GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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WEDNESDAY

APRIL 21, 1999

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The Board met in Hearing Room 220 South at 441 4th Street, N.W., Washington, D.C., at 9:00 a.m., Shelia Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID, Chairperson
BETTY KING, Vice Chairperson
JERRY GILREATH, Board Member

ZONING COMMISSION MEMBERS PRESENT:

ANGEL F. CLARENS, Commissioner
ANTHONY HOOD, Commissioner
JOHN F. PARSONS, Commissioner

STAFF PRESENT:

SHERI PRUITT-WILLIAMS, Interim Director, Office of Zoning
PAUL HART, Office of Zoning
JOHN NYARKU, Office of Zoning
ALAN BERGSTEIN, ESQ., Office of Corporation Counsel

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

9:46 a.m.

CHAIRPERSON REID: We will begin. Those of you here for the meeting, we do have a short meeting that we will engage in before we start the hearing.

We will now begin the morning meeting.

Can you hear?

For those of you who are here for the hearing, they're with us because we have a meeting that we will commence before we start the hearing.

MR. HART: Good morning, Madam Chair, members of the Board. For this special public meeting, we have the application 16421-C of Howard University, Metropolitan Day School, Inc., pursuant to 11 DCMR 3108.1 for a special exception under Sections 205 and 206, for the construction of a private school for 220 students and 24 staff and a child development center for 20 children and two staff persons located in an R2 district, at premises 1240 Randall Street, N.E. This is in square 3923, Lot 25.

CHAIRPERSON REID: What number is it?

MEMBER GILREATH: We're here to make a decision on this, right?

CHAIRPERSON REID: Uh huh.

MEMBER GILREATH: I felt in the citizen's testimony and so forth, that the concern, first and far most, is traffic and noise.

And I read, I guess, the DPW's report and they felt the traffic was -- would not be really a major problem.

I felt that based on the DPW and considering the information provided, that I can appreciate the citizen concern but somehow it was hard for me to reach the conclusion that the traffic getting out of there would create that much of a difficulty.

The noise, the applicant has said they would raise the fence for the play area about eight feet. Now, maybe there are aesthetic considerations that still need to be considered, but considering -- as understanding the traffic is -- there's a traffic artery nearby and you get quite a bit of background traffic noise. So, I'm not sure that noise is going to be significantly greater than what you're getting in the background noise on that.

So I certainly would like to hear what the other Board members have to say, but --

CHAIRPERSON REID: Would you like to move? Make a motion?

MEMBER GILREATH: I would if everyone is, I'm prepared to, unless someone else would offer --

CHAIRPERSON REID: Ms. King was not involved in it.

MEMBER GILREATH: Does anyone want to offer some other thinking before we do that?

CHAIRPERSON REID: Well, you can make the motion and we can still have discussion.

MEMBER GILREATH: Well, okay. I move that we approve the day care center. I feel that they have, even though the school would create some additional activity, that schools are permitted if the noise is controlled, it's not a major traffic impact, and consideration seem we don't need any more schools because it's going to be an Afro-centric school, I don't feel that's really a basis for rejecting it.

So, I move that we approve the applicant's submission.

CHAIRPERSON REID: I would second it.

I also -- I felt -- I concur with your analysis, Mr. Gilreath. I felt that while there would currently on the -- from the standpoint of the community there was some opposition in regard to additional traffic, and noise, and parking, and the -- it's a fact that the -- they worked the issues regarding other day care centers or school things, 1,000 feet of this particular facility.

I felt that the applicant did meet the burden of proof and that they demonstrated that while these things may have been apparent, it was to -- and more or less the adverse impact was minimal. And that they would move to ameliorate these, or mitigate these, impacts as best they could in regard to noise, as you mentioned. They talked about the screening and the landscaping and as well as the allocation of the parking.

They also made provisions for the pick up and drop off the children which I thought was adequate. They made provisions

for the trash removal and also for management during the construction. And I felt that, therefore, the impact would be at the most minimal and therefore this particular application should be approved.

Mr. Parsons?

MR. PARSONS: Well, I want you to consider an alterative.

CHAIRPERSON REID: Uh huh.

MR. PARSONS: I would feel more comfortable if we approved this for 150 students instead of the 240 that's requested. As you recall, the initial phase of this school would have been this September at 150 students.

CHAIRPERSON REID: Right.

MR. PARSONS: Through the sixth grade.

CHAIRPERSON REID: Right.

MR. PARSONS: I'm not as confident that all of these predictions that have been made are going to result in what we think it will. So, I was going to recommend that, or am recommending, that we do kind of a phased situation here where we test this for a year or two at 150 through sixth grade and reconsider it at that point.

CHAIRPERSON REID: Okay, put a term on it.

MR. PARSONS: Rather than go directly to the 240. Certainly we had no testimony on what the impact of this would be.

CHAIRPERSON REID: Of the number.

MR. PARSONS: Of this idea would be. But I don't, in

that this is an absolute new start and the comparison with past uses here is irrelevant to me. I mean, yes, there are 150 teachers and people in a much different circumstance, adults. It's just not a good -- not a valid comparison to the capacity of the previous facility or orders of this Board to allow it to happen.

So, I know this is unusual or abnormal, normally we issue a permit or a permit, if you will, for a period of time for certain activities to come back and see how they're doing. This would be yes, 240 seems all right but let's take it one step at a time.

CHAIRPERSON REID: Do you feel, Mr. Parsons, that in two years the opposition will have in any way moderated their position?

MR. PARSONS: That's what I'm hoping. And it's really the fear of the unknown at the moment. And that's a human response, a community response here. I mean, we certainly had a lot of testimony concerned.

CHAIRPERSON REID: I see. So, you feel that on the one hand we could allow them the opportunity to start the school and then, since it's unproven, allow some period of time where they would be able to operate and then come back?

MR. PARSONS: Right. Operate at 150 which is --

CHAIRPERSON REID: Come back for the full 250?

MR. PARSONS: Right.

CHAIRPERSON REID: To request the additional students?

MR. PARSONS: Beyond the sixth grade.

MEMBER GILREATH: Well, if they make all these alterations to the building and they come back in two years and the citizens make a case that indeed the traffic is a real problem, the noise, and so forth, we simply freeze that at 250? We say you can't go beyond that?

MR. PARSONS: Yes.

CHAIRPERSON REID: The capacity -- I think the capacity was 250.

MEMBER GILREATH: Well, can they -- do we have the information that if they operate at 150, can they afford the investment and so forth? This would be a functional thing that they have to close the school down in two years?

CHAIRPERSON REID: If they do what now, I'm sorry?

MEMBER GILREATH: Well, if they invest in all this and it turns out indeed in two years that we say 150 is as far as you go on this, can they continue to function? Is this a viable school activity at 150 students?

CHAIRPERSON REID: Well, I think that a lot of this would depend on the manner in which they conduct themselves at the school. And what I think Mr. Parsons is doing is putting the onus of responsibility on the school itself to demonstrate that their being there is going to be conducive to an atmosphere which there would be less, or not an inordinate amount, of adverse impact.

Also, I think from what I could garner from the testimony in opposition was that the school could do well to develop more of a community outreach and to become involved with the community, and to be good neighbors. A lot the testimony was based on lack of communication, the fact that the school did not -- the church did not notify the community that they intended to bring the school here and to get the input before -- and the school there, before the application actually came -- they signed a lease and making the application.

So, I think that this time period also would be used to -- for the school to, given the fact that there is this contention around them, to reach out and to ameliorate that as much as possible with maybe a liaison entity with the community and school, and handling any problems that might come up. So that when the two year period is up, then they can come before us and expect to get the additional amount of students.

I think that that's a fair position to take for both sides.

MEMBER GILREATH: Well, I would want some kind of implicit understanding that within two years, when they came back, if there were significant problems, either with the community or traffic, what have you, that we would accord them -- they would have to come in with some kind of mitigation program. And we'd leave the door open so if they can mitigate these difficulties, it would be understood that we would go ahead and approve it.

What I have problems with is in two years they have

to shut the school down unless they can operate at 150.

CHAIRPERSON REID: Yes, that's a good point, because I think that they are also, in all fairness, there will be those who will never accept the school and never cooperate with the fact that they're in the community. And we have to bear that in mind as well.

But, I think that if -- my impression is that if the school can come into that community, does its homework and develops the relationship with that community, a cordial kind of relationship, that their prospects of them being able to come here in two years and have the amount increased to 250 would be probably be most favorable.

MEMBER GILREATH: Well, how do you feel, John, them coming back in two years if there are difficulties? Wouldn't we say that either they, when they come in, they would have addressed these or we say we're going to give you an opportunity to address the problems that have arisen. And if you can establish appropriate mitigation, we would let you -- And I want them to at least say that if certain conditions are met and addressed, they can go to the 240. I'm really concerned whether they can operate at 150 as a viable institution.

So, if we shut the door at that and they can't go beyond that, it's not fair to the applicants. Saying we started this up and in two years we can only go 150 and it's really not viable. It's got to go some place else.

I appreciate the concern but it somehow -- can we in

any way make the provision or allowance, or stipulation, that within two years if there are significant problems established by the community, traffic and what have you, we would say, if you can address these conditions, maybe you need to change the parking and this, that, and the other, that we would let you go to the 240. The opportunity is there if indeed there are problems and they can mitigate them rather than simply say 150. We don't know what's going to happen.

MR. PARSONS: I don't see this as any different than the case of, say, an operating day care center or an operating school came to us saying they wanted to increase the capacity at the second round, if you will. That is, two years from now they would come back to us and deal with the issues of traffic and noise which are the only major issues that have been identified, come forward and say all right, we want to increase it by another third. We want to go from 150 to 250, or whatever the figure is. And here's been our experience. Here's what happens in the drop off. Here's the video, whatever, and the noise has proven not to be a problem. And we want to increase it to 150.

And all we're saying at this stage is 240 might be okay but we're not sure enough about the circumstance. Come on back after two years and tell us what your operational experience is with respect to traffic and noise. Because those are the only -- traffic, noise, and parking, because they're worried about people parking in the street to come to PTA meetings and so forth, or whatever it's

called.

CHAIRPERSON REID: And also, I think the cumulative impact of the other day care entities that are within 1,000 feet of this particular entity.

MR. PARSONS: Well, only one's been identified as 1,000 feet.

CHAIRPERSON REID: Well, there were --

MR. PARSONS: The opposition says three.

CHAIRPERSON REID: Yes, opposition said three but the applicant said one.

MR. PARSONS: They don't count the others. I think the elementary and public schools.

MS. PRUITT-WILLIAMS: Excuse me, Madam Chair. Because there were differences in both applications, staff did independent analysis off the base. And when it scaled down on an engineering scale, the radius goes through the intersection of Randolph and Perry. So it does -- that other day care is on the outside.

CHAIRPERSON REID: Okay. All right. Then that does -- that's a moot point.

MEMBER GILREATH: Well, I'm willing, having heard John's argument, that I -- it's reasonable to say approve it at 150 and look at it. And certainly if we're still on the board here when this came back in, if there were problems they demonstrated that they were additional effective mitigations measures they could take, I would be in

support of the 240. But, we're willing to hold it at this point to see how things go. So, do I need to amend my motion or --

CHAIRPERSON REID: Well, we're going to include conditions. And if you're going to move that we adopt the draft order as submitted with the amendment and the --

MEMBER GILREATH: But I'm going --

CHAIRPERSON REID: -- conditions, then that would be a change in the conditions wherein rather than 240 students, it would be 150 students.

MEMBER GILREATH: For a period of, what, two years, John?

MR. PARSONS: Two years.

MEMBER GILREATH: How about three years?

CHAIRPERSON REID: And then the term, the term of the school, then, would be two years. It would add admission 15 which would be the term, correct?

MS. PRUITT-WILLIAMS: Excuse me, Madam Chair. Just clarification for staff.

So, in two years, if in two years you've decided that they no long -- that 150 is where they should stay and not get the increase to the 240, how long does the two year -- how long will the condition for the 150 students be? For just two years or --

MR. PARSONS: No, in perpetuity.

MS. PRUITT-WILLIAMS: That's what I wanted to be sure of.

And then, in two years, they have the opportunity to increase?

MR. PARSONS: Yes.

MS. PRUITT-WILLIAMS: But the 150 would be in perpetuity.

CHAIRPERSON REID: Come back and -- the increase.

MS. PRUITT-WILLIAMS: The 150 students would be in perpetuity?

MR. PARSONS: Yes.

MS. PRUITT-WILLIAMS: Just wanted to be sure we got this condition correct.

MR. PARSONS: Perpetuity is a long time.

MS. PRUITT-WILLIAMS: I know. That's why I wanted to be sure.

MR. PARSONS: More than I can imagine.

MEMBER GILREATH: That's not a term we use here very often.

MR. PARSONS: Just say a long time.

CHAIRPERSON REID: So, the draft order would be adopted as submitted with the amendment and the condition that it be 150 and that the term of the school be for two years. And after which time, they would be able to reapply for an increase up to 250 students --

MEMBER GILREATH: 240 I believe it is.

CHAIRPERSON REID: 240 students or remain at the 150 for another period of time, I suppose that would be determined by the Board at that time.

MEMBER GILREATH: Yes, they could determine whether or not --

CHAIRPERSON REID: Is that where you were going with that?

MR. PARSONS: Correct. And I think we ought to make sure in our -- I guess it would be in the findings of fact or conclusions of law, not in the decision, that we're favorably disposed to -- we realize the facility could accommodate 240 people. They don't need additions to the building or anything else.

CHAIRPERSON REID: Only for -- only for the increasing the number of students.

MR. PARSONS: That's correct. And that we wouldn't treat it as a fresh application. That is, it would -- there's a base of data here that talks about the fact that the physical plant can handle 240, it's just a matter of whether it has obnoxious qualities in the neighborhood.

CHAIRPERSON REID: Mr. Parsons, why don't we say, then, the for two years in which time they would reapply for an increase of the number up to 240, just in case the Board --

MR. PARSONS: Yes.

CHAIRPERSON REID: -- at that time determines that maybe 200 --

MR. PARSONS: 200, but 240, 200.

CHAIRPERSON REID: Up to a maximum of 240.

MR. PARSONS: Right. And the test would be parking, traffic, and noise.

CHAIRPERSON REID: And noise. Okay.

All in favor?

(Whereupon, an oral vote was taken.)

CHAIRPERSON REID: Opposed?

(No response.)

MR. PARSONS: Now, I did want to deal with one other matter, or I should have interrupted the vote, I guess. And it has to do with the sound wall.

And as you know, the opposition asked for the record to be open for Mr. Henning's cross examination which I don't feel is necessary. And I'm not sure whether we need to deal with that in the form of a motion. Was that a formal motion for us to open the record?

MS. PRUITT-WILLIAMS: Why don't we just do and that way we'll be safe. Move to deny or approve.

MR. PARSONS: The motion is a motion to strike the letter from Mr. Henning or to reopen the record. And I think we should deny the motion on both counts. I don't think it's that complicated of a matter that we need to belabor it.

CHAIRPERSON REID: I'd agree.

MEMBER GILREATH: I agree.

CHAIRPERSON REID: All in favor.

(Whereupon, an oral vote was taken.)

CHAIRPERSON REID: Opposed.

(No response.)

CHAIRPERSON REID: When I agreed, I seconded the motion.

MS. PRUITT-WILLIAMS: Right. The motion is to deny the reopening of the record, correct?

MR. PARSONS: No, to deny both.

MS. PRUITT-WILLIAMS: Strike his testimony and deny?

MR. PARSONS: Right.

I'm going to the proposed modification or mitigation. I'm kind of sorry I started this. There's an existing wall. They sent us a section. You may see it. There's an existing wall at the east end of the forecourt, or the atrium, if you will. It's about three feet high.

And you recall what they proposed to do is to put a, as I recall, it was a wrought iron picket fence on top. And I observed that that wouldn't stop the sound so could they make an effort to build a sound wall.

So, what they chose to do is to use cinder block seven feet high with duct liner on it and some kind of a metal screen over it. That's not quite what I had in mind and what I'm thinking is that given the analysis that Mr. Henning did of the amount of decibels that would reach the opposite of the street which is in the 50 to 60 range, that we'd be better off with plant material. Returning to the

wrought iron that they originally proposed and in the space, the 30 feet between the low wall and the street, that we should ask them to plant a hedge of evergreens, plant material. I'm not going to specify what kind. We could but I don't think that's the way to do it.

What might be easier, I could just say that it should be, I don't know, let's do that. My proposal, then, would be to place along that wall, at the base of the wall, on the east side of the wall, that is the outside of the wall, arborvitae eight feet high, four feet on center, across that entire length of that wall which is quite specific for an order but it's easier than asking for a drawing and so forth. And I think that would provide the same kind of acoustical buffering that I had in mind.

I don't know. What do you --

CHAIRPERSON REID: You want to move that as a condition?

MR. PARSONS: That's a condition, yes.

CHAIRPERSON REID: I have no problem with that. I do remember that there was a discussion about them using some type of buffering device. And if that is what you feel would be most suitable, then just add that as a condition to the order.

MS. PRUITT-WILLIAMS: Excuse Mr. Parsons, the height of the wrought iron fence? You have -- the height of the wrought iron fence should be seven --

MR. PARSONS: On top of the existing wall they were going to put the wrought iron as I recall.

MR. PARSONS: Would be a total of seven feet high, is that --

MR. PARSONS: Seven.

MS. PRUITT-WILLIAMS: Yes.

MR. PARSONS: I only had a chance to look at this exhibit, but you can see what they proposed and it's a complete architectural barrier.

CHAIRPERSON REID: Well, yes, and also, they have -- I remember there was some discussion about acoustical panels.

MR. PARSONS: Yes, that would go on the inside.

CHAIRPERSON REID: Sound absorbing panels that they were going to investigate manufacturers to see if in fact --

MR. PARSONS: Well, what they've done is a one and a half inch thick fiberglass duct liner with a metal fabric over the top that I'm sure would be dented in time and just doesn't look like the right solution to me.

I then wanted to go to the issue of the dumpster and I'm not a dumpster expert. But they provided an exhibit the committee's had an opportunity to review. You recall they were taking a parking space out back here --

CHAIRPERSON REID: Right, for the dumpster.

MR. PARSONS: Along the alley. And we had asked them for a screening around that and they provided a stockade fence seven feet high. I think that's appropriate.

But you see on the diagram that they are using the alley as the way to open the gates. In other words, the gates swing into the alley.

CHAIRPERSON REID: Into the alley.

MR. PARSONS: And, I don't know how we deal with that here on the Board but it seemed to me that it should be farther back. That is --

CHAIRPERSON REID: Well, could the gate swing into the area?

MR. PARSONS: Move the dumpster enclosure back so that the truck could move into the space.

CHAIRPERSON REID: Okay. So, basically --

MR. PARSONS: Rather than relying on the alley.

CHAIRPERSON REID: Basically what you're saying is, you don't want that gate to obstruct the alley.

MR. PARSONS: Right and places the truck in a situation where it's backing up --

CHAIRPERSON REID: So, either have to have the hinges so that the gate swings in or move the dumpster back.

MR. PARSONS: Yes, I don't have as much trouble with the gate swing as I do the fact that I would suggest that they put the dumpster enclosure back here.

CHAIRPERSON REID: Well, do you want to indicate how far back?

MR. PARSONS: Where is back here, she said.

CHAIRPERSON REID: Can you be a little bit more specific?

MR. PARSONS: Yes. Let see if I can do this.

CHAIRPERSON REID: And is it possible? I mean, is the space there?

MR. PARSONS: Yes.

CHAIRPERSON REID: To move it back?

MR. PARSONS: You see, that was a parking space. So, to make this simple, I guess, I would move -- I would keep the size of the dumpster enclosure the same and move it to align itself with the edge of the parking spaces indicated on the drawing.

CHAIRPERSON REID: That's where now?

MR. PARSONS: Which would allow the truck to maneuver into the space rather than relying on the alley.

So, those are my only suggested --

VICE CHAIRPERSON KING: Those amendments to the --

CHAIRPERSON REID: To the conditions of the proposed order that's been submitted.

MR. PARSONS: I think everything else, the parking spaces, hours of operation, the 40 students playing at one time, and the drop off, and all of the other conditions shown by the applicant in their proposed findings would be fine. Their draft order.

CHAIRPERSON REID: Ms. Pruitt-Williams, we don't have to reopen the case?

MS. PRUITT-WILLIAMS: You can just amend your motion.

CHAIRPERSON REID: All right. Mr. Parsons, would you amend it, the motion, to include the condition that you just --

MR. PARSONS: Additional condition.

MS. PRUITT-WILLIAMS: There are two conditions that Mr. Parsons put up after you took the vote.

CHAIRPERSON REID: That you proffered after the case was decided.

MR. PARSONS: Yes. We need a motion to --

MS. PRUITT-WILLIAMS: To amend your previous vote because you voted before these were put in.

MR. PARSONS: All right. So moved.

MEMBER GILREATH: I second the motion.

CHAIRPERSON REID: All in favor?

(Whereupon, an oral vote was taken.)

CHAIRPERSON REID: Opposed?

(No response.)

CHAIRPERSON REID: All right. That's that. All right, thank you.

The hearing is now concluded for this morning. I'm sorry, the meeting is concluded for the April 21st meeting and we will now begin the hearing.

Good morning, ladies and gentlemen. The hearing will please come to order.

This is the April 21st public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Sheila Cross Reid, chairperson.

Joining me today are --

VICE CHAIRPERSON KING: I'm here.

CHAIRPERSON REID: Betty King, Jerry Gilreath representing the National Capitol Planning Commission.

The topic 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 tot he Board, please give both cards to the reporter who is sitting to my right.

The order of procedure for special exception and direct case will proceed as follows. One, statement of witnesses of the applicant. Two, government reports, including Office of Planning, Department of Public Works, ANC, et cetera; persons or parties in support; persons or parties in opposition; closing remarks by the applicant.

The procedure for appeal applications will be as follows: Statement and witnesses of the applicant; the Zoning administrator or other government official; the owner, lessee, or operator's property involved, if not, the appellant; the ANC within which the property is located; intervenor's case; rebuttal and closing

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

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

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

At this time, the Board will consider any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today such as a request for postponement, continuance, or withdrawal, whether proper and adequate notice of the hearing has been given. If you're 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?

MS. PRUITT-WILLIAMS: Yes, Madam Chair, there's a couple.

CHAIRPERSON REID: Please come forward.

MS. PRUITT-WILLIAMS: You can come forward, too.

There are two preliminary matters. Staff has one in reference to Case No. 16372 which is your last case on the agenda this morning. This case was initially -- was initiated prior to a zoning

change or --

CHAIRPERSON REID: Right. Ms. Pruitt-Williams, excuse me one second, please.

MS. PRUITT-WILLIAMS: Yes.

CHAIRPERSON REID: Let's deal with the preliminary matters, the general preliminary matters, and then the staff preliminary matters, if you don't mind.

MS. PRUITT-WILLIAMS: Okay.

CHAIRPERSON REID: All right.

Mr. Brown?

MR. BROWN: Good morning, Madam Chairman, members of the Board. My name is Patrick Brown. I'm with the law firm of Greenstein, Delorne, and Lux. I'm here this morning on behalf of the appellant, Ms. Mildred Crary in Case No. 16405.

I've just provided the Board a letter dated this morning raising two preliminary matters. There was one that I raised originally with the filing of my pre-hearing statement. The statement was filed the morning after the 14 day deadline, requested the Board waive its time period to allow it to be accepted into the record.

Counsel for the intervenor, Ms. Dwyer, has in writing consented on behalf of her client to that, ask the Board to waive its rule and allow the pre-hearing statement to be accepted into the record with my apologies to staff and the Board for the minor delay.

CHAIRPERSON REID: I have no problem with allowing it to be submitted at this time. Does the Board have no

objections?

MEMBER GILREATH: Don't mind.

CHAIRPERSON REID: Okay. We have not had a chance to read this. So, you're going to basically give us the gist of it?

MR. BROWN: The letter, yes.

CHAIRPERSON REID: Please.

MR. BROWN: It raises two points. And again, my apologies for the last minute filing of it. It involves issues with us going forward today that need to be, I think, dealt with early on. I was perhaps overly optimistic that we'd be able to work a resolution between the parties but we have not.

First is, I raise concerns that in fact there have been ex parte contacts between the intervenor and Mr. Bergstein, the Board's legal advisor. That came to light in a conference call that I, Ms. Dwyer, and Mr. Bergstein had. And I believe that was April 6th. In which case, and Mr. Bergstein insisted, that to avoid ex parte contacts, that the call be participated by all the parties, myself and Ms. Dwyer included.

We had that conversation and discussed issues. At that time, it became clear, based on the conversation, that some sort of written document had been provided to Mr. Bergstein having to do, again without having seen it, the facts and the law in this case. I asked for, and did not receive, a copy of that and in keeping with the Board's admonition at the beginning of the hearing that you just gave, I believe that the prohibitions on ex parte contacts extend not only to

the Board members, but to their legal advisor who is supposed to be providing them independent legal advice based on the record.

This document, that I know of, is not in the record and it's a great concern to me that my client get the opportunity to respond fully to all the materials that are being brought to bear in this case.

The difficulty of how we deal with this, I've laid out in the letter several possibilities. A combination of one or all of them I think are appropriate. The first is, I'm speaking without seeing the document, so is the Board and the staff, that we obtain a copy of that document and then proceed from there depending on its contents.

Second, the issues may require that those issues being raised be somehow limited or struck by the intervenor in bringing their case. Certainly at a minimum, I should have opportunity to respond in writing, both to the Board and through the Board to their legal advisor.

And then, I've never had a situation like this and there may be other steps the Board may wish to take. But again, I think it's important that we do this in an open atmosphere.

So, that's the first issue. I have a second one but --

VICE CHAIRPERSON KING: Should we deal with the first issue?

MS. PRUITT-WILLIAMS: We also need to -- the applicant and intervenor is here, so we need to hear their response.

VICE CHAIRPERSON KING: I'm sorry, I didn't hear you.

MS. PRUITT-WILLIAMS: The intervenor is here, so we need to at least hear from them.

CHAIRPERSON REID: Counsel is here.

MS. PRUITT-WILLIAMS: They have an opportunity to respond.

MS. DWYER: Good morning, Madam Chair and members of the Board. For the record, my name is Maureen Dwyer with the law firm of Wilkes, Artis, Hedrick, and Lane, Chartered. I have been retained by Mr. Sisson to assist him at this morning's hearing.

I just reviewed the letter and listed to what Mr. Pat Brown said, and let me tell you what happened. And let me also start by saying that I've practiced with this Board -- before this Board, for 20 years and I have never engaged in ex parte communications.

When I was brought into this case, the first thing I did was to contact the Zoning Administrator and have a meeting with him which is what we normally do in cases involving an appeal. I also read the transcript from the last hearing. And what I read is that this matter was being referred to the Office of Corporation Counsel, Mr. Alan Bergstein, for their advise and assistance. As a courtesy, I sent Mr. Bergstein a copy of the agenda for the meeting with the Zoning Administrator.

The meeting with the Zoning Administrator was cancelled. They were moving their offices. He was busy. Mr. Bergstein called me and said, "I received a copy of your agenda. What I would like to do is to avoid any appearance of impropriety is to

have a conference call with Mr. Pat Brown. If you are willing to do that, would you set it up?" I called Mr. Pat Brown and said, as you know, I'm on the case. Corporation Counsel is involved. He would like to have a conference call and I scheduled that with Corporation Counsel and Mr. Brown.

At that conference call with Corporation Counsel, we outlined a course of action and all of us agreed to the best way to proceed with the case at that point. We discussed with Corporation Counsel not filing a motion in advance of today's hearing; handling the issues that Mr. Sisson raised at the last hearing as a preliminary matter at today's hearings; and that following today's hearings, Corporation Counsel suggested that both Mr. Brown and I get an expedited transcript, prepare our respective draft orders, and hopefully have this case ready for decision by the Board on May 5th.

After we concluded that conversation, Mr. Brown asked me what was the document that Mr. Bergstein was referring to receiving from you and I explained that it was a copy of an agenda for the meeting with the Zoning Administrator and that it outlined the same issues that Mr. Sisson had raised at the hearing, the reasons why we felt the appeals were untimely, and Mr. Brown did not insist on a copy of that document. I explained to him that those same arguments would be made at the hearing today. He didn't object to my not providing him with a copy of the agenda. So, I am totally surprised at the suggestion this morning that that was a major issue and requires somehow postponing or deferring this case.

In looking at the transcript from the last hearing, this Board agreed at that time that the issues that Mr. Sisson tried to raise then would be raised today as a preliminary issue. And Mr. Brown agreed to it at that time. Chairperson Reid said then this would be done at the hearing as a preliminary matter. At the actual hearing, on the following page 32, Mr. Brown said, "I have absolutely no objection. I think that's the appropriate way to proceed."

Again, in our conversation with Corporation Counsel, when we outlined the way to proceed with the case, Mr. Brown agreed that that was the way to proceed.

I see no basis at this point in time to delay this case in any fashion. The arguments that we are making this morning are the same arguments that Mr. Sisson made and he provided Mr. Brown on February 17th with copies of these BZA orders and other materials that he was citing.

The decision --

VICE CHAIRPERSON KING: Ms. Dwyer, do you have any objection to giving him a copy of the memo that was given to Alan?

MS. DWYER: I don't have it with me but I will be happy to give him a copy --

VICE CHAIRPERSON KING: Can you have it faxed over here while we're hearing our first case?

MS. DWYER: I'm not sure that that's possible but as soon as I go back, and I will have it by close of business today, a copy

of the agenda to you and to Mr. Brown. The same -- those are the same issues that Mr. Sisson raised on February 17th. They're the same issues we're raising this morning. And they're the issues that Mr. Brown has responded to in his filing, issues of laches, estoppel, and timeliness.

There's no surprise. There's no reason to delay a decision on this. And at this point, we'd like to go forward with our preliminary issues and in accordance with the directions we received from Alan Bergstein, to hopefully have this case ready for decision on May 5th.

So, what you're saying is the objection you have is you have not seen a copy of that particular document. And you want a copy of the document and you're also requesting time to respond to the document. If the document is an agenda --

MS. DWYER: Right.

CHAIRPERSON REID: If it's a very simplistic document that really did not --

MR. BROWN: I'm talking in vacuum of not seeing the document.

I think it's important, one, I don't know what it says. I have a difference on the characterization of our conference call but that's not relevant as Mr. Bergstein or his staff can provide their guidance here.

I am concerned there's been a communication outside the normal channels that you and I haven't been part of, and that

concerns me. My job is to look after my client's interest and its been handicapped. And so, I bring it to the Board's attention. I'm not saying necessarily we have to delay this case. That's ultimately for you to decide. But certainly as, one, at a minimum for myself and the Board to be able to see that document, make a judgment. And then if necessary, my being able to respond to it.

It flows into my second issue which is the ability to respond on behalf of my client to a filing that was made this morning, or will be made this morning. So, perhaps we can kill two birds with one response by me. But again, I need to be able to participate fully in this case on behalf of my client and before the Board. And whatever was sent to Mr. Bergstein is outside of that and at the same time I need to be able to respond to -- in writing, to the filing that will be made this morning.

CHAIRPERSON REID: Ms. Dwyer, you don't have a copy here with you?

MS. DWYER: I don't --

CHAIRPERSON REID: For the document in question?

MS. DWYER: I don't believe I do. I'll check my files when I go back.

CHAIRPERSON REID: All right.

VICE CHAIRPERSON KING: And you can't have it faxed over from your office?

MS. DWYER: I'm not sure that I'd be able to do that.

CHAIRPERSON REID: Corp counsel is here. Do you perchance have a copy of the document?

Ms. Nagelhouse is representing Corp Counsel's office here today and she's going to look to see if she has it. And if she does, then this will completely, I hope, dispose of that issue.

MR. BROWN: Well, dispose of it as to providing the document to all -- everybody involved. Whether it warrants by itself a response --

CHAIRPERSON REID: Well, if we come up with it, then you can look at it. But also, in regard to the ex parte aspect of it that you're raising, I'm not really sure if -- I know that in regard to the Board members, if there's any external communication, it's ex parte. Now, how that relates to the Corp Counsel's office, speaking to them or giving them documentation, I am really not sure.

However, be that as it amy, I feel that from what Ms. Dwyer is saying, there was no intention -- there was no intentional or deliberate action on her part to deprive you of this information. And I think that even if it is being deemed as ex parte, that she was not aware of or did not deem it as such when she did it.

MS. DWYER: If anything, the ex parte was our conference call in which we all participated. And if Mr. Brown had -- was so concerned at that time, I don't know why he didn't raise it with Alan Bergstein and say that he was going to file something in the record and would like him to respond. And it could have been resolved well in advance of today.

There was no objection raised at that time. Mr. Bergstein explained the reason for the conference call. We all discussed the case and our positions, and how best to proceed, and we reached agreement on the issues. I'm very surprised by this--

MR. BROWN: Well, I mean, one thing I think -- and this is the danger we have because -- and I don't want to get into a fight before the Board on what we agreed to on that telephone call. But, we didn't reach agreement in the context that's being provided here. So, I mean, again, that just raises the question of the importance of having everything in full view.

So, I mean, the Corp Counsel is here to give legal advice and I think that's best rather than Maureen and I trying to characterize conversations that this attorney wasn't part of.

MS. DWYER: The -- If any agreement was reached on how to proceed today, I would just refer back to the transcript were this issue came up and the Board decided it would be a preliminary issue at this hearing. And counsel for appellant agreed at that time. I read the transcript. That's the way I understood today's hearing to go and that's what I'm prepared to do.

CHAIRPERSON REID: Ms. Dwyer, come forward, please. Just one second so we can have her look at this. I think this is the document she's referring to and --

MS. DWYER: That's the document.

CHAIRPERSON REID: The whole of it? Or is it just the first few pages?

MS. DWYER: I would have been all of it. Which is the same material that's in our filing today. And these are the same cases that Mr. Sisson referenced at the February 17th hearing.

CHAIRPERSON REID: So this is -- this has been made available to Mr. Brown?

MS. DWYER: Yes.

CHAIRPERSON REID: Mr. Brown, would you come take a look at this to see if you --

MR. BROWN: I mean, and this raises the concern I have. That we were talking about a meeting agenda and now we're producing a package of material that's a half inch thick. And that's not in the record before the Board, if it's what Mr. Sisson attempted and was not able to file on February 17th. So, we've got a whole separate back channel communications to Mr. Bergstein outside of these proceedings and that's exactly what I'm talking about. And in fact, the situation, in view of this, and I'll be happy to look at it, is, I think, more troublesome than just an enumerated agenda.

I would like to look at it.

CHAIRPERSON REID: Yes, definitely.

COMMISSION MEMBER CLARENS: Ms. Dwyer, you started this conversation by saying that -- or your statement, by saying that you -- when you entered the case, your first move was to ask for a meeting with the Zoning Administrator in order to discuss the issue because the appeal is against --

MS. DWYER: That is correct.

COMMISSION MEMBER CLARENS: And that is, that seems to me reasonable. Do you usually involve Corporation Counsel in those matters?

MS. DWYER: No, the reason I did so in this case was that I also had read the transcript and understood that the matter was going to be referred to them. So, as a courtesy to Corporation Counsel, I sent a copy of --

VICE CHAIRPERSON KING: Referred to them by who?

MS. DWYER: The -- this issue, at the end of the last month, or February 17th --

CHAIRPERSON REID: It was in regards to the issue of timeliness, I think.

MS. DWYER: Right. At the end of the hearing on February 17 --

CHAIRPERSON REID: Go into a reading on -- you definitely shouldn't -- how we've established timeliness.

MS. DWYER: The Board, at the end of the hearing on February 17th, said that it was going to ask Corporation Counsel to advise them on the issues raised by Mr. Sisson's, laches, estoppel and timeliness.

MR. BROWN: Madam Chair, I'm looking through this and it includes a fairly detailed outline which I've never seen. Some of the material from the -- that Mr. Sisson attempted to file which I had, it includes the transcript from February 17th and it appears to include

case law going well beyond what was attached to Mr. Sisson's attempt to file.

COMMISSION MEMBER CLARENS: So, this is more like -- than an agenda. This is an argument?

MR. BROWN: Absolutely. Absolutely. Which I don't have time to read and digest, and respond to.

CHAIRPERSON REID: Sure.

MR. BROWN: On the basis of this, I'm now going to change my request that we do in fact continue this case. Because, again, the Corporation Counsel and their office has got information, is giving advice, based on documents I haven't seen and the Board hasn't seen. And I object to it. And it sets--

COMMISSION MEMBER CLARENS: And would that cure the problem?

MR. BROWN: Well, I'm not so sure it would because -- I mean, certainly we now have it in open -- in plain view. And then I've got to look at it. I mean, it's 75, 100 pages. There are cases. There's information. We may in fact have to have the parties and the Corporation Counsel's office who reviewed it be subject to examination by the Board and the parties.

But this is a real problem. And this is not in fact the Board and its legal counsel should operate. And I'm going to now ask for a continuance of the matter.

MS. DWYER: And, Madam Chair, I would object. The attachments to that agenda are the BZA orders and cases that

Mr. Sisson referred to at the hearing on February 17th. Counsel for the appellant is well aware of the case law on the general issues of timeliness, laches, and estoppel. Those same cases are referenced in his filing. Those same cases were discussed in our conversation with Corporation Counsel and Corporation Counsel even suggested additional cases for us to look at.

This is not -- the information that is in there is the same information that is a matter of public record. The transcript is a matter of public record. I read it. Mr. Brown read it. There is nothing new in there that was not brought up on February 17th. There's nothing in there that was not addressed by Mr. Brown in his pre-hearing filing today. And it's the same material we are raising again in our arguments this morning on the preliminary issues.

MR. BROWN: Madam Chair, I can't begin to agree to that. It looks like, just in leaping through, that there are substantially additional materials. There's the transcript. There are things that were not part of the February 17th hearing. I mean, just for me to take a catalogue and compare the two documents, I can't do at this moment.

And so, I mean, I think -- And then, that leaves the Board without any idea of what's going on. I mean, you can characterize it as -- and I appreciate Maureen's view that I know everything there is to know about some of these issues. After all, I did work at Wilkes, Artis where I got good training.

But I shouldn't have to, and the Board shouldn't have

to, use a crystal ball about what Mr. Sisson's case is. I deserve to have it in front of me as well as the board and respond appropriately.

So, I think the only way at this point, and this is by far not the only thing that may need to be done, but in fact we need to continue the matter because there's a whole body of information going beyond what -- a simple agenda that's now been transmitted in an ex parte form.

CHAIRPERSON REID: Ms. Dwyer, excuse me, before you speak, may I just ask you, did you not say that Mr. Brown had those items that we just gave him already in his filings?

MS. DWYER: Yes.

CHAIRPERSON REID: Has it been submitted to him?

MS. DWYER: Uh huh.

CHAIRPERSON REID: But he's saying that he doesn't

MR. BROWN: I do not have -- Looking through this and, one, I think it contains, one, the agenda. It contains the transcript. It contains, it appears to be, case law going beyond what was provided. And the cases aren't even in the form. They've been annotated in hand with suggestions about their importance.

CHAIRPERSON REID: And if I ask her -- Thank you, Mr. Brown, but I want her to respond.

MS. DWYER: If I may respond.

Issues relating to laches, estoppel, and timeliness,

are jurisdictional issues that the Board generally hears as a preliminary matter. There is no requirement by the party raising those issues to do anything in advance. They can come at the time of the hearing and raise those issues, which is what Mr. Sisson tried to do on February 17th, to say this case shouldn't even be heard let alone be continued for these reasons.

We are making those same arguments today. I have filed a document this morning that attaches the cases that we believe support our reasons why laches and estoppel should apply. I believe that the Board should hear the arguments on those issues and have that as a matter of the transcript. And then, if the Board chooses, it can leave the record open, as it would anyway, for some period of time so that we can get an expedited transcript and do a proposed order. In that time period, Mr. Brown can file whatever he thinks is responsive to the surprise that he's met with this morning. And the Board will have all the information before it.

VICE CHAIRPERSON KING: Madam Chair --

MS. DWYER: To continue this another time, without having the opportunity while the parties are here to get into these issues, which Mr. Sisson tried to do two months ago, is not going to serve any party's interest. When we had the discussion with Corporation Counsel, what they felt was important, was developing a public hearing record on these issues, not papers going back and forth, not motions.

We're here this morning. We can argue both sides.

The record can be left open for a short period of time to respond to anything. And then it's all before you in a format on which you can make a decision.

CHAIRPERSON REID: Thank you.

VICE CHAIRPERSON KING: Madam Chair, I might tend to agree with Ms. Dwyer if this whole case had now not become tainted with the fact that there had been communication outside of the frame work of being on the record with the Corporation Counsel. That gives me great concern.

It seems to me that the document that the representative of the Corporation Counsel had given us, which Mr. Brown has, should be duplicated and should become part of the record. Should be given to Mr. Brown. And that this whole matter -- It would be a great shame if we went through all of this agony and then ended up in court because there was some suggestion that we did not follow due procedures and that there was ex parte conversations or communications between the -- Mr. Sisson and his attorney, and the Corporation Counsel.

I'm really surprised that such a thing occurred, Ms. Dwyer. And -- But I -- But not having given that thick package of information to Mr. Brown, I think argues in favor of entering it into the record now, giving Mr. Brown an opportunity to respond in a useful way, and then getting on with this at a later date.

CHAIRPERSON REID: Ms. Pruitt-Williams.

MS. PRUITT-WILLIAMS: Yes.

CHAIRPERSON REID: You had indicated earlier that the submission by Ms. Dwyer to the Corp Counsel had been -- had been offered to us?

MS. PRUITT-WILLIAMS: No, it's not in our file and I'm looking at the transcript now. And in recalling this, we decided that it would all be handled at the hearing, that Mr. Sisson's issues -- because at the original hearing I believe on May -- on February -- and I have the full transcript in front of me, anyway -- was a request for a continuance of this. We only -- you only dealt with the continuance and Mr. Sisson asked if this would be put in the record. The Board denied it at that time and said we will deal with it when we actually hear the case.

CHAIRPERSON REID: So, you did not allow it to be --

MS. PRUITT-WILLIAMS: Correct, it was not in the record.

CHAIRPERSON REID: -- put in the record?

MS. PRUITT-WILLIAMS: Huh uh.

CHAIRPERSON REID: Until when?

MS. PRUITT-WILLIAMS: Well, it would be put in the record today if the case went on.

CHAIRPERSON REID: But wouldn't we have received it in our packages?

MS. PRUITT-WILLIAMS: We don't have it. It hasn't been given to us officially.

VICE CHAIRPERSON KING: The intervenor has filed no -- I mean, although he has given it to Corporation Counsel, has filed nothing with the Board.

MS. DWYER: We brought our statement this morning which is --

CHAIRPERSON REID: First of all, let me get an understanding on the sequence of things.

If you filed it -- you gave it to Corp Counsel.

MS. DWYER: Right.

CHAIRPERSON REID: And you also gave it to--

MS. PRUITT-WILLIAMS: No. No.

MS. DWYER: No.

MR. BROWN: And in my view, there are two completely separate packages of information. The one that was given to Corp Counsel is dated March 25th. And again, it contains information that goes well beyond, because some of it didn't exist on February 17th when Mr. Sisson tried to file his document. SO, there are two separate documents. One I've seen. It's not part of the record. The Board hasn't seen. This I'm just seeing for the first time and the Board hasn't seen it. And I'm very concerned and -- about the -- and I think Ms. King was saying, tainted nature of this.

One, we're -- I don't think we're in a position to proceed this morning. And, two, some sort of remedial action, and I'm not so sure having never faced this situation, that I'm -- that my crystal ball allows me to tell the Board, nor my unsolicited advice. But I think

there are serious legal issues about how we're going to proceed in this case, on what basis and who's going to be advising the Board on legal issues.

CHAIRPERSON REID: Mr. Clarens -- Mr. Clarens, please, he wants to speak.

COMMISSION MEMBER CLARENS: Well, it seems to me that there's -- one thing we want to make sure we do is that when we make a decision, that that decision holds. And it is as unappealable as it can be. And it seems to me that we're entering this whole issue with this muddy issues and the possibility that some impropriety might have taken place and that we need to cure that. That needs to be resolved before we proceed. To proceed otherwise is imprudent --

VICE CHAIRPERSON KING: I totally agree.

COMMISSION MEMBER CLARENS: -- for the Board.

So, it seems to me that what I hear is that we need to hear from both parties as well from the administrator, from Corporation Counsel as to what this situation is. And what is that you propose to cure it. So that when we proceed, we proceed with a clean slate.

CHAIRPERSON REID: If in fact -- this is not clear to me, and if there's someone who can clarify, I'd appreciate it. The definition of ex parte.

MS. PRUITT-WILLIAMS: Madam Chair --

CHAIRPERSON REID: Excuse me. Beyond the

Board members. What other persons or parties would be included in that definition of ex parte I'm not really clear on that. So, I think we need to establish that first.

MS. PRUITT-WILLIAMS: We have -- Mary Nagelhouse has gone to get Alan Bergstein, the person who has been intimately involved in that. And I suggest we hold off on dealing with that until he's here.

COMMISSION MEMBER CLARENS: Then we can proceed with the first --

MR. BROWN: And those are issues that -- Point in fact, I've got to go back, digest what's here and so does Mr. Bergstein because he and his staff are good lawyers, and look at the legal issues, because I don't have the answers. I couldn't define a lot of the questions that are being asked.

But we're not going to do that today in fairness to the Board and the other people who are scheduled. I mean, Mr. Parsons -- I mean, Mr. Clarens' position is right on point. If we're going to do this, we need to do it right so that the court of appeals doesn't throw it back here because of a significant issue. And we're not going to resolve that as good of lawyers as some of us are, and as much experience here, we're not going to do that today. And to do so, I think, would be inviting a mistake.

Again, I would ask the Board, so that you can move on with your other business, is to continue this matter and to invite advice from your legal counsel. I'm going to take the copy of this back

and be providing guidance to the Board and its legal advisor on the record at some later date. But I think that's where we need to be today.

MS. DWYER: Madam Chair.

CHAIRPERSON REID: Ms. Dwyer.

MS. DWYER: I would object to any continuance. I believe that you should poll this question and go forward. If Mr. Bergstein is coming, he's the third person here that can answer that conversation and what happened.

The only way to resolve this is for the Board to have on the record, as you do, what happened. A meeting was scheduled with the Zoning Administrator. A copy of the agenda was sent to Corporation Counsel. Corporation Counsel immediately -- Let me finish, Mr. Brown. Let me finish, Mr. Brown.

MR. BROWN: No, but that just mischaracterizes the document.

VICE CHAIRPERSON KING: It's clear that that is a mischaracterization, Mr. Brown.

MR. BROWN: It goes well beyond that.

VICE CHAIRPERSON KING: Let's get on with this.

MS. DWYER: May I --

VICE CHAIRPERSON KING: Madam Chair, I move that we continue this case.

MEMBER GILREATH: I second that.

CHAIRPERSON REID: Well, for one thing, what I

was just discussing with Ms. Pruitt-Williams is that the Zoning Administrator is supposed to be here and he's on his way. And he hasn't gotten here.

MS. PRUITT-WILLIAMS: However, we just called them and he is on his -- that was the last we heard. We called at 10:30.

VICE CHAIRPERSON KING: Regardless, I think we should retrieve from Mr. Brown this document from the Corporation Counsel. That it should be duplicated and become part of the record, and then become part of our information as well as a copy given to Mr. Brown. And that I think that we need to have -- not only do we need to have the Zoning Administrator, but we need to have the Corporation Counsel and so forth here at a subsequent date -- so that our whole proceeding not going to end up in appeals court and we don't have to do the whole damn thing over again, I suggest that we continue this. Do it right. Do it clean. Have everybody here at the same time singing off of the same page and with the same information.

An agenda for a meeting with the Zoning Administrator is not an enormous amount of case law and so forth. Your agenda was to find out what happened. We want to find that out, too. And let's do it in a formal, on the record, way in which that we do not end up in appeals court.

And I would, therefore, move that we set a subsequent date for the hearing in this case.

MEMBER GILREATH: I'll second that motion if that's

a motion.

COMMISSION MEMBER CLARENS: Ms. Dwyer, your argument against the continuance is based on some harm that would come to your client as a result of the continuance?

MS. DWYER: I'm arguing against it for several reasons. First of all, I think that all of the issues are before you and there's no purpose that would be served by any delay. Mr. Brown knows the issues that are being raised and there is nothing in that, the materials with the agenda, that is any different than what we're filing today and what we've discussed with him and what he's responded to.

And before I go too far, I do want to file what we were going to file today so that is in the record and there's no question. And these, as I said, are the same materials that have been referenced.

There is a delay to my client. My client is, as a property that he can't move into because he doesn't know if the additions on the property are going to be held to be valid or not. He is carrying costs on the property and he was taken completely surprised by the filing of this appeal back in September. The work has been done on the property since August of '98 and it is sitting there. And this is a time for this case to be decided.

The question of whether the permits were filed timely and whether laches and estoppel bars going ahead with this case are preliminary jurisdictional issues which I believe can be addressed today. The record can be left open for any response to the filing of the

agenda, for a response by Corporation Counsel as to what they did or did not do with that material, and the case can go forward. I don't see any purpose to be served by a delay.

COMMISSION MEMBER CLARENS: Answer, then, this question. What if we agree with you and we decide to hear the case, and this is now thinking from the point of view of your client. And Mr. Brown then files an appeal to the decision of this Board and he's still in limbo as the thing has not come to a conclusion. Because at the outset, there are -- there could be grounds for appealing on a procedural issue of the fact that this ex parte communication took place.

And then, so, your client has not resolved issues. He's still the -- our decision can be appealed, sent back to us, and remanded or even reversed on the basis that this thing took place although I can't imagine that. But it could definitely be remanded back to the Board. And then we're back nowhere.

I agree that we could hear. We can hear the merits, but the whole thing is tainted.

MS. DWYER: Mr. Clarens --

COMMISSION MEMBER CLARENS: This is more than an agenda, by the way. I mean, I've seen agendas and an agenda is not a document that is half an inch thick.

MS. DWYER: Mr. Clarens, the -- in a situation like that, what the Court is going to look to is the decision of the Board. Did it consider the issue? Did it develop testimony on the issue? And

did it make a decision that is based on that testimony?

I have, and Mr. Brown has, testified as to what transpired. You can get the information from Corporation Counsel as to what they did and the follow up phone call, and everything that was done completely above board, no ex parte communications. And the Board can decide on the basis of that record there were no improper communications. Everything is now a matter of record. We've had a full public hearing. And on the basis of the evidence, this is our decision.

And I would have ever confidence that the Court of Appeals would uphold your decision.

COMMISSION MEMBER CLARENS: Let me say -- Let me recommend to the Board that we table this issue until Mr., is it Bergstein, join us, and we can hear from Corporation Counsel who is our legal advisor.

CHAIRPERSON REID: Is Mr. Bergstein on his way as well as ZA's office?

MS. PRUITT-WILLIAMS: Ms. Nagelhouse went to get him. He's in the Chief's meeting so she's going to get him.

CHAIRPERSON REID: And I think that that's the best resolution at this particular time. That we table it until -- they're on their way and we get a reading from both of them, and then make a decision.

COMMISSION MEMBER CLARENS: Because, it might very well be that --

CHAIRPERSON REID: In all fairness to everyone.

COMMISSION MEMBER CLARENS: -- I don't see anything in the record, I don't know, that we have -- that we asked for Corporation Counsel's opinion. Did we ask for an opinion or advice when we postponed this case?

CHAIRPERSON REID: In regard to -- I think Ms. King asked.

VICE CHAIRPERSON KING: I don't recall.

CHAIRPERSON REID: Timeliness, the regulations are silent as to the definition, as to how you ascertain timeliness. And then it goes to reasonableness. And then we would -- going to get a read on that. And then we would then make the decision as to what we deem to be reasonable under the circumstances that have been presented to us and the merits of the case.

COMMISSION MEMBER CLARENS: And, but we have not received an opinion or advice from Corporation Counsel?

VICE CHAIRPERSON KING: Yes, and thank God for that.

MS. PRUITT-WILLIAMS: Madam Chair?

CHAIRPERSON REID: Yes.

MS. PRUITT-WILLIAMS: As a matter of course, because we do have Corp Counsel, we have several Corp Counsel people working with us, on appeals and on cases that are going to be -- that legal sufficiency is very important, staff automatically advises them, asks -- requests their advice. So, we send them this saying that

it's an open case and we'd like for you to track this with us to make sure that we're legally sufficient and that we're covering all bases. And we're doing that more and more frequently but it's done from a staff level.

CHAIRPERSON REID: All right. Well, why don't we do that. Why don't we table this for right now and -- and actually, we really, even with the next case, we need the Zoning Administrator.

MS. PRUITT-WILLIAMS: We haven't completed preliminary issues, yet.

CHAIRPERSON REID: Well, if we've tabled-- Oh, just this particular issue. Now, there are other issues that you have?

MS. PRUITT-WILLIAMS: There is.

CHAIRPERSON REID: Okay.

COMMISSION MEMBER CLARENS: We don't need to table anything. We've got Mr. Bergstein --

CHAIRPERSON REID: No, I was referring only to this particular issue. Then I know staff has preliminary issues after they -- we table this.

Now --

MR. BERGSTEIN: Good morning.

CHAIRPERSON REID: Good morning.

Just to kind of quickly -- Yes, after I ask this one question.

Mr. Bergstein, can you please define for us ex parte communication as it pertains to this board? What is ex parte

communication?

VICE CHAIRPERSON KING: And/or legal advisor to this Board.

MR. BERGSTEIN: I'm sorry. Are we -- I was looking at my -- were you talking to me?

CHAIRPERSON REID: Uh huh.

MR. BERGSTEIN: I thought you said Murphy.

CHAIRPERSON REID: Mr. Bergstein, could please define for us, so we can all be clear on what consists -- what is ex parte communication, and give us parameters.

VICE CHAIRPERSON KING: As applied to this Board and/or its legal advisors.

MR. BERGSTEIN: First, I haven't research the issue. My sense has been that an ex parte communication would take place if a party in a contested case spoke with a Board member. I don't believe it would be ex parte communication for a party to speak with a member of the Board's staff or with me in my capacity as general counsel.

However, it is a standing order in my section that neither I nor any member of my legal staff speak with a party, not because I think it's ex parte, but because I'm concerned about the record becoming confused in that the rules of the Board require that its opinions be based upon the record.

If you ask me for an opinion and a party that's involved in that opinion speaks with me, and I somehow, inadvertently,

without referring to the fact that my views are influenced in part by that communication, if I don't share that with you and then you accept those views, my concern has been that your decision will be based upon materials that were never actually presented to you by the parties. And that the other party did not have an opportunity to respond to.

So, there is a standing order in my section to which, when I recognize in this particular case, and I just walked in here, but when I recognized that this particular case was a contested case before the Board, I indicated to Ms. Dwyer that I would not speak with her further but that I would speak with her and the counsel for other parties in a conference call if that's what was desired.

CHAIRPERSON REID: So, the ex parte aspect that is in the event this morning, is in regard to a submission or document that Dwyer had given to your office.

VICE CHAIRPERSON KING: And which was not shared with the appellant.

MR. BERGSTEIN: I don't view that as being ex parte. I'll leave it at that. I don't view that as being ex parte. And if I had given an opinion to you, I would have noted that I have gotten that. But I've asked counsel for parties not to do that.

And I would appreciate the Board's assistance in issuing a standing order for parties not to communicate with my office directly.

CHAIRPERSON REID: And not to submit things to

you.

MR. BERGSTEIN: To me.

CHAIRPERSON REID: Well, what about your not receiving, was that done by the mail? I mean, could you have not accepted that document?

MR. BERGSTEIN: What I accepted was a document that was attached to a letter that referred to a meeting that involved Mr. Lorenko because I did not know this was a contested case at the time I received that communication. And what I thought I was receiving was materials that related to that meeting with Mr. Lorenko that related to an application which I would have received in that instance.

Now, the better practice would be for me to never to get these types of things unless everybody, all the parties, wanted me to get them. But I really do believe in a record. And that what the Board should have before it should be decided upon a record and then if a party wants the Board to do something, it should submit a formal request to the Board to do something. And if it has arguments to make, and believes that documentary materials would be helpful to the Board, it should provide it to the Board. And then if the Board wants my office to review those materials, it should send them to me.

But, --

CHAIRPERSON REID: I would agree with that.

MR. BERGSTEIN: But -- And, and, and, I would appreciate a standing order from this Board to all parties not to

communicate with my office directly unless they do so in combination with other parties.

CHAIRPERSON REID: But, you know, I think that given your explanation as to the ex parte aspect in this instance, I think that what we're dealing with is not so much then, the fact that of it being ex parte as the -- it being construed as being ex parte or giving the appearance of being ex parte.

VICE CHAIRPERSON KING: Or giving the appearance of being improper.

CHAIRPERSON REID: Improper, right.

VICE CHAIRPERSON KING: Let's forget the Latin and talk about --

CHAIRPERSON REID: The shading of it. The shading of it which would, I suppose, and for us, and this is what we usually try to do is err on the side of caution in regards to the appearance of this particular issue.

MR. BERGSTEIN: Well, in fact, I'd like to discuss this off the record with the Board because this is an issue that has come up before.

But again, when I took over this responsibility, one of the first things I noticed was the amount of materials I was receiving directly from parties. And in most instances, all the parties knew that I was receiving these materials. And I consulted with the past attorneys who worked with the Board and indicated that that was fairly much a standard, a continuing practice, where parties were communicating

directly with our office to provide supplemental materials for us information of a highly legal nature. You know, very, very specific to the legal issues presented. And I continued that practice for a while.

But again, because of concerns I raised, whenever that was attempted, not because I believe it's ex parte because I do not. Because I'm not a member of this board. I'm not a decision making member of this board. But because I'm often called upon to review legal issues that come before this Board, I believe that the legal issues must be presented to the Board directly. All materials that relate to those issues should be presented to the Board directly. And that, then, those materials can be sent by the Board to me if it's appropriate for me to review. And then everybody knows what's in the record. Everybody knows the decisions are being based upon the record.

And I do believe that although I don't believe that's an ex parte issue, I believe it's a deliberative issue, what's the -- how the Board deliberates, what's in the record, how the parties know what's being decided upon. And I think that that's the better practice and one that I think the Board should adopt.

VICE CHAIRPERSON KING: Here, here.

MR. BERGSTEIN: But I don't believe that what I received was an ex parte communication.

VICE CHAIRPERSON KING: But, you know, Latin aside, I think there is an appearance of impropriety here and I think that the solution is for us to circulate the document that Ms. Dwyer

sent to Alan to all parties and to continue this case.

So, my motion stands.

CHAIRPERSON REID: Do you second it?

MEMBER GILREATH: I have seconded. And I, from my point of view, had just been in reverse. That Mr. Brown had submitted documents at the last moment. We would accord the courtesy to the intervenor representative. And because of the uncertainty, I think it's only fair that the appellant representative have a right to look at this. He maintains it's different. Maybe indeed the documents are virtually identical. But he says he needs the time and for us to proceed forward on this I think would be a mistake.

So, I think it should be postponed.

CHAIRPERSON REID: I agree. I agree.

All in favor?

(Whereupon, an oral vote was taken.)

CHAIRPERSON REID: Opposed.

COMMISSION MEMBER CLARENS: I.

MS. PRUITT-WILLIAMS: Madam Chair, can we now schedule when you want to continue this to?

CHAIRPERSON REID: Well --

COMMISSION MEMBER CLARENS: Madam Chair, I believe you took a vote and which I voted. And you did not ask for a question. And you didn't ask for discussion on the motion.

CHAIRPERSON REID: Oh, I'm sorry.

COMMISSION MEMBER CLARENS: And I would

like to discuss the motion, even though you've taken a vote and obviously I'm in the minority.

CHAIRPERSON REID: I'm sorry, Mr. Clarens. I thought that earlier when Ms. King first made the motion, that you did have time for discussion. You made whatever type of --

COMMISSION MEMBER CLARENS: Yes, but Mr. Bergstein had not spoken at that point.

CHAIRPERSON REID: Okay. Please do so.

COMMISSION MEMBER CLARENS: And -- And my vote will stand against the motion because I think that things have been cleared up. There is no ex parte communication in my opinion and we have not received, nor have we asked, nor are we going to make a decision based on a recommendation from the Corporation Counsel except as it might -- we might now ask Corporation Counsel to give us an opinion, or a recommendation, after we hear the case in which all of these issues that have been brought up are going to come out into the open and it will give an opportunity to the opposition party to express their opinion.

So, it seems to me that there is no harm, no harm has happened, no ex parte communication in the opinion of Corporation Counsel, has taken place. And the Board will receive the material, will act on the material, and if we in fact do need an opinion or an advice from Corporation Counsel, that will be, then, based on the same line that he had received previously. And that the Board will then have on its -- on the case and its possession.

So, on the basis of that argument, that's why I'm voting against the motion.

MEMBER GILREATH: I still support the motion. I feel that in our consideration of hearing the case, that the appellant's representative should be fully informed and given the take. He can write a written opinion but to get more information, I think we can ask him questions directly.

So, I would prefer that both counsel be fully informed and give us their best judgments from which we can make our determination.

VICE CHAIRPERSON KING: I concur.

CHAIRPERSON REID: Another thing, too, is that ZA office is not represented here.

MS. PRUITT-WILLIAMS: They're here. Mr. Nunley is here. He's coming in. He is here. So, if you wanted to proceed --

VICE CHAIRPERSON KING: Well, nevertheless, I think as far as this case is --

MS. DWYER: Madam Chair, let me say that initially, when Mr. Brown was raising this, he had suggested leaving the record open, filing this material, and have an opportunity to respond. If the issue is not one of ex parte, if the issue is giving him the opportunity to respond to what was filed, he will have --

CHAIRPERSON REID: We've already taken a vote, Ms. Dwyer.

MS. DWYER: He will have the time this morning and

by leaving the record open.

CHAIRPERSON REID: Do we have a date for the --

MS. PRUITT-WILLIAMS: That was the next thing on the agenda, Madam Chair.

Our regular hearing dates, the first available one would be June -- July 21st, unless you wanted to set this for a special hearing.

VICE CHAIRPERSON KING: Let's have a special hearing.

COMMISSION MEMBER CLARENS: Yes, seems only fair.

MS. PRUITT-WILLIAMS: Well, next week, I don't know if that's enough time for you.

The 28th is a Wednesday and that's not a regularly scheduled --

VICE CHAIRPERSON KING: I would prefer it be -- Because I have so many records to read between now and the first meeting in May, I would suggest that it be the week after the first meeting in May.

MR. BROWN: Because I'm going to need some time to review and, in fairness, I need to review the documents and provide some -- perhaps an additional filing.

MS. PRUITT-WILLIAMS: That would, then, make it --

MR. BROWN: Some time in May or --

MS. PRUITT-WILLIAMS: That would make it May

12th.

MS. DWYER: That would be fine with the property owner.

MS. PRUITT-WILLIAMS: That would be a special public meeting on May 12th, 9:30, is that correct?

MR. BROWN: And I'll be out of town from the 12th through the following Monday. So, I'll be back in the office the 18th.

MS. PRUITT-WILLIAMS: How about the 26th, then, that's a -- that is not a normal BZA day but it's a Wednesday.

MR. BROWN: Yes, that's fine with me.

MS. DWYER: Would it be possible to schedule it after the Board's meeting on May 5th?

MS. PRUITT-WILLIAMS: We have six cases to be decided on that agenda that we've already investigated that. And there our other meeting dockets are pretty full of at least eight, sometimes nine, cases.

CHAIRPERSON REID: You said on May 5th we have --

MS. PRUITT-WILLIAMS: Five cases in the morning to decide at the meeting. And then you have a regular afternoon agenda.

MR. BERGSTEIN: May I make a suggestion here.

If the applicant -- the, sorry, the appellant's going to respond to this, perhaps one thing that might be useful, and this is I'm throwing it up to the Board and perhaps the parties, too, is for the

property owner to file a formal motion to dismiss. Because, what's involved here are fairly discrete legal issues, that is, whether or not the appeal was timely filed and whether or not the doctrine of estoppel would apply to the facts and circumstances before us. And what these materials consist of are for the most part either cases that have discussed those principles or memorandum obtained from office that have discussed those principles.

And if things are going to be responded to, then perhaps for the Board's benefit and to provide a framework either the property owner can file in essence a trial brief explaining the relevancy of these documents. Then everything gets in the record, her position, and the documents. And then the appellant can respond. And if it's put in the context of a motion to dismiss, then it may be possible for the Board to decide whether or not it needs to have a hearing at all.

But if we're, again, this is the issue of what's a record. If this is going to be responded to, then we need to know what this is. And I'd rather have it be placed in the record as either a trial brief wherein the property owner is explaining to its -- to describe to the Board its view of the circumstances that were presented and the factual principles that apply. And then we can have a response. And then either the Board would have a frame work to look at and understand why its having this hearing, and if it's put in as a motion to dismiss, perhaps no hearing is required but I'm not certain if that's the case for some of these issues.

But, at least we'd have a sense of what it is that's

being provided to the Board and what it is that's being responded to. And it might be a helpful aid to the Board in any instance. So, I was going to present that and that might give you an aid to your scheduling, in any event.

MS. DWYER: Madam Chair, we would be happy to do that. And I can file something as soon as tomorrow, giving the appellant plenty of time to file a response. And maybe the issues can either be decided or clarified at your meeting on May 5th. So, if there is a hearing, it's limited because of decisions you've made or it's wide open. But it would give us a lot more direction because -- and we do feel that these are legal issues that could be decided to help frame the hearing. And having that decision on May 5th and then the, if needed, the hearing date at the end of May would be our preference. And we very much appreciate that suggestion.

VICE CHAIRPERSON KING: I don't know that we're going to be -- Are you suggesting, Ms. Dwyer, that without oral arguments that we will be able to decide on the motion to dismiss?

MS. DWYER: I'm agreeing with Mr. Bergstein that as to some of the issues, it may be possible on the basis of the facts in the record to either decide them or to clarify the scope of the hearing. And we would be happy to file a formal motion tomorrow giving ample opportunity to respond. And on May 5th you can decide whether there -- on the basis of the facts of record, and I truly believe that on --

VICE CHAIRPERSON KING: I think -- But we -- We have a calendar that is so crowded it would not allow for any oral

arguments or any questioning of the attorneys, is that right, Ms. Pruitt-Williams?

MS. PRUITT-WILLIAMS: Well, in the meeting you don't have oral argument or questions.

MS. DWYER: And the question would be whether you could on the basis of the record.

CHAIRPERSON REID: If we want to move forward on this as a motion, and then we'll just take a vote on that.

VICE CHAIRPERSON KING: And if we don't want -- if we can't make up our minds, we just go for the 28th?

CHAIRPERSON REID: Uh huh.

MR. BERGSTEIN: In essence, what's being argued here is that on its face, on the facts presented, when the appeal was noted and when the facts that gave rise to the appeal were known, that the appeal is unreasonable in terms of time. Maybe that could be decided on the papers, maybe not. But at least it would provide a frame work.

You could also ask the parties, or require the parties, to meet and stipulate as to such facts as they can agree to which would further narrow the record here. Because we do know who the parties are. There's no one else that needs to be involved at this point.

VICE CHAIRPERSON KING: Except the ANC.

MR. BERGSTEIN: Are they a party in this case?

VICE CHAIRPERSON KING: Uh huh. Always.

MR. BERGSTEIN: They would have to meet as well. But, in any event, it may be --

MR. BROWN: So is Mr. Lorenko, too. He's the Zoning Administrator.

MR. BERGSTEIN: Is he a formal party?

MR. BROWN: Yes. He is the appellee, I believe.

And I think your suggestion about having this as fully briefed as possible makes sense. Again, we're -- I keep hear these dates and everybody's pushing, pushing, pushing. I need time to respond adequately. I'm very much concerned that the law may be clear. Maybe we could agree on the law. And the facts are critical. And anything the presupposes that this Board, on a black and white piece of paper, can make decisions does concern me. Obviously you could decide that. But --

So, I'm -- the May 5th schedule, quite frankly, given the quantity of information, is too soon for me to respond. One, I don't have anything in hand from Ms. Dwyer. So, I think we can set up a schedule in advance of the 26th where the material is filed, the Board has it in plenty of time, and then they come to the 26th hearing --

VICE CHAIRPERSON KING: And what about this notion that the parties -- the intervenor, the ANC, and the appellant, should all get together and come to conclusions of where they agree? Is that --

MR. BROWN: Absolutely. And in fact, I've gone

further --

VICE CHAIRPERSON KING: Is that an achievable goal?

MR. BROWN: I know the ANC is very much interested in this case and have participated at depth, and I think they continue to. Mr. Lorenko, I think, would be amendable and I think we'd benefit from his professional guidance since he is the zoning expert.

MS. DWYER: Madam Chair, if I could just say, I think the Board's rules provide for a response time of seven days with the filing of a motion. If we file tomorrow, we're in full conformance with the Board's rules. As I said, these are not new issues. These are the issues we raised February 17th. Mr. Brown has responded to them in his filing.

VICE CHAIRPERSON KING: And when are you going to have your meeting to agree with all the parties?

MS. DWYER: Well, it will probably be after I file the motion and while we're meeting to see whether prior to the time he files his response it's a question of whether we can reach any stipulation as to the facts. But I wouldn't want to delay the filing of the motion and the -- and hopefully getting some of the issues narrowed. We have been meeting with Mr. Brown and talking about settlement. And if we can reach agreement with the community on a stipulation of facts, we would be able to present that prior to your meeting on May 5th and say we all agree that these are the facts.

I personally believe that the facts are a matter of public record and in terms of at least dates that things were filed or issued, there isn't any disagreement.

CHAIRPERSON REID: Mr. Clarens.

COMMISSION MEMBER CLARENS: I don't understand and now I got confused.

Why are we -- If this is motion to dismiss, that's what it's going to be. That's what has been discussed. That's what Corporation Counsel has proposed. Then that precedes any discussion of anything else. And the motion to dismiss is based on the timeliness of the appeal, the filing of the appeal.

And there's no need involve any other party. If it is an issue of timeliness, then that's an issue between the -- the intervenor who's filing the motion to dismiss and the Board, and the Board and its legal advisor to find whether that motion to dismiss has merit or not. And it has no -- nothing to do with the case or with the merits of the case. It precedes the case and that's a decision that this Board needs to reach before it proceeds anywhere and before any further negotiation takes place with them.

Because if in fact there's no merit and there's no jurisdiction for this Board to hear the case, then there is -- there's no case. There's no appeal. And the owner has no obligation to deal with anybody else if there is in fact no case.

If there is a case, and the motion to dismiss is denied, then all the other things are triggered because there is in fact an

appeal.

MR. BERGSTEIN: Let me -- since this was my idea, let me jump in. It's not unusual for a party to file a motion to dismiss and the case to go on at the same time. I suggested that either as a motion to dismiss or as a trial brief just to frame the legal issues and if she can convince us, the Board, I should say, that it's not necessary to have a hearing, that the matter can be decided on papers, and she can meet that burden, then that can be done. But that's not a certainty.

And what I was suggesting was since the Board might well find that it wouldn't be prudent to rule on a motion to dismiss until after the hearing is held, it would help make the hearing more efficient if the parties got together and tried to reach stipulations of the facts so that the known contested facts would be known to the Board and the scope of the hearing could be narrowed. But the fact that someone files a motion to dismiss doesn't mean that the proceeding has to stop in its tracks.

And you first deal with that. In this particular case, you can do a two track approach where they could file a motion to dismiss. You could hold it in abeyance and take it up as part of an after hearing decision. Or, if its merits are so clear, you could perhaps cut out a few of the issues that are before you. But that doesn't mean you might still not have to have a hearing.

So, I suggested the possibility of, as most courts do, requiring the parties to meet before a hearing and see if they can

reach stipulated facts. If they can, it's great. If they can't, they can't. But it at least aids the Board in its hearing process. But one isn't really related to the other and both can happen at the same time.

And I would hate to see the hearing delayed because someone happened to file a motion to dismiss. Really, it's more important that the hearing go forward. I was just suggesting that since there was a notion that the property owner -- Sorry, the applicant, the appellant, might be responding to something, that what that something was become defined by whoever was going to file it, either if it was a trial brief or a motion to dismiss, at their choice. And then the appellant respond to it. But I don't think you'd want to stall your proceeding just because that was filed, because that happens many times in your proceedings and motions that are filed can be held in abeyance while you go forward with the hearing.

COMMISSION MEMBER CLARENS: Madam Chairperson, that -- there's a -- now I'm hearing something else.

The motion to dismiss, what I was suggesting was a disconnect between the motion to dismiss and the case itself. What you're suggesting, Mr. Bergstein, is that the -- what I was trying to get at was that in fact the idea of presenting a motion to dismiss to this Board, and that this Board would take it up as a decision on May 5th, would be an appropriate way to proceed. And that that decision is going to be made on the merits of the arguments presented by the parties with the assistance of Corporation Counsel. And that that might in fact end the case, now, at that point.

If we decide that to either postpone a decision on the dismissal motion, or we deny the dismissal motion, then the case would proceed to a hearing date to be selected, either now or at the time of the May 5th meeting.

MR. BERGSTEIN: It would be just if you decide to proceed at a hearing at the May 5th meeting, if the parties had met before that time and tried to narrow the issues, then you'd have a much more focused hearing. But that was all I was suggesting. That if you were considering also having a hearing on May 5th and you needed to have one because the motion to dismiss was in fact dispositive, didn't resolve all the issues, then at least the parties had tried to meet before May 5th, arrived at certain stipulations, you would know such things as a permit was granted on such and such a date. The person lives next door. Whatever they could agree to. You would have that and then you won't have to have a lot of unnecessary testimony.

So, having them meet before May 5th would only be useful if you were going to have a hearing on May 5th as a means of narrowing the hearing.

MEMBER GILREATH: Madam Chair, I concur with Corporate Counsel. Just as I feel that we're according consideration to the appellant's counsel to have time, I think the intervenor should also receive consideration to not unduly prolong this. To the degree, certainly you'd have to stay within legal bounds, but move as long as it's expeditious so then we can either determine whether or not he can

get into this property. We do not drag this out two or three months. I think that's a mistake.

CHAIRPERSON REID: I think that we're setting time lines now to determine on May 5th what will occur. I don't --

MS. PRUITT-WILLIAMS: Excuse me.

CHAIRPERSON REID: I'm sorry.

MS. PRUITT-WILLIAMS: On May 5th you will entertain the notion -- the motion, excuse me, that will be submitted and you can either make a decision or not on that motion to dismiss or not, with a tentative hearing if you decide not to dismiss the case, with a hearing to start at the 26th at 9:30, is that -- that's my understanding.

CHAIRPERSON REID: Right. Because we couldn't schedule it for that day.

MS. PRUITT-WILLIAMS: Right.

CHAIRPERSON REID: Is everyone in agreement with that --

MS. DWYER: Yes.

CHAIRPERSON REID: -- scenario?

Mr. Brown?

MR. BROWN: I'm -- Well, I'm concerned, though. Because even -- we're setting up May 5th for potentially a decision on a motion. And even if we don't have the presentation of evidence, assuming we have stipulated to all the factual issues, I'm still concerned that we're not going to have an opportunity for -- because it's a public meeting session, to have an opportunity for oral arguments,

presentation. Because you've got, again, you've got to hear the intersection of facts in the law.

And I'm just not so sure that I'm comfortable on behalf of my client, nor -- I won't speak for anyone else, but to proceed without, at a minimum, the opportunity for some sort of oral argument. Without -- again, my strong feeling is that we're not going to be able to decide this without a full factual inquiry at a hearing. But I'm concerned that not even an oral argument --

CHAIRPERSON REID: So, what you're saying, then, is that rather than having the motion to dismiss on May 5th, you'd rather have it on the same day of the hearing? At the hearing so that you could have an opportunity to argue --

MS. DWYER: Madam Chair, that's -- the Board can decide that if on May 5th, on the basis of what it receives, we're not persuasive enough in what we write and having reached agreement on the facts of record, you can say at this time we're going to postpone a decision and we're going to entertain oral argument as a preliminary matter at the hearing.

If you are persuaded by what's in writing, then you have the option of granting the motion at that time. So, it preserves every option for you and the option for us, and --

COMMISSION MEMBER CLARENS: And furthermore --

MR. BROWN: But it forecloses --

COMMISSION MEMBER CLARENS: -- Mr. Brown

can, in his written response to the motion, request that in fact oral arguments be made. That this is not a case that can be decided and the Board can hear the merits of his case.

CHAIRPERSON REID: So, we still take it up on May 5th?

MS. PRUITT-WILLIAMS: Traditionally, the Board deals with motions at meetings and there isn't testimony --

CHAIRPERSON REID: No, I think that Mr. Clarens is saying --

MS. PRUITT-WILLIAMS: I understand. But what I mean, traditionally, that's how we do it. But since this seems to be a very complicated case, if that request is made --

COMMISSION MEMBER CLARENS: So, Mr. Brown is not compromised then.

MS. PRUITT-WILLIAMS: Sop that nobody is compromised that way.

CHAIRPERSON REID: No, I didn't understand him to say that.

Are you -- Am I interpreting what you're saying to mean that at that meeting they will be given an opportunity for oral argument?

COMMISSION MEMBER CLARENS: No.

MS. PRUITT-WILLIAMS: No.

CHAIRPERSON REID: That's not what that was saying. Oh, okay. Okay. You mean at the hearing date?

MS. PRUITT-WILLIAMS: If you -- Yes. But he can request --

CHAIRPERSON REID: He can request it in writing and that we take it up as a matter of the motion?

COMMISSION MEMBER CLARENS: Well, he can request -- he can basically argue in his argument against the motion that this is a case that should be -- this is an issue --

CHAIRPERSON REID: That warrants.

COMMISSION MEMBER CLARENS: -- that warrants oral argument.

CHAIRPERSON REID: Right.

COMMISSION MEMBER CLARENS: And then the Board can try to see the merits of that and decide whether it does or it doesn't --

CHAIRPERSON REID: All right.

MS. DWYER: May I just clarify the dates?

CHAIRPERSON REID: We need to move on.

MS. DWYER: No, if I file the motion tomorrow, then seven days for the response by Mr. Brown so that it's before you for May 5th, which is in accordance with the Board's rules. And I'll hand deliver it.

MR. BROWN: So, that would --

VICE CHAIRPERSON KING: And part of our record will be this mysterious correspondence with Mr. Bergman -- Bergstein?

CHAIRPERSON REID: Right. We need to conclude this particular preliminary matter. I think that we've kind of like beat this horse to death and I think we're all on the same page and we understand where we're going. And to get some time line so we can move on.

Do you have the time line, staff members?

MS. PRUITT-WILLIAMS: Excuse me?

CHAIRPERSON REID: Time line, May 5th.

MS. PRUITT-WILLIAMS: May 5th --

CHAIRPERSON REID: For the motion.

And in the interim, you will do two things. One, submit the responses to her submission and whatever you want to submit to us. And also, if you can in negotiating with the ANC and the applicant, intervenor and the appellant getting together. It seems that there's really a grave attempt to try to come to meeting of the minds. I'd really like to see ideally would be -- that would be achieved. And then we don't have to even try to resolve it for you. Even if we did something with conditions or some type of compromise that would -- everyone could live with. Make life a lot easier for everyone involved.

Now, can we conclude this preliminary matter?

MR. BERGSTEIN: We need to establish the date by which a motion needs to be filed by. Do we have that date?

MS. DWYER: I have suggested filing tomorrow.

MR. BERGSTEIN: All right. So, you're going to file tomorrow.

CHAIRPERSON REID: Yes. Seven days response.

MR. BERGSTEIN: And how -- seven days. Is that seven calendar days or seven working days?

MS. PRUITT-WILLIAMS: Seven calendar days. That means the 29th.

CHAIRPERSON REID: I think it's always, in regards to this particular body, it is always calendar days.

MS. PRUITT-WILLIAMS: Right.

MR. BROWN: CaN I ask, and you tell me, I think the seven calendar days would make it a Thursday?

MS. PRUITT-WILLIAMS: Correct.

MR. BROWN: Could I ask that my response be due on that Friday, the following day? Would that be sufficient time to get it to the Board members? I'm asking --

VICE CHAIRPERSON KING: What would the date be?

MS. PRUITT-WILLIAMS: It's -- Unfortunately, no, not at close of business. We mail them out early. We have to mail them out by 10:00 in order for them to be delivered on -- to get any kind of guarantee that they're delivered on time.

MR. BROWN: And again, it's seven days from receipt of --

MS. DWYER: I will personally hand it to you, how's that?

MR. BROWN: We'll go out to lunch.

MS. DWYER: It will be dinner time when I do that but --

CHAIRPERSON REID: All right. Thank you very much.

MR. BROWN: Thank you.

MS. DWYER: Thank you.

CHAIRPERSON REID: Other preliminary matters. Staff has preliminary matters?

MS. PRUITT-WILLIAMS: Yes, Madam Chair. On your case, actually deals with Mr. Brown again, Case No. 16372, the applicant is actually requesting that this be withdrawn. This case was submitted prior to a rezoning done by the Zoning Commission. And so, the proposed project is now a matter of right.

VICE CHAIRPERSON KING: Wonderful. We love it.

MEMBER GILREATH: Good news.

MR. BROWN: Thank you very much.

VICE CHAIRPERSON KING: Thank you.

CHAIRPERSON REID: Another preliminary matter? Is there another one?

We have one other case which is a short case. And I'd ask that the sequencing of the case in regard to appeal number 14604 be changed and allow 16426 to come forward, if that would be in agreement with the parties involved because this is a very simple and short case. And I feel that the applicant has been here for some time and I think that this particular issue is not going to be resolved

very quickly.

So, if you don't mind, I'd like to ask your indulgence.

Could you call the Case No. 16426, Mr. Hart.

MR. HART: Applicant 16426, Seung Won Hong, pursuant to 11 DCMR 3107.2, for a variance under Section 741 to construct and automotive repair service center in a C-3-C District at premises 21 L Street, S.W. (Square 648, Lot 22).

CHAIRPERSON REID: Have a seat and give your name and your address.

MR. HART: I have to swear in.

CHAIRPERSON REID: Oh, I'm sorry.

MR. HART: Do you swear or affirm that the testimony you're about to give is the truth?

MR. HONG: Yes.

MEMBER GILREATH: Madam Chair, where is the microphone for the applicant? I don't see any microphone.

MS. PRUITT-WILLIAMS: They have been broken or stolen

MEMBER GILREATH: Oh, okay.

CHAIRPERSON REID: Were you able to pick up the preceding --

MS. PRUITT-WILLIAMS: Yes, she can. We don't have any --

CHAIRPERSON REID: Preliminary matter.

Okay. We just have to speak loudly. Project your

voice.

MR. HONG: Hello. My name is Seung Hong. I'm the owner of 21 L Street, S.W. which is a vacant lot at this time.

CHAIRPERSON REID: Where do you live?

MR. HONG: I live in Springfield, Virginia.

CHAIRPERSON REID: Address, please.

MR. HONG: Sorry. My name is Seung Won Hong. I live in 8138 Ridgecreek Way, Springfield, Virginia 22153.

I'm the owner of the 21 L Street, S.W. which is a vacant parking lot at this time. We'd like to build an auto repair shop, auto service center which is also located in front of the D.C. Inspection station which is zoned C-3-C, which requires a variance to build an automotive repair facility.

CHAIRPERSON REID: Is that all you have to say?

MR. HONG: Oh, I'm sorry. I've attended ANC meeting back in 8th of February and discussed with the neighborhood. And we were well received and -- the area is already has few automotive repair facilities such as NTB which is a tire wholesaler and D.C. Inspection Station.

Especially with the D.C. converting their inspection facility to accommodate more strict emission requirements, I feel that D.C. needs -- could benefit from having a modern facility that can handle new requirements of the emission testing. Therefore, I ask for the variance to be granted.

VICE CHAIRPERSON KING: Sir, one of your

neighbors has written and pointed out that there will be high levels of pollution which -- specifically saying, "allowing auto repair facility with its inevitable spillage of oil, gas, grease, additional commercial and other traffic, et cetera, is unacceptable. To bring such pollution into this area is unthinkable."

MR. HONG: Well, actually, that question was not raised -- I didn't know about that. But, it can be answered very simply. No repair shop operating in D.C., or anywhere that I know of, can -- I mean, allow -- are allowed to spill any kind of a hazardous material onto the ground. Every single amount of waste material generated from a shop is collected by a recycler. And if not, it would have -- we have a regulation, EPA regulation, that we have to follow.

Such notion about a shop having to inevitably generate hazardous material is not true. One may easily think that but the reality is, a generator of such hazardous material that does not dispose of it in a proper manner can be severely punished.

VICE CHAIRPERSON KING: Well, just for the record, Mr. Joseph K. Nathanson, who is a real estate person, who writes from New York City says that he has attempted to get information from you and has been unsuccessful. Have you had any contact with Mr. Nathanson?

MR. HONG: I've called Mr. Nathanson. He is the owner of the adjacent property which is renting to a post office. He asked for an explanation as to why I was building a repair shop and I had told him that we would like to build a repair shop because of the

same reasons that I spoke about.

But he politely told me why am I -- why am I trying to build a shop. Why don't you stay where I am now. And his concerned wasn't really valid, I thought, because he just didn't like me to build a shop or come over to his side of the street where he doesn't even live at.

MEMBER GILREATH: I think the letter of Mr. Nathanson says that you presently enjoy some monetary benefit, or remuneration, from this lot. Do you sublet some of this for parking for the Postal Service, or it's just a vacant lot with no revenue returns involved?

MR. HONG: A portion of that lot is being used as a parking lot by the U.S. Postal Service. The adjacent lot, which is where the post office is located on, is also a tenant of Mr. Nathanson. So, the U.S. Postal Service is both tenant of mine and also Mr. Nathanson. In order for them to operate, they have to have a parking lot which I made provisions for that they can operate the parking lot.

So, he doesn't -- Mr. Nathanson will be not be effected adversely because of the building of the repair facility. And I think it would actually benefit him since the post office will need the parking lot in order to operate.

CHAIRPERSON REID: Mr. Hong, two things, one is, you did post it this time?

MR. HONG: Yes, sir.

CHAIRPERSON REID: Great.

The other thing is, in order for you to receive a variance, there is a three prong test that you must meet in order to get that relief. Are you familiar with that test?

MR. HONG: No, ma'am.

CHAIRPERSON REID: That has not been explained to you?

MR. HONG: No.

CHAIRPERSON REID: The proceed here, no one explained to you that you had -- a variance required that you meet a three prong test. One, that the property has to -- you have to show that the property is in some way unique or unusual.

VICE CHAIRPERSON KING: Isn't -- that's for an area -- it's undue hardship and practical difficult of permitted use for a use variance.

CHAIRPERSON REID: But this is use --

VICE CHAIRPERSON KING: Use variance.

MEMBER GILREATH: It's a use variance.

CHAIRPERSON REID: Oh, okay. Then you have to demonstrate that there would be some type of undue hardship that would occur --

VICE CHAIRPERSON KING: That's practical difficulty.

CHAIRPERSON REID: No, no, just undue hardship. Practical difficulty is for the area. Undue hardship that would prevent you from complying with the existing zoning regulations. And that

there would not be any adverse impact as a result of you receiving your -- the relief that you're asking for. And that it would not impair the integrity or intent of the zoning regulations or map. Are you familiar with that process?

MR. HONG: Yes. It wasn't quite words used that way.

CHAIRPERSON REID: But, can you demonstrate that for us?

MR. HONG: Well, yes. Next to the property that I'm proposing to build the auto repair facility is an Exxon station which sells gas, automotive related, and also next to the post office would be the D.C. Inspection Station where they inspect safety inspection and emission inspection for D.C. Government. And across the street from 21 L Street, which is also L Street, is what used to be an automotive repair facility which is being used for limousine service at this time but eventually will probably become an automotive repair shop as well.

And this property was under zone -- UR zoning which allowed construction of a repair -- automotive service center just at the -- the UR zoning is now expired. The area is -- does not have any office buildings and it is sort of industrial facilities.

Addition of the shop will not change the use of the area.

CHAIRPERSON REID: Before you go any further, Mr. Wong, how is your property unique, or different, or unusual? What is it about -- in the land itself, the property itself, not in the surrounding

or the abutting properties. But in -- we're talking -- you have to specifically refer to property, the subject property, that we're discussing today.

MR. HONG: Well, the property itself, we do not effect harm -- we do not harm the property by building an auto repair facility. We do not generate any hazardous material and we won't have any salvage vehicles or trash, if that's what you mean.

MEMBER GILREATH: I'm not sure about the uniqueness, but the hardship, it seems to me what the applicant has said that because the automotive activities surrounding it, what could he build there in the way of a business that would be viable. And I'm not sure that he -- assuming that he was so inclined otherwise, he'd say, well, you can't put an office building in here or what have you.

So that perhaps there's no other use for that property that's appropriate other than something of that nature. Because of the -- there's an Exxon filling station on one side and what did you say on the other? So, to put an office building there, it might be viable.

CHAIRPERSON REID: So, you're saying by virtue of the location of that particular property, it would be an undue hardship for him to comply with the existing matter of right zoning regulation?

MEMBER GILREATH: Right. What could he build otherwise in there and that would be useable and viable as a business. And perhaps there isn't.

CHAIRPERSON REID: I'm not -- Are you looking up that zoning, Ms. King, matter of right?

VICE CHAIRPERSON KING: Yes.

This is what -- what is the zoning, U-C?

CHAIRPERSON REID: C-3-C.

MR. HONG: C-3-C.

VICE CHAIRPERSON KING: C-3, amusement, enterprising including penny arcade or shooting gallery, laundry or dry cleaner not to exceed 5,000 square feet, gasoline station --

COMMISSION MEMBER CLARENS: Where are you reading?

VICE CHAIRPERSON KING: As an accessory use to a mechanical parking garage.

CHAIRPERSON REID: Page 7-20.

What was the last thing you said?

VICE CHAIRPERSON KING: This is 7-21. A gas service station, printing, lithography, or photo engraving establishments with no limitations on it, so forth. Motorcycle sales and -- I mean, it just --

COMMISSION MEMBER CLARENS: Madam Chairperson, I think that more pertinent that the use as a matter of right is the major -- is the 7-40 of the zoning regulations that establishes the intention of a major business and employment tender as a C-3 zone.

And under 7-40-8, the 3-C-3 is described as a district which is geared towards medium-high density development including office, retail, housing, and mixed use developments. It is in the

reading of 7-40 that you get the sense of what the zoning commission intends for a C-3 zone and C-3 zone to have.

And it seems to me that a very strong case, which I have failed to hear so far, has to be made before a C-3-C can be used for the intended purposes that the -- that this applicant wants to do.

CHAIRPERSON REID: Mr. Wong, did you not have an opportunity to review the zoning regulations as it pertains to the zoning? The zoning district in which the property is located, the C-3-C, to see what matter of right uses could be permitted in that zoning, that zoning district?

MR. HONG: We had a meeting some time ago with Ms. Gladys Hicks of Zoning when we first went to her office to discuss this. And at the time, the UR zoning had just expired and she had instructed me to ask for the variance, which is why I'm here today. And due to the fact that the UR zoning was active for a long time and conforming to that, most of the surrounding building, actually, all of the surrounding building except for the U.S. Postal Service, is industrial use, light industrial use such as auto repair -- automotive service shop. She saw no problem and I see no problem in building an auto repair shop.

Auto repair shop, as you may think, is not a warehouse where everything is closed up and some sort of industrial activity occurs. It's a -- it's more of a retail business where we're greet the customer in a pleasant environment and we will have a very pleasant facia where it would be more of a retail operation than it is

heavy industrial activity.

And I do think that it's a type of a retail store, as -- and we really need one in that location because we have a shortage in competent shops in D.C. to service D.C. residents. Many of the D.C. residents are going to either Maryland or northern Virginia for their auto service needs because the -- just for one thing, the emission standard is getting higher and we don't -- many shops in D.C. do not have proper equipments to service them properly.

CHAIRPERSON REID: The ANC -- you met with -- and note the ANC said that they were in agreement or they supported your application?

MR. HONG: Yes, they were.

VICE CHAIRPERSON KING: We have -- Wait a minute. I have an --

MEMBER GILREATH: Madam Chair, I didn't Mr. Clarence read what the existing provided. From describing the surrounding uses, to say the property owner can only put an office building in there or a residential strikes me, who would patronize -- who would want to live in a building where you've got the D.C. emission inspection and all these filling stations around. I think it would be a hardship and actually a losing business proposition.

CHAIRPERSON REID: I think that given the fact that it was zoned UR and just recently was zoned C-3-C, I'm not really sure if that rezoned to the consideration the abutting businesses of this particular property. And that may make an argument in that

regard.

But let's move on --

COMMISSION MEMBER CLARENS: Let me remind the Board, Madam Chair, that when the Zoning Commission rezones a district, it rezones it for a reason. And the reason is that they're looking at the overall land use map and they're looking at the comprehensive plan. And they're trying to eliminating consistencies and they're trying to make the land use plan match the --

And it is this Board's responsibility to carry out the Zoning Commission's direction in the use of the land. And that is -- and the fact that it has been rezoned, it's very clear that it was not the previous element allowed under the previous zoning map that the Zoning Commission felt are the ones that in the future should be taking place in this location.

And that the C-3-C is a highly intense use of the land that gives the property owner a significant latitude of use and of economic reward for that property. And that I don't hear any case being made for either uniqueness nor hardship based on what the zone allows. And I would like to caution the Board to take the issues that I've raised into consideration before it proceeds.

MR. HONG: Where the property was not zoned C-3-C, newly zoned C-3-C. C-3-C zoning was the old zoning, back in the '70s, I was told. That it was zoned for UR, urban development, for a certain given amount of time which lasted until last year, 1998. And it just simply expired.

So, without having to rezone the area, it just fell back to the very old zoning. But due to the UR zoning that the area had, I feel that the area had developed it not with the office buildings. I was told -- I may be wrong, but C-3-C zoning allows office buildings which is highest value for the property to carry.

So, unless I was, as a property owner, interested in solely value of the -- monetary value of the property, I don't think I will have any problem with having an automotive service facility.

CHAIRPERSON REID: Mr. Wong --

MR. HONG: In fact, the --

CHAIRPERSON REID: Go ahead.

MR. HONG: -- neighborhood -- I've been in the area for the last 15 years, just across the street, for the last 15 years. We rent there. And part of the reason why we are well received at the ANC meeting was that I work closely with neighborhood in general and have many friends and customers who think that I've done a good job in the last 15 years.

MS. PRUITT-WILLIAMS: I just want a point of clarification. The land that Mr. Hong is talking about was part of the southwest urban renewal plan. That land was covered by the Federal Government so it was unzoned. The plan sunsetted and the Zoning Commission then rezoned it recently.

So, for 20 years, or 30 years, prior to that, it was considered unzoned land under the jurisdiction of the Federal Government.

CHAIRPERSON REID: That clears it up for us.

MS. PRUITT-WILLIAMS: I just wanted to let -- I just wanted let you know how it got that way.

CHAIRPERSON REID: Let me ask, so we can move through this case?

MR. HONG: Yes, ma'am.

CHAIRPERSON REID: What is the undue hardship -- you have to demonstrate an undue hardship if in fact you were required to comply with the existing zoning regulation? Can you speak to that?

MR. HONG: I don't quite understand undue hardship. What is undue hardship?

CHAIRPERSON REID: Mr. Clarens, could you--

COMMISSION MEMBER CLARENS: Well, that you cannot develop the property, that there's something unique about your property that doesn't allow you to develop the property according to the zoning regulations in a way that you would benefit appropriately from the -- economically from that property.

MR. HONG: Well, the only way I --

COMMISSION MEMBER CLARENS: What prevents you from developing this property for any of the uses that are allowed under C-3-C?

MR. HONG: The only way I could benefit from owning this property without building an automotive repair shop would be to wait around for somebody to buy it at a higher market -- higher

value than I have bought it for. It's a vacant lot and an office building is just an inappropriate at this time. Maybe if the area was the develop entirely, and become office facilities, which means other automotive related facilities in the area is all demolished, I will not be able to do anything else with the property.

CHAIRPERSON REID: Other than keeping it as a parking lot that you receive income --

MR. HONG: Other than parking lot.

CHAIRPERSON REID: Which you receive income for this being a parking lot, right?

MR. HONG: Only part of it, yes.

CHAIRPERSON REID: Why only part?

MR. HONG: The lot is almost 30,000 square foot and of it, the U.S. Postal Service is using 18,000 square foot as their parking lot. Only because they don't need anything bigger -- they don't need any more space than that to park their postal vehicles.

CHAIRPERSON REID: So, if you build this parking garage and this automotive garage, then you would have the automotive garage on part of the land and the other part would still be used for the parking?

MR. HONG: Yes, ma'am.

CHAIRPERSON REID: All right. Then let's move on to adverse impact. You talked about the aspect of the opposition, letter of opposition from Mr. Nathanson. Ms. King talked about that, so -- addressed that. Other than that, do you know of any other

adverse impacts that would come about as a result of your receiving the relief that you're requesting?

VICE CHAIRPERSON KING: In fact, the ANC has come out strongly in support of this application. So, I doubt that there would be adverse neighborhood impact.

CHAIRPERSON REID: None that you know of?

MR. HONG: None at all.

CHAIRPERSON REID: All right, then --

COMMISSION MEMBER CLARENS: We have a letter in the record that somebody opposes.

CHAIRPERSON REID: Ms. King read --

COMMISSION MEMBER CLARENS: I understand.

VICE CHAIRPERSON KING: I already dealt with that, Mr. Clarens.

CHAIRPERSON REID: So --

VICE CHAIRPERSON KING: And the applicant responded that the EPA would not permit the type of pollution that Mr. Nathanson is suggesting would occur.

COMMISSION MEMBER CLARENS: But Mr. Nathanson also suggests in his letter that there is ample potential development on this property that the applicant can pursue without the need of a variance.

The variance is not a matter of right. The variance is exactly what it is, a variance.

VICE CHAIRPERSON KING: I understand that, Mr.

Clarens, but I must agree with Mr. Gilreath, that I don't under -- I see it as a hardship that the -- that a large post office and a D.C. inspection station, and other --

CHAIRPERSON REID: Industrial.

VICE CHAIRPERSON KING: -- industrial type developments of that sort surround the area of Mr. Hong's property and would make it extremely difficult for, as he has said, for him to do anything except sit and wait, and hope that the bluebird of happiness flies by and changes the character of the whole neighborhood before he could mae any justified profit out of this.

COMMISSION MEMBER CLARENS: It is the intention of the comprehensive plan precisely to change that neighborhood from what it is.

MEMBER GILREATH: Well, that's true, but a variance is we look at to see where general zoning, if there is some relief because of hardship of the factor. So, the intent of the plan, we concur fully but our job is to see whether or not the zoning in some instances creates a hardship and we can allow a variance.

CHAIRPERSON REID: Let us move through the case and then we can get to the --

MS. PRUITT-WILLIAMS: You must keep in mind that Mr. Hong has to prove that he cannot develop uses that are allowed as a matter of right on his property.

VICE CHAIRPERSON KING: Thank you, Ms. Pruitt-Williams.

CHAIRPERSON REID: Thank you.

MS. PRUITT-WILLIAMS: And that's the key.

CHAIRPERSON REID: Now, let's move to Government reports. There are none. The ANC report, Ms. King has already --

VICE CHAIRPERSON KING: The ANC says --

CHAIRPERSON REID: -- discussed that somewhat but for the record.

VICE CHAIRPERSON KING: Had a meeting and duly noted, as properly noticed public meeting on February 8th with a quorum present. Following the applicant's explanation of the reasons that he needed a variance and expressions of support from members of the audience, the Commission voted 6 to 0 to support the application. There are six commissioners in ANC 2D, therefore the quorum consists of four commissioners. The vote was unanimous." Signed by Roger Moffett, Chairperson of ANC 2D.

CHAIRPERSON REID: So, they will be afforded the weight in which they're entitled.

Move now to persons, parties in support of the application?

Being none present, we move now to persons, parties in opposition. We had discussed that there was a letter from Mr. Nathanson in regard to the pollution aspect of it and Mr. Hong had responded to that accusation.

Now, closing remarks by the applicant.

MR. HONG: If this variance was to be granted, I will continue to serve the community as well as I have in the last 15 years, and become a contributing member of the neighborhood.

Thank you.

CHAIRPERSON REID: Would you like to have a bench decision, a summary order? Which means you get a decision today. Would you like to request that?

MR. HONG: Excuse me?

CHAIRPERSON REID: Would you like to request a decision today?

MR. HONG: Yes, ma'am.

CHAIRPERSON REID: All right. Board members?

MEMBER GILREATH: Madam Chair, I feel that indeed a hardship is constituted if he has to own this property for how many years to achieve this goal of one day becoming residential or office use. So, considering the surrounding use, the D.C. inspection station, the filling station and so forth, the circumstances are sufficiently unique that I think that he deserves relief and I recommend that a variance be granted.

VICE CHAIRPERSON KING: I second.

CHAIRPERSON REID: All in favor?

COMMISSION MEMBER CLARENS: You have to ask for discussion.

CHAIRPERSON REID: Oh, I am so sorry. I am so sorry.

COMMISSION MEMBER CLARENS: -- and this is a, I don't know what to do. When others on the commission are here, you need to discuss motion before you ask for a vote.

CHAIRPERSON REID: Mr. Clarens, you made that point earlier and I thank you for it. And I apologize.

COMMISSION MEMBER CLARENS: I think that the motion is in correct. I don't think the burden of proof has been met. And that I will recommend to the Zoning Commission that they review this case as soon as possible review. I think the Board has erred if it decides to go that way.

VICE CHAIRPERSON KING: Call for the vote.

MEMBER GILREATH: We have no problem with that. He wants the Zoning Commission to review it, fine.

CHAIRPERSON REID: I want to make sure that -- have you --

COMMISSION MEMBER CLARENS: I think it is absolutely, I mean, but absolutely a major error. There is nothing, absolutely nothing, on the record nor nothing has been presented that even comes close to the proof of hardship. So, that's my personal opinion. The Zoning Commission might disagree and might not reverse you but -- or rescind it back to you. But I -- I'm just expressing my opinion. I think that it is a major error on the part of the Board of Zoning Adjustment.

MEMBER GILREATH: Madam Chair, we respect his opinion and he certainly should use all the machinery and adjudicatory

capabilities to have this reviewed. We make the best decision we feel based on facts presented. And if we're overturned, we're overturned.

VICE CHAIRPERSON KING: Here, here.

CHAIRPERSON REID: Thank you.

All in favor?

(Whereupon, an oral vote was taken.)

CHAIRPERSON REID: Opposed?

COMMISSION MEMBER CLARENS: Aye.

MS. PRUITT-WILLIAMS: Staff would record the vote as 3 to 1 to approve. Motion made by Mr. Gilreath, seconded by Ms. King. Mr. Clarens in opposition.

CHAIRPERSON REID: Mr. Hong, you can have your order and --

MR. HONG: I'm sorry?

CHAIRPERSON REID: Your order, the order in which you requesting for the relief that you requested here today, you should have it in approximately two weeks.

MR. HONG: Okay.

CHAIRPERSON REID: It has been --

MS. PRUITT-WILLIAMS: Madam Chair, I think we need to -- that I have to check on. If Mr. Clarens is sua sponte this to the Zoning Commission, that may stay the order. And I would not -- let me check on this. We don't do sua spontes very frequently.

CHAIRPERSON REID: What is that -- Oh, you're saying that you don't know what the procedure is?

MS. PRUITT-WILLIAMS: I'm not very familiar. It's only been once since I've been here in like 15 years.

CHAIRPERSON REID: And this is the first time I, too, have experienced it, so I don't know what the process is. Let's just say as soon as possible predicated upon the response or the input from the Zoning Commission.

MS. PRUITT-WILLIAMS: I want to investigate to make sure that we're doing it correctly so that we don't compound the problem.

CHAIRPERSON REID: And, staff will then apprise you as to what the time line is. We really aren't sure right now.

MR. HONG: Okay.

CHAIRPERSON REID: But as far as the BZA is concerned, you have been -- your application has been approved.

MR. HONG: Okay.

CHAIRPERSON REID: All right.

Oh, you're done. You're done.

MR. HONG: Thank you.

CHAIRPERSON REID: You're welcome.

Next case.

MR. HART: Appeal No. 16404 of the Capital Hill Restoration Society, pursuant to 11 DCMR 3105, from the decision of Gladys Hicks, Acting Zoning Administrator, to issue Certificate of Occupancy Permit No. 98-0271 for a Home Occupation in a CAP/R-4 District at premises 434 New Jersey Avenue, S.E. (Square 694, Lot

811).

MS. PRUITT-WILLIAMS: Madam Chair, there have been some problems with this case, not getting any outreach on the applicants or the appellant are at fault. The Zoning Administrator, Mr. Nunley has left. I have called him. He's not coming back.

CHAIRPERSON REID: What?

MS. PRUITT-WILLIAMS: I can only speak to what --

CHAIRPERSON REID: What?

MS. PRUITT-WILLIAMS: I just got off the phone. I called -- I spoke to Ms. Hicks. Ms. Hicks told me that Mr. Lorenko and Mr. Nunley were now carrying these and those were no longer her responsibility. As you note in the file, we sent them two memos. We called yesterday to confirm that somebody would be here because this case has been postponed three times.

Quite frankly, I'm not confident that the Zoning Administrator will ever get here. I am making -- I would suggest you might consider going on with this in absence of them because even when we do our best to outreach of calling and memos, and calling again this morning, and then they come and they still leave -- Mr. Nunley said nothing to staff that he was not able to make it or was not able to stay. He --

CHAIRPERSON REID: He arrived late?

MS. PRUITT-WILLIAMS: I thought he was actually in the anteroom reading the case when we were taking this one. And that's when I noticed that he had gone and --

CHAIRPERSON REID: Well, procedurally, if in fact there's an appeal of the Zoning Administrator's decision, we could proceed without their appearance here today? I was not of that impression. I really don't know.

MS. PRUITT-WILLIAMS: I mean, I'm really at a lost as to what you could do since we've done everything -- I mean, we don't have subpoena power so we can't subpoena the --

MR. NETTLER: If I could respond. I'm sure Capital Restoration Society will respond also.

If you recall, Mr. Nunley testified the last time and you had asked that the person responsible for taking in the home occupation permit be requested to appear, which actually is not -- wasn't Ms. Hicks either.

So, the fact is, the appellant has the burden of proving that the decision is adverse, is incorrect. If you recall, the Board did the last time we heard this matter, recognize that the burden -- the burden of proof -- the proof that's necessary for the burden is restricted to what was before the Zoning Administrator at the time of the application was approved, the home occupation permit, and not as to any subsequent facts.

As a consequence, there were not facts put on the record as to the issue that the Capital Restoration Society raised which was the -- whether this was their primary residence of the individual. And thereafter proceeded to deal with Mr. Nunley on the basis of the form of the application.

I would -- I think that, and having -- First of all, with regard to the ability to subpoena, the District of Columbia administrative agencies do have the authority to subpoena and the Department of Consumer Regulatory Affairs actually has issued subpoenas in other cases for other agencies like the Board of Zoning Adjustment that hold hearings. There has been no subpoena issued for anybody from the Department to be here. It is the appellant's burden. I do hope that the fact that the -- no one else from the Department has appeared is not held against us as the intervenor and the property owner. And that we proceed to deal with the matter and allow us to put on our case.

CHAIRPERSON REID: Mr. Nettler, say that again, please. Who has the power to subpoena, the DRA to appear?

MR. NETTLER: The District of Columbia -- You can authorize a subpoena to be issued and the Department of Consumer Regulatory Affairs in their hearing exam -- through their administrative process, does issue subpoenas for agencies or, and in fact this has been requested and in fact there was -- not recently but within the last 10 years, a court of appeals decision dealing with the Board of Zoning Adjustment situation where this precise issue came up and the Court said that an applicant, appellant or an applicant, who had deprived the opportunity to have a government witness at a hearing could go to Superior Court and have a subpoena issued by the Superior Court to have that person appear at a Board of Zoning Adjustment hearing.

It's the Appellant's burden here. And I understand

your frustration not having someone here from the Zoning Administer. I share that frustration. We did have Mr. Nunley here. But that should not be held against the property owner nor should it be a basis for us not being able to go forward and conclude this matter as was --

As pointed out, we've been here now three times. This whole matter is staying the issuance of a decision in another case. As you know, we had earlier move that be dismissed on timeliness grounds which obviously is rejected. But, this should be it. This should be the time to finalize this case. And I think we'd be severely prejudiced if this thing is allowed to go further given the fact that it's the appellant who has the burden here either of producing witnesses or making a case.

CHAIRPERSON REID: Mr. Schauer.

MR. SCHAUER: I would have no problem with moving forward except that at the last hearing, the members of this Board, and Ms. King in particular, questioned Mr. Nunley about whether there were additional documents submitted during the course of their processing of the home occupation permit, a number of such questions, which Mr. Nunley could not answer because though he was familiar with the process, was not familiar with this case.

I think the Board probably still has those questions. And if you do, I can't see how we can proceed without somebody from the Zoning Administrator's office who is knowledgeable.

VICE CHAIRPERSON KING: Have you done your own investigation at the Zoning Commission office to find out the

answer to any of these questions? As Mr. Nettler has pointed out, the burden of proof is with you. Have you interviewed the person who issued the home occupancy permit?

MR. SCHAUER: No, I have not.

CHAIRPERSON REID: Well, I certainly had questions of the ZA's office in regards to their procedures because the issues, writs this case, goes to how and what procedures are in place or implemented by the ZA's office. Which to me then would determine whether or not the case of the application was put forth properly. And I don't know how we can do that without them being here to answer that.

And what I don't understand further, Mr. Nettler, is those -- the representative, Mr. Nunley, who was here before, could not answer and they sent him back again which I don't understand why because --

MS. PRUITT-WILLIAMS: Madam Chair --

CHAIRPERSON REID: -- it still does not answer the questions that we would have.

MS. PRUITT-WILLIAMS: I will attempt to answer that the best that I have at this point.

Ms. Hicks no longer deals with appeals at all. All of that work has been turned over to Mr. Lorenko or Mr. Nunley. So, while it may not have originally been his case, it's now their responsibility to take it from here on forward. So Ms. Hicks won't come back to the Board at all any more. That is no longer her job

description.

CHAIRPERSON REID: That wasn't what -- My issue was, Ms. Pruitt-Williams. What it was, was it goes to no matter who appears, we want someone to give us the correct information as to the procedures that are adhered to at the ZA's, which should be universal.

MR. NETTLER: If I might respond to that.

If you recall, the basis for the appeal here is that the Zoning Administrator's office either should have known, or for some other reason, determined that this was not the principal residence of the application which we obviously disagree with.

Mr. Nunley explained what the procedures were. What he couldn't answer was what information was imparted to the person who reviewed the application, which Ms. McCarthy is here and be able to testify to because she was the one who obtained the permit.

Going into what procedures there are in the abstract does nothing to resolve the basis for the appeal by the applicant because the applicant -- by the appellant, because the appellant's challenge is limited to a particular issue which, as we -- as you agreed with us, if there was nothing before the Zoning Administrator to show anything that contradicted to the representation made by the property owner that this was their principal residence, then this wouldn't be the appropriate forum for overturning the issuance of the home occupation permit.

Because, in the normal set of circumstances, what

happens is, if a -- any permit is issued, whether it's a home occupation, building permit -- not building permit. A home occupation permit or an occupancy permit, what normally happens is that somebody is challenging the basis for the issuance of the permit, an inspector goes out to the property to determine whether the property is being used properly. And its a basis of that inspection that then leads to any challenge to the permit that's been issued, either a revocation or a challenge to a determination that it was issued -- is being used properly.

That goes back to my initial problems with the way this case comes before you. Because, as I believe Ms. McCarthy will testify, the only document before the Zoning Administrator is a certification by the property owner, this is my principal residence. They relied on this certification that it was their principal residence, issued the home occupation permit which is provided for as a matter of right under the zoning regulations, and there's nothing else.

And since the applicant didn't put any -- the appellant didn't put anything on in their case to show that there was something else, there's no reason for this case not to simply proceed with Ms. McCarthy testifying as to what she did, what she gave them, what happened, and the for you to decide whether there's a sufficient basis for you to determine whether the home occupation permit was issued in error based on the representations made and the information known.

VICE CHAIRPERSON KING: I can go along with

that.

MEMBER GILREATH: Sounds reasonable to me.

COMMISSION MEMBER CLARENS: I think, furthermore, I think that the Board can then if they have any questions, can then submit any questions to Mr. Lorenko for clarification and leave the record open for that kind of information.

VICE CHAIRPERSON KING: I think in the future we bypass Mr. Lorenko and go directly to the Director of the Department of Consumer and Regulatory Affairs with our complaints about -- and just incidently, Madam Chair, I would suggest that we -- that a letter go to the director of the Department saying that we're very disturbed by the lack of cooperation that we've received, regardless of what the outcome today.

CHAIRPERSON REID: Okay.

Mr. Schauer.

MR. SCHAUER: I, as I said, I have no objection to proceeding today --

CHAIRPERSON REID: All right, well --

MR. SCHAUER: -- if it's all right with the Board.

CHAIRPERSON REID: I have no problems proceeding with the case. However, again, I'm not sure I agree 100 percent with what Mr. Nettler said, that I still feel that there are some procedural questions that were unanswered. And Mr. Nunley stated that -- I remember distinctly asking him questions that he said he could not answer which were important to me as far as the procedure

is concerned. So, what he did was to more or less give us his take, or his interpretation, as to what he felt was supposed to have been done. But as far as what actually happened, he could not give us that information. And it does not look like we're going to get that, so might as well proceed.

Unless there's any objection among my colleagues, I have no --

MR. SCHAUER: The other question, Madam Chair, was what documents were in the file of the Zoning Administrator. Remember, he came to us with just the application, nothing -- no other documents. Now, there are other documents in that file, or should be. And that was one of the concerns, I think, that those other documents should be brought forward. And--

CHAIRPERSON REID: Mr. Schauer, did we specifically ask for certain documents? You just refreshed my memory. I know there were some discussion but I -- do you have -- your recollection, do you remember?

MR. SCHAUER: Well, we know that there's more in the file. I'm not sure that you asked for them specifically but there are more things in the file. For example --

VICE CHAIRPERSON KING: You've seen the file, have you, Mr. Schauer?

MR. SCHAUER: Pardon me?

VICE CHAIRPERSON KING: You've seen the file, have you?

MR. SCHAUER: No, I've seen documents that were filed, for example, let me give you an example. On December the 16th of 1997, the Zoning Administrator denied an application for a home occupation permit because it exceeded the number of persons, the employed persons, who are allowed as a matter of right. It called for three and it was rejected.

Now, Mr. Nunley did not have that with him. He had only the application itself, an application which, as a matter of a fact, calls for one employee.

Now --

VICE CHAIRPERSON KING: Would you like to question Ms. McCarthy about what she put in the files?

MR. SCHAUER: I think that would be very interesting.

VICE CHAIRPERSON KING: Since she's the person who did that?

MR. SCHAUER: Yes.

VICE CHAIRPERSON KING: Would that be helpful for your case?

MR. SCHAUER: That would be very helpful.

VICE CHAIRPERSON KING: Do you want to call her now?

MR. SCHAUER: That's not for me to call.

MR. NETTLER: His case is over with. This is --

VICE CHAIRPERSON KING: Oh, his case is over.

MR. NETTLER: His case was over by the time --

VICE CHAIRPERSON KING: Oh, I see. I'm sorry. I didn't realize that.

But you're going to call Ms. McCarthy?

MR. NETTLER: I am going to call. He can certainly cross examine her.

VICE CHAIRPERSON KING: Let's get on with it somehow.

MR. NETTLER: That's my desire as well.

MR. HART: Case of Appeal 16404 of the Capitol Hill Restoration Society, pursuant to 11 DCMR 3105, from the decision of Gladys Hicks, Acting Zoning Administrator, to issue Certificate of Occupancy Permit No. 98-0271 for a Home Occupation in a CAP/R-4 District at premises 434 New Jersey Avenue, S.E. (Square 694, Lot 811) I call.

Do you swear or affirm that the testimony you're about to give is the truth?

MS. McCARTHY: I do.

MR. NETTLER: Let me make a brief opening statement.

This is not the Zoning Administrator's file that Ms. McCarthy has brought up here.

I think there's a misunderstanding by Mr. Schauer about the process and which Ms. McCarthy will hopefully elucidate. The document that he's referring to was the document that led to the

special exception case that you heard earlier last year. When that was denied, the owner of the property sought, as Ms. McCarthy will testify, an application that would simply cover one property to use while, for one person, to use while he was pursuing the special exception before you.

A file on a Certificate of Occupancy, or a Home Occupation permit, is not an extensive file. It is in fact a very small file unless you either have certain other requirements that are required to be -- that require certain other documents to be submitted, and there are certain types of cases under the zoning regulations that require you to do that such as with cases involving carry outs, restaurants. There are certain certifications that you have to do. Such as with boarding houses or similar types of functions. Such as with community based residential facilities.

Home occupation application and permit requires one document and only one document to be filed. If there's going to be an issue for that Zoning Administrator or the staff to address, it would normally come before the permit is issued by somebody else asking them to consider something other than the document that's submitted by the applicant, the property owner.

So, this supposition that there is more to some file here is based merely on that, a supposition. There is nothing more to this case other than the application that was filed and the decision of the Zoning Administrator based on whether that application was sufficient to issue a home occupation permit.

The issue as to whether there's some processes that were unanswerable by the Zoning Administrator and Mr. Nunley have nothing to do with the appeal issue that is raised here. And the appeal issue is succinctly phrased by the Capitol Restoration Society as one issue. That is that the Zoning Administrator should have known that, at the time the home occupation permit was issued, that this individual was not going to occupy the premises as the person's principal residence. And issue that we, of course, disagree with.

But that substance of whether it is the principal residence or isn't the principal residence obviously is an issue that we're never going to get into in this proceeding because, as Mr. Nunley testified to, the document that was submitted contains a certification that it is and there is nothing else in this file, as Ms. McCarthy can testify to since she's the one who submitted the document, that would suggest otherwise.

As I said, if Capitol Restoration Society has an issue with how this property is being used, there is a forum in which to pursue that. This isn't it. And having said, that, I'd like to call Ms. McCarthy as our first witness. And she is not here as an expert witness. She's here as a fact witness regarding the issuance of this home occupation permit.

If the Board is ready.

VICE CHAIRPERSON KING: Do you want to hear from Ms. McCarthy?

MEMBER GILREATH: Yes, that's --

CHAIRPERSON REID: Pardon us, please.

MR. NETTLER: Excuse me? I didn't hear what you said.

CHAIRPERSON REID: No, I said pardon us, please. I spoke off the record for a second there.

MR. NETTLER: Ms. McCarthy, could you please give your name and address?

MS. McCARTHY: For the record, my name is Ellen McCarthy. I live at 3905 Morrison Street, N.W., Washington, D.C.

MR. NETTLER: And where do you work?

MS. McCARTHY: I work at Robins, Kaplan, Miller, & Ciresi at 1801 K Street, N.W.

MR. NETTLER: And did there come a time earlier last year when you were asked by a client of that firm to obtain a home occupation permit for the premises at 434 New Jersey Avenue, S.E. for one employee?

MS. McCARTHY: Yes.

MR. NETTLER: And do you recall when that was?

Excuse me a minute. I'm sorry.

Excuse me.

Did there come a time when you sought the approval of a home occupation permit for these premises?

MS. McCARTHY: Yes.

MR. NETTLER: And, do you recall when that was?

MS. McCARTHY: Let me just check the date. It was,

I believe, in January of 1998.

MR. NETTLER: And what did you file in order to obtain a home occupation permit for the premises?

MS. McCARTHY: I filed a application for a home occupation permit that I obtained from the Office of the Zoning Administrator.

MR. NETTLER: That's already been submitted as an exhibit, I believe, and I think it's in your files.

Did you submit anything other than that document to the District of Columbia Department of Consumer and Regulatory Affairs?

MS. McCARTHY: Not that I clearly recall. There may have been a Certificate of Good Standing.

MR. NETTLER: Certificate of Good Standing, right. And, was that document signed by the present owner of the property?

MS. McCARTHY: Yes.

MR. NETTLER: And did you explain to him the -- Did you have an opportunity to discuss the document with that individual?

MS. McCARTHY: Yes, by telephone. And I had sent him -- the application, as you receive it from the Zoning Administrator's office, has a brief explanation along with it of the conditions under which it can be granted. It Xeroxes that copy of the zoning -- I mean, that section of the zoning regulation. So, it's a package of the application form and the zoning regulations. And I sent that to Mr. Fields and discussed with his staff the answers to the

questions about number of employees, and number of visits of delivery people, and all of that that are asked -- that are requested in the application.

MR. NETTLER: And did Mr. Fields certify to you this was the principal -- his principal residence for purpose of this application?

MS. McCARTHY: Right.

MR. NETTLER: And who did you submit this application to?

MS. McCARTHY: I submitted it to the Zoning Administrator's office. I was there at two different periods of time during that day, I think, because I had to get answers to some questions. And at one point, Ms. Dauphne was at the desk and at another point Mr. Juan Doralesa who's a zoning inspector.

MR. NETTLER: Did they ask you for anything other than this document and the Certificate of Good Standing?

MS. McCARTHY: No.

MR. NETTLER: And did they ask you any questions about any of the information that was filled out in the document?

MS. McCARTHY: After I turned the document in, they reviewed the document to make sure that I had filled it out satisfactorily. But they didn't -- they didn't have any problems with what I had filled out so they accepted it at that point.

MR. NETTLER: Did you tell them at the time that Mr. Fields was the contract purchaser for the property?

MS. McCARTHY: Yes, I believe I explained that to them. I said this is a little difficult to figure out because it lists owner's name and the owner of the property is actually Gerald Cassidy, but the person who's applying for this is the contract purchaser. And so, they -- the way that it was filled out, they said was fine.

MR. NETTLER: And did you thereafter receive a home occupation permit for the premises?

MS. McCARTHY: Yes, we received a home occupation permit for the premises that was dated February 5th.

MR. NETTLER: Was there any requests for additional information from you between the time that you submitted this application and the time that the permit was issued?

MS. McCARTHY: No.

MR. NETTLER: Where there any other conversations with the Zoning Administrator's staff regarding the application, either concerning anything that was certified or any other issue?

MS. McCARTHY: No.

MR. NETTLER: I have no other questions.

CHAIRPERSON REID: I do.

Ms. McCarthy, reiterate for me what the response was when you asked about -- when the issue came up as to who the owner of the property was on the application. Question 5 of the application says, if the applicant is other than the owner of the premises as in Question 3 above, does the owner of the property agree with its use in the proposed business. So, I checked yes and I wrote

the owner's name. And then I explained to the person at the counter, we will be -- Mr. Fields will be the owner/occupant of this when this contract is completed. But right now he's not the -- he's not the owner occupant. Should I have him down as the owner? And they said no, because he's not currently the owner. So, you should have -- you should fill that out with Mr. Cassidy being the owner of the property.

And actually --

CHAIRPERSON REID: Who, a clerk who asked?

MS. McCARTHY: It seemed appropriate because we were also applying, in terms of the variance, we were applying on behalf of the -- with the -- the special exception we were seeking by Mr. Cassidy on behalf of Mr. Fields. So --

CHAIRPERSON REID: So, you put on the application Mr. Cassidy as the owner?

MS. McCARTHY: Right. He was then the owner of the property. But I indicated that the application, in Question 1 where it says applicant's name, the applicant's name was Jack Milton Fields.

VICE CHAIRPERSON KING: Was what?

MS. McCARTHY: Jack Milton Fields.

CHAIRPERSON REID: All right. I'm sorry, I don't have in front of me the application. Could you --

Can I see that, please?

MS. McCARTHY: Sure.

You'll see on the application that it --

MR. NETTLER: Just wait until a question is asked.

COMMISSION MEMBER CLARENS: Is this in the file?

MR. NETTLER: It should be. It was --

COMMISSION MEMBER CLARENS: Well, if it is in the file, the file is right, actually, here.

CHAIRPERSON REID: Mr. Clarens, the reason why I'm asking is because it's not in the file.

COMMISSION MEMBER CLARENS: Well, then, it needs to be also given to the parties.

CHAIRPERSON REID: All right. It is not in this file. This file that I have here is the appeal file. And this is what we were discussing with staff and they were assigned to come up with a copy of it. That the original file is the file that had it and that file is not before me. This is why I was asking Mr. Nettler.

MR. NETTLER: Actually, this was but when Mr. Nunley testified the last time, it was accepted as an exhibit in this.

CHAIRPERSON REID: But the point I'm making is that was not given to us in our -- given to me in the master file today. That's why I don't have it. But, please give it to the staff member.

MEMBER GILREATH: That's not to say you didn't submit it. It just didn't make its way through.

CHAIRPERSON REID: Yes.

MEMBER GILREATH: Or whoever submitted it.

CHAIRPERSON REID: This is why the staff disappeared, because there's apparently some -- some problem as to

why it was not -- didn't make itself back up here, make its way back up here to us.

MR. SCHAUER: Madam Chair, I would like to see this document.

CHAIRPERSON REID: Oh, sure. Please make a copy for Mr. Schauer as well.

MR. SCHAUER: Because I want to make sure it's the same document --

CHAIRPERSON REID: The same document.

MR. SCHAUER: -- that was introduced or was referred to when Mr. Nunley was here.

(Whereupon, a brief pause while the document was retrieved.)

CHAIRPERSON REID: If I remember correctly, one of the questions that was asked, and I don't remember, was in regard to the HPA, the circling of -- and there was some confusion here in regard to the form and the way that it's formatted. That it was depicted as an owner occupied single family dwelling but it really was not occupied by the owner. So, and I think that it was suggested that the -- it's a little misleading because the applicant was to circle one, either the owner/tenant, or the other. And it wasn't the owner or the tenant, then he would have to fall into the category of other. Would that not be correct?

MS. McCARTHY: Right.

CHAIRPERSON REID: And what was the response

to that as to why that was not done?

MS. McCARTHY: Just the confusing format of the application. I saw Question 4. I just skimmed down to my choices, A, B, C, D, and circled A because I knew that when Mr. Fields was going to occupy this for his home occupation permit, he would be the owner/occupant. So, I thought that was the most reasonable choice and asked the clerk about 4.

I'm sorry?

VICE CHAIRPERSON KING: I said, none of the other choices apply in this case.

MS. McCARTHY: Right. Right.

VICE CHAIRPERSON KING: I mean, there's no other fill in the blank or anything.

MS. McCARTHY: Right. And I -- to tell you the truth, I really because of the way it's formatted, I just skimmed down to the choices and didn't really notice the A, B, or C at that point in time. I would have circled C but as Ms. King just said, there wasn't -- it wasn't like if you say C, then go to section such and such. So, there was no way to catch it --

CHAIRPERSON REID: But why would you circle --

VICE CHAIRPERSON KING: Oh, I see.

CHAIRPERSON REID: Why would you circle C?

VICE CHAIRPERSON KING: Because it says applicant is circle 1. Owner, tenant, other. Premises indicated in question 3, circle one below. It's very confusing.

CHAIRPERSON REID: Yes, but I was asking the question, why would you -- it's n to a condominium or cooperative?

VICE CHAIRPERSON KING: No, no. She's talking about C up in where you have A, B, C. Not down where you have A, B, C, D.

CHAIRPERSON REID: Oh, okay. But then, I see -- I see now. Then after you -- If you circle C, then, if I'm interpreting this correctly, then when it says circle one below, there's not really a category, is it, that would --

VICE CHAIRPERSON KING: There is no other.

MS. McCARTHY: Not one that would say --

CHAIRPERSON REID: -- relate to what other is.

MS. McCARTHY: -- other is purchaser or --

CHAIRPERSON REID: It should be like a blank line.

VICE CHAIRPERSON KING: Right.

CHAIRPERSON REID: E, a blank line, I guess, for other. I remember that.

The question that was raised with the ZA's office was would a home occupancy permit have been given to someone other than the person who's actually occupying the premises?

VICE CHAIRPERSON KING: But then, 5 says, applicant is other than the owner of the premises in Question 3 above, does the owner of the property agree with its use in the proposed business. I mean, you know. It's a very -- There appears to be nothing in the file in this application which we have seen before.

CHAIRPERSON REID: I have no further questions.

VICE CHAIRPERSON KING: That would raise the question --

CHAIRPERSON REID: Mr. Gilreath.

MEMBER GILREATH: I don't have any questions.

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

VICE CHAIRPERSON KING: I don't think so, no. I don't.

MR. NETTLER: Can I just follow up from a question that you asked?

CHAIRPERSON REID: Uh huh.

MR. NETTLER: You told, did you not, the person who was receiving this application that he was the contract purchaser for the property?

MS. McCARTHY: Right.

MR. NETTLER: The -- do you read the -- I'm not going to ask you that. The -- is it unusual for you, in the years that you've been dealing with the Department of Consumer Regulatory Affairs, to seek to obtain either permits or approvals for individuals who are seeking to purchase or occupy premises in order to enable them to determine whether they're going to be able to use the premises when they occupy them?

MS. McCARTHY: Right. That's quite common. That someone who's got an option on a property or is a contract purchaser,

wants to know if they will be able to use the property in the fashion that they want to purchase it for.

MR. NETTLER: And was that the purpose that you were seeking this?

MS. McCARTHY: Right.

CHAIRPERSON REID: And there's no category depicted here for contract holder.

MS. McCARTHY: Right.

MR. NETTLER: And this is explained -- this was explained to the city when you sought this?

MS. McCARTHY: Right.

CHAIRPERSON REID: I'm sorry? What?

MR. NETTLER: And this was explained to the Department of Consumer Regulatory Affairs when you sought this, isn't that correct?

CHAIRPERSON REID: And you're saying that they, then, told you to just circle owner.

MS. McCARTHY: Right. They -- I said -- I explained the situation. I said, is this filled out correctly given that that's the situation and they said yes.

CHAIRPERSON REID: All right. We have no other questions.

MR. NETTLER: I have no other questions.

CHAIRPERSON REID: Thank you.

Mr. Schauer, cross examine.

MR. SCHAUER: How do I address them since we don't seem to have a microphone here?

CHAIRPERSON REID: Speak loudly.

MR. SCHAUER: Speak loudly.

VICE CHAIRPERSON KING: Pull up a chair and speak loud.

MR. NETTLER: You can sit with us if you want.

MR. SCHAUER: Ms. McCarthy, you said you went to the Zoning Administrator's office, the zoning office, and got a copy of the form?

MS. McCARTHY: I did. I can't remember whether it was -- whether I got one each time or whether I just got a copy of the form before I applied the first time.

MR. SCHAUER: And this would have been in January that you went to the zoning office?

MS. McCARTHY: No, as Mr. Nettler said, the first time I applied was in November.

VICE CHAIRPERSON KING: Of '97?

MS. McCARTHY: Of '97, or right around there, for the three employees.

MR. SCHAUER: All right. And then in January you applied for -- In January, with the Zoning Administrator having rejected the application, you then applied for one?

MS. McCARTHY: Right.

MR. SCHAUER: You didn't cut a new application?

MS. McCARTHY: I used sections of the application I had used before that wasn't changing and just used a new page, I think, for number 17 which is the only thing that had changed from the first application to the second.

MR. SCHAUER: So, the Zoning Administrator's office actually saw this twice, is that right?

MS. McCARTHY: Yes.

MR. SCHAUER: These answers that we've been discussing?

MS. McCARTHY: Right.

MR. SCHAUER: These -- the staff saw that the appellant was not owner, tenant, or other, and nothing was checked there. He also saw that the owner was listed as a Mr. Cassidy?

MS. McCARTHY: I believe so. I think that that same page was used. Right.

MR. SCHAUER: So, we're to understand that they missed this twice?

VICE CHAIRPERSON KING: Missed what?

MR. SCHAUER: The fact that item 4 was not checked as the owner, tenant, or other. They missed that twice?

MR. NETTLER: I object to the way the characterized of missed as if something was --

MR. SCHAUER: Well, there's a blank here. And that blank is important.

CHAIRPERSON REID: Mr. Schauer, are you saying -

- rephrase your question, please.

MR. SCHAUER: Well, the application was first filed in November. And then another application was filed in January.

MS. McCARTHY: Right. These are approximate times because I don't -- there's no date on the application.

MR. SCHAUER: And the first page of the form looked exactly the same each time?

MS. McCARTHY: Right.

MR. NETTLER: Do you know?

MS. McCARTHY: Yes, I mean, as far as I know. I have the one before me here that is the one that is the subject of this appeal.

MR. SCHAUER: And the only difference between them would have been a page 2 that was inserted which in answer to Question 17 would say, one employee instead of three?

MS. McCARTHY: I believe so.

MR. SCHAUER: Or was the three whited out and one put in?

MS. McCARTHY: I can't tell you for sure.

MR. SCHAUER: It looks like the same handwriting throughout the --

MS. McCARTHY: Well, I definitely filled both of them out.

MR. SCHAUER: That's yours.

So then, we really have two applications here, do we

not? There's one for three which was denied and is now subject to -- or, was subject to a special exception application. And then a second which is just for one employee.

Now, I don't quite understand why you applied for one employee when that wasn't going to suit Mr. Fields' purpose at all. Why apply for one? I mean, you applied for three. Had been rejected. You were --

VICE CHAIRPERSON KING: Does this have anything to do with the judgment of the action of the zoning office, Mr. Schauer? I mean, what you're questioning is the judgment of the zoning office in having granted this application.

MR. SCHAUER: Because it is my contention, Ms. King --

VICE CHAIRPERSON KING: But Ms. McCarthy--

CHAIRPERSON REID: Let him answer --

VICE CHAIRPERSON KING: -- can only answer factually as to what she filed.

CHAIRPERSON REID: Ms. King, let him answer.

MR. SCHAUER: Yes, it's my contention, Ms. King, that this application for one was submitted, even though it didn't meet Mr. Fields' needs, in order to immunize the rest of the proceeding on the special exception for three. Because they --

VICE CHAIRPERSON KING: Well, I mean, since we're all speculating like mad, I mean, clearly, Congressman Fields wanted to start his business with one person and expand it as soon as

he was able.

MR. SCHAUER: With that situation --

MR. NETTLER: Objection.

CHAIRPERSON REID: Mr. Nettler testified to that earlier that was in fact the case.

Yes, you said it, right?

MR. NETTLER: When we were discussing the motion to dismiss because the fact that they were aware that he had filed for the one back in April.

CHAIRPERSON REID: Yes, that was already a matter of record, Mr. Schauer.

Continue with your questioning.

MR. SCHAUER: I would like to -- and I'm not sure if I can ask this of Ms. McCarthy and Mr. Nettler is here and he was questioning her at the time. It's a transcript from the last hearing. And the question was, "What kind of" --

MR. NETTLER: Objection. I thought the Board agreed with me that we were not to get into anything post-issuance of this home occupation permit which is subject to this appeal, such as a transcript from the hearing that occurred in July.

MR. SCHAUER: This is a transcript from the hearing in December on this case. In other words, the first session --

VICE CHAIRPERSON KING: On the --

CHAIRPERSON REID: Overruled.

He can ask her that.

BY MR. SCHAUER:

Q Mr. Reed, should he have put the test that's addressed for his --

MR. NETTLER: Wait. Objection. Is he tendering a question to somebody, a witness?

CHAIRPERSON REID: I think he's -- are you posing a question -- Posing this in the form of a question?

MR. SCHAUER: Yes.

MR. NETTLER: To Ms. McCarthy?

MR. SCHAUER: And I'm just quoting from the transcript.

MR. NETTLER: Well --

CHAIRPERSON REID: Mr. Nettler, I think that in order to ask the question, he wants to get a little information, which is okay.

MR. NETTLER: But he had said this was not a question for Ms. McCarthy so I don't know who this is --

CHAIRPERSON REID: Who is it to?

MR. SCHAUER: It's because you were under oath, not Ms. McCarthy.

CHAIRPERSON REID: But who is the question directed to, Mr. Schauer?

MR. SCHAUER: Pardon me?

CHAIRPERSON REID: Who is the question directed to?

MR. SCHAUER: It would have to be to Mr. Nettler because Ms. McCarthy was not testifying.

MR. NETTLER: Objection. He can't ask me a question. I'm not testifying here as a witness. I'm a counsel for the intervenor.

CHAIRPERSON REID: Right. Right. Yes. Sustained.

You'd have to direct it to Ms. McCarthy and hope that she would know the answer. He's not testifying.

MR. SCHAUER: Is it the position of your firm that Mr. Fields was a resident of the house at the time that this application was made?

VICE CHAIRPERSON KING: Resident of the house?

MR. SCHAUER: 434 New Jersey Avenue.

MR. NETTLER: Objection. It's been answered. It's been asked and answered before.

CHAIRPERSON REID: Overruled. I'd like her to respond to that question.

VICE CHAIRPERSON KING: What?

MR. SCHAUER: The reason I ask it is because I have to read from this transcript in order to be able for you --

CHAIRPERSON REID: Is it very much?

MR. SCHAUER: No. It's not very much.

CHAIRPERSON REID: All right.

MR. SCHAUER: Mr. Reed -- Ms. Reed: "Should we

have put the" -- "Should he have put the Texas address?" Mr. Nettler: "I would object." Mr. Parsons, "I don't know where he lives." Ms. Reed" "But that's not where he was living at the time, Mr. Nettler. I would object to the characterization without you knowing whether he was living there at that time."

Now, that seems to raise the issue that Mr. Fields was in fact a resident there, a tenant, in that property prior to close of the transaction.

MR. NETTLER: Objection. He's taking a discussion between the member of the Board and myself regarding an issue as a basis for trying to challenge the Zoning Administrator's decision in February to issue a -- this home occupation permit. It has nothing whatsoever to do with the Zoning Administrator. It doesn't go to whether the Zoning Administrator knew or didn't know whatever he supposedly is trying to prove.

What relevance does this have what the Zoning Administrator did?

CHAIRPERSON REID: Wait a minute, Mr. Nettler.

MR. NETTLER: Sorry.

CHAIRPERSON REID: Before I respond to that.

Mr. Nettler -- I mean, Mr. Schauer, where's your question?

MR. SCHAUER: Why this is important is because if Mr. --

CHAIRPERSON REID: No, but what is the question

to the --

MR. SCHAUER: The question was, during the period from November until the closing on July 1st, was Mr. Fields a tenant in that property?

MR. NETTLER: Same objection as to whether this is something -- if this is eliciting a fact, it has to elicit a fact that something that the Zoning Administrator was considering or not.

VICE CHAIRPERSON KING: That's right.

CHAIRPERSON REID: I don't know if I agree with that because this goes to the basis as to why the home occupancy permit was issued. And that was predicated the residence aspect. It was a part of it. So, I would overrule that objection and let that question be answered.

MR. NETTLER: The question?

MS. McCARTHY: Oh, I'm sorry. You're asking me whether he lived there?

MR. SCHAUER: Between November and July 1st when the closing was held on 434 New Jersey Avenue, was Mr. Fields a tenant in that property?

MS. McCARTHY: I don't know.

MR. SCHAUER: Not to your knowledge.

MR. NETTLER: She didn't say that. Don't--

MS. McCARTHY: I don't know. He was my client but I didn't visit him at home. So, I don't know.

MR. SCHAUER: But your not -- I gather that you're

not going to present any facts that --

MR. NETTLER: Objection.

VICE CHAIRPERSON KING: Mr. Schauer, in filling out this application, there is no home number listed for Jack Milton Fields at 434 New Jersey Avenue. There is a work number but no home number. I mean, presumably he wasn't therefore living there.

But, I mean, all the -- I mean, we have the document that was before the Zoning Administration and I don't -- you need to impeach the actions of the Zoning Administrator and not of Ms. McCarthy.

MR. SCHAUER: I'm not impeaching Ms. McCarthy. I'm just trying to determine what the situation was in regard to that property.

CHAIRPERSON REID: I think that the essence of this particular case is predicated upon the issuance of the home occupancy permit. And from Ms. McCarthy's testimony, it was based upon just submission of this application. That's it. So, the Zoning Administrator relied on this document to determine whether or not that home occupancy permit would be in fact granted.

And that, then, goes to the gist of Mr. Schauer's question as to the information that was proffered here and whether or not it was correct or whether or not it was interpreted correctly.

Continue.

MR. SCHAUER: I have no further questions.

MEMBER GILREATH: Madam Chair, wasn't the

Zoning Administrator, if they had any question of the validity of this data, they would have questioned the one who submitted it, right?

CHAIRPERSON REID: Uh huh.

MEMBER GILREATH: It's their decision to determine whether this is adequate or not. The information is adequate, contradictory, you have to provide me with -- So, it's the Zoning Administrator, it seems to me, who could answer this.

CHAIRPERSON REID: Well, actually, yes, when we had the Zoning Administrator's representative here, he didn't really -- he could not tell us how, the basis, for the ruling of the Zoning Administrator. Because of the procedural aspect of it, there was not a clearly defined set of rules or regulations that determined the validity of what was presented in the application for which the home occupancy permit was granted.

MEMBER GILREATH: It seems to me the only way we can give any weight to this is, if this is substantiated that this information was false or misleading. And I'm not hearing anything to that effect.

CHAIRPERSON REID: No. That's what we have to get clear on. I can see where there is some confusion in the way that the application was filled out. It gives the address at 434 New Jersey Avenue, S.E., but that's not my understanding, or you don't know -- no, you couldn't have been because he was a contract holder.

MEMBER GILREATH: That is the address of the property.

CHAIRPERSON REID: No, no. The address of the applicant at the time. The applicant being Mr. Fields. And then his address. The form asks for his address and that was the question as to whether or not this was his address at the time of the application. And did you say you did not know?

MS. McCARTHY: No, that's why I talked to the person at the zoning counter because I said, he's the contractor purchaser but when he gets the home occupation permit, it's for this address. And I don't see any other place on the form to say what would be the address if it's not this -- if there's no place else. Because, as you said, there's no provision there for applying as a contract purchaser.

CHAIRPERSON REID: What you said was you didn't know if he was -- the time period that he had occupied the property before he actually --

VICE CHAIRPERSON KING: What she said, she didn't know whether he was renting there at the time of the application.

CHAIRPERSON REID: No she didn't.

MR. NETTLER: The question that Mr. Schauer asked was from the time when the application was submitted until July 1st when he bought the premises, closed on the premises --

CHAIRPERSON REID: Right. That's what she didn't know.

MR. NETTLER: Did you know whether he was living

there or not?

CHAIRPERSON REID: Yes. But the question I --

MR. NETTLER: She said no. Sh did not.

CHAIRPERSON REID: -- have is, at the time the application was filed, Ms. McCarthy, when you put the applicant's name as Jack Fields and the Social Security number, the address, I'm assuming they were asking for what's his current address at the time the application was filed. And I want to know what was his address at that time? Is this correct? And you're saying -- then you're saying in response to that, that because of the confusion, which I don't see where -- why it's confusing because it just says the address. And the assumption is that the current address of the applicant. Why did you not put that address rather than the subject property address?

MR. NETTLER: If I might ask her a question, then.

Were you asked what the address was for the purposes of issuing the permit? What was the address going to be for the permit?

MS. McCARTHY: Right.

MR. NETTLER: Was there anywhere else on this document to put the address for where the permit was supposed to cover other than that, number 3?

MS. McCARTHY: Right.

MR. NETTLER: And you were -- you explained to the Zoning Administrator's office that he was a contract purchaser but this was the address for where the permit was going to be issued?

MS. McCARTHY: Right.

MR. NETTLER: And they didn't question you about that. And that's where they issued the permit for, is that correct?

MS. McCARTHY: Right.

CHAIRPERSON REID: That's not my question. My question was, did you know the current address of Mr. Fields at the time the application was filed?

MS. McCARTHY: I didn't know his residential address.

CHAIRPERSON REID: But was it 434 New Jersey Avenue?

MR. NETTLER: She doesn't know.

MS. McCARTHY: I didn't know whether or not he was living there. I knew that he had not yet purchased it because he was asking us to determine if he could conduct his business there by filing a home occupation permit to determine whether or not he could live there and carry out his business. And therefore, that he could go ahead and purchase the property.

CHAIRPERSON REID: All right.

MR. NETTLER: If I might just make some concluding remarks. I don't have any other witnesses.

CHAIRPERSON REID: No, no, Mr. Schauer.

MR. NETTLER: I mean concluding remarks for my case. He can make for his. Sorry.

As I stated, the issue that's been framed for you by

this appeal is whether this -- and the challenge that went to the basis for the Zoning Administrator issuing this home occupation permit is that this is not the principal residence of the applicant. That this -- That in using this permit, it will not be used for a premises which would be the principal residence of the applicant.

The Zoning Administrator hasn't testified that that's -- that they had any information to believe. The certification says it was the principal residence. There's simply a dearth of any evidence in which to say that the Zoning Administrator erred in accepting the certification by Mr. Fields that he was using this for his principal residence. There's none.

I know we've gone into a number of issues which I think are legitimate issues to get into in terms of how these things get structured. But they're not the basis upon which this appeal was filed. And you heard the basis. The basis was the fact that somebody, even if the person lived there and was not, I recall the precise words of Mr. Schauer, if the person was not an active member of the community, this couldn't be his principal residence.

And that's -- there's simply nothing in the law to support that. There's certainly nothing in the zoning regulations. There's nothing in the Corporation Counsel's memorandum to support that. And all that the Zoning Administrator had before them was a certification, this is my principal residence when you issue me the-- and I will be using this for my principal residence when you issue me the home occupation permit.

There's no basis for this appeal to be -- for the appeal to be accepted by this Board.

Thank you.

COMMISSION MEMBER CLARENS: Well, I've heard the second half of the case and I'd be willing to read -- I've already requested the first part of the case so that I can participate.

CHAIRPERSON REID: Did you have any questions at this time? Or any comments?

COMMISSION MEMBER CLARENS: No, I think it's fairly clear to me but I would like to read the first part. I'd like to hear Mr. Schauer's opinion.

CHAIRPERSON REID: We would -- Actually, Mr. Clarens, I think the appellant was supposed to come first, but that's okay. We just kind of reversed things.

There is no Government report. There's no government official in this case. So, proceed.

MR. SCHAUER: The floor is all mine, is that correct?

CHAIRPERSON REID: Yes.

MR. SCHAUER: If there's anything that's certain about home occupation regulations, it's that a permit may not be issued to someone who doesn't live in the premises for which the permit is sought. This is very clear from 203.3, Subsection C, "The permit may be granted only to a designated person or group of persons who reside at a residential address."

In this case, this application was made and the permit

was issued to a vacant house. Now, we know from Mr. Nunley's testimony at the last hearing that -- he says, "If a person is speculating, in other words, they're going to use our action as a basis for making a decision whether to purchase, then we would give them verbal. We would not give them an official document allowing them to operate from a home when we have information they do not reside there."

And the reason they didn't have information that that person was not residing there was because this form was not filled out properly. If it had been properly filled out, under item 4, it should have -- the applicant should have circled other and indicated he was a contract purchaser. That immediately would bring you into Mr. Nunley's structure, we don't give a permit to somebody who doesn't live there. We may give them a written statement that yes, it looks fine to us. When you get resident there, then you come back and apply.

In other words, somebody doesn't have to purchase the property and then find out later that he can't get a permit. So, they can go down there, get an informal permit, but not the piece of paper that was issued in this case on February 5th, which was five months before Mr. Fields became resident.

That, in -- that voids, in our view, this application. A serious, serious mistake was made in the zoning office. They did not read this form for completeness and they didn't insist that it be filled out. And had it been filled out, they would have learned that this was

a contract purchaser and they would have not issued the document.

And the reason that this is important is the reason I alluded to before, we can get in, if we can get a home occupation permit granted for one person as a matter of right. Then we can argue later, well, you can't go back to question what was not before the Zoning Administrator at the time the permit was issued. We can -- it's a handy tool to deflect the very kind of attack that they received in this case.

And I would suggest that, whether that was their intention or not, that has been the effect. What I would hope this Board would do is to void this home occupation permit issued on February the 5th and direct -- no. This is not going to be a big problem for Mr. Fields. It's not going to be an economic distress to him because he can come back and apply for a permit right now. But when he does, all of these facts that are in the record about the -- whether or not this is his principal residence, will then have to be considered by the Zoning Administrator.

And that has been their whole intention all along, to get those facts before somebody. And that would, then, please them before the Zoning Administrator in their entirety. And he can then make a decision. And we can object to that or not as we see fit. But that's the way it should move forward. This permit be voided and direct Mr. Fields to seek a new one.

In closing, I mentioned to the Board a Court of Appeals case that I think is somewhat on target here. That's the case

involving Hugh Bines, Bines v. District of Columbia, Board of Zoning Adjustment, 572 At. 2nd, 122. There, we had an innocent applicant -- or, innocent intervenor, the Foxes, had put an addition on their house. And between the time that they had applied for the permit and the time that it was issued, the regulations -- new regulations came into effect that required them to seek a variance. They couldn't get a matter of right building permit.

So, this went to the Court of Appeals and they said, "Moreover, even if the alterations were found to be unlawful in one or more respects, this does not necessarily mean the improvements must be demolished. The Foxes would not be prohibited from apply for an area variance and a consideration of that application, both are economic prejudice and the acts of the zoning officials giving rise to the estoppel decision would be relevant factors." And those same principals apply here.

Mr. Fields is not going to be economically distressed. All he has to do is apply for another permit. But, he is going to have to convince the Zoning Administrator that this is in fact his principal residence based on the facts that have been placed in the record and have been transmitted by us to the Zoning Administrator in the past.

Thank you.

CHAIRPERSON REID: Mr. Schauer, I have one question.

MR. SCHAUER: Yes?

CHAIRPERSON REID: The date of the application,

you said, was February 5th?

MR. SCHAUER: It's not the application. That's the date of the home occupation permit.

CHAIRPERSON REID: Oh, the permit itself.

MR. SCHAUER: The actual document that was issued.

CHAIRPERSON REID: All right. Thank you.

ANC report?

VICE CHAIRPERSON KING: This is the appeal.

CHAIRPERSON REID: I'm sorry. I'm sorry. Wait one second.

Mr. Nettler has cross examination first. Mr. Nettler can cross examine Mr. Schauer.

COMMISSION MEMBER CLARENS: This is where confusion is.

VICE CHAIRPERSON KING: Cross examine, this is Mr. Schauer's closing statement.

CHAIRPERSON REID: No. No, we got out of sequence. Mr. Nettler has --

Do you have any questions for Mr. Schauer?

MR. NETTLER: I understood to be his closing statement. We already had --

CHAIRPERSON REID: I know. What happened, Mr. Nettler, is that you came first. You came first but the appellant was supposed to come first.

MR. NETTLER: They did, last time. We've had the appellant's case. We've had the Government's case.

CHAIRPERSON REID: I'm sorry.

MR. NETTLER: We've had the ANC.

CHAIRPERSON REID: Thank you for correcting me. I'm sorry. I'm sorry.

The ANC already has. I just got in the sequencing of it all.

MEMBER GILREATH: Are you ready for comments?

CHAIRPERSON REID: No.

Mr. Nettler, before we conclude, even though it's out of sequence, I do happen to have a question. I do have a couple. If Ms. McCarthy could come back up, too, please, because I do have a couple of questions I'd like to answer.

VICE CHAIRPERSON KING: But the case is closed.

CHAIRPERSON REID: It's not closed yet, Ms. King. I haven't closed it. I do want to ask him a couple of questions.

I forgot, in regard to the application, the date of the amplication? The date?

MS. McCARTHY: Yes, I don't believe the application has a date.

CHAIRPERSON REID: Yes, that's what I was asking you. There is no date. And the other question was, I forget to ask you before, was the telephone number, the home telephone number, you put n/a?

MS. McCARTHY: Right.

CHAIRPERSON REID: And that was because?

MS. McCARTHY: It wasn't applicable because it's a home occupation permit for when this is his home. And since it -- since he can't -- since the permit for carrying on his occupation is at home, it's only good if that is his home and he's carrying on his occupation there. I believe that's why the Zoning Administrator's office was willing to entertain this when I explained to them he was a contract purchaser. Because they -- if they issue a permit and he's not living there, he's not going to use the permit to be carrying on an occupation there.

So, since it's tied to the carrying on of an occupation in his home at the address that's listed on the permit, that's --

CHAIRPERSON REID: Then that's very confusing.

COMMISSION MEMBER CLARENS: Madam Chair.

CHAIRPERSON REID: It is to me.

Huh?

COMMISSION MEMBER CLARENS: I have a quick question of both Mr. Schauer and Mr. Nettler.

And I have offered to read the first part of the record because I have not read it.

The -- Isn't this an issue of enforcement of the occupation permit? That if in fact he's not a resident, if it's not an issue of error, it's an issue of compliance with the conditions of the occupation permit. And am I going to read all of that in the first part of

the record?

MR. NETTLER: Well, if I have the first --

VICE CHAIRPERSON KING: Good point.

MR. NETTLER: Yes, I hope you will. That's precisely the position I was taking. And I thought I alluded to in the beginning here. Which was, this is not in the appropriate posture. There's a forum for Mr. Schauer to try and address his allegation that this is not his principal residence.

COMMISSION MEMBER CLARENS: And it would be BZA but it would be a -- where?

MR. NETTLER: Well, it would be -- there's two possible avenues if he raises this as an issue for enforcement and an infraction is issued, order is issued, it goes to the Board and Appeals and Review. If an infraction -- Which could ultimately come here. And if an infraction is not issued, that he can come here to address the reason for why an infraction wasn't issued.

So, either way, it ultimately would come here but on the basis of a record that's created by the Department of Consumer Regulatory Affairs as to whether in fact it's being used as certified. That's the way this case normally comes before this Board.

COMMISSION MEMBER CLARENS: And it's coming to us as an error in judgment by the Zoning Administrator in issuing the permit. But there's no way--

MR. NETTLER: Based on testimony that Mr. Schauer believed -- testimony given in another hearing, the he believes that the

Zoning Administrator should have somehow known about.

COMMISSION MEMBER CLARENS: I think I'm ready to read the record.

MR. SCHAUER: Mr. Clarens, can I speak just a little bit to that point?

COMMISSION MEMBER CLARENS: Sure.

MR. SCHAUER: Home occupation permits cannot be issued unless the person to whom they're issued is resident at the address for which they are. They cannot be issued -- it is a serious error.

COMMISSION MEMBER CLARENS: I agree. I agree but --

MR. SCHAUER: Now, that kind of error should be addressed --

COMMISSION MEMBER CLARENS: No, but the permit is issued to a person and in the regulation it says that it's not transferrable. It's to the address and to the person. So, if in fact there's a contract purchaser, and that contract purchaser does not execute the contract, and the permit is null and void. It cannot be operated because the person doesn't own the property and doesn't operate out of that property.

So, you can, I see no problem, in obtaining a permit for a property that you have under contract if you intend to purchase and for which you intend to live, and from which you intend to practice a home occupation. And that the Zoning Administrator -- but I'm

getting ahead of myself. I'll stop there.

VICE CHAIRPERSON KING: Point well taken, Mr. Clarens.

CHAIRPERSON REID: Mr. Schauer, did you finish?

MR. SCHAUER: I think so.

CHAIRPERSON REID: Any other questions, Board members, Zoning?

MEMBER GILREATH: I think I concur with Mr. Angel. It seems to me that --

CHAIRPERSON REID: Mr. Clarens.

MEMBER GILREATH: Mr. Clarens. This is an enforcement problem and we are not in a position to start ascertaining what the Zoning Administrator thought or didn't think about this. To try to impose our judgment of what in their state of mind, and so forth, I think goes far beyond our capabilities. And an enforcement, if indeed they investigate and it's been used as a permanent residence it solves the problem. If not, then they revoke the permit.

VICE CHAIRPERSON KING: Hear, hear. I'll agree.

CHAIRPERSON REID: I'll take just a second.

I'm not sure -- I'm not really sure as to whether or not it is or is not an enforcement issue. I think we need to contemplate that a little bit before taking that position. It certainly could go either way. It could be a matter of the ZA's office been in error, or it could be --

COMMISSION MEMBER CLARENS: Madam

Chairperson, if you want me to participate, if don't want me to participate, that's okay. I don't participate and that's fine. If you're going to make a decision, that's okay. But if you want me to participate, I need to read the record.

CHAIRPERSON REID: Well, we're not going to make a decision today.

COMMISSION MEMBER CLARENS: Well, so then, I would say to set it up for decision --

VICE CHAIRPERSON KING: So, let's not discuss it today?

CHAIRPERSON REID: Well, let's not. I was just giving what I thought were -- Okay.

So, we will decide this case at our next meeting?

MS. PRUITT-WILLIAMS: If that's your choice.

MEMBER GILREATH: The next meeting is May 5th?

CHAIRPERSON REID: Does that give you adequate time?

MR. NETTLER: I would have to prepare proposed findings of fact. I don't think that gives you enough time to --

MS. PRUITT-WILLIAMS: Applicant needs to make his submission and then have time for response. So, that isn't enough time to do it.

CHAIRPERSON REID: All right. Then, would June, the June meeting?

MS. PRUITT-WILLIAMS: We can do it for the June --

I mean, that's certainly --

CHAIRPERSON REID: What date is that?

VICE CHAIRPERSON KING: And what do we need from Mr. Schauer and Mr. Nettler before then?

MS. PRUITT-WILLIAMS: They don't have to but they are certainly welcomed and encouraged to supply a draft conclusions of law and findings of fact.

Are you asking for any additional information be submitted for the record?

MR. SCHAUER: No. When is that due?

MS. PRUITT-WILLIAMS: We can figure that out. First I wanted to see, is there any additional information to be submitted?

MR. SCHAUER: I don't believe so.

MS. PRUITT-WILLIAMS: So, the record is closed with the exception of those two items that would come.

If we're going to hear it on May -- June, excuse me, June 2nd, Mr. Schauer, if you could have it in to us by the 12th and then Mr. Nettler, we'll give you to the 26th to respond.

I'm sorry, no --

MR. NETTLER: No, no, we do it at the same time.

MS. PRUITT-WILLIAMS: At the same time, sorry.

If you'd like, you can have as much to the 26th to give you some time to --

MR. NETTLER: No, no, the 12th is fine.

MS. PRUITT-WILLIAMS: The 12th, does that work for you also?

MR. SCHAUER: That would be May 12th?

MS. PRUITT-WILLIAMS: May 12th, yes. That gives you several weeks. More than normal.

MR. SCHAUER: Yes, thank you.

MR. NETTLER: Thank you very much.

CHAIRPERSON REID: We will adjourn for five minutes and then we'll come back and take up preliminary matters.

(Whereupon, the foregoing matter went off the record at 1:23 p.m. and back on the record at 1:28 p.m.)

CHAIRPERSON REID: For persons or parties in opposition. Cross examination of witnesses is permitted for persons or parties of 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 protested 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 close to 6:00 p.m. If the applicable 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 requests for postponement, continuance, or withdrawal, whether proper and adequate notice of the hearing has been given. If you're 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.

Preliminary matters.

MS. PRUITT-WILLIAMS: I believe there's some preliminary matters from the audience and staff has some, too.

CHAIRPERSON REID: We're going to hear the preliminary matters because I understand there's some time constraints. We ran over this morning. So, we will take a brief break after preliminary matters and we'll come back.

All right. Come forward, please.

MR. MONTGOMERY: My name is Jim Montgomery. I'm an attorney for the applicant, Rainer Kraus.

VICE CHAIRPERSON KING: Which case is this?

MR. MONTGOMERY: 16443, application of Rainer Kraus

I was prepared to hear this case yesterday and I came down and reviewed the file. And I have received material from opposing counsel April 13th as to his reason for opposition. I received a fax last night at -- I received it at 6:00 p.m. It actually was sent at 5:00 but I received it after 6:00 in my office, and it raised two new

issues which presented a real problem for me.

This case is based on a medical condition and it's my assumption that the medical condition could be a basis for a variance. I received -- that is, that the language of the code is broad enough to include that as a hardship.

I received this new argument from opposing counsel in the form of this letter. I don't know whether, Ms. Cross, you've seen this or not. This is dated April 20th, yesterday.

CHAIRPERSON REID: I'm Ms. Cross Reid or Ms. Reid.

MR. MONTGOMERY: Oh, Ms. Reid.

CHAIRPERSON REID: Uh huh. And give it to staff who will then give it to us.

MS. PRUITT-WILLIAMS: We'll take the letter.

VICE CHAIRPERSON KING: Are you requesting a continuance?

MR. MONTGOMERY: Yes, for one month, because, first, this issue -- the first new issue raised is the issue of a medical or lifetime variance. That is, whether the medical condition can be brought in as a matter of evidence. And the other issue is whether it can be conditional, like for a term of five years or a term of the medical handicapped person's life.

And these are very difficult. My understanding of the Board of Zoning Adjustment is that you have a great deal of authority and privilege to interpret these rules. And that it is broad enough.

And what authority I was able to check last night confirms that.

CHAIRPERSON REID: Confirms what?

MR. MONTGOMERY: Confirms, that is, that the Board has authority to take medical condition and a --

CHAIRPERSON REID: But that's not true. And I noticed in your submission that you often, in making your case, refer to a medical variance. But to my knowledge, there is not anything in the regulations that --

MR. MONTGOMERY: No, it says condition. His medical condition.

CHAIRPERSON REID: Medical condition, but if I'm not mistaken, you ask for a medical variance in your submission.

MR. MONTGOMERY: I use that term.

CHAIRPERSON REID: There is no such thing. And --

MR. MONTGOMERY: Well --

CHAIRPERSON REID: Let me explain. The variance would be predicated upon your being able to demonstrate to us that you are able to -- that you have the burden of proof of meeting three tests. And that is, one, that there's something inherently unique or unusual in the land itself that would cause an undue hardship for the applicant to be able to use it under the current zoning district regulations. And that there would be no adverse impact. And that it would not impair the intent or integrity of the zoning regulation or map. And that has to be the basis for your argument.

A medical condition is not one of the criterion that is utilized in making that argument.

MR. MONTGOMERY: Well, this is what I'd like to submit the authority on. I would like to submit a brief.

VICE CHAIRPERSON KING: But you want a continuance in order to do it?

MR. MONTGOMERY: Yes. I need time.

MS. PRUITT-WILLIAMS: Madam Chair, may I make a suggestion?

You can hear the case and leave the record open. And therefore -- I'm sorry, I didn't get your name, sir?

MR. MONTGOMERY: My name is Jim Montgomery.

MS. PRUITT-WILLIAMS: Mr. Montgomery would still have the opportunity to provide you with that information prior to a decision.

CHAIRPERSON REID: Mr. Montgomery, you're saying that -- You're making -- You're taking the position that what? Let me understand that clearly.

MR. MONTGOMERY: Well, I learned this just last night. I need time. It was a complete surprise to me. I have Mr. Aguglia's submission of April 13th is entirely on a different issue.

CHAIRPERSON REID: You need time to make your case, to actually be able to --

MR. MONTGOMERY: To prepare the kind of evidence that I need.

CHAIRPERSON REID: I don't think we can hear this today because Mr. Montgomery has not had the opportunity or the time required to be able to even proffer a case before us.

MS. PRUITT-WILLIAMS: But, it's the applicant's burden to do so. Mr. Aguglia is responding to his submission. His submission should stand on its own regardless of what Mr. Aguglia provides to us right now for the hearing. He will have the ample opportunity to respond to that later.

CHAIRPERSON REID: He's saying that he's not prepared for it.

MS. PRUITT-WILLIAMS: I understand, Ms. King -- I mean, Ms. Reid. But, anybody can come up and testify. They don't have to have put anything in the record. He would not have had that information prior to the hearing. So, he would not be able to prepare for that, either.

MR. MONTGOMERY: I'd like to make it clear that I just heard this last night at 6:00.

MS. PRUITT-WILLIAMS: Oh, I understand, sir. And it's -- there's no disputing that. It's just that our --

CHAIRPERSON REID: Can I --

MS. PRUITT-WILLIAMS: The way our procedures are set up, that a person, or even -- since parties are not declared prior to the hearing, anyone can submit or testify at the hearing at that date. You, nor the Board, or anybody, may necessarily have any advanced notice of it. You, then, get the opportunity to respond to it

directly there through cross examination or however you want to deal with it, or through a written responses by leaving the record open.

But, the way the BZA procedures are set up, it allows for information to come into the record up to the very last minute for other than applicants.

MR. MONTGOMERY: Well, I have another problem. My client, Rainer Kraus, is severely ill. I don't know whether you've read the doctors' letters. I'm not sure that all the doctors' letters are in the file. But he's lost one leg from diabetes. He has congestive heart failure. He had a stroke. He's lost the use of his hand. And he's blind.

He was not able to make it here today. That's another reason.

MS. PRUITT-WILLIAMS: Was he going to testify?

MR. MONTGOMERY: Yes. Another reason is that this -- I learned just yesterday in reviewing the file, that there's some confusion about the notice that went out. The notice refers to this case as a variance to enlarge the pad. And that's understandable among lawyers, but for the lay people, the neighbors, they think that it's a variance to get an additional. It sounds like a variance to get an addition to the pad.

MS. PRUITT-WILLIAMS: That can be addressed as amending. We can amend that on the spot. So, that's not an issue that would necessarily postpone.

MR. MONTGOMERY: No, but it's confusing to the

neighbors that they thought it was an enlargement of the pad. So --

CHAIRPERSON REID: It is what?

MR. MONTGOMERY: That it was an enlargement of the pad where --

VICE CHAIRPERSON KING: In fact, it's a reauthorization of an existing pad, is it not?

MR. MONTGOMERY: Yes, that's right.

MEMBER GILREATH: Well, if the person who resides on the premises has this health condition, he would normally plan to participate but couldn't make it today. Isn't that a sufficient basis for postponing this?

CHAIRPERSON REID: I have no problem with a continuance. I think that Mr. Montgomery should have the opportunity to make his case. His submission to us is not -- give the basis or demonstrate adequately that he has met his burden of proof because he was operating under another assumption, that you could proffer a medical variance. And the fact that the applicant is not able to make it today because of illness, and the notice being incorrect, I think I have no problem with granting a continuance.

MS. PRUITT-WILLIAMS: Excuse me, Madam Chair, you have the opposition party who would like to speak.

CHAIRPERSON REID: All right.

MS. PRUITT-WILLIAMS: And you need to hear that.

CHAIRPERSON REID: Mr. Hood, did you have any --

COMMISSIONER HOOD: I concur with you, Madam Chair.

MR. O'GOULKNEE: Richard O'Goulknee representing a party in opposition, Mr. Sell, who's the next door neighbor.

We have two thoughts. The first thought is that Mr. Montgomery reviewed the file and realizes that all the neighbors have objected as well as Mr. Sell. Also, I had mailed to him on April 13th our opposition and which premised on the fact that he had stated nothing in the original application under the three criteria that you set forth.

I did not get, until April 16th that was faxed by Mr. Montgomery, any information that he seeking a medical variance. And I would agree with you that there's no such thing as a medical variance. And I filed an opposition with the case law and had that faxed to Mr. Montgomery last night because I did not receive that information until April 16th.

However, if Mr. Montgomery, as an officer of the Court, will swear that Mr. Kraus is too ill to come today to testify, we would not oppose an objection. I'm sorry, oppose a continuance.

On the other hand, and I know I'm arguing but in honesty, I think the application was so deficient in meeting the rules that we'd request that you dismiss the application and start all over again.

But if Mr. Kraus is truly ill and unable to testify, then

we will not oppose.

MEMBER GILREATH: Madam Chair, I don't think the applicant has to affirm or otherwise confirm that the applicant is ill. I think -- I'm willing to give credence to his statement that he is in unusually ill health and under that condition, that I'm willing to take his word without an actual sworn statement.

CHAIRPERSON REID: Well, I would agree with you. I'll take that as being the basis for his request for continuance. I have no problem with that. Ms. King said she had no problem with it.

Mr. Hood?

COMMISSION MEMBER HOOD: No.

CHAIRPERSON REID: All right. What's the next available date?

MR. MONTGOMERY: I was wondering, if it would be one month, I want to submit a brief.

CHAIRPERSON REID: Yes. Yes, you would have an opportunity to --

VICE CHAIRPERSON KING: You get at least one month.

CHAIRPERSON REID: Yes, to --

VICE CHAIRPERSON KING: More likely two.

CHAIRPERSON REID: -- to submit your brief as well to give the opposing attorney an opportunity to respond to the same.

And, you said that you faxed over Mr. Montgomery your argument in response to his submission? Did you also -- do we

also have that in our records?

MR. O'GOULKNEE: Yes.

MR. MONTGOMERY: Let me say as a matter of courtesy, I didn't realize --

CHAIRPERSON REID: You did? You did, you said?

MR. O'GOULKNEE: Yes.

MS. PRUITT-WILLIAMS: It came last night, correct?

MR. O'GOULKNEE: Yes.

VICE CHAIRPERSON KING: So, then, it's not our files?

MS. PRUITT-WILLIAMS: Its' not in your files right now.

CHAIRPERSON REID: All right. Well, then we'll have an opportunity to agree with it as well.

MS. PRUITT-WILLIAMS: Was it given to me?

CHAIRPERSON REID: Question, Mr. Montgomery?

MR. MONTGOMERY: Well, I just wanted to say, I apologize if I neglected in some way to inform the--

CHAIRPERSON REID: You may want to also confer with staff as to what in fact is the criterion for setting a case before this Board so that you can--

MR. MONTGOMERY: I'll do that.

CHAIRPERSON REID: -- have the opportunity to be on the same page.

MR. MONTGOMERY: Thank you very much.

MEMBER GILREATH: We may want to schedule a --

CHAIRPERSON REID: She's going to schedule it now, give us a date.

MEMBER GILREATH: She's --

MS. PRUITT-WILLIAMS: The next available date that we have would be July 21st.

MR. MONTGOMERY: Well, we would accept that. If it can be heard earlier, we'd like the opportunity. We were hoping to get rid of this.

MS. PRUITT-WILLIAMS: Unfortunately, all of our hearings are book prior to that, so this is the first available one.

MR. MONTGOMERY: Thank you.

CHAIRPERSON REID: Is that date all right with you as well?

MS. PRUITT-WILLIAMS: Madam Chair, we have another issue. There's still another person.

CHAIRPERSON REID: Is there anyone else who has any preliminary matter to bring forth?

Please?

MR. TAYLOR: Thank you. Good morning, Madam Chairman Reid and members.

My name is Vanny Taylor. I represent Eagle Maintenance.

CHAIRPERSON REID: We can't hear you, sir.

MS. PRUITT-WILLIAMS: Excuse me, Mr. Taylor.

Our PA system is out so we're going to have to ask everyone to please talk as loud as you can, and we do apologize for any inconvenience.

MR. TAYLOR: Once again, my name is --

MS. PRUITT-WILLIAMS: And you can sit if you'd like.

MR. TAYLOR: -- Vanny Taylor, III. I represent Eagle Maintenance Service. And -- who is the Applicant here before this Board, basically for a continuation of the special exception.

VICE CHAIRPERSON KING: Which case number?

MS. PRUITT-WILLIAMS: 16454, the last page on the agenda.

MR. TAYLOR: Which is an application for the continuation of a special exception so that he may continue to operate a recycling facility that's located at 6130 North Capitol Street, N.W.

It's my understanding that there has been no opposition filed in reference to the continuation of this special exception.

CHAIRPERSON REID: What's the basis for that? Why are you requesting a continuation?

MR. TAYLOR: No, I'm actually I'm not requesting a continuation. I was really requesting that the matter be advanced on the calendar so that we might expedite it due to the fact that I also chair an ABC Board which I have to get back to in about a half an hour.

CHAIRPERSON REID: I can't hear you.

MS. PRUITT-WILLIAMS: Madam Chair, he's requesting that --

VICE CHAIRPERSON KING: He wants to be moved ahead in the schedule.

CHAIRPERSON REID: I understand that. But he said due to the fact that what?

MR. TAYLOR: I chair an ABC Board and we sit on Wednesdays as well, and I need to get back in half an hour.

COMMISSION MEMBER HOOD: So, Mr. Taylor, what you're saying is that the ABC Board is meeting at this time?

MR. TAYLOR: That's correct, sir.

CHAIRPERSON REID: Oh, okay.

COMMISSION MEMBER HOOD: And he wants -- he was asking us to expedite this particular case.

VICE CHAIRPERSON KING: Well, the file is -- I mean, the case is not made in the file. So, it would be very difficult to expedite it. We're going to have to go through all the criteria.

MR. HART: Madam Chair, I have --

CHAIRPERSON REID: We have --

MR. HART: We also, may I say something, Ms. Reid?

CHAIRPERSON REID: Yes.

MR. HART: Madam Chair, we also, if we chose to do this, we would want to ask if anyone is in opposition.

CHAIRPERSON REID: Right. We will. We'll ask

that.

But before that, Mr. Hood, I was just trying to get an idea as we had so many postponements and changes here this afternoon, we are left now with one or two cases?

MS. PRUITT-WILLIAMS: Three.

CHAIRPERSON REID: Notwithstanding his case?

MS. PRUITT-WILLIAMS: Three including his case.

CHAIRPERSON REID: Three including his case.

MS. PRUITT-WILLIAMS: He's the last one on the agenda. He's requesting that he be first.

CHAIRPERSON REID: So, what are those three?

MS. PRUITT-WILLIAMS: The District of -- 16442.

CHAIRPERSON REID: Don't we have a request to postpone that one as well?

COMMISSION MEMBER HOOD: We just did that.

MS. PRUITT-WILLIAMS: We did 443. We did 443.

CHAIRPERSON REID: Mr. Graham? Council Member Graham.

MS. PRUITT-WILLIAMS: Right. 443, 1650 is a conversion of a single family dwelling into a two room flat. And then this particular special exception. So, there's --

CHAIRPERSON REID: But my question was, there was a we have a letter in the file for 16442, a request for a postponement from Council Member Graham.

MS. PRUITT-WILLIAMS: Oh, yes. And that's--

VICE CHAIRPERSON KING: Oh, really? I don't have a copy of that.

CHAIRPERSON REID: That's why I'm saying, I think that we have only one other case.

VICE CHAIRPERSON KING: I don't have any--

MS. PRUITT-WILLIAMS: There is a request that it be cancelled postponement -- I'd let you read it and then you can make your decision from there.

VICE CHAIRPERSON KING: This is all supposed to be part of this?

MS. PRUITT-WILLIAMS: We just got it.

CHAIRPERSON REID: This is the letter.

So, if we postpone that one, then we only have the 16450 case, Cynthia and Harold Brooks.

All right, Mr. -- I'm sorry, your name, sir?

MR. TAYLOR: Vanny Taylor.

CHAIRPERSON REID: Mr. Taylor, could I ask you to just sit right there for just one moment. And let's see what else we have to do and then we'll respond to your request.

MR. TAYLOR: Thank you.

CHAIRPERSON REID: All right. Now, do you have a preliminary matter --

MS. BROWN: I have one now that you mention it, 16442

VICE CHAIRPERSON KING: Why don't we just skip

lunch and go right through. I mean, this -- having preliminary matters and arguing about what comes next, we're -- it's now 2:00 and we haven't had lunch. Let's just go right straight through.

CHAIRPERSON REID: That's a suggestion. We may take that.

MEMBER GILREATH: I don't have a problem with that, if we only have two or three cases.

CHAIRPERSON REID: Your preliminary matter, please, ma'am? Can you come forward?

MS. BROWN: It was just brought to my attention that there's a request for an adjournment for Case No. 16442.

CHAIRPERSON REID: Not adjournment but a postponement or continuance.

MS. BROWN: A continuance. I oppose it. We put in the application and you have at least 15 people here today ready to speak on the issue.

CHAIRPERSON REID: And you are, ma'am?

MS. BROWN: I'm the attorney for the D.C. Housing Authority.

CHAIRPERSON REID: Your name and address?

MS. BROWN: Eilene Brown, 1133 North Capitol Street in Washington, D.C.

CHAIRPERSON REID: You're the attorney for?

MS. BROWN: The D.C. Housing Authority. And we've put in the application for the special exception.

Apparently Ms. Fitzgerald has some issues regarding the application and I thought she'd be here today to discuss those because I have people here to speak to those issues.

CHAIRPERSON REID: Who is Ms. Fitzgerald? Is she the applicant?

VICE CHAIRPERSON KING: She's the ANC commissioner.

MS. BROWN: ANC Commissioner.

CHAIRPERSON REID: ANC Commissioner.

MS. BROWN: And these issues were all reaised and dealt with a week ago at an ANC meeting and a vote was taken. And they support the application. And Mr. Guyot is here in support of the application.

So, I believe that she should be here to discuss any issues she has. We don't need to -- My position is that we shouldn't postpone this hearing today because she sent in a letter when she could be here to make --

CHAIRPERSON REID: The letter that I'm referring to was not from Ms. Fitzgerald. It was from Council Member Graham.

MS. BROWN: Right, but it's on behalf of ANC Commissioner Adal Fitzgerald.

CHAIRPERSON REID: Right. I know, but you said from her. It's not from her.

VICE CHAIRPERSON KING: You haven't met with the Advisory Neighborhood Commission on this?

MS. BROWN: Yes, we did, a week ago for two hours. We went back and forth on the issue and we got their support. And they're here today in support of the application.

CHAIRPERSON REID: Mr. Guyot, can you speak on this matter?

MR. GUYOT: Madam Chairman, we would vigorously oppose any rescheduling or any delay whatsoever. We removed this on two consecutive months from our agenda once it was on the agenda to allow the parties to work this out. We had a full blown discussion of both sides at our last public meeting at which a quorum was present. We've made a decision on this case on the merits and it would be really quite unjust to consider any delay.

CHAIRPERSON REID: Mr. Guyot, was there a letter submitted?

VICE CHAIRPERSON KING: Is there a letter?

MR. GUYOT: The letter is here.

CHAIRPERSON REID: But did you submit it? Do we know about the letter?

MR. GUYOT: No, that is my fault. I would ask a waiving of the rules so I can submit it.

VICE CHAIRPERSON KING: The other thing that I have here before me, item -- Exhibit 7, which is incomprehensible and refers to various attached exhibits. It says, page 2 of 4 and that's all I have. Does anybody else have a complete file?

CHAIRPERSON REID: Let me see what you have.

VICE CHAIRPERSON KING: I have this document. It says page 2 of 4. It says, See Exhibit A, Exhibit B, Exhibit C, none of the exhibits -- I don't know what -- and starts with item 3 followed by 4A. My file is incomprehensible.

MS. BROWN: Is that the application?

VICE CHAIRPERSON KING: I don't know what it is. I've never seen anything like it.

COMMISSION MEMBER HOOD: Madam Chair, if I just can add, ANC took a vote whether to support or not, I'm not sure what they have. But this letter here, from what I see from Ms. Fitzgerald, where she has names crossed out, it's from a single member district.

VICE CHAIRPERSON KING: I don't have that.

COMMISSION MEMBER HOOD: The law states that we give ANC commissioners great weight and I will -- my opinion is that we move forward with this case.

CHAIRPERSON REID: Mr. Hood?

COMMISSION MEMBER HOOD: Yes.

CHAIRPERSON REID: You're saying that -- Which document are you referring to?

COMMISSION MEMBER HOOD: I'm looking at this document here where some names have been crossed out and I don't know what this is. We oppose the site and -- It was just handed to us about three minutes ago.

VICE CHAIRPERSON KING: Commissioner 1B letter

paper with names scratched out.

COMMISSION MEMBER HOOD: Oh, okay. Same-- yes, this is it.

MR. GUYOT: Madam Chairman, so there's no confusion, this is the letter from 1B.

Madam Chairman, may I submit the 1B letter now?

CHAIRPERSON REID: Yes, please.

VICE CHAIRPERSON KING: Do you have a complete file?

MS. PRUITT-WILLIAMS: Here's the case file but the case file is very thin.

MEMBER GILREATH: I don't have the attachments.

MS. PRUITT-WILLIAMS: It has what we have in the case file.

CHAIRPERSON REID: Mr. Guyot --

VICE CHAIRPERSON KING: You don't have any of these -- this item 7 is what -- it says who it --

So, you have the commission coming on a board with an approval, in support of the application?

MR. GUYOT: Absolutely.

CHAIRPERSON REID: Ms. Fitzgerald is a member who is not?

MR. GUYOT: That's correct. She is on the opposing side --

CHAIRPERSON REID: Single member district.

MR. GUYOT: -- that did not prevail. It is her single member district and she lives in the building in question.

CHAIRPERSON REID: But, nonetheless --

VICE CHAIRPERSON KING: And she is opposed?

MR. GUYOT: She is opposed. This was -- on the property, I'm sorry. She was at the meeting. She was present. She had -- was given full right by the commission to express her opinion as was the opposing side. We listened to both sides and came down on the merits.

CHAIRPERSON REID: The vote was taken and there was a quorum present. And 1B decided to support the application?

MR. GUYOT: Yes.

CHAIRPERSON REID: Ms. Fitzgerald is not here today?

MR. GUYOT: I don't see her.

CHAIRPERSON REID: Her request came through Jim Graham and she said -- he said that there are not represented, or fully represented in this matter before you.

MR. GUYOT: Ms. Brown gave one of the best legal performances and political performances I've ever seen before the commission. She had to deal with a lot of obstacles and she dealt with every one of them, using the federal legislation as to what their intent, and purpose, and organizational frame of reference is, pointed out the purpose, and refuting all accusations, every one of them.

CHAIRPERSON REID: Let me get a feel. How many persons are here in opposition of this case?

Case 16442, who here is opposed to this case and will testify in opposition to it?

So everyone else is here in support?

MR. GUYOT: Do you support?

MS. BROWN: Support, everybody here. All of them.

CHAIRPERSON REID: All right. I just wanted to see a show of hands. Thank you.

VICE CHAIRPERSON KING: Ms. Brown, are you familiar with this document? It says page 2 of 4 and is this yours?

MS. BROWN: Yes, it is.

VICE CHAIRPERSON KING: That's all we have in our file.

MS. BROWN: In this file there's a complete application. I looked at this file.

VICE CHAIRPERSON KING: This is all that's in this file. That's item 7. And there's one page.

MS. BROWN: Can I just take a look at that? That's part of it. See the page numbers? That's page 3 of 4.

VICE CHAIRPERSON KING: What was page 1?

MS. BROWN: The application, the actual printed application.

VICE CHAIRPERSON KING: This one?

MS. BROWN: No, that's the affidavit of posting.

VICE CHAIRPERSON KING: But this is the entire -- and what were --

MS. BROWN: No, that's not the entire application. There was a form. There's a printed form.

MS. PRUITT-WILLIAMS: That's our typical form from our office, is that what you're referring to?

MS. BROWN: Yes. And I typed my own sheet in addition to that to refer to certain paragraphs.

CHAIRPERSON REID: Do you have yours?

MS. BROWN: Yes, that's the form. And there are pages attached to that form.

VICE CHAIRPERSON KING: What are these exhibits? I mean, this is -- I read this twice and I don't understand a word of it. What does all of this mean? What are the exhibits?

MS. BROWN: I need to look at this.

CHAIRPERSON REID: It relates to the application?

MS. BROWN: Yes.

CHAIRPERSON REID: So, you just started with number 3, there was no one or two?

MS. BROWN: Right, because in the application, I'll say, see this page or see this exhibit, because it wasn't -- right, it wasn't enough space for me.

CHAIRPERSON REID: Okay. I understand.

VICE CHAIRPERSON KING: And page 2 was what?

MS. BROWN: To expand. This is page 2.

CHAIRPERSON REID: See, she --

VICE CHAIRPERSON KING: And what are the exhibits that you're talking about there?

MS. BROWN: I would have to see it all together.

There's a reverse side to this. And it asks for certain things. And that's when I went to the next page, because there's no space provided on the application.

MS. PRUITT-WILLIAMS: Right. But that's just a -- I mean, there's nothing that you can provide on there. That's just where it looks for us. I mean, there's no substantive information for you all.

VICE CHAIRPERSON KING: But, she refers to exhibits. I don't have them.

MS. PRUITT-WILLIAMS: They're not here, either. I mean, that's what we're saying.

VICE CHAIRPERSON KING: So we have an incomplete file.

MS. PRUITT-WILLIAMS: Or rather, what we have here is what we have.

CHAIRPERSON REID: Do you have copies of what you submitted?

MS. BROWN: I believe so.

MS. PRUITT-WILLIAMS: Yes, because, see, the back page, the back side of this page is just our information.

COMMISSION MEMBER HOOD: Madam Chair?

CHAIRPERSON REID: Yes?

COMMISSION MEMBER HOOD: May I just ask Mr. Guyot a question.

CHAIRPERSON REID: Yes.

COMMISSION MEMBER HOOD: Mr. Guyot, what was the vote? I know you have a great weight but I was just curious, what was the vote?

MR. GUYOT: 7-2.

COMMISSION MEMBER HOOD: Seven to 2?

MR. GUYOT: Yes, ma'am -- Yes, sir.

COMMISSION MEMBER HOOD: Thank you.

CHAIRPERSON REID: Mr. Hood moved that we go forward with this application. Can I get a second?

No second?

MEMBER GILREATH: I'll second.

CHAIRPERSON REID: Discussion? Second. Okay. All in favor.

(Whereupon, an oral vote was taken.)

CHAIRPERSON REID: Opposed?

Discussion.

VICE CHAIRPERSON KING: I'm abstaining. I don't see how we can go forward with this case. I mean, is the case has been presented in writing by the attorney, I don't think that there's a case ready to be heard by this committee.

COMMISSION MEMBER HOOD: Ms. King, could you restate that, please?

VICE CHAIRPERSON KING: My file is so incomprehensible and incomplete that if -- that I can't understand the basis for this case at all.

CHAIRPERSON REID: Well, I felt that if the attorney was submitting now --

VICE CHAIRPERSON KING: It seemed to me -- I understand that I have a complete file. But the file does not give me any information on which to make a --

CHAIRPERSON REID: But your file is not complete. She -- the attachments that she was referring to, she has not submitted yet.

MS. PRUITT-WILLIAMS: Madam Chair?

CHAIRPERSON REID: Yes.

MS. PRUITT-WILLIAMS: What you have in the file is what she has here. The rest of the case would have to be made at the hearing.

MS. BROWN: Right. And I think that some of the pages may have been take out of order or out of process --

MS. PRUITT-WILLIAMS: The other pages that she includes here are our referral letters such as --

MS. BROWN: We had actual photographs.

CHAIRPERSON REID: We will go forward.

MS. PRUITT-WILLIAMS: Well, they have the photographs.

CHAIRPERSON REID: We will go forward with this

case.

MS. PRUITT-WILLIAMS: They have the photographs. We have -- you know, it's like our letter to them indicating what ANC they're in. These are form letters that come from our office to the applicant.

MS. BROWN: Right, and we had put that as an attachment in responding to the application.

MS. PRUITT-WILLIAMS: Right.

COMMISSION MEMBER HOOD: Madam Chair, I think Ms. King is not correct. I think you're referring to this page here? And I was assuming that we were going to get it at the hearing.

VICE CHAIRPERSON KING: Yes, I guess so.

CHAIRPERSON REID: All right, then, let me ask you, do you have any -- Would you object to allowing the last case to go first to give Mr. Taylor an opportunity to get to his meeting?

MR. GUYOT: Not at all.

CHAIRPERSON REID: Not at all.

And also, thank you very much, Mr. Guyot and Ms. Brown.

The next one was --

VICE CHAIRPERSON KING: And what about Cynthia and Harold Brooks?

CHAIRPERSON REID: That's -- the next one is Cynthia and Harold Brooks. Are you here?

WOMAN: Yes.

MAN: The opposition is here.

CHAIRPERSON REID: Is Cynthia and Harold Brooks here, the applicants?

MAN: That one becomes a quick one.

CHAIRPERSON REID: Is Cynthia and Harold Brooks for Case No. 16450, here? You Mr. Brooks?

MR. BROWN: No, I'm the architect.

VICE CHAIRPERSON KING: You're representing --

MS. PRUITT-WILLIAMS: Are you representing them, sir?

MR. BROWN: I guess so.

CHAIRPERSON REID: You making the case for them?

MR. BROWN: I designed the area.

CHAIRPERSON REID: You're the -- Would you have any objection to Mr. Taylor going first so that he could -- because there's a time constraint?

MR. BROWN: No.

CHAIRPERSON REID: Thank you.

MEMBER GILREATH: Madam Chair, before this goes forward, in the District of Columbia's Department of Consumer Regulatory Affairs, there's a letter from Mr. Nunley. In the second paragraph it says, in terms of the --

CHAIRPERSON REID: Which case, Mr. Gilreath?

MEMBER GILREATH: Oh, this is the 16454. That

they say, the Certificate of Occupancy, so forth and so on, authorizing her use expired December 30th, 1998 -- 1999. Now, are we to assume that for the -- assume for 1999?

MS. PRUITT-WILLIAMS: I believe it expires. They're coming back so that they can get an order prior to its expiration.

MEMBER GILREATH: Oh, you're anticipating. You're not in default?

MS. PRUITT-WILLIAMS: No, no. They're actually ahead of the curve. We don't do that often.

VICE CHAIRPERSON KING: We don't see that very often, do we.

MEMBER GILREATH: Usually it's the other way around.

COMMISSION MEMBER HOOD: It's usually the other way around.

CHAIRPERSON REID: Did you call the case, Mr. Hart? Did he call it?

MS. PRUITT-WILLIAMS: Not yet, no.

CHAIRPERSON REID: And you have to get some forms.

MR. HART: Application No. 16454, of Richard W. Tynes, Jr., pursuant to 11 DCMR 3108.1, for a special exception under Section 802 to continue use of a recycling processing facility in a C-M-1 District at premises 6130 North Capitol Street, N.W. (Parcels 135/237 and 135/238 near Square 3374).

Those persons planning to testify, do you swear or affirm that the testimony you're about to give is true? Say I do.

MR. TAYLOR: I do.

MR. HART: Thank you.

MR. TAYLOR: Madam Chair, whereas it's my understanding that there's have been filed no opposition to this -- the request for a special exception in this case. And whereas this matter came before this Board five years ago, and this special exception was granted for that time period, the Applicant is requesting in that he has had no violation and has complied completely with the request of the Zoning Board at that time, by installing the special fencing, the -- and as a matter of a fact, he's gone far beyond that in terms of the fact that he has spent to decorate and landscape the facility so that it is more than adequately integrates into the surrounding neighborhood and community. It's actually a very beautiful facility located at 6130 North Capitol Street.

I'm basically, and since there's no opposition, no opposition here, no opposition of record that I'm aware of --

VICE CHAIRPERSON KING: Have you all met with the ANC?

MR. TAYLOR: Yes, we have met with the ANC.

VICE CHAIRPERSON KING: And do you have a letter from them?

MR. TAYLOR: The ANC -- No, we do not have a letter from them because they do not meet until this coming Thursday.

We have met with the ANC. It's my understanding they're not opposed to this application, this special exception. And they will be --

COMMISSION MEMBER HOOD: Which ANC is that?

MR. TAYLOR: ANC 4B.

COMMISSION MEMBER HOOD: 4B.

MR. TAYLOR: And ANC which I formerly chaired.

The ANC will be meeting Thursday. We expect to get a letter of support. And as a matter of a fact, we request that the record remain open for that submission.

VICE CHAIRPERSON KING: You going to make your case?

CHAIRPERSON REID: So, what are you contending here, sir, is that you are -- remain in compliance with Regulations 802?

MR. TAYLOR: That is correct.

CHAIRPERSON REID: For your special exception.

VICE CHAIRPERSON KING: He still has to make his case.

CHAIRPERSON REID: That's what I'm asking him. I'd like for you to basically demonstrate by looking at the regulations how you are still in compliance, just for our records.

MR. TAYLOR: Well, for the record, basically, the Applicant has complied with all the requirements of 8 -- all of the requirements of this Board which were placed on him at the time that

he originally requested this exception, or to be granted the exception.

That all those requirements have been maintained and he continues to operate the facility in that manner.

CHAIRPERSON REID: That's what I wanted to hear. That the original regulations in which he was granted relief and which he complied, is still basically in effect and he is still in compliance, in fact?

MR. TAYLOR: That is correct.

CHAIRPERSON REID: You don't have to go through them one by one.

MR. TAYLOR: No.

VICE CHAIRPERSON KING: Why not?

CHAIRPERSON REID: I don't think we need to, do you?

COMMISSION MEMBER HOOD: May I just ask one quick question?

MR. TAYLOR: Certainly.

COMMISSION MEMBER HOOD: The only thing that you're dealing with in your site is what you have listed here, plastics, glass, newspaper, steel --

CHAIRPERSON REID: Let him finish.

VICE CHAIRPERSON KING: Is it hospital waste?

MR. TAYLOR: No, ma'am.

MR. TYNES: No, ma'am.

VICE CHAIRPERSON KING: Pharmaceutical waste?

MR. TAYLOR: No.

MR. TYNES: No, ma'am.

CHAIRPERSON REID: Let Mr. Hood finish his question. Then we'll come over here.

COMMISSION MEMBER HOOD: She was more where I was going. I just wanted to make sure that these were the only things that are listed here.

MR. TYNES: Absolutely.

MR. TAYLOR: If I might be very --

COMMISSION MEMBER HOOD: Because you are-- Let me just say, because you are recycling. You're not a trash transfer, am I correct. Or are you a trash transfer?

MR. TYNES: Yes, Mr. Hood, I'm recycler. No trash transfer.

CHAIRPERSON REID: Have you had any complaints or any objections from any of the people who are -- live around?

MR. TYNES: No, ma'am.

CHAIRPERSON REID: Or the community?

MR. TYNES: No, ma'am.

CHAIRPERSON REID: In regard to adverse impact, that is traffic, noise, smell, parking, or light?

MR. TYNES: No, ma'am.

In fact, to answer your questions, you know the little container that you sit in front of your house that contains your glass, plastic, aluminum and newspaper, I'm the one that receives the

containers that are placed in front of your house. I'm the one that processes that for the District. We don't have any hospital waste. We don't have any medical waste. We don't have any garbage, per se. We are a recycling facility. Truly a recycling facility.

VICE CHAIRPERSON KING: So, you sort it out and then shipped on, so it is a trash transfer station?

MR. TYNES: No, ma'am. It is not a trash transfer station. We do sort the material. We separate glass by color. We separate plastic by grade. We separate paper by grade. We separate the steel from aluminum. We package it. We ship it at that point to distant points to be recycled. We have no --

VICE CHAIRPERSON KING: It's a recycling transfer station?

MR. TYNES: No, ma'am. It is not a transfer station. It's a sorting operation, not transfer, to be literal.

VICE CHAIRPERSON KING: There are absolutely no hazardous materials under any circumstances?

MR. TYNES: No, ma'am. We don't permit hazardous material. In fact, every truck that comes in is inspected prior to even dumping its load. Again, prior to our receiving our initial license, we had to have a fence around the facility. We had to have hours of operation between 7:00 and 7:00. We only had to have -- we could not employ more than 25 people at the facility. We couldn't store material outside. We've been in complete compliance with every requirement and regulation.

In fact, Ms. King, and the rest of the chair, the local civic associations have their meeting in our facility. The local ANC has their meetings in our facility. We have been an active part of the community. We've adopted three schools in the surrounding area, including schools that come out and bring their students. We teach them about recycling and various other things.

We've been a key point for the city. We've had -- The City has brought international people from around the world to see our facility. We have a state-of-art facility. We built this facility with our own funds, with no government support, no government hand out, no -- We built it out of our pocket. And we continue to operate that way.

VICE CHAIRPERSON KING: The conditions listed in your letter, you're Mr. Tynes?

MR. TYNES: Yes, ma'am.

VICE CHAIRPERSON KING: These conditions, the specific features, that you list, are those the conditions that were in the BZA --

MR. TYNES: Yes, ma'am.

VICE CHAIRPERSON KING: -- order?

MR. TYNES: Yes, ma'am.

VICE CHAIRPERSON KING: And these -- all of these conditions will continue? You're still 200 feet from a residential property?

MR. TYNES: Yes, ma'am.

VICE CHAIRPERSON KING: You still have a ten foot

high fence?

MR. TYNES: We have 12 foot high fence.

VICE CHAIRPERSON KING: Twelve foot?

MR. TYNES: Yes, ma'am. The requirement was only 10 but we do have a 12 foot.

VICE CHAIRPERSON KING: Right. And you maintain the site free of litter and other debris, that truck access is not allowed on residential streets?

MR. TYNES: Yes, ma'am.

VICE CHAIRPERSON KING: You're operating Monday through Saturday, 7:00 to 7:00?

MR. TYNES: Yes, ma'am, but we've changed the Saturday operation. We do have the load crib operating on Saturday, but we operate five days a week.

VICE CHAIRPERSON KING: Okay, but do you want to --

MR. TYNES: Yes, we'd like to keep it that, just in case something happens. We try to do our maintenance and repairs on Saturdays, when we don't receive material.

VICE CHAIRPERSON KING: Okay, and the environmental permit requirements are met?

MR. TYNES: Yes, ma'am.

VICE CHAIRPERSON KING: What term are you requesting as to time?

MR. TYNES: I'd like not to come back to this again. I

mean, we are requesting an indefinite -- an indefinite --

VICE CHAIRPERSON KING: Think again. No, give us a number.

MR. TYNES: Fifteen years.

The reason I say 99 years -- the reason I think the Board last time, and I just put some restriction on it, because at this time five years ago, this was new, it was different, nobody really knew what it was, nobody really knew what I was going to do, to the extent, I think the Board took a little faith in me and said let's take a look at it, let's see what you do for the next five years, and then come back.

VICE CHAIRPERSON KING: No, but this -- this exception marches with the land, does it not, and not with you as an individual?

MR. TYNES: That is correct.

VICE CHAIRPERSON KING: So, 99 years from now you and I aren't going to be around, and who is going to be operating it.

MR. TYNES: Hopefully, my sons will be operating it.

VICE CHAIRPERSON KING: Grandsons by that time. Maybe great grandsons.

COMMISSION MEMBER HOOD: I just want to add something. If we do an exception for that long a time, trash is a big -- you know, they are all over my neighborhood.

MR. TAYLOR: Mr. Hood --

COMMISSION MEMBER HOOD: Let me just finish,

let me just finish, Mr. Taylor.

MR. TAYLOR: Please, don't categorize it as trash.

COMMISSION MEMBER HOOD: No, no, it's not, it's recycling.

MR. TAYLOR: That's correct.

COMMISSION MEMBER HOOD: And, I have visited your facility, and it is nice, but what I'm saying is, I think there should be some time constraints, and Mr. Tynes may eventually sell, and the next person may come in and put a trash transfer station, and it's zoned for that.

VICE CHAIRPERSON KING: I agree.

MR. TYNES: Well, I think -- excuse me, if I might, as long as you keep those restrictions in place --

VICE CHAIRPERSON KING: The conditions that--

MR. TYNES: -- whoever owns it would have to comply with the same restrictions.

VICE CHAIRPERSON KING: -- yes, but you know, life is full of people who don't comply with restrictions, and then the citizens have to go out and spend a lot of money getting compliance and so forth.

Well, let us decide when we make the decision as to what amount of time we would all agree upon for this particular term.

MR. TYNES: Very well.

CHAIRPERSON REID: Are there any other questions of the applicant?

All right. You might as well just stay right there, because --

MR. TYNES: Thank you, Ms. Reid.

CHAIRPERSON REID: All right, government reports?

VICE CHAIRPERSON KING: None.

CHAIRPERSON REID: ANC?

VICE CHAIRPERSON KING: None, although the applicants say that they'd like the record held open until they can get the letter from the ANC, and that would make me considerably more comfortable if we had a letter from the ANC before we make our decision.

MR. TAYLOR: I agree, that was the applicant's request.

VICE CHAIRPERSON KING: Because there's nothing from the community here. I suspect if you had been a great blot on the landscape that it would have been, and the place would have been packed, but, nevertheless, that's a sort of negative evidence. I'd like some positive evidence that, in fact, the neighbors, through the person of their Advisory Neighborhood Commission, have no objection.

CHAIRPERSON REID: And also -- I'm sorry, Mr. Hood?

COMMISSION MEMBER HOOD: Can I just add to also, if the community and ANCs do not have a problem with the undetermined time frame, then I don't, but I just want to make sure that something doesn't happen later on down the road, but if they

don't have a problem we can move forward.

CHAIRPERSON REID: I was about to say that. I think we should give the ANC a time certain to have their submission in, or their letter in, and not leave it open indefinitely.

VICE CHAIRPERSON KING: Are they are meeting on Thursday?

MR. TAYLOR: They are meeting on Thursday, I think ten days would be more than sufficient time.

CHAIRPERSON REID: Okay.

All right, now, you can sit down.

MR. TAYLOR: Thank you.

CHAIRPERSON REID: I've heard from the parties in support, heard from the parties in opposition, closing remarks by the applicant.

MR. TAYLOR: Well, Madam Chair, basically, we would just -- we would just request that this exception be granted for as long a time as possible.

Mr. Hood, you visited the facility, you know what a gorgeous facility it is. There are millions of dollars that have been invested in that facility. There is some -- the owner, the CEO, has no intentions of letting it deteriorate, and not just money invested to maintain the average facility, he has gone far above and beyond the -- if you just look at the landscaping, there are thousands of dollars that are expended each year to maintain the landscaping around that facility, the additional shrubbery and trees that have been planted that

weren't required by the BZA.

Mr. Tynes is one of the most responsible proprietors to operate a business that I've had the good fortune and the opportunity to represent. I like his business philosophy, and I'm certain that he has no plans to change that in the immediate in the near future.

So, I'd urge this Board to, I guess, show your appreciation for the contribution that he's making to this community. I mean, if you have time to take a look at his facility, and see what he's doing, and the kind of investment he's made, and how he maintains it, clean, litter free, I think you'd have no qualms whatsoever granting the length of time that we are requesting in this exception.

CHAIRPERSON REID: Thank you.

COMMISSION MEMBER HOOD: Thank you.

CHAIRPERSON REID: Thank you very much.

Questions?

MEMBER GILREATH: Is there any reason that would prohibit the applicant from deciding maybe a decade hence to say, well, he's done a very fine job and so forth, but his sons are not interested in it and he wants to sell it, and someone else takes it over, in other words, this could be sold to someone else some time in the future

VICE CHAIRPERSON KING: That's right.

MEMBER GILREATH: Is that correct?

MR. TAYLOR: Yes, yes, but if it were sold it would

have to be operated for the purpose for which the Board has authorized the operation.

MEMBER GILREATH: We understand that, but the question would be would the new owner maintain and adhere to these provisions? He should.

CHAIRPERSON REID: As well as the current-- I mean, as well as the current --

MEMBER GILREATH: Well, all the provisions are in there now.

CHAIRPERSON REID: -- no, I'm sorry to interrupt you, I was just kind of saying, you want just to ensure that if, in fact, there is a sale that the new owner will operate it as efficiently as the current owner.

MEMBER GILREATH: Well, I have a little bit of a problem with this in perpetuity, or 99 years.

CHAIRPERSON REID: Well, we will determine that.

MEMBER GILREATH: I think the owner should be rewarded, we are willing to accept he's done a superb job, it's a modern facility, so this five-year restriction in the future I think is incorrect, so it should be more liberal, but to say 99 years I would have misgivings with that.

CHAIRPERSON REID: Well, when we make our decision, which I don't think we are going to make today because of the ANC letter, so when we have the meeting and make the decision, at that time, should we decide to extend the special exception

application we will then make a determination as to for how long.

COMMISSION MEMBER HOOD: Madam Chair, might I say, the way Mr. Tynes -- he does run a superb place, but the problem is it's zoned C-M-1, and if he decides to sell the next person may not want to come in and do exactly what he's doing, so that's why the time frame, Mr. Taylor, if you could run that past ANC, and then maybe if they could submit their piece.

CHAIRPERSON REID: A recommendation as to the time.

VICE CHAIRPERSON KING: Something short of perpetuity.

CHAIRPERSON REID: Okay, now, this decision will be made I think at our next hearing, which will be on -- I'm sorry, our next meeting date, which will be -- is that May 5th? That's getting kind of full, isn't it, Mr. Hart?

MS. PRUITT-WILLIAMS: The next available meeting date is July 17th. Oh, I'm sorry, meeting date.

CHAIRPERSON REID: Yes, decision date.

MR. HART: The next decision date that we'd be able to accommodate him would be June 2nd.

CHAIRPERSON REID: June 2nd? Okay.

VICE CHAIRPERSON KING: You're not in a rush anyways, because your present permit doesn't end until the end of the year.

MR. TYNES: Yes, ma'am.

Ms. King, the reason I brought that up, that was a -- in my certificate of occupancy, it gave me one date, and my BZA letter gave me another date.

VICE CHAIRPERSON KING: Oh, I see.

MR. TYNES: So, what I did, I just split it right down the middle.

VICE CHAIRPERSON KING: Well then, you followed the process.

MR. TYNES: Yes.

CHAIRPERSON REID: Okay, thank you very much.

MR. TAYLOR: Is that all?

CHAIRPERSON REID: Yes, that's all. You're case will be decided on June the 2nd.

Thank you.

MR. TYNES: Should we come back at that time?

CHAIRPERSON REID: No, no, it's an open meeting, you are welcome to attend, but there's no participation from the audience at all.

MR. TAYLOR: Thank you very much.

CHAIRPERSON REID: All right.

We have two other short cases. I'm going to move for 20 minutes. Give us a chance to eat, yes, we haven't had any break.

Okay. We are going to recess for 20 minutes, and we'll come back and resume the afternoon hearings. We have two cases left.

(Whereupon, the hearing was recessed at 2:18 p.m., to reconvene at 2:35 p.m., this same day.)

CHAIRPERSON REID: The afternoon session will now resume.

MS. PRUITT-WILLIAMS: The application of the District of Columbia Housing Authority, Garfield Terrace Public Housing Development Community Center, pursuant to 11 DCMR 3108, for a special exception under Subsection 334.1 to establish a temporary community service center in an R-4 District at premises 2371 11th Street, N.W. (Square 2864, Lot 334.)

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

Thank you.

Would the applicant please come forward?

CHAIRPERSON REID: She's not here.

UNIDENTIFIED SPEAKER: She's gone to get something to eat.

CHAIRPERSON REID: I'm sorry?

UNIDENTIFIED SPEAKER: She's gone, she went downstairs to get something to eat.

CHAIRPERSON REID: The attorney who is representing you.

MS. PRUITT-WILLIAMS: But, does the attorney have to be here?

CHAIRPERSON REID: Well, she doesn't have to be

here, and she doesn't need to be sworn in, but she's not testifying.

MS. PRUITT-WILLIAMS: Okay. So, only she has to be sworn in.

CHAIRPERSON REID: Yes.

VICE CHAIRPERSON KING: As a matter of fact, all the people who are going to testify.

CHAIRPERSON REID: We just did that.

VICE CHAIRPERSON KING: Oh, I'm sorry, I was looking here and reading.

MS. PRUITT-WILLIAMS: All of them are not present.

CHAIRPERSON REID: Okay, in other words, all the persons who are affiliated with this case are not here.

VICE CHAIRPERSON KING: Well, let's skip over and go to the Brooks case.

CHAIRPERSON REID: The Brooks case? All right.

Are the persons -- are you the only person here for the Brooks case?

MR. BARBARA: Yes.

CHAIRPERSON REID: Why don't you come forward?

Okay, we'll take it out of turn and take the next case, and then by that time perhaps the people who are with your case will come in.

MS. PRUITT-WILLIAMS: Application of Richard W. Tynes, Jr., pursuant to 11 DCMR 3108, for a special exception under Section 5802 --

VICE CHAIRPERSON KING: We've already done that one.

MS. PRUITT-WILLIAMS: I'm sorry.

VICE CHAIRPERSON KING: Let's move to 16450.

MS. PRUITT-WILLIAMS: Okay, excuse me.

VICE CHAIRPERSON KING: It does get a little confusing, I do understand.

MS. PRUITT-WILLIAMS: Okay, let's try this for the third time.

Application of Cynthia and Harold Brooks, pursuant to 11 DCMR 3107.2, for a variance from the use provisions of Section 201.1 for proposed alteration and conversion of an existing one-family dwelling unit to allow a two-family flat in an R-1-B District at premises 1215 Hamilton Street, N.W. (Square 2930, Lot 53).

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

Would the applicant come forward, please?

CHAIRPERSON REID: Excuse me, ma'm, we do the applicant first, and then government reports, and then opposition.

You can start with your case, sir, please.

MR. BRUNNER: All right.

I'm Lou Brunner, Jr. I'm an Architect.

CHAIRPERSON REID: Sir, you can have a seat.

Your address, please?

MR. BRUNNER: 752 Park Road, N.W., Washington,

D.C.

CHAIRPERSON REID: All right, go ahead.

MR. BRUNNER: I was hired by Mr. and Ms. Brooks about a year or so ago to redesign their residence, single-family into a two-family flat on Hamilton Street, which I proposed, but I was turned down because the zoning did not adhere to the proposed change. And, therefore, I made the change and submitted my request to the Board, this Board, for variance.

VICE CHAIRPERSON KING: And you know the standards for a variance, the test that you have to meet?

MR. BRUNNER: No, I don't. I was just told that all I needed was the variance from --

VICE CHAIRPERSON KING: But, you have to make the -- the burden of proof is on you to make a case for the variance.

MS. PRUITT-WILLIAMS: Sir, you have to prove that you can't use this particular property as it is, in what is allowed in an R-1-B District. For a use variance, it's a little different than area, you have to prove that you can't market it as a single-family house or whatever else would be allowed in that particular area, in that zone, excuse me.

MR. BRUNNER: Then I would have to go back and get more evidence.

CHAIRPERSON REID: You also have to show -- demonstrate that there's something unique or unusual about the property that prevents you with complying with the existing zoning

regulations, that caused you some type of practical difficulty.

You are not familiar with these?

MR. BRUNNER: No.

CHAIRPERSON REID: Okay.

I think that, perhaps, since you are not prepared today, the best thing for us to do and for you to do is to continue this case --

MR. BRUNNER: Okay.

CHAIRPERSON REID: -- to give you time to prepare properly to come before us.

In the interim, you can confer with the staff and they can kind of guide you as to what you need to have before you come, so that you have the best possible chances of getting your application approved.

Other than that, you are at a gross disadvantage.

MR. BRUNNER: All right, I will agree with that.

CHAIRPERSON REID: All right.

MS. PRUITT-WILLIAMS: Madam Chair, would you like to continue to a date certain?

CHAIRPERSON REID: Yes, definitely, definitely.

I'm sorry, do you have any --

MS. PRUITT-WILLIAMS: You still have the opposition.

CHAIRPERSON REID: Do you consent?

MR. BRUNNER: Yes.

CHAIRPERSON REID: All right, okay, come forward, please, give your name and your address.

MS. YOUNG: Maureen Young, Advisory Neighborhood Commission ANC-4C --, 1520 Farragut Street, N.W. We would be opposed to any continuance of this case.

The applicant has had adequate notice, ample notice, to prepare for this case. As you can see, the applicants themselves are not here. They sent an architect that is not prepared to proceed with this case.

The residents have been enduring this situation for some time now.

CHAIRPERSON REID: What do you mean by "enduring"?

MS. YOUNG: The fact that the construction has already started. It started without the necessary permits. There is a tenant that's currently there that has been experiencing unsafe conditions as a result of the conversion, and much of the conversion has already taken place.

There is a work stop order on the building, and in light of all of that we feel that the applicant knew that this hearing was coming up this day, and that it is unfair to have the residents in this block and in this community have to wait in order for to make a decision in this case.

CHAIRPERSON REID: When you say "unsafe conditions," what do you mean by that?

MS. YOUNG: Well, the current tenant is--

VICE CHAIRPERSON KING: You can sit down, you don't have to stand.

MS. YOUNG: -- the current tenant is scheduled to testify, but what she has revealed to us thus far is the fact that there is, because initially there was use of the entire home, meaning the first level and the second level, the --

VICE CHAIRPERSON KING: Of the current tenant.

MS. YOUNG: -- of the current tenant, the basement now has been totally cut off from --

VICE CHAIRPERSON KING: Does she have a current lease?

MS. YOUNG: She has a current lease, and her lease is valid up until April of 2000, from what she tells me, and she would be here but she called and they said we were last on the list, so she didn't find a need to get here at 1:00, so she will be coming to testify to these matters. But, she said she's been experiencing problems with electrical, there have been some electrical outages.

The landlord has been tardy with addressing her concerns. There is flooding -- there is flooding in the basement as a result of the construction and the drain being clogged. There are, if I can read my notes she raises some other concerns,

COMMISSION MEMBER HOOD: I just had one quick question. So, you are saying this is being used right now as a two-family apartment.

MS. YOUNG: Well,no, it is being converted. The construction, from what I understand, could possibly be almost 75 or more percent complete, even though zoning has not been granted for the conversion. And, there is a work stop order.

CHAIRPERSON REID: Did you see any permits posted on the property?

MS. YOUNG: If I can consult with -- was there any permits posted on the property?

AUDIENCE MEMBER: No.

MS. YOUNG: No, just a work stop order.

CHAIRPERSON REID: So, it appeared that the work was done without any building permits?

AUDIENCE MEMBER: Yes.

MS. YOUNG: Absolutely, absolutely.

And, she said that there's a change in the electrical, the heavy up, no access to the basement, so if there's a problem with power going out she can't get to it.

She has a problem with the furnace, because they are converting from one type of heating system to another.

Now, the next-door neighbor, Reverend Cox, has experienced some impact as a result of the flooding onto his property, and he has had to make some changes as a result of that, and there are other concerns and I apologize, I did not make clear notes of them because she is scheduled to be here to testify.

But, there are some problems at this point.

MEMBER GILREATH: Has the construction stopped, as a result of the stop work order?

AUDIENCE MEMBER: Yes.

MEMBER GILREATH: It has stopped.

In other cases in the past, isn't it appropriate that once the work stoppage has been enacted or is in effect that the applicant can come in and we hear his case to see whether or not he can continue? Is that normal procedure?

So, I'd be reluctant to --

MS. PRUITT-WILLIAMS: Well, the applicant has the burden of proof. Either he can make his case or not, and postponing it because they have not made their case, in one sense, doesn't serve anybody but to actually be more inefficient because it's taking away a space for another case.

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

MS. PRUITT-WILLIAMS: I'm talking as loud as I can.

The applicant has the burden of proof, and they need to prove, as you said, the test for a use variance, which is very different than an area variance.

It appears that the person who lives there, who would be, I would assume would request party status and probably would be granted it because they are directly affected, has legitimate concerns for postponing the case, and that's a really Board decision, because you can hear the case and at least move on with it, and the person

can add information at the end. I mean, you can leave the record open if you still don't feel comfortable.

MS. YOUNG: If I might add, this is the applicant's opportunity to present their case, and they aren't here, and the representative they sent is unprepared, and we should not be the ones --

VICE CHAIRPERSON KING: And, your desire is what, that the house should be restored to what it was before --

MS. YOUNG: That is correct.

VICE CHAIRPERSON KING: -- the construction began?

MS. YOUNG: And that the variance not be -- the application for variance not be granted because of the effect that it would have on the block itself and the neighborhood and immediate vicinity.

MEMBER GILREATH: Madam Chair, I think the applicant should be afforded an opportunity. Now, admittedly, the principals are not here today and the architect has been sent to represent them.

It seems to me, though, we should provide one additional opportunity to tell him what the requirements are. We must have the representation from whatever he says, that they can prepare themselves better.

We will hear the case on its merits, and if, indeed, the case has not been made, indeed, they'll have to restore the building

and so forth.

In terms of the interior conditions of the house, I think that's an occupancy matter, not a matter of whether or not they --

VICE CHAIRPERSON KING: Oh, no, we can't do anything about the conditions of the house. They have to go to the --

MEMBER GILREATH: There is an appropriate authority, I think probably the Health Department or something.

VICE CHAIRPERSON KING: -- Rental Housing Authority or the Department of Consumer and Regulatory Affairs.

MS. YOUNG: Absolutely, but she -- but the current tenant was going to address the effect that it has on -- the effect that the conversion is having on her.

COMMISSION MEMBER HOOD: I understand, I believe the applicant was notified, just like everybody else, and they should come prepared. I mean, I understand giving them an opportunity and going back over it, but if they didn't know they had staff here, we can make allowances and what not, but they should have been prepared.

CHAIRPERSON REID: Miss King?

MR. BRUNNER: May I address --

CHAIRPERSON REID: Just one second, please.

Ms. King?

VICE CHAIRPERSON KING: Well, I mean, the gentleman who is here representing -- Mr. and Ms. Brooks have not had the courtesy to attend, the gentleman who is here is not at all

familiar with the law and is totally unprepared.

We have two choices, either we dismiss the case entirely, or we continue it. There's no way we can hear it today, because Mr. Brunner, is that your name?

MR. BRUNNER: That's correct.

VICE CHAIRPERSON KING: Mr. Brunner is so totally unfamiliar with the law that, you know, so I'm torn as to whether we should dismiss it.

CHAIRPERSON REID: Well, why don't we -- yes, go ahead.

COMMISSION MEMBER HOOD: I believe Ms. Brooks is deceased, am I correct?

CHAIRPERSON REID: Oh, I don't know.

VICE CHAIRPERSON KING: Ms. Brooks is deceased?

COMMISSION MEMBER HOOD: Ms. Brooks is deceased.

AUDIENCE MEMBER: And, her daughter is in California.

CHAIRPERSON REID: You can't speak from the audience.

AUDIENCE MEMBER: Oh, I'm sorry.

CHAIRPERSON REID: Ms. Brooks is deceased?

COMMISSION MEMBER HOOD: Well, according to the document here. I noticed that.

CHAIRPERSON REID: What document?

COMMISSION MEMBER HOOD: The one that says, "To Whom It May Concern," they are authorizing Mr. Brunner to speak on their behalf.

CHAIRPERSON REID: On whose behalf?

COMMISSION MEMBER HOOD: On the applicants' behalf.

CHAIRPERSON REID: And, who is the applicant?

MS. PRUITT-WILLIAMS: Mr. Brooks, Cynthia and Harold Brooks have authorized Mr. Brunner, the architect, to represent them. So, they have chosen -- through this letter you can assume that they have chosen that they are not going to really testify, that the burden of proof would be with the architect to prove their case.

MS. YOUNG: It has been shown that they had ample notice. They even sent a letter notifying you that they would not be here, that someone would testify on their behalf.

And, I think the burden was on them to actually prepare their representative for today's hearing.

CHAIRPERSON REID: Okay, Wilburina Brooks is deceased, but Cynthia Brooks --

MS. YOUNG: Yes, she's in Las Vegas.

CHAIRPERSON REID: -- so now, who is she?

MS. YOUNG: She is one of the owners. The owners are now the children of the deceased, Cynthia and Harold Brooks.

Ms. Brooks, we understand, lives in Las Vegas, or in

that area.

CHAIRPERSON REID: Okay, well all right, now, who then gave the authorization for the work to be done?

MS. YOUNG: Mr. and Ms. -- Cynthia Brooks and Harold Brooks.

VICE CHAIRPERSON KING: Who are the daughters of the former owners.

CHAIRPERSON REID: And, one lives in Las Vegas and one lives where?

MS. YOUNG: The Mr. -- Harold Brooks lives in --

AUDIENCE MEMBER: He lives in Northeast, 7th Street, N.E.

CHAIRPERSON REID: Okay.

MS. PRUITT-WILLIAMS: Washington, D.C.

AUDIENCE MEMBER: Yes.

CHAIRPERSON REID: Okay, well, why don't we do this, giving the information that has been presented to us, Ms. Pruitt-Williams, if we entertain a motion --

MS. PRUITT-WILLIAMS: To dismiss?

CHAIRPERSON REID: -- is that to be done at this point?

MS. PRUITT-WILLIAMS: Yes.

CHAIRPERSON REID: Okay.

MEMBER GILREATH: Madam Chair, if we approve a motion to dismiss, since they have this work stop situation, if they

would act in good faith, can they apply again and have this heard again?

MS. PRUITT-WILLIAMS: Mr. Gilreath, if there's a motion to dismiss their work stoppage would stop. They would not have a variance, they would then have to --

MEMBER GILREATH: Well, can they come back to the Board again?

MS. PRUITT-WILLIAMS: They can come back, but they would have to restore the house to the original condition.

MEMBER GILREATH: Until they came back to the Board.

MS. PRUITT-WILLIAMS: Yes, I would think. They certainly would not be able to use it or continue to live in it that way.

MEMBER GILREATH: Well, my question, I'm not sure that it's bad faith. Maybe, indeed, it was bad faith for not showing up, but if one is in Las Vegas and the son, I guess, and why he didn't -- I would prefer that he'd explain why he couldn't come, if it was in bad faith I have a little problem dismissing it across the board, but given the possibility there may have been some reasonable basis why he was unable to attend the meeting, I'm a little reluctant to slam the door entirely.

COMMISSION MEMBER HOOD: Mr. Gilreath, the letter was dated February 8th, and that's where I came to my conclusion, we are talking about April the 21st.

The letter dated that this gentleman knew he was

going to be representing on this case was dated February the 8th, 1999.

CHAIRPERSON REID: Okay.

I'm sorry, what's your name, again?

MS. YOUNG: Maureen Young.

CHAIRPERSON REID: Maureen Young?

MS. YOUNG: Young.

CHAIRPERSON REID: Ms. Young, is this gentleman right here with you?

MS. YOUNG: No.

CHAIRPERSON REID: Would you find out what his position is, because he keeps trying to say something. You need to go over there where he is. No, you need to go over to him.

MS. YOUNG: I'm sorry.

CHAIRPERSON REID: And, just give us that information before we make a decision.

MS. YOUNG: His point was just that everybody was notified of this matter, and if I may beg the panel that this -- if you are talking about not in good faith, Mr. Brooks started this project, from what I understand, more than a year and a half ago, without any of the necessary permits. I don't think that this is no accident that he's not here today. I mean, he knows that he was wrong, he has the work stop order. Yes, he has stopped because he was made to stop.

And now, instead of coming and facing the challenges before him, he chooses -- he lives in D.C., he chooses not to be here.

VICE CHAIRPERSON KING: Mr. Brunner, were you aware that the work -- I mean, you were the architect on the project, or were you hired in order to represent -- I mean, are you the architect for the work that's been going on that has been stopped?

MR. BRUNNER: I proposed a design for the basement apartment, based on my contract with Mr. Brooks.

VICE CHAIRPERSON KING: And, were you aware that work was begun without permits?

MR. BRUNNER: No, I didn't.

CHAIRPERSON REID: You only dealt with the design and then you gave the design to Mr. Brooks and he took it on through construction?

MR. BRUNNER: Yes, or somewhere.

CHAIRPERSON REID: Or, someone else took it through construction, but not you.

VICE CHAIRPERSON KING: You have not been involved in the project since you did the design, is that correct?

MR. BRUNNER: The sketches that I did were not detailed.

VICE CHAIRPERSON KING: Schematic designs?

MR. BRUNNER: Yes, they were simply schematics.

CHAIRPERSON REID: Ms. King, did you want to make a motion?

VICE CHAIRPERSON KING: Well, I'm not sure.

AUDIENCE MEMBER: I beg this court to entertain

that motion to dismiss.

CHAIRPERSON REID: Well, we haven't had a motion yet.

Does anyone want to make a motion at this point?

MEMBER GILREATH: I'd like to ask Mr. Brooks, I mean this gentleman here, did the, I guess it's Mr. Brook, did he indicate to you why he would not appear, he simply felt that the -- was such he did not feel adequate to represent himself so he had you to do it? On what basis?

MR. BRUNNER: No correspondence.

MEMBER GILREATH: Excuse me?

MR. BRUNNER: We had no correspondence.

MEMBER GILREATH: Well, how did you show up then? On what basis do you appear?

MR. BRUNNER: I got word on my answering machine that I should attend this hearing.

CHAIRPERSON REID: And, that was it?

I move that we dismiss.

COMMISSION MEMBER HOOD: Second the motion.

CHAIRPERSON REID: Any discussion?

All right. All in favor?

(Ayes.)

CHAIRPERSON REID: Opposed?

Aye.

Opposed?

MS. PRUITT-WILLIAMS: Staff would record the vote as 4-0 to dismiss, the motion made by Ms. King and seconded by Mr. Hood.

CHAIRPERSON REID: Thank you.

MS. PRUITT-WILLIAMS: Last case today.

VICE CHAIRPERSON KING: Which has already been called.

CHAIRPERSON REID: Okay, next case, please.

MS. PRUITT-WILLIAMS: Last case of the evening, application of the District of Columbia Housing Authority, (Garfield Terrace Public Housing Development Community Center) pursuant to 11 DCMR 3108.1 for a special exception under Subsection 334.1 to establish a temporary community service center in an R-4 District at premises 2371 11th Street (Square 2864, Lot 334).

All those intended on testifying, would you please stand and raise your right hand, anyone who is going to testify at all.

Thank you.

CHAIRPERSON REID: You may proceed.

MS. BROWN: Good afternoon.

CHAIRPERSON REID: Good afternoon.

VICE CHAIRPERSON KING: Excuse me, Madam Chair, do we have a letter of authorization from the D.C. Housing Authority for -- do you have a letter of authorization?

MS. BROWN: I have it here.

MS. PRUITT-WILLIAMS: Can you give it to me,

ma'am?

VICE CHAIRPERSON KING: Give it to the staff, please.

And, could we just see it? I don't know that we need to copy it for everybody.

MS. PRUITT-WILLIAMS: Yes, it just came in.

VICE CHAIRPERSON KING: It authorizes her to --

MS. PRUITT-WILLIAMS: Represent them.

VICE CHAIRPERSON KING: -- represent them.

CHAIRPERSON REID: And, how many people are here in opposition to this case? None.

Okay, Ms. -- is it Brown?

MS. BROWN: Yes, Brown.

CHAIRPERSON REID: Ms. Brown, then there's no opposition to your case, so in a situation like that --

VICE CHAIRPERSON KING: Well, except for the letter from Jim Graham (phonetic), which we can't overlook.

CHAIRPERSON REID: Well, I mean, here.

VICE CHAIRPERSON KING: In person in opposition.

CHAIRPERSON REID: In person in opposition.

So, basically, you can stand on your submission and just give us the salient points of your case and we can get this case fairly quickly, I do believe.

MS. BROWN: Okay.

VICE CHAIRPERSON KING: I would contest that she

can't stand on her submission because it's incomplete.

Can I see that letter?

MS. BROWN: Incomplete based on the submission on behalf of Ms. Fitzgerald (phonetic) or because of the application, which I was going to start out with?

VICE CHAIRPERSON KING: Because I don't have -- I don't have any of the attachments.

CHAIRPERSON REID: Let's see from your presentation if the gaps can be filled in adequately for us to be able to make a decision.

MS. BROWN: Okay.

The application is not part of my presentation, so I'd like to just start out by clarifying the application. It's a form document, I had to submit certain papers to apply for the special exception.

And, on the back half of the form it says that I have to submit a plat, which is Exhibit A, that's the plat that I got drawn up by the government.

I also had to submit photographs of the front, the side and the rear of the property, that's Exhibit B, three photographs.

Did you find the exhibits?

VICE CHAIRPERSON KING: No, we got the plat, the photographs and so forth.

CHAIRPERSON REID: Those are the exhibits.

MS. BROWN: Right, those are the exhibits.

VICE CHAIRPERSON KING: I thought that maybe

this was part of some kind of preliminary statement, but it's not. You haven't filed a preliminary statement.

MS. BROWN: No, this is just the application.

VICE CHAIRPERSON KING: You haven't made your case.

MS. BROWN: No, we are here today to do that.

VICE CHAIRPERSON KING: Could you give the address, your address for the record?

MS. BROWN: 2371 11th Street, N.W.

VICE CHAIRPERSON KING: Okay, that's your residence?

MS. BROWN: No, that's the address of the property.

VICE CHAIRPERSON KING: No, your's.

MS. BROWN: Oh, my address, my work address or home address?

VICE CHAIRPERSON KING: Home address.

MS. BROWN: My home address is 3708 Excalibur Court, that's in Bowie, Maryland 20716.

And, as stated earlier, I'm here on behalf of the D.C. Housing Authority. I'm an Assistant General Counsel within the General Counsel's office, and the D.C. Housing Authority has put in this application with the attachments and exhibits seeking a special exception under DCMR Title 11, Section 3108.1.

We would like for the community center located at 2371 11th Street, N.W., in the basement of that building, to be

classified as a temporary community service center, R-4, and that's pursuant to DMCR, Title 11, Section 334.

The community center located at that property, and the property is known as Garfield Terrace, it's a public housing development, is currently being run by the Garfield Terrace Family Council.

May I continue?

CHAIRPERSON REID: Yes.

MS. BROWN: Okay.

The community center that's currently located at 2371 11th Street is being run by Garfield Terrace Family Council, which is a resident council. That is a formally-recognized body, it's recognized by the District of Columbia Housing Authority and HUD, which gives the Housing Authority funding.

And, I have a statute here, which is 24 CFR Section 964.100, it discusses the role of the resident council, and it says that the role of the resident council is to improve the quality of life and resident satisfaction and participate in self-help initiatives to enable residents to create a positive living environment for families living in public housing.

And, that's --

VICE CHAIRPERSON KING: Is that the Federal Code?

MS. BROWN: Yes, it is.

VICE CHAIRPERSON KING: Not the District of

Columbia Code.

MS. BROWN: No, this is the Federal Code that HUD goes by, and we follow the federal regulations because we are funded by HUD.

The center that I'm discussing meets the criteria set forth in Title 11, Section 334, for a temporary community service center. The definition of a temporary community service center is that it should accommodate organizations created for the purpose of improving the social or economic well-being of the residents of the neighborhood.

This community center that's being run by Garfield Tenant Family Council does, in fact, improve the social and economic well-being of the residents.

The center is funded via a drug prevention grant, and I have someone here who will discuss that further, who is employed by the Housing Authority, but I'll just go through some of the main points.

Pursuant to that grant that funds the center, there are several types of programs run through the center via volunteers, which include members of the resident council.

A few of the strategies and programs that they offer are psychological education, peer counseling, literacy enhancement, youth after school sporting activities, after school tutoring, summer camp, educational trips, arts and crafts, computer training, adult education and peer counseling. And, again, this is all done through

volunteers, so it's not for profit, there's no profit at this center, and I also note that that's one of the criteria that we have to meet under Title 11, Section 334.5.

With regard to the Section 334.2, and any objections to the neighboring properties regarding noise, et cetera, and structural changes, I have someone here from our Department of Modernization, he's an architect and he'll speak to those two issues, so I won't address those right now.

I also have Ms. Akimoni here, who is the president of the resident council and she's at the center on a day-to-day basis, along with Ms. Jackson, and they'll give you more detail on what's actually done at the center and how the center is run.

VICE CHAIRPERSON KING: How long is this presentation going to last?

MS. BROWN: I think that everyone plans to speak about five minutes each.

VICE CHAIRPERSON KING: So, we'll be here for an hour?

MS. BROWN: No, we have three people, we have Mr. Brown, who will talk about the noise and the structural changes, he's an architect. We have Ms. Stefanie Reid, who will talk a little bit about the resident council, the funding for the program and that it's a non-profit entity, and Ms. Akimboni and Ms. Jackson, who are there on a daily basis, and they can give you more of an incite on what's actually done at that center.

VICE CHAIRPERSON KING: So, approximately five minutes each, 15 minutes to an hour you'll be finished.

MS. BROWN: Yes, we'll keep it brief, very brief, that's why I'm not going to go into it, because they are going to -- rather than repeat what they are going to say, I'll let them say it directly.

Michael, can you come up first? Michael will speak directly to the regulations set forth at DCMR Title 11, Section 334.2 and 334.3.

Whereupon,

MICHAEL BROWN

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

DIRECT EXAMINATION

MR. BROWN: Yes. In reference to a temporary community service center, which shall be located so that it is not likely to become objectionable to neighboring properties because of noise or other objectionable conditions. The location of the particular site is at the end of the building in question, Building No. 2.

CHAIRPERSON REID: Do we have those drawings in our file?

MR. BROWN: No.

VICE CHAIRPERSON KING: Are you submitting them for the record?

MS. BROWN: You can.

MR. BROWN: I can?

MS. BROWN: Yes.

VICE CHAIRPERSON KING: Thank you.

What's above, and below, and to each side of it?

MR. BROWN: Below grade, nothing.

VICE CHAIRPERSON KING: No, below the -- I mean, is it in a basement?

MR. BROWN: Yes.

VICE CHAIRPERSON KING: So, there's nothing below it?

MR. BROWN: That is correct.

VICE CHAIRPERSON KING: What's above it?

MR. BROWN: Residential units.

VICE CHAIRPERSON KING: A residential unit?

MR. BROWN: Yes, and nothing on the exterior side at all.

VICE CHAIRPERSON KING: And, what about on the interior side?

MR. BROWN: On the interior side are residences.

VICE CHAIRPERSON KING: So, there are two residences that will be impacted by the noise that's created there, is that correct?

MR. BROWN: That is correct. Due to --

VICE CHAIRPERSON KING: And, are the residents of those two apartment units here?

MS. BROWN: No, actually, it's our position that they

won't be impacted by noise because of various things that Michael will bring out.

VICE CHAIRPERSON KING: Okay.

MR. BROWN: The type of construction that we're dealing with is a concrete slab on beams, which is approximately ten to 12 inches thick, which will not allow -- which will allow minimal noise to escape from the space.

The only windows involved in the process are in front of the building, out away from the structure, and in the rear of the building, again, out and away from the structure, not allowing noise to go up, but that is the extent of the openings out to the outside of the envelope of the structure.

There is one stairwell that accesses from the grade down to the space, and that is open to the air, to the outside air, it is not an enclosed foyer, it is an open area.

As I was stating on drawing one, they are not labeled attachment one, two or three, I apologize for that, but the first sheet has a

VICE CHAIRPERSON KING: You cannot refer to something that we don't have in front of us. You'll have to hold it up in front of us and explain it to us.

MS. PRUITT-WILLIAMS: Ms. Reid has it.

VICE CHAIRPERSON KING: Oh, we have one copy.

CHAIRPERSON REID: Sir, number one, you need to bring the easel up so we can see it, and, number two, maybe

someone can assist you.

VICE CHAIRPERSON KING: We have some clips for him.

CHAIRPERSON REID: You have what?

VICE CHAIRPERSON KING: Clips.

CHAIRPERSON REID: Okay.

VICE CHAIRPERSON KING: Here are some clips for you.

And, the building in question is the one to the left, is that correct?

MR. BROWN: That is correct, Building 2. This is the location of the center, as indicated on the highlighted version.

11th Street, Florida Avenue and Barry Place, this is a ten-story high-rise building, specifically for seniors, townhouses, multifamily, multifamily is the make-up of the site.

We have two -- one area that is generating a community center. This is the entrance to the opening, which allows you access to the space. There are two exits, two entrances and exits for ADA accessibility on the rear of the structure.

We have, as I said, ten to 12 inch thick concrete slabs. This building was constructed circa in 1948 and ‘49, so it’s built to standard, and we have solid concrete slabs on concrete columns.

On the second page you will see a detail of the original layout for that elevation, Unit 107 and 106.

VICE CHAIRPERSON KING: So, you are essentially

taking over what would have been two apartments.

MR. BROWN: That is correct.

MS. PRUITT-WILLIAMS: Excuse me, entrances from grade or what's the grade difference?

MR. BROWN: It is from grade, but you descend approximately 33 inches, 33-34 inches.

MS. PRUITT-WILLIAMS: And, the topography drops from that to the west?

MR. BROWN: That is correct, as you proceed in this direction, it drops, to where you are on grade when you walk out of the rear of the building.

MS. PRUITT-WILLIAMS: But then, does it also drop from the end of that building to the west towards 11th?

MR. BROWN: Yes, not all the way to 11th, but to the curb.

MS. PRUITT-WILLIAMS: But, I mean it slopes.

MR. BROWN: Yes, that is correct.

MEMBER GILREATH: Will this area be air conditioned? I understand you are going to have few windows there, so you-

MR. BROWN: It is air conditioned, yes, it is.

MEMBER GILREATH: And heat.

MR. BROWN: Air conditioning and heat.

VICE CHAIRPERSON KING: And, I understand you are not going to be making any structural changes?

MR. BROWN: That is one of the items that I'm to speak on. We made one structural change, and that was to an eight foot opening to join the two spaces together, and that was --

VICE CHAIRPERSON KING: That's made already.

MR. BROWN: -- a maximum of eight feet. Yes.

VICE CHAIRPERSON KING: Otherwise, the partitions that are shown here that make this into two separate apartments exist, is that correct?

MR. BROWN: No, they do not exist. Those were not structural.

VICE CHAIRPERSON KING: Okay, but you made an eight foot opening in this wall?

MR. BROWN: That is a structure wall, yes, that is correct.

MS. PRUITT-WILLIAMS: Did you use a transfer beam across the top?

MR. BROWN: Yes, we did, and we have detailed drawings from Mr. Carson Mock (phonetic), who is a recognized PE in the area.

VICE CHAIRPERSON KING: Can we have those for the record, please?

CHAIRPERSON REID: Yes.

MS. PRUITT-WILLIAMS: You can submit those later, sir, I'm sorry, not to interrupt your presentation, just for the record later.

MR. BROWN: Oh, okay. I will submit them at a later date, because we do have them here by the engineer.

COMMISSION MEMBER HOOD: For further clarification, the entrance into the community center, proposed community center, is there, existing unit.

MR. BROWN: Yes.

COMMISSION MEMBER HOOD: Is that shared by the residents who live upstairs?

MR. BROWN: Upstairs, yes. There is a three -- door that gains access into the structure and then you go up to the residential unit and you go down to the community center. There are no other residential units on the lower level.

COMMISSION MEMBER HOOD: I guess my question is, and I don't know if this is a right question to ask the architect, but the people who live in that same building, are they in agreement with what's going on? Do they object? I'm just asking.

MR. BROWN: I don't know.

COMMISSION MEMBER HOOD: Okay. Let me reserve that question for later.

MS. BROWN: Right, we have the residents here, and I think they are all in support.

COMMISSION MEMBER HOOD: They live in that particular building.

MS. BROWN: Yes, one of them lives in the building.

MR. BROWN: On the last page, which is the 8-1/2 by

11, is a floor plan of the community center itself, orientation is as in the package.

VICE CHAIRPERSON KING: Now, where did you say the ADA entrance was?

MR. BROWN: The rear, those two --

VICE CHAIRPERSON KING: And, I can't read what that says?

MR. BROWN: Storage.

MS. PRUITT-WILLIAMS: Closets, those are closets.

VICE CHAIRPERSON KING: Closets, and where is the ADA entrance?

MR. BROWN: There are two doors on either side.

VICE CHAIRPERSON KING: What, and there's a ramp, or is it on grade?

MR. BROWN: It's on grade.

VICE CHAIRPERSON KING: Okay.

MR. BROWN: Now, as I said before, the noise, as far as the structure is concerned, is minimized due to the type of construction. In addition to that, in close proximity to the site you have a public school, which is approximately 125 feet away from the exterior of the facade. We have a retaining wall, which divides the property line, which is at, I believe, that's at 20 feet from the grade of the elementary school to the top of this grade that we are showing here. This property line is a retaining wall, concrete retaining wall, and then it drops approximately 20 feet down to the public school area.

In addition to that, as I said before, we have the end of the building which does not have any conflicting traffic, pedestrian traffic patterns, with other residential spaces from this area up.

MEMBER GILREATH: Will people be coming by car there to attend these activities?

MR. BROWN: This is for the local residents of this property, Garfield Terrace.

MEMBER GILREATH: Well, is there any -- if a few people, for whatever reason, want to attend, friends, is there a place for them to park?

MR. BROWN: Yes, there is parking available. This is a parking lot here and here, but I will say that that is for the residents, not for someone coming off of the site onto the property.

COMMISSION MEMBER HOOD: Let me just ask, is this similar to what's going over Lankston (phonetic) and Carver Terrace? I'm just curious.

VICE CHAIRPERSON KING: Sounds like it.

MR. BROWN: I have no knowledge of the project.

COMMISSION MEMBER HOOD: Okay, well, wrong person again, but let me ask you another question. The noise level, what about the ceiling? If it's in the basement, the person --

MR. BROWN: Concrete slab.

COMMISSION MEMBER HOOD: Okay.

MS. PRUITT-WILLIAMS: That's a 12-inch concrete slab?

MR. BROWN: Yes, and that's not only for the basement level, but at each floor and ceiling.

MS. PRUITT-WILLIAMS: Floor to floor height?

MR. BROWN: Floor to floor height, I believe, is nine feet.

MS. PRUITT-WILLIAMS: Will there be any treatment on the ceiling aside from the concrete slab, acoustical tile?

MR. BROWN: No.

Thank you very much.

VICE CHAIRPERSON KING: Thank you.

CHAIRPERSON REID: Any other questions?

MS. BROWN: Mr. Brown just addressed 334.2, which is the noise, 334.3, structural changes, and 334.4, which asks the question about convenience. And, again, it's an on site location for the residents of Garfield Terrace, and everyone can walk to the center to access it.

Next, I'd like to hear from -- we are going to go out of order, because there's a gentleman here who is ill and he just wanted to speak on behalf of the benefits of the program at the center.

MR. GORHAM: Good afternoon.

VICE CHAIRPERSON KING: Good afternoon.

MR. GORHAM: My name is Terry Gorham, and I'm the former Director at Garfield Terrace. I'm very familiar with the families and services provided at Garfield Terrace. I was the former Director with the -- program under the Office of Census, D.C. --

I'm also familiar with certain housing procedures, as it relates to non-dwelling units for programs on various properties, which is approximately 35, and at Garfield Terrace, when I was there and presently, they provide volunteer services for educational, recreational, employment, and also I worked with them as a consultant volunteer, voluntarily, and the program that I have assisted with, not only involves the families on the property, also provide services for the senior citizens.

The past ten years straight I have worked as a volunteer with a program called "Mother Dears," which provides services for senior citizens. The program, as far as having a non-dwelling unit to provide services, I also know directors of various programs that serve their particular center, such as Jane Holly (phonetic), which has an organization called "Come Back," (phonetic), and what she does is provide technical service as it relates to the arts, and she also is the spokesman for auditions for the Apollo Theatre in New York. I'm also familiar with Athela Zuma (phonetic), who provides services for Gospel Church as it relates to computer literacy.

I was kind of taken by the fact that this was being presented in reference to whether the service center will continue to do what they need to do to provide for families, and that's why I got out of the sick bed to be here, and I just found out about it a couple days ago.

So, but I am pro Garfield Terrace, and whenever I'm needed to provide any volunteer services I do, and I didn't mention but

a few. So, that's about it.

If there are any questions, I'd be glad to answer them.

CHAIRPERSON REID: Thank you.

MS. BROWN: Thanks, Mr. Gorham.

The next person I'd like to speak is not Ms. Akimboni, Ms. Stefanie Reid, who is an employee of the D.C. Housing Authority, and she's familiar with the grant, the funding that's to be provided to the center, and how the books have to be kept and the reports that have to be made, just to add validity to the program.

VICE CHAIRPERSON KING: Excuse me, Madam Chair, I think we can take for granted -- I mean, we are familiar with this kind of program, I think we can take their word for it that this is a non-profit, if that's the motive for her testifying. Can we not stipulate that this is a non-profit organization and move on to the rest of the case?

CHAIRPERSON REID: Is that the gist of your testimony?

MS. BROWN: And also to add credence to the programs that are there, because we have actual documentation of the program, and at the ANC meeting a question was raised regarding what is actually done at the center, and Ms. Reid is the person who keeps the documents.

VICE CHAIRPERSON KING: Okay, we'll then deal with what is actually done at the center.

MS. BROWN: Excuse me?

VICE CHAIRPERSON KING: We'll take your word for it that it's non-profit, tell us what they do there, other than the list of activities you've given us already.

MS. BROWN: Well, this is in addition to, with documentation from the person who keeps it. I didn't want to come with hearsay, I brought her here with the notebook.

VICE CHAIRPERSON KING: All right, just --

MS. BROWN: I didn't know how much information you wanted.

MS. PRUITT-WILLIAMS: Excuse me, you've already -- you are just backing up the information that's already in the record about the types of programs, right?

MS. BROWN: Yes, with actual documents.

MS. PRUITT-WILLIAMS: Ms. King is saying we take that as -- the Board is viewing that as a finding of fact.

MS. BROWN: Oh, yes, that's fine.

VICE CHAIRPERSON KING: We'll take your word for it.

MS. BROWN: That's fine, thank you.

VICE CHAIRPERSON KING: We believe you.

MS. BROWN: So, we don't need Ms. Reid's testimony.

MS. PRUITT-WILLIAMS: Correct.

VICE CHAIRPERSON KING: You are a non-profit and you do good work.

MS. BROWN: Thank you. I'm glad you agree.

COMMISSION MEMBER HOOD: Is this basically the same as over at Lankston and Carver Terrace, the program is pretty much the same?

MS. BROWN: I don't know what that program is.

COMMISSION MEMBER HOOD: Okay.

VICE CHAIRPERSON KING: I'm sure it is, Anthony.

VICE CHAIRPERSON KING: Do you know what it is?

MS. REID: They have different programs at each one of the developments, but they do, on the Drug Elimination '97, Lankston does have a program under this grant.

COMMISSION MEMBER HOOD: Okay.

MS. BROWN: And, Ms. Reid monitors all of them.

COMMISSION MEMBER HOOD: Right, that's all I'm trying to find out. Okay, thank you.

MS. BROWN: After that, I was going to bring up Ms. Akimboni, who is the president of the resident council, and she runs the center, so she's familiar with everything that goes on day to day. Again, this is just so that you are not hearing it from me, you are hearing it from the people who actually do the work. I don't know if you want to hear from her at this point?

VICE CHAIRPERSON KING: Yes, please.

MS. BROWN: Okay.

MS. AKIMBONI: Good afternoon.

My name is Rosemary Akimboni. Really, you can see

that I'm from Nigeria. I moved to this country in 1975. I moved to public housing in 1990, so when I move in there I see that the kids there, its nothing for them to do. They are just outside, they are doing nothing, and the crime around was too much.

Then I asked the residents, what are you doing to help all these children, so we can keep them together? So, we started organizing the center, they used to have a program place before, but the place was out, there is nothing for them to do, so we organized ourselves and go about the Department of Consumer Affairs, registered the Tenant Council, then they nominate me to be their president at that time.

As of that time, we have been working so hard to get the place for the children when they come back from school, so that we can have them with the education, so finally Housing Authority help us to renovate two three-bedroom apartments and make it for us so that we can keep our children safe from outside, and since then we have been residents that live there, we volunteer ourselves to make sure when the kids come back from school there is a place for them to come to, make sure that we can check their homework, to make sure they finish their homework, to make sure that they are not outside there doing nothing. Sometimes we play games, sometimes we do arts and craft. We have a neighborhood collaboration which I can mention some of their names, FLOC (For The Love of Children), some time they do programs with us, Columbia Heights Development Corporation, D.C. Agenda is part of us, they come down there and

help us with our children volunteer students. Housing Authority.

Now we are involved with the -- Institute, because we have some of our children that they need some crisis evaluation, so we are working with the -- Institute.

DCCHA, we are partnership, they train some of our residents to become the Columbia Heights Leadership, we work with UPO when some of the residents need a job we send them down there, we prepare their resume, we do everything to help educating our residents that live in public housing.

The only thing we are trying to do is to make our public housing a different place for the kids to be able to be proud of. That's all we are doing. The Housing Authority has already -- they help us with everything we need to be able to elevate ourselves.

A majority of the people that share in the center, we are residents of Garfield, and we are volunteers. Nobody is doing anything for profit. We don't have no profit. We are just there to make sure our children are safe and help them with their education.

VICE CHAIRPERSON KING: How many clients or children -- I mean, you are dealing only with children, or are you dealing with children and adults?

MS. AKIMBONI: We are dealing with -- I the morning time, the parents come and do -- they type.

VICE CHAIRPERSON KING: Okay. Your hours of operation are from what time to what time?

MS. AKIMBONI: It depends on what time we are

available. I'm going to school, I don't get out of school until 11:00, so --

VICE CHAIRPERSON KING: So, you never start anything before -- I mean, if we are going to -- if we want to put conditions on the approval, if we give approval, what are the hours when you might be open?

MS. AKIMBONI: Okay. We ask for from 10:00 to 7:00.

VICE CHAIRPERSON KING: 10:00 a.m.

MS. AKIMBONI: 10:00 a.m. to 7:00 p.m.

VICE CHAIRPERSON KING: On what days of the week?

MS. AKIMBONI: Five days a week.

VICE CHAIRPERSON KING: Monday through Friday.

MS. AKIMBONI: Yes.

VICE CHAIRPERSON KING: And what is the legal capacity of that space?

MS. BROWN: Michael, what's the square footage, is it 1,700?

VICE CHAIRPERSON KING: No, what is the legal capacity, not more than X number of -- how many?

AUDIENCE MEMBER: Sixty.

MS. AKIMBONI: Sixty.

VICE CHAIRPERSON KING: Sixty? That is, that's staff and children and/or parents, or any -- 60 human beings of any

species.

AUDIENCE MEMBER: Yes.

VICE CHAIRPERSON KING: All right.

I have no further questions.

CHAIRPERSON REID: Are your hours Monday through Friday year round, 10:00 to 7:00?

MS. AKIMBONI: Yes.

CHAIRPERSON REID: You have a summer program?

MS. AKIMBONI: Yes, we have summer -- when the kids get out from school during the summer we open from 10:00 to -- we take them to --

CHAIRPERSON REID: The same hours.

MS. AKIMBONI: The same hours. We take them to Aerospace Museum, we take them to the zoo, sometimes we -- if there is any organization that we are working with that want to help us to take them on a trip.

Last year, we took them to Black Watch Museum, one organization --

CHAIRPERSON REID: But, you never do weekend programs.

MS. AKIMBONI: Unless we have like we have something for the kids on weekends, or we have something like, if any organization around us wants to do something for them, like they want to do like Christmas party, as former Council member used to do,

Christmas party for our children, so we used to do it outside, sometimes rain before we get this place, because this place does open December, 1997. So, a former Council member used to help us, they bring -- collect books and everything and give it to the children during the Christmas time.

CHAIRPERSON REID: But, she was asking on the weekends.

MS. AKIMBONI: On weekend, unless --

CHAIRPERSON REID: You won't be using the space on weekends.

MS. AKIMBONI: If there is something for them to do on weekends.

VICE CHAIRPERSON KING: My question earlier was, if we put conditions on the approval, if we give you approval, what are your hours of operation?

MS. AKIMBONI: Okay, Monday through Friday it's from 10:00 to 7:00.

VICE CHAIRPERSON KING: 10:00 to 7:00.

MS. AKIMBONI: Okay.

VICE CHAIRPERSON KING: Period.

MS. AKIMBONI: On Saturday, if there is any program that we happen to -- that any organizations wants to do for the kids, we can do it on Saturday from 10:00 to 2:00.

VICE CHAIRPERSON KING: 10:00 to 2:00?

MS. AKIMBONI: Yes, ma'am.

VICE CHAIRPERSON KING: Saturday from 10:00 to 2:00, not at all on Sunday, huh?

MS. AKIMBONI: No. I go to church, yes, on Sunday I go to church.

CHAIRPERSON REID: How many staff? How many staff members?

MS. AKIMBONI: We don't have no staff.

VICE CHAIRPERSON KING: They are all volunteers.

CHAIRPERSON REID: So, basically, you are just a combination of --

MS. AKIMBONI: Residents that live --

CHAIRPERSON REID: -- combination of staff and participants will not exceed 60 at any given time.

MS. AKIMBONI: No.

CHAIRPERSON REID: Okay.

MEMBER GILREATH: Madam Chair, I just have a question about the 10:00 to 7:00. I'm just concerned because I know a lot of resident councils and other groups, they don't start meeting until 7:00 some evenings, and I don't know if that's one of the uses that you may want to use it for, but I know that at a certain time that adults may use that too in the evening, and they want to have their community meetings there.

MS. AKIMBONI: You see, this is my own hour. If the residents, they want to have their meeting from 7:00 to about 9:00 o'clock, that is once in the month, unless we have an emergency

meeting, or they want to meet with the --

VICE CHAIRPERSON KING: If we are going to put conditions on your approval, they are not going to be these are the hours of operation plus anything else that Ms. Akimboni says that she'd like to do.

I mean, we need to have some parameters. If there is opposition, and there is opposition from at least one member of the Advisory Neighborhood Commission, we need to be specific, so that the people, the neighbors and so forth, know when you are going to be operating.

MS. AKIMBONI: They know we are there from 10:00 with the kids until 7:00. If the residents want to have meeting, once in a month, or there is a committee meeting that they want to have there, that is additional.

VICE CHAIRPERSON KING: So, that would be in addition. What are your hours of operation?

MS. AKIMBONI: My hours of operation is from 10:00 to 7:00 p.m.

VICE CHAIRPERSON KING: Okay, and if we put that condition on, you will not use the facility after 7:00 p.m.

MS. AKIMBONI: Only --

CHAIRPERSON REID: Ms. Akimboni, let me just try to jump in here.

MS. AKIMBONI: Okay.

CHAIRPERSON REID: I think that it's 10:00 to 7:00

daily, except for -- and the Saturday hours, except for once or twice a month --

MS. AKIMBONI: Maybe they have meeting.

CHAIRPERSON REID: -- meetings until 9:00.

VICE CHAIRPERSON KING: With a maximum of twice a month, how many --

CHAIRPERSON REID: How many, two or three?

MS. PRUITT-WILLIAMS: I just have a question, one of the issues -- I'm sorry, your name again, ma'am?

MS. AKIMBONI: My name is Rosemary Akimboni.

MS. PRUITT-WILLIAMS: Ms. Akimboni may be the person who is heading it now, but if she is not heading it in three years, and this exception is still good at that time, if you choose to do that, you may want to have a broader range of hours.

MS. BROWN: And, I'd like to interject in that instance and broaden the hours, if I may, from 9:00 to 9:00 during the week, and also Saturday hours, considering that they are open in the summer, from 10:00 to maybe 5:00 or 6:00 in the evening, because it will include all of the exceptions for summer programs, and meetings.

VICE CHAIRPERSON KING: Right, and then you don't have to worry about occasions when they have to be open longer.

CHAIRPERSON REID: Are there any other questions of this witness? Okay.

MS. AKIMBONI: Thank you.

CHAIRPERSON REID: Thank you.

MS. BROWN: Oh, one other thing, Mr. Hood had mentioned if there was anyone else living in that building, Ms. Akimboni does live in the building on, what, the second or third floor?

MS. AKIMBONI: Oh, there's only one resident in the building, the resident is here, Linda Jackson (phonetic).

MS. BROWN: Do you want to hear from her?

MS. AKIMBONI: She's the only one there. She's volunteer at the center.

COMMISSION MEMBER HOOD: Okay, thank you.

MS. AKIMBONI: She's volunteer at the center.

MS. BROWN: I also have Ms. Jackson here, who is another volunteer. She's the Treasurer. She would probably say many of the same things Ms. Akimboni said, so I don't want to take up your time.

CHAIRPERSON REID: If she doesn't have anything new to add to the testimony, then that's okay. We are, basically, just getting the gist of the testimony from the witnesses.

MS. BROWN: Okay, so we won't hear from her.

One concern I do have is that Ms. King keeps referring to opposition by Ms. Fitzgerald, and I don't know how you are going to take -- are you going to let her submit papers or something in opposition, because I'd like to address whatever she has to say.

CHAIRPERSON REID: You will have an opportunity to come back.

VICE CHAIRPERSON KING: Ms. Fitzgerald is not here. I'm going to ask that since we denied Mr. Graham's request for a continuance, that we hold the record open for Ms. Fitzgerald to testify in writing and for you to respond to her before we make a final decision on this application.

MS. BROWN: If I may object on two grounds, three grounds. One --

MS. PRUITT-WILLIAMS: She's not a party, Ms. King, so we --

VICE CHAIRPERSON KING: She's the ANC Commissioner.

MS. PRUITT-WILLIAMS: She's a single member district.

VICE CHAIRPERSON KING: She's the single member district.

MS. PRUITT-WILLIAMS: They don't get party status, the ANC itself gets it, the single member district testifies as an individual.

VICE CHAIRPERSON KING: Okay, I am still going to ask, I put you all on notice now, and nothing you can say is going to dissuade me, that the single member -- that since a member of the City Council asked us to continue this, in order to give Ms. Fitzgerald time to present testimony, and since we denied that application, I'm going to ask my colleagues to join me in not making a bench decision today, but in holding this open and giving Ms. Fitzgerald a very limited

amount of time, but nevertheless time in which to present anything that she wishes to say and time for the applicant's attorney to respond.

CHAIRPERSON REID: You know, I don't understand the -- of Ms. Fitzgerald's opposition, because, number one --

VICE CHAIRPERSON KING: Well, neither do I.

CHAIRPERSON REID: -- she did not appear here before us today to testify, and, number two, she didn't submit anything. She talked to Mr. Graham and had him do a short paragraph of a letter. I would not be inclined to keep the record for a submission from her.

But --

MS. BROWN: If I may, Madam Chair --

VICE CHAIRPERSON KING: In that case, I will be voting against this application.

CHAIRPERSON REID: -- but we are not voting yet, let's just get to this. Yes?

MS. BROWN: I'd like to just submit my opposition to that on a few grounds.

CHAIRPERSON REID: To what?

MS. BROWN: To letting the record remain open.

CHAIRPERSON REID: Well, first of all, let us get through this case, and then you'll have an opportunity to come back up for closing remarks.

MS. BROWN: Okay.

CHAIRPERSON REID: Okay?

As a matter of fact, you might as well sit right there.

VICE CHAIRPERSON KING: We haven't dealt with Section 334.6 yet.

CHAIRPERSON REID: I thought that she went through all of them.

VICE CHAIRPERSON KING: No, 334.6 is the fact that this is a temporary and shall not exceed three years. How many years are you asking for?

MS. BROWN: We are asking for the maximum three years. It also says the Board may renew the authorization, we'll just come back for renewal at the time that we have to do that.

VICE CHAIRPERSON KING: You see this as something that's going to go on in perpetuity, is that it?

MS. BROWN: I can't say at this point. It's a center to benefit the residents. Things may change in three years. The Housing Authority is in receivership right now, I think it's up in 2000 or 2001.

VICE CHAIRPERSON KING: Funding and all that, funding considerations. I said you also have funding considerations.

MS. BROWN: Right, funding considerations, the property may not exist, it may be changed in some form or fashion, I don't know.

VICE CHAIRPERSON KING: Three years, I wouldn't have a problem with that.

MS. BROWN: So, the three years is fine for now, and if we need to renew we can come back before the Board.

CHAIRPERSON REID: All right, thank you.

Now, government reports?

ANC report?

MR. GUYOT: Madam Chairman, Mr. Hood, as an ANC Commissioner, can understand the delicacy our Commission is faced with. The major opposition to this consideration by our Commission --

CHAIRPERSON REID: Could we ask you to give your name and your address?

MR. GUYOT: Excuse me, of course, my name is Lawrence Guyot, I reside at 507 U Street, and I represent Single Member District 1-B-04, and I'm a member of Commission 1-B.

We were faced, Madam Chairman, with the situation where we put this on the agenda for our last two monthly meetings, and removed it for both sides to negotiate.

We found that that was not going to happen. We heard from ten people testifying on this, and we discovered that this was a well-balanced program, dealing both with young and old people, that our Commission listened to both sides. Commissioner Fitzgerald first presented her side, we then heard from the other side, and I might say, Madam Chair, I was tremendously impressed with the restraint, the legitimacy, the wholeness and the completeness with which these citizens came to us and sought representation.

Mr. Chairman, I am -- Madam Chairman, we enthusiastically support this. When I look at the coalition they've pulled together, as it relates directly to services, if you -- this Commission is more acquainted with the political style of 1-B than any other Commission, we deal with bringing together groups that are issue oriented, that provide services, and we work with them.

On the Howard University campus plan, we brought together eight groups. When we tried to deal with the Banner Recreation Center, we brought together groups. This lady attended training sessions conducted by the Columbia Heights Development Corporation. Ms. Akimboni sits on the Board of the Columbia Heights Development Corporation. This kind of unification, and this kind of moving spirit by citizens, it is our responsibility, it is every member -- every person in this rooms responsibility to, where it is possible, to facilitate respect and participation in governmental affairs.

Madam Chairman, again, I want to repeat the sensitivity. This group had the burden of really repudiating on the merits one of our most famous and illustrious members of our Commission. They did so with restraint and panache. We were soundly convinced, and the majority of us then proceeded to vote on the merits, and now let us be clear, Council Member Graham made his objection based, and let me quote it, "on the uncertainty about the quality of the representation of the tenants." I think we can say today that the tenants have been ably represented in this hearing.

I think they've met the burden of proof. I said to the

group after they made their presentation, this government, we are agents, you are the principals. We've heard you, and we come here today pleading, if there was ever a case for a bench decision this is it.

As to Mr. Graham's relationship to the ANC, he has the right to his opinion, but thank God we live in an equal kind of government. There's the Executive, there's the Legislative and there's the ANCs. We listen to people who vote for us. We listen to the people with whom we exist. Mr. Graham does not agree with ANC 1-B on the Roosevelt. We think the tenants should have the right to prevail there.

VICE CHAIRPERSON KING: That's another case, we don't have to hear about that now.

MR. GUYOT: Okay.

My point is, we feel that when we hear on the merits from the people who are our reason for existence, and we are persuaded in an open meeting in which we have a quorum, and you have to take on one of our most articulate members, and you must convince us, we were convinced hands down.

I plead -- please --

VICE CHAIRPERSON KING: What was --

CHAIRPERSON REID: Let him finish, please. Let him finish that last sentence.

MR. GUYOT: I plead that we have a bench decision today.

In this case, and I'll be glad to respond to your

question --

CHAIRPERSON REID: Mr. Guyot, I'm sorry, but you need to waive the record to have that report submitted today.

MR. GUYOT: Yes.

CHAIRPERSON REID: You need to request a waiver.

MR. GUYOT: I certainly request -- I'd like to request a waiver so that the ANC report may be entered.

CHAIRPERSON REID: So waived.

MR. GUYOT: Madam Chairman, if there was ever a case for a bench warrant, this is it.

CHAIRPERSON REID: I think you mean a bench decision.

MR. GUYOT: I'm sorry, I really want that stricken, Madam Chairman.

I don't want to give certain people -- by the way, let me go on, if there was ever a time to deal with immediacy this is it. Let me tell you why, Madam Chairman.

For years, the aims and ambitions about the utilitarian participation by the groups in this family, in this building, in this complex, have been thwarted. They have an opportunity now to be rewarded for their very excellent objectives. We should not hesitate when given the opportunity.

CHAIRPERSON REID: Thank you, and you will submit your letter?

MR. GUYOT: Yes, I have done so.

CHAIRPERSON REID: And, Mr. Guyot, ANC 1-B will be afforded the great weight to which it is entitled.

MR. GUYOT: Thank you very much.

COMMISSION MEMBER HOOD: Madam Chair, if I can just add for the record, because I know the ANC process that will not affect which way I vote, I'm not biased in any way.

CHAIRPERSON REID: What will not affect it?

COMMISSION MEMBER HOOD: The Commissioner made a statement, and I want to put that on the record.

CHAIRPERSON REID: Oh, okay.

COMMISSION MEMBER HOOD: That that would not bias -- I'm not biased in any way, very objective.

CHAIRPERSON REID: Understood.

COMMISSION MEMBER HOOD: Second, I want to ask Commissioner Guyot, did Ms. Fitzgerald have an SMD meeting?

MR. GUYOT: No.

COMMISSION MEMBER HOOD: Thank you.

MR. GUYOT: Madam Chair, may I just clear up one thing. I preferred to former Commissioner Hood's experience because I wanted to make sure that this body gave due consideration to overturning the decision of the Single Member district. I didn't want to in any way imply, or impugn, or infer his lack of impartiality. I want to be understood on that.

CHAIRPERSON REID: Thank you.

VICE CHAIRPERSON KING: Excuse me.

CHAIRPERSON REID: Yes.

VICE CHAIRPERSON KING: I still have a question pending, what was Doll's problem?

MR. GUYOT: Total, she felt that the people who were doing it should not be doing it, that there was no reason for it, that there was destruction of a medical center, that it was --

VICE CHAIRPERSON KING: Where is this? I mean, go back a piece, what medical center?

MR. GUYOT: Years ago there was a medical center in the building.

VICE CHAIRPERSON KING: Yes.

MS. BROWN: May I clarify? There was confusion at the meeting and I don't even know that Mr. Guyot understood it, and I think it would be better coming from me at this point.

MR. GUYOT: No, but I'm asked to respond to a question.

MS. BROWN: Right, but I just don't want confusion to start because there was confusion after the meeting as to the buildings. It's two separate buildings. The building where the center is --

MR. GUYOT: This is a very sophisticated board.

MS. BROWN: -- separate from the other one.

CHAIRPERSON REID: I don't understand that, so I would like some clarification.

MS. BROWN: And then I'll turn it back over to you,

and I apologize.

What I tried to bring out at that last meeting a week ago, and I'd like to bring out here, is that -- and I spoke to Ms. Fitzgerald on the telephone after speaking to Mr. Guyot, and he expressed her concerns, we had a lengthy conversation on the phone for about an hour, where she proceeded to tell me all of her concerns. I made sure I gathered up all of the information to address her concerns at that meeting a week ago. I addressed all of her concerns, and I knocked down each and every one of them. I believe that I did that.

But, in any event, her concerns involved 2301 11th Street. There's a senior building on that property, where there was a clinic years ago, and it was defunct even before we started something called the Fix Center, and I had Mr. Gross here -- I mean, Mr. Simmons here to talk about the Fix Center, but when Ms. Fitzgerald didn't come he left. That's why I don't think it's fair to keep the record open, when I have people here who can address her concerns, or I had people here to address her concerns, and they were addressed for two hours a week ago.

But, in any event, it's two separate properties. She's concerned about, (A) a clinic no longer -- she doesn't have use of a clinic for the senior citizens, and (B) she pulled out a calendar with all of this crime, dates for crime, and where crime occurred all throughout the property.

COMMISSION MEMBER HOOD: Excuse me, Madam

Chair, I object to hearing her concerns because they are not listed on the letter.

MS. BROWN: Right, and she could have been here.

COMMISSION MEMBER HOOD: I think we need to move forward, but if you want to hear the concerns --

CHAIRPERSON REID: No, no, my question to her was completely with regard to the medical center, to clear up the case of the two buildings, and that's all.

MS. BROWN: They are two separate buildings.

COMMISSION MEMBER HOOD: We didn't need to get into --

CHAIRPERSON REID: Right, we don't have to get into that.

MS. BROWN: Right.

CHAIRPERSON REID: The other part, just that. Okay.

Now, Mr. Guyot, did you finish your response to Ms. King?

MR. GUYOT: Let me just finish by saying that of all of the charges that Commissioner Grover asked Commissioner Fitzgerald, what does any of these charges have to do with the application? That question was never successfully answered.

Let's be very clear here. Every -- to the satisfaction of every member of the Commission, with three exceptions, every charge made was refuted on the merits in its entirety. We left feeling

that when we made a decision that it was on the entire picture.

I wanted -- I felt it was my responsibility to reply to the question in completeness, and I did so.

CHAIRPERSON REID: So, there are how many members of your ANC?

MR. GUYOT: Twelve.

CHAIRPERSON REID: And, three of them voted against it?

MR. GUYOT: That's right.

CHAIRPERSON REID: And, how many voted for it?

MR. GUYOT: Seven.

MS. BROWN: And, I might add that two -- the elderly woman, I can't remember her name, she objected with a condition, and she said if a condition had been met she would have been in favor of it. She wanted a group to be formed.

MR. GUYOT: Let me clarify that.

CHAIRPERSON REID: I'm sorry, Mr. Guyot, we just really need the official vote of the Commission. We don't have to hear it, did we get a copy of the vote here?

MR. GUYOT: The vote is not enumerated here.

CHAIRPERSON REID: And also, basically, what we need to hear is that there was a quorum.

MS. PRUITT-WILLIAMS: There was a quorum, and it was voted in the affirmative.

CHAIRPERSON REID: That suffices for our

purposes.

MR. GUYOT: There was a quorum, it was at our publicly announced meeting. It was well attended. The issue was discussed fully on both sides and then we voted.

CHAIRPERSON REID: Thank you.

COMMISSION MEMBER HOOD: It may have been said earlier, but why didn't Ms. Fitzgerald not attend today, was it because of illness or some reasonable basis?

CHAIRPERSON REID: Does anyone know the answer to that question, why Ms. Fitzgerald is not here? No? All right.

Okay, now, so we move now to persons or parties in support of the application, is anyone here who has anything new to add, that has anything new to add.

Persons or parties in opposition to the application?

All right, closing remarks by the Applicant.

MS. BROWN: In closing, I'd like to say that I believe we've met the burden set forth in the regulations, Title 11, Section 334. I believe that we've also showed that this property will benefit the community, and that the center will not adversely affect the use of the neighboring property, but will serve to enhance the lives of the residents living at Garfield Terrace.

Thank you.

CHAIRPERSON REID: Thank you.

COMMISSION MEMBER HOOD: Madam Chair, if it's

in order, I make a motion that we approve with the necessary conditions. I'm not really sure exactly what all of them are.

VICE CHAIRPERSON KING: Well, I'll supply the conditions.

CHAIRPERSON REID: All right. I will second the motion.

Any discussion? Any further discussion?

VICE CHAIRPERSON KING: Do you want to me propose some conditions?

CHAIRPERSON REID: Absolutely.

VICE CHAIRPERSON KING: I would suggest that it be for a period of three years, that the number of staff, volunteers and participants in the facility at no time should exceed 60. The hours of operation should be Monday through Friday from 9:00 a.m. to 9:00 p.m., and Saturday from 10:00 a.m. to 6:00 p.m.

CHAIRPERSON REID: Did you say

CHAIRPERSON REID: 9:00 to 9:00?

VICE CHAIRPERSON KING: 9:00 to 9:00 and 10:00 to 6:00.

CHAIRPERSON REID: Okay, and number of persons?

VICE CHAIRPERSON KING: Sixty.

CHAIRPERSON REID: At any given time.

VICE CHAIRPERSON KING: At any given time.

CHAIRPERSON REID: Okay, were there any other --

VICE CHAIRPERSON KING: And, that's staff, volunteers, clients and so forth.

CHAIRPERSON REID: What about trash collection, I would assume regularly scheduled trash pick up?

VICE CHAIRPERSON KING: I don't know, is this going to generate -- you are not serving meals, I take it at any time, and is it going to generate trash?

MS. BROWN: Just, I guess, in the summertime, just probably snacks, juices.

CHAIRPERSON REID: They have a summer program.

VICE CHAIRPERSON KING: And, there's a kitchen in the facility, too, so we better mandate regular trash collection.

MS. BROWN: Okay, in accordance with the collection on the property.

VICE CHAIRPERSON KING: Right.

MS. BROWN: Okay.

CHAIRPERSON REID: As necessary, okay?

Mr. Hood?

COMMISSION MEMBER HOOD: No, I think this is okay.

CHAIRPERSON REID: Mr. Gilreath?

MEMBER GILREATH: I fully support the project, and the only concern I had was somewhat similar to Ms. King's, about Ms. Fitzgerald's response, but it seems to me that if she couldn't be here

her letter at least should have identified specific issues.

In the absence of anything specific, I, therefore, give the full weight to the ANC report.

CHAIRPERSON REID: I, too, feel that it's a very worthwhile project, that is an attempt by citizens to try to mitigate some of the ill forces or some of the problems that are now being faced by providing this kind of facility for the children, and also for the adults in the community. So, I very much favor approval of this application.

All in favor?

(Ayes.)

CHAIRPERSON REID: Opposed?

MR. HART: Staff would record the vote as 4-0 to grant.

MR. GUYOT: Madam Chair, on behalf of 1-B, thank you very, very much.

CHAIRPERSON REID: Mr. Guyot, really, in all fairness, you should really address the entire Board, and thank the entire Board.

MR. GUYOT: I only wanted to be recognized by you, it was my intention to thank the entire Board. If I did not do so, I want to do so at this moment. Thank you all very, very much.

CHAIRPERSON REID: Yes, because, as you saw, everyone just really kind of jumped in and tried to make this work.

Good luck to you.

The hearing is adjourned for today.

(Whereupon, the hearing was concluded at 3:54 p.m.)