GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

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TUESDAY

OCTOBER 24, 2000

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The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:00 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
ROBERT N. SOCKWELL	Vice Chairperson
RODNEY L. MOULDEN	Board Member
ANN RENSHAW	Board Member

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Commissioner
JOHN G. PARSONS	Commissioner

NATIONAL CAPITAL PLANNING COMMISSION MEMBER PRESENT:

WILLIAM LAWSON	Commissioner

OFFICE OF ZONING STAFF PRESENT:

Jerrily R. Kress,	Director
Sheri Pruitt,	Secretary, BZA
Beverly Bailey,	Office of Zoning
Paul Hart,	Office of Zoning
John Nyarku,	Office of Zoning

OTHER AGENCY STAFF PRESENT:

Arthur Jackson, Office of Planning
Ellen McCarthy, Office of Planning
John Moore, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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(9:38 a.m.)

CHAIRPERSON REID: Ladies and Gentlemen, this is October 24th meeting of the Board of Zoning Adjustment, a public hearing of the Board of Zoning Adjustment. My name is Sheila Cross Reid, Chairperson.

Joining me today is Ann Renshaw, Rodney Moulden, representing the National Capital Planning Commission; and also Mr. Robert N. Sockwell. Schedules for today's hearing 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. Before coming to speak to the board, please give both cards to the reporter, who is sitting to my right.

Order of procedure for special session in variance cases is statement and witnesses of the applicant, government reports, including the Office of Planning, the Department of Public Works, et cetera.

For the ANC, parties or persons in support, and then parties or persons in opposition, and closing remarks by the applicant. Cross-examination of witnesses is permitted by the applicant or parties. The ANC within which the property is located is automatically a party in the case.

The record will be closed at the conclusion of each

case, except for material specifically requested by the Board, and the staff will specify at the end of the hearing exactly what is expected.

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

Please turn off all beepers and cell phones at this time so as not to disrupt these proceedings. The Board will now consider any preliminary matters.

Preliminary matter are those which relate to whether a case will or should be heard today, such as a request for postponement, continuance, or withdrawal, or whether proper and adequate notice of the hearing has been given.

If you are not prepared to go forward with your case today, or if you believe that the Board should not proceed, now is the time to raise such a matter. Those having preliminary matters, please come forward.

MR. KANE: Ms. Reid, and Members of the Board, my name is Michael Kane. I am the attorney for the Phillips Collection, and Mr. and Mrs. Janitazio, in Application Number 16618.

I believe you have before you a letter requesting a continuance of the hearing from today until December 5. We have been strongly urged by some of our neighbors and by ANC-2B to ask

the Board for extra time so that we may meet further with the neighbors, and work harder to try to resolve their concerns, and hopefully present a more contained and more agreeable fact pattern for the Board's consideration.

CHAIRPERSON REID: December 5th?

MR. KANE: Yes, December 5th.

MS. BAILEY: Madam Chair, in addition to the applicant's request for postponement, there have been several other entities who are also requesting that the case be postponed.

That being ANC-2B, Mr. Steven Gell, who is representing a host of residents in close proximity to the site; the Office of Planning, and the Dupont Circle Citizens Association.

All of these -- also, the Cosmos Club. All of these persons are requesting that this application be postponed, Madam Chair.

CHAIRPERSON REID: Okay. Thank you very much, Ms. Bailey. Yes, we had received within our packages these said requests that were stated by Ms. Bailey.

And the Board traditionally likes to see when there are opposing sides, opposing points of view, and that there is some type of conflict, the various entities try to get together to work out their differences and come to some resolution to get to a further point, so that when you do appear before the Board that it makes our job a lot easier.

So we would then put a motion to the board to consider the request that you just made. Board Members, may I have a motion?

BOARD MEMBER RENSHAW: Madam Chair, I so move.

VICE CHAIRPERSON SOCKWELL: I second.

CHAIRPERSON REID: All in favor?

(Ayes.)

CHAIRPERSON REID: Opposed?

(No audible response.)

MS. BAILEY: The staff will record the vote as 4 to 0, motion made by Mrs. Renshaw, seconded by Mr. Sockwell Mrs. Reid and Mr. Moulden, to postpone the hearing, or for the hearing to be continued rather to December 5th.

In addition, Madam Chair, lastly on this same case, there are several parties who are requesting to join in the case. The Staff is recommending that the party status be established when the case is heard on December 5th. I don't know whether you want to address that matter, but that is the Staff's recommendation.

CHAIRPERSON REID: Okay. That is to be taken up as a preliminary matter. I think, Mr. Gell, you had a request. Would you please come forward and give us the request during this morning's hearing, and the basis as to why you are requesting that at this time.

MR. GELL: Good morning. Party status.

CHAIRPERSON REID: At this time.

MR. GELL: Simply to settle the matter so that the parties will know their situation over the next month while we prepare a case either for or against.

We are trying to work with The Phillips, but it may be that we will be coming in in opposition, and for us not to know for that period of time whether we are going to be parties or not, it seems to me, puts us at a bit of a disadvantage.

But I recognize that you have pressing concerns. You have things scheduled and the staff has asked me if we couldn't wait until the hearing, and if that is the Board's decision, I will be glad to, or I would be glad to proceed and request party status for the individuals.

CHAIRPERSON REID: My understanding is that your request was to represent these several individuals as a group for party status.

MR. GELL: We would make the motion based on individuals as parties, or as a group. We think that we can make a case for individuals who live across the street, or on the alley that is being affected.

But we recognize that the Board does prefer to have people get together as a group, and indeed we are acting as a group, and I am representing all of us.

CHAIRPERSON REID: Absolutely, because I am sure that you can appreciate that to have several individuals with

party status, and those individuals having to cross-examine, having the right to cross-examine, would make that particular case extremely onerous for us, and also for the people who would be attending that particular hearing.

And so in the best of worlds, we always try to suggest that you combine, and have one spokesperson who represents the group, because invariably we find that with the exception of extenuating circumstances that the concerns are usually about the same.

You know, it runs the gamut of whatever the particular adverse impact or perceived adverse impact is, is usually reiterated in the numerous times by the same individuals.

So the only time we would depart from that is if someone had a particular situation that was unique and unusual to everyone else. But if it is basically the same type of concern, then we would ask that it be combined with one spokesperson.

MR. GELL: We will be happy to move on that basis. I would ask, however, for some leave to amend that at a later time if it turns out that the -- because they are individuals, and they have different properties, and to some degree different interests.

And if it turns out that the needs or that their goals diverge, and they go different ways, that they be given the opportunity as a parliamentary matter before the hearing to state a case for why they should be given separate party status.

CHAIRPERSON REID: Absolutely, and if that is determined, then we would do so.

MR. GELL: I would appreciate it.

CHAIRPERSON REID: So, now what we were saying was -- and what we are saying is that typically we grant party status at the time that we hear the case, and if it does not cause you any type of inconvenience in your ability to negotiate, then we would do it along those lines.

So hopefully you would still be able to enter into negotiations or what have you without having received party status.

MR. GELL: Okay. I thought you were moving to grant us party status as a group, but I --

VICE CHAIRPERSON SOCKWELL: Madam Chair, it seems to me that because Mr. Gell has stated that his group of affected residents may or may not wish to become individual parties in the future, that we would hold party status on that basis alone until the hearing, because after negotiations, his group may not hold together.

And to grant status now might be premature and require us to just go through another set of procedures. And it is also disadvantageous to the applicant for party status to be granted outside of the situation where all parties are present, and all entities are present.

CHAIRPERSON REID: Thank you.

MR. COLLINS: Ms. Reid --

CHAIRPERSON REID: Did you wish to say something?

MR. COLLINS: Yes, I do. My name is Chris Collins, and I am here on behalf of the Cosmos Club, which has also requested party status in the case. And I understand your decision and Mr. Sockwell's articulation, and I respect that.

I would just like to have it on the record that the Cosmos Club would not oppose the continuance until December 5 provided that the Cosmos Club is entitled to raise any and all issues at that time, and by virtue of having it delayed only until -- I'm sorry, December 5, does not prejudice the Cosmos Club's right to raise issues that may require a further delay. We have not --

CHAIRPERSON REID: Raise issues that may require a further delay?

MR. COLLINS: Yes.

CHAIRPERSON REID: Than the December 5th date?

MR. COLLINS: Yes, that's correct. We have not completely finished studying the plans.

CHAIRPERSON REID: But this doesn't give you ample time to do that?

MR. COLLINS: Well, I don't know, and I just want to preserve our rights.

CHAIRPERSON REID: Okay. Well, hopefully -- you are talking about approximately what, a month-and-a-half?

Hopefully that is ample time for you to be able to have and take into consideration all of the issues and concerns that you had.

MR. COLLINS: Sure.

CHAIRPERSON REID: So that we would not necessarily prejudice the case by having to take the chance of prejudicing the case by a further delay, particularly since we do have this time span now in order to be able to address the concerns of which you speak.

MR. COLLINS: Well, for instance, one of the issues that we have addressed preliminarily is a jurisdictional issue, and that if the case is raised on December 5 that the Board may not have jurisdiction.

CHAIRPERSON REID: I understand.

MR. COLLINS: I just want to be able to raise issues like that.

CHAIRPERSON REID: I understand. Certainly, you do have --

MR. COLLINS: Thank you.

CHAIRPERSON REID: I mean, notwithstanding what I said, the fact remains that just as a matter of procedure that you are aware of the fact that you do have inherent rights to raise issues that you feel necessarily.

But hopefully -- again, hopefully the majority of them will have been addressed by that time.

MR. COLLINS: We hope so.

VICE CHAIRPERSON SOCKWELL: Madam Chair, may we just clarify the record that in Mr. Collins' testimony that he indicated a right to a further delay. It is more of a right to request further delay to the matter.

MR. COLLINS: Of course.

CHAIRPERSON REID: Well, I think we all understood that. As he said it, I think we were all under that impression.

MR. COLLINS: Thank you.

CHAIRPERSON REID: Thank you very much. So -- oh, I'm sorry.

MR. JOHNSON: Steve Johnson on behalf of the Embassy of India. We have also requested party status.

CHAIRPERSON REID: The Embassy of -- I'm sorry, which embassy?

MR. JOHNSON: The Embassy of India.

CHAIRPERSON REID: Oh, India. Okay.

MR. JOHNSON: We have also requested party status, and we support the continuance. We have no interest in any further delay, but unfortunately co-counsel and I are going to be out of town on December 5th.

And we would like to request the Board that if there was any alternate date, we would appreciate you considering that alternate date.

CHAIRPERSON REID: Did you request in writing an alternate date?

MR. JOHNSON: We did not yet, no.

CHAIRPERSON REID: But were you aware of this date we requested?

MR. JOHNSON: We only became aware of it yesterday actually.

MR. KANE: Madam Chair, we were not aware that they had applied for party status, or I would have contacted them, as I did Mr. Gell and Mr. Collins.

MR. JOHNSON: Well, we submitted our written request for party status at least two weeks ago.

CHAIRPERSON REID: Did you check the record? Did you come in and look at the public record?

MR. KANE: We did on October 6th, which by our calculation was the last day. I know that the others filed October 10. It must not have been in the folder yet is all I can tell you.

CHAIRPERSON REID: Ms. Pruitt, can you speak to that, please.

MS. PRUITT: I am looking for that now. Actually - -

CHAIRPERSON REID: No, what I am trying to ascertain is the timeliness of it having been filed so that all parties would be able to have had the opportunity to look over it before today.

MS. PRUITT: It was my understanding that it was

filed timely. The staff did not pull any information on party status today because we thought we were only going to deal with the continuance. So that information is in the big file which Beverly, I believe, has found for you.

CHAIRPERSON REID: Yes, it was in here, but we didn't address that. I see the date. It is not so much the fact that the party status is being requested as it is the date in which it is being continued is what we are dealing with, right?

MR. JOHNSON: That's correct.

CHAIRPERSON REID: Okay. Now, you said that you were not aware of the fact --

MR. JOHNSON: I was not aware of the fact that the date that was anticipated to be continued to was December 5th until yesterday.

CHAIRPERSON REID: Okay. Here is what I am trying to determine. Should he not have not been notified?

MS. PRUITT: There was a request for a continuance. We tried to find dates that are workable to let those that we do know of apprised of that date. But only the Board has the right to do that.

So I am very cautious in saying that this will be continued to a certain date because I don't have that authority. And you may choose today not to continue the hearing at all. And people said --

CHAIRPERSON REID: Okay. I understand. I

understand. Basically what has happened is that the persons requested party status may not have been aware of the date that other people had requested specifically for party status, and that is what we were going by.

And unfortunately not until right now do we -- that all of this comes together, and we have then determined that this is the date that they are asking for, and determine if the people who are asking for party status, and particularly the attorneys who are requesting party status on behalf of the people who live in the community, if that date is amenable to everyone concerned. And we are now hearing that you and your co-counsel are both unable to be here on that date?

MR. JOHNSON: Unfortunately, we are both scheduled to be out of town on that day.

CHAIRPERSON REID: Okay. Is there anyone else from your firm that perhaps could represent you?

MR. JOHNSON: Well, yes. I mean, if necessary, we could have somebody appear, but obviously we would much prefer that either Mr. Johnson or I appear.

CHAIRPERSON REID: Well, you see, the problem for us at this point is that -- Mr. Thomas, is your name Mr. Thomas?

MR. JOHNSON: Mr. Johnson.

CHAIRPERSON REID: Mr. Johnson, the problem for us is that the ANC is probably not here. Is the ANC here?

(No audible response.)

CHAIRPERSON REID: So we would have to try and query everyone to see if another date would be suitable, and they are not here. But to ask them -- and this seems to be the date that has been agreed by how many entities?

MS. PRUITT: The ANC, Mr. Collins, who is representing the Cosmos Club; and Mr. Gallo, who is representing a group of citizens, and the Dupont Circle Citizens Association also.

MS. BAILEY: So -- and the Office of Planning.

MS. PRUITT: True, and also the Office of Planning.

CHAIRPERSON REID: And the Office of Planning. So am I going to have -- do you think that it is possible to be able to have some alternate counsel to have --

MR. JOHNSON: Well, hopefully we will be able to working things out with The Phillips Collection before that time, but if need be, we will do that.

CHAIRPERSON REID: All right.

MR. KANE: In a way, Madam Chair, this is a step forward, because we have been trying to find somebody at the Indian Embassy with whom we can have a conversation and explain the project, and we just have not found that right person.

CHAIRPERSON REID: You haven't?

MR. KANE: Nobody with the authority to sit down and talk to us seriously and in detail. So the fact that Mr. Johnson has arrived is good news for us. The fact that he can't

make the 5th is a problem for us, a big financial problem.

But we will certainly be meeting with them in the interim, just like we have already been meeting with Mr. Gell and his client.

CHAIRPERSON REID: Well, that may be a fluke, because if it allows you all the opportunity to get together and maybe work out some of the differences, then perhaps it won't be as involved as we had perhaps anticipated initially, and perhaps it will be appropriate for -- or not inappropriate for someone else from your law firm to be able to present at that particularly time.

MR. JOHNSON: Well, that would be the ideal outcome if we can reach that point.

CHAIRPERSON REID: Sure. Okay. Because it is a month-and-a-half, and a month-and-a-half is a lot of time to be able to have some type of ongoing dialogue between the various entities. And from what looking at what we have in our file right now, it seems to be rather messy.

So if it can be contained a little better, or come to some type of resolution or a meeting of the minds, it certainly would be great for us. We always like a situation where you can kind of make your own decisions, rather than putting it in our laps and we have to do it for you.

MR. JOHNSON: Well, I am concerned -- the Embassy's concern is that they have some various serious problems with --

CHAIRPERSON REID: I understand. However, you can't get into the merits of the case at this point. We certainly understand and appreciate that. Okay. So are we now all in agreement that the December 5th date is workable? Okay.

BOARD MEMBER RENSHAW: Madam Chair, before Mr. Johnson leaves the microphone, would you identify your co-counsel, please?

MR. JOHNSON: Yes. It is Verna Produng, and we are both with the law firm of Verner, Lippert, Bernhardt, McPherson, and Hand.

CHAIRPERSON REID: Oh, I see. When I looked at it quickly, I was saying Thomas as your last name and it is your middle name. Okay.

BOARD MEMBER RENSHAW: And do I understand correctly that you have not requested party status in writing at this point?

MR. JOHNSON: No, we did, yes. We submitted it on the 6th of October.

CHAIRPERSON REID: Do you have the October 10th letter? You said the 6th.

MR. JOHNSON: I'm sorry, the 10th. That's correct.

CHAIRPERSON REID: Do you have that letter?

MS. PRUITT: Madam Chair, the staff did not pull any party status information for this particular hearing as it was a request for a continuance.

CHAIRPERSON REID: Well, I am looking at it from the regular files, but we will receive a copy for our files prior to the case being heard. All right. So we will proceed with a motion to -- well, we are going to have to make a motion to decide -- well, not to take it to party status.

MS. PRUITT: You just determined that you are not going to do so.

CHAIRPERSON REID: Yes. In other words, if we were going to do it today, we would vote to do it today. That would be kind of like out of procedure. However, since we are going to be doing it or taking up party status, that is, on the day we hear the hearing, which is in keeping with our regular procedures, I am just notifying you as to what or how we are going to be handling that particular situation.

MR. KANE: Thank you, Madam Chair.

CHAIRPERSON REID: So no vote is necessary. Thank you.

MS. BAILEY: Madam Chair, the next preliminary matter has to do with the second case on the morning agenda, and that is Application Number 16611, Kenneth Workman, Josef Straka, Carl and Elizabeth Richmond.

In other words, this is the Burke School. And they are requesting that the hearing on this application also be continued.

CHAIRPERSON REID: Until?

MS. BAILEY: The Staff is recommending that the hearing be continued until November 14th. The parties who are requesting the continuance are the applicant; ANC-3F, Mr. Phil Cogan, on behalf of ANC-3F; and Julie Weisman.

All of these entities are requesting that this hearing be continued --

CHAIRPERSON REID: Everyone concerned? I'm sorry, Ms. Bailey, for interrupting.

MS. BAILEY: I was just going to say November 14th is the date that we are suggesting.

CHAIRPERSON REID: Okay. So everyone involved is basically requesting -- are amenable to that date of November 14th; is that correct? Oh, boy. Which is it?

MS. BAILEY: The 14th.

MS. KRESS: The 15th was initially suggested because that was the day you were -- it was a Tuesday, and the 15th is Wednesday, the day you were doing the determination on George Washington.

But since some space opened up on the 14th, we felt that -- the staff wanted to recommend to you that you handle it on your regular day, and kept the 15th just for decision making.

CHAIRPERSON REID: Okay. All right. Do you wish to speak?

MR. COGAN: Yes, Madam Chair. We appreciate the fact that you responded to your request, and the continuance would

give us the --

CHAIRPERSON REID: I'm sorry, sir, but the first thing you must do is give us your name and address, and also who you are.

MR. COGAN: I'm sorry. I will. I am Phil Cogan, and I am a Commissioner with ANC-3F, and my address is 3634 Viese Street, Northwest. We do appreciate the Board's grant of a continuance, and I think that the applicant has also agreed that that would be acceptable.

I would add that I don't want to complicate the Board's task any further than necessary, and I have not discussed this with the applicant, but the ANC would be amenable to the December 5th date that was discussed in the previous case if that would work for the Board, in terms of scheduling.

Our problem up until this point has been a lack of time in being able to prepare our presentation. And December 1st, or 5th rather, I think would work much better for us than it would for November 14th.

CHAIRPERSON REID: Okay. And in order to do that, there are several things that we have to consider. One is whether or not the other entities that are involved would be able to -- that that would be amenable to them, number one.

And, number two, is whether or not we could actually be able to accommodate that on that day's calendar.

MS. PRUITT: Madam Chair, that is what I would like

to raise. On December 5th, you have a pretty ambitious schedule as it is.

CHAIRPERSON REID: Okay.

MS. PRUITT: Mr. Sissen, and potentially the appeal of the Digital Tower Transmission. So you don't really want to put anything else on that. They are not withdrawing their appeal, and so that is still on our books at this point.

CHAIRPERSON REID: Oh, boy. Well, I guess the answer that we just -- I mean, it would be -- it would not be workable unfortunately.

MR. COGAN: Thank you, Madam Chair.

MS. SHAW: Good morning, Members of the Board. My name is Sarah Shaw, with the law firm of Shaw Pittman, representing the Edmund Burke School, and I am here to say that we certainly agree to the postponement to the 14th, and want to continue working with the community.

CHAIRPERSON REID: Okay. All right. This is another -- could you come forward, please, and speak into the mike if you wish to say something?

MR. COGAN: Was there a time on the 14th?

MS. PRUITT: The afternoon.

MS. WEISMAN: Hi, I am Julie Weisman, and I applied for party status. I live on Upton Street, right next to the Burke School. I think I have been talking with all of the neighbors in the area, and I think it was everybody's

understanding that the continuance would be until the 15th.

If in fact it is going to be the 14th, I would ask for some extra time for us just to respond, to file our response, because I think we are having a hard enough time trying to review the papers which we got late, and also coordinate efforts so that we actually try to make it easier for the applicant and easier for the Board.

I mean, there are a lot of different parties involved in different parts of the neighborhood, and what we are trying to do is coordinate and get together, and see if we can come up with some type of an effective solution to the problem so it doesn't even have to get to you in the form of a dispute.

And because of the late date in getting the papers from Burke, and actually being able to look at the plans and evaluate them, we are actually cut short. That's why we asked for the continuance in the first place.

CHAIRPERSON REID: Okay. I understand that. However, a one day difference? Is that going to make a whole heck of a lot of difference?

MS. WEISMAN: Well, I was talking to Phil, and we would have liked to have gone to the 5th just to --

CHAIRPERSON REID: I can't accommodate you on the 5th.

MS. WEISMAN: I understand that. Can you give us --

CHAIRPERSON REID: No. I have no problem, and the other Board Members can speak to this, if you want a continuance later than the 5th of December.

MS. KRESS: February of this next year is the next date.

CHAIRPERSON REID: That is something that you all will have to decide, you know.

MS. WEISMAN: I understand.

MS. SHAW: But that really causes a problem for the applicant for the school year. A lot of this is based on enrollment, and what we will be able to do and not do.

CHAIRPERSON REID: I'm sorry, then what is -- is there a date later than November 14th for us?

MS. KRESS: February, not until February, unless someone else cancels. What is happening is that we are moving things into places where other people were, like you are today, and then the case gets continued.

Then we can put somebody else in there, but otherwise we are booked through the end of January.

CHAIRPERSON REID: Okay. Given the fact that we are only moving it from the 15th to the 14th is only one day. That wouldn't -- I mean, does that have --

MS. WEISMAN: Then can the compromise be to allow the response for the neighbors to be moved, for example, until the 5th?

MS. PRUITT: Actually, we have not had the hearing, and so the record is open.

MS. WEISMAN: Well, okay. It was our understanding to apply for party status that we had to do that 14 days.

MS. PRUITT: Oh, I'm sorry, for party status.

MS. WEISMAN: But we didn't have to make a response also? I think everybody is under the impression that we had to do that.

MS. KRESS: Basically, if it gets continued, then it does also continue your ability to file for party status. If it would have gone ahead today and you hadn't filed the 14 days ahead, you would not be a party.

But now that it is being continued under the 14th, you have to get your application for party status 14 days ahead of that, which means basically November 1st.

CHAIRPERSON REID: But I think what she is asking, if I understand her correctly, is could we waive some of that time requesting party status.

MS. WEISMAN: That's correct. That is what I am asking. Could we move it to, for example, the 5th? I don't have that date in front of me.

CHAIRPERSON REID: For five more days?

MS. WEISMAN: Yes.

CHAIRPERSON REID: It doesn't -- I mean, given this particular situation, and understanding your request up front,

then I don't have a problem with it unless any other board members object to it.

MS. KRESS: Our staff has just informed us that your request for party status is already in.

MS. WEISMAN: Well, I am here for the rest of the neighbors. I am the one that works downtown, and I said I would be here.

CHAIRPERSON REID: Do any other board members object to -- well, if that can make it work for you. And again, I don't know if you were in here when I had just said that in all instances the Board would love to see entities in opposition to each other, or having some type of conflict, or some type of -- and for a better word, some type of misunderstanding, come to get together and engage in dialogue, and try to come up with some type of resolution on your own.

And then perhaps like you said, it may not even be necessary for you to even come before the Board, which would be great. And if that will further help you to work with the other people who are -- either the neighbors, or the others who want to apply for party status, to work with the applicant and to work with the ANC, that's great.

That's great and so we have no problem with accommodating you to that extent, and especially also from seeing you nod your head that that appears to work better for you as well, the ANC.

MR. COGAN: Well, I wanted to say, Ma'am Chair, that the discussions are still open with the Burke School, the neighborhood, and the ANC. So I think that process is ongoing.

CHAIRPERSON REID: Great.

MR. COGAN: It is unclear where it is going to take us, but I think we are trying to work in the direction that you laid out.

CHAIRPERSON REID: And also in regards to your request for party status, if the persons that are going to be asking can try to consolidate into a group, and have one spokesperson, then that would go a long ways towards receiving party status.

Because for several people to ask for party status -- and then remember if you receive party status, one thing you also receive is the ability to cross-examine. And that can be long and just for all of us rather painstaking. So --

MS. WEISMAN: And that is what we are trying to do. Unfortunately, there are a lot of different groups, and trying to bring them all together is time consuming.

CHAIRPERSON REID: Exactly. That would go a long ways in getting the case to move along rather

-- I don't want to say rapidly, but certainly with less time.

MS. WEISMAN: So one letter with everybody's name on it?

CHAIRPERSON REID: That would be great. And one

spokesperson to represent, because usually the issues in regard to whatever the perceived adverse impact are usually about the same, except for if there is an exceptional situation, where someone feels that they need to have a party status on their own.

And we do recognize that, but typically if it can all be combined and consolidated, that would be very helpful to us.

MS. WEISMAN: Okay. That's what we will try to do.

MR. COGAN: Madam Chair, one other point. I believe that the ANC report is due to the board one week before the hearing, and I will probably ask for a waiver of that, although I will make every effort to get the report to you timely.

CHAIRPERSON REID: Well, I think also again, as we know, and we understand that given the circumstances that we are discussing here today, and we know ahead of time, I don't have a problem with it, unless there are other board members who might have a problem with it.

Hopefully if it is not seven days, it could be -- how many days is that Friday, 3 or 4 days before, so that we complete our package?

MS. KRESS: We try to send it out on Thursday.

CHAIRPERSON REID: Thursday.

MS. KRESS: So if we could get it the prior Thursday morning?

CHAIRPERSON REID: Well, that would still be --

BOARD MEMBER RENSHAW: Mr. Cogan, does that meet with the ANC's regular meeting schedule?

MR. COGAN: I think the concern here right now is more my scheduled, in terms of being able to work with the neighbors and get all of that together.

CHAIRPERSON REID: Well, I'll tell you what then. Sometimes what we do allow is if it can be faxed to us on that Monday, or the Monday before, that's okay. And then the Board Members will receive it on the fax.

MS. PRUITT: We will attempt to fax it to you, but we will definitely have a copy for you like we have here. We faxed stuff to you, and unfortunately sometimes it doesn't get through. That's why we then provide you with another copy.

CHAIRPERSON REID: The worst-case scenario is that --

MS. PRUITT: You get it the first thing in the morning.

CHAIRPERSON REID: Right. The worst-case scenario now is that we don't usually likely receive things the day of. However, if you can get it that Monday, it will be faxed to us, and then she will make sure also that we receive another copy the morning before.

MR. COGAN: But it sounds like the best date would be the Thursday before the hearing.

CHAIRPERSON REID: It does not give you a lot of

time, and that's just six days, because the hearing was on that Tuesday and Wednesday, or that Tuesday, and so it only cuts it down one or two days.

But even that Friday, that Friday or that Monday, would really be great, okay. So thank you very much.

MR. COGAN: Okay. I will work with the staff on that.

CHAIRPERSON REID: Okay. Thank you very much. Now, we need to vote on the continuance. A motion, please?

COMMISSIONER MOULDEN: I make a motion for a continuance of the application for a special exception to establish a private school, and a special exception for Section 411.

BOARD MEMBER RENSHAW: I second.

CHAIRPERSON REID: Okay. One second, please.

(Brief Pause.)

CHAIRPERSON REID: Oh, I see. All in favor?

(Ayes.)

CHAIRPERSON REID: No opposed?

(No audible response.)

MS. BAILEY: The staff will record the vote as four to zero. Motion made by Mr. Moulden, and seconded by Mrs. Renshaw, and Mr. Sockwell and Mrs. Reid are in agreement, to move application Number 16611 to November 14th. Are you ready for the next case, Madam Chair?

MS. SHAW: Excuse me, Madam Chair, what time of day will that be? Do you know?

MS. BAILEY: The afternoon.

CHAIRPERSON REID: The afternoon, exactly.

MR. COGAN: And that means one o'clock, i think?

CHAIRPERSON REID: Right. Excuse me, but those of you who are here for the continuation of the application for Azerbaijan. It was supposed to start at 10 o'clock, and we are sorry that we ran over a little bit.

However, do due the fact that we received some information this morning that the Board has to look at, we are going to break for about 10 minutes.

MS. KRESS: I would say 15 minutes.

CHAIRPERSON REID: So, 15 minutes, or until 10:30, so that we will have an opportunity to look over the matter. You have to come to the mike, sir.

MR. SNODGRASS: Francis R. Snodgrass. I live at 2804 - 34th Street, adjacent or across the street from the proposed chancery. Is it possible for the rest of us to also look at the material that you are going to go into executive session to look at?

CHAIRPERSON REID: Wait one second.

MS. KRESS: The file is open, and let me see what I can get. We only got it this morning. So no one has had a chance to look at it. It is basically the report of the State Department

in response to the OP's report, and I will try to get some copies.

CHAIRPERSON REID: Unfortunately --

MR. SNODGRASS: Madam Chairman, I am equally delinquent. I have a statement myself that I have made copies of overnight, and I would be pleased to give those to you at the same time.

CHAIRPERSON REID: Do you have copies for everyone?

MR. SNODGRASS: Yes, I do.

CHAIRPERSON REID: For all the board members?

MR. SNODGRASS: Yes, I do.

CHAIRPERSON REID: All right. All right, thank you very much. For those of you who would like to have a copy of the response to the Office of Planning report from the State Department, can I have a show of hands so that we can try to make those available to you?

MS. KRESS: Or if you could share.

CHAIRPERSON REID: So about three people. So, we need about three copies, and you can pick it up right at the Office of Zoning at the counter. All right. Thank you very much, and we will be back about 10:30.

(Whereupon, the hearing was recessed at 10:15 a.m. and was resumed at 10:15 a.m.)

CHAIRPERSON REID: All right. Ms. Giordano.

MS. GIORDANO: Yes. For the record, Cynthia Giordano, Linowes & Blocher, representing the applicant. I had

submitted on Friday a letter to the Board saying that we were completing this parking management study, which has just been up to the wire.

And our consultant, Osborne George, is on his way here with that. It is only two pages and a couple of graphics. It is very short.

CHAIRPERSON REID: On his way?

MS. GIORDANO: Yes.

CHAIRPERSON REID: And do you know when he will be here?

MS. GIORDANO: He should have been here at 10:00. So I imagine that he will be here at any moment. And as soon as I get that, I would like to submit that to the staff.

CHAIRPERSON REID: Okay. Hopefully it will come before while we are still on break.

MS. GIORDANO: Right. And what we would like to do --

CHAIRPERSON REID: Go ahead.

MS. GIORDANO: I'm sorry. If we could just take five minutes at the beginning of the hearing so that he can present it. That way the opposition parties have an opportunity to hear it and address it in their rebuttal. I think it would be better for everybody.

CHAIRPERSON REID: Okay. So we will just hear it orally. Okay. I have no problem with that. Do any board members

have any problems with that, or comments, or objections?

(No audible response.)

CHAIRPERSON REID: Okay. Now, given the fact that everyone is aware of the fact that this particular case has now gotten to be a little bit more convoluted, in that reports are just coming in, we have to be able to go over these reports in order to be able to have an understanding, and to be able to digest what is coming in.

It is going to take a little bit more than just 10:30, because it is now 10:20. So we will be back as soon as we can. I guess about 20 minutes or so. We have the right to do this, and then we will come back and continue with the continuation of the hearing. Thank you.

(Whereupon, the hearing recessed at 10:18 a.m., and resumed at 10:56 a.m.)

CHAIRPERSON REID: Good morning, ladies and gentlemen. This is a different hearing than the one that we just had. So let me read the opening remarks for the request for a foreign mission before the Board of Zoning Adjustment. The hearing will please come to order.

This is the October 24th meeting of the Board of Zoning Adjustment. I am Sheila Cross Reid, Chairperson, and joining me today are Robert N. Sockwell, who is coming out; Ann Renshaw, and representing the National Capital Planning Commission is Bill Larsen, and representing the National Park Service is John

Parsons.

Copies of today's agenda are available to you. They are located to my left near the door, and please be aware that this proceeding is recorded electronically, and so we must ask you to refrain from any disruptive noise or action during the hearing.

If you desire to give any information to the Board, please do not speak from the audience, but come forward to the mike so that we can hear you, and give your name and address, and proceed to make your wishes known.

All persons planning to testify either in favor or in opposition, are to fill out two witness cards. These cards are located on each end of the table in front of us.

After you have finished with your statement, please proceed to pick your cards up, and fill them out, and when the case is called, you will be ready to hand them to the reporter.

Before speaking to the Board, please give both cards to the reporter, and when seated at the witness table, please give your name and home address. I repeat to please give your home address rather than your business address, and after this you may proceed to give your testimony as stated.

The agenda for a foreign mission case will proceed as follows, which is the statement and witnesses of the applicant; government reports, including the Secretary of State and Office of Planning on behalf of the mayor.

However, for this morning, this is a continuation of last week's case, and the order is a little different. We are going to start with a report from the Office of Planning, and other government agencies, and a report by the ANC, and then persons in support and persons in opposing, and closing remarks by the applicant.

The record will be closed at the conclusion of each case, except for material specifically requested by the Board. The Board and the Staff will specify at the end of the hearing exactly what is expected and the date when the persons must submit the evidence to the Office of Zoning.

After the record is closed, no other information will be accepted by the Board. The Board has instructed the staff to return any materials that is received after the record is closed to persons who submitted it.

The decision of the Board in this legislative proceedings must be based exclusively on the public record. To avoid any appearance to the contrary, the board requests that persons, counsel, and witnesses, not engage the members of the board in conversation during any recess or at the conclusion of this hearing session.

While the intended conversation may be entirely unrelated to any of the cases heard or that are before the Board, other persons may not recognize that the discussion is not about a case.

The staff will be available to discuss procedural questions. Please turn off all beepers and cell phones at this time so as not to disrupt the proceedings. The Board will now listen to any preliminary matters.

Preliminary matters are those which relate to whether a case should be heard today, such as a request for a postponement, continuance, or withdrawal, or whether proper notice of the hearing has been given.

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

MS. GIORDANO: Cynthia Giordano, for the record, representing the applicant. In terms of the order of proceedings, we had requested 10 minutes at the beginning to get the traffic management study out of the way so that the other parties who testify after us could respond to that if they wanted to.

CHAIRPERSON REID: Okay. Do you think you need 10 minutes?

MS. GIORDANO: Probably less. Maybe eight.

CHAIRPERSON REID: Okay. All right. I have no problem with allowing them their additional time to give the requested traffic management report.

MS. GIORDANO: Okay. Mr. Osborne George was retained. He has been qualified as an expert by this board, I

think, on numerous occasions. And I would ask that the Board acknowledge him as an expert in traffic and parking management this morning before he proceeds.

CHAIRPERSON REID: Okay.

MS. GIORDANO: I am just going to start while he gets his exhibits set up.

MS. BAILEY: Excuse me, but we --

MS. KRESS: We need to call the case.

MS. BAILEY: Exactly.

CHAIRPERSON REID: This is a preliminary matter -- excuse me one second.

(Brief Pause.)

CHAIRPERSON REID: Ms. Bailey will call the case and then give us the time frames.

MS. BAILEY: Application 16620, of the Embassy of the Republic of Azerbaijan, pursuant to Section 206 of the Foreign Missions Act, and 11 DCMR of the Zoning Regulations of the District of Columbia, to locate a new chancery in an R-1-A District at the premises of 2741 - 34th Street, Northwest, Square 2122, Lot 27.

All those persons who were not here last week, October 17th, and who would like to testify in this case, would you please stand to take the oath.

(All witnesses were sworn.)

MS. BAILEY: Thank you. You may be seated. Madam

Chair and Members of the Board, as was stated, this is a continuance of the hearing from last week.

At that hearing the Board requested several items to be in the file, including a floor plan, a traffic management plan, the proposed exterior signage, specifications for the signage, a copy of the contract for maintenance of the property, and a revised supplemental report by the Office of Planning.

All of the documents have been received. In addition, we have received several other items from the State Department, and what Ms. Giordano just mentioned, a traffic report from O.R. George and Associates, and then lastly, neighbors of 2741 - 34th Street, have also filed a submission.

All of these documents you have. The ANC-3C is recommending a denial of this application, as last week we established that there are several neighbors who are opposed to the project.

However, party status cannot be established or will not be established. This is a rule making case. And then lastly, there are time limits for the remainder of this case. Organizations will be given 8 minutes to testify, and individuals will be given 5 minutes.

As always the Office of Planning and the ANC have no time limits. The case is now ready to go forward.

CHAIRPERSON REID: All right. Thank you very much.

MS. GIORDANO: Yes. Good morning again members of

the board. We have been working since the last hearing last Tuesday to put together a traffic management study. We were working on a number of fronts.

First of all, we wanted to try and get an accurate survey of parking availability in the surrounding area. Mr. George did that survey last Thursday and Friday, and also Saturday evening.

We were actually hoping that there might be a function at the Finnish Chancery, because I know that that has been a concern about parking, and that causes a concern about parking availability, but there were no functions Saturday evening.

But we went ahead and decided to go ahead and survey anyway. In addition, the Ambassador has contacted the Belgium Ambassador -- the Belgium Chancery is located a block from the site -- about utilizing their parking lot for the four larger social events per year that he is willing to be restricted to.

And fortunately the Belgium Ambassador was very forthcoming. He apparently has a number of large social functions at his house, and that is where the Belgium Chancery does their entertaining. He lives in or near the Mount Vernon College Campus.

And he has an arrangement where people park on that campus, and are shuttled to his house, and so he understood the problem immediately, and he has agreed to allow the Republic of

Azerbaijan to use that parking lot for large social functions.

So I wanted to let the Board know that, and then ask Mr. Osborne George to very quickly provide the results of his traffic survey.

CHAIRPERSON REID: Okay. Ms. Giordano, you said that there is an arrangement to use the parking lot of the Finnish Embassy?

MS. GIORDANO: The Belgium Chancery. It is an open air parking lot adjacent to their building.

CHAIRPERSON REID: Okay.

MS. GIORDANO: And Mr. George will let you know exactly how many spaces are on that lot.

CHAIRPERSON REID: Okay. Do we have an agreement?

MS. GIORDANO: We have a verbal agreement, which we can -- well, in the rush, we really didn't have to hammer it out. But the Board can certainly condition an approval on that, and we would be willing to abide by it.

And we can if the record extends beyond this day, we can certainly provide a written agreement.

CHAIRPERSON REID: Well, we could condition approval on that, or we could leave the record open for that to come in prior to us making a decision.

MS. GIORDANO: Right, either way.

CHAIRPERSON REID: Okay. Thank you. Mr. George.

MR. GEORGE: Good morning, Madam Chairperson, and

members of the Board. For the record, I am Osborne George, and I am pleased to be here this morning representing the Embassy of Azerbaijan.

At the request of His Excellency, the Ambassador, I undertook a traffic assessment, a traffic and parking assessment I should say, in order to address concerns which I understand have been raised regarding the proposed establishment of the chancery at the 2741 - 34th Street, Northwest location.

We prepared a very brief technical memorandum, which we have made available to the Board. I think I gave you copies of this. As an attachment to that memorandum, we have a number of exhibits, or attachments I should call them, which are essentially the boards which I shall put up here in just a minute.

And I will use those to facilitate my brief discussion and presentation before the board at this time.

The exhibit which is on the board and which is Attachment 2 of the package, which is Attachment 2 of the package of exhibits, shows the location of the subject property.

In order to set the scene, just let me run through this. This is Massachusetts Avenue, running along from the southeast to the northwest direction. The Naval Observatory is immediately to the south; and 34th Street running north-south, and Garfield Street, the Washington National Cathedral domes, and the Norman Stone Park to the east and southeast.

Massachusetts Avenue is a major arterial on the

City system, and 34th Street is a major collector roadway, as is Garfield Street. The remainder of the roadways are local, and serve primarily residential uses.

Among the uses in the area are several embassies, and we have highlighted them -- the Embassy of Belgium, and this is the proposed site for the Embassy of Azerbaijan. Chancery, I'm sorry -- the Chancery of Norway, Cape Verdi, and Liberia, and Finland.

Considering the type of use that is proposed, we define a study area that is essentially bounded by Massachusetts Avenue to the south and west, Garfield Street to the north, and just at this point, this line, which we have arbitrarily drawn, north-sound to the east of 34th Street.

Since the Board's concern appeared to focus on parking, we undertook a detailed inventory of the parking within the area, and I would like to show what we found.

CHAIRPERSON REID: Mr. George, make sure that you do speak into the mike.

MR. GEORGE: Yes, Ma'am. I'm sorry. The second exhibit, which is included as Attachment 3 in your package, shows the local roadways, and what is the parking along each block face was measured in the field, and the numbers are highlighted.

And so the squared numbers indicates the number of parking spaces, on the street parking spaces, along each block. We also undertook an inventory of the number of residences within

each sector of each block.

So, you find, for example, if we look at this block -- and I am talking about the block in the southwest corner of quadrant of 34th Street and Garfield, we have for example nine houses along Garfield, and three along 34th Street, and four along the 3400 block of Fulton Street, and so on.

Now, obviously this is a fairly large area, and so we divided it up into what we call zones or sub-areas. And the basis for that subdivision was the consideration of factors such as walking distances relative to the subject site, the site of the chancery of -- the proposed Chancery of Azerbaijan.

So we have what is indicated in yellow, we identified as zone one. The remainder of the roadways within the local area, we identified as zone two. And there is a considerable amount of parking along Garfield Street between Massachusetts Avenue in the west, and Cleveland Avenue, which is a bit further to the east, we identified as zone three.

As Ms. Giordano pointed out, we conducted surveys of the parking usage along every block face last Thursday, Friday, and Saturday; on Thursday, between 12:00 and 7:00 p.m.; and on Friday, the same time, and on Saturday, between 6:00 and 9:00 p.m.

Those times represent the periods when one would expect the highest level of parking usage related to an office or a chancery type use to occur. On weekdays, between noon and six o'clock, and I think those hours, as you have heard from Ms.

Giordano, the hours planned are from 8:00 a.m to 6:00 p.m.

And if evening functions are held, they would likely be between the period of 6:00 to 9:00 o'clock. I think guests would arrive during this period, and so we conducted our survey during that period.

There is on aspect of this exhibit that I would like to highlight, and that is that you would notice that it shows the internal alleyway system. So in each of the blocks, there is a complete alleyway system as is typical of city streets, of the city system.

And there is also considerable off-street parking I should say serving these residential uses. And again we inventoried these and we have the information. I will adhere to the Chairman's admonishment and not go into detail, but we will be able to answer questions.

The third exhibit, Madam Chair, is what is indicated as Attachment 4 of the package which I provided to you, and what it does is show essentially the same information regarding the street outlay, the residences, the alleyway system, as well as in the previous exhibit.

But it summarizes the results of our survey, and so we have a series of bar charts which represent the parking observed within the three zones that I defined.

And since I said it some time ago, let me just repeat it. We divided the area into three zones; zone one, in

yellow because of its proximity to the proposed chancery; and zone two, further to the west and consisting of all of the remaining streets; and zone three, along the adjacent section of Garfield Street to the north.

Now, in the brief memorandum which I provided, the number of spaces in each one of those zones have been noted, and I refer you, Madam Chair, to page 3 of the memorandum.

And it shows that in zone one that there are 79 on-street spaces; and in zone two, the blue area, 173; and along Garfield Street, there are 120 spaces.

Similarly, we computed or we inventoried the number of houses in this zone, and in zone one there are 15 houses; and in zone two there are 35 hours; and in zone three, there are 23 houses.

Now, the number of houses that I have enumerated do not include large facilities which have significant off-street parking. So we excluded the Belgium Embassy, the Apostolic Nunciature, or The Vatican Embassy, and so on; those which had a large number of off-street parking spaces.

And do the results show? Again, that is summarized in attachment four which you have, and which is replicated on the board. And in zone one, since this is the focus, I imagine it would be the focus of your concern, the area immediately adjacent to the chancery, where I have said there is a total of 79 spaces.

And our survey shows -- and we show the three bar

charts here, representing Thursday, Friday, and Saturday. At the top of the chart, we indicate the capacity, in terms of the number of spaces that are available.

And so between 12:00 and 7:00 p.m., this is the usage that we observed within zone one on Thursday; and as you can see, the uses generally are in the range of 30 spaces occupied, 30 out of the 79 spaces available on Thursday.

On Friday, there were roughly 40 spaces occupied between 12:00 and 3:00, and after 3:00, it dropped off considerably, down from 30 and close to 10 at this point. And on Saturday, the use was very low, generally between -- less than 20 spaces.

Again, that is out of a universe or a total supply of 79 spaces. I just want to stress, Madam Chair, that -- and for clarification, that obviously the spaces within this area, the parking spaces that are on the street, they are not metered.

So there is some degree of arbitrariness in computing the number. And we did that by observing, number one, the cars that are parked on the street, and observing alleyways and driveways which obviously could not be used for parking, and required distances away from them which you are not allowed to park in.

And we generally used a length of 25 feet for a vehicle. As you know, the typical length for a standard sized vehicle is 19 feet. However, to allow for parking maneuvering,

the traffic engineering profession would typically use between 22 and 25. We used 25.

So in most cases the number of parking spaces that we have indicated is on the conservative side. So where, for example, we indicated a supply of 79, it could easily be 82 or 83. But we prefer to err on the side of caution, and allow for a factor of safety.

This is zone one, which we believe would be the area of your focus. This is the use, and this is what is available on a weekday and on Saturday. I would -- the use is even less within the central area of the neighborhood, Madam Chair, and that's shown for the area identified as zone two, the area in blue, and the chart on the left side, which indicates at the top zone two.

Here as you can see, we have a parking supply of 179 spaces. The average on Thursday and Friday of spaces uses was around 40. On Saturday, it was between 20 and 30.

The use along Garfield Street was significantly higher. There we had a supply of 120 spaces, and the use was in the vicinity of 80 spaces, between 60 and 80 I should say, and that is shown on the first two blocks of this bar chart on Thursday and Friday.

And on Saturday, it was considerably less, and not exceeding 50, and generally under 40. Again, that is roughly a third of the spaces utilized. Ms. Giordano has discussed the fact

that the chancery proposes to have an average of four major functions per year, with attendance of between 15 and 40 persons.

Typically, we have found that persons driving to such functions would not go alone, but typically you would have an average of three persons per vehicle.

That's typically three persons per vehicle, and that is the average for social and sporting related events. That takes into consideration that you have mini-vans containing six, and of course you do have some vehicles with one person.

But the average the profession has found is around three vehicles. If we take the maximum of 50 persons, that means that there would be a need of roughly 17 spaces. That is 50 divided by 17. Ms. Giordano has pointed out -- and I think the applicant's statement has pointed out -- that there is a provision for seven parking spaces within the chancery grounds.

And so we have computed then a critical need of off-site spaces of 10, which is 17 minus 7. We surveyed the parking lot of the Belgium Chancery, and they have 27 parking spaces.

And so we think that if those 27 parking spaces are available during the time of events, it would more than adequately accommodate the demand of the chancery.

The distance is approximately 350 feet. It is on the next block. We have measured it and it is approximately 350 feet. Then have got two parking sections. So it is a maximum of

400 feet. That walking distance is quite convenient.

We understand that the chancery is proposing to arrange for valet parking, and that would certainly help the situation. Based on these factors, Madam Chair, we have concluded that establishing the chancery per the applicants proposal should not create any adverse conditions.

We went one step further, and looked at the size of the property. We understand from the data that it contains a residence of over 5,000 square feet.

In our experience, such a house would have facilities which would include demographic factors such as high vehicle ownership, and perhaps in excess of three; and use of support staff, domestic and other staff, and perhaps a home office, and perhaps frequent visitation, and likely large social functions, which may even be outside the perview of the City's administrative bodies.

And so while we did not do a definitive analysis, we think -- and I am prepared to say -- that as a residence, this property could perhaps have a greater impact than the use as proposed by the chancery.

I took part of my data or the basis for that one statement in the applicant's submittal, that they expect most passport and visa type of activities to be conducted by mail.

They expect perhaps 2 to 3 visits per day for that period. They have also pointed out that the residency

arrangements for the staff is such that they all car pool. They drive by vans from the Van Ness area, and from Crystal City.

The hours of operation, opening at eight o'clock, means that most employees would arrive before the peak hour, which is typically between 8:00 to 9:00. They close at 6:00, which means that most would leave after the peak period at six o'clock.

We again conclude that the impact, in terms of parking particularly, and generally based on the related traffic condition, should be quite minimal. Thank you, Madam Chair.

CHAIRPERSON REID: Thank you. Questions, Board Members?

BOARD MEMBER RENSHAW: Yes. Mr. George, a couple of questions. One, why didn't you survey Fulton Street? Why isn't that a consideration for parking. Also, did you take a look when you were --

CHAIRPERSON REID: Let him answer that one.

BOARD MEMBER RENSHAW: Yes, but I will put the other one on the record right at this point -- and residential zoned areas for parking stickers. Did you note whether or not any of the streets that you surveyed were marked as residential zoned parking?

MR. GEORGE: Yes. Yes, Ma'am. Your first question was why didn't I survey Fulton Street. We did survey Fulton Street between Massachusetts Avenue and 34th Street.

To the east of 34th Street, there is -- it is a

short of undefined situation there. There are no parking restriction signs. However, the general environment with the park on one side, there is a sidewalk or jogging trail, or bike trail, along the northeast side.

So the general environment suggests that it is not a place that you would want to park. Also, considering its relationship to other land uses, and we observed no parking along that section of the road.

But we did survey the section of Fulton Street within the area. And in fact this section, the 3400 block of Fulton Street, is included in what we defined as zone one.

BOARD MEMBER RENSHAW: How many cars could Fulton Street accommodate in the back of the chancery, the proposed chancery?

MR. GEORGE: I didn't measure it. I observed several cars parked there, I believe, and I think there are two garages, two enclosed garages, and the applicant's statement notes that there is additional space for three cars within the carport area. So at the back, you can accommodate five cars, Mrs. Renshaw.

MS. GIORDANO: Mrs. Renshaw, Mr. Mlotek also informs me that he has some information related to parking on Fulton Street.

BOARD MEMBER RENSHAW: All right.

MS. GIORDANO: If we could provide that at this

point.

BOARD MEMBER RENSHAW: It is up to the chair.

COMMISSIONER LAWSON: Is he an expect?

MS. GIORDANO: No, he is really just observing.

MR. MLOTEK: Well, just a personal observation in response to Ms. Renshaw's question. I was yesterday at a very, very large reception in that specific area that The Vatican Chancery was holding.

And I observed personally that there were a lot of cars parked in the area of Fulton Street that you mentioned. I did not myself park there, but I don't believe there are signs. This is just personal testimony, direct eyewitness testimony, and it is not from an expert obviously.

CHAIRPERSON REID: Okay. I just had a couple of quick questions.

BOARD MEMBER RENSHAW: I also asked about residential zone stickers.

CHAIRPERSON REID: Excuse me, but are you not finished yet?

MR. GEORGE: Oh, yes.

CHAIRPERSON REID: I'm sorry.

MR. GEORGE: I'm sorry, Mrs. Renshaw, but the entire area is covered under the City's residential parking permit program, generally referred to as RPP.

Most of the areas I could identify them block by

block, but most of the areas along 34th Place, along 35th Street, and along most of Fulton Street, up to 34th Place, is restricted to two hour parking for non-permit holders between 7:00 a.m. and 6:30 p.m.

Along 34th Street, along the lower side, the south face of Garfield Street, and along a couple of the blocks here, 35th Street, and up to Fulton Street, it is restricted from 7:00 a.m. up until 8:30 p.m.

CHAIRPERSON REID: Okay. Are you done, Ms. Renshaw?

BOARD MEMBER RENSHAW: Yes.

CHAIRPERSON REID: Okay. Mr. George, did you -- and I don't guess you have an exact figure, but the houses that you observed on 34th and Fulton, and 34th Place, and 35th Street, did any of them have offset street parking, or garage parking?

MR. GEORGE: Yes. Yes, Madam Chair. We actually --

CHAIRPERSON REID: Are most of the houses single family detached?

MR. GEORGE: Yes, Madam. We have got -- I would say looking at my field sheet, perhaps 50 to 60 percent appear to have two-car garages. The remainder, which is perhaps between 40 and 50 percent, have single-car garages, which are accessed through the internal alleyway system.

CHAIRPERSON REID: And my other question was did

you say -- I don't see it on your map, but I thought I heard you say that there was parking on Mass Avenue?

MR. GEORGE: No, no, there is no parking there.

CHAIRPERSON REID: I didn't think so. And the other question that I had was in regard to Ms. Giordano corrected you when you were speaking, in terms of which of these foreign mission facilities were chanceries or embassies. Now, which one is which?

MS. GIORDANO: Well, Liberia is an embassy, and the rest are chanceries.

CHAIRPERSON REID: Well -- well, go ahead.

MR. GEORGE: I do not know personally that they were -- I would call the term generically missions.

CHAIRPERSON REID: But I want to know specifically which is which. You said Liberia is a chancery? On your map, it is referred to as an embassy. And are the rest embassies?

MS. GIORDANO: Really, the expert on this is the State Department. Can Mr. Mlotek answer that question?

CHAIRPERSON REID: Sure.

MS. GIORDANO: Okay. Thank you.

MR. MLOTEK: Thank you, and for the record, again Ronald Mlotek, Legal Counsel, Office of Foreign Missions, U.S. Department of State. Any information that I give about whether something is a chancery or an embassy comes from our official document, the Diplomatic List. I see that you are way ahead of

me, Mr. Sockwell.

At any rate, we generally do not list them there any more, but we used to, and because of security considerations, we generally do not list there anymore the embassies.

A few embassies do in fact list the ambassador or residences, but most of them these days do not. All of the sites which Mr. George enumerated in his report are chanceries, with the exception of the Liberian property.

The Liberian property is the only one that he enumerated which is not an institutional use, and just to clarify, in the case of Norway, there is an embassy. There is the ambassador residence which is attached to the chancery, but the chancery is the larger structure.

And in the case of The Vatican, there is the ambassadorial residence, the embassy there, as well as residences of some other diplomats. But every building is classified and listed in the blue book the Department of State diplomatic list as a chancery, with the exception of the Liberian property that was mentioned.

CHAIRPERSON REID: Okay. So also that would include Belgium?

MR. MLOTEK: Yes. The Belgium is a very large building, and it is entirely an office use and it is a chancery.

CHAIRPERSON REID: Okay. And the last question is before you met Mr. George, and in regard to The Vatican Embassy,

which is a chancery, you have half of it -- it looks like about half of it is coded in yellow. Why is that?

MR. GEORGE: Okay. One of our graphic support personnel took some liberties. We could not find the flag of The Vatican Embassy, and so I think he created one, which I don't know whether that is an offense, and we apologize.

CHAIRPERSON REID: Okay. No, I didn't understand it. It wasn't following your legend.

MR. GEORGE: Yes.

CHAIRPERSON REID: Thank you.

MR. GEORGE: Madam Chair, I want to say that I have learned something today about the differences, and if it is all right with you, I would submit a revised drawing identifying these as chanceries should you desire or require.

CHAIRPERSON REID: The Board would like that.

VICE CHAIRPERSON SOCKWELL: Sure.

BOARD MEMBER RENSHAW: All right.

CHAIRPERSON REID: All right. Thank you very much; if you would, Mr. George.

MR. GEORGE: Surely. Yes.

MS. GIORDANO: Thank you. That concludes our presentation.

CHAIRPERSON REID: All right. Thank you very much. All right. The Office of Planning report is next. If you please.

MR. JACKSON: Madam Chairman, thank you for the opportunity to speak to you and the Board today. Before I begin to summarize my report, I would like to identify two definitions that we should keep in mind today.

One is the definition of an embassy, which is in our zoning ordinance the official residence of an ambassador or other chief of a diplomatic mission, or that portion of a combined chancery/embassy devoted to use as such an official residence.

And a chancery is defined as the principal offices of a foreign mission used for diplomatic or related purposes, and annexes to the office, including ancillary offices and support facilities, including any building on the site that is used for diplomatic or related purposes.

The application before you today, of course, is for an application to establish a chancery, and a single family residence at 3441 - 34th Street. The Planning Staff reviewed this application, and --

CHAIRPERSON REID: Excuse me, but the application is for what?

MR. JACKSON: I'm sorry.

CHAIRPERSON REID: Can you repeat that.

MR. JACKSON: To establish a chancery in a single family residence at 3741 - 34th Street, Northwest.

CHAIRPERSON REID: Okay. Thank you.

MR. JACKSON: In line with that, the Planning Staff

did an analysis of the proposal and came up with a series of conclusions, and I will go through and explain the analysis that we performed, and why we came to the conclusions that we did.

The subject property, in summary, is on a corner lot, and developed with a two-story, single family dwelling, with 12 rooms, 4 baths, 2 lavatories, and a full basement, with a two-car garage.

It also in the front has a semi-circular driveway with access to 34th Street. In the rear is a driveway, a wide driveway, that has access to Fulton Street. This driveway allows access to the rear garage. This property is heavily landscaped and has high walls.

This property is zoned R-1-A, and is under two overlay districts, but is not within the mixed use, diplomatic overlay district, that covers most of the square of the city square to the south.

The building was constructed in 1949, and was reconstructed sometime in 1987. The properties north and south, and across 34th Street, are single-family residences, 2 to 3 stories in size.

And there are also embassies in the area and chanceries. The Norwegian Embassy is located to the south, and the Belgium Chancery is located to the north. And of course the Finnish Chancery is located to the southeast.

Through discussions with the applicant, according

to a statement of existing and intended uses, we have derived that the applicant wanted to do the following things.

To establish a small diplomatic mission of 10 to 15 people, and this would be increased from the current staff, which totals 11, a possible increase in the returning staff, for a total of 11.

The interior will be renovated for office uses. Offices will be located on the first, second floor, and in the basement. The garage, restrooms, and living and dining areas remain unchanged.

The only exterior changes proposed would be to add a plaque and a flag to the exterior of the building. There is a cellular antenna on the roof, and the occupants said that was put on by the previous occupant. Outside parking would be provided in the garage and outside on the wide driveway.

The semi-circular driveway was indicated to be reserved for occasional site visitors, and dropping off and picking up of passengers. They stated that they did not plan to ask for diplomatic parking along 34th Street, and that occasionally social functions on the property would be no more than 50 people, and probably four a year.

The applicant also stated that these functions would pose no greater demand on street parking than a similar function at a typical neighborhood residence. The applicant also stated that they located here because of the strategic location,

and the fact that it was an affordable property.

According to our current zoning regulations, and the current D.C. regulations under which the missions board of the Board of Zoning Appeals has to hear this case, it has to be heard under Section 51206, which indicates that the location of a chancery is determined and can be permitted in any way which is zoned medium high, or high density residential, or any other area determined on the basis of existing uses, which includes offices or institutional uses, not including, but not limited to, any area zoned mixed use, or diplomatic or special purpose, subject to disapproval by the District of Columbia's Board of Zoning Appeals, or Board of Zoning Adjustment, in accordance with this section.

So in other words, this provision is the one that allows the establishment of a chancery use in an area that is zoned R-1. A case involving the Dupont Circle Association versus the District of Columbia Board of Zoning Adjustment, and that was heard in 1987, determined that this regulation would supersede any regulation in the zoning ordinance of a similar nature.

The placement of chanceries is also subject to the requirements under Section 51206. This section states that any determination concerning the location, replacement, or expansion of a chancery under Subsection (b)(2) of this section concerning an appeal of an administrative decision with respect to a chancery based in whole or in part on any zoning regulation or map shall be based solely on the following criteria.

There is the International Outreach of the United States, historic preservation, adequacy of off-street parking and other parking, the extent to which the area is capable of being adequately protected as determined by the Secretary, and municipal interest and Federal interest, also as determined by the Secretary.

So there are essentially two standards that a user must meet in order to be allowed -- for a chancery to be established in the R-1 area as proposed. Based on that information, the planning staff made the following analysis of this proposal.

The analysis is based on work that was previously done by the National Capital Planning Commission, and accepted by this commission, by this board, in their deliberations on previous applications.

The wording of the original Foreign Missions Act, including the phrase, "determined on the basis of existing uses," which includes office institutional uses, required some clarification.

To accomplish or to come up with a measure or standard that should be used to make the determination, a consultant was hired, who prepared a rationale for locating chanceries.

This rationale was based on the following elements. It took the city square as a unit of analysis for determining --

and based on lot square footages that were based in-part on information from the District's inventory of uses and land area.

This study found that an average mixed-use ratio of individual squares, zoned diplomatic at that time, was approximately two-thirds residential and one-third office, institutional, or other uses.

This standard was then applied to all squares zoned R-1-A through R-5-B, to determine what squares in the City met or exceeded that ratio. Each square was then analyzed to ensure that they contained existing office institutional uses.

The squares that met or exceeded the standard were determined to be consistent with the provisions of the Foreign Missions Act. And where included as possible in the plan element as possible chancery locations, subject to disapproval by the Foreign Missions Board of Zoning Adjustment.

It is also recommended that chanceries and squares that do not meet the ratio be allowed to remain, but not allowed to expand beyond the current boundaries.

At that time, Square 2122 was analyzed, and it was determined that the portion of the square fronting Massachusetts Avenue was equally developed with embassies and residential uses.

The remainder of the square -- and this would include the subject property was R-1-A, and developed as single-family residences. Zoning evidence was produced that was used to

amend the foreign missions and mission national organizations comprehensive plan element.

That atlas did not extend the existing diplomatic district to include the subject property. In light of that earlier analysis the Secretary of State requested that NCPC perform an analysis again on the subject property.

In a second letter, dated June 21st, the commission staff agreed that the subject property met the original standard set to determine whether chancery locations met the standards of the Foreign Missions Act.

The planning staff did a different and separate analysis, and came up with a different conclusion. I wanted to check to see if you have -- do the members of the board have copies of the maps that I passed out at the last meeting? That would be the map that has NCPC on the front.

CHAIRPERSON REID: Yes.

MR. JACKSON: It is unfortunate that the Commission does not have the benefit of the explanation of how NCPC came to their determination, but I will carefully walk through and explain how we arrived at ours in some detail

CHAIRPERSON REID: Okay. Does everyone have it? Okay. All right. We have it.

MR. JACKSON: Okay. All right. Just to locate the site, note on the map where it has Norway, Finland, the Holy See, and Norway again to the south, and in the lower left-hand corner

of the map.

Note that the legend has triangles for embassies, and green triangles for chanceries, and of course the yellow square are residences. Also note that the Holy See is shown as being an embassy.

But I think we can all agree that at various times the Holy See, which is the Papal Embassy, has been discussed as being a chancery and an embassy. And I would define that as both.

If you go to the second page of the map, the second map, note an interesting -- something interesting here. This map shows the existing lots as larger blocks. But if you go to the map that follows that, you can see that on our city regulations, as far as our assessments office is concerned, the lot is actually 10 parcels.

We did our analysis based on what we felt was the best interpretation of what was done initially, and where they took each land use and determined what was the principal use and the accessory use.

To do that we contacted the City Finance Office and asked them what was each slot assigned, in terms of use, as far as the official record. I also distributed copies of a summary table of all of the uses lot by lot. I wanted to make sure that you all had that.

CHAIRPERSON REID: Yes.

MR. JACKSON: Okay. So basically we went through

and looked at all of the lots that exist. Now, you can flip back between the illustration of this that the lots that exist, and the buildings that are developed on the lot, and those are two separate maps to make the comparison.

But let me make the following observations. If you are looking at the map of just lots, there are according to the City assessments there are five lots that do not have a principal use on them, and they are characterizing them as being vacant.

But the vacancy clarification really only reflects the fact that there aren't any principal uses on them. In the summary, I explained that two of these lots are open spaces that are part of the efforts of the Apostolic Nunciature, but are not developed for specific use.

Two of the lots are developed with residents, single-family residences. Those lots -- or actually for residents, and I should refer to the lots themselves. On the lot sheet, 809 and 27, are developed single-family residences.

One of those is also owned Apostolic Nunciature. And then one lot on the corner, Lot Number 6, is occupied by a garage, which is also used as a storage building.

So in essence the vast majority of the lots as they current exist are developed for residential purposes and not institutional, or have uses that are associated with another use.

And Lot 29, which is at the lower right-hand corner, of course is where they Finnish Embassy is. Now, we will

concur that the Finnish Embassy is a chancery and office use, and that that entire lot is developed for office uses.

The bone of contention, however, is what is the use of 3339 Massachusetts Avenue that is developed with the Apostolic Nunciature building. The Planning Staff had talked to a number of people who had different interpretations about what the use was.

We contacted -- we called and talked to the Apostolic Nunciature, or actually to the Archbishop, and asked him to describe the use of the building.

He explained that -- he said that the top two floors are residential, and the first floor was office, and he said that there were offices in the basement.

We asked the Archbishop if we could visit this property to actually see the site, and I believe that at the first part of the public hearing there was a discussion of how the applicant's attorney contacted me just when I was trying to find transportation and we missed each other at the subway station.

But I was informed by the Archbishop that he was unable to meet with me, but that one of his aides would show me the building. So I took the metro and caught the bus, and went by the Apostolic Nunciature, and met with his aide, and he gave me a tour of the building, and this is what I saw.

Now, before I go much further, I should recount what we have in our assessment report about this building. It was developed in 1939 as a residential structure, with three floors

and a basement.

On the third floor by the way are 26 rooms and 13 bathrooms, which appears to indicate that it was designed to have a number of residents on that floor.

As you walk into the building, the first thing I observed was that there was no sign stating that this is an embassy. There is a small sign stating that it is a chancery, but that sign redirects you to a side door.

The chancery entrance is on the side of the building. You go into that door to get into the chancery, which appears to be primarily rooms in the rear of the building.

The main entrance to the building -- as you go to the main entrance to the building, what you come into is a lobby, with what appears to be dual parlors on either side of the lobby.

There is a long hallway -- as you proceed further in the building, there is a long hallway that goes from the side entrance straight through the building to an area that is a chapel.

I asked the aide what the chapel was used for, and he said the chapel was used by the people within the building, and was not open to the public, and based on that information, I concluded that the chapel is accessory to the residual use, because it is not open to the public.

He indicated that there were offices, and that the chancery office was to the right, but then the basement was also

used for offices. I asked him what else was in the basement, and he said storage. So then I asked him how much of the basement is used for office space. He said approximately a third.

We proceeded through the building, and on the way out, I asked how much of the upstairs is used for residential purposes, and he said that the top floor was all apartments, and he indicated to me that he lived on the second floor, but that there were also eating facilities on that floor.

We walked quickly around the property. There is a paved circle in the back that appears to be more for walking or exercise, but there is a residence on the same site that is behind the larger building.

And I asked him what that site or building was used for, and he indicated that it was servants quarters on the official record, and he indicated that those are residences for members of the other mission.

And, of course, there is on the two lots -- well, I guess you should go back to your map. There are two narrow lots, 21 and 22. These appeared -- there is a residence on 809 that is owned by the Apostolic Nunciature.

And it is occupied by members of the mission, and 20 and 21 appear to be where there is a landscape garden, or a garden for reflection. Again, according to our official record, it is undeveloped, but that is because there is not a principal use on it.

And then number six is a garage. Based on this survey of the property -- and again it was unofficial, but I can readily say that I visited and saw, and I made a determination that most of the property was developed for residential use, or for uses -- or to be used by the residents.

And again I am referring to the chapel on the first floor. The arrangement of the first floor with dual parlors, and the fact that the actual chancery entrance is really just a side entrance into the building.

As a result of that, I made a determination that if the use is primarily residential, and with that determination, only 29,815 square feet, the lot where the Finnish Embassy is located, would be considered office, and therefore this does not meet the standard set out under B-2-B.

Now, this is our analysis, and of course it does not agree with that given by the NCPC. We would concur though that if the Board decides to concur with the NCPC analysis, we find that the use must meet the standards under Section 5106D.

Those standards have to do with the stating or meeting the following criteria. The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital.

A presentation was made at the previous meeting concerning that standard, and we would agree that criteria has been met.

The extent to which the area is incapable of being adequately protected as determined by the Secretary. There was a presentation at the previous meeting concerning that standard, and the Planning Staff would concur that that criteria has been met.

The municipal interest as determined by the Mayor of the District of Columbia. The Office of Planning, representing the Mayor, has concerns that this proposal would impair the integrity of the District zoning plan.

The R-1 district is designed to protect the required residential neighborhoods not developed in one-family detached dwellings, and adjoining vacant spaces likely to be developed for these purposes in an attempt to stabilize the residential areas and promote a stable environment for family life.

For that reason only a few additional uses, compatible uses, are permitted in R-1-A. Offices is not one of them. I would also say that we made the observation -- and I can refer to the map by the consultant for this observation.

Note where the flags of the various embassies and chanceries are. They are all along Massachusetts Avenue, except for the one north of the subject property, which predates our current regulations.

As such, this would be the first encroachment into the residential area and used and defined as being office, and we think that is inconsistent with the goals of our zoning ordinance

and plan.

The final standard is the Federal interest as determined by the Secretary. We concur that the Secretary has met that criteria. There have been other concerns raised, and residents are here that will go into those in detail.

In summary, our basic concern is that the proposal, as proposed, will make the maximum use of the site. This is a solution that does not allow any potential for expansion or significant change.

There also appears to be insufficient room for the anticipated relatively large social functions. Attempts to accommodate this expansion later has great potential to have negative impacts on the neighborhood, and we didn't think that the applicant had adequately addressed those issues.

We also highlighted sections in the comprehension plan that deal with the low density residential uses, but the bottom line would be as we stated, that the goal of the comprehensive plan is to maintain the existing land use character of this area, and protect the existing residential neighborhoods and enhance their qualities.

We think that this proposal has the potential to have an opposite effect. The community comments were received, and the advisory commission 3C voted twice on this application, and each time they voted to deny it based on the fact that the predominantly low density single family use in R-1-A, where the

chancery would be located, and an overall prohibition of commercial office use in R-1-A.

There were a number of letters in opposition that were received, and that were summarized in my report. There is also a letter of support that was received from Archbishop Montalvo, and who stated that the Apostolic Nunciature owns the house at 3735 - 34th Street, and it serves as a residence for its members.

And it owns the property at 3339 Massachusetts Avenue, which contains offices and residences of the mission, and it is their belief that the chancery would not in any way undermine the character and quiet environment of the residential space.

The Agency comments. I think we summarized what those were about. So, in conclusion, the Office of Planning recommends or continues to recommend denial based on a determination that this property does not meet the requirements of 5126 D-2-B

under Title 7 of the D.C. regulations, in that they have not established that more than one-third of the land uses on the city square are office institutional uses.

If the foreign missions Board of Zoning Adjustment determines that the requisite standard has been met, OP recommends denial, because the applicant failed to adequately address the criteria under 5126 B-3 and 5 of Chapter 12, that the status under

the proposed office use in a clearly residential neighborhood is contrary to the goals of the District of Columbia comprehensive plan.

That is, establishing a proposed chancery use as a short term solution without the potential for expansion or significant change; and that it attempts to accomplish chancery expansion at a later date and have the potential to negatively impact the neighborhood.

And that if the foreign missions Board of Zoning Adjustment determines that this request should be approved, then the request should include the following conditions.

The number of mission officials and employees on-site at any one time should not exceed 15. The number of vehicles on-site driven by embassy staff, officials and staff, should not exceed seven; or arrangements should be made for additional off-street parking at another location.

And the applicant shall not request diplomatic parking along 34th Street, Northwest; and the number of persons invited to major functions should not exceed 50; and the number of functions should not exceed four per calendar year.

That the chancery shall only be used for activity by the Azerbaijan government. A complete list of as-built plans showing the building and steering grounds will become part of this approval.

I should note that the reason for this proposal is

so that the commission would be able to track changes over time if they should occur; and that any variances from the referenced conditions or alterations of the existing landscaping and grounds, or redevelopment or expansion of the existing buildings shall be subject to BZA review.

MS. MCCARTHY: Madam Chair --

CHAIRPERSON REID: Thank you very much for your report. Go ahead, Ms. McCarthy.

MS. MCCARTHY: The Office of Planing, in addition to providing our report today, wanted since the State Department had submitted a set of comments suggesting again that you should not waive your procedures and permit our report, and also taking issue with some of the Office of Planning report.

And we just wanted to take a few minutes to address the submission from the Department of State.

CHAIRPERSON REID: I think that perhaps, Ms. McCarthy, that the order, the sequence, of this proceeding would be -- I think it would be easier to follow if we first had the State Department give their comments, and then allow you to then rebut what they are giving us.

MS. MCCARTHY: Okay. That would be fine.

CHAIRPERSON REID: All right. But before that, are there any questions from the Board Members in regard to the Office of Planning report?

VICE CHAIRPERSON SOCKWELL: Just one or two.

CHAIRPERSON REID: Okay.

VICE CHAIRPERSON SOCKWELL: One question would be the Office of Planning has apparently assumed The Vatican facility to be a mixed used building, as opposed to a chancery whose residential uses are accessory thereto.

MR. JACKSON: I think the reverse is the case; that we considered this to be a primary residential use with accessory chancery.

VICE CHAIRPERSON SOCKWELL: Can a chancery by definition be an accessory use --

MR. JACKSON: Yes.

VICE CHAIRPERSON SOCKWELL: -- to a residential building?

MR. JACKSON: Yes.

CHAIRPERSON REID: Obviously you can tell from Mr. Sockwell's questions that this is very baffling to us, because we have so many experts giving us different analyses of the same situation, and my question goes to also this issue of The Vatican building, the Holy See, as to what the determination of that building is.

Now, is there any standard, or is there any way to expressly determine -- when you say to us, and everyone is agreeing, you know, more or less -- I think, that it is both a chancery and an embassy, correct?

MR. JACKSON: Yes.

CHAIRPERSON REID: All right. Now, there is nothing that would then determine if in fact you would call it either/or. We keep calling it both.

MR. JACKSON: The normal practice would be to look at what the property is principally used for, and -- well, in planning, the planning approach would be generally to look at what is the most dominant use on the site, and then determine if there is one, then the other uses become secondary.

What we observed was that the basic -- that the specific chancery is accessed by a sidebar, which is back in the rear on a corner. There are offices on the first floor. However, it appeared that most of the uses on the first floor beyond the chancery uses were either for circulation or for the benefit of the residents.

CHAIRPERSON REID: We understand that, but my question is whether there is any hard and fast rule to apply as to whether or not -- for example, you said that there was a sign at that chancery?

MR. JACKSON: Yes.

CHAIRPERSON REID: So obviously the mission considers itself a chancery?

MR. JACKSON: Well, as I explained, the sign was not, I guess, much larger than that, and there was an arrow pointing around to the side entrance, where you actually entered -- you enter a side door to go to the chancery.

So if you visit the site, there is no sign that says that this is related to The Vatican. All there is there is a small metal plate that points to the side door to go to the chancery.

CHAIRPERSON REID: All right. Well, the question is that the sign was there.

MS. MCCARTHY: Well, in fact, Madam Chair, it is a sign like you would find on a dentist office that operates at home, where you are directed around to the side door for what is clearly an accessory use, and a principal use, which is a dentist's home.

CHAIRPERSON REID: So in other such missions is it fairly common that there would be some residential proponents to the official business use as a chancery or is this an anomaly?

MR. JACKSON: Well, if you go across the street to the Norwegian Embassy, that also is -- I believe the front part is the embassy, and the rear part is the chancery. In that case, there is a whole wing that was constructed as a chancery. But then behind that wing are apartments.

CHAIRPERSON REID: And then when you go to -- I think you said that the person that you talked to, and that person -- what was the capacity? What was the official role of that person that you talked to?

MR. JACKSON: He didn't indicate what his capacity was, but the Archbishop said that he was going to have an aide

show me the property.

CHAIRPERSON REID: And he wasn't -- okay. You don't know -- okay.

MR. JACKSON: No.

CHAIRPERSON REID: Okay. And then you said that approximately one-third -- that the basement was approximately one-third?

MR. JACKSON: Right. I asked him whether -- what the --

CHAIRPERSON REID: It was storage?

MR. JACKSON: He said that approximately one-third was office and the rest was storage.

CHAIRPERSON REID: All right. Then my question goes to would the rest that was storage be attributed to the office space or to the residential space?

MR. JACKSON: Well, as I indicated, the building was built in 1939 as a residence. So that space has always been there for use as a residence. Now, whether or not they are using it for storage, or whether or not the mix of use for storage for the residents who live there, or for the office for chancery use. I didn't go into that level of discussion with them.

CHAIRPERSON REID: Wouldn't that be fairly important, and since you are doing the square footage and what is attributable to what? I mean, how would you allocate the space usage? That would kind of then lead to how we would then

ascertain what that building is.

MR. JACKSON: Well, my assumption would be that the -- well, I am still making assumptions, but rather than to consider it is essentially split, because the assumption for most basements, if you have a large residential development, and especially dating back to the '30s, for one thing, what you don't have is closets.

So most of your storage, particularly with clothes and traveling materials, would be in your basement.

CHAIRPERSON REID: Well, you can make that assumption, but by the same token, you could assume that there may be a lot of reports and papers, and things, too, that would need storing, and therefore have space allocated thereto. So this is very perplexing, and that is all that I can say.

MR. JACKSON: I understand.

VICE CHAIRPERSON SOCKWELL: Madam Chair, if I might add to this, to ask the gentleman from the Office of Planning that when the building was built, it was United States soil, I assume, and was not always in the hands of The Vatican?

MR. JACKSON: I can't attest to the ownership of the property at that time.

VICE CHAIRPERSON SOCKWELL: All right. So to the best of your knowledge, there is no way of being sure that it has or has not been in the hands of The Vatican from its beginnings, and I don't have that information myself.

But the issue is that if the building is using -- is calling itself a chancery, and is under the circumstances considered to be foreign soil, and if it is consisting of storage, and office, and residential aspects, and if it is not possible to determine that the storage is part of the residential portion of the occupancy; and if as a chancery the foreign government, or The Vatican, has the right to determine what its use of a structure might be, therefore rendering that structure suitable to become foreign soil under the circumstances of its use, then is it for us to determine that the chancery occupies 10 percent of the building, 20 percent, or 30 percent, and whether or not without some specific measuring device, determine whether or not the storage is attributed to the chancery, active use, or the residential -- possibly accessory use; and if we can't even determine effectively whether or not the fact that a sign points to a side door, versus the main entrance, determines that some other portion of the building is not relevant to the chancery function -- and I would certainly not want to bring this up.

But the John Wilson Building was almost invariably entered through a side door, and the main stairway on Pennsylvania Avenue was hardly ever used after a certain period of time. It didn't make the building anything different.

I am just stating that it I believe that it may be very difficult to break this building out into residential and chancery components without having some real measuring device

other than opinion.

CHAIRPERSON REID: Thank you.

MS. MCCARTHY: I think that is true, Mr. Sockwell, except for one thing in the case of the Wilson Building, there wasn't a mix of uses in there. It was all a hundred percent office use.

VICE CHAIRPERSON SOCKWELL: True.

MS. MCCARTHY: But that also is the explanation as to why we felt that we needed to go there in person, and that we couldn't just rely on what a map said, or what a description of the property was.

VICE CHAIRPERSON SOCKWELL: But you did compare a dentist office, and since that is not germane to this later.

MS. MCCARTHY: Well, I am talking about determining accessory uses. But we could also say that based on zoning definitions that that which is in the basement doesn't count towards FAR.

CHAIRPERSON REID: Thank you, Ms. McCarthy.

VICE CHAIRPERSON SOCKWELL: But FAR doesn't count in this particular aspect, because it is grandfathered for one thing, regardless of what it is.

COMMISSIONER PARSONS: Is there a certificate of occupancy for this building, The Vatican building? If that is a certificate of occupancy --

MS. KRESS: I'm sorry, but I don't believe they are

required to have certificates of occupancy, and they might do it so to be in compliance with our local regulations. But they are not required to have one to the best of my knowledge.

COMMISSIONER PARSONS: Are they required to have a building permit?

MR. JACKSON: The only observation that I would make was that if it dates from '37, and that in '37 they did not have status as a foreign mission, then they may have a certificate of occupancy.

VICE CHAIRPERSON SOCKWELL: And voided upon a change of hands, and change of use.

MS. GIORDANO: My office researched to see the records for all of the properties in the square, and there was no certificate of occupancy for the building.

COMMISSIONER PARSONS: No building permit?

MS. KRESS: No, they are not required to have a building permit.

MR. JACKSON: That's not totally correct. If I could be recognized just to alleviate the confusion here, because it is very difficult afterwards to try to dispel it. I will answer it specifically.

They do not have a certificate of occupancy now. It is not -- the reason that they don't need it -- the comment that was made by Ms. Kress is correct only with respect to preexisting chanceries, and that is very important

Mr. Sockwell put his finger on it when he mentioned the fact that The Vatican chancery is grandfathered. All of this is controlled by the Foreign Missions Act, the issue of the certificates of occupancy or lack thereof.

Therefore, anything that was on October 1st, and that is the critical date in the law, anything that was on October 1st, 1982, a chancery, and this building was, is grandfathered.

So therefore it is irrelevant whether there was a certificate of occupancy or not. Therefore, Ms. Kress' point would be correct; they would not have needed one.

But I want the record to be clear that anything after -- for example, should the Board of Zoning Adjustment act favorably on the Azerbaijan application, Azerbaijan would -- and I repeat, it would require a certificate of occupancy.

Every chancery that has come into being and that is located, or constructed, or had an addition put on to it since October 1st, 1982, has had to have a certificate of occupancy.

COMMISSIONER PARSONS: All right. If I could continue then. Mr. Jackson, what would be required, if anything, for this building to be converted to all office space?

I mean, structurally, and I mean permission from the city, and a change in their circumstance. Do you see where I am going with this? You have gone into the building, and you have discovered that it is residential. It is classified as a chancery.

If they determine that they wanted to eliminate residential uses and convert it to office, what would be required, anything?

MR. JACKSON: Well, they would have to -- if they continued to be owned by The Vatican -- you are not talking about the sale of the property to another party?

COMMISSIONER PARSONS: So that The Vatican decided, well, that's enough of that. We will put offices in here.

MR. JACKSON: Well, they would have to work in conjunction with the Foreign Missions Act.

MR. MLOTEK: May I be recognized? Ron Mlotek again from the Department of State. This is a very key question, Mr. Parsons. In fact, nothing would be required.

COMMISSIONER PARSONS: That is what I thought.

MR. MLOTEK: Nothing, unless, of course, they were going to do construction, and construction always requires a permit wherever it is, be it residential or nonresidential.

But if construction were required, they would be given the construction permit automatically by the Office of Zoning, provided that the plans were otherwise in conformity. You know, electrical, plumbing, what have you.

But from the zoning perspective, no further permission would be required; and incidentally, no permission from the Department of State would be required if there weren't construction.

If they were going to simply change their mind, and move all of the residents out, and convert the existing space to entirely office space, no further permission would be required from any governmental body.

COMMISSIONER PARSONS: As long as we have got Mr. Mlotek here, why don't I continue my conversation with him. Mr. Mlotek, in your experience in the development of the diplomatic zone, which you were a part of as I recall, was entering buildings in the fashion that the Office of Planning has done here part of that, or was it more done on an exterior -- well, explain to us if you could, because I don't recall the details if we identified a property such as this as a chancery.

MR. MLOTEK: There was obviously no entry of the buildings, Mr. Parsons, which we had previously noted was problematic in this case. But back in the early and mid-1980s there was no entry into any foreign mission property.

And it was all done as you said from external visualization, and anything that was listed in the records of the Department of State, those were the records that were in those days deemed to be dispositive of what a building was a residence or a chancery.

Anything that was carried on our books as a chancery, even if it had a residential component in it -- and of course many did. Not may, but a significant number, maybe 20 percent or so, anything that had a residential component in it.

Nonetheless, if it had office use, it was considered to be a chancery. Now, an obvious exception would be if it was declared to the State Department to be an Ambassador's residence, and he had a personal office in it, that wouldn't make it a chancery, of course.

COMMISSIONER PARSONS: Thank you.

MR. MLOTEK: Yes, sir.

COMMISSIONER PARSONS: Mr. Jackson, in your calculations, if in 1983 this had been determined to be a residential building as you would suggest today, would there be any difference in the delineation of the diplomatic zone?

In other words, I know that you are not recommending that here today, but if it was known what you know today, or what you are suggesting we count as residential was counted as office, would it have changed the diplomatic line on this map, on the one-third, two-third, basis?

MR. JACKSON: That is possible. However, at the time, I think it was a nonconforming use. It was either nonconforming or chancery use, and so they would have probably have included it in the zone just on the basis of its existence.

COMMISSIONER PARSONS: Well, what I am trying to get at is what I think you are suggesting, is that an error was made in 1983. Maybe you are not personally suggesting that, but that's where I go with this; is that not only is today a one-third, two-third, basis inaccurate.

That possibly the diplomatic line on this block, or in this square, is improperly drawn, and should retreat if you will from where it has indicated.

MR. JACKSON: That's possible.

COMMISSIONER PARSONS: But you are not prepared to discuss that today?

MR. JACKSON: In reviewing the records that I have been able to see from that determination, and the hearings that went on, I think there were a number -- there was a lot of back and forth between the NCPC, the planning commission, and the Department of State.

So I think there were probably a number of issues that were discussed and considered at the time, which may not be as obvious today. So I would have to second-guess their determination because there were probably a lot more issues discussed than I am aware of.

COMMISSIONER PARSONS: All right. Thank you.

CHAIRPERSON REID: Okay. Thank you very much. If that concludes your report, then I would move then to the Department of State's report; and this is the report in response to the Office of Planning report, correct?

MR. MLOTEK: Yes, Madam Chair, it is. For the record, one again I am Ronald Mlotek, legal counsel of the Office of Foreign Missions, and to my right, I am accompanied by Ms. Gilda Brancato, who is an attorney-advisory in the Office of the

Legal Advisor, the central legal office of the Department of State.

CHAIRPERSON REID: Okay. And, Mr. Mlotek, in the interest of time, and the fact that you have already given your report, the Board Members during the recess did read the entire report. So, could you please give us the highlights, and avail yourself for questioning.

MR. MLOTEK: Yes, I will do that, and let me highlight, since a great deal has been made about what The Vatican property is. Let me try to key closer of what I want to say to that. But let me begin by saying this.

For the record, once again, we do have to provide for the Board our view about the relative egregiousness of what happened in this case, of the District of Columbia official gaining entry into the property.

For the record, I would like to note that I have been instructed to convey to the Board today on behalf of The Vatican Embassy, from the Ambassador himself personally last night, with whom I had an extensive discussion inside the premises, and so I have been in it, his great unhappiness over the fact that entry was gained into this property under pretenses which were not fully understood.

The embassy, he confirmed to me, did not understand that this visit was in connection with a zoning case which was contested, and that information which they might give could be

used in some way which they had no control over, and particularly be used against the Embassy of Azerbaijan, which for the record The Vatican Embassy supports.

There is a letter of support from them in their capacity as residents, and so this is interesting.

CHAIRPERSON REID: Yes.

MR. MLOTEK: The second point is relating to the fact that they have residences there. The Office of Planning Report, one issue that we have with it is that while the Office of Planning, which is to make a very great deal of the fact there are Vatican diplomats living on these various properties, and not just this one, but there are two other buildings as well, two other houses.

While the Office of Planning report wants to make a very large point of the fact that this is a residential property, it apparently wants to disregard the only fact really that is relevant with respect to the presence of Vatican diplomat residents there.

And that is that as residents they support this, and from my point of view, and I would hope from any rational land use planning point of view, any sort of mathematical debate about one-thirds, two-thirds, and whether this is an appropriate chancery location in a residential neighborhood or not, is immediately and instantly rendered totally moot if the residents who live there support it.

I mean, it is totally irrelevant to say that a chancery location is going to destroy the residential character of this zoning square, and the square is the area, the neighborhood, that the Office of Planning agrees should be looked at. It has exclusively focused its attention on this square.

Every single resident who lives in this square, the square alone, supports this, as is evidenced by the fact that the New Seer himself has written to you saying that they support it.

So to a very large extent, in the discussion about the one-thirds, two-thirds, is irrelevant here. In addition, the major thrust of our criticism of the OP report could be distilled to this.

Factually, it is inaccurate. That is the major thrust. In other words, if it is true that this is, quote, clearly a residential area, then even the State Department would admit and concede at the outset that this would not be an appropriate place to put a chancery.

And indeed we would not have even advised the embassy to bring the case, and we would not have even supported the case. We surveyed the area ourselves as well, and we saw that throughout the area, no matter how you calculate the neighborhood, whatever definition you want to apply here, the Department of State is prepared to accept that.

Whether you want to use just a square that the Office of Planning prefers, or whether you would like to draw a

circle of 200 feet around the property, that would be fine, or whether you want to go to 500 feet.

You see the charts which the parking consultant for the embassy drew, and we believe that those are accurate. What we don't understand is how the Office of Planning, which is supposed to do a planning survey in an area in a case such as this could simply have ignored all of the many nonresidential uses that are there.

I mean, leaving aside any quibbling over one-thirds or two-thirds, you have an entire United States Naval base that is located in the observatory complex. This is carried on the books of the Department of Defense as a base.

There is a base commander, and there are literally hundreds of United States naval personnel who come there to work every day, in addition to be the vice-presidential residence, but that occupies a relatively small area of the complex.

That is at the southern end of this neighborhood. The other end of the neighborhood, of course, you have the National Cathedral, which is a major nonresidential presence.

If you contract the circle and look a little closer, and let's say 200 feet from the site, you have the Belgium chancery, which has about 110 or 120 employees working there, which is a very large nonresidential structure and nonresidential presence.

The Norwegian chancery. You heard Mr. Jackson just

now in his report testify, and as he notes in his written report as well, he characterizes -- first of all, he characterized the chancery in his report as an embassy. It isn't. It is a chancery.

He also stated that the entrance of it is on Massachusetts Avenue, and therefore any -- if the board were to act favorably upon Azerbaijan, it would for the first time allow chancery use to spill over on to 34th Street, which is wholly incorrect.

Anyone who goes by the Norwegian chancery can see for themselves that the chancery portion, there are two buildings there. One is the Ambassador's residence, and that does front on Massachusetts Avenue.

But the chancery portion of the Norwegian Embassy, the front entrance, the main entrance, and really the only entrance -- the only way you can get into the Norwegian chancery without trooping through the ambassador's own residence, is to go in on 34th Street.

And the entirety of the building, the institutional building which is the Norwegian chancery, the entirety of it fronts on 34th Street, and not any part of it at all fronts on Massachusetts Avenue.

The Vatican chancery itself, if one does want to look at the interior of it, is not as stated by the Office of Planning. There is a major difference of opinion.

The Office of Planning believes that there are any -- leaving aside the areas where the priests actually live, and looking totally at or solely at the entertaining and representational space that they have there, the Office of Planning wants to treat that as being residential.

Yesterday at the National Day of The Vatican, which is the anniversary of the ascension of the pope, which they celebrate every year as their National Day -- and there were at least 400 or 500 guests at this function.

And the reception rooms were being used, and I went through every one of them, and those are clearly official, and therefore chancery, representational areas. The priests who live there are not allowed to invite their friends and families in there for birthday parties.

Those are representational areas where they conduct their meetings, and their conferences, and they have many conferences there of the Catholic clergy throughout the United States.

There is bishops and dioceses across the United States who come there for meetings that are related to the business, and not the residential purpose of the site, but to the business of The Vatican in the United States.

Finally, we would note with regard or would respond to the OP report as distilled by Mr. Jackson, that if indeed some ancillary chancery use in what is a residential structure as OP

wishes to characterize The Vatican, if indeed the Office of Planning is going to take the view that in such a case the chancery use is ancillary to the residential use, and therefore the residential use should characterize this building for your consideration, would then the Office of Planning be consistent at least and follow this through and state that if a foreign government obtained a property somewhere which was residential, and wanted to put some office use in there that they would not then require approval by the Board of Zoning Adjustment?

That they would not require an office permit from the Zoning Administrator? Of course that can't be the case, and we know that can't be the case. A chancery could not -- you know, you could not have a residential structure somewhere which was a diplomatic residence, and then have 15 or 20 people working there without zoning authorization, without have a zoning permit, an occupancy permit for institutional or chancery use.

But that would be the logical outcome of taking forward the Office of Planning's rationale, which is that if there is some chancery use in a residential -- in what is primarily a residential building, basically it should be classified for these purposes as residential and not as chancery. Do you have anything to add, Gilda?

MS. BRANCATO: Thank you very much, Madam Chair. I am Gilda Brancato, with the Office of the Legal Advisor of the U.S. Department of State. I will be submitting witness cards for

the record.

I just wanted to add one very small point to Mr. Mlotek's presentation, and that is very briefly that for the factual reasons stated in our record, and in our report, and also in the NCPC letter that this is more than one-third institutional use; and for the legal reasons cited in our reply, that even if the one-third standard had not been met in this case as it has today based on existing uses, this is clearly an appropriate area for a chancery location, and the Board's inquiry should be directed to the six criteria under 206. Thank you very much, Madam Chair.

CHAIRPERSON REID: Thank you very much. Questions by the Board Members?

MR. MLOTEK: Just one last -- I saw on my list of notes here that I had taken for my rebuttal, that a question had been asked I think by the Chair, or one of the other members, as to the capacity of the person who showed the OP representative around.

In any event, the Archbishop told me or identified that person as, quote, their handyman. The person who sort of takes care and fixes thing, and he is in fact the person who lives in the little house in the back, and he is their gardener as well.

And he is hardly an authoritative source on the specific land use issues that pertain to the building.

CHAIRPERSON REID: Okay. All right. Are there any

questions of Mr. Mlotek?

BOARD MEMBER RENSHAW: Well, I do have just a small question. I did not get your last name. I'm sorry.

MS. BRANCATO: Brancato, B-R-A-N-C-A-T-O.

BOARD MEMBER RENSHAW: Ms. Brancato, you said that if it clearly an appropriate area for a chancery. If it did become a chancery, and was a chancery for X-number of years, what becomes -- can this revert back to R-1-A zoning if the property is not used as a chancery?

MS. BRANCATO: Thank you. Mr. Mlotek would like to answer that question. Thank you.

MR. MLOTEK: Yes. It absolutely can, and it would not be grandfathered. That is a very important consideration. Grandfathering ended in 1982. In other words, it froze in 1982 in time. Anything that was a chancery in 1982 can continue in perpetuity to be a chancery.

However, anything which was approved by this board, or favorably acted upon by this board, after 1982 does not grandfather. And the specific authority for that is the Foreign Missions Act, at 22 United States Code 4306, Subsection H.

And it would be similarly numbered something close to that in the DCMR as well under Subheading H, because they preserve subheadings in the DCMR. So it does not continue. And there was an issue about foreign soil, I believe.

MS. BRANCATO: Thank you very much for your

reference to foreign soil. That is a very -- I would just like to say for the record -- and I hope that this is not an admission against interests, but I do think that foreign soil is a very convenient fiction for noting, of course, the inviability of a chancery and embassy premises by which no member of the host State authorities, Federal or local, may enter without the express consent of the ambassador.

And, of course, that also attaches the panoply of privileges and immunities that attach under treaty, which is for the record is technically United States soil. Thank you.

CHAIRPERSON REID: Okay. My question is in regard to this one-third, two-thirds, test. Now, Mr. Mlotek, in your report, you spoke to the average ratio that was utilized to come up with this type of

-- what you refer to pre-Foreign Missions Act, the diplomatic overlay map.

And my question then becomes -- I think you are alleging that this test within itself is inadmissible?

MR. MLOTEK: No. No. The test, of course, is admissible, and the Board can take it into consideration. But it is not -- it was never intended, and it cannot be considered, to be something that has automatic operation.

the D-overlay map, the one-thirds, two-thirds, all of these things that you are hearing bantered about here in one form or another, and which were of such great influence in the OP

report, none of those things are mentioned in the Foreign Missions statute, or in the DCMR provisions that implement the Foreign Missions statute.

So none of them have the express imprimatur, the express blessing if you will of Federal law. They simply exist because, number one, prior to the Foreign Missions Act there was a so-called diplomatic overlay, or a so-called diplomatic mixed-use zone is sometimes how it is referred to in various materials.

So that preexisted 1982 when the Foreign Missions Act came in. When the Foreign Missions Act was passed, there was a feeling -- and not by the State Department, and I want to emphasize this, but by the professional planners at NCPC, in the Office of Planning, in the Office of Zoning, in the various groups that are in the land use community, Federal and local here -- that there should be an effort to continue with some sort of overlay exercise that would give guidance, only guidance.

It was never meant to be a hard and fast test. There is no legal test here. That's what is critical to get straight in everyone's analysis. The one-thirds, two-thirds, test does not exist as a test per se.

It was merely a statistical, or a mathematical formula -- simple, one, one-third, to two-third -- that the planners used when they had the computers run through in 1983 and '84 all of the zoning squares in residential areas of the city.

And if they found that there was more than one-

third existing institutional uses, and analyzing only the outside structures -- and they didn't only

-- and to elaborate my answer to Mr. Parsons, in 1983 and 1984, it wasn't just that chanceries were not entered into to measure residential and nonresidential components, but churches, schools, and other -- all the other institutional uses.

Remember that the diplomatic overlay, this one-third, two-thirds, analysis doesn't only look to see whether there are other chanceries in the zoning square. It looks to see if there are any other institutional uses.

This is very important, because as a result of the last zoning case here, NCPC, as you may know, is undertaking a study under the umbrella of NCPC to reexamine the issues relating to the diplomatic overlay map.

And we, the State Department, are participating with them as a partner, and we have made this point. And remember very well what then Executive Director Griffith said from this dias in the Benin case when he entered his views as to what the order should say. Well, not the order, but the letter which the board then sent to NCPC.

And he made it very, very expressly clear that from his point of view as executive director that the exercise of examining the D-overlay should not and cannot look only at diplomatic use, chancery uses.

It had to look at all nonresidential uses that are

in a residential zone, and that is what the D-overlay looked at, and what we say is that is fine to look at as a guide. We certainly look at it as a guide.

We use it and it has some utility there, and unfortunately I think it has a lot of confusion about it as well. But it was never meant to be a legal test that would be presented to the Board of Zoning Adjustment by way of saying that if this site falls within the D-overlay map, then basically it should be approved.

And if it falls outside, it should be disapproved. As we know historically from the tabulation that we did of previous BZA cases, with one exception, every case which has been disapproved by the Board of Zoning Adjustment was in the D-overlay. Every single on, except Taiwan, and there have been a number.

The case of Sweden, which was disapproved, was in the D-overlay. It does not make a difference. The Board is entitled to disapprove locations that are in the D-overlay, and likewise conversely, to approve even if they are outside the D-overlay. The essence is what are the other existing uses in the area. What is around there.

CHAIRPERSON REID: Okay. Mr. Mlotek, thank you very much. However, what I need from you is to be able to -- is to clarify for me the areas that are out there, and I am rather cloudy on that, and that is -- and my question to you is that if

in fact an application of this ruling or this rule of one-third, two-thirds, did you deem that to be inadmissible, and wait one second before you answer.

And with that, you said, well, of course, I think it should be admissible. But let me read to you in part what you submitted to us in writing, which says that finally -- on page 8, the first paragraph, "Finally, the application of the one-third, two-thirds, form as a strict test the chancery location is impermissible because it would engulf on to Section 206D a seventh and completely dispositive criterion."

"This criterion is not found in that section and would contravene the exclusive nature of the six factors identified by Congress as the sole criteria for a location of a chancery under Subsection (b)(2)."

MR. MLOTEK: All right. That simply states in other words what I just stated to you verbally.

CHAIRPERSON REID: No, no, what you just stated to me verbally was that it should be admissible, and should be applied.

MR. MLOTEK: But not as a strict test. The key if you -- Madam Chair, if you read that paragraph, and you wish to highlight or underline, the most important thing to underline there is the two words "strict test."

CHAIRPERSON REID: Use it, but don't use it strictly.

MR. MLOTEK: No, you can use it as a guide. It could be one -- as you know, the board in these cases -- it places a very difficult and unenviable complex task of having to weigh different things.

CHAIRPERSON REID: But before you go any further, my question is, and what I am trying to get to is, we know that under the Foreign Missions Act that our role is to apply the six criterion that we normally utilize in these particular cases.

However, what the argument is that is flowing around this particular case is this test, this one-third, two-thirds, test. And I guess what I am trying to understand is do we use it or do we not use it or do we not use it, or are you saying, okay, in addition to the six criteria that we usually use, give that some type of consideration. I am having just a difficult time with it.

MR. MLOTEK: Madam Chair, we have a difficult time with it, too. All the real estate people who try to show properties for chanceries have a difficult time with it. The chanceries themselves have a difficult time with it.

It really goes to the issue of whether this D-overlay thing serves any great utilitarian purpose anymore, but let me see if I can help you with this very difficult issue.

First of all, as the Office of Planning, the Office of Planning was trying to suggest this, and this is one thing that we agree with them in their report. I think it is about the only

thing that we agree with them in their report, and that is the analysis of how the decision making is supposed to proceed here.

There really are -- there is really a two-step process that the board is supposed to do and that it does in every case, whether it highlights it as two-steps or not.

The first is -- the first step does not have to do with the six criteria. Maybe that is what the difficulty is in trying to fit the D-overlay into the six criteria when it really is separate.

So, step one, or the first barrier if you will, the first hurdle -- think of it as two hurdles. Hurdle Number 1 that an applicant has to get over, a chancery applicant, it has to persuade the board that the area, the general area now -- and how we define area is an issue, but the general area is, quote, appropriate for chancery location.

Now, if they don't make it over that hurdle, then you don't even get to the six criteria. You don't even get to them. They are not relevant. You just find that the area is not suitable for a chancery location and that's it.

We don't have to weigh the District interests, and we don't have to weigh the State Department interests, and we don't have to weigh reciprocity. We don't weigh anything else. It is not suitable or appropriate.

The statute says and it gives you this guidance; whether the area is appropriate, quote, on the basis of existing

uses. That is where the D-overlay was supposed to fit in, and not under the six criteria.

It was supposed to be a way of looking to see whether the general area -- and for the one-third, two-thirds test, area was defined only as a square, and not what was across the street, and not what was down the street. Just that square.

And if that square met the one-third, two-thirds test, the way the board has proceeded in the past, and the way we agree that it can proceed in the future, is that it could presume -- and subject to rebuttal, or in other words, an opponent could come in and say, well, we don't care.

We live in the neighborhood and we don't care whether it meets the one-third test or not. This specific site would not be appropriate because there are private residences on any side, either side, and it would disrupt the residential life of the neighborhood.

But as a general guide, if it did meet the one-third, two-thirds test, and therefore was in the D-overlay, the Board could presume that the area was, quote, appropriate for a chancery location, and then move on to the six criteria to examine the specific site.

And if there was construction proposed, or other things, and not just location, could take all of that into account -- parking, intensity of use, how many employees, et cetera, et cetera.

But you wouldn't get to those six criteria. You would not even get there, Madam Chair, until you first determined whether the area was appropriate.

Now, this site, for whatever reason, whether it was an accident, a mistake of the mapping process in 1984 of the D-overlay or not, this site does not now fall within the D-overlay. So the embassy applicant here has a slightly higher burden to meet, which we agree and think that they can meet it.

And that is that before they get to the criteria, the six criteria, they have to show and the board has to be convinced, that the area -- and here OP says area should mean the square, that the square is appropriate for a chancery location.

We agree that that is a fair -- and that is what the statute contemplates as the procedure. You all -- did you want to add something?

MS. BRANCATO: Madam Chair, if I can just reformulate the answer to your question. Yes, the Board of course may admit the one-third ratio as a general guide for examining the area, but not as a legal prerequisite.

And that is stated right at the top of our brief on page seven. I think that is a short capsulazation of the appropriate use of the one-third ratio. A general guide for institutional-residential uses, but not as a legal prerequisite or threshold, which would be invalid under the Foreign Missions Act.

MR. MLOTEK: In other words, what we meant to say

in that paragraph was that if the Board -- and as OP seems to want the board to do, OP takes the view -- or Mr. Jackson summarized the OP report as follows.

The one-third, two-thirds test here is not met. Therefore, the board should disapprove if then. What we say here is if you apply that sort of mathematical or mechanistic test, that would be a strict test as we use the term strict test here, and that would be impermissible.

In other words, if the board were to render an order that said that we believe that this is not an appropriate area for chanceries to locate, and therefore we deny this application because it doesn't meet the one-third, two-thirds test, that would be impermissible.

Now, if in addition, if that were just one of the factors that the board used -- it doesn't meet the one-third test, and in addition there are all these private neighbors who live in the same square and they oppose, and in addition there are other consequences that would befall this residential neighborhood.

In other words, if there were more than just the one-third, two-thirds test that were used as the rationale for disapproving and finding that this was not "an appropriate area" based on existing uses, that would be permissible.

But if alone the only issue that was to be looked at was this one-third, two-thirds test in determining whether this was, quote, an appropriate area, if that alone is the standard,

that would be impermissible.

COMMISSIONER PARSONS: Madam Chairman.

CHAIRPERSON REID: Sure. Mr. Parsons.

COMMISSIONER PARSONS: I hope this has been clarified. I think we are getting a little redundant here. I would just suggest that maybe the answer to the question has been in-hand.

MS. BRANCATO: Right. And if I may, Madam Chair --

CHAIRPERSON REID: Yes.

MS. BRANCATO: -- add one sentence, and I agree with Mr. Parsons, but to add one sentence. We also urge the board to credit the letter of the National Capital Planning Commission, which says the one-third guide has been met, really making this entire discussion academic. Thank you.

CHAIRPERSON REID: Thank you very much. And, you know, I am really not completely sure, but I will take it under consultation with counsel as to procedurally if in fact what Mr. Mlotek said is exactly correct, but thank you very much.

MS. BRANCATO: Thank you very much.

CHAIRPERSON REID: Any further questions?

(No audible response.)

CHAIRPERSON REID: Are there any other reports from any other government agencies? The Office of Planning wants to respond to the State Department's report.

MS. MCCARTHY: Thank you, Madam Chair. I guess

just as a preliminary matter, I just want to be clear of the circumstances under which we visited this site, which I think have been somewhat mischaracterized.

We did phone ahead of time. We did indicate why we were coming out. We did ask for permission to come. We were greeted and directed to a person who could lead us around and tell us what were the appropriate uses. It was described as an aide.

Perhaps that person was a handyman, but I guess if you are fixing various portions of the embassy, you have a pretty good idea -- or the chancery, but that you have a pretty good idea of what uses are going on there.

But that is -- and perhaps this was not understood by The Vatican, but we attempted to be as clear as possible about why we were coming out, and the circumstances behind our visit.

But let me address the written report from Mr. Mlotek, because he suggests on the first page that because of, quote, many serious deficiencies and numerous defects, constituting errors of fact, misconstructions of law, and inordinate lateness, that you shouldn't even consider the Office of Planning's report.

And yet when I listened to his explanation and I read the rest of the report, the only, quote, serious deficiency or numerous defect that I find are typos that -- you know, apologies for our aging eyes, that we got some b's and c's mixed up, which were then corrected in the report that we sent back to

you on Friday.

In terms of some of the other concerns that he raised; one, the issue of lateness, and the fact that we have had five months lead time to prepare the report, I think or I am sure that you understand when Azerbaijan asked for a postponement, we simply stopped working on this report, not knowing for sure whether they were even going to continue with this site.

When we resumed again, we had an entirely different staff person, and had to become familiar with the facts all over again. We also only became aware fairly late in the process from the neighbors that they felt that the information contained in the National Capital Planning Commission letter was flawed, in terms of the one-third, two-third.

And when we called NCPC staff and asked them how they had made the determination that The Vatican was 50 percent residential and 50 percent office, they indicated it was because they called up and were told that there was a mix of uses, and concluded that it was used in the evenings as a residence, and during the day time as an office, and

therefore that constituted 50 percent.

We didn't think that that was the appropriate way to analyze the uses, and so we went out in person to inspect the site and see what the relative proportion of uses were, and it was on that basis that we made the conclusions that we did about the percentage of uses in the site.

But I would also point to the fact that the applicant -- the State Department's report was faxed in at 5:16 last night, and the traffic report was presented today. So if one were going to say only those things that had been submitted a week in advance should be considered by the Board, we would have a problem with both of those last two reports.

But lastly a plea to make sure that we consider the Office of Planning report is the criteria which the Department of State was just mentioning, one of the six criteria is the municipal interest.

If the Office of Planning Report is not considered, the Board really has no way of weighing what the Office of Planning -- what the municipal interest is of the District of Columbia, because the Office of Planning report is the representation of the municipal interest in this case.

So that is basically page one of the State Department's report. If I move on to page two, number one, under OP report section, entitled, Summary Recommendations, that is where the issue of the typos came up.

And as I mentioned, those were corrected in the corrected report that we turned in last Friday. If I go down to Roman Number II, the Office of Planning report committed serious errors in characterizing the neighborhood as clearly residential.

I think that it doesn't really matter which definition you use. This neighborhood is clearly a residential

neighborhood, and I think there isn't anybody familiar with this neighborhood who would characterize the Naval Observatory, or no matter how much they would like to claim the Vice President as their neighbor, would characterize him as somebody who is in their neighborhood.

But if we look at the zoning square itself first, the first criteria that Mr. Mlotek suggested, he talks about, for example, that this means today, excluding the subject site, 50 percent of the existing structures are chanceries, including the Azerbaijan building, and 40 percent of the structures would be chanceries.

But, you know, that is not the criteria that the Foreign Missions Act talks about. It talks about existing uses and those uses are either residential, institutional, or office.

I think if you go to Mr. Jackson's analysis, you would conclude as we did that open spaces which are gardens are hard to classify as office space, or even as institutional.

And that when you look at the actual uses of those lots, it is pretty clear that this neighborhood or that this area is residential, and that the one-third, two-thirds test is not met on this particular square.

If you go to the 200 feet criteria, and you look at the map that is before you, there are, I think, four chanceries, and they are all along Massachusetts Avenue, which you know is called Embassy Row.

That I think is a substantially different part of the neighborhood than that which remains behind there, and I think that I am not familiar enough with every block along there to point out to you what the total number of single family residences are that should be balanced against the number of embassies or chanceries in order to determine what is the predominant use.

But I am sure that when the neighbors come up that they could indicate to you just how many houses are included in that area that are strictly residential, as compared to the number of office or institutional uses in the area.

Let's see. If you go -- and that is basically page three. If you go then to page four of the State Department testimony, I would certainly concede to Mr. Mlotek that we are not trying to suggest that the Ambassador is agreeing to this standard, and is then going to turn around and break that standard, in terms of expansion space.

I think what we were particularly trying to indicate to the Board is that this house is used to the utmost for commercial purposes. There is not any additional extra space utilized that could not even have a mix of uses.

It is completely commercial, or office in character, and that there is no room for expansion, and that the embassy would be faced with the stark reality of having to go out and look for an entirely new site should they have a change of fortunes, or a change of mission, and determined that they needed

to expand their operations.

If I could go on to page five, in terms of the conditions that the embassy has accepted, which certainly are as Mr. Mlotek noted in his report, a notable gesture of good faith.

Well, let me deal with those, and there is a point that I wanted to make with regard to the last page of the report, and go on to page six, on the Office of Planning report suggesting or entitled, "Existing Zoning and Relief Requested."

In the last paragraph, he notes that contrary to the position of the Office of Planning, the underlying zoning classification of the site, and the inclusion or exclusion of the site from the diplomatic overlay map do not govern whether a chancery can locate in that area under FMA Section 206(b)(2)(b).

I don't think that is what we are arguing. We have clearly recognized that if this were in the diplomatic overlay that there would be a presumption that it is an appropriate place to locate a mission.

But when you are not in the diplomatic overlay, and you have to rely on the criteria which he cites in the indented area immediately above that, in any other area determined on the basis of existing uses, which includes office or institutional uses, including but not limited to any area zoned mixed use, or diplomatic, or special purpose, it is specifically those criterion we are trying to address, and which we did address in our report.

And I think that is a misleading paragraph to

suggest that we were trying to say solely on the basis of the fact that the diplomatic overlay did not exist there that this was an inappropriate use.

And I think that if you then go to page seven, and you go to the third paragraph, at the end of that paragraph, the State Department notes, "Rather, Section 206 of the Foreign Missions Act was enacted to balance Federal and municipal interests in chancery location, and to allow location in 'any area' of the district based on existing uses."

I mean, I think as we have discussed today, we don't mean any area. We mean any area where the existing uses are such that the introduction of a commercial use does not disrupt the land use and is not inappropriate.

And while the two-thirds, one-third, may not be a Federal criteria, there has to be some predictability. If you are a neighbor, or if you are a prospective neighbor, and you are looking to buy into a neighborhood, you need to be able to know whether or not you may end up with a series of office buildings, in effect, as your neighbors; or whether or not you are going to continue to be surrounded by people living in the buildings beyond you.

So to simply say, well, the law provides a lot of flexibility, and the law says that there can be a location in any area of the district, that flies in the face of the whole mission of this Board, which is to determine what is or is not an

appropriate area.

And the one-thirds, two-thirds formula gives us something that is concrete, and that can be measured, and something on which we need to hang our hats so that people, prospective neighbors, and existing neighbors, can know what to expect in terms of those locations.

In particular, and I guess I would go on to page eight, we need to have some sort of standard. If you say that one home office use in a square means that there is an office use, and therefore the entire square could be considered a location for a chancery, that would be inappropriate.

That's why we think that the one-thirds, two-thirds square or proportion is an important guideline to use in making that determination. With regard to the suggestion that the State Department makes in the middle of that page about the references to NCPC and the comprehensive plan are legally incorrect and factually inaccurate, I am truly perplexed.

It says that the Office of Planning report states that the comprehensive plan is the legal basis for zoning in the District, and he suggests that is incorrect. I believe that I don't need to remind the Board that we are legally obligated that our zoning may not be inconsistent with the comprehensive plan.

That is a very strict requirement and it is something that governs the Office of Planning when we determine -- and the Zoning Commission and the Board of Zoning Adjustment.

So to say that the comprehensive plan is the legal basis for zoning, I think, is pretty clear, and I don't understand the rationale here, and I don't see any explanation other than to suggest that that is in error.

I guess going to the conclusion, to the last page, I would say that I think there are really two important issues that the Board needs to take into account which I believe are missed by the State Department's analysis of this case.

Our major concern, and what we think is the key in overriding municipal interest in this instance, is the precedent that would be set in this case.

With all due respect to Ambassador Pashayerv -- and I do have a great deal of respect for the conditions that the embassy has agreed to for their attempt to try to be as minimally intrusive as possible to the neighborhood, the key fact is other embassies are not so gracious as neighbors.

And that once we create a precedent in which we say that regardless of the D-overlay, and regardless of the two-thirds, one-third rule, a chancery can be approved in a residential neighborhood, we may not be so lucky maybe the next time.

And if one set precedent is established, it is not clear to me how the Board could easily draw that distinction the next time. That is particularly true in light of my second point, which goes back to the description in the zoning regulations that

was quoted by Mr. Jackson in his report, the description of what an R-1-A zone is characterized by.

We are talking about the most restrictive zoning in the District, and we are talking about a situation which occurs in several R-1-A areas around the District, which is large homes, very large homes, in what are not stable neighborhoods.

But they can be very easily endangered species, or very easily endangered as a neighborhood as we have seen in many instances along 16th Street, in some of the areas around Logan Circle, and in these very neighborhoods, because precisely these are very large houses in very desirable neighborhoods.

They are places where diplomatic missions look to locate, and they are places where social service organizations look to locate community based residential facilities.

They are places where religious organizations look to locate house churches, and all of those factors have threatened and in some cases have made inroads into stable residential neighborhoods with large houses in the city.

And 16th Street Heights is a perfect example of that, where the neighborhood finally had to come to the Zoning Commission for an overlay.

CHAIRPERSON REID: Ms. McCarthy, thank you very much. I think that you are going a little beyond just responding to Mr. Mlotek's report.

MS. MCCARTHY: Well, I was trying to specifically

address the point that he was making, that the two-thirds, one-third is only the threshold test, and that then you have to apply the other criteria.

And since one of those criteria is municipal interest, I have tried to explain that our municipal interest in this particular site is what we see as the potential threat of this precedent, and the fact that these neighborhoods do have a number of forces which threaten them or which threaten the character of them as R-1-A neighborhoods.

CHAIRPERSON REID: All right.

MS. MCCARTHY: And that is what I was trying to deal with.

CHAIRPERSON REID: Okay. Thank you. I just didn't want you to get too far out with that.

MS. MCCARTHY: I was just concluding my point there.

CHAIRPERSON REID: Okay. Now, I had a very quick question, and that is just back to this one-third, two-thirds criterion, this rule. My understanding is that this pertains specifically to where that particular site, the instant application is located in. Is that not correct?

MS. MCCARTHY: That's right. We have characterized the neighborhood as one which is clearly residential.

CHAIRPERSON REID: And that is where I am going with that, and I am not cutting you off, but you see that it is

very important for us to understand what we are dealing with, and as such, are you talking specifically about that square, or are you saying now that the neighborhood also has some bearing on that criterion, or do we also look at the surrounding neighborhood, as well as the square.

Or do we put on blinders and look specifically at that particular square. That's what we have to understand. We have to understand that.

MS. MCCARTHY: Right. I think one goes to the test about the area, and in that instance, the one-third, two-thirds test is specifically in relation to the square in which the applicant is located.

The municipal interest which we are interpreting as more broadly to apply to threats of commercial uses in residential neighborhoods, and then we are defining the larger area as one which is clearly residential, despite the fact that it has some institutional/diplomatic uses in the area.

CHAIRPERSON REID: Okay. Thank you very much.

MR. PARSONS: Chairman Reid, excuse me, but I have to leave. But I want to assure the public that I will read the record, most of the last hearing and the remainder of today.

CHAIRPERSON REID: Okay. Thank you very much, Mr. Parsons.

VICE CHAIRMAN SOCKWELL: I have a few questions of the Office of Planning. One, Mr. Jackson, who toured The Vatican

property, did not tour the property completely. Am I correct?

MR. JACKSON: What I toured was that I went into the lobby, and walked through the lobby, and walked past the chancery, and then out on the grounds. I did not go through the entire building.

VICE CHAIRMAN SOCKWELL: You walked past the portion that you characterized as the chancery?

MR. JACKSON: Right, on the right side of the building. So I walked straight through it and past the chancery.

VICE CHAIRMAN SOCKWELL: Okay. So there was no touring of the upper floors, nor the lower floors, and because of that, it is my understanding that there was no way to characterize the use of portions of the building as storage in any way other than as described by the individual who accompanied you into the building?

MR. JACKSON: Yes. And I guess I should have described the person. He has been a 30 year resident of the site, and so he had a good knowledge of what was there.

VICE CHAIRMAN SOCKWELL: Right.

MR. JACKSON: He explained -- I did my -- well, my research reflects his description of what went on there on the other floors, correct.

VICE CHAIRMAN SOCKWELL: But his description of things like storage was not detailed enough to discern between residential or commercial storage?

MR. JACKSON: No.

VICE CHAIRMAN SOCKWELL: Okay. Thank you. And, Ms. McCarthy, you made the statement that there is no room to expand the proposed chancery use at the existing site based upon the size of the building, and the fact that it would not accommodate any more use than is apparently being proposed; is that correct?

MS. MCCARTHY: That was Mr. Jackson's conclusion in his report, yes.

VICE CHAIRMAN SOCKWELL: But you echoed that in your statement?

MS. MCCARTHY: I was trying to explain why Mr. Mlotek had objected to our characterization of it as being incapable of being expanded, and said that was agreed to, but that that should not count against it because they were not planning to expand.

VICE CHAIRMAN SOCKWELL: But I believe that you stated that they would have to move, and/or find, another facility in order for expansion to take place in terms of their program?

MS. MCCARTHY: That was Mr. Jackson's conclusion when he reviewed the plans.

VICE CHAIRMAN SOCKWELL: Okay. With regard to the precedent being set in this case, it has been pressed on that the one-third, two-third rule is really a very important piece of this.

And with regard to that, I am going to ask this question once again. Based on historical considerations, when three -- or let's say multiple lots in single ownership, i.e., in this case the Apostolic ligations' properties, which include garden areas, as well as areas accommodating buildings for both the principal use and the caretaker, when those lots are contiguous and in single ownership, and the aspects of the land use are all considered to be aspects of the principal structure and its surroundings, is there a reason why one would be able to characterize a chanceries accessory facilities as being something other than those devoted to a chancery if the chancery is in fact the principal use?

If the residential portion is characterized as secondary, or accessory, or ancillary to the principal use, which is a building with a sign on it that says somewhere that it is a chancery, is there any reason to be able to believe that one can segment the property and say that Lot A is used for one thing, and Lot B is used for something else, and Lot C is used for something entirely different?

MS. MCCARTHY: That's why I made the point just now that what the Foreign Missions Act says needs to be the basis of the determination of the existing uses, is not chancery versus non-chancery use. It is what is used as office, and what is used as residential, and what is used as institutional use.

And that's why we -- when you have a lot, and there

is a house on it, and that is where a staff person lives, and that is a separate record lot from the record lot of the embassy, we -- or the embassy/chancery, that's why we felt that we needed to make a determination for each of those lots based on what was the actual use involved.

And that within that building that we needed to make our determination as best we could based on the actual use of the spaces within the building.

VICE CHAIRMAN SOCKWELL: And I want to ask one other question of the Office of Planning, and that is if the property in question were to be occupied by a -- and I will characterize the person as a wealthy socialite, a 5,000 square foot property -- and there are many in the District of that size, could easily accommodate the social life of a family or individual with strong ties; is that not correct?

MS. MCCARTHY: I'm sorry, with strong ties to each other, or --

VICE CHAIRMAN SOCKWELL: With strong ties to a larger audience of friends and associates, et cetera.

CHAIRPERSON REID: Mr. Sockwell, you are referring specifically to social functions that may occur?

VICE CHAIRMAN SOCKWELL: Yes, social functions that could occur at such a home.

MS. MCCARTHY: Could someone living in an R-1-A zone with a minimum lot size of 5,000 have a large party?

VICE CHAIRMAN SOCKWELL: Yes.

MS. MCCARTHY: Certainly.

VICE CHAIRMAN SOCKWELL: And the only reason I use that is because Majorie Merryweather Post had a home on a very narrow street in Washington, and for many years, many large parties were held.

So I am just saying that the intensity of use of the property is really not as much a factor of the fact that it may be used as a chancery, versus a residential property.

But the type of use of the property is at question, and not the intensity of use, because there is no way to determine the level of intensity to which this property would be used, no matter who owns it.

MS. MCCARTHY: That's true, but I think the point is that it is certainly true that within an R-1-A zone you can have somebody who is a hermit, and you can have somebody who is a socialite, and the differences in their use will be substantial.

I guess our concern is that if you have something that is in an R-1-A zone, regardless of whether one or two of the neighbors may be more or less social, saying that an office use is a permissible use in that zone is -- well, that is substantially different from saying that there will be differing impacts, depending on what the neighbors are like.

Because once you permit that office use in the zone, you don't have much control over how extensive that office

use might be, or how intensive that office use might be.

VICE CHAIRMAN SOCKWELL: But you do based on the densities allowed.

MS. MCCARTHY: If a hundred percent of the Papal Nuncio can be office use, and if a hundred percent or more of the Azerbaijan property can be office space once it is declared a chancery, then we don't really have too much control over the densities allowed.

VICE CHAIRMAN SOCKWELL: But you cannot increase the size of the building beyond those allowed in the R-1-A district. So the building itself might be that max, and it might not be.

But I am just saying that based on the size of the building and the Office of Planning's statement about the fact that these people would have to find another place to live if they wanted to intensify beyond what they had agreed to, that there are limits.

MS. MCCARTHY: I guess I am -- I think I am missing something, because that was one of our concerns, was to the extent that we say it is okay to put a chancery in an R-1-A zone that is outside the D district, then there is a potential for substantial differences in intensity of use, and potential for embassies that aren't limiting their number of employees, and that aren't limiting their number of cars, and that aren't limiting their number of social events.

MS. BRANCATO: Madam Chair, may I respond to that point?

CHAIRPERSON REID: Okay.

MS. BRANCATO: If I may just respond to one point in the OP's reply to the State Department's submission, and again this is Gilda Brancato from the Legal Advisor's Office.

I do welcome one area that we share with the Office of Planing, and that is that the Congress has empowered the Foreign Missions Board of Adjustment to adjudicate what is an appropriate any other area under 2-B-2 on the basis of existing uses in the surrounding area, and then to address that six criteria.

For the reason that you were empowered to look at these cases, case by case, including outside of the D-overlay -- and here once again can arguably say that if the D-overlay were mounted that it would be within it, within the map, based on the letter supplied by the National Capital Planning Commission.

But the point is that on the slippery slope argument, that is exactly the role of the Foreign Missions Board of Zoning Adjustment to adjudicate case by case whether this is an appropriate other area under 2-B-2 based on existing uses, which includes office and institutional uses.

That is the criterion. One-third is a useful guide, but it cannot be used to provide the certainty that is perhaps suggested. That would be under a different statute, and

that would strip the Board of its empowerment to review case by case.

And then, of course, to move on to the six criteria. So precisely because of the structure set up by the Foreign Missions Act to allow your case by case adjudication on the enunciated criteria under 206D, and any other area under 2-B-2 based on existing uses, that we don't fear the slippery slope.

The next chancery around the corner may not be appropriate, but that would be your decision with the next application. Thank you very much.

CHAIRPERSON REID: Thank you. Now, getting back to the use of this particular facility, the Holy See Building, and the portion that is used as residential, and the portion that is used as commercial, or for office use.

Now, if in fact, or how does the Office of Planning categorize generally buildings -- and I know the question came up as to the fact that this is a chancery, and that some of the place is used for office space, but the residential component is considered to be an ancillary use or accessory use to the chancery.

However, in effect, the entire building is used for the chancery. Is the chancery used with the people who work for the chancery staying there? Is that what I am understanding?

MR. JACKSON: There was no indication about who is living where. I think our --

CHAIRPERSON REID: But let me finish my question, and my question is, Mr. Jackson, please, is do we know whether or not -- I mean, if we know, or does it make any difference, as to whether or not the residential component is something that is rented out to some other persons, or if in fact the chancery uses the whole building as a chancery and for the staff to live there?

MR. JACKSON: I think the proper way to characterize our characterization of this property is that the residents, it is used by the residents, with an accessory chancery. So that is in effect how we characterized the building in our report.

CHAIRPERSON REID: Okay.

VICE CHAIRMAN SOCKWELL: Would there be the residence if there were not the chancery use? Are they interdependent, or are they independent of one another? We don't have a representative of the delegation here, and the assumption that we might be left with is that the residence would not be there but for the chancery use in this particular circumstance.

It might be an apartment building if it were not a chancery, and if it were allowed, but aside from being a chancery and having chancery staff living there, are there independent persons there doing something else?

MS. MCCARTHY: I think there are many examples around Washington of embassies which are used entirely as ambassadorial residences, and those which have shared use, and

then chanceries which are just chanceries.

So were The Vatican to determine that they wanted to have more people live in this location, they certainly would find another place as a chancery. I assume for historical purposes they did not need more space than this.

So it made sense to -- in the same place where the Papal Nuncio was living to also have working space. But I think Mr. Jackson has another perspective as well.

MR. JACKSON: I guess the only point I would make is that according to our records, this was established as a residence.

VICE CHAIRMAN SOCKWELL: At the time that The Vatican took possession of it?

MR. JACKSON: In 1939.

VICE CHAIRMAN SOCKWELL: And, see, that is the thing that is an incomplete answer, because I don't know whether the chickens or the eggs came first. And I don't know which are the chickens and which are the eggs and that is my problem.

MR. JACKSON: Are you assuming that The Vatican purchased the property, or I am not sure what your assumption is.

VICE CHAIRMAN SOCKWELL: I can't make an assumption as to whether or not The Vatican purchased the property, or had it built for them, or what not. If it was established as a residence, and many residences have become chancery uses as second and third lives.

But yet in this case, we don't have or I don't have the information to tell me whether or not it was acquired by The Vatican for that use as a chancery, and not completely converted away from all residential applications within the building, those remaining being part of the chancery's ancillary space requirement for its staff.

CHAIRPERSON REID: All right. Well, I think that we have kind of beat that horse to death, and I don't know that we have gotten any further. I think at this point that we all have to do further analyzing and research to try to determine exactly what we are dealing with. Thank you.

Given the time, it being almost 1:30, there are persons here who are present for the afternoon session, which will probably not be going forth until about two o'clock.

And in regard to the remainder of this hearing, given the fact that we have a one o'clock, it was brought to my attention by the staff that we do have an opening --

MS. KRESS: An opening a week from today in the morning.

CHAIRPERSON REID: That in order to be able to continue -- because we have quite a bit to go through still. I mean, it is actually going to be -- if we were commence now, it would take several hours, because we have the ANC report, and then we have persons in opposition -- just a moment -- and we have persons in support.

Then we have closing remarks by the applicant, which would definitely take quite a while in order to be able to complete the day. So I am throwing that out as it has been presented to me.

Another suggestion that has been brought to my attention is that given the fact that we do have the opening next week, is to proceed with this case, and then reschedule the afternoon session, because the persons here have -- in all fairness, this is the second time they have come, and it might be more equitable to continue the case for those who are coming here for the first time under the circumstances.

And we do offer our deepest apologies nonetheless. As you can see, there is no way we can predetermine how long a case is going to take, and in particular when we have highly contested, complicated, cases that we have to give the time to in order to be able to do it ample justice. So, just one second, please. Did you have something to say?

MS. DOGGETT: Well, I don't know what your decision will be. I am Rosalyn Doggett from ANC-3C. I do have a job, and the other people here, their job is to be here. And I just wondered if it necessary, and if your rules require that the State Department be allowed to go on at great length after everybody -- after each person speaks.

Could they not be required to speak at the end instead of taking up the whole floor for such a long period of

time?

CHAIRPERSON REID: Ms. Doggett, thank you very much. If in fact you are requesting that we continue today, that's one thing, but we have not even gotten into the ANC report, and we have not gotten into the opposition report.

Remember that those persons, too, would have an opportunity to speak, and I think the ANC is untimed. So whatever time it takes in order for us to be able to do ample justice to that segment is what we have to do.

Now, just one second, and let us take into consideration what we are dealing with, and see what would be the best way to proceed. Thank you.

MS. KRESS: I think she was also asking a procedural question, and for the rest of the hearing you will not be having rebuttal by the applicant or by the State Department.

CHAIRPERSON REID: Oh, no, no, no. I don't know if you were here last week, but the reason why we even had to continue was because of the fact that the Office of Planning report had come in late, and there were some legal issues that the State Department had asked to be able to respond to.

And there is no cross-examination, and just as an indulgence, the Office of Planning, I asked them to respond to that, and the State Department then had some clarifications, and that is how we have gotten to that type of exchange.

But typically that would not be the case, and the

Office of Planning is done, and the State Department is done. So there is no further participation by them whatsoever, and the rest of the time would be allocated to those segments who have not yet been heard. All right. Thank you.

(Brief Pause.)

CHAIRPERSON REID: Excuse me, but let us address -- those persons who are here for the one o'clock, can I see a show of hands back there? Okay.

Are the applicants here? Are the attorneys for the applicants here?

MS. KRESS: There are two, he said.

CHAIRPERSON REID: Okay. Would you come forward, please. I think we have two cases.

MS. KRESS: We have two cases for the afternoon.

CHAIRPERSON REID: Okay. The Congress Heights Wellness Center representative? Okay. Given the circumstances that we are dealing with now, would it be too much of an inconvenience for you to be able to come back next week? What day and time is it?

MS. KRESS: It would be in the morning.

CHAIRPERSON REID: The morning of the 31st.

MS. KRESS: And we have these two cases first.

CHAIRPERSON REID: Wait one second, please.

(Discussion off the record.)

CHAIRPERSON REID: Now, my understanding is that

this particular case, if it is inconvenient, that you don't have any opposition to your particular application, and so it will be a relatively short application to take up. So we may be able to do yours today.

And then we could perhaps move the Sasha Bruce House to next week, to next Wednesday morning, because that one is a rather involved case, and that would be the concern.

MR. HOPBURN: My name is Josh Hopburn, and I cannot come Wednesday morning.

MS. KRESS: It is Tuesday.

MR. HOPBURN: Tuesday morning is fine.

CHAIRPERSON REID: Okay. All right. Thank you.

(Discussion off the record.)

CHAIRPERSON REID: All right. Now, I think we have finally got things pretty much contained, we think. Now, it depends. What we are going to try to do is finish the Azerbaijan case today.

ATTORNEY FOR SASHA BRUCE: When you are thinking of having the Sasha Bruce hearing, I cannot do it that day. I have something else that morning.

CHAIRPERSON REID: What about the afternoon?

ATTORNEY FOR SASHA BRUCE: I'm afraid that I am -- I would be fearful that I wouldn't be able to get here in time. I don't know how long this will take.

VICE CHAIRMAN SOCKWELL: Is there a time that you

are pretty sure that you would be out of that morning commitment?

ATTORNEY FOR SASHA BRUCE: On that day?

VICE CHAIRMAN SOCKWELL: Yes.

ATTORNEY FOR SASHA BRUCE: I would not want to calculate anything that day.

VICE CHAIRMAN SOCKWELL: So do you think it would go to 6:00 or 7:00, or whatever?

ATTORNEY FOR SASHA BRUCE: No, no, I wouldn't think it would be 6:00 or 7:00. If you stay that late, I could certainly come in.

CHAIRPERSON REID: What about three or four o'clock?

ATTORNEY FOR SASHA BRUCE: I don't think so.

VICE CHAIRMAN SOCKWELL: Okay.

ATTORNEY FOR SASHA BRUCE: It is Halloween isn't it?

VICE CHAIRMAN SOCKWELL: Yes. But if you pick up your costume early --

(Laughter.)

ATTORNEY FOR SASHA BRUCE: It takes hours.

VICE CHAIRMAN SOCKWELL: You could just wear it to the hearing.

ATTORNEY FOR SASHA BRUCE: That might help.

CHAIRPERSON REID: Okay. The only thing that we can do at this point in time is to try our best to accommodate,

which means that we may be here a little later, which means that we would go ahead with the Azerbaijan, and try to hold people to the time constraints so that we can get through it, and then take the other two cases today.

The Office of Aging, we don't think that is -- that is a pretty straightforward case, and we can expedite that fairly quickly. And then with the other case, the Sasha Bruce House, unfortunately it will probably be a little later into the day that we will be able to take you.

And we will try to do it, and just move it along fairly quickly so that we can get through it, and that's all that we can do, if in fact we cannot reschedule. Those are the only options or alternatives that are open to us at this time.

MS. RENSHAW: However, Madam Chair, we do not want to give the neighbors to the Azerbaijan case any feeling that we are rushing them, all right? I don't think we should do that at all, because they have waited patiently for their turn at the microphone.

CHAIRPERSON REID: Ms. Renshaw, I thank you very much for that very insightful comment. Nonetheless, I think it is a given that not just the opponents here for the Azerbaijan case, but that is in consideration and with respect to each and every person who comes to this board that they will be given an opportunity to speak.

And the point that I was making is that there are

time frames that will be allotted to them that will definitely be respected. I was speaking primarily to times when sometimes people want to speak beyond that time frame and we allow it.

And I am saying that today, because of the situation, we will not be able to accommodate people beyond the time that would be allotted to them, and I just wanted to make that as a point. With that in mind, we will try to get back --

ATTORNEY FOR SASHA BRUCE: Excuse me. Maybe we could make it easier. We would be willing to come in two weeks time if that would be all right with you.

VICE CHAIRMAN SOCKWELL: It's our schedule here that makes it difficult for us to reschedule hearings to meet your time constraints, because the docket is very full, and sometimes even fuller than we expect.

CHAIRPERSON REID: Okay. We have a case that is being rescheduled from a November 8th hearing day.

MS. KRESS: At the end of the day.

CHAIRPERSON REID: And we could substitute you in at that time.

ATTORNEY FOR SASHA BRUCE: That would be fine, and if Mr. Hopburn can do that.

CHAIRPERSON REID: No, that was next Wednesday. We are talking about the following Wednesday, the 8th.

MR. HOPBURN: I'm sorry, I have scheduled meetings, too, and I understand. Is this in the afternoon, and this would

be the final case of the afternoon?

CHAIRPERSON REID: Yes.

MR. HOPBURN: And this would be Wednesday, the 8th?

MS. KRESS: Yes, Wednesday, the 8th.

MR. HOPBURN: I can make that.

CHAIRPERSON REID: Then that will work. That certainly does relieve some of the pressure here today, and we can follow our regular schedule without too much of a problem.

MS. PACE: Madam Chair, what timed do you suggest that we return?

CHAIRPERSON REID: Around four o'clock.

MS. KRESS: Why don't you call our office, and our staff will check, but it will probably be at least 4:00.

MS. PACE: Okay. Would you at least query the representatives who are here in support, because they are seniors, and if it is fine with them, it is fine with me.

CHAIRPERSON REID: Okay. Is there anyone here who is in support of the Office of Aging application who would find it difficult to return at four o'clock?

PARTICIPANT: We would prefer to come back at 3:00.

CHAIRPERSON REID: What are you saying, yes or no?

(Brief Pause.)

MS. PACE: They are saying that they would prefer to come back next week, and I would bow to that consideration.

CHAIRPERSON REID: I'm sorry, but I didn't hear them say that. They communicated that to you?

MS. PACE: Yes, just now.

CHAIRPERSON REID: So you would rather come back next week?

MS. PACE: Or have them stand, and they will tell you.

CHAIRPERSON REID: Well, that is what we had asked at first, if in fact you could, and that didn't seem to be a problem. So, at 10 o'clock next Tuesday?

MS. PACE: Madam Chair, they are all in support. I mean, we have the ANC Commissioner, and --

CHAIRPERSON REID: You don't have any opposition?

MS. PACE: No, we don't, right. And we are very excited about it that we don't.

CHAIRPERSON REID: Okay. One second. Bear with me.

(Brief Pause.)

CHAIRPERSON REID: Now, here is another angle. Here is another angle. Now I am getting some suggestions that if in fact Azerbaijan would be amenable to allowing us -- this is a very short case that should not take any more than 15 minutes.

MS. PACE: That is correct.

CHAIRPERSON REID: And there is no opposition?

MS. PACE: No.

CHAIRPERSON REID: And there is very little testimony, and so therefore we can go ahead and dispose of it today if there is no objection. Is there any objection?

(No audible response.)

CHAIRPERSON REID: All right. Then how about that, would that work for you?

MS. PACE: That will be just fine.

CHAIRPERSON REID: Okay. So immediately after lunch, we are going to come back about 10 after, and then we will be done with your case by 2:30.

MS. PACE: Okay.

CHAIRPERSON REID: And then we don't have to worry about trying to reschedule anything given the fact that we are dealing with seniors.

MS. PACE: We thank you very much.

CHAIRPERSON REID: If that is okay. Ms. Giordano.

MS. GIORDANO: Can we come back at 2:30 then? Is that okay?

CHAIRPERSON REID: Yes. We haver not yet adjourned for the morning, from the morning session. So those persons who are involved with the Azerbaijan case can return at 2:30. So we will have a longer recess for you, and then we will come back and take up the Office of Aging's case immediately after lunch.

And as I said before, we don't foresee -- we have all read the record, and we don't foresee their being a problem.

We don't have any letters or any persons here in opposition. So those are the cases that we love to have. Thank you.

(Whereupon, the hearing recessed at 1:44 p.m.)

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

(2:17 p.m.)

CHAIRPERSON REID: We will resume with the first case of the afternoon. Could you please call the case for me, Ms. Pruitt, and we will proceed.

MS. PRUITT: The first case of the afternoon is the application of 16630, the Application of the Office on Aging/District Government, pursuant to 11 DCMR 3104.1, for a special exception under Section 205 to allow the proposed construction of an elderly wellness day care center for more than 16 people in an R-4 District at 3 500 Martin Luther King, Junior, Avenue, Southeast, Parcel 243/47 in Square 6091.

All those planning to testify, would you please stand and raise your right hand. Anyone who is going to testify today, please stand.

(All witnesses were sworn.)

CHAIRPERSON REID: All right.

MS. PACE: Good afternoon. I am E. Veronica Pace, executive director of the D.C. Office on Aging, and I certainly want to thank you for the opportunity to speak on behalf of the application of the D.C. Office on Aging for a special exception to permit the construction of a senior wellness center, as well as to serve more than 16 people.

It is our vision that the wellness center will be the first state-of-the-art facility that will inform, educate,

teach, train, demonstrate, support, and prepare individuals to stay well.

To focus on what is it that one must do in the way of health promotion, in the way of self-care, in the way of monitoring one's own health indicators, so that people will move into longevity as healthy and as independently as possible.

We envision that these will be daytime activities, but at any given point in time you might come by the wellness center and you might see as many as 50 to 75, or a hundred individuals, who will be receiving nutrition counseling, who will be getting health care screening, who will be line dancing, because dancing is a weight bearing exercise.

And who will be lifting weights so that they can carry their groceries to and from the store without a great deal of assistance, and who will be able to remain in their own homes, but have a quality of life that is vital, and that is interesting, and where they can continue to serve and continue to be as healthy and as independent as possible.

The wellness center as I indicated before will be a state-of-the-art facility, and its sole purpose will be to be the beacon of light, the beacon of health, in Ward 8 for seniors, who constitute about 5,000 of that population in Ward 8 currently.

We unfortunately when we got to the point of doing this, we realized that a special request for exception would be required, simply because what is currently in the regs allows for

a child day care facility or an elderly day care facility, but that serves only 16 people.

So our request is merely to serve more than 16 people. What you see there is a proposed rendering of what the facility will look like. It will be at 3500 Martin Luther King Avenue, and it will be the first of its kind, and it will constitute approximately 11,000 square feet.

With me today at the table is the architect for the facility, and I am also backed up by representatives from the community, the Chair of the ANC Commission 8C, Virginia Majors, who was here earlier, and has submitted a letter for the record in full support.

The Chair of the D.C. Commission on Aging is here, and the Commission is a body that is statute, D.C. Law 1-24, to recommend and to advise on such issues. The Chair is a resident of Ward 8. Also here is the Chair of the Mini-Commission for Ward 8.

And I dare say that they have be with us at the very beginning from day one when we went to the community with the proposed facility, and before we even got anything on the drawing board, and to have that input, and we have continued to meet and discuss ongoingly. And so we hope that you will favorably look at this special exception request.

CHAIRPERSON REID: Thank you, Ms. Pace. As I had previously mentioned, the board members had had an opportunity to

look over the materials that were submitted in our packages, and as such, we basically felt that you had no opposition, and that you could stand on the record of what had been submitted.

And what we can do is to expedite this particular application, we can do a couple of things. One is to have -- if you have persons who wish to speak, allow them to do so, and if the architect would wish to say a few words about the project, and further explain to us, or answer any questions that we may have, then we would certainly allow him to do so.

And the other thing is that in regard to your support base, the people who are here, if they each want to speak, they can have a few minutes. Or you could have a spokesperson who could just basically give us the general feeling of support, and everyone else could basically echo that.

But as far as we can see, your application appears to be very clean, and very straightforward, and we do appreciate that. But only one thing. The regulation that you are requesting under, and the relief that you are requesting, is 205.1.

And we do need you to just briefly address that portion of the regulation as to how you meet the requirements for the relief that you are asking for, and that is basically all that we would need. Do you have a copy of it?

MS. PACE: Is that the impact statement?

CHAIRPERSON REID: No, excuse me one second.

(Brief Pause.)

CHAIRPERSON REID: Are you going to do it?

MR. MOORE: I have the information, yes.

CHAIRPERSON REID: Okay. Ms. Pace, what we will do is that -- and it was mentioned to me that the Office of Planning report does go into the various components of that regulation, and if you would like, it can just be handled through his report, and you don't have to try to go through it.

MS. PACE: And that would be fine. We have caucused, and if it pleases you, and we are sure that this will move swiftly, that is what we would prefer. And if there are any questions -- and I would state that we have total support from the community, I believe.

CHAIRPERSON REID: And the Office of Planning, too.

MS. PACE: And the Office of Planning. The Chair of the ANC Commission is here, and she has arrived. And, Ms. Campbell, do you want to raise your hand that you are with the D.C. Commission, and, Addy, do you want to raise your hand, the Chair of the Mini-Commission.

I mentioned Virginia Majors already on the record, and she is here. I believe that she may want to say a word.

CHAIRPERSON REID: All right. Let us then go now to the Office of Planning report, or any other government reports, unless there are any questions by the Board Members of Ms. Pace or the architect now?

I'm sorry, but the one thing I did is that I moved

a little too fast. This is the rendering of the facility, correct?

MS. PACE: That is correct.

CHAIRPERSON REID: Now, if -- I'm sorry, but did you introduce your architect?

MR. COOPER: Good afternoon, Madam Chair, and Members of the Board. My name is Phillip Cooper, and I am a principal in the firm of Baker, Cooper, and Associates, and we are the architects for this particular project.

CHAIRPERSON REID: And did you wish to say a few words or to give us any further embellishment of what you have presented within our packages?

MR. COOPER: I think the report and the information that was presented is pretty comprehensive. If there any questions that you have that you would like to have me answer, I can do that.

CHAIRPERSON REID: Okay.

MR. COOPER: And the rendering basically gives you a very good view of what it is intended to look like.

CHAIRPERSON REID: Okay.

VICE CHAIRMAN SOCKWELL: Just one question, Mr. Cooper.

MR. COOPER: Yes, sir.

VICE CHAIRMAN SOCKWELL: I sort of expected to see Mr. Baker, but now I get to meet you.

MR. COOPER: All right.

VICE CHAIRMAN SOCKWELL: I have known him for many years. The walking-running track that you provided at the perimeters of the facility, is that within the grounds? Is that just the walkway that goes around the building?

MR. COOPER: Yes, that's correct.

VICE CHAIRMAN SOCKWELL: It is not on the opposite side?

MR. COOPER: No. At the present time, that is what you see, is what the track is looking like at the present time.

VICE CHAIRMAN SOCKWELL: I see. I just was not sure where it was.

MR. COOPER: Right. And if need be, if there is a need to extend it or to modify it, you know, for longer distances, it could be done.

VICE CHAIRMAN SOCKWELL: All right. Because you have such a large site area there that could be utilized for a slightly up and downhill exercise track.

MR. COOPER: That is correct.

VICE CHAIRMAN SOCKWELL: It seemed like it would have had some benefit, but that's all I wanted to know. Thank you very much.

MR. COOPER: Sure.

CHAIRPERSON REID: Thank you, Mr. Cooper. Now, Mr. Jackson, the Office of Planning's report, and may I ask you to --

well, first of all, you need a waiver, correct, since it was not timely filed?

MR. JACKSON: Yes.

MR. COOPER: Yes.

CHAIRPERSON REID: Okay. Board Members, is there any objections to accepting the report? If not, we will waive the record to so --

MR. MOULDEN: I make a motion to accept the Office of Planning Report.

VICE CHAIRMAN SOCKWELL: Second.

CHAIRPERSON REID: All in favor.

(Ayes.)

CHAIRPERSON REID: Okay. Now, Mr. Jackson, could you please just summarize for us -- oh, you are not going to be here? Okay. Have you briefed him on what we were doing? Have you briefed him on what we discussed before he came in?

Okay. If you could just summarize for us very quickly, and also highlight how the applicant meets the criteria for a 205.1 in regards to this particular application.

MR. MOORE: Okay. Let me apologize first. I was in the back smelling the lunch that you guys had. I am John Moore, of the Development Review Section at the Office of Planning.

The Office of Planning believes that the applicant has satisfied the conditions of 205.1. Shall I go through those

individually for you?

CHAIRPERSON REID: Yes.

MR. MOORE: Okay. The use of this site by the elderly development center shall be permitted in an R-1 district if approved by the Board of Adjustment, or the Board of Zoning Adjustment, in conditions specified in 3801, Chapter 31, of this Title.

MS. PRUITT: Excuse me, but if you could speak up.

MR. MOORE: I am having all kinds of problems today. The concept of a senior citizen wellness center is a new phenomena in the District. The zoning regulations group elderly citizens and child development centers together, because children and elderly people are at the opposite ends of the age spectrum, and we think they should be treated distinctly separate and distinct.

And in 205.2, the center shall be capable of meeting all the applicable codes and licensing requirements. The building will comply with the BOCA code, and the building will meet all applicable licensing requirements as indicated.

There will be 20 parking spaces there, and that would exceed actually what is needed. They would be building on less than 25,000 square feet, and the facility would be 11,000 square feet, and they could build up to 25,200 square feet.

The center shall be located and designated to create no objectionable traffic conditions, and unsafe conditions

for pick-up and drop-off. Because Ward 8 is the most public transit dependent population in the City, most of the seniors will be using public transportation to get to and from the center.

Therefore, the impact on the public transportation systems will be minimal at best. The center shall provide -- and this is 205.4. The center shall provide sufficient off-street parking spaces, and as I indicated, there will be 20 spaces, and two additional handicap spaces as required by the D.C. Code.

And 205.5, the center, including any indoor play space provided, shall be located and designated so that there will be no objectionable impact. Everything in this center will be basically inside, with the exception that there will be a walking track for exercise.

And in addition to that, of course, there may be occasions when seniors may take advantage of the grounds for passive recreation only. The Board may require special treatment in the ways of design. The applicant's architect probably spoke to that already.

CHAIRPERSON REID: Yes.

MR. MOORE: And I want to apologize for being late, because I was right in the back here.

CHAIRPERSON REID: That's all right.

MR. MOORE: Okay. And the building would meet the aesthetics of buildings in the community in that area, being that you have a high school in the back and a child development center

to the northeast of it.

Any off-site play areas has already been addressed, and there will only be the walking track around the facility. And with respect to another child or elderly development center within a thousand feet, I indicated the National Child Care Center is located in the same proximity.

But that is a center for children with special needs, and there is little likelihood, if any, that there will be conflict between the two groups.

With regard to meeting the test as I have already stated, the Office of Planning in conclusion recommends that this facility, or that the relief sought by the applicant be granted. And if you have any questions, I will be glad to respond to them for you.

CHAIRPERSON REID: Thank you. Board Members, did you have any questions of the Office of Planning?

(No audible response.)

CHAIRPERSON REID: All right. Thank you very much. I don't think we had any other government reports, although you did request from the other governmental entities reports that you submitted to them, and there was no other report forthcoming.

MR. MOORE: No, I will provide those for the file.

CHAIRPERSON REID: Yes, that you do have?

MR. MOORE: No, I didn't get them yet. I will provide them.

CHAIRPERSON REID: Okay. When they come in. All right. I see what you are saying. All right. Now we move to the ANC report.

And just for the record, I guess I didn't ask as I am moving through the various segments, I didn't ask for cross-examination. Does anyone have any cross-examination of the applicant or of the Office of Planning.

(No audible response.)

CHAIRPERSON REID: All right. Seeing none, all right.

MS. MAJOR: Good afternoon. My name is Virginia Major, and I am the Chairperson of the Advisory Neighborhood Commission 8C.

MS. PRUITT: Excuse me, Ms. Major, but were you in the room when we sworn in earlier?

MS. MAJOR: No.

(Whereupon, the witness was sworn.)

MS. MAJOR: Again, I am the Chairperson of Advisory Neighborhood Commission 8C. The commission at its October 4th, 2000 public meeting voted unanimously to support the request for a special exception for construction of the elderly wellness day care center for more than 16 persons in an R-4 district at 3500 Martin Luther King Avenue.

There were four members of the seven member commission present. Four is the required quorum. Proper notice

was provided to all commissioners, the community, and any other interested person by mail, posting of the notice, and by personal contact.

Since I am going to abbreviate and summarize this report, I am simply going to say that the community has overwhelmingly supported this center.

The Community Commission on Aging, led by the Ward 8 Mini-Commission on Aging, and the City-wide Commission on Aging, has made a fantastic effort to be informative of the community, and to keep everyone involved.

And I think the seniors and the future seniors are looking forward to this center coming to the community. Thus, on behalf of the ANC community, we support this project, and recommend that the Board approve the special exception request.

CHAIRPERSON REID: Thank you. Board Members, do you have any questions? Any cross-examination? Okay.

VICE CHAIRMAN SOCKWELL: And the vote was four to zero of the quorum?

MS. MOORE: Yes, a unanimous quorum vote, as well as all of the persons present at that meeting voted unanimously also.

CHAIRPERSON REID: Okay. And so therefore you ANC will be given the great weight to which it is entitled.

MS. MOORE: Thank you.

CHAIRPERSON REID: Thank you. All right. Thank

you very much. Now we move to persons in support. We don't have any persons here in opposition. So, Ms. Pace, if you and your architect would step back, and then we can allow those persons to come forward.

Now, we also have a petition with several signatures of people in the community who are very much in support of this legal application. And those of you who are in support, if you wish, you may come up and say a few words.

Or if you just by virtue of your presence want to indicate your support of the application, it is up to you how you want to proceed. Do we have persons who want to verbally -- okay.

Then come forward to the table at this time if you would like to testify orally in this proceeding. All right. And I would just note that there are several other people here also who are giving their support physically, if not speaking verbally. Thank you very much.

MS. BAILEY: Madam Chair, excuse me. The persons who will be testifying, were all of you sworn in previously? Would you please stand. Anyone who wishes to speak and who was not sworn in, please stand.

(Whereupon, the witnesses were sworn.)

CHAIRPERSON REID: Okay. You will be given three minutes each as a person in support.

MS. CAMPBELL: Good afternoon. I am Alethia Campbell, Chairperson of the D.C. Commission on Aging, and a

longtime resident and activist of Ward 8. The D.C. Office on Aging recognizes the need for wellness centers in the District of Columbia, and its goal is to establish one in every ward in the District.

A wellness center for the elderly residents in Ward 8 is long past due. The seniors in Ward 8, the Mini-Commission on Aging, and the local AARP chapter, the Peter Green Senior Club, several church based groups, several ANCs, and the Police Advisory Council, have all participated in various public meetings voicing their concerns about what this center should look like, its location, the activities and services that should be provided.

A few decades ago as an ANC Commissioner, I came before this agency to support the present R-4 zoning of this property because services for the elderly were a part of that plan.

Our former school board member and I, along with three other founders of the Congress Heights Civic Association, jointly entered into a covenant on this property that would ensure that housing and services for the elderly would be placed on this property.

Now, decades later, we have some housing and services for the youth, but no wellness education or social activities for the elderly. The surrounding single-family homes, and day care services, schools, and churches, provide the desired environment for this center. It is on a major bus line.

The community welcomes this facility and is waiting for it. The question most likely to be asked by members of the Ward 8 Mini-Commission is when will that center be completed.

Today I ask that the present R-4 zoning be eased to allow our Ward 8 wellness center on the property at the southeast corner of Martin Luther King Avenue and Savannah Street, Southeast, to accommodate up to 100 seniors at one time. We are waiting to utilize its services.

And I would like to add that sitting in the back of me, the seniors that are here, are representative of various agencies. Ms. Cooke here to my right is the Chairperson of the Ward 8 Mini-Commission.

And Barbara Harris, Ward 8 Democrats; and Ms. Virginia Lee is the President of the Peter Green Senior Club. Mrs. Jeanette Hinson is representing the Congress Heights Civic Association.

Mrs. Irene Green is representing the local AARP chapter, and of course, Mrs. Major is the ANC Commissioner.

MS. COOKE: Good afternoon. My reluctance to speak was not because of the lack of my enthusiasm, but in the matter of trying to expedite time. I am very excited --

CHAIRPERSON REID: Madam, could you please give us your name and you address.

MS. COOKE: Okay. I am very excited about this. My name is Addy Cooke, and I am the Chairperson of the Ward 8

Mini-Commission on Aging. I am also President of the Fort Stanton Civic Association, a senior citizen, a homeowner, and a long time activist and resident of Ward 8.

As Chair of the Mini-Commission, my role is to promote and encourage efforts which best serves the needs of the undeserved seniors of Ward 8. As President of the Fort Stanton Civic Association, my role is to encourage all residents of the community to become active participants in all of the affairs of the District.

It so happens that the majority of the Fort Stanton community are also senior citizens. As the President and a Chair, I take responsibility for promoting what is right and proper for the citizens of the District, especially for seniors who may be partially immobilized and unable to travel across the City for the type of programs and services the wellness center will offer in our own Ward.

On October 8th, 1999, Mayor Anthony A. Williams, and members of the Commission on Aging, and the D.C. Office of Aging, held a ground breaking ceremony for the senior citizens and fitness center.

Numerous community residents witnessed this historic event and welcomed it. We have spent many months and countless meetings to reach this point in the process.

To change now would be disastrous and ill-meaning for the many seniors who have given so much to the District of

Columbia and our community, and for the above-stated reasons, I support the special exception allowing the proposed construction of the Ward 8 senior wellness day care center for more than 16 in an R-4 district located at 3500 Martin Luther King, Junior, Avenue, Southeast.

Thank you very much, and again my name is Addy Cooke, Chair, Ward 8, Mini-Commission on Aging. Thank you.

VICE CHAIRMAN SOCKWELL: Would you give us your address, please?

MS. COOKE: My address is 240 - 18th Street, Southeast, Washington, D.C.

CHAIRPERSON REID: Okay. Thank you very much. Board Members, do you have any questions?

(No audible response.)

CHAIRPERSON REID: All right. Any cross-examination?

(No audible response.)

CHAIRPERSON REID: All right. Thank you very much. Okay. Ms. Pace, can you come back up and give us your closing remarks.

MS. PACE: I will simply say in closing that I am as excited as they are, and like them cannot wait to have a state-of-the-art wellness center, because it is about time that we put more energy and more resources in teaching people how to stay well.

Most of our know that public health traditionally has not focused on elderly people or seniors. It has focused primarily on communicable disease, on mothers and children, and maternal and child health.

And we applaud that, but we must do more, because we are all getting older, and two weeks ago we just celebrated a centurnarians day, and we had 20 seniors in attendance. The eldest centurnarian in the city is 112 years old, and we have identified about 115 of them.

So, you see, we are all going to be there. So let's meet up at the Congress Heights Wellness Center so that we call be carrying our groceries, our packages, and able to get on the bus, and able to dance, and able to live life fully. Thank you so much.

CHAIRPERSON REID: Thank you very much, Ms. Pace. Would you like to have a bench decision summary order? Do you know what that is? That is getting your decision today.

MS. PACE: Absolutely.

CHAIRPERSON REID: Okay.

MS. PACE: How about right now?

(Laughter.)

CHAIRPERSON REID: Board Members, I would like to move that we approve this application. I think that the applicant has demonstrated that they meet the criterion for 205 and our zoning regulations, as well as the fact that there does not appear

to be any adverse impact and no opposition.

I don't think that granting the application will impair the intent and integrity of the zoning map or regulations. I would like to also point out that I feel that it is extremely worthwhile project, and in an area that is certainly well deserved of such a facility, and it is something that this board member would love to see go forward.

COMMISSIONER MITTEN: I second that motion, Madam Chair.

CHAIRPERSON REID: Thank you. Now, before taking the vote, do we want to condition as we do --

MS. PRUITT: I was just going to ask, Madam Chair, and that is basically that some of the -- just to give some technical guidance.

MS. PRUITT: At this point, Madam Chair, what I have for conditions so far is the number of people not to exceed 100.

CHAIRPERSON REID: Okay.

MS. PRUITT: Ages 60 and older. And that you will be providing 20 parking spaces, including two handicap. Now, the other question is with the hours of operation. Is there a particular drop-off and pick-up time? That may not be applicable.

MS. PACE: No, and I would ask to indulge us and not to restrict us to 100. The 100 figure that I gave you was at any given point in time you would have that many. The facility

will hold more than that, but we would hope that any day you stop by to visit that you would see as many as a hundred people in nutrition counseling, and fitness classes, and --

MS. PRUITT: No, I meant how many people does it hold?

MS. PACE: The facility will hold at any one point in time, with everyone seated, up to 500 individuals. But this will be in and out. It will be with some people coming in the mornings, and some in the afternoon. It will truly be an active live center.

MS. RENSHAW: Madam Chair, is the parking requirement of 20 spaces predicated on the 200, or the 100, or the 500?

COMMISSIONER MITTEN: There is off-street parking as well I might add.

COMMISSIONER MITTEN: I believe, Ms. Renshaw, that it is predicated on the size of the structure, and not the number of individuals that will be using the structure.

CHAIRPERSON REID: Yes. This is one of those situations where I don't know if we can, or if it is prudent for us to try to put a restriction on the number of people.

VICE CHAIRMAN SOCKWELL: The parking would be a zoning code issue, and not necessarily a Board of Zoning Adjustment issue, and would have been handled or should be handled by the Zoning Division of the DCRA.

CHAIRPERSON REID: And this is a public facility and apparently which will be utilized by many different individuals at different times. It is not like a day care center where they have a certain amount of kids who come and go every day.

MS. PRUITT: This would also require a CFO, which would then indicate the maximum number of people, and they would have to confirm to that, and so I think you are safe there.

CHAIRPERSON REID: So through the regular licensing facility or regulation.

COMMISSIONER MITTEN: However, I don't know if you want to deal with hours of operation, or you can leave that off, too, to make it flexible as possible.

CHAIRPERSON REID: The hours would be what they said, weekdays, daylight. So that means that there would not be anything in the evening, and you wouldn't have --

MS. PACE: Not necessarily, because there may be a men's group if they are working, because we plan to have a lot of men participate in this facility, and pick counseling, and promoting a good prostate health, and promoting anti-cancer, and healthy lifestyles and behavior.

And you would not want to restrict it to a time where people would not be able to get there for a lecture of some kind, or some kind of demonstration. But generally speaking, senior centers are 9 to 5 operations, coming and going.

CHAIRPERSON REID: But the question, Ms. Pace, was do you -- are you saying that you do anticipate evening meetings, or some type of activity?

MS. PACE: There may be on occasion, but not consistently.

CHAIRPERSON REID: Is there a time when they would terminate, like eight o'clock or nine o'clock?

VICE CHAIRMAN SOCKWELL: Madam Chair, may I suggest that because this is a center that is being operated by the District Government, as opposed to a private non-profit, or private for profit facility, it should have the full capability of providing services for the range of government sponsored programs and government supported programs that might be held there.

I would not want to limit them to hours that would normally be assigned to a private facility. This is a community desired facility in an undeserved area that is really there to bring the services up to the level that they have not had ever before.

And I would not want to put those restrictions on it; and I would also want not to restrict it to people 60 or over, only because there might be some really enthusiastic 59 year old who wants to join those senior citizens.

CHAIRPERSON REID: Well, okay. I mean, I don't know --

VICE CHAIRMAN SOCKWELL: Plus there is no way we

can police it.

CHAIRPERSON REID: Ms. Mitten, if in fact this is a governmental entity, then --

COMMISSIONER MITTEN: Well, Madam Chair, it is your choice. I mean, given what Mr. Sockwell said, and that this is relatively new, you just don't need to condition it.

I mean, you usually put conditions on because they are private entities, and we want to be sure of that. But in this case, it sounds like it is unnecessary.

CHAIRPERSON REID: And what about term, and that it is something that is -- we are moving into the unknown, and do we want to put a term, so that if in fact there are any problems that were not anticipated that there is an opportunity for the community to weigh in on it later?

MS. RENSHAW: I recommend five years.

COMMISSIONER MITTEN: Well, you know, I think in terms of -- and again falling back on the notion that Mr. Sockwell introduced, which is that it is the District that is going to be operating the facility.

And the idea that someone would make an investment of this magnitude with only a certainty that they would be able to operate the facility for five years, again I think that the whole nature of the project, and the nature of the operation, suggests that we really don't need to condition it in this way.

CHAIRPERSON REID: Okay.

VICE CHAIRMAN SOCKWELL: If a condition were to be provided, it would seem to be that as long as it serves the function of a senior citizen wellness center that it can operate in perpetuity.

That only should the certificate of occupancy change, or the use change, from its stated use as an application, or as in the application, only if such a change would take place would it void the approval of the Board, because we are approving it to be used for this specific purpose.

MS. RENSHAW: Madam Chair, I recommended five years, but not in a punitive sense. I thought I was giving you ample opportunity, and would want to come back and visit with us, and would want to share all your great successes, because we certainly don't want to cast you adrift, and not hear of all the good things that you are going to be doing over in Ward 8.

CHAIRPERSON REID: I think what I am hearing overwhelmingly from the Board is that they know that they are kind of moving in that direction, and therefore they are very amenable to this type of facility being available to them in the future.

So therefore I am not wanting to put any conditions. I have no problem with that, and so we can move now to the vote.

MS. RENSHAW: Just one additional point, in that ANC meetings are held in community centers across the city, and there is a provision in many of these community centers that they

have to close by 9:30.

So my ANC, for instance, must get out of that community center by 9:30. You may have to abide by those rules and regulations also.

MR. MOULDEN: Madam Chair, I have a question that is related to the transportation. This facility fronts on Dr. Martin Luther King Avenue, and in the applicant's statement, number four, on traffic, said that the facility fronts of a major or main public transportation route in the area.

Does that mean there is public transportation, such as mass transit, available?

MS. PACE: Yes, there is.

MR. MOULDEN: And within close proximity to the site?

MS. PACE: Exactly.

MR. MOULDEN: Good. That's very good, because most elderly facilities, if you have public transportation close or nearby, that is a good amenity to the site.

MS. PACE: Thank you.

VICE CHAIRMAN SOCKWELL: May I make this one statement? And that is that I would like to commend the applicant and its architect, and civil engineer, and others for supplying us with one of the more complete, or one of the most complete, sets of drawings to review that we have received from an applicant in the year that I have been involved with this board.

And it made my questions fairly simple, because I was able to review everything, not that Mr. Jackson's stormwater management drawings weren't very attractive to me. It's just that I didn't need to see them all.

CHAIRPERSON REID: Thank you very much. All in favor?

(Ayes.)

CHAIRPERSON REID: Opposed?

(No audible response.)

MS. BAILEY: The Staff will record the vote as five to zero to approve the application, and no conditions, and motion made by Mrs. Reid, and seconded by Mrs. Mitten, Mr. Moulden, Mr. Sockwell, and Mrs. Renshaw in approval.

CHAIRPERSON REID: All right.

MS. PACE: Thank you all so very much. You will all be very proud, and we will invite you to the grand opening. Thank you.

CHAIRPERSON REID: You should have your order in approximately 2 to 3 weeks.

MS. PACE: Thank you.

CHAIRPERSON REID: Thank you and good luck.

(Whereupon, the hearing recessed at 2:59 p.m., and was again resumed at 3:09 p.m.)

CHAIRPERSON REID: All right. We will now proceed with the continuation of the Embassy of Azerbaijan. Ms.

Giordano, are all your people here?

MS. GIORDANO: Yes.

CHAIRPERSON REID: Now, where are we in the proceedings? There was the Office of Planning Report, and now we go to the ANC, I think.

VICE CHAIRMAN SOCKWELL: The ANC report.

CHAIRPERSON REID: Is the ANC representative here?

MS. GIORDANO: Yes.

CHAIRPERSON REID: Okay. Right. I didn't see you.

MS. DOGGETT: Madam Chair, and Members of the Board, my name is Rosalyn Doggett, and I am the ANC Commissioner for the District in which the chancery is proposed, and I am here to present the views of our commission, which did at its regular meeting of September 25th wrote unanimously to oppose the application in this case.

The principal reason is that the extension of the diplomatic overlay zone would amount to the deliberate introduction of commercial office use into a single family area, and really that is the fundamental question.

There is no resorting to formulas about one-third, two-third use, even if correct, and we would contend that the applicant's assertion is not, can change this result, the deliberate insertion into an area which is clearly R-1, single family, low density residential, and not a mixed use district.

Only limited office use is permitted in an R-1

district; a home office, or by special exception an accessory office which would employ no more than 1 to 3 persons.

And in contrast to that the Embassy of Azerbaijan is proposing to employ 15 persons, clearly in conflict with the zone. In the application the applicant's attorney states that Azerbaijan was able to find a building that it could afford for office use, and which it bought, and didn't option, but bought it, at 2741 - 34th Street.

That certainly is not surprising since it purchased a three bedroom residential building not intended to house 15 workers. So I want to reemphasize that this is a residential area, and at the longstanding request of local residents, ANC-3C worked this past spring and summer with the District of Columbia Department of Public Works to restripe 34th Street so that it now accommodates only one lane of traffic in each direction.

And the purpose of that was to underscore the residential nature of the area, and that the street not be considered a real thoroughfare. And the fact that it is a residential area is why the diplomatic overlay boundary was mapped with care in the early '80s.

It is supposed to mean something. The boundary is supposed to mean something. It is supposed to mean that it is for limited chancery use. After all, since that time nothing has really changed, except for the Finnish Embassy, which I will get to.

But the Norwegian Embassy and Chancery was there, and the Belgium Chancery was there. The diplomatic zone was not extended up to include the Belgium Chancery.

That was for a reason, and the reason is because that was considered enough intrusion of chancery office into that residential area. So if the FMBZA were to approve this current application, it is not supporting the city policy to protect this or any level of low density residential area.

Instead, it is sending a signal that R-1 zones are readily able to be converted to office use if the State Department requests it, and makes a case that it feels is compelling, despite what the residents and the history show.

We think that the applicant has failed to make its own case. And as documented very well I think by the Office of Planning the area is not remotely one-third office.

There is only one chancery in Square 2122 referred to by the applicant, the Finnish Chancery, whose application before the FMBZA, my advisory neighborhood commission supported. And we supported it because it is appropriately sited in a diplomatic overlay zone on Massachusetts Avenue.

We thought at the time that they demonstrated that they had ample parking, which they do for normal events. And it is at the far edge of a residential neighborhood. It is not within the residential neighborhood.

It is really across from the Vice President's house

and on the other side of the Papal Nunciature. And I guess it is ironic that we are now being challenged that the square is one-third office and institutional because we appropriately, I think, supported the insertion of the Finnish Embassy into the diplomatic zone, when before there had been a house there, a residential structure, occupied by just folks.

We do think that the Office of Planning has demonstrated that the Papal Nunciature is primarily residential, and with respect to some of the comments that the representatives of the State Department have made about the reception areas being office functions, I think probably most people know that embassies which are residences all over Washington have substantial entertainment reception areas.

I know that because my husband for many years was the consulting architect to the British Embassy, and I have been through all that building, and the residence has larger, much larger entertainment areas, than the chancery does.

So I don't think the fact that the reception area is in a building makes it an office use. I think that is entirely correct with an embassy residential use.

The Norwegian Embassy is a residence with an office attached to it, and the church, which was pointed out in the applicant's application shown and calling for institutional is actually a residence. It is not a church.

In fact, everything else in the area is

residential, but for the -- but going up 34th Street, with the exception of the grandfathered Belgium Chancery, which was there long before the diplomatic overlay zone.

So we feel that the applicant has simply not provided documentary evidence. The Office of Planning Report is far more carefully done than NCPC's report.

The Square 2122, or even the immediate area further a field, is one-third office and institutional. But in looking at the one-third, two-third issue, I would further draw the board's attention to FMBZA Case 14820, which was decided in 1988, because it is directly applicable to this case.

That case involved the application for chancery use in Square 153 in the Dupont Circle area that had two zones within it; S/P-1, which allows office, and R-5-B, residential, which does not.

The applicant in that case, in Dupont Circle, contended that the square had one-third office use. In this current case, Square 2122 has two zones; D/R-1-A, which allows office, and R-1-A, which does not.

In the Dupont Circle case the FMBZA decided that the pertinent area to consider was the R-5-B portion of the square. In other words, not the whole square, but the R-5-B portion of the square, and it ruled against the applicant since it was not one-third office use in the R-5-B zone within the square.

Applying that same logic and precedent from the FMBZA to the R-1-A zone in Square 2122, it is clear that there is currently no office use in that zone, and therefore the FMBZA should rule against the applicant in this case as well in our opinion.

The neighbors of 2741 - 34th Street have provided ample support for the ANC's position in their statement, dated October 16th, 2000 provided to the FMBZA as Exhibit 43, and in a statement given in today, dated October 24th, 2000, which I would like to incorporate by reference into my testimony.

But the FMBZA need go no further then to find that this case does not pass the first hurdle; that the diplomatic overlay zone should not be extended into a single family residential area, and that there is no basis for doing so.

This ANC would be happy to support the use of the houses as an ambassador's residence. It would support chancery use in commercial areas in our jurisdiction.

But we cannot support office use in a single family residential area, and believe that such use is contrary to the intent and implementation through zoning and planning for the area, which is of course our municipality's position.

Finally, we recognize that there really is a problem, and that the District of Columbia is an area of limited geography, and though there have been some buildings for sale in diplomatic overlay zones, there is such space and sometimes

budgetary constraints for small countries.

And we understand that the National Capital Planning Commission is now looking into ways of addressing this issue. It is not unthinkable, since we do live in a metropolitan area, and in a global economy, that embassies and chanceries can go outside the District of Columbia.

And also as members of the FMBZA know, considerable planning effort is going into the Anacostia waterfront locations that might have been considered somewhat laughable a few years ago, and that I think might now be appropriate for small embassy enclaves, particularly ones that are Federally owned and already tax exempt.

For example, the Southeast Federal Center or Poplar Point, just two examples. So creative thinking can be brought to this issue, but it is not creative to chip away at residential areas in the same Wards of 1, 2, 3, 4, and particularly when residents end up having no control through the District of Columbia government over the use or abuse in the case of a building a block-and-a-half from the applicant's proposal at 3507 Fulton Street, which is owned by the Liberian Embassy, and was once an embassy, and that is impossible for an ambassador to live in, and it is simply derelict.

So thank you for your attention to our argument, and I hope that I have not abused your time. Thank you.

CHAIRPERSON REID: Thank you very much. Board

Members, is there any questions of the ANC representative?

VICE CHAIRMAN SOCKWELL: Just one. It is interesting that you suggested Poplar Point and the Federal Center. Has there been any study that you have been involved with that might have suggested such uses?

MR. DOGGETT: No, but as I said, I think it is appropriate. Just as we are throughout the City trying to go beyond the monumental core in locating offices, and encouraging tourism, I think it would be appropriate to suggest that on Federal property -- and as I said that is already tax exempt, it would make sense to have small embassy enclaves.

I am not saying that they would necessarily become dominant uses, but I happened to be at a function over the weekend at which the counsel member of Ward 8 was present, and I have to admit it was a casual chat, but she said, gee, we would love it.

So I really think that more creative thinking, in terms of location, can go on, and we don't have to as I said keep coming back to the same places and forcing or forfeiting buildings and do places that are really rather saturated.

CHAIRPERSON REID: Okay. Thank you.

MS. RENSHAW: Madam Chair, a question for Ms. Doggett. Would you reflect a bit on the parking situation in your neighborhood? We spent some time this morning hearing from the parking consultant.

And I would like to hear what the neighbors would

think about what has been advanced, and also to touch on this point about valet parking that was mentioned in the consultant's report.

MR. COGAN: Well, I think the neighbors are going to address that, and I can only say that I got off the bus last night in front of The Vatican Embassy, and it was as though there was a Redskins game or something.

I mean, the place was just super saturated with cars going in all directions. This, of course does not happen all the time, but it happens frequently enough that it is a bother, and as I said, we did not expect it when we supported the Finnish Embassy that that kind of valet parking would go on all over the neighborhood.

We are an urban neighborhood, and I think we have to expect some traffic and some parking problems, and I think we are relatively willing to put up with some.

But I don't think that we want to deliberately start increasing intensity, particularly when it is a different kind of use in an area that it had not been designed for it, which is an R-1 area.

CHAIRPERSON REID: Okay. Thank you very much. Let's see now to the persons in support of the application, or rather we did it in reverse order. Will the persons in opposition please come forward. All right. Are you the only two people planning to testify, or is everyone back there planning to

testify?

MR. SNODGRASS: I think in the interest of not burdening you too much with this case, if that has not already occurred, that we would try to limit ourselves very strictly.

CHAIRPERSON REID: Well, we will do that. We will take you in panels, and I guess we will have two panels.

MR. SNODGRASS: I think this may be the only panel.

CHAIRPERSON REID: No, no. There are indications from the back, sir, that there are other people who wish to testify. But the time lines are already basically set up, and they are basically three minutes for individuals, and --

MR. HART: No. Madam Chair, individuals have five minutes, and organizations have eight minutes.

MR. COOPER: Oh, okay. Five minutes for individuals and for organizations eight minutes. You don't have to speak for the entire amount of time, but we are just letting you know what is allotted to you.

MR. SNODGRASS: Can we borrow amongst each other?

(Laughter.)

MR. SNODGRASS: If I may start, I am Francis R. Snodgrass, and I live at 2804 - 34th Street, which is in the block above 2122. I wanted to address my comments largely to BZA Case 14820 that was alluded to by our ANC, and which was actually brought to my attention by her.

I think that this is very relevant and I think the

thing that we ought to do -- and I am very sorry that our map is gone from here. It was a wonderful map. If you go back and look at the map that was handed out, I think this is the one that will help you see.

And what you need to do is you need to draw a line just behind The Vatican Embassy and the Finnish Embassy, and the Embassy of Norway. There is a private house next to the Embassy of Norway, and then there is the Embassy of Cape Verdi Islands, and next to it, and not shown on this map is the Embassy of the Cape DeVoir.

And there is a line there demarking the edge of the -- on your map, and the map I gave you is the City's official zoning map that shows the edge of the diplomatic overlay.

The fact of the matter is that we are on the edge, and there always has to be an edge. There has to be a transition from one type of zoning to another type of zoning. And if you stand on the edge and look one way the only uses you are going to see are the uses in the other zone.

And I think that is the reason if I were looking at the BZA's decision in 14820, where the BZA dealt with a square divided between special zoning and residential zoning.

And the BZA, I believe, accepted and explicitly stated that it understood the State Department's arguments on the way to go about making a decision under the Foreign Missions Act and accepted that, and then said the appropriate area -- and that

is the statutory word, the appropriate area to test for existing uses is the area with the zoning that you are trying to change.

So I would submit to you that if you look at 14820 that the appropriate way to look at this case Mrs. Doggett suggested is to look at that line. And the reason that you should do it is not just these three blocks.

And mind you that these three blocks, taking that line, but considered as complete squares, one-third is either currently diplomatic chancery use, or capable of being it very shortly, just as the Embassy of Finland was inserted on us.

That is true down Massachusetts Avenue. It is true at 30th Street, and it is true at Belmont Road, and it is true at California Street, and it is true across the road where Secretary Kissinger used to live.

It is also true if you were to look at the NCPC map -- and unfortunately I only have this copy, but if you were to get the NCPC map out, you would see that it is also true up and down 16th Street. NCPC went carefully through and divided blocks in half, or squares in half.

They did the same thing on Connecticut Avenue. And I put it to you that this was a body that took a long time, and made some very detailed recommendations after a lot of very careful consideration.

And I put it to you that they did not decide to go totally square by square. They divided squares. If you now say

that a square that is partially zoned diplomatic overlay can use the diplomatic uses in that partial zone to push back into the block, the whole block might as well have been put into the zone to begin with.

CHAIRPERSON REID: You know, we don't have that map.

MR. SNODGRASS: This can be supplied to you by the State Department.

MS. BAILEY: Mr. Snodgrass, documents that you speak about really need to be submitted into the record.

MR. SNODGRASS: May I give it to you now?

MS. BAILEY: Yes.

MS. RENSHAW: Madam Chair, can we get copies?

CHAIRPERSON REID: You may ask -- Mr. Lawson is right --

MS. RENSHAW: Mr. Mlotek?

CHAIRPERSON REID: No, no, Mr. Lawson can accommodate us with that.

MS. RENSHAW: Thank you.

COMMISSIONER LAWSON: Yes.

MR. SNODGRASS: I think that the decision in 14820, you said that a commercial area that consumed half-a-block could not be used in your judgment as a basis for concluding that existing uses in the other half of the square were institutional or office, and I think that was a correct decision.

I think that authority would be very helpful to you in looking at the current case, and presumably also looking at a number of other cases that you could very well have to deal with in the future.

CHAIRPERSON REID: Well, in regards to the map that you are just submitting, I think that -- and if I am hearing you correctly, you are saying that while there is a lot of bantering about the issue of the one-third, two-thirds rule, and that pertains specifically to a square, that there are squares that are split.

MR. SNODGRASS: For example, if you would look on my map -- and I indicated that to you.

CHAIRPERSON REID: Yes, we need to look at.

VICE CHAIRMAN SOCKWELL: He is going to give us copies.

MR. SNODGRASS: Well, if you were to look down Wisconsin Avenue on the map that I gave everyone earlier, which shows -- and I am going to switch and argue by analogy, look at Wisconsin Avenue as it goes down towards Georgetown.

The front of the block there is zoned commercial. The back of the block is zoned residential. They intended to take a major arterial and use it for one kind of use, and protect the area behind the major arterial for other kinds of uses.

And I think that is the -- I am not a zoning planner, and I will defer to those who are and who know about

these things. But when I look at these maps, that is what I infer is going on.

You are recognizing that Massachusetts Avenue is a major arterial, and is embassy row, and embassies have proceeded up these three blocks. But at the same time there was a recognition -- and in fact if you look back in the Federal element of the comprehensive plan, when NCPC looked at this, it specifically marked Massachusetts Avenue, in the area between Scott Circle and 35th Street, as an area to be retained as a unique area for diplomatic facilities in the National Capital.

And then NCPC added this sentence, "The existing character of the area should be preserved and its qualities enhanced. Existing smaller buildings should be retained in residential use where practicable."

CHAIRPERSON REID: Okay. Thank you. Questions?

VICE CHAIRMAN SOCKWELL: Just one. It is not quite a question. It is that when you see these half-blocks considered, remember that under the zoning ordinance the commercial versus residential land uses are generally denoted by differences in density.

And the following of that with the chancery district mapping is more in some instances just a traditional following of the existing use pattern, and continuing as an overlay.

But there are other things in mind that were more

important determinations of where those lines actually wound up. They were not put there strictly for the chancery use overlays. They are merely following a designated line that existed along with the 1958 zoning application and its amendments.

But not to look at it as the point of demarcation. It just happens that along Wisconsin Avenue, which is a commercial corridor, or on Connecticut Avenue, which is a commercial corridor, you would certainly find that.

And then you have to look at the land uses that are adjacent to or included within those zones to see exactly what is happening. It is not always C-1 or C-2-A adjacent to an R-3 or R-2 or R-1-A. It might be adjacent to an R-5, or it might be adjacent to an SP and certain other zones. And so you have to look at it contextually.

MR. SNODGRASS: I would be the first to admit that first I am a novice at looking at zoning maps, and I would be the first to admit that this is not an easy process. It is a difficult process.

I think my point though is principally that you ultimately are in the business of drawing a line, and the question is how to keep the line from moving if it shouldn't move.

CHAIRPERSON REID: I think we will probably get some further clarification on that, and due to the fact that we have now allowed you a few extra minutes, we have to kind of allow the next person to be able to testify. Thank you.

MS. O'NEIL: I am Jacqueline O'Neil, and I live at 2814 - 34th Street, Northwest. I am reading the statement of my husband, William O'Neil, who deeply, deeply regretted that he couldn't be here. And so he says say this, and I will say this.

My wife and I -- and he is William P. O'Neil. My wife and I bought our house at 2814 - 34th Street, Northwest, in 1971. Since then we have seen the metropolitan area, mainly Maryland and Virginia suburbs, develop rapidly and extensively, with ever increasing auto road traffic congestion and parking problems.

Remarkably, our neighborhood, 34th Street, Garfield, Mass Avenue, 36th, has remained very much the way it was 29 years ago. I attribute this very favorable situation to, one, good basic zoning; two, good zoning enforcement; and, three, an active concerned neighborhood wishing to support good zoning practices.

Now, we see in October of 2000 the fundamental issue as this. Do we continue with the sound, successful practices of the last 29 years, or do we permit gradual nibbling away of those practices so successful in the past, and to access the new demands of present urgent political needs.

Now, we as a strong and cohesive neighborhood strongly request the backing and the support of the Board of Zoning Adjustment of D.C. to deny the application of the Azerbaijan Embassy to change the legal permit zoning of the

property at 2741.

We believe that existing law should be upheld, and special exemptions should be avoided rigorously to maintain the favorable residential use of our neighborhood as it has been over the last 29 years and longer.

We urgently request the help and support of the BZA to do just that, to maintain a residential, and not a business, chancery use of the subject. Respectfully submitted from William O'Neil.

I would like to add just as a side that I hope that Mr. Mlotek didn't have any trouble parking last night when he went to the Papal Embassy, because he could not have parked in front of my house. That's for sure.

And the gentleman who was doing the study, and who did it Thursday, Friday, and Saturday after 12 o'clock, I wish he had been there when all of the tour buses are on Garfield, or when there is no room left on Garfield, which has room for he said 120 cars or something like that.

Then they come down in front of my house, and they are not there that often, and I don't resent them terribly much, except if they turn off their engines, but they are there, and they are there often.

And we have -- the street has been designated by the Mayor as a residential street. It is not a pass through street. It is not a main artery. It is a residential street.

And I don't even deny Azerbaijan to have four parties a year. It is only four parties here. Of course, the Norwegians have about five, and the Fins have about a dozen, and the Pope has just a few. And even with this, it is the day to day parking that is the problem.

And if we don't go out too often in the evening, we can stay home and park. But otherwise I feel that it would be just best for everybody if our neighborhood was left alone. Thank you.

CHAIRPERSON REID: Thank you. Any questions?

VICE CHAIRMAN SOCKWELL: Yes, just one. You suggested that the tour buses are using Garfield on a regular basis?

MS. O'NEIL: Oh, yes, absolutely. To go to the -- and especially on Sunday, when they go take tours to the Cathedral, then they come around because there is no room or not enough room on Wisconsin.

They come around and they park until it is time to go back and pick up the people, and it is not that often, but often enough that when they do that, there could be 3 or 4.

And then they have to come also with buses for The Sheraton Hotel when they are having an event at The Sheraton Hotel. Garfield is the closest place that they can park, and then they can park there all evening and wait to be called back to the hotel. And those also are the people who park on 34th Street in

front of our house, too.

VICE CHAIRMAN SOCKWELL: So there are tour bus parking zones?

MS. O'NEIL: No, no, they just park there. They just park there.

VICE CHAIRMAN SOCKWELL: So they are just there?

MS. O'NEIL: They are just there, and it is on the Cathedral side, and if St. Albans School isn't in session, or if there aren't people playing tennis at the tennis courts, then there is room for these buses occasionally.

And they are both from the cathedral and from the Sheraton Hotel -- well, it has a new name now, the Marriott Hotel, down on Woodley.

VICE CHAIRMAN SOCKWELL: Woodley, yes.

MS. O'NEIL: Woodley.

VICE CHAIRMAN SOCKWELL: And has there been a request placed by your neighborhood or through the ANC to restrict tour bus parking idling on Garfield to the best of your knowledge?

MS. O'NEIL: No. I sometimes have to be the restrictor of going up to the buses and saying that I'm sorry, but you can't idle here. There is no restriction against parking. They have to turn -- they supposedly are not supposed to go up 34th Street, but there is no parking restriction.

And I have never known there to be parking restriction there, believe it or not, but it is the idling that is

really bad, and that they will park in front of your house if it is winter, and it is their heater, and if it is in the summer, it is their air-conditioner.

And they do that because they can park -- well, granted, mostly when the Belgiums aren't there. So they make up for the Belgiums going home.

CHAIRPERSON REID: Thank you very much.

MS. RENSHAW: Madam Chair, I would like to ask Mrs. O'Neil, do you have a residential parking zone?

MS. O'NEIL: On one side of the street. On our side of the street, we have residential parking, but not on the other side where the Belgium Embassy is.

MS. RENSHAW: Have you gone to your ANC to request that residential zoned parking be --

MS. O'NEIL: Well, you see, if we do, then we interfere with the Belgiums, because regardless of how many parking places people say they have, the Belgiums -- and they do have a lot, the people don't go in the parking places.

So if we ask for residential parking on both sides of the street, it would interfere with the Belgium Embassy. And I am sure that we would hear from the proper authorities on that.

MS. RENSHAW: Mr. Mlotek is shaking his head behind you.

MS. O'NEIL: I bet he is.

MS. RENSHAW: I want to ask this question. You

said that you stay at home and park, and I am interpreting this in another way. Do you feel that you are kind of trapped in your house, that you don't have any flexibility about going out at night because you may not have a parking space when you get home?

MS. O'NEIL: No, no, I really don't. I personally don't feel that way. And I will add one more thing about the gentleman who was counting the parking spaces.

That the two houses between Mrs. Loory and Ms. Elwood, there are two houses at the moment that have no one living in them. So they don't have cars in them. One is being rehabilitated, and one is in the process of being sold, and not to an embassy. So we would have had more cars if they had been there.

MS. PRUITT: Excuse me, Madam Chair, just for a point of clarification to Mrs. Renshaw, and this question about zoned parking. I believe, Mrs. Renshaw, if you have a residential -- if on one side you have residents on one side, and non-residents on the other, the only side that can get zoned residential is the side that has the housing.

So if there is an institutional use, that cannot be zoned for residential housing, or I mean residential parking.

MR. SNODGRASS: We actually have three houses vacant. Probably the next speaker is the future occupant of the third hours.

MS. O'NEIL: Oh, right. I forget about him.

CHAIRPERSON REID: All right. Thank you.

MR. TASKIER: My name is Paul Taskier, Madam Chair, and Members of the Board. My house is 3401 Fulton Street, and it is undergoing some renovation work right now. It is kitty-cornered across from the proposed Azerbaijan Chancery, and directly across Fulton and 34th Street.

So we would have a fairly substantial impact. My point here is not that we have anything against Azerbaijan, or the Ambassador, or any of the members of the embassy staff.

But rather that we are opposed to a non-residential use. If you were a resident, or any of them were residents, or the IMF, or the World Bank, we would have no opposition whatsoever.

This Board, however, is charged with a decision under the Foreign Missions Act to make a determination as to whether the use that exists in the present square justifies an encroachment into the solely residential zoned area.

There is a two-step process, and in this regard, I endorse, and adopt, and incorporate by reference Ms. McCarthy's able elucidation of the statute and the Board's prior decision in the Dupont Circle case.

It is a two-step inquiry, and it requires a common sensical approach. In fact, I believe if the Board carefully analyzes the way the Office of Planning has looked at the use of the square, you will see both common sensically and probably

legally that it is a residential use.

And indeed the whole character of the neighborhood echoes that residential use. I was surprised in the two days that I have been listening to the testimony and legal argument most ably represented here by the State Department and the Azarbaijanies -- and many hours of argument I might add -- that we have heard alluded to the underlying or an underlying agenda, which I believe ought to inform your decision, and which bears upon your consideration of the six criteria laid out in the Foreign Missions Act, and that is as testified to by Mr. Strickland of the State Department.

What we are faced with here is a quid pro quo. If the Azerbaijanies give the U.S. Embassy in Baku a 100 foot setback, the United States through its State Department will vigorously advocate anything reasonable, I assume, that the Azerbaijanies want with respect to their chancery here.

It could not have been more clear. It is give us this and you will get that. They have as I understand it delayed the application of Azerbaijan pending the completion of the destruction of the five buildings in Baku. What could make it more clearer than this.

Indeed, the way the evidence has been carefully orchestrated should not escape this board. The fact that every diplomat comes in and is characterized as residents by the State Department should no count as residential support.

These are transit residents. These are people who are diplomats who are here under the perview of the State Department, and who are accredited diplomats, and whose interest it is to make the State Department happy and to work with the State Department.

But by the same token, the fact that the NCPC, after initially determining that this was a residential area and is not diplomatic overlay, and that there is no one-third, two-thirds test met here, that its consideration was changed on nothing more than what I understand is a fairly cursory determination after the State Department spoke to them.

In other words, there is significant pressure brought to bear, and much legal arguments, and much orchestrated evidence being put before this Board, and I would respectfully request the Board to consider the nature of the evidence, and the proponent before it gives full weight to the arguments and statements made.

Thus, for the question of security, we have heard not one word about the fight between the Armenians and the Azerbaijans, and the enclave of Nagorno Karnibak.

This is not the embassy or chancery of Switzerland, which is at peace with virtually everyone, I think, except perhaps -- well, this is a place that is a volatile area of the world, where they have non-stop fighting in Nagorno Karnibak, and I have actually three small children.

I don't know that I necessarily want to have my children across the street from a potential war zone, and the notion that the Secretary can unilaterally determine that it is safe, and that it can establish that criteria by whatever, I don't know that this Board should accept that, because this Board, in terms of the 3 of these 6 criteria, are virtually by the Secretary's say so.

Well, the Secretary, as I think we should understand, is a partisan in this fight. He has bought a hundred foot security zone in front of the Baku Embassy, and in return for that hundred foot security zone, has pledged and put not the inconsiderable resources of the State Department behind him to reach this result.

And so I respectfully request the Board to consider the evidence, the quality of the evidence, and where it comes from, and the agenda behind it, in weighing whether -- and if indeed the Board reaches the six criteria, weighing whether or not it ought to be granted.

VICE CHAIRMAN SOCKWELL: Mr. Taskier, if I might state briefly that I believe that it would not be unfair to assume that this board, being fairly experienced in life, understands that our Department of State and our United States foreign policy, bear upon any position that might be taken by the government in support of the Azerbaijan purpose.

And yet one cannot divorce one's self from all of

the larger issues that make our concerns somewhat difficult to encapsulate. But I do understand 100 percent what you are saying, and I am sure that the rest of the Board feels your pain in that respect.

MR. TASKIER: I by no means seek to imply that this Board has been suborned or indeed is ignorant of this agenda. I know that you are. It is just that I have not heard it articulated, and I have not heard anyone articulate the fact that you are charged with weighing those six criteria.

And to this point all we have heard is vociferous advocacy by the State Department, saying to rely on the NCPC determination, which strikes me as a fairly shallow determination, with all respect to the NCPC.

And I think also misguided legal argument, which says that the Foreign Missions Act trumps in every respect the Dupont Circle decision, which interprets how the Foreign Missions Act should be applied under these circumstances.

VICE CHAIRMAN SOCKWELL: It would be one thing also to say that one should feel comfort or some comfort in the fact that we do live here in the United States, where citizens have a voice in whether or not there might be a 100 foot setback placed around an embassy facility, with your only decision as to what day the truck comes.

MR. TASKIER: You anticipate me, because one of my lines which I didn't deliver was that this is a country of laws,

and not of men, and not of back room deals by the State Department.

CHAIRPERSON REID: Thank you very much. And I just wanted to first of all point out that the Secretary of State happens to be a woman and not a he.

VICE CHAIRMAN SOCKWELL: He probably meant to say the Deputy Assistant Secretary of State.

MR. TASKIER: Absolutely.

CHAIRPERSON REID: Number 2 is that having been around on this board for six years now, I want you to be mindful of the fact that no only with the Foreign Missions Board of Zoning Adjustment, but in all instances where we have highly contested cases, as such we do always hear -- it is not uncommon that we hear different experts if you will espouse their points of view on the same issue, but opposingly.

And that is part and parcel of what we are charged with, is to be able to dissect and decipher, and to digest, and analyze, and to be able to come up with some type of deliberation that we feel is in the best interests.

And typically it is in the best interests of all those citizens of the District of Columbia, and then when we come to this particular board, which is a very extremely important board, then we go to not only the District of Columbia interests, but also national interests, and international interests.

So it is our -- the responsibility that we have is

a very grave responsibility that we don't take lightly. This is why these hearings sometime take a long time, is because we have to be able to receive as much information as we possibly can after questions that would give us information that would enable us to be able to make decisions that we feel would be the best decision, all things considered.

MR. TASKIER: I absolutely respect that decision, and I thank you for the careful attention that you have paid to this hotly contested issue. My point simply was that this is a highly partisan State Department, and basically giving you the full-court press on evidence and legal argument.

And I think you should be aware that they are attempting to roll you, and as long as you understand that, I'm happy.

CHAIRPERSON REID: We understand. We understand perfectly, and by the same token, everyone has their point of view, and everyone is trying to jockey and position themselves for the most favorable position, and we understand that, and we thank you.

MR. TASKIER: Just as long as you understand the deficiencies that they are arguing and with their evidence, then I am very happy.

MS. RENSHAW: Madam Chair, may I just say very briefly that as the newest member of the BZA, against Mrs. Reid, who is our longest standing member on the board, I just want to

say that these arguments are very valuable to me, as I am -- shall we say -- aging in place on the BZA, the full range of opinions that are brought to bear to the table.

And we certainly weigh them very carefully and very thoroughly, but I must say I was waiting for Mr. Taskier's remarks, and I was waiting for this, and you brought it forth, and I just want to thank all of you for the comments that you are bringing today.

CHAIRPERSON REID: Thank you. Okay. Next.

MS. LOORY: Well, I am just a homeowner of 20 years, and my name is Marjorie Loory, and I live at 2724 - 34th Street. I live right next door to the Norwegian Embassy, and I must say that it is a happy relationship.

I bought the house knowing that the Norwegian Embassy was there, and knowing that The Vatican Consulate was there; and also being told that the diplomatic overlays zone ended at the driveway between the Norwegian Embassy and myself, or my house.

And I felt comfort that I was moving into a residential area. It is a lovely area, and it is convenient, and it is safe, and it is good for transportation, and I hope to live there for the rest of my life god willing.

But I certainly do not want to live surrounded only by consulates and diplomatic areas, and business offices. I certainly did not move into the area and live there 20 years with

the anticipation that this would occur.

And I thought knowing something about what was going on in the city that I was safe where I lived, and I have lived in the District of Columbia for many years before that, too, and all over the world.

And so, first of all, I would like to comment that Mr. Gino Delenzo is not a handyman at the Embassy. He has lived there for more than 30 years. He is in charge of the whole site. He manages it all and has for 30 years.

And he is a man who knows every inch of that building, and I think you could not have had a better guide. He probably knows more than the archbishop does about that building, and he is also a very good friend of mine. And so I enjoy that.

And I just get upset when I see the possibility of a very wonderful stable area -- the house that I live in was built in 1926. It has had only two owners; the first owner and myself.

And I think I am one of, or maybe about the oldest member living there. It is a wonderful neighborhood. It is one that has every advantage that one could hope to have in living in an urban area. And also we have traffic.

If I want a plumber to come, I get up at seven o'clock, and I put my car in for a block, so that they can get in there and I can get into my garage, but that is part of urban living and you expect that.

I am afraid that if you do approve the petition, or

the exclusion, or whatever it is called -- I am not a lawyer, you know, I told you. And I really do like the Ambassador, and I think I would love to have him as a neighbor.

But I do not want to have an office building there, and I do not want this to add to the percentage of the square, and then the next one has a much easier time.

It is to the City's best interests to maintain stable neighborhoods, and we are people who are active in the city, and we want to stay in the city. We haven't moved to the suburbs. You want to keep us. Please do not turn our neighborhood into a place where I have to flee from, and that's all that I have to say.

CHAIRPERSON REID: Thank you very much.

VICE CHAIRMAN SOCKWELL: Ms. Loory, how do you spell your last name?

MS. LOORY: L-O-O-R-Y.

VICE CHAIRMAN SOCKWELL: Thank you. That's not my question.

MS. LOORY: Well, that's a good question that I get asked a lot.

VICE CHAIRMAN SOCKWELL: I just wanted to make sure that I had it correct. You say you are the second owner of the home?

MS. LOORY: Yes.

VICE CHAIRMAN SOCKWELL: And you have lived there for how long?

MS. LOORY: For 20 years. It was built in '26, and so let's do the arithmetic, and you will see that the other woman lived there until she was in her mid-90s. So I hope to do the same.

VICE CHAIRMAN SOCKWELL: For 20 years. And my question is that the properties immediately to your -- I guess that is the west?

MS. LOORY: Yes. North actually, unless you are talking about 34th Place.

VICE CHAIRMAN SOCKWELL: No, 3726.

MS. LOORY: No, 3727 would be my block.

VICE CHAIRMAN SOCKWELL: Okay. The two houses that are to your left.

MS. LOORY: One is owned by Peter Sloan, or Ms. Mary Sloan. Her mother was the original owner of that house. And her son is fixing it up a little bit. But that house has been in the family from 1926.

VICE CHAIRMAN SOCKWELL: Okay. And the house next to that?

MS. LOORY: That is for sale now. It looked just like mine at one time.

VICE CHAIRMAN SOCKWELL: I see. So it has been added on to?

MS. LOORY: Doctored.

VICE CHAIRMAN SOCKWELL: And then next to that is the alley?

MS. LOORY: Yes.

VICE CHAIRMAN SOCKWELL: So between the two houses that are immediately adjacent to the embassy there has been one family in that house since 1927 adjacent to you, and you have been there for 20 years, as only the second owner of that home?

MS. LOORY: Yes, and the one that is immediately next to the proposed consulate, the woman lived there until she was a hundred. Then the Embassy of The Vatican bought it.

VICE CHAIRMAN SOCKWELL: And they have had it for about how long to your knowledge?

MS. LOORY: About 6 or 8 years ago.

CHAIRPERSON REID: Are you establishing something for the record?

VICE CHAIRMAN SOCKWELL: Yes, I am. I am establishing a relationship of community. Thank you.

MS. O'NEIL: I am the second owner of our house as well.

CHAIRPERSON REID: Thank you. But you have already testified. Thank you very much. Now, could we have the second panel, and the second and last panel to come up.

MS. ELWOOD: Okay. First of all, thank you for the many hours that you have given to hearing this case, and I know,

and I am confident of the careful consideration of everything that has been said by both sides.

I wasn't planning to testify today. I feel somewhat a conflict of interest because I am indeed on the National Council Planning Commission. So I think that my neighbors have spoken well, but I do want to point out that as a neighbor that I would like you to note that there are two distinct atmospheres.

MS. BAILEY: Excuse me, Ma'am. Would you please state your name?

MS. ELWOOD: Oh, I'm sorry, Patricia Elwood, at 2740 - 34th Street, Northwest. And I live what one can consider across the street from the yard of the proposed chancery. I would like when you are thinking about this to consider that Massachusetts Avenue is called Embassy Row, and that there is a line that was to demarcate the differences in usage.

And I think that there must be some significance to the fact that the houses, or the residential area, is zoned R-1-A, the most restrictive zoning for a residence.

And I would really like you to think about that, because as we look in our houses across the street, I see a residence which the Azerbaijanies have now bought, and it has been a residence.

I saw in the report from the State Department, they mentioned that there was some office space used there. I in fact

saw the office furniture going into this house, and went across the street, and asked them what is the use of this house, and I was told this is for people who are staying here from the Native American tribe overnight as a residence.

And in fact we never saw any action there whatsoever. I don't know what ever happened. Next to that is the residence of Ms. Loory's friend, who took Mr. Jackson around the Papal Nunciature.

Then we have a garden and after that a garage, and both have always been explained to me to be for use of the residents, and I mean the residents of the Papal Nunciature.

In the 21 years that I have lived there, I have interacted many times with the residents of the Papal Nunciature. I have never thought of that quite frankly as anything else but a residence. It was an auxiliary small office space.

I have been in there. I actually think that this could all be solved, and I have the greatest confidence that you will agree with the Office of Planning, if you yourselves would go see this residence.

It is beautiful, and you cannot see office space, and you have to look for it. And if you go across the street to the Norwegian Chancery, it is just -- you can see that it is like night and day. It is an office space and there is no doubt about it.

And to clarify what that was built for, I would

like you to know that in the front there is an emblem in the rock of The Vatican, and that is sculptured into the rock.

So that indicates to me at least that maybe in 1930 or '31 when it was built -- and I'm not saying it was, but certainly if it's in the rock, that indicates that that has been there for a long time. It is not a sign. It is an inscription.

Also, with regards to the parking, there are to be noted, and I want to reemphasize this because I know it is one of the six criterion. That there are four empty houses right now in our block. That makes a huge difference in what the parking is at this present time.

The house, as Mr. Sockwell was trying to enunciate, and which is next to me, which is right next to the alley, have no one in it. The house next to that has no one in it. The house where the Azerbaijanies have bought has no one in it.

And the house next to me on the other side right now, the resident just spoke, and there is no one in it. Now, that is four houses with no one in it, and it makes a huge difference in what the normal impact of parking in a neighborhood would be.

And the last thing that I would like to emphasize is the municipal interest, and the fact that the Mayor has reemphasized 34th Street as a residential street, and I thank you very, very much for your attention.

CHAIRPERSON REID: Thank you. Board Members, any

questions?

(No audible response.)

CHAIRPERSON REID: Okay.

MS. WILLIAMS: I am Virginia Hayes Williams, and I live on 34th Street also. I am a recent resident, and my son ran for Mayor and became the new Mayor.

CHAIRPERSON REID: Thank you, Ms. Williams. Please give us your exact address.

MS. WILLIAMS: 740 - 34th Street.

CHAIRPERSON REID: And we do welcome you as the Mayor's mother here.

MS. WILLIAMS: I am not here to create any problems for either side. I just want to see justice done, and I believe that you can do it. I don't understand anyone who would not go to the neighbors in advance and let them know what they had planned to do.

We didn't know what this was until we walked in there to a reception, and Mr. Mlotek told us that this was to be -- and this was the first knowledge, that this was to be not the Ambassador's residence, because we were there to welcome him.

And then we were told that it would not be the residence. He already had a place in Maryland, and I asked him, well, why would you do that, because this is R-1 zoned.

And to me sitting here, all I can here is that the State Department deliberately ran a game on the people on 34th

Street, and now they are for want of a better word, now they are trying to bring their weight to bear to break the law.

This is an R-1 zone, and the Catholic -- I happen to be Catholic, and I have been through all of the property over there, including the fact that I did not know that was a residence owned by the people that lived there.

This is the kind of neighborhood that it is. I walk all around the neighborhood, and this is a personal affront to the neighbors to me to think that they would run in there and deliberately try to change the zone, knowing that it looks bad for America if they can do so much for us, and that we can't do anything for them.

This is not fair and they had gone someplace else before that, and they had been turned down. Well, they should have known that these people were just as conscientious about wanting their residence kept intact.

And someone on the corner just bought the house completely adjacent to us, and she has three young children. And she doesn't it to be changed. But she could not be here today.

It is time for all of us to act with integrity in this city, and I think that this is what I am here for, is to say let's examine all of the facts, and let's ask these people why they did not come to us in advance, and let us know what they were doing. Thank you.

CHAIRPERSON REID: Thank you very much, Ms.

Williams. Let me just understand this. You are saying that you were unaware of the fact that this building -- okay.

The reception that you went to, you thought you were going to welcome the ambassador to the neighborhood, and him moving there, and using the facility as a residence?

MS. WILLIAMS: Yes.

CHAIRPERSON REID: But there was no prior notification to the residents there, and you are saying that this was in fact going to be a chancery, which is a little different.

MS. WILLIAMS: They never mentioned it that it was going to be a chancery.

CHAIRPERSON REID: So when did you find out, when you went to the reception?

MS. WILLIAMS: When we went there, and the gentleman, Mr. Mlotek, he told me himself that this was to be a chancery, and this is the first knowledge that we had that it was going to be.

I said, well, this is not his residence, and he said, no, it is not going to be his residence. He has a residence. This is going to be a chancery. And I said, well, when did you intend to tell us that it was going to be a chancery.

And he said, well, we purchased the property and that's what we have for its use, to be the chancery. And so at that time the Minister across the street was there, and I said that he can't have his church because this is a residential area,

and he has since moved out because the neighbors did not want that there.

And he had enough respect for them to move out of the place, and it is a three story building, and if you start changing the laws for one, you are inviting others.

CHAIRPERSON REID: Okay. When was this reception?

MS. WILLIAMS: In May.

CHAIRPERSON REID: Okay.

MS. WILLIAMS: And we didn't know that it was going to be a chancery until then.

CHAIRPERSON REID: Okay. Thank you.

MS. WILLIAMS: And we went there to welcome him. We went there with the express purpose of welcoming the Ambassador.

CHAIRPERSON REID: Well, I have to get some clarification on that, because I can't imagine the State Department having a reception at that site and giving the impression that it was going to be an embassy when it was not going to be an embassy.

MS. WILLIAMS: Everybody thought it was going to be an embassy. The neighbors came from all around.

CHAIRPERSON REID: Let me get a clarification, because typically what happens often is that people who are confused as to the terminology of chancery and --

MS. WILLIAMS: Chairlady, I know the difference

between beautiful furniture with chairs, and a long beautiful table with chairs around, and I said, oh, he is going to have quite a reception from time to time with all of these chairs.

I think it was about 12 or more chairs, and a long dining room table in the kitchen. Everything was just like a residence. We went up and looked around the place.

CHAIRPERSON REID: Oh, it was?

MS. WILLIAMS: Yes. It looked like it was going to be a residence.

CHAIRPERSON REID: Okay. All right. Thank you. One second.

(Brief Pause.)

CHAIRPERSON REID: All right. We will get that clarified. Mr. Mlotek, there aren't any closing remarks in this particular proceeding. However, we would allow you to answer, which would be the Board Member's questions now as to what happened that day.

MS. RENSHAW: I wanted to ask for a copy of the invitation that was given.

MS. GIORDANO: Yes, I have it right here, and I don't know how I ended up in a position of disagreeing with the Mayor's mother here, but we sent out a letter that was very clear.

It says that recently the Republic of Azerbaijan purchased 2741, located at the corner of blah, blah, blah, for the purpose of conducting our diplomatic activity there. And it went

on to talk about their country.

And it said that as for our work, it will be quiet and unobtrusive, and we believe that our new chancery will be fully compatible with the residents in the lovely area to which we have a pleasure to move.

We are very honored to become your neighbor, and fully understand the responsibilities of becoming a good neighbor. As a result, we do not plan any changes in the appearance of the building from the outside; only a small brass plaque and our national flag will indicate our presence.

Also, parking for the building will be located behind the house off of Fulton Street. So I think it was clear.

CHAIRPERSON REID: That was the invitation that went out to everyone who attended?

MS. GIORDANO: Yes.

CHAIRPERSON REID: All right. Then if you would just place it in the record, and we will take a look at it.

MS. GIORDANO: It is a form letter, and I drafted it, along with the Ambassador, so that we could be very clear as to what it was that we were proposing.

CHAIRPERSON REID: Thank you.

COMMISSIONER LAWSON: If I could ask a question. What is the date of that letter?

MS. GIORDANO: Unfortunately, it is a form letter, because I submitted -- you know, I didn't keep copies of all of

them. The date of the reception was May 1st, and the letter I think was sent out about two weeks in advance.

VICE CHAIRMAN SOCKWELL: Just one question. The copy that you have given us is undated and unsigned.

MS. GIORDANO: Right. It is a form, because it was done on a computer, and then we inserted all the names, and I didn't keep copies of all of the names.

VICE CHAIRMAN SOCKWELL: I see.

MS. GIORDANO: But it was personally addressed to all the 200 property owners. I just didn't keep copies of each individual. I just kept the form.

CHAIRPERSON REID: Okay. Thank you. Now, Mr. Lawson, of the National Capital Planning Commission, wishes to say a few words.

MS. GIORDANO: I had asked, and I hate to burden you with this now, but I had asked at the beginning if I could have a few moments for a closing statement, and you had granted me that permission. You probably don't recall.

CHAIRPERSON REID: Yes, you are right. That was so long ago. Okay. All right. We will, but allow Mr. Lawson, who typically we would call to speak at the time of government reports.

However, rarely do they speak; and also Mr. Lawson is not only new, but also basically acting director for Reggie Griffith until he returns. So he is not really that up to snuff

with our proceedings.

So I would like to allow him the opportunity to say a few words.

MS. GIORDANO: Madam Chairperson, the Ambassador reminded me that we sent out the letters to all of the property owners, and so probably Mrs. Williams did not get a copy of that letter. It was sent to the owner of the property.

CHAIRPERSON REID: Okay. Mrs. Williams, did you receive this particular invitation? She did or did not?

MS. WILLIAMS: I did not.

CHAIRPERSON REID: Well, whoever received the invitation, if they could come to the mike, please.

MS. WILLIAMS: The neighbor next door, who has since moved out, told me about the party or the affair to welcome the ambassador, and it was he and his wife who I was friendly with.

CHAIRPERSON REID: Okay. So you did not actually see the invitation?

MS. WILLIAMS: I never saw the invitation and neither did Ms. Elwood. Some people might have received it, but we didn't.

CHAIRPERSON REID: Well, when I said earlier that sometimes people -- and not necessarily you -- get the two kind of confused. It may have been in the exchange that somehow the people thought they were coming to one thing, and when in fact it was the opposite thing.

MS. WILLIAMS: In fact, as we were walking around, everyone thought they were coming to the Ambassador's residence.

CHAIRPERSON REID: I understand. But the persons who came, I understand for the most part, came as a result of the invitation that was sent out?

MS. WILLIAMS: Yes. They could have misunderstood.

CHAIRPERSON REID: Sure. And we will look at it and see if there can be some way that it could have been misconstrued or confusing. We will assess it accordingly.

MS. WILLIAMS: But if I had gotten an invitation, I would have known the difference, but I didn't know the difference until they said he wouldn't be living there. I said, well, then this is a residential area.

CHAIRPERSON REID: Thank you. Thank you very much.

VICE CHAIRMAN SOCKWELL: Madam Chair, in looking at the invitation, and trying to look at it objectively, the first paragraph calls it a house warming. Generally, housewarmings are considered to be home type activities.

In the second paragraph, in the second and third lines, it speaks to conducting diplomatic activity, which is a very vague description of what might occur there. And that is not to say that anything was done to misconstrue. And in the first line of the third paragraph, the word chancery is specifically used. So, it is just --

CHAIRPERSON REID: Mr. Sockwell, two things. One

is that we should not get into a deliberation right now. We will analyze the --

VICE CHAIRMAN SOCKWELL: No, no, I am just stating what is in the application, and --

CHAIRPERSON REID: But also in the second paragraph, the last line says that it is an appropriate chancery location, and then it goes on to say as for our work, and it says that we believe our new chancery.

VICE CHAIRMAN SOCKWELL: Well, what I am just saying is that a lot of people tend not to read all of certain things, and very often when you see housewarming, May 1st, 7:00 p.m., it sounds like fun.

CHAIRPERSON REID: Mr. Sockwell, what you are doing now is speculating.

VICE CHAIRMAN SOCKWELL: No, I am not speculating.

MS. GIORDANO: Can I just --

CHAIRPERSON REID: What you are saying is interjecting what most people do, and that --

VICE CHAIRMAN SOCKWELL: All right. Let me not say it that way.

MS. WILLIAMS: Can I just say one thing, please? I do business in my home, and an Ambassador could have 2 or 3 secretaries. I know that there are embassies where they have secretaries, and they do business in their homes.

So I have been in the Mayor's home in California,

and he did business in his home, but it was a residential area, and it was considered the Mayor's home.

CHAIRPERSON REID: Thank you. Thank you very much. And this is what we are going to be looking at when we deliberate as to how much weight to give this, and --

MS. GIORDANO: If I could just say that the purpose of the whole reception was to give notice to the neighbors. It wasn't a ruse to sort of get them there and then spring this on them. The first draft was done by me, and it was very legal.

And the Ambassador wanted to make it much more neighborly, and I thought he had very good input in the letter, and that it was not appropriate to invite somebody to a reception on a legal sounding letter.

So it was a mix. It was supposed to be a social invitation, as well as an attempt to let people know what was happening.

CHAIRPERSON REID: Thank you, Ms. Giordano.

COMMISSIONER LAWSON: Okay. Thank you. I thought that I would offer a clarification if I may, or a position earlier, but I didn't want to interject and sound like I am rebutting any of the witnesses, or the report from DCOP.

But I feel compelled to clarify what NCPC, since we seem to be the center of a lot of the discussion, what our letter means, and what it doesn't mean, and how I think the Board should take that into consideration, along with the DCOP report.

And I am going to repeat some of what I think you heard earlier, but I just want to try to differentiate between what is binding by statute, dealing with the overlay, and what is guideline, and not binding, but can be considered anywhere from a range of planning opinions to guidance for the Board's consideration.

I think that Mr. Jackson mentioned earlier that he regretted not having any further explanation of NCPC's letter. I think he has it because Ms. McCarthy expressed it very well. It is very simple. Some may consider it shallow, but it is probably more in-depth than the overlay map itself. That is even more shallow.

And that map was developed using summary information to guide or to make a planning interpretation of a statute, and to help guide in subsequent decisions on locations for foreign missions.

The overlay map is just that, a guideline. It is not binding, and it is not a rule, and it is based on a planning formula that still we think makes some sense. And planners can differ on what those formulas should be.

In this particular case, which is very unique, it has no precedent that I am aware of. We were asked to give an opinion, and to look in more detail, and to make some judgment, and to help guide the board in its decisions.

What we did was, and just based on an interview

with the occupants of The Vatican property, I used a fairly simple ratio of 50-50 to determine something that was usually determined on a summary basis or a more shallow basis.

If the property were noted as chancery property by record, the overlay map that was developed in '87 would consider that entire area then chancery. We understood there were residents there. We called The Vatican, and based on their feedback that Ms. McCarthy mentioned, we used a 50-50 ratio.

How much more weight that should carry than a walk through, a one floor walk through, with some assumptions about the second floor and the first floor, that's for each member of the board to decide.

But I would reiterate a point made earlier that the binding guideline, or the binding criteria is in the statute itself, and that is in subparagraph (b), in any other area determined on the basis of existing uses, which includes office or institutional uses, including but not limited to any area zoned mixed use, diplomatic, or special purpose, subject to disapproval of the District of Columbia BZA in accordance with this section.

The bottom line is that those areas can be outside of the overlay that was drawn in 1987. Those areas can be mixed use areas in other parts of the city. It is not a requirement, or a statute of law, for foreign missions to locate within that drafted overlay area.

It is a requirement that they locate it within the

areas cited in the statute by word, and subject to the BZA approval. So how you want to use the DCOP report, or our letter, and what weight, I think that is for each individual on the board to decide.

I don't think there is any right or wrong answer. I think, as we have seen with lawyers, there are two opinions, and I respect the DCOP opinion, and I understand their logic.

Likewise, I stand the letter that we sent to the Department of State, and we see no reason in changing that position, and we see no reason in changing our opinion that should we draw the overlay map today, which we need to.

It is great that -- or there is a consensus, I think, that is well outdated, if we were to draw the overlay map today, we would recommend this lot as a part of the overlay. That in and of itself doesn't mean the boards should pass an approval.

It is guidance for the board to make a decision. So I just wanted to get that on record, and answer any questions if anyone has any.

CHAIRPERSON REID: Okay. Thank you, Mr. Lawson, for that clarification.

MS. RENSHAW: Madam Chair, just a question for Ms. Giordano. At the May reception was there a formal presentation by the Ambassador to the assembly which outlined what the use of the property was going to be?

MS. GIORDANO: There were remarks by the ambassador

which definitely indicated what the use was going to be. I was there myself, and Mr. Mlotek was there. We were talking with the neighbors individually, and letting them know as well.

I don't think anybody left -- Mr. Mlotek reminds me that there were four State Department representatives there. So the purpose was really to get the word out, and obviously advocate our case. I mean, that was the purpose.

CHAIRPERSON REID: Thank you very much, Ms. Giordano. Do you want to wrap and say a few words very quickly.

MS. GIORDANO: Very quickly. First, I just have a couple of little housekeeping things. I know that there was an issue about this property, the one directly across the subject property on the alley, and whether that was pink, or yellow, and I had put yellow on my map because when I looked at it there was a sign, a brass plaque, that said the Embassy of the Orthodox Church of America.

And I called the occupants, who explained to me that it was the headquarters of a religious organization, and that there was -- although this gentleman lived there, there was a significant office component.

But it is a moot issue now. They apparently have moved out and the property is vacant as was stated before. But I just wanted to explain that discrepancy.

I also had some photos of the 34th Street frontage of the Norwegian Chancery, because there was an issue or some

disagreement about whether the chancery was on 34th Street or limited to Mass Avenue. So I wanted to pass those out.

I think the photograph clearly shows the frontage on 34th Street. In closing, I just wanted to say briefly regarding the Dupont Circle case. The precedent there was -- and again the BZA makes these decisions on a case-by-case basis.

And the BZA has to decide on a case-by-case basis what the relevant area is. In that case the BZA indicated that it was the residentially zoned portions of that square.

That square, located in Dupont Circle, also contained commercial and SP zoning, which is certainly different from the case here. There is no commercial zoning in this block. Regarding -- I just wanted to discuss the whole issue of the map that was put into the record, the diplomatic overlay, and the fact that the diplomatic overlay did split squares.

And certainly we are not denying that, but this case is not about whether the diplomatic overlay can zone a part of the square or a whole square. This case is about locating a chancery outside the diplomatic overlay.

And what the logic is in mapping the diplomatic overlay is really a separate issue. As we have I think have testified at length, the Foreign Missions Act is very specific that the chancery can be located in areas outside the diplomatic overlay based upon existing uses.

In this case we have looked at the existing uses in

the square and outside the square, and we feel that clearly this is not an essentially residential neighborhood. It is clearly a mixed use area.

Looking at the one-third, two-thirds test, as indicated, NCPC, who was the author and administrator of that test originally, indicated that they felt that it met the one-third test.

OP indicated that they felt that NCPC's analysis did not go deep enough, and was not critical enough, in evaluating existing uses, and they pursued I think with laudable initiative, although they made a diplomatic faux pas to conduct their own analysis.

That analysis, however, we think was based upon some fairly tortious interpretations of the zoning regulations. Clearly, there is no such thing as a residential use with an accessory chancery use. If there was, we would not be here today.

The Ambassador could move in and put the chancery in the basement, and we would not have to discuss this matter any further. There is just no such thing.

The whole effort to discredit the office use in the basement by throwing that out and saying we don't count that an FAR. I mean, clearly these are -- this is gerrymandering. This is gimmickry. There is just no reason to do that.

This is clearly a chancery from the standpoint of our zoning as indicated. It could be a chancery tomorrow without

any zoning change. It is a chancery in the eyes of the State Department, which keeps a list, an official list, of chancery uses.

If we all agree that The Vatican Embassy, or not all of us, but the ones of us who have to make a decision agree that The Vatican Embassy is actually an institutional use, then the calculation very quickly becomes one-third.

We don't have to include the vacant lots that abut it. Just taking that one lot, which I think is -- if you look at OP's document here, which is 26,552 square feet, and add it to the Finnish Chancery lot, which is some 29,000 square feet, you arrive at 56,000 square feet, or 34 percent institutional office use in that square.

And that is not even starting to argue about the vacant pieces that abut it. So if the one-third, two-thirds test is to be utilized as a guide, and we think it should, we clearly meet that test.

Beyond the one-third analysis, the crux of this case is whether the BZA can deny this application based upon a fear that it could set a precedent for future chancery applications in this area. We think not.

Such reasoning is entirely speculative. It is not a reasonable basis for finding that this application does not meet the municipal interest. We have to look at the actual impacts, the actual potential impacts of this application.

And we think that we have clearly met the requirement that this proposed chancery will not have the potential for adversely impacting this neighborhood.

We have been very careful to agree to some very restrictive conditions, actually unprecedented from the State Department's viewpoint in these types of cases.

We have gone out of our way to try and find parking for the very few social events per year that would take place at this property, and the chancery has indicated -- the Ambassador has indicated himself that he is willing to abide by these conditions.

So each case needs to be taken on its own merits. In this particular case, we have a very small diplomatic mission, which is willing to abide by some very stringent conditions to make sure that it does not have an adverse impact on this neighborhood.

And we feel that we have met the criteria and that it should be approved. Thank you very much for your attention.

CHAIRPERSON REID: Thank you very much, Ms. Giordano. Okay. Ms. Pruitt, my understanding is that I think we had set a date certain for deliberation.

MS. PRUITT: Well, there is of course a time frame associated with any FMBZA case, and unless -- I don't know what -- I am sure that the board would like to get a draft findings of fact from the applicant.

CHAIRPERSON REID: The applicant and the opposition.

MS. PRUITT: There are no parties. The ANC could do that.

CHAIRPERSON REID: The ANC?

MS. PRUITT: Yes.

CHAIRPERSON REID: Okay.

MS. PRUITT: If they would like. And in doing so --

CHAIRPERSON REID: If you could repeat that so that it will be very clear as to what you are saying.

MS. PRUITT: My understanding, first, is that there is no additional submissions that the Board wanted.

CHAIRPERSON REID: Not that I can recall.

MS. PRUITT: So in doing so, to allow the most time for everybody, and since it does take us a little while to get transcripts -- they are a little slow -- my suggestion is that draft findings of fact be due on November 27th, after Thanksgiving, with a decision date for December 5th.

CHAIRPERSON REID: All right. And also the ANC can submit a draft order, and both on disk, right?

MS. PRUITT: Correct.

CHAIRPERSON REID: With findings of fact and conclusions of law, and the decision day will be on December 5th, at our regularly scheduled morning decision meeting, public

decision meeting.

MS. PRUITT: That will allow the board to make a decision within the six month time frame, and issue an order, because it has to be issued, and not just a decision, but a written order must be issued also.

CHAIRPERSON REID: Six months? I am not following you.

MS. PRUITT: There is a six month time frame for FMBZA.

CHAIRPERSON REID: I understand that, but the --

MS. PRUITT: This was submitted January 27th. So six months from January 27th -- excuse me, July, July 27th. So now a written order has to be issued. Not just the decision, but the written order.

CHAIRPERSON REID: And that would give enough time for that to be done?

MS. PRUITT: Correct.

CHAIRPERSON REID: Okay. Any other comments or questions by any board members?

(No audible response.)

CHAIRPERSON REID: Then this will conclude today's hearing. Thank you.

(Whereupon, the hearing was concluded at 4:33 p.m.)