GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

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WEDNESDAY

JANUARY 6, 1999

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The Public Hearing convened in Room 220, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 1:00 p.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

STAFF PRESENT:

Sheri Pruitt-Williams	Interim Dir., Office of Zoning
Tracey Witten Rose	Office of Zoning
Paul Hart	Office of Zoning
John Nyarku	Office of Zoning
Alberto Bastida	Office of Zoning

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1:08 P.M.

CHAIRPERSON CROSS: Good afternoon. The hearing will please come to order. This is the January 6 public meeting of the Board of Zoning of Adjustment, the District of Columbia. My name is Sheila Cross Reid, the chairperson. Joining me today are Betty King and Jerry Gilreath, representing the National Capital Planning Commission.

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

The order of procedure for special exception of various cases will proceed as follows: The statement of witnesses of the applicant, 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.

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 material specifically requested. The Board and the staff will specify at the end of the hearing exactly what is expected.

Decisions of the Board in these contested cases must

be based exclusively on the public record. Avoiding any appearance to the contrary, the Board requests that persons present not engage the members of the Board in conversation.

The Board will make every effort to conclude the public hearing as near as possible to 5:00 p.m. If the afternoon cases are not completed as of 5:00 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, or whether proper and adequate notice of the hearing has been given. If you are not prepared to go forward with a 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: Madam Chair, staff has one preliminary matter.

CHAIRPERSON CROSS: Okay.

MS. PRUITT-WILLIAMS: In reference to the first case, 16407, the request for Capital Hill Hospital, we just wanted to note for the record that we do not have a report from the ANC. We have researched our files. It is logged in that a report was received on December 10. However, we have checked our office and everyone in the office. The writing is not familiar to anyone in our office. No one in the office remembers ever seeing it logged in.

VICE CHAIR KING: Well we do have a draft from the ANC from 6A Zoning and Licensing Committee. It was received on

the 31st of December.

MS. PRUITT-WILLIAMS: I understand that. So if someone looked at our public file, they would have seen logged in a report that came in on December 10th. That, we have investigated Exhibit 20, which is in the log. We have not been able to find it in the office. No one in the office logged it in. I just wanted to put that on the record.

VICE CHAIR KING: Is there anybody here from 6A?

CHAIRPERSON CROSS: Come forward please, Mr. Pernell. Give your name and address.

MR. PERNELL: Commissioner Daniel Pernell at 6A. Yes, question?

MS. PRUITT-WILLIAMS: Did you receive -- did someone submit a report to this office around about December 10th?

MR. PERNELL: I believe some of the commissioners and I were discussing this. I believe that we submitted, under the Subcommittee of the Zoning License of 6A, we submitted a draft. You are right, Ms. King, it is indeed a draft. It has not been approved by the body. Witnesses here, that is it.

CHAIRPERSON CROSS: Well the draft was December 31st. But there was something that had been logged in coming from you on December 10th. Apparently there was some type of discrepancy.

MR. PERNELL: We didn't have a meeting until December 14th. Anything that came in before then was irrelevant to the facts that we discussed on the 14th.

CHAIRPERSON CROSS: Then your body did not

submit anything?

MR. PERNELL: We should have not. We don't know what other people were doing, but we didn't meet until the 14th. Nothing should have been submitted until after the 14th.

CHAIRPERSON CROSS: Okay. Thank you.

MR. PERNELL: You're welcome.

MS. PRUITT-WILLIAMS: I just wanted to put that on the record since it is in the file or in the log.

CHAIRPERSON CROSS: Okay. Call the first case, please.

MR. HART: First case, Application 16407, of the Capital Hill Group, pursuant to 11 DCMR 3108.1, for a special exception under Section 359 to establish a health care facility with 162 beds, basement through sixth floor, in an R-5-C District at premises 708 Massachusetts Avenue, N.E. (Square 895, Lot 76).

Those persons planning to testify please stand for the oath.

(Whereupon, the witnesses for the Applicant were sworn in.)

MR. CONNER: Good afternoon, Madam Chair and Members of the Board, my name is Brent Conner. I am with the law firm of Robins, Kaplan, Miller and Ciresi. I am appearing here this afternoon for Richard Netler on behalf of Applicant Capital Hill Group in the matter before the Board this afternoon.

As the Board is aware, the Applicant in this matter is seeking a special exception pursuant to Sections 3108 and 359 of the zoning regulations for adding 32 beds to its existing nursing facility at

700 Constitution Avenue Northeast. The site is zoned R-5-D.

The Board has previously approved a special exception for the same facility to allow operations involving 130 beds. One hundred and thirty beds are currently in use at the facility. Applicant seeks some modification of the Board's previous order to allow a total of 162 beds.

Based on the evidence that will be presented this afternoon, the Board will see that the Applicant meets all of the criteria in sections 3108 and 359 for the special exception. For instance, Applicant will demonstrate that its request is in harmony with the District's zone plan and zone maps and is not likely to adversely the use of neighboring property. In fact, the proposed increase in number of nursing facility beds will bring the facility up to the number of beds permitted by its certificate of need, which was granted by the State Health Planning and Development Agency.

The increase will also meet an important need in the District. The facility currently has a waiting list of patients who need care, and many of these patients depend financially on Medicaid and Medicare to obtain such care.

Applicant has been communicating with members of the community with regard to its request. A presentation was made to ANC-6A, and information was shared with the Stanton Park community and with the neighboring St. James Church in relation to this request.

Neighboring property will not be affected since the requested increase is minor. It will require no change to the size of the facility or the exterior of the structure, and it will be accompanied

by a substantial increase in parking capacity. The increase in staff required by the additional beds is comparatively minor. Only 40 full-time employees will be required, spread out over three shifts.

There are currently 300 full-time employees at the facility. Therefore, an increase in traffic, if any, would be nominal. This is especially true since many of the employees rely on public transportation.

Briefly, the evidence presented today will also show that Applicant satisfies the criteria set forth at Section 359 of the zoning regulations. That regulation specifically allows health care facilities for up to 300 persons in R-5 Districts if approved by this Board. Moreover, Applicant meets the conditions set forth as Sections 358.2 through 358.7. Applicant therefore will meet its burden of showing that it has complied with the requirements for special exception, and asks that this Board grant its request.

At this time, Applicant would like to call its first witness, Linda Grigsby.

Whereupon,

LINDA GRIGSBY

was called as a witness, and after having first been duly sworn, was examined and testified as follows:

MS. GRIGSBY: Good morning, or afternoon I guess now. I will start with giving a brief history of the facility. My name is Linda Grigsby. My address is 700 Constitution Avenue, N.E.

The facility was founded in 1888 as the Eastern Dispensary of the District of Columbia. It moved to its present site in 1922, and adopted the name of Capital Hill Hospital. In 1976, the

Capital Hill Hospital was a full service medical surgical hospital with 38 skilled nursing beds. In 1983, the hospital was acquired by the Washington Hospital Center, otherwise known to many of us now as MedLantic, a 900-bed facility located in Northwest Washington.

In 1990, Washington Hospital Center announced its intention to convert the Capital Hill Hospital to a nursing home facility with a complement of in-patient, psychiatric beds. All acute care patients were transferred to the Washington Hospital Center. The staff and the community actively opposed this transfer. The hospital operations suffered substantial downturn. In 1991, all the hospital services were discontinued and the hospital was closed.

After great consternation in the community and elsewhere, the hospital was bought in 1992. The Capital Hill Group, a non-profit mutual benefit corporation, organized under the laws of the State of California, under the leadership of Dr. Peter C. Shin, the founder of Capital Hill Group. It was granted a certificate of need to operate a facility as 125-bed acute care hospital, and 125-bed skilled nursing home.

Under the grant of the certificate of need, the Capital Hill Group began the development of a skilled nursing facility. A second corporation, the Capital Hill Health Care Group, was organized to operate the nursing facility. The nursing facility opened with 35 beds in December of 1992. At the present time, the Capital Hill Health Care Group has a certificate of need to operate 162 beds and currently operates 130 licensed beds.

In 1995, MedLink decided to seek licensure as a long-term acute care hospital rather than originally proposed general acute

care hospital. It has become a definite need in the community and met the need for long-term acute care as a hospital.

In that effort, we have started working in the community with a Wellness Program in which I operate the Wellness Program. We have programs every month. The program this month will be on how to start a healthy lifestyle. We also have programs. We have the licensed Jazzercize program also operates within the hospital. We are also currently, up until the end of this week, we have been the --

VICE CHAIR KING: I don't mean any disrespect, Ms. Grigsby, but we have quite a full agenda this afternoon. Perhaps your lawyer can explain to me or Ms. McCarthy, how this relates to land use planning. I mean I think we are all aware of the good work that is being done. But I think we are on a tight schedule for this afternoon. We sat here until 8:30 last night. I would just as soon get out early tonight.

I think, could we all stipulate that the hospital does good things and get on to the land use planning issues, Madam Chair?

CHAIRPERSON CROSS: Sure. Sure. Absolutely.

MS. McCARTHY: We were not aware -- we were not sure how aware you were about the relationship between the hospital and its neighbors, and the fact that it had been a good neighbor and that there was a long history of health care use on that site, which was predominantly what we wanted to establish.

VICE CHAIR KING: I think we can stipulate that.

MS. GRIGSBY: Two of the main issues that have

come up as it relates not only to land use, but also to being a good neighbor, is the fact that we do have extending parking facility for our staff. If you don't mind, I can show it to you on the map.

The parking facilities are located on the 7th Street side of the property. This being the main entrance here, with two parking lots. One here, and one here. Then we also have a parking facility right here in back that also has approximately about 50 parking spaces. This is also the entrance to the parking garage.

VICE CHAIR KING: How many spaces are there all together?

MR. CONNER: All together there are --

MS. GRIGSBY: One hundred and thirty two existing. Existing right now. That's without the parking garage.

VICE CHAIR KING: And is it the 1991 order of the Board of Zoning Adjustment under which you operate? Item 2 says the Applicant shall provide 176 on-site screened parking spaces for employees, residents, and visitors, with a preference for employees to occupy free parking in the underground garage in the same square. And you have 150 spaces? Is that correct?

MS. GRIGSBY: All together there are 276.

VICE CHAIR KING: How many are open and in use?

MS. GRIGSBY: The ones that are open, half of them are in use. That's minus the parking garage.

MS. McCARTHY: Because of the mess --

VICE CHAIR KING: So there are not 176 spaces available at any time?

MS. McCARTHY: Because the beds have not been

open and because of the use of mass transit by employees, there has not been a need to open the underground facility. But we are opening the underground facility in conjunction with the request to expand the number of beds.

VICE CHAIR KING: But at no time in the 7-1/2 years since this order was granted have you complied with condition number 2. Is that correct?

MS. McCARTHY: The hospital provides free parking for all of its employees off-site on those two parking lots, and has not had problems to my knowledge or requests from the neighbors to increase the amount of off-street parking spaces. The amount of parking provided has been sufficient for both staff and visitors to the facility.

VICE CHAIR KING: Did you see the notice we received today?

MS. McCARTHY: And the parking is also free to visitors as well.

VICE CHAIR KING: Did you get copies of the letters that we received today?

MS. McCARTHY: No.

VICE CHAIR KING: From the ANC's Committee on Zoning and Licensing and Zoning, and from the Stanton Park Neighborhood Association?

MS. McCARTHY: We have the one from the ANC.

VICE CHAIR KING: Perhaps the staff would provide you with the one from the Stanton Park Neighborhood Association.

Whereupon,

JOHN LUNSFORD

was called as a witness, and after having first been duly sworn, was examined and testified as follows:

MR. LUNSFORD: Good afternoon. My name is John Lunsford. I am the general counsel for Capital Hill Group and for MedLink Hospital. Having just received, just seen the letter which was apparently submitted yesterday by Stanton Park, I can give only a cursory response to a couple of the issues that they raised.

Going to the second point that they make. First with respect to the agreement between essentially Rogers Memorial Hospital in 1971 at St. James Church, we certainly have been aware of that agreement to provide parking to allow St. James Church parishioners to park on the lot in the parking facilities at the hospital for church services and church functions. It would be our contention that we have always honored that, and that the statement made here by the Stanton Park Neighborhood Association is in fact not correct. We certainly intend to be in compliance with that covenant which again, as I said, was made in 1971. As far as we are concerned, has always been honored not only by ourselves but also by Atlantic when they owned the hospital, and prior to that, by Rogers Memorial Hospital from 1971 further.

The third point that they make concerns an historic row house that is located between the two parking lots on the 7th Street side. Again, we are aware of our obligation with respect to that. We have made certain inquiries and have contracted or at least contacted certain engineering firms about doing the appropriate work necessary to preserve that structure. Frankly I think it's not totally

relevant to this particular situation. But I can assure the Board that we are aware of that obligation and intend to do what is required of us to make this -- to preserve this structure.

With respect to the underground garage, it has been inspected. We have received a certificate of occupancy to open it. We are prepared to open it. Again, as I said, we are opening it in conjunction with this application. We think it will, by providing essentially an extra 140 parking spaces, more than adequately serve all the needs of our facility as well as of other facilities.

We currently provide free parking to at least three different churches, including St. James. We allow our parking lot to be used by other community groups, have in the past on a free basis. We intend to be a good neighbor, a good corporate citizen. Again, just a cursory response to the Stanton Park Neighborhood Association would be that they are incorrect in many of their allegations, and that we are intending to abide by each and every private covenant that we might have with another party and public law or regulation as it comes to our attention.

VICE CHAIR KING: Do you have any kind of an advisory group that involves people who live in the immediate neighborhood?

MS. GRIGSBY: Yes. We do.

VICE CHAIR KING: Would you talk about that?

MS. GRIGSBY: Yes. We have a Community Advisory Board, which has approximately four members in it. One of those members is here now. Ms. Karen Wirt is on our advisory board. Also we have other people from the area, not only who work and live

in Ward 6, but also who work in other areas of the city.

VICE CHAIR KING: It's a four-member advisory board?

MS. GRIGSBY: Well, right now it's four to six members of the advisory board.

VICE CHAIR KING: Are any of the members of the Advisory Neighborhood Commission?

MS. GRIGSBY: Karen Wirt was at that time an ANC Commissioner. She is not an ANC commissioner at this time. She just went out of office December 31st.

VICE CHAIR KING: And how often does the advisory committee meet?

MS. GRIGSBY: Every other month. We just started meeting in the beginning of the summer.

VICE CHAIR KING: Great.

MS. GRIGSBY: Also we met with Commander Coward of the Fifth District about the parking. We have submitted letters. We have had letters from the Imani Temple, also the Way of the Cross Baptist Church, also from the Capital Hill Seventh Day Adventist Church, asking for assistance in parking. They have been using our lots.

I have had ever since the ANC meeting of December 14th, I had asked our security to monitor the parking in all the parking lots and keep a record. When I spoke with them this morning, they said on the average, 12 to 13 cars Mondays, Wednesdays and Fridays I believe, have been utilizing the parking lot from St. James Church. Also on the weekends too. I am there usually on Saturdays

and Sundays, and they have been using the parking lot in the rear of the hospital.

BOARD MEMBER GILREATH: So the reason you have not been utilizing the underground parking garage is you had enough capacity and it just wasn't needed until --

MS. GRIGSBY: Yes.

BOARD MEMBER GILREATH: Okay.

MS. GRIGSBY: Right. With capacity, we really -- even with the visitors that we have who come to the hospital, we don't seem to have that problem. On Saturdays and Sundays, we definitely do not have an overflow of staff. Even with the visitors that we get to the patients, we still have room for the churches to utilize the parking space.

BOARD MEMBER GILREATH: So theoretically, the underground parking was available. It just wasn't needed so you have not been utilizing it? Wouldn't that meet the requirement of the 172 spaces? The underground parking was there. It just wasn't -- they didn't have a need of it.

VICE CHAIR KING: Right. It's a condition of the order that was signed, you know, a decision made that was signed in August of 1991.

CHAIRPERSON CROSS: The objection is just that, coming from the Stanton Parking Neighborhood Association, that they had not complied with that order, notwithstanding the fact that maybe you did not feel that you needed it. Nonetheless, it was in the order and that was supposed to have been done. It was supposed to have been open. You were to provide 176 parking spaces.

In addition to that, the gist of the letter that I read from the Stanton Park Neighborhood Association is that they were displeased for the fact that you did not open it, and that there was some problem with parking, and inadequate parking provided, and that MedLink had ticketed church goers --

MS. GRIGSBY: We explained that.

CHAIRPERSON CROSS: Using whatever parking areas now.

Before you answer that question, we ask you this. Have you met with Stanton Park Neighborhood Association and discussed? Have they alerted you to the fact that they were displeased with some of these things?

MS. GRIGSBY: I'm sorry. I missed that last part of your question.

CHAIRPERSON CROSS: Okay. Have you met with Stanton Park Neighborhood Association? Were you aware of the fact that there was some displeasure with the manner in which this had been taken care of or not taken care of?

MS. McCARTHY: Right. I think what is important to note is that the only parking problem that Stanton Park is referring to in this letter is a parking problem that they have heard about from St. James Church. The first time that that parking problem was ever expressed as a problem to MedLink Hospital was a letter that arrived either the day of or the day before the December 14th ANC meeting.

At that ANC meeting, we reviewed the entire parking information. The MedLink Hospital made clear that they were willing to meet with St. James on the issue. The administrator Yates has

since called St. James Church to set up a meeting to discuss the issue in more detail.

It became clear at that meeting that this ticketing situation was a misunderstanding that had occurred when the hospital had been concerned about large numbers of people unrelated to the church, but just people from the neighborhood who had begun parking in the hospital's parking lots. So their security force had issued warning notices, not tickets, just warning notices to people who were parking in the lot.

The hospital had been unaware at the time that that had caused a problem with St. James or that St. James had interpreted that as saying that the hospital was reneging on its agreement.

So what the hospital has done is rather than meet with Stanton Park, who is just relating this sort of as a third party, they have gone ahead and attempted to make sure that everything is ironed out with St. James about the parking situation.

But as you can see from the letter from Stanton Park, they allege no place in here that there is a parking problem caused by a shortage of parking at the hospital that has affected other people in the neighborhood. They have only talked about it in conjunction with St. James. Those 176 parking spaces, as Mr. Gilreath said, were available to be used. But since they were not needed, the hospital found it easier to use the surface lots, which are generally the parking that people prefer.

The other parking is an underground parking lot. It's not usually -- you know, people in general do not like to park in

underground lots because of lighting and security concerns. So the surface the lots are the ones that have been maintained by the hospital and open to visitors and to people from St. James Church.

So I think that we have attempted to deal or the hospital has attempted to deal with any of those parking concerns once they became aware of them as of December 14th.

VICE CHAIR KING: Let's discuss the trash. What is the trash problem? What have you done to remedy?

MS. GRIGSBY: The trash problem was that St. James Church has a covenant with us to use our trash facility. They have always had that ability to use that. On many occasions, I have noticed where they have been utilizing that either by putting the trash directly in the receptacle themselves or throwing little bags of trash over the wall, and our maintenance people pick them up and put them in the trash can.

Also it was stated in that letter that we received from Father Downing, that our staff was eating in their cars on 8th Street. I pointed out to the ANC at that particular time two things. One, that we have a litter control group that goes out every morning between 10:00 a.m. and 10:30, that does a complete sweep of the area of the whole square block from 7th and Mass, all of our property all the way around that whole square block on the litter control.

Also, our staff is not the ones who are eating in their cars on 8th Street, due to the fact that's residential parking. Our people do not park there because of getting tickets and they can't afford to get the tickets. We don't encourage staff members to park on that street. There is another clinic across the street on the 8th

Street side that does use 8th Street parking.

CHAIRPERSON CROSS: So it's not your trash?

MS. GRIGSBY: No, it's not. We do -- litter control has been done. I have monitored it since December 14th. They are out there every day. I make sure. I myself go out at least once every two days to check.

CHAIRPERSON CROSS: If you have litter control and it's taken care of on an almost daily basis, I don't understand why there is some concern about that.

MS. GRIGSBY: I didn't understand that either, ma'am.

CHAIRPERSON CROSS: Okay. Were you done or did you have more?

MR. LUNSFORD: I'll try to be brief and continue to address the increased parking issue.

We would expect that adding these beds would add about 40 employees to the overall operation, but these employees would be spread out over 24-hour, 7-day a week period because they would primarily be resident care type employees, nurses and CNAs and other resident care people.

We currently have, I think was earlier indicated, about 300 full-time equivalent people, but because of our 24-hour, 7-day a week operation, the peak number of employees that would be on site at any one time would not exceed 150 at this point. It would probably not exceed 160 or 165 even with this expansion. So that you can see that our current parking capacity is more than adequate for the number of employees we have at peak time. With the increased

parking capacity, it would be far in excess of anything that we would ever anticipate needing in any foreseeable future.

As a point of clarification, I think earlier it was indicated that we originally received a certificate of need for 125 nursing home beds, and that we currently have a certificate of need for 162 beds. The expansion of that certificate of need has occurred in two different ways that may be of interest to the Board.

First, in the normal expansion process by which every two years an automatic increase in the certificate of need is available. But secondly, two years ago the District of Columbia came to us and asked us if we would accept from D.C. Village an additional number of residents because they were closing down D.C. Village and had to place them elsewhere. In that process, we accepted 22 residents from D.C. Village. They granted us an increase of 22 in our certificate of need. So that we have grown from 125 in our certificate of need to 162. However, we at the present time only operate, I think our census today is 125.

So we do need this special exception in order to reach our capacity under our current certificate of need.

BOARD MEMBER GILREATH: You need this -- what is it, a special exception? You need this to bring you into compliance? You already have this 162 people there?

MR. LUNSFORD: I'm sure you understand that there is a difference between certificate of need and zoning issues. We have the certificate of need authorization. We just can't utilize it.

BOARD MEMBER GILREATH: Oh. I see what you are saying.

MR. LUNSFORD: Without the zoning exception.

BOARD MEMBER GILREATH: How many of these people you took from D.C. Village -- it's still not clear to me what your capacity is now, the actual occupants there now.

MR. LUNSFORD: We operate both the hospital which exists as a matter of right of course. It has 35 beds. We have a nursing facility which operates under a special exception. There are actually 133 beds in that facility. As I say, we only have 125 occupied beds.

BOARD MEMBER GILREATH: Right now, as of now. You want to go to what, a capacity of 162 for the --

MR. LUNSFORD: One sixty two would bring us up to the level of our certificate of need.

BOARD MEMBER GILREATH: Okay.

MR. CONNER: Applicant's next witness is Ms. Ellen McCarthy. Ms. McCarthy is appearing as Applicant's expert witness on zoning and planning issues. Ms. McCarthy has extensive experience in such issues and has been qualified as an expert witness in numerous hearings before this Board. Her testimony will demonstrate that the Applicant meets the criteria for the special exception.

Whereupon,

LINDA McCARTHY

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

MS. McCARTHY: Good afternoon, Members of the Board. My name is Ellen McCarthy. I live at 3905 Morrison Street in

Washington, D.C. I am here today to speak on behalf of the hospital and to address basically five major points.

That the proposed changes are minor and meet an important community need, that there will be no adverse impacts on adjacent property owners, no impact on the residential character of the neighborhood, no adverse impact or parking impact in the surrounding area, and no adverse impact on the integrity of the zone plan.

It is important to note I think at the outset that were we coming a month or so later to you, we would not even have to have this hearing because the rules that were adopted by the Zoning Commission and advertised in the December 4th D.C. Register, change for community-based residential facilities, change to the regulations so that we could operate as a matter of right, a community-based residential facility of this size in an R-4 district. I would like to just give you copies of the regulation.

I'm sorry. I had not meant to imply that it was actually in effect at this point. It's been advertised in the D.C. Register as a proposal which was preliminarily adopted by the Zoning Commission. But should that proposal be adopted, as you can see, it would -- we already can operate as was just indicated, a hospital has a matter of right in an R-5-D zone. We simply can not operate the community-based residential facility, the nursing facility that we have on the site. That would change under, if the new community-based residential facility regulations are adopted and approved.

Essentially what we are talking about is to go from 130 to 162 beds. That is an increase of less than 25 percent and

consistent with the need which has already been demonstrated in the certificate of need, and as been mentioned, the population we serve is largely Medicare and Medicaid reimbursed. We serve that population which we have a waiting list or the hospital has a waiting list. It has had that need because of the closure of D.C. Village and because of the aging of the population of the District of Columbia.

There do not appear to be any adverse impacts on adjacent property owners. For one thing, there has been a very long history of hospital use on this site. For over 50 years at least, there has been a hospital use on this site in the midst of the neighborhood. The previous hospital use on this site immediately before it was taken over by Capital Hill Hospital was of substantially greater intensity than that which we are proposing here today. There were more beds. There were a total of 250 beds in the hospital facility when it was operated before, and it was a far more intense type of use. It was an acute care hospital. What we are proposing is simply 162 nursing beds, far lower in terms of the amount of traffic that is generated and the ambulance access and all the type of disruption that would be associated with an acute care hospital facility on the site.

There is no impact on the residential character of the neighborhood. Number one, because we are not proposing any physical changes to the exterior of the hospital. Number two, because the type of use that we are proposing to expand is essentially a residential use. We are talking about people who are there for long-term skilled nursing care in the facility.

Fourth, we are not talking of any adverse traffic or parking impact. Skilled nursing care facilities are in and of themselves

low traffic generators, and as Mr. Lunsford pointed out, the increase in staff is essentially 40 staff positions spread over three shifts. But the increase in parking spaces that will accompany that is a total of 144 parking spaces that will be added as the parking garage is opened up, in addition to the 132 spaces that now exist. So that will be a total of 276 spaces, but there are only 140 to 150 hospital employees on site, even at the peak times.

Lastly, we don't see any adverse impact on the integrity of the zone plan. The zoning on the site is, as we have mentioned, R-5-D. A hospital, sanitarium or a clinic could be permitted as a matter of right, even in an R-4 zone. There are no other residential uses on the square. The generalized land use map designates this as moderate density residential immediately adjacent to a mixed use moderate density residential/low density commercial area along 8th Street N.E. immediately to the north of the hospital.

But as we have indicated, it is a long-term medical use on this site, so the neighborhood has -- most of the people who live in the neighborhood have come there after the hospital was located there. It is a use which has been quite consistent with the residential character of the neighborhood, and as witnessed from the support from the ANC and from additional witnesses that you will hear from today, is generally accepted as a positive contribution to the neighborhood.

So in short, I think we have met our test. It is not contrary to the integrity of the zone plan, and will not cause any adverse impacts on the neighboring properties. Thank you.

MR. CONNER: The Applicant has no other witnesses

to call, but we request the opportunity to make a closing statement after all testimony has been heard.

CHAIRPERSON CROSS: Does the ANC, do you want to cross examine? Would the ANC like to cross examine these witnesses?

MR. PERNELL: No.

CHAIRPERSON CROSS: Are there any parties here in opposition?

MS. McCARTHY: We do have some parties in support too.

All right. Now we'll have the Government reports, Office of Planning. Did you have a report, Mr. Bastida?

MR. BASTIDA: No.

CHAIRPERSON CROSS: Not on this one? Okay.

The Office of -- I don't think we have any Government reports. Okay. ANC report.

VICE CHAIR KING: ANC, Madam Chair, we need to swear these people in because they weren't sworn in originally.

CHAIRPERSON CROSS: Anybody else who intends to testify today pro or con or anything, stand up and take the oath, please, on this case.

(Whereupon, additional witnesses for the Applicant were sworn in.)

Whereupon,

DANIEL PERNELL

was called as a witness, and after having first been duly sworn, was examined and testified as follows:

MR. PERNELL: Good morning. I'm Commissioner Daniel Pernell, reelected to the 6A Commission.

CHAIRPERSON CROSS: Give your address.

MR. PERNELL: 1132 4th Street, N.E.

CHAIRPERSON CROSS: You can pull the mike up to you so you don't have to be uncomfortable leaning into it. The arm pulls up. Pull it up toward you.

MR. PERNELL: Okay. Good morning. Madam Chair, this is in speaking of Application 16407 for the Capital Hill MedLink Hospital and Nursing Center.

Madam Chair, let me say for the record, Representative of the MedLink hospital came to us for the first time on November 19, 1998, asking for approval of their application for special exemptions to establish a health care facility and to increase the number of beds permitted in a health care facility from 130 beds to 162 beds.

At that time, we were unable to do so, to render a decision at that time because the hospital representative failed to provide the 6A Commission with a copy of the application and further plans of the hospital operations there. We did not receive copies of a map or any other plans at that time. Therefore, we were unable to render a decision.

Also, that was an unscheduled meeting. It was not a subcommittee of the ANC, which is the subcommittee of the Zoning and License Commission. The meeting that we had was not a regular meeting. It was of the Zoning and License Committee, Subcommittee of the 6A Commission.

Let me make it very clear, and we made that very clear to the representative of the hospital that we could not render a decision at the time because of the facts and the material that we needed was not present. Even at the meeting they said they would provide us with an application, but they did not. We planned to propose a meeting which all the commissioners would meet. We did a phone call of all the commissioners and see what date was good. The 14th of December was agreeable to all commissioners, of that date.

On the 14th, we voted unanimously with the subcommittee members, which was the body of six members I believe, five members, I'm sorry, for the application for exceptions to establish a health care facility and to increase the number of beds from 130 to 162, with my attachment of a number of concerns at that time.

One of the concerns was trash. I think Ms. Grigsby explained that a bit. But also we wanted that to be as an agreement to this attachment.

The second attachment was concerning parking. We have great concern about parking because Commissioner Angela Cox, who is on my right here, left here, I'm sorry, she will testify concerning her letter of December 14th to the ANC Commissioner, and also a letter concerning parking from Father Richard Downing of St. James Parish. I believe you have a copy of those letters.

Also I want to make it very clear, the minutes of December 14, 1998, have not been edited or approved by each individual ANC, but we are in general in approval of the hospital special exemption, with the exception with the attachment that I am

reading now.

Third, for the attachments is security in and around the hospital, and especially adjacent to the church, St. James Church. One of the concerns that we were concerned about with the parking there and security is the fact that there are heavy trucks coming between off of C Street into the -- between the hospital and the church.

What I witnessed a couple weeks ago, those trucks that are coming through there are too heavy for the little area that they are coming to pick up the dumpster and dump it. I think that they need to either reduce the size of that truck or something because to me it looked like there's going to be some kind of damage to the church. Eventually the truck is going to either fall into one of the windows on the side or something because the ground level is almost even with the windows there.

One of the other concerns that we had was we -- one of the concerns that we had there, Dr. Peter Shin was present at the hospital. I brought up the concern about the move of the ANC Commission. After the meeting we talked. He agreed with Commissioner Gregory Ferrell and myself and another commissioner too was listening on, that he would work with us concerning the move out of that facility and into another facility, which we should have been gone some time ago because it was already on a temporary basis.

By Dr. Shin saying that he would -- and that's Shin, S-H-I-N, he would work with us. We got a letter just the other day from his lawyer, Dr. Lunsford, John Lunsford, asking us to move out as of January 8, which is one day after our first meeting of the year with the

new elected commissioners coming on board. We did not use that as a premonition for the approval of the application, but we made it very known that we did not want this commission to be defunctive, you know, at the time of the -- before the approval or after the approval. Still this is a cloud over our heads and I am very concerned about this commission at this time because we need to elect executive officers so that we can have a full and clear and definite report to the Commission, BZA Commission, concerning such various exceptions, such as the hospital application.

I want to end there and say that one of the concerns I heard, that they had an advisory association. I am very close with Commissioner Karen Wirt, but she never told me of an advisory to the hospital. No one was never notified concerning parking in and around the church, least of all Father Downing of the St. James Parish. Neither Ms. Angela Cox, who is a resident in the area or Mr. Nelson, who is also one of the residents who will be testifying here today. They are also aware that -- was aware that there was no advisory concern.

I don't know where this popped up. This was not also said at our December 14th meeting concerning advisory on parking in and around the hospital and the church.

I am going to rest now and let other Commissioners speak. But if I have something else to come out, would like to have the privilege of doing that at the end. But I do want the attachments of concern of trash, parking, security, and there was one more that I'm not sure of, and the extension of the ANC past the first date of election, which will be tomorrow, January 7. Thank you.

MS. PRUITT-WILLIAMS: Excuse me, Mr. Pernell. For the record, you are not representing the ANC. You are representing your single member district. Is that correct?

MR. PERNELL: Let me correct. Yes, because we were unable as a body to --

MS. PRUITT-WILLIAMS: Okay. I just wanted that clear.

MR. PERNELL: We are here as individual agencies. The meeting that we had on December --

MS. PRUITT-WILLIAMS: That's all right. You've explained it satisfactorily. I just wanted to have it clear on the record. Thank you.

CHAIRPERSON CROSS: Mr. Pernell, in regard to the trash, you heard Ms. Grigsby explain to us that the trash was not of their own making and that they had a litter control entity that was cleaning up the litter and the trash almost daily.

MR. PERNELL: I don't disagree with Ms. Grigsby on that concern. These are concerns that I am forwarding by way of community members and Father Downing at the St. James Parish. I have not -- I have seen that the hospital has done a good job, but we wanted to -- and they request that these be noted as an attachment for an agreement. I abide by my constituents' concern.

CHAIRPERSON CROSS: So that would be something that perhaps you want to be included within the conditions that they continue to make sure that trash is picked up.

MR. PERNELL: Absolutely. The problem is is that they have several parking spaces on 7th and 8th Street. We don't

know exactly who is doing the damage, but the hospital wants the hospital to be responsible for the trash in and around those facilities.

CHAIRPERSON CROSS: Okay. As it pertains to parking?

MR. PERNELL: Yes.

CHAIRPERSON CROSS: You said there was a parking problem. Can you elaborate a little bit on that?

MR. PERNELL: The parking problem is you know, the underground parking there has been closed for some time. We don't know why it's not open. They are stating today that they will open it with the additional, I think it's 29 new employees. That's where the traffic is going to start to be a problem, in and around the church there.

CHAIRPERSON CROSS: So you are saying that -- I'm sorry to cut you off. Go ahead.

MR. PERNELL: Well we had concerns even from our own ANC secretary, Ms. Diane Poe, that she has received a ticket from parking in those garages, where there was an agreement between the parking owners there and the hospital. Ms. Grigsby said on December 14th that that was not a DVW parking ticket, and if they had called the hospital, they would have remedied the problems. But I don't know what the situation is. She just said she received a ticket.

Other residents in the area said they also have received tickets from being on that lot. So Ms. Grigsby did come forward and said that she would ratify that. But we want to make sure that's one of the attachments.

CHAIRPERSON CROSS: Do you think that the

parking garage as the ANC deems it, is it necessary for it to be open prior to the --

MR. PERNELL: We don't always concur with 6B, but it may be a concern that we have not fully addressed. I believe that from looking at the position of the underground parking, that there will be some great concern, and that we should look into it further.

CHAIRPERSON CROSS: If in fact it is open -- it should be open.

MR. PERNELL: It should be open, but it's not open.

CHAIRPERSON CROSS: It is a matter of an order that actually technically is in violation at this time because --

MR. PERNELL: I agree with you on that.

CHAIRPERSON CROSS: Nonetheless, are you satisfied with it being opened at the time they increase the beds, the number of beds?

MR. PERNELL: If that would alleviate the problem, yes. If it's also agreed that it would be an attachment so they would live up to that agreement.

CHAIRPERSON CROSS: Okay. This time.

MR. PERNELL: This time.

CHAIRPERSON CROSS: Okay. Thank you.

Whereupon,

GREGORY FERRELL

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

MR. FERRELL: I'll be brief. My name is Commissioner Greg Ferrell. My address is 618 19th Street, N.E.

I don't want to repeat what Commissioner Pernell has already stated. There are a few other points that I would like to make. First of all, whatever draft minutes or report that the body may have, we never received that as a Commission. So we are not privy to what you are privy to. We never actually had ANC full body meeting to approve whatever was drafted up and gave to the BZA.

However, at the meeting there were a lot of concerns about the parking situation. One of the recommendations was the hospital should maintain direct contact with now Commissioner Angela Cox, who represents that single member district, and also a representative from the church. We asked that the two parties would come together prior to this meeting to hash out their differences with regards to the covenant, the 1971 covenant and the 1991 BZA approval and any breeches thereof.

I am not exactly sure whether that meeting took place or not, but we wanted to make sure that all parties that were involved would come to a meeting of the minds with regards to whether or not the underground parking facility should be open immediately or could that parking, underground parking facility wait until after this body rendered a decision on this BZA application.

There is a lot of concerns in the community about the parking, the trash. We have met with the community. They expressed interest in having the hospital to do some vector control. There has been allegation that rats have proliferated since the hospital has moved in.

At the meeting, we concluded that with the covenants that were attached to the Zoning License Committee report, which

probably pretty outlined by Commissioner Pernell and myself, that the application could be approved. Since then we have heard some other concerns about the hospital breach of the 1991 contract and never living up to that agreement. So of course that would be a concern for the community with regards to whether the hospital will live up to any future agreements that they may enter into with the agreement and approved upon by this body.

So that's the issue that really needs to be addressed.

VICE CHAIR KING: You are Mr. Ferrell?

MR. FERRELL: Yes, ma'am.

VICE CHAIR KING: Gregory Ferrell?

MR. FERRELL: Yes, ma'am.

VICE CHAIR KING: So you were at the meeting of the committee?

MR. FERRELL: Yes, ma'am.

VICE CHAIR KING: Okay. The agreements with the hospital, are these agreements that MedLink inherited from predecessor hospitals or are they recent agreements with MedLink itself?

MR. FERRELL: From my understanding, the covenant that occurred in 1971 was actually inherited by MedLink. However, the 1991, I think it was variance approval for MedLink, for special exception, that was directly with MedLink and the community that was involved at that particular time.

MR. PERNELL: Madam Chair, if they had just wanted the increase of the beds from 130 to 162, it would have not been a problem. But the problem is that --

CHAIRPERSON CROSS: You should identify yourself for the record.

MR. PERNELL: I'm sorry.

CHAIRPERSON CROSS: So they will know who is speaking.

MR. PERNELL: Commissioner Daniel Pernell speaking again. If the issue was just the matter for special exceptions for the beds from 130 to 162, it would have not been a problem with the 6A Commission. But you are talking about parking, which they have an earlier agreement with the church which has to do with the conducive actions of the hospital, which is heavy traffic and as I mentioned before, trucks coming between the two buildings and that sort of thing. So that's what made it more serious.

CHAIRPERSON CROSS: Thank you very much.

Who is next?

Whereupon,

MARVIN FIELDS

was called as a witness, and after having first been duly sworn, was examined and testified as follows:

MR. FIELDS: Good afternoon. My name is Commissioner Marvin Fields. I reside at 604 12th Street, N.E.

I don't believe that we have had adequate time to look at all the circumstances. I didn't see anything across the ANC table until just before the holidays. My understanding is that this request was initiated in September. We never saw it as a whole body until December.

I have concerns about the underground parking

facility, the safety and condition of the garage, whether or not there's a need for fire inspection. Also, I had asked for a tour of the facility in question so we could have a pretty good idea of what we needed to make a decision on. We haven't heard of anything come towards us about the tour of the facility.

I do also have an understanding that there was supposed to be a prior negotiation with Father Downing from Dr. Shin. I don't believe that those two have had an opportunity to speak about whatever concerns were.

There are a lot of ongoing community issues and input regulating whatever the growth or whatever the continuation of whatever the hospital has intended to proceed with. Based on the fact that there are circumstances between the hospital and the rest of the community with regards to the issues that haven't been spoken about, I am having questions towards the integrity of the hospital in regards to the community relations or being a good neighbor.

CHAIRPERSON CROSS: Are you done?

MR. FIELDS: Yes, ma'am.

CHAIRPERSON CROSS: The advisory committee that Ms. Grigsby spoke about that meets every other month with people in the community, are you familiar with that body?

MR. FIELDS: The advisory body?

CHAIRPERSON CROSS: Mrs. Grigsby testified that there was an advisory entity that they had established that met with people in the community every month or so to discus issues like what we're talking about today. Are you familiar with it or do you know anything about it? Or does anyone sitting at that table for that matter

know anything about this?

MR. FIELDS: I am not familiar with that. My knowledge with this situation is as it occurred during the special meeting we had in December, December the 14th.

CHAIRPERSON CROSS: Have you had any relationship or communication or correspondence with the Applicant?

MR. FIELDS: Really only recently after --

CHAIRPERSON CROSS: I don't mean recently. I mean within the last seven years.

MR. FIELDS: No. I haven't.

CHAIRPERSON CROSS: But these concerns that you are expressing today, you did not communicate that to them prior to this time?

MR. FIELDS: Well the concerns that I have today are as a result of being in the midst of the community and doing my own personal surveys on how the community feels about the circumstances dealing with the --

CHAIRPERSON CROSS: So the notice of this hearing basically stimulated your coming forth to discuss and to testify what in fact the feeling of the community is?

MR. FIELDS: Yes.

MR. FERRELL: Gregory Ferrell, ANC Commissioner 6A-12. The problem that we had as a commission, because of course you know we are obligated to try to hold a meeting so that the community can voice their opinions and also the Applicant. The problem that we had was, and I believe the BZA sent the application to our office, we never received the application in a timely fashion.

The first that the majority of the Commissioners knew about the application was in November when we had an informal meeting with the hospital. At that particular time, there was no community people at that particular meeting. We felt the need that the community had to be involved with the ANC process so that we would be able to ascertain what the problems could be between the Applicant and the community. That didn't occur until December the 14th.

With regards to any advisory committee that the hospital had put together to air out community concerns, the ANC as a body or as a whole, and I have been in ANC 6A, this is my third term, I have never heard anything regarding meetings that the hospital has had with an advisory body.

We are basically having the right to speak because the church and other community members wanted to be heard. So we had the obligation to make sure that they were heard in an open forum. I mean that's the function of the ANC. The ANC's function is to make sure that we have meetings so that the community and prospective business people, whatever concerns may arise we addressed.

So no, we haven't had any direct communications with an advisory panel, a lot of direct communications from the church, or did we have any prior knowledge that the hospital was contemplating seeking a special exception or variance, we didn't have any knowledge of that.

I mean we had to actually rush this process through because we didn't have knowledge that the BZA had transmitted the

copy of the application to our office.

MS. PRUITT-WILLIAMS: Excuse me, Madam Chair. I would just like to correct for the record. This office doesn't actually send the application out to individual ANCs. We notice them with a public hearing notice, indicating that there has been an application submitted to our office for a certain type of zoning relief. Our files are open to the public, but we don't have the resources to send the actual application that comes in to each ANC.

So our normal process, and it has been this way for a very long time --

MR. PERNELL: But you do send the ANC a notice.

MS. PRUITT-WILLIAMS: Right. That's what I am saying.

MR. PERNELL: The problem with that is that we didn't receive the notice. It disappeared.

MR. FERRELL: It disappeared. I am not doubting your word that it was sent. I am just saying that we never received it.

MR. PERNELL: Right.

MR. FERRELL: We didn't receive it. It was probably sent. I'm not going to doubt your word. I am just saying that the body of ANCs never received the notice.

MS. PRUITT-WILLIAMS: Sometimes we receive them back and then try to contact you, but we didn't in this case.

MR. PERNELL: That's what I witnessed when I came down here a week after that. I checked the records and there was, we had a problem. I remember one of the members of the representative of the MedLink hospital saying on the November 19th meeting that

they had a previous date to hearing, but then there was not -- I think Ms. Linda Cross canceled all the hearing dates until further notice or something like that. Then you all gave the MedLink hospital a hearing date for January 6. That is the letter I received from Linda Cropp's office.

MS. PRUITT-WILLIAMS: Well, the Council has no control over our hearings.

MR. PERNELL: Maybe she was just making an announcement. That's the way I perceived it to be.

MS. PRUITT-WILLIAMS: If you could, please, for the record, leave us your address so that we can make sure that you receive --

MR. PERNELL: Absolutely. As a matter of fact that was one of my meetings with Kathleen Patterson, who was at that time chairman of the operations, ANC operations. I said that one of the problems that the individual single member, ANCs were not being properly notified, which is required by the D.C. Charter of 1974, have 30 days of notice of such an application.

MS. PRUITT-WILLIAMS: Mr. Pernell, we don't notice individual SMBs.

MR. PERNELL: Right. The chair.

MS. PRUITT-WILLIAMS: Right.

MR. PERNELL: The chair. I'm sorry.

MS. PRUITT-WILLIAMS: Then it's the chair's responsibility to --

MR. PERNELL: Absolutely. What we were trying to do is to make an amendment that the right of the individual ANC who

has great weight in this single member district be notified, whereas a problem that we had with the Commissioners in the past year or so of defunct chairs and defunct commissions.

MR. FERRELL: Also, I would just like to state for the record that members of the community, once we met with them, they were under the impression originally that this meeting was scheduled to take place some time in February, I believe.

CHAIRPERSON CROSS: Wasn't the building, the hospital post it? Didn't they have those big orange posters that notified everyone that there was going to be a hearing regarding this particular building? Did you all not see that?

MR. FERRELL: Let's say that the hospital posted the orange sign notice notifying the community of a hearing. But from what I understand from members of the community, that it was posted relatively late in December.

VICE CHAIR KING: It has to be posted, what, 15 days in advance. So late in December would be --

MS. PRUITT-WILLIAMS: We have the affidavit of posting. The affidavit of posting is in the file.

CHAIRPERSON CROSS: Here it is right here. It was posted on the 22nd of December.

VICE CHAIR KING: So it's 15 days before the hearing, if that's --

Whereupon,

ANGELA COX

was called as a witness, and after having first been duly sworn, was examined and testified as follows:

MS. COX: If I may, good afternoon. My name is Angela Cox. I live at 336 10th Street. The hospital is indeed in my single member district. I think we are getting away from the details at the end here, and I want to get back to that.

In speaking with both the church and various community leaders, community activists, they are concerned. I am going to be honest and say that the number one concern is the fact that the hospital and the church are having such problems. Be it right, be it wrong, any business or institution that is up against a church, they are more than likely going to look like the bad guys. That's how it's come across to the community. That's how I see it.

The other issue with the trash and other things like that, that's important. That's very important. I have spoken with Ms. Grigsby. She has been more than accommodating to talk with me, to answer all of my questions, and also Dr. Shin. They have always been there when we have had questions of any sort, which has been helpful.

There was supposed to be a meeting between Father Downing of the church and members at the hospital, and then I was supposed to be notified of that. I think that a phone call was made. No meeting was held. I'm not sure which side defaulted that or if it's just the busy holiday schedule.

I do know that the primary concern is parking. There are a lot of issues surrounding that. I'm not -- you know, there are a lot of different variables in there to consider. I am not here to say which side I'm on. I am just here to say that the community is unhappy that there are these issues going on. Whether or not the

hospital comes before the Board, I think it's very important to maintain good community contact. That's very important. Although they have tried to do that, for some reason it has not happened. That is my concern. That is my concern.

I do want to say again that they have been helpful and they have been helpful in allowing the ANC to continue meeting there until we find another meeting place. So that's all I have.

CHAIRPERSON CROSS: Okay. Thank you.

MS. COX: I would also like to reserve the right to speak following any other.

CHAIRPERSON CROSS: That is not typically done. This is the segment wherein you have the opportunity to speak.

MS. COX: Only once? I am saying after other individuals.

CHAIRPERSON CROSS: No. You have to use this forum at this time to voice whatever you have to say.

MS. COX: Well I am saying that the people seated here now have spoken at different points during this segment. I am saying if there are any other activists who would like to speak during this segment.

CHAIRPERSON CROSS: Oh, during this segment.

MS. PRUITT-WILLIAMS: This segment is only for ANC people.

CHAIRPERSON CROSS: You mean this segment now? This is just ANC.

MS. COX: I apologize.

CHAIRPERSON CROSS: You are speaking. You

are having the last say. So if you have something additional to say, additional that you would like to say, you may do that at this time.

MS. COX: No, there is not. There is nothing else. Thank you.

CHAIRPERSON CROSS: Okay.

MR. PERNELL: Daniel Pernell, Commissioner of 6A-02. I would like to say two things for the record and very briefly. I know we have other people waiting. One of the things that Ms. Grigsby, who I have been knowing for a long time, they have had several functions at the hospital such as Christmas parties and whatever functions. None of the ANCs with the exception of Karen Wirt, was notified of those meetings and such and so on, and least of all an advisory concern parking there.

Also the second concern is that we talked directly to Dr. Peter Shin, who as I said, conversed with Commissioner Gregory Ferrell and myself concerning the extension of the ANC there until we find another place. He said he would work with us. Now we're getting letters from the lawyer, Mr. John Lunsford, concerning a move on the eighth, which is the day after our election and the first meeting of new elected ANC commissioners. I think that's unfair the way they are treating us. This whole process in getting approval from the ANC was coerced by certain commissioners in there.

MS. PRUITT-WILLIAMS: Excuse me, Mr. Pernell, while I understand your concern, that is an internal working of your ANC. We really need to look at how it links directly.

MR. PERNELL: It also bears on the fact that even though Ms. Angela Cox is new to the Commission, she does not know

all the backlash of why we are here today. Some of those, that Ms. Grigsby is not the communications person at the hospital between the hospital and the Commission. Because only certain commissioners were notified of certain meetings.

MS. PRUITT-WILLIAMS: Okay. So we understand that not everybody was notified.

MR. PERNELL: Right.

MS. PRUITT-WILLIAMS: Of the same amount of equal information.

MR. PERNELL: If they are going to be a good neighbor to the church and the commission, then they should have done that. It was not done so. I just want to make that clear for the record.

MS. PRUITT-WILLIAMS: Thank you.

CHAIRPERSON CROSS: Okay. Questions?

MR. PERNELL: One more thing. Commissioner Fields brought it up, and I was reading through my notes so fast. The fourth attachment lists a tour of the community of the ANC commissioners to see the full facility of the MedLink Hospital. It has not been done as long as we have been there.

CHAIRPERSON CROSS: Okay. Thank you. Is there any cross examination by the Applicant, please?

MR. CONNER: First of all I would just like to ask all four of the witnesses, weren't you all --

MR. PERNELL: We are not witnesses. We are representatives of the State of Washington D.C.

MR. CONNER: I would like to ask all of the

representatives at the table here, weren't you all present at the ANC meeting that decided to adopt and ratify this application?

MR. PERNELL: What date?

MR. CONNER: On the December 14th meeting.

MR. PERNELL: Okay. We were there, but let me tell you. That was just a subcommittee.

MR. CONNER: That's all I wanted to know.

MR. PERNELL: No, no, no. You need the facts on that. That was just a subcommittee. The requirements by law to the BZA that it must be approved by the body. We did not have a quorum to have a full meeting for the body to meet and vote. So therefore, this is just a recommendation that we approved.

MR. CONNER: I understand, but you were all present at that meeting.

MR. PERNELL: Yes.

MR. CONNER: Mr. Pernell, regarding your testimony on the trucks and the entry into the facility.

MR. PERNELL: Yes.

MR. CONNER: That wasn't an ANC concern, was it?

MR. PERNELL: Yes, it is. The law requires when a constituent makes a complaint, it's the right of the ANC to see both sides of it, the side of the hospital and the side of the constituent.

MR. CONNER: Did someone from the ANC raise that at an ANC meeting? Wasn't it a fact that that was your personal concern?

MR. PERNELL: No. Why would it be my personal concern, sir?

MR. CONNER: I am just asking you a question.

MR. PERNELL: Well why would it be my personal concern? What I did is that I knew there was a problem of traffic between the two buildings. I noticed a truck at the time I was investigating it that a truck came there and shook the entire area.

MR. CONNER: So that was your own personal observation.

MR. PERNELL: It is not my personal. It was a part of my report as an observation of the traffic problems that the church is having with the MedLink hospital.

MR. CONNER: Mr. Pernell, isn't it also a fact that you were the one that set January 8th as a date to leave the space that the hospital is permitting --

MR. PERNELL: I had a conversation on December 24th with Mr. Lunsford, John Lunsford concerning. I did agree with him, but that agreement is not binding until I take it to the body, which was January 7th, which is tomorrow.

MR. CONNER: Mr. Ferrell, a couple questions. Isn't it true that at the ANC meeting the only concerns raised regarding the parking is really in relation to the church's use?

MR. FERRELL: No.

MR. CONNER: Isn't it a fact that the 1991 agreement you referred to during your testimony was not with the applicant but with MedLantic?

MR. FERRELL: I am not exactly sure.

MR. CONNER: The parking agreement between the church and --

MR. FERRELL: The 1971 agreement?

MR. CONNER: Yes.

MR. FERRELL: You said --

MR. CONNER: I'm sorry, yes, it's the 1991 parking agreement with the church. Isn't that between the church and MedLantic and not this Applicant?

MR. FERRELL: I am not exactly sure if this Applicant is a subsidiary to MedLantic or what. I just know that there was an agreement in 1991 that the community was concerned about that was breached from the community standpoint.

MR. CONNER: I don't have any further questions.

CHAIRPERSON CROSS: Thank you. Any further cross examination? Thank you very much.

We'll now have a person to the parties in support of this Application. Please come forward.

MR. CONNER: Excuse me, Madam Chair. If I may, there is one witness who would like to testify on behalf of the Applicant. She has to leave at 2:30. I request that she be heard at this time.

CHAIRPERSON CROSS: Is she in support?

MR. CONNER: Yes.

CHAIRPERSON CROSS: This is the section for that. Yes, anyone --

MR. CONNER: Just as long as she could go first.

CHAIRPERSON CROSS: Any parties who are in support, please come forward at this time. Any person or parties in support. Just one? This is the person you just referred to? Okay,

fine.

MS. PRUITT-WILLIAMS: Have you been sworn in?

MS. WIRT: Yes, I have.

Whereupon,

KAREN WIRT

was called as a witness, and after having first been duly sworn, was examined and testified as follows:

MS. WIRT: My name is Karen Wirt. I live at 234 E Street, N.E. in Washington, D.C. I am a former ANC Commissioner. I have served with the people that you saw on this table just a few minutes ago. I resigned as of the end of the year.

I would like to make a couple of simple statements to clarify the community from my perspective, the community concern. First of all, I have a feeling that my fellow commissioners, as much as I respect them, don't really want this hospital to grow and to continue to serve the public with the number of attachments they are putting onto their understanding of the situation.

At the December 14th meeting, there was a vote held among the Commissioners who were there. The vote was unanimous in support of the hospital. I have the tape of that meeting. I would be glad to submit it to this body if you wanted to have it. I can submit it later.

AUDIENCE MEMBER: I submit that Ms. Wirt was not at that meeting.

CHAIRPERSON CROSS: You can not speak from the floor.

MS. WIRT: I was not at the meeting. That is true.

CHAIRPERSON CROSS: And you, ma'am, you should not, you are not allowed to respond to a statement or question from the floor. So just continue with your testimony. Thank you.

MS. WIRT: Again, I have the tape. I was not at the meeting. I was acting secretary, executive secretary at the time. I was given the tape by the vice president. I took the minutes and transcribed them and gave them back to the Commission. So there is a record of a vote. It was unanimous. I just wanted to clear that.

Second of all, there were questions raised about an advisory community group that served the hospital. Yes, I was a member of that group. I have been for the past probably year and a half. The activities I participated in were very simple ones. On two different Christmases, I was asked to judge the Christmas decorations in the hospital. We participated in planning activities, outreach, wellness, Jazzercise, that kind of thing. We had nothing to do with parking, nothing to do with trash. These items were never discussed. Simply a body of people that got together and worked on projects to help the hospital become better known in the community. That's the second point I wanted to make.

Thirdly, I bring with me today a letter from the former chair of ANC 6A, Marshall Williams, who couldn't be here today. I brought copies. I won't take up your time by reading all of it. I will submit it for the record. But I would like to read two paragraphs, if possible, pertaining to the community-hospital relationship. I am speaking in the words of Marshall Williams here, who served as chair of ANC for two terms, was chair of the Zoning Committee. He says the following:

"In my experience as dealing with various entities that have made applications for adjustment to the certificates of occupancy, licensing and so on, they are often purely on personal company interests. In the case of MedLink, I have found them while serving as a profitable enterprise, to be far more willing to listen to the concerns of the neighbors and the residents in the surrounding area and to make adjustments needed in the course of their business to address the concerns of their neighbors."

"MedLink has attempted to respond to the once needs and desires of the neighbors. However, certain elements in the neighborhood have failed to give them credit for their contributions to the quality of life in the immediate neighborhood. There have been several occasions when these elements in the neighborhood have attempted to thwart adjustment or zoning considerations of MedLink. More often than not, the basis for this lays in agreements made with previous owners of the site. MedLink has, in my experience, been willing to accommodate these demands as much as feasible. However, to make MedLink adhere to and be accountable for agreements between neighbors and former owners is both impractical and self serving of the elements in the neighborhood."

"I would like to draw your attention" -- last paragraph. "I would like to draw your attention to how they, MedLink, have made contributions to their neighborhood by both the physical aspects, new plantings, signage, and improvements in the building, and contributing to the health and welfare of the neighbors. These actions were taken by MedLink without concerns for the costs for profit margins."

I guess the third thing I would like to say is that to kind

of reiterate what Marshall said, I think the hospital has done its best to reach out to the community, but the community has not really responded in kind. I don't think the community has been understanding of what the hospital is trying to do. I don't know whether it's a communication gap or whatever, but I would like my former fellow Commissioners to consider the alternative.

If MedLink is not allowed to grow and to continue to serve the community, and if MedLink dies and the building becomes derelict, the alternative is a derelict, empty building. I think it behooves them to work with the hospital and to allow them to grow and to continue to serve the community. That's all I have to say.

CHAIRPERSON CROSS: Thank you. Ms. King?

VICE CHAIR KING: No questions.

CHAIRPERSON CROSS: Persons and parties in opposition to this application, please come forward. There's only one person? Come forward.

Whereupon,

RONALD NELSON

was called as a witness, and after having first been duly sworn, was examined and testified as follows:

MR. NELSON: My name is Ronald Nelson. I am just a guy that lives down the street, 10th and D, 337 10th Street. I am not -- I went to my first ANC meeting just a few weeks ago.

CHAIRPERSON CROSS: Your name is Ron Nelson?

MR. NELSON: Ronald Nelson. In the couple years that I have lived around MedLink, I have never once seen a security person. Never once have I seen anybody pick up trash. Never have I

heard anything about a community advisory meeting, Jazzercise classes. It's not in the Hill rag. It's not on the street. There are no posters. Never have I seen it in the neighborhood newsletter. This was all news to me.

Peculiar coming from a -- that I walk past four times a week. St. James has been on the Hill for 20 years. Father Downing has been on the Hill for 100 years. Father Downing has been there for almost 20 years. He knows the neighborhood. St. James is a diverse and open community, welcoming anybody in its doors for worship or in this case, relative to this case, to meet in our halls, heated, lit, cooled in the summertime, at our expense. That includes Narcotics Anonymous, Alcoholics Anonymous, various courses from the community. They all meet at St. James for free.

When the MedLink people make comments about St. James people being there all nights a week, that is probably true. They are not our parishioners but if for this case for the case involved, they will be our parishioners if indeed we'll embrace people from Narcotics Anonymous and Alcoholics Anonymous and call them "our people." They are indeed St. James people using that parking lot.

We are interested in being a good neighbor. We have been there for a long time. I would invite MedLink to put me on their community advisory committee. They couldn't figure out whether or not they had four or six, but I would like to be part of that. I am not interested in judging Christmas decorations. I am interested in working between, as a liaison between the community and MedLink.

I would like to submit that to the record, that I would be available to meet with them and discuss these issues.

CHAIRPERSON CROSS: Okay. Are you done?

MR. NELSON: Yes.

CHAIRPERSON CROSS: Now please tell me, just for my own clarity, you said that you were just a neighbor that lived down the street, but at the same time, you do have some link to the church?

MR. NELSON: Yes. I'm a member. I'm sorry, yes.

CHAIRPERSON CROSS: Oh, okay. All right. You started saying "we" in regards to the church, and I didn't --

MR. NELSON: I'm sorry.

CHAIRPERSON CROSS: Thank you. Next?

Ms. King, did you have any questions?

VICE CHAIR KING: No.

Whereupon,

WILLIAM SILAGI

was called as a witness, and after having first been duly sworn, was examined and testified as follows:

MR. SILAGI: My name is William Silagi. I live at 635 Acker Place, N.E., which is in the Stanton Park neighborhood.

There are a couple issues I am concerned about basically having to do with the 1991 special exception case 15542. One of them has to do with the number of beds that was approved and that the hospital may have operated. That special exception gave them approval for 130 beds. In a community meeting on December 19, 1997, the hospital stated that they had 145 nursing home beds as well as 35 hospital beds. I raised this issue at the ANC meeting on December 14th and was told they had reduced the number to

apparently the current 130.

I don't know if I'm missing something here or not. If those 15 beds were some other type of beds or what, but I guess I would be concerned if they had at some point exceeded the number that was allowed.

CHAIRPERSON CROSS: You are saying that the decision in July 1991 stated that they had 130?

MR. SILAGI: Right.

CHAIRPERSON CROSS: And then what?

MR. SILAGI: At a meeting December 19, 1997, they stated they had 145 nursing beds.

CHAIRPERSON CROSS: They said?

MR. SILAGI: Yes.

CHAIRPERSON CROSS: Okay.

MR. SILAGI: When I asked the hospital at the ANC meeting this December of 1998, they said they had reduced the number to 130. So apparently they are at 130 now.

VICE CHAIR KING: I don't see anything in the order, the BZA order that specifies the number of beds.

MS. PRUITT-WILLIAMS: There is a modification and the original order in your package.

VICE CHAIR KING: One hundred and thirty max, okay.

MR. SILAGI: I don't remember that I have all the facts on that. I just raise that as an issue.

I believe there was a statement made by the hospital's lawyer that these agreements with predecessor

organizations, it's my understanding is that they would be legally binding on the purchaser of the hospital. Again, I don't know. That's not my area of expertise.

The next issue has to do with the parking, and that is, as was stated earlier, the 1991 BZA approval required them to open another underground garage and have 176 spaces. They have been in violation of that for seven years. Ms. Grigsby said that they are being a good neighbor by extending the parking. I believe she meant in terms of increasing the number. This is an obligation that's seven years out of date.

It's been stated earlier in the testimony that well the parking garage was there but not open. It's true that it physically existed, but first of all, it was shut and they couldn't just open it. I don't believe that they had all the DC approvals that they needed to open it.

In part of this process, that they had to go through and get some additional approvals of the D.C. Government to open it. I believe a year ago that an issue came up that they needed to do some repair work on it. So it wasn't like it was just they could just open the door if on that day there happened to be a parking problem or something.

Ms. Grigsby I believe also stated that they weren't aware that their neighbors were concerned about parking before this December 14th ANC meeting and that there hadn't been a problem because they hadn't been fully occupied, they didn't see a need. I think that the neighborhood has raised concerns about parking. A year ago, they were engaged in negotiations with the D.C. Government to lease space to D.C. There were a number of

community meetings that were held. Parking was a big issue with everyone at those meetings. It came up multiple times. That's why some of the facts I have from December 1997, because we were talking then.

So I think that it has been raised. They seem to still feel it's not a problem. I think Reverend Downing's letter from St. James is that he feels that it is a crunch even though the hospital is not fully utilized now.

They seem to be sort of ignoring community concerns and then papering over them, you know, this issue, the way they have sort of cast this community down too, is putting them in a better light than is the actual fact.

I would say I'm actually not opposed to the increase of 32 beds. I think that's a wise use of the property. If it were any entity other than the Capital Hill Group, I would whole heartedly support it. I am just concerned about how they have treated the community in the past, and what seems to be their lax attitude in terms of obligations like this 1991 agreement.

I don't know what can be done to monitor compliance of any conditions that the Board may choose to require in this case. I just wanted to bring some concerns about their previous lack of compliance to the Board's attention. I don't feel that they have been a good neighbor or good corporate citizen as they do. But I would agree with Karen Wirt, that I wouldn't want to see that facility closed.

But I note that in early 1998, the church requested a dialogue at a public meeting regarding this leasing space to D.C. I can't really address that, but I have been aware of no such dialogue.

This wasn't one of my points so I just wanted to mention it as an aside, the issue of the Louise, which is that vacant property that's falling down across the street that was mentioned in the letter. Mr. Lunsford stated that they have engineers looking at it.

They came several years ago, and I don't know if it was 1993 or 1994, something like that, to apply to demolish it. They had an engineering report then. I have seen no evidence that they have had an engineer or anyone else look at it or do anything since then, but I think that's an aside.

I guess my concerns would be their work with the community and whether they have fully complied with all the previous requirements.

CHAIRPERSON CROSS: Did you provide staff with a copy of your testimony?

MR. SILAGI: No. I'm sorry, I did not.

CHAIRPERSON CROSS: Do you have one?

MR. SILAGI: I don't have any written.

CHAIRPERSON CROSS: Did you, Mr. Nelson?

MR. NELSON: No. I do not. I do have -- Jane Weaver, who was here, has a statement. She had to leave because of parking problems and she has a statement to submit.

CHAIRPERSON CROSS: All right. You have it?

MR. NELSON: She'll provide it.

CHAIRPERSON CROSS: Okay. All right. Thank you very much.

Did the Applicant's attorney have any cross? No?

MR. CONNER: I have no cross. Thank you.

CHAIRPERSON CROSS: Thank you very much. Closing remarks by the Applicant?

VICE CHAIR KING: Weren't there supposed to be some other people out in the hall who wanted to testify?

CHAIRPERSON CROSS: If they had come in during that segment and they haven't come in. I don't know if someone went to get them, but --

MR. CONNER: If I may, Madam Chair, I just have some brief redirect.

Ms. McCarthy, could you review the efforts, to discuss the issues regarding the special exception?

MS. McCARTHY: I think it's a little confusing today, so I wanted to be sure that the Board understood that on November 8, we initiated a meeting with the ANC to discuss the special exception, even though the hearing had not then been scheduled, just to be sure that the ANC's Planning and Land Use Committee had proper advance notice of what was being planned.

VICE CHAIR KING: And when was that?

MS. McCARTHY: That was November 8. The Committee had a quorum then and there were ANC members, as well as the non-ANC community members, which are members of that committee.

There was a generally favorable discussion of the proposal, but the ANC -- the committee felt at that time that because they had not gotten, the hearing had not been formally scheduled and because the ANC was about to add a new single member commissioner to represent this particular area because that seat was

vacant, that they would not vote at that time and would properly notice a follow-up meeting.

At a follow-up meeting on December 3, I was not in attendance, but Ms. Grigsby and Mr. Lunsford were there. The issue was discussed briefly. It was decided to hold a further follow-up meeting on December 14th. We came back again. We presented the issues. We answered all the questions. That was, as I indicated before in my testimony, the first time we ever heard of this parking problem at St. James. So we agreed that the hospital would get in touch with St. James for a follow-up meeting about parking. I'll let Ms. Grigsby talk about that further.

So we have certainly reached out in all of those instances to meet with the ANC. We have given them we thought, plenty of notice to discuss these issues. On the 14th as the letter that you have before you from the ANC indicates, all of the people who have testified so far today and all of the other attendees that are listed at that meeting in the minutes that you have, voted unanimously to support the special exception for MedLink.

The conditions were that we give a tour of the facility after it was over, that we meet with the church to discuss parking issues, and that we continue to deal with trash issues around the facility.

So it's surprising to hear the ANC portray this now in what comes out sounding in a negative light, because that certainly was not the tone at any of the ANC meetings at which this was discussed.

In addition to those efforts to make sure that the ANC

was aware, Ms. Grigsby also distributed a letter. Maybe I should let her deal with that more specifically.

MS. GRIGSBY: Linda Grigsby, MedLink Hospital, 700 Constitution Avenue, N.E.

I did send out three letters, one to Father Downing at St. James Church, giving him a brief update on our programs that we were having at the hospital, and also our application for the special exception. That was done the first of December. So it was sent to St. James Church, Imani Temple, which is also at Stanton Park, and also to the Stanton Park Civic Association, and with copies to Mrs. Ambrose of the letters that I sent out.

Also not in this special exception was in there, but we also do a community newsletter. That community newsletter did go out. It is inserted in the Washington Post. It was done in November with our wellness programs, our Jazzercize and all of that. This was sent out. It was inserted in the Washington Post for those who subscribe to the Washington Post on a daily basis. It was done for zip codes 20001, 20002 and 20003. Those who do not subscribe to the Washington Post, they mailed it out. So everybody should have gotten copies.

Now there are some people we found that didn't get copies of this newsletter. We have been trying to work with the Washington Post to try to figure out why they did not get that. But we got a good response to the Jazzercise from that, and also for those in the community who wanted to participate in the brown bag lunch series. So there is a copy of the community newsletter.

We are also offering free vaccines, flu vaccines at the

same time.

CHAIRPERSON CROSS: Will you give a copy of that to staff, please?

MS. GRIGSBY: Yes. I will. That goes in there. That went out in November.

BOARD MEMBER GILREATH: Does your company or firm or corporation gotten in touch with the church, with Father Downing?

MS. GRIGSBY: Yes. After the December 14th meeting, I talked with our CEO, Mr. Ron Yates. I asked Mr. Yates to get in touch with Father Downing. He has called Father Downing. They have sort of played telephone tag with each other. But I spoke with Mr. Yates before leaving here today. He said he had not heard from him in this week.

BOARD MEMBER GILREATH: Well do you know if either Father Downing or some executive administering this church has gotten in touch with your company previously and said "Hey, we've got parking problems, we want to talk to you." Has the church made any attempt whatsoever to get in touch with your firm complaining about the parking?

MS. GRIGSBY: There were two occasions that you may say that. One at the December 14th meeting of 1998. Also it was brought up, as Mr. Silagi mentioned, in last winter at community meetings that we held, that there was concern about parking. At that time, both myself, Mr. Lunsford, and Dr. Shin expressed our concern about parking, and we would do the best, trying to remedy those problems. But he never said that we had a problem, that he had a

problem per se with us as parking. He just said parking was difficult in the general area.

Also I did meet with Commander Coward of the Fifth District as it relates to parking of the churches in our area and trying to give some relief there.

BOARD MEMBER GILREATH: It seems to me if this had been kind of a pestering problem that you heard about this past winter, your outreach program or something, you would have gotten called up to the Father or some minister official over there and say let's sit down. The Father will not meet with you? Why hasn't there been some kind of communication, say let's sit down and see if we can get this ironed out?

MS. GRIGSBY: He didn't at that time in January or February when we had the community meeting, he didn't say that there was a meeting per se with us and parking. It was that they were expressing concern about whether or not we were going to lease our property to some people who would compound the parking problem in the community. It wasn't that we were that.

We tried very hard, and we also mentioned then, we tried very hard to make sure that our staff people parked in our parking lot. That was one of the reasons why the security guards had gone out, and I explained that, gone out and given them warnings, because we wanted to make sure that our staff people have parking stickers to make sure that we know who is parking.

We have found that people from the community, not people who actually live in the community, some who live in the community in one of the apartment buildings, they use our parking lots

at night. Also a couple of the office buildings nearby were parking there. We were trying to make sure that our staff got first crack at those parking spaces.

BOARD MEMBER GILREATH: It seems like there is almost some confusion, a lot of misunderstanding. I'm not sure that relates to land use. It seems maybe your company and the ANCs need to get together, however this issue we decide on, sit down and see if you can thrash out some of these misunderstandings.

Certainly speaking for myself, I will have to look at this consideration mainly as a land use matter, which will remain my focus. But I would hope that whatever decision we reach, that maybe you do increase or intensify your outreach program, because I think there's a lot of misunderstanding here between the ANCs and your company.

I think what you are doing is a very benign thing. You are not putting an incinerator there. You are not damaging in general. As the populations age, we probably need more of this. So in general terms, I think it's a good thing you are doing, but anyway, to this point. I will render a judgement later. Thank you.

MR. CONNER: I just had one other question for Ms. Grigsby. Were you at the meeting of the ANC on November 5?

MS. GRIGSBY: I have been to -- yes.

MR. CONNER: Do you have the minutes of that meeting which address --

MS. GRIGSBY: Yes.

MR. CONNER: The vacating of the ANC's office at the hospital?

MS. GRIGSBY: Yes.

MR. CONNER: Could you tell the Board what the vote was?

MS. GRIGSBY: "Commissioner Barnes moved and Commissioner Wirt seconded a motion to depart from MedLink hospital by December 31st, 1998, due to MedLink's need for return of space made available to the ANC."

"The vote was six ayes. One abstention. That was Commissioner Moining. Commissioners were departed at 7:30 p.m. Commissioner Barnes stated that he would work with the new chairperson during the transition period."

So that was the monthly meeting November 5. But that was the minutes that were read at that December meeting.

MR. CONNER: So in effect, the hospital extended the time that the ANC could use the space?

MS. GRIGSBY: We have extended it several times. They could not get a quorum for several months. That was one reason why it was extended.

MR. CONNER: Thank you. I just have a question for Mr. Lunsford. Mr. Silagi suggested that you were in violation of the 1991 BZA order with regard to the number of patient beds at the facility.

Could you explain that comment, please?

MR. LUNSFORD: Mr. Silagi is actually correct in that assertion. When we took the 22 additional patients from D.C. Village on an emergency basis, we did in fact unknowingly exceed our zoning process. When we discovered that, we took steps to reduce it back down to the acceptable level.

The issue has to do with once a resident is in a nursing home, they have a right to remain there. So in order to get back down, it took us some time to work our way back down to the 130 level of authorization.

He is correct. There was a time in which we were in violation of zoning. The city of was aware of that and worked with us to help us get back into conformance.

MR. CONNER: Thank you. I have one other question for Ms. McCarthy.

You suggested that the parking facility was not used because it wasn't needed. Could you elaborate on that?

MS. McCARTHY: As I pointed out before in my testimony, and despite the recollection of one of the ANC Commissioners, to my best recollection, at that meeting on December 14th, the only issue that was raised at that meeting, at the meeting on November 8 with regard to parking, there was no issue raised with regard to a shortage of parking on November 8. The only issue that was raised with regard to parking at the December 14th meeting was the letter that had been received from Father Downing with regard to the church's parking.

There was never any other suggestion that the employees or visitors to the hospital had inadequate amounts of parking on-site, and therefore were parking in the neighborhood or parking places that they should not have been, displacing residents who otherwise would have been able to park there.

The reason that I think we can be relatively certain that the hospital has not been causing parking problems by the fact

that they have not technically been in compliance with that 176 parking space allotment that was stated in the 1991 order, was as Ms. Grigsby said, all the hospital's employees have stickers readily identifying their cars as employees of the hospital.

So you can be certain, I mean you know as BZA Commissioners the number of times you hear about parking problems. If those employees with the readily identifiable stickers had been parking in the neighborhood, they certainly would have been reported to the hospital and complaints would have been made. That has not been the case.

But also it is important to note that virtually all of the block faces around the hospital have residential parking permit restrictions on them. The hospital provides free parking to its employees and visitors. So there is no reason why those facilities on the site of the hospital would not be being used as opposed to any neighboring facilities. There certainly would be a reason why, if they were using streets nearby, the hospital would have heard complaints about that, which has not been the case up until this point. I just wanted to explain that.

MR. CONNER: I just have one final question for Ms. Grigsby. Could you tell us how often the security patrols the exterior of the hospital?

MS. GRIGSBY: The security, we have a security system within the hospital. It's not gigantic and they don't carry guns or anything like that. But they do sweep the perimeter of our property every hour and a half. They also monitor when those of us, those, not myself though because I use public transportation, those who have

cars who park on the parking lots, they are escorted to the parking lots, the front and the back.

At the December 14th meeting of the ANC, I asked the security to pay particular attention to the 8th Street perimeter of the building to make sure that we were in compliance. Also to ensure the fact that the parking lot was made available in the back lots to the church.

MR. CONNER: Okay. I have no further questions. I would just say that in conclusion, based on the testimony and the evidence that's been presented to the Board today, it's clear that the Applicant's request for a special exception to increase its beds at the nursing facility does comply with the pertinent zoning regulations.

The Applicant's request complies with section 3108, since its increase is in harmony with the District's map and zoning regulations, and increase in beds is not likely to adversely affect any of the neighboring property. In fact, based on the testimony, the hospital has been a good neighbor to the surrounding community. It's made great efforts to communicate with the members of the community in applying for this comparatively minor adjustment to its operations.

It has testified or its representatives have testified that it will open the additional underground parking, bringing the spaces up to a total of 276. The underground parking garage was not needed in the past, as Ms. McCarthy has testified. Any warning notices that were issued to those parking in the parking lots were really intended to keep out the general public. They were not intended to scare away any of St. James' parishioners who were using the parking lots.

The hospital is or the Applicant is also attending to the abandoned row house that was mentioned earlier. The Applicant, as we have heard, does allow St. James parishioners to park in its lots in accordance with its agreement with the church, and it has continued and will continue to contact Father Downing and representatives of the church to address those or any concerns that the church might have.

In short, the hospital does not generate any parking problems in the neighborhood. It's really helping its neighbors with any parking issues because it allows its neighbors to use its parking facilities.

Finally, the Applicant has reached out to St. James Church to talk about, well I already mentioned that, to talk about parking in general.

The evidence thus presented today also demonstrates that the Applicant does meet the criteria at section 359 of the zoning regulations. Accordingly at this time, Applicant respectfully requests that the Board grant its application for a special exception and that the Board issue a bench decision in this matter. Thank you.

CHAIRPERSON CROSS: Before you go. At issue is the order that has not been complied with in regard to the underground parking. I fail to understand how you could after having received the order, decided not to comply with it based on what you later determined was a lack of need, which within itself obviously it's problematic because from the testimony we've heard here today, parking is a problem. That's one thing.

Secondly, I have heard you say that two or three

times that you will. But the fact of the matter is, the tickish part of this is that the people who are testifying against, in opposition to this application, are irritated because it has not been done. That goes to the gist of this particular, the problem with this particular case. We would be hard put I think, I don't know how other Board members and they'll express their views, to approve another order when the other order, the last order, has not yet been complied with.

MR. CONNER: Well, Madam Chair, I would only suggest that the testimony shows that they are going to become in compliance with that order. As to the parking issues, that's really not an issue that's covered under the zoning regulations. That is 35 --

VICE CHAIR KING: It is covered under our order of 1991. It is specified clearly.

MS. PRUITT-WILLIAMS: It is a compliance issue. It's something we can't enforce. It's really a DCRA issue of complying with the order because they are the people who enforce compliance. But it becomes a problem when it comes back to you when they have not done so.

VICE CHAIR KING: The Chairperson's question is very germane. They are coming back to us to ask for an amendment to their order. They say they are going to comply with the original order, but they haven't done so.

Why haven't you done so? Has it still not been inspected and approved to be opened?

MR. LUNSFORD: It has been inspected. It is approved. It is ready to be opened.

VICE CHAIR KING: And when will it be opened?

MR. LUNSFORD: It is capable of being opened at any time. Our goal certainly is to open it prior to the implementation of any increase in the number of beds.

VICE CHAIR KING: I mean your goal is -- you mean your goal is to comply with the 1991 order and here it is only 1999? Don't rush.

(Laughter.)

MR. LUNSFORD: Let me say this. We don't mean to be in disrespect or in disobedience to that order. The development of the nursing home started with 35 beds back in 1992. That was all that was operating. There has been a suggestion that there was in fact some issues that had to be addressed with respect to the underground garage in order to get the approval to open it. At the level of 35 beds, and you must remember, this order was issued under a different ownership, different management, under MedLantic. So that we were not initially privy to the whole process.

There has been some neglect. There is no question about it. The order on its face is very clear. It hasn't been complied with. We are capable of complying with it. You are certainly capable of saying we can not increase bed number one until we do comply with it. We are willing to comply with it.

I can pound my chest and say mea culpa. You are absolutely right. It should have been complied with. It hasn't been. We are now --

VICE CHAIR KING: But now you can comply with it, but you are unwilling to tell us when you are going to do it?

MR. LUNSFORD: I can commit to you that by

February 1 of this year, we will comply.

CHAIRPERSON CROSS: So it will be done prior to our next meeting, our decision meeting?

MS. PRUITT-WILLIAMS: Do you have a C of O for the parking --

CHAIRPERSON CROSS: Excuse me, if I may, if he could answer.

MR. LUNSFORD: Yes, it can be done within that time frame.

MS. PRUITT-WILLIAMS: Do you have a certificate of occupancy for it?

MR. LUNSFORD: Yes.

MS. PRUITT-WILLIAMS: That may be something the Board might want to see. I mean that would then indicate that yes, the building is ready to be opened physically. It's more of an administrative reason on their part.

CHAIRPERSON CROSS: It's been ready but it still hasn't opened.

MS. PRUITT-WILLIAMS: Well there was some question that it wasn't structurally or --

MR. LUNSFORD: That's correct.

MS. PRUITT-WILLIAMS: Wasn't able to be opened to the public. A C of O means it is able to be opened to the public. They just have not.

VICE CHAIR KING: We would like to see the C of O, and we would like to have some kind of an attestation that it is, the bloody thing is opened.

Who provided this unsigned letter from Father Downing?

MR. NELSON: I did.

VICE CHAIR KING: It's unsigned you know. Was it sent?

MR. NELSON: Yes, it was.

VICE CHAIR KING: It was signed and sent?

MR. NELSON: Yes.

CHAIRPERSON CROSS: You need to come up, sir, and speak into the mike. Respond to her questioning. Identify yourself, please.

MR. NELSON: Ronald Nelson. Yes, it was sent.

MR. LUNSFORD: Could you identify the letter that you are referring to?

VICE CHAIR KING: This is a letter to Peter Shin and the date of December 23. "Dear Dr. Shin, I was delighted to hear at the December 14th meeting of the ANC that MedLink Hospital will honor its previous parking agreement with St. James Church as a contingency for approval of the hospital's new intermediate care beds. We look forward to using your above ground and underground parking lots for our worshippers beginning with our Christmas Eve service tomorrow night as you promised at the ANC meeting. Please contact me immediately at the parish office to discuss final details for the opening of the parking lot."

Did that occur? Were the parking lots opened on Christmas Eve?

MR. LUNSFORD: The underground parking lot is not

opened. All other parking lots are open and have been available to St. James from the beginning as far as I'm aware.

VICE CHAIR KING: I think it would be nice, I mean I agree with our director that we would like to see a copy of the certificate of occupancy. But I think it would be nice if before our February meeting at which we'll decide this case, if we could have some kind of -- it will be on February, what, February third, that we could have some kind of affidavit from MedLink that their hospital is open and is available -- the underground parking is open and is available to the church and its neighbors, or whatever.

I mean an affidavit of the situation as of the first of February vis a vis the underground parking.

MR. LUNSFORD: May I inquire as to that issue? You are not suggesting that a condition of zoning would be reach an agreement with the church as to the use of the underground parking lot?

CHAIRPERSON CROSS: No. Just compliance with the existing order that says the Applicant shall provide on-site screened parking spaces to employees, residents, and visitors, with a preference for employees to occupy free parking in an underground garage in the same square.

MR. LUNSFORD: I understand.

VICE CHAIR KING: An affidavit that that provision is being complied with.

CHAIRPERSON CROSS: You see basically what we would like for you to do is to convince us based upon this testimony here today, this case, and us seeing some disbelief among the

community that your willingness or ability to comply with existing zoning orders has been taken care of and we want to restore a level of confidence within the community.

So we would be hard put to approve this order when we have not seen your willingness or your ability to comply with the preceding order. That we think will go a long way for us to be able to make a reasonable decision at our next meeting, once it has been established that you have done what you were supposed to have done.

MR. LUNSFORD: I understand.

CHAIRPERSON CROSS: Then you eradicate all of the -- well, a lot of the distrust that has now permeated in the community.

The other things that we deem necessary could be done with conditions. I don't think that they are insurmountable. I think that the community for the most part would like to see your increase in your beds. However, they would also like to see you be a "good neighbor" in living up to whatever your obligations are.

VICE CHAIR KING: How many years are you asking for this exception, preparative years?

MS. PRUITT-WILLIAMS: In perpetuity? You are not asking for -- okay. Until they come back for an addition or a modification basically.

VICE CHAIR KING: Okay. Well we'll think about that.

MS. PRUITT-WILLIAMS: So just for the record, I want to be sure everyone knows what is being requested. This will be taken up at your February 3 meeting. You would like to have a copy

of the certificate of occupancy for the underground parking, and an affidavit of the situation of the underground parking as of February 1. Is that the date you would like or would you like it earlier?

VICE CHAIR KING: Anytime when it is open, not later than February first.

MS. PRUITT-WILLIAMS: Okay. Not later than February first.

VICE CHAIR KING: On February 1, it's going to be a Monday or something, yes.

MS. PRUITT-WILLIAMS: So could you have the C of O in our office by January 18th? If you would like to do proposed findings, we would like to have that by January 25th.

CHAIRPERSON CROSS: On a disk.

MS. PRUITT-WILLIAMS: Thank you.

CHAIRPERSON CROSS: Draft order.

MR. CONNER: Thank you, Madam Chair. Thank you, Members of the Board.

CHAIRPERSON CROSS: Thank you.

Next case.

MS. PRUITT-WILLIAMS: I would like to make an announcement and apologize for the coldness in here. We have been informed that there is a heating problem throughout the building and that there are some areas that are without heat. So I do apologize for the frigid weather.

Please can we have order? If you have a need for a conversation, extraneous conversation, please do so in the outer lobby. Thank you.

CHAIRPERSON CROSS: Next case, please.

MR. HART: Application of the George Washington University, pursuant to 11 DCMR 3108.1, for a special exception under Section 210 to allow renovations and additions to adjacent university used buildings for use by the Law School under an approved campus plan for property located in an R-5-D District at premises 2003 G Street, N.W. and 700-706 20th Street, N.W., at Square 102, Lot 46.

Will those persons planning to testify, please raise your hand and take an oath.

(Whereupon, witnesses for the Applicant were sworn in.)

VICE CHAIR KING: Madam Chair, we have a -- where Mrs. Miller, with George Washington University, and the ANC united. I think that we should all cheer and I think that we should compliment both parties, with the ANC and Mrs. Miller and the university for this, bringing this historic and auspicious moment to occur.

I would also suggest that, Madam Chair, that you might want to find out if there are any people here in opposition. If not, we might have an abbreviated hearing, given --

You are in opposition, Dorothy?

MS. MILLER: My name is Dorothy Miller. I am Chair of ANC-2A, but I am speaking for ANC-2A or 5 today. I am not exactly against it. I abstained on the voting and I want to explain why.

CHAIRPERSON CROSS: That certainly goes a long ways of --

MS. MILLER: Sort of mending some of the previous discourse.

CHAIRPERSON CROSS: Given some of the other cases we have seen.

VICE CHAIR KING: Would you have any objection if we had an abbreviated hearing, given that we have read the record and you are familiar with the project?

MS. MILLER: Good gosh no, because we have seen it so many times. I went through all the Historic Review Board and came back to us three times. So anything you want to do to speed it up. All these other people want to get home before it snows.

MR. SZEGEDY-MAZAK: Good afternoon, Madam Chairman, and Ms. King, Mr. Gilreath. My name is Peter Szegedy-Mazak. I am special counsel in zoning and land use at the law firm of Arnold and Porter. Today with me is my colleague, Nate Gross, who is the director of Zoning Services at Arnold and Porter.

We had scheduled four witnesses, but following what Ms. King said, I would like to make an introductory statement. If that's sufficient with the witness backup, if you have any particular questions, then we can abbreviate our presentation.

Is that --

CHAIRPERSON CROSS: That's fine, Mr. Mazak. I think that we're all very happy to see that it does not appear that there's any discord and that once Ms. Miller had made her statement, then that was basically clear whatever issues there might be.

MR. SZEGEDY-MAZAK: I would like to read my summary statement, my introductory statement, which I think

summarizes our position.

We are here to present Application Number 16408 by the George Washington University pursuant to section 3108.1 of the zoning regulations for the District of Columbia for a special exception.

A special exception is required under section 210 of the regulations for further processing of the campus plan. The proposed use is renovation and additions to adjacent buildings currently occupied by the law school. The properties are owned by the university, are within the main campus, and are currently zoned R-5-D.

The properties occupy a portion of Lot 46 in Square 102 and are located at the intersection of 20th and G Streets, N.W. The buildings include one, a three-story double townhouse at 2003 G Street, and 700 20th Street, N.W., known historically as the President's Offices, which will be renovated on the interior and fully restored on the exterior consistent with their landmark status.

VICE CHAIR KING: Can we see these on the handsome model as you refer to them?

MR. SZEGEDY-MAZAK: Sure. The double townhouse.

VICE CHAIR KING: Is on the corner there? Is that the president's residence or used to be the president's?

MR. SZEGEDY-MAZAK: Yes. That's correct. It used to be the president's offices.

VICE CHAIR KING: It is now currently part of the law school?

MR. SZEGEDY-MAZAK: Facilities that are being

used by the law school.

Second is a small vacant site immediately to the north of the townhouses, again, currently vacant, which will be developed with a four-story addition, a ground level and two lower levels, a portion of which will extend over the existing townhouses, and will provide connections on certain floors between the Burns Library and the townhouses.

Chris, did you want to show where the current --

VICE CHAIR KING: It's beautiful. I get the idea. There's a four story. And the vacant lot is -- go ahead.

MR. SZEGEDY-MAZAK: And finally is the Burns Law Library South, at 716 20th Street, N.W., which would be improved with two small upper story additions, plus a penthouse screen wall. I think there, Ms. King, you see where the current vacant lot is. Then the Burns, if you can point out, Chris, the Burns, where the Burns Library is now.

CHAIRPERSON CROSS: Excuse me. Your testimony is not on the record. That's the only thing. Speak into the mike, please.

Whereupon,

CHRIS GRAY

was called as a witness, and after having first been duly sworn, was examined and testified as follows:

MR. GRAY: Chris Gray. Cress Cox Architects. I live at 6153 31st Place, N.W.

The law school is basically starts from here and goes all the way up to H Street. We didn't continue of course with the

model all the way up to the end of the block. So we basically sliced the model partway through the overall law school building. The additions that we're making are at these three levels, which we'll illustrate when we put the model back together again.

VICE CHAIR KING: Okay. And then you are tucking something into that vacant lot that will sort of overhand what's called the president's house? Okay.

MR. SZEGEDY-MAZAK: Our proposed project has received conceptual design approval by the Historic Preservation Review Board. It has been recommended by the Office of Planning. It has been approved by the Department of Public Works, and received practically unanimous approval by the ANC.

University uses now occupy Square 102 and the campus extends several blocks to the west of the subject properties. The project fully comports with the scale and density of adjacent campus building and private buildings, including the IMF building and the United Church of Christ.

I understand from Mr. Ingle next to me that we have letters of support from the United Church of Christ and the IMF, which we can submit to the record. There are no adjacent private residences.

New construction will only result in 9,138 square feet of additional floor area, as calculated above grade out of a total 12,000 square feet of useable space, which includes above and below grade. So there's only a very negligible increase in the floor area on the campus. Currently the campus plan is permitted, allows 3.5 FAR, and they are at 2.4. So there's significant capacity left on campus.

We intended or we intend to provide substantial evidence today in support of our application and that you should grant the application for the following reason. First, the project fully comports with and implements the university's adopted and approved campus plan 1985-2000. It fully implements the designated institutional use category for the site as contained on the generalized land map of the land use element of the plan.

Second, the university has no plans or intention to expand the number of law school students or faculty as a result of this project. Accordingly, the project will not generate any additional noise, traffic, number of students or other objectionable conditions.

Third, the proposed addition simply relieves over crowding and provides better educational facilities for existing students, faculty and staff. The project will help keep law school facilities and the learning environment competitive with the learning environments and facilities of law schools of similar stature as George Washington's.

Fourth, the project scale and density fit well into the neighborhood context, comprised primarily of academic, institutional, and office buildings. The project is sufficiently distant and buffered from the residential and private residences of Foggy Bottom that it will have no foreseeable, objectionable effects on the residential community.

Five and very importantly, the project has already received conceptual design approval from HPRB. It has the complete support of the Office of Planning and DPW, and the almost, as I said, unanimous support of the Advisory Commission 2A, which carries as

you know, great weight.

For these reasons, what I was going to do then was introduce the witnesses that were going to testify in support of what I just said. If you would like their testimony, we could have the four witnesses testify or if you want me to rest, I can rest right now.

CHAIRPERSON CROSS: Your witnesses are here?

MR. SZEGEDY-MAZAK: Our witnesses are here, ma'am.

CHAIRPERSON CROSS: Well can we just have from each witness a statement, just basically give us a highlight?

VICE CHAIR KING: I mean if they have met the burden of proof, I think we should move on and hear Mrs. Miller or hear the LP and so forth.

CHAIRPERSON CROSS: If they are down here.

VICE CHAIR KING: I mean I don't know that they mind.

MR. SZEGEDY-MAZAK: Ms. King, what I can do if it's okay with you, is I can proffer. I can give the name of the witness and then proffer what the testimony would have been in a summary form.

CHAIRPERSON CROSS: Okay.

BOARD MEMBER GILREATH: If the witnesses will agree with that and not append it, we are certainly prepared to listen to them.

MR. SZEGEDY-MAZAK: Oh no, this is great. The first witness to my right is Mr. Al Ingle, Associate Vice President for Business Affairs at George Washington. He would discuss the

school's renovation and addition project in the context of the university's overall campus plan, and show its consistency with the campus plan.

The second witness would have been Michael K. Young, Dean of the Law School. Dean Young would have testified to the importance of the project to keep the law school competitive with similar facilities, the absolute need for current students, for additional classrooms, for faculty offices, and for computer space.

The third witness would have been Chris Gray, who is a principal with Cress Cox Architects, who is the architect for the project. He would have testified describing the model and the other diagrams you have in front of you.

If you have any questions there, Ms. King, I am certain, if any technical questions --

VICE CHAIR KING: No. It's clear to me. I couldn't quite visualize it from the written, but this is great.

MR. SZEGEDY-MAZAK: And the final witness would have been my colleague Nate Gross, who would have testified how the project meets the standards of section 210 on the zoning regulations.

So those are the evidentiary proffers that we would have made.

CHAIRPERSON CROSS: We would like to have that testimony in regard to the compliance with 210.

MR. SZEGEDY-MAZAK: Very good. I then introduce my colleague Nate Gross, who will then testify to the compliance of the project with the current zoning regulations.

Whereupon,

NATE GROSS

was called as a witness, and after having first been duly sworn, was examined and testified as follows:

MR. GROSS: Thank you, Mr. Mazak.

Good afternoon, Madam Chairman and the Board. I am Nathan W. Gross. I reside at 4424 Alton Place, N.W.

I will generally follow the summary of testimony that's at the end of our pre-hearing submission. In terms of planning and zoning policies and requirements, as Mr. Mazak already noted, the area of the campus is designated institutional on the generalized land use map of the comprehensive plan. This project is within the campus boundaries, so there's no apparent issue there.

Section 210 provides the special exception requirements emphasizing that there will be no possible adverse effect on surrounding residential uses. We note several factors in this. First, the quite small size of the project in square footage and the fact that it's interior to the campus and buffered to the east by a very large 130 foot office building. So you have a small size of addition physically. No increase in the number of faculty or students. The people who will use the facility are already on campus, so no generation of traffic or even additional pedestrian movement.

Scale of development is moderate, and it's in a general area of the campus. Surrounding buildings that range all the way from townhouse scale to 130 foot office buildings. This project essentially steps up from three stories to as much as small additions on top of part of Burns, making I guess a fourth or fifth floor. But

certainly to scale and found highly compatible by the Historic Preservation Review Board.

Also the addition to the allowed campus FAR is extremely minor. The campus is still well under the allowed 3.5 FAR.

Square 102, within which the project is located, is designated in the approved campus plan by the Board for educational mixed use, which by definition includes classrooms, laboratories, and other educational facilities.

As the Office of Planning report noted, the other special exception criteria don't have direct applicability. So we believe that it does comply with section 210.

MR. SZEGEDY-MAZAK: Madam Chairman, that concludes our presentation unless you have any questions of particular importance.

BOARD MEMBER GILREATH: I have no questions.

CHAIRPERSON CROSS: No questions.

MR. SZEGEDY-MAZAK: Thank you very much, Madam Chairman.

CHAIRPERSON CROSS: Thank you.

We now move to Government reports, Office of Planning.

MR. BASTIDA: Good afternoon, Madam Chairperson, Members of the Board. For the record, my name is Alberto Bastida with the D.C. Office of Planning. The Office of Planning submitted its report on December 24th, Christmas Day, and basically recommended approval of this application.

The Office of Planning determined that the Applicant

complies with section 210 of the zoning regulations, specifically 210.2 in which the property will not have adverse impact because of no traffic, number of students or any other objectionable conditions. In fact, the number of students, faculty, and staff will not be increased as a result of this application.

In addition to 10.3, determines the number of FAR that the university can build. The university complies with that provision.

Section 210.1, 210.4, 210.5 and 210.6, are not relevant to the case. Accordingly, the Office of Planning has determined that the Applicant meets with the criteria for approval and recommends so.

Thank you. That concludes my presentation. I will try to answer any questions you might have. I would like also to point for the record that you have in your package a memorandum from the Department of Public Works they did December 16th in which they have no objection to the proposal. Thank you.

CHAIRPERSON CROSS: Thank you very much, Mr. Bastida. Are there any questions of Mr. Bastida or any cross for Mr. Bastida?

Just for the record, let me just read into the record the letter from Kenneth Layden from DPW. In part it simply says, "From a transportation standpoint, the Department concludes that the proposed improvements will have no adverse traffic impact on the surrounding streets and adjacent neighborhood area. DPW has no objections to the proposal."

All right, ANC report, please?

BOARD MEMBER GILREATH: Ms. Miller wants to make a statement.

Whereupon,

DOROTHY MILLER

was called as a witness, and after having first been duly sworn, was examined and testified as follows:

VICE CHAIR KING: Are you representing the ANC's report or yourself?

MS. MILLER: I am representing ANC-2A, 05.

VICE CHAIR KING: All right. This will be the time.

MS. MILLER: Since I filed the resolution.

VICE CHAIR KING: Right. The resolution is on file whereby the ANC 2A approved the in-fill project for GWU's Law School and alterations to the historic president's house. That was dated December 16th, 1998. There was a quorum and a majority was in favor.

CHAIRPERSON CROSS: They will therefore be given a great weight since they are titled.

MS. MILLER: That is correct. That is the only time, and almost in the four years I have been there that I have abstained. I wanted to explain it, if I may.

CHAIRPERSON CROSS: Now, Mrs. Miller?

MS. MILLER: Yes.

CHAIRPERSON CROSS: Is this the statement that you are getting ready to read?

MS. MILLER: Right. I really would like to read it.

CHAIRPERSON CROSS: No, no. I am not asking

you not to read it. I am just asking you to, if you will, as you go through it can you not read word for word, but just kind of give us the most important --

MS. MILLER: It's only two pages, and I read fast.

CHAIRPERSON CROSS: If you can.

MS. MILLER: Because what I want you to do is to look at the attachments.

CHAIRPERSON CROSS: Okay, well do the best you can, please.

MS. MILLER: I will, and I'll talk fast. I am Dorothy Miller, Commissioner for ANC-2A 05. ANC-2A passed resolution 98-12A on December 16th and filed a copy of the resolution with the Board of Zoning Adjustment on December 18th. I am attaching a copy of the resolution to my statement to show that I abstained from taking a position.

CHAIRPERSON CROSS: We saw that.

MS. MILLER: On the law school. Okay.

In 1998, ANC took the position on Resolution 97-6A, that the campus plan should be reopened, and "that no further construction projects be approved by the Commission pending a full analysis of the implication of GW's land use policy on the Foggy Bottom West End residential neighborhood, and on DC's financial position."

The many construction projects filed in the past year have preempted on campus sites suitable for student housing and increasing the objectionable conditions to neighboring property because of noise, traffic, and large increase in the number of students.

I abstain because that would have been a reversal of my previous vote, in the best interest of my single member district, and in the district as a whole.

I also abstained for the following reasons. The three applications GW filed in 1998, as well as the one before you today, the University failed to meet certain requirements. I heard today what I had not heard previously, by the way, of the comprehensive plan amendment's act. The University must file a written justification for non-dormitory development projects that have been or are being submitted to the BZA. The BZA has been remiss in not enforcing this, but you can't enforce it. I have tried to change that, I wrote this so fast, we were here so late last night, that you can require the enforcement.

I am requesting that this requirement be met in Case No. 16408, not because I am against enlarging the law school, but because to do so makes it possible to increase. Even though they say they will not increase, it seems to happen. Student enrollment, with their corresponding requirements to have on-campus adequate housing for the increased enrollment. You've got filed last night that they have only 16,000. So please look at what they had on the Webnet last year. That's I think number 2 in my attachments. That's the buildings they have taken over. It's number 4 in my attachments. I put them together wrong. In number 4, you will see the students that are now in our area.

The comprehensive plan mandates the protection and enhancement of residential neighborhoods, particularly when vulnerable to development pressures. The comprehensive plan states

that the primary purpose of the CP is to protect and enhance residential neighborhoods. The BZA and improving the Health and Wellness Center and the Media and Public Affairs, which allows for increased enrollment with their corresponding requirement to have adequate housing on campus. Thus, the BZA permitting the University to expand beyond the approved campus boundaries in violation of the campus plan.

BZA has failed to comply with the comprehensive plan and protect Foggy Bottom, West End residential area from becoming an extension of the campus and of turning 11 residential apartments, and that's one of my attachments, and my apartment is 75 percent students, into off-campus residential apartment buildings that have been taken over by GW students, replacing DC taxpayers. And that practically it turns them into dormitories.

Attached is a news article from The Current about the pressures that GWU has used to secure the off-campus housing for its students, along with a list of the total number of students now living off campus.

The attached is a news article of how the students on campus feel about the on-campus housing. That's another interesting article I wanted to share with you.

In 1998, GW submitted four applications for further processing under the campus plan, with their complying with the campus plan, which requires that GW submit with each application an updated calculation of the following. I respectfully request, you got this today but we hadn't heard it, and that all cases on which the BZA has not written an order, that they should supply that.

I do not have the authority to speak for the Commission in my position as chair of ANC-2A, but I have supported over the four years the requests that the Commission has made to the BZA to reopen the campus plan and reexamine the overall land use policy of GW's order number 14455 dated February 25, 1998 -- that's not 1998, it was 1988. Specifying 18 conditions for the approval of the present campus plan.

It specifies "the campus plan may be reopened prior to the year 2000 as the Board or its successor with jurisdiction over the campus plans determines conditions warrant the number of special exceptions requested in 1998 and hopelessly outdated and under-verified on campus and off-campus parking should make it clear to the Board that now is the time." I made another typographical error. My person who proofed my work didn't catch that one.

In lieu of what is happening, of that happening, the BZA should at least require enforcement of the limited protections, the provisions and protections that are in the current plan. Counsel member Davis Categna, a former ANC Commissioner, is now chair of the Committee on Government Relations, and has set one of his goals, the strengthening of the ANCs and its position as an elected part of the District Government.

I thank you for letting me make that. Please look at the attachments. They'll blow your mind.

CHAIRPERSON CROSS: Mrs. Miller, thank you very much for your testimony. However, you are aware of the fact that the BZA does not get involved in enforcement.

MS. MILLER: I have tried to change that. When you

are here late at night, and I am getting up at 2:00 or 3:00 to get this typed, and I have to count on the computer working and my nephew being in town to fix it if it isn't.

CHAIRPERSON CROSS: Thank you very much.

MS. MILLER: But I want to put before you the spot that we have been caught in. The law library was the least offensive of anything they have asked for. So I just plainly have stated.

VICE CHAIR KING: I just have one question for you, Mrs. Miller. The comprehensive plan, would you explain that to me? The comprehensive plan requires that any new construction be matched with housing?

MS. MILLER: I gave you a copy last night of exactly what it says, because they didn't do that on the hospital. That what they do is they have to put in writing a rationale of why they are asking for something that is not a dormitory. It was in the 1994, which the new one hasn't come out yet. It's passed the Council, but not yet approved.

VICE CHAIR KING: Have there been any alterations in that?

MS. MILLER: Comprehensive plan?

VICE CHAIR KING: In the comprehensive plan that would have any impact on this or other GW programs?

MS. MILLER: Yes. They sent in what the GW wanted and everything ANC-2A wanted practically got thrown in the trash can. But we did make some headway toward the end. But as you know, the Council passed it so fast they didn't give anybody a chance to say anything.

VICE CHAIR KING: Okay. What you are saying is that the comprehensive plan of 1994 --

MS. MILLER: Requires.

VICE CHAIR KING: And this I presume is unchanged by the recent Council action, that the University must file a written justification for non-dormitory development projects that have been or are being submitted?

MS. MILLER: That are non-dormitory.

VICE CHAIR KING: Now what are the criterion for those? What is the criterion for that justification or what is the criteria?

MS. MILLER: It was in the comprehensive plan to protect us because they were trying to fill up every space on campus.

VICE CHAIR KING: No, no. I understand your motive and so forth. But I don't quite understand how, I mean it was removed from the hypothetical case of a hospital, right?

MS. MILLER: That's correct.

VICE CHAIR KING: A hospital is a good thing. Is that justification?

MS. MILLER: They have a hospital, which was a good thing. But GW didn't keep it that way.

VICE CHAIR KING: Okay. Well let's not argue yesterday's case. Let's not go there. But you are saying that they have to, if they are going to build anything other than a dormitory, they have to justify why they are not building a dormitory? Is that your interpretation?

MS. MILLER: Right. Correct. That is exactly what the plan says. I gave you all an exact copy of it so you would know.

VICE CHAIR KING: Okay, fine. I do not want to debate this today.

MS. MILLER: It was removed from the current one that just went through, but that is not official yet. It has to go through NCPC, and it has to go through the Hill and a few other places before it becomes official.

CHAIRPERSON CROSS: You are saying it's in the existing?

MS. MILLER: The 1994 is the one that is the existing one right now.

CHAIRPERSON CROSS: However, that has been removed from the one to be enacted?

MS. MILLER: On the 1998. But the 1998 hasn't finished their process.

VICE CHAIR KING: Was it passed as an emergency or just as an ordinary?

MS. MILLER: I beg your pardon?

VICE CHAIR KING: Was it passed by the Council as an emergency or just in the ordinary way?

MS. MILLER: Well it was not ordinary the way they passed it.

VICE CHAIR KING: Well, no. But I mean was it an emergency piece of legislation?

MS. MILLER: No, except that Mrs. Cropp felt that everything would be lost unless it was done. Then they assured the new mayor, who asked them to hold up until he came in office, that he could change anything he wanted to.

VICE CHAIR KING: No. I am just trying to get the date. Usually things that are passed in December become law in March.

MS. MILLER: Not until they are approved by the NCPC and approved by Congress.

VICE CHAIR KING: Or survive the number of days.

MS. MILLER: And survive the mayor's disapproval, the new mayor's disapproval.

VICE CHAIR KING: Okay. All right.

MS. MILLER: We're working on it.

VICE CHAIR KING: But however the existing law of the land is that they have to justify anything they build that's not a dormitory?

MS. MILLER: In writing.

VICE CHAIR KING: Interesting. Okay. Thank you very much.

MS. MILLER: If you look at the list of apartment buildings they have taken over and if you look at the newspaper --

VICE CHAIR KING: No, no. We can't do anything about that. You know we can't.

MS. MILLER: No. I am just telling you. I am trying to get you to understand where we're coming from.

VICE CHAIR KING: I understand. I understand very well.

CHAIRPERSON CROSS: Thank you, Mrs. Miller.

Okay, persons and parties in support of this application, please come forward. Seeing none, persons and parties

in opposition to this application, please come forward.

Mrs. King, there were letters in support that you might want to just kind of --

VICE CHAIR KING: Yes, we got two. It was mentioned. The International Monetary Fund and the church. Mr. Mazak mentioned that. The United Church.

CHAIRPERSON CROSS: Two letters of support.

VICE CHAIR KING: They find no objection to our approving it. The International Monetary Fund has reviewed the plans, understand the purpose and the scope of the proposed work, and have no objection.

CHAIRPERSON CROSS: All right. Persons and parties in opposition are called.

Closing remarks by the Applicant.

MR. SZEGEDY-MAZAK: Thank you, Madam Chairman. Ms. King, in response to the requirement with respect to justification, we would maintain that because this is an in-fill project for a law school addition that claiming or trying to justify why there is no residential opportunity here, we believe is on its face evident from our application.

We would be, however, glad to provide a page or two or whatever. I am unaware of that requirement. I was told that it is a single sentence in the comp plan, but that it's -- the application we believe speaks for itself. The justification for not providing something is based on our justification for providing what we're doing now. So the very fact that we have by substantial evidence proved that we need an addition would de facto, de facto, just assuming that, would

prove that we can't do residence.

As Mr. Gross tried to point out, this is entirely consistent with the generalized plan and entirely consistent with the campus plan.

I could certainly see occasions, Ms. King, where there's an amendment to the campus plan. I mean this is an amendment to an already existing structure and function. In that case, I think there may be a clearer, more clearly a justification needed. But in this particular case, in my view, ma'am, the evidence that we have presented speaks for itself.

If you thought that there was some --

VICE CHAIR KING: No, no. I agree with you. But we have some other cases before us for which this is -- I wanted to get some clarification in my mind as to exactly what the implications were.

MR. SZEGEDY-MAZAK: I understand.

VICE CHAIR KING: I think in this case, I think it's perfectly clear that it would be totally uneconomical to consider infilling with dormitory space. I think Ms. Miller is nodding her head in agreement with me. But I wanted to get clarification for that in terms of other cases that we might hear in the our future.

MR. SZEGEDY-MAZAK: I have Mr. Gross here who would like to add a comment.

MR. GROSS: Madam Chairman, Members, I just wanted to add that there was a very significant court case just not long after the original comprehensive plan was adopted in 1985 in which a building permit was issued that was consistent with existing zoning,

but inconsistent with the new land use designation of the comprehensive plan for the site. The court found that the comprehensive plan is not self executing. That when the plan mandates zoning actions, those have to be enacted in the zoning regulations or a map before the comprehensive plan has jurisdiction over the property. We can provide that court citation.

VICE CHAIR KING: And are you saying that that is the case with regard to the 1994 comp plan?

MR. GROSS: We certainly think so. If that provision -- I am not familiar with that provision and I forget if Mrs. Miller provided the citation, but to have the effect in the zoning regulations, that needed to be adopted as a text amendment, as an additional special exception criterion perhaps.

VICE CHAIR KING: Would you discuss this with Mrs. Miller after this case?

MR. GROSS: Sure. We can find the court case and provide a copy also.

VICE CHAIR KING: In between you two, perhaps you could cast some light on her concerns and our interest in this, if you would be so kind.

MR. SZEGEDY-MAZAK: Madam Chairman, because of the overwhelming evidence in support of the project, including the reports of Government agencies, the ANC resolution, and the evidence presented here, and the urgency of commencing the project to avoid undue disruption and disturbance of the academic programs at the law school, we respectfully request a bench decision and a summary order in this case. Thank you.

CHAIRPERSON CROSS: Okay. Board members, I would move that we approve this application.

VICE CHAIR KING: Second.

CHAIRPERSON CROSS: I think that they have overwhelmingly met the burden of proof. They comply with section 210 of the zoning regulations. There does not appear to be any opposition or adverse impact in regard to this application. I don't think that our granting approval will impair the intent or integrity of the zoning plan or zoning map.

Any further discussion?

VICE CHAIR KING: No. I concur.

CHAIRPERSON CROSS: All in favor? Opposed?

Thank you.

MR. SZEGEDY-MAZAK: Is that that we can get a summary order, ma'am?

CHAIRPERSON CROSS: Two weeks. You should have it in about two weeks.

MR. SZEGEDY-MAZAK: Thank you very much.

MR. HART: Staff will record the vote as --

CHAIRPERSON CROSS: This decision, summary order.

MR. HART: As three to zero. Mrs. Reid, Mrs. King, and Mr. Gilreath, to grant. Bench decision, summary order.

CHAIRPERSON CROSS: We will recess for about five minutes.

(Whereupon, the foregoing matter went off the record at 3:55 p.m. and went back on the record at 4:05

p.m.)

CHAIRPERSON CROSS: Okay, the hearing will resume. Can we please have the next case called?

MR. HART: Application number 16416, of 619 14th Street Limited Partnership. Pursuant to 11 DCMR 3108.1, for special exceptions to waive the rear yard requirements, subsection 774.2, and the roof structure set-back requirements, subsection 411.11, and relief under 11 DCMR 3107.2, for a variance from section 1702.1, the ground floor retail requirement, for the construction of an addition and use of the entire building for offices in a DD/C-4 District at premises 619 14th Street, N.W., square 23, lot 67.

VICE CHAIR KING: Madam Chair, could we find out if there is any opposition to this? I note that the ANC-2F is in favor of this program, and that we might be able to do an abbreviated hearing on this one.

MS. PRUITT-WILLIAMS: Madam Chair, we haven't sworn anybody in yet. He just called the case.

CHAIRPERSON CROSS: Okay, sorry.

MR. HART: Please stand and take the oath.

(Whereupon, witnesses for the Applicant were sworn in.)

CHAIRPERSON CROSS: Yes, let's determine, is there anyone here in opposition to this case? Okay. So therefore --

Mr. Glasgow, we have read the submission, your pre-hearing submission, and we are familiar with the basis of the case. We would ask that you expedite and give us the salient points and

basically demonstrate how you are able to meet your burden of proof for the relief that you are requesting, both special exception and for the variance.

MR. GLASGOW: Thank you, Madam Chair. For the record, my name is Norman M. Glasgow, Jr. of the law firm of Wilkes, Artis, Hedrick and Lane. Here with me this afternoon are Ms. Singershaw of the same law firm, Mr. Anthony Lanier, representative of the owner, Mr. Doug Redmond, representative of Meridian, who is a Northern Virginia high tech company in Alexandra, and Mr. Gary Martinez, of Martinez and Johnson Architects.

What I would like to do with respect to this presentation to see if we can really truncate it, if that is the desire of the Board, is we have submitted for the file a statement of Applicant, which you have. There is a report of the Office of Planning which has one condition, which I will submit for the record is acceptable to the Applicant. We also have the report of the Advisory Neighborhood Commission, which is part of the record.

I would like to have the witnesses in so far as the statement of the Applicant, which goes in some ways excruciating detail as to how we meet all the burdens of proof, and as part of the record adopt the statement as it pertains to their testimony and rest on the record that we have, and then be available for any questions.

I would like to ask each one of the witnesses, do you adopt this statement as your testimony in so far as it applies to your area of expertise?

BOARD MEMBER GILREATH: Who are the witnesses?

MR. GLASGOW: I think I identified them earlier. Mr. Anthony Lanier, who is a representative of the owner, seated to my immediate right. Next is Mr. Doug Redmond, who is a representative of Meridian, lieutenant of the project. And the witness at the far end of the table is Mr. Gary Martinez, the architect, the architectural firm of Martinez and Johnson.

I think you have witness cards for all three of them.

CHAIRPERSON CROSS: Mr. Glasgow, I think that what we -- while yes, we do want to expedite. But at the same time, we also want to have for the record the basis for this case. I would like to have you or one of the witnesses to go over how you meet the burden of proof for your variance and also for the special exception. And, I would like to have a brief summation by the architect.

MR. GLASGOW: Mr. Martinez, why don't you proceed forward with your testimony. Maybe we can cover all of the issues with that.

We also would submit that in pages 4 through 9 of our text, in fact it's pages 4 through 11, we go through each provision of the regulations and how we meet the burden of proof.

CHAIRPERSON CROSS: Starting on page 5, you demonstrate how you comply with 774.4.

MR. GLASGOW: Correct.

CHAIRPERSON CROSS: We need to go through that. Then on page 9 is when you start going to how you meet your burden of proof for the variance. I'd just like to have that for the record.

Whereupon,

GARY MARTINEZ

was called as a witness, and after having first been duly sworn, was examined and testified as follows:

MR. MARTINEZ: My name is Gary Martinez. I am an architect with the firm Martinez Johnson Architects. I will give you a very brief presentation of the project. Please, if I sort of don't answer all of your questions, feel free to interrupt me.

The project is located at the southeast corner of 14th and G Street, N.W., in Washington. It is Square 253, Lot 67. It's comprised of two sections. First is a historic landmark. It used to be the National Bank of Washington. The address is 619 14th Street. On that site or a part of that site is a small lot which is just to the east of the existing building. It's approximately 25 feet wide, and it faces onto 14th Street. The entire site is just under 9,000 square feet.

The existing building, constructed in the mid-1920s, is a historic landmark and has the unusual quality of being protected and historically designated not only in the exterior but also the interior. It was one of the few banking halls left in the city. I have some historic photographs located on this board. It is a very large open space. The structure is three stories tall.

You can see from this historic photo which was taken approximately during the opening day of the facility, the first floor has a street front presence. From the main entrance, you were led up through an entry vestibule to the main banking hall, which is really at the second level. That was kind of unusual for its time.

There is an upper level of offices which ring the main banking hall. But at the center of the floor, is a very large open space.

So what you have essentially is a mezzanine which wraps around the central banking hall. Then behind the cornice of the building is a third floor, which was really the executive offices.

These interiors and the exterior of this building were designated and protected and are part of a restoration program where we will re-execute and repair the building so that it matches the appearance as you see it here in the original photographs.

VICE CHAIR KING: What a great building.

MR. MARTINEZ: It's a wonderful building.

CHAIRPERSON CROSS: It's grand.

MR. MARTINEZ: It's superb. It's a neoclassical building done in a revival style. It has a classical, a colossal order, is what we would say, of giant piers which reach up two stories, columns which surround an arcaded entrance way, and then a very heavy cornice, very solid, which is the effect the banks were looking for in those days.

The addition that we're doing to the building matches the building very much in its scale and its presence on the street. As you can see from these contemporary photographs, what at one time was probably the largest building on the block has now become really one of the smallest buildings. It's in a zone where on other lots developers are allowed to build to 130 feet. So to the south, to the north, and you don't see it in these photographs, but also to the west, the building is surrounded by structures that are built to 130 feet.

To the east currently there are some smaller buildings. It is a site which is under active development. I am sure at some point in the future this site will also be built out to its full volume,

which really leaves the bank in somewhat of a hole, if you will, contextually on this site.

Our addition, however, responds really more to the scale and the size of the existing building. This begins to lead into the reasons asking for the relief.

I am showing you sort of a main level plan, really at street level, of the building. You have 14th Street down at the bottom of the board, G Street along the left hand side of either plan. Here at the first floor, you can see the existing building outlined in gray. The piece which is just above it, which is a 25-feet wide, approximately 80 feet deep, is the annex building.

In order to respond to current day requirements for fire, life, safety, for accessibility for disabled persons, just for general circulation of the building, what we have done is we have used the annex building to the east to place all of the required facilities and utilities. Those would include the elevator, a new elevator for the building, two fire stairs, and on typical floors, a new bathroom core, which is designed so that it can handle disabled persons in wheelchairs.

As you can see from this drawing, those elements in this position occupy virtually the entire length and depth of the site that we have to work with. The reason for not putting these into the historic building is that they would immediately impinge upon the historic nature of the room that we're trying to save. So basically we'd be working at odds against ourselves.

In taking this approach, we can set the building up so that it has all of the modern necessities, but at the same time, we still

work with the historic fabric.

From the exterior view, looking at the building from 14th Street, what you see here is a partial view of the existing building, which is 62 feet to the top of its parapet, and the corresponding addition is 25 feet. Anything beyond this point is not on our site and could be built to a height which is approximately double what you are seeing here on this drawing. So even in that very simple example, you'll see that this building will only be about just slightly more than half the size of any building around it.

We have a FAR potentially of 10 in this area. This particular site has an FAR of six, but even at that, once we build out the project, including the addition, the FAR of this project will be approximately 3.6. So not only in terms of height, but also in terms of mass, we are well below the density that's typically allowed on a site like this.

We have what essentially is a glassy wall on the addition that is then bounded by a very solid concrete element on the -- I'm sorry, stone element, which responds to the stone which is on the existing building. It is this element that contains the core facilities that I was describing to you in plan, the stairs and the elevator. For that reason, this element rises above the roof of both the new structure and the existing building up to a height of approximately 84 feet, still well below the allowable height limit for this area.

So as we look at the -- what I would like to do is walk through the three, the two special exceptions and the variance request that we are asking for and talk about them now in the context of the design that I have just shown you.

We start with the rear yard. One other note I would like to make is that the building does have a small corner which opens up to an alley. It's a 26 foot public alley at the rear. We would be using that access for our loading. So our loading does not occur around the historic storefronts or anything like that. It will happen at the back of the building.

With regard to a rear yard, typically a lot on a corner in this particular zone, we have either a rear yard or at many times we would provide a court in lieu of a rear yard. Given the fact that we have such extensive new facilities to put into the building, what I would like to show you here is one of the typical upper floor plans.

You can see even here that they occupy even more of the new floor. The only piece that we really have left in the new building is just enough for circulation to serve the existing building. So in this particular case, we would be asking for relief from the rear yard or court requirement, given the fact that we are so far below the height and the density of the building.

MR. GLASGOW: Why don't we check with the Board members and see if they have the gist of the case.

VICE CHAIR KING: Absolutely. I think it's clear. Let's touch briefly on the roof elements, just to make sure that we have got on the record what we need to know.

MR. MARTINEZ: As I described earlier from the elevation, the roof elements for the stairs and for the elevator exist at the eastern edge of the site. Now typically we would have a setback for those elements, a setback requirement.

As you can see in the diagram, take this typical floor

plan, since we only have 25 feet, we have a very narrow mezzanine in the historic structure. This is the major area we are trying to restore. Once we have allowed for circulation up and down in the building and sort of around the floor plate in the annex building, we are really only left with this strip to work with. That is the reason we are asking for the relief from the setback on the roof structure.

BOARD MEMBER GILREATH: The addition, since that will be part of the building, that's been reviewed by the Historic Preservation Review Board?

MR. MARTINEZ: The addition has been reviewed by the Historic Preservation Review Board. I believe there is a letter in the application.

BOARD MEMBER GILREATH: What kind of facade for the addition? Is that going to be glass or what?

MR. MARTINEZ: The addition has been given a glassy facade, why don't we just put that back up, for a portion. What we have done is we have really treated the portion of the addition which is immediately adjacent to the existing building in a manner which is different from the existing building, not trying to compete with sort of the wonderful scale of material that exists on the banking structure now.

So we have really taken an opposite tact from the original designers, whereas they were looking for solidity and a sense of strength through opaque, using opaque material. We have worked with a very transparent glassy material to open up the northern and the eastern annex.

At the very end of the building, where we have those

elements which you typically don't see in a structure, the spire stairs and the elevator and toilet rooms, we have given that an opaque fenestration, if you will, skin to the building so that we'll be using a sematissious skin on this piece of the building that stands up for the elevators.

VICE CHAIR KING: What does Meridian do? Welcome to the District. What does Meridian do?

CHAIRPERSON CROSS: Give your name and your address, please.

Whereupon,

DOUGLAS REDMOND

was called as a witness, and after having first been duly sworn, was examined and testified as follows:

MR. REDMOND: My name is Doug Redmond. I am a vice president of Meridian. I live at 7808 Town Gate Place in Bethesda.

Meridian is a recent merger of a number of companies in the last year or so. We have 3,000 employees nationwide and some overseas. We have approximately $300 million in revenue currently, and are looking toward additional mergers and acquisitions, growing to $1 billion by 2003.

We are a professional services, offering advanced technology solutions to Department of Defense, NASA, Federal and State agencies. We have deliberately selected this site as one that we feel meets and is compatible with our vision for the future of our company, and are very anxious to relocate to the District.

We know that this is a massive undertaking. We are

respectfully requesting from the Board expeditious relief so that we can begin construction, knowing that it's going to take probably a good year to do so.

VICE CHAIR KING: Could you speak for the record to your company's commitment to the display windows on the ground floor?

MR. REDMOND: Yes, indeed. Thank you. Yes. We intend to on the street level in the windows, showcase our technology innovations and capabilities on a regular basis, as we have showcased those in other locations throughout the company, both models and display units as indicated here in these posters, which will show past showcasing that we have done, which will demonstrate those projects.

VICE CHAIR KING: And the recommendation made by the Office of Planning, which we will get to in a minute, but while we're talking to you about it, about the placement of it and so forth, is all very acceptable to you?

MR. REDMOND: Yes, ma'am.

VICE CHAIR KING: Great. Thanks. I have no further questions.

CHAIRPERSON CROSS: Okay.

VICE CHAIR KING: I think they have hit the high points to demonstrate their burden of proof.

CHAIRPERSON CROSS: Yes. Mr. Glasgow, can you summarize, particularly as to the variance.

MR. GLASGOW: The variance? Well, we have submitted that the subject site is a small site in the DD/C-4 district.

We only had limited area in which to work with, particularly the interior designation of the subject property. As an interior landmark it was very difficult to find a user who would not want that chopped up in some fashion that is not consistent with the desires of the Historic Preservation Review Board.

So when you taken into the small size of the site the user that we are presented here with, and the interior designation, we have the exceptional situation and condition and unique piece of property in order to meet the variance test.

CHAIRPERSON CROSS: And what about the relief being granted in regard to the existing zoning planning and zoning map?

MR. GLASGOW: We submit that we are consistent with the existing zoning as to the use of the property, and that we are having, that we variance that we have is an area variance test with respect to the ground floor utilization of the property for the .5 FAR of relief.

We submit that the Board has granted in other cases this relief, for instance, that the case at 555 12th Street, where Arnold and Porter was, there was a variance granted with respect to the arts component because it was determined that to have the arts and the department store use as a part of that property, you were not able to fit both in there on that particular property, so a variance was granted. I handled that case a few years ago.

This is similar to that in that to have, to meet the competing interests of the historic preservation and to have the ground floor retail, and it's not been practical to do that with respect to

this particular site. So that a variance relief is appropriate on this site in the DDC shop area.

CHAIRPERSON CROSS: And there is to your knowledge no adverse impact?

MR. GLASGOW: No.

CHAIRPERSON CROSS: You have not heard any opposition from any of the --

MR. GLASGOW: We have had no opposition. We went and met with the Advisory Neighborhood Commission, and we have their unanimous support of this application.

CHAIRPERSON CROSS: Okay. Very well. Questions? Okay. Thank you very much.

Let's move now to the Office of Planning, Government reports, Office of Planning. You might as well just stay right there, Mr. Glasgow and the witnesses.

MR. BASTIDA: Good evening, Madam Chairperson, Members of the Board. For the record, my name is Alberto Bastida, with the D.C. Office of Planning. The Office of Planning submitted its report on December 24th. The Office of Planning addressed the deviations of the zoning regulations as requested by the Applicant on pages 3, 4, 5 and 6 of our report. I'll very quickly summarize that.

Because of the historic nature of the building, because of the location of the building, because of the structural characteristics of the building, we believe that the Applicant has met the burden of proof regarding the application, regarding the special exception and the practical difficulty.

Regarding the area variance, if the Board adopts the

recommendation and the condition of the Office of Planning, the Applicant will be in compliance with the zoning regulations, the intent of the zoning regulations if and accordingly will not have a negative impact on the zone plan for the city because the overall retail aspect of the environment created by the displaced window will befit the retail aspects of the area.

Accordingly, the Office of Planning recommends approval of this application. If you have any questions, I will try to answer them. Thank you.

CHAIRPERSON CROSS: Thank you, Mr. Bastida. Your report indicated that it was a conditional approval?

MR. BASTIDA: That is correct, because we request that the Board attach to its order the condition as began at the bottom of page 5 and going to page 6 for three paragraphs. That those conditions were carefully negotiated between the Office of Planning and the Applicant in order to fulfill the requirements of the Applicant and the requirements of the zoning regulation not to have a negative impact on the zoning regulations of the District of Columbia as enacted.

CHAIRPERSON CROSS: So these conditions that you have set forth, you would like that to be incorporated within the order?

MR. BASTIDA: Indeed.

CHAIRPERSON CROSS: All right. We will then have to read the record at the time that we make the decision.

VICE CHAIR KING: It needs to be edited for our order. But nevertheless --

MR. BASTIDA: Because I quoted directly from the Applicants using our words and other language that will not be applicable to an order. But I am sure that the Applicant will be glad to submit a proposed order for you in which, the correct wording is incorporated in such a proposed order.

CHAIRPERSON CROSS: All right. There are no other Government reports?

Is there a representative from ANC? I don't think so. But we do have a letter from ANC.

VICE CHAIR KING: We have letters from ANC-2F. They had a community forum. They are glad that they are going to preserve the building. The ANC-2F support for the requested relief from the ground floor retail requirement is based on the unusual circumstances of this case and is not to be considered a precedent for its future position on proposed development in the downtown development district.

We are requested to give great weight to their report.

CHAIRPERSON CROSS: Was there a quorum with a vote?

VICE CHAIR KING: They must have done, but they don't specify that. Yes, at a regular meeting December 2, at which a quorum of four commissioners were present. Yes, voted unanimously. So yes, they did have a quorum. It was a proper meeting. So we do give it great weight.

CHAIRPERSON CROSS: Thanks very much.

Persons or parties in support of this application?

Seeing none, persons or parties in opposition?

Seeing none, closing remarks by the Applicant.

MR. GLASGOW: I think we have covered everything for any closing remarks. We would like to have an approval on an expeditious basis.

CHAIRPERSON CROSS: Okay. I don't know if I said, but I just wanted to indicate for the record that you are in compliance with the various sections of 774.2 for the special exception. We didn't go over all of them, but that's okay. At least the record will reflect that you did specify or you did indicate for our purposes that you were entitled to the relief that you are requesting.

VICE CHAIR KING: I move that we grant this application.

BOARD MEMBER GILREATH: I second that. I think they have met the burden of proof.

VICE CHAIR KING: Absolutely.

BOARD MEMBER GILREATH: They are certainly going to preserve a very important historic building.

VICE CHAIR KING: With the condition that is embodied in the Office of Planning report. We will request that Mr. Glasgow prepare a draft order for us that would incorporate edited language that would require that these displays from the distance from the windows and all that jazz.

CHAIRPERSON CROSS: They have definitely demonstrated that they have met the burden of proof in both the special exception and in the variance, also for the variance. We certainly applaud the effort of Meridian coming into the city, which obviously helps to booster our economic development plan.

All in favor?

Opposed?

VICE CHAIR KING: Great building. Now when am I going to be able to come and see it? When are you going to be open? In a year you say?

MR. LANIER: 2001.

CHAIRPERSON CROSS: We are looking forward to seeing those display windows. That should be very interesting. They change every hour or every two days?

MR. LANIER: Every 120 days. Every quarter.

CHAIRPERSON CROSS: Every quarter? I don't know why I was thinking it would change quite frequently. But nonetheless, still. And also the fact that you are willing to give all the space in your window to community organizations and to civic organizations as a proffer to the city. I thought that was very commendable.

Next case?

MR. HART: Application number 16410 of 17 H Associates, Limited Partnership, 17 H Limited Partnership and Bell Atlantic, pursuant to 11 DCMR 3108.1, for a special exception under section 774.2 to allow the waiver of the rear yard requirement for the construction of a new office building in a C-4 district at premises 1716 H Street, N.W., Square 166, Lots 39, 825, 837, 839, and 860.

Those persons planning to testify, stand for the oath. Raise your right hand.

(Whereupon, the witnesses for the Applicant were sworn in.)

MR. GLASGOW: A twofer.

CHAIRPERSON CROSS: A twofer.

MR. GLASGOW: Madam Chair, for the record, my name is Norman M. Glasgow, Jr. of the law firm of Wilkes, Artis, Hedrick and Lane, representing the Applicant in the case that was just referenced by staff.

Here with me today is Mr. Rick Nero of the same law firm sitting the audience, Mr. Steve Tanner, a representative of the owner, and Mr. Erik Johnson, of the architectural firm of Einhorn, Jaffey, Gabbey and Prescott. Mr. Johnson is submitted as an expert in architecture, and a copy of his resume will be submitted for the record.

This application involves one area of special exception, relief for a rear year waiver at 716 H Street, N.W., which is a mid-block location on the south side of H Street between 17th and 18th Streets in the C-4 zoning district.

There also should be in the record, copies of three letters of support for the application. I will approach the map, a plat of the property. Those three properties that have the letters submitted, is the office building immediately to the west, the office building to the south, and the office building to the east. So all the adjoining property owners have submitted letters in support of the application.

CHAIRPERSON CROSS: Mr. Glasgow, again, you don't appear to have any opposition to this case. Is there anyone here in opposition to this particular case? It's pretty straight forward just as the last one was. So basically I guess we would just duplicate pretty much what we did in the last case and expedite it, the salient points.

Show how you meet your burden of proof of the relief that you are requesting and let's move right on through it.

MR. GLASGOW: I would like to then proceed with Mr. Johnson, who can explain the area of relief in the rear yard and how this site is impacted by an exceptional situation or condition, the shape of the lot and how it is impacted, and why we need the rear yard variance.

Whereupon,

ERIK JOHNSON

was called as a witness, and after having first been duly sworn, was examined and testified as follows:

MR. JOHNSON: Good afternoon. My name is Erik Johnson. As was mentioned earlier, I am project architect for the project, representing the firm of Einhorn, Jaffey, Prescott Architecture and Engineering here in Washington, D.C. Do I need to read in my address?

CHAIRPERSON CROSS: Home address.

MR. JOHNSON: Home address? 1914 North Madison Street, in Arlington, Virginia.

CHAIRPERSON CROSS: Mr. Glasgow, please, just a moment. You are here for a variance or a special exception?

MR. GLASGOW: It is a special exception for a rear yard.

CHAIRPERSON CROSS: Okay, because you said variance.

MR. GLASGOW: It is a rear year waiver in the nature of a special exception.

CHAIRPERSON CROSS: Okay. All right. I just wanted to be clear in my mind.

MR. JOHNSON: Okay, well then I'll proceed. The subject property is basically this parcel here. The surrounding buildings as you can see, are cross hatched. This is H Street. This is Pennsylvania Avenue down here.

The project as was mentioned earlier, is surrounded by high density office development. I have reviewed the Applicant's request for the rear yard waiver. In my opinion, a special exception will allow the development of the property be consistent with the existing pattern in the rest of the subject square.

The waiver will furthermore not be detrimental to the occupants of the future office building or to the occupants in the nearby buildings.

What the waiver does for us is allow the construction of a more functional floor plan that actually works on this site. As you can see from the proposed plan, the site is pretty shallow. It's interesting to see that the buildings surrounding it are all somewhat similar in nature. They have an angle. Our building here again fronts on H Street, is bordered over here by another building and backs onto this alley.

If we are required to comply with the rear yard requirement, we need to have substantial setback along the rear of the building, which would make the floor plate extremely shallow, and as you can probably see, much shallower than the buildings neighboring it.

The required setback would be 23 feet, which as you

can see would take a big slot off the rear of the building and really make it extremely unworkable to develop as a commercial property. So that's why we are requesting this waiver, to really make the project a feasible one. As I said, the waiver will help us avoid having a building which really won't work on the site.

The proposed building will be separated from neighboring buildings that contain windows by a distance sufficient to provide adequate air and light for those buildings. Additionally, the waiver won't affect the Applicant's ability to provide adequate off-street service functions, including loading areas and access points.

As you can see, the parking comes off H Street and service is provided off of the alley. We have located it in the corner here to make it easy to get to.

So in conclusion, it's my testimony that the special exception will be in harmony with the general purpose and intent of the zoning regulations and maps, and that the rear yard waiver will not have an adverse effect on the use of the neighboring property. Thank you very much. I'll be happy to answer any questions that you might have.

VICE CHAIR KING: The ramp down goes down to underground parking? Is there parking in the building?

MR. JOHNSON: There is underground parking beneath the building.

VICE CHAIR KING: I have no questions other than that.

BOARD MEMBER GILREATH: What is the current setback? If you didn't get the waiver, how many feet would you have

to drop back?

MR. JOHNSON: Well, it's 22 feet, 11 inches, so I rounded it to 23.

BOARD MEMBER GILREATH: Additional space for increased FAR space to make the building more profitable?

MR. JOHNSON: No. We are going to comply with the FAR. We are not asking for any extra FAR. Basically we are trying to be able to build out the FAR we are allowed to do. It would be difficult to do that.

BOARD MEMBER GILREATH: You couldn't do it given the present --

MR. JOHNSON: It would be extremely difficult to do it.

BOARD MEMBER GILREATH: That's all the questions I have.

MR. GLASGOW: Madam Chair, in conclusion, we feel that we met the requirements of section 3108.1 and 774.2 of the regulations. In our statement at pages 4 through 8, we go through all the various requirements of the regulations and how they are met. Those statements of the regulations and how the requirements were met were all drafted by Mr. Nero, who is land planning expert, who has been accepted by the Board on many occasions.

CHAIRPERSON CROSS: What did you just say? I was kind of reading. You said Mr. Nero will do what?

MR. GLASGOW: Mr. Nero drafted those provisions in our statement that talked about how we have complied with each of the individual sections of the regulations. He is available for any

questions.

CHAIRPERSON CROSS: I would like that to be a part of the record, Mr. Glasgow.

Can we have Mr. Nero just very briefly go through each section and highlight it as to how you comply with the regulations?

Whereupon,

RICHARD NERO

was called as a witness, and after having first been duly sworn, was examined and testified as follows:

MR. NERO: Thank you, Madam Chairman. On page 4 of our --

VICE CHAIR KING: Name and address, please.

MR. NERO: Yes. Richard Nero, with the law firm of Wilkes, Artis, Hedrick and Lane.

CHAIRPERSON CROSS: And your home address?

MR. NERO: Home address is 13116 Riviera Terrace, Silver Spring, Maryland.

The Applicant's compliance with section 774.2 starts on page 4 of our statement. 774.2 basically allows a waiver from the rear year requirements in the C-4 where certain provisions are complied with. 774.3 states that the office window shall be separated from other buildings that contain facing windows a sufficient distance to provide light and air to protect the privacy of occupants.

As the architect has explained, the proposed building will in fact do that. The waiver of the rear yard variance will not impact on light and air to adjacent buildings.

774.4 requires that in determining distances between windows in buildings facing each other, the angle of sight lines and the distances of penetration of sight lines into habitable rooms shall be sufficient to provide adequate light and privacy to those rooms. There are no residential habitable rooms affected by this application. So that requirement is complied with.

The fourth condition indicates that if, requires that if the rear yard waiver is approved, that it will not affect the adequate off-street service functions, including loading areas and access points. Mr. Erik Johnson, the architect, explained how the parking area and loading areas would be accessed without adversely affecting adjacent properties.

Subsection 774.6 requires that the Board submit the Applicants to the Office of Planning as well as the State Historic Preservation Officer if it's in a historic district. Both those things -- we're not in a historic district and the Office of Planning has not submitted a report in this application, though a referral was made.

In conclusion, I would only reiterate what has already been said, in that the special exception will be in harmony with the general purpose and intent of the zoning regulations and maps, and that the rear yard waiver will not tend to affect adversely the use of neighboring property.

CHAIRPERSON CROSS: Thank you. You have not received any letters or any correspondence of opposition in regards to your application?

MR. NERO: We are aware of no opposition to this application.

CHAIRPERSON CROSS: Thank you. Stay right there.

There is no Office of Planning report, government report. There is no Office of Planning report.

I did not have an ANC report in my file. Did you get any correspondence from them? Having not heard from them, we assume that they are not in opposition or they are not opposed to your application.

Persons or parties who are in support of the application?

VICE CHAIR KING: There are the three letters from Bell Atlantic, and two from Carr America, which are all the surrounding properties as were described.

CHAIRPERSON CROSS: Letters of support.

VICE CHAIR KING: Letters of support.

CHAIRPERSON CROSS: Persons or parties in opposition to the application?

Seeing none, closing remarks by the Applicant?

MR. GLASGOW: I think we have met the burden of proof in the presentation that we have made today and the evidence that's already of record. We would like to have a bench decision from the Board, if we could.

BOARD MEMBER GILREATH: I concur with the representation that they have met the burden of proof. I think the angularity of the lot is such that the fact that other buildings on the block --

CHAIRPERSON CROSS: Wait, wait one second. Do

you want to make a motion?

BOARD MEMBER GILREATH: I was leading up to the motion.

CHAIRPERSON CROSS: Oh, okay.

VICE CHAIR KING: You can make the motion first. I'll second it.

CHAIRPERSON CROSS: You'll have it on the floor, and then we can discuss the basis for the motion.

BOARD MEMBER GILREATH: Okay. I make a motion that it be approved.

VICE CHAIR KING: I second.

BOARD MEMBER GILREATH: I've already said it. I won't repeat it.

MR. HART: Staff will record the record.

CHAIRPERSON CROSS: All in favor?

Let's not skip over steps.

MR. HART: Okay. Staff will record the vote as three to zero. Mr. Gilreath, Ms. King, and Ms. Reid, to grant summary order.

CHAIRPERSON CROSS: This decision, two weeks you'll have the order, Mr. Glasgow.

MR. GLASGOW: Thank you very much.

CHAIRPERSON CROSS: Thank you.

VICE CHAIR KING: Getting paid by the hour, you are never going to get rich at this rate. I mean you took less time than the first case did for two cases, the first case alone.

MR. GLASGOW: We try to be efficient.

VICE CHAIR KING: We appreciate it.

CHAIRPERSON CROSS: Okay. Call the next case. That's the last case of the day.

MR. HART: Application number 16411 of Ruth A. Thompson, pursuant to 3108.1, for a special exception under section 205 to increase the number of children at a child development center from 5 to 12 children, ages infancy to 14 years, and three staff persons, in an R-2 District at premises 817 48th Place N.E., at the Square 5149, and Lots 20 and 21.

(Whereupon, the witnesses for the Applicant were sworn in.)

VICE CHAIR KING: Good evening.

Whereupon,

RUTH THOMPSON-PRICE

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

MS. THOMPSON-PRICE: Good evening. I am Ruth A. Thompson-Price. I live at 817 48th Place, N.E., Ward 7.

Since 1994, I have been a licensed family child care home, operating 23 hours, seven days a week, serving our community parents. I am currently licensed to care for five children from the Department of Health in my home at this time.

I wish to expand my home business from five children and add seven more children, whereby allowing me to serve more of our community families for a total of 12 children. This will allow my business to change from a family daycare home to a licensed daycare center.

I plan to have two additional staff members along with myself. Most of my staff members live within walking distance. I will continue to still live at my home. I am just converting my den and my basement to my daycare center. I have recently been inspected by the fire marshall. I am now waiting for LED to come in. They are informing me that I need the approval of the Zoning to continue to operate 23 hours, seven days a week.

VICE CHAIR KING: Madam Chair, could I ask the director are we dealing just with the child development center aspect of this? We are not getting into this business of a home occupation?

MS. PRUITT-WILLIAMS: Correct.

VICE CHAIR KING: Moving up to three. If we do the child care center, you won't find yourself having to come back to get permission to add two employees to a home occupation?

MS. PRUITT-WILLIAMS: In fact, I believe in your file there is a permit for home occupancy.

VICE CHAIR KING: Yes, but it says one employee. She is now going to three.

MS. PRUITT-WILLIAMS: Based on what came from the Zoning Administrator, the only thing we are looking at is the increase in the number of children from five to seven, for a total of 12.

VICE CHAIR KING: But I mean is she going to have to go back and get a home occupation permit that permits her to have two additional employees?

CHAIRPERSON CROSS: For a special exception.

MS. THOMPSON-PRICE: In my letter, it states three in what they gave me, staff members.

MS. PRUITT-WILLIAMS: Right. My understanding is because it was not cited here, no, she will not.

VICE CHAIR KING: Okay.

MS. PRUITT-WILLIAMS: Now the other thing is, just for a note for the record, we also are not dealing with parking. One off-street parking is required. It was not advertised because I believe you do provide an off-street parking space.

MS. THOMPSON-PRICE: Parking for two cars in the back of my home.

MS. PRUITT-WILLIAMS: That has been required, so we are really dealing with just an increase in children.

VICE CHAIR KING: Okay. I just didn't want Mrs. Thompson to find that after going through all of this and waiting for us to hear her case, that she had to start all over again from scratch on another issue.

CHAIRPERSON CROSS: Go ahead Ms. Thompson. Are you finished?

MS. THOMPSON-PRICE: That's basically it.

CHAIRPERSON CROSS: Okay, Ms. Thompson, for the relief that you are requesting, basically the regulation that you are dealing with specifically is section 205. You have to demonstrate to us how you comply with section 205. Are you familiar with that?

MS. THOMPSON-PRICE: No. I'm not.

VICE CHAIR KING: Let's walk her through it.

CHAIRPERSON CROSS: 205 is the regulation that you have to comply with in order to get the relief that you are requesting for the special exception for a child development center.

MS. THOMPSON-PRICE: Okay.

CHAIRPERSON CROSS: But I see you are looking quizzical. That's okay. Obviously this is your first time here and you are really not familiar with our proceedings. So Mrs. King just said that what we'll do is we'll walk you through it so that we can help you to kind of make your case.

MS. THOMPSON-PRICE: Okay. Thank you. All right.

VICE CHAIR KING: 205.2 says the center shall be capable of meeting all applicable code and licensing requirements. You are going to need to be licensed.

MS. THOMPSON-PRICE: I have been pre-inspected. They pre-inspected me on January 7 of 1998. They are waiting now for my CO from Zone. The fire marshal has been out. She is waiting for my CO.

VICE CHAIR KING: That's great.

MS. THOMPSON-PRICE: I have met everything that she complied for me to do. I am still waiting on LED now. The fire marshall has came out. The Department of Health now, they have came out. The only thing that they have told me I needed to do for them is my physical, my director, and give them my staff. I was planning on going to take them my paperwork when I left here today before 5:00. But I will take it tomorrow. I do have my staff. I am the director and I am the head teacher.

VICE CHAIR KING: Okay great. It's just that we can give you all the permits that we want to, but you can't open a daycare center without all that other stuff.

MS. THOMPSON-PRICE: Right. I understand that.

VICE CHAIR KING: The law requires that you -- the center shall be located and designed to create no objectionable traffic condition and no unsafe condition for picking up and dropping off of children.

We always pay a great deal of attention to the safety of the children, and of course the disruption. Can you describe your plot and where the children will be dropped off? Will they be escorted into the house and so forth?

MS. THOMPSON-PRICE: Well right now I service the people in my community. My neighbor across the street has a child that's disabled. I go out and meet the school bus in the morning and walk him to the door. Transportation picks him up.

Now most of my parents either they will pull into the back. For the children who are unable to walk, I do have handicap accessible in the back. They will walk their children in the back.

Right now we have no sidewalk, so they pull right up to the grass and they walk right into my walkway.

VICE CHAIR KING: And there won't be any disruption for your neighbors of cars queuing in front of the house or anything?

MS. THOMPSON-PRICE: No. Most of my parents are in the community. The six lots next to me has been vacant for the last nine years. The only problem I have had, to call the police to run the little people away from whatever they are doing. But on my block, most of my parents, my neighbors park in the back. Our street is vacant. I am probably the only person home during the day on the

whole block.

VICE CHAIR KING: They are probably glad that you are there.

MS. THOMPSON-PRICE: Other than that, most of my neighbors are next block over.

BOARD MEMBER GILREATH: Are you saying that most of the parents in the neighborhood walk their children rather than coming by car?

MS. THOMPSON-PRICE: Yes. They walk. Most of my parents are issued to me from Department of Health, DHS. They live in my community in Ward 7. I just received one from Cardoza area. His father comes by bus with his two children. He's on 3:00 to 12:00 shift. So most of my parents do not drive.

CHAIRPERSON CROSS: The rear, the picture of the rear off-street parking ramp that you have submitted, the parents come up?

MS. THOMPSON-PRICE: If there's a child that's handicapped or disabled, because I have a background in special needs.

CHAIRPERSON CROSS: All right. Once they let the child off --

MS. THOMPSON-PRICE: They drive all the way in.

CHAIRPERSON CROSS: Okay now. Do they have to back out or do they drive all the way through?

MS. THOMPSON-PRICE: They can back in. No, they would either have to back in or pull in and back back out in the alley.

MS. PRUITT-WILLIAMS: This is off of the alley?

MS. THOMPSON-PRICE: It's off an alley, the alley of 49th.

CHAIRPERSON CROSS: Oh okay. So this is -- I don't see an alley. I see grass on this side and grass on that side. Where is the alley? Is that on the east side?

MS. THOMPSON-PRICE: I show the picture of the ramp in the back parking lot of my house.

VICE CHAIR KING: Is it really a ramp or like a deck?

MS. THOMPSON-PRICE: No. It's actually --

VICE CHAIR KING: Because it looks like a deck.

MS. THOMPSON-PRICE: It's not a deck. Well, you could call it a deck, but it's --

VICE CHAIR KING: It's wood, but it's on grade?

MS. THOMPSON-PRICE: It's at a slant.

CHAIRPERSON CROSS: Can you come and verify for us? Because what I am looking at does not seem to be what you are describing.

MS. THOMPSON-PRICE: Yes, this is it. It's grass right there and then the alley.

CHAIRPERSON CROSS: Oh, right beyond the grass is the alley?

MS. THOMPSON-PRICE: Yes, right here. Right on the other side of my high six foot fence is the alley. It's just the grass.

CHAIRPERSON CROSS: But they pull in.

MS. THOMPSON-PRICE: Pull in.

CHAIRPERSON CROSS: So now where do the

children play? Where is the play area?

MS. THOMPSON-PRICE: Okay. My play area is back there. My whole yard is my --

CHAIRPERSON CROSS: Back where?

MS. THOMPSON-PRICE: Okay. Well when you come in --

CHAIRPERSON CROSS: Where is the play area in proximity to this?

MS. THOMPSON-PRICE: On the left.

CHAIRPERSON CROSS: On the other side of the building?

MS. THOMPSON-PRICE: On the other side of it.

CHAIRPERSON CROSS: Okay.

MS. THOMPSON-PRICE: On the other side of the deck I have a -- this is on the righthand side of my house that they don't come down. This is the walkway where they come in.

CHAIRPERSON CROSS: Okay, but the play area is over here? How large is that play area?

MS. THOMPSON-PRICE: The play area is I would say as big as my ramp, and my ramp holds two cars. So the play area I would say --

MS. PRUITT-WILLIAMS: Your ramp holds two standard sized cars?

MS. THOMPSON-PRICE: Yes. Two standard. It will hold a truck and --

MS. PRUITT-WILLIAMS: Which are usually about nine feet each.

MS. THOMPSON-PRICE: It can hold a truck and a compact car.

MS. PRUITT-WILLIAMS: Twenty feet wide.

MS. THOMPSON-PRICE: Yes.

CHAIRPERSON CROSS: And do you have play equipment?

MS. THOMPSON-PRICE: Yes.

CHAIRPERSON CROSS: And things like that over there on the play area?

MS. THOMPSON-PRICE: I have a playhouse that I can stand up in. I have a sliding board.

CHAIRPERSON CROSS: What is the surface over there?

MS. THOMPSON-PRICE: Mulch. Regulatory Affairs said it had to be mulch, six inches deep.

MS. PRUITT-WILLIAMS: And with the ramp there, you can still provide your one off-street parking?

MS. THOMPSON-PRICE: I can provide two off-street parking if necessary on that ramp. Two cars.

MS. PRUITT-WILLIAMS: And still allow for access for parents to drop of a kid?

MS. THOMPSON-PRICE: Yes.

VICE CHAIR KING: So that takes care of 205.4. So 205.5, the center, including any outdoor play space provided shall be located and designed so there will be no objectionable impact on adjacent or nearby properties due to noise or activities or other objectionable conditions.

What are the hours when your center will be opened?

MS. THOMPSON-PRICE: I currently operate now 5:30 a.m. to 4:30 a.m., seven days a week.

VICE CHAIR KING: 4:30 p.m.?

MS. THOMPSON-PRICE: A.M. I am open 23 hours, seven days a week. On my copy of my license --

CHAIRPERSON CROSS: So you are one of those 24 hour --

MS. THOMPSON-PRICE: Yes, I'm on 23 hours.

CHAIRPERSON CROSS: For the parents who work at the non-traditional jobs and need some care at night?

MS. THOMPSON-PRICE: Right.

CHAIRPERSON CROSS: So you provide that care. They bring them. You put them to bed and they come and get them?

MS. THOMPSON-PRICE: Yes. They come get them the next morning.

VICE CHAIR KING: I note that the ANC has endorsed your application. You haven't had any complaints so far as to your operation or disruption of the neighborhood or noise from the children?

MS. THOMPSON-PRICE: No. I opened on September 23rd after leaving Georgetown for 25 years. I have been taking care of the neighbor's children across the street behind me. I associate with the community day cares. I do field trips with them. I had my hearing. I personally handed my announcement to each one of my neighbors except for one neighbor that has a pitbull. I just waited for you all to send him the notice. I posted a big sign. In fact, I

think I'm going to have to close off the fence because this dog is getting into the next neighbor's yard somehow.

But everybody came to my hearing. They signed off. They spoke to me this morning, told me "Best of luck." They brought me their children.

CHAIRPERSON CROSS: That raises another issue. You do have a fence. That yard will be fenced in?

MS. THOMPSON-PRICE: Yes, I do. A six foot fence. It's a vacant property, yes. It's a vacant property and people's dogs are just roaming in it. It's about six lots next to me. It's vacant. And people, they decide they want to walk their dogs, they let them in this vacant lot. But it's for sale now, so the ANC is working on it.

REVEREND HARRIS: We're going to take care of that.

MS. THOMPSON-PRICE: They are working on that.

VICE CHAIR KING: You are from the ANC?

REVEREND HARRIS: I am the ANC-7C. I am the chairperson.

VICE CHAIR KING: Oh good. Any off-site play areas shall be located so as not to result in endangerment to individuals in attendance at the center, in traveling between the play area and the center itself. Well, the play area is immediately next to where the children are going to be. Is that right?

MS. THOMPSON-PRICE: The play area is basically in my back yard. There is a gate that would stop them from coming to the play area versus going inside the building. I do have two gates to separate the play area from going into the walkway of the building.

VICE CHAIR KING: Is there any other child development center within 1,000 feet of yours? Are you aware?

MS. THOMPSON-PRICE: Assuming that the sign says more than 1,000 feet.

REVEREND HARRIS: More than 1,000 feet.

MS. THOMPSON-PRICE: No. There is no other daycare center.

CHAIRPERSON CROSS: Ms. Thompson, I wondered about that because in part of your submission that you had submitted to the ANC Commissioner you said you distributed your flyer to these various entities. Out of the 19 distributions, eight are child development centers.

MS. THOMPSON-PRICE: Eight are child development centers?

VICE CHAIR KING: Or daycare centers.

MS. THOMPSON-PRICE: Or licensed family daycare homes.

CHAIRPERSON CROSS: Okay.

MS. THOMPSON-PRICE: Licensed family daycare homes. Not daycare centers. They are homes.

CHAIRPERSON CROSS: Child care home. I see a center, Save and Sound Center.

MS. THOMPSON-PRICE: Right. That's where I had my hearing.

CHAIRPERSON CROSS: Road Center. Home, home. Assuming the Saint's Church Childcare?

MS. THOMPSON-PRICE: Yes.

CHAIRPERSON CROSS: That's a center. So it's four. In what proximity to yours?

MS. THOMPSON-PRICE: Assuming the Saints is 1,000 feet away or more. So is Safe and Sound. She's 1,000 feet or more.

What was the other one?

CHAIRPERSON CROSS: Safe and Sound, Little Treasures Daycare.

MS. THOMPSON-PRICE: Little Treasures is well over 1,000 feet away. They are on the other side of the road. Happy Faces is --

CHAIRPERSON CROSS: Happy Faces?

MS. THOMPSON-PRICE: Oh gosh. She's probably 4,000. She's all the way off of 12th and Marona.

CHAIRPERSON CROSS: Oh, okay. Okay.

MS. THOMPSON-PRICE: I put it there so that I could catch parents that lived in my community that I did not know. That's what I called myself, trying to catch parents that were spread all over Ward 7 that I never met.

VICE CHAIR KING: Good. That's the highlights of section 205.

CHAIRPERSON CROSS: The parking?

VICE CHAIR KING: The parking we skipped over because she, you know, I mentioned it but she had answered it twice as a matter of fact. I skipped over the part about screening of the buildings and planting because she described the topography, and that there didn't seem to be any need for us to require that. So that's -

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CHAIRPERSON CROSS: That's it.

BOARD MEMBER GILREATH: We don't get involved in whether or not there is adequate square footage for the house interior for these additional children?

VICE CHAIR KING: No. The Department of Human Services.

CHAIRPERSON CROSS: They have to get licensed. As a part of the licensing process, those inspectors come out and they will determine.

BOARD MEMBER GILREATH: We don't have to deal with it. Okay, that's fine.

CHAIRPERSON CROSS: Now the next thing is Government reports. There does not appear to be any Government reports.

ANC report?

Whereupon,

REVEREND HARRIS

was called as a witness, and after having first been duly sworn, was examined and testified as follows:

REVEREND HARRIS: Right here. I am Reverend Harris. I am Vice Chair and Chair of ANC-7C. I have been in that area over 20 years. As a result of being in that area, I know every spot out there. In fact, I traveled with the newly elected mayor in various, all over that center to make sure that my friend becomes the new mayor of the District of Columbia, because we're talking about a responsive government.

As a result of seeing all these abandoned properties and what have you, it is my intention basically to try to get as far as Ward 7, to get up to par. I will say to you that ANC from 7-01 all the way down to 6, and I want to commend Mrs. Thompson because I have grandchildren. I look at the fact that here's a lady that's taking people that possibly would have been on Aid to Families with Dependent Children.

I am retired psychologist and I have handled a number of cases. Her place is not only safe, but it's also a motivating and educational type of thing for those people that need to get off assistance and go ahead and go to work.

So as a result of that statement, I wish to endorse the application for Ruth A. Thompson-Price, entitled the Little Jewel Child Development Center, which is located at 817 48th Place, at which I'm working on now. We're going to straighten it out. We're going to get it all straight.

Washington, D.C. 2019, it sets forth under the provision DCMR title II, section 5-424G3, section 3108.1, 5-424G3, section 5.413 to 5.432. I am really elated that this person is trying to help the community. We need more people like that out here to get these people off of welfare so they can go to work.

CHAIRPERSON CROSS: And more people like you too.

REVEREND HARRIS: Pardon me?

CHAIRPERSON CROSS: And more people like you too to support these endeavors.

REVEREND HARRIS: I have put 38 years, in fact, I

talked to the mayor this morning. I was on my way -- he said, "Where are you going, Reverend Harris?" I said I'm going to the Hearing Board. I showed it to him and he read it. He said "Well you go down there and see what's happening." I told him that we have some very efficient people here, very thorough people here. I am observing every function of this government. I am on the staff. I have walked with him over this entire city. We are going to get it together.

CHAIRPERSON CROSS: Okay, that's great.

REVEREND HARRIS: I mean all these drugs and these abandoned places, and these people that are home that are on Aid to Families with Dependent Children, you have got a Republican Congress. You have got a Control Board. Everybody is saying get up and go.

If I have put 38 years of my life out here working with the youth service, involved with boa constrictor snakes, with juvenile kids that are pushing drugs, when people walk upon me with knives, and I have been in the system for six years. I've got two more to go. I am running for the City Council, Ward 7, and I am going to win.

CHAIRPERSON CROSS: Thank you, Reverend Harris.

VICE CHAIR KING: Was there a meeting of the ANC?

REVEREND HARRIS: Oh yes. We have done all of that.

VICE CHAIR KING: With a quorum

REVEREND HARRIS: Yes, ma'am. We've done it all.

VICE CHAIR KING: And it was a duly advertised regular meeting?

REVEREND HARRIS: Yes, ma'am. I'll tell you, I've never seen a person that -- this lady is very meticulous. I am not saying it because I walk, but when a person, you know, this computer system, when I came along they didn't have a computer system. You had to type the stuff up. Right today the ANC needs, as I talk with the mayor -- in other words, I have got to become computer knowledged in order to get my stuff out so the people know what's going on.

CHAIRPERSON CROSS: Thank you, Reverend Harris for giving us your platform.

(Laughter.)

BOARD MEMBER GILREATH: He's off to a good start.

CHAIRPERSON CROSS: Let's move to the issue at hand today and try to get her approved.

REVEREND HARRIS: That's what I am here for.

CHAIRPERSON CROSS: Before I lose my quorum.

REVEREND HARRIS: Right. Well I'm here for that. I'm definitely here for that.

CHAIRPERSON CROSS: Now you did indicate to Mrs. King's question, in response to Mrs. King's question, that there was a meeting of the ANC?

REVEREND HARRIS: Oh yes, ma'am.

CHAIRPERSON CROSS: But they didn't submit a letter?

VICE CHAIR KING: We have a letter.

REVEREND HARRIS: It should be because we did have a letter.

CHAIRPERSON CROSS: We do?

REVEREND HARRIS: Yes, sure.

VICE CHAIR KING: This is a letter, but it doesn't say that there was a quorum, and it doesn't say at a duly -- it's signed by Everett Lyles and Reverend Edward Harris.

CHAIRPERSON CROSS: Not that, Mrs. King. I had that. I meant what you were asking for that showed there was a quorum and a vote.

VICE CHAIR KING: Well he is saying, Reverend Harris has testified that there was a quorum, there was a duly called meeting, there was a quorum, and a majority of the people voted to support Mrs. Thompson. So I think we give it great weight.

CHAIRPERSON CROSS: No. It would have to be within --

VICE CHAIR KING: It has to be in writing?

CHAIRPERSON CROSS: The great weight aspect of it has to be in writing by the regulations. However, based on your verbal proffer to us as to what happened, we will definitely take into consideration the meeting and the fact that there was a quorum. So we will acknowledge that.

REVEREND HARRIS: Well I appreciate that. I wish all of you a happy new year.

CHAIRPERSON CROSS: We're not quite done yet, Reverend Harris.

REVEREND HARRIS: My car is down. I don't want

them to take my car.

CHAIRPERSON CROSS: We're going to get through this. Now let me ask you something.

REVEREND HARRIS: You can ask me anything.

CHAIRPERSON CROSS: The sign-in sheet for, it says sign-in sheet, Ward 7 community meeting. What is this? Is this a petition in favor of support of the Little Jewel School or what?

VICE CHAIR KING: You see it says agree,

REVEREND HARRIS: Ms. Thompson can address it. I'll just back up what she says.

MS. THOMPSON-PRICE: When I had my community meeting after putting out the announcement on the 23rd, those were all the people who attended, and the vote was taken of those people.

CHAIRPERSON CROSS: I see now.

MS. THOMPSON-PRICE: Those were all the people that supported. That's why we had yes or no.

CHAIRPERSON CROSS: I see. So they came in, they signed in, and then they would put yes or no?

MS. THOMPSON-PRICE: Right. That they supported me.

CHAIRPERSON CROSS: I see. Okay. Thank you for clarifying that for me. I didn't -- I wasn't really focusing on those yeses and noes. I just saw the names and I was wondering what the purpose of it was for.

Okay. Let's see what other questions I have. All right. All persons and parties in support of this application? Seeing none. Do we have any letters of support?

VICE CHAIR KING: No. Just the one from the ANC.

CHAIRPERSON CROSS: Okay. Persons and parties in opposition? Seeing none.

Closing remarks by the Applicant.

BOARD MEMBER GILREATH: Just say please.

MS. THOMPSON-PRICE: Oh please.

REVEREND HARRIS: Maybe she should say pretty please.

CHAIRPERSON CROSS: I would move approval of this application.

VICE CHAIR KING: Second.

CHAIRPERSON CROSS: I feel that the Applicant has met her burden of proof in section 205, and demonstrated that she is entitled to relief for what she is requesting. She has complied with all of the specification, that there is no adverse impact. We see no opposition, have received no correspondence whatsoever.

In actuality, this would be certainly a booster to that community to have a child development center there and to be able to provide the kind of services that she is going to be providing to the community.

I don't think that it would impair the integrity of the zoning map or zoning regulation. We just would put the regular conditions that we put for all child development centers.

VICE CHAIR KING: Including that we won't put any restriction on the hours of being open because essentially she's open 23 hours a day. But we would say that she can care for up to 12 children, zero to 14 years of age. She can have a staff of three

people. She must provide at least one parking space, off-street parking space.

CHAIRPERSON CROSS: Monday through Friday or are you seven days a week?

MS. THOMPSON-PRICE: I am open seven days a week and I have shifts. Right now --

VICE CHAIR KING: She's 23-7.

MS. THOMPSON-PRICE: Right now I see a total of 15 children in one day. I have three shifts. So when you are saying 12 --

VICE CHAIR KING: Well the application was for 12.

MS. THOMPSON-PRICE: Well it's 12 at any given time. According to your license, I can't be over 12. I have shifts.

VICE CHAIR KING: So maximum of 12 children at any time. Is that correct? At any given time, there will not be more than 12 children in the house.

CHAIRPERSON CROSS: We forgot to ask you if you are providing any type of food there?

MS. THOMPSON-PRICE: I provide breakfast, a.m. snack, lunch, p.m. snack, and dinner.

CHAIRPERSON CROSS: Do you prepare it there?

MS. THOMPSON-PRICE: I prepare it there. The fire marshall came in. She said I did not need to have a special kitchen put in. I did not have to have a pull station put in.

CHAIRPERSON CROSS: All right. What about your trash pickup?

MS. THOMPSON-PRICE: My trash pickup is still by

the District until they tell me that I have to have a special service.

VICE CHAIR KING: Is once a week adequate once you are starting to --

MS. THOMPSON-PRICE: I may have to get another green trash can. I may have to buy another green dumpster.

CHAIRPERSON CROSS: You are almost doubling the amount of kids.

MS. THOMPSON-PRICE: Because right now with my two sons and myself, with five I can fill up my green trash can and some more.

CHAIRPERSON CROSS: With three shifts, you may have to have trash pickup service pick up your trash, because that's one thing that we look at. Your disposal of the trash and debris because you have more children and more litter.

VICE CHAIR KING: Particularly because of the impact on the neighborhood.

MS. THOMPSON-PRICE: Okay. Well I can take it to the city trash. I have transportation.

VICE CHAIR KING: I think we'll put in a condition that adequate trash removal be provided by the owner.

MS. THOMPSON-PRICE: Okay.

VICE CHAIR KING: By the Applicant.

MS. THOMPSON-PRICE: Okay. Other than my home trash? Because see, I still live there.

VICE CHAIR KING: Well your home trash we're not dealing with. But you are going to have a lot of trash if you have 12 children. Per shift, that's 24 kids, five meals a day. That's a lot of

trash.

CHAIRPERSON CROSS: You may not realize that. So you want to be mindful of it so that you can take care of it adequately.

BOARD MEMBER GILREATH: Do you have District regular trash up once a week at your place?

MS. THOMPSON-PRICE: Once a week.

BOARD MEMBER GILREATH: Is there any kind of provision, where something like this where she's taking care of children, that she can request the District if she needs --

VICE CHAIR KING: On the contrary. If she makes that request, they will probably stop picking up her personal trash because she'll be considered a business and will have to have private contractors.

BOARD MEMBER GILREATH: She can take her own then. That would be another alternative for her.

VICE CHAIR KING: She can take her own or she can arrange for private hauling.

CHAIRPERSON CROSS: Now that she is increasing her clientele, then of course she would be able to better afford to have trash pickup, additional trash pickup once a week. Right?

MS. THOMPSON-PRICE: Yes. I can arrange that.

BOARD MEMBER GILREATH: You said there was someone in your neighborhood community who --

MS. THOMPSON-PRICE: Yes, we have Taylor Trash Company that's in Ward 7. So he services the community. He has a dump that we can take excess stuff to. So I can arrange private

pickup.

VICE CHAIR KING: The pickup and drop off should be done securely in order to protect the children.

CHAIRPERSON CROSS: As indicated in your testimony as to your -- did you say that you go to pick up a couple of children who are handicapped?

MS. THOMPSON-PRICE: No. The D.C. Public Schools sends the school buses to my house to drop them off and pick them up.

CHAIRPERSON CROSS: When the buses come to your house, do they come up that ramp?

MS. THOMPSON-PRICE: No. They come to the front door.

CHAIRPERSON CROSS: Then how do they get from the car or the bus to your front door?

MS. THOMPSON-PRICE: They walk right in my front gate.

CHAIRPERSON CROSS: The handicapped children?

MS. THOMPSON-PRICE: Yes. All children, when I'm saying disabled, are not necessarily wheelchair or crutches. I have several children that are ADA, AH. I have one that's AIDS. All of these are considered disabled children in the buses. They go to special schools, some of them.

VICE CHAIR KING: Right. What we are going to put I think in our conditions is that you assure the safety of the children in the drop off and pickup, whether that means that you require that

whoever brings them deliver them to your door, or that you go out to the buses or cars or whatever to get them.

MS. THOMPSON-PRICE: Right now I have the attendant come and meet him all the way to my front door and ring the bell.

VICE CHAIR KING: That is what we want to have happen.

MS. THOMPSON-PRICE: And then I bring them out. Okay, I'll continue to do that.

VICE CHAIR KING: Do we put a time on this? Five years?

CHAIRPERSON CROSS: Five years will be fine.

VICE CHAIR KING: Is five years okay?

MS. THOMPSON-PRICE: Yes. I plan on living in Ward 7 a long time. I'm not moving. I have been there 10 years come June. I'll be there for another five.

MS. PRUITT-WILLIAMS: It just means in five years you would have to come back though to the Board for another special exception.

CHAIRPERSON CROSS: And then basically we can assess how this particular child care facility did in this community. Because quite frankly, I think you are only the second one that we've had that's been like a 24 hour.

VICE CHAIR KING: We had one other I think.

CHAIRPERSON CROSS: The one on Georgia Avenue, off of Georgia Avenue. So I think since this is a relatively new concept and there is quite a bit of traffic, that we would just want

to reassess in five years. If there's no opposition, no problem, no complaints, then you should have no problem really.

MS. THOMPSON-PRICE: Fine. Thank you.

VICE CHAIR KING: Do we have to take a vote? Have we voted?

MS. PRUITT-WILLIAMS: Yes.

VICE CHAIR KING: Oh we have. Good.

CHAIRPERSON CROSS: It's been a long day. You should have your order in about two weeks.

MS. THOMPSON-PRICE: Okay. Thank you.

VICE CHAIR KING: Congratulations.

(Whereupon, at 5:18 p.m., the proceedings were concluded.)