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 17, 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 9:30 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT A.M. SESSION:

SHEILA CROSS REID, Chairperson
ROBERT N. SOCKWELL, Vice Chairperson
ANNE RENSHAW, Board Member
WILLIAM LAWSON, Acting Executive
Director, National
Capital Planning Commission

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT P.M. SESSION:

SHEILA CROSS REID, Chairperson
ROBERT N. SOCKWELL, Vice Chairperson
ANNE RENSHAW, Board Member
RODNEY L. MOULDEN, Board Member
Kwasi Holman, Commissioner

COMMISSION 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

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.
David McGettigan

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Linowes and Blocher, LLP
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Washington, D.C. 20036
202/293-8509

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Washington, DC 20007
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Greenstein, Delorme and Luchs, PC
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P R O C E E D I N G S

9:52 A.M.

CHAIRPERSON REED: Good morning. We do apologize for the delay. We ask your indulgence. We did have some matters that we had to address prior to coming out this morning.

The hearing will please come to order. Ladies and gentlemen, this is the October 17th public hearing of the Board of Zoning Adjustment for the District of Columbia. My name is Sheila Cross Reed, Chairperson. Joining me today are Robert N. Sockwell, and William Lawson, representing the National Capital Planning Commission; Anne Renshaw and unfortunately, John Parsons who represents the National Capital Commission is not with us today. However, he will participate -- the National Park Service, is not here today. I'm sorry, John Parsons also serves on the Zoning Commission. He wears several hats, but on the Foreign Missions BZA, he represents the National Parks Service.

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

Please be aware that this proceeding is being recorded electronically, so we must ask you to

refrain from any disruptive noises or actions in the hearing room.

If you desire to give any information to the Board, do not speak from the audience but rather come forward to a microphone, state your name and home address and then proceed to make your wish known.

All persons planning to testify either in favor of or in opposition of are to fill out two witness cards. These cards are located on each end of the table in front of us. After I finish this statement, please proceed to pick up your witness cards, fill them out and when your case is called you will have them ready to be handed to the reporter.

When coming forward to speak to the Board, please give both cards to the reporter who is sitting to my right.

When seated at the witness table, please give your name and home address. I repeat, please, give your home address rather than your business address. After this, you may proceed to give your testimony or statement.

The agenda for a foreign missions case will proceed as follows: (1) statement and witnesses of the Applicant; (2) government reports, Secretary

of State and the Office of Planning on behalf of the Mayor; (3) reports or recommendations of other public agencies; (4) report of the ANC within which the property is located; (5) parties or persons in support of the application; (6) parties or persons in opposition of the application. The record will be closed at the conclusion of each case, offered to or accepted by the Board. The Board and 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. As directed as closed, no other information will be accepted by the Board. The Board has instructed the staff to return any materials received after records closed to persons who submitted it. The decision of the Board in this legislative proceeding must be based exclusively on the public record. To avoid any appearance to the contrary, the Board requests that persons 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 that are before the Board, other persons may not recognize it as such, 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 these proceedings.

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

Are there any preliminary matters? Does staff have any preliminary matters?

MS. BAILEY: No, Madam Chairman.

MS. PRUITT: Madam Chair, actually, we do have some preliminary matters, excuse me.

in your file you have two requests for party status. This is a rule making case and the request came from Mr. Scott Harris and a group of neighbors called the Neighborhood Organization of 34th Street. Neighbors of 2741 34th Street. And that consist of about 16 people. Both of these groups are entities that requested party status.

However, this is a rule making procedure and there is no party status. So staff did send a letter out to individuals informing them that they would certainly be able to testify, but party status is not granted. This was just a preliminary issue to deal with.

CHAIRPERSON REED: Thank you. The two persons who had requested party status are who?

MS. PRUITT: There was a couple, Mr. Scott Harris and Barbara Harris.

CHAIRPERSON REED: Are they here?

MS. PRUITT: And then a group of neighbors which I guess, a coalition, I would call it, the Neighbors of 2741 34th Street.

CHAIRPERSON REED: And what party status? Have requested party status?

MS. PRUITT: Yes ma'am. And it's --

CHAIRPERSON REED: Who is going to represent them?

MS. PRUITT: They had four people, I think five people here: Mr. O'Neill, Dr. Ellwood, Snodgrass, is that correct.

Sir, can you come up to the mike, please?

MS. KRESS: I would just like to say, the staff, inappropriately because we have very few of these kinds of cases sent out our standard package

which did have in it how one becomes a party and so that's why when it came to our attention that we had done that, we sent out follow up letters saying that unfortunately this is a rule making and people cannot have party status. But our staff did make a mistake early on and I apologize to everyone.

MR. SNODGRASS: We did receive the letter and our original response was based on the materials we had previously received.

CHAIRPERSON REED: Okay, as long as that issue has been clarified to the satisfaction of everyone here, then we can proceed.

MS. PRUITT: Your next issue was a request for the refund.

CHAIRPERSON REED: Yes.

MS. GIORDANO: Yes, good morning, Madam Chair, my name is Cynthia Giordano for the record from Linowes & Blocher law firm representing the Republic of Azerbaijan. We included a request with our application to waive the fee requirement in this case because essentially what we were requesting was a postponement or a continuance. That wasn't permitted under the rules because under the rules for chancery applications, the Board has to make a decision within six months, so we had no choice but

to withdraw our application and then resubmit it. But since it was essentially a continuance which the Board routinely grants upon request and in this case the request was based upon a need for the State Department to work out some trade issues with, I'm sorry, some treaty issues with the Republic of Azerbaijan prior to proceeding with the case, that was the reason for the request and we think it was a reasonable request and if I said the Board routinely grants these continuances so we are requesting a waiver of the fee in this case, essentially we refiled the exact same application.

CHAIRPERSON REED: Okay, thank you, Ms. Giordano.

Board Members?

VICE CHAIRPERSON SOCKWELL: Madam Chair, it is my belief that in a situation of an involuntary withdrawal which was based upon an extenuating circumstance revolving around the federal government's requirements that we would be well served to take that into account and perhaps not treat this as the typical withdrawal which would be a voluntary effort on the part of an applicant and if we can do something in their behalf, I think it would be appropriate.

CHAIRPERSON REED: Is that a motion, Mr. Sockwell?

VICE CHAIRPERSON SOCKWELL: That is a motion.

MEMBER RENSHAW: Second.

VICE CHAIRPERSON SOCKWELL: My motion is that we not impose a second round of fees.

CHAIRPERSON REED: That we waive the fees.

VICE CHAIRPERSON SOCKWELL: That we waive the fees.

CHAIRPERSON REED: And seconded.

MEMBER RENSHAW: Yes, seconded.

CHAIRPERSON REED: Discussion? I would concur. All in favor?

(AYES.)

Opposed. Nobody.

MEMBER RENSHAW: Madam Chair, before the proceedings begin --

CHAIRPERSON REED: Ms. Renshaw, right after they read the vote, then you can speak.

MEMBER RENSHAW: Thank you.

MS. BAILEY: The vote is 4 to 0. Mr. Sockwell made the motion, seconded by Ms. Renshaw to waive the fee.

CHAIRPERSON REED: Okay, Ms. Renshaw?

MEMBER RENSHAW: Yes, I just wanted to state at the outset of this hearing that I am an officer in an nonprofit organization called The Hospitality and Information Service that deals with senior level diplomats and their families here in Washington, but I wanted to state for the record that I have had no personal or professional interaction with the Embassy of the Republic of Azerbaijan and I wanted to have that inserted into the record.

CHAIRPERSON REED: Well, thank you for that disclosure, Ms. Renshaw and unless anyone has any objection, I suppose your stating that you don't think your position on that particular in that organization will have any impact in your ability to be impartial in regard to this particular case.

MEMBER RENSHAW: That is correct.

CHAIRPERSON REED: Okay, thank you very much.

MR. LAWSON: Madam Chair, may I?

CHAIRPERSON REED: Yes.

MR. LAWSON: I also would like to enter for the record that one of our City Commissioners is a member of the neighborhood, however, it's on record with her position on the disposition of this case in

that we too, I have had no contact and we have had no -- I've had no direct discussions with this member of the Commission on the matter and feel that there is no conflict and I can act independently of any Commission Member's opinion.

CHAIRPERSON REED: I understand that. Okay. Again, unless there's any objection, I think Mr. Lawson, we have no problem with your participation and on behalf of NCPC irrespective of the fact that a Member may live in that particular ward or that particular area of the city. Seeing no objection, we can now proceed. Thank you.

MS. BAILEY: Application No. 16620 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 premises 2741 34th Street, N.W., the Square is 2122 and the Lot is 27.

All those wishing to testify, would you please stand to take the oath? All those wishing to testify, please stand, raise your right hand.

(Witnesses were sworn.)

Madam Chair, a couple of matters prior to you proceeding. We do have a report from ANC-3-C.

The ANC is recommending denial of the application.

We also have a report from the Office of Planning also recommending denial. The Office of Planning's Report was received late, so you would need to waive that into the record.

Madam Chair, would you like to do that now?

CHAIRPERSON REED: Two things. One was the Office of Planning Report and we did receive that, was it yesterday? Yesterday.

MS. BAILEY: Yes.

CHAIRPERSON REED: And the representative from the Office of Planning's name I think is someone new. Sir, could you give us your name?

MR. JACKSON: Arthur Jackson, Madam Chair.

CHAIRPERSON REED: Right, okay. I remember now. We'll get it right, sooner or later.

Mr. Jackson, I received your report yesterday and while it was very informative and instructive, there was some concern by Board Members this morning in regard to the fact that the timeliness of the report made it rather difficult to be able to adequately analyze it and to be able to digest it appropriately to do our work. And one of

the Board Members, specifically didn't receive it until this morning and it was a very involved report. I think that the Office of Planning did, in my opinion, a good job with it, but we certainly would have liked to have had it in a more timely fashion because in order for us to be able to utilize it, you need to have given it to us much earlier. So I'd just like to request that even though today we would be amenable to accommodating you and waiving the record to allow it to enter, that you make an extra attempt to make sure that we receive it in a timely fashion so that we could go out with our packages and we could have the necessary time to give it the appropriate time that we would need to not only for our benefits, but also to be better appreciate the work that you've done when you submit it.

MR. JACKSON: Madam Chair, I want to apologize to you and the Members of the Board. We did extensive work on the plan and as such we really didn't go out and walk the property until late last week, so we were gathering information up to the last minute and we do apologize for the delay and will work diligently to eliminate this from future applications.

MR. MLOTEK: Madam Chair?

CHAIRPERSON REED: Yes?

MR. MLOTEK: Good morning, Madam Chair, for the record I am Ronald Mlotek, Legal Counsel of the Office of Foreign Missions for the U.S. Department of State. This is an unusual case as we will shortly find out when we get into the substance of it. One unusual aspect of it is that I must now on behalf of the Department of State in an unprecedented action, I think, over the 17 years we've been here, we have to object before you actually admit the report. We would ask that you consider further details about it. We must object to the late admission of the OP report and I will tell you why.

In the 17 years that the Department of State, it's actually 18 years now, has been participating in these proceedings, the Department of State has never been late, not one time in submitting its report to the Board. This report in this case, the Office of Planning, was not only late, but as you correctly pointed out, it was exceedingly late. You have correctly pointed out the prejudice that the Board incurs by having it be late. But in addition, the Department of State, the federal government, and the Embassy, the Chancery Applicant here, were also

severely prejudiced for the following reasons. This report that ultimately has issued forth from the Office of Planning contains numerous factual and numerous legal errors that we will have to take exception to in the main part of the hearing. This is unfortunate. But had the report been submitted timely, it would have enabled, it would have given the Department of State and the Office of Planning a period of time in which to try to reconcile this, so that we would not be in the difficult position now of having to take issue and having to waste the Board's time in challenging the factual and legal errors that are contained in the OP report. So there's prejudice there.

In addition, there is in this case an even more highly unusual episode or incident that occurred in the production of the report that is at issue here. On last Friday, I am informed, the OP representative, without any effort to coordinate this with the Department of State, actually went and paid a site visit to a foreign diplomatic mission, not the one involved here, a neighboring one and sought entry into this foreign diplomatic mission, in order to conduct what he believes is accurate and we challenge as inaccurate, an actual survey, a land use survey of

the interior of a foreign chancery. This is something unprecedented in my experience at the Department of State, that a government official, any government official, even a State Department official, but a local government official would without coordination with the people at the Department of State who are responsible for foreign missions, knock on the door of the Vatican Embassy, the Apostolic Nunciature, as it's called, asked for admittance, have substantive discussions with foreign accredited diplomats about how they use this building without adequately informing these people who are not really informed and are very naive on issues of District of Columbia land use and zoning law, in order to take the information which he gathered from this foreign chancery and embody it in a report which was then going to be introduced and used against the interest of another Foreign Mission and of the federal government, the U.S. Department of State. This is really an extraordinary instance which occurred. I regret it very much. Mr. Jackson and I, along with other members of the Embassy, had a very what I thought was a productive visit several days before and a site visit of the Azerbaijan Embassy. That is how, if Mr. Jackson had a concern, about the

Vatican Embassy it should have been done. The Department of State should have been informed. We should have been there. We should have been able to inform the diplomats at the Vatican Embassy concerning what this was all about and it didn't occur. So in summary, this report is very seriously flawed. It is flawed not only because it came it at literally two minutes before midnight on the proceeding time table here, it did not provide us an opportunity to be able to discuss and have dialogue with the Office of Planning about the report. But in addition, it was the information it contained, was obtained in a way which is totally out of bounds, totally unfair and really in a very serious way undermines the entire integrity of this proceeding. So we have to object.

Now what I would suggest because this is a very difficult issue that I've just hurled at the Board, I realize this, but what I would suggest is as the proper way to do this subject to consultation with your staff, is to hold in abeyance your decision to accept the report and listen to the entire proceeding, take it under advisement. If necessary, we can submit written -- you can hold the record open at the end. We can submit written argumentation

along the lines that I've just orally argued as to why this report should not be received, and the Office of Planning, if it wishes, can likewise submit written argumentation of why it should be received. But just in summary, this report is flawed not merely because it was late and as we know, OP reports traditionally are late. And we know that. And if it was simply a matter that this was an OP report that came in a couple of days late or three days before the deadline or if it came in as late as it did and there weren't the problems inherent in it that I've identified, we would not be here objecting. But we object because we are compelled to because of this very serious prejudice that it imposes upon the federal government and upon the Foreign Mission concern and the manner in which the information, some of the central information that is contained in it, was obtained from a foreign government without consultation or coordination with us.

Thank you.

CHAIRPERSON REED: Thank you, Mr. Mlotek.

MS. GIORDANO: Madam Chair, Cynthia Giordano again for record. I represent the Republic of Azerbaijan and for the record I also would like to object to the late filing of the Office of Planning

Report. I just wanted to indicate that we had been working very closely with the Office of Planning and it wasn't until I guess Friday morning, last Friday morning that I had called Mr. Jackson, that he informed me that the Office of Planning was changing its position and that it was based, in part, on the conclusion that they had reached that the Vatican Embassy was not a chancery and I indicated, I asked him what the basis for that conclusion was and he said that he had talked to somebody at the Vatican Embassy and that he was going to go there and do a site visit. I suggested that I meet him and that we go together so that that way we could at least both see the same thing and we wouldn't be in a position at the hearing of having a factual dispute as to what exactly was happening inside the building. So we had agreed to meet at the Metro and for whatever reasons, I guess Mr. Jackson said that he didn't see me there, he went ahead on his own and I went to the Embassy afterwards and followed up. So unfortunately, we couldn't see it together, but we both saw the property and we have, unfortunately, differing factual interpretations as to what exactly is going on in the building which will come out later. But again, my objection is based upon the fact that

although I think the visit was well-intentioned, it puts us in a position at the last minute to have facts in dispute which we can't resolve here at the hearing and just further confuse and complicate the proceedings.

Thank you.

CHAIRPERSON REED: Okay, there are two issues here and let me say this just to kind of clarify my comments prior to your speaking. I was referring to the timeliness of the report and mentioned to Office of Planning that it was a good report. Let me clarify that. My statement was in regard to the fact that we had had reports just reprimanded OP about the fact that some of the reports were not conclusive and they were not as -- the format and the information that was submitted to us was not in the proper structure that would be most helpful to us and this instance they had improved on that aspect of the report.

Now, contextually, obviously we were not aware of some of the issues that you raised this morning as to the -- not only the timeliness, but the content and the legal aspects of it and the lack of having the necessary time to be able to rebut or to give a legal argument as to the validity of some of

this, the legal positions that were taken and we do accept that graciously because, of course, the staff had also mentioned that it poses problems and I'm glad that you further elucidated for us the kinds of problems that further hampered the position of the Department of State as well as from the Applicant.

Now it is my position that given the situation that you just presented to us, we would not make a decision as to the waiving the rules to accept the Office of Planning Report at this time and rather proceed to hearing the case and after having done so, then we can make at a decision accordingly. I don't know how staff and other Board Members feel about it. I'd like to hear some input.

MEMBER RENSHAW: Madam Chair --

CHAIRPERSON REED: Just one second, please. Just one second.

As to anyone else, other than the actual Applicant and the State Department, there are no parties in the case, so therefore while you will have an opportunity to speak at the designated time, this is a preliminary matter and only parties are allowed to speak during preliminary matters, but you certainly can make your position known or give us your point of view at the time that is designated for

you to do so.

MEMBER RENSHAW: Madam Chair, I have a question for Ms. Giordano. You stated that you and Mr. Jackson were going to visit the Vatican Embassy last Friday, but you did not connect?

MS. GIORDANO: It was a very, sort of last minute thing. I talked to him and he was really on his way out the door and he told me he was looking for a car to get there and I said well, I'm happy to pick you up at the Metro and take you there so we can both see it together and then we eliminate the confusion, but I went to the Metro, and I waited an hour and he told me subsequently that he didn't see me so he took a cab over.

MEMBER RENSHAW: My question is did you notify Mr. Mlotek that you were going to visit the Vatican Embassy?

MS. GIORDANO: I did not. I was really running out the door to meet him. Actually, I did. I left him a voice mail message, I think, on my way out. I didn't reach him.

MEMBER RENSHAW: You think you did?

MS. GIORDANO: I did leave him -- I didn't speak with him, but I left him a voice mail and I told him I was on my way there.

MEMBER RENSHAW: And Mr. Mlotek, were you going to meet them?

MR. MLOTEK: It is correct. Yes, I was trying to meet them. It was difficult because I didn't know exactly when they were going to be there, but from the standpoint of the State Department, our concerns which I identified would have been amply addressed if counsel for the Embassy had been there. I mean it would have been preferable had I been there, obviously, that would have been optimal. But it would have been satisfactory and I would not now be complaining if counsel for the Applicant had been there because Mr. O'Donnell is in broad terms, familiar with all of the legal and factual issues in this case and the various legal issues that involve the Vatican Chancery and its role in this case. And so it would have been acceptable to us, even if I could not be there that Mr. O'Donnell be there. The fact that there was nobody there to be able to inform, correctly inform the Vatican Chancery as to the significance of the answers they were giving to Mr. Jackson and to interpret for the Vatican Embassy the questions that Mr. Jackson was asking. You have to

understand most diplomats and most embassies do not

understand the first thing about chancery -- they don't even understand the difference between a chancery and an embassy that everyone here understands.

So Mr. Jackson asked them a whole series of questions, I understand, and I'm quite convinced that they didn't understand half. Had Mr. O'Donnell been there, I think that harm could have been prevented.

MEMBER RENSHAW: But Mr. Mlotek, you did know then through Ms. Giordano's voice mail that Mr. Jackson and Ms. Giordano were planning on going to the Vatican Embassy?

MS. GIORDANO: If I could just interrupt, literally, it was -- I had to drop everything. I had a 12:30 meeting I had to cancel. I called him on my cell phone on the way there and I mean from the time Mr. Jackson and I spoke, the time we were supposed to meet was 45 minutes and I barely had enough time to get there. There really wasn't -- he was on his way. So this was my opportunity to go or be left behind. So there really wasn't an opportunity to really track Mr. Mlotek down. I simply left a voice mail message for him.

And my intent in meeting him was just to

-- I mean I'm not an expert on international relations issue either, but really to just make sure that we were both seeing the same thing and that we would not be in a position at the hearing of having seen it at different times and having any dispute as to exactly what was going on in the building.

CHAIRPERSON REED: Let us not belabor this issue. I think that it's pretty apparent to everyone that something wasn't quite up to snuff in this instance. But nonetheless, be that as it may, I think that the Board and from the comments I've heard so far, is inclined not to waive the rules to accept the Office of Planning Report at this time and we will take it up after we have basically heard the case and then we'll make a decision as to whether or not we will or will not accept the report into the record, unless there's an objection.

(Pause.)

Okay, now, Mr. -- ready?

MS. BAILEY: Madam Chair, the property was properly posted. All legal requirements have been met and the case is now ready to go forward.

CHAIRPERSON REED: I'm sorry, Ms. Bailey, you raised two things. The Office of Planning Report being waived, and what was the other?

MS. BAILEY: I just indicated that the report of ANC-3-C was received on time and the ANC is recommending denial of the application.

CHAIRPERSON REED: All right. Then we can proceed.

Thank you. Ms. Giordano?

MS. GIORDANO: Yes, good morning, again. To my left is Ambassador Pashayev who is the Ambassador to this country from the Republic of Azerbaijan. He is our only witness in this case today and he just returned from Baku this weekend for this hearing, so I know he's dealing with some jet lag and also a lot of last minute issues in terms of the current status of the case.

So I will be asking him a series of questions and eliciting some answers. I hope you'll bear with us, but first I wanted to just make some introductory remarks. It seems a little silly. I was going to say that this was really a very simple case. And it is simple on the facts. It involves a property that's located outside of the diplomatic overlay, almost immediately adjacent to the existing diplomatic overlay zone at the corner of 34th and Fulton Streets. It is abutted by one single family residence which is owned by the Vatican Embassy and

the Vatican Embassy is on record. There's a letter in the file in support of the proposed chancery use. It does not abut any other single family residential use. It is located in a square with two major chancery uses, the Embassy of Finland which is located -- fronts on Massachusetts Avenue, and then the Vatican Embassy which was just mentioned which for the record is an official chancery use. It's listed and I think Mr. Mlotek will give you a better sense of that as an official chancery by the State Department. There is some residential use in the building. The top floor of the building is the residence of six priests that live in the building. It's a 50,000 square foot building, by the way, a very large building on a large lot, consisting of 29,000 square feet. As I indicated, and this is based upon, I'm testifying here and I did take the oath, unfortunately, I'm sort of put in this position, but I did visit the chancery on Friday morning. I had just basically knocked on the door asking for Mr. Jackson, was told that he had just left and asked to be shown around and asked about the uses in the building.

We object really and disagree with the Office of Planning's position that because there are

some residences in the building that somehow the whole building becomes residential. It is an official chancery use. The entire square footage of that building may be used as a chancery, but the existing situation is that it contains four levels of improved space. The basement level includes offices. The first floor level, that's the ground floor level, is a combination of offices, reception areas and a small chapel. The second floor are reception areas which are used for diplomatic functions, for entertainment uses and a kitchen that basically serves those areas as well as the dining room for the priests that live in the building and then the top floor are the residences for the priests. So in a nutshell, if we can sort of just get that on the record, that is really what's going on in that building and I guess how we interpret that is a difference of opinion, but in our view our original statement said that it's approximately one third residential, that's the top floor, and two thirds chancery use, but for the purposes of zoning, it is entirely a chancery use and the purposes of the State Department's listing of chanceries, official Foreign Missions, it is 100 percent a chancery use.

So that is -- those are two, as I

indicated, existing chancery uses in the square. The other lots in the square include several undeveloped lots owned by the Vatican Embassy. One other lot that contains a garage that serves the Vatican Embassy. Also on Massachusetts Avenue, is a lot that is owned by the U.S. Park Service and is park land. And then turning the corner on the 34th Street is the single family residence which abuts the subject property that I indicated is owned by the Vatican Embassy and then the subject property.

The subject property is improved by a single family house which was purchased by the Republic of Azerbaijan in the first quarter of this year. They had no choice, they felt, but to go ahead and purchase the property and then apply to the BZA because given the current residential real estate market in D.C. there was no way to get a contingency which would allow 8 months to prepare a BZA application and then get a BZA approval. So they have purchased this property. They currently own it. They have been maintaining it. They have not been using it. The property is really a lovely property that includes some very ample landscape spaces that have been well-maintained by the Republic of Azerbaijan. The proposal is for a small diplomatic

mission to be housed in the building. They currently use leased office space in the downtown and they have been an independent republic for seven years and they very much would like to secure a signature building as most countries have to represent their presence in Washington. That was the purpose in purchasing this building.

The diplomatic mission at the beginning of the application, and as I said in my papers, included 10 employees. They have recently hired two additional employees. Now they have 12 employees. They are willing to agree to a cap of 15 employees because that is really the amount of people that can be comfortably housed in this building. The 15 employees would be taken to and from the site with car pool arrangements. Republic of Azerbaijan owns a fleet of four vehicles. Two of them are minivans which currently shuttle their employees to and from work. Their employees' living arrangements are clustered in Silver Spring and the Van Ness area to accommodate that car pool arrangement. So we foresee very little traffic impact associated with this use. In fact, we have represented that the chancery would forego the privilege of reserving diplomatic parking in front of their building on the street so as not to

take street parking in the area.

In addition, there is a garage which can house two vehicles in the rear of the property which is accessed from Fulton Street and a parking pad adjacent to the garage which can park an additional three cars, at least. That is where we are proposing top ut the parking associated with the employees and the staff of the Republic and also to accept deliveries.

In front of the building is a semi-circular drive. There are two curb cuts on 34th Street that access the semi-circular drive which can accommodate two additional vehicles and we are proposing to use that for short term visitor parking and for the drop off and pick up of visitors. The Republic of Azerbaijan have very little in the way of visitors during the day, at most two to three, and usually those are other diplomats and business persons, the Visa application process and processing is all done by fax and delivery and mail these days. There's really no reason for anybody to come to the site to do that kind of business. So that really cuts down on the amount of trips to the site.

In short, we anticipate very little traffic or parking impacts associated with the use.

As far as the appearance of the building, it will remain essentially the way it is now. There will be a small brass plaque which will indicate the presence of the chancery and the national flag. We're not proposing any alterations to the outside of the building. We're not proposing to add any large antennas or satellite dishes on top of the building. There is currently a dish, a TV dish on the building now which will remain.

The employees, as I indicated, will be taken to and from the site. The issue of the hours of operation at the chancery will be normal business hours, approximately 8 o'clock to 6 p.m. There will be very little activity at the site on weekends or during the evenings. There will be occasional social functions. There might be functions involving a few people to the site for dinner or cocktails. Any larger functions we have indicated would be restricted to approximately four times a year and by larger functions we're saying in the range of 15 to 50 people and a condition was proposed, I think, by the Office of planning and it's certainly something that we can agree to to limit that by condition of our BZA application to four times a year, if necessary.

We were asked what about the parking needs or the parking impacts associated with the larger social function in the range of 15 to 50 people and our response is that those people will primarily be parking on the street, but that is no different than any single family residents in the neighborhood. It's entirely conceivable that a single family residence might have a few large functions a year whether it's Thanksgiving or having a class party for your children and that amount of activity is really similar to a single family residence. We think that overall, the amount of parking demand created by this chancery will be less than a single family residence because there will be no parking demand for the most part in the evenings or on the weekends. The parking demand which we think we can adequately address on site, is only during the day time when the residents for the most part are not at home.

So we do not foresee an adverse impact with this use. The issue of the diplomatic overlay is one that will be addressed in more detail by the State Department, but just to clarify in our opening remarks, the Foreign Missions Act does not restrict chanceries to locations within the diplomatic overlay

zone. The Foreign Missions Act says that chanceries can locate in areas based upon existing uses which include office and institutional uses. This area does include office and institutional uses. We've submitted a land use map which colors in yellow the various institutional and chancery uses in the surrounding area. We have not limited that map to the subject square, although the subject square is the unit of measurement that was used initially by the National Capital Planning Commission in designating or recommending for designation the overlay zones. We've gone further. We think a reasonable area of impact is the 200 foot property area which is shown on that map. We've included a square to the north, the northeast really, because that's an area of impact. To the west is the Naval Observatory. There is really no other use there and the Vice President's House, but we have moved up 34th Street and shown that just one block away is the Belgium Chancery to across 34th Street, outside the subject square is also the Norwegian Chancery. It's a chancery and an embassy. The embassy fronts of Massachusetts Avenue and the chancery fronts on 34th Street. The entrance to the chancery is on 34th Street, across from the subject square.

So there's been a lot of issue regarding the one third, two thirds use which has been a measurement, as I indicated, by NCPC in the past and we meet that measurement although we don't submit that that is the precise criteria because the Foreign Missions Act does not say one third, two thirds is the standard.

But since that has been adopted by NCPC, NCPC took a look at this subject application and wrote a letter which we've submitted in the record which says that the subject site does meet the criteria, the original criteria for mapping of diplomatic overlay zones, because it meets the one third office institutional component and that one third is generated by the Finland Chancery and the Vatican Embassy which I have already indicated and described is a chancery use.

In addition, we have submitted our own analysis of the one third, two thirds criteria. We've also indicated that the BZA has considered a chancery outside the de-overlay in the past and there, the BZA used the standard of the subject square and they indicated that it was the residentially zoned properties in the subject square and the presence of the office uses there and of

course, a chancery is an office use, that was indicative and relevant in their mind.

But again, the standard, according to the Foreign Missions Act is that the area has to include office and institutional uses. I think the land use map clearly shows those uses in the immediate area.

At this point I would like to ask the Ambassador to just answer a series of questions so that you can hear from him directly how the subject property will be used and the nature of his diplomatic mission in this country.

Mr. Ambassador, will you state your name for the record?

AMBASSADOR PASHAYEV: Yes, my name, Pashayev Hafiz. I'm Ambassador for Azerbaijan to United States.

MS. GIORDANO: Mr. Ambassador, could you please describe the number of employees that you anticipate housing at the site and how the site generally will be used?

AMBASSADOR PASHAYEV: Yes, first of all, let me also say good morning to all of you and Madam Chair, thank you for this hearing. And during my almost 8 years now in Washington I have had a lot of experience in this city and this is my first

experience with D.C. government and this is -- during all these years we were looking for some opportunity to buy property to install embassy in chancery and it was somehow related to issues of reciprocity and United States government had beautiful building in capitol of my country in Baku. You are welcome to come and to see this beautiful building. But for unknown reasons, it was government always caring about security issues in foreign countries. In our case, actually, after bombing in Tanzania and Kenya, the United States government decided to somehow expand on property and to put some additional --some security fences. It was reason why we were not able to buy earlier years building because as I said, the reciprocity issue was very important between our two countries, but our government did -- it's best to accommodate requirement of United States government and I believe State Department representatives will talk about that.

So my point that my experience in Washington, although I did not go far enough with D.C. government to accommodate our property demands, but I know some regulations and many times I tried to check what property would accommodate Azerbaijan and I had some experience. I was just about to buy one

property on diplomatic overlay with all requirements in place. Unfortunately, this same issue of opposition of neighborhood in case of --

MS. GIORDANO: Yes, if I could just interject. That was in the neighborhood right near the Benin Chancery case that was heard by this Board earlier this year. And it was the Benin decision that -- not the Benin decision, but the Benin -- the opposition from the neighborhood that persuaded the Ambassador that maybe that wasn't the best site to go ahead and purchase.

AMBASSADOR PASHAYEV: It wasn't on diplomatic overlay, I would mention this once again and I agree with Ms. Giordano, that this case is looks to me to be very easy case because when I have seen this property and location and all features of this building and as Ms. Giordano said, we have small, small embassy. We have not so great activities. So I saw that it would accommodate us and it will not hurt neighborhood concerns and it was reason why I decided to go forward with this property. And now I think if you ask me about what kind of activities we will have, as I said, we don't think that the foreseeable future will have more than 15 people in our embassy, in our chancery.

MS. GIORDANO: Mr. Ambassador, yesterday, I went over the conditions that were recommended in the Office of Planning Report and one of those was that the number of mission officials and employees on sight at any one time would not exceed 15. Did you indicate that you were agreeable to any approval or lack of disapproval of the chancery being conditioned on that?

AMBASSADOR PASHAYEV: I think we can agree on that, on not more than 15 people will be working there.

MS. GIORDANO: And I just want to add, I think Mr. Mlotek can elaborate on this later, that the embassies have to register the names of their employees with the State Department, so there -- this is not a situation where you can easily fudge how many employees you have in a building. There is a record of this and the Ambassador is aware of that. And he's willing to abide by that. It could very easily be determined if that number were exceeded in the future.

The second condition that we discussed was that the number of vehicles on site for use by embassy officials and staff should not exceed seven. Could you just describe how your employees get to

work currently and whether you anticipate that that arrangement would change in the future?

AMBASSADOR PASHAYEV: I think it's also, currently we have less than seven, much less than seven and I think we agreed that also that we can accommodate our people with less than seven.

MS. GIORDANO: Could you just describe for the record how your employees get to work and where they live?

AMBASSADOR PASHAYEV: Currently, some group of people live around Van Ness region on Connecticut Avenue and they are coming all together in one van and another group are coming from, also from Virginia, Crystal City, is another van. And I have my personal car, Ambassador's car. And one more car right now, we have all together four cars right now. It accommodates all our needs and in terms of parking, of course, there is as Ms. Giordano said, we have plenty of places, plenty of parking spaces around the building, our property.

MS. GIORDANO: Mr. Ambassador, could you describe the kinds of social functions or activities that you would have at the chancery and where you have large functions currently?

AMBASSADOR PASHAYEV: Currently, we have

once per year, actually we have big function. It's almost 400, maybe 500 people, a reception and some functions in major hotels of Washington. So some small dinners, of course, we have at the residence and would think that if this property will be chancery, we will have less opportunity to make some social function if this property will stay as Ambassador's residence and I think it's what we proposed and what we agreed upon, that four functions per year, no more than 50 people in each occasion, I think it will accommodate our needs.

MS. GIORDANO: Mr. Ambassador, you alluded to the difference in how much social activity would be held at this property if it were an Ambassador's residence. What would you do with the property if the chancery was not able to be established here?

AMBASSADOR PASHAYEV: As I understand it, by regulations of D.C. government, I don't think we have restrictions for residential use of this property and in that case, as I said, we could have much more social events because in this case, as you understand, we will not rearrange inside space of this property. It will stay almost as it is right now and will give us more space and more opportunity

to invite more than -- more than 50 people definitely to make some social events. And I believe that as you know, it's major part of diplomatic missions to make social events. In that case, I think this property will stay as residence. I will -- I can promise you that it will have much more social events than four per year.

MS. GIORDANO: But if it's chancery you would abide by a restriction of four per year?

AMBASSADOR PASHAYEV: Of course, yes. As I said, it physically will not permit me to do more.

MS. GIORDANO: I think what the Ambassador is trying to say, as we indicated, the property has already been purchased. It cannot be used for a chancery use. The option is to use it for the Ambassador's residence. That was not the intention here. It's a much larger property than the Republic of Azerbaijan intends for an Ambassador's residence, but that would be one option.

Another option would be to try and sell the property again, but --

AMBASSADOR PASHAYEV: Yes, let me say that also, because the Republic of Azerbaijan is a relatively new country in Washington, it's my understanding that we need first to accommodate our

chancery necessity. That's the reason why I'm trying to first to get this opportunity because government of Azerbaijan also indicated to me that most important for us now to have in Washington first chancery and then residence. As you know, it's not easy to accommodate both simultaneously, so I would be happy to do that.

MS. GIORDANO: Could you comment on the amount of visitors that you would anticipate coming to the site and how they would arrive and depart?

AMBASSADOR PASHAYEV: Usually, in embassy, in chancery, we have individual visitors like Ambassadors and some other dignitaries from different missions and this is usually, it's -- they're coming by car and sometimes if we have long meeting, they drop the -- the driver drops the guest and then comes back to pick them up. But in the case of Visa application as you rightly indicated, now in technology in the United States it is very easy to accommodate all and we are doing right now in our current chancery through basically mail and just one or two visitors like courier services bringing some passports for getting visa. So I don't think it's also will change the environment in the neighborhood.

MS. GIORDANO: I think that that

adequately addresses the overall intention with regard to the subject property.

Let me ask one more question. Regarding the possibility for expanding the property or altering it, do you have any intentions along those lines?

AMBASSADOR PASHAYEV: The property itself is so beautiful that I don't -- I think that any interference, even though it's good intention, will spoil all this environment. So when I met with neighborhood, it was a half a year ago approximately and I promised that this beauty of property will stay as it is right now and I am doing my best to keep it, when we are not using this property, I am trying to keep this property in very good shape and I don't think that any kind of expanding will demand some funds. If I will have these funds, I will buy another property somewhere in Washington.

MS. GIORDANO: So Mr. Ambassador, to be clear, if you have needs beyond 15 people at this site or a need for a larger site, how would you deal with that?

AMBASSADOR PASHAYEV: I think I will transform this property back to residential for residence of Ambassador and then maybe I will buy

some bigger property someone else.

MS. GIORDANO: So you have no problem with the restriction that would prohibit you from expanding the property or increasing the number of employees beyond 15?

AMBASSADOR PASHAYEV: No.

MS. GIORDANO: I think that includes the Ambassador's comments. If there are any questions, we're happy to take them at this time.

CHAIRPERSON REED: Board Members?

VICE CHAIRPERSON SOCKWELL: Yes, I would like to start with a question and this relates to the Ambassador's statement about the use proposed for the property.

Now I realize that you are here before the Board to request a chancery use. And that having been in this process to this point you know that the neighborhood has some opposition to the intensity that they believe the property would be put to in terms of that use, yet in stating that there might be an additional utility of the property in the event that it is not approved as a chancery, you stated that it could become a more social center with large parties and more people. And to me, that gave the impression that perhaps the nation of Azerbaijan

would not respect the community's interest in low activity levels unless so required under the restrictions of a chancery use.

Can you respond to that?

AMBASSADOR PASHAYEV: Yes, my point was that it's physically, will make this chancery, this property will automatically will have some limit on any kind of social activity. Of course, if I -- I gave impression --

MS. GIORDANO: I think he's saying that if it's used for office, it's going to have desks in it and office furniture and it's going to limit the amount of space that's available for gatherings.

AMBASSADOR PASHAYEV: Yes. So it's my intention absolutely not to disturb neighborhood and I think if I put somehow not in the right way my statement, my point that when I look through arguments of neighborhood, why they are opposing to our request, it was my -- just argument or counter argument that it's in no case will disturb neighborhood because chancery or residence of Ambassador will not make any difference. This was the point.

VICE CHAIRPERSON SOCKWELL: All right, Mr. Ambassador, is was just that I wanted to declare

that you were not presenting the alternative use as a sort of veiled threat to utilize the property to a much greater extent as a result of perhaps not receiving an approval for a chancery use and Ms. Giordano, it is not really something that one can factor in whether or not there's office furniture in the space or not because that's up to the discretion of Azerbaijan to use the space and to fill it with whatever they wish. The space could be utilized for anything.

Another issue that I would want to raise very quickly is the fact that you mentioned, Ms. Giordano, in your testimony that the State Department maintains records of the number of employees. Having participated on Foreign Missions Board of Zoning Adjustment cases previously, I think that it may have been brought out in testimony that the Department of State does not necessarily enforce, nor monitor, such things even though it might keep records. It might not do anything to prevent Azerbaijan from having a larger contingent of employees than might be desired or even written into an order by the BZA. So I'm just making those statements and you might want to respond to those.

MS. GIORDANO: Okay, again, I'm not an

expert on State Department enforcement. I was merely making the point that if someone wanted to determine how many employees, independently determine, a neighbor or whatever, that we were in compliance, the employees have to be registered with the State Department. That's my understanding. So someone could determine, it could be easily determined how many employees were in the building.

My understanding is also that the State Department does enforce these conditions, but I'm going to defer and let Mlotek expand upon that issue.

VICE CHAIRPERSON SOCKWELL: That would be a good idea.

MS. GIORDANO: As far as the issue of the office furniture, I think that it might be helpful for us to submit into the record after the hearing a floor plan of the property and I think you'll get a better sense of what we're trying to say. What I'm saying is that as a chancery use, for instance, the large kitchen will be used. It will basically be disassembled. It's a very large grand kitchen that would serve very well as a staging place for parties, but the embassy with the chancery use intends to make it a galley kitchen and convert it to an office, so the things that they are proposing to do interior in

the building to accommodate the chancery use really make it -- precludes the use for large entertaining functions. So that was the point that we're trying to make and the Ambassador is saying that as far as his options go, he has been told by the neighbors that embassies are welcome in the neighborhood and we're just pointing out an inconsistency. It's not a threat, that there's an inconsistency that embassies can mean large social functions and often do mean large social functions in this type of neighborhood, which have greater traffic impacts than a chancery use.

CHAIRPERSON REED: Ms. Renshaw?

MEMBER RENSHAW: Yes. Thank you, Madam Chair. I'd like to come, Mr. Ambassador, to the number of employees. You stated that there would be 15. Does that include the eight other senior level diplomatic officers, plus yourself, or are those in addition?

AMBASSADOR PASHAYEV: Yes, no, all together. All together.

MEMBER RENSHAW: All together there are 15, including yourself and the 8 senior level diplomatic officers?

AMBASSADOR PASHAYEV: Exactly. I can't

count my embassy without myself.

(Laughter.)

MEMBER RENSHAW: I am not saying that, I am just asking for clarification on the numbers.

MS. GIORDANO: Right, you might want to clarify, Mr. Ambassador, that you don't have 15 now.

AMBASSADOR PASHAYEV: We have 12 right now. So it's -- as I said, we have limited activities and limited resources and for now our relationship with the United States, though it's very fast growing relationship, but for foreseeable future, 15 limit which is agreed upon, I think it will accommodate us.

MEMBER RENSHAW: Ms. Giordano, you said earlier that there would not be more than 15 people on the site at any one time.

MS. GIORDANO: That's the Office of Planning suggested, that's the way it was worded and what I'm saying is it says employees and embassy officials. They are employees. That doesn't take into account another Ambassador that might be visiting.

MEMBER RENSHAW: All right, now we have talked a little bit about the number of social functions that you may have up to four per year and

including 15 to 50 people, but during any given week, how many visitors to your site would you have? In addition, you've got 15 employees, including yourself and how many other people will be visiting the site per week, can you estimate for us?

MS. GIORDANO: And when you answer, Mr. Ambassador, also explain what your employees are doing. Are they usually all on site or are they on the Hill and --

AMBASSADOR PASHAYEV: As I said, it's basically visa issue. As I said, we are doing through mail, but today, I would say between 3 and 4, not more visitors.

VICE CHAIRPERSON SOCKWELL: Per day?

AMBASSADOR PASHAYEV: Per days, yes. And our employees basically we have some -- we divided by obligations, two or three people working with Congress and by the way, these hearings, I would say that I'm much more nervous here now than when I am testifying in Congress.

(Laughter.)

But people, our employees, going to State Department, visiting State Department to -- and other embassies, to Congress. And of course, depends on time and acclivities. Depends on what kind of issues

we are discussing with U.S. government, some U.S. government representatives coming through embassy.

So I once again, if -- let me compare once again with -- if I will be as resident there. My family is big family. I have three grandchildren. I have a son, daughter and son-in-law and daughter-in-law. They have friends. I don't think it will be more than family activities if we will have chancery in this property.

So the beauty of this building, we have backside, we have on Fulton Street. We have entrance from back side of building and we have at least four or five car, where can accommodate parking space and we will make sure that mostly visitors will come and drop people in the back side and I don't think -- if you are familiar with this neighborhood, the back side of this property, Cleveland Park -- Rock Creek Park, right?

MS. GIORDANO: Normanstone Park.

AMBASSADOR PASHAYEV: So it's absolutely no any disturbance for any neighbor.

CHAIRPERSON REED: Mr. Lawson?

MR. LAWSON: Just one question, Madam Chair. From your testimony, both of your testimony, I'm kind of running a check list on the Office of

Planning Report and am I correct to assume that in the last section where the Office of Planning says, "if the Foreign Missions Board of Zoning Adjustment determines that this request should be approved, then approval should be subject to the following conditions" and there are one, two, three, four, five, six, seven conditions there. Am I reading it correctly that you would agree to those conditions?

AMBASSADOR PASHAYEV: Yes.

MR. LAWSON: Those seven conditions?

AMBASSADOR PASHAYEV: Yes.

MR. LAWSON: No further questions.

CHAIRPERSON REED: Okay, let's see I had a few questions of my own. During the social activities that you are going to -- that you anticipate having during the course of the year, what provisions are you making for parking for those who attend these social functions?

AMBASSADOR PASHAYEV: As usual, as my study shows, as other embassies doing, it's actually parking space on street would be, I think, would be enough. In case of if I will have, let's say, 30 Ambassadors all together in this property, they usually drivers, I think, dropping Ambassadors and going back to pick them up, so they are not -- it's

not necessary for them to stay. And some other opportunities, of course, many people coming by taxi and this neighborhood, I think, has no good public transportation, but taxi, of course, is common thing.

CHAIRPERSON REED: Well, I find this to be rather a concern to me because am I understanding you to say that the four functions you intend to have will be attended only by Ambassadors?

AMBASSADOR PASHAYEV: Not necessarily. Some other functions also might be --

CHAIRPERSON REED: Okay, so in the event you have a function that will not be attended by 30 some odd Ambassadors with their drivers, then my understanding is that parking on the street is somewhat difficult and I doubt most people who attend those types of functions don't come on a bus, so my question is have you, I guess, have you thought about parking during those times when you do have considerable amount of guests that would be converging on that particular site at one time?

MS. GIORDANO: Maybe I can help out here. The Ambassador is saying that generally the functions are going to include Ambassadors, businessmen, other diplomatic individuals. At least some percentage of those people and maybe we can try

and further define that are arriving to the site by driver.

CHAIRPERSON REED: Let's give it 50 percent.

MS. GIORDANO: If you think that's reasonable.

CHAIRPERSON REED: Let's say just for purposes of illustration 50 percent.

MS. GIORDANO: And we're talking about a maximum number of 50 people.

CHAIRPERSON REED: Correct.

MS. GIORDANO: Four times a year. Okay, so we're down to 25. And you're right, there is excellent public transportation to this site by bus, but probably these people are not coming by bus. Some of them may come by taxi. So I would say another handful might come by cab. We're down to maybe 20 people and we're talking about four times a year. And we have parking on site. We have seven spaces on site that could be accommodate on site.

CHAIRPERSON REED: Wait, wait, wait --

MS. GIORDANO: This is in the evening.

CHAIRPERSON REED: Wait, but what about the cars that are provided by the chancery already. There's a minivan and two other cars with drivers and

then there's another vehicle. There are four vehicles already on the site. They would have --

MS. GIORDANO: They might be on site. They might not be in order to accommodate their guests. I don't know that all the employees would necessarily be at a social function, would they?

AMBASSADOR PASHAYEV: Not necessarily.

CHAIRPERSON REED: But still, I think, Ms. Giordano, that the fact remains that I think there may be somewhat of a problem with those activities occurring.

MS. GIORDANO: So we have a few places on site. So maybe we're down to 15 people coming and parking. Let's say you know, that all those individuals aren't even coming -- we had 50 people. We talked about half maybe coming by driver.

CHAIRPERSON REED: Now it's 25.

MS. GIORDANO: Maybe an additional 5 by cab. Some people may not come, may come together. So just for the sake of argument, let's say -- just to be generous, let's say 20 people are coming and driving to the site. There is residential permit parking that's in our statement on the streets that give residents a preference to park on the streets, to our residential parking so that a guest can only

park for two hours.

There is also ample parking on the streets.

CHAIRPERSON REED: Okay, but during that time period you have people who are coming home from work.

MS. GIORDANO: Right.

CHAIRPERSON REED: And I would think that it would be kind of difficult to find difficult or if these functions occur during the time when people are coming home, then they would occupy some of the spaces that would otherwise be available to the residents and this is a sticky point and where I'm getting to is simply this, do you think that perhaps there could be a traffic management plan developed that would address these problems?

Perhaps there could be some alternative arrangements made with -- it's not position to tell you what to do, nonetheless, you see this is a problem area. I would think that whatever you can do to diffuse that problem would be better for your case and that is an issue that needs to be addressed more appropriately than what I'm hearing here right now.

MS. GIORDANO: I appreciate that advice and we will take a look at that. But first of all I

just want to say that it hasn't been proven that this is a problem area for parking. There's residential permit parking on the streets. We have been to this site on numerous occasions --

CHAIRPERSON REED: I'm going, Ms. Giordano, by -- we have a huge submission of materials that come from not only yourself, but from State Department, NCPC, Office of Planning and also from the residents and since there is no cross examination per se, then I am basically devil's advocate to kind of get these issues on the floor.

MS. GIORDANO: And I appreciate that and we'll look into it. But I just want to reiterate that we're talking about four times a year. This is not any different than somebody having 20 people to their house. It's not that unusual. You have children. You have activities. For someone else to have 20 people at their house and not arrange for valet parking or parking at a chancery, these things happen in neighborhoods. And we think that as compared to a single family residence where there might be a daily demand in the evening for parking and an every weekend demand, that four times a year really is not that much of a burden if you think about it.

But we will look at that. There are chanceries in the immediate proximity that have parking and maybe we can make arrangements with one of them.

CHAIRPERSON REED: Well, the difference is notwithstanding what you just said, but the fact that the matter is that the persons who may be having or residents may be having a child's party is something, is a little different from the application that's before us that has a considerable amount of opposition. That's what you have to contend with and the other thing is when we have these type of affairs, then there are also issues with cars idling in front of the building or on the street in front of neighbor's houses that may be disruptive and those are the kind of things I like to see you reflect in a management plan.

Okay, now the other thing was the signage. In your submission it indicated that there would just be a plaque on the building and it didn't say what size plaque would be. It said small plaque, but what size would that plaque be, a brass plaque that I guess would identify the embassy?

MS. GIORDANO: We haven't designed it yet, but we can have a submission for you, if you

like.

CHAIRPERSON REED: We would like to know the size, the size of the plaque. We've had here quite a few complaints about embassies in regard to the upkeep and the maintenance.

Do you have any plan as far as general maintenance, upkeep, landscaping of that particular site?

AMBASSADOR PASHAYEV: I have already tried to address this, though we bought this property in February, I think, March, February and since from first day I already hired special company which is taking care of landscape and watching and I think if you will come and see, this property is in very good shape. So once again I am not leaving -- nobody is there, but still property is in very good shape. Of course, it's our intention to keep in very good --

CHAIRPERSON REED: Mr. Ambassador, I did hear you mention that you were going to maintain the property, but we need to have a little bit more explanation as to do you have a contract with a maintenance company that will be taking care of the property on an on-going basis?

AMBASSADOR PASHAYEV: Yes.

CHAIRPERSON REED: As well as

landscaping.

AMBASSADOR PASHAYEV: Yes. I have contract with landscape company, but additional contract with air conditioning facilities and some --

CHAIRPERSON REED: Maintenance.

AMBASSADOR PASHAYEV: Maintenance, yes.

CHAIRPERSON REED: That would be something else we'd like to have, copies submitted to the record.

My last question is in some of the other submissions, it came up that there are other properties that were available in a mixed use diplomatic zone that could have been purchased for your use and as such why is it that you opted to choose this particular property rather than one of the other properties that would have caused you less difficulty, there would have been less opposition, perhaps if you had chosen those properties for the use that you desire?

MS. GIORDANO: Mr. Mlotek just indicated to me that he's going to address that issue. I think the Ambassador also had addressed it with regard to one property which I think there had been a fair amount of effort made on purchasing, but --

CHAIRPERSON REED: That was in the area -

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MS. GIORDANO: That was in the diplomatic overlay.

CHAIRPERSON REED: I can understand that one, but there were others --

MS. GIORDANO: And the issue there was a concentration of too many chanceries. That was the issue in the neighborhood.

CHAIRPERSON REED: But there was a list submitted of several other properties that could have been possibilities for chanceries.

MS. GIORDANO: I haven't had a chance to review that list, but we certainly can.

CHAIRPERSON REED: Okay. Thank you very much.

VICE CHAIRPERSON SOCKWELL: Madam Chair, with regard to two things, one the request for maintenance contracts, I believe that in this case there has been question that I've seen of the ability of Azerbaijan to maintain the property and I don't think that we really need to request that contracts be submitted.

If we did not do it in previous cases where the issue was very strong, I don't think that we should subject the Ambassador to that indignity.

CHAIRPERSON REED: Well, Mr. Sockwell, thank you for your concern.

VICE CHAIRPERSON SOCKWELL: And let me finish.

CHAIRPERSON REED: Sorry.

VICE CHAIRPERSON SOCKWELL: I have to speak to the issue of size of events. With a house party with the average family event, there will be people coming certainly and in certain cases there might even be some catering, but it has been stated in testimony by the Applicant that the kitchen which is currently very large will be reduced to a galley sized kitchen and part of that space converted to office use. And I would submit that in my experience, large embassy parties require large food facility preparation areas and in this case there will be catering trucks. In the other situation, these are Ambassadors. These are senior diplomatic officials of sovereign nations. They will have security people who are assigned to them and to them alone. There may be convoys of vehicles, depending upon the nations and their political situations both at home and the conditions within the United States. I do believe that an embassy function of 50 people may present a much large impact on a community for

that time period than would any average party of the same number of individuals given by a resident as a homeowner's party.

CHAIRPERSON REED: Okay. Thank you very much for your comments, Mr. Sockwell.

In reference to the request for the maintenance contracts, that was in no way an attempt to -- it was not -- I didn't think that it was an indignity to ask for it. I think in previous cases, yes, we have requested it and what I asked, I think, was that if, in fact, he had one to submit that to the record. I didn't request that he obtain one because I think that my opinion the residents who have voiced considerable opposition would be desiring of seeing that type of thing because of the fact that we have had quite a bit of problem previously with the manner in which other embassies have been maintained and this is no reflection on the Applicant whatsoever and if that were interpreted like that and I do apologize for that. That was not the intent.

VICE CHAIRPERSON SOCKWELL: Well, my apologies, Madam Chair. I just feel that we should take those things on a case by case basis.

CHAIRPERSON REED: Thank you.

VICE CHAIRPERSON SOCKWELL: As they are

presented.

CHAIRPERSON REED: Thank you very much.

MS. GIORDANO: Can we respond to Mr. Sockwell's comments about getting back to the entertaining issue.

First of all, I would ask if Mr. Mlotek might address the issue as to sort of what is the common practice in this city for these -- I'm sure he goes to these functions probably more than he cares to admit, it is typical to bring to convoy of people or security people to this kind of function and maybe the Ambassador has comments as well.

CHAIRPERSON REED: Mr. Mlotek, do you want to do that now or do you want to do it within the scope of your particular presentation?

MR. MLOTEK: That's entirely at the discretion of the chair. If you think it would logically -- the Board Members have expressed an interest, an intense concern, an interest yourself, Mr. Sockwell and Ms. Renshaw, concerning the level of entertainment, so if you would like me to respond to that --

CHAIRPERSON REED: Why don't we conclude, since they're wrapping up and then you're next and then segue right into your presentation.

MR. MLOTEK: Well, what about the other parties in support or other persons in support?

CHAIRPERSON REED: The sequence of this particular proceeding is the statement and witnesses of the applicant and then the government report, the Secretary of State's report being first.

Then we have the ANC reports, then persons in support and then persons in opposition. That's the sequence.

MR. MLOTEK: Okay, thank you.

MS. GIORDANO: That pretty much concludes our presentation. I just wanted to reiterate that it is not the intention of the Republic of Azerbaijan to purchase this facility for party purposes. That's not what it's about. They are willing to restrict social activities for a year. They currently use, they currently lease space downtown and they have their social activities in hotels, their large social activities. That is what they intend to continue to do. We are just trying to leave a little flexibility for the Ambassador four times a year to have a social activity there and we will look into the issue further of parking if the Board is concerned about that.

CHAIRPERSON REED: Thank you very much,

Ms. Giordano.

Okay, the report from the Secretary of State, Mr. Mlotek.

MS. GIORDANO: Excuse me, will we have an opportunity to address any concerns or issues that are raised later on by the Office of Planning or the neighborhood?

CHAIRPERSON REED: Let me check that, because typically that's not a provision for these proceedings, but --

(Pause.)

Unless there's an objection by any other Board Members, I have no problem with you having an opportunity to rebut or --

MS. GIORDANO: We'll be brief.

CHAIRPERSON REED: Okay, all right, thank you.

MR. MLOTEK: Good morning, Madam Chair, and Members of the Board, may it please this honorable Board. I am, as you know, Ronald Mlotek, Legal Counsel of the Office of Foreign Missions, and it is a pleasure for me once again to appear before this Board, in my official capacity, I think, for the 58th time if my calendar is correct. And as the Board knows, I've also appeared in my personal

capacity as a citizen, a proud resident of the District of Columbia.

As I said in my preliminary remarks, this is a very unique case in many ways and it's going to depart a little from the way we've handled the State Department end of it at least, the way we have made our presentation in the past.

Among other things there is in this case a very important diplomatic relations issue that rises far beyond what this Board has seen in any of the cases it's handled and it's probably one of the most important that we've had in a decade. And to reflect this fact, I'm accompanied today by the Deputy Assistant Secretary of State who is responsible for the area of Foreign Missions activity. He also serves in the statutory capacity as Deputy Director of the Office of Foreign Missions, Deputy Assistant Secretary Ted Strickler. He is also the signatory of the Standards Letter that you all see coming over to, but you actually see him in person, in the flesh before you. And Deputy Assistant Secretary Strickler is here today to describe to you in detail and to impress upon you, the importance of the accommodations that the Nation of Azerbaijan, the government of Azerbaijan had made

for us in very significant issues that favor and benefit our diplomatic mission in Azerbaijan. After Deputy Assistant Secretary Strickler completes that end of the presentation, I would like to then turn to some of the legal and factual issues that are present in this case, most specifically the issue of the diplomatic overlay which as you know is a very complicated issue, both legally and factually. And also address some of the questions that the Board had, the concerns about entertainment, parties, the conditions that the embassy has agreed to which are frankly unprecedented as well, another distinction in this case.

If that meets the Board's approval, Madam Chair, could we proceed in that?

CHAIRPERSON REED: Please.

MR. MLOTEK: Then at this time then I will turn the floor over to Deputy Assistant Secretary Theodore Strickler.

MR. STRICKLER: Good morning, Madam Chair, and Members of the Board. For the record, my name is Theodore Strickler. I reside at 10652 John Ayers Drive in Fairfax, Virginia and I am the Deputy Assistant Secretary in the Office of Foreign Missions.

I have some prepared remarks this morning that I'm going to deviate from and not read to you because I feel that this issue is so important that I have to, with your indulgence, go into a little bit of history.

I first came to the District of Columbia when Lyndon Johnson was President. I was a student at American University, the School of International Service, and after four wonderful years in that institution I graduated and was very much interested in a foreign service career and within a year of graduation I managed to pass the entry test and examinations and was sworn in as a foreign service officer in the United States of America. And since that time I've been with the Department of State and I've been privileged to serve my country both at home and most abroad in places such as Rome and Geneva, Munich and Bonn, but also places such as Khartoum, Azmera, Cairo and Mogadishu. I can tell you from those experiences and over the years, the world has changed and the world has changed dramatically. You all read about it in the headlines. I don't need to go into details. But having seen and lived that experience overseas, I can tell you that change is real and it affects every one of my colleagues, both

in my service and in our sister services of other countries who serve their governments at home and abroad.

The world is a much more dangerous place today. We've all seen that dramatically illustrated with the bombings of our embassies in Nairobi and Tanzania and most recently the tragic bombing of our warship in the Gulf of Aden. When I first joined the Foreign Service, it was not unusual for the Secretary of State to travel abroad with a body guard or two, one or two individuals, just traveling alongside, flying on commercial aircraft. You all know what the Secretary of State does now with the motorcades, the limousines, all of the security protective envelope. It's very much the same treatment that's accorded the President and the Vice President. That in and of itself is an example of how the world has changed. But more importantly the way we operate overseas is no longer in a carefree atmosphere. It is filled with the potential for danger anywhere in the world and we simply can't specify that what we need to be prepared to counter a potential dangerous situations in this area or that area. We have to be prepared everywhere. We can't let our guard down in any given location at any given time. And for that reason, we

have a adopted a very stringent series of guidelines as to how our embassies should be built and constructed and how they should be located. And one of the most important security aspects of our embassy defensive posture is what we refer to as the 100 foot setback. This is a requirement that our embassies must have at least 100 feet from the sidewalk or from the street as a buffer zone, if you will, to minimize the potential damage from any sort of terrorist attack.

As you can imagine, many of our embassies do not meet this requirement because they've been in existence for a number of years and you just don't pick up embassies and move them very easily. And we're also confronted with situations where it was not possible to have a wide selection of suitable sites where our embassies could be located, so sometimes compromises had to be made and in those situations we work very closely with the host government to resolve those problems. In the case of Azerbaijan is an illustration of where we have worked very hard, very closely and very cooperatively with the government of Azerbaijan to meet our requirements. I may say that our requirements at times to the government of Azerbaijan probably appear

to be demands, not just requirements, but we had secured a building which was a suitable building for our embassy, but unfortunately it was surrounded by other residential property, right up next to the property line with the embassy, in other words, no 100 foot setback. And in order to meet this requirement, the government of Azerbaijan at our urging relocated the residents of these properties and moved them elsewhere, demolished the buildings in order to give us this 100 foot setback which is so essential to our security posture.

If you can imagine the disruption that this created, the consternation, the dilemma that the host government faced in doing this it would be as though an embassy here demanded that we clear the site around an embassy on Wyoming Avenue or pick any site in the District of Columbia and physically against their will, move the inhabitants someplace else. That's what happened in Baku. And the government of Azerbaijan really went to a great deal of time and effort and really did something on our behalf that was contrary to the interests of its own citizens.

Now we deal in my office and in the Office of Foreign Missions on the basis of

reciprocity. We feel that the government of Azerbaijan in its request to locate its embassy here in the District of Columbia has done far more than we could ever ask them to to meet our requirements and we feel that we should be no less forthcoming in acknowledging their interest and their right, really, to locate in the District of Columbia in a suitable building and that we hope the Board will take into account not only the legitimate and the proper views of the neighborhood, but also the fact that in this world everything is connected to everything else and the issue today is not just an issue of what is best for the District of Columbia, but the issue is also what is best for the United States and its diplomatic relations with the rest of the world.

Thank you, Madam Chair. I would now like to turn to my colleague, Mr. Mlotek, who would like to address some other aspects of this issue.

CHAIRPERSON REED: Thank you very much, Mr. Strickler.

Did Board Members have any questions of Mr. Strickler?

VICE CHAIRPERSON SOCKWELL: Mr. Deputy Assistant Secretary, one question. What was the time period of the relocation in order to accommodate your

needs, just how long did that take?

MR. STRICKLER: The relocation was under discussion for some time, but the actual relocation, I believe, took a period of six months. If you recall, this hearing was originally scheduled earlier in the year and at that time, the relocation had not taken place and for that reason the request for the delay in the hearing was made. But that relocation now has been completed and the property in terms of the setback is no longer an issue for us.

VICE CHAIRPERSON SOCKWELL: Thank you.

CHAIRPERSON REED: I have one very quick questions and that's in regards to the 100 foot setback. Is that a requirement -- that's a relatively new requirement, you said?

MR. STRICKLER: We've had requirements of various distances before, but this is now established as the iron clad requirement for embassy property.

CHAIRPERSON REED: As of when?

MR. STRICKLER: I don't recall the exact date, but we can get --

CHAIRPERSON REED: Approximately.

MR. STRICKLER: Within the last year or so, subsequent to the bombings in Dar es Salaam, yes, it was subsequent to the bombings.

CHAIRPERSON REED: And this is a requirement, I wasn't sure if you say this was world-wide or in certain areas of the world?

MR. STRICKLER: The threat is global. This is a global requirement.

CHAIRPERSON REED: Okay, thank you.

MR. STRICKLER: Just to clarify, Madam Chair, it would be for new embassies. In the middle of London, for example, we're not going to --

CHAIRPERSON REED: I understand that. I was -- I understood that. I was just wondering if it was only germane to certain localities or if it was across the Board requirement now. Thank you.

Ms. Renshaw?

MEMBER RENSHAW: Yes, Madam Chair, a question for the Deputy Assistant Secretary of State, Mr. Strickler, thank you. You mentioned in your commentary that the world is more dangerous and you talked about the worldwide threat. I would like to know what you are advancing to the neighborhood in the way of the neighborhood security because embassies as we know, are often targets in this country. Chancery buildings can attract attention, unwanted attention. And this puts the neighborhood in a bit of a security bind and I'd like to know what

you are offering in the way of security to the neighborhood.

MR. STRICKLER: First of all I would note that in terms of actual attacks, we've had far more attacks on U.S. government installations, Oklahoma being a prime example than we have had on embassies. I don't recall that any embassies being blown up in recent years. But it's a fair question. The question about security in general. Security for diplomatic establishments is handled with a combination and cooperation of various police elements in the District with the Uniformed Division of the Secret Service, with the Metropolitan Police and with the Bureau of Diplomatic Security. And based on current threat information, additional assets and resources are provided to embassies to counter any perceived threat.

CHAIRPERSON REED: Thank you very much. Mr. Mlotek?

MR. MLOTEK: If I could just amplify for Ms. Renshaw, there has not, in fact, been any attack on a foreign embassy or a foreign diplomatic mission in the United States going back as far as we know. Nevertheless, some missions we evaluate as being more threatened than others, the Israeli Embassy would be

one, for example, and that has a very high level of physical security placed around it. In fact, on a 24-hour day basis.

At various times other missions -- the Chinese Embassy attracts some attention so there is around the clock, 24-hour, what is called a fixed post security there.

Every foreign embassy in this city and every proposed new location for a chancery in this city is reviewed by our security professionals in the Department of State, our colleagues in the Diplomatic Security Service. Every time a foreign government comes to us, the Office of Foreign Missions as they are legally required to do, we refer this request to numerous parties, including the National Capital Planning Commission and others and our security people who send a security officer out there and the security officer evaluates the site and the security officer also goes into the files of the Department of State, what is called the threat analysis data and talks to the threat analysis professionals who are basically intelligence analysts and evaluates what degree of threat Azerbaijan is under.

Now notwithstanding the comment that was made by one Board Member about the security of body

guards who would accompany Ambassadors to various social functions, I hope it will be noticed and made a mention in the record that Ambassador Pashayev from Azerbaijan is here today without any security protection and I have met with Ambassador Pashayev on many occasions, at least 20 occasions since this case first arose, both in the Department of State, in various other locations, the site in question. He has never been accompanied by a security guard. So the government of Azerbaijan as a government, Ambassador Pashayev as an individual, and the United States government as a government, all agree that there is no major or any threat, any significant threat that would warrant any sort of professional or special security protection for Azerbaijan that would set it apart from the 183 other or so embassies in this city that do not have a security problem, leaving aside about five or so that do. But Azerbaijan is not one. And just for the record, we so certified in Mr. Strickler's formal submission to the Board that in fact there is no special security need that applies to this site, so there is no special security need that would apply here, Ms. Renshaw. There's no specific threat or special threat that deserves attention. And the embassy, the

chancery if it were permitted to locate, they would receive the ordinary, routine, Secret Service Uniformed Division protection that all other Foreign Mission locations in the District have which is a roving patrol every couple of hours or so, 24 hours a day.

CHAIRPERSON REED: Thank you, Mr. Mlotek, now for your presentation.

MR. MLOTEK: Right. I would just like to begin by noting that everything that Mr. Strickler testified to is also summarized for the record in his written submission to the Board which the State Department did file in a timely fashion, according to the rules of the Board of Zoning Adjustment.

Let me begin my part of the presentation by stating this, a concern has been expressed here or a question was raised here about how it was that the Embassy of Azerbaijan came to fix upon this property. I think this is a very critical and central issue in this Board's deliberation. The Board should know that this embassy, Azerbaijan, conducted its search for this building in a way which was absolutely exemplary. It was a model of how a Foreign Mission should look for a property. They coordinated with us at the Department of State in the Office of Foreign

Missions every step of the way. They were inordinately sensitive to the concerns of the residential communities in which they might locate and as was mentioned and I would like highlight very strongly because I think it's very relevant to the Board's consideration, their original site, this was their second choice, their first choice which they much preferred was a location which was within the diplomatic overlay, so we wouldn't have had that problem as an extraneous issue to deal with, was in the diplomatic overlay, but was almost immediately behind the now famous property which the Chancery of Benin purchases and received approval from this Board to occupy as a chancery. And this embassy, Azerbaijan, closely observed the progress of the Benin case and even though they believed and we believed that they would have a very good chance of getting approval in that site, based upon the fact that it was in the D-overlay and based upon this fact that it was an embassy not much greater in size than Benin and based upon the fact that the building that they wanted to occupy was bigger than the property that Benin ultimately occupied and had more parking and based upon, notwithstanding the fact that this Board had approved it, which would have increased the

chances, nonetheless the Ambassador because he was sensitive to the concerns of that community which regarded saturation, if the Board will recall, that was the issue in the Benin case, that the opposition brought to the Board, that the area in Sheridan Kalorama was quote over saturated, if that's not a redundancy, saturated with chanceries as it was.

So the Ambassador withdrew from the deal. He withdrew and began a search in other parts of the city in consultation with us. And what we emphasized was what we emphasized to all chanceries, if they're good enough to come to us and consult with us beforehand, not every chancery does that, but this chancery did. We emphasize the fact that it is important to find a location that does not have -- if it is in a residential area, that does not have private, residential homes in close proximity, particularly not abutting the chancery, that are so configured that they could allege, rightly or wrongly, that they could allege the private homeowners could allege some detrimental harm to come from the embassy. That's number one. And number two, we urged them then to look beyond the immediate abutting properties, to properties that are 50 feet, 100 feet, 200 feet away and analyze, along with us,

whether any specific harm or any specific detriment could be said to fall upon those private residential property owners from the presence of the embassy. And then the third step is that we look around both at the zoning square itself which is the D-overlay analysis, the famous one third, two thirds test about which you will hear and we also look within the general 100 foot, 200 foot, 200 foot being the BZA regulatory notice zone, 300 foot, 400 foot, to analyze what else is in the neighborhood. Obviously, the Department of State would not countenance and my boss, Mr. Strickler would not countenance a foreign chancery seeking to locate in an area which was pristinely residential and which would interject for the first time an office presence in an area that didn't have any. So that goes out of the question.

This particular site met all of the search criteria that I've just described. There is no private resident that lives on either side of this embassy, front, rear or side. The one private residence that does exist on -- it would be I think the east, no the west of this building, toward Massachusetts Avenue, is a residence, but it houses diplomats of a foreign country, the Vatican. And we checked with the Vatican to find out whether they

would have any opposition to an institutional use such as a chancery located next to them. They said no. Incidentally, I believe that they had sent a letter of support, as residents to the file in this case supporting the Application of Azerbaijan as has the Ambassador of Norway.

In addition to that, we noted that there were foreign chancery institutional uses elsewhere throughout this neighborhood. This would not be the first one. In fact, in the zoning square itself we calculated that even though for some strange and bizarre reason of how the D-overlay was mapped, this particular site did not get mapped into the D-overlay. We felt that if it were mapped again today, it would fall into the D-overlay.

Now that in itself is not a critical issue for us, but it's an important consideration because in this zoning square you have a chancery of Finland, a chancery of the Vatican representation here and their residential facilities. So in other words, in this zoning square, precise zoning square, there is no, I repeat, no private civilian use. There is only diplomatic use and the preponderance of this diplomatic use is chanceries. So that met the criteria.

In addition, almost directly across the street from this site you have the Chancery of Norway, which is a fairly large operation. And down the street from it, in the other direction toward the National Cathedral, you have the Chancery of Belgium, which is a very large operation. Then, of course, you have the National Cathedral itself which is an institutional use and the Chancery of Cape Verde a couple blocks north of the site.

So in other words, when we looked at this site and when the Ambassador of Azerbaijan looked at this site, he saw a neighborhood that was residential, but not pristinely residential, not solely residential. There's a lot of institutional uses there.

And this fact, combined with the fact that this embassy is so small in comparison to other -- the other embassies in the area, for example, it's much smaller than the Norwegian, the Belgian or the Finish, combined with the fact that it had a lot of parking on its grounds, combined with the fact that the parking situation in this neighborhood itself is not a very difficult situation and I will say more about that later, those factors all combined, led us to the conclusion that this was an appropriate site

and the Ambassador proceeded on the basis of this.

But then even further, it's very essential for the Board to note that the Ambassador followed each of the steps that we commended to him, with respect to dealing sensitively and openly and transparently with the neighborhood. Almost immediately after purchasing the property, the Ambassador held a reception which he invited all of the neighbors within about a 200 to 300 foot radius. Many of them are sitting here today in opposition. They all were given a tour of the facility. They were all shown how the facility was going to be carved up into individual offices and were able to see with their own eyes that once this was done, there would be virtually no room left for entertaining. I mean they could see from the evening that they came to the chancery, that just 40 or so neighbors who were invited there, it was extremely jammed and that it would be even more so after the internal renovations that the Embassy wants to do to convert it to office use. So that regardless of what the Embassy's intentions would be, it's just physically impossible and the neighbors could all see this for themselves, it's just physically impossible for them to hold any large scale social function in

this property at any time.

But then perhaps the most important event in this sequence of events is that the Embassy agreed as you heard, in an unprecedented fashion to a whole list of conditions which no chancery has ever agreed to before and some of which frankly make the State Department a little uneasy. We've never had any chancery case in this city where a chancery has agreed to limit the number of social events that it holds. No American embassy would ever agree to that overseas and that's what makes us uncomfortable about a chancery doing it here because they could later come to us and say well, look in our country you can hold as many as you want and here you made us accept these conditions, so we have to make it very clear to them that we're not making them do it. If they want to do it on their own volition, all right, but they have to understand that we would never agree to this in their country and yet they have agreed to it. And that's a very material condition.

In addition, they've agreed to a limitation of how many people would inhabit the building. That's also a first. We've never had that before in any chancery case. A very major concession which again makes us somewhat uneasy because we don't

accept any limitations on how many American diplomats can be present in an American embassy overseas.

And then last of all, the Embassy attempted on repeated occasion, both directly and as a result of recommendations that were made by the Office of Planning representative, Mr. Jackson, attempted repeatedly to negotiate with the community, the people who were in opposition and ask them what conditions they wanted to see, whether there was any room for compromise at all. This is something, of course, that this Board in all cases historically urges that the parties to such land use disputes try to reach an accommodation and try to negotiate in good faith to reach a compromise and the Embassy did this on repeated occasion and were given a cold shoulder and an absolute stone wall and an absolute refusal to discuss any of this. So the opposition simply said that their opposition was absolute and uncompromisable.

When you take all of those things that I just listed and combined them in total, you see that the Embassy did what I think this Board would want a chancery to do in seeking to locate and I think that effort should be recognized.

CHAIRPERSON REED: Mr. Mlotek, if I

understand you correctly what you're saying is the decision to purchase that particular site, that particular building at that site was predicated upon the application of a great deal of criteria that would not be the case in the other sites that would have been to some other observer appropriate for this particular applicant?

MR. MLOTEK: I would say yes.

CHAIRPERSON REED: Uh-huh.

MR. MLOTEK: They had a very competent professional real estate broker who brought them all sorts of properties all over the city and I think they went down the list and discussed these with me and crossed one of them off the list after another.

CHAIRPERSON REED: In other words, it wasn't so much the building itself that was being considered, it was the siting of that particular location.

MR. MLOTEK: Absolutely.

CHAIRPERSON REED: Or that particular -- it was a siting of the strategic siting of that particular building that was of paramount importance over and above just a building that would have been in the mixed use diplomatic overlay.

MR. MLOTEK: Absolutely correct.

CHAIRPERSON REED: Okay.

MR. MLOTEK: Absolutely correct. Strategic in the sense of land use. Strategic land use analysis which we do in all cases and we did here.

That is correct.

CHAIRPERSON REED: Thank you very much.

MR. MLOTEK: Now with respect to several issues that were raised by the Members of the Board in response to the presentation of the applicant, I'd like to point out the following. With respect to security I think I responded concerning the security of most Ambassadors here. They do not -- the overwhelming majority of foreign Ambassadors do not go about accompanied by body guards. There are a few that do, but the vast majority of the 185 or 186 that we have do not.

It should not escape the Board's attention and I want to make sure that the Board heard this correctly, that what we are speaking about here is four events a year. The Embassy of Azerbaijan, like many other small embassies, this is a very typical pattern that you see with every embassy from the United Arab Emirates to Benin, to Togo, they cannot accommodate large social functions

in their chancery facilities. And what they do for these large social functions such as when they have a visiting President or a visiting Foreign Minister, or their National Day or their Armed Forces Day or any of the other host of representational events that they have, they rent space downtown. The National Day of Azerbaijan this year was at the Willard. I am sure that the Willard Hotel must host at least seven or eight or nine functions a year and the other hotels likewise. Nigeria which does have a large chancery and is a fairly large diplomatic mission here hosts its National Day every year at the Shoreham Hotel. That is the typical pattern. That is what we are talking about.

Now other missions which have been built to spec, so to speak, the French Embassy, the German Embassy, the new Italian Embassy, these types of facilities that are built with the intention of having large entertaining space, they do, it is true, hold the vast majority of their functions and a large number of them in their chancery space. But that is not the typical pattern at all and it's certainly not the typical pattern for small sized chanceries and certainly not the typical pattern for small sized chanceries that are located in buildings that were

essentially built as residences.

So to try to ease your concern somewhat about what the level of activity might be here, might emanate from here, from this property, if it were a chancery, that could inflict harm or detriment to the community, that has to be kept in perspective. Four functions a year that they are committing themselves to limit themselves to, none of which would be very large in a relative sense to other chanceries, even in this area, larger chanceries.

And in that conjunction also, we come to the issue of parking which is, of course, at the heart of all neighborhood concerns when it comes to congestion and to institutional impact. It should be understood that in this neighborhood the parking situation is not an impacted one. I personally commute on this street, 34th Street at least four to six times a day. My offices are at the International Center, near UDC at Connecticut and Van Ness. I go up and down 34th Street coming from my house and going back. Every day, almost, I visit the main Department of State facility and I commute on 34th Street to Mass. Avenue and get on Rock Creek Parkway. Sometimes in the middle of the day I will go home for lunch or run an errand and I'm on this street as

much as any of the -- I would dare say of the neighborhood residents who are here today and I have made a point of looking at the parking situation and I have gone to at least six or seven meetings with the Embassy at the site and parked my car there during the day and never had the slightest difficulty. And in this regard I would merely cite in conclusion on the issue of parking that when I went to our last meeting yesterday, which concluded about 2:15 in the afternoon, as I was pulling out my parking space, immediately in front of the embassy, one of the opponents in this case, Dr. Ellwood was pulling in to park in front of her house. She had no difficulty at all finding a parking space. She sidled her car right into a space directly across from her house in the middle of the day when the peak of activity of the other chanceries in the neighborhood would occur. And as you've heard the testimony indicate, the Embassy of Azerbaijan is not going to bring to this site any significant, any measurable even, additional measure of parking, since their parking for their employees will be accommodated on site, and their visits are very few.

Now let me come then -- if there's any question on the issue of parties or entertainment or

parking?

CHAIRPERSON REED: Yes. Whatever social activities that will occur there will occur before 5 o'clock? That was one of the conditions, I think that was proffered.

MR. MLOTEK: No, I don't think that's --

CHAIRPERSON REED: Before 5 or after 5?

MR. MLOTEK: I don't think, no, I don't think in the conditions that -- the conditions I think that they're willing to agree to are the ones that were listed by the Office of Planning in its report. And I don't think that they committed in that to the four social functions.

CHAIRPERSON REED: On page 12 of that report, Mr. Mlotek it does say that, number 2, "No social events should be permitted at the chancery whatsoever after 5 o'clock p.m."

MR. MLOTEK: That, I think, is something -- I think those are a separate set of conditions which were opposed, proposed rather, by the opponents and they were proposed to Mr. Jackson.

CHAIRPERSON REED: Right, I see now. That was -- I had just glanced at it. That was from the community that had been included in their report. They were just basically mentioning that.

MR. MLOTEK: Correct. Those aren't the ones that were --

CHAIRPERSON REED: That were being proposed by the Office of Planning. I see now.

MR. MLOTEK: Right. The ones that the chancery has agreed to are the ones that were proposed by the Office of Planning.

CHAIRPERSON REED: On page 14.

MR. MLOTEK: Yes, right. Well, it's repeated twice. It's both the Office of Planning included it on page 2 --

CHAIRPERSON REED: 2 and 14. They repeated it.

MR. MLOTEK: Right.

CHAIRPERSON REED: I think that they're the same, aren't they?

MR. MLOTEK: And it should be noted in this regard, I've already discussed the difficulties we have with the way the OP report was prepared. It should be really highlighted the Office of Planning has had two bites at this apple. There was a very extensive Office of Planning land use analysis of this proposal done in June by a predecessor to Mr. Jackson, Mary Vogel whom you all remember because she sat here on the dais with you. She came to the site.

She had extensive conversations with them. She discussed the idea of various conditions, so that whole discussion was held at that time and she went back to her office and began preparing a report. Now in the interim, of course, she left, but Mr. Jackson then sort of reinvented the wheel here and studied everything again from the beginning.

But the main thrust of what I'm saying is that the chancery, the Embassy was exceedingly cooperative with the Office of Planning, in enabling them to see the site and to discuss it with them and to discuss the issue of conditions with them, as they would have been prepared to discuss it with the neighborhood itself, had the neighborhood been willing.

CHAIRPERSON REED: In regard to the -- you say that in your opinion parking is not a problem, would not be a problem with these additional -- the four social activities. Nonetheless, are you saying that you would object to a parking management plan?

MR. MLOTEK: No. No.

CHAIRPERSON REED: Or looking at the map, the traffic going into this particular site would enter on 34th Street or Fulton?

MR. MLOTEK: I think the majority of people would come from Massachusetts Avenue on to 34th Street.

CHAIRPERSON REED: The entrance is on 34th Street?

MR. MLOTEK: The front entrance to the building is on 34th.

CHAIRPERSON REED: Okay, then behind the building where the park land area is?

MR. MLOTEK: There is no parking there to my knowledge. It's a very narrow -- Fulton is very narrow where it goes into Normanstone.

CHAIRPERSON REED: There's no parking allowed on Fulton.

MR. MLOTEK: I don't believe. Someone from the neighborhood I'm sure can verify this, but as I recall.

CHAIRPERSON REED: So the accommodating parking would be along 34th Street and -- just 34th Street. I don't think there's too much on Mass. Avenue.

MR. MLOTEK: No, I think the majority of parking would be on 34th Street on those four occasions.

CHAIRPERSON REED: I think that a parking

contingency plan in the event, just to address or perhaps diffuse or alleviate any perceived congestion would be good now. If you have a contingency plan and you don't need it, fine, but if in fact it does come to the point that there is a need for it, then you have a plan in place to address that and that would diffuse the opposition greatly as to parking problems.

MR. MLOTEK: The State Department certainly would have no objection to leaving the record open to do a parking management plan. In that event though, I would urge that at some point, perhaps if that were what the Board had in mind, it would give some signal or some indication to the Applicant about what kinds of things it would like to see in the parking plan to make sure that they address the needs. But with respect to parking, I would beg the Board, please to consider one final issue that affects parking for all of us in Northwest, where I live in Georgetown where the parking is much worse, as you know.

We benefit, all of us, the residents of Northwest, we benefit from the District of Columbia's residential parking permit program. No foreigner, if you will, no outsider, no interloper who would dare

come on to the streets of the residential areas of the District of Columbia who does not have a residential sticker for that zone, for that ward in this case, Zone 3, I'll get to the diplomatic license plates --

CHAIRPERSON REED: Wait a minute, wait one second. Now I've kind of been lenient as far as decorum is concerned in this particular hearing room. Now I ask that there be no speaking out or speaking from the audience. If you have something to say then I ask that you wait until the appointed time that you will be given an opportunity to speak and in the event there is any further disruption with that speaking out, I will have no alternative but to ask you to leave.

Thank you.

Okay, Mr. Mlotek?

MR. MLOTEK: The residential parking permit program prohibits anyone from parking on the street for more than two hours or else you get a ticket. Now, I think in this particular street, in these particular blocks, the limit may only go until 6:30 or 8:30, I'm not sure. But what is clear is that the neighbors, the residents of this community have the right to ask the District to extend this

until 10 o'clock at night and make it go 6 days of the week as I understand it. That's what we have on my street. Paradoxically I also live on 34th Street. Same street, but a little -- on the other side of Observatory Circle in Georgetown. That's what we have there. Nobody can come. So if you have a party and I mean frankly although some people just come in and out, a lot of people stay for more than two hours. They're going to get a ticket and the embassy, if it's going to be responsible, act responsibly towards its invited guests, is probably going to tell its invited guests in the invitation, as I've seen in many invitations that I've received from embassies, you know, please be advised that parking is available in the surrounding residential streets, but you are subject to a two-hour limit and I think when those kinds of things are taken into account, and what I have seen, and I want the Board to accept this as personal testimony, the opposition is certainly free to enter conflicting testimony, but based on what I have seen traversing this street at all times of the day and night, because I go to many embassy functions also in that area at the Embassy of Finland, for example, I have never had the slightest difficulty finding a parking space on 34th Street.

And I can't imagine that the residents do now or that they would at a chancery the size, the small size of Azerbaijan if they moved in there. But as regards to the parking plan, we don't have a problem with it.

CHAIRPERSON REED: Thank you, Mr. Mlotek. I think that we will definitely hear from the residents and they're the ones who live right there. They will definitely give us an update as to what the parking situation is around that particular area.

MR. MLOTEK: I have to cover one issue, I'm sorry, but it's been raised in this case. I know the time is of the essence, and I don't want to have to address it, but it has been raised and that issue concerns the diplomatic overlay.

As I hope the Board is aware, there is nothing that is more misunderstood in the zoning law in the District of Columbia than the so-called diplomatic overlay. And it has been unfortunately raised in this case in a way that sort of obfuscates what is the role and the duty of the Board to perform here and ultimately adjudicating the case.

Specifically, there are some individuals or persons including, it seems the Office of Planning from reading its report, that believe that the fact that a mere fact that a property is not in the

diplomatic overlay is in and of itself a grounds for denying an application. I think the Board is aware of the State Department's position in this matter. The State Department's position which we have incidentally noted very carefully in our written submission and I would flag the Board's attention to it. It is covered in our written submission.

The diplomatic overlay has no formal role, I want to emphasize, it has no formal role in the statutory process that is created by the Foreign Missions Act. That is the process that you, the Board Members, participate in. The diplomatic overlay, for example, is never even mentioned once in the Foreign Missions Act. The diplomatic overlay exercise was an attempt by the District government, in conjunction with the National Capital Planning Commission to try to map areas of the city, residential areas of the city, to take an inventory or a census, if you will, of the extent to which nonresidential uses had intruded into various residential neighborhoods. And then to say that this could act, I repeat, it could act -- it doesn't have to act legally, but it could act as a general guide to the Board in deciding whether "an area of the District was appropriate or not appropriate for

chancery location."

Now as I have already indicated, we feel very strongly and the staff of the National Capital Planning Commission agreed with us in the letter which I think you have seen, that if this area, meaning the zoning square, were mapped today under the same criteria that was used in the diplomatic overlay exercise, that is one third nonresidential to two thirds residential and if exceeded one third nonresidential, it would be included. That this site or this zoning square would today qualify as being in the D-overlay.

The Office of Planning took exception to this based on the visit that I described to you which we took exception to because the Office of Planning representative spoke to someone, I don't know whom, in the Vatican Embassy. I'm not sure that this person was even qualified to speak on these issues, but spoke to someone there and inferred or deduced from what this person said that, in fact, the Vatican chancery and it is a chancery, has a considerable amount of residential use there. And that is true. They do have people living there. But that is beside the point I want to emphasize, for two reasons. One, even if it is important for the result in this case

that the site be in the D-overlay, even if it is important, then it should be understood that it is irrelevant from the standpoint of D-overlay analysis whether there are, in fact, some people living in what is a chancery. The Vatican property is carried on the books of the Department of State as a chancery. Under the Foreign Missions Act, it is a chancery. Why? Because it was in chancery use as of October 1, 1982 and therefore is grandfathered as a chancery for all eternity, I guess which is important to people in the Vatican, issues of eternity, but the key fact that has to be understood is that even if, let's say 50 percent, let's take a figure, 50 percent of the gross area of the Vatican chancery were today being used for residential purposes, they have a perfect legal right under the Foreign Missions Act tomorrow morning to change that to 100 percent. They are a chancery. They don't require any further zoning approval with respect to the use of their existing buildings, not new construction, but their existing buildings. So tomorrow morning they could find houses for, residences for all of the people who are living there now, either in the District or elsewhere, and turn that building 100 percent into chancery use without anybody having anything to say

about it. It's their absolute right. And therefore, it makes no sense legally and no sense from a land use policy perspective to say that we are going to fine tune, we're going to conduct a census of the Vatican property that goes room by room, floor by floor, and calculate whether this proportion is residence or this proportion institutional. It just doesn't work.

Having been in that building myself, I can tell you that the vast preponderance of it is nonresidential and one failure or error that Mr. Jackson made in his study is that he counted as residential very large areas that are meant for entertaining visitors, official visitors, not residential visitors. But secondly, the diplomatic overlay is not the alpha and omega here. It is not the end all and be all. The Board has to exercise under the Foreign Missions Act the Board is intended to exercise its own independent analysis of what the character of this neighborhood is, whether it is in the D-overlay or outside the D-overlay.

And in this regard, I point the following out as I've pointed out in all the other cases that I've been involved in. Chanceries are a part of Washington. Washington is the seat of government.

Chanceries have been here from the beginning, they always will be. It is essential that we find a place for them. Like police stations, like fire stations, like schools, nobody particularly wants to have one immediately next door to them, but the common good, the common public good both for the District as an entity as well as for the government of the United States is that they have to be sited somewhere.

So then the question becomes where? Where should they be sited. In the Benin case, we all recall, even though the area was in the diplomatic overlay, the site was objected to because there were too many there already. And I said in that case the difficulty was going to come before the Board sooner or later that we were going to find a location in response to the concern that the Board felt about impact and saturation, that the State Department and a foreign chancery might find a location that was not in the D-overlay and then the objection would be well, there are not enough chanceries here, in other words, a chancery cannot locate where there are too many chanceries and a chancery cannot locate where there aren't enough chanceries and in the end where could they locate?

The final spin on this is that we have

been avidly, the State Department that is, we have been avidly now investigating and have decided internally that we should, in fact, proceed to allow chanceries to leave the District of Columbia for the first time in our history. There's been a policy in place, we no longer fill this policy. It's justified. We are in consultations now with the National Capital Planning Commission to see how we can amend the comprehensive plan so that that will be in sync with what we want our policy to be.

But even there, I want to emphasize, ladies and gentlemen, even when it comes to the subject of allowing chanceries to leave the District which many people in the District would feel very -- they would shout hallelujah about, even there there is opposition. To our people, to our great surprise and shock, there are a lot of people about who believe the chancery shouldn't be allowed, the State Department should not allow chanceries to leave the District.

So now behold the situation that we have. Chanceries should not be permitted to locate where there are too many chanceries already. Chanceries should not be permitted to locate where there aren't enough chanceries already. And chanceries should not

even be allowed, if they can't find a place within the District, to move outside the District.

There will be opposition, my point is. There will be opposition of chancery location in each and every case. But we count on the Board to try to analyze the specific land use configuration that we analyzed before asking, before recommending the chancery to proceed and that the chancery analyzed and that its zoning council analyzed and not to conclude the adjudication on the basis of some artificial distinction such as the diplomatic overlay. It is merely a guide.

Before concluding I wanted to ask Mr. Sockwell if he wanted me to address the issue of enforcement of conditions, I know that you had raised.

VICE CHAIRPERSON SOCKWELL: You might want to do that, just briefly.

MR. MLOTEK: Conditions are enforceable. They're enforceable by the Department of State. We have a specific -- in the Foreign Missions Act, a specific statutory directive that says that the Secretary of State shall require substantial compliance with D.C. building and related codes. That includes in our interpretation, that includes

zoning, Board of Zoning Adjustment orders that contain conditions. So chancery would be required to comply with it. Now with respect to the number of people whom they would have employed there, that is a matter of public record.

In most cases, Mr. Sockwell, the cases that you refer to, we don't monitor this on an on-going basis because as I said, this is the first case ever that a numerical limit had been imposed. So you are correct, but correct in sort of a backhanded way. We don't check how many people are employed by each and every embassy because no other embassy has a limit except the old Soviet Embassy did when we had -- during the Cold War and those you better believe we did check. And incidentally, I think the Cubans also, we do check the Cubans because there is a numerical limit there for bilateral reasons.

But no other -- for land use reasons, there isn't any. This would be a first and if it would make the Board feel more comfortable that we would maintain some on-going or regular check as to how many employees were employed there, that certainly is something that we could consider doing and I think we would. But the bottom line is that any member of the community can obtain that

information. It's public information, cna go to the Office of Protocol and ask how many -- or the Office of Foreign Missions now, I guess, with the transition, we have that information as well. And ask how many accredited employees are there at the Embassy of Azerbaijan. It's public record. It can't be concealed.

CHAIRPERSON REED: Okay. Thank you very much, Mr. Mlotek.

Now this certainly has taken up a lot more time than what we had anticipated. I guess I should announce that -- how many people are here for the Catholic University case? Okay, obviously, we didn't get to that this morning.

(Laughter.)

And we have still to complete this case which will include the Office of Planning Report and the folks in opposition and support.

There are no other people in support of the case, Mr. Mlotek?

MR. MLOTEK: I'm informed that there are two citizens of the District of Columbia here who are in support.

CHAIRPERSON REED: All right.

MR. MLOTEK: In addition to the letters

you received in support.

CHAIRPERSON REED: All right, thank you. So those who are here for the Catholic University case that will not be, unfortunately, be heard until after lunch and we do apologize for that, but there's just no way that we can anticipate how long a particular case is going to take, so rather than your having to sit here and endure this hearing, you can go ahead and come back. We will probably break for lunch at approximately -- what do you think, around 1, 1 o'clock and we'll come back around 1:30. That's all we can tell you at this point. At least you can go get lunch or do something else if you'd like.

Now in regard to this particular case, we come now to the Office of Planning Report and we have to address that and have to take an assessment as to whether or not we need to take a break, a short break before we -- a short recess, Ms. Renshaw?

MEMBER RENSHAW: Yes. A short recess would be appreciated.

CHAIRPERSON REED: They're asking for a short recess because we've been here since just before 10 o'clock this morning and we're going to take just a 5 minute recess and we'll return and then we'll go into the Office of Planning Report or how

we're going to address that.

Thank you.

(Off the record.)

CHAIRPERSON REED: The hearing will please come back to order.

Mr. Mlotek and Ms. Giordano, can you please come up to the table. We're going to address the issue of the Office of Planning Report and waiving the record. And basically, we think that having discussed this during the break with Corp. Counsel that because the Office of Planning Report is the representation from the District of Columbia's Office of the Mayor, that we cannot not hear their report, not take their report. However, given the fact that it was late is an issue we have to address, so that you would have the opportunity to be able to respond to that report as well as the opposition. It was determined that it would probably be better to continue this case to a date certain to allow the Office of Planning to make any changes that they deem necessary and to get the report to the Applicant and to the State Department and the opposition so that everyone can be on the same page as to the report and the report being submitted in a timely and correct manner.

There were two dates that were given and they were --

MS. KRESS: October 24th in the morning, about 10'ish, you've got two preliminary matters so you could --

CHAIRPERSON REED: Next week.

MS. KRESS: A week from today at 10 o'clock or December 5th at 1 p.m.

MR. MLOTEK: Just to clarify, this would be in the nature of a hearing or --

MS. KRESS: A continuance of this hearing.

CHAIRPERSON REED: In other words, we would stop the hearing at this point.

MS. GIORDANO: I think they are because I think we submitted July 26th. We need to make sure that the 6-month time period gives you enough time.

CHAIRPERSON REED: If it's a week --

MR. MLOTEK: I'm confused. Are we talking about two separate things here? We started off talking about the Office of Planning Report. Is the

--

CHAIRPERSON REED: This is all about the Office of Planning Report.

MR. MLOTEK: So this is an additional hearing to address the issues of the Office of Planning Report?

CHAIRPERSON REED: Well, it's a continuation of the same hearing because you have not heard any -- you will not hear -- we will not hear the Office of Planning Report today.

MR. MLOTEK: I see, but we'll go forward with the rest of the case.

CHAIRPERSON REED: Of course.

MR. MLOTEK: I misunderstood completely. I'm sorry.

CHAIRPERSON REED: This is the segment now where the Office of Planning would give their report. However, given the fact that they was such strong objection to their report, then we had to kind of caucus a little bit and decide how to address the problem because of the fact and there was a dilemma because they have to give a report. And the other thing is if that would be okay, we could decide on a date certain, preferably next week that we could then move forward with the Office of Planning Report, but also in deference to anyone who is here today who cannot come next week, we would then allow those persons to testify, the persons in support, Ms.

Giordano, if you have persons in support who may wish to give their testimony while they're here today we would be willing to allow them to do so or the persons, people in opposition, however, we would think that the Office of Planning Report being so crucial to that position, that you may want to wait until the Office of Planning can give their report, if it's next week, can do so. Yes sir, come up to the mike, please.

MR. SNODGRASS: I realize -- Francis R. Snodgrass. I reside at 2804 34th Street which is diagonally across the street from the subject property. I realize you do not have any wonderful solution to your current problem that you have an agenda for the afternoon. I think it might be appropriate if you would permit us just a few minutes before you adjourn this, if that's what you decide to do to make a couple of remarks on some factual statements that have been just been made this morning. I don't know my schedule for next week at the moment, but I will do my best to come back then or the 5th of December or whatever date it is that's decided upon.

CHAIRPERSON REED: Okay, let me address that for just a couple of minutes, Mr. Snodgrass?

MR. SNODGRASS: Yes, Madam Chairman.

CHAIRPERSON REED: What I was trying to ascertain was if, in fact, you'd like to give your remarks today you can do so, or next week, but you can't do both, one or the other. It's up to you, it's your choice.

MR. SNODGRASS: There were some of the factual statements that were made today that I hesitate to leave unchallenged for a week, but I wouldn't want to take the time. For example, it was stated that the --

CHAIRPERSON REED: No, no, no, no. But why do that? It doesn't matter. Exactly where we stop is where we're going to stop. We're not going to in any way address anything else that pertains to this particular case if we continue it. So we would pick up just as if we were still doing it today and you would have the opportunity to address it at that time.

MR. SNODGRASS: Well, I don't know whether Ms. Doggett has any difference. We will do whatever you think appropriate.

CHAIRPERSON REED: All right.

VICE CHAIRPERSON SOCKWELL: I think it would probably be more coherent for you to wait until

the following hearing to bring all the issues up together.

CHAIRPERSON REED: Are you all going to make a decision as to whether or not the persons in support wanted to go ahead with their testimony today?

(Pause.)

MR. MLOTEK: It's just the issue of the date.

CHAIRPERSON REED: The 5th of December? So it would have to be next week, if that's okay.

(Pause.)

MR. MLOTEK: All right, we can go for the October 24th.

CHAIRPERSON REED: That includes any persons in support who want to speak at that time too?

MR. MLOTEK: Inasmuch as they came here and took time off and --

CHAIRPERSON REED: I proffered that to them as an alternative to coming back next week. They have three minutes apiece and we can do that today.

MR. MLOTEK: I think they would prefer to do it. I'm not speaking for them, but since they're

here.

CHAIRPERSON REED: Then let's do that, the three minutes apiece for those persons in support and then everyone else from this point on, it's the Office of Planning Report or any other government report and then persons in opposition and then the Applicant will have closing remarks.

MS. BAILEY: Madam Chair, you forgot the ANC.

CHAIRPERSON REED: I'm sorry, you're right. That's extremely important. The Office of Planning and any other government reports which would be the ANC -- of course, the ANC would have an opportunity to speak as well.

Can you come forward and to the mike, please. Name, address.

MS. DOGGETT: Rosalyn Doggett, I'm with the ANC, 2702 36th Street, N.W. I just wanted to know what time you had indicated on the 24th.

MS. KRESS: I think 10 o'clock. They have two preliminary motions that the Board needs to handle and I would guess about 10 o'clock to 10:15 is when the hearing would begin, a week from today.

MS. DOGGETT: Okay.

CHAIRPERSON REED: Be here at 10 o'clock

and we will take it up at that time. Okay, persons in support. I think there are three people. Would you like to come up to the table at this time, and give us your testimony.

All three at the same time, please. There are only two people, okay, sure.

MR. FRANKLIN: Good afternoon, Madam Chair and Members of the Board. Thank you very much for this opportunity. I appreciate your fitting us in.

My name is Shai Franklin. I'm a resident at 2555 Pennsylvania Avenue, N.W. And I vote in the District in Ward 2.

I feel when Mr. Mlotek said that no one wants to have an embassy next door I would actually take issue with that. I live across the street from a facility that's being built for the Egyptian Defense Office. As I understand it, there was no opposition to that being constructed. Many people who live in the District of Columbia, especially in this part of Northwest where I live and up to where the Naval Observatory is, I think live here because of the world class nature of this city, much of which depends on the cultural and business opportunities that are brought to us by having embassies in the

District of Columbia. I think it would be very unfortunate if embassies started to leave the District as businesses have been leaving the District.

Mr. Strickler said that it's not a matter of what is best for the District of Columbia. I would take issue with that. I think that this is best for the District of Columbia. I think this is very good. I wish that we could have more embassies engaged in the kinds of cultural and political activities that the Embassy of Azerbaijan has been engaged in, even from their currently temporary facility.

The people of Azerbaijan and the government of Azerbaijan are known for their hospitality, culture, independence, tolerance and pride. They lean to the West. They've been conducting outreach to the American people and if they are here in the District of Columbia it makes it much easier for them to do that.

Ambassador Pashayev who I know personally and I also know by reputation is a man of honor, who acts in good faith. He's widely respected in the D.C. community and he seeks to outreach to people like us who live in the District of Columbia.

Our own next door neighbor at home happens to be in charge of all State Department properties overseas and I should mention that I'm not an employee or past employee of the U.S. government or the Embassy of Azerbaijan or the government of Azerbaijan.

I spoke of my next door neighbor, however. Upon returning from a visit to Baku in Azerbaijan last year, before I knew of this situation here with the embassy in the District, I talked to her about the situation of our embassy in Baku because I could see that it was a very precarious siting, given the events that were happening last summer, as you will recall. And she confirmed to me that this was a very serious, very difficult situation, politically as well as physically and I'm very gratified that I was able to come here today to speak to you as a D.C. resident, as somebody who understands the importance of having this embassy here.

Thank you.

CHAIRPERSON REED: Thank you very much for your testimony.

MR. WOOD: Good afternoon, Madam Chairman and Members of the Board. My name is James Wood and

I'm a resident of the District. I live in Georgetown on 33rd Street between P and Volta. And indeed, I am aware of various intrusions in neighborhoods that parking can create because we live right around the corner, my wife and daughter and I from the Georgetown Club and on a continuing basis both day and night when they're open, their valet parkers come and take our parking spots. And this is something we resent a great deal and which we think is probably dangerous.

In any event, it is an intrusion and if people were living there, it would be much more of an intrusion, but we seem to live with it because no one will do anything about it.

But I want to talk more about the reciprocity issues involving Azerbaijan and the United States from the perspective of having worked in the private sector and for a number of years I represented the New York Stock Exchange on opening doors to foreign markets, predominantly countries such as China, the former Soviet Union and of course, Azerbaijan is part of the -- was part of the Soviet Union, and Central and Eastern Europe.

I think there's no question but in the private sector as well as in the government sector

that these issues of reciprocity are extremely important to our country and I know I can tell from the comments that this Board is very sensitive to that and I don't want to belabor the point. I just want to give a different perspective from say outside of government, that I can tell you from dealing with the Peoples Republic of China, with Russia, with other countries that are part -- that formed a part of the former Soviet Union and various countries in Central and Eastern Europe, these are important issues and I ask the Board to continue to be sensitive to these issues and bear these in mind as you reach a decision.

And also bear in mind the great importance that the country of Azerbaijan will have to the United States, not just because of what was mentioned by the first speaker because of their culture and their friendship, but realistically because of their tremendous amount of oil which probably exceeds $1 trillion by today's market or maybe $1.5 trillion with inflated prices, so it's a tremendously important relationship to the United States on a number of different levels and I simply ask the Board to keep that in mind as they proceed.

Thank you very much.

CHAIRPERSON REED: That's amazing.

(Laughter.)

That's amazing that you both finished right on the buzzer. Thank you.

VICE CHAIRPERSON SOCKWELL: We'll let you do witness training courses in the future.

(Laughter.)

CHAIRPERSON REED: Thank you so much for your very insightful testimony here today. We appreciate your time to come in and to testify before us.

Any other comments from Board Members? Okay, well this will conclude this morning's hearing as to Azerbaijan -- I'm getting used to it coming off my tongue. I'm sure I'm going to be saying it quite a bit in the future.

MS. BAILEY: Madam Chair, can I please ask something. There were several things that were discussed during the course of the hearing and I just wanted to remind you or ask you if you would like to have those things submitted prior to next week. And that is the floor plan of the building, possibly a traffic management plan, the specification for the signage, those were some things that you had indicated an interest in getting a copy of and I just

wanted to notify the Applicant, if you wanted to provide those prior to next week.

MS. GIORDANO: Sure. We can submit the floor plan right away and I can send one to some of the neighbors too.

CHAIRPERSON REED: And also, I'd ask for a copy of your existing maintenance and landscaping contracts that you have.

MS. GIORDANO: Yes.

CHAIRPERSON REED: That would be great. Those are the only things?

MS. BAILEY: The signage, specification for signage and a traffic management -- possibly a traffic management --

CHAIRPERSON REED: Well, you had already mentioned those two things. But in addition to those things and the maintenance and landscaping contract, was there anything else?

MS. BAILEY: No.

CHAIRPERSON REED: Board Members, is there anything else you can think of?

MS. SANSONE: Madam Chair, I had discussed with the Applicant's attorney, there seems to be a little discrepancy in the maps that were submitted.

MS. GIORDANO: It looks like a couple of lots were not colored and I can submit a new set of those and share one with the neighbors, if you'd like.

CHAIRPERSON REED: I had a question about that myself --

MS. GIORDANO: I don't know what happened. I didn't color them myself.

CHAIRPERSON REED: And also the parcel on the corner, 34th and Mass. that particular parcel is orange. It's supposed to be pink.

MS. GIORDANO: I wrote on it residential.

CHAIRPERSON REED: I see that.

MS. GIORDANO: It's supposed to be pink.

CHAIRPERSON REED: I thought that was some kind of special category that you were trying to depict for us.

MEMBER RENSHAW: Pink over yellow equals orange. On my map there are two properties across the street that were not colored in and could someone tell me what they are?

CHAIRPERSON REED: She just told you that, Ms. Renshaw.

MEMBER RENSHAW: Did she?

CHAIRPERSON REED: She was just saying --

MEMBER RENSHAW: Is it yellow and pink?

CHAIRPERSON REED: She just said that she inadvertently left that out and I had the same question. That will be determined when it's submitted and if you have a --

MS. GIORDANO: I had intended one to be yellow and one to be pink and --

CHAIRPERSON REED: Again, we'll go by what Ms. Giordano submits to us and if the opposition has any differences of opinion then of course I know that your coloring, your legend is a little different and you can submit yours accordingly.

Thank you. All right, if there's nothing else, then we will then adjourn until next week at 10 o'clock which we will continue this case and we'll return around 1:30'ish after lunch. Thank you.

(Whereupon, at 1:04 p.m., the hearing was recessed, to reconvene at 1:30 p.m., Tuesday, October 17, 2000.)

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

1:58 P.M.

CHAIRPERSON REED: Thank you. The meeting will now continue with the second case of the morning that we're now just taking up and we do apologize for the delay, however, the case this morning took a tremendous amount of time, much more than what we thought.

Ms. Bailey.

MS. BAILEY: Thank you, Madam Chair. Application No. 16613 of Catholic University of America, pursuant to 11 DCMR 3104.1 for a special exception under Section 210 to permit a modification to and further processing of an existing campus plan

and to allow the construction of a student center in an R-5-A District at premises 620 Michigan Avenue, N.E., the property is located in Square 3821, Lot 44.

All those wishing to testify would you please stand to take the oath.

(Witnesses are sworn.)

Madam Chair, the Office of Planning Report was filed late, so a waiver is needed there. In addition to that, the Zoning Office inadvertently advertised this case for the wrong ANC. Notice was sent to 5-C, however, the project site is located in ANC-5-A06 and we do have a report from the Single Member District Commissioner from that area.

The required affidavit of posting has been filed. The campus plan is for the Years 1990 to 2002. Your indulgence in accepting the Office of Planning Report is now before you for consideration.

CHAIRPERSON REED: All right. I think we got the report, what, yesterday?

Board Members, have you had an opportunity to be able to have read over this Office of Planning Report?

VICE CHAIRPERSON SOCKWELL: Yes.

CHAIRPERSON REED: What did you say, Mr. Sockwell? I didn't pick that up.

All right, then this report is very extensive and very detailed. I have had an opportunity to read over it myself and I found it to be very instructive. So are there any comments on whether or not the record should be waived to allow the report to come in at this time?

VICE CHAIRPERSON SOCKWELL: I move it.

CHAIRPERSON REED: No objections? Okay. You want to make a motion? We can do it by consensus.

All right, unless there's any objection from anyone, then we would -- then we would waive the record to allow the Office of Planning Report to come into the record.

MS. BAILEY: With that said, Madam Chair, the case is now ready for you to hear.

CHAIRPERSON REED: Ms. Prince, this case appears to be rather straight forward. As far as I know, I didn't see any opposition to it and it seems to have the support of the Office of Planning and of the ANC, so essentially you can just kind of expedite it, give us the highlights and we can probably get you out of here pretty quickly.

MS. PRINCE: That's terrific.

(Laughter.)

Good afternoon. The shorter, the better.

CHAIRPERSON REED: Well, the thing about it is, it's up to you. If you want -- we have the submission on the record and we basically have read materials that have been submitted, so whatever you want to give us or add to that, then you can do so or not, however you'd best think you'd like to handle it.

VICE CHAIRPERSON SOCKWELL: If you could concentrate on certain things like the siting issues, in particular --

CHAIRPERSON REED: And how you comply with the Section 210 and the adverse impact, basically.

MS. PRINCE: We'll be brief. We only have two witnesses, Sue Pervi from Catholic University and Frank Grauman from Bollins, Swinsky, Jackson, the architecture firm and my opening statement will be brief.

Good afternoon, Members of the Board. I'm Allison Prince of Shaw Pittman. I'm here today on behalf of Catholic University. We're seeking approval for a new student center, a university center, actually is what we're calling it, in the center of the campus. It will provide a greatly

needed gathering place for students that does not now exist. It will be located opposite the law school and along the lawn that will separate the two buildings. The building location is very slightly different from the location as shown in the approved campus plan. The location is shifted slightly to the west of the originally proposed location on the site of a building that is no longer planned by the University.

In terms of impact, the building is barely visible, if at all, from all adjacent rights of way, Michigan Avenue, Taylor Street, McCormack and Harrowood Road. There is no change of enrollment proposed and I should note, unlike many of the other universities that are before you in campus plan cases right now, Catholic University is well below the cap of enrollment that was set in 1989 in connection with the campus plan. In fact, there's quite a lot of room of growth for the University. The cap is 7500 and the current enrollment is more than 2000 students below that.

The proposed building is well under the height limit of 90 feet. And in terms of FAR, when this building is built, the campus will still be at 1/5th the density permitted under the zoning

regulations for a campus. That's the 1.8 FAR limit.

From a noise standpoint, the presence of a student center in the middle of the campus can only benefit the community because it will give the students a reason to stay on the campus, rather than leave the campus. The project enjoys the support of the subject ANC, as well as the Michigan Park Citizens Association so ANC-5A, ANC-5C and the Michigan Park Citizens Association have all expressed support.

Before I proceed with the testimony of the witnesses, a few things I'd like to note. We do require some level of flexibility in the plans. Although the building height, massing and sitting have been determined, the exact ratio of brick to glass in the exterior facades of the building has not been finally determined. As the architect will describe, it's the goal to create a very transparent building with a very substantial amount of glass and that amount of glass may be reduced, depending on budgetary constraints although there will be a minimum of one third glass in the exterior facade. So we would like flexibility in that regard.

There was one very important benefit of this morning's delay. While you were all working on

that chancery case, we were in the hall talking to Mr. McGettigan from the Office of Planning to make sure that he was comfortable with the plans because there were some issues raised in the Office of Planning Report that was filed recently and Mr. McGettigan is here today so he can share this recent thoughts with you, but we believe we had a beneficial discussion with him that removes the concern that he had expressed in the way of a third condition in the Office of Planning Report requesting the ability -- requiring the University to go back to the Office of Planning for a final approval. I think he achieved a comfort level that will make that condition unnecessary.

CHAIRPERSON REED: Okay.

MS. PRINCE: So if the Board has no questions, I can proceed with Sue Pervi's testimony and thereafter, we'll proceed with the testimony of Frank Grauman.

CHAIRPERSON REED: Mr. Sockwell was asking, I think everyone was sworn in, were they not, Ms. Bailey?

MS. BAILEY: Yes, Madam Chair.

CHAIRPERSON REED: Okay.

MS. PERVI: Good afternoon. I'm Sue

Pervi. I'm the Vice President for Administration at Catholic University. It's nice to be back and see everybody again. My colleagues from Student Life and Facilities Planning and Construction are here today with me and I'll shorten my testimony. Many of you already know the many outreach programs that the University does and I'll just touch on some of the highlights that this particular project will bring to the campus.

The University actually is requesting this approval for the construction of a University Center and it is a University Center to serve the entire campus community, but especially the students beginning the fall of 2002. The project has been identified as the next priority in the collaborative planning efforts of the University and the local community.

The Center will help strengthen the ability for the University to enroll and retain a diverse student population which includes graduate, professional, nontraditional and undergraduate students. We remain focused on stabilizing our enrollment cycles, but through the performance of responsible enrollment management. I know that's an issue for the community, but responsible enrollment

management and coordinating our facility construction and renovation projects in partnership with our admissions process managers, our student life leaders and then also with the community.

The Catholic University seeks to provide facilities that actually support the intellectual, cultural and spiritual life of the campus community but through improvements that are also respective of our neighborhood environment. The University has a strong tradition of collaborative efforts on facility issues, of common concern to both the campus and the local community. I would like to mention that our current master plan which is approved on May 22, 1992 which has provided the framework for our institutional preservation and change also respects and supports the local neighborhood and it was developed through a campus and community partnership that included neighborhood representation on the core planning group at the earliest stages. In other words, we preferred to do campus planning by including everybody in the beginning and then developing the plan as we go along, versus developing a plan and bringing it to the community and having them react to that. And we will continue that for our next series, our update of our campus master

plan. It's also a process we've already begun with the community.

We have provided regular briefings to the community and we do continue to focus on the projects of mutual concern and benefit to our local neighborhood. A quality well-placed University Center is a critical element of the student life program. This facility is more than a social center. I think many people think of a student center or University Center as "social center". It will help us better accommodate our expanded educational symposiums, sponsor more meaningful co-curricular events and provide a place for essential mentorship opportunities for our students.

We have been aggressively completing the design phase of the Center in anticipation of a very critical construction schedule to coincide with our academic schedule. The architectural professionals whom you'll hear from very soon, we have partnered with, are really chosen for their talents, experience and demonstrated sensitivity, so essential for us to accomplish the institutional goals for this project, but within the context of the broader community environment. We look very carefully at the selection of people we partner with because we think it's very,

very important to partner with the right folks.

I want to assure you and I've been at the University 18 years and been before this Board many times, that this project is also being designed to respect our existing facilities in the area, to preserve and enhance our green space on campus, to establish an inviting, functional and safe activity complex, to provide greater links to our other essential programs and services that are also in the project area. I want to mention that the site, the Center is being sited literally in the heart of the expanded on-campus housing cluster which is under construction right now, nearby worship areas and adjacent to generous existing parking facilities. The University also has developed a public transportation management plan through our last master plan process and as part of that initiative, we continue to work with the Metropolitan Council of Governments to reduce vehicular traffic in the area and actually take advantage of the Metro site which is located literally less than a block away from this facility.

It's also -- the new Center is also very close to our new section of the Metropolitan Bike Trail and as I said, the Brookland CUA Metro Rail

Station is already being served very well by our campus.

I'm trying to skip over most of the context here. The University Center project is actually very time sensitive as it directly impacts the next critical phase of our coordination of enrollment and student life initiatives. It's actually being very closely watched and directly supported by a faithful alumnus who is praying it can be constructed in his lifetime. He will be 95 years old in a few weeks and I might add he called me yesterday and he's anxiously awaiting a call from me after the hearing this afternoon, and he will be here on November 3rd to see how we're doing and that is also his birthday. So he tells me he'll be 96 on November 3rd and wants to know how we're doing.

The project represents very intensive efforts to ensure that we do have the appropriate student life facilities on campus, once again another concern by our community.

I want to thank you. That's all I have. I'd be happy to entertain any questions. I want to thank you and let you know that the entire University community believes that this Center has been planned in a consistent manner and also with lots of input

from both the campus community and the neighborhood community and we would appreciate a favorable response to our presentation.

Thank you.

CHAIRPERSON REED: Thank you very much. Board Members, questions? Okay, next witness?

MEMBER RENSHAW: Madam Chair, I have for Ms. Pervi just some questions. Catholic University has been in the press lately, not particularly good press, I must say, because it has to do with student drinking in the neighborhood, but one of the articles mentioned the fact that yours is a wet campus and that you allow drinking on campus and I wondered if this student union building, this new University Center was going to allow any kind of drinking?

MS. PERVI: I'll respond and I don't know if our Student Life officials might want to augment that. I think that there has been, in fact, what you might be referring to is on Saturday, particularly on Saturday, August 26th our students on Michigan Avenue had a party and it made the news. The University is taking a series of steps. One, the University does have an alcohol awareness program, very aggressive student life program in terms of alcohol awareness. It's a nationwide problem. We've instituted the CARE

effort, it's a model where we've brought the local, other local communities in, Metropolitan Police, Student Life leaders and also student leaders in terms of trying to address this very serious national problem of alcohol abuse.

The University campus is naturally we are more than half graduate students, so one of the issues becomes having facilities for graduate students, but we don't permit underage drinking on campus. We certainly have worked, I'll use an example of an initiative we took, local establishments in our area, one used to be called Kitty O'Sheas. It's now Johnny K's -- you know, these thing reinvent themselves under different names. The University, in fact, the Vice President for Student Life who is here today, Father Friday, and our Public Safety Department took the initiative to work when this was being transitioned to come up with a memorandum of understanding to reduce the, for example, March opening up at 6 a.m. for St. Patrick's Day, that sort of thing, and to take the initiative to develop a memorandum of understanding on behalf of the neighborhood, to try to control the kind of establishments that develop around the University and we have, as I said, very aggressive on campus -- it's

a combination of discipline initiatives and educational initiatives. I'll use an example of that August 26th incident, the University identified three student houses and we took action and we have what's called a discipline property policy which was developed I believe in California. It's a model that's out in California. We looked at this and looked at a means that we can institute further policies and procedures off campus in order to help control the few student behavior problems we have. We have 5500 other students and many of them are back on campus saying why does the neighborhood always judge us, based on a few and we're working with our student leaders, I think, to be sure that the community is exposed to the other students that do good. But I want to assure you that we've taken action on our student houses. We continue to do that. We also have CUA student expectations, expectations of a CUA student. We also took the initiative and have been taking the initiative to present these sorts of things to the parents. Our President was very clear at orientation that the University will not permit and will not tolerate so that they can expected to come and pick up their students if this kind of behavior continues. I think

what we're doing is we're trying to address those very pointed cases very carefully, trying to get the word out to other students that it's not tolerated and trying to develop the role model of other students and have those students put the peer pressure on students.

I might add, as a point of information, CUA has met with the students. We've met with involved ANC. We've go to many meeting and work this out, but since August there have been no major incidents reported, that Student Life has addressed any individual concerns with both neighbors and students, so we're trying to keep a handle of it, so nothing erupts into these wild parties again. But nothing has happened since August 26th in a major way.

MEMBER RENSHAW: But back to my original question, are the students who are 21 years and above going to be allowed to drink on campus at this Student Center?

MS. PERVI: I believe that that would be the case, right, there will be a limited, just like we have right now, there's a Rathskeller on campus, but the persons of age are permitted and if there are activities, for example, our Graduate Student

Association, those are controlled by carding and also by public safety by every --

MEMBER RENSHAW: But your campus university police would have jurisdiction?

MS. PERVI: Correct. Our campus university police, our special police commissioned officers with full powers could take action, correct.

MEMBER RENSHAW: And what is this disciplined property policy that you spoke about?

MS. PERVI: Okay, basically a discipline property policy -- can I have Father Friday explain it since it's his policy? Is that permitted?

FATHER FRIDAY: And I swear to tell the truth.

(Laughter.)

We instituted the Discipline Property --

CHAIRPERSON REED: Give your name and your address.

FATHER FRIDAY: My name is Father Robert Friday. I'm Vice President of Student Life at the Catholic University of America.

The Discipline Property Policy is one that when we have a disruption in the community by students that brings about concern from the neighbors

and/or the police, if the police report there, I will designate that particular property which is usually a rental, as a discipline property which puts all tenants on notice that if there is a repeat occurrence that they will be disciplined anywhere from a warning to suspension from the University. So it stays with them for a minimum of four academic months. It can be removed if they will petition to me or through the ANC, which I prefer, and also if the owner of the property, the landlord, petitions through the ANC. Part of our intention there is to involve the landlords in these situations. Too often, they are absentee landlords and we can't reach them.

We've had tremendous cooperation from the D.C. Consumer and Regulatory Commission on this too. It's been very good.

CHAIRPERSON REED: I think that -- I very much appreciate your giving us the information. However, I would like other universities that have come before us, when there is an overwhelming problem in regard to student misconduct off campus, the room is full and by virtue of the fact that we have not even had a letter in opposition to this case, nor anyone here appearing in opposition, it's rather

apparent to us that that particular incident also appeared to be rather isolated and not something that is rampant within that community which I really commend you for. Obviously, your policies have been very effective.

FATHER FRIDAY: Thank you.

MEMBER RENSHAW: And I might add that the value of the question and response is that your policies have come to light in greater detail and I appreciate that because you have certainly tackled a problem that was in the press and it sounds like you have it on course.

FATHER FRIDAY: Thanks.

CHAIRPERSON REED: Thank you.

MEMBER RENSHAW: Thank you.

CHAIRPERSON REED: Next witness.

MS. PRINCE: Our next witness is Mr. Frank Grumbart -- did I mispronounce your name?

MR. GRAUMAN: You did. I am Frank Grauman.

MS. PRINCE: I'm sorry. From Bollings, Swinsky, Jackson. I would like to have him qualified as an expert in architecture and since he's not testified before this Board before --

CHAIRPERSON REED: He has or has not.

MS. PRINCE: Has not.

CHAIRPERSON REED: Uh-huh.

MS. PRINCE: I just wanted you to summarize very briefly your educational background, years of experience and significant projects.

CHAIRPERSON REED: No résumé?

MS. PRINCE: No résumé.

MEMBER RENSHAW: Would you spell your last name, please?

MR. GRAUMAN: I'll be glad to. I spell it G-R-A-U-M-A-N.

Do you need the particulars on my firm or that would be in your packet, I would think. I'm a partner with Bollings, Swinksy, Jackson, whom I joined in 1976. I might introduce my partner, Russ Roberts behind me with whom I've worked for that entire period. We happen to both be educated at the School of Architecture at Rensslaer Polytechnic Institute. I've been registered in my case since 1975.

Our practice which constitutes about 100 people at five locations, three of them in Pennsylvania, is quite broad in what we do. We're a national practice and are now working out of two offices on the West Coast.

About half of our work currently and historically has been with colleges and universities. The other half is quite broad, ranging from things like federal courthouse, recently, to corporate work, for instance, a studio for Pixar in San Francisco. But the half that's more germane is college and university work, including many names you've recognized, certainly up and down the East Coast such as recent work at Princeton, at the University of Pennsylvania. We're currently working on a master plan at Syracuse University where we've done a dozen projects that have specifically the focus of Mr. Roberts and my career and have worked at institutions of all sizes. For instance, we're interviewing at Elmira College which is a small college in upstate New York for what would be our third project there, this Friday.

We therefore know quite a bit about this type of project and this type of institution and what's of special interest to us in these cases often is how buildings relate to a master plan.

Are there any other particulars you'd like of a biographical nature before I segue into that?

One technical question is I have the

usual architect's handicap that I need drawings to communicate. And I notice this is a fixed microphone.

CHAIRPERSON REED: Well, before you continue, then the Board would then have to decide whether or not they will, in fact, accept you as an expert witness.

MR. GRAUMAN: I may not need the microphone then.

(Laughter.)

CHAIRPERSON REED: You're right. You're right.

MEMBER RENSHAW: Do you need a motion?

VICE CHAIRPERSON SOCKWELL: I've been around since 1975. I believe he's been around long enough.

(Laughter.)

CHAIRPERSON REED: Well, then we will accept -- what's your full name?

MR. GRAUMAN: Frank Grauman.

CHAIRPERSON REED: Frank Grauman.

MS. PRINCE: G-R-A-U-M-A-N.

CHAIRPERSON REED: Okay.

VICE CHAIRPERSON SOCKWELL: And if the microphone doesn't work, we'll call him Silent Frank.

(Laughter.)

(Pause.)

MR. GRAUMAN: Sue, maybe if you slide yours over, I won't knock the table over.

How's this? First, I thought just to give all of you a very quick sense of what this building will be, where it will be and what it will be. For your reference, here's Michigan Avenue. Here's Harrowood Road and McCormack. The Metro Station is here on this particular map and the Shrine should be recognizable to you.

In this drawing we've colored the proposed building red. And as you can see, it's very much at the center of the campus. The building represented is about 102,000 square feet on three levels and while dealing with sort of the basic facts about it, it's an average of 50 feet high as measured from grade to the midpoint of the roof.

The building is organized so that it sits into the side of a hill. Just for your reference, for those of you who don't know the campus, we've brought a few photographs that are over here which I think are also found in our submission, but as you can see, the campus goes up this series of sort of terraces that were created through the long history

and evolution of that piece of real estate.

In this building, we're actually reinforcing that terracing character of the campus by dealing with a gently sloping site and creating a pair of terraces, this portion being filled and this portion being cut. That gives us a building that appears to be a two-story building from its western face and a three-story building from its eastern face, as you can see.

For those of you who know the campus would understand that this is the underground parking structure that was built in connection with the law school construction in 1992, so as seen from the law school, you see three levels and on this side you see two. It makes an elegant transition then, between those two levels.

This particular cross section is cut right through the middle of the building, the location that's indicated in blue on my site plan. And it's an atrium and the reason for that is the entire building is spoken of within this community as the University's living room. It's that place where the entire family can come together. And the heart of that idea is this atrium that organizes the building and that allows people to commune in all

sorts of ways.

This happens to be the upper level floor plan, but it's as useful as an other plan to give you the broad sense of how the building is organized. There's an entrance on the west side which is located there, off of this new space. And that enters a multi-height 3-story high atrium space and connects as well through a second entrance to the lower level.

On this plan, the portion on the right hand side of the drawing represents a multipurpose room which is also called the Ball Room. It's a divisible room for a broad range of activities and the portion on the left represents a dining hall. But typical of this building, large spaces that are divisible on either side of the atrium, that focus inward on that atrium.

So were I to show you the floor below, I think you'll see it later, this is a different dining venue and this is an environment for the Student Life Program. The portion that extends this way houses the book store on the lower two levels, typical upper level, lower level bookstore and then the offices of Vice President of Student Affairs and Dean of Students, Father Friday's office above.

One the principal design intentions here

is this, we very much believe that in a mature university environment, an older university such as Catholic University, the greatest responsibility in designing a building is designing the public green spaces and if you think about a quadrangle as an outdoor room, that has a great deal to do with unifying an environment or organizing an environment.

One of the central purposes of the building massing is to make good walls for that room and we are able in the case of this building to complete a pair of spaces. This formal space that was initiated in 1992 is completed by the construction of this building and the new space that we're calling the Commons, that people can't imagine right now because it doesn't exist, will emerge as a result of this plan.

As a way of understanding that, we've brought along a drawing that is sort of a quick sketch of the current condition of the campus, the area where this building will go is this white area here, that is somewhat the sloping landscape you see there. It's essentially undeveloped landscape at the heart of the University.

And it's instructive to think a bit about the way this University came about. You know there

are some campuses and a regional one that's a great example is Johns Hopkins in Baltimore, that are characterized by an extraordinary uniformity as a central vision about building design that was then implemented very consistently over the years. And there are many other great universities that are quite diverse and quite eclectic. One that we've all heard of is Harvard, for instance. The buildings are all different. It's the landscape that makes it a singular place.

This University is very eclectic and historically one of the reasons is that it was formed through the joining of various properties that had been seminaries and so one of the characteristics of the University is that as indicated by the yellow arrow, many of the buildings don't front each other in a kind of classic, organized way. Many of them try to be self-sufficient buildings such as in this case McMahan Hall fronting on its own lawn or these buildings each fronting on their own lawns. And so that's one odd character of this University. There's plenty of land there, as you've heard, the FAR is indicative of it. And that's why that works. The buildings have traditionally enfronted greens.

The other eclectic aspect of it is what

buildings are made of and we've indicated in this bluish color the range of buildings that are stone buildings. Clearly, they're the older buildings from the time when that craft was more affordable. We've indicated in red, red brick buildings and had we extended the drawing to the left, you'd find that the preponderance of the buildings to the north are red brick.

On the other hand here, we have the Architecture School, the Engineering Complex, the Science Building, Hannon, from the 1960s which is the building, very sort of modern building you see there. And the law school, all of which I characterize as buildings that wish they were stone and some of them are very successful. The law school is a beautiful building, but chose a gray brick and then chose an ornamental pattern on the brick that increased the scale of the unit to something more closely approximating stone.

These are beige and yellow because they didn't want to be red brick and this is precast which sort of matches stone. It's not stone. And the School of Architecture in the Kroge Building had been an Army Surplus building. It had been a gymnasium that's been very creatively recycled as a really

interesting School of Architecture. And you get a sense of that diversity from those panels. So you have very diverse buildings, very diverse times, each built on their own.

In 1992, in designing the law college, the University did a very careful sector plan, master plan working by the way with Michael Ferguson with whom my firm works often and is working on this project and that building is the first building at the Catholic University that is clearly planned to deliberately create a new public space. And that space is the one that we're currently completing. So clearly it's an obligation of this particular design effort to honor that plan and complete it.

In some ways, that's not difficult. The row of trees that is part of the front of the law school has been duplicated and at the same time they've planted this row. When you look at this graphic and think that these trees are to be part of the project that I've representing today, but they actually exist, so they've been maturing at the same rate.

And so it is our task here to provide a building that's a suitable backdrop behind those trees and certainly are tasked to reinforce this

axial relationship that had been so thoughtfully created or implied by the law college.

On the other hand, this is the University Center which as Sue Pervi said is for everyone at the University. That includes the lawyers, but actually because the law school is the most comfortable building on campus, has a wonderful atrium in it if you know the building and very pleasant dining facilities and involves a largely, almost exclusively graduate students who do not live on campus. The law college does not represent one of the more major constituent groups for whom the building is being created. They are a group who are certainly welcome and part of the community.

And so while this relationship is very compelling and very strong, it was the University's wish to make sure that the building not be perceived as an annex to the law school or as a natural twin sister for the law school. It needs to be part of that master plan, but be its own thing.

We observe that the greater portion of the community is on this side and that making a new space here, a space that will be at least the equal of the space created in the law school project is really one of the most important design objectives in

shaping and massing the building and that is what we've done.

This is the place where the two axes that are set up by the grid come together, so you can imagine the space here that is surrounded by the visual presence of many of the fine buildings, including the library, McMahan Hall and the Shrine which is not technically part of the University, but certainly part of people's image of the place that is visible through this gap.

And our desire is to make a place, the University's desire that embraces that environment and is therefore kind of touchstone for the University.

In doing so, as I've emphasized this is very much a kind of landscape solution. Do you have the large board?

(Pause.)

As has already been testified, this diagram illustrates that we're dealing with a building that is practically invisible from any of the public streets. But it also gives a sense of a scale relationship. Here is the law college. Here is the 50-foot tall building set into the hill that I've just described. Here's McMahan Hall and we've

fudged the drawing a bit just to give a sense of the size of the height of the dome on the Shrine beyond.

And we're orienting this building towards that environment, to participate in it. And so an interesting design question for us is how to make a very strong lively building that attracts the attention that it needs to be the community living room, when it's surrounded by things that are of greater height and heft. We have 50 feet here, but it's only 35 there. It's about 70 plus here and it's way over 100 at the Shrine.

And the less than friendly elevation of the Hannon Science Building is more on the 90 foot height level. And so given the humanizing nature of this building, given that it's a family living room, and given that it is -- it's great thrust will be its participation in the landscape, we've all come to look at the project as one that desires a great deal of transparency, so that when you approach the building, you get the strong sense of the life of the building inside and of people and when you're in the building, you get a sense of the landscape, rather than making a building which was a kind of self-sufficient object of its own. Were we to do that, it's hard to know which of these precedents one would

pick up on.

So here again, a floor plan, but to give you a sense of that, this dining space is all glass here and extends right out to the new green. We imagine as well as that the entrance which has a number of plateaus could be a venue for people to simply sit or for events.

That gives you a sense of the height relationships. Again, the program is ballroom, dining, Student Life offices, another dining venue and on the side that has windows, student organizations on the lowest level and kitchens on the other side.

Let me see, maybe I'll switch to those two. Let me mention that these graphics are really color enhanced versions of the technical drawings we submitted in our submission, colored them over so you could see them better here today. That's why they're not part of this set.

This gives you a sense of the building as seen from the law college. We're intending that these horizontal bands be largely glass, punctuated by masonry or concrete columns and sort of a traditional device like that. What you're seeing up at the top, as you know, the building has a slightly

inverted roof. In meetings yesterday, someone very flatteringly likened it to the Dulles Airport, that the top floor of the building is sort of concourse with the two big spaces that opens upward towards the sky.

While this is colored blue and shadowed because if the sun were in that position you'd see it as a shadow line, at night -- or ceiling like that which is indirectly lit, can become a great glowing beacon to let people know about the activity inside. So that's what you're seeing there. That beacon would modify, in a subtle way at the middle where the atrium is to mark the position to the forecourt of the law school.

Unfortunately, for us, in coloring this drawing, the truth is all the trees are behind you. So we can't show you -- it's a very green space. It's, in fact, a -- it's drawn right here looking at the building. So it's a space that is surrounded on two sides by this building. The third side by a grove of trees and then looks up to St. Thomas hill and these other buildings. We're regrading the hill in such a way that all the buildings will be visible from that point. If you were to visit the campus right now, you wouldn't have that experience, because

the lumpy landscape would impede the view. So know that what you're seeing here, cut through the earth, is that green.

This drop, where the heavy shadow is, is that difference in elevation and it allows a service yard here that presently serves Hannon, I think it's somewhere on the photo, but right now that service yard is very exposed. We're able to contain it and serve both buildings there. And so the left hand side of this drawing is really down into the service yard. The portion that people experience is that.

And on this side, the side from the middle of the building which is again marked in that manner, one of the really great experiences will be a gallery that's running -- pardon me while I shuffle. A gallery space that's indicated in pale blue here. This again is the multi-purpose room. And this is a kind of gallery or foyer that allows people to enter that room or the multiple rooms you get if you subdivide it through a series of doors like that.

One of the problems of placing a big space like that in a fine campus like this, similar to a hotel, is if you just do the proverbial conference center meeting room in the most obvious way, you get a big dull windowless box and because it

has to be darkenable and while you can darken things like clear stories, it's an interesting thing to maintain a human scale and to put people in touch with out of doors.

The feeling here was if you're coming to an event, in this space, you're going to want to know you're at the Catholic University of America if you haven't gone and gotten space just anywhere and so you can leave that space through a series of doors into a kind of continuous porch behind this curving wall that participates in the experience of the new commons we're making and has you looking at those things. And that's a very human scaled porch. It's not very tall. It's like almost a residential scale because it's one story in height and being a simple porch it doesn't need this sort of lay in ceiling and all the services we have above us.

The other thing it does is it gives us an arcade below which is just a very nice way in climate like this when people suffer from heat in the summer, to bring people into the building, make an arcade around the green. That gives you a sense of the character of the building we're developing and why. It has very much to do how we're feathering it into the greater environment.

As Allison mentioned, this set of drawings is definitive in terms of the massing, the height, the position of things and the arrangement of the building. We're presently going through fine tuning process with the budget which is the usual interesting concern and we've identified that one of the more constructive variables we can deal with as we fine tune the budget is the exterior skin of the building. We intend for the building to be extremely transparent for reasons I've mentioned, but if the budget suggests we need to do it -- oh, thank you so much.

(Pause.)

You must have gone through gallons this morning.

(Laughter.)

If it serve the budget well, we may increase the amount of masonry that we use on the building, partly to get the openings down from the sides. We'd use a curtain wall system to the sides where you can use a window system and if that occurs, our intention is to apply that somewhat unevenly so that the great degree of welcoming opening that I have spoken of continues to be extremely prominent at the heart of the building, at the atrium, along the

commons where that gallery and arcade are, but I think you would agree that it would not be inappropriate if we did add masonry to the building to start to add the masonry on the side that faces the law college.

We are just in the next several weeks going to be dealing with whether we're making that adjustment. And so it's the one point on which I would advise you that we would beg for some flexibility so that we're able to do that if we need to.

I think that concludes my presentation. Thank you.

CHAIRPERSON REED: Questions? Ms. Renshaw?

MEMBER RENSHAW: Yes, thank you for a very complete presentation. The statement of the Applicant talked about the fact that this was a slight modification and slightly shifted to the west. On your drawing, could you show me where it was originally planned, if it's been slightly shifted to the west?

MR. GRAUMAN: Well, do know that we were not authors of that master plan, but there had been a student union intended where Mr. Roberts is

indicating and an academic building had been foreseen for the site where we're putting the University Center.

And so we've actually broadened the purpose of the building. It's now a University Center and we're developing a site that had been set aside for that purpose in the master plan. The master plan is foregoing putting a building in that other location, you see.

Two buildings have been foreseen. One is being proposed.

CHAIRPERSON REED: Mr. Sockwell?

VICE CHAIRPERSON SOCKWELL: Mr. Grauman, I must say that the description of the building as a beacon on the campus was very well received on my part and when one looks at the adjacent structures that will basically frame the hillside around your building, if you want to call it that perimeter. And that perimeter is one of traditional buildings with traditional walls and windows, some punched, some otherwise provided.

I would hope that the University and in looking at its budgets and endowments and its future would be able to extend to you the freedom to maintain as much of that transparency as possible

because one of the things that will occur from this building is that from all vista points between other buildings and from any horizon points that are visible to pedestrians and people in cars and even just the fact that as a beacon that building can either be a torch or it can be a small flame in the darkness. And with the solid facades that surround it, the more transparent it can remain the more impressive it will be to all who perceive that campus as passersby or as users. And when you start adding more masonry, you take away that more exciting aspect of the building and especially the fact that it will bleed light out to the campus and it will become a focal point and you really do not want to lose that at all costs.

MR. GRAUMAN: Thank you so much for making that point.

(Laughter.)

CHAIRPERSON REED: Thank you. Board Members, any other questions? Okay.

MEMBER RENSHAW: Just one comment. You spoke about the ballroom and I was interested in your use of that word because do I remember correctly, I see the Father shaking his head, there is no ballroom.

FATHER FRIDAY: Multi-purpose room.

MEMBER RENSHAW: Multi-purpose room. And I just brought it up because I thought that Catholic University had a competitive ballroom dancing team and so I thought how appropriate that you are building this room just for that team. Thank you.

(Laughter.)

CHAIRPERSON REED: Okay, thank you very much. Ms. Prince, does that conclude your presentation?

MS. PRINCE: That concludes our presentation. I would simply ask for the Board's rapid disposal of this case and I would please to submit a summary order since we do have that one condition that we're seeking regarding the flexibility on the exterior facade.

CHAIRPERSON REED: Okay, thank you. Now is there anyone here from the ANC? Okay, we do have an ANC report. And actually, I had a question about that because it was not -- it was not the full ANC. It may have something to do with it having been sent to the wrong ANC. Ms. Pruitt?

We did get a letter from Ms. Currey of ANC-5A06 as a single member district representative.

MS. PRINCE: I can help with the ANC

reports if you need guidance on that. ANC-5A is not subject to ANC. The campus is located in 5C. 5C did file a report yesterday that was --

CHAIRPERSON REED: It did?

MEMBER RENSHAW: Does anyone have a copy?

MS. PRINCE: We have a copy of it.

CHAIRPERSON REED: Do we have it, Ms. Pruitt? Do we have the copy of the 5C report?

MS. PRUITT: I'm just checking with John now.

CHAIRPERSON REED: Okay.

MS. BAILEY: Madam Chair, there seems to be some confusion.

Ms. Prince, I was told that the ANC is 5A06 and Mary Byrd is the Commissioner for that area. Is that not correct?

MS. PRINCE: I neglected to bring my ANC map with me. The campus used to be in 5A. I think it is now in 5C with the redistricting. Sue is more familiar, but we've heard from both ANCs.

MS. PERVI: Yes. Just as a point of information, in 1990 when they did the census, they moved us from 5A to 5C. As a point of information, however, I have the dates and the approvals from both 5A and 5C so rather than getting in the great ANC

battle we go to both. It's easier.

CHAIRPERSON REED: They're sent out to both ANCs.

MS. PERVI: Right.

CHAIRPERSON REED: And you said we did receive a letter from 5C?

MS. BAILEY: Yes. He's passing it out. Yes.

CHAIRPERSON REED: My question is did we receive it or did it come from Ms. Prince?

MS. BAILEY: This is the first time I'm seeing the one from 5C. What we have in the file is a report from the single member district commissioner, 5A06, Mary Byrd Currie, but this is the first time I'm seeing one from 5C.

CHAIRPERSON REED: We'll have to waive the record to permit 5B.

MS. PERVI: I received a call from Mr. Barry yesterday.

CHAIRPERSON REED: Thank you. Did they not submit it to this office?

MS. PRUITT: It appears that way unless it's still at the front with someone who hasn't actually made it to the file, but I asked John to check.

MS. PERVI: Just as a -- he called me when he filed it, so we also just to double check, I had my administrative assistant send -- he faxed it to us when he faxed it to you and we had it sent again just in case. When we received the fax we were concerned because he indicated to us he has no support staff, so he was all worried. And so what we did is we also faxed it, I believe you might have my copy, but he did indicate and call that it was faxed yesterday, I believe.

MS. PRUITT: Our fax machine has been down.

MS. PERVI: He called to confirm and then I also brought the copy with me, but I also had my administrative assistant fax it just to be safe. He said he did, but --

CHAIRPERSON REED: Okay.

MS. PRUITT: He may well have. It just didn't come through.

MS. PERVI: Yes.

CHAIRPERSON REED: All right. I guess it should be forthcoming and then we'll have the Office of Planning Report.

Do we have any other government reports other than Office of Planning? I don't think so.

There was a DPW or anything like that.

MR. McGETTIGAN: No, Office of Planning.

VICE CHAIRPERSON SOCKWELL: Madam Chair, the map confirms that it's in 5-C12. 5A06 actually stops on the east side of McCormack.

CHAIRPERSON REED: That's fine. We've got reports from both. So no conflict there.

(Laughter.)

Give us a minute so we can get this report.

(Pause.)

Is that it? Is that is, Ms. Sansone? Is that the report from 5C?

Are there any other questions? Why don't we just take this moment to get the report in.

MEMBER RENSHAW: When do you expect to finish the building, next week?

(Laughter.)

MR. GRAUMAN: We're expecting to occupy it in the fall of 2002.

MEMBER RENSHAW: Have you worked out or are you planning to work out with the neighborhood the truck distribution plan for the neighborhood so the truck traffic does not burden one particular street or couple of streets?

MR. GRAUMAN: Richard Wheel was kind enough to step out to get me a coke or something, but he's with the Facilities Office. Oh, you want to answer?

MS. PERVI: I can address that. We are currently constructing the new residence hall and we are in the midst of that construction right now. We do work that out locally. Generally, we have some natural boundaries, certainly, with the Metro and the railroad tracks on that side and that's basically where the temporary and the construction vehicle traffic would be and it would be similar to what we're doing right now. We coordinate that also with the community.

I have an initiative also. We have a dumping problem. We've had a dumping problem in the neighborhood and I coordinate that. I don't know if you're aware, straight up that street is the trash transfer center, yes. So the neighborhood prior to any construction on that area, in fact, one of the nice comments from the neighborhood was that our construction on that end will actually help and it helps us control the more activity we put in that area, the more I think we can control some of the illegal dumping that happens in the community, but I

have public safety -- I have a whole host of things that report to me. I actually have all the things that everybody usually complains about reporting to the Vice President for Administration. But what we've done with the neighborhood is instituted, they can call our public safety if they see illegal dumping, even in the neighborhood. We try to work out having somebody assigned, get license numbers and work with the regulatory agencies to decrease the dumping that's around in the neighborhood. So we'll do that. And also service to the building, typically the prior master plans, when I came to this campus, the concept of master planning was if you want to do a building, figure out where you can put it, versus let's figure out what kind of services. I have all the services under me, so it would be very -- we wanted to carefully plan how you access a building like this that would require heavy services, so we have coordinated that and we do have a service entrance right now. A parking facility enabled us to develop a better service. Since 1992, we've actually taken problematic trucks off the neighborhood streets and developed it and this will tie into that -- already that service area that serves the science building and service roads, so -- and we've worked

with the fire and the public works and looked at the traffic impacts, all of that, in this building. This will not have an adverse impact on anything currently, but we've improved that since 1992. I would say the 1992 effort has improved the traffic issues in that area.

CHAIRPERSON REED: Thank you. We have the ANC report from ANC-5A which is Commissioner Mary Byrd Currie who expresses support of the application and then have you had a chance to look at it, Ms. Renshaw?

MEMBER RENSHAW: Yes.

CHAIRPERSON REED: The ANC report from 5C?

MEMBER RENSHAW: Yes. We have now a letter from 5C, ANC-5C to Chairperson Reid and it is dated October 16th. All right. Thank you. It's dated October 16, 2000 regarding BZA application 16613 and it extends its unanimous support for the Applicant's request for special exception to construct -- these are two new dormitories so this is -- to be used as residences -- oh, it's all purpose. And reaffirmed its support for the University's master plan which included the eventual construction of a University Center.

And let's see -- I'm just looking back since it's the first reading of this letter. They met on December 21, 1999 to consider the issues and does it say that we have a -- it has a quorum?

CHAIRPERSON REED: Yes, toward the end of that paragraph and the third line from the bottom of that paragraph.

MEMBER RENSHAW: Indicated a quorum of our membership who was present at the time that this issue was discussed with Ms. Sue Pervi, Vice President of Administration for the Catholic University of America and subsequently voted upon by the body.

CHAIRPERSON REED: And the next line?

MEMBER RENSHAW: The next line I have read in brief. ANC-5C extended its unanimous support for the Applicant's request which included -- it reaffirmed its support for the University's master plan which included the eventual construction of a University Center.

CHAIRPERSON REED: Okay.

MEMBER RENSHAW: And it's signed by James D. Barrie, Jr., Chairperson.

CHAIRPERSON REED: Thank you very much. And the ANC-5C will then be --

MS. PRUITT: Madam Chair, just procedurally, you just need to waive this into the record.

CHAIRPERSON REED: I'm sorry, there was a request for the report to be -- for the record to be waived --

MS. PRUITT: The filing time.

CHAIRPERSON REED: And to accept into the record and due to the fact that it was submitted late.

Now, it will be afforded -- ANC-5C will be afforded the great weight to which you're entitled as such.

Now, the Office of Planning Report?

MS. PRUITT: If you do it through a motion, usually you waive it through a motion.

CHAIRPERSON REED: Hold one second.

(Pause.)

VICE CHAIRPERSON SOCKWELL: Just a question for Sue Pervi. The Advisory Neighborhood Commission has seen the current design as planned with -- because since their unanimous support seems to speak more specifically toward the dormitories, I just wanted to make sure that they know what is truly being planned as a student center?

MS. PERVI: Yes. Maybe I can clarify two very quick points. One is that on ANC-5C actually initially voted on the construction on June 15, 1999 and then that part of the issue they had assumed they already approved that along with the residence halls.

Then on September 18th they reviewed the plan on September 18th. Mr. Barry called to confirm, actually last Thursday that they, in fact, had all the updated plans so they received that in my letter of September 18th, just as a matter of update. And at that time they had mistakenly believed we were at the BZA on November 7th, I think was the original time table. So what I did was get a reaffirmation that what they approved on June 15th and the subsequent updates which have been presented and then also on Saturday at an economic summit they were there and we reconfirmed that we were here today and the plans as I sent to them in September, the most up to date plans were September 18th and that's the conversation I had yesterday. So their generation of that letter was based on that.

VICE CHAIRPERSON SOCKWELL: So you've been having so much fun with the Advisory Neighborhood Commissions that they've just approved everything.

(Laughter.)

CHAIRPERSON REED: Thank you. In regard to the waiver issue, Ms. Pruitt, by consensus we agreed to waive the record.

MS. PRUITT: Previously, we had done it by motion so I thought we were continuing that way.

CHAIRPERSON REED: What previous?

MS. PRUITT: Previous case. We have -- we can do it by consensus, in the past and we have been doing it through motions to keep the votes straight.

VICE CHAIRPERSON SOCKWELL: I move that we accept the ANC response outside of the 10-day period.

MEMBER RENSHAW: Second.

CHAIRPERSON REED: All in favor?

(AYES.)

Opposed?

MS. PRUITT: Thank you. Staff will record the vote as 5 to 0.

CHAIRPERSON REED: Okay. Now Office of Planning Report? The Office of Planning also -- wasn't there a request for waiver of this report? Yes. And I think that we -- did we already take this up?

MS. PRUITT: No, you haven't.

CHAIRPERSON REED: Okay, then -- now. This is the same problem that we had before in that -- Ms. Renshaw did you receive it yesterday?

MEMBER RENSHAW: No, I received it this morning.

CHAIRPERSON REED: Due to the lateness of the report, we have not -- some of the Board Members have not had a chance to really read it. I received it yesterday, so I did have a chance to read over it. Did you all -- did the other Board Members receive it?

VICE CHAIRPERSON SOCKWELL: Yes.

CHAIRPERSON REED: But it doesn't give us the time to be able to properly be able to absorb it, digest it, to be able to have the benefit of utilizing it and making decisions or to be able to make assessments of this particular case and ask appropriate questions. So again we ask that you try to make more of an effort to get it to us in a timely fashion even though the report itself, I felt was a very good report and it was very instructive, but we need it in a more timely fashion. Okay? All right.

MR. McGETTIGAN: My apologies for it being late. It should slow down. We have more

people on staff now so these reports should be more timely as we get everybody up to speed.

CHAIRPERSON REED: We appreciate getting reports because there was a lull, one time we weren't even getting reports, so now we are I guess just basically making these adjustments and with the new people on staff, starting to get the reports out and then also getting the right format and getting everything tweaked just like so. Hopefully in the next few weeks or so we won't have those kinds of problems any more.

VICE CHAIRPERSON SOCKWELL: Madam Chair, I would like to say that I understand that Mr. McGettigan is very busy. He's reviewing work for me outside of BZA and we like to get that done too.

(Laughter.)

CHAIRPERSON REED: That's very important. Give your name for us, please.

MR. McGETTIGAN: Yes, David McGettigan and I previously worked for the City of Fairfax and have extensive experience in the public sector and I've been with the Office of Planning since August 21st and this is my first report to the BZA. I had my first report to the Zoning Commission yesterday.

MR. HOLMAN: Madam Chair, are we going to

waive the report in?

CHAIRPERSON REED: Okay, do you want to make a motion?

MR. HOLMAN: Yes, I move that we accept the report.

VICE CHAIRPERSON SOCKWELL: Second.

CHAIRPERSON REED: Waive the record to accept the record. All right. All in favor.

(AYES.)

Go ahead.

MR. McGETTIGAN: This building is I guess very well represented today by the architect which I encouraged him to make this presentation that he did because of my concern of how the architecture fit into the rest of campus and I think he did a fine job. I think this building will fit on the campus and will be a good focal point for the campus.

I don't see any negative impacts that it will have on the campus. I don't think that there's any problem with the siting change and I passed out the existing campus plan and indicated where the student center was on the original campus plan with the magenta dot. And the building that it was sort of in that space with the red dot that was the humanities building they were proposing, so we do

have a slight change to the plan, but you're also looking at today as well as approval of further processing of this building.

And we want to make sure that this is conformance with the plan so we offer three conditions, suggest three conditions that we would put on the plan. One is that the University Center will primarily be used as a meeting and recreation space for the campus which is a proposed use and we want to make sure it's in that guideline.

Also, that the University Center will be developed in substantial accordance with the plans that they've shown us today and shown us in our packet.

And the third -- we had initially wanted to have some direct review of it because the plans weren't fully developed, but after the presentation I feel that they're headed in the right direction. They know what they need to do and we can just change my last recommendation to take out everything after "subject to review" and just ask that the University Center be sensitive to the architecture of the premiere buildings on campus.

VICE CHAIRPERSON SOCKWELL: In the immediate absence of the chair, I would call for any

questions that the Board Members may have on the OP's report?

Mr. McGettigan, from my point of view, with regard to question 3, would you repeat exactly what your proposed modification to your recommendation was?

MR. McGETTIGAN: The architecture of the University Center shall be sensitive to the architecture of the premiere buildings on campus. Period.

VICE CHAIRPERSON SOCKWELL: So basically, the Office of Planning is in consideration of what has been seen today, the Office of Planning would allow the architects the flexibility that they need to complete the design as has been described at this point without Office of Planning review authority necessary.

MR. McGETTIGAN: Right, they've shown us enough detail today and design concept to date that we're comfortable with the architecture and feel that we needn't further burden them with the review of the architecture as long as it's consistent with what they've done.

VICE CHAIRPERSON SOCKWELL: All right. Thank you.

Do any other Board Members have questions of the Office of Planning?

MR. HOLMAN: No.

VICE CHAIRPERSON SOCKWELL: Then that should -- we have no reports from DPW and no other agency reports that I can think of, so I believe that it would be consistent to request closing remarks by the Applicant.

Oh, are there persons and parties in support? In opposition? Then we would go to closing remarks.

MS. PRINCE: I would simply like to thank you for your time and in light of the fact that I feel we meet the burden of proof in all respects regarding the standards under Section 210 and have no opposition whatsoever and the support of the Office of Planning, we would ask for a bench decision and a summary order. Thank you.

CHAIRPERSON REED: There are no other questions from Board Members?

VICE CHAIRPERSON SOCKWELL: I just would reiterate the issue of openness and transparency to the building being of paramount importance based on what surrounds the building and that this would be I think necessary as a departure from the traditional

architecture of the campus in order to create the focal point that it really wants to be.

MEMBER RENSHAW: Madam Chair, I'm just a little bit sensitive to Ms. Pervi's statement. I understand budgetary constraints but where you talk about the amount of glass may be reduced, that's kind of flag to me that there is going to be a substantial, rather than a minimum reduction and I would hate to see it based on the architect's very fine presentation and the fact that this is not only going to be a torch, but a major flashlight in the dark of the University campus, so I hope it's kept as Mr. Sockwell has said as open as possible. And I would hate to read all about it in the paper that it's much more masonry than glass.

MS. PRINCE: I think we could put a minimum percentage in the flexibility language in the order, minimum percentage of masonry or minimum percentage of glass which we had discussed yesterday.

If the architect could step in?

MR. GRAUMAN: We haven't really calculated such a percentage, certainly, but if we need to do one, Ross, maybe you can be thinking.

Let me mention that often in our practice when we deal with as we always do with the question

of resources versus intentions, two things happen. One, sometimes is the pressure to think again causes things to get better sometimes. That's worth knowing. The other is that we very much believe in such cases that it makes sense to apply resources unevenly, so that rather than taking a given idea and making it a little paler or just a little less strong all over that one keep true to one's intentions, what really matters and afford that by overcompensating elsewhere.

In this case where it absolutely really matters is right in the middle where the atrium is and along the entire perimeter where we're creating the new commons. We believe the portions where it matters less, but is nonetheless important are on the two flanking positions. Maybe if we could have the large elevation.

Have you come up with a percentage yet?

(Laughter.)

This middle of the building will be extremely visible from the law school, but because of the forecourt of the law school, for those of you who know the building, there's an illustration of the upper right of the left hand thing, my colleague Michael is pointing to -- stepping out of the law

school, you look across that court, along that center line of the building we're designing, just the nature of that court will edit -- will occlude the view from where my hand is to the north and from where my hand now is to the south. So the transparency in the middle here is of much greater value than transparency here and here, notwithstanding that it's important in those two locations.

In regard to the other side of the building on the commons, we believe it's important along that entire perimeter, so as we speak about the change, we're speaking about an uneven treatment that we wouldn't just suddenly turn the whole thing into brick, but that we would make things less transparent on the end and then perhaps work even harder at the middle, to heighten that sense of openness there.

So it will be a matter of applying it with that kind of I'll call it uneven philosophy.

Beyond that we will tend, for instance, to take a room like a dining room and do continuing ribbon window on that, but maybe not downstairs where it's an office.

So that would be the underlying strategy and can we put a number on that and if it's necessary we will just to have the data.

VICE CHAIRPERSON SOCKWELL: It might be too restrictive to put number on things like that in this not so technical situation, but I would want to ask you what your site lighting plans are because that, along with the building, will create the true environment by which people will find the campus inviting and fun and safe and bright.

MR. GRAUMAN: As you'd appreciate it without having designed it in detail, we have thought about a unifying design theme, if you will, around the perimeter of this space because it's an unevenly shaped space and it will be very useful to essentially put a sort of necklace around it that causes people -- that frames it, causes people to understand it as an entity and so it would be our intention to do ornamental lighting of some nature that has not been determined, at a low level around the perimeter.

We're also expecting a great deal of light to emanate from the building so that the treatment of gallery space to which I refer would be that we would put light against this wall, the ones that are shown and shaded in gray because this, after all, is transparent and also on that ceiling. So rather than what happens if you look into a building

like this one at night where you're looking up into a light fixture and the iris in your eye adjusts, you see a black ceiling, is that you look into a bright surface. And that would be true along here and along here so that essentially the building is something of a light fixture.

That principle may be a little more subdued on the law college side because the way the building is set back and the way that third story roof is higher and further removed from the ground, but on that side those types of landscape improvements are already in place and will continue to be very much as they are right now at the law college.

VICE CHAIRPERSON SOCKWELL: All right, thank you.

MEMBER RENSHAW: Madam Chair, I would like to ask what is going on top of the building, any roof top structures, antennas, towers, anything of that nature?

MR. GRAUMAN: None of the things you mentioned. However, there will certainly be rooftop cooling equipment and if -- let me use this, an elevation, Russ -- the other one. Sorry.

Yes, that one. Thanks. I had mentioned

that the building as seen from the lower level is three stories in height and from the upper level is two stories in height. However, here is that entrance court and if you count them, service court, it's one, two, three, four levels and this element which is the one that you see at the end of that space will appear to be nearly three stories from that side and the reason is that just above the book store there will be a good deal of roof top equipment surrounded by a parapet. So this element will appear to be taller than the body of the building here as well as from the service court. That actually is a benefit because it allows the building to mass itself up more in relationship to the ductwork that you see on the back of the science building. I'll just walk over there and point to that.

(Pause.)

Were we not doing that, as it approached this building, we'd be about this tall. This wing of the building, the book store wing is the one I'm talking about, gets quite close to Hannon and it's a sort of backdrop seen from a great distance as you approach that way and without the mechanical equipment, it would be only about as tall as maybe 40 percent the height of Hannon. That wing will be --

appear to be about 9 feet taller than its actual roof height because it will be a parapet concealing equipment, so most of the equipment is being put there. There are a few other places right at the middle of the building where we have sunken areas of concealed equipment.

But we're not expecting any of that to protrude above the visible roof line.

VICE CHAIRPERSON SOCKWELL: So you're not using the full 18 foot 6 penthouse available height under the District zoning regulations?

MR. GRAUMAN: No, we're not.

VICE CHAIRPERSON SOCKWELL: Thank you.

CHAIRPERSON REED: I think that that just about takes care of it. There was -- I heard you mention earlier that you would ask the Board's indulgence in some flexibility of one particular aspect and I can't remember now what it was. Did we cover that?

MR. GRAUMAN: It was in regard to the masonry and the transparency of the building.

CHAIRPERSON REED: Okay.

MR. GRAUMAN: We emphasized how transparent it would be. We said we might dial it down a bit if we have to.

CHAIRPERSON REED: Right.

MR. GRAUMAN: But we'll be true to the idea.

CHAIRPERSON REED: And you're not able to give us any specific percentage of --

MR. GRAUMAN: In lieu of that I gave you a sense of our philosophy as we do it.

CHAIRPERSON REED: You responded to that and I think that the Board was comfortable with that response.

All right, I just want to make sure --

VICE CHAIRPERSON SOCKWELL: I believe that the only other flexibility that was requested was with regard to the slight relocation of the siting from the original campus plan approved location for the center and the slightly west and re-adjusted position of the proposed building.

CHAIRPERSON REED: But that's on the plans.

MS. PRINCE: Actually, that was a modification of the plan. We didn't need any flexibility on that.

VICE CHAIRPERSON SOCKWELL: Those are the only two things I remember you mentioned and that was because you said that it was relocated to a position

of another building that was no longer required and --

CHAIRPERSON REED: Okay. Board Members, disposition. May I have a motion?

MEMBER MOULDEN: I make a motion that we approve the special exception to permit a slight modification and further processing of the Catholic University of America master plan to allow for the construction of a new University Center on the campus.

MR. HOLMAN: Second.

CHAIRPERSON REED: And the Applicant appears to have complied with Section 210 of the zoning regulations and there does not appear to be any opposition or adverse impact as a result of this application being approved, nor does it seem to impair the intent and integrity of the zoning map or the plan, the zoning plans.

Comments?

VICE CHAIRPERSON SOCKWELL: The only comment is that we are not conditioning the application on the basis of value engineered adjustments to the design, facade materials.

CHAIRPERSON REED: All in favor.

(AYES.)

Opposed?

MS. BAILEY: The staff will record the vote as 5 to 0, motion made by Mr. Sockwell, seconded by -- motion made by Mr. Moulden, seconded by Mr. Kwasi Holman; Sheila Cross Reid, Robert Sockwell and Anne Renshaw to approve the application.

MS. PRINCE: Thank you very much. It will make my phone call to Mr. Prisbow a lot easier.

MEMBER RENSHAW: We certainly hope that this becomes an award winning building and we're going to look for it in some architectural magazine, first place.

CHAIRPERSON REED: Ms. Prince, you did say something about your submitting a summary order?

MS. PRINCE: I'd be happy to submit a summary order if it would help to get that flexibility language written for you and I think the staff is nodding in appreciation.

CHAIRPERSON REED: Ms. Pruitt? You would like her to submit that for us.

MS. PRINCE: Draft summary order?

CHAIRPERSON REED: Sure, a draft summary order. It will work.

VICE CHAIRPERSON SOCKWELL: I think you will know if the building is successful when you

can't keep the students off the campus.

(Laughter.)

CHAIRPERSON REED: Thank you very much.

MS. BAILEY: Madam Chair, are you ready for the next case or are you going to take a slight break?

CHAIRPERSON REED: Board Members, do you want to break before we take the next case? Five minute break?

VICE CHAIRPERSON SOCKWELL: Yes.

CHAIRPERSON REED: Okay, five minute break and then we'll proceed with the last case of the day. Thank you.

(Off the record.)

CHAIRPERSON REED: Ms. Bailey?

MS. BAILEY: Application No. 16521 of Charles A. Sisson, pursuant to 11 DCMR 3103.2, for a variance from the front yard setback requirements under Subsections 1543.4 and 1543.2 from the allowable percentage of lot occupancy of a dwelling for the construction of a front porch, rear addition and accessory garage in the Wesley Heights Overlay District/R-1-A at premises 3020 43rd Street, Northwest, Square 1621, Lot 70.

All those wishing to testify, would you

please stand to take the oath?

(Witnesses sworn.)

Thank you. You may be seated.

Members of the Board, this particular case has been continued from several hearings that had been held previously, the last being June 20, 2000 of this year. At that time the Board requested two pieces of information. One was a report from ANC-3-D and the other was correspondence from the Zoning Administrator concerning the correct zoning relief that's required for this project.

We have received the ANC report, that's ANC-3-D. The ANC is opposed to granting of this application. We have not received the correspondence as of today from the Zoning Administrator's Office.

Lastly, Members of the Board, this application or facts of the case were discussed previously in an appeal, Appeal No. 16405. The Board has a copy of the order on that appeal. That is a result of a court case which is now pending before the District of Columbia Court of Appeals. That decision has not been rendered as yet. The case is now ready to be heard by the Board.

CHAIRPERSON REED: Just one second, give me one second. There's something here.

MS. BAILEY: Madam Chair, Ms. Pruitt has a comment to add, please.

CHAIRPERSON REED: Okay.

MS. PRUITT: Madam Chair, previously also Mr. Brown submitted a Motion to Dismiss that you still have to deal with.

CHAIRPERSON REED: Okay. That's right.

MR. BROWN: Madam Chair?

CHAIRPERSON REED: Yes. Who called me? Mr. Brown?

MR. BROWN: Mr. Brown. When you're ready, following up on Ms. Pruitt's remark about the pending motion to dismiss the application or in the alternative to deny the application.

We are here, and by the way, for the record my name is Patrick Brown from Greenstein, Delorme and Luchs. I'm counsel for Ms. Mildred Crary who is the Appellant in the underlying appeal case which invalidated the five building permits issued to Mr. Sisson for this project. Behind me today is Ms. Crary, George Watson, the President of the Wesley Heights Historical Society and Mr. Steven Griswold who is a Single Member District Commissioner for ANC-3-D which has been involved in the project for going on two and a half years now.

As to the Motion to Dismiss, very much in line with what's been filed previously and discussions that occur, on several fronts this application is either premature or in fact, not ready for hearing by the Board. The Board, in its original order which is -- lays out a very detailed finding of fact and conclusions of law, spelled out the facts of this case which are compelling, and (2) in specificity provided the zoning relief that was, in fact, required or lacking in the project.

The application currently before you, this is our sixth hearing date, starting back one year ago, as of Thursday, and the Applicant who bears the burden of going forward still has not managed to put together an application that (1) is consistent with the Board's rather detailed order; and (2) consistent with the facts of the property as we've -- the Board, and others have had to almost forcefully draw out of the Applicant as to critical elements about the property. I name specific issues. We went through several iterations and finally determined that in fact, the property as it relates to Ms. Crary's boundary does not have the requisite minimum 5 foot side yard so that, in fact, that property requires a variance not only for any construction,

but the construction of the rear addition. That is not currently listed as part of the application, although in the zoning computations finally prepared by the Zoning Administrator which I provided to you, indicate that is, in fact, less than 5 feet on Ms. Crary's side of the property.

In addition, the Board's order is very clear that the driveway, private driveway to the rear of the structure had to be of a minimum width. The record is also clear that the width of that private driveway is 8 feet, not the requisite 12 feet for one way circulation or 14 feet for two-way circulation as I believe is the case here. So on its face, again, inconsistent with the order, that variance has not been requested. It also has a domino effect because failure to meet the required access requirements on a driveway renders the parking provided, the off street parking provided not in compliance with the zoning regulations, so in addition, a variance from the off street parking requirements is also appropriately required and referenced in again the Board's order in the appeal case.

Of an important issue is this matter as Ms. Bailey presented before the D.C. Court of Appeals by Mr. Sisson. I think it's premature and if the

Board runs the risk of having different decisions going forth in different manners by proceeding while the Court of Appeals matter is being challenged, but certainly no stay of the Board's appeal order was requested or granted, so that order as it relates to this matter is conclusive as to the findings of fact and conclusions of law reached and should be binding on this Board as to the required zoning relief so that the Applicant always bears the burden of prosecuting an application and has not done so and this is our sixth visit. It's been very costly for my client. Very costly, quite frankly, for Mr. Sisson and very costly in time and energy and missed opportunities for the Board. And so I'd ask that six hearings is enough and we ought to dismiss the matter as -- or deny it with the requisite bar from reapplying for one year.

CHAIRPERSON REED: Thank you, Mr. Brown. Mr. Sisson, did you wish to speak on this matter?

MR. SISSON: Sure, thank you very much. For the record, my name is Charles Sisson and it is my home at 3020 43rd Street, Northwest. As Madam Chairman, you're well aware, this has had some history. I think your other Board Members have not been fully familiar with the sequence of events that

have been transpiring. I'm sure you're only too painfully aware of the events, but if you'll bear with me, I'll try to summarize a couple of things very briefly. And I might mention that I do appreciate the difficult job that you have. I work for an institution that has a Board of Directors and I've sat in on their meetings and at first I thought it was a great job, but I have since concluded it's a very, very tiring and difficult job.

Mr. Brown is, of course, quite right. I've been trying to get this to hearing for about a year now. I thought that we would do it. Mr. Brown has successfully been able to postpone, delay and otherwise obstruct this hearing from going forward and I take this as another in his long series of events.

Initially, we did ask the requirements are that the District's required self-certification at Mr. Brown's request, we went beyond that and we had a survey done by an architect. We came back. That was determined to be insufficient, so we went back and got a survey by a surveyor that is registered at the Board. We had a series of meetings with the Director of Zoning, Mr. Johnson. At that time it's my understanding that Mr. Nunley who was

involved in the case from the beginning and you recall he testified some time ago when the original case came forward, and he certified that the variance that we were requesting was satisfactory and was complete and the only variance that would be required to perform the -- to verify or to validate the construction that had taken place.

That is my understanding. Is there some mistake on this?

There were some other issues that Mr. Johnson took under his discretion as Director of Zoning to waive as requirements and that the only two that are outstanding are the lot occupancy and the setback from the front yard.

That is my understanding.

MR. BROWN: Madam Chair, if I could add briefly. I think one, the facts as we've drawn out over time indicated a much different circumstances than any of us were aware, particularly as to the side yard issues and the nature of these variances, the size and the impact of them has grown as more and more reliable information has been presented.

This has not been an exercise in obstruction. It's been an exercise in one defining the nature of the application we have. I'm not so

sure the Board, given even all its experience, is in a position to gauge the exact relief required, but that just highlights the fallacy or the incompleteness of this application. Again, it's the applicant's role to bring this forward. There are ample facts to indicate both in the Board's appeal order and the facts as they're before you indicate that the appropriate zoning relief hasn't been requested. And I think again that's Mr. Sisson. He has been represented by extremely qualified counsel and a very good friend of mine, so he's not been lacking in advice or assistance. So I think it's at this point incumbent upon the Board to deny this application and if, in fact, Mr. Sisson chooses to refile after the cooling off period, that's fine. But he'll certainly do so in an appropriate manner.

CHAIRPERSON REED: Okay, now what we have to do is determine whether or not, number one, we're going to act on -- did you actually submit a motion to dismiss?

MR. BROWN: That was filed, yes, and it was probably back, I mean again, I think it was in the April time frame.

CHAIRPERSON REED: At that time we voted on it and decided that we would not act on that

motion until -- I think we agreed to go ahead and hear the case and then we continued the case.

MR. BROWN: Can I draw a somewhat important distinction? One of the problems back in the process and certainly in April and in fact, even in the June time frame in April, May and June was the Board was clearly of the view that it did not have adequate information and in fact, instructed Mr. Sisson to go out and hire a certified land surveyor to provide the Board information; one, what was first submitted turned out to be incorrect. It was resubmitted. And in fact, that information turned out to highlight what had long been my suspicion that additional side yard variances were required.

The Board never acted. It deferred action specifically is my recollection on the Motion to Dismiss and quite frankly in fairness to Mr. Sisson and so no action was taken. You were still very much in a fact-finding "we need to know" mode. I think we know as much as we're going to know in this case as to the physical attributes of this -- what was built illegally and he still hasn't asked for the right relief.

CHAIRPERSON REED: All right, thank you very much, Mr. Brown, but I think that without saying

is that you did submit a Motion to Dismiss and we had acted on that and the decision was that we would hear the case before we would actually entertain that motion. I think that's what we said. And we continued the case. Nonetheless, we're at this juncture now and we continued the case because of the fact that we needed additional information, one of which was input from the Zoning Administrator and the Zoning Administrator, it is my understanding, has still not submitted to us what we thought we needed.

And so my question to you, Ms. Pruitt, and also Ms. Kress, is the agenda reflects the relief that is needed, but where was that listed from, the actual relief that's being requested as being needed came not from the Zoning Administrator, was that from the

self-certification?

And because of this controversy, we ask the Zoning Administrator to verify if, in fact, that was the correct relief. So now do we know if that's the correct relief or what?

MS. KRESS: The Zoning Administrator did not answer it. Right now, I was just conferring with Board Member Sockwell to --

CHAIRPERSON REID: Determine --

MS. KRESS: To determine or to help advise you. As you know, it's up to the Zoning Administrator to determine. I mean no matter what you vote, when they accept this as already built, the Zoning Administrator is the one who does the interpretation then of what really can be built. But I understand this is already built.

MR. SISSON: Madam Chair, I have some information that I think may clear up all of this. Mr. Brown had made a great deal in the last hearing about how this piecemeal approach to the building permit that I had obtained and in fact, I did ultimately obtain five building permits, two of which were a direct result of Mr. Brown's intervention, but nonetheless, five all together. And he was arguing that this was a pattern of deception, that I was somehow trying to deceive the District of Columbia from knowing my ultimate objectives.

So as an aftermath of my discussions with the Zoning Administrator at which time he confirmed that everything was in accordance with the required applicable law, I asked him if he would -- if we could get a building permit that would verify under one permit all the improvements that have taken place at my property which has been granted.

So the only issues that are still outstanding as a result of this final, sixth building permit which is a remedial building permit is relating to the setback to the porch and the lot occupancy.

CHAIRPERSON REID: Okay, wait a minute --

MR. SISSON: I would be glad to give you a copy of --

MR. BROWN: Madam Chair, I don't know anything about a sixth building permit.

CHAIRPERSON REID: Okay, wait a minute, Mr. Brown. You'll have an opportunity to speak. This is -- let me just say this, this is very complicated for us. Remember now, most of the Board Members here were not here when this case first initiated, so what we're trying to do now is kind of sort out exactly what, in fact, we're doing and as such, the first thing is to determine if, in fact, the relief that is requested on the agenda is the relief that's needed or if it's not and one thing that we'd asked for is for the Zoning Administrator to weigh in and to give us further direction. He didn't. So you're saying now, Mr. Sisson is saying that he has a building permit that reflects the relief that was requested and you're saying that you

haven't seen it?

MR. BROWN: And I would object to it being entered at this point. He's got a filing deadline to do that. I can't imagine, and Mr. Sockwell, the Vice Chairman Sockwell, could probably weigh in on this, but I can't imagine that appropriately that a permit being issued in this case without this matter being before the Board.

CHAIRPERSON REID: But before we even go there, I need to understand what, in fact, is the remedial building permit?

MR. BROWN: Madam Chair, can I add one other thing that I think --

CHAIRPERSON REID: Let me get my question on the floor.

What in fact -- Mr. Sisson said he has a remedial building permit. What is that?

MS. KRESS: There's no such thing, really. It sounds like a permit to fix something that's wrong.

CHAIRPERSON REID: Is that what it is? What is it?

MR. SISSON: It is a permit to build an addition to the back of my house, to erect a garage on the back of my property and to erect a deck on the

front of my property.

CHAIRPERSON REID: What does remedial --

MR. SISSON: The building exists --

CHAIRPERSON REID: Does it mean after the fact?

MR. SISSON: It is after the fact. They took an as-built blueprint of the property and they confirmed that as a matter of right it is my right to build these -- put these improvements on the property.

CHAIRPERSON REID: And when was that issued?

MR. SISSON: It was issued after the Zoning Administrator had thoroughly reviewed the case, after Mr. Nunley who was the zoning representative, who testified here and reviewed the matter at the Board's insistence.

CHAIRPERSON REID: My question is, Mr. Sisson, is what's the date?

MR. SISSON: They issued it let's see the 11th of October.

CHAIRPERSON REID: What year?

MR. SISSON: This year.

VICE CHAIRPERSON SOCKWELL: Mr. Sisson, who signed off on the zoning portion of that?

MR. SISSON: Mr. Nunley.

VICE CHAIRPERSON SOCKWELL: He couldn't have. He retired prior to the --

MR. SISSON: Sorry, I --

VICE CHAIRPERSON SOCKWELL: When was it applied for, let me ask you that?

MR. SISSON: When was it applied for? It was applied for about five weeks ago.

VICE CHAIRPERSON SOCKWELL: All right, so it was applied for during this pre-retirement.

MR. SISSON: He did sign it.

CHAIRPERSON REID: What was the date?

MR. SISSON: The effective date is the 11th of October.

VICE CHAIRPERSON SOCKWELL: That was issue date.

MR. BROWN: Madam Chair, I mean that's totally inconsistent with everything the Zoning Administrator has said. It's totally inconsistent with us being here. I think again it just goes to the heart about this Board has -- I mean what Mr. Sisson is saying, he hasn't shown it to any of us is, that I don't even need to be here. Well, then I think that's implausible at best. And I'd ask him to share a copy with myself and the Board.

But certainly under his view, he doesn't even need to be here. If, in fact, he's gotten a building permit to build what is already there, I mean that's inconsistent with the Board's order in the appeal case and inconsistent with everything that the Zoning Administrator has said in the last two years.

So I mean I think we're in worse shape than we were ten minutes ago in this case.

CHAIRPERSON REID: Wait a minute --

MR. BROWN: Could I ask that we share that building permit with the --

CHAIRPERSON REID: Wait one second. Wait one second. Let me get some clarification, legal clarification.

Ms. Sansone, this is obviously highly irregular and unusual. I really do need you to weigh in on this because for one, the building permit that Mr. Sisson says he has is one that none of us has seen, was not submitted in order for both Mr. Brown and for us to have had a chance to look at, one. Two, it's signed off, he says by Mr. Nunley who left mid-September and also the remedial aspect of it for something that has already been built. I am rather troubled as to what, in fact, the Board needs to or

should do in this situation.

MS. KRESS: Do we have a copy of this permit and what was permitted?

CHAIRPERSON REID: It was suggested that he provide us with a copy, but my question is given all the history on this case, is that permissible for us to now accept it into the record and to --

MS. SANSONE: I believe we could accept it into the record, but I don't think we have a copy here today. Isn't that the problem?

CHAIRPERSON REID: He has a copy.

MS. KRESS: The thing is, do you have drawings as well, because if we don't know what was permitted, because what we have in front of us that was handed to us by Mr. Brown from Ed Nunley is the computations from 6/20/00 this summer and it shows that there are three variances that are needed and this is from Nunley.

CHAIRPERSON REID: Why don't we take a look at -- if it's permissible, we can take a look at what Mr. Sisson has --

MS. KRESS: Yes.

CHAIRPERSON REID: But my question is is there such a thing as a remedial building permit to give approval for something after it's already built.

MS. KRESS: That I can answer, yes. You can get permits for something that is built afterwards.

CHAIRPERSON REID: Okay.

MR. SISSON: Could I intervene. The point that I was trying to make with bringing this building permit up at this time is that it responds directly to Mr. Brown's challenge. He says how do we know that I am seeking the required relief? I know I am seeking the required relief because I have a building permit for everything except the front porch which requires a lot overlay variance and a setback variance and that's why I'm here today.

CHAIRPERSON REID: Okay, I have you.

VICE CHAIRPERSON SOCKWELL: Madam Chair, let me say this if I might before we go into this, the existence of a building permit does not in itself mean that all of the tests have been met. It just means that a building permit has been issued.

CHAIRPERSON REID: Okay, Mr. Brown.

MR. BROWN: I think the point Vice Chairman Sockwell has made is well taken and then Mr. Sisson, I don't believe -- he essentially wants to have it both ways and I think quite frankly take advantage once again of this Board. He's got -- he

has built certain improvements. The Board has in great length in the previous order indicated what was wrong with those and the zoning relief required.

Mr. Johnson and Mr. Nunley have attempted the best they can, but they've both stated their view that the Board's decision is binding on them and it should be, particularly in this case. So the Board was very clear about the failings of this as far as the requirements for variances and to come in and now say well something different is required. For the Zoning Administrator to say something less than what the Board said previously gets us in a cycle that never ends.

CHAIRPERSON REID: Well, Mr. Brown, I think that where we are, and correct me if I'm mistaken, is he has a building permit, remedial, for the other things that he was required to have it for, but it still remains that the relief that is reflected on the agenda, the variance on the front yard setback and for the allowable percentage of lot occupancy is what -- is the only thing that we're dealing with here today. I mean are we only facing that?

MS. KRESS: Wait a minute, that's all that's been advertised, but it appears that he also

needs a variance for his side yard.

CHAIRPERSON REID: Okay, wait a minute --

MS. KRESS: And that has not been advertised.

CHAIRPERSON REID: The side -- oh, not wait a minute. This came from Mr. Johnson's office, right?

MR. SISSON: That's correct.

CHAIRPERSON REID: Now this is -- now Ms. Kress, this is in the form of a comp. sheet.

MS. KRESS: You get these. This what the --

CHAIRPERSON REID: Usually, this is attached to a letter to us that tells us what the relief is.

MS. KRESS: Uh-huh.

CHAIRPERSON REID: So how do we handle this in that we don't have the letter?

MS. KRESS: That is up to you, but I am just telling you the way you read this and I would ask Mr. Sockwell his knowledge as well. But on all of these, what they put in the variance column are the things that you need a variance or a special exception for. And it is showing here, unless something different has happened, a side yard that is

not in conformance.

CHAIRPERSON REID: A side yard -- okay. The side yard and the --

MS. KRESS: The front yard --

CHAIRPERSON REID: The front yard --

MS. KRESS: What you mentioned.

CHAIRPERSON REID: The front yard, the side yard and the lot occupancy.

MS. KRESS: Right. And what has been advertised deals only with two out of the three, the way I look at this.

MR. BROWN: And can I add further and I mentioned this in my introductory remarks is that in coming out directly out of the Board's order and their finding of facts and conclusions of law, additional variance relief is required beyond those three elements, one of which has not been advertised. The first is the driveway access where the Board indicated what the required access was. The finding of facts found that the access was not in keeping with that standard and then the domino effect is because that access private driveway access was too, required offstreet parking, he no longer meets that. So we've got a situation, one where we haven't advertised for what the Zoning Administrator thinks

as to the side yard variance.

Also, we haven't advertised in compliance with the Board's findings of fact in the original appeal order. So we're now missing three variances from this case and putting aside Mr. Sisson's remedial permit which I still haven't seen, we're not ready to go forward and we're even more not ready to go forward with him showing up here with the permit that was issued last week which I have no way of knowing and staff and the Board Members have no way of knowing what that means.

CHAIRPERSON REID: You said that there was another one with regard to the garage. Where is that? In the previous order?

MR. BROWN: Yes. If I could -- the Board's order --

CHAIRPERSON REID: Page 4?

MR. BROWN: Well, let's see.

CHAIRPERSON REID: Now it says on page 4, number 3, that there was a building permit for a garage.

MR. BROWN: It says here in page 3 and actually can I bounce you around? I'll start first with on page 4 and this is the driveway access issue, page 4, paragraph 13. "The zoning regulations

require that offstreet parking space must be accessible at all times directly from the improved streets or alleys or accessible from improved streets and alleys via graded and unobstructed private driveways." And then it cites to the code section.

And then paragraph 14, "A driveway providing access to required parking spaces must meet certain standards including that a driveway serving more than one parking space must be at least 12 feet wide, if designed for one way circulation or at least 14 feet wide if designed for two way circulation." And in this case it cites again to the section.

Paragraph 15 on the next page says, "A private easement extends from Hawthorne Street along the rear of four neighboring properties and terminates at the end of either Mr. Sisson's property. Following construction of a new garage, the easement is 8 feet wide." So you have a requirement that he's got to have appropriate access for his off-street parking. The Board has found that it's got to be either 12 or 14 feet and the Board has also found in this case that the easement is only 8 feet wide which indicates clearly that an additional variance is needed, both for the driveway access and the fact that his offstreet parking is no longer in

compliance, so again, coming right out of the Board's order as to that issue.

If the Zoning Administrator chooses to ignore that, I can't speak to that, but certainly the sense and direction of the Board in this matter, and we can't -- we've gotten ourselves in enough trouble in this case. The Board can't start making other findings. They've made findings. We were here for and Ms. Reed, you recall we were here for the better part of 8 hours in a very intense fact finding session and this is what the Board found and wrote and this order is binding on the Board and in my view, binding on the Zoning Administrator.

So it's very clear that just on those three paragraphs, three additional -- I man two additional variances from parking and driveway access are required which are not advertised this morning, which have not been corrected, as best as I can tell by Mr. Sisson's permit, even though I haven't seen it. So again, we're back to -- we still don't have the appropriate case advertised and before the Board, notwithstanding what Mr. Sisson has done last week.

CHAIRPERSON REID: Okay, this was very convoluted, as you recall. The issues also went to

the fact that some of these permits were issued incorrectly and it reflected the wrong zoning district in a couple of them and then they were permits to correct the incorrect permits and as a result of that things got to be really complicated.

If you ask me, quite frankly, I can't see that it's any less complicated. It seems that the areas that we need clarity in have -- we've not gotten the support we need from DCRA to allow us to know what, in fact, we're supposed to do.

Now, knowing that they did not give us any clear direction in the form of a letter, but also they gave us a comp sheet that says something different than what's advertised and in that sense, something different than what was reflected in the previous Board order.

So at this point in time I really do need to have some guidance to give us some idea as to what, in fact, we're supposed to be doing here.

Mr. Sisson?

MR. SISSON: Thank you very much, Madam Chair. Let me just again, I was hoping to clarify things by putting forward this permit. And that, in fact, was my intention when I applied for it a month ago and received it. I said we need to clarify the

issues that are still being discussed here so that it will be easy enough to go straight forward and to resolve the matter one way or the other.

Mr. Brown has raised a number of other objections. The zoning authorities -- by the way, and I should mention in response to Mr. Sockwell, I'm sure you're quite right, that the fact that I've gotten a permit doesn't necessarily mean that the other issues have been addressed, but let me assure you, in this case this zoning -- this building application, building permit was very intensely scrutinized.

CHAIRPERSON REID: Do we have it?

MR. SISSON: I did submit a copy, yeah.

MR. BROWN: Madam Chair, I still object, I haven't seen it.

MR. SISSON: Excuse me -- am I speaking? I'm sorry.

CHAIRPERSON REID: Mr. Brown, Mr. Sisson did not interrupt you, so can we please have mutual respect here.

MR. BROWN: Absolutely, my apologies.

MR. SISSON: So anyway, I just want to assure you, Mr. Sockwell, that they have really looked this over. But the conclusion is that they

have decided that the claims that Mr. Brown has made regarding parking and access do not apply, that because it is not an alley, not a public alley, but a dedicated right of way, the right of way may be as little as 8 feet which is the right of way that has been provided to this property, so that that is no longer an issue.

That's why, again -- and a second thing, there was an issue relating to the side yard. The original side yard was 5 feet. About 30 years ago someone renovated the building and put on aluminum siding on the wall and underneath that, put on a strip of styrofoam for insulation, so that the side yard as measured from the wall decreased from 5 feet to 4.96 feet. And the Zoning Administrator determined as -- due to his discretion, at his discretion, he would waive that as a variance requirement.

CHAIRPERSON REID: Where do we have that? Where do we have that in writing?

MR. SISSON: Well, I'm sorry, I wouldn't have gotten that permit, if it hadn't been --

CHAIRPERSON REID: Okay, okay.

MS. PRUITT: Madam Chair, this may hopefully help.

CHAIRPERSON REID: Okay.

MS. PRUITT: The discrepancy from what we advertised to this is because Mr. Sisson self-certified. He took it upon himself to determine what zoning relief he wanted. In doing so, our office is obliged to advertise it that way. We did do so. However, at the hearing this issue came up that there was not -- not all the zoning relief needed was requested. That is what generated this which now has one, two, three, I believe five or so requests for variance based on the computation. That's where the difference between those two come in.

CHAIRPERSON REID: Okay, but I thought that Mr. Sisson just said that the side yard requirement --

MS. PRUITT: This is a new wrinkle -- this is something new because based on this which my understanding is from the Zoning Administrator, it does say it meets the side yard. So I'm not sure.

CHAIRPERSON REID: Thank you very much, Ms. Pruitt. That's what we're looking at. That's the main reason why I was asking the question I was asking.

MS. PRUITT: Mr. Brown, you provided this

to us?

MR. BROWN: Yes.

CHAIRPERSON REID: Just a moment, I think I was talking.

MS. PRUITT: I'm sorry.

CHAIRPERSON REID: Mr. Sisson said that he had a waiver of the side yard setback. Where is that in writing? Who gave you that?

MR. SISSON: It is implicit in the fact that a permit was issued for the building, for the addition to the property which would require that as a variance.

CHAIRPERSON REID: Okay, Mr. Sockwell, you want to try to clarify for us?

VICE CHAIRPERSON SOCKWELL: Yes. There is, I think it's in Section 223, is that correct, that the Zoning Administrator's discretionary powers are enumerated and he does have a right within 2 percent on area variances, I think it is, or whatever it is, exactly how it's written I don't have it turned to that section, but I assume that that is the regulation that Mr. Sisson approached zoning with regard to.

I also was looking at a copy of West Consulting Group's location survey which dates back

to my June files or my May files.

CHAIRPERSON REID: Excuse me --

VICE CHAIRPERSON SOCKWELL: And those numbers that were professed weren't on that survey.

CHAIRPERSON REID: Wait a minute, Mr. Sockwell, please. Indulge me. The issue of the side yard setback, are you saying that that is in your opinion also a matter of discretion by the Zoning Administrator and is that waived?

VICE CHAIRPERSON SOCKWELL: It depends upon whether there is considered to be a conflict between the ordinance in the minimum side yard requirements under grandfathered properties, if the side yard existed prior to the 1958 zoning code enactment and/or whether or not a nonconforming side yard that was created after that time could be waived in by some action of the Zoning Administrator. Some of these things leave me to believe that maybe there's a conflict, but I don't have enough information to say that.

I mean apparently there was, as Mr. Sisson states, there was an insulation issue and the insulation reduced the side yard to 4 point something something feet at this point --

MR. BROWN: But Mr. Sockwell, can -- you

raised an important point. One is we don't know where we are in this case. Two, the whole adding insulation would not create the result that he's claiming. I mean basically, and we went through this in June. When the measurement was taken properly which was to the underlying wall of the building, because the insulation and the siding was added on top, but to go to the wall itself which was the correct measurement which is shown in the latest West drawing is less than 5 feet.

Now what the Zoning Administrator did, we are left to guess and we're left to guess with a lot of things here. But I think the Board's order is clear as to there is no distinction here between a public alley and this private easement. The statute talks in terms of a private driveway which this is and it makes very specific requirements which he just doesn't meet and the Board found that.

VICE CHAIRPERSON SOCKWELL: Now the question of the private easement which is shown in general descriptive in the drawing that's on the board which is -- well, maybe it isn't.

MR. BROWN: It's not.

VICE CHAIRPERSON SOCKWELL: Use the microphone so that the recorder --

MR. BROWN: I don't think we have, at least I don't believe we have an accurate drawing, but the easement comes up and again Ms. Crary here for definition purposes is here. The driveway, private driveway comes up from Hawthorne down here. It's very steep and it comes up and it's 8 feet wide and it comes up somewhere in here and it goes about -- Mr. Sisson, 25 feet in depth into your property.

MR. SISSON: That's right.

MR. BROWN: His property is 52.5 feet. So it goes up halfway. But again, there's no -- and he provided the documents and they're in the record in the appeal case. It's still only 8 feet side.

VICE CHAIRPERSON SOCKWELL: But that's the area that is taken from Mr. Sisson's property? Or it is -- in other words, it does not cross Mr. Sisson's property line, it is a private driveway that was probably taken from all the properties between the street and the terminus and a portion from them to create an 8 foot access to all of the properties that border it on both sides.

MR. BROWN: Well, if I could clarify. It's 8 feet deep in Mr. Sisson's property and then because there are four or five properties running down this way, so that 8 feet crosses the rear of all

those properties.

VICE CHAIRPERSON SOCKWELL: Right.

MR. BROWN: But it's still a private driveway that's 8 feet wide as it's set forth in the regulations.

VICE CHAIRPERSON SOCKWELL: I'm just trying to determine that it's not mapped on to Mr. Sisson's property. It is just mapped between the properties that border it as an 8 foot right of way, call it private because it is of those lots as opposed to a city owned easement.

MR. BROWN: That's right.

VICE CHAIRPERSON SOCKWELL: There are numerous easements dating back to the early 1800s on the books for various access to various pieces of property and I just want to make sure that I understand what it is and where it is, because it is not -- it is a private driveway. It is only an easement if it is mapped over Mr. Sisson's property line to my understanding.

If Mr. Sisson's property deed does not reflect a portion of that driveway being in his property within this property, then it is more of a private driveway and far less of an easement.

The access cannot be blocked by any of

the bordering property owners if it shows up on the description of land as a private driveway.

MR. BROWN: It was a reciprocal easement created between the joining property owners and Mr. Sisson submitted the documents.

VICE CHAIRPERSON SOCKWELL: Yeah, and I don't know exactly what it looks like.

MR. BROWN: But it's there. It's an encumbrance on his property for his benefit and for the reciprocal benefit of the other --

VICE CHAIRPERSON SOCKWELL: Exactly, that much I do understand.

MR. BROWN: But we're talking zoning now and now title work. An easement was how it was created, but what it physically is, in fact, a private driveway. That's what it looks like. That's what is serves. It actually -- it looks like a private alley or it looks like an alley, very steep, running up. In fact, I might be able to show the Board a picture if that helps.

(Mr. Brown submits photos to Board.)

If you'll bear with me here --

Mr. Sockwell, may I approach?

VICE CHAIRPERSON SOCKWELL: Yes. Pass these to staff.

(Pause.)

MR. BROWN: Madam Chair, and you've heard plenty from me. Mr Griswold is here on behalf of the ANC-3-D. They took up this issue specifically both as to the alley access and also in fact, the general nature of the premature and incomplete nature of the relief being sought. So he is entitled to great weight on behalf of the ANC and perhaps that would help the Board and he is available.

MR. SISSON: Madam Chair, wouldn't that be a little premature here? I mean haven't we got to resolve whether we're going to try this case and then he would be entitled to speak?

CHAIRPERSON REID: Thank you. Mr. Brown, sequentially, the ANC will have an opportunity to speak, but first we have other issues that we're trying to iron out here and then we will proceed in the correct order. And thank you.

MR. BROWN: Madam Chair, and I don't mean to be argumentative, but on this specific issue, the Commission took a position in nature with the discussion we're having now as a preliminary matter. Their view was that the matter was not right to go forward because of the deficiencies that we're discussing now.

So I just add that. It's certainly in their record and it will come up again, but that's a position that they've taken.

CHAIRPERSON REID: Thank you. Bear with us just a -- we need a little time to sort things out.

(Pause.)

VICE CHAIRPERSON SOCKWELL: Mr. Sisson, it is impossible for me to ask you any questions that I can get relevant answers from because I don't have access to Mr. Nunley who apparently signed off on this. But I will make the assumption that when you approached Mr. Nunley with your site drawing, you showed him the 5.13 feet and the 4.96 feet and explained to him that in some way the 4.96 feet was not a significant deficiency and he said, "Mr. Sisson, I agree with you" and he signed off on that or something.

I don't know. But because he had to have signed off on it by saying that the 4.96 feet was not a significant deficiency, either through his powers under Section 223 or because he was retiring and didn't care any more. But I don't mean it that way.

MR. BROWN: Mr. Sockwell, can I add something?

VICE CHAIRPERSON SOCKWELL: Yes.

MR. BROWN: In the plans, he's got a miniaturized version of the latest evolution of what the Board had seen previous of the survey. He's labeling this document differently than that document?

CHAIRPERSON REID: How so?

MR. BROWN: Here, he is -- he seems to be making a distinction between the foundation and the stones and he calls it facing and siding. It doesn't seem to bear up and be consistent with this. It looks like he's used different terms and I'm just looking at this the first time.

VICE CHAIRPERSON SOCKWELL: Well, that was part of what I was getting at. If you read it all, there are things there that one would have to either imagine or he showed a documentation of some sort.

The other thing is that if you have 8 feet and you have provided your own additional 5 feet of paving, at least, it appears that if there is an 8 foot easement, you have provided an additional paving on your property of about 5 feet that reduces down to what looks like about zero as it goes down past adjacent properties, not belonging to you. And I

don't know exactly how all that came about, but it appears that there is paving initiated by someone which looks like it was part of the construction of your garage and its access that intrudes upon private property that extends beyond your property line.

I'm looking at this picture.

MR. SISSON: To directly respond to your question, there is -- could I -- perhaps it would be best if I gave this in evidence and this is the latest plat from West Surveyors who are a well recognized surveying --

VICE CHAIRPERSON SOCKWELL: It would be consistent with the fact that West provided the other surveys which are different from the one you're going to give us now?

MR. BROWN: And Mr. Sockwell makes the point that we keep hearing, we're getting into evidence --

MR. SISSON: Excuse me, was I responding or not?

MR. BROWN: Well, I was trying to follow up a comment made by Mr. Sockwell. I'll hold my peace, but I think the point he made was very --

CHAIRPERSON REID: One at a time, let him finish.

VICE CHAIRPERSON SOCKWELL: My comments are more questions in an attempt to understand what I'm looking at. The file on this particular project is voluminous because I am the Board Member who was here for all of the hearings and I made a lot of notes on this, but it got continued to the point that even my memory of the notes that I've made is not as clear as it was.

CHAIRPERSON REID: I don't think that you were here in the beginning?

VICE CHAIRPERSON SOCKWELL: I was here.

CHAIRPERSON REID: I think Mr. Clarens --

VICE CHAIRPERSON SOCKWELL: Maybe not the beginning. I've been here for --

CHAIRPERSON REID: For a year.

MR. SISSON: Excuse me, but to respond to your question directly, yes, there is an 8 foot concrete driveway that comes up the hill and widens to provide a concrete pad for the garage itself and then there is a narrow strip of about 5 feet wide that extends past the driveway and terminates at the base of the end of the garage and that concrete was in there, it's been in there for as long as I know.

If I could just make one comment though, regarding your earlier suggestions about Mr. Nunley

and the zoning variance that would be required for any short fall from the 5 foot side yard, that was not determined by Mr. Nunley. That was determined by the Administrator and Mr. Brown knows this very well. There was a series of meetings this summer at which this was discussed, at which he was a participant and the Zoning Administrator told him that he was going to use his authority as given under the regulations to provide -- to provide, to determine that this was not an issue for a variance. And Mr. Brown had made a couple of points in public at the ANC meeting that it wasn't in writing, but I think the fact that this permit has been issued should vindicate the fact that he has made that determination.

MR. BROWN: It's inconsistent with what he provided me and unfortunately not the Board in writing and I don't want to have the Board put too much weight in the permit that was issued because I haven't had a chance to look at it. We haven't seen the drawings.

I think Mr. Sockwell has raised the point that's critical here. We don't know. We have all these questions and I think this is probably the most difficult place to try to resolve those, particularly in the absence of timely information and

participation by the Zoning Administrator.

CHAIRPERSON REID: Just a moment.

(Pause.)

Okay, on this --

VICE CHAIRPERSON SOCKWELL: Let me ask -- Mr. Sisson, this is the $24 question, what is the height from the finished grade at your front porch to the top of the porch floor as determined under the issued building permit?

MR. SISSON: I would suggest that it's about 2.5 feet. I'm sorry, I don't have a -- that's pretty approximate, it's three steps up.

VICE CHAIRPERSON SOCKWELL: Okay.

MR. SISSON: It's three steps up.

VICE CHAIRPERSON SOCKWELL: All right. And that was -- because all of these elements were existing at the time that these permits were initiated, these --

MR. SISSON: I'm sorry. It is a very complicated situation. I bought this house in November 1997. I bought with a view to try to make improvements and renovations comparable to the ones that had been done already to the other houses in the block to the south of this property. I did not realize, nor did anybody that I hired realized that

in the meantime from the time that these houses were improved to the south of me, that there had been the Wesley Heights overlay installed. So that we looked at it as it would be consistent with what has been done before.

So I went and got a permit to put an addition to the back of my house, to renovate the existing one car garage and make it into a two car garage and to add a front porch. The problem has been that in doing so I did, inadvertently, with no knowledge to myself at the time, I did break or infringe on the Wesley Heights overview in the sense that I did exceed my lot occupancy level and I did exceed my setback, even though the front porch itself is further back from the street than any of my neighbors to the south, it is still infringing on the setback that is required under the Wesley Heights overlay and that is the nature of my request here to get a variance for those two issues.

Believe me, over the last six months, the staff of Zoning and Building has scrutinized this work ad nauseam. I mean they have gone through it 25 times and Mr. Brown has been a party to those meetings.

And they have, after all, this concluded

that there was an issue, yes, but it resolved down to the two variances that I am requesting at this time. I'm sorry, and to try to expedite things I got this permit which verifies everything that has been built to this point in time under one permit after exhaustive review by everybody in the Planning Department, but that there are two problems. And that is that if the porch -- if a roof is put on that porch, then I exceed the lot occupancy requirement under the Wesley Heights overlay and that the setback is exceed by some 3.5 feet. That's why I'm here today.

VICE CHAIRPERSON SOCKWELL: Thank you.

MR. BROWN: I think, Madam Chair, and Members, one, Mr. Sisson would like to rewrite the Board's original order which was fairly detailed and placed kind of circumstances -- they characterized his permits as piecemeal, inconsistent, misleading. Mr. Nunley testified, I quote, "that he was knowledgeably misled." So it angers my client to no end, but we're stuck with the record that's pretty clear that this was not approached just by virtue of the fact that thee were five permits issued. The permits that were issued were exceeded, stop work orders were issued and in fact, two of the permits

were for work that was already completed as to the front deck. So again, context is important. It's in the order. The Board was polite, but very firm and where they found fault in this matter and that's where we are today. We're still having the same credibility problems. And it pains the Board, I can tell, one, that we're still involved in this case and that you're still being forced to try to figure out what this case is about.

I don't think this permit that he comes up with, which isn't, quite frankly, for what it there. It's for something less than what is there. So we're still in the agonizing position and in no basis to go forward today. I look at my clock and it's 5 minutes to 5.

VICE CHAIRPERSON SOCKWELL: Well, let's forget about the time for the moment, because it is only 5 minutes to 5. The issue that I see right now is that the percentage of lot occupancy, based upon previous statements in the record is that with the garage and the two story addition on the rear of the house, the percentage of lot occupancy came out to approximately the 2,000 square foot maximum. And that the porch, whether it was by my calculations which were the front porch, my calculation was that

it was 338 feet. The most recent calculation is that it was 322.65 feet in the -- in our documentation here. But I was doing mine without having -- I used what dimensions I had here and that's what they pretty much worked out to be. But the point is that if the porch goes away because the roof of the porch has now been removed under a consolidation permit and part of the reason for the consolidation, whatever permit this thing is, part of the reason was to take the roof off. That way, it brought the percentage of lot occupancy into conformance with the regulation. So if that goes away, based on performance under the permit, then we are looking at a front yard and a side yard issue, I presume.

CHAIRPERSON REID: Okay, now --

MS. KRESS: The front yard goes away with the porch.

VICE CHAIRPERSON SOCKWELL: The front yard goes away with the porch, okay, so the front yard goes away.

MS. KRESS: And the side yard, I think we've already answered.

CHAIRPERSON REID: Is that what your understanding was when you had this permit to remove the roof over the front porch?

MR. SISSON: That's correct. That if I do -- if I do remove the roof over the existing porch, which I would be loathe to do, but it may be something that I have to consider. I would prefer not to, that's why I'm here today, but if I do remove the roof off of the front porch, then I go back -- everything that I have done is as a matter of right and as I say, the Zoning Administrator, the zoning people, they're all in accordance that that is the case.

And Mr. Brown has made a lot of nice statements about my duplicity and how I've been deceiving people, but I think the fact that it's all under one permit kind of defeats that rhetoric.

CHAIRPERSON REID: Okay, but you said here that your permit does indicate removal of the roof over the front porch and that's what you applied for.

MR. SISSON: No. I'm saying that if I do not get a variance, I have to remove the roof over the front porch, yes ma'am. That's why I'm here today, is that I would like to have a variance that would allow me to keep the roof over the front porch.

CHAIRPERSON REID: The roof over the front porch and the front porch.

MR. SISSON: And the front porch itself is three and a half feet.

MS. KRESS: And I would just like to add, then what was advertised was correct relating to the front yard and the lot occupancy because if he puts the porch, leaves the porch on, now as you've looked at everything, I believe he is correct and that is all he would need.

CHAIRPERSON REID: What about the garage?

MR. BROWN: The driveway access is in the Board's order and I do take exception on the side yard issue and again, we're guessing. That's the problem and Ms. Kress and Ms. Pruitt and every one of the Board Members is working very hard, but ultimately we're guessing and supposing and assuming --

CHAIRPERSON REID: Well, Mr. Brown, under these circumstances all we can do is the best we can do given the submission of this particular application and what is before us now and we have Ms. Kress here and Mr. Sockwell who are very well -- very competent and very well learned in the permitting process and also very highly regarded architects and we're looking to them and we also have Ms. Pruitt, who is also an architect, looking to them to give us

guidance and they're -- as you can see, eyeing out these issues and kind of framing them for us to assist us in trying to dispose of this. In my opinion it's just been going on for entirely too long. So we're going to have to just do the best that we can do. We don't have the letter from the Zoning Administrator like we need. We don't have -- Mr. Nunley is not here any more. Mr. Johnson -- what's the title?

MS. KRESS: Well, not only that. It may be that it's not needed because they filed for this other permit. Maybe that's why the remaining few zoning folks didn't find the time to do this because they have in their possession the proofed set of permits that if built the way this is approved, there are no zoning variances required.

CHAIRPERSON REID: Okay. Except for just what's advertised, back to what's advertised.

MS. KRESS: No. Right now this -- in my opinion and I think Board Member Sockwell will agree, and from what we know and from what we can see, what he has got permitted here he can do as a matter of right. And the reason it's remedial is he has to take the roof of the porch off to be allowed to do all the rest of the things he's done.

CHAIRPERSON REID: What I was asking was Mr. Sisson is saying, as I understand, that be that as it may, yes, he has permits for those things, but the reason why he's here today is to ask for the variance --

MS. KRESS: To keep the porch on, porch roof on.

CHAIRPERSON REID: Yes.

MS. KRESS: Yes. And I believe that the two things that he has advertised that he self-certified and advertised --

CHAIRPERSON REID: Is correct.

MS. KRESS: Is correct.

CHAIRPERSON REID: My question was what about -- it says rear addition from the allowable percentage of lot occupancy of a dwelling -- front porch, rear addition and accessory garage. All that is contained therein?

MS. KRESS: Yes.

CHAIRPERSON REID: Okay.

VICE CHAIRPERSON SOCKWELL: Let me say this, if I might, Madam Chair, and I am concerned because the volume of my files on this seemingly simple construction is one of the largest files that I have secured outside of the campus plan process.

And let us say that under the circumstances now, the Applicant has a valid permit to have a porch and to have a two story addition and this garage thing I'm still not quite sure about with regard to the access, but on those other issues, it would seem quite simple for the Board to process the roof on a porch which he can have by a matter of right, simply as a minor structural modification to something that's already going to be on the front of his house and we ought to do that. But I am not really comfortable with that only because of the torturous process by which this has come about. It is not the action of an -- how can I say this, of an uninformed homeowner with little knowledge of the process working his way through the system which may sometimes be onerous and sometimes ineffective. It is more a sophisticated motivated well designed, well executed, but complex process by which we have wound up with something that might be either a simple execution of our powers or perhaps a miscarriage of justice on our part and I'm asking my fellow Board Members to very carefully consider how we got to where we are today.

After saying that I want to make sure I understand exactly where we stand on the alley, on the private easement portion of this with regard to

garage.

CHAIRPERSON REID: Aren't you going to finish?

VICE CHAIRPERSON SOCKWELL: Well, I'm not making a statement of where we should go with this. I'm just making the statement because not every Board Member has this and this --

CHAIRPERSON REID: Okay, but --

VICE CHAIRPERSON SOCKWELL: To guide them through how the process has evolved.

CHAIRPERSON REID: But you opened up a whole other spin on this, so can you give us some more input as to what you feel or you think?

VICE CHAIRPERSON SOCKWELL: I sort of think that this has been calculated to leave us with no way to go but to say do it. And I'm not sure I'm there. I don't like the way this has evolved. I think that as one who wants to be helpful and lenient and certainly assist applicants who have problems with the process to get from Point A to Point B, this troubles me. And it has all to do with the way it has come about.

So my question is first of all, if we have to move on this in various directions or break this down into components, I want to make sure that

everything that we are dealing with is within those components.

MS. KRESS: Have you dealt with the proofing, the variance? We've just walked about that as an option. We're still kind of in the motion stage. But if, in fact, this goes ahead, you have the standards which are quite tough to prove to get a variance like this. And I think that that's a good part of the rest of the case as well.

CHAIRPERSON REID: Okay, why don't we just move forward and see where we get? I think that we've established now what relief, that the relief that has been advertised is, in fact, the relief that we kind of agree is needed.

MS. KRESS: I have to agree with Robert. I'm not sure about the driveway. As it relates to all of the other things, I'm feeling comfortable.

CHAIRPERSON REID: Where does it say something about a driveway?

MS. KRESS: It's back on page --

CHAIRPERSON REID: No, no, where was it advertised on the agenda?

MS. KRESS: Nothing. That's what I mean. It wouldn't be enough if there was something that needed to be done for the driveway. I'd like to just

take a few more minutes to look at the driveway --

CHAIRPERSON REID: Okay, let's move to the driveway issue and try to put that to rest.

VICE CHAIRPERSON SOCKWELL: Let me say one thing. As I look at the most recent survey, one of the things that might trouble me about the survey is that it has been asserted that the difference between the 5.13, the foundation; the 4.96 stone face thing of the house is based on insulation and -- or the siding, it's based on insulation. And then the garage has very similar characteristics for a building that would not have had to be insulated. And I don't know that I can really believe in all of that, when it seems to be painting a pattern of fairly consistent side yards to work for the application, but it doesn't necessarily hold water from an architectural standpoint to me.

CHAIRPERSON REID: Okay, well, thank you very much, Mr. Sockwell.

VICE CHAIRPERSON SOCKWELL: Because we started at 5.03 everywhere and we're winding up --

CHAIRPERSON REID: I don't know if that has cleared things up for us or if that has kind of added a new element.

MS. KRESS: Madam Chair, may I suggest

there's a couple of ways you can go. As you know, with these self-certifications our stand has been that the applicant takes the risk and it's when they go to the zoning -- to get their permit that they might be turned down and have to come back to us. In fact, what has happened here, including the driveway, the permit people have accepted the driveway as well as the addition and the garage and in order to approve this, they're making them take off the porch. So I think you would be comfortable if you wanted to go ahead and hear the case like you normally would and see if the Applicant can prove the variance standards that it would have been advertised correctly based on this permit that we have in front of us.

CHAIRPERSON REID: That makes a lot of sense. That's what I was trying to ascertain as to whether or not the relief that was being advertised was what we should be dealing with and your point is well taken that if we go ahead with the case and in the event, subject to the review of the Zoning Administrator and if, in fact, he deems that additional relief is necessary, then it will have to come back at the risk of Mr. Sisson, right?

MS. KRESS: Right.

CHAIRPERSON REID: Okay.

MR. BROWN: Madam Chair, it troubles in two points. There is a risk for my client. There's a risk for the Board, and you sat on the appeal case and four other individuals worked very hard on it. And staff went to great lengths to very specifically point out a deficiency in this project. And to go forward on something that's contrary to that, I think is a mistake for the Board, and I don't mean that personally, but it basically is we're relitigating what has already been decided and it's a risk for the Board, for Mr. Sisson, for my client. There is already an appeal of the Zoning Administrator's decision that's been filed. It has not been docketed. So the likelihood is that unfortunately this matter is going to be litigated again in the context of this case.

I think it behooves all of us to decide the appropriate variances and go forward because the uneasy feeling Mr. Sockwell has is not going to go away, I don't believe.

CHAIRPERSON REID: Mr. Brown, thank you very much. However, what was before us was the motion was to dismiss the appeal based on timeliness and laches.

MR. BROWN: That was the appeal case.

MS. PRUITT: That was the appeal case.

CHAIRPERSON REID: That was the what?

MS. PRUITT: The appeal.

CHAIRPERSON REID: That's what I'm saying. This is the order and when we address that --

MS. PRUITT: Right, but there's also a motion from Mr. Brown to dismiss this existing --

CHAIRPERSON REID: I'm not referring to that. We already said, I prefaced my remarks earlier with the fact that we have already ruled on the fact that we're not going to take that matter up until such time that we have heard the case. We've already ruled on that. But what I was referring to was the order and just trying to refresh my memory on that. I think that it looks like the position the Board took was that the appeal was dismissed based on timeliness and laches, that the Motion to Dismiss was denied based on timeliness and laches.

What is before us right now is the actual variance case, is it not?

MS. PRUITT: Yes.

CHAIRPERSON REID: All right. So that's what we're doing today. Why don't we just go ahead

and proceed and see if, in fact, see where we get with this.

Okay. Who is going to start with this?

MS. KRESS: Typically, your Applicant makes the presentation for his reasons to prove his case for a variance.

CHAIRPERSON REID: Yes. I had gotten kind of confused, if you want to know the truth.

Okay, Mr. Sisson, please.

MR. SISSON: Okay, I think that a lot of my presentation is going to be redundant because I think we've raised a lot of the issues and I'll try to be brief. I'll try to summarize as best I can.

CHAIRPERSON REID: Okay.

MR. SISSON: You already know that my name is Charles Sisson, that I own the home at --

CHAIRPERSON REID: Don't be redundant now.

MR. SISSON: All right, I will try. I should mention that I'm a white collar worker, I'm not a professional builder. I bought this home as I said to try to remodel it to put it into context with what my neighbors had already done, the neighbors to the south.

As we discussed this renovation has had a

long and troubled history because of the appeals filed by my neighbor to the north, Ms. Crary.

I want to repeat because it is very important and it goes to the point that Mr. Sockwell raised and perhaps I should elaborate on this, that at no point did I attempt to do anything that was illegal. I at each stage attempted to get a permit for the work that was to be undertaken. I had hired an architect. I had hired a contractor. I consulted with the District. No one picked up the fact that there were any issues here.

It's true that there were five permits issued. And in fact, I only planned to get three permits. I planned to get a separate permit for the addition, for the garage and for the porch. I had to get five because of Mr. Brown's intervention. He at one point when I started construction on the garage, the original permit was for renovation of an existing garage. My contrary ripped out the foundation for the old garage and all of a sudden I couldn't renovate my existing garage. He was quite right. I need to have a permit for a new garage which I subsequently did get. He did get the stop work order. He did intervene to make sure that a stop work order was issued and in fact, work was stopped.

I did get another permit and work proceeded.

I would mention that Mr. Nunley was the person who testified at the original hearing. Mr. Nunley is also the man who reviewed all the work subsequent to that and in fact, before he retired, when he signed off on the permit, Mr. Nunley apologized to me for any allegations that he might have made about my character. So I did appreciate that.

This application meets the three part test for a variance. The first part is that the subject site is affected by extraordinary or exceptional conditions. I believe that two main factors cause my property to meet the first part of this test. The site is affected by extraordinary circumstances which are inherent in the history and events affecting the property. The five building permits, which I relied on in completing the improvements.

Second, my house, as originally constructed, was set back from the lot, a greater distance than the three houses to the immediate south. In this aspect it was different from these houses. By removing the original covering over the entryway which existing and replacing it with a porch

along the entire facade of the house, my house is made more similar to the properties to the south in terms of its distance from the street.

Secondly, I have no doubt but the strict application of the zoning regulations will cause me practical difficulties. As the facts in the case clearly indicate, I acted in good faith throughout this entire process and reasonably relied on the District's records, issuance of permits, statements of District officials and the inspection of the property by those officials. All the inspections were undertaken.

I have never made any attempt in any stage of the construction process to subvert the legal process. But I am not faced with the situation where I have a porch which causes my house to exceed the lot occupancy ratio and it infringes on the setback, front setback. In the event that the requested variance relief is not granted, I will be forced to rip off the entire front porch and redesign the entrance to the house. The porch was constructed at substantial expense because it involved not only the porch upstairs, the porch structure itself, but the addition of stone to the front of the house to enhance the design of the porch. The removal of the

porch will require an entirely new design approach to the front of the house.

Finally, I strongly believe that the requested variance relief can be granted without detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. My purchase and renovation of the property has been a vast improvement over the prior condition of the site. The addition is, as I said, similar to many other additions in the immediate area. Many of the existing houses have front yards that are less than the 25 feet now required.

What I did was extend the overhang, the covered entry to the front door of my house over the full length. It actually from Ms. Crary's house, I cannot believe that she has any different view than she had before because her house is set back, since it's not on 43rd Street, it's actually on New Mexico Avenue, it is set back further than my property by substantial measure and the only corner of the house that she can see is the corner that has the front door which had a covered entryway over it before. So as far as her view of the street, I do not think that there has been any impact whatsoever.

So now I would like to make one point and that is to respond to Mr. Sockwell's question about -- which he's concerned why has there been the process and why have -- why do we have a file of the magnitude that we now have on this application which I must tell you I am really impressed by myself.

I would make two points. One is that when the Board heard the original appeal on the zoning -- on the building permits, Mr. Gilreath, who I think is Mr. Sockwell's predecessor to this Board, specifically stated in the decision this is from a transcript of June 6, 1999, he said, "I would like to say first of all I did not see any kind of ill or deceptive intent on the part of the Intervenor" and that would be myself in this case. "There is no question that the District, in my judgment, made horrific mistakes. Generally speaking, the citizens of this city and any community have a right to rely on reasonable common sense of their organizations and so forth. I have misgivings on that, but dealing on a strictly technical level, I support the motion. As I understand it, the Intervenor will have recourse to subsequently apply for a variance. That's up to him if that's what he wants to do." And that's exactly what I'm doing at this point in time. I'm following

Mr. Gilreath's recommendations.

And secondly, I would just like to ask the question that Mr. Sockwell raised from a different perspective. Yes, it's true. I did get five permits in this building process. I only intended to get three, but I did get five. My question is this. Why, if Mr. Brown, who I can assure you was there on a continual basis, we know that he intervened at the time I got a second building permit because he was instrumental in getting the stop work order. Why didn't he stop me at an earlier stage in my process? Why did he wait until the building was entirely complete before he intervened, before he filed a legal objection? I think that's really very much to the point of this case.

The only other time I've ever had experience, personal experience with the building permit process in the District of Columbia was about 15 years ago when I had a townhouse down on Capitol Hill and I petitioned to have a small deck put outside my property. And I did get a building permit and I did start and within 15 minutes my neighbors had called the police and gotten me to stop work on that building because they objected to my

construction. Fifteen minutes.

Mr. Brown waited 8 months. He waited until everything was completely done, until I had all of my inspections, until I had gotten my final inspection and then he raised formal objection. Why would he wait that long if he was so aware of all the -- the pattern of negligence and duplicity I was undertaking? Why would he do that?

MR. BROWN: I object. The Board made specific findings on that case that because of the piecemeal nature of the permits that were sought, the work that was done beyond the scope of those permits, that in fact, myself and my client, Ms. Crary could not have been reasonably --

CHAIRPERSON REID: Mr. Brown, wait --

MR. BROWN: Mr. Sisson, if we're going to go down that path and relitigate this case, we're going to relitigate it fully.

CHAIRPERSON REID: Okay, Mr. Brown. Thank you very much. Mr. Sisson has already made the point and you can address those issues at the designated time. You can do that at the designated time.

Thank you. Mr. Sisson, you kind of beat that to death.

MR. SISSON: I'm just about done.

CHAIRPERSON REID: All right.

MR. SISSON: In summary, I would say yes, errors were made which I'm more than painfully aware of and I really very much regret that there were errors, but it appears to me that in light of the building permit that was issued through the approval of the Zoning Administrator, that errors related to the final permit which was the porch.

MR. BROWN: I object. He's making conclusions that are not borne out in the record on the appeal and we're going to be here -- this is exactly the concern I had is that we're now going to be forced because I can't leave these unanswered, we're going to be forced to relitigate the appeal case because the credibility of Mr. Sisson, the credibility of my client, the credibility of the process are now being put before you and as a result to that, we're going to have to -- because he's raised the issues, we're going to have to relitigate that and this Board, because it's a critical element of the case, is going to have to make an assessment about whether, in fact, Mr. Sisson's hardship is self-created.

CHAIRPERSON REID: Mr. Brown, Mr. Brown,

thank you very much and your objection -- I'll sustain your objection and notwithstanding the fact that something that Mr. Sisson said was not in keeping with -- was more germane to the appeal case, remember that we understand fully our obligation and our responsibility and that is to hear and to deliberate on a variance case only today. So if other things happen to come in, we have to refocus on what our responsibility is. Thank you.

MR. SISSON: But yes, I didn't make any statements. I just raised the question, as you will recall.

CHAIRPERSON REID: Right.

MR. SISSON: But anyway, Mr. Sockwell, and I only raised it because you had raised that question earlier and I wanted to try to respond to it.

But anyway, I think I've said as much as I can and probably more than I should, but anyway, I would urge you to act expeditiously in approving the requested variance and I do appreciate your time today.

CHAIRPERSON REID: Okay, thank you. And Mr. Brown, some of the things that were said, even though it was more germane to the appeal, really kind

of refreshed my memory, because I remember distinctly that we did, in fact, we ordered that the appeal be granted. We dismissed the aspect of it -- we denied the Motion to Dismiss based on laches and on timeliness. However, we did grant the appeal and we did so for this reason. Mr. Gilreath, the Board Member that he referred to, felt very strongly that while this was such a mess, it would only be fair to not grant -- to grant the appeal and require the Applicant to go back through the process correctly and come back before this Board at which time we would then look at the merits of the relief that was germane to the variance only and make a decision accordingly and that's why we're here.

MR. BROWN: Madam Chair, to an extent, you're right. If this was a project that hadn't been built, then we'd be talking and we could look at the variance case.

We've got a somewhat different circumstances, one, because it's there. And the typical give and take in a variance case isn't there.

CHAIRPERSON REID: Mr. Brown, thank you very much. However, I think that there's been far too much extraneous discussion with regards as to how you feel, what your take on this is. The fact of the

matter is per the instruction of this Board, Mr. Sisson is now complying with that and that decision is what we will make and right now, we're going to go ahead and proceed with this case, as I said before. Thank you very much. Any points that you want to make you'll be given an opportunity to do that. But right now we need to try to proceed through this case, and as such, Board Members do you have questions for Mr. Sisson, any more questions?

VICE CHAIRPERSON SOCKWELL: Just one, the Advisory Neighborhood Commission's response to this original case -- I won't even ask the question. I will leave this alone.

CHAIRPERSON REID: Thank you. Now we move to Office of Planning Report?

MS. PRUITT: Madam Chair, you've got to offer Mr. Brown the opportunity to cross examine.

CHAIRPERSON REID: I'm sorry, I'm sorry. Mr. Brown, cross examination.

MR. BROWN: Mr. Sisson, at the appeal hearing you testified on direct and on cross examination that prior to filing the first permit in January of 1998 that you were aware of the overlay restriction --

CHAIRPERSON REID: Uh, uh, uh, wait a

minute. We're supposed to be -- this case is on the variance case, not on the appeal. Now you just raised that objection yourself and I sustained you. These questions you're asking are in regards to that appeal case. This should only be germane to the variance case that we are actually hearing today, Mr. Brown.

MS. KRESS: And I might add the variance is for the roof on the front porch, that's what the variances are for and it's not about the parking. I just wanted to clarify that. It's not about anything else because basically at this point he has a permit as a matter of right for all of those things. So we're only talking about the roof on the porch which he does not have a permit for.

MR. BROWN: I disagree. I mean number one, Mr. Sisson --

CHAIRPERSON REID: Mr. Brown, Mr. Brown, we are not going to accommodate you any further. You've been objecting the entire time. If, in fact, you want to ask questions for cross examination we will afford you that opportunity. If not, we're going to move right on past you.

MR. BROWN: I need to clarify a point which the staff raised because part of -- we've got

an application here for a front yard variance and a lot occupancy variance for the improvements that were constructed in toto. I think we need to consider that separate from what Mr. Sisson has a permit to build a roofless porch because what he's asking for is something different. He's asking to be able to keep everything that's there now which as is which includes a garage, a porch --

MS. KRESS: He's doing that as a matter of right according to this permit he has right now. He's got all of that as a matter of right. The only thing he does not have as a matter of right is the roof on the front porch.

VICE CHAIRPERSON SOCKWELL: Which equates to a lot occupancy issue.

MS. KRESS: And a front yard issue.

VICE CHAIRPERSON SOCKWELL: And a front yard issue.

CHAIRPERSON REID: Mr. Brown, Mr. Brown, if, in fact, you do have some other questions --

MR. BROWN: I disagree with that.

CHAIRPERSON REID: Fine, we understand that and we respect that. If you have some cross examination questions germane to the variance, you can do so, but if not, we're going to the Office of

Planning Report and the ANC report.

MR. BROWN: Can I ask the chair so I can tailor my cross examination, Mr. Sisson has raised as part of his hardship, his practical difficulty is the fact that these improvements exist --

CHAIRPERSON REID: If you have a question, ask him, not asking me. I'm not -- this is not my case. You should be asking the Applicant.

MR. BROWN: Mr. Sisson, is a practical condition or extraordinary condition affecting this property, the fact that you've completed these improvements? Yes or no?

MR. SISSON: I have put stone facing on the front of my building which is one story high. If I have to remove the porch roof, then it's going to look very bizarre, I will have to say, yes.

CHAIRPERSON REID: And also, just to remind the Board Members, we're hearing this case as if the addition were not there, okay? So -- I know it's difficult to do, but you have to kind of block it out of your mind, the fact that it's there. We're hearing it, the case that has to be made is a case for a variance without taking into consideration the fact that this is already built, okay? All right.

MR. BROWN: And pretending that -- and

I'm asking the Board for clarification, because I want to tailor my questions, because we're dealing with more than just the fact that the front porch is there.

CHAIRPERSON REID: Mr. Brown, are you still going into that?

MR. BROWN: I'm asking the question.

CHAIRPERSON REID: We -- I would like to say, I thought that was pretty clear. We have to hear this case as if the addition that has been built were not there. That's how we have to look at it.

MR. BROWN: Strictly the front porch?

MS. KRESS: Strictly the front porch. You're not looking at the other addition or the other things. Those were all built as a matter of right according to the approved permits set. The only thing that is not a matter of right is that porch.

CHAIRPERSON REID: Okay.

MS. PRUITT: Madam Chair, staff is ready to give Mr. Brown a copy of what exactly was advertised which is the front porch.

MR. BROWN: I have a follow up question.

CHAIRPERSON REID: To Mr. Sisson?

MR. BROWN: No, to the Board, because I don't want to be here all night and I don't want to

belabor the point, but if, in fact, my confusion is that if, in fact, by eliminating our inquiry here today to strictly whether the front porch is --

MS. KRESS: That's all he's asked for right now. He's only asked for that variance. You're making it other things.

CHAIRPERSON REID: Variance relief.

MS. KRESS: He's only asking for that.

MR. BROWN: See, I think the way it was advertised was for improvements made to it so that we have a situation where there may be an ability to have part of the front porch and part of the garage --

CHAIRPERSON REID: That's not what it says, Mr. Brown. Staff has provided you with a copy of the relief that's advertised.

MR. BROWN: The --

MS. KRESS: I think it's clear. It doesn't matter what was advertised. This Board has decided to hear as a part of its new evidence whether or not the front porch can be there and that roof can be on it.

CHAIRPERSON REID: That goes to lot occupancy.

MS. KRESS: Exactly.

CHAIRPERSON REID: Which is what was advertised.

MS. KRESS: Exactly. But what I'm saying, even if the advertisement didn't match -- you don't have to hear what was advertised. You hear what is needed. What I'm saying is even if contended that more was advertised, it doesn't mean you have to hear more. You only have to hear what needs to have a variance.

MR. BROWN: So in essence, and I think this will resolve it. The Board has essentially -- what was advertised is a variance for lot occupancy and front yard for the construction of a front porch, rear addition and accessory garage. It is now being handled as a variance for lot occupancy and front yard for the construction of a covered front porch.

MS. KRESS: Exactly.

MR. BROWN: That's all we're dealing with.

CHAIRPERSON REID: And do you have any cross examination, questions for Mr. Sisson?

MR. BROWN: Yes. Mr. Sisson, you got five building permits, the original five, six now?

MR. SISSON: Is this germane to the request?

CHAIRPERSON REID: No. Mr. Brown, Mr. Brown, I've warned you three times. This is -- I can't allow you to continue doing that. Of course, your being a very learned attorney and you've been here many times before. We all know you. We know that you understand what we're saying. And in deference to all the Board Members and everyone here, we would have to -- we have no alternative but to move on to the ANC Report, if in fact, you continue with that line of questioning.

MR. BROWN: And I'll stop, but my question is because I think it is critical to this that Mr. Sisson proceeded to build this porch which he's now presenting to us and asking for a variance in such a way that he built it before he asked permission for it and I think based on what his testimony is and the questions raised by Mr. Sockwell that that's relevant. But I think perhaps I've made that point or I could recommend that the Board read its original order which made it very clear.

Because my concern is that --

CHAIRPERSON REID: That order was for the appeal which we granted the appeal. Now we're dealing with the variance. That's all.

MR. BROWN: But I don't think you can

take the application particularly as to the front porch in isolation and I'm just recommending the Board do that. I will allow the BZA, I mean the ANC, Mr. Griswold, we've been waiting -- to continue.

CHAIRPERSON REID: Thank you very much. There's no Office of Planning Report?

MS. McCARTHY: No ma'am.

CHAIRPERSON REID: No other government reports?

MS. McCARTHY: No.

CHAIRPERSON REID: Okay, then Mr. Griswold, the ANC representative. Did you have any questions of Mr. Sisson?

MR. GRISWOLD: I have no questions of Mr. Sisson.

CHAIRPERSON REID: Okay, then please come up and give us your presentation.

MR. GRISWOLD: Madam Chair, ladies and gentlemen of the Board, my name is Stephen Griswold. I'm ANC Commissioner for ANC-3-D01. I was authorized by the ANC to come and speak to you today by way of explanation of our letters in this matter.

I had a prepared statement which I would still like to go through to reflect our letter, but

let me begin by saying as someone who is not versed in the zoning stuff, I am very confused. I'll keep it short because everyone else is getting as tired as I am, but what the ANC -- and I raise this as relevance, not just my personal thing here. I raise this because I think it's relevant to the recommendations that the ANC has made in this matter.

The variance that was advertised here was for a variance from the front yard setback requirements from the allowable percentage of lot occupancy of a dwelling for the construction of a front porch, rear addition and accessory garage. So we have looked at this whole property, everything that's happened here as a package. And again, I'm not sure I understand what's going on here, but suddenly I'm hearing that this only has to do with the roof over the front porch and I don't get it. I'm sorry. I don't get it. Maybe it's because I'm ignorant in this stuff, but something feels very off to me here and I just throw that out as a premise.

CHAIRPERSON REID: Ms. Kress, would you --

MS. KRESS: Let me take a stab at that again. We got new evidence today and the evidence is a permit that has now been acquired by Mr. Sisson and

as a part of that permit, from the people who issue permits and from the Zoning Administrator, all of those things, the garage, the addition, they all say he can do as a matter of right. So things that are done as a matter of right don't come to the BZA. The only things that come to the BZA are things you can't do as a matter of right. And so that's why he cannot put the porch on as a matter of right, so that comes to the BZA.

Now that doesn't mean that you couldn't appeal the DCRA, the Zoning Administrator's decision. That's a different case. Right now, they're looking at granting a variance that's being asked for. Did I help at all? No.

MR. GRISWOLD: It helps. I mean I guess it makes sense in theory, but I guess what that brings up to my mind is the ANC has been working on this, as have you all, for several years now. I've only been involved for 9 months as an ANC Commissioner. Even in that 9 months this matter has come up I think it's three times. Each time it comes up, the target keeps changing. What are we talking about here? The survey wasn't there, the survey wasn't there, the survey wasn't there. Finally, there was a survey. And it said something different

than we had all been working on before. Now, okay, we got the survey. We know what we're looking at. And today I arrive at the hearing to find out well, no, that's actually not the issue, it's something else. This permit has just appeared. Maybe that's normal for this process. Again, I'm not an expert in this stuff, but as a layman, that strikes me as a very strange way and I would say unfair to the neighborhood that I represent. It strikes me as an unfair way to proceed because we don't know what we're talking about. What are we supposed to be objecting to?

MS. KRESS: Again, you have the option to -- if, for example, today they turn this down and they don't feel Mr. Sisson has proved his case, then he will have to rip off this front porch because that's part of these plans approve. And then you as the ANC, if he does win, and he gets the front porch, then you can come back and you can appeal the Zoning Administrator's opinion as it relates to the garage or to the addition and then you can also ask for a reconsideration from this Board if they approve it for the porch. There are several more steps you can do.

CHAIRPERSON REID: Ms. Kress, could we

not make a decision today and leave the record open for the ANC to take into consideration the new evidence that's been submitted and --

MS. KRESS: Oh, absolutely.

CHAIRPERSON REID: And put in writing, get a position on it before we deliberate or something like that?

MS. KRESS: Sure. I'm sorry. I didn't mean to say that you all were going to deliberate today.

CHAIRPERSON REID: No, no, no. I didn't think that you were saying that. I was just looking at alternatives, given the fact that the ANC representative, Mr. Griswold, is not clear and I think that it's important that he be clear because what he's prepared to testify on, looking at your letter is different from what is actually happening. And that puts you in a rather difficult position even to try to explain it to the ANC as to what happened.

MS. KRESS: The big thing is we have new evidence today. We didn't know ourselves when we started this case.

CHAIRPERSON REID: Right, but given the fact that we do have the new evidence and it has

taken a different twist, then perhaps before we do anything, make any determination that the ANC be given the additional new evidence and be able to act on it, revise it, or whatever they want to do at their next meeting and then we can act on the case. That's what I think would be the most fair thing to do, in consideration that the ANC is -- as we were too, Mr. Griswold. We were rather taken aback ourselves and as you saw us trying to iron things out and going through the papers and regulations and I can understand that you're going back to the ANC and saying well, I don't know what in heck happened would put you at a disadvantage and I just want to make sure that you are given every opportunity to be able to respond appropriately, your ANC to respond appropriately, given the new information that we have. I have no problem with that. We can do that.

MEMBER RENSHAW: Madam Chair, I would recommend that if Mr. Griswold takes this back to his ANC for further consideration, that he is going to have to have some written guidelines from the BZA as to what he's taking back to the ANC so that there is no more confusion.

CHAIRPERSON REID: Ms. Kress, is it possible to have staff be in attendance at the ANC

meeting to explain what happened?

Is that possible?

MS. KRESS: Sure, or something in writing. We'll be in touch. We'll put something together --

CHAIRPERSON REID: No, no, no. I wasn't saying in writing. I was saying to have someone, not only in writing, but someone to explain and to answer questions because I am sure that when they receive -- this is -- the manner in which this whole thing is -- how everything --

MS. KRESS: I don't think I should be out speaking in the community, until you've made a decision.

CHAIRPERSON REID: Not you --

MS. KRESS: I've been told before that staff should not really be speaking to the community before a decision is made.

CHAIRPERSON REID: Okay, okay.

MS. KRESS: Afterwards, we can, but not before.

CHAIRPERSON REID: Just in writing.

MS. KRESS: But I think certainly something in writing that clarifies the new information that we got today --

CHAIRPERSON REID: And what happened and why it happened.

MS. KRESS: And why it happened.

CHAIRPERSON REID: Would that be al right with you, Mr. Griswold?

MS. KRESS: And what the issue of the variance is, this roof on a porch, then so that you can then formulate your response to that one item which is the variance he's asking for.

MR. GRISWOLD: So you're saying that you would not be proceeding then at this point?

CHAIRPERSON REID: No, no, what we're saying is that we would not make a decision today. We will leave the record open to give the ANC the time to meet and to receive the information so that they would be able to vote predicated upon the new information they received today and be able to act accordingly. So we're not going to -- in other words, there will be no closure today. Would that be something that you find --

MS. KRESS: And you tell us how much time you need us to keep our record open for you to meet and respond to us.

MR. GRISWOLD: Right.

MS. PRUITT: When is your next meeting,

sir?

MR. GRISWOLD: I don't remember the actual date, but it would be the first or second Wednesday in November. I think it's the --

MS. PRUITT: So that would be the 9th --

MR. GRISWOLD: I believe so.

MS. PRUITT: The 8th or the 3rd.

MR. GRISWOLD: I don't have this memorized.

MS. PRUITT: We could put that then on for December meeting because you do need to leave time for Mr. Sisson and the party to respond.

MS. KRESS: So our suggestion then of staff would be that the decision be made at the public meeting in December after receiving the information from the ANC and allowing for Mr. Sisson's response.

MS. PRUITT: Would that be -- would you be amenable to that?

MR. GRISWOLD: It seems the least that we can do for the neighbors that I represent. Otherwise, they really haven't been heard and I can't go back to them like that.

CHAIRPERSON REID: Mr. Sisson, would you be amenable to --

MR. SISSON: You have to understand that this has been on-going for nearly a year now.

CHAIRPERSON REID: We understand that.

MR. SISSON: And I was hoping that we could get a decision rapidly.

CHAIRPERSON REID: We understand that.

MR. SISSON: But I understand your position and I concur.

CHAIRPERSON REID: We have to be fair.

MR. SISSON: I understand.

CHAIRPERSON REID: Look how long it took us to understand it and given the fact that it's been going on for so long and there have been delays and you have to kind of go back and recount what happened before and why it happened and how we got to this point and what we're doing and all of that. It is very convoluted.

MR. SISSON: I'm just very grateful we're hearing it today. Thank you very much.

CHAIRPERSON REID: Thank you very much. Now, so that's what we'll do for you. So we won't do an ANC report. We'll have a report from you in writing once everything has been clarified to your satisfaction?

MR. GRISWOLD: I'm not sure that -- first

of all, let me ask so I understand what the picture is. Will the next meeting of this Board simply be a decisional meeting?

CHAIRPERSON REID: Yes.

MR. GRISWOLD: In which case could I be afforded the opportunity to make a statement now at least reflecting the ANC's general understanding of this whole matter and what our position is on it?

CHAIRPERSON REID: Can we? Well, typically, Mr. Griswold, there is no input, however, I'm getting nods from the Board Members as to making an exception in this case only to allow you to speak, no?

VICE CHAIRPERSON SOCKWELL: Madam Chair, just as you wouldn't want Mr. Brown to testify regarding things that are not germane, I don't think it might be such a good idea for the ANC to do it.

CHAIRPERSON REID: No, no. Not things that are not germane. He was asking -- he's now prepared to testify today and he'd like to be able to be heard and I thought I saw the Board Members nodding saying that they --

VICE CHAIRPERSON SOCKWELL: Oh yes, absolutely. That's fine. I misunderstood.

CHAIRPERSON REID: At the time that we

have our meeting which we don't usually allow anyone to testify --

MS. KRESS: Or Madam Chair, we can actually continue the hearing, here's another -- to another date in time certain. You don't have to do it during your public meeting and then you're not setting a different precedent. What you're doing is just continuing the case --

MS. PRUITT: Because if he does testify, you do need to allow for cross examination.

MS. KRESS: Exactly.

CHAIRPERSON REID: Okay, right. So what should we do, continue it?

MS. KRESS: Yes.

CHAIRPERSON REID: Continue the case. Board Members? To my left?

MS. KRESS: You can continue it actually to next Tuesday, but I don't think that's enough time for the ANC to get their position. So your next date, as you know, is still December 5th. We still have some potential time there, if you want to move it.

CHAIRPERSON REID: Would December 5th be satisfactory?

VICE CHAIRPERSON SOCKWELL: Before we go

forward with this line, I am concerned that understanding Mr. Griswold's confusion and my own and all the things that have happened, if we take this case down the road on a continuance, regardless what happens with that continuance, if the Board decided to deny the variance, Mr. Sisson is still going to have his garage. He is still going to have his two story addition, and he is still going to have a projection into his front yard and he will still be occupying although not by code, he will be occupying a percentage of the lot that he has so desired and has fought so hard to get.

The only thing that will not occur, should the Board deny the variance, is that there would be no roof on the front porch and by zoning's standpoint, because the front porch is less than four feet above the adjacent finished grade, for zoning's purposes it doesn't exist. And therefore, the only thing that will be gained by pushing the case down the road, understanding your having represented the ANC on positions which are much more cloudy now because of the permit that Mr. Sisson has received, it is a very limited relief that will be granted by this Board under the circumstance that we don't approve the variance. And my question is one that

really goes to Ms. Crary who has not spoken in these hearings to the true effect of a victory versus another decision by this Board based upon what Mr. Sisson has done. That is excluding any other relief that might be sought outside of the Board's area of purview. And it is very important that we not push this case on ad nauseam in a circumstance where there is really a very limited win factor and a very limited lose factor.

CHAIRPERSON REID: Is there a question in it?

VICE CHAIRPERSON SOCKWELL: Yeah, the question is do we really want to do that? I realize the ANC can go back and meet on this. The ANC's position of win-loss was much different before this permit was issued. And you as the representative of the ANC must realize what you're going to take back to them and I want you to be fully aware of what it is that you can gain or not gain from the additional ANC effort.

CHAIRPERSON REID: The question is?

VICE CHAIRPERSON SOCKWELL: And what we will gain. The question is do you really want to go back and push this case down the road?

CHAIRPERSON REID: That's the question?

VICE CHAIRPERSON SOCKWELL: Do you have to do that?

CHAIRPERSON REID: That's the question to the ANC? I thought you said you had a question to Ms. Crary?

VICE CHAIRPERSON SOCKWELL: The question to Ms. Crary as well. She knows where we are now. And it's taken a while to figure it out, but that's really where we are. We're just talking about a roof. We're not talking about a porch. We're not talking about a garage. We're not talking about a two story addition. We're not talking about pushing Mr. Sisson's as-built back to his front wall. We are talking about a roof on it which might be more appropriate than a non-roofed porch sticking out like that, based on the quality of the neighborhood homes adjacent to it.

He has left us with a very limited parameter for our decision making. As much work has gone into this case, as much as we've agonized over it, that's what it is. I just want everybody to make some -- take a minute or two to think about this and where we are.

I don't like, as a citizen, I don't like not getting where I want to go with something,

especially after a lot of effort. I don't like not having a position to review after having gone through mounds of information. But this is what has happened. There may be other relief available, but it's gone a long way and we've sort of had the case gutted. And that's why I raise this question this way.

CHAIRPERSON REID: So the question is are you asking Mr. Griswold whether or not he thinks that we should continue the case or what?

VICE CHAIRPERSON SOCKWELL: I'm asking Ms. Crary whether or not she would want to pursue the porch as a nonroofed porch if the porch is going to exist under any circumstance, unless other relief is sought outside of this Board.

Would it be more appropriate to withdraw the objection and have a porch with a roof, knowing that the other items are no longer on the table. The garage isn't going to go away, based on what he has from DCRA, unless other relief is sought. The two story addition isn't going to go away either. And that is a tough -- it's a tough question to raise, but it's -- we're really talking about a roof that might make the porch, if it has to be there, more appropriate in its environment, in that neighborhood.

We are not talking about anything else, but reality now and we're all facing the fact that we cannot at this Board level, I do not believe we can do anything other than say yeah or nay to a roof. ANC can set -- can be opposed to the roof, but is it really the way we want to go? I'll do whatever, and I'm sure the rest of the Board Members will do whatever is deemed appropriate, but I just don't know where to tell you to go, except I know what I think and I can't tell you what to think.

MR. HOLMAN: Madam Chair, even though it's really late, if they want to consider what he said, maybe we should take a little break and see if they want to reconsider.

VICE CHAIRPERSON SOCKWELL: Can we give you five minutes to think about it?

CHAIRPERSON REID: I think -- let me just add also in here, that I think that what Mr. Sockwell raised is a very pertinent issue because we've gotten down to the, as they say, the nitty gritty of this whole issue. And there was a proffer of an offer that was submitted through Ms. Prince as maybe perhaps another way of going at this, as a settlement perhaps, and was an issue about a fence, erecting a fence that would camouflage the unsightliness that

Ms. Crary may have regarding that particular structure next to her property and a couple of other things. In the interest of time and just to kind of bring some closure to this, perhaps as Mr. Holman just indicated, perhaps we just recess for a few minutes and allow the participants to try to see if they can come to some resolution because when it gets right down to it, it's really negligible and that's what Mr. Sockwell is trying to point out to us. It now almost gets to the point of being nonsensical.

So perhaps putting on our grown up hats, maybe we can come to some resolution.

Ms. Renshaw, you were going to say something?

MEMBER RENSHAW: Yes, I was going to make a comment here that first of all, I resent very much the fact that the Applicant, Mr. Sisson, brought to our attention a permit that is dated 10/11 and we get it on 10/17 and it hasn't been shared with everyone else to help all of us prepare. Our time is valuable, to help all of us prepare for this meeting. That in itself is absolutely wrong.

I think insofar as the ANC goes, Mr. Griswold is probably feeling what I would feel as an ANC Commissioner, that I have a duty to go back to my

ANC with information in writing from the BZA that expresses what has happened to this case up to this point and have him explain it to his ANC and ask for the guidance of the Commissioners as to whether or not they want to vote a position to bring back to this Board.

I think that so much effort and money has gone into Ms. Crary's case that she is going to want to have more than just a breather, in quotes, to confer with her attorney. That is unfair to her and to Mr. Brown for us to say, hey, make a decision because everything seems to be nonsensical and negligible and do it in 5 minutes. And we also have the issue of the Wesley Heights overlay to consider which has not been brought to this Board at this point.

So we have other matters to hear about. And I just want to say that a quick breath is not going to do it for me.

And I will want to hear back from the ANC. I'll want to hear back from Mr. Brown and Ms. Crary and the Wesley Heights citizens as far as what they feel. I think we owe it to them.

CHAIRPERSON REID: Thank you, Ms. Renshaw. I think what we had on the floor was simply

a suggestion and this was not a mandate, nor was it a command to persons here. It was a suggestion proffered in that in the event they were desirous of having such a conversation we would afford them that and we've done that before with other applicants and opponents and it worked out.

So if, in fact, they would like us to give you that, we can. However, of course, if you don't want to try to come to some resolution at this time, then we will do the next best thing which will be to continue it and then allow you additional time to try to work it out with the ANC and all those other things.

Mr. Brown?

MR. BROWN: Can we take five minutes?

CHAIRPERSON REID: Yes, 5 minutes.

VICE CHAIRPERSON SOCKWELL: And just to say in every great war, there have been pieces of property that were fought for over and over and it never was necessarily a major gain from either side's point of view, but a lot of blood was left on the field.

CHAIRPERSON REID: Okay, Mr. Moulden, do you want to make the announcement?

(Off the record.)

E-V-E-N-I-N-G S-E-S-S-I-O-N

(6:00 p.m.)

CHAIRPERSON REID: Are we ready to go?

MR. BROWN: I've taken the opportunity, which I appreciate, to talk to Ms. Crary, the ANC and George Watson from Wesley Heights. Sparing the details, they're desirous of going forward in this matter to protest the variance. I suspect that you know that you now that it's much more than just a roof on the issue and want to go forward.

Their ability to do so today, given the kind of surprise last minute issue, has severely handicapped them. Mr Griswold is statutorily limited because of the way the ANC works. Mr. Watson is unprepared, as perhaps I am, and I think it's fair to say that Ms. Crary is in shock about this matter.

CHAIRPERSON REID: And who is Mr. Watson?

MR. BROWN: Mr. Watson is the president of the Wesley Heights Historical Society.

CHAIRPERSON REID: Oh, okay.

MR. BROWN: And an active participant in the creation of the care and feeding of the Wesley Heights Overlay District.

So that that's the dilemma we're left, but my instructions from my client and the people in

support is they take great exception to this variance and these proceeding and they want to proceed forward, but are really handicapped by the way things have developed with this ambush with the new permit and the issues and what not. We would ask for a continuance, one I think that will allow for calm, cooler heads from my side.

CHAIRPERSON REID: Okay.

MR. BROWN: And also allow us to focus in on what has now been defined before the Board. As much as we disagree with that, I think we're not prepared to deal with the issues as they're currently framed. And it's also 6:15 and I think it's a good time to take advantage of this opportunity. I think the end result will be better for everybody.

CHAIRPERSON REID: Thank you, Mr. Brown. Mr. Sisson?

MR. SISSON: Well, two points. First of all, if I could address Ms. Renshaw's comment or criticism of me. I never had any intention to bring this permit out today. I had expected that the Zoning Administrator would have a statement and that we would proceed on that basis. And it was only in the absence of that and the apparent lack of direction in terms of what were the issues that I

attempted to clarify things by introducing the permit and that's why the permit was interjected at a late date.

Notwithstanding the fact that I only got it a week ago, but the second point is I have some sympathy for Mr. Brown's point of view, but you have to understand that this has been going for a year now and every time he asks for a continuance. Every time. It's not that I ask for a continuance. He asks for a continuance. It's been a year. This sort of thing is not -- again, it comes to my detriment. I would like to have a resolution as soon as possible?

VICE CHAIRPERSON SOCKWELL: May I make a statement to you, sir. First and foremost, you appeared in this hearing room today armed with a permit that was at least 7 days old. That permit had not been submitted to the Board, nor to the opposition, nor to the ANC for any review. You pulled that out of your pocket as a grand stand effort to have an ace in the hole --

CHAIRPERSON REID: Just one second --

VICE CHAIRPERSON SOCKWELL: Let me not say it that way. Let me say it this way --

CHAIRPERSON REID: Mr. Sockwell, Mr.

Sockwell.

VICE CHAIRPERSON SOCKWELL: Let me change that. Let me finish --

CHAIRPERSON REID: Let's be very careful about any allegations --

VICE CHAIRPERSON SOCKWELL: That was not an allegation of wrong doing, it was merely an allegation of strategy and let's say there was obviously an opportunity for you to have presented this permit to the Board in advance of the meeting, in advance of this hearing. That was not done.

CHAIRPERSON REID: Mr. Sisson did say that he expected to have reports from the Zoning Administrator.

VICE CHAIRPERSON SOCKWELL: That does not have anything to do with the permit. The permit was evidence. The evidence was provided at the last minute. The evidence changed the entire nature of the case. That evidence should have been presented to the Board in time for us to react to it. Things of that nature are generally provided in advance.

The fact that you expected a Zoning Administrator ruling surprises me that it wasn't there because I would have expected you to follow the Zoning Administrator, perhaps even to the grave to

make sure you had that when you came in here. But that may not have been possible under the circumstances of DCRA at this point. But I am very concerned that such evidence was not provided to the Board in advance and yet what has to happen now is that we will go forward and we will respond as whatever the Board decides to do with regard to a request for continuance.

CHAIRPERSON REID: All right, thank you very much.

Let's move forward. We're not going to have any resolution today, so the alternative is a continuance. The date for continuance would be?

MS. PRUITT: December 5th in the afternoon.

CHAIRPERSON REID: December 5th in the afternoon, at what time, 1 o'clock?

MS. PRUITT: Yes.

CHAIRPERSON REID: 1 o'clock, at which time we will give the ANC -- there was a question. Ms. Renshaw, why don't you just ask on the record.

MEMBER RENSHAW: I'm asking Madam Chair about that afternoon's agenda. We have 16649 and ANC appeal of a digital television transmission tower. Is that still on the agenda?

MS. PRUITT: We haven't officially received the letter. As you know, the Mayor -- this was an appeal of the Zoning Administrator's issuance of a building permit for the tower. The community was appealing the Zoning Administrator. The Mayor rescinded that, so they don't have anything to appeal right now, but the tower people are taking it to federal court and so what I believe the ANC is going to request is that we continue this until after the federal court has made their decision because they may take it back here. So the bottom line is we will not hear it on that day.

CHAIRPERSON REID: All right, so then that afternoon, December 5th at 1 o'clock is the designated continuance date of all parties concerned is okay? All right. Can I have a motion?

MR. HOLMAN: I move that we continue this case until December 5th.

VICE CHAIRPERSON SOCKWELL: Second.

CHAIRPERSON REID: All right, all in favor? Opposed.

Mr. Rodney Moulden has said that -- he had to leave. We will read the record for the remainder of the hearing and we will so notify him as well.

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

CHAIRPERSON REID: Okay, then that will then conclude the hearing today. But let me also say to you, Mr. Sisson, comments that have been made by this Board, by Board Members today do not necessarily the reflect the position or the feelings of all the Board Members. And I want to be very clear about that.

Thank you very much.

(Whereupon, at 6:18 p.m., the proceedings were concluded.)