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 10, 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:

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

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD	Commissioner

OFFICE OF ZONING STAFF PRESENT:
Jerrily R. Kress, Director
Beverly Bailey, Office of Zoning
Vincent C. Erondu, Office of Zoning
Paul Hart, Office of Zoning
John Nyarku, Office of Zoning

OTHER AGENCY STAFF PRESENT:

Robert Collins, Office of Planning
Arthur Jackson, Office of Planning
Ellen McCarthy, Office of Planning
Jennifer Steingasser, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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P R O C E E D I N G S

9:42 A.M.

CHAIRPERSON REED: Good morning. The hearing will please come to order.

Ladies and gentlemen, this is the public hearing of the Board of Zoning Adjustment for the District of Columbia. My name is Sheila Cross Reed, Chairperson. Joining me today is Robert N. Sockwell, Anne Renshaw and representing the Zoning Commission is Anthony Hood. Rodney Moulden, representing that National Capital Planning Commission will be joining us shortly.

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

All persons wishing to testify -- 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. When coming forward to speak to the Board, please give both cards to the reporter who is sitting to my right.

The order of procedure for special exception of variances is (1) statement and witnesses of the Applicant; (2) government reports, including Office of Planning and Department of Public Works, etc.; (3) Report of the Advisory Neighborhood Commissions, the ANCs; (4) parties or persons in support; (5)

parties or persons in opposition; (6) closing remarks by the Applicant.

Cross examination of witnesses is permitted by the Applicant or parties. The ANC within which the party is located is automatically a party in the case.

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

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

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 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, staff has none.

CHAIRPERSON REED: There are no preliminary matters. Okay. Then we'll proceed with the first case.

MS. BAILEY: Members of the Board, the audience, good morning. I'm Beverly Bailey with the D.C. Office of Zoning. The first case is Application No. 16606. This is the application of Traci Brown. All those wishing to testify, would you please stand?

Ms. Brown, please stand. Raise your right hand.

(Witnesses sworn.)

You may be seated. Members of the Board, this is the Application of Traci Brown, pursuant to 11 DCMR 3103.2 and 11 DCMR 3104.1, for a variance from the requirements of Subsection 2001.3(a)(b) and (c) to allow an enlargement to an existing nonconforming structure and a special exception under Subsection 223.1 to allow a nonconforming rear yard for a single-family dwelling in an R-4 District at premises 1032 D Street, N.E. That's Square 962, Lot 66.

Madam Chair, just a couple of housekeeping matters. This property is located in ANC-6A. It's not located in ANC-2C

and the proper notices were sent out to 6A.

We have letters of approvals from the ANC, from the Office of Planning. There is a letter from the Capitol Hill Restoration Society and I think that's about most of what you need to know at this point. The case is now ready to go forward.

Ms. Brown, please?

COMMISSIONER HOOD: Excuse me, Madam Chair, before she proceeds, can I do a disclosure?

Ms. Brown is a co-worker of mine. While we do not work in the same office, I'm not unaware of this case. While I do know Ms. Brown, I don't believe unless anyone has a problem that there's any reason for me to recuse myself on this particular case, unless anyone has a problem.

CHAIRPERSON REED: Okay, unless there is any objection to Mr. Hood sitting on this case, then we'll proceed.

Ms. Bailey, you said that there was a letter from the ANC. I didn't see one in my package?

DIRECTOR KRESS: It's in the file that was given to us this morning.

CHAIRPERSON REED: I don't have that. Where was that, out in the anteroom?

DIRECTOR KRESS: Yes.

CHAIRPERSON REED: I didn't have it. Ms. Kress,

could you ask staff to make sure that all Board Members have the new file, the ancillary file that came in this morning?

Do you have it, Mr. Sockwell? Thank you very much. I just have to make a note that I didn't have it.

DIRECTOR KRESS: Yes, Madam Chair.

CHAIRPERSON REED: Okay, thank you very much. Well, I don't. I don't have that. Okay, all right.

Ms. Brown? Ms. Brown, put your microphone on, please and give your name and your address, please, ma'am.

MS. BROWN: Good morning. My name is Traci Brown. And I would like to discuss the application 16606 that I submitted, that I filed to the Board of Zoning and Adjustment for a special exception and variance for the property that I own at 1032 D Street, N.E. It's Square 962 and Lot 66.

I have a few handouts that I would like to give out. They are Exhibit 10 in your folder and I just wanted to make sure that everyone had a copy of the architectural drawings for the addition and the balcony. Should I just give them to this gentleman? Okay.

I am here by myself. I'm not an attorney. Couldn't afford one and my architect who charges over $150 an hour could not be here today to assist me so that -- so I ask that you bear with me in that when you ask questions of me I'm not really

familiar with a lot of the District's jargon or jargon that may have to do with zoning, so if you could just try to phrase your questions in layman's terms and just be patient with me, so that I don't get confused, I'd appreciate it.

MEMBER SOCKWELL: Ms. Brown, excuse me. What did you say with regard to your architect? I missed that.

MS. BROWN: I just mentioned that he was extremely expensive. I couldn't pay $150 an hour for him to sit with me.

MEMBER SOCKWELL: You say $150 an hour?

MS. BROWN: Yes.

CHAIRPERSON REED: Ms. Brown, we're glad to hear your case, but feel comfortable in the fact that we don't expect for you to perform like an attorney and we will afford you the same type of respect and consideration that we would give anyone else that comes before us and whatever help we can assist you with in getting your case, getting through your case, then we certainly will be willing to do that.

MS. BROWN: Thank you.

CHAIRPERSON REED: So don't be nervous, relax, and just give us the facts.

MS. BROWN: Thank you very much. I'm requesting a variance and special exception for several reasons and I'll briefly go through those reasons and I'll be glad to entertain

questions afterwards or even during.

This property was abandoned for over a year, almost two. It was a convenience store. All the store fixtures were still in the store. Food and etcetera were left in the building when I purchased it. It was rat-infested. It was just an abandoned property, bricked up and boarded up. It was Zoned R-4 and I've begun renovations to live in it as a residential property and bring it back into its residential use.

It was built in the late 1800s, around 1860 or 1890, I'm not really sure. I'm in the process of trying to figure through the National Archives exactly how old the building actually is. But it was built prior to the promulgations of any zoning regulations which I believe became effective around May 12, 1958 or somewhere around that time, almost 100 years after the building was built.

My building therefore was grandfathered into zoning and I'm mentioning this to highlight the fact that anything built before 1958 would not meet zoning regulations because it couldn't and in this regard there may be several issues that have to do with zoning of the building that unfortunately I'm just unable to address.

The variance and special exception that I've requested is for the addition of two balconies to the property and

an addition which encloses a six foot space between the rear of the home or the side of the home, actually, I should say and the existing garage.

There have been several carjackings in the area in the past few months on Capitol Hill, females, as they were going into their home. This addition, I believe would allow me to park my car and walk directly into the alarmed property. For security reasons, I'm very concerned about that space being left open. So this would close the space that is often used by some of society's undesirables at times, at least since I've owned the property to hide in that area, make drug transactions and sales and enter my property to steal and things like that and to also come inside and damage it. So it's a hidden space that is often used by people in the area to do all kinds of things and there is a security issue that I'm very concerned about because of that open space and where it's located.

The request that I've made to the BZA actually represents nothing new on Capitol Hill and it wouldn't adversely change the historic look or the presence of the property that I currently own. I have several pictures of homes within walking distance of my property which have additional -- which have similar additions and balconies and what I've done is I have copies of these pictures that I would like to hand to the staff

also so that you can take a look at them to show that this sets precedence for me doing exactly the same thing as other properties.

One set shows additions to the garage and the other set shows that folks have rear balconies, side balconies, balconies in the front of their home and also balconies in the back of their homes, and in between the bay areas of their homes which is what I am requesting, at least for the 11th Street side of my property. So there are several pictures in there. Those pictures are all within less than a mile of my home. They have the addresses on post-its on top of the pictures and for the ones that you don't, that don't have post-its, I can provide a list of all the addresses that those homes represent in case someone would like to go out and take a look at them or see if they're in close proximity to my home.

I've also received the support of the District's Planning Office. I wanted to highlight that as was mentioned earlier today by Ms. Bailey, and the Advisory Neighborhood Commission 6A, Zoning and Licensing Subcommittee which I made a presentation to and entertained questions of the residents in the area as well as the subcommittee members.

I've also received the support of several of my neighbors. What I did was I walked around and I showed them the

addition, I showed them the drawings and I showed them my entire file, my application and that was -- I did not realize until later on in the process that I probably should have done that. I submitted the names and addresses of the folks that live within 200 feet radius of the home and from what I understand the Office here submitted letters to them or notification that there was a hearing and I thought that that may have been sufficient. But just to make sure that there was no opposition, I actually went around over the last four days and knocked on everyone's door, showed them pictures. Of the folks that were home, I only could get I think about 5 or 6 folks. They were more than happy. They were actually ecstatic that I was doing something to the abandoned property and they gave their names, printed them, signed them and also their addresses. And these represent folks that are either directly beside me or either behind me or would be looking at the additions or looking at the balcony and they have agreed that it would not adversely impact their lighting, their space or the scenery in the area and they would be more than happy to receive any kind of -- entertain any questions or anything like that. They realize that these photos hung in the property at all times, even though I've asked them not to go in since we're doing renovations in the house. They can gladly take a look at this. I've also offered them copies if they need it, but they seem to be

satisfied with the pictures that -- with the drawing when I presented it to them at the same time that I asked them to sign the letter of support.

On the 11th Street side where the additions are proposed, there's no way for me to block anyone's space as I just mentioned before because no one else occupies or uses the property that the variance and special exception will address.

My lot width currently is 16 feet which is a substandard lot and the zoning regulation allows for the property to occupy as much as 18 feet. The proposed addition would allow me to fully occupy the standard lot size that's allowed by the zoning regulations.

My lot occupancy is currently approximately 881.6 square feet and my addition would add 96 square feet for a total of 977.6 square feet which is approximately 94 percent.

I'm asking for a variance of only 34 percent. I realize prior to me purchasing the home that the lot occupancy was already over 60 percent which is why I'm even asking for a variance and a special exception. But this was an existing condition and there is really nothing, unfortunately, that I can do about this and again this has to do with the zoning and the grandfathering provisions that came into effect, that affected my property after 1958.

The lot is small and since it's only a modest addition which again doesn't change the character or outside appearance of the home in an adverse manner, I'm hopeful that the Board will approve it.

What I tried to do in the drawings was just actually come up with something -- the architect and I tried to come up with something that would be within the same character and historic presence of the property in and of itself. So none of the chamfered edges of the house or anything like that would be taken off and again, it doesn't change the character or outside appearance of the home and it's actually quite similar to the photos that I've shared with you of other homes within walking distance of my area who have additions and have balconies.

The drawings that I provided also show that that this is only 16 by 6 in measurement to tie the existing building into the garage. In addition, while this may be hard to make out in the literature that I filed, I'll still have approximately 20 feet of yard space on the side of the home and I realize that this is very difficult to make out on the drawings, so what I have done is provided you or I will give you copies of photos which show the front of the home, please keep in mind it's in renovation and the side of the home which is not very clear on those pictures because it was fenced in prior to me buying it and a portion of it is

actually public space that I rent, but I use and I'm not proposing to change the section that's fenced in.

And you can see that from the side. It's not very clear in the written literature that you have, but I will be glad to give you these photos.

(Pause.)

As I said before, this area was fenced in prior to the purchase of my home and it gives a measure of open space. So initially, it may appear that the addition will take all the greenery, all of the dirt, all the grass away, but in actuality, it won't. It will take a small area that was used as a little platform, probably to put trash there or something before the weeds got out of control and it's not really used for anything now. And the side of the home would be used for sitting out a wrought iron table or something like that. There's a lot of space to actually do the same type of things that you would do on a back yard or a side yard.

In addition, there's an easement on the side of the garage and I would just like the Board to take a look at those pictures. If you have questions about that area, then I'll be glad to entertain those questions, but again, what I'm proposing does not change the character or outside appearance of the home. It's a very modest addition, only a variance of 34 percent. And I

would still have a huge yard which gives a measure and dimension of open space.

So I thank you for entertaining my comments.

Are there any questions?

CHAIRPERSON REED: Yes, just one minute, Ms. Brown.

(Pause.)

Is the representative from Office of Planning here?

MR. JACKSON: Yes. My name is Arthur Jackson. I'm with the Office of Planning.

CHAIRPERSON REED: Oh okay, hi. I don't believe we have met and welcome to the BZA. You've been here before, have you?

MR. JACKSON: Once.

CHAIRPERSON REED: Oh.

MR. JACKSON: Only as a visitor.

CHAIRPERSON REED: Okay. I was wondering if we had OP. And the other lady there?

MS. STEINGASSER: My name is Jennifer Steingasser. I'm also with the Office of Planning.

CHAIRPERSON REED: Okay, well, welcome also.

MS. STEINGASSER: Thank you very much.

CHAIRPERSON REED: To the BZA. Okay, Ms. Renshaw?

MEMBER RENSHAW: Yes, Ms. Brown, I'm referring to

this map that you have submitted today, the large drawing of your marked Office of Surveyor and also this map which shows the location of your property in your block?

MS. BROWN: Yes.

MEMBER RENSHAW: Would you comment about the easement? You just mentioned there is an easement on the side of your garage and your -- this information from the Office of the Surveyor does not seem to show where the easement is. Can you tell us where it is?

May I hand her this?

CHAIRPERSON REED: Yes, and she need to speak into the microphone. If you can turn your mike around, Ms. Renshaw, so she can answer your question.

MS. BROWN: On this picture, it would be right at the end of the property line. And I'll mark it here on the picture. It would be in between my home and 406. This would be the easement here. And 406 11th Street. My home has --

DIRECTOR KRESS: Please don't speak unless you're by a mike. Thank you.

CHAIRPERSON REED: Can you speak on the record, please?

MEMBER RENSHAW: I just wanted to mention that the Capitol Hill Restoration Society had in its letter of October 2

the comment that there is a four foot walk beside the garage at the end of the lot that may be an easement for access to 11th Street from buildings farther west on D Street. The building is now being converted into single family residences. So hence, the question about just exactly where this easement was.

MS. BROWN: The easement -- in the drawing that you just shared with me which I believe is called a Sanborn map, I think I was told. I'll try to point this out as much as I possible can. My property on the drawing would be right at the corner of 11th and D. My home has two addresses. It has 1032 D Street and 400 11th Street. The easement that is referenced is in between 400 and the marking on the Sanborn map that says 406. So there's a little space in between there and that represents an easement.

So it would be right -- I know you definitely cannot see it on here that I'm holding up. CHAIRPERSON REED: Ms. Brown, just give us one second so we can kind of -- Mr. Hood, do you want to come over and --

(Pause.)

MEMBER SOCKWELL: Ms. Brown?

MS. BROWN: Yes.

MEMBER SOCKWELL: I have some questions and they came up as I was reviewing the initial supporting statement for

this project. One, the personal safety and security issue could have been or could be satisfied merely by placing an appropriate fence to prevent direct access to that six foot space between the garage and the back of the main house.

And that was in your first bulleted statement.

In the second bulleted statement, contemporary living, not sufficient space for contemporary living is a very subjective term and contemporary living in Capitol Hill often means living in houses that are much smaller than anything else in the city. And I didn't see a strong justification on that particular basis and one statement that you made at the beginning about pre-1958 buildings, building constructed before 1958 are grandfathered in to the zoning ordinance because of their prior conditions, but it does not always mean that they are smaller than or have constraints based upon the current zoning ordinance. Some of those existing properties are far larger than the minimums. Some of those houses are far larger than the minimum expected requirements. So the zoning ordinance primarily granted relief from those properties that did not meet the requirements of that particular 1958 document, as amended, to today, but it did not mean that all properties that existed prior to the ordinance would not meet the requirements of the ordinance today. It just meant that those properties which didn't were not incumbered by the

ordinance's more restrictive requirements.

CHAIRPERSON REED: Is there a question in this, Mr. Sockwell?

MEMBER SOCKWELL: Yes. There was a statement somewhere -- you said, oh yes. You said "an addition which extends and connects the existing residence to the garage will afford the possibility of accessing the main house from inside the garage without exposure to the outside and risk of personal safety.

Well, I looked at the architect's drawings and then confirmed by the pictures that you submitted that the elevation of the garage versus the elevation of the first floor of the main house would virtually prevent any access between the two directly walking because the garage is a couple of feet below the level of your ground floor and in a 6 foot space, as outlined in the architect's drawings, there is no provision for a change in elevation to get you down, unless you're going to jump off the edge of a door which probably would not fit with the roof that would be expected to be constructed on the existing flat roofed garage walls. It does not appear to me that the possibility of access is even there.

MS. BROWN: I had mentioned to the Office of Planning that would be revising the drawings that you have because

there is a door to the garage already. The garage as I have shown in the photos has a side door to it. If I connect the addition to the side door, I would be able to park my car, go in through an existing door in the garage and then step up two steps and get into the addition. As it stands now I would go through the garage if it was totally repaired, step two steps up, go on the platform and then go in the back of the house. And that is why I provided the recent photographs to show that on the side of the garage there is already a door there that is existing. So if I had an addition attached to it, it would just be an addition that the door remained.

MEMBER SOCKWELL: I can understand that, but the submission of architect's drawings from Mr. Gay did not show any indication that there would be such a connection.

MS. BROWN: Well --

MEMBER SOCKWELL: Because the space is being shown as an extension of your dining area from the C-shaped kitchen that's being proposed.

MS. BROWN: But --

MEMBER SOCKWELL: And therefore, if you don't show it, and it is assumed that that was the architect's design not to include it, then the area that you were talking about, stepping down to the garage through would have to be indicated on the

drawings as such.

MS. BROWN: What I mean indicated on the drawings, Mr. Sockwell, he would draw a line just like he has on the other drawings because the building would be joined together, so you wouldn't see the door unless you were inside the garage.

MEMBER SOCKWELL: There's a floor plan of your ground floor which shows your kitchen. Otherwise, I wouldn't know the kitchen was there.

What I'm saying is that in your exhibit here, this is your garage, this is your house --

CHAIRPERSON REED: Which exhibit?

MEMBER SOCKWELL: This is --

CHAIRPERSON REED: Give us exhibit numbers and we can all look at the same time, Mr. Sockwell.

MEMBER SOCKWELL: It doesn't have a number.

CHAIRPERSON REED: Last page of the drawings?

MEMBER SOCKWELL: It's a floor plan of --

DIRECTOR KRESS: It appears to be labeled sheet 4. It's the last floor plan of the plans that she just handed out today.

MEMBER SOCKWELL: Right, in this floor plan, you show solid wall. You show a floor that is a continuation of the dining and then there's a step up or down to the living area. Now

the way this is shown in order to access the garage through a side door, you would have to put a stair and a platform of some sort to get you to that point or you're going to jump off at some point to the floor level of the garage. What alerted me to it initially was the architect's drawing which clearly shows that the ground floor or the floor of the garage is significantly below the floor level of your building. So I'm saying that it is not a simple matter. If you're creating the space and you're going to fill it up with a circulation path, then it is of less utility to you to have that space. And in fact, the way it appears to me you cannot place your balcony where it is because it would intrude upon the rear yard, unless you get the rear yard removed. You have a minimal rear yard. There's something -- I didn't look at it directly, but I believe there may be an issue with your balcony as far as it being possible if you don't get the extension because you'd already be in violation of minimum rear yard requirements and you would be building a structure into a required open space. It's all part of the building code. I mean the zoning code.

CHAIRPERSON REED: Ms. Brown, just one second. You looked rather quizzical.

MS. BROWN: Yes.

CHAIRPERSON REED: Did you understand what Mr. Sockwell was explaining?

MS. BROWN: I think I do and I will try to address several of the issues that he raised. If I don't address them all, then I will just have to ask Mr. Sockwell to repeat the ones that I did not understand.

It's my understanding that the whole reason why I'm asking for the special exception and the variance is so that I can put the balconies there. I want to put the side balcony on the 11th Street, in between two existing bay areas, then the rear balcony would be one of the reason why I would ask for the special exception and the variance.

As far as the step down, it may have been just -- I may just have to have that shown on the drawing. There are steps actually there now that allow you to step down off of that platform into the garage. I cannot provide any additional response to that step down other than I clearly do want it to be an entry way from the garage directly into the house for those safety reasons. I will be more than happy to attest to the fact that I will have it revised as such and he and I have talked about it. We have some preliminary drawings, but we have not talking them down to the city to get them stamped or approved anything as we try to with these initially until after I came here to see just in concept if the addition was something that the Board would approve.

I realize that I have to now that I received a letter from the Capitol Hill Restoration Society that I have to go through them to talk to them about the design of the building and I have mentioned to them several times. I've called them. I've received their letter only two days before this hearing. I did everything I possibly could including inquiring from different offices if there was anyone that I needed to talk to, but from what I understand I should be talking to them about the design of the building, sharing my architectural drawings with them and things like that and I mentioned that to the Planning Office when I had spoken to them last week. So I'm more than happy to entertain changes in the structure that I'm proposing, but I thought it was best that I see if in concept the addition was something that would be approved. I don't mind making the change to show the step down because I had actually intended to do that in the first place. And as I said before, I would rather do all of my changes to the architectural drawing once because I am charged each time that I go back to the drawings, so that addition would be -- the door and the step down would be changes that I would reflect in the drawings submitted to the District government for approval for permits.

MEMBER SOCKWELL: And you have to understand we are ourselves considered part of the District government and for that

reason we have to see the specifics of what is being requested so that we can grant or at least review the proper relief and in the case of the drawings, the statement of purpose and the drawing presented did not match one another and it's very difficult to be certain that what we are granting could actually be produced if the statement is that you want access to the garage and a secure situation and the drawings show no access to the garage at all. It shows only an increase in living area and a useful increase in living area, but not the request that is outlined in your supporting statement.

MS. BROWN: And I realize --

MEMBER SOCKWELL: So there's nothing that we can do about it at this point, except I have to bring that out because we think it's important to us.

MS. BROWN: Right. Mr. Sockwell, I believe we can -- he did show me prior to me coming down here how to draw a door and I'll be glad to draw it on all of the drawings in the initial --

MEMBER SOCKWELL: It's not quite that easy. I'm an architect myself and I know what he should provide, but I'm just saying that it's not there and that's -- I wanted to get a clarification.

In your rear yard you have a 3.8 foot rear yard

approximately in a zone that requires 20 feet of rear yard, so your balcony on the back would have to meet the requirements of Section 2502 of the zoning ordinance because you have a nonconforming rear yard and if we allow the addition, the rear yard goes away and then the balcony is moot, but the balcony is contingent upon the rear yard because you have such a minimal rear yard that the balcony is, in fact, encroaching on something that is less than the allowable from the outset.

CHAIRPERSON REED: Question? Is there a question?

MEMBER SOCKWELL: Well, her architect is not here to deal with this and he would be considered to be the technical professional of support, but he was not available for this for the reasons that she stated. I would want at least to see the drawings effectively modified to show what is required to get you from your house into the garage through that wall. It is more than just showing a door.

MS. BROWN: I understand, sir.

MEMBER SOCKWELL: Okay.

CHAIRPERSON REED: Mr. Hood?

COMMISSIONER HOOD: Madam Chair, I also do believe we need the final set of drawings. I would hope that staff would assist Ms. Brown to help her through that process. But also, I notice that the Office of Planning recommended approval and I

would like to know contingent on the drawings which we have in front of us, is that what you recommended approval for?

CHAIRPERSON REED: Excuse me, they're going to give their report and then you can ask them questions.

COMMISSIONER HOOD: Oh, okay.

CHAIRPERSON REED: Okay, if that's all right with you.

COMMISSIONER HOOD: That's right. I don't want to get ahead of the game.

Also, let me ask a question, Ms. Brown, about the easement. What else is the easement used for at this time besides selling the drugs and what not. What else is that easement used for?

MS. BROWN: Nothing.

COMMISSIONER HOOD: There's no access for other neighbors to go back --

MS. BROWN: Other neighbors use it. They maintain it. I have never seen them use it for any reasons other than just to maintain it for aesthetic purposes. It has no other use. They don't like drive motorcycles and bikes and stuff like that in between there.

COMMISSIONER HOOD: You mentioned that you had to go in front of the Capitol Hill Restoration Society or was that

the Historical Preservation Review Board?

MS. BROWN: I believe it was the Capitol Hill -- I have to get the information.

COMMISSIONER HOOD: Capitol Hill -- that's fine. That's fine. I was just wondering was it HPRB or Capitol Hill.

Are there other existing -- you mentioned that there are other existing homes that have the same type of concept throughout the neighborhood?

MS. BROWN: Yes. What I have submitted to you as far as pictures are concerned which are labeled, are homes that have garages. There are two homes specifically in there within walking distance from my home that I wanted you to take a look at. One is I believe 600 9th or 8th Street. It's labeled in there. They have a garage. It has -- it takes up more property, more of their property than mine and there's also another home at the corner of 12th and Constitution where they have taken up almost all of their property. That was a recent renovation. It's the green house in there. It's painted green and they have an addition and two balconies on the side of their home. They don't have an easement.

CHAIRPERSON REED: Ms. Brown, this is what happens often when people come before this Board is they then start to point to other properties that have similar types of structure.

We can really not consider those because we don't know if, in fact, those people have been granted a special exception or variance and I don't know if you're aware, but the fact of the matter is that we're aware that there are several instances where we have community residents who have illegal structures that don't have any -- they have not complied with the existing zoning regulations and they just put whatever they want to put anyhow, so it is not always to your best advantage to mention those --

COMMISSIONER HOOD: It was a question that was reference for me, so I led her down that road.

CHAIRPERSON REED: It doesn't really help your case a lot.

MS. BROWN: The properties that I'm referring to don't have illegal structures. I've tried to do my research as much as possible, talked to these individuals as well as find out through records.

CHAIRPERSON REED: Or they may have been grandfathered prior to the existing zoning regulations. The structures may have been done before, so we don't know -- we can't really consider those because we really don't know the circumstances in which those persons have these types of structures.

MS. BROWN: I understand what you're saying. The

only pictures that I've provided to the Board have been photographs of homes that I've either researched and found out that they were not in violation of the regulations or that they were recently done, or that they were approved by the Board. I've tried to go around and ask the neighbors before I even photographed their homes, is this a -- did you get a approval for the structure.

CHAIRPERSON REED: So you did determine that?

MS. BROWN: Yes, I did. I only submitted pictures to the Board where I talked to the neighbors or either I knew for a factor that they were recently done. They were not illegal.

COMMISSIONER HOOD: Again, Madam Chair, if I could just finish. I led her down that road, so that was something that I wanted for my own information, so I don't want her to be running for that one because I did ask the question. Thank you.

MEMBER SOCKWELL: Madam Chair, it would my statement to Ms. Brown that when attempting to show that other structures which are similar and that would be in the same general type location as opposed to other parts of buildings, if you want to prove that those structures are legal, the best way to do it is to produce copies of issued building permits for those structures because it is very unlikely that a neighbor who produced anything without a permit will admit to it.

CHAIRPERSON REED: Okay, now Ms. Brown, your responsibility to us is to demonstrate how you're in compliance or how you are able to meet your burden of proof which is a three prong test as to the relief that you're requesting which is a variance. And you know that you have to demonstrate (1) that there's something unusual and unique about the property that causes a practical difficulty for you to comply with existing zoning regulations. You are familiar with that, right?

MS. BROWN: Yes.

CHAIRPERSON REED: Now as to the uniqueness, I don't think that I saw where you demonstrated in your submission to us how your property is unique or unusual? And that's the first prong of the test, so could you speak to that for me, please?

MS. BROWN: I attempted to show that the building was unique and unusual because it sat on a corner lot, that --

CHAIRPERSON REED: I'm sorry, guide me through that in your submissions.

Did you stipulate that in your submissions?

MS. BROWN: I believe I did. I'm not sure.

CHAIRPERSON REED: I didn't see it. Okay, you say that the property is on a corner.

MS. BROWN: Yes.

CHAIRPERSON REED: All right, what else?

MS. BROWN: It's a corner lot and because it's a corner lot this open space is used by individuals for various things and I believe that that in and of itself is unique because the other properties in the area do not lend themselves to this open space to be used for those reasons.

CHAIRPERSON REED: Okay, you're saying that -- all right, your property has the space that -- that easement space behind it, you mean?

MS. BROWN: There's an easement space as well as the open six foot space in between the garage and the home.

CHAIRPERSON REED: The home behind you?

MS. BROWN: My property. In between the rear of my home and the garage.

CHAIRPERSON REED: Okay, the property next to it --

MS. BROWN: Yes.

CHAIRPERSON REED: That abuts your property, is that not in a similar situation?

MS. BROWN: No. None of the other properties are in a similar situation. All the rear of their homes are all secured.

CHAIRPERSON REED: How?

MS. BROWN: Because they are up against other

homes. You cannot enter their homes through any way other than that small easement. They don't have the entry way folks to go into the corner and sell drugs and things like that.

CHAIRPERSON REED: Looking at the Sanborn map. It looks like that space goes all the way back to -- it goes back along four other properties.

MS. BROWN: It goes along three of the properties, stopping at 1026.

CHAIRPERSON REED: Okay, 1026.

MS. BROWN: So 1028 is a vacant lot --

CHAIRPERSON REED: Wait a minute, wait a minute. 1028 is a vacant lot?

MS. BROWN: Is a vacant lot which is sealed up. The easement stops right at the beginning of -- at the end of 1028 and 1026, so there's a fence there.

And they've used it to plant a garden there.

CHAIRPERSON REED: So your property then is the only -- are you saying that your property because of the fact that that lot is fenced off, it's your property is the only one that has that kind of exposure?

MS. BROWN: Yes ma'am, it is. And that's what I've tried to show in the photographs of my property.

CHAIRPERSON REED: So the uniqueness of your aspect

of your case is the fact that your property is the only one that is exposed to illicit -- well, it lends itself to being vulnerable to illicit activity?

MS. BROWN: Yes, it is.

CHAIRPERSON REED: That's the first time we've heard that one. But nonetheless --

MS. BROWN: The photograph -- that's why I brought the photographs to try to give you an idea of what the property actually looked like and how it was --

CHAIRPERSON REED: Well, we can see it, but we don't see -- what you're showing is the siting of the property, but what you're saying is that the exposure of the property lends itself to the illicit activity which we don't see in the picture, so therefore we have to kind of question you to see where, in fact, what, in fact, makes this property so unique and --

MS. BROWN: I'd be glad to point it out on the photograph, if necessary.

CHAIRPERSON REED: Okay. Those? This is what because you don't have them identified. You can speak right here.

MS. BROWN: This is the area that I'm interested in extending, the back of the rear yard to the garage. This is where individuals go and do whatever they do back there and they climb up on the window and come in and break in and steal things. This

is the easement. This is the easement between the homes and the back of this home, you cannot access it through a driveway or anything like that.

CHAIRPERSON REED: This is this?

MS. BROWN: Yes, this is this photograph here. I'm proposing to extend from here to here which is a blown up version from here to here.

CHAIRPERSON REED: Okay.

MS. SANSONE: Maybe to clear the record instead of saying "here to here" you could try to be more descriptive so when we get the transcript --

MS. BROWN: I'm trying to extend the distance between the rear of the home to the garage which is a six foot dimension and the picture that I'm pointing out shows that there's an easement in between the garage and 406 which 406, 1028 and 1026 on D Street do not have the same open space which avail themselves to all kinds of illicit activity.

CHAIRPERSON REED: Right here.

MEMBER SOCKWELL: Let me ask two questions.

CHAIRPERSON REED: You should have identified your photographs because it's hard to determine what, in fact, you were trying to show us.

MEMBER SOCKWELL: Ms. Brown, with regard to the

building, currently the building has been unoccupied for how long?

MS. BROWN: Approximately one to two years.

MEMBER SOCKWELL: One to two years?

MS. BROWN: Yes.

MEMBER SOCKWELL: The garage has been in the condition that it is in for as long as the building has been vacant?

MS. BROWN: I cannot answer that question.

MEMBER SOCKWELL: Well, let's put it this way. The garage doesn't look like it's had a roof on it, doors on it, windows in it for years. So it is at least been in this condition for a significant period of time based upon the deterioration of the structure?

MS. BROWN: Yes, the property was used for commercial use. There was no -- I'm not sure what they did before I purchased the property, but it was a commercially used property. The first floor was used as a store. It had a commercial refrigerator in there. Like I said before, it was rat infested, the back just looked horrible and it was used for commercial purposes. The top two floors were used for two apartment buildings which they had a side entrance to it, so it had two different entrances. One was used for residential, the other half was used for commercial property and I've since tried to renovate

it and what you're reviewing now in these photographs which unfortunately I just took yesterday and had developed and did not have a chance to correctly label all of them is the progress that I've made so far in trying to bring it back into its residential use, but the reason why I'm speculating here and assuming that it may not have a garage on it is because the shop owner just used the first floor for commercial purposes and did not maybe pay that much attention to the garage. Before I purchased the home, I had a very difficult time trying to convince people not to use it for illegal dumping and I've reported the dumping of all kinds of appliances and things like that. Folks park in there. They block the entrance way. They block other people who part in there. So they've used that garage which I've since received approval to put the roof on it and fix it up for all kinds of various purposes. So again, this is all an attempt for me to bring it back into its residential use, fix the property up and change the whole character of the property so it goes back to its original, historic use. But I'm not sure if I've answered the question you were --

MEMBER SOCKWELL: What I'm getting at is it appears that the garage, are the houses adjacent to you occupied now?

MS. BROWN: Yes.

MEMBER SOCKWELL: It appears that if the garage

were rebuilt and your building renovated for occupancy, that the available area for the drug dealing and things that you have stated have taken place would no longer be available, that the -- it would be possible to merely place a fence between the wall of the garage and the wall of your house and accomplish a level of security. You're not going to have drug dealing when there's no place for people to congregate. The garage would be secure, would have a roof on it and a door on it and your car in it and the adjacent space, that narrow 6 foot space could be fenced and would therefore become secure and could be lighted at night to solve the other issue.

As well, it appears that the stones that are missing from the garage and I may be wrong, but it appears that some of those stones were used to build that wall that actually separates the -- your yard from the next one. I might be wrong. It just appears that some of the stonework has been relocated.

You have a very low roof line for gaining access from your house to that garage, so your steps would have to take place within the area of your proposed addition.

CHAIRPERSON REED: Do you have a question? Ms. Brown, did you have a question?

MS. BROWN: No. I don't have a question.

CHAIRPERSON REED: Back to the issue of uniqueness.

The burden here is to determine whether or not there is something unique about this property. And notwithstanding the fact that -- and it has to be something inherent in the land itself. So notwithstanding the fact that there is illicit activity, that the siting of this particular area lends itself to that, that's not one of the -- unfortunately, that's one of the criteria that we can use or security, but we have to establish is that something that is unique to your property unlike this area on the side that we're referring to, is this something unique to your property that is not present in the other properties that are surrounding or other properties in the neighborhood?

MS. BROWN: I believe it is. The fence that Mr. Sockwell mentioned, I do not believe would not sufficiently do the job. There have been and I have three police reports to prove this --

CHAIRPERSON REED: Okay, but Ms. Brown, although Mr. Sockwell raised it as an issue, that is not what you want to address.

MS. BROWN: Okay.

CHAIRPERSON REED: What you want to address is simply this, if, in fact, the -- the variance that your asking for has something that is unique about this property, inherent in the land that makes it different or unusual than any other properties

around it and that's what you want to answer.

MS. BROWN: And I believe it does. I believe that this open space that is just a six foot space that I would like to enclose is unique and different from the other properties.

CHAIRPERSON REED: Because none of the other properties have this same aspect to it?

MS. BROWN: Exactly.

CHAIRPERSON REED: Okay, that's what you want to answer.

MS. BROWN: Yes, ma'am, I'm sorry. I was confused.

CHAIRPERSON REED: Then you have to go to would it cause a practical difficulty for you not to comply with the existing zoning regulations?

MS. BROWN: I believe it would cause a difficulty for me to not comply with the existing regulations?

CHAIRPERSON REED: Why?

MS. BROWN: Because I will not be able to go from my home direct from the garage, directly into the home.

CHAIRPERSON REED: Okay, well, what we have ascertain is that an inconvenience or practical difficulty and at this point in time let us not dwell on it because we do have a report from the Office of Planning that I'd like to hear. They have recommended approval and we'd like to hear from them. That's

where we go next to determine, based on their analyses, how they were able to come to their conclusion and their recommendation and that might enlighten us as to what the basis of the recommendation is.

MS. BROWN: Okay.

CHAIRPERSON REED: Before we go to Office of Planning, is anyone from the ANC here? All right, the ANC has submitted a letter and approval of the application.

Ms. Renshaw, could you please do us the honor?

MEMBER RENSHAW: Yes. We have a letter of resolution dated Tuesday, October 4, 2000 signed by Wanda Harris, the Acting Chairperson of ANC-6A and it states that 6A met on September 19, 2000. It was a regularly scheduled -- I think they mean ANC meeting. They established a quorum of six ANC-6A members and they voted to approve the application for approval of a one story addition that will extend and connect the existing residence to the garage.

They state that the Applicant has not received opposition to the project from surrounding neighbors and the community.

MS. SANSONE: Madam Chair, the ANC report was not received within the 7 day filing deadline so if the Board wishes to consider it, it will have to waive the filing requirement.

CHAIRPERSON REED: Okay, I would so waive unless there's any objection from any of the Board Members.

MEMBER SOCKWELL: No objection.

CHAIRPERSON REED: Now ANC-6A will be afforded the great weight in which they're entitled. All right, thank you very much.

MS. BAILEY: Madam Chair, excuse me, the ANC letter is addressed to Arthur Jackson, Development Specialist. It also addressed to the Board of Zoning Adjustment. So there's a little confusion there. There are two different entities here, but we just assume that it's to the Board of Zoning because it does say that, but there's no Arthur Jackson, Development Specialist at the Office of Zoning and I just needed to clarify that.

CHAIRPERSON REED: Who is Arthur Jackson?

MS. BAILEY: I don't know, ma'am. It's listed here as 801 North Capitol Street, N.E.

MR. JACKSON: Madam Chair, I'm Arthur Jackson.

CHAIRPERSON REED: I'm sorry, you already introduced yourself. I forgot your name. It didn't stick with me that quickly, but what is really throwing me is are you a Development Specialist? Is that your title?

MR. JACKSON: Yes, I am.

CHAIRPERSON REED: At the Office of Planning?

MR. JACKSON: Yes, I am.

CHAIRPERSON REED: I see. So perhaps what they did was, they just didn't use the same letter?

MR. JACKSON: Development Review Specialist, ma'am.

CHAIRPERSON REED: Okay, but they sent the same letter to you, perhaps, and they just let one letter suffice for both entities, Office of Planning and BZA?

MR. JACKSON: Yes.

CHAIRPERSON REED: Okay. All right. That's certainly acceptable, Ms. Bailey.

MS. BAILEY: I just wanted to bring it to your attention.

CHAIRPERSON REED: Thank you. Okay, now Mr. Jackson, please.

MR. JACKSON: Madam Chair, I would first like to request a waiver of the filing deadline. Our official report was one day late.

CHAIRPERSON REED: Okay, we'll so waive the regulations as far as the time is concerned to accept the Office of Planning Report, unless there are any objections from any other Board Members?

Okay.

MR. JACKSON: Thank you. My next question is would

you like me to walk through the entire report or should I just ask questions, ask for questions?

CHAIRPERSON REED: No, please don't. Just give us basically, your recommendation and how you came to your conclusion and how you defend your recommendation -- and thereby defend the recommendation that you did through your analyses?

MR. JACKSON: Yes, Madam Chair. The application asked for a variance from the requirements of Section 2001.3(a), (b) and (c) to enlarge an existing nonconforming building and special exception relief under Section 223.1 to allow a nonconforming rear yard setback for a single family dwelling in an R-4 zone. The subject property is a corner property located at the intersection of 11th Street and D Street and the Applicant made several requests -- made this proposal based on a number of requests which she has outlined in her report.

The Planning Staff reviewed the site plan and reviewed the site and came to a number of conclusions. As to the current status of the property, the property is currently being renovated and I would note that there have been a number of building permits issued to allow the property, the work to continue. Building permits include one for interior renovations, to redo the exterior brickwork, to add a new roof to the garage and to add a metal balcony on the third floor and erect a metal

fence 36 inches tall. With reference to the previous discussion about metal balconies, the permit has been issued to allow the balcony to be installed and I would defer to the Zoning Officer, Zoning Administrator, but I believe this may have been done under an existing provision of the code, Section 25-02.5. I'm sorry, 02.6 allows for an open or lattice enclosed fire balcony or escape to project into a required yard or open court for a distance not to exceed four feet. The proposed trellis, the proposed balcony is an open trellis and in that case it could have been approved as proposed under the current zoning and it did not require a variance. But as I say, I defer to the Zoning Administrator on that issue, but in our analysis we assumed that that was actually what happened in that case.

On to the other issues that were raised, of course, there's a proposal for a metal fence on the south and east sides of the building. That would be outside of her property and I believe she's saying that enclosed an existing area that's currently used by the site.

Based on our analysis of the existing building, and the proposal, we came to a number of conclusions. The proposed single family residential use is permitted by right in the zoning district. The property does not meet minimum lot width and size requirements of the R-4 District under current regulations. The

existing row house, row dwelling would not meet the side yard requirement and the garage does not meet the rear and side yard requirements. The expanded building, which would be a combination of the garage and the house would therefore not meet the rear yard requirement or the side yard requirement.

The existing buildings and proposed addition would exceed the maximum allowable lot occupancy, therefore, the existing and proposed uses would not be consistent with existing regulations.

And further analysis, we reviewed the various aspects of this proposal and we decided to review point by point how it would be in compliance to grant this variance and still be in compliance with the referenced provision of the zoning code.

We found that the property is two feet narrower and roughly one third the size of the lot area required under current zoning regulations. Therefore, it is inconsistent with existing regulations.

We did not find that the inability to pass from the garage directly to the dwelling constituted an undue hardship. In fact, we also found that she can effectively expand the house six feet until it's right next to the garage and not be in violation of the zoning code. However, her proposed design really requires the building addition to extend to include the garage by attaching

and what happens when she attaches the garage to the house, it becomes part of the house and that's just the house extends completely into the property. So she could, in essence, extend the building to the edge of the garage and not be in violation of the current regulations and not require a zoning variance. However, the current design does requires the buildings be attached and she requires this relief for that reason.

The issue of whether or not she provided the interior door or not was something that I discussed with the Applicant and I considered as one of the conditions of approval that this only be approved subject to including a condition that she provide that access.

However, the real issue here is not what the interior, but the exterior circumstances of her attaching to the building and so we proceeded to review this case in light of that reality.

The required yard of 20 feet is substantially developed with the garage and in spite of what shape it's in, it's still listed on the assessed, City Assessment Report as being a garage. And as such, it occupies most of that rear yard.

Given the fact that she can extend the building to build a wall immediately adjacent to the garage and the fact that because of the type of construction that's being used, an addition

having access directly between the buildings would not be an inordinate impact on the property. And the fact that the existing four foot setback would not change as a result of this improvement. We felt that the proposed extension and variance would not be inconsistent with the existing conditions or the requirements of the zoning ordinance.

Let me reference the compliance with Section 223.1. We viewed the property site plan and building elevations and determined that this proposal would not affect the provision of light or air to the neighboring properties, impact privacy or the enjoyment of the existing use. The building design would not intrude upon the character and scale of the housing around, along the street frontage and for this we referred to the comments from the Historic Preservation Review Board. From all indications this addition will be compatible with the surrounding community.

The Historic Preservation Review Board reviewed the application at the September 23rd meeting. Now in researching this, the application was considered as an item on their consent agenda. So a staff report was submitted at the September 23rd meeting, which I have a copy of which recommended that the staff -- - recommended approval of this proposal for the balconies, for the windows, for everything that's proposed by the Applicant today. Subject to the final design, be approved by the staff, because I

think the Applicant indicated at that proposal that there might be some changes.

So the recommendation from staff, in essence, was that the -- was for Board approval of the conceptual design as being consistent with the purposes of preservation law delegating approval, final approval to the staff.

As I say, this was an item on the consent agenda and the minutes do not reflect that there was any discussion of it, so by inference, it was approved.

We also considered the comprehensive plan which, of course, is our principal guidance for any improvement, changes or development in the area. And the comp. plan includes the following provisions: housing objectives for Ward 6 under subsection 1705.1 include to stimulate production in Ward 6 of new and rehabilitated housing, to providing housing opportunities and allow for residential growth and stability according to area needs and to encourage rowhouse construction compatible with existing neighborhoods. We found that this proposal is consistent with those objectives.

Also, objectives for preservation of historic features under 1725.1 include to protect, to preserve the historic character of residential neighborhoods in Capitol Hill, in the Capitol Hill Historic District, to encourage new development and

renovations of structures that are sensitive to the character of Historic Districts in Ward 6.

Based on the findings of the Historic Preservation Commission, or Review Board, we concur that the application is consistent with those requirements.

Finally, the Zoning and Licensing Committee of the Advisory Neighborhood Commission, ANC-6A, had recommended approval of the requested variance and special exception. As per the letters received by planning staff and distributed to the Commission, the Advisory Committee unanimously approved, well, unanimously approved with abstentions, the approval of this proposal for the renovation and addition.

We have just become aware of the concerns expressed by the Capitol Hill Preservation Commission in which we, in fact, notified of this application and really have no comment on their comments.

So with these provisions and in light of, as I say, the current previous consideration of requiring the connection that she show a connection, that she connect both buildings together, we recommend approval of the request.

I'm available for questions for further clarification.

CHAIRPERSON REED: Okay, Mr. Jackson, thank you

very much for your report. However, I did have some questions with regard thereto. On page 4, Section 3103.1, the paragraph that refers to the -- whether or not the Applicant actually has met its burden of proof in regard to a variance and here's where I am a little bit confused. It says the inability to pass from the garage directly into the dwelling does not constitute undue hardship.

MR. JACKSON: Yes.

CHAIRPERSON REED: I think that we're referring here to an area of variance so it would be a practical difficulty, would it not?

MR. JACKSON: Well, the practical difficulty is she could not pass from one --

CHAIRPERSON REED: I understand that.

MR. JACKSON: -- to the other.

CHAIRPERSON REED: I understand that, but --

MR. JACKSON: Whether that she could or not would be -- I see what you mean.

CHAIRPERSON REED: We all know -- understand my point, Mr. Jackson. With reference to the aspect of the -- the burden in this test for area is practical difficulty, not undue hardship.

MR. JACKSON: Okay.

CHAIRPERSON REED: It's a different test for a use variance.

MR. JACKSON: Okay.

CHAIRPERSON REED: And as such this needs to be specified as to what, in fact, we're dealing with here. That's one thing. The other thing is, however, the proposed expansion would be consistent against -- with other -- there's a word missing here, existing developments in the area.

Now is this what you -- I'm not following this, but is this what you are proffering as a basis for the granting of the variance?

MR. JACKSON: Yes.

MS. McCARTHY: Madam Chair, I think we could say that while we -- it looks to me that a part got left out in which we would have indicated it certainly wouldn't have met the undue hardship standard, but we thought as a practical difficulty, given that we felt that it met the uniqueness test and I think we would --

CHAIRPERSON REED: How? I don't see that. I don't mean to cut you off, Ms. McCarthy, but where is that indicated herein?

MS. McCARTHY: We had this discussion so I think that somehow it did not make it into the written report that in

terms of -- I guess I'd step back for a second addressing the Capitol Restoration Society report which we just saw. They had argued that this lot wasn't that unique and that there are a number of small nonconforming lots in the Historic District, but as a corner lot, while it may be slightly larger than some other corner lots, it is also smaller than several on Capital Hill and the buildings typically, as they agreed, the buildings typically on a corner lot in Capitol Hill are larger and more prominent. This one, the linkage between the garage and the main house helps create a consistent street wall along the street, along 11th Street which is one of the distinguishing characteristics of Capitol Hill in terms of those row houses. And because of the fact that the garage was already there, the house was close to the garage anywhere. There was this existing nonconformity. There were the historic aspects. We thought there were just a bundle of considerations which all taken together constituted uniqueness and that the practical difficulty that the ability to construct this extension almost to the garage, and yet not quite be able to do that because of the technicalities of the zoning seemed to us to meet the standards of practical difficulty, that it was hardly worthwhile to go through all of that expense to do the addition if one could not complete those last few inches or feet to make the full connection and to have the full benefit of that space, to

make it useable space.

But we would readily agree, it's a judgment call and that's why we then went to where there were other instances of exactly the same thing being done in the neighborhood, yes, there were. And so it seemed that to single this out and say this could not be done when it had clearly been done in the neighborhood when it was acceptable to the ANC, when it seemed consistent with the comprehensive plan, we felt that this was a judgment call worth making in favor of the Applicant. And we certainly understand the difficulties involved in that and it's a tough choice.

CHAIRPERSON REED: Thank you very much, Ms. McCarthy. That certainly states for me the basis of the -- of your premises and the conclusion that you came to for the recommendation for approval, but that was not reflected in the report so we didn't have a basis to -- of being able to adequately analyze your report to help us in making a decision as to whether or not the applicant did meet the burden of proof and I would appreciate having that information in the report because when we're reading it for you to frame for us what, in fact, you're trying to have us to understand and we need all the different, the pieces of the puzzle.

My last thing is, well, my next to the last thing is in the next paragraph when you go to how are the required rear

yards now substantially developed with the existing garage since the four foot rear yard beyond the garage would remain after the addition, granted the relief, the requested relief would essentially maintain the status quo.

Could you elaborate on that, please? What does that mean?

MR. JACKSON: In essence, this goes back to the fact that the existing rear yard setback of 20 feet is occupied by 16 feet of a garage. There's the remaining four feet that is undeveloped. Now the garage is a permitted use in a rear yard setback, but the effect of having your garage in your yard setback is that you only have four feet of usable space beyond that.

The extension of the building, of the existing, the conversion of the existing store to a dwelling and extending that dwelling to attach the garage would not affect the existing usable rear yard setback which is the four feet. So in essence, nothing would change with regard to the rear yard setback. That's available for use by the applicant or anybody else who uses the rear of the property.

CHAIRPERSON REED: Oh, I see. I wasn't sure where you were going with that. I didn't see in any discussion of the adverse impact or the lack thereof.

MR. JACKSON: Well, the adverse impact, that is

discussed under the compliance with 223.1 where it talks about how the -- well, actually, it seemed like that section more directly addressed what happens to the nearby residents as a result of this addition and in essence, nothing about happen.

CHAIRPERSON REED: Where is that?

MR. JACKSON: The next paragraph.

CHAIRPERSON REED: See, you're dealing with two different things. One is a variance and one is a special exception.

MR. JACKSON: Right.

CHAIRPERSON REED: And you have to address adverse impact --

MR. JACKSON: For both.

CHAIRPERSON REED: For both.

MR. JACKSON: I have to apologize to the Commission. I, in essence, because I would be repeating the same thing twice, I just stated under 223.1, essentially the adverse impacts that would be analyzed would be essentially the same, but the net result, we did not feel there would be any adverse impacts on the community, in essence, because we thought the historic character would be preserved as per the comments by the Commission.

CHAIRPERSON REED: I see.

MR. JACKSON: And there would be no impacts to properties off the site because of the very nature of the proposed development.

CHAIRPERSON REED: Okay, I see, in other words, you basically kind of combined it into how the applicant comply with Section 223.1 and that portion of that was impacted --

MR. JACKSON: I apologize. I should have made reference. I should have just put a sentence there referencing "see below" and made such words to make the connection. My apologies.

CHAIRPERSON REED: And also you said that you just received the report from the Capitol Hill Restoration Society which was in opposition so that was not contained in your report?

MR. JACKSON: No, in fact, at the behest of Ms. McCarthy, when we became aware that they had not made any comment, we called and told them about this application and we hadn't heard anything since from them. I guess we were so much surprised when we saw this letter this morning, but -- so -- but I think most of the issues tat they have raised have been addressed in my report to some degree.

CHAIRPERSON REED: And also you should have had that report prior to your making your report so you could contain within your report your analysis of their submission and I don't

know what happened. The report came in late. Ms. Kress, how was --

DIRECTOR KRESS: October 2 is when we received the Capitol Hill Restoration Society Report and --

CHAIRPERSON REED: But they said they didn't receive it until today?

MS. McCARTHY: Right, Madam Chair. We made the mistake of assuming that since we were the ones that had called Capitol Hill Restoration Society and solicited their input on this application, that -- and then had found out from them or then been thanked by them for letting them know about it, we thought that it was understood -- we had understood and obviously incorrectly that they would let us know then if they had a problem with the application, particularly since it had been approved by the ANC.

CHAIRPERSON REED: But when it was submitted to the BZA, to the Zoning Office, they didn't also send you a copy of that letter?

MS. McCARTHY: No. You know, and that's surprising because usually they do that as well.

CHAIRPERSON REED: Right, and that puts you -- that causes a problem here, because it also puts you at a disadvantage as to the completeness of your report when you don't have the information you need to conclude -- to make your proper

conclusions or to be able to buttress their position, if you're recommending approval and they are not, so that kind of makes things a little bit cumbersome up here on the dais.

MS. McCARTHY: That is true, but it is our responsibility to keep up with the file, with the record and to check it, just as any citizen or anybody else would and we obviously will do a better job of it in the future.

CHAIRPERSON REED: Thank you. I have no further questions. Do any other Board Members have questions of the Office of Planning?

MEMBER SOCKWELL: Just one. Was the Office of Planning aware that the addition would likely be taken up to a large part or significant part by access to the garage based on the differences in roof heights?

MR. JACKSON: That the addition itself will, in large part, become circulation to get to the garage with the access, if such access is provided to the garage? We had no information regarding that, no.

MEMBER SOCKWELL: You didn't get a copy of the drawings then?

MR. JACKSON: Our drawings were the same as yours and they did not show a connection between the two. However, in discussion with the applicant, she said that she was -- she would

be resubmitting revised plans based on her architect's revision of the drawings, contingent on approval by the BZA.

I would have to say, however, that again, this is interior to the property and if most of it was taken up by the steps, that's the Applicant's choice.

MEMBER SOCKWELL: Because the only other option would be to raise the roof of the garage and therefore it would not be an in kind replacement.

MR. JACKSON: I'm not sure --

MEMBER SOCKWELL: The garage roof would -- IM.

MR. JACKSON: Well, my understanding is that it doesn't have to be in kind replacement, does it?

MEMBER SOCKWELL: Well, if it's an existing garage, then the drawings that were shown showed it generally in kind replacement in terms of bulk. The garage would otherwise have to probably gain maybe three or four feet of actual real height in order to accommodate the head room required to get out of the house and into the garage without compromising the addition.

MR. JACKSON: Again, I have no information to that regard, so I can't really comment on it.

MEMBER SOCKWELL: The elevations gave a pretty good indication of the differences. It was probably just overlooked by the Office of Planning.

MEMBER RENSHAW: Madam Chair, I have a question. I was just reviewing the 6A submission and this is a three-page submission and on the back of it is a listing of Commission Members. Two of the Members are not listed as Commissioners. I question whether or not these two people are actually Commissioners. They voted. There are ten Commissioners listed, five of them voted. That does not make a reference -- that does not constitute the quorum of six. If the two who are not listed as Commissioners voted, that would change the vote to seven, the quorum of six --

COMMISSIONER HOOD: Ms. Renshaw, I looked at that too.

MEMBER RENSHAW: Can you tell me --

COMMISSIONER HOOD: You don't see and this is what I came to my conclusion, I came to -- you don't see 6A-01. You don't see 6A-04. That may be a typo. I did notice that too.

MEMBER RENSHAW: I would like to have this checked as to whether or not they are voting members of the Commission and who they represent.

It's a simple call down to --

CHAIRPERSON REED: Okay, Mr. Hood said it looks like 01 and what else?

COMMISSIONER HOOD: 04 are missing.

CHAIRPERSON REED: Are missing so it may have been that they just didn't put those in, but we can have that clarified for the record.

DIRECTOR KRESS: Yes, we can, Madam Chair.

CHAIRPERSON REED: Okay, thank you very much. For persons in support, is there anyone here in support of the application? We did receive from the Applicant a petition with five signatures of persons in support of the application.

Persons and parties in opposition. Is there anyone from the Capitol Hill Restoration Society or anyone else in opposition? I do have a letter from Capitol Hill Restoration Society that basically is opposed to the application, based upon the fact that they feel that the Applicant has not met their burden of proof and that they feel that there is nothing unique about the property and there's more practical difficulty and the question that they asked and I will put that to you, Ms. Brown, is that the Applicant has not demonstrated why the garage side giving access to the rear door would not provide adequate security. According to our calculations the first floor contains 624 square feet plus 165 square feet in the two bays for a total of 789 square feet. We do not understand why this amount of space cannot be divided so as to provide an adequate living room and kitchen.

Can you answer that?

MS. BROWN: I've tried several times to phone, when I received this letter just two days ago, to the Capitol Hill Restoration Society. I phoned them on Thursday morning when I received the letter Friday and Monday and haven't been able to talk to anyone about it. I've talked to several members. No one has talked to me about those issues or given me an opportunity to speak with them or meet with them. So I just wanted to acknowledge the fact that I did try to talk to them about their concerns and have not been afforded an opportunity to meet with them to go over it, receiving the letter only two days before this meeting.

I do not -- there is not adequate enough space in the home to divide the two rooms and have a kitchen and a dining room. It would be one or the other, given that when the house was originally built, there was a lot of space given to the living room area which was for years and years and years, decades, a store. The back of the house was used for storage. The floors have been separated and leveled as such, so there's enough space in the back to have one or the other, but not have both.

CHAIRPERSON REED: Okay. I think you did speak earlier about that side door. Thank you very much.

Do you have any closing remarks?

MS. BROWN: I do have -- yes, I do have one closing

remark. I'm not sure if it is appropriate, but I would like to ask for a bench decision and a summary order. I'm not sure that given the concern about the entry way to the garage, if it would be something that the Board would consider, but I thought I would ask at any rate.

CHAIRPERSON REED: Okay, thank you. Board Members?

MS. BROWN: And I would also like to know in addition to that side door, if there are other issues that I would have to follow up on today --

CHAIRPERSON REED: Well, not cutting you off, but let me interject. The least would be the issues that were raised by Mr. Sockwell in regard to the revised architectural plans.

MS. BROWN: That's not a problem.

CHAIRPERSON REED: That reflect the stairs --

MS. BROWN: That's not a problem

CHAIRPERSON REED: The fact that that was omitted from the architectural renderings.

MS. BROWN: Yes, that's not a problem.

COMMISSIONER HOOD: Madam Chair, the only other thing I would add, if we need to find out exactly, the other two Commissioners, whether they're Commissioners or not. Other than that --

MEMBER RENSHAW: Madam Chair, Ms. Brown, I

understood you earlier to say that you had just received this letter from the Capitol Hill Restoration Society.

MS. BROWN: Yes.

MEMBER RENSHAW: Do I take it that you are definitely meeting with them or are they calling you to a --

MS. BROWN: They have not called me. I received their letter on Wednesday evening around 11 p.m. when I got home to check my mail box and was shocked and taken aback to receive it in light of the fact that I've tried to talk to everyone that I knew, going down to the Historic Preservation Office at 9:41 and asking the ANC and everyone else who I should talk to.

I tried to phone them three times on Thursday. I was told that the person that I needed to talk to was out of town until Friday. I tried twice on Friday. I left my cell phone number which is on 24 hours a day, my home number, left my work number and a number where they could get in contact with me over the weekend or in the evening.

I also even though yesterday was a holiday, tried to call them twice, left all three of my numbers at that point, told them even after the hearing today that I would be more than happy to meet with them to discuss this and I do intend to call them back again. I don't know what else to do other than to phone them on Thursday, Friday and Monday and again today and at least,

at a minimum two times to try to reach them. I was told that someone would be calling me back on Thursday afternoon. No one did.

I was also told that they would try to get back in contact with me at home to leave a home phone number. No one has. I have very good reliable phone, Verizon phone message -- I've done everything that I can do --

MEMBER RENSHAW: You certainly made the effort. You certainly made the effort to try to get a hold of them. I know it's difficult when you're dealing with a volunteer organization, perhaps a letter with return receipt requested to indicate that they had received a letter from you asking for a meeting.

MS. BROWN: Yes.

MEMBER RENSHAW: To resolve some of these questions and Madam Chair, I would like to get some response from the Capitol Hill Restoration Society from a meeting with Ms. Brown prior to voting on this.

CHAIRPERSON REED: I don't know if we could -- I don't know if we would necessarily have to hold up a vote for a response from a meeting. I don't think that's something that's required for them to meet and to hold up a vote, for them to get a response from -- as to the nature or the outcome of that meeting.

We've gotten submitted Ms. Brown's application and also the position of the Capitol Hill Restoration Society and I think that that is adequate enough to be able to make a decision. That does not negate us requesting that report prior to an order being issued.

Board Members, would you like to act upon this particular case today?

COMMISSIONER HOOD: Madam Chair, I think we could -- my opinion is we could proceed today contingent on those issues that we addressed which can come in at a later time. Then I will make the final order, the summary order, whatever she's asking for, go out at that particular time.

CHAIRPERSON REED: Would you like to make a motion?

I'm sorry, Mr. Sockwell?

MEMBER SOCKWELL: Madam Chair, I have some trouble with going that route, specifically and only because in the event that access to the garage is handled through the addition as the level change to meet the garage would be achieved therein, the garage will stay essentially the same as the drawings that we've been presented. Should the requirement be that the access to the garage occur outside of the addition, i.e., in the garage, then the roof of the garage will have to be raised some three or four feet, which will mean that the drawings that we've seen would no

longer be as specified. And I believe that we need to know what the -- we need to see what is going to be done there and in fact, should there be an external connection to the garage, the Capitol Hill Restoration Society would be seeing a different animal than the one that they reviewed and did not approve. As well, the Office of Planning might have other review needs for that and I think that we need to make sure that those organizations and the ANC would have the opportunity to see any changes that might be significant in terms of exterior architectural appearance.

CHAIRPERSON REED: Very well. Mr. Sockwell, your point is well taken.

Mr. Moulden?

MEMBER MOULDEN: I have a question for Mr. Sockwell?

MEMBER SOCKWELL: Yes.

MEMBER MOULDEN: If the Applicant is not sure of what side of the garage they may enter, they decide to put steps, steps are just projections into the side yard. Is that --

MEMBER SOCKWELL: Well, the issue is that the prehearing statement, supporting statement of the applicant was that the need for security was desired and felt critical to the requirement for the addition which would allow a direct connection into the garage. That is the first bulleted item in the

Applicant's statement. Since that is a critical matter, how that's accomplished is going to affect the way the garage might look on the outside. As long as all it affects is the way the addition looks on the inside, as the Office of Planning stated, it's not a particularly important issue, but there's a potential that the connection will affect the garage. The garage is a key piece in that it would then rise in height, would affect the location of the balcony perhaps above. It would certainly affect the appearance of the house based on the way the drawings have been shown in elevation at this present time.

And there are several agencies and several organizations that would want to know that.

DIRECTOR KRESS: Madam Chair, could I suggest that you do put the vote off until November 8th and ask for the drawings to be submitted, modified to show the concerns of the Board and we will also be getting in touch with the ANC to ascertain the voting and to make sure there was a proper quorum and then you can vote on it at your November 8th meeting.

CHAIRPERSON REED: Thank you very much, Ms. Kress. I was about -- before you interjected, I was about to say just that, that given the fact that there is so much uncertainty here today in regard to the request from Ms. Renshaw as well as the concerns of Mr. Sockwell and the fact that I think the Office of

Planning Report needs to be revised to reflect the discussion we had here today and also to include a response to the Capitol Hill Restoration Society report therein, to give us a clearer record as to what, in fact, we're dealing with so that we can make a decision that is based entirely on having factual evidence before us and the ANC report -- to make sure that it's clear as to how, in fact, the vote was taken and the other issues that have been raised.

We can, as Ms. Kress said, we can take this up for the November 8th is it?

DIRECTOR KRESS: Yes.

CHAIRPERSON REED: Isn't that voting day?

COMMISSIONER HOOD: I think that's the 7th. Madam Chair --

DIRECTOR KRESS: We're meeting on Wednesday, that week, instead of Tuesday.

CHAIRPERSON REED: That's right, we did change that. Voting day is the 7th.

COMMISSIONER HOOD: It's not probably being the sitting Zoning Commission Member that we have at first on the agenda.

CHAIRPERSON REED: Yes, we can have it first on the agenda.

COMMISSIONER HOOD: Thank you.

DIRECTOR KRESS: Staff will note that.

CHAIRPERSON REED: Ms. Brown, we have some cleaning up to do with this particular case, some things that are hanging that we need to get further clarity on before we can make a decision so unfortunately we won't be able to grant your request for a summary order bench decision today, but on November 8th, we will be able to do so, to move to make the decision at that time.

MS. BROWN: On November 8th --

CHAIRPERSON REED: Which is our next meeting day.

MS. BROWN: Will I be notified to come back to this same building?

CHAIRPERSON REED: Actually --

DIRECTOR KRESS: Staff can help and inform you of what's going to be happening on that day.

MEMBER MOULDEN: And staff will also be sure that we get more information from her?

DIRECTOR KRESS: Yes, the revised plans need to be submitted 14 days preferably before November 8th, so they can be included for the Board's review and decision.

CHAIRPERSON REED: Okay. Thank you very much.

MEMBER SOCKWELL: And Ms. Brown, I don't think that your architect is going to have to do too much work to those plans

to achieve the stairs, fairly simple, but we need to know how you're going to get it done if you do it inside the building, it will be simple. If you do it outside of the building, it will require some redrawing of elevations.

CHAIRPERSON REED: Thank you very much.

DIRECTOR KRESS: Ms. Brown, before you leave, if you could see Paul Hart and we'll tell you and inform you about what the next steps are.

Thank you.

MS. BAILEY: Madam Chair, are you ready for the next case?

CHAIRPERSON REED: Mr. Moulden had a question for the Office of Planning prior to them leaving if you're not going to be here for the next case.

MEMBER MOULDEN: Yes, we wanted to know whether or not there will be one person sitting to represent the Office of Planning or every time there's a different case to be a planner representing a specific case coming to the BZA?

MS. McCARTHY: Generally, what we try to do is have the planner that's written the report be here definitely and as many times as I can be here as well, I will be, particularly while we have a lot of staff that -- this was Arthur's first case before the Board of Zoning Adjustment. We have four new staff people, so

--

CHAIRPERSON REED: Ms. Bailey, will you call the next case, please?

MS. BAILEY: Certainly. This is Application No. 16608 of Steven and Mary Ellen Cymrot, pursuant to 3103.2, for a use variance under Section 330, for a use variance to allow a retail store for the sale of used books in a CAP/R-4 District at premises 417 East Capitol Street, S.E., Square 817, Lot 13.

All those wishing to testify, will you please stand to take the oath?

(Witnesses sworn.)

Madam Chair, all requirements, all filing requirements have been met on this Application, meaning affidavits and so forth. The ANC's comments, that's ANC-6B, they were not available to us prior to the start of this meeting today. There is a report from the Office of Planning with conditional approval. And as you mentioned in the last case, Madam Chair, this particular test today for relief for this Application for undue hardship which would be a use variance. I think this case is now ready to go forward, Madam Chair.

MR. DePUY: Madam Chair, Members of the Board, for the record, I'm Jacques DePuy, attorney with Greenstein, DeLorme & Luchs, representing the Applicants here today.

As been mentioned this is an Application for a variance at 417 East Capitol Street, S.E. First, I think it's important to point out to the Board in terms of the unique and exceptional test, this property is located in a block which is essentially characterized by commercial structures which are used for commercial use and were built for commercial purposes. Specifically, the south side of the 400 block of East Capitol Street has a grocery store, a gallery, several offices, a clinic and a dry cleaning establishment.

The subject property has been used since it was constructed in 1898 on the first floor for commercial purposes. In terms of documented certificates of occupancy, it has been used as a laundry, as an art and antiques store and as a medical office. In fact, the Board of Zoning Adjustment in May of 1977 approved an application for the subject property to be used as a medical office. Unfortunately, the doctor who is still in the property failed to obtain a certificate of occupancy and for that reason we're here for a use variance as opposed to a nonconforming use which had the doctor obtained a certificate of occupancy, we would not be requesting a use variance.

As the Board is will aware, there are three tests for a use variance, the first being the exceptional or unique condition of the property. I've mentioned one which is the

location of the property being in an essentially commercial block, although the property is zoned R-4. Secondly, significantly, the lot is a very small lot. It's a substandard lot in terms of size, consisting of only 1,069 square feet which is 59 percent of the required minimum lot size in the R-4 District.

Third, the building is a substandard building. It is substantially smaller than most buildings in the square and on Capitol Hill. In addition, this building has several other unique characteristics including because it was built for commercial use on the ground floor, it's characterized by a large glass door front window. The building at the first floor is built at grade which is an unusual condition for structures on Capitol Hill and because of those reasons, it would be an undue hardship on the Applicant to be required to convert this property which has been used for commercial use, was designed for commercial use in a commercial block to any permitted use in the R-4 zone, nor, we submit, would it be the most appropriate use given the nature of the block. This particular use, as the Applicant will testify is a low intensity use. It will have no substantial adverse impacts on the neighborhood, will not generate much, if any, vehicular traffic, will not cause noise, is not going to have lights and cause glare and therefore we submit as to the third test, that we are in compliance with the third test of the variance as well.

And that concludes -- we have submitted photographs of the property, evidence of the prior commercial use. I would like to point out one additional thing which the Capitol Hill Restoration Society in its letter in support of the application, dated October 2nd, pointed out that this block is a small commercial enclave and were it to have been a little larger, this particular area on Capitol Hill, on East Capitol Street would probably have been designated as a commercial zone and in fact, as we have submitted and argue in our pre-hearing submission, this block is really an anomaly on Capitol Hill because of its commercial use and the commercial nature of the structures.

As was pointed out, the ANC-6B has supported the application, although unfortunately did not file a report. The Capitol Hill Restoration Society is in support of the application and the Office of Planning which is here, has also submitted a report in support with conditions recommended by the Applicant.

If there are no questions of me, I'd like to ask our one and only witness, Mr. Cymrot to give his name, address and statement to the Board.

MR. CYMROT: Madam Chair, Members of the Board, my name is Steve Cymrot. I live at 410 A Street, S.E. which is in the same square as this property. We've lived there since 1968. We've owned 417 and 419 East Capitol Street since 1974 and with a

BZA approval in 1974 have had our office at 419 East Capitol Street, next door to the subject property since 1974. Its prior use had been as a dry cleaners since 1898, -- no, there was a TV repair shop in there in between, but it was basically in the single family business for many years.

I have a little bit of a conflict here because Jacques has asked to make a six or seven minute presentation and you all probably are not interested in hearing a repetition of the same things he just said and as he went through his presentation I was checking off all of the items that would be repetitious for me to say them.

CHAIRPERSON REED: We appreciate that. Basically, Mr. DePuy has given us the highlights of your case and that's all we need and you don't have to reiterate anything that he's already said. If you have something new that you wish to add --

MR. CYMROT: All I would repeat and perhaps expand on used book stores, by their nature are very low impact on communities. In putting testimony together I had somebody sum it all up here this morning by saying bookstores make people happy. At a time that Capitol Hill is having its commercial properties go over to Starbucks and Ritz Camera and Radio Shack, I'm hoping that we're going to create an environment there that will be more on there Carroll's neighborhood sense than some of the newer things

that we are being blessed with up there. I think it will be something that will be an addition to the community. The only question or main question that we've heard from neighbors in telling them about a bookstore is that about half of the people said are you going to have coffee which seems to be a current thing. We are referring people to Jimmy T's at the corner of 5th and East Capitol where they serve a very nice cup of Maxwell House coffee for a buck and it doesn't have any lattes or anything else in it.

As the Office of Planning did say, we have proposed several restrictions upon our use of it. We will be open, limited normal business hours. My son and I are the owners of the business that will be running the bookstore. We will be there. We anticipate that based upon the lengthy hours and all we probably will from time to time have an employee there, although we anticipate that it will just be one or the other of us most of the time.

I'll be happy to answer any of your questions, but I don't think there's really anything to add to the zoning case.

CHAIRPERSON REED: Thank you. Board Members, if you have no questions, then we can move to the ANC and Office of Planning Report.

MEMBER SOCKWELL: Mr. Cymrot, how long have you

owned the subject property?

MR. CYMROT: 1974.

MEMBER SOCKWELL: And the use that did not have the certificate of occupancy, you were just unaware that --

MR. CYMROT: I was unaware of that and I believe I first became aware of it when I came down to file this case intending to handle it on my own as a simple special exception case. My understanding was that the tenant who went in there who was the person who was to secure a certificate of occupancy would have gone down and done it.

It was also a time at that point, the Zoning Administrators, the Zoning enforcement people were on a regular basis going around to businesses on Capitol Hill and handing out $500 fines for people who didn't have C of Os, so my assumption at that time was we would have heard from them if we didn't have it. That was when I first learned just several weeks -- about the time that we were filing this case was when I learned that they had not secured it.

And just for clarity, there were three pediatricians who succeeded each other at that location and --

MEMBER SOCKWELL: And they were in there when you brought the property?

MR. CYMROT: No, it was vacant when we bought the

property. We were here before you for a successful BZA case on an art and antiques shop. They lasted two years, I believe, or three years. We came back again for the pediatrician's office which you granted and now we're back for a third time.

MEMBER SOCKWELL: Okay.

CHAIRPERSON REED: Thank you very much. ANC? I did not receive the letter that you referred to -- the letter of recommendation?

MR. CYMROT: We did not receive a letter either, but we were informed by telephone that they had approved it when I spoke to the staff and Commissioners.

CHAIRPERSON REED: When the Board does not receive a letter from the ANC, then we assume that they don't have any difficulty with the application and that they are all right with it, so that is so noted.

Office of Planning, please?

MS. STEINGASSER: Yes ma'am. My name is Jennifer Steingasser. I'm the staff rep for this report. The Office of Planning considered the Applicant's information provided. We did speak with the ANC by telephone also and the Historic Restoration Society who both recommended approval of the project. We reviewed the project relative to its zoning, its land use, the character of the neighborhood and the history of the site and we felt that the

proposed use was in keeping with the intensity of use for the site and many of those that were permitted under the current zoning, that the character of the neighborhood would not be changed and with no opposition from the ANC and the Historic Preservation, we recommend approval of the application.

CHAIRPERSON REED: Okay --

MS. STEINGASSER: We also felt that the Applicant had demonstrated -- had passed the hardship test by the character of the building.

CHAIRPERSON REED: Okay, and also you had some condition, did you not?

MS. STEINGASSER: We accepted the provisions offered by the Applicant. We recommend approval of the variance and acceptance of the provisions that he had offered which wre the limitations of the business operation which we thought were appropriate for residential zone and the business being contained to the basement and first floor of the property which has historically been the business locations.

CHAIRPERSON REED: Okay, Board Members, any questions to Office of Planning?

MEMBER SOCKWELL: No.

CHAIRPERSON REED: All right, then we move to -- I have none. Then we move to persons and parties in support?

Seeing none, persons and parties in opposition? Seeing none. Closing remarks by the Applicant.

MR. DePUY: Madam Chair, Members of the Board, in lieu of a closing statement, we would request that the Board grant the application as a summary -- as a bench decision and grant a summary order and we would accept the recommendation of the Planning Office that the summary order contain the conditions that it mentioned with respect to the hours of operation, numbers of employees and the location of the business on the basement and first floor.

CHAIRPERSON REED: Board Members? Do you want to make a motion?

I move that we approve the application. I think the Applicant has met his burden of proof and certainly going from a more restricted use to a less restricted use would certainly be a less intense use of the subject property and obviously the aspect of the -- proving that the property is unique and that there would be a hardship to try -- to comply with the existing zoning regulations that there has been no adverse impact as demonstrated by not having any opposition here today or letters and the Office of Planning, as well as -- well, the Office of Planning recommends and ANC has not submitted anything to us which is indicative of the fact that they have no opposition to this

particular case, it does not appear to be -- impair the intent or integrity of the zoning map or the zoning plans or the comprehensive plan and I guess -- can I get a second?

DIRECTOR KRESS: Is that a motion, Madam Chair?

CHAIRPERSON REED: Yeah, I moved to approve.

DIRECTOR KRESS: I'm sorry. Is there a second?

MEMBER RENSHAW: Second.

CHAIRPERSON REED: Ms. Renshaw.

DIRECTOR KRESS: Ms. Renshaw, I'm sorry. Thank you.

CHAIRPERSON REED: I'm sorry, Mr. Hood?

COMMISSIONER HOOD: That's all right, you had a second. I was just going to ask are we going to incorporate the recommendations?

CHAIRPERSON REED: With the condition, as set forth by the Applicant and also the Office of Planning in regard to the business hours being from 10 a.m. to 6 o'clock p.m. on Saturday -- Monday through Saturday and -- wait a minute. Limited Monday through Saturday to 10 o'clock to 6 o'clock p.m. and Sunday, 12 o'clock p.m. to 6 o'clock p.m. Employees will be limited to one and how many owners?

Okay, two owners and one employee and that it will be -- business will be operated on the basement and first floor of

the property.

DIRECTOR KRESS: Madam Chair, may we call these provisions, this is a use variance right now and we need to work this out. May we call these provisions slash conditions?

CHAIRPERSON REED: Well, as indicated last week with a similar case when we were dealing with conditions for a variance, my understanding was -- I think Ms. Sansone, we couldn't put conditions for an area variance, but we could for a use or is it just the opposite?

MS. SANSONE: Madam Chair, the Office of Zoning has some concern about how these orders are drafted with conditions. Perhaps, for the time being a useful compromise would be in the text of the order, that the conditions that have been recommended by the Office of Planning will be set forward and then the use variance that's granted would be to allow the use as described in the order and until we do some further legal research into conditioning variance applications that might solve the problem for the time being.

CHAIRPERSON REED: Okay, that's fine with me. Do you have any problem with that, Mr. DePuy? Okay. All in favor.

(Ayes.)

Opposed?

MS. BAILEY: Staff will record the vote as 5 to 0,

motion made by Sheila Cross Reid, seconded by Ann Renshaw; Rodney Moulden, Anthony Hood and Robert Sockwell to vote to approve the application with the condition, with the provisions as identified.

Thank you.

MEMBER SOCKWELL: Madam Chair, I just wanted to say one thing and that is that maintaining the use of the property as a more community-oriented use and one that does not reflect the sign of the times, Radio Shacks and fast food outlets certainly helps to maintain the character of Capitol Hill.

CHAIRPERSON REED: Thank you, Mr. Sockwell. Good luck. You should have your order in approximately two to three weeks.

Next case, please, Ms. Bailey?

MS. BAILEY: The last case of the morning is Application 16612 of Clifton Terrace Associates, L.P., pursuant to 11 DCMR 3103 and 3104, under Sections 214 and 214.2 for a variance and special exception to permit the conversion of a previously approved parking lot to a roof top garden and play area with a four-level below grade parking garage in an R-5-B District at premises 13th and Clifton Streets, N.W. The property is located in Square 2868, Lot 109.

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

(Witnesses sworn.)

You may be seated. Madam Chair, the requirements, posting requirements and so forth have been met by the Applicant. We do have a letter of support from Council Member Jim Graham which is the Ward 1 representative. There is a previous BZA order with this application. It's quite old. It has four digits which gives you an idea of how old it is.

This case is now ready to go forward, Members of the Board.

CHAIRPERSON REED: Thank you very much. Ms. Glasgow?

MR. GLASGOW: Thank you, Madam Chair. Good morning, Members of the Board. For the record, my name is Norman M. Glasgow, Jr., of the law firm of Wilkes Artis. Here with me today is Mr. Marty Sullivan of the same firm; Ms. Lessie Powell Evans is seated immediately to my right of the Community Preservation Development Corporation; Ms. Ava Goldman of Michaels Development Corporation is also here in the audience. They are here on behalf of the Clifton Terrace Associates, L.P., the owner of the property. Also here in attendance is Allan Stock of Schwam Associates Architects and Mr. Richard Nero, an expert in land planning, previously qualified on many occasions by this Board, who is also with Wilkes Artis and who is also in the audience

here.

The subject property is an existing surface parking lot fronting on 13th Street, N.W., just south of the existing Clifton Terrace Apartments and is located in an R-5-B District. The parking garage is permitted by special exception and due to the topography of the site, we shall -- we will also be requesting a variance from the requirement that the parking garage be entirely below grade.

We have previously filed, for the record, a copy of the Statement of Applicant outlining the nature of the case for special exception and variance relief requested. The statement contains plats and plans of the site and plans for the garage. The garage will be accessory to the Clifton Terrace Apartments and will provide approximately 153 parking spaces for the 228 units to be redeveloped. This redevelopment scheme has been approved by HUD and the community and the developer of this project won a national competition to proceed with the project.

We also note for the record the letter in support of the application from Council Member Graham that was mentioned earlier. We have a letter in the record in support from ANC-1-B and a support report from the Office of Planning which is also in the record.

As set forth in pages 4 to 6 of the statement we

assume that you have a copy of our statement of applicant in the record.

As an explanation of how the applicant meets the burden of proof for special exception relief, pursuant to Sections 214 and 3104.1 of the Zoning Regulations concerning accessory parking; at pages 6 to 9, the Applicant states how the application meets the burden of proof for variance relief for the construction of the parking garage. Subject site is unique in that it has been used for surface parking accessory to Clifton Terrace Apartments for approximately 40 years and was initially established through BZA approval and due to the severe change in topography with the grade dropping north to south along 13th Street, and that grade drops about 16 or 17 feet, and it's shown as the plans, there is no reasonable way to construct the garage such that a portion of it will not be out of grade and therefore variance relief is required.

Without the parking garage, sufficient space for the 228 units to be provided at Clifton Terrace Apartments will not be available and will exacerbate on-street parking concerns in the area. The parking garage is intended to hold approximately 153 parking spaces and is far in excess of the one space for each two units required under the zoning regulations. As previously mentioned, there is overwhelming community support for the

granting of the requested special exception of variance relief. If there are no preliminary questions, I'd like to proceed with the testimony of the witnesses, first calling Ms. Lessie Powell Evans.

CHAIRPERSON REED: Mr. Glasgow, prior to your continuing, there is to our knowledge no opposition to this case. There's no one here to testify in opposition and it appears to be a case that's pretty straight forward and we are all -- we all have read the record. You can stand primarily on the record and the fact that this case seems to be championed by the ANC and DPW and Office of Planning, everyone, HUD, just give us the highlights to show us how you comply with the zoning regulations and how you are able to meet your burden of proof and I think we can truncate this because we have read everything that you've submitted.

MR. GLASGOW: Ms. Evans, will you please proceed with your testimony?

MS. EVANS: Hi, Madam Chair and Members of the Board, my name is Lessie Powell Evans. I'm with the Community Preservation and Development Corporation. I'm representing the Applicant, Clifton Terrace LP and we request approval for special exception in a variance to allow the construction of a four level parking garage as part of the overall development of Clifton Terrace Apartments.

First, Clifton Terrace LP is a joint venture between the Community Preservation and Development Corporation and the Michaels Development Company. CPDC is a 501(c)(3) nonprofit. We've been in existence for about 10 years. We own about 1300 units. This will be our fourth project in the District of Columbia. We are District of Columbia based. You may know us from our work at Edgewood Terrace where we have an employment training program as well as a youth technology program.

CPDC is joined with the Michaels Development Company. Michaels has owned over 20,000 units in 15 States and the Virgin Islands. They are very, very experienced in doing tough renovations as is CPDC. We bring together resources and expertise to do a first rate redevelopment here at Clifton Terrace.

We believe in working closely with the community. We have been doing that before we were awarded the property by HUD, since the award and we will continue to work with the community to develop a first rate, affordable housing, rental and condominium development.

Thank you.

CHAIRPERSON REED: Thank you very much.

MR. GLASGOW: I'd like to proceed with the next witness, the architect of the project.

MR. STOCK: Madam Chair and Members of the Board, my name is Allan Stock. I'm principal with Schwam Architects. We were brought into this development and quite pleased that we were to take three rather magnificent, but ill-treated buildings overlooking Washington, D.C. and turn them into dignified housing for both low and moderate income residents and also offer a third of the units for sale.

Part and parcel of the redevelopment which will be historic in nature is the increased use of an existing parking lot currently built on a large mound of fill which I think you can see on your pictures. We are basically tucked into the earth. Because of the nature of the rather steep slope on 13th Street, we are compelled to have some of that building exposed as it travels down 13th Street.

We have chosen to enter the building, the garage, off of the alley because this property is located at the top of the hill and we felt that it would be quite dangerous to be entering off of 13th Street and I believe various city agencies have agreed with that. We'll be entering, as you can see, halfway down a repaved 20 foot alley offering queue space for four or five cars prior to getting into the garage which we think will be more than satisfactory.

The building -- the garage actually doesn't have

any cars parked on the top level. We're looking for play and green space on the top level. It softens the entire development. It is a rather dense development. We're looking for open space for residents and children. It affords people an exceptional view of the city, casually wandering on the green space and in addition, affords those living in the south building and the east building a much more pleasant view of the top of this structure as opposed to putting another 30 cars on top of the structure. We feel that the 153 cars we're providing for more than satisfy the needs of what is projected within the structure.

We're quite pleased the way it worked out. Thank you.

CHAIRPERSON REED: Questions, Board Members?

All right, what we'll do, why don't we wait until they have completed their -- take your notes and once they've completed we can address questions to the various members of the application team.

MR. GLASGOW: For the last witness, I'd like to call Mr. Nero.

MR. NERO: Thank you. Very briefly, Madam Chair, Members of the Board, it's my opinion that the application satisfies the conditions for approval under Sections 214, 3103 and 3104, the zoning regulations. The proposed parking garage with

its recreation rooftop is a permitted use by special exception and will be in harmony with the general purpose and intent of the zoning regulations and will not tend to affect adversely the use of neighboring property.

The request of variance can be granted as there are justifications based on the uniqueness of the property which makes strict compliance with the zoning regulations practically difficult. The application can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zoned plan. Hence, the zoning regulations are met.

In summary, that concludes my statement.

CHAIRPERSON REED: Thank you. Do we have testimony, written testimony submitted to the staff for each of the witnesses? Mr. Glasgow?

As indicated in your submission it said that we had outlined the testimony for the representative of the Applicant and the architect and Mr. Nero.

MR. STOCK: I can certainly submit mine.

CHAIRPERSON REED: Did you contain it, Mr. Glasgow? Because I didn't see it.

MR. GLASGOW: They are exhibits G, H and I in the

statement of the Applicant. In the packet that was submitted, those are the -- right after the photographs, Exhibit G, H and I are the outlines of the testimony.

CHAIRPERSON REED: All right. Let me just --

DIRECTOR KRESS: They are just outlines, Madam Chair. Perhaps, you would like, for the record ask for their full testimony to be submitted.

CHAIRPERSON REED: I don't even see the outlines.

DIRECTOR KRESS: Right behind the photographs. It's just very brief.

CHAIRPERSON REED: Oh, is that what you're referring to, as outlines?

DIRECTOR KRESS: Yes.

CHAIRPERSON REED: I'm sorry, I didn't detect that. I didn't pick that up as an outline, as an outline, as I know an outline to be. I would appreciate that to be submitted for the record because I didn't have it.

MR. GLASGOW: Do you want those to be taken from the transcript in the --

CHAIRPERSON REED: Were they not reading from --

MR. GLASGOW: I believe they were reading from notes.

CHAIRPERSON REED: Oh, okay. They did not have a

prepared statement to submit to the record?

MR. GLASGOW: No, they prepared notes of their testimony which are in the record and will be in the transcript.

CHAIRPERSON REED: Well, Mr. Glasgow, thank you very much. That's a given. I just thought -- we had missed something. I didn't see it in the record. I mean I didn't see it in the submission, but I thank you very much.

Questions, Board Members?

MEMBER RENSHAW: Just a few questions. You stated that you would have 153 parking spaces on four levels, Mr. Glasgow, I believe it was you or perhaps the architect, Mr. Stock. The DPW letter talks about 156 parking spaces. Is that an error?

MR. STOCK: Yes. It's 153.

MEMBER RENSHAW: It's 153. Thank you. Also, do you know what's in the fill? You talked about the location. You have to remove, you have to replace a large mound of fill. What's in the fill, do you know?

MR. STOCK: We actually have taken test borings and it's soil.

MEMBER RENSHAW: Just plain soil.

MR. STOCK: It's overfill, overburden.

MEMBER RENSHAW: And would you talk to the security in the garage, how are people going to access the garage and how

do they get out from the garage into their apartment?

MR. STOCK: When someone drives up to the garage, they will have a proximity activator which will open a gate and allow car access into the garage and they'll take their space. At that time they can either walk up the stairs or more likely walk up the elevator that we've planned for the garage which will exit onto a little pavilion at the top of the garage and have a direct enclosed attachment to what we call the East Building at Clifton and 13th. There will also be another door out of that attachment, that little pavilion where residents of the other two buildings can simply walk a short distance into their two other buildings, the entire site will be also secured.

As far as walking on to the property to get their car, they will walk through a gate and the gate will also have a proximity reader which will allow people in.

MEMBER RENSHAW: Okay, thank you.

CHAIRPERSON REED: Any other questions?

MEMBER SOCKWELL: In the plans that were submitted there's a sheet, G-1, that says parking garage that I have a very small size drawing of. As well, in your elevations described in G-5 and one of the others you show trees and other growing elements placed upon the roof of the garage. While these are descriptive and not engineering, it does show a rather thickened

roof slab for the garage and my question to you is how are you to accomplish the landscaping of the roof of the garage structure?

The trees that are shown won't be growing in that roof, so I want to know --

MR. STOCK: They'll be growing in rather large containers on that roof.

MEMBER SOCKWELL: Okay, and it appears that between the walkway paths there would be some sort of earth which would as well be landscape. Is that correct?

MR. STOCK: That's correct.

MEMBER SOCKWELL: What kind of depths are you talking about and is this designed that it will really work because we are talking about a garage that will present itself as an element.

MR. STOCK: We certainly believe that it will work. We're using a system by which reasonable amount of top soil is placed upon a semi-permeable coffered plastic system that allows drainage. The concrete itself will have a waterproofing add mixture to it. No membranes will be there to rip during the life of the structure and everything will be both automatically sprinkled and also drained through. So we have every confidence that what we want green will stay green.

MEMBER SOCKWELL: Okay, thank you.

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

MEMBER MOULDEN: On your rooftop, will there be any screening for security purpose, like a fence, a low level fence or some --

MR. STOCK: There is a fence all the way around three of the sides and also some garden walls that separate the more public spaces from a service entrance that mirrors where there's a service entrance right now.

MEMBER MOULDEN: In the event of an emergency, from the rooftop, I know there will be stairs in the garage, but what will the alternatives -- like a rear doorway that could let people out?

MR. STOCK: There are first one stair on 13th Street, rises up and connects -- why don't I show you?

MEMBER MOULDEN: Okay.

MR. STOCK: Will I be heard?

MEMBER MOULDEN: No, take the mike.

MR. STOCK: This stair extends the entire width of the garage and also up on to the roof deck. This is my remote entrance for this area. There are steps and a ramp down through this level which is only a few feet down which will also immediately exit out here and also through that pavilion that I

had mentioned and could also go into this building as a point of security or out in that direction. So we've given two remote exits off of that top. There is a fence above the deck that goes around all three sides at this point. And as I mentioned before, some garden walls here which are a more visual barrier between this service drive and the garden top.

We purposefully put a fence, a transparent fence there to lessen the impact and the apparent size and mass of the building.

MEMBER MOULDEN: Okay.

CHAIRPERSON REED: Thank you. All right, Mr. Hood?

COMMISSIONER HOOD: What precautionary measures do you have between the play area entrance and the entrance of the parking lot? I mean the parking --

MR. STOCK: The entrance to the parking lot itself that's coming down the alley?

COMMISSIONER HOOD: Right.

MR. STOCK: And on a lower level at this point.

COMMISSIONER HOOD: Okay.

MR. STOCK: The entrance to the play area is through that secondary structure on the top, entrance structure into the other building and also through this gate on to the top so the two are nowhere -- they are on different levels.

COMMISSIONER HOOD: Okay, so if I am 8 years old, I have no way of going down and getting hit by a car?

MR. STOCK: Absolutely, that is correct. They're quite remote from each other.

COMMISSIONER HOOD: Good.

CHAIRPERSON REED: Thank you very much.

MEMBER RENSHAW: Madam Chair, just two quick questions. Young children are not going to be able to get down in the garage, are they?

MR. STOCK: I would expect not by themselves. I mean with their parents or guardians, but the garage is not a place for them to play, no.

MEMBER RENSHAW: My other question had to do with is there a landscape guarantee, in other words, to maintain that lovely top area, a guarantee for the trees?

MR. STOCK: I don't know if I could actually give you a guarantee. Certainly, the information we've got from the system that we've incorporated has a great deal of history behind it. It has been successfully used in many other locations. We're choosing this system because we feel that it's easy to maintain and it has a success rate that we're happy with.

MEMBER RENSHAW: Well, many times neighborhoods ask for guarantees of plantings to maintain a buffer or to maintain a

landscaped area and so I am just inquiring whether or not you are going to have this kind of guarantee with a landscaper who is to maintain or to build that area.

MR. STOCK: Maybe I could refer to --

MEMBER MOULDEN: Maybe she's talking about, you mean develop a landscape plan for the entire facility?

MEMBER RENSHAW: Exactly.

MS. EVANS: We would have a plan and we would have a contractor that would maintain it over time.

MEMBER RENSHAW: But you don't have that developed at the present time?

MS. EVANS: We don't have that developed at the present time.

MEMBER RENSHAW: All right.

CHAIRPERSON REED: Okay, could we move on, please. Thank you very much. Now ANC report.

MEMBER RENSHAW: Madam Chair --

CHAIRPERSON REED: Mr. Guyot?

MEMBER RENSHAW: We have Mr. Guyot here. I don't even have to say anything.

MS. FITZGERALD: Madam Chair, excuse me, I'm Commissioner Fitzgerald and this is my District and I would just like to --

CHAIRPERSON REED: Just one second, please.

Can the Applicants please take a seat back. When I call for ANC report, Ms. Fitzgerald, you said?

MS. FITZGERALD: That's correct.

CHAIRPERSON REED: That does not exclude you. This is the opportunity now --

MS. FITZGERALD: They all excluded me, but you can't because I've been 16 years in that single Member District.

CHAIRPERSON REED: No, no, no, excuse me, ma'am. This is the opportunity for ANC reports and as such your presence here gives you the opportunity to be able to speak, if you'd like.

MS. FITZGERALD: Well, I'd like,

CHAIRPERSON REED: Certainly. Would you like to go first?

MS. FITZGERALD: I would like to because, excuse me, good morning, everybody.

CHAIRPERSON REED: Good morning.

MS. FITZGERALD: I'm very disturbed about this hearing because --

CHAIRPERSON REED: Give your name and your address, please, ma'am.

MS. FITZGERALD: My name is M-A-D-O-L-L Fitzgerald,

SMDB103 in which housed Clifton Terrace and I met with Leslie, both Leslie, back in 1999. We had a meeting and we had a meeting with adjoining representatives of the communities that is readily involved in the Clifton Terrace and during that time we outlined a lot of things that's very important regarding the community and since that time I got in touch with Leslie, I put her on the agenda, down to Mr. Guyot's office and put hereon the agenda to come to speak to the ANC-1-B and the community and she came and I asked her also to file with the Board of Zoning so that she'll get zoning, proper zoning and various whatever that we would need to move forward with this project because I was in favor of the project, but I wasn't in favor of some of the things and some of the things that's very disturbing that I heard this morning and he was saying, oh, the community is for it. Well, a lot of the community is not for it.

CHAIRPERSON REED: I didn't say that.

I said that the ANC had come up --

MS. FITZGERALD: Well, some of the ANCs because then starting with number one, we at the meeting, we voted and she noted that we didn't want the sales for the condominium, we didn't want that. But the residents there said they wanted it. So we didn't fight about that, but what I am upset about is that the mention of going down four levels and I said to them then, I

agreed. I disagreed at the ANC meeting about four levels. I agreed to two and we have questions about that. And the question that I had about the four levels because 40 feet down is nothing but water. I don't care who your architect is, it is. And that's why the Metro being the way it did because of that problem. And we have to deal with that problem. So I asked the question of the attorney, is it a difference in the four levels of a story or the four levels of the level for the building of the parking garage? And he said there is a difference for the square feet for the depths. If that's so, part of my question is answered, if not, I'm still very disturbed because when you do that and we're putting a building this size and in this place, we got 13th Street going, we got freeway all the way from downtown, we got the school over on the other side and we've got all the children here. If you're going to put a garden top here and a play area and children are out there, we who been here for 25 and 30 years can understand that once a big truck came right on up into that place, right on the parking lot where the cars are now and the same structure, in an area where he's going to put the garden top. The only thing I would like to have seen, like I said to Mr. Glasgow is that if you're going to do that, then let's put a stone barrier fence all the way down that side, no higher than 4.5 feet so all can see, so a fence like he's talking about is not -- it doesn't fit the

criteria for the traffic that's going through and the amount of kids going to be out there. Because you can't stop a big cement truck if it come through there with a fence like up there. We need a stone barrier type fence that is going to protect the children and the senior.

The other thing about the garage, he explained it very explicitly about going down and coming up. He said nothing about handicapped provisions, you know, for that garage. He said nothing about if we're going to have an elevator or does it require an elevator or an escalator so handicapped people could get up and down. We didn't talk about that. It wasn't discussed, but here again, if I had got the information that we're going to have the hearing, I could have prepared a more efficient report for you rather than to sit here and try to tell you and I would have facilitated a report for everybody at this Board and I think it's very unfair.

Now I'm aware that the Board of Zoning don't have to send a Single Member District a copy, but you ought to have enough respect to do so because my ANC, my Chairperson does not facilitate the stuff to us and it's not fair for me to represent my community and I don't even know a hearing going on. Yet, I still can't even talk to the peoples in the community. Peoples are upset about this in the community. They're not upset or

they're not against doing it, but the way it's being done. We want it done, but we want to make it safe for everybody, safe for people who are going to live there and go around in the community. The people are scared to death. Once you put the condos in there, everybody's taxes is going to go up. They're hanging by the nails as it is. So why take this place, turn it into -- I'm going to sell part of it. I'm going to have a section 8 here in the middle. I'm going to have a moderate income here. How long is it going to take the condominium people and the middle income people to say to the Section 8 people in the middle your taxes is going up, we don't want you here. You have no control over that. If they own the condominium, they're going to do what they want to do because they paid for it.

So here again, you've done an injustice to the community who is barely making it and have a right to live there. They've been living there all their lives. But they do not have the right to push them out by putting in the condominium. It's unfair and then don't even have a hearing.

I heard this lady this lady said oh, everybody, the attorney said everybody in such and such a feet I got a notice. People across the street, Single Member District person across the street, didn't get a notice. So how you going to notify a community when right across the street, not even 50 feet, there's

another Commissioner. She didn't get a notice.

CHAIRPERSON REED: Ms. Fitzgerald, let me understand, let me try to --

MS. FITZGERALD: Let me finish the other part first, Madam Chair, about the roof top, the trees. No, he was saying and we didn't -- nothing was facilitating a meeting about a tree. My thing about the trees and like Mr. what's his name said here a while ago, that I asked him, how big a tree is going to be? He said but the drainage is going to go down. Where is the drainage going? You know? Ten, 15 years from now, where is the drainage going? He got the material that he saying is going to hold up. How do you know it's going to hold up? We don't know anything about that. It wasn't brought to us to the meeting. We should have had an opportunity to deal with that.

Now we want Clifton Terrace done. We want it renovated. We want all these things, but we want it to be done so it will be safe for the residents and conducive with everybody who live around there. It's a very unfair thing to do this. It's very unfair. And like I said, we want it done. But we want it done where it would be conducive to everybody who live there and we certainly would have wanted it done with the community knowing what you're doing. It's a sad thing to walk into a community and you going to bring all these people in here and you're going to do

this -- last meeting, Lessie didn't show. We don't know why. She said she was coming back to bring us the blueprint. First time I saw a blueprint when I went outside there. I think that's very disrespectful to me. It's very disrespectful to my community and it's not being fair to the people who are living at Clifton Terrace. The chairperson is just what he say he is or she is, but the chairperson is not the Single Member District and I think it's time that this BZA Board realize that you cannot sit up there and rely on no Chairperson in this city to facilitate stuff to us. You need to go back to basics. When you send this stuff to the Chairperson, you need to send it to the Single Member District that the Applicant is in. That's what you need to do and then we wouldn't be in this situation. I wouldn't be here today with egg on my face. These people talking about something I never heard of before. Didn't even get a notice. There's no reason. I got a fax machine. You all know that. I've faxed enough stuff down here. So I'm really unhappy. So when you say there's here in opposition, I'm not exactly in opposition, but I'm in opposition to some of the stuff that's taken place and I think I'm angry and I've got a right to be angry. If you were me, you'd be angry too and I think this Board should take into consideration before you trespass on people's rights that they too are human being and they got a right to know what you're doing in their community, with

their property and where they live.

CHAIRPERSON REED: Ms. Fitzgerald, I thank you very much for coming down here today taking out your time to inform us as to your position and your feelings in regard to this application. Now let me just see if I can address or we can try to address what these concerns are one at a time.

As I understand it, there were several things that you were upset about and let me just enumerate them for you. One was the lack of notice you said that you didn't receive the notice that there was going to be a hearing and that, I think, is done through the -- we send a notice to the ANC --

MS. FITZGERALD: Never come to us.

CHAIRPERSON REED: Our responsibility as the BZA is to the send notice to the ANC which then, I think, if this is procedurally correct is given to the full body of the ANC at your meeting as to the fact that there is going to be a hearing. May I ask Mr. Guyot to address that.

MR. GUYOT: Ms. Fitzgerald --

CHAIRPERSON REED: Give your name and your address.

MR. GUYOT: My name is Lawrence Guyot. I'm the Chairman of ANC-1-B.

Ms. Fitzgerald said that she invited the developer

to the ANC meeting, so she obviously had notice of that meeting.

MS. FITZGERALD: Not the hearing. When I invited him, Madam Chair, there were --

MR. GUYOT: Just check her testimony.

MS. FITZGERALD: That's not true. When I invited this lady right here, I went down to your office and asked you to put on the agenda. At this particular time there wasn't even nothing filed at the BZA Board, so how am I going to -- I'm not that clairvoyant. I don't think anybody on this Board is that clairvoyant.

CHAIRPERSON REED: Okay.

MS. FITZGERALD: We didn't even know that it hadn't even filed for BZA.

CHAIRPERSON REED: Okay --

MS. FITZGERALD: That's when we asked --

CHAIRPERSON REED: The notice was sent to 1-B-09. Ms. Kress, isn't that the procedure that we usually follow --

DIRECTOR KRESS: Basically, our notification process says it's through the Register, it's through notifying everyone within 200 feet, posting the property, notifying the ANC. We have now recently started notifying Single Member Districts and obviously though our map is not as good as it should be. We're trying to work with the Council Members to -- in this case,

we did notify an individual member, but perhaps that was not the correct individual member, but again, this is something because there is not -- the map that's out is very tiny and it's very hard to see the boundaries. With our financing this year, our budget, we are hoping to put that on to our computer along with our zoning map so that when we do enter automatically we'll get a run out of all of the relevant of the chair of the ANC and the individual member because right now there isn't a good way to keep these addresses up to date. We've been doing our own just because Board of Elections and Ethics hasn't done it and hasn't kept the names and addresses up to date, so we're working on it. We're not there. We are working on trying to get proper notification out to the SMDs.

CHAIRPERSON REED: So in addition to the full ANC, we're going to also make sure that we also notify each Single Member District representative. But we haven't done that yet and it wasn't done in this case.

DIRECTOR KRESS: We did notify one, but it wasn't Ms. Fitzgerald so I think we have the wrong, we probably had the wrong member.

COMMISSIONER HOOD: Madam Chair, can I just ask Ms. Fitzgerald and Mr. Guyot, whoever, is this one B109 in which the Applicant --

MS. FITZGERALD: No, it's 1B03.

COMMISSIONER HOOD: The issue is we have been sending it to each Chairperson --

MR. GUYOT: 1B09 is Catherine Hammond. That's the Single Member District in which she resides.

CHAIRPERSON REED: All right, all right. Ms. Fitzgerald -- you cannot be out of order. We will allow you -- we understand that you're upset.

MS. FITZGERALD: Yes --

CHAIRPERSON REED: But what you have to do is to allow us to try to clarify this and we can't do it with a lot of confusion, okay? So give us the same respect that we're trying to afford you.

Mr. Hood was speaking, so allow him to finish. If you have some disagreement, you be allowed to speak.

COMMISSIONER HOOD: Madam Chair, my point is the Commission as well as the Board and staff, we have been trying to send it to the Chairpersons of every ANC all over the city, as well as the Single Member District of whichever project is taking place. While it's not full proof, there are some problems with it, but my concern was I wanted to know because it did go to 1B09.

MS. FITZGERALD: But she did not receive it.

COMMISSIONER HOOD: That is Catherine Hammond. She is the person who commands that Single Member District in which this property resides.

MS. FITZGERALD: No sir. Then what am I?

COMMISSIONER HOOD: I didn't say that for argument. I'm just trying to make sure.

CHAIRPERSON REED: Why do you say that that's not true?

MS. FITZGERALD: Catherine Hammond is 1B09. Clifton Terrace is 1B03. She's over on the other side of the street. How are you going to say that she commands that?

CHAIRPERSON REED: Let us determine based on the public records what Single Member District representative --

MS. FITZGERALD: I'll go and get it for you, Madam Chair --

CHAIRPERSON REED: I understand that. Has jurisdiction over the actual site of Clifton Terrace.

MS. FITZGERALD: 1B03.

CHAIRPERSON REED: All right, you're saying one thing and he's saying another. So let us ascertain what is correct, okay? Thank you for that. Now we will take care of that. The other thing is through the full ANC, Mr. Guyot, there

was a hearing where all the Single Member District representatives were notified as they should have been -- they were?

MR. GUYOT: There was a meeting. We're talking about an ANC meeting. It was our regular meeting at which a quorum was present and at which Ms. Fitzgerald voted for this proposal.

MS. FITZGERALD: I voted --

MR. GUYOT: There was one person who voted against it and that's Mr. Imhof and he voted against it only because he wanted more information.

CHAIRPERSON REED: Do you have the vote, Mr. Guyot -- could you give us the actual vote that was taken that day and who voted which way?

MR. GUYOT: I don't have that.

CHAIRPERSON REED: No, no, but could you submit it for the record.

MR. GUYOT: I'll be glad to.

CHAIRPERSON REED: Thank you.

MR. GUYOT: I'll be glad to. There was one -- there was one person who voted against Mr. Imhof and I'll be glad to submit that. But let me say, Madam Chair, my concern here is the legitimacy of the position of the BZA as it relates to giving great weight to the ANCs. I want to congratulate you on that and

if I may, I'd like to give the report of the ANC.

CHAIRPERSON REED: Okay, just one second, please. Let's clear this matter up.

MR. GUYOT: Okay, all right.

CHAIRPERSON REED: All right now, Ms. Fitzgerald, you were there at the meeting of the ANC?

MS. FITZGERALD: I asked --

CHAIRPERSON REED: Just yes or no, were you there?

MS. FITZGERALD: Yes and I voted for what I said.

CHAIRPERSON REED: And yo did vote for this particular application?

MS. FITZGERALD: I didn't vote for it in this context. I didn't vote for it in this context and if he get the minutes, if he's got them, because very seldom do we have minutes.

CHAIRPERSON REED: Well, our records show, our records will reflect that you did vote in support.

MS. FITZGERALD: I voted, but not in this context, Madam Chair.

CHAIRPERSON REED: We'll find out. Now as to the areas that you are protesting here today, as far as the condos, did you say that you protest the --

MS. FITZGERALD: Yes. I didn't -- the community doesn't want the condos because they fear that the surrounding

area --

CHAIRPERSON REED: What community? The ANC supported the application.

MS. FITZGERALD: Here again, I'm the ANC. Are you saying I'm not an ANC?

CHAIRPERSON REED: No, the ANC majority, the quorum.

MEMBER SOCKWELL: Madam Chair, may I interrupt for one minute?

CHAIRPERSON REED: No, just one, please -- let me finish with this, please and then I'll let you proceed.

Ms. Fitzgerald, the only procedures that we have to go by or we have to go by are the procedures, the ones that we received and that gives us the position of the full ANC. This is not to say that there are some people who may not agree with it, but what we have to look at is what is the majority of the position of the ANC which is reflected by a quorum vote being taken. And that's what happened.

Now in regard to the issue of the safety of the handicapped provisions and the rooftop trees, I will personally ask of the Applicant when they come back up here what, in fact, they intend to do in that regard. They have already addressed the issue of the rooftop trees saying that they would be put into

large containers, so there would be no runoff.

MS. FITZGERALD: But he said drainage would be, so I wanted to know where the drainage would go, Madam Chair.

CHAIRPERSON REED: I think they were in large containers, large pots or something.

Anyway, I will for your edification, I will make sure that I will ask them again and have them clarify that for you.

MS. FITZGERALD: Yes ma'am, and please, we don't know how large are those trees are going to grow. The architect must have some idea the size that that tree is going to grow.

CHAIRPERSON REED: We'll ask about that.

MS. FITZGERALD: It's very important.

CHAIRPERSON REED: So these issues that you have that you raised, we'll make sure that they're addressed, all right?

MS. FITZGERALD: I appreciate that.

CHAIRPERSON REED: Thank you very much for your testimony.

Now Mr. Guyot?

MR. GUYOT: Madam Chair, in view of this testimony I'd like to submit this to the Board. One, it lists the properties that are no longer covered by Section 8 in that

immediate area. And I'd also like to present an article recently written about the development and the shrinkage of housing in that area.

CHAIRPERSON REED: First, Mr. Guyot, can I ask you to please give us your report and then supplement your report with the additional information that you just mentioned.

MR. GUYOT: I'd be glad to. This letter is to advise that ANC-1B at its regularly scheduled public meeting held on July 12th at which time a quorum was present, voted to support the Applicant's request to construct a four level parking garage with a roof top on the area of an existing parking lot previously approved by the Board of Zoning Adjustment. The Applicant has requested a special exception to allow the parking serving the Clifton Terrace Apartments to be a separate lot and a variance because a portio of the underground parking will extend above the adjacent grade.

The ANC supports the overall redevelopment of Clifton Terrace which has been a project of troubled history within the community. The proposed redevelopment plan removing the surface parking and replacing it with the underground parking will be of significant benefit to the community. The special exception allows for the parking to be located elsewhere than the lot on which the lot is located because the project consists of a

number of record lots and the apartment buildings themselves, do not contain parking relief as required.

The parking will be provided within the site traditionally considered to be the part of Clifton Terrace and is within close and convenient access to the building the space will serve.

In reviewing the matter, the ANC has determined that the subject property use as a surface parking lot for many years servicing the Clifton Terrace Apartments is unique. Lot 109 is a separate record lot within the project used only for parking lots. The Clifton Terrace Apartments are viewed by the community as being historically significant and part of the solution of the danger that we now face. And we are elated that there was a committed, ethical developer with the amount of money to come in -- Madam Chair, I sit on the Board of Directors of the Columbia Heights Development Corporation which puts me in access with every piece of property in that immediate area. We know what's being developed. We know what's not being developed. And I want to present a list showing the number of properties that previously presented access to tenants that have done their 20 or 30 year service to HUD and they're now on the private market.

We heard testimony in Mr. Glasgow's case. This Board heard testimony about the process that's now happening of

people buying buildings and breaking down the three or four apartments and converting it into a private home. We heard that testimony. We are aware of it. And our ANC was very cognizant of these competing economic factors which we deal with. We deal with Donatelli and Klein. We deal with Mercason. We deal with the development that's going on there. The Harrison Development, we did it. The League of Public Welfare, we're doing it. So we didn't take this as something abstract. This is about what our constituencies need and need immediately. So I just want to make the point, Madam Chair. We did not take this casually. We listened to the presentation. We knew how to put that into a political context that fit with why we think we were elected and decided accordingly.

Lastly, the use of the subject property as an underground parking lot garage with a landscaped area above furthers the public interest and is a benefit to the community by relieving on street parking pressures which will occur through development, redevelopment of the Clifton Terrace Apartments. If no additional parking is permitted to be provided, the granting of the application will further the purposes of the zoning regulations and zone plan. For the foregone reasons, ANC-1B urges the Board of Zoning Adjustment to grant the application for special exception and variance relief, unanimously and

immediately.

We come to you with a need and Madam Chairman, may I present these two documents? What they are, it lists the properties that will not longer be covered by Section 8 or no longer be subsidized. Imagine, Madam Chairman, if we continue that process from 14th right straight up, we're talking about all of the surrounding houses for -- in that area imploding. So when a developer comes to us and says, we're talking about low and moderate income housing, we say how, when and what are the conditions. So I want to be very clear, the Commission listen to the discussion, one Member of the Commission said look, I would like to have more information and he decided based on that to vote against the plan. Every other Commissioner present voted for this application.

Madam Chairman, if we stand for anything in that Commission and if I stand for anything, it is clarity and doing what is best for the city and for the people who elect me to serve -- my colleagues who serves as ANC Commissioners who when given an opportunity, to further development in that area, that serves our people, we do it. I urge that you support us in this application.

CHAIRPERSON REED: Thank you very much, Mr. Guyot. Board Members, do we have any questions?

MEMBER SOCKWELL: Not really, we are looking into

the ANC relationship, however. There's one map that says one thing, but there was a redistricting. We don't know if it affected that.

MR. GUYOT: I understand.

COMMISSIONER HOOD: Madam Chair, I just want to ask Ms. Renshaw, Commissioner Renshaw, if she knows when the redistricting took place? I think it was 1993.

MEMBER RENSHAW: I think you're right, but --

MS. FITZGERALD: It was in 1998.

CHAIRPERSON REED: 1990.

MEMBER RENSHAW: Elections and Ethics is just down the hall and we can check it.

CHAIRPERSON REED: I think Ms. Renshaw and Board Member Hood and Ms. Fitzgerald and Mr. Guyot that in that there is a discrepancy we will determine accuracy through the appropriate channels. To speculate is dangerous.

MR. GUYOT: Madam Chairman, may I be heard on this? I would respectfully submit that even if I'm wrong which I know myself not to be, that it is in 103 and not in 109. What possible difference could that make? The Commission with the Commissioner from both of those areas were present. Both of them voted for this application, both of them heard the discussion. Both of them made up the quorum of the Commission. I may be wrong, but I

thought that the BZA gave great weight to the position of the Commission.

CHAIRPERSON REED: Mr. Guyot, you've already made that clear and we do understand that. thank you very much.

COMMISSIONER HOOD: Let me just say, Madam Chair, if I can, that was just going to interject a question I was going to ask the Single Member District person. So I did have something I wanted to ask, but I need to have that cleared up before I ask the next question.

I mean it's not nothing for me to hold up on, but I didn't feel like I needed to ask that question if it wasn't in 1B03 so that's why --

CHAIRPERSON REED: Both were --

COMMISSIONER HOOD: I'll ask it anyway. Let me jus task it anyway.

Ms. Fitzgerald, did you have a Single Member District meeting?

MS. FITZGERALD: Did I have? I had Single Member District meetings east side, west side of my Single Member District all the time.

But the meeting that I was interested in having for the whole Commission, for my whole Single Member District was held at the Reeves Center, the one I asked, went down and asked to be

put on his agenda in which Leslie came and she was supposed to come the next time and bring us the blueprint, but the next scheduled meeting she did not show. There were no blueprints.

COMMISSIONER HOOD: Which was your Single Member District meeting?

MS. FITZGERALD: No, it was our regular meeting. We wanted her to come so --

COMMISSIONER HOOD: Okay, let me go back and rephrase my question. I just need a yes or no.

Did you have a Single Member District meeting on this issue?

MS. FITZGERALD: That's what I'm telling you. I've had and said -- see, the way I do my Single Member District meeting I have -- we are situated, 1B is situated so on the east part of my Single Member District meeting, I have meetings for those people to come. Back on the Clifton Street side, this is the other side of it. I have Single Member District in that corner. Like I put it in four corners, just like you would do a square --

CHAIRPERSON REED: And answer is yes.

MS. FITZGERALD: Yes.

MR. GUYOT: The answer is no.

MS. FITZGERALD: Yes, I did.

MR. GUYOT: Not on this issue, Madam Chair --

COMMISSIONER HOOD: Madam Chair, I don't know what the answer is, but I'll withdraw my question.

CHAIRPERSON REED: Mr. Hood asked if you had a meeting --

COMMISSIONER HOOD: On this issue.

CHAIRPERSON REED: Yes.

MS. FITZGERALD: Each meeting that I have --

CHAIRPERSON REED: Yes or no, Ms. Fitzgerald, did you?

MS. FITZGERALD: Yes. Each meeting I have I bring this issue. Let me explain.

CHAIRPERSON REED: No, no, because of time, Ms. Fitzgerald --

MS. FITZGERALD: It won't take any time.

CHAIRPERSON REED: All I want to find out is did you and you said yes. Okay. thank you very much.

MS. FITZGERALD: That's all I had to say, Madam Chairman, I just don't want this Board to think that I'm against this project. I'm not. I'm for it. But with the additions that I had stated --

CHAIRPERSON REED: We understand that. I have that

in my notes that you're not opposed, but you are concerned.

And I also said that I would address your issues when they come back up with closing remarks and Ms. Fitzgerald, if you don't mind, we do need to move on.

MS. FITZGERALD: Yes, but I had just one last question that comes to me. I just wanted to say since 1974 I come aboard. It will be 16 years coming up in January and I have served that community, helped run it like before it was integrated. I was there with Mr. Blackwell and them.

CHAIRPERSON REED: Question?

MS. FITZGERALD: So I'm saying to you that 1B09 even if the redistricting before and 1990, has never been on that side. That has always been 1B03.

CHAIRPERSON REED: Okay. Thank you very much.

MEMBER SOCKWELL: Madam Chair, may I interject the fact that the map supports ANC Commissioner Fitzgerald in that the western boundary of ANC 1B03 is 14th Street. The northern boundary is the south side of Clifton. Clifton Terrace is on the south side of Clifton at 13th between 13th and 14th and is squarely inside of 1B03. So a 16-year ANC Commissioner knows where her District is.

CHAIRPERSON REED: The fact of the matter, Mr. Sockwell, is that --

MEMBER SOCKWELL: It is to clarify the record.

CHAIRPERSON REED: Notwithstanding whose Single Member District the site is located in, both Commissioners were present at the meeting when the vote was taken.

MEMBER SOCKWELL: It is more than that. There was a statement that the Commissioner was incorrect on the location of her own Single Member District. The question had to be clarified. I clarified the question. This is not substantive to the argument. It is substantive to the statement of who represents whom.

CHAIRPERSON REED: Thank you very much. Okay, Office of Planning Report?

MR. MOORE: Good afternoon, Madam Chair. My name is John Moore. I'm in the Development and Review Section of the Office of Planning. We won't be redundant. The Applicant has already made his case. I would like to refer you to pages 2 and 3 of the Office of Planning's Report where there is support for the project in the comprehensive plan under the housing, transportation element as well as the Ward 1 plan. And on pages 5 and 6, we believe the three tests that have to be met for special exception and variance, has, in fact, been met and Office of Planning believes that the relief sought by the Applicant should be granted.

CHAIRPERSON REED: Okay, we do have in your submission, your analysis as to how the Applicant meets the requirements under Section 214 and also -- not the DPW Report, are you going to contain that within your report?

MR. MOORE: Are you asking if we have a DPW Report included?

CHAIRPERSON REED: No, I'm saying are you going to reflect that in your report? You have it in your written report, but in your oral report.

MR. MOORE: If you have any questions regarding that report I can address them for you. I do have a copy of the letter to the --

CHAIRPERSON REED: I'm sorry, hold on one second.

(Pause.)

I'm sorry, what was the last thing you said? I was distracted a little bit.

MR. MOORE: I said yes, we have included DPW's comments in our report. Are you asking me if we have a hard copy of the DPW report?

CHAIRPERSON REED: No, I do. I have a hard copy. I was just asking you to, in your report, your oral report, in your summation, the fact that this orally, I thought that you had mentioned the fact that you had received a report from DPW.

That's all.

MR. MOORE: Yes, we did.

CHAIRPERSON REED: And that the report --

MR. MOORE: In the DWP report --

CHAIRPERSON REED: Uh-huh, and the report reflected?

MR. MOORE: It reflected that they had no opposition to report.

CHAIRPERSON REED: That's all. That's all I was asking. Thank you very much. Okay, we then also did receive from DPW their report. In his report contained therein he says that in pertinent part, the Department has determined that the garage is an asset to the residents of Clifton Terrace and will also serve a useful purpose and it alleviates parking and spill over in the surrounding street system with the on-street parking where on-street parking is limited. And that they accordingly do recommend approval of the application.

All right, are there any persons here in support of the application? In opposition to the application?

All right, then we have closing remarks by the Applicant.

MR. GUYOT: Madam Chair, just before you do that, may I have the opportunity --

CHAIRPERSON REED: No, Mr. Guyot, you cannot. Thank you very much.

MEMBER RENSHAW: Madam Chair --

CHAIRPERSON REED: Sorry about that, but that statement has now passed. I think that we have adequately been able to ascertain your position.

MR. GUYOT: Very good.

MEMBER RENSHAW: Madam Chair, I'd just like to ask the Office of Planning if on page 7 it references the Third District Police and Fire Department Reports not available. Do you have reports at this time?

MR. MOORE: We didn't receive them yet. Hopefully we'll get them today and I'll provide them --

MEMBER RENSHAW: For the record.

MR. MOORE: Yes.

CHAIRPERSON REED: Okay. All right.

MR. MOORE: We have verbally spoken to them and they support it.

CHAIRPERSON REED: Okay. Mr. Glasgow?

MR. GLASGOW: Madam Chair, I understand we're supposed to address -- I brought part of the panel back up here to address three issues: safety, handicapped access and rooftop

trees.

CHAIRPERSON REED: Uh-huh.

MEMBER SOCKWELL: And the fourth issue was water.

CHAIRPERSON REED: Drainage.

MR. GLASGOW: Right, drainage issue with the rooftop --

MEMBER SOCKWELL: It wasn't the drainage, it was the four level garage.

MEMBER RENSHAW: The four level garage having water.

MR. GLASGOW: Okay, four level garage.

CHAIRPERSON REED: All right.

MR. GLASGOW: I'd like to have the architect --

CHAIRPERSON REED: Excuse me, please. Ms. Fitzgerald, specifically for your edification, the Applicants are now going to address your concerns and I would very much appreciate if you would be attentive to their response because this is specifically for your edification. Thank you.

MR. GLASGOW: All right, Mr. Stock, would you please go through the plans and address the safety issue, handicapped access, the rooftop trees and drainage and the four level garage, explaining with respect to that, there will be two levels below grade, off of -- or one and a half levels below grade

off the alley and then two levels above, as shown in the plans.

MR. STOCK: Okay, as far as safety, from what I understand from Ms. Fitzgerald, she's concerned about vehicles coming down 13th Street and somehow coming into the site --

CHAIRPERSON REED: Excuse me, Ms. Fitzgerald, you need to come over here so you can see. You can't see over there where you're sitting, but you're welcome to come right around so you can see where he's indicating on the map.

MR. STOCK: We do continue to use an existing curb cut at this location for service to this building. There is, as I mentioned, a garden wall, masonry garden wall separating this area from the play area and the space above, about five feet above, this garden area is elevated above this level. So we don't foresee anyone actually coming in and barreling through and disrupting. Certainly, they're not going to get up into this location, but we do have the masonry wall here to separate.

MS. FITZGERALD: What is the masonry wall composed of? Is it like a stone?

MR. STOCK: Brick.

MS. FITZGERALD: Brick. How high is it going to be?

MR. STOCK: I think it's about 6 feet high.

MS. FITZGERALD: Why wouldn't we bring it down a

little so we be able to make it about -- 4.5 feet. That will still stop the traffic, but it won't be like we're fenced in. You can't see. I'm 5'1" and you got a 6 foot wall. I'm fenced in and if I'm a child, I'm fenced in. If I'm a mother of a child, I'm fenced in.

MEMBER RENSHAW: Ms. Fitzgerald, you don't have the opportunity to go into all the testimony and all that. I think your point is well taken and perhaps the Applicant will revisit that and see if, in fact, there can be some whatever -- this is based on a request, perhaps from the Single Member District representative for that particular area, to revisit it and see if there can be some type of accommodation in that regard, if it is feasible and if not, then address it in a letter to allow them to be able to have a comprehension about why it can or cannot be done.

MR. STOCK: We shall do that, Madam Chair.

CHAIRPERSON REED: Thank you.

MR. STOCK: Secondly, handicapped issue. This is a major, major renovation of this site. We will comply with all handicap accessibility issues on this site including the garage. There is an elevator in the garage which will bring anyone from any level up to any other level.

Third, the trees. Quite frankly, I can't recall

the exact species of tree that we're using. The containers will be rather large. I will tell you that my past experiences eventually, no matter what species of tree you use, it will outgrow the container, the tree is removed and another tree is put in its place. Just pretty much can't help that. But the containers are rather large. They will have a self-feeding water system, so someone doesn't have to come out and water it. It will be on a regular timer. Similarly, with all the other green spacing on the top. It will be regularly watered. That water will percolate through the soil and be drained away underneath.

The fourth issue --

CHAIRPERSON REED: I think also, excuse me, I think that was an issue that was raised by Board Member Renshaw and I think we ascertained at that time that the trees would be maintained --

MR. STOCK: Oh yes.

CHAIRPERSON REED: So that in the event or when, because inevitably they will outgrow the container, that that correct the adjustment will be made --

MR. STOCK: Oh certainly.

CHAIRPERSON REED: -- There for the purpose of maintaining the landscaping adequately.

MR. STOCK: It's an important architectural

component for the entire site and we would maintain it continually.

CHAIRPERSON REED: Thank you very much.

MR. STOCK: Finally, the issue of water during excavation.

MS. FITZGERALD: This is what I was worried about, going down four levels, not three to two.

CHAIRPERSON REED: Ms. Fitzgerald, see at this point you really can't cross examine him, but he already knows what he's answering, so he's just going to address your question. I think he understood --

MEMBER SOCKWELL: You missed the roof drainage issue.

CHAIRPERSON REED: Okay, then you can raise that. Okay -- and if he does, Mr. Sockwell will ask the question that would sufficiently answer that question for you, okay?

MEMBER SOCKWELL: While you're dealing with the rooftop trees, explain how the drainage gets off the roof and drains out.

MS. FITZGERALD: That's my concern.

MR. STOCK: Oh, that's what you were worried about?

MS. FITZGERALD: Where does the drainage go?

CHAIRPERSON REED: All right, he'll answer the

question. Do you understand? Let him, Ms. Fitzgerald, let him answer it for you.

MR. STOCK: The system of large containers and the system on top of which replacing soil that will support the ground cover is a permeable system. All right, there's a thickness of soil and various geotechnical fabrics and then a honeycomb grid. Water either by rain or by sprinkler system will hit and percolate through the dirt, the soil, enter into this honeycomb grid area underneath this entire area and then make its way to rooftop drains that are hidden from above because they're below the soil area, collected and then drained out. So there's no overflow and we certainly hope there won't be any water percolating down on to the cars on the level below.

MS. FITZGERALD: I'd like to ask him one other question while I'm here.

COURT REPORTER: You're not on the record. You need to talk into the microphone.

MS. FITZGERALD: I'd like to know in the parking lot here, we coming out, we down in the parking lot and all the lights go out, is it going to be some provision so we can see how to get out?

MR. STOCK: The entire property is covered by three separate emergency generators. The lights wont' go out. The

emergency generators will come on and activate the lights in this garage all the way down.

CHAIRPERSON REED: Thank you very much.

MEMBER SOCKWELL: And I think that there was a question raised about the four levels of garage and the water table and that Metro had apparently rerouted whatever, and you might just want to address the elevation at which you're going to be which would probably -- well, you can answer it.

MR. STOCK: When I arrived on the site the Metro had already been installed on 14th Street so I don't know how far down they are.

We have done test borings on the site. Water really wasn't a concern based upon test borings and from this point we're really only about a flight and a half, a story and a half down at the alley side. We don't think we're going to be experiencing water. If we do, we hope to use a material called Zypex which we've had tremendous success with and I understand was also the material that eventually made the Washington, D.C. Metro actually water proof. It's worked here.

CHAIRPERSON REED: All right, closing remarks, Mr. Glasgow?

MR. GLASGOW: Madam Chair, in proceeding with this case, this project has been through numerous public reviews with

numerous agencies for a significant period of time, including process before choosing of this developer to go and redevelop this which has had a checked history, this project. It went through extreme scrutiny within the community, the city, with HUD and we are now finally at a point where the HUD approved project can be implemented with the parking and number of units through the approval of this application. We felt that we've met the burden of proof. We have the support of the ANC. We are able to address the issues that were raised here today. We have the support of the Office of Planning. We are unaware of any opposition to the case. We have some issue with respect to timing and proceeding with HUD and we would respectfully request a bench decision on this application and we felt that we have met the burden of proof to be entitled to that.

Thank you for your time.

CHAIRPERSON REED: And that complies with Section 214.

MR. GLASGOW: That is correct.

CHAIRPERSON REED: Except for the 214.2 in which you're asking the variance from?

MR. GLASGOW: That's correct.

CHAIRPERSON REED: All right, did you ask for a bench decision and summary --

MR. GLASGOW: Yes, I did.

CHAIRPERSON REED: Board Members? Is there a motion?

COMMISSIONER HOOD: Madam Chair, I make a motion that we approve Application No. 16612 for the variance and special exception and also accept the Office of Planning Report incorporated into the record.

MEMBER MOULDEN: Second the motion.

CHAIRPERSON REED: I would concur with my colleagues in that this application appears to certainly made their burden of proof and that granting of the application would not cause any adverse impact as evidenced by the fact that there is no one here in opposition nor is there anyone -- any submissions in writing of people in opposition. The ANC will receive the great weight to which it's entitled and also hopefully we have addressed the issues of the Single Member District representative, Ms. Fitzgerald, to the point that her concerns have been met. She did indicate that while she had concerns, she was not opposed to it. She just needed to have some clarification and that is the purpose of this -- one of the purposes of this hearing, to try to address all issues from all persons concerned in which the application being granted would have any impact on whatsoever. I don't think that granting the application will

impair the intent or integrity of the zoning regulations or map in any way adverse to the comprehensive plan. Any other comments?

MEMBER RENSHAW: Yes, Madam Chair --

CHAIRPERSON REED: Discussion?

MEMBER RENSHAW: I would like the text of the summary judgment to describe the landscaping plan, in other words, make some reference to the landscaping plan and the guarantees that will be a part of that landscaping plan.

CHAIRPERSON REED: I don't think that -- I think that the architect stated that -- he wasn't certain as to the guarantee aspect as you had indicated in some other cases that you were aware of.

However, I think that I did hear him say that they would submit for the record the maintenance plan. I don't know if there were any guarantees. Was there a guarantee?

Nonetheless, the maintenance plan that had been constructed for this particular site as far as landscaping is concerned would be submitted as a part of this particular submission.

MEMBER RENSHAW: Madam Chair, I'd just like to pursue this a little bit further because it is not untoward to ask a landscaping company to guarantee trees for X number of years.

CHAIRPERSON REED: If, in fact, this particular

landscaping company does guarantee, then there would be no problem. However, I would not want to attach that to this particular order in the event there is no guarantee. So I have no problem with the submission of a maintenance plan and a guarantee if it is one available.

MS. SANSONE: Madam Chair, in our orders we frequently provide that the landscaping shall be maintained in a healthy and growing condition and perhaps that would address Board Member Renshaw's concerns.

MEMBER RENSHAW: That kind of language certainly would.

MEMBER SOCKWELL: Madam Chair, as one who grew up in the general neighborhood of Clifton Terrace, I just want to say that this is one project that's necessary to help revitalize that 14th Street neighborhood and the mix of units and some discussion that was not germane to the particulars of the case was brought out, but it is absolutely critical that we get projects like this on line because the overall city's health is based upon the health of the individual neighborhoods and it's the only way we're going to get there.

CHAIRPERSON REED: Thank you very much, Mr. Sockwell. All in favor?

(AYES.)

Opposed?

MS. BAILEY: Staff will record the vote as 5 to 0. Motion made by Mr. Hood, seconded by Mr. Moulden; Sheila Cross Reid, Ann Renshaw, Robert Sockwell to approve the application. The applicant shall submit a maintenance plan and a guarantee, if there is one, and also the order should reflect that the landscape should be maintained in a healthy growing condition.

MR. GLASGOW: Madam Chair, did not the condition in the order to maintain the landscape in a healthy and growing condition, didn't that address the issue? We'll put that in the order.

CHAIRPERSON REED: Yes. Yes, it was. As indicated by Corp. Counsel, Ms. Sansone and this is what we will comply with. Your order should be out in about two to three weeks. Good luck on a very worthwhile project. We applaud the effort.

Thank you. That concludes the morning session.

MEMBER MOULDEN: Madam Chair, what time are we going to reconvene for those who are in the audience?

CHAIRPERSON REED: I'm going to say that, thank you.

(Whereupon, at 1:03 p.m., the hearing was recessed, to reconvene at 1:58 p.m., Tuesday, October 10, 2000.)

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

1:59 P.M.

CHAIRPERSON REED: The hearing will please come to order. Good afternoon, ladies and gentlemen. This is the October 10th public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Sheila Cross Reed, Chairperson. Joining me today is Robert N. Sockwell and representing the National

Capital Planning Commission is Rodney Moulden And representing that Zoning Commission is Anthony Hood. Anne Renshaw will be joining us shortly. She is here. She is momentarily detained.

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

All persons wishing to testify -- 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. When coming forward to speak to the Board, please give both cards to the reporter who is sitting to my right.

The order of procedure for special exception of variances is statement and witnesses of the Applicant; government reports, including Office of Planning and Department of Public Works, etc.; Report of the Advisory Neighborhood Commissions, the ANCs; parties or persons in support; parties or persons in opposition; closing remarks by the Applicant.

Cross examination of witnesses is permitted by the Applicant or parties. The ANC within which the party is located is automatically a party in the case.

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

is expected.

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

Please turn off all beepers and cell phones at this time so as not to disrupt these proceedings.

The Board will make every effort to conclude the public hearing as near as possible to 6 o'clock p.m. If the Applicant case is not completed at 6 o'clock p.m., the Board will assess whether it can complete the pending case or cases remaining on agenda.

At this time the Board will now consider any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today such as requests for postponement, continuance or withdrawal or whether proper and adequate notice of 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: Yes, Madam Chair, we do. Application

16609 of Ashley House, that's 4645 Nannie Helen Burroughs Avenue, N.E. was withdrawn.

I don't think there's anyone in the audience, but for the record, Application No. 16609 was withdrawn. That's the only preliminary matter I have, Madam Chair.

CHAIRPERSON REED: Okay, thank you very much. Are you ready to call the first case of the afternoon?

MS. BAILEY: Application 16610, this is the Reinstatement of Application of 5501 Connecticut Avenue Associates, pursuant to 11 DCMR 3104.1, for a special exception under Section 214 to continue to operate an accessory parking lot serving a commercial building on the same lot in a C-1 and R-1-B District at premises 3725 Livingston Street, N.W. The property is located in Square 1868 and it's located on Lot 69.

All those wishing to testify will you please stand to take the oath? Raise your right hand, sir.

(Witnesses sworn.)

You may be seated.

Madam Chair, we have reports or you have reports from Advisory Neighborhood Commission 3-G, from the Office of Planning as well. The property was properly posted and the affidavit has been filed. There was a previous order connected with this site. The order number, the previous order number is

12259 and that was approved in 1977. I'm sorry, it was first approved -- the parking was approved for this site first in 1977. The last order approving the use of this type for parking was in 1992. And that's order 15752. The case is now ready for you to hear.

CHAIRPERSON REED: Okay.

MR. KLIGMAN: May it please the Board, my name is Theodore Kligman. I'm the attorney for the Applicant.

CHAIRPERSON REED: I'm sorry, sir, could you repeat your name?

MR. KLIGMAN: Theodore Kligman, K-L-I-G-M-A-N. I'm a member of the D.C. Bar. Seated to my right is Mr. Barry Katzen who is the Property Manager for this particular property.

CHAIRPERSON REED: Okay, Mr. Kligman, I don't think there is any opposition to your case.

MR. KLIGMAN: That's correct.

CHAIRPERSON REED: It's a simple reinstate special order and to continue a parking lot. And I don't think -- is there anyone here today in opposition to this case?

All right, then we have read the record, so basically just give us the salient points and we can be able to get you out of here relatively shortly.

MR. KLIGMAN: Thank you.

CHAIRPERSON REED: I do apologize for the delay in starting the meeting.

MR. KLIGMAN: We understand.

CHAIRPERSON REED: Okay. But we'll try to make up for that with getting your case through for you. I don't think -- it's pretty straight forward.

MR. KLIGMAN: We have the same situation as we had last time. We have a lot that has split zoning on it. The western portion of the lot faces Connecticut Avenue which is C-1. The portion of Lot 69 that's part of this is R-1-B and since 1977 these 15 parking spaces have been approved as accessory parking to service the commercial building which is part of the same lot and the address for the location that we're interested in is 3725 Livingston Street, N.W. which is just a few feet off Connecticut Avenue. We have the same situation as the Planning Office Report shows that there be no adverse impact on the integrity of the zoning plan since the use is accessory to the low density commercial use which is clearly a neighborhood serving retail. It has no adverse impact on the neighborhood because the lot is well screened, well maintained, and keeps customer parking off residential streets. We have consistently adhered to the conditions that were placed upon the Applicant in prior hearings

that we've had.

We noted that there is a recommendation in the Planning Office Report suggesting that the directional arrows and parking space markers need to be repainted. We're in the process of doing that. We've got a copy of the report. While we didn't think it was necessary, if the Board wants us to do it, we'll be more than happy to repaint the stripes.

The landscaping surrounding the property is in excellent condition. It's mature and it's well maintained.

We have the same problems as we did before. There's not enough space on the commercial portion of the lot as to have the accessory parking on the commercial portion of the lot. I believe we meet all of the requirements for the continued use of part of Lot 69, Square 1868 that could be used as accessory parking, the space is to serve a commercial building that fronts on Connecticut Avenue and Livingston Street.

Does the Board want me to go through the lighting and so forth?

CHAIRPERSON REED: Go through the what?

MR. KLIGMAN: The conditions about the lighting that's the same as it was before.

CHAIRPERSON REED: In the previous order?

MR. KLIGMAN: Same as the previous order.

MEMBER SOCKWELL: You can just state that all conditions and requirements of the previous order are currently being maintained and would apply.

MR. KLIGMAN: That's correct.

CHAIRPERSON REED: And since we don't see anyone here to oppose you, then obviously you have complied with your requirements under the previous order which is good.

MR. KLIGMAN: Yes, we have.

CHAIRPERSON REED: Go ahead.

MR. KLIGMAN: May I please request that this matter be approved for a period of 10 years? When we attended the ANC meeting, someone at the meeting advised that recently the Board had approved the 10-year for accessory parking. I forget whether it was the Safeway lot just north of this lot here or if it was a lot across Connecticut Avenue that services some other retail stores. But in any event, we're under the impression from what we had heard at the ANC meeting that the previous one had been approved for a 10 year period.

CHAIRPERSON REED: Usually, one of our determinants as to the term is to -- after imposing a period of time then we can assess whether or not the order has -- the order that has been issued worked for the community and whether or not the conditions that were imposed were complied with and when you come back to us

if we don't have any opposition or any complaints then we would be open to consideration of that nature to a longer period of time.

MEMBER RENSHAW: Madam Chair, this matter came before the Chevy Chase Advisory Neighborhood Commission and we note in our records that we have a letter from ANC-3-G expressing its approval of this application. It does not note in the letter concerning a time frame and since this is my ANC, Mr. Kligman, I don't remember anything having to do with a 10-year option on a parking lot. We're always quite cautious about these matters of parking lot renewals and I don't think it would be an undue hardship on you to have a lesser time. We acknowledge the fact, the ANC acknowledged the fact that you kept the premises up and there was no adverse criticism of your operation at all, but it's just a matter of liking to have you before the ANC in five years and not wanting to have you such a stranger in not coming back for 10 years.

CHAIRPERSON REED: Thank you very much. Go ahead and continue.

MR. KLIGMAN: That's our case.

CHAIRPERSON REED: Does this gentleman beside you, he's not going to testify?

MR. KLIGMAN: He would just reiterate what I have told the Board. He's the property manager.

CHAIRPERSON REED: Just ditto what he said, huh? Okay, that's fine. All right, thank you very much.

Board Members, do you have any questions?

MEMBER SOCKWELL: Yes, I have one. The order that you are before us for reinstatement of, Order No. 15752, was issued in November of 1992 and apparently would have therefore expired in 1997.

MR. KLIGMAN: Right.

MEMBER SOCKWELL: And no one came forth to have the order reissued at that time. Is there a reason behind that?

MR. KLIGMAN: There was a change of management personnel and it just slipped through the cracks.

MEMBER SOCKWELL: Okay, and under what circumstances did you find out that the order needed to be instated?

MR. KLIGMAN: From the new property manager.

MEMBER SOCKWELL: Okay, and that would be you, sir?

And you became aware of it through the process of looking at records or what?

MR. KATZEN: I have managed this property since the day it was built. And about three years ago I was taken off, it switched owner of the property and the property manager that had it did nothing with it. It was given back to me about six or

eight months ago and I asked the question where is -- because I knew from past experience, we needed these special exceptions and that's why it got started again.

MEMBER SOCKWELL: I see.

CHAIRPERSON REED: We have that problem, from time to time when there is a change in administration or management in regard to some of the orders that have been issued for a certain term and I don't know what we can do to better insure that when the expiration date nears, that the applicant will be made to come back in because when it expires we don't know that it expired. We don't track it, right?

DIRECTOR KRESS: As you're stating, right now it is totally the applicant's responsibility to monitor that. I will tell you it's very much staff's desire that with our computerization and hopefully some of the work we may be able to do this year, that we will be able to track those things and follow up on them in the future. That's definitely something that we want to be able to do.

CHAIRPERSON REED: I think, Ms. Kress, that's a very good point that you're making, that you're looking at it in trying to make some type of arrangements to do it, but if, in fact, somehow the cases could be flagged for a given year and when the year comes up, you know each month what cases are going to be

expiring and perhaps a letter could be sent out to the Applicant that they are in danger of their order being, the order expiring and to get back in here to have it reinstated or -- I guess they should be coming back -- they should be giving notification within about six to eight months before, you think?

DIRECTOR KRESS: Uh-huh.

CHAIRPERSON REED: I know that's additional work, but if it's done by computer, so it could just be automatic as they're put in, then each month or -- I don't want to say each year, but whatever time that would be necessary for it to be feasible that it would be flagged that it was coming up for renewal and a letter sent out to the Applicant, because as we can see, we can't rely on the Applicant, you know, because things change. This is not --

DIRECTOR KRESS: Most of the people that we're finding have found Robert's question very insightful. A lot of them, what happens is it comes through the enforcement arm which is right now really what's supposed to be happening if the Applicant doesn't remember to come in, then it's picked up by enforcement. But realistically, we're the right people, I think, to be doing that.

CHAIRPERSON REED: This goes to our discussion when we came to testify, was the Council, the fact that enforcement is

something that is for lack of a better word is kind of needy, is lacking. It is not adequate. It's less than adequate. So the applicant, when they come, when it comes time for reinstatement or the like, this does not take the responsibility away from them, because regardless of whether there's a change in management or administration or not, still it's incumbent upon the applicant to make sure that whoever comes in is made aware of the fact that they have these things that will have to be reinstated at a certain point in time. I think that we can do better both on the part of the Applicant as well as with staff.

DIRECTOR KRESS: I think you've expressed many times and I think staff totally agrees, the more we can be helpful, the Applicants are clients. We're here to serve so sending out a friendly reminder, if you will, I see as something we should be doing.

CHAIRPERSON REED: Well, yes and no, Ms. Kress. Very much so we can certainly do more, but also I think that we don't have any penalties or anything like that to use as a --

DIRECTOR KRESS: Oh yes, their C of O can get withdrawn.

CHAIRPERSON REED: But the point of the matter is that, notwithstanding that, if in fact, there is no reinforcement, no monitoring, that's not going to happen, but the point I'm

making is that if they are made aware of the fact that if immediately after time that has expired, there will be a penalty imposed so much per day or so much per month until such time that it is reinstated, then that will certainly be very motivational, I do believe.

DIRECTOR KRESS: That is being done right now, I understand DCRA has been reevaluating -- oh, Robert seems to be able to speak to that.

MEMBER SOCKWELL: No, I wasn't going to speak to that. I was going to ask a question which is that I believe that the certificate of occupancy period runs with the order period and that the certificate of occupancy is a document to be posted in a visible location, either in the management office or at some location on the property where it is not unavailable to inspectors and others. So someone should periodically look at them and see what they say.

In this case, it's a time restricted document.

DIRECTOR KRESS: Well, the rest of my point was is that DCRA right now is reviewing the finds that they give for infractions and in fact, has mentioned that they're working on it even as we speak and if this Board wished to convey that they felt there should be tougher fines for these kinds of infractions, certainly we can convey that on your behalf, but we do hope this

year to get our document management system working and once we get that functioning, like you say, it will be a simple matter. It will be an easy reminder to have it pop up.

CHAIRPERSON REED: Right, thank you.

DIRECTOR KRESS: The trick is to get it in place working and the historical information put into the system.

CHAIRPERSON REED: Thank you so much, Ms. Kress.

MEMBER RENSHAW: Madam Chair?

CHAIRPERSON REED: Yes?

MEMBER RENSHAW: Another point I am assuming that our approval of this application will also stipulate that the conditions that ran with the order with the past order would be continued and I just want to make mention of No. 6 of those conditions which states that the applicant shall maintain in good condition the right turn only sign in the public space at the exit from the lot to direct traffic toward Connecticut Avenue. That's difficult. That's very difficult because often the Mail Box, UPS truck is parked right at that intersection and to come out of your lot and to have to swing around that truck when the cars are turning left into Livingston Street from Connecticut Avenue, makes for a big bottleneck and so cars are almost forced to turn left to go down Livingston Street.

MR. KATZEN: The sign is there. The sign is

maintained and you're absolutely right. There have been a couple of accidents, even people trying to make the right hand turn, because the liquor store has deliveries there, UPS, you're absolutely right. But the sign does exist and it is close enough in that you can see it. Now if you opt to turn left, you're going at your own risk, but the sign is in place.

MEMBER RENSHAW: I'd also like to suggest that we just add a condition that the ANC is very hep about and that is for immediate graffiti removal from any of your surfaces within the parking lot, for instance, the shed rather that's there.

MR. KATZEN: Ms. Renshaw, the shack -- this came up in a local meeting. That shack hasn't been there for four years.

MEMBER RENSHAW: Well, then, I change that. Thank you very much for pointing that out.

MR. KATZEN: It was torn down and removed for the reason --

MEMBER RENSHAW: You know, it's almost like looking at a piece of wallpaper, you're not quite sure what's on the wallpaper, so thank you for correcting that.

MR. KATZEN: You're welcome.

CHAIRPERSON REED: Thank you very much. Now we move to Office of Planning Report.

MR. COLLINS: I'm Robert Collins with the Office of

Planning. Mr. Kligman pretty much summarized our report pretty well. I could answer any other additional questions, but obviously as in front of you our recommendation is for approval, subject to the conditions of the previous order.

CHAIRPERSON REED: All right and your report was rather short and to the point. Very concise. I appreciate that.

MR. COLLINS: Right, and Mr. Kligman did actually quote from our report to us about the no inverse impact to the integrity of the comprehensive plan and no inverse impact to the neighborhood.

CHAIRPERSON REED: Okay, thank you very much.

MEMBER SOCKWELL: Mr. Collins, you're a Development Review Specialist?

MR. COLLINS: That's correct.

MEMBER SOCKWELL: Thank you.

CHAIRPERSON REED: All right, questions? Okay, ANC report? Is anyone from the ANC here?

MEMBER RENSHAW: No, but we have a letter in the file dated July 26th. It was signed by Jeff Norman, the Vice Chair of ANC-3G and it notes that this is an application for a parking lot for 15 passenger automobiles to serve commercial buildings, on the remainder of Lot 69, Square 1860H which is zoned R-1-B and at the ANC's publicly announced meeting of July

24th, the Commission voted 6 to 0, and a quorum is 4, to support this application 16660 of 5501 Connecticut Avenue Associates for the renewal of the special exception.

CHAIRPERSON REED: Thank you, Ms. Renshaw, the ANC will certainly be afforded the great weight in which it's entitled. That's ANC 3-G. That's ANC 3-G? Thank you very much.

Okay, persons and parties in support. Seeing none here, but we do have letters, at least three or four letters of support from members of the community for your application. Persons and parties in opposition. Seeing none, closing remarks by the Applicant.

MR. KLIGMAN: We will stand on the statements previously made, Madam Chair.

CHAIRPERSON REED: And you are asking for 10 years this time?

MR. KLIGMAN: Ten years.

CHAIRPERSON REED: Can I have a motion, Board Members?

COMMISSIONER HOOD: Madam Chair, I just want to ask a question. Was that discussed at the community meeting? I don't believe it was.

CHAIRPERSON REED: Was what?

COMMISSIONER HOOD: Going from 5 to 10.

MEMBER RENSHAW: No.

COMMISSIONER HOOD: So we're not going to 10 or are we going to do what was discussed or --

CHAIRPERSON REED: We can -- regardless as to what the previous order said or if it were or were not discussed at the hearing, at the meeting, the ANC meeting, we can determine the term and we can have a motion and go into the discussion about the term.

COMMISSIONER HOOD: Oh, you want the motion first and then you want to discuss?

MEMBER SOCKWELL: I'll make the motion. I move that we reinstate Order No. 16572 or renew Order No. 16572 for the use of -- the previous order was 16572.

CHAIRPERSON REED: 16610 --

MEMBER SOCKWELL: Well, the previous order has to be referenced because of conditions.

CHAIRPERSON REED: That's true, but this particular application is -- application 16610 for the reinstatement of the application.

MEMBER SOCKWELL: Okay, if you want me to say in those specific words as opposed to words I was using, I'd be more than happy to do that.

CHAIRPERSON REED: Please.

MEMBER SOCKWELL: I recommend the approval of Case No. 16610 for the reinstatement of previous Order No. 16572 by which the lot of Lot 69 in square whatever it is is continued as a parking lot.

COMMISSIONER HOOD: Madam Chair, before we second that, I think we need to make a correction to Mr. Sockwell's -- we have a wrong number that was mentioned.

DIRECTOR KRESS: Yes, the number if 15752.

MEMBER SOCKWELL: Oh sorry, 15752.

CHAIRPERSON REED: Wait a minute, what? Where did that number come from?

DIRECTOR KRESS: The old application he referenced and Member Sockwell said 16752, it's 15752.
I just wanted to correct that.

CHAIRPERSON REED: But the motion is being made to --

DIRECTOR KRESS: For 16610.

COMMISSIONER HOOD: With that, Madam Chair, I'll second the motion.

CHAIRPERSON REED: Okay.

DIRECTOR KRESS: May I ask is it for purposes of discussion, are you also looking at the two recommendations in Office of Planning's Report on the condition?

CHAIRPERSON REED: Yes. We're going to move now to talk about the conditions to include a term. Who made the motion -- you made the motion, so what is your recommendation for term?

MEMBER SOCKWELL: With regard to term, I think that the actual previous order expired three years before they came so they got three free years out of the deal before it became an issue for renewal during which time apparently there were no negative requests or requests that the order not be reinstated or that any problems brought up. So I would while not opting for 10, I want to ask one question before I make my statement and that is can -- has any change taken place in the use of the property for which the parking is to be provided over the last five to seven years?

MR. KATZEN: Same tenants have been there close to ten years.

MEMBER SOCKWELL: And are they expected to remain there for the foreseeable future to the best of your knowledge?

MR. KATZEN: Yes.

MEMBER SOCKWELL: Then I would be willing to recommend a renewal period of 7 years.

MEMBER RENSHAW: I second that.

CHAIRPERSON REED: Okay, any further discussion? All right now, the conditions that were imposed on the previous

order would also be included in this order with the inclusion of the conditions from the Office of Planning which referred to conditions 5 and 7, the directional arrows and parking space markers need to be repainted. And condition 10, the landscaping surrounding the subject parking lot is now maturing, the condition may not represent the exact description discussed in Condition 10. Okay, now Ms. Renshaw, you had --

MEMBER RENSHAW: I spoke about graffiti, but we have determined that the poor old guard shack is no longer there, but if there is any graffiti on the surface of the parking lot, I'm sure you will take care of that immediately.

MR. KATZEN: We get more graffiti on the building than we get on the parking lot and it is power washed and painted when we find it.

MEMBER RENSHAW: Thank you.

CHAIRPERSON REED: All in favor, say aye.

(AYES.)

Opposed?

MS. BAILEY: Staff will record the vote as 5 to 0 to approve the application. Motion made by Mr. Sockwell, seconded by Mr. Hood with the conditions as identified in the previous order, but for seven years instead of five.

MR. KLIGMAN: Is that 7 years as of today's date?

CHAIRPERSON REED: Seven years as of the date of the order that will be issued in two to three weeks.

MEMBER SOCKWELL: So you'll be parking at your own risk for two to three weeks.

MR. KLIGMAN: Thank you.

CHAIRPERSON REED: Let's hear the next case.

MS. BAILEY: Application 16624 of Jonathan B. And Gerd G. Rickert, pursuant to 11 DCMR 3104.1, for a special exception for an addition to a single-family dwelling under Section 223 to add a rear addition in a R-1-A District at premises 6683 32nd Place, N.W., Square 2351, Lot 16.

Please stand to take the oath.

(Witnesses sworn.)

You may be seated.

Madam Chair, the property has been posted and the required affidavit has been filed. This is again application within ANC boundaries of 3-G who is recommending approval of the application. There is a petition in support of the application and many of the neighbors have written letters in support and the application is now ready for you to hear.

CHAIRPERSON REED: Okay.

MR. RICKERT: Madam Chair, this is the first time I've done this so I am not sure of all of the customs and rules

for this type of procedure, but I will state the case as briefly as I can.

CHAIRPERSON REED: Give your name and your address, please, sir.

MR. RICKERT: Yes, my name is Jonathan Rickert and with my wife I own and live in a single family dwelling at 6683 32nd Place, N.W., Square 2351, Lot 16, which we've owned since 1967. I'm a retired federal employee and U.S. Army Veteran who was born and raised in the District where my father spent his career as a public high school teacher.

The lot on which our house stands is 91 feet long and 70 feet wide with a 15 feet restriction line along the front parallel to 32nd Place. The house which was built in the mid-1930s currently occupies about 21 percent of the 6,300 square foot lot.

We propose to create a family room by constructing a small, one story frame addition to enlarge and extend an existing room at the back of the house. To do so, we understand that we must receive a special exception from the 25 feet rear setback requirement since the proposed addition would extend to 19 feet from the rear property line.

In developing this property we gave careful consideration to various other possible configurations for an

addition which would obviate the necessity of applying for a variance or special exception. Unfortunately, none of the alternatives we considered could give us the space we required in a user-friendly layout that could come close to matching the advantages of the plan which you have before you. We believe that this project is consistent with the general intent and purpose of the zoning regulations and specifically meets both letter and spirit of Section 223 of Title 11 of the District of Columbia Municipal Regulations. The proposed addition clearly would not have a substantially adverse affect on the use or enjoyment of any adjacent dwelling or property as regards the light and air available to or the privacy of use and enjoyment of neighboring properties. Moreover, the proposed addition would be virtually invisible from the street since there's no alley or other public way.

The proposed addition is similar in form and design to those of two structures on the back sides of two neighboring properties, thus ensuring its harmony with its surroundings. I have a couple of photos to show that, if anyone is interested.

With the addition, the house would occupy about 23.7 percent of the lot well under the 50 percent limitation for dwellings in R-1 Districts.

The neighbors within 200 feet of our house have

been notified about the proposed addition and the fact of this hearing has been duly posted for over 2 weeks. Our five immediate neighbors, that is, those whose property directly abuts ours have all stated in writing that they have no objection to the proposal. Some neighbors have volunteered to write to the Board of Zoning Adjustment in support of the project, others have simply told us orally that they hope we will receive the necessary approvals to enable us to proceed.

We have not heard of any objection to the proposal from any source. Moreover, the ANC-3G has twice reviewed and given its support to the project. This proposal is identical to the one we submitted to the Board early this year as a request for a variance. That was BZA application 16564 in which the Board denied by a bench decision on April 5, 2000. We were not aware at that time of the possible relief provided by Section 223 through a special exception in our case and therefore mistakenly applied for a variance. We believe that our proposed addition does meet the requirements of Section 223 and very much hope that the Board will agree.

In closing, I would just like to say that my wife and I have been dreaming about building this addition for nearly 20 years. If realized the room will serve as a family room, library, computer room and entertaining space. It will

significantly to our enjoyment of the house and our ability to use it in ways that we would like to. This modest addition would also increase the property's value somewhat for real estate purposes, real estate tax purposes, thus benefitting the District of Columbia. Therefore, it would seem to be a project from which everyone gains.

Our contractor, Mr. Laurent Lafleur of Lafleur Associates and I -- who is sitting to my right -- and I are available to answer any questions you may have.

Thank you for your patience and attention.

CHAIRPERSON REED: Mr. Rickert, thank you very much. It appears that and usually I say this in the beginning of a case that there is no opposition to your application and the application seems to be pretty straight forward in that the amount of relief that you're asking for under special exception appears to be not excessive to say the least.

Does your contractor wish to say anything?

MR. LAFLEUR: Yes ma'am.

CHAIRPERSON REED: You may.

MR. LAFLEUR: My name is Laurent Lafleur from Lafleur Associates. I just want to come in and mention that the Rickerts do have a very modest addition in mind and I know the neighborhood quite well. There is in no way have designed it in

such a way that anyone, I don't think, even future owners would ever be objected to what we're proposing to do there and being so modest and he did mention, he did look at other areas in the house and we did spend some time trying to design other additions or reshape this addition in a way of not having to come to this board and the layout of his house with the dining room, it just doesn't appeal to any of the other options. This virtually is the last option for them to do a modest addition. And I just want to state that.

CHAIRPERSON REED: Thank you so much. Board Members, if you have no questions, we're going to --

MEMBER RENSHAW: Madam Chair, I would just like to say that Mr. Rickert did come before ANC-3-G and had his hearing before the Commission and the Commission is very tuned into these additions to houses in our neighborhood and Mr. Rickert had a thorough hearing on this and there was no opposition from the ANC, nor anyone present.

CHAIRPERSON REED: Thank you very much. Do we have Office of Planning Report?

DIRECTOR KRESS: No.

CHAIRPERSON REED: Office of Planning didn't weigh in, so we can assume -- Ms. Kress, we can assume then that they have no opposition to this case?

DIRECTOR KRESS: We told them that because this case had been here before that we didn't feel we needed to have a report on this specific case.

CHAIRPERSON REED: It is pretty straight forward and it is not really, like I said, the request is modest. The ANC, Ms. Renshaw, you mentioned there was no opposition, but can you please just --

MEMBER RENSHAW: Yes, we have a letter in our file dated September 13, 2000 signed by Jeff Norman, the Vice Chair of ANC-3-G and it references Application 16624, Jonathan Rickert at 6683 32nd Place, N.W. for a special exception to add a rear addition and at the ANC's publicly announced meeting of September 11, 2000, the Commission voted 4 to 0 and a quorum is 4, to support this BZA application 16624.

CHAIRPERSON REED: Thank you very much and ANC 3-G will again be afforded the great weight to which it's entitled.

We go now to closing remarks by the -- I'm sorry, there's no one here in opposition? And we do have one petition of people who are abutters to the property that are in support of the application.

So now we move to closing remarks by the Applicant.

MR. RICKERT: I really don't have anything to add. I do have copies of the plan if anyone is interested in having

that.

CHAIRPERSON REED: Would you like to have a summary order, request a summary order, bench decision?

MR. RICKERT: Yes, please.

CHAIRPERSON REED: Okay. Board Members, can we please have a motion?

I'm sorry, I neglected to ask if there are any questions from Board Members before we did that?

MEMBER SOCKWELL: The one thing that we didn't have was plans that actually showed what the addition was suppose to look like. We have a plat, but not plans.

DIRECTOR KRESS: We have the plans.

CHAIRPERSON REED: I'm sorry, Ms. Bailey?

DIRECTOR KRESS: We have received and we will be passing it out right now.

MEMBER SOCKWELL: Because under the requirements of Section 223, we have to be able to evaluate on the basis of what 223 requests and without plans we have nothing to evaluate.

I would request that we take a couple of minutes to look at those.

(Pause.)

MEMBER RENSHAW: I'd like to ask Mr. Rickert when was the back portion of the house built, the two story addition?

MR. RICKERT: As far as I know that is original. The lower part which we now use as a television room presumably was screened in at some point, but as far as I know it's been on the house since it was built.

MEMBER SOCKWELL: So it's likely it was enclosure of a screen porch with a second floor on it, perhaps, because the way the original wall turns in, it appears that there's a different type of connection than one would expect on the original home at the point of enclosure anyway.

It's not significant.

CHAIRPERSON REED: Did you have a question, Mr. Sockwell?

MEMBER SOCKWELL: No, actually I don't have any questions. It looks quite reasonable and appears to match very consistently the rest of the house, the rear portion being a siding facade, appears to catch that and appears not to be obtrusive or out of character with the home.

CHAIRPERSON REED: All right. So let's see now, I think we were at the point of making --

MEMBER SOCKWELL: I'll make the motion. The reason I would like to make the motion is because I opposed the previous submission and I feel that under Section 223 this is compatible with the adjacent properties and similar projections from their

brick facades in the rear and is in character with the existing home, would not have any negative effects on light and ventilation of the enjoyment of neighbors and therefore I recommend that the special exception for the one story addition under Section 223 be approved.

MEMBER RENSHAW: Second.

CHAIRPERSON REED: Further discussion? All in favor?

(AYES.)

Opposed?

MR. RICKERT: Thank you very much.

MS. BAILEY: Staff will record the vote as 5 to 0. Motion made by Mr. Sockwell, seconded by Mrs. Renshaw, Ms. Reed, Mr. Hood and Mr. Moulden to approve the application.

CHAIRPERSON REED: Thank you. Your order should be out in two to three weeks. Good luck. Also, I forgot to apologize for the delay in starting the afternoon session, but I think that was made up to you by getting you out of here in record time.

MR. RICKERT: It was worth it, Madam Chair.

CHAIRPERSON REED: Thank you.

MR. RICKERT: Thank you, ladies and gentlemen.

CHAIRPERSON REED: Okay. Then that will then

conclude the afternoon session.

(Whereupon, at 2:45 p.m., the hearing was concluded.)