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

JULY 11, 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
RODNEY MOULDEN	Board Member
ROBERT SOCKWELL	Board Member
ANNE RENSHAW	Board Member

ZONING COMMISSION MEMBER PRESENT:

KWASI HOLMAN	Commissioner
JOHN G. PARSONS	COMMISSIONER

OFFICE OF ZONING STAFF PRESENT:

SHERI PRUITT	Secretary to the BZA
PAUL HART	Zoning Specialist
BEVERLY BAILEY	Zoning Specialist
JOHN NYARKU	Zoning Specialist

D.C. OFFICE OF CORPORATION COUNSEL

MARIE SANSONE, Esq.

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9:47 a.m.

CHAIRPERSON REID: Good morning. Please pardon our delay in getting started, but the meeting will please come to order. This is the July 11 meeting of the Board of Zoning Adjustment for the District of Columbia. My name is Sheila Cross Reid, Chairperson. Joining me today is Robert Sockwell, who will be with us in just a couple of minutes, Ann Renshaw, Rodney Moulden, representing the National Capital Planning Commission, and he also will be coming out in just a minute, and also John Parsons representing the Zoning Commission.

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

The order of procedure for special exceptions and variances is 1) statement and witnesses of the applicant; 2) government reports,

including Office of Planning, Department of Public Works, et cetera; 3) report of the Advisory Neighborhood Commission; 4) parties and persons in support; 5) parties and persons in opposition; 6) closing remarks by the applicant.

Cross examination of witnesses is permitted by the applicant or parties. The ANC in which the property is located is automatically a party in the case. The record will be closed at the conclusion of each case except for any materials specifically requested by the Board, and 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 of 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 the 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? Please come forward.

MS. PRUITT: Yes, staff has a preliminary matter.

CHAIRPERSON REID: All right. First the audience. You need to sit and speak directly into the microphone, ma'am. Give us your name and your address. Now, the microphone is not on.

MS. LIGHTFOOT: Now it is on. Can everyone hear me all right?

CHAIRPERSON REID: Sure.

MS. LIGHTFOOT: My name is Cynthiana Lightfoot. I live at 1609 Calmea Road, Northwest. I did not receive notice of this hearing.

CHAIRPERSON REID: Which case are you referring to?

MS. LETTS: We are talking about The Washington Ethical Society.

CHAIRPERSON REID: The first case?

MS. LIGHTFOOT: Yes.

CHAIRPERSON REID: All right. Is there anyone here? Mr. Gell, could you please come

forward? Okay, to your knowledge -- your microphone is not on

-- to your knowledge, the property was properly posted?

MR. GELL: Yes, it was posted and we have pictures and so forth that show that. We also used the list that was provided to us by the tax office. That is usually a very good list. We also -- we had meetings and so forth in the neighborhood and in some cases flyers were handed door-to-door. I mean, I am not disputing Ms. Lightfoot that she didn't get a notice, but there were two neighborhood meetings plus two ANC meetings at which we participated. And the list that we used was the one that was provided. So I don't know why. I am really sorry that she didn't get the notice. We have been talking about some of the issues that she would like to bring up.

CHAIRPERSON REID: Well, Ms. Lightfoot, typically what the applicant -- their responsibility as far as notification to the public is to post the building. You did not see the big orange signs on the building? Did you not?

MS. LIGHTFOOT: Not until it was -- this meeting was brought to my attention.

CHAIRPERSON REID: Okay, well let me --

typically in our proceedings, there are three manners in which we notify the public. One is through the Public Register. The other is through sending out notification to everyone within 200 feet of the property, and thirdly is to post the property so that if you missed one, then there is another. And also further the ANC in which the property is located is also noticed as well. So out of those four methods, then conceivably at least one of them would have enabled you to have been notified. Nonetheless, this not being a perfect world, it is conceivable that somehow or another you were missed. But even still, the responsibility of the applicant has been fulfilled.

MS. LIGHTFOOT: I am not the only one who did not receive notice. Several people along my block did not receive notice. The only time we have ever heard of this new process was an open house for the Oneness School.

CHAIRPERSON REID: Okay, but the property was posted. I mean, the signs were on the property. That was notice.

MS. LIGHTFOOT: Certainly if you pass by that property, you would see it. But if you don't, you wouldn't. So how would I know if I didn't pass

the property?

CHAIRPERSON REID: Well, the point I am making is that those are the only ways that you could be notified by the posting or if you read the D.C. Register or if you read the notices that come out in the paper. Or --

MS. LIGHTFOOT: I have not seen those.

CHAIRPERSON REID: Okay. Or from your local -- usually the civic associations and ANC's -- we notice the ANCs, not necessarily civic associations I don't think. So that is all of those methods.

MS. PRUITT: Madam Chair, may I make a suggestion?

CHAIRPERSON REID: Yes.

MS. PRUITT: Ms. Lightfoot, are you requesting a continuance?

MS. LIGHTFOOT: Yes, I am.

MS. PRUITT: Is that because you feel that you were not able to be prepared today?

MS. LIGHTFOOT: Yes.

MS. PRUITT: Staff may recommend that maybe the record be left open but we have the hearing today and the record left open for you to add your comments after you've had time to hear everything and

then so that you could provide a prepared statement.

CHAIRPERSON REID: Thank you, Ms. Pruitt. I wasn't aware. She didn't say that she wanted a continuance.

MS. PRUITT: Well, that is what I wanted to find out. I mean, I wasn't sure where we were going.

CHAIRPERSON REID: If you had said that, then we could have --

MS. LIGHTFOOT: Yes, I would like a continuance.

CHAIRPERSON REID: All this discussion. All right, so is that -- are you amenable to that?

MS. LIGHTFOOT: Yes, I am.

MS. PRUITT: Excuse me, Ms. Lightfoot, are you within 200 feet?

MS. LIGHTFOOT: I am right --

MS. PRUITT: Could you actually show us?

MS. LIGHTFOOT: I can point to where I am.

MS. PRUITT: And the actual site?

MR. GELL: It may be that she is not within the 200 feet. I will look again at the list. Madam Chair, normally I wouldn't object to a continuance. But in this case, one the school is

right up against a time deadline. Because they have to be able to notify the parents that they --

CHAIRPERSON REID: Okay, wait. Before you go any further, what has been decided, I think I heard, was not a continuance. That with the record being left open so that if she has anything that she wants to submit to us, she can do so. Did I not understand that, Ms. Lightfoot? That seemed to be amenable to her. So the issue of a continuance, I think, has now become moot.

MR. GELL: I understand. If it is possible to keep that period of time very short. We had actually believed we had no opposition until just now -- until I found that there was a letter from another lady in the file yesterday. We thought we had no opposition and we were going to, of course, ask for a bench decision.

CHAIRPERSON REID: Okay.

MR. GELL: I think the issues that Ms. Lightfoot is going to raise are things that we have considered and we would like to speak to, and we would be happy to have --

CHAIRPERSON REID: Well, let's go ahead -- let's go ahead with the case and then we can hear from her. Did you want to testify? Correct?

MS. LIGHTFOOT: Yes.

CHAIRPERSON REID: And then in your closing remarks or through the cross examination you will have an opportunity to --

MR. GELL: Could you hold off a decision until later as to whether you feel the record should be left open?

CHAIRPERSON REID: Okay. All right. Sure. We will make that assessment at the end of the hearing as to whether or not she feels there is additional information that she wants to submit and we will make a decision then. We would determine whether or not we would grant that. Thank you.

MR. GELL: I appreciate it.

MS. LIGHTFOOT: Thank you.

CHAIRPERSON REID: Now, Ms. Pruitt, do you have a preliminary matter?

MS. PRUITT: Yes, I have several, Madam Chair.

CHAIRPERSON REID: All right.

MS. PRUITT: The first preliminary matter is the first case of the morning, 16598. I just wanted to indicate that the applicant has withdrawn this case by letter dated June -- excuse me, July 6. They are withdrawing without prejudice. So the

application for the Chancery of Azerbaijan has been withdrawn.

The second preliminary matter actually deals with The Washington Ethical Society, and it is just a procedural issue. You need to waive -- the affidavit of filing wasn't filed in time, so you need to waive the filing time. However, the property was posted timely. What are you saying?

MS. PRUITT: I am sorry, the affidavit of posting was not filed five days before.

CHAIRPERSON REID: Okay. All right.

MS. PRUITT: So you need to waive the filing time for the affidavit of posting.

CHAIRPERSON REID: Right. But you are saying that the property --

MS. PRUITT: But the property was posted.

CHAIRPERSON REID: It was posted in a timely manner?

MS. PRUITT: Yes.

CHAIRPERSON REID: Okay. Well, Board Members, are there any objections to allowing the affidavit of posting to come into the record? All right. There is no objection by Board Members. So by consensus, we would allow that.

MS. PRUITT: That concludes staff's

preliminary matters for the morning.

CHAIRPERSON REID: Okay. Did you mention, Ms. Pruitt, that the request for withdrawal had come from the attorney?

MS. PRUITT: No, actually I didn't indicate who it came from. It came from the attorney representing the Chancery of Azerbaijan.

CHAIRPERSON REID: And that was Ms. Cynthia Giordano?

MS. PRUITT: Correct.

CHAIRPERSON REID: All right. Thank you. All right, can you call the first case and only case of the morning?

MS. PRUITT: The first case of this morning is 16590, Application of Washington Ethical Society, pursuant to 11 DCMR 3104.1 for a special exception under Section 205 to allow a child development center/nursery school, up to 40 students, ages 3 to 6 years old, and to serve both before and after school care in an R-1-A district at 7750 16th Street, N.W., Square 2745-F Lot 81. All those planning to testify, would you please stand and raise your right hand?

(Witnesses are sworn.)

MS. PRUITT: Could you please proceed?

MR. GELL: Good morning, Madam Chair and members of the Board. My name is Stephen Gell. I am an attorney representing the applicants, who are the Oneness Family School and The Washington Ethical Society, the owner of the property. In an effort to get a special exception to locate a nursery school in The Washington Ethical Society building, which is at 7550 16th Street. The school plans to have a nursery school with children ages 3 or perhaps two-and-a-half to six. The program would run from about 7:00 or 7:30 in the morning until 6:00 at night. But most of the children would be enrolled in the nursery school, which would start about 9:00 and end at 3:30.

I have with me Mr. Donald Montagna, who is the senior minister at The Washington Ethical Society, and Mr. Andrew Kutt, who is the president and director of the Oneness Family School. And with him is Ms. Michelle Radcliffe, one of the teachers at the Oneness School. I am going to ask Mr. Montagna if he wouldn't start and make a presentation. And we also have with us Mr. Stephen Peterson, who is a traffic engineer. I think he has been accepted many times by the Board as an expert, and I would appreciate it if the Board could grant him that status and he will discuss the traffic and parking

issues.

CHAIRPERSON REID: And he has been before the Board and accepted as an expert once before?

MR. GELL: Yes.

CHAIRPERSON REID: Okay. Mr. Gell --

MR. GELL: Gell.

CHAIRPERSON REID: I thought I was pronouncing your name wrong -- Mr. Gell, the persons here that are present are with you? They are with the applicant?

MR. GELL: That is correct.

CHAIRPERSON REID: Is there anyone here in opposition to this case? Okay, two persons in opposition. Okay. All right then proceed.

MR. MONTAGNA: Don Montagna is my name. The Ethical Society is a religious community. We are an interfaith/interdenominational type of community that believes that although the world worships many different Gods, God's law is pretty much universal. We base our faith on the basic values of truth, justice, love, and that is what our common ground is. We were founded back in 1876 and we are across the country. We have groups in different parts of the world, but here in Washington, we have neighborhood groups throughout D.C. and a group out in Northern

Virginia and one in Baltimore.

Like most churches, we marry people, bury people, have our seasonal holidays, church suppers, Sunday school. But in social service, our special mission has always been children and education of children. We are founders of, among other things, the Child Study Association, the Fieldson School System that is in New York City and numerous other schools.

When we moved from Dupont Circle to Northwest Washington in the mid-1960's, we founded The Washington Ethical Society High School. At the time, it was intended to be -- if you remember the times, the issues then had to do with being able to teach ethics with a separation of church and state, and that is the school we built and that was the point that we made.

In recent years, as you know, the difficulty with teenagers and high school has brought a lot of attention to our school and we have developed a waiting list. So what we have done is that we have built a school up on Georgia Avenue with the idea of making that the center and moving them out of our church building classrooms. What happened within the community is that some members would prefer to run a preschool in the space rather than

allowing the high school to use the space further. What I did was have a couple of neighborhood meetings and found that every neighbor who attended it not only thought that the preschool would be better for the neighborhood -- better meet the needs of the neighborhood -- but would be better than having teenagers in the neighborhood. So we pursued the idea of creating a preschool.

Among the six different groups that we talked to, we ended up selecting the Oneness School, mostly because it emphasizes value education and it also takes not just the student but the entire family as its primary client, and it fit very much our value system. So we asked that they run this preschool.

Our property on 16th Street is 1900 square feet. It slopes from 16th Street down to an alley. That means that in the back the lower ground floor is accessible from the alley, and it is there that the preschool will be. We have a -- on the property, there are two buildings, a larger building and a smaller office building, and the third block is basically -- is a yard. That yard is at the alley level, the lower level, so that the children will not even be seen from the 16th Street. It is completely at that lower level.

Our intention is that between the hours of 7:00 and 9:00, when the children are left off, and 4:00 and 6:00, that the parents would be able to come down the alley. We have a long parking lot and a shorter -- a six car and a five car -- that they would pull in to that parking area and a staff person would relieve them -- would take them out of the car and the car could move on. At the time that the classes -- the parents are leaving and picking up, I have no staff in the building. So therefore the parking spots are very free in the afternoon.

The other inconvenience that we were aware of were having a playground in the yard. Behind the alley, there is an empty lot, literally as far as you can see. The property is constructed so that there is no neighbor or no house behind us at all. The house that is immediately next to us, the playground is protected from that house by several trees -- three trees to be exact. And we don't anticipate any disturbance. And that neighbor, the Stansels, have given us a letter that reads that they are the next-door neighbor and they find no problem and that they support the school.

The other direct neighbor, who is actually protected from the playground and the

entrance of the school by the entire building has also written a letter in support of the preschool, and I have that here too.

We held, as I say, a total of five meetings -- two that we held and three with other -- and until today we thought we had complete support for it. We choose the preschool because we think that it fits the facilities and that it will serve the neighborhood. I don't know if you have any other general questions for me, but that is what we are doing and why we are doing it.

CHAIRPERSON REID: Okay, thank you. Next witness?

MR. GELL: Thank you. Madam Chair, if it would help the Board, I did find the map that the tax office had put together for us. It shows the 200-foot area and unfortunately Ms. Lightfoot is just outside of the area.

CHAIRPERSON REID: Okay. That might -- thank you very much. That may --

MR. GELL: But that is apparently why she was not on the list.

CHAIRPERSON REID: Why she didn't get a notice. You know, I am not sure -- I don't remember it being within our package. We don't usually get

that, do we?

MR. GELL: No.

CHAIRPERSON REID: Okay, could we have a copy of it since it has become an issue? Give it to staff, please, Mr. Gell. Thank you. Mr. Andrew Kutt is going to -- I guess you can stay for a minute.

CHAIRPERSON REID: Yes, let him stay. Because we are going to ask questions after the presentations.

MS. PRUITT: Excuse me, Mr. Gell, the map that you gave us, what scale is that? Because there is no scale on there.

MR. GELL: I don't know. That is what was handed to me by Mr. Brown over at the tax office.

MS. PRUITT: Okay, thank you.

MR. GELL: And he also provided the list which I submitted to you as well.

MS. PRUITT: Okay.

MS. RENSHAW: Mr. Gell, who drew the circle?

MR. GELL: That was Mr. Brown at the tax office. He is in the Maps and Titles Division. That is where we normally get those lists. Shall I --

CHAIRPERSON REID: Sure.

MR. GELL: Mr. Kutt is the Director of

the Oneness Family School, which is currently located -- which the main school is at Wisconsin and Bradley Lane. It will remain there. This is going to be an additional preschool that does not exist now that will be in the neighborhood -- 16th Street and Calmea. And the hope is that children from the neighborhood will be coming to the school. Because now the First Israel Nursery School is closed and will not reopen, so we are hoping that many of those children will also be able to take advantage of the Oneness School, and I will ask Mr. Kutt to make his statement.

MR. KUTT: Yes, good morning, Madam Chair and members of the Board. My name is Andrew Kutt. I am the Director -- the founder and Director of the Oneness Family School. As you know, we are here to seek a special exception to permit the Oneness Family School to open a new nursery school at The Washington Ethical Society Building on the corner of 16th and Calmea Streets. We plan to eventually have 40 students, ages 3 to 6, with a maximum staff of six people.

CHAIRPERSON REID: Excuse me.

MR. KUTT: Yes?

CHAIRPERSON REID: I thought you said

two-and-a-half.

MR. KUTT: I am glad you mentioned that. The formal request we have made says three to six, but occasionally we accept students that are two-and-a-half years old if they are developmentally ready.

CHAIRPERSON REID: So it will be two-and-a-half -- two-and-a-half to six?

MR. KUTT: We would like to request permission to accept a very few students at that age if they are developmentally ready.

MR. GELL: I think when Mr. Kutt and I originally talked about it, he was thinking three developmentally and I was thinking three chronologically. And that is why we had said three to six. But apparently there are some children who are two-and-a-half who can take advantage of the program.

CHAIRPERSON REID: All right.

MR. KUTT: As I mentioned, we plan to have 40 students eventually, but I don't think we would get anywhere near that in the first year or perhaps even in the first two years. Realistically in the first year, we would probably look at somewhere between 10 and 24 students.

Our main hours would be 9:00 a.m. to 3:30 p.m. We do offer a half-day option for parents. We

also offer a three-day option. And we also in addition to that offer before and after school care available for parents who need it. We start our program at 7:30 in the morning and we close down at 6:00 p.m. in the evening.

I thought I would just share very briefly a bit about the philosophy of our school. We are a Montessori-based school. We have a tradition of teaching positive values. Those are very much incorporated into our program -- values such as non-violence. We actually teach conflict resolution skills, values such as tolerance and appreciation for other cultures and other religions and so forth is very much a part of our program.

We overall stress a balance between a strong academic foundation on the one hand and a strong emphasis on character development, and that mix has been something that has been very successful and very much appreciated by our parent community.

As Mr. Gell mentioned, we stress also a strong partnership with the families that attend our program. We believe that we cannot achieve our goals without incorporating the families and working with them hand-in-hand in terms of attaining our goals.

I wanted to mention that this is a new

facility. We have an existing school, as has already been stated, which is at 6701 Wisconsin Avenue in Chevy Chase, Maryland. Our existing school will continue as a nursery school and a grade school. But for several years, we have had interest from families in the Washington, D.C. community as well as Takoma Park and Silver Spring. Families who have said I wish you could open a school closer to where we live. And so when Mr. Montagna approached us initially from The Washington Ethical Society, we were very, very excited about that possibility of serving families closer to the Washington, D.C. community.

Indeed, there has been a fair amount of interest already from families in the neighborhood who have attended our open houses. As Mr. Gell also mentioned, there has been a closing of another nursery school nearby, which means that additional families are going to be looking for a place to have their children attend nursery school.

Mention has already been made of the alley in the back of the building, which we would plan to use as an arrival and a drop-off location. Every effort would be made to ensure the safety of the children who are arriving and who are being dismissed. We have about twelve years of experience

with arrivals and dismissal procedures, and so we are well aware of the challenges and the safety issues involved. We plan to have cars approach the building from the south so that children could emerge from their passenger vehicles on the passenger side. And then they will be escorted to and from the building by teachers and staff at the school. And that would happen both in the morning and in the afternoon -- both at arrival time and dismissal time.

In closing, let me say that we -- reiterate that we have had two neighborhood meetings regarding these matters and we have attended two ANC meetings about the project as well. And prior to today, we were not aware of anything but positive feedback from the neighborhood. That concludes my statement and I would be happy to answer any questions.

CHAIRPERSON REID: Okay.

MR. GELL: I wonder, Mr. Kutt, if you would say a word about school policies with regard to scholarships.

MR. KUTT: We have a very strong tradition of supporting families who could not otherwise afford a private school education. We do that because we believe it is very important to the

type of school philosophy that we have that not only is there a multicultural representation, but also a representation from many different socioeconomic backgrounds. And in fact, we give out more financial aid as related to our budget than the national average of private schools across the nation, and that is something that we are very proud of and that we plan to continue at this location. And I might add that we are also very much interested in employing staff people from the neighborhood as well.

MR. GELL: Thank you very much. I would like now to introduce Mr. Stephen Peterson to talk about the traffic and parking. And I might say by way of further introduction that knowing full well the problems of the Jewish Primary Day School and the hearings that they had, we started early-on to address any issues that could come up that we knew had been raised by the opponents to that. In fact, we spoke to all of the major opponents -- the people that had presented the case -- to make sure that they had no problems. And they all assured us that they did not. In fact, Mr. Bardinelli came to one of our neighborhood meetings and was very helpful. And he said that not only did he feel that it was okay, but that he had sampled some neighborhood opinion and had

concluded that there really was no problem knowing what we were doing. We are, of course, changing from a high school to a nursery school, and I think that was very attractive to many people. Knowing that there were some high schools that wanted to use the property. And if we can't make this change, then The Washington Ethical Society will have to decide whether to accept one of those other offers. But we very much hope that the Board will see the nursery school as less of an impact on the neighborhood, even though in some respects it may create some additional issues or exacerbate some issues with regard to traffic. I would like Mr. Peterson to speak to that now.

MR. PETERSON: For the record, my name is Stephen G. Peterson. I am a traffic planning and engineering consultant and have appeared on occasion before the Board on various matters relating to traffic.

For the Oneness School, we undertook several different evaluations and analyses. Starting with the existing high school, we were brought into the case before school was dismissed in June, and therefore we had The Washington Ethical Society conduct a survey of the 36 students that were

enrolled here in the spring term to determine their mode of transportation and how they got to the school and when they arrived. From that survey, we discovered that approximately half of those students actually drove to the school and parked either at the rear of the building or on the neighboring streets, primarily Calmea Road, where they arrived in the morning between 8:00 and 9:00, parked, and the cars continued to be parked there through dismissal time, which is typically between 2:00 and 3:00 in the afternoon. Staff related to The Washington Ethical Society did park on site, although even there for the teachers that would arrive late in the morning after the parking spaces were filled, they would park on the adjacent streets as well.

In order to be able to compare that operation with that of what Oneness Family School does in its Bethesda Campus, we asked the Oneness School to segregate out from their student population, which runs from preschool through I believe fifth or sixth grade --

MR. GELL: Eighth grade.

MR. PETERSON: Eighth grade. The preschool element to determine the pattern of activity for parents that bring preschool children to

their current facility and then pick them up in the afternoon. So we were able to determine from that that the arrivals in the morning are spread over a period of approximately an hour, starting at about 8:30 in the morning until 9:30 in the morning. So that -- and the distribution through that hour by 15-minute intervals is fairly good. There is one slightly higher 15-minute peak. But on the whole, the fact is that they are essentially coming after the highest peak hour of traffic on 16th Street.

The pick-up in the afternoon again spreads over a considerable period of time, starting at approximately 3:30 and extending all the way until 6:00. In the afternoon, they do have a peak between 3:30 and 3:45, when the majority of their students are picked up. But, again, this is off peak in terms of traffic in the general area.

The third thing we did was to actually do traffic counts on 16th Street at 16th and Calmea Road and again on 16th at Jonquil Street. When you go through the -- and we did those counts to cover the -- particularly in the afternoon to cover the period of departure from the proposed preschool. When you do the technical analysis of those counts, you can determine that in terms of levels of service, they

are operating for the intersection as a whole at acceptable levels of service, which in fact are very good levels of service as contrasted there in the B and the C range using that term that you heard in other cases.

In prior discussion before the hearing started with Ms. Lightfoot, she was concerned about the fact that there seems to be back-ups on Calmea Road because the school parents do use that road. And from the observations that were made in the field, I have personally observed that there are back-ups on Calmea Road at that signal, but it is a function, as I learned by looking at the way the traffic light time is divided, that the District in terms of its policy for setting signal timings favors 16th Street and penalizes Calmea Road. That is a balancing act that your District Transportation Department goes through in terms of what is more important to move in terms of traffic on 16th Street.

So while I can acknowledge that she has observed back-ups on Calmea Road, it is not an issue that we as an applicant can really dictate to the Department of Transportation what they should do relative to their priorities in terms of setting traffic signal timing. If you modify -- and I

actually played with the software to modify the signal timing and determined that I could make the side street work very well, but I penalized the main street. Not terribly, but I do penalize the main street. And that is a balancing act that, as I say, I don't think the school is in a position to -- or The Washington Ethical Society is in a position to dictate to the District Government.

In terms of getting down to the specific operations that we developed as a function of being aware of what Jewish Day is proposing for their circulation pattern, the safety issues related to the drop-off and pick-up of children, if I can go to the map we can describe that. Can you see this or should I bring it closer?

CHAIRPERSON REID: Yes, bring it closer. It is difficult. You should try to position it in such a way that you could show it to us as well as the people here who are in the audience.

MR. PETERSON: Okay.

CHAIRPERSON REID: Well, let's see now, we can't see that. Or you can come -- if you want, you can come over -- you can walk over to this area so you can better see it. All right. Now is it visible to everyone? All right.

MR. PETERSON: This, by the way, is the same map that was provided by the tax office to show the 200 foot limit.

CHAIRPERSON REID: With the circle around it.

MR. PETERSON: So responding to the earlier question of the scale of that, I would have to say probably it is not a specific scale, but it is approximately an inch equals 130 feet. I took the boundary that was shown by the office and converted that 130 feet to 200 feet. And from the northwest corner of the property to the corner where the alley is -- that 200 foot line is right at the corner of the alley and Calmea Road. So that was an effort to try and put a scale on the map that was provided by the tax office.

What we -- again, because of where the school is sited or proposed to be sited, the desirability is to allow the children to depart from the passenger side of the vehicle. That suggests that the vehicles that are going to drop children and pick them up should proceed in a northbound direction through the alley, depart the alley at Calmea Road, where they can make either a left turn or a right turn. When they make a right turn, they proceed to

the traffic signal controlled intersection of Calmea Road and 16th Street, again which we consider to be -- gives them more opportunity to turn -- particularly turn left if they are going -- their desire is to depart to the north towards Silver Spring.

As you also are well aware, one of the sites for the Jewish Day school is in this block between Jonquil Street and Juniper Street. The order which you have drafted for them indicates that their traffic will come through the alley that is behind their building, turn right onto Jonquil and then be directed to go right and south on 16th Street. Therefore, that can logically raise the issue of well is there a conflict between the two operations. The fact of the matter is that first of all this school would not be directing traffic in the same direction as trips leaving Jewish Day. Secondly, because they are, by virtue of your order, directed to turn right, they are not in conflict with any trips that are turning left off of 16th Street or right off of 16th Street to access the alley to arrive at the subject site. Therefore, they can operate -- they essentially can operate independently.

CHAIRPERSON REID: Excuse me, we are going to ask questions. But I just have -- before we

leave that point, you are saying that all the traffic going into -- I think you said Jonquil --

MR. PETERSON: This is Jonquil.

CHAIRPERSON REID: Into Jonquil is coming northbound on 16th Street?

MR. PETERSON: No. I am saying that it can come either southbound or northbound. There is an option. We don't know where the --

CHAIRPERSON REID: Okay. But you were just saying -- I thought you were making a point that the southbound vehicles would not have to cross.

MR. PETERSON: No. I was making the point that Jewish Day people, by virtue of your order, come out of the Jewish Day site and proceed to take 16th Street and then are required to turn right. People arriving at this site can come north on 16th and because of gaps that are created in traffic by this traffic light, make their left turn during those gap times.

CHAIRPERSON REID: What? Are you saying the gaps down there?

MR. PETERSON: Are created by the signal up here.

CHAIRPERSON REID: Okay. So you are saying because of the gap -- the signal up there will

cause there to be no traffic here.

MR. PETERSON: Correct. That is how left turns get in.

CHAIRPERSON REID: And they will be able to make that left turn easily?

MR. PETERSON: Correct.

CHAIRPERSON REID: I don't know so much about that.

MR. PETERSON: It is -- it is the way the signals work.

CHAIRPERSON REID: True. Nonetheless, still trying to negotiate that turn across all those lanes of 16th Street --

MR. PETERSON: Just two.

CHAIRPERSON REID: What do you mean two?

MR. PETERSON: It is two lanes southbound.

CHAIRPERSON REID: Okay. But you have to come out of this lane and make a left and go over here.

MR. PETERSON: There is a store in the middle here. There is a -- as you recall, there is a median in 16th Street and they stop --

CHAIRPERSON REID: Okay. But still you are going to have to wait there until that light

changes down at that next intersection. So it is not -- you know, it is --

MR. PETERSON: Oh, agree.

CHAIRPERSON REID: Yes.

MR. PETERSON: But that occurs every 80 seconds in the morning.

CHAIRPERSON REID: I don't -- I am not so sure about that. Making those turns over into the other -- the opposite -- the lane that is going in the opposite direction during rush hour is a little bit more cumbersome than the way that you are presenting it. It is not so clean that traffic stops there and you just zip on over there.

MR. PETERSON: But you have room to store. there is approximately 80 feet of storage lane -- it stores three cars. And that is what happens. They stop and they wait for a gap and they go.

MR. SOCKWELL: Mr. Peterson?

MR. PETERSON: Sure.

MR. SOCKWELL: With regard to the previous use or current use as a high school, the in-flow of students was coming in what direction?

MR. PETERSON: We didn't actually determine the direction of travel. They are again --

their population is scattered through this general area of the city. So they could -- they had that option to proceed to here and make their left and proceed up the alley to park. If they couldn't find parking, they would proceed to the alley to Calmea Road and then look for parking on Calmea.

MR. SOCKWELL: So realistically speaking to some degree, the left turning northbound traffic would be an increment greater than or perhaps equal to the increment of traffic making left-hand turns under the high school program.

MR. PETERSON: Correct.

MR. SOCKWELL: However, the distribution of vehicles once they made the right into the alley looking for parking would be different because now you have people looking for spaces to park as opposed to people leaving to go elsewhere.

MR. PETERSON: Correct.

MR. SOCKWELL: Okay. I am just trying to get a feeling for that. Because what we are saying -- what I am saying anyway is that to some degree, there will be left turning traffic and to some degree there is existing left turning traffic. To some degree, left turning traffic will be less than or equal to existing left turning traffic, but in no way

should we assume that there was no left turning traffic when it was a high school.

MR. PETERSON: Correct.

MR. SOCKWELL: Okay.

MR. PETERSON: It is a replacement use. It is a replacement use that requires children to be transported to the site, whereas with the high school, some could arrive by other modes. Some arrived by transit, some drove, and one or two got dropped off. Clearly we don't want to do any of the activity related to the preschool on 16th Street in the morning. We can't because no stopping or standing is permitted southbound on 16th Street in the morning. In the afternoon, we could park there, but it is still preferable from a safety perspective that all of the activity take place at the back of the site because, first of all, it is at the same level as where the classrooms will be for the children that would attend the preschool. And secondly, it is clearly less activity at the back of the site than there is at the front of the site in terms of traffic.

CHAIRPERSON REID: But are they going to pull up to the site -- well, since he was standing up there, if you have something that you just want to

ask pertaining to that chart while he is up there.

MS. RENSHAW: Mr. Peterson, we have an issue with the alley that was discussed at the time of the Jewish Primary Day School hearings, the necessity to keep these alleys open for two-way traffic. That is the way it must be because these alleys are necessary for public safety reasons.

MR. PETERSON: Understood.

MS. RENSHAW: And I am looking at your chart, the day of the week where within an hour -- for instance, on a Monday between 8:30 and 9:30, you have got 25 cars coming into the alley for 50 trips in and out. How does that time frame compare with the 36 high school students? How many of those 36 drove to school? Do you have that information?

MR. PETERSON: Yes, I do have it in the --

MS. RENSHAW: And is that comparable to the 25 cars from 8:30 to 9:30 that you are proposing for a Monday with the young people equal to what happened with the 36 high school students?

MR. PETERSON: Let me, if I may --

MS. RENSHAW: Sure.

MR. PETERSON: If you will go to Table 3, which is --

MS. RENSHAW: Okay, I was on Table 2.

CHAIRPERSON REID: Table 8?

MS. RENSHAW: Table 3.

MR. PETERSON: Table 3 at the very bottom of the page. I calculated the numbers that you are concerned about. The net incremental increase during the highest 15 minutes of this activity and the comparable 15 minute period for the high school is a net increase of 8.

MS. RENSHAW: Oh, okay.

MR. PETERSON: Eight trips. There is a greater increase in the outbound mode because as we have indicated earlier, the high school children came and parked, whereas a daycare generates an outbound trip as well because the parent leaves. By the same token, the parent -- by virtue of the parent leaving, the child at the preschool isn't parking in the neighborhood. So there is your -- that is your trade-off.

CHAIRPERSON REID: Fewer cars parking in the neighborhood but more cars during those rush hour. Because with this preschool, all the children have to be dropped off, right? There is no bus? I mean, of course they are too small to be on a bus anyway.

MR. PETERSON: Correct.

CHAIRPERSON REID: So you are going to have each of those kids being dropped off and those cars all coming through that alley during a certain amount of time in the morning. Then we go to things like what about the trash trucks and other vehicles that would have to come up -- that would have to share that alley during that time? So I don't see a provision for taking into consideration all of the additional traffic that would be in that alley during that time of the morning. I mean, how do you reconcile the fact that there are people who leave around there who may have to use the alley or the trash that has to be --

MR. PETERSON: Well, let's -- excuse me. Let's separate morning and evening.

CHAIRPERSON REID: I am only talking about morning right now. I haven't gotten to the evening yet.

MR. PETERSON: Okay. In the morning, it is a passage through the alley to a drop-off point behind the school which can take place off the -- outside of the limits of the alley. Because there is a parking area behind the school.

CHAIRPERSON REID: You pull up -- they

pull up. But that still doesn't have anything to do with the traffic going through the alley. Still, they stop and drop off and they continue. But that still does not in any way negate the traffic flow -- the intensity of the traffic flow.

MR. PETERSON: Well, let say -- so your concern is how much traffic is in the alley at the same time.

CHAIRPERSON REID: Well, wouldn't you be concerned if behind your house a school opened and then all of a sudden you had like 30 or 40 cars converge in your alley every morning within a short time frame during rush hour? That seems to me to be a given.

MR. PETERSON: Well, I think your balance here is the fact that you -- the site is already approved for a school operation. The question is what is the trade-off between a high school operation --

CHAIRPERSON REID: Oh, but now. My question was wouldn't you be concerned if that were to occur behind your house?

MR. KUTT: I think it is probably important to mention the staggered arrival during school time that a lot of families use.

MR. GELL: Madam Chair, some of these children are going to be --

CHAIRPERSON REID: Speak into the microphone.

MR. GELL: I am sorry. Some of these children are going to be dropped off early because they will be taking advantage of the early opening, the 7:00 to 9:30.

CHAIRPERSON REID: That was my question too. That was one of my next questions. The ratio of those that would be going to the preschool compared to those who would be going to the regular school and how would those cars be dispersed between the time frame. Because that would have a great bearing on that.

MR. GELL: Well, with the high school -- and Mr. Montagna could tell me whether I am right or wrong. But all of the students would be coming around the same time. Whereas with the nursery school -- and we don't know the numbers because it is up to the parents to decide whether they want their children there at 7:00 or 7:30 in the morning -- whether that is more convenient for them or leave them there until 6:00 at night.

CHAIRPERSON REID: Well, just give us

some idea.

MR. GELL: A significant number of those children will already be there by 9:00 --

CHAIRPERSON REID: What we need to know is what does the school anticipate to be the ratio of the ones who would be dropping them off earlier for preschool -- let me make two points here -- earlier for preschool as opposed to those who come later for the regular school day. And two, to your raising the issue up that the 40 high school kids --

MS. RENSHAW: 36.

CHAIRPERSON REID: The 36 high school kids, they did not necessarily have to come through the alley to find parking. They could just go right to Jonquil or Calmea or one of the other side streets. But in this instance, the impact is predicated upon the increased intensity of the traffic coming through that alley during that time period in the morning. That is what we are talking about. So let's compare apples to apples.

MR. GELL: I think I was responding more to the notion of 30 to 40 cars, which we think will not be the case. Yes, there will be more traffic. There is no question that there will be more traffic during a short period of time in the alley behind the

school. And I think Mr. Peterson has considered that. In addition to which the school doesn't expect to be up to full complement for maybe two or three years, if ever. We don't know if the market is there. But their expectation is that there may be -- what, 14 the first year? 12 to 14 in the first year and maybe 20 the second year. So we are talking about a period of time during which we can see how the alley operation works and take account of it and take any remedial measures that may be necessary to make sure that if people complain about the fact that they can't get out of their garages. That is a concern. I recognize that.

MR. MOULDEN: But the application indicates 40.

MR. GELL: Of course. Of course.

MR. MOULDEN: And you have got a 16-foot wide public alley which should be clear at all times for emergency vehicles and access for the community. There is a definite impact if you had 8 to 10 kids being dropped off. These are young kids who can't get out of the car and walk in on their own. The cars will have to stop. They will be stacking in the alley and parents will have to get out and walk their children in and sign them in to the school and maybe

chat with the teachers. So there is going to be a definite impact.

MR. PETERSON: I think you need to describe the kid operation.

MR. MONTAGNA: I would like to say the Board of The Ethical Society addressed this issue, and this is how we ended up seeing it. That unlike the high school, which has a specific beginning time and ending time and all of the traffic is literally, if you can recall high school students, within about a five-minute period. And we also had six teachers parking in the back. We are now talking about two teachers who will be parking directly behind the building. If you will notice in your packet this particular drawing. We have a parking area that runs along the alley behind the building. What we anticipate is that the drop-off times are about a two-hour block of time as opposed to about a three-minute block of time at the high school. A two-hour block of time, which means that even though invariably there will be a peak at certain hours depending on the staggering that different parents might choose, you are still talking about a car only every few minutes at best. And when they come, they pull into this long parking lot, which will have no

cars in it. So that cars are not stopping in the alley to let their children out. There is a sidewalk along this parking area at the edge of the playground marks here. So that the people will be coming down the alley, pulling into the long parking lot, which is off the alley -- the alley will be completely cleared. Then someone will be taking the child out of the car and walking them into the side doors of the building. Now it is possible that one or two other cars are in the alley at the same time. But frankly with that two-hour block, it is not even likely that there will be ever a back-up in the alley. That is how we saw it.

CHAIRPERSON REID: How many cars -- excuse me, how many cars does that parking area accommodate?

MR. MONTAGNA: Six. Six going this way. So that we figure that two cars at one time could easily be stopped, having room to pull in, stop their car and pull out again off the alley. And we doubt that there are going to be higher traffic than that, given the long period of time and the randomness by which the people will choose to bring their children. I mean, the children are dropped between 7:30 and 9:30 in the morning, unlike the high school which was

precisely at 8:20.

CHAIRPERSON REID: Well, let me say this as a mother and having dealt with taking my child to daycare centers, I have not ever seen an instance where there were no other cars. Typically, everyone is coming at the same time to drop their kids off and everyone is in a hurry. If it is raining or if there is any type of traffic problem, then you are going to have to have a stacking of those cars in the alley. This is realistic. You can't just assume that it is going to run smoothly and only two cars will come up there. I think that the more realistic thing to consider is the fact that those kids drive up, they try to get them out of those seatbelts -- I mean, those carseats and they are dropping their lunch or can't find this or can't find that. I think more realistically that you can expect that there would be a stacking in that alley. If you are talking about approximately -- let's say half, 20 cars. Two being able to -- that parking area can accommodate 2 or 3 at a time. And if half that many come up, then the other cars are going to be sitting in the alley waiting to come up into that -- queuing up, waiting to come into that area. I think that is a given.

MR. MONTAGNA: Well, I think that over a

two-hour period, you are not talking about that many cars as opposed to the high school, which was all at the same period. So I do think that it is going to be spread that.

CHAIRPERSON REID: The only way you do that --

MR. MONTAGNA: And even so -- even in --

CHAIRPERSON REID: Excuse me. The only way you could do that is if you designate with the parents that only -- give them time slots in which to bring their kids. That is the only way you can control it.

MR. MONTAGNA: We could. But if you think about the -- this is a preschool and it is for people who primarily are going to work. And different people have different schedules. So that is why the school is open from 7:30 in the morning until 6:00. Because people want to drop their children off according to their personal needs. So, therefore, there tends to be a natural staggering. We certainly could put an agreed upon staggering, but I honestly don't believe that is going to be necessary. This is not a kind of program that every single person gets their 3-year-old there precisely at 9:00 and picks them up precisely at 3:30. It is not that kind of

program. So I think there will be a natural staggering. But even in addition to that, if in fact there was a back-up, it would be a back-up in front of the Stansels yard. They have two parking spaces and a double garage. They are very supportive. They have written a letter in support of this. So the neighbor --

CHAIRPERSON REID: Who did?

MR. MONTAGNA: The neighbor who is the next-door neighbor whose house is immediately adjacent to us. And behind their house, they also have a parking area which is four wide. And so even if there is something like three or four cars backed up, it is going to be backed up behind their house. They are aware of it. We have had exactly this conversation. Because what I told them was that they were the neighbor that would be most affected. Because the playground is near their house and only their house. And this back-up that we are talking about, if it occurs, is going to be behind their house. And they were in support and have the letter here in support. So I am just saying I don't anticipate the problem of backing up in the alley, or do I anticipate the alley will be blocked for passage.

CHAIRPERSON REID: Okay, I have one other question before we proceed. This is the to the traffic engineer.

MR. PETERSON: Yes.

CHAIRPERSON REID: Are you familiar with the proposed DPW repairs or renovation to 16th Street -- the reconstruction that is going to occur early next year -- 2001 -- wherein 16th Street is going to be basically a zoo. Have you factored that into your traffic analysis?

MR. PETERSON: I am aware of it. The fact of the matter is that it is an inconvenience that is going to affect everyone, whether this site is occupied by this school or not. Therefore -- and it is a relatively short duration kind of thing. You know, it might last a year or two relative to the life of the proposed preschool. It is an increment of time that will cause grief and concern for everyone. After it is completed, we will have a normal operation.

CHAIRPERSON REID: Do you have any contingency plans for when that occurs?

MR. PETERSON: The school -- first of all, it is occurring in the very early stages of the growth of the preschool. Therefore, they have no

anticipation of being anywhere close to the maximum enrollment that they are requesting and which is currently permitted in the building until probably sometime well after that construction is completed. So in these early -- in the early years when that construction is ongoing, they are dealing with potentially a third to a fourth of that total enrollment.

CHAIRPERSON REID: Okay.

MR. PETERSON: They will have to, like everyone else, accommodate the issues that it generates. And you really can't predict what they will be until the plans are actually laid out as to what the traffic routings will be.

MR. GELL: May I ask Mr. Peterson if it is also possible that knowing the problems of 16th Street that many people will choose different routes and you won't have the same amount of traffic trying to use 16th Street for people that know that -- whether the preschool is there or not that they are going to have a serious problem getting through that intersection. But as I did say before, we don't think we will be up to full complement for the next few years, which should be well beyond the time that this work is completed. Perhaps you have some other

questions for Mr. Peterson.

CHAIRPERSON REID: Have you completed your presentation? I know that we kind of jumped in with questions.

MR. PETERSON: You've got the basics of the work we did and the evaluations we made. We will be available for questions.

CHAIRPERSON REID: Okay.

MR. GELL: I might just add one other thing. It is a two-way alley, and at that time, the time that this alley was put in, the District considered 15 feet to be sufficient for two-way traffic. That is not the case now for commercial alleys when they are established. They have to be 20 feet. But two cars can get through. Two dump trucks will not be able to get through -- will not be able to pass each other. And anybody coming out of their space who normally might have to do it at the time of the peak drop-off time in the morning, getting out of their garage and so forth, can ask for a gap in the traffic. We can alert parents to the fact that people may have to be getting out and wanting to turn left or even right if they want to go down the left side of the alley, but can turn left. So it doesn't mean that people have to wait for 15 or 20 minutes to get

out of their garages. That can be accommodated by people of goodwill who are looking out for each other. And because the traffic will be moving at a fairly good clip in the morning hours through the alley as kids get out and other cars move up, there will be opportunities for those gaps to occur. And that is something that we will be working out with those neighbors and obviously we will be in constant touch with them to find out if there are problems and certainly we will be very open for them to make those kinds of complaints.

MR. KUTT: May I add one thing?

MR. GELL: Yes.

MR. KUTT: If I may, I would like to add just one point, which is that at our current location, we have about 12 years of experience of working with our neighbors, and we have extremely positive relations with them. A big part of what we have worked out with them is the current traffic flow for arrival and dismissal procedures. And I make that point only to indicate our history and our willingness of working with the neighborhood. And so we have a lot of experience of dealing with the issues surrounding the various uses of the streets around our school. And so I just wanted to make that

point.

CHAIRPERSON REID: Okay. Thank you. Was that your last witness or did you have another?

MR. GELL: We will be glad to respond to any other issues that come up.

CHAIRPERSON REID: Okay, so that --

MR. KUTT: Mr. Peterson was suggesting one other additional point to be made, which was that at the peak hours of arrival and dismissal, we don't encourage our families to get out of their vehicles -- the parents to get out of the vehicles. We have the staff people go and take the children out of vehicles. Of course, parents always have the option of parking somewhere else and walking their child to the school. But if they are coming at the arrival and dismissal time, it is the staff that traditionally escorts them directly from the vehicle or brings them to the vehicle.

CHAIRPERSON REID: That was not -- wait a minute -- in the submission. Actually, I was looking for that. It did not specifically say that staff was going to be on hand to take the children out of the vehicles.

MR. GELL: I thought we had said that, but that --

CHAIRPERSON REID: Okay, I am looking at the second paragraph on your submission, Mr. Gell. And it says "the major difference between the prior and the proposed operation..." -- so forth and so on -- "the children attending this preschool will be dropped off and picked up in the alley behind the school."

MR. GELL: And on the June 27 prehearing statement under safety, I said that --

CHAIRPERSON REID: Under safety?

MR. GELL: The children will be met by teachers and aides and will be escorted --

CHAIRPERSON REID: I am sorry, I did not see that.

MR. GELL: That is okay.

CHAIRPERSON REID: Where is it?

MR. GELL: This is on page 2 of the June 27th --

CHAIRPERSON REID: Did that come in later?

MR. GELL: No, it came in on the 27th.

CHAIRPERSON REID: Okay. Well, I don't --

MR. GELL: But I can repeat it for you anyway. It says that they will be dropped off at the

alley entrance to the school, will be meet by teachers and aides and will be escorted into the school.

CHAIRPERSON REID: Okay. I am sorry I missed it.

MR. GELL: And then in the evening, children will be similarly escorted to the parents cars. So parents won't have to just park their cars and go in and get their kids. That would not work for anybody.

MR. MOULDEN: The parents won't be required to --

MS. RENSHAW: If I may, Madam -- go ahead. You go ahead.

MR. MOULDEN: The parents won't be required to sign the children in and out? In most daycare centers, they do that just for safety and just for control.

MR. KUTT: We have a process of doing that that doesn't impinge upon the arrival and dismissal process. If a parent is walking them into the school themselves, they would sign them in. If we are escorting them in, the staff people know the children and they indicate on the chart that that person has arrived safely and has been escorted in.

And that is done, in fact, to facilitate the whole process. So if a parent brings them in, they have to sign. If they are dropping them off, the staff person writes it down on the chart.

MR. MOULDEN: Okay. Another thing you might want to consider if you haven't recognized this -- maybe you have a staff person sort of be like a traffic control person.

MR. KUTT: You are looking at him.

MR. MOULDEN: In addition to helping the kids that could help move the cars along so they don't stack up too long.

MR. KUTT: Yes.

CHAIRPERSON REID: Okay, was that your last witness?

MR. GELL: I would just add one other thing, and you probably have seen it. We did appear at the ANC twice and we were told by Mr. Harriston that it is their policy where there is no opposition that the ANC does not write a letter. However, Mr. Douglas Sloan, who is the single member, did write a letter.

CHAIRPERSON REID: We have it.

MR. GELL: Explaining that.

CHAIRPERSON REID: We have it. And we are

going to move to the ANC after this segment, that is if you have completed your presentation.

MS. RENSHAW: Madam Chair, I --

CHAIRPERSON REID: Yes, I am going to open it up for questions.

MS. RENSHAW: Okay.

CHAIRPERSON REID: I just wanted to make sure he was finished.

MR. GELL: Yes, we are finished, I believe.

CHAIRPERSON REID: Okay. Thank you very much.

MR. GELL: I would like a minute after the opponents --

CHAIRPERSON REID: You have closing remarks.

MR. GELL: To perhaps bring back some rebuttal information.

CHAIRPERSON REID: Sure. Sure. All right, now the Board members would like to ask their questions.

MS. RENSHAW: I will start. Mr. Gell, I would like to get for the record the dates of those two ANC meetings and also the two neighborhood meetings that you had.

MR. GELL: I believe that is in the report, and if you will give me a moment, I will look for it.

MS. RENSHAW: If you would just cite it for us, please.

MR. GELL: Certainly. Yes, we -- on page 3. On April 4 and 11, we met with the neighborhood. And on meetings of May 2 and June 6, we made presentations at the ANC. And I might add that we also went to the ANC on April 4 to meet with some of the people and just give them a kind of advanced understanding about what we were going to be coming to them with. And that is when we had an opportunity to meet and talk with many of the people who had appeared here in opposition to the JBDS.

MS. RENSHAW: All right. Did any of the neighbors talk about the noise factor? I bring it up because we had an issue in my neighborhood where neighbors were objecting to playground noise. So did that come up in any of the neighborhood meetings and how did you deal with it?

MR. MONTAGNA: We have no neighbors adjacent to the playground except for one. And I particularly went to them and told them that they are the neighbor who would be most inconvenienced because

of the playground noise. The playground, however, is not near a house. I mean, there is nothing behind it and nothing to the side of it. It is adjacent to the backyard of the closest house. Between the playground and the house, there are three trees that are low and so are barriers. But I brought it up directly with the couple who lives next door and they said, "We like the sound of children. We have no problem with it." And as I say, they have given us a letter, which I believe you have received saying that they support the preschool and would like to go in there. So there is no other house I would say within earshot or eyeshot of the playground.

MS. RENSHAW: Well, I am aware that noise carries a great distance. It depends on the wind. It depends on the loudness of the voices. But if Mr. Gell would put his finger on where the playground is, we would be --

MR. GELL: The playground is approximately here. And this whole area here is open below the school here. And it drops down. So I think much of the noise that might be generated with the kids playing, and obviously there will be some noise, would tend to be directed this way to non-residential uses. There is nobody living on this side of the

alley except up here.

MR. MONTAGNA: And the other thing -- may I -- the other thing about the property is it slopes down from 16th Street. So this is lower than this. And all the houses are up here. The playground is down here at a lower level. The only house -- so this is like a lower level and this is a higher level. The only house that is even near is this house right here. And as I say, there are trees here and a building here. So they are blocked. But this is the neighbor who has written a letter saying that they have no opposition. But it is the only one that reasonably could because of this slope.

MS. RENSHAW: And what will be the playground hours and is the playground fully fenced in?

MR. MONTAGNA: The playground is fully fenced in according to the licensing that is required. But I think Andrew could answer that more about the hours it will be used than I could.

MR. KUTT: In terms of the hours of usage, occasionally in nice weather, the children are outside a bit in the morning, let's say between 8:30 and 9:00. And then they go out for recess around 12:30 to 1:30, let's say. And then they will go

outside typically in the afternoon, again weather permitting, usually for an hour or sometimes a little bit longer between the hours of let's say 4:00 and 6:00. And those are the students that are only in the after-care program, so that is quite a -- usually a significantly smaller number.

CHAIRPERSON REID: Any questions, Mr. Sockwell?

MR. SOCKWELL: Now at this time.

CHAIRPERSON REID: All right. Thank you very much. The ANC --

MS. PRUITT: Excuse me, Madam Chair?

CHAIRPERSON REID: Yes.

MS. PRUITT: I just wanted -- for clarification because I was out of the room, did they indicate the number of staff that was associated with the project?

MR. GELL: Mr. Kutt can speak to that.

MR. KUTT: The number of staff is pretty much dictated by the childcare licensing.

MS. PRUITT: Right.

MR. KUTT: And so --

MS. PRUITT: If you are going to have a maximum of 40 --

MR. KUTT: For a maximum of 40 students,

which again we probably wouldn't reach for two or three years, that would require a teaching staff of five and administrative staff.

MS. PRUITT: Five?

MR. KUTT: So a maximum total staff at any one point would probably be around six.

MS. PRUITT: Six. And where would they park?

MR. KUTT: Well, according to the plans that we have talked about with The Ethical Society, they would park in the spaces immediately behind the school building. Then that would leave the other spaces available for this pull-off that we are suggesting for the drop-off.

MS. PRUITT: Thank you.

CHAIRPERSON REID: I have one other question. In regard to trash, did you say that the kids would be provided with any food? Or are they bringing their lunches? Or how is that --

MR. KUTT: The students bring their own lunches to our program.

CHAIRPERSON REID: You don't provide any food on premises?

MR. KUTT: We provide just snacks. Snack in the morning and snack for the after care. But we

don't provide food -- hot food.

CHAIRPERSON REID: All right.

MR. KUTT: That is too many headaches.

CHAIRPERSON REID: Okay. But you have made provisions for your trash pick-up?

MR. MONTAGNA: We have a dumpster which is out by the alley and of course we have a commercial company that handles that. And I am pretty sure that the toddlers will not generate as many potato chip bags as the teenagers did, and I am frankly looking forward to those days.

CHAIRPERSON REID: Okay. Thank you very much.

MS. RENSHAW: Madam Chair, we did not inquire about weekend use of the property. Do you plan to use the property on weekends for events or --

MR. KUTT: Well, occasionally we may have a parent workshop. That is something that is part of our program. As I mentioned earlier, the partnership with the parents. We might occasionally do that in the evening or on the weekend. But from talking with Mr. Montagna, I don't think that it would be any different from what goes on now in terms of the traffic flow or the usage of the building.

MR. MONTAGNA: We use the building every

day and every evening. There are a lot of activities. And we already run parent programs, et cetera. So, therefore, I would say that if he is running a parent program on a Saturday, it would replace a parent program or some other program we are already reading on a Saturday. So I don't anticipate there would be -- there would be zero change from the weekend or evening use, which is already reasonably active.

CHAIRPERSON REID: Evening use goes to what time?

MR. MONTAGNA: Usually about 9:30, but we have an 11:00 curfew that we enforce and we have staff all the time there to enforce that. In fact, Ms. Hackney, whom you will hear from, actually originated this about ten years ago in which we installed a curfew and an on-staff person to enforce not only our ground rules but the curfew.

CHAIRPERSON REID: A curfew for who?

MR. MONTAGNA: For anyone using the building.

CHAIRPERSON REID: You have meetings going up to 11:00 at night?

MR. MONTAGNA: No, we do not allow a meeting to go after 11:00. I would say mostly it is

9:30.

CHAIRPERSON REID: Up to --

MR. MONTAGNA: Like last year -- last night I had an executive committee meeting designed to end at 9:30 and they did end at 10:50, but that is considered a bad meeting. So it does happen, but we don't allow our building to be used --

CHAIRPERSON REID: How often do you have these evening activities?

MR. MONTAGNA: We have an evening activity virtually every day.

MR. SOCKWELL: Madam Chair, I don't think that your question is germane to this hearing.

MR. MONTAGNA: No, it is not part of the high school. It is part of our --

MR. SOCKWELL: Because this is an existing activity that they are doing by right.

CHAIRPERSON REID: No, I am not asking -- thank you, Mr. Sockwell. I am not asking in regard to the existing. I am asking in regard to that that is anticipated when and if this application is approved.

MR. MONTAGNA: I don't anticipate --

MR. SOCKWELL: Your question wasn't raised that way. That is why I raised my question to your question.

CHAIRPERSON REID: Oh, okay. Well, let me clarify it. I don't know if you -- did you understand my question?

MR. MONTAGNA: I guess if I understand it correctly --

CHAIRPERSON REID: My question is in regard to the application that we are considering at this time. And in answer to my question, you said that the intensity would be the same as it is now.

MR. MONTAGNA: Agreed.

CHAIRPERSON REID: However, that doesn't tell me the degree of intensity. So only as it pertains to what we anticipate the activity to be if the application is approved is what I would like to have you respond to. And I thought you were doing so.

MR. SOCKWELL: Would you put it in the context of the daycare operation only?

CHAIRPERSON REID: Well, the school is no longer going to be there.

MR. SOCKWELL: Right. But the building is still used by The Ethical Society.

MS. PRUITT: It is a church in a matter of right.

MR. SOCKWELL: Right, they have a matter

of right use there.

MR. MONTAGNA: We are a church and we were running a --

MR. SOCKWELL: You need your question to be coordinated around what they are proposing as opposed to the things that they do as a matter of their normal church business. It wasn't clear and I just want to make sure that it is clear for the record.

CHAIRPERSON REID: Okay. As it pertains to the school only -- I am not asking you to respond in any other way other than what is before us in this application. The activities that you have at night -- and I guess I was a little confusing. You were referring to everything that you do there, which I am not asking you for. As it pertains to -- we wanted to get an assessment of the intensity of use if this application is approved. So tell me how often and for how long do you anticipate their being after-school activities?

MR. KUTT: Could I answer that, Don?

MR. MONTAGNA: Right, Mr. Kutt can answer the question as to how often the school will use the facilities in the evening. The point I was trying to make to you simply was that the facility is already

on a first-come/first-serve basis used for workshops. And so, therefore, in terms of the use of the building, the level of activity will not go up at all. Instead of having a parent group run by me, there might be a parent group run by him. But it still will be the same activity.

MS. PRUITT: Madam Chair?

CHAIRPERSON REID: Excuse me.

MR. MONTAGNA: But he can answer the question as to how often he is likely to want to run an activity.

MS. PRUITT: Madam Chair?

CHAIRPERSON REID: Just a moment, please, Ms. Pruitt. When you say workshops, you are referring to the general use workshops, right?

MR. MONTAGNA: Yes. We --

CHAIRPERSON REID: Okay, I understand now. I think I have got a clearer picture now.

MR. MONTAGNA: Okay.

CHAIRPERSON REID: Ms. Pruitt?

MS. PRUITT: I was going to say it may be helpful if the school could identify the number of events they anticipate having in a year or what they normally have now, and that may help you understand the level of intensity associated strictly with the

school.

MR. KUTT: Madam Chair, usually I would say on an average I would say about two times a month. Let's say we would have a parent workshop in the evening or a lecture or something of that nature. It could be a little bit more than that in a given month. It may be fewer than that in a month. But I think that is about the average. And just as we do at our current site, we work out that schedule with the church that we currently exist in at our main campus, and we would do the exact same thing with The Ethical Society, as Mr. Montagna was saying. So if we were going to use the auditorium, for instance, for a lecture, then we would have it for that night and it wouldn't be able to be used by someone else.

CHAIRPERSON REID: And on Saturdays or weekends?

MR. KUTT: Not that often do we have things on Saturday or the weekend. We have very dedicated teachers and they may be working in their classrooms. But maybe three or four times a year there might be something on a weekend. But that may be something like coming to clean up the playground or to put new mulch down or to plant flowers or something like that. So it is not --

CHAIRPERSON REID: Okay.

MR. KUTT: Mr. Gell is advising me to mention one other thing. We do have two or three festivals that happen during the course of the year. One is United Nations Day in October, one is the Festival of Lights in December. Those happen during the school day, and we do invite parents to come to those events. And we do invite our neighbors as well. We have a tradition of doing that. And at our location, we have many neighbors that attend those events.

CHAIRPERSON REID: That is during the school day?

MR. KUTT: That is during the school day about two or three times a year.

MR. SOCKWELL: With your evening meetings, what is the typical cut-off time for such evening meetings?

MR. KUTT: Well, given the fact that most of the attendees are parents, we try to start at around 7:00 p.m., and we try to end around 9:00 p.m.

CHAIRPERSON REID: Okay. Any other questions? Okay, now in regards to the ANC, as Mr. Gell has said, we have not received a letter from the ANC. Nonetheless, Ms. Renshaw had him to indicate

for the record when he did meet with the ANC and we got a general idea as to the response. They have not sent a letter, which is usually indicative of the fact that they have no opposition. That is a very strong ANC, and we know that if they did, they would be here in full force. So there is on great weight. But there was a letter from a single member district representative. Ms. Renshaw, could you kind of summarize that?

MS. RENSHAW: Yes. The letter from Douglas Sloan, who is the Commissioner for A-01 is dated June 23. And he indicates that he is the ANC Commissioner for this particular district in which The Ethical Society is located. And he indicated that the school and the Society met with the ANC to describe the nursery school proposed and the fact that the ANC does not take any action on such issues unless there is substantial community opposition. And, therefore, since there was no substantial community opposition, there would not be a letter from ANC 4-A in the files. And he expressed his personal view that he looked forward to the BZA granting special exception to the applicant. And that is from Douglas Sloan.

CHAIRPERSON REID: Okay, thank you very

much. There were no other government reports from Office of Planning or from Department of Health. Usually we do get one from them, but we did not receive one in this instance, I don't think. All right, then persons or parties in support of the application please come forward? No one? Seeing none, persons or parties in opposition to the application please come forward. And how many people do we have here in opposition? Two who wish to testify? All right. Give your name and your address, please.

MS. LIGHTFOOT: Good morning, my name is Cynthiana Lightfoot. I am at 1609 Calmea Road, N.W.

MS. HACKNEY: My name is Ethel Janette Hackney. I live at 7742 16th Street, N.W.

CHAIRPERSON REID: Okay. Excuse me, who is going to go first?

MS. LIGHTFOOT: You have your paper ready.

CHAIRPERSON REID: Okay, Ms. Hackney, you go ahead. And then, Ms. Lightfoot, before you speak then give your name and address so the reporter will have the record straight.

MS. HACKNEY: Before I do my formal presentation, may I respond to a few things that were

said earlier today? Mr. Montagna referred to a long parking lot, but he finally cleared it up and said it would accommodate two cars in stacking to discharge students. So I wanted to make sure that the Board does not think there is a long space where cars can pull out of the alley. Another thing I would like to point out, he has a letter --

CHAIRPERSON REID: All right, now if you want to use the chart, you have to speak into the microphone.

MS. PRUITT: Excuse me, ma'am, we have a portable microphone.

CHAIRPERSON REID: The hand microphone. Is it over there?

MS. PRUITT: I think you need to turn it on.

MR. SOCKWELL: Just speak into it and let's see if it is on.

MS. PRUITT: Here is a Lavaliere.

MS. HACKNEY: Mr. Montagna refers to a letter from Ms. Jackson saying that it would not be a problem to her. I would like to point out that this is Ms. Jackson's house right here, at the corner of 16th and Calmea. She can get in and out of her property without going by The Ethical Society. So I

can definitely see why she would not be caught in this stacking proposition here. The Stansels live right here. That is the other neighbor who said it would not be a problem. Ms. Stansels says that she goes out her front and catches the bus. She doesn't drive through the alley. So cars stacked in the alley would not be a problem to her either. He mentioned having talked to Mr. Bartonelli about the problem -- any potential problems. Mr. Bartonelli lives on Juniper Street, which is way down here. He is certainly not within the 200 foot zone. He would not be -- there is Jonquil in-between. Here is the site up here. Here is Jonquil. Mr. Bartonelli, whom I know, lives on Juniper Street. He would not be involved in this traffic in our alley. And I think it is a little confusing to bring up these people who do not have a problem with it.

CHAIRPERSON REID: Where do you live?

MS. HACKNEY: I live right here, 7742 16th Street. I am 50 feet from their property. When he says there are no houses near the playground, he discounts I am only 50 feet from it. This is my house right here. That is the Stansels' house. That is their property. I just wanted to clear those up on the map so that there would not be any confusion

about that.

Concerning plans to have the traffic enter through the alley from the south, are they now taking the position that they can determine which way I can go through an alley where I live? I pay taxes and I have since 1943. About the traffic being able to turn left on 16th Street when the light is red at Calmea Road. Many times the traffic is so heavy southbound coming into town that the traffic never really clears that intersection because of the cars that are slowly coming down 16th Street do not all get through. They talk about the two-way traffic going into Jonquil. Jonquil is a relatively narrow residential street. It is not an arterial street, and it could easily become clogged with these cars, some going this way and some going that way. He said something about they could park on 16th Street in the afternoon on the south -- on the west side. Of course, you know 16th Street is an arterial street and there is no parking during rush hour on either side of 16th Street.

In terms of serving the neighborhood, I am trying to figure out who they serve. There is no preschool age child in my block. I checked with Mrs. Baytips, who lives on Jonquil, and there are no

preschool children on her block. I checked with Mrs. Lightfoot, who lives on Calmea Road, and she says there is one preschool child on her block. I don't know how extensive this neighborhood is they propose to be serving, but it is certainly not the neighbors who are immediately adjacent to the property.

And people like me who live there, I have lived there since 1963. Our children are long grown and gone. We don't have preschool children in the neighborhood. Those are things I would like to respond to that were said before.

Now for my presentation here. I oppose the operation of the nursery school at The Ethical Society. This site is totally unsuited for a school. The school would bring additional traffic and parking to an area which is already overburdened. The three to six-year-olds will have to be brought into the school, escorted inside, while a car waits in the alley. This process will be reversed at the end of the day. The facility, therefore, needs but does not have space where cars can drive in, park or stand and drive out without paralyzing the neighborhood or trapping the residents in their garages. This site fronts on 16th Street, which has no parking or standing during rush hour. It is not

on a corner where it could be accessed from another street, but rather it is between two residences in an R-1-A neighborhood. Drop-off and pick-up hours can be long and irregular. Unlike regular schools, which have a stated opening and closing time, this school will offer before and after-school care. This makes it highly unlikely that staff will be stationed outside to receive and dismiss students, thus shortening the stay of the parents in the alley. Something has already been said about that -- stationed during that whole long process. Those of us who live here must park our cars in our garages, which are entered from the alley, because of parking restrictions on our street. Those who come to render services to us also come to us through the alley. We have been greatly inconvenienced over the years by people utilizing The Ethical Society facility, standing in the alley, parking in the alley and even parking on our own private property.

The students from the high school, which just closed this site, obstructed the alley in the morning, at lunchtime, and at dismissal time. Despite the name of The "Ethical" Society, they have been not particularly good neighbors. Their people park in the alley with such frequency that the

residents asked the street to erect a no-parking sign. This sign was completely ignored and practically knocked down by the cars parking against it. On one occasion when I called the Office of Planning complaining about cars parked in the alley, the woman who answered the phone said they had nowhere else to park, as though that gave them license to violate city parking laws. Many other times I have come home or looked out my window, to find cars or strangers parked in my private parking pad in my rear yard. When I manage to see some of these trespassers, they gave me such excuses as I am teaching a class at The Ethical Society. I am going to a program at The Ethical Society. I am picking up my child at The Ethical Society. None of them seemed to realize they were completely out of bounds.

A few years ago, a group of neighbors invited Mr. Don Montagna, the leader of the Society, to meet with us to discuss problems with parking and the almost nightly activities at the site which made it difficult for friends visiting us to park near our homes and for the loud music late at night. He was asked directly if they rented the facility for parties, and he said no. He was asked directly if they rented it for wedding receptions. Again, he

said no. He said only their members use the facility. Shortly after that meeting, I saw an advertisement in the Washington Post Magazine for their wedding services, and they are still advertising. I have here as exhibits today a copy of the Washington Post Magazine for June 18, 2000, July 2, 2000, and July 9, 2000, in which they all carry ads from The Ethical Society. And these are here if you would like to see them.

One can only wonder why they feel it necessary to contact their members through the Washington Post ads. Mr. Montagna has been less than forthcoming in presenting his case to the neighbors and in the message he left on my answering machine. He stated that the nursery school would be less of a problem to the community than the teenage high school students had been. But that if this application is denied, he would bring another high school, since the facility is zoned for a high school. I feel that Mr. Montagna knows that this block is zoned R-1-A, and that that school existed as a special exception and that any other school which wants to come there must also go through the zoning process. I feel the neighbors are being treated to misinformation and intimidation. If you don't take this, I will put

something back in here you like even less.

We were also told that this school will serve the neighborhood. Well, this block which will be damaged the most by the school, there is not a single child of nursery school age. Please deny this application. We are inundated with schools. We have the Lowell School on the same square on Calmea Road and 17th Street and the Jewish Primary Day School coming for a year in the adjacent block. We know that the city regulations gives churches the right to occupy facilities in any zone as a matter of right. We ask you, though, please don't allow these churches to come into our neighborhood and set up schools as a de facto matter of right. These schools do not benefit the neighborhood. They only benefit the churches, giving them a source of income from renting their property. None of this income flows to the city in the form of taxes. All of us on this block are homeowners and taxpayers. Please help us reserve the quality of our neighborhood and the value of our property. Don't allow this area to become a dumping ground for every school looking for a home.

And with this I have brought statements from three neighbors who live in that -- I am only talking about neighbors who live within that alley

that would be obstructed by this activity. I have statements from neighbors. Would you like that I should turn those in? And I also have copies of my presentation if you would like me to leave those. And thank you for the opportunity of appearing. And would you like to see these Washington Post Magazines?

CHAIRPERSON REID: The Washington Post Magazine articles pertain to the --

MS. HACKNEY: I know that.

CHAIRPERSON REID: Wait, wait, wait. The Washington Post articles pertain to the other uses of The Ethical Society. It doesn't pertain to this particular application, does it?

MS. HACKNEY: No, but my point was --

CHAIRPERSON REID: Speak into the microphone.

MS. HACKNEY: They are bad neighbors and they don't do what they tell us they are going to do. Mr. Montagna told us he doesn't rent out, but I was proven that he does. So I don't trust what they say they will do in relation to this school because they have not kept their word in relation to other activities there. That is the connection I make.

MR. SOCKWELL: Madam Chair, it appears

that that information would be supportive to her testimony and should be included in her submission.

CHAIRPERSON REID: Okay. Ms. Pruitt had earlier stated to me that --

MS. PRUITT: Excuse me, ma'am --

CHAIRPERSON REID: That that should not be part of it. Ms. Pruitt, should it -- can it -- can it or cannot?

MS. PRUITT: The Board ruling -- I do believe that while I understand Ms. Hackney's concerns and that they may be relevant and very true issues, the school isn't there yet, so you really should only be dealing with evidence that deals with the school. The school would be the person who -- the entity in which these restrictions or anything should be put on. That is just my opinion. If the Board wants to open it up and have it set in, that is fine. I am just voicing staff's opinion on that.

MR. SOCKWELL: May I suggest that in that the School or the Society has met with the community on numerous occasions regarding their operation of the facility in general, and that the objection is based upon the belief that the facility may not be operated as specified in a BZA order, I think that there is some relevance to that supportive

documentation. But I would leave it up to my fellow Board members to make that determination.

CHAIRPERSON REID: Let's defer to Corp Counsel.

MS. SANSONE: Madam Chair, I would agree with Mr. Sockwell on that. It may not be relevant to the nursery school's special exception, but it is relevant to issues such as credibility. And as Mr. Sockwell, mentioned, I think we can attach it to the statement of the witness.

CHAIRPERSON REID: Very well. Thank you.

MS. HACKNEY: Thank you. Would you like me to leave these?

CHAIRPERSON REID: Yes, give them to staff. Okay, Ms. Lightfoot?

MS. LIGHTFOOT: Good morning again. My name is Cynthiana Lightfoot. I live at 1609 Calmea Road, N.W. I came here today to talk about safety of pedestrians, of the traffic flow, and primarily that is it for today. My concern initially will be two-part. One is I am seeing that the exit access is out Calmea Road in both directions. As people know or don't know in the morning, even though Calmea Road is designated as no parking on each side, there is parking. It is not enforced by police, but people do

park. So what becomes normally a relatively safe access across town, and it is a major intersection from east to west, with cars parked on either side becomes a dangerous street in which people speed through. There is only a stop sign at the very bottom of the hill. Where you have a large group of children who walk back and forth to school, whether it is across the street to the Lowell School or whether it is to Shepard. You have seniors who walk and people who enjoy and use the park. Access out of either of those alleys, whether it is coming westerly -- well, no, coming up northerly or southerly becomes difficult. Even more so now with the addition of traffic patterns from the school. We also have in the morning all our refuge trucks picking up and dropping off, et cetera, in those small alleys.

CHAIRPERSON REID: Excuse me, Ms. Lightfoot, where is your house?

MS. LIGHTFOOT: My house is right here.

CHAIRPERSON REID: Okay.

MS. LIGHTFOOT: And in the morning, it is very difficult for me to walk my ten-year-old son across the street because of the issue of cars driving quickly, as fast as they are. And I have watched on numerous occasions where children have had

to dart out of the way of cars who don't stop for them.

CHAIRPERSON REID: There is a light at the corner.

MS. LIGHTFOOT: There is a light on the corner, but you have children who either are coming through -- still have to come across the alleys here, or because the next crosswalk may be down upon here have to dart through. Also, there is a reason for the delayed light here, of course, which is to allow children to walk through the crosswalks here. There is no gap down here in the morning for people to come back through on this street as indicated by the expert because of the flow of traffic here. In fact, people are trying to get in and out.

We are not even addressing the issue of the major construction on 16th Street. People are still going to be using 16th Street. They have to for some of them. For others, there is only Georgia Avenue and only part of 14th Street after Walter Reed. So this really isn't going to address our future problems in traffic and safety. There are multiple accidents that occur on this corner because people try to get through that light, run that light, et cetera. When the high school was there, the issue

was children did come and they parked on the street. But they parked. They were their own transportation. You are now talking about children being brought in and dropped off. As we all know as parents, you can't just drop off your child in the morning. You have to soothe them or comfort them and get them prepared for school. That is not addressed. If I want to talk to my teacher, I am going to park on Calmea Road. That is the most obvious and closest spot for me to do for a quick pick-up. To think nobody is going to do that is not probable and it is not going to occur. What needs to be done is to address this segment over here, either with additional staffing to guide and direct traffic on either side, but that hasn't been addressed.

So certainly those are my main concerns are children safety. Now we have hundreds of children who are going to these elementary schools. We have issues again with Lowell School and their traffic pattern, as we all well know. We have traffic patterns down here that have to be addressed with the probability of another school coming in. And certainly at this point I think we need to have a continuance or a denial until these are addressed in the appropriate fashion. Let's not address them

helter skelter when something occurs that is tragic among the children who are walking or it directly impacts those people in the surrounding areas. Whether you live 200 feet or 1,000 feet, this directly impacts the citizens of this area and those people who are going through it.

MR. SOCKWELL: Mrs. Lightfoot, one question in particular. It pertains particularly to the crossing of Calmea Road by children. Admittedly, the block is reasonably long between marked crosswalks. But the particular issue of children darting out between parked cars and doing those things that are not proper as opposed to crossing at the intersections, at the marked intersections, is an issue that is prevalent with virtually any neighborhood and is one of good training and obedience more than anything else. If they are trained well and they don't obey, they are going to get hit if they run out there. And unfortunately, children who are too young shouldn't be allowed to play unsupervised along Calmea Road anyhow.

MS. LIGHTFOOT: I don't think obedience plays so much a factor because there are adults who don't use the crosswalk. But even using the crosswalks, we are talking about an alley that

doesn't have a stop sign per se that is used effectively.

MR. SOCKWELL: And most D.C. alleys --

MS. LIGHTFOOT: Don't have them.

MR. SOCKWELL: Don't have stop signs.

MS. LIGHTFOOT: But you are looking at this being used almost as a secondary road.

MR. SOCKWELL: All right.

MS. LIGHTFOOT: And that is the issue there. And unless you have something, whether it is a school guard or you get your police there, you are going to have issues. And it is not just children who do that. Again, I work in a specific area where I deal with children's injuries and adults. Adults jaywalk. Recently we had that accident unfortunately on Calvert and Connecticut Avenue. We talk about speed. We talk about impatience. That has nothing to do with age necessarily. It is the nature of the traffic that is occurring and the change in patterns. We haven't even addressed the Silver Spring development and the increase in traffic congestion being brought down into our neighborhood as well. We have a multitude of problems. We have to address this in an appropriate manner.

MR. SOCKWELL: Well, admittedly there are

a lot of things happening, and I can certainly attest to the fact that Calmea Road is driven much more quickly. Myrtle Street is driven very quickly. People come up and down Calmea Road a lot faster than they ought to. And even through the other neighborhood streets, the residents themselves drive very fast along those streets, not just people from outside of the neighborhood. There is less respect for some of those very narrow streets such as Myrtle than one might believe.

MS. LIGHTFOOT: Exactly.

MR. SOCKWELL: And I agree with you. But the issue of -- you made several points.

MS. LIGHTFOOT: We are compounding an already critical issue.

MR. SOCKWELL: The parking issue. You said parents will park on Calmea Road. Currently students from the high school park apparently on Calmea and the other streets, whether they have zone stickers or not, I don't know. And I certainly don't know where the children are coming from that will occupy this proposed use. But maybe the applicant can provide some information on that, which I don't think was present in their testimony.

CHAIRPERSON REID: I think that the

issues that are raised by Mrs. Lightfoot are very serious issues and should be taken as such. Because being a resident there and having firsthand knowledge of the traffic and the activity there in front of her house, I think that it is great for her to have come here today to point these things out. They may not be something that the applicant is aware of -- may or may not. Nonetheless, I think that her having given that testimony, then that intersection between the alley and Calmea, that junction, should be closely looked at by the applicant and then to proffer to us some way of mitigating that impact. Because if in fact -- and Mr. Sockwell's point was well taken as far as the fact that the kids should not be, but nonetheless that is what -- the difference between what they should do and the reality are two different things. And if in fact they are -- and we know that Lowell School is there and Shepard is there. There are a lot of kids there. And she is seeing those kids coming back and forth. And if you have additional traffic coming out of that alley, then something should be done to mitigate that right now as opposed to waiting until someone is hit or there is an accident there. And I think that the suggestion to perhaps -- I don't know if you can request from DPW

to put a stop sign there so they would have to stop. And to have someone -- a staff person there designated there at that juncture to ensure -- to better ensure that you don't have too much congestion or to kind of monitor the flow of the traffic would certainly go a long ways as far as giving the community comfort. I think that that is something that if that is addressed, Ms. Lightfoot, would then that give you some satisfaction as far as this application? I know that you truly don't really want to have it up there in the first place. But in a compromise vein --

MS. LIGHTFOOT: Oh, absolutely.

CHAIRPERSON REID: If in fact there was some proffer of mitigation of that particular issue that you raised of coming out of that alley onto Calmea, would that be satisfactory to you?

MS. LIGHTFOOT: Certainly that would address some of the safety issues I have. And this is about safety for our children primarily, and that hasn't been addressed by the particular applicant.

CHAIRPERSON REID: Yes, I think it is an excellent point and I think it very well should be. It is not just safety as far as the community is concerned, but safety in general.

MS. LIGHTFOOT: For everybody.

CHAIRPERSON REID: In that we have children -- quite a few children involved. And you are right, those parents who have to go jot in to see a teacher for whatever reason are going to park on Calmea. And so you are going to have that with the people trying to park as traffic is going by. So seeing this, you don't have to be a rocket scientist to figure out that there should be something done going in rather than -- to be proactive rather than reactive.

MS. LIGHTFOOT: Exactly.

CHAIRPERSON REID: I certainly agree with you.

MS. LIGHTFOOT: Thank you very much.

CHAIRPERSON REID: Sure.

MS. RENSHAW: I would like to ask both Ms. Hackney and Mrs. Lightfoot if they have talked -- has there been any discussion in your community about the impact of this DPW construction of 16th Street -- reconstruction of 16th Street? Because my fear is that these alleyways on both sides of 16th Street are going to become thoroughfares for cars wanting to bypass the construction activity. It is a natural for any commuter in the know. They are going to turn at

Calmea, enter the alley system to go south. So --

MS. LIGHTFOOT: Well, they can actually enter the alley system before Calmea and just proceed for a long period of time. That has been -- it has been an issue and has been one for a long period of time.

MS. RENSHAW: And what is your community doing to get to DPW and have some kind of direction out of DPW as to how the Department is going to handle this during the reconstruction period.

MS. LIGHTFOOT: I am not the best person to ask that to. Probably certainly Douglas Sloan would be able to answer that and I am going to go and speak to him --

CHAIRPERSON REID: Who is he?

MS. RENSHAW: He is the ANC Commissioner.

MS. LIGHTFOOT: The ANC.

CHAIRPERSON REID: I thought it was Pearson.

MS. RENSHAW: No, no, he is the chair.

CHAIRPERSON REID: You mean single member district? Oh, okay. Right.

MS. HACKNEY: I would second what Mrs. Lightfoot has said. That alley is already used as a semi-thoroughfare. People come through that alley to

avoid the light at 16th and Calmea now and it is only going to get worse. They start further down -- further south and duck into the alley and just drive on down through the alley. And our alley was recently paved, so the potholes are gone, so it is more inviting now as a thoroughfare than it was before. So it is used that way now.

MR. SOCKWELL: So, Ms. Hackney, you are saying that people just dart up the alleys and don't stop at the streets and cut straight out? Is that what you are saying?

MS. HACKNEY: I didn't say -- they might slow at the streets. I am saying the alley is used now as a street. We, of course, use it --

CHAIRPERSON REID: Like a shortcut?

MS. LIGHTFOOT: Exactly.

CHAIRPERSON REID: Ms. Hackney, the issues that you raised are some of the things that we also took note of and had some concern about during the presentation. The applicant does have an opportunity to come back and to give closing remarks in rebuttal. And in that you are not a party in this case --

MS. HACKNEY: Why am I not a party? I sent a letter and asked to be a party.

CHAIRPERSON REID: You did?

MS. HACKNEY: Yes, I did. I wrote a letter and sent it in.

CHAIRPERSON REID: We don't --

MS. HACKNEY: And it was received because they --

MS. PRUITT: There is a letter in the file, Madam Chair. It just says -- well, it is not as explicit as requesting party status.

CHAIRPERSON REID: Well, no, we have her letter. We have her letter right here.

MS. PRUITT: That is what I am saying.

CHAIRPERSON REID: Wait a minute, we have a letter. But I didn't see her requesting party status.

MS. PRUITT: Well, it doesn't say that directly. That is what I am saying.

MS. HACKNEY: Well, I thought I did. I requested to participate. I thought I had filled out -- answered all the questions on the back of that form or that letter that had been sent.

CHAIRPERSON REID: Okay, in your letter -- and I have it right here -- it did not -- well, for party status, there is a set -- there is set criteria that you have to address to give us information on

and request thereto, which you did not do. There is no request for party status contained in the letter that you submitted to us.

MS. HACKNEY: Oh, I said participate. I thought that was the same thing. I requested to participate.

CHAIRPERSON REID: No, it is a little bit more involved. I hear that, and participating is what you are doing right now. And that is a different thing from party status. Party status is when you have an opportunity to cross examine and also to receive materials that are submitted by the applicant and any other party in the case, which you did not have that as such. That is why I raised that because of the level of concern that you have demonstrated here today. Since you did not have party status, I wanted to hear from you.

MS. HACKNEY: Well, it was a matter of misunderstanding on my part. Because I looked at the letter that I had received from you --

CHAIRPERSON REID: I understand that.

MS. HACKNEY: And I thought I had supplied all the information needed.

CHAIRPERSON REID: I understand that. You know, in hindsight -- well, I didn't even know

that you were going to be testifying in opposition, because I would have maybe tried to get a further clarification. Nonetheless, that being the case, then is there anything that you feel that you would like to suggest that would help to mitigate some of the adverse impacts that you have presented here today or that you have aired here today? Or not? If you feel that there is nothing --

MS. HACKNEY: I can't think of anything offhand. The thing I am most concerned about is what I have dealt with all along, traffic and parking. And anytime there is anything going on at the facility, be it the school or other activities, there is parking in the alley.

CHAIRPERSON REID: Okay.

MS. HACKNEY: This is a given. It stays there.

CHAIRPERSON REID: All right then perhaps we --

MS. HACKNEY: And I think I have made the points.

CHAIRPERSON REID: Perhaps we can make some suggestions or discuss some things that we have dealt with in similar types of situations that may give you some satisfaction -- may. I am not saying

that we are magicians here, but we will try. We will try to do what we can.

MS. HACKNEY: Thank you very much.

CHAIRPERSON REID: Thank you.

MS. LIGHTFOOT: Thank you.

COMMISSIONER PARSONS: Ms. Lightfoot, I just wanted to clarify something. I gathered from your testimony that the high school wasn't as offensive as you think this may be. Did I catch --

MS. LIGHTFOOT: Oh, no. I found the high school extremely offensive. This is the -- it is being given to us as the lesser of the two evils. I love preschools. I love education. I didn't like these high school students because they trashed and smoked drugs and were just miserable neighbors and issues were not addressed in regard to them. They trespassed, and I was very uncomfortable with having them. And the situation was not addressed in an appropriate fashion by the administration.

COMMISSIONER PARSONS: Thank you. That clarifies it for me.

CHAIRPERSON REID: Okay. Mr. Gell, closing remarks? Closing remarks by the applicant?

MR. GELL: Madam Chair, before I make very brief closing remarks, would it be appropriate

to respond to some of the statements that were made? I think Mr. Montagna should have an opportunity to give his perspective on the conversations that he had with Ms. -- I have forgotten her name -- Ms. Hackney. And to explain what The Washington Ethical Society's policies are with respect to weddings. And then I would like Mr. Kutt also to address a couple of issues.

CHAIRPERSON REID: All right.

MR. GELL: Thank you.

MR. MONTAGNA: First, the entire motivation from anybody who has ever been involved in this is to be lighter on the neighborhood than a high school. And I believe that all of the evidence does indicate that this school will be a nicer thing for the neighborhood and better serve it. And the neighbors directly next to us and everyone who has ever attended one of our meetings has enthusiastically agreed that they prefer this.

I think when you look at the traffic report in there, the traffic in the alley ranges between three and eight cars per hour, with eight cars being the peak. So we are not talking about currently heavy use, and that is in your packet.

As a church organization, we can only use

our building for activities that we sponsor that are non-profit, that are religious, educational and cultural. And that is all we use it for. In answer to the question about weddings, what I said -- and it is our policy -- is that we only allow wedding receptions if we ourselves do the wedding. We would never allow a party or reception in the building unless we are performing the wedding. Is it a fact that we offer ourselves in the Washington Post Magazine on some months as a place where you can be married? Yes. We do not offer the building to be married. What it is advertising is our services to do weddings. Something like -- I don't know the exact numbers -- but it is in the 90 percentiles of them are not held in our building. It is only when a person requests us to do the wedding and would like to do it on our site that the wedding is held. Under no time ever do we let the building be used by an activity that we do not sponsor, that is not religious, education or cultural or non-profit. And I want to say that one of the things I am proud of is that the neighbors very much are appreciative of our responsiveness. That if when you have teenagers -- in fact, at our meeting they acknowledged that as teenagers, these were rather good teenagers. The

fact is that teenagers walk up and down the streets to smoke cigarettes because we don't allow it, and that we cannot control that all the time. And yet I think the neighbors found when they call us, we respond. I want to say that neither of the people who testified have ever called me. I have been there for 28 years and I respond totally and thoroughly to anyone whoever has a request, and the two people here today have never in 28 years called me.

CHAIRPERSON REID: Okay.

MR. GELL: And Mr. Kutt has some comments to make.

MR. KUTT: Just three very brief comments I would like to make. First is regarding traffic and parents dropping off and bringing their children and picking their children up. We, as I mentioned earlier, have had to work out a very carefully constructed plan for our own parents and the procedures we have at our current location, and that was done in conjunction with work with the neighbors and with the Chevy Chase Council and so forth. The point I want to make is that once we have established a plan, our parent community has been very, very supportive of following whatever plan it is that we have for arrival and dismissal procedures. And if

someone doesn't follow the plan, then they have to talk to me about it. Because my responsibility is not only to my parent community, but to the neighbors as well. So my point is that our parents are extremely responsive to whatever plan we have in place, and that they do follow the procedures that we lay out in our handbook and in our meetings at the beginning of each year. I mentioned that it was done in conjunction with the neighborhood.

Secondly, I just wanted to make a point about safety. I am personally a stickler for safety. We have a 12 year track record of arrival and dismissal procedures as well as field trips and so forth, and we have an extremely positive safety record. And again, that is the result of educating the parents and working with them and also hearing parent concerns and being responsive to them. So I just wanted to mention in terms of general safety and issues surrounding safety that we have a commitment to that and also a strong history of that.

And finally in terms of parking on Calmea Street in the morning, doubtless there are going to be times where somebody wants to park there for some reason or another. However, in terms of parents wanting to come in and speak to teachers, that is

something that is not part of our procedures. The parents understand that the teachers need to tend to the children in the morning. That is not a time for conference time. It is not even a time for chatting time. We have a procedure where the parents write a note, send a note in with their child's lunchbox and if they want to address certain issues or want a phone call back from the teachers, then that is how it is handled. But we do not encourage parents to come in in the morning time to talk to the teachers. And that is not something that is a part of our plan. So I think those are the three.

MR. GELL: Let me ask you along those lines, is there a place where a parent on the rare occasion when a parent absolutely has to come in to talk to a teacher to warn them about something or tell them about some problem the child is having, is there a place where that parent or even two parents could park that is not on Calmea Street?

MR. KUTT: I believe that in terms of the plan that we have worked out with Mr. Montagna, there should be a couple of spaces available behind the building for parents that want to pull in and come in to the building in the morning.

MR. GELL: I think in our prehearing

statement, we indicated that the people that work at The Ethical Society, the two staff members -- usually two, it can be more -- generally do not come, except for one person, do not come before about 9:30. These are, many of them as I understand, women who have children and have to get them off to school and so forth. So their hours start after the peak time when parents would be bringing children to the school. And they leave at 3:00, prior to the -- I shouldn't be saying this, Mr. Montagna should, but he can nod -- and they will be leaving prior to the pick-up time -- the normal pick-up time. Did you want to --

MR. MONTAGNA: No, that is all right. We only have one staff person who comes in at 9:00 in the morning, and she leaves at 3:00. And the rest of the staff is there from 10:00 to 3:00. There is one staff member who on some days would be there until 5:00, but that is a max of one. There are no staff in the parking lot or near the parking lot during the pick-up or drop-off time.

MR. GELL: Mr. Montagna mentioned that it is his belief that no more than eight cars an hour at a peak use the alley. That is actually based on a test that Mr. Peterson did and perhaps if he wouldn't mind, I will ask him to explain how he did that test.

MR. PETERSON: Yes, sure. What we did was we installed a device that can record the passage of vehicles back and forth through the alley at the, what is the south property line of The Ethical Society. And that device was in the alley for 48 hours. During that period of time, as Mr. Montagna indicated, the maximum was eight or nine vehicles in an hour. And at the pick-up time in the afternoon, which the number of vehicles using the alley during the hour between 3:00 and 4:00 was three. So this is not a heavily used alley. And the potential conflicts that could be generated between parents picking up children in the afternoon and traffic using the alley is very, very modest.

MS. RENSHAW: Mr. Peterson, did your instrument only register if a car drove over a strip? I am just thinking if there was activity in the lower part of the alley where a service vehicle would enter and exit on -- what is that -- Jonquil Street.

MR. PETERSON: It in effect registered thru traffic.

MS. RENSHAW: Only thru traffic.

MR. PETERSON: Only thru, yes. It was -- you draw -- it is like drawing a line across the alley. So it is activity back and forth across it.

Except by being at the point south of The Ethical Society, it did measure the level of activity that would be there -- that is currently there and which would have to be traversed by somebody coming to the proposed preschool to pick up a child. Somebody could enter and exit to the north, for example, and not be picked up.

MR. GELL: As I understand it, the concerns -- and I could be wrong -- but the concerns that the Board had had about traffic using the alleys had to do with the other side of 16th Street, which we understand is commonly used by people who live in that area to get down -- further down 16th Street before they have to buck the traffic in that general area. I am not quite sure how far they go, but that is what we were told. And you, I am sure, have heard testimony on this. I don't mean to repeat it. On our side, that has not been the case. Will there be some increase? We don't know. It may be possible that during the construction some additional people may want to traverse that alley. But it will be open to two-way traffic.

The other point I think we should make is that the concern that Ms. Lightfoot had about people coming out of the alley onto Calmea -- it is a real

concern. We ought all to be concerned about children just running or walking across there and being hurt. That, it seems to me, is something that we need to tell our parents about. To be particularly cautious when they get to that point. Now we think that many of those children will already be in school by the time any of our parents are crossing the alley in the morning or coming out of the alley in the morning. However, I think the parents need to be warned that this is a serious problem. They obviously don't want to have an accident either. And if it needs a sign, that is a possibility. But certainly the parents will be told that they are to come to a full stop and make sure that there is nobody coming down the street or running down the sidewalk trying to get to one of the schools. That is something we should be as worried about as anybody else.

MS. RENSHAW: It is not only the parents, but also the nannies, the au pairs who bring children to school who disregard any rules and regulations. We have seen it in my neighborhood certainly.

MR. GELL: Yes. And indeed, a sign could be placed -- in addition, a sign could be placed on the sidewalk warning people that cars are coming out and to be extra cautious or something. I have seen

that in other places.

I would simply close by saying that the Oneness School very much wants to open in September. That they are right now having to tell parents whether or not there is going to be a school in September. And obviously people don't want to talk to you unless they are pretty sure that you are going to be there. A two or three week delay could be very devastating to the Oneness School's being able to open in September. This is a crucial time for them. We did wait perhaps a bit longer than we ought because of the Jewish Primary Day School and our need really to work much more with the neighborhood than what apparently had happened previously. We felt that this was a lesson to us that we ought to talk to the neighbors and go to the ANC and so forth before we even filed. But that obviously has put us at a difficult time in terms of the timing of the opening of the school. So we would urge the Board, if they could possibly do so, to come to a decision in the near future. If not today -- I do have a proposed order. I am not sure that is appropriate, but I do have it available and would ask for a bench decision if that is at all possible. I am sorry, Mr. Kutt would like to say something.

CHAIRPERSON REID: Go ahead. Let me hear you.

MR. KUTT: Just very briefly. I wanted to respond to one other point that was raised. I don't have any specific statistics, but my best guess is in terms of the inquiries we have had about the new proposed school, about 70 to 75 percent of those inquiries have come from the Washington, D.C. area, and about 30 percent elsewhere, primarily from Takoma Park and Silver Spring. So I did want to mention that.

CHAIRPERSON REID: You mean in regards to the issue --

MR. KUTT: There was an issue that --

CHAIRPERSON REID: Concerning the neighborhood kids being serviced or neighborhood community?

MR. KUTT: Exactly. There was a question about the community being served or not.

CHAIRPERSON REID: Well, that was the whole issue. You are saying that the inquiries come from D.C., but the question was as to the immediate surrounding community.

MR. KUTT: I understand.

CHAIRPERSON REID: Do you know the

percentage?

MR. KUTT: I am sorry, I don't have those kind of figures, no.

CHAIRPERSON REID: I am sorry, did you know the percentage?

MR. MONTAGNA: No.

CHAIRPERSON REID: You don't? Okay, then.

MR. MONTAGNA: But our whole reason for being there is to serve that neighborhood. And I agree, if you define that neighborhood as the six houses closest to us, there may be only one preschool child.

CHAIRPERSON REID: Let's just go to the 200-foot radius. How many --

MR. GELL: When we talk about neighborhood, we are both talking about the larger --

MR. MONTAGNA: Neighborhood, I am talking about Northwest D.C. I am talking about that whole 16th Street corridor from the park over to Georgia Avenue.

CHAIRPERSON REID: Much broader.

MR. MONTAGNA: From the D.C. line, you know, down below Walter Reed. I mean, that is a large area, and that is what I am talking about. I am not

talking about the blocks -- the literal block that we are in.

MR. GELL: I think when Mr. Montagna defines neighborhood -- if I am wrong, please tell me -- he is talking about The Washington Ethical Society serving a neighborhood. When we talk about neighborhood in terms of hoping that many of the children will be coming from the neighborhood, we are talking about Shepard Park and about the immediate vicinity. Maybe not the block next to us, but certainly with in a ten-square block radius. Many children, some of whom could be brought by their parents on foot -- that is certainly a possibility. We note that the Tafareth Israel Nursery School did close. They had many children, I am told, from the neighborhood and many of those kids and families need to find other places for their children. So there is some possibility that they will be coming from the neighborhood. I do thank you very much for your time. Thank you.

CHAIRPERSON REID: Okay. I think that in these -- in this particular application, this is my personal opinion. I think that while you have addressed many of the regulations -- proffered as to how you meet the regulations under Section and

Subsection 205, which is great, the issue of the adverse impact is something that is still unreconciled. Now I did not hear you proffer to this Board some solution to the problem that was raised by the neighbor with regard to parents parking their cars in the neighbor's parking spaces. I would think that while in your handbook you may have something that says don't do this, nonetheless it is happening. And as such, I would think that perhaps you would have or be able to devise some type of -- and I know that you can't do it here today -- through your Board of Directors penalties that would dissuade parents from parking. If you just say don't park, they park and people are saying they tell them, well, I am going to The Washington Ethical Society or I have a meeting or whatever. That is not satisfactory. So obviously there is -- I do not hear brought to this Board some sort of proffer as regards the concerns that the neighbors brought up, and I think that that is very necessary so that that will not happen. That is one thing.

The other thing is in regard to the staff person being in the alley in the morning -- now did I understand you to say that you were going to designate someone there every morning to make sure

that the traffic does not get congested or stacked in the alley? For example, if a neighbor wants to back their car out, then the staff person is going to do what? Or you said that you will tell your parents to be courteous to the neighbors and give them -- I guess give them a right of way --

MR. GELL: Exactly.

CHAIRPERSON REID: Or to defer to them or to give them their due respect because of the fact that they do live there to be able to back out. How are you going to do that?

MR. GELL: We are going to alert the parents to the fact that people may be -- may want to pull out of their parking spaces. It will be pretty obvious when somebody is trying to get out. And to say that the school policy is that you stop and wait for them to get out. As the traffic in front of you moves ahead that you allow people to move out. And there is no reason for people not to do so. We believe that that will be handled perfectly well simply by people being courteous to one another, and of course we would tell them that that is absolutely necessary that they do so. If we get complaints, obviously there are other things that can be done.

CHAIRPERSON REID: Well, I mean --

MR. GELL: And we would expect people to make those complaints. We are talking about four or five houses. And there is no reason that we can't have an ongoing dialogue with the four or five families that are in that situation so that they know who they can call if this becomes a problem for them.

CHAIRPERSON REID: So you have a staff person that you are going to have out there every morning?

MR. GELL: The staff person would be in charge of taking care of the children. There would be more than one staff person.

CHAIRPERSON REID: No, no, no. Not the staff person -- the question was raised to -- I am sorry, your name, sir?

MR. KUTT: Mr. Kutt -- Andrew Kutt.

CHAIRPERSON REID: Mr. Kutt to be there on site. Not to assist the children in going in. That is a different staff person, unless I misunderstood. He was there to just monitor the traffic and to make sure that there was no back-up or congestion or to be able to assist with the flow. Is that not correct?

MR. MOULDEN: Excuse me, Madam Chair, I think I asked that question earlier, would there be

someone out there just sort of moving traffic along.

MR. KUTT: In response to your question, just to clarify --

MR. MOULDEN: Yes, in response to my question --

MR. KUTT: The way that we do it now, which I would propose would be a good way to do it at the new site, is that I am out there largely to make sure things run smoothly and to address any issues that occur regarding traffic and safety. The staff -- my staff works in terms of actually physically escorting the children to their vehicles or taking them away from their vehicles and into the building. So certainly myself or someone that I designated could certainly serve that role.

MR. MOULDEN: Every day.

MR. KUTT: Every day. And occasionally what does happen is that someone -- something occurs where I do have to address something in terms of someone not following procedures or a neighbor needing to get by or whatever the case may be. So does that clarify it?

MR. GELL: Mr. Kutt --

CHAIRPERSON REID: I still have a couple of things. Yes, that is a -- specifically a

specified designated person to take care of the traffic issues there in the morning. I don't think it is so bad in the afternoon. But in the morning especially.

MR. GELL: It would of necessity tie a person up when in fact there may not be a problem. Would it be possible, therefore, for us to promise that we will assign somebody if neighbors complain that people are simply not letting them get out of their spaces? We would obviously be happy to do it under those conditions. We think it won't be a problem because we are going to be in constant contact with those neighbors and making sure that they are not impeded from getting out of their spaces. But if the Board feels differently, then of course we will just simply have to assign somebody.

CHAIRPERSON REID: That brings me to the next thing. Yes, we are still on the same question. Then the -- the issue of the penalties for the parking, the designated traffic person, community liaison. Do you have a specified person who --

MR. MONTAGNA: I am.

CHAIRPERSON REID: Okay. But while you may be that person, I don't know if the community is aware of the fact that you are serving in that

capacity. Such that if in fact there is a complaint or there is a problem, they could be able to immediately contact you and have the problem --

MR. KUTT: Absolutely. And I think if you talk to neighbors who do respond, they will notice that I respond. You know, when we run a wedding and someone's aunt and uncle come, I can't guarantee that they won't be a rude and awful person who will park in someone else's lot. But I do not believe that has anything to do with the high school or the preschool. I think that has to do with the outside activities that we have. And we respond totally and completely whenever we hear about it. But frankly we hear about it relatively rarely. The two incidents you hear today are two incidents over 30 years time that I never heard about. Our customary -- when people park along the alley where they are not supposed to park, we do two things. We call the police and ask them to ticket, which as you may know, they often do not do, but occasionally do. And we put a little note on the car telling them that they are parked illegally and that they are liable to get a ticket and they are not supposed to park there. The parking in other people's lots of parking is something that is not a normal occurrence.

Can I say it has never happened in the last 30 years? I cannot say that. But it is not a normal occurrence. And when anyone calls, the calls are directed either to me or to the head of the school if it has to do with -- that was David Mullens when it was the high school. And I believe that the people who have complained about kids walking and dropping potato chip bags and whatever have gotten a thorough response. And as I say, we have a wonderful reputation for that. And if I had heard anything from Mrs. Hackney, she would have gotten a wonderful response too. And I promise in the future to be responsive to her. I don't anticipate there is going to be a back-up in the alley at all. But if there were, we would certainly be able to have a staff person out there to monitor that back-up. I mean, our goal -- I mean, we are The Ethical Society and we are trying to do things right and our reputation hates to hear the fact that we are not. I mean, it is an easy and obvious joke, but we do everything in our power to live up to our name.

CHAIRPERSON REID: Well, if you are the designated person, perhaps what you may want to do is to notify the persons that are closest to the -- who may be greatest impacted by your application of the

preschool going there of who you are and who to contact in case there are any problems.

MR. MONTAGNA: I personally know certainly our next-door neighbors. And as I say, they wrote a letter in our favor. And I would have also talked much more personally to Mrs. Hackney if I knew that she had any problem with it. But I did not.

MR. GELL: She is asking what are you going to do to make sure the neighbors know you are the one to come to. Will you send a notice out?

MR. MONTAGNA: Oh, yes. I mean, I think that they all know me personally by name. I would be happy to send a letter reminding them to it.

CHAIRPERSON REID: They know you?

MR. MONTAGNA: Yes, they know me by name.

CHAIRPERSON REID: Okay. And the last thing that I am --

MR. MONTAGNA: I have been there for 28 years. I mean, it is like it is not a new thing. And most of the neighbors have been there for a while.

MR. KUTT: Madam Chair, excuse. On your point, may I suggest also that we would perhaps send a letter to all the neighbors coming from the Oneness School itself and designating myself as the community liaison and person to address any concerns to as well

that concern the school specifically.

MR. MONTAGNA: That is how we divide it. General issues regarding the Society come to me and usually the head of the school receives issues around the school. That is how we have done it in the past.

CHAIRPERSON REID: The last thing that I had was in regard to the intersection -- the juncture of the alley and Calmea Road. Perhaps you could do something in regard to -- can you not request a stop sign there from DPW?

MR. KUTT: I don't know if they will give it, but we can certainly request.

CHAIRPERSON REID: Perhaps, Ms. Renshaw, could you --

MS. RENSHAW: Yes. What you can do is contact your ANC Commissioner, Mr. Sloan, and ask that it be put on the agenda at an upcoming meeting and go before the ANC and request that the ANC write a letter immediately to DPW requesting a stop sign.

MR. KUTT: That will be done.

CHAIRPERSON REID: I think that would be a comfort to the neighbors as well as the parents who are driving their cars there. All right, thank you. That is all I have. Mr. Sockwell?

MR. SOCKWELL: To reinforce something

that the chairperson said. The person who answers the phones at The Ethical Society in deference to Ms. Hackney's issues should be instructed to refer all complaints when generated to a responsible person immediately as opposed to feeling that that person can field the call and deal with the issue. Because if a neighbor calls with an issue and the person who answers the phone decides that it is not relevant, then the response is not going to be an effective response. You are not going to hear about it. The neighbor may not call again thinking that The Ethical Society has no interest in their complaint. So I would suggest that you instruct anyone who answers the phone to refer calls either to Mr. Kutt or to yourself or to some other official immediately because those calls are immediate issues.

MR. MONTAGNA: I absolutely agree. That certainly is our policy. And the instant I get back, I will find out to what degree it is followed or not followed. But to my knowledge, it is followed. And to whatever time somebody answered the phone and did not respond that way, it is certainly not our norm and not our expectation, and I will deal with it. I totally agree with you. Completely agree with you.

MR. SOCKWELL: But under any

circumstances, a reinforcing memorandum would be appropriate.

MR. MONTAGNA: Totally agree with you. Totally agree with you.

MS. RENSHAW: What will be the procedure if neighbors have complaints about the noise. In other words, you told us in your testimony that there would be a number of times during the day when the children would be out. Children love to go outdoors. But if the neighbors find it to be very tiring for them. They want some peace and quiet back again. It is affecting their quality of life. What are you going to offer the community and also the Board?

MR. KUTT: Well, first of all, we would certainly, as with any other issue, be perfectly willing to sit down with the neighbors and discuss the issue and hear all of the concerns. I don't think anyone could reasonably expect that you would keep the children indoors all day. But certainly if there are times that are particularly offensive or there are other issues in terms of the type of noise or whatever, I would certainly be willing to address those.

MS. RENSHAW: And with the children out at play, is there a supervisor with them all the

time?

MR. KUTT: Yes, of course, ma'am.

CHAIRPERSON REID: Okay. Board members, what --

MS. RENSHAW: Madam Chair, I have a question too. Mrs. Lightfoot had asked for a continuance or a denial and Mrs. Hackney is opposed to this. How is the Board going to handle Mrs. Lightfoot's request for a continuance or a denial?

CHAIRPERSON REID: Mrs. Lightfoot would have to be a party.

MS. RENSHAW: To do that?

CHAIRPERSON REID: Yes.

MS. RENSHAW: And she is not?

CHAIRPERSON REID: Yes. And in our discussions with her when she came up to testify, we were able to garner her major concern being that juncture of the alley and Calmea Road. And my understanding was that if in fact that could be somehow mitigated, that would give her -- that would take care of her opposition for the most part. I think that is my understanding.

MS. RENSHAW: We also had the issue of keeping the record open. That was something else we did not really come to closure on.

COMMISSIONER PARSONS: I certainly don't see any need for that. I think the proceedings have been open and thorough here today. I am ready to vote.

CHAIRPERSON REID: And she did -- she was able to give us her input to these proceedings. All right, Mr. Sockwell?

MR. SOCKWELL: I have one question and actually it goes to Mrs. Lightfoot. And that is does she believe -- or do you believe that a stop sign condition at the intersection of Calmea and Myrtle in both directions would be in any way effective in slowing down and affecting the traffic condition that she feels is present and is a problem with regard to the alley and that intersection of Calmea and the alley.

CHAIRPERSON REID: Okay, Mr. Sockwell, just procedurally, that time has passed to be able to ask her a question.

MR. SOCKWELL: Okay, well --

CHAIRPERSON REID: And the issue that she raised was specifically to that juncture of the alley and Calmea, and that is the one that we addressed for her.

MR. SOCKWELL: In her testimony, she

spoke to speed along Calmea Road as an important aspect of her problem. And I recorded that.

CHAIRPERSON REID: Oh, okay. Well then would you -- then you could proffer to the applicant. Don't they usually have slow signs? Don't signs that signal to the drivers that school zone or that the speed limit is lower in a school zone? I thought that was a matter --

COMMISSIONER PARSONS: Madam Chairman, this is way beyond our jurisdiction. We are giving the audience the impression that we have some control over slow and stop signs. We don't and we shouldn't be asking these questions.

CHAIRPERSON REID: I don't know. I was just asking.

MR. SOCKWELL: I guess I will rephrase this to deal with Mr. Parsons' issue. I would suggest that the applicant, should their application be approved, present themselves to the adjacent schools with regard to some kind of coordinated look at the traffic and the issues of signalization and that the community would be involved with that and that the ANC would be involved in that.

MR. GELL: We would be happy to do that and also to work with Ms. Lightfoot and to support

any efforts that she wants to make. And obviously work with her to make the effort with the ANC to get whatever stop signs or signals or slow signs and so forth that will make that a safer intersection.

We hope this is not the end of our contact with Ms. Lightfoot. We think this will -- I think she will be very helpful to us in making sure that our operation is indeed a safe one. So we want to work with her on that and of course Ms. Hackney as well.

MR. SOCKWELL: And I want to finish by just saying that the Jewish Primary Day School, which has been referred to in this hearing is a one-year approval and not renewable. And at the time that the 16th Street reconstruction takes place, it is assumed that they will not be there.

CHAIRPERSON REID: Okay. All right, thank you. Board members -- Mr. Parsons, you said you are ready to vote. Did you want to make a motion?

COMMISSIONER PARSONS: I would move you approve the application.

CHAIRPERSON REID: Okay.

COMMISSIONER PARSONS: I would move we approve the application.

MR. MOULDEN: I second it with conditions.

COMMISSIONER PARSONS: Oh sure.

MR. MOULDEN: That we mentioned earlier.

CHAIRPERSON REID: Okay. But let's take the vote and then determine conditions as appropriate. I think that the applicant has met his burden of proof as far as Section 205 of the regulation is concerned. I do feel that the approval should be with the appropriate conditions to mitigate adverse impact as far as the community is concerned. Any other comments? All in favor?

BOARD MEMBERS: Aye.

CHAIRPERSON REID: Opposed?

MS. RENSHAW: I am abstaining.

CHAIRPERSON REID: Okay. With -- do you want to record the vote before we do the conditions, Ms. Pruitt?

CHAIRPERSON REID: Certainly. Madam Chair, Mr. Parsons moved to approve the application. It was seconded by Mr. Moulden with a vote of four to zero to one, Ms. Renshaw abstaining.

COMMISSIONER PARSONS: Madam Chair, I note that Mr. Gell had mentioned he brought a draft order with him. We could maybe make better use of our time if we used that draft as a --

CHAIRPERSON REID: It will be a summary

order.

MS. PRUITT: Madam Chair, I did write down some of the conditions, I believe, that were sort of proffered throughout.

COMMISSIONER PARSONS: Well, if he has placed those on a piece of paper --

MS. PRUITT: Steve, Steve, Steve.

CHAIRPERSON REID: Some of the normal conditions? Okay. All right, why don't you tell us what conditions you have that are already contained in the proposed order, Ms. Pruitt. And then we can make the --

MS. PRUITT: I am sorry, I wasn't listening.

CHAIRPERSON REID: I said, why don't you let us know what conditions you have and also those that are in the proposed order and then if we have any other ones, we will just tell you.

MS. PRUITT: Okay, we only have one right now. Staff is copying it. So you have the one order that is available at this particular time.

CHAIRPERSON REID: All right. Then --

MS. PRUITT: But I can read off what I have. And if you would like to double check.

CHAIRPERSON REID: Okay, go ahead.

MS. PRUITT: I have special exception for a nursery school for a maximum of 40 students, age two-and-a-half through six years old. Overall hours of operation to be from 7:00 a.m. to 6:00 p.m. The nursery school would be from 9:00 to 3:00, and then the alternate hours would be before and after care. Maximum number of staff would be six. Two on-street parking spaces will be available. Drop-off and pick-up would be off of the alley. Staff will escort child to and from car to the school. One staff person -- and this could be posted at the intersection of Calmea and the alley to help traffic during drop-off and pick-up. That is as far as I got in reference to conditions. The only other thing I don't know if it was addressed was a time frame. Usually special exceptions are for a period of time and I don't remember the applicant proffering a time.

CHAIRPERSON REID: Okay, the term. Let's see now --

MR. KUTT: Can I make a correction just on the time of dismissal in the afternoon is 3:30 rather than 3:00.

MS. PRUITT: For the nursery school 3:30?

MR. KUTT: Yes, that is right.

MS. PRUITT: Okay, thank you.

CHAIRPERSON REID: Okay. In regard to -- Ms. Pruitt, in regard to the proffer from the applicant as to the designated person to monitor the traffic in the morning in the alley as needed, would that be a condition or would that just be something that would be part of the record?

MS. PRUITT: That would be a condition. That was one of the conditions I read off.

CHAIRPERSON REID: I am sorry.

MS. PRUITT: One staff person will be posted at the intersection of the alley on Calmea to direct traffic during drop-off and pick-up.

CHAIRPERSON REID: No, not that. That wasn't the one I was referring to.

COMMISSIONER PARSONS: I think what Mr. Kutt was saying is he would have oversight of the whole operation and not be stationed at one location or another. I mean, if need be it would be down at Jonquil Street.

CHAIRPERSON REID: And then we talked about the fact of as necessary -- okay, as necessary. That kind of gives a little flexibility as far as -- rather than someone having to be there every day. And the community liaison designation? Did you have that?

MS. PRUITT: Yes, I do. Mr. Kutt will be the community liaison for the school, with Mr. Montagna being the community liaison for anything associated with The Ethical Society.

CHAIRPERSON REID: Okay, how -- or can we include the issue about the stop sign at the -- the request for a stop sign or best efforts to inquire?

MS. PRUITT: Madam Chair, the concern I have is that DPW -- that is under DPW's jurisdiction. If we are asking them to do something that DPW won't allow, then it is putting them in a very awkward position.

MR. MOULDEN: We can say we encourage.

CHAIRPERSON REID: Ms. Pruitt, I understand that. That is why I didn't say -- that is why I didn't make it a condition. I was asking if we could. And the answer is, no, we cannot.

MR. MOULDEN: We can encourage them.

CHAIRPERSON REID: All we can do is encourage that they use their best efforts to investigate. And that would not necessarily be a condition. I am just saying as a matter of record encourage them to make the best efforts through DPW and through the ANC to acquire the stop signs and appropriate signage as needed for that school -- for

the alley and for Calmea Road and all that. Okay. Do you have something?

MR. SOCKWELL: Mr. Gell, in your summary order draft, you specify that the ages would be two to six. Two-year-olds are designated, at least under the building code, as infants. And I don't know that you stated that you are going to have infants.

MR. GELL: I am sorry, that was a mistake. I said two-and-a-half.

MR. SOCKWELL: Yes.

MR. GELL: And certainly they would have to be -- not all two-and-a-half year olds would be able to fit into the program. They have to be toilet trained and other things. But two-and-a-half would be the cutoff.

MR. SOCKWELL: A two-year-old requires a different space requirement and is classified as an infant. And in an infant situation, we might be more concerned. But you are not planning to have infants?

MR. MONTAGNA: No, sir.

MR. SOCKWELL: No crib babies?

MR. GELL: No.

MR. SOCKWELL: All right. Fine.

CHAIRPERSON REID: Okay. So --

MR. GELL: I regret the confusion.

CHAIRPERSON REID: The last thing is in regard to the penalties for parking violations as well as the instructions or whatever it is for people backing out of the garage or the parents being alerted as to courtesy -- ethics, if you will, pardon the pun -- in regard to the people who live there backing out of the alley, I would like to see prior to this order being issued, which will be about two weeks, Mr. Gell -- about two weeks -- a submission by you for the applicant of some type of detailed plan in regard to handling that issue. I hope that made sense. That sounded like it was kind of jumbled.

MS. PRUITT: Madam Chair, could you clarify? Are you leaving the record open for him to submit that?

CHAIRPERSON REID: Well, the record will be left open for him to submit a detailed plan designating penalties that will be given to the parents in regard to parking violations. You have rules. But what we don't want is these parents to park in the neighbors' yards and block them or whatnot and cause them problems. So if they have penalties that are imposed, then they know that if they do they are going to be fined. And I will tell you what we did in a previous case was $50.00 for the

first violation, $100.00 for the second violation, $200.00 for the third violation, and the four violation was a possible expulsion. That is what we did before. I am just proffering that as a suggestion to dissuade that problem from coming up. And I know that you can't make that decision here now. But through that. And also submit to us what you are proffering to the parents as to the ethics -- the ethical issue in regard to handling that alley and the courtesy toward the neighbors. Those two things I would like to see prior to the order being issued, which will be about two weeks. So you can get it to us as soon as possible.

MR. GELL: I think we should have something to you within a week.

MR. SOCKWELL: May I suggest a policy statement and that would be that cars queuing in the alley would not block designated driveways to residential property. That way, there would be a space between cars wide enough for someone to back out of his or her garage into the alley. And because these properties are larger, the width of those properties would allow the average size car to be in a space that doesn't block those. And I think that should be part of your designated policy.

MS. RENSHAW: And also that there be no horns used and there be no idling of car engines.

MR. SOCKWELL: I don't think I would do that. In the summertime, you are going to have the child in the car with air conditioning.

MS. RENSHAW: I am sorry. I mean, I would not want to be in the neighborhood with cars in an alley idling period -- noise and pollution, period.

MR. GELL: In the really cold weather, that means the parents would have to leave their cars and come inside if it is very cold.

CHAIRPERSON REID: Come inside? The staff will still take the children out of the car, right?

MR. GELL: In the afternoon when they come to pick the children up. If they can't sit in their cars -- well, can we say no more than 10 minutes of idling? Which should take care of it completely.

CHAIRPERSON REID: How do the kids come out? How are they put into the cars when the parents pick them up? Does staff assist with that?

MR. GELL: The staff would bring them to the car.

CHAIRPERSON REID: Oh, okay. Then why

would it take --

MR. GELL: Oh, I see. It was just suggested that we talk about no idling behind residences.

CHAIRPERSON REID: Well, the alley is all behind residences.

MR. GELL: I might also point out that there is quite a bit of space between the houses and the alley. There are garages that are right on the alley but are not part of the houses. So I am not sure that is going to be --

CHAIRPERSON REID: Okay. How about best effort? Best effort --

MR. GELL: Best effort is not --

CHAIRPERSON REID: Best effort -- do you understand that?

MR. GELL: I do understand.

CHAIRPERSON REID: The objective here is to try to do all that we can to mitigate adverse impact on the community -- on the neighbors, the adjacent abutters to the subject property. We are not asking for the impossible, but as best you can. Make the best effort to do that.

MR. GELL: We will include some instructions on that in our proposed order or

proposed instructions.

CHAIRPERSON REID: Okay. What about the night activities? They said that the night activities were about two per month? Ms. Pruitt, are you recording this?

MS. PRUITT: I am sorry, I didn't get the last one.

CHAIRPERSON REID: Night activities for -- specifically for the --

MR. GELL: An average of two a month.

MR. KUTT: I would just --

CHAIRPERSON REID: No more than two per month?

MR. KUTT: To clarify, as I said, on an average there are about two per month. I would be hesitant to be limited to two per month. The primary goal of the evening activities is to educate our parent community on matters --

CHAIRPERSON REID: Well, we are talking about impacts.

MS. RENSHAW: Madam Chair, this is a residential neighborhood and the residents deserve to have quiet time.

CHAIRPERSON REID: Especially when you have all these other activities that are emanating

from the --

MS. PRUITT: Madam Chair, maybe if it is --

MR. KUTT: We are talking about two different things, I think.

MS. PRUITT: I was going to say, maybe if it is an average of two per month, you say no more than 24 and no more than 3 within one month. Because maybe you would have one month where you would only have one. It is the same number. It is just --

CHAIRPERSON REID: What are you saying?

MS. PRUITT: If you average it out for two a month, that is 24 evening events, correct?

CHAIRPERSON REID: Yes.

MS. PRUITT: He said it is an average of two a month.

CHAIRPERSON REID: Oh, so 24 per year.

MS. PRUITT: No more than 24 per year, but not more than 3 within one given month, so that the neighbors can know what to expect.

CHAIRPERSON REID: Okay. Does that make sense?

MR. GELL: And these are the activities that would generate noise or disturbance to the neighbors, is that -- and parking? Parking problems.

Okay.

MR. MONTAGNA: I think the 24 works. But if we wanted to do a four-week course, I think that would be an issue.

MS. PRUITT: This is only for your school.

CHAIRPERSON REID: But then you have to ration -- you have to ration your allotment.

MR. MONTAGNA: I don't have any problem. That is not -- that is fine.

MS. PRUITT: Do it between two months.

CHAIRPERSON REID: And then on the weekends, what did we say? I am sorry, I didn't jot that down. How many weekend kinds of activities do you anticipate for --

MR. KUTT: Three to four in the course of a year or four perhaps.

CHAIRPERSON REID: No more than four?

MS. PRUITT: Okay. Per year.

CHAIRPERSON REID: Okay. The term -- that was the last thing. The term?

MS. PRUITT: Right, I don't --

CHAIRPERSON REID: I would suggest three years. And I would suggest three years because of the concerns of the people who live right adjacent to the

-- usually we give five years -- five to ten years. If there was no opposition, then I would certainly have no problem with at least five years. But three years would be what I would suggest. And I would like to hear from other Board members.

MR. SOCKWELL: I would think -- since we did not have parties in opposition, we had residents in opposition, individuals, that we could push it to four years. For one thing, three years would put them right in the middle of the reconstruction of 16th Street. Four years would probably put them at the end of the reconstruction of 16th Street. And if they have been able to manage that effectively and maintain their community relationship, then that would be a good time to bring them back in.

CHAIRPERSON REID: I have no problem with that.

MS. RENSHAW: I would say that a three-year term --

CHAIRPERSON REID: Wait a minute. You abstained.

MS. RENSHAW: I know, but can't I --

CHAIRPERSON REID: I don't know. That is what I have to find out. With an abstention, can she then be involved in the conditions?

MS. RENSHAW: Yes, but I -- I abstained, but I still have opinions.

CHAIRPERSON REID: Ms. Sansone? Well, we just have to make sure. I have no problem with Ms. Renshaw -- I just want to make sure procedurally that we are correct here.

MS. SANSONE: Madam Chair, maybe you should allow Ms. Renshaw to state her concerns and comments. But then I don't think it would be appropriate to vote on the conditions.

CHAIRPERSON REID: Okay.

MS. RENSHAW: Okay. My statement in regard to the term is that I think that three years -- my feeling is that three years would be a suitable term because it would still be one year beyond the end of the reconstruction of 16th Street. And I think that the neighborhood needs to have a feeling that they have a reasonable period of time to get back to the Board. Four sounds a bit much to me. Three is more in keeping with I think a neighborhood based school -- in other words, a school in this particular neighborhood.

MR. SOCKWELL: While I understand Ms. Renshaw's concerns, there is no way to be sure that the Department of Public Works would on this

instance, as in any other instance, meet a schedule. So I move that we allow the school a four-year term prior to returning to the Board for re-establishment of their condition.

MR. GELL: Could I make a comment on that? It might be helpful. The school is going to be building up very slowly the numbers of students. And I think four years will give the neighbors a chance to see what the impact is with more students. If you only have 15 or 20 students, it is not the same as if they have 30 or 35. So the more years that you give, the better chance the neighbors have to say that it either is or is not a serious impact on them.

CHAIRPERSON REID: Thank you. I second. All in favor?

BOARD MEMBERS: Aye.

CHAIRPERSON REID: Opposed?

MS. PRUITT: Staff would record the vote as four to zero to one for a term of four years. Motion made by Mr. Sockwell, seconded by Ms. Reid, and a proxy from Mr. Parsons with Mrs. Renshaw not voting or abstaining.

CHAIRPERSON REID: Okay. Thank you very much. This will then conclude this morning's

session. And obviously we are going to be delayed on the afternoon session. So we will come back at about 1:30. Thank you. Good luck.

(Whereupon, at 12:41 p.m., the hearing was adjourned for lunch to reconvene this same day at 1:38 p.m.)

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

1:38 p.m.

CHAIRPERSON REID: Good afternoon. This hearing will please come to order. This is the July 11th Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Sheila Cross Reid, Chairperson. Joining me today is Robert Sockwell, Anne Renshaw, Rodney Moulden, who will be here in a couple of minutes. He is representing the National Capital Planning Commission, and Kwasi Holman representing the Zoning Commission.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us. Upon 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 and variance cases are as follows. One, statement and witnesses of the applicant. Two, government reports including office of planning, department of public work, et cetera. Report of the Advisory Neighborhood Commission. The parties are

persons in support. Then parties or persons in opposition. And finally, closing remarks by the applicant.

The order of procedure for appeals applications will be as follows. Can you hear me back there? Okay, the order of procedure for appeal cases -- I just did the one for special exception and variance cases. One, statement and witnesses of the appellant. Two, the zoning administrator or other government officials. Three, the owner, leasee or operator of the property involved if not the appellant. Four, the ANC within which the property is located. Five, intervenor's case. Six, rebuttal and closing remarks and statement by the appellant.

Cross examination of witnesses is permitted by the applicant or parties. The ANC within which the property is located is automatically party to 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 6:00 p.m. If the afternoon cases are not completed at 6:00 p.m., the Board will assess whether it can complete the pending case or cases remaining on the agenda.

At this time the Board will consider any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today such as a request for postponement, continuance or withdrawal, or whether proper and adequate notice of the hearing has been given. If you are not prepared to go forward with 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? Please come forward. Speak into the microphone and give your name and address please, sir.

MS. PRUITT: You have to push the button.

MR. O'BRIEN: Madam Chairperson, my name is Patrick O'Brien. I am the attorney for the

Potters.

CHAIRPERSON REID: I can't hear you and I am sure the people in the back can't. So if you would please just raise the volume a bit? Oh, no, on your voice. Speak louder.

MR. O'BRIEN: Madam Chairperson, my name is Patrick O'Brien, and I am the attorney for the Appellants Cynthia and Edward Potter, number 16588. We were under the impression, as was ANC 3-D, that this matter was scheduled for September, based on conversations that I had, at least, and apparently they had with staff. As a result, we haven't made -- we were preparing to make filings which have not been made and we have no witnesses for a hearing today.

CHAIRPERSON REID: How is it that you are here today?

MR. O'BRIEN: We received a notice. I called in and spoke to a staff person and was told to come in.

CHAIRPERSON REID: So are you saying that you were not noticed that you had a hearing scheduled for today?

MR. O'BRIEN: We were originally informed that it was in September.

CHAIRPERSON REID: Who did that? Who so

informed you, sir?

MR. O'BRIEN: I believe it was Elaine Booth, but I didn't get her name at the time. We then received a written notice that it was in July. We then called in and were informed that it would be continued until September, which was --

CHAIRPERSON REID: Who so informed you about the continuance?

MR. O'BRIEN: I don't recall the specific name, Madam Chairperson.

CHAIRPERSON REID: Because specifically the continuance would have to occur at the hearing, you see? The Board members would make that determination as to whether or not a case would or would not be continued. So I don't know how someone on the telephone could possibly tell you that.

MR. O'BRIEN: I assume, Madam Chairperson, that you had some sort of docket control clerk and that was the person to whom I was speaking.

MS. PRUITT: Madam Chair? Actually, I am the person who scheduled it, and I know we have never spoken, Mr. Potter. And in looking at the file, Exhibit 8, the ANC was notified through our normal procedure in which we send out referrals on May 21st. There was a letter that went to the ANC, the single

member district, to Mr. Ghafoorian, Mr. Johnson, Mr. Niedermayer, Mr. Potter and Mr. O'Brien. So those are our normal -- that is our typical referral process. It is dated July 11.

CHAIRPERSON REID: Okay. Did you -- were you notified to contact the ANC? When you say 3-B wasn't notified, I am not sure --

MR. O'BRIEN: 3-D was notified --

CHAIRPERSON REID: 3-D.

MR. O'BRIEN: And they met last night to consider this. They will be filing a position in this case.

CHAIRPERSON REID: They met last night?

MR. O'BRIEN: Yes, Madam Chairperson.

CHAIRPERSON REID: And when were they notified?

MS. PRUITT: May 21.

MS. RENSHAW: I think 3-D meets only once a month?

MR. O'BRIEN: Yes, I am sure.

CHAIRPERSON REID: Well, then they would have had a June meeting.

MR. O'BRIEN: Their June meeting, actually Madam Chairperson, was canceled due to a lack of quorum. They only handled matters in

Executive Committee.

MS. PRUITT: Madam Chairperson, actually I was mistaken. We logged it in on May 21. It was actually mailed on May 18. A few days difference. But it was sent out of this office on May 18. And they are exhibits 15, 16 and 17 in your folder.

CHAIRPERSON REID: They didn't -- obviously, they didn't forward anything to us?

MS. PRUITT: No, Madam Chair. And Mrs. Hurez, of course as you know, has been here many times before and certainly is very active. I mean, she has called me directly many times.

CHAIRPERSON REID: If they met last night -- and they did vote on it last night? Were you there?

MR. O'BRIEN: Yes, I was, Madam Chairperson.

CHAIRPERSON REID: And do you know what the vote was?

MR. O'BRIEN: 7 to 0, Madam Chairperson.

CHAIRPERSON REID: In favor?

MR. O'BRIEN: In support of the Potters.

CHAIRPERSON REID: And was there a quorum? Well, there are only 7 --

MR. O'BRIEN: There was a quorum last

night.

CHAIRPERSON REID: So it was unanimous?

MS. PRUITT: We procedurally have no requests for them to leave the record open. Because they have a filing time of seven days prior to the hearing.

CHAIRPERSON REID: Right.

MS. PRUITT: So we have not received anything officially from them even acknowledging that they are going to respond.

CHAIRPERSON REID: I was just curious. I mean I know that we don't have any official word from them. Not even a telephone call. So --

MS. PRUITT: And Madam Chair, just to further at least back up the information, they were sent a second -- the first actual contact was sent out on May 21. We send out two referrals.

CHAIRPERSON REID: To who?

MS. PRUITT: To the ANC and to everybody. So they knew as of April 21. Then we sent out another letter in May.

CHAIRPERSON REID: Okay. And the applicant was --

MS. PRUITT: The same time. We send everybody at the exact same time.

CHAIRPERSON REID: You didn't receive that?

MR. O'BRIEN: Well, I got it from the appellant. So I assume it was sent out in the regular course as Ms. Pruitt is --

CHAIRPERSON REID: You mean your client?

MR. O'BRIEN: My client, yes.

CHAIRPERSON REID: Who -- did he -- if he received the notice, I don't understand why there was a problem.

MR. O'BRIEN: We had several phone conversations with the staff.

CHAIRPERSON REID: You mean subsequent to receiving the notice?

MR. O'BRIEN: Both before and after.

CHAIRPERSON REID: So are you saying that because of the verbal message you were getting that conflicted with what you received in writing?

MR. O'BRIEN: I called back to verify the date and was told that it would be continued into September. But I know that was not by Ms. Pruitt.

CHAIRPERSON REID: All right. Is there anyone else here today that is familiar with this particular case?

MR. O'BRIEN: I have no witnesses

present, but I believe the other side is here, Madam Chair.

CHAIRPERSON REID: All right, if you can come forward, please?

MR. SOCKWELL: Madam Chair, may I interject that our BZA meeting hearing schedule prepared Tuesday May 16 of this year shows the 16588 case to be a July 11, 2000 agenda item. So we have had it as early as May 16 in a document that I happen to have here as being on today.

CHAIRPERSON REID: Do we have a schedule through September that reflects on there?

MS. PRUITT: We have a schedule that reflects through the end of this year. The new one that is dated July 11.

MR. SOCKWELL: May 16th schedule reflects cases on the docket through October 3.

CHAIRPERSON REID: Okay. September -- what date was it you were told, sir?

MR. O'BRIEN: September either 16th or the 26th. I don't have my calendar in front of me. But it was mid to late September.

CHAIRPERSON REID: Okay, it is not on -- okay. So, I am sorry, go ahead, please?

MR. NIEDERMAYER: Madam Chairperson, I am

Roy Niedermayer. I am the attorney for Mr. Ghafoorian, who is the property owner of 4900 Indian Lane. On the issue of notice, we received the notices that Ms. Pruitt indicates were sent and had communications also with members of the staff and they consistently told us that July 11 was the date. I even questioned and there was a letter in the file. When I was informed or told by Mr. O'Brien that it was sometime much letter, I wrote a letter and asked for a confirmation whether in fact it was July 11 or not, and it was confirmed to me that it was in fact July 11. We are here. We are prepared. We made submissions. And we are ready to go forward on the merits. There is also some preliminary issues regarding jurisdiction and timeliness which the Board could address without getting to the actual merits of whether or not there has been a violation of any zoning regulation. But these are issues whether the case should actually be heard by the Board at all or even at this time.

MS. RAY: Good afternoon. My name is Venita Ray. I am from the Office of Corporation Counsel, and I am here representing the District Government and Mr. Lourenco. And we were just notified of the case recently, but we are here today

and ready to move forward. We did take the opportunity to look at the file and photocopy it and it appears to us that all the notice procedures were complied with. Of course, we would oppose any motion for a continuance at this point. And we would join, I guess, Mr. Niedermayer -- I am just meeting him -- in asserting that there are some preliminary matters in reference to jurisdiction and timeliness. But as far as the motion for a continuance, we definitely would oppose.

CHAIRPERSON REID: Okay.

MR. NIEDERMAYER: Madam Chairperson, if it wasn't clear, Mr. Ghafoorian would also oppose any continuance as being ready to go forward today pursuant to the proper notice.

CHAIRPERSON REID: Okay.

MR. O'BRIEN: In that case, Your Honor, it sounds like I am making a motion to continue. I haven't had a chance to talk to Ms. Ray yet, but I would appreciate the opportunity to do so. The ANC, of course, has voted to file comments in this case, and I assume based on that alone they would join me in the motion to continue so that they have that opportunity.

With regard to Mr. Niedermayer's

procedural objections, I received a faxed copy of them. They were sent to my office yesterday. I received them actually this morning and I would appreciate the opportunity to respond to them, as I am sure would the District of Columbia.

CHAIRPERSON REID: To his procedural --

MR. O'BRIEN: Yes. The preliminary view of it suggests that there are some serious factual omissions and --

CHAIRPERSON REID: Okay. Well, let's deal with the first issue, the motion to continue. Did you say that you are still keeping the position in regard to that? Are you still maintaining that position? Is your motion still on the floor to continue this hearing?

MR. O'BRIEN: Yes, Madam Chairperson.

CHAIRPERSON REID: Okay. Board members, what is your feeling on that?

MS. RAY: Excuse me, Madam Chair, could the District make one other comment? Mr. O'Brien, I guess, referenced that the ANC wanted or needed additional time. Again, we would oppose a motion to continue. But in addition, I think he mentioned that the ANC had voted to join his clients in their appeal. But, however, as someone has already stated,

they have filed nothing with this Board and have received sufficient notice. So we can only presume that if they intended to file something, they should have filed it or could have faxed it over. And with nothing on the record, we just say that there is nothing in front of you to indicate that the ANC wants to file anything.

CHAIRPERSON REID: Okay, thank you.

MS. RENSHAW: Madam Chair, I would just ask Mr. O'Brien, was there a conversation with the 3-D Commissioners? Did you indicate at the meeting that the session before the BZA was really scheduled for September? In other words, was the ANC misled in any way or was there some miscommunication?

MR. O'BRIEN: I discussed with them a September date. I think that explains what their timing was. That was the impression I was under and I communicated that to them.

MS. RENSHAW: Then that perhaps is the reason why we didn't get anything faxed in today. Because I know that ANC would respond immediately if they had thought indeed this case was going forward today.

MS. PRUITT: Ms. Renshaw, we have received no calls whatsoever.

MS. RENSHAW: I know. I heard you.

MS. PRUITT: And everything that officially went out from this office has consistently said July 11.

MS. RENSHAW: I heard you.

CHAIRPERSON REID: All right. Why don't we do this? Why don't we table this and call -- can we call Ms. Furer and try to get a read as to what happened -- what the position of the ANC is?

MS. PRUITT: Madam Chair, I am little troubled in doing that because we have a set procedure. Ms. Huan in ANC 3-D is actually very well -- I mean, very much aware of our procedures. And to step out of the scope and to call them to find out why they didn't submit a -- even if they had a hearing last night and they were unsure, they could have at least faxed us -- I mean, Mr. O'Brien was there and he showed up today. So I assume you must have told them that you were confused but you were going to show up today. They could have faxed us a request to at least leave the record open for an official letter, which happens all the time with ANC's that they request that the record be open for their official report. I am troubled by going outside of the scope.

CHAIRPERSON REID: That is true.

MR. O'BRIEN: I called -- I happened to call in this morning to make further inquiry about the scheduling of this. That is how I knew that this was set for -- this was in fact set for today. And the last time I discussed it with Mr. Niedermayer, if he had any different information, he didn't communicate it to me.

MS. RENSHAW: Madam Chair, I would like to know if Attorney Niedermayer was at the 3-D meeting last night.

MR. NIEDERMAYER: No, Ms. Renshaw, I was not. I was not aware that there was such a meeting and so I was not notified of it and I did not attend.

MS. RENSHAW: You were not aware that there was a 3-D meeting or you were not aware that this was on the agenda.

MR. NIEDERMAYER: Well, I was not aware that there was a meeting and I was not aware that it was on -- or that it was on the agenda.

MR. O'BRIEN: For the record, Commissioner, Mr. Niedermayer faxed a copy of the pleading that he filed apparently yesterday to the ANC -- apparently yesterday.

MS. RAY: Excuse me, but none of these

issues get to the fact that the ANC was duly noticed here by written notification. Now whether if they received some conflicting dates by word of mouth, that is not the official notice that is required. And they received notice of the hearing dates. So for us to presume now that they went on some other information, definitely they shouldn't have if they did. And it definitely behooved them, at least from the Government's position, that they should have at least notified or inquired further or follow the notice that they had already received and at least faxed through their vote, if in fact they voted last night. And I think it could be resolved still by leaving the record open for them to submit it for a period of time, whatever that they have. But I cannot -- the Government would not agree that because the ANC voted to join in the appeal that that is reason or support for a motion for a continuance.

CHAIRPERSON REID: All right. Well, I had said -- excuse me one second. All right, Ms. Sansone, procedurally is it improper to not make a decision this moment until after we -- or try or attempt to call and find out from the ANC Commissioner what in fact their position was or what happened and take it up -- go to the first case and

take it up after the first case or something like that?

MS. SANSONE: Madam Chair, there -- procedurally if the Board wishes to call the ANC and find out the status of the report and whether the ANC intended to submit it or was confused about the date, maybe that would help the Board deliberate on this motion for the continuance or perhaps to keep the record open if we go ahead with the appeal to get the ANC report. And then at least we would be hearing directly from the ANC what happened. It is irregular, as Ms. Pruitt pointed out, but this seems to be some irregularity that happened here with the understanding about the date and perhaps that would help clear it up.

CHAIRPERSON REID: Well, yes. I think that given the circumstances that have been put before us, it may serve to clarify as well as the fact that the Board members -- three of the Board members at least feel that it would be proper to give them a call. Table this for right now, give them a call and find out -- get more input as to what happened or what their position is. And then with that information, be able to make a more educated decision.

MS. PRUITT: Madam Chair, just for the record, staff would just like to object. We believe that the ANC's were duly noticed and everything was done correctly and that if they didn't respond, they just chose not to. So I just wanted to say that for the record.

CHAIRPERSON REID: That was clear the first time. Thank you.

MR. NIEDERMAYER: Madam Chair, the continuance as I understand it is for reaching the merits of the appeal in this case as to the issues raised. There are two procedural issues which are raised which can be addressed without regard to the vote of the ANC. Because as I understand it, their vote to support it is based on the merits of the issues raised as to the zoning regulations. There are two issues that are raised procedurally as to whether this Board, in fact, has jurisdiction to hear this matter at all, and a second issue as to the timeliness under the regulations for the hearing of this particular appeal in any case. Those do not go to whether or not there is a violation of any zoning regulations, which is presumably the issue that the ANC addressed when they took a vote as to supporting the appeal or not. Therefore, it would be possible

to continue a hearing on the merits, but yet proceed today on these procedural issues of timeliness and jurisdiction to get those resolved. In the event that the Board determined that there was either no jurisdiction or that the appeal was untimely, then that would address or resolve the issue of whether there should be further proceedings on the merits now or at a later time.

CHAIRPERSON REID: Okay. In regard to the issue, Board members, that we wish to take up at this time, or do you want to take it up at the time of their presentation whether or not the jurisdiction issue as well as the timeliness issue?

COMMISSIONER HOLMAN: I prefer to take it up now myself.

CHAIRPERSON REID: Now? Okay.

MR. O'BRIEN: Madam Chairperson, I received, as I mentioned, a copy of Mr. Niedermayer's motion actually this morning and I would like to respond in writing to it. There are some serious at least factual discrepancies that should be brought to the Board's attention. And I believe there are some legal arguments that flow therefrom that should be brought to your attention as well.

CHAIRPERSON REID: Ms. Pruitt, when did

we receive it?

MS. PRUITT: We received it yesterday, July 6. It is stamped in -- if you -- it is in your package.

CHAIRPERSON REID: Okay. In this type of instance --

MS. PRUITT: There is no requirement for filing.

CHAIRPERSON REID: Ms. Sansone, when in fact there is a motion or a pleading or what have you filed by one of the sides, does the other side have to have an opportunity to respond to it prior to coming to the hearing? I am just not exactly clear on that.

MS. SANSONE: Madam Chair, the zoning -- the rules of procedure are not entirely clear about service of papers. However, in this case, the property owner is asking to dismiss this case. So if the Board were to rule on that motion and grant it, it would have the effect of terminating the appellant's case. Now Mr. O'Brien is stating that he did not receive a copy until this morning. It is a fairly lengthy document and it makes several arguments. It would seem that he should have a reasonable chance to read it, study it, and prepare

an opposition. Now maybe he could be prepared by later today to do that. But he should have some opportunity to study these papers, review them with his client and be able to present the Board his side of these motions. So perhaps we would give him at least -- you know, find out if he is ready to go forward or if he could be ready to go forward later this afternoon. But he should have a chance to review it and respond.

MR. O'BRIEN: Could I also add, Madam Chairperson, that I did not receive the exhibits and apparently they are fairly voluminous.

CHAIRPERSON REID: Speak up?

MR. O'BRIEN: Based on what I have, which is a seven-page single spaced document, it references a number of exhibits which were not sent to me with it. I may or may not --

CHAIRPERSON REID: You don't have the exhibits?

MR. O'BRIEN: I may have some of them in my files back at my office. But we are talking about things like building plans, transcripts of other proceedings, the permits, of course.

MS. PRUITT: Madam Chair, we can provide Mr. Potter with a copy of the exhibits right now if

he needs to.

CHAIRPERSON REID: Well, I think that the issue is not so much being provided with it, which would be great to do that. But still from a prudence standpoint, if in fact he is contending that he received the documents this morning -- Mr. Niedermayer?

MR. NIEDERMAYER: Yes, ma'am.

CHAIRPERSON REID: And it is rather lengthy. Because as a matter of fact, we didn't receive them ourselves, and I don't know how he could aptly be able to respond if he hasn't had an opportunity to be able to read them and to analyze them and to be able to respond to them. I think that prudence would dictate that he be allowed to do so, even if the regulations don't. I think that is not unreasonable.

MS. PRUITT: Madam Chair?

CHAIRPERSON REID: Just one minute.

MS. SANSONE: Madam Chair, I think it would be an issue of fairness to the appellants to have the opportunity to respond.

MS. PRUITT: In the past, you have actually heard the merits of the case and put off the decision to dismiss until after that. So that would

allow Mr. O'Brien time to respond.

CHAIRPERSON REID: Well, there were two. One was in regard to dismissal and the other one was timeliness -- dismissal based on timeliness.

MS. PRUITT: Right.

CHAIRPERSON REID: The other one was jurisdiction.

MS. PRUITT: Correct.

CHAIRPERSON REID: Okay.

MS. PRUITT: But on timeliness and dismissal, the Board has on several occasions, you know, deferred that and heard the merits of the case.

MR. O'BRIEN: Your Honor, I may be -- excuse me, Madam Chairperson, I may be missing something, but all I have received is something that goes to the issue of timeliness. I have not received anything that goes to the issue of this Board's jurisdiction. So I am not sure that I -- was there one motion filed or two?

CHAIRPERSON REID: Just one second. Let me just double check. Timeliness and then --

MR. O'BRIEN: So it is the same issue? Okay.

CHAIRPERSON REID: Then the issue as to -- where is that envelope?

MR. O'BRIEN: It has just been brought to my attention, Madam Chairperson, that the issue of timeliness is jurisdictional and that is one in the same. So there is only one filing that was made and it was directed to timeliness.

MR. NIEDERMAYER: Madam Chairperson, there is also another jurisdictional issue before the Board that I learned about, and that is whether the particular order that is being appealed is one over which this Board has jurisdiction to hear appeals. The particular matter is captioned as an appeal from a stop -- the lifting of a stop work order that was -- the stop work order was issued by the Building and Land Regulation Administration and it was lifted by that same administration. That is covered by Title XI and has its own appeal procedures. That is a jurisdictional issue whether this Board has the authority and the jurisdiction to hear an appeal from that type of order. That is a matter which I believe Mr. Lourenco is prepared to address in part with respect to the other jurisdiction. And that is an issue which I learned about just very recently in terms of the jurisdiction of the Board. That was not raised in the motion for timeliness, which also is a jurisdictional issue.

MR. O'BRIEN: In that case, Your Honor, I am really going to -- Madam Chairperson, I am going to have to review the regulations that Mr. Niedermayer is referring to.

CHAIRPERSON REID: Ms. Sansone, in regard to jurisdiction, what is your read on that? It is my understanding that we are the entity that serves in the capacity of an appeals entity for just this type of situation where there has been an order or a stop order or whatever it is through DCRA, or either some discrepancy as to the type of relief that is requested and so forth and so on. And my understanding was that that was one of the functions of this Board.

MS. SANSONE: Madam Chair, that is correct. Under the Zoning Act of 1938, the Board of Adjustment is authorized to hear appeals from any decision or any order by any administrative official that involves the zoning regulations. And that would extend to a stop work order or lifting a stop work order with a permit. The wording that is used right in the statute is "any order, requirement, decision, determination or refusal of any administrative officer in carrying out or enforcing any zoning regulation." So it would be my recommendation that

the Board find that it has jurisdiction to hear this appeal.

MS. RAY: Excuse me, Madam Chair, before the Board decides that, I would have to disagree. And I am prepared to argue on this. The stop work order at issue was issued under Title XII of the DCMR, the Building Code and Construction Codes, not Title XI of the Zoning Regulations. This Board only has jurisdiction to hear matters that were decided or orders issued as they relate to Chapter 4 of Title V or of the zoning regulations. The stop work order, if you look at it, it was issued under 12 DCMR 111.1. That is part of the building and construction code. Those matters pursuant -- and I even have some exhibits here with the statute. If you look -- if we are going to argue this, Title VI-2721 states that the Board of Appeals and Review hear all appeals other than those involving zoning matters, and that is under the zoning regulations, Title XI of the DCMR, or Title V, Chapter 4. Every other matter is heard by the Board of Appeals and Review. This stop work order at issue here was issued under the Building and Construction Code, Title XII. So, therefore -- and like I said, I am prepared to argue on that and have copies of the statute.

MR. SOCKWELL: Ms. Ray, if I might interrupt you, I was prepared to challenge Mr. Niedermayer on that aspect of his reference to Title XI rather than Title XII. But you are correct in that respect as far as I can see.

MS. RAY: I have copies of the D.C. Code -- copies for the Board, if in fact you would like to argue on this. Because --

COMMISSIONER HOLMAN: If she is in fact correct, then why are we hearing it? I don't understand.

CHAIRPERSON REID: How did it get here?

COMMISSIONER HOLMAN: No, I mean, why don't we deal with that issue then? Because that would be dispositive of the matter as it relates to us period.

CHAIRPERSON REID: Well, that being the case, Mr. Holman, then why would it even be before us? Why would it even be on the agenda in the first place?

MS. PRUITT: Because the Board has to hear every appeal that comes in. We don't have the discretion as the Zoning Commission not to have a hearing on an application.

MR. SOCKWELL: If I might say this --

CHAIRPERSON REID: But the issue here, as I understand it, is jurisdiction. Am I not understanding? If there is a challenge to whether or not the Board has the jurisdiction to hear it --

MS. PRUITT: But the application --

MR. SOCKWELL: There are two issues. The actual issuance of a stop work order is a Title XII event or action. And yet the issues that would lead up to a stop work order could be issues of relevance to either Title XII or Title XI, or some other title that would be under the jurisdiction of the Building and Land Regulation Administration's permit issuance authority.

MS. RAY: That is correct. And if you look at the appellant's statement when they filed it, they reference that they were appealing under this -- the vacating of the stop work order. But they cited zoning regs as a basis for the appeal, which the District would argue were inappropriate. They tagged on violations of the zoning regs to the lifting of the stop work order that really should have never been there. And that is how I believe that the matter got brought here. But that is a way to kind of boot-strap a matter before this Board instead of going before the Board of Appeals and Review, which I think

at the point that they wanted to appeal, they were out of time. And at that point, because I think you have like 15 days or so from the date of the decision to appeal a matter. And even if it is before the Board of Appeals and Review or before this body, the 15-day time period had passed. But if you mention zoning regs, it kind of gets you before this body. But, again, we would state even though the appellant mentioned that there were zoning regs that were at issue and violations at issue, the stop work order was not based on any of the zoning regulations or Title V of Chapter 4 of the D.C. code. So, therefore, it shouldn't have been before you.

MR. O'BRIEN: If I may, Madam Chairperson, the stop work order in fact was issued based on zoning violations. And the person who went out to review the site and initiated the stop work process was in fact a zoning inspector.

COMMISSIONER HOLMAN: Madam Chair, with all due respect, wouldn't that information be on the stop work order itself?

MS. RAY: It is.

COMMISSIONER HOLMAN: I think we could deal with this if we just looked at the proper documentation and moved forward.

MS. RAY: If you look at your stop work order, and I believe it was attached to Mr. Niedermayer's motion to dismiss -- oh, excuse me, it is in your files as Exhibit 2. If you will notice that the official -- and you can barely read this, and we have Mr. Lourenco here that can speak to this. It is Edward Ball, Jr. If you look at the top of the stop work order, it says Department of Consumer and Regulatory Affairs, Building and Land Regulation Administration, Building Inspection Division. Okay? At the bottom, you see checked construction to the left. And the official who signed it is Edward Ball, Jr., and he is a building inspector for the Building and Land Regulation Administration of DCRA. He is not a zoning inspector. And Mr. Sockwell was perfectly correct that stop work orders can be based on zoning violations, but they weren't in this instance and neither was the stop work order signed off by a zoning inspector. It was signed off by a building inspector, who we have Mr. Lourenco here to testify to if in fact we need to go there.

MR. O'BRIEN: Madam Chairperson, the zoning inspector who came out submitted an affidavit in this matter. And he viewed it as a zoning matter. This is the first time I have heard of this and I

would very much, once again, appreciate an opportunity to respond to it in detail. I think there are factual inaccuracies here which are quite serious and which I would like to respond to.

MS. RAY: If I may continue. If you notice the citation on the stop work order, they said it was per zoning request on permit posted, and it has a 111.1. The 111.1 is in reference to 12 DCMR 111.1. And if I could, I have copies for the Board where 111.1 is in fact under the construction codes and refers to permits being required. So there is no zoning regulation that was even cited on the stop work order because it was not being issued pursuant to any zoning violation.

MS. RENSHAW: Dropping down from 111.1 on the stop work order, what does it say in parentheses?

MS. RAY: It says, "Owner right to appeal is given." The owner of the property in this instance. If I may, Madam Chair -- here are the originals. Included in the Government's exhibits, you are going to see some documents that relate to also the other jurisdictional issues that we are going to

-- we thought that we were going to be arguing today over the timeliness issue. But we would in fact say

that the fact that this is the improper forum for this appeal probably takes precedence at this point. That this Board does not even have jurisdiction to hear this matter and that this matter is more appropriately for the Board of Appeals and Review.

MR. SOCKWELL: Ms. Ray?

MS. RAY: Yes.

MR. SOCKWELL: In the documentation that contains this stop work order, which is before me, the statement "manner in which applicant has agreed by decision to remove stop work orders and to approve projects." This particular stop work order appears to state "per zoning request no permit posted", and may say "someone not working per plans"?

MS. RAY: Not working per plans, right -- the building plans.

MR. SOCKWELL: If no permit is posted on the building site or at the building site in a visible manner, then a stop work order could be issued because the permit posting is a requirement of permit issuance.

MS. RAY: That is possible.

MR. SOCKWELL: That is a building code violation.

MS. RAY: Yes, that is correct.

MR. SOCKWELL: Under the authorities of DCMR 12, that is a building code violation regardless of any zoning implications. This particular stop work order cites first that no permit is posted.

MS. RAY: That is correct. And if you look in your packets Exhibit -- excuse me, Exhibit D, you will see the Section 111 that it is referring to in its talk about application for permit and when permit is required. That is Exhibit D. And I just photocopied the whole section just to show you that this is straight out of the building code -- building and construction code section of the DCMR, not the zoning regulations.

MR. SOCKWELL: This is your Exhibit D, right?

MS. RAY: Correct, in that manila envelope -- excuse me, manila folder that you should have just received. And like I said, you can ignore some of the other documents. But this one is what is referenced there. No permit posted 111.1. And it is referencing the building posting requirements or the building permit requirements of the Building and Construction Codes, not of the zoning regulations. If you keep going to Government's Exhibit E, you will notice -- it should be the next page -- that

jurisdiction to hearing appeal, Title VI-2721 talks about that the District of Columbia Board of Appeals and Review shall entertain and determine appeals. And I have underlined, and it should have came through in your copies, except appeals involving infractions of Chapter 4 of Title V or the D.C. Zoning Regulations. I think that is kind of clear. The building -- the stop work order at issue was issued pursuant to -- excuse me -- and the building code is in Title VI, if I am not mistaken, and I think I have attached it -- no, V, Chapter 13. So being that this stop work order was not issued pursuant to Title V, Chapter 4 or the zoning regs, this Board doesn't have jurisdiction to hear an appeal from a stop work order issued pursuant to the Building and Construction Codes. And the mentioning of the zoning regs in your statement I don't think gets by that issue.

CHAIRPERSON REID: All right. What we are going to do is we are going to take a 10 minute recess and then we will resume. Because there is just too much -- we are going too many different ways to be able to make any sense out of it. Thank you. We will confer with Corp Counsel.

(Whereupon, at 2:20 p.m., off the record

until 2:35 p.m.)

CHAIRPERSON REID: Okay, basically what we have decided is that given the information that has been presented before us and the fact that there are some discrepancies and there are some things that are rather unclear, Mr. O'Brien, we are not going to decide on this right now. We are going to allow you time to -- we are going to take the other cases up that are before you and take the agenda in order, and that should give you ample time to be able to read over the material to see if there is some issues or some points that you would like to argue and make the decision as to whether or not to dismiss at that time.

MR. O'BRIEN: So if I may, Madam Chairperson, we are going to return this afternoon at any particular time or just --

CHAIRPERSON REID: Well, we have two cases before you.

MR. O'BRIEN: May I have two hours to --

CHAIRPERSON REID: Yes, we will allow you that. Around 4:30 -- 4:30.

MS. RAY: Clarification, though. Is the issue -- are we going to argue both jurisdictional issues again, or are you going to give him time to

respond to the motion to dismiss, which is something different than what was just argued. The timeliness versus your lack of jurisdiction or this isn't the proper forum.

CHAIRPERSON REID: Well, basically he will be given the time to read the material that was given to him that pertains to the issue of jurisdiction.

MS. RAY: There were no materials in there that pertain to the argument that I just made.

CHAIRPERSON REID: Well --

MS. RAY: Just the timeliness argument is all that he has written.

CHAIRPERSON REID: Well, nonetheless, the materials that he has received, he has not read in regard to the motion to dismiss, the timeliness, to jurisdiction, all the above. We will give him -- we will afford him an amount of time to be able to do so. And then by that time, it should be the time that your case would be coming up. We spent almost an hour on this already.

MS. RAY: Okay.

CHAIRPERSON REID: In the afternoon. So we can bring it back up.

MS. RENSHAW: I would just like to ask

Ms. Ray if she gave a copy of all her material to Mr. O'Brien.

MS. RAY: Yes.

MS. RENSHAW: Thank you.

CHAIRPERSON REID: Okay. Thank you very much. Ms. Pruitt is not here? Mr. Hart is not here? Could you call the first case?

MS. PRUITT: We have some more preliminary issues.

CHAIRPERSON REID: Oh you do? Preliminary? Okay.

MS. PRUITT: Madam Chair, there are just a couple of other preliminary issues. Because we have some pretty lengthy cases today, I would like to at the outset sort of establish the time frames based on our regulations. So that everybody understands that we are working on the same page. And based on Section 3117.4, which gives time frames or designates time frames, "Applicants shall have one hour to present their case. Parties in opposition collectively shall have one hour, organizations five minutes, and individuals three minutes." So we ask that everyone who is participating, please follow the guidelines. And we will be timing you. The clock is up there. That is for the other two cases coming up

-- well, actually for all of them.

CHAIRPERSON REID: Thank you. Would you please call the first case of the afternoon?

MS. PRUITT: Okay. The first case of the afternoon is application 16570, Application of Bertha Tucker/Tucker's Day Care Center, pursuant to 11 DCMR 3104.1 for a special exception under Section 205 to increase the number of children in an existing child development center to a total of 65 students, ages 6 infants and 59 other children ages 2 through 12 years of age and 8 staff persons in an R-5-A district at 3215 11th Place, S.E., Square 5944, Lot 800. All those planning to testify, would you please stand and raise your right hand?

CHAIRPERSON REID: Excuse me, you have a question?

UNIDENTIFIED SPEAKER: Are we finished with the preliminary matters?

CHAIRPERSON REID: Yes, we just finished. Did you have a preliminary matter?

UNIDENTIFIED SPEAKER: We had one and it is on the calendar.

CHAIRPERSON REID: Oh, what is it?

UNIDENTIFIED SPEAKER: It is relating to waiving our filing fee.

CHAIRPERSON REID: Oh, oh --

MS. PRUITT: Generally, sir, we do that when we call your case.

CHAIRPERSON REID: When your case is called, then just before that you can make your request.

MS. PRUITT: Yes.

CHAIRPERSON REID: This is all Bertha Tucker?

UNIDENTIFIED SPEAKER: Yes.

CHAIRPERSON REID: Okay.

MS. PRUITT: Ma'am, are you going to testify? You need to stand and raise your right hand to be sworn in. Everyone -- this is for Bertha Tucker Day School. Everyone who would like to testify, please stand and raise your right hand.

(Witnesses are sworn.)

MS. PRUITT: Thank you. Please be seated.

CHAIRPERSON REID: Okay. Is there anyone here in opposition? May I see your hand in opposition? One? Okay. Two? Okay.

MS. RENSHAW: The Department of Health over here.

CHAIRPERSON REID: Oh, okay. I am sorry.

Okay, all right. Thank you. Go ahead and proceed, sir.

MR. ANDERS: Good afternoon, ladies and gentlemen. I am Joel Anders and I am representing Ms. Tucker in her application here today. I would like to make a brief opening statement, if I may.

CHAIRPERSON REID: How many witnesses are you going to call, sir?

MR. ANDERS: Well, Ms. Tucker will be called to testify and Mr. Charles Anderson of the ACORN Organization has asked to be called in rebuttal testimony to ANC testimony.

CHAIRPERSON REID: Wait, wait, wait, no. Just in the presentation, Ms. Tucker is going to be the witness to present for the --

MR. ANDERS: She will be the primary witness.

CHAIRPERSON REID: Then we will go to the ANC reports, the government reports. Then we will go to persons in support, then persons in opposition, and then you will have an opportunity to make closing remarks or rebuttal. That is the procedure. That is the sequence of procedure, okay? All right.

MR. ANDERS: And in response to your question, there are -- with the Court's indulgence --

members of Ms. Tucker's community who have come here today and asked for opportunity to speak in support of the Tucker Day Care Center.

CHAIRPERSON REID: They will have that opportunity. Okay.

MR. ANDERS: Thank you.

CHAIRPERSON REID: Go ahead, Ms. Tucker.

MS. TUCKER: My name is Bertha Tucker, president of Tucker's Day Care Center, located at 3215 11th Place, S.E., Washington, D.C. I want to thank the supporters who took time out of their schedule to be here today and those who provided letters which are in your package. Tucker Day Care Center is recognized as a nonprofit day care center by the Internal Revenue Service. We have operated now for four years. Our present approved capacity is 29. We have 26 children. We have added additional space to accommodate the increase. We ask for this increase because of the need for children service and related service in Ward 8. Tucker Day Care Center presently has a waiting list of 20 children with calls every day for childcare service for infants and after-care. We have the support of the majority of the community and DHS, which we receive the majority of our referring to expand the service. We are in

compliance with code as our current space will allow us to have 62 children. We respectively request this Board grant our rezoning request. I will be happy to answer any questions you may have. Thank you. Ms. Tucker.

CHAIRPERSON REID: All right. Board members, questions? That is it. That is all. We go now to government reports.

MR. ANDERS: I wish to make an opening statement. Ms. Tucker gave her opening statement before mine. I don't know if that is out of order.

CHAIRPERSON REID: Go ahead.

MR. ANDERS: Thank you. On behalf of Ms. Tucker, I would like to represent to you ladies and gentlemen that childcare, the service that Ms. Tucker provides, really reflects jobs. Married couples and single parents alike will center their employment around the needs of their children. Tucker Day Care provides a valuable asset to the community. Tucker Day Care will look after the community members' children, allowing community members to free themselves from the home, go into the community and work at their jobs. For some, it is a dual income. For some, it is an opportunity to come off of public assistance. For most it is an opportunity to enjoy

the self esteem of employment and making a service to their community.

The people who will have the opportunity to get their jobs because of Tucker Day Care's valuable service will also bring dollars back into the community which will be spent in the community, enhancing all the merchants who offer their goods and services to community members.

Ms. Tucker asked for the opportunity to expand her valuable service to additional children and to additional community members. Growth will always have with it growing pains. Expansion will always have an impact on its community. Tucker Day Care has been a good neighbor in her community and with the opportunity to serve more family members will continue to be a good neighbor to the community.

By analogy, Georgetown University has situated itself in the heart of an upscale bedroom community in Georgetown. Clearly there is impact on Georgetown by the presence of Georgetown University. But clearly the valuable service that Georgetown provides to the nation and to the residents of Georgetown far outweighs the community impact -- the added cars, the added parking on the streets, or the occasional soda pop bottle that might be left on the

street.

By analogy, Tucker Day Care by its expansion may well occasion additional cars of moms and dads who drop their children off. It may occasion an additional candy wrapper on the ground. However, Ms. Tucker, as a responsible community member, is prepared to deal with any litter that may occur because of the increased students, and Tucker Day Care asks the community to understand that if there are additional cars that will traverse the streets, these are cars for parents dropping off their children so they can pursue the employment which is so intrinsic to their survival.

Tucker Day Care has many community supporters, many of whom have taken their valuable time to come here today to offer their personal support to Ms. Tucker and to the wonderful service she now provides and to ask you ladies and gentlemen to permit her to provide it to an expanded number of moms and dads in the community. Thank you very much.

CHAIRPERSON REID: Mr. Anders, are you going to demonstrate how Ms. Tucker's application complies with the regulations? In other words, she is asking relief 205 to the zoning.

MR. ANDERS: Yes, thank you. We have

brought our architect who would be called on to offer testimony as to the architectural conformity of Ms. --

CHAIRPERSON REID: No, Section 205 is what you have to -- basically your presentation should be predicated upon demonstrating how she complies with the regulations under 205 -- Subsection 205. Are you familiar with Subsection 205?

MR. ANDERS: Which -- no. Could you elaborate that, please?

CHAIRPERSON REID: All right. Then let me give you -- this is what you have to address. Mr. Anders, can you just read the line item by item, starting with number one, and then just tell us how you comply. It doesn't have to be anything elaborate. Just basically demonstrate that she does comply with the regulations.

MR. ANDERS: Very well. By way of testimony, Ms. Tucker, I would like to ask you to tell the Board in your own words with regard to 205.2, will you be able to meet all applicable code and licensing requirements? Will your architect be able to provide the testimony to show that you meet your code and licensing requirements?

MS. TUCKER: Yes.

MR. ANDERS: And can you tell the Board in your own words how your center shall not create objectionable traffic conditions or unsafe conditions for picking up and dropping off of children?

MS. TUCKER: Yes.

MR. ANDERS: Would you elaborate? How is it within the framework of your streets? Can you tell the Board how it is that there won't be objectionable traffic or a lack of safety for the picking up and the dropping off of the children?

MS. TUCKER: Okay. Most of my parents and children are low income and the majority of them come on busses. Some of them walk and pull the stroller. We have a few of them that have cars. They just pull up front and drop their children off and they immediately go on to work or school.

MR. ANDERS: So are you saying that there won't be a significant increase in the number of cars on the streets when the mothers or fathers drop their children off?

MS. TUCKER: No, no. Not from the daycare, now. Other cars do come by there, but I am talking about the daycare right now. So, no, that wouldn't be a problem.

MR. ANDERS: How about the issue of

safety? Is there a safe context for the moms and dads to drop their children off?

MS. TUCKER: Yes, the daycare is fenced in all the way around. We have a gate where they drive up and they immediately come into the center and drop their children off.

MR. ANDERS: So when they drop their children off, they won't be blocking the cars that are trying to get by?

MS. TUCKER: No, no.

MR. ANDERS: All right. And will there be, to your knowledge, sufficient off-street parking to meet the needs of increased staff or other employees who will be necessary to staff your daycare if the increased students were permitted?

MS. TUCKER: Yes. We only have one staff member that drives. The rest of them come on buses and walk to the center.

MR. ANDERS: Can you tell the Board about any outdoor play space that you provide and where it will be located and that there will not be objectionable impact to the neighbors if additional children are placed in that play space?

MS. TUCKER: Yes, I can address that. Number one, all the children do not go outside and

play at the same time. Number two, the whole center is fenced in all the way around. They children is inside the center and there will be staff out there with the children when they are out there on the playground.

MR. ANDERS: How about with regard to noise? How can you assure the Board that increased children won't create a noise nuisance for the neighbors?

MS. TUCKER: Well so far I can say we haven't had no problem yet. You know, there are always adult staff outside with them, you know. We keep them quiet. We haven't heard no complaints from the neighbors about the children being too noisy.

MR. ANDERS: Now you indicated that there is a fence or screening of your unit. Can you describe the type of fencing or screening that you have?

MS. TUCKER: On one side of it is wood about 8 inches high. On the other side is wire all the way around. The door around the back -- two doors around the back and one door around the front.

MR. ANDERS: Does this screening safeguard your daycare from any intrusion that the neighbors might experience?

MS. TUCKER: Yes, it do. We have locks on the doors in the back. They are always locked. And we only unlock them to take the trash out.

MR. ANDERS: Have you in the past had many occasions where neighbors have complained to you about the noise or the intrusion of the children?

MS. TUCKER: No. I have never had a neighbor say nothing about no noise. I had a lady that said that she didn't know what was going on because it was so quiet down there. They live on the next street, Savannah Street, and said -- was talking about how quiet the children are. Do they go outside? You know, sometimes she don't hear them. I said, yes. But she said, I don't ever hear them. But we try to keep them quiet because we know there is other people in the community. Some work and some don't work. Some are old and some are young. So we realize that.

MR. ANDERS: Do you have adequate signs posted in your daycare center to alert other members of the community that you are conducting the daycare?

MS. TUCKER: Yes, we do. Right in front of the building it is posted.

MR. ANDERS: And have you in the past and will you in the future go out of your way to protect

adjacent and nearby properties from any interference Tucker may cause them?

MS. TUCKER: Yes, sir. We also have cameras in our center front and back. We done got cameras there now. We can see the children outside or inside, the front of the building or the back of the building. If anybody tried to get in or whatever, we do have cameras.

MR. ANDERS: Quite specifically, how many additional staff do you plan to bring into your daycare center if your application is approved to meet the needs of the children?

MS. TUCKER: Well, we have 8 now. We wouldn't need no more because we have got over now what we need. But I am planning on getting two more teachers.

CHAIRPERSON REID: Did you go through 205. Mr. Anders?

MR. ANDERS: Yes.

CHAIRPERSON REID: Did you go through 205?

MR. ANDERS: That was 205.

CHAIRPERSON REID: Okay, I didn't hear -- maybe I was distracted. But did you respond to the issue as to whether or not there are any other

daycare centers within 1,000 square feet?

MR. ANDERS: 205.8. Let me ask you, Ms. Tucker -- thank you -- are there any other daycare centers within 1,000 square feet of your location?

MS. TUCKER: 1,000 square feet? I don't know about 1,000 square feet. I know that there is one on Alabama, Rehoboth.

MR. ANDERS: How far is that from your location?

MS. TUCKER: I really don't know. It is a little ways from us. They say six blocks. I don't know about the square foot really.

CHAIRPERSON REID: That is 1,000 feet, not square feet.

MS. TUCKER: I am sorry.

CHAIRPERSON REID: Within 1,000 feet of your center. So six blocks -- would that be within 1,000 feet more or less?

MS. TUCKER: You said six blocks? At least. Okay.

CHAIRPERSON REID: And the question, Mr. Anders, is whether or not the cumulative effect of the daycare centers would have impact -- a negative impact on the community combined? In other words, you are adding another one. If you add another one

in such close proximity, would that have a detrimental impact on the community? That is what you would have to address.

MR. ANDERS: Ms. Tucker, the question being raised, which I would like to call your attention to, is can you state to the Board why another -- why an expansion of your daycare center with another center being six to eight blocks away would not negatively impact the community or the environment.

MS. TUCKER: Number one, DHS has been asking me to expand or would I like to get another building, a larger building, because of the waiting list we have. And that is what caused us to make some arrangements and do some preparation and to expand our center.

CHAIRPERSON REID: So are you saying there is a need? Is what you mentioned that there is a greater need for more day care center providers there in that area right now?

MS. TUCKER: Yes, yes. Especially for infants and after-care. I have a waiting list now at the center.

CHAIRPERSON REID: How many?

MS. TUCKER: 20.

CHAIRPERSON REID: Okay. All right. Thank you.

MR. ANDERS: I do think it is important to note, if I may highlight or reemphasize as Ms. Tucker states. There is a wait list and the wait list perhaps bespeaks the need of the community for the service she provides. And I think that it is important to consider the fact that there are people waiting in line to put their children in the center as evidenced by the wait list.

CHAIRPERSON REID: All right. Thank you very much. Board members, any further questions?

MS. RENSHAW: Madam Chair, I would like to ask the applicant about a definition of her community. In other words, you say you have got a wait list of approximately 20 from the community. Now are those within your zip code?

MS. TUCKER: Southeast, Ward 8.

MS. RENSHAW: They are all Ward 8?

MS. TUCKER: Yes.

MS. RENSHAW: They are not in PG County?

MS. TUCKER: No, no. These are Ward 8 children.

MS. RENSHAW: All Ward 8 children. All right.

MS. TUCKER: Because DHS sends me all of my children.

MS. RENSHAW: Oh, thank you.

MR. MOULDEN: I have a question for the applicant. How long has your daycare center been in operation?

MS. TUCKER: Almost four years.

MR. MOULDEN: Four years. Okay.

MS. TUCKER: Yes, sir.

MR. MOULDEN: And over the four years, have you gradually increased -- how many kids did you start off with?

MS. TUCKER: 29.

MR. MOULDEN: 29. Okay. And you have 26 now and you want to go to 65?

MS. TUCKER: Huh?

MR. MOULDEN: You want to increase it to 65?

MS. TUCKER: No, no. We aren't asking for 65 children.

CHAIRPERSON REID: You said no?

MS. TUCKER: We weren't asking for 65. I think it was 30 more or 32 more. When I put the appli -- let me say this. When I put the application in and came down here and paid for 30 or 35 children,

I didn't know how many children I was going to be able to have. Now that I have been down to occupancy, they have told me that I can have 29 more children. Now I know. At that time I didn't know.

MR. MOULDEN: So you have 26 now.

MS. TUCKER: Right.

MR. MOULDEN: And how many more do you want?

MS. TUCKER: 29.

MR. MOULDEN: You want 29 more.

MS. TUCKER: Um hum.

MR. MOULDEN: Okay. So -- on the application here it has a total of 65.

MS. TUCKER: I know. I know.

MR. MOULDEN: Okay.

MS. TUCKER: I said when I put the application in, I didn't know how many we was going to be able to hold. I didn't know.

MR. ANDERS: I think if I might say from what I understand, she is zoned for 29 and she has 26 students actually in attendance now, and she would like to expand to include an additional 29. That would bring her to a total capacity of 65 students.

MR. MOULDEN: Is that how many you want? I am not sure what the request is.

MS. TUCKER: Yes. I am saying I didn't know when I put the application in --

MR. MOULDEN: Right.

MS. TUCKER: I didn't know how many more children I could have. I put a number there.

MR. MOULDEN: Right.

MS. TUCKER: And I knowed I would have a hearing and then I would go from there.

MR. MOULDEN: Okay. So your request is to have a total of 65.

MS. TUCKER: Right. Yes, sir. Right.

MR. MOULDEN: Okay. Now I have some questions about your house. How many bedrooms do you -- how many rooms do you have in your house?

MS. TUCKER: About 8.

MR. MOULDEN: Eight? Okay, that is good enough.

MS. PRUITT: Madam Chair, for the record, I think there is some confusion on the math here, at least when I add it. I got a number of 55. Is that correct? Is that what you are asking for?

CHAIRPERSON REID: It is 55. But I think the --

MS. PRUITT: Do you want to have it as a maximum of 65?

CHAIRPERSON REID: On the application it says up to 65. But she has -- the calculation is a little off. It is 55 for sure.

MS. PRUITT: So you want to amend the application to say for a maximum of 55, is that correct?

MS. TUCKER: Correct.

MS. PRUITT: And would the breakdown still be the same? Six units? Excuse me, six infants -- six infants and the rest being age 2 to 12?

MS. TUCKER: Yes, yes.

MR. ANDERS: May I take a moment to clarify this with Ms. Tucker?

MR. SOCKWELL: Mr. Anders, just one question. You made a statement about 26 and 29. You said they had 26 children but they were approved for 29, is that what you said?

MS. TUCKER: Yes.

MR. ANDERS: That is what Ms. Tucker had related to me as being the status of her --

MR. SOCKWELL: Okay. So you were not currently at capacity? Is that what you are saying, Ms. Tucker? Or is that what Mr. Anders is saying, that your 29 is the current capacity and you have 26

actually in the school?

MS. TUCKER: Yes. My maximum is 29, yes. But we have 26.

MR. SOCKWELL: So if you were asking for 29 additional children, is that in addition to your maximum or in addition -- which it should be.

MS. TUCKER: Right.

MR. SOCKWELL: As opposed to in addition to the number of children that you actually have in the center now.

MS. TUCKER: Correct.

MR. SOCKWELL: So then we would be talking about 58 as opposed to 55.

MS. TUCKER: Right.

MR. SOCKWELL: I am just trying to clarify the top line number.

MS. TUCKER: Yes, sir, correct. You are right.

MR. ANDERS: And if I may clarify with Tucker one moment. If I may reflect Ms. Tucker's wish list here, I believe her architect would testify that her spacial environment would accommodate up to 62 students. So ideally, the approved expansion would take her up to her architectural limit. However, at this juncture, 55 students total would be

anticipated. The architectural plant would take her to a maximum of 60.

MS. TUCKER: Instead of 65.

MR. ANDERS: And not 65. The anticipated initial increase would be to 55. But with the Board's approval, that would give her an additional five students that would be within code requirement.

MR. SOCKWELL: Is it correct to assume that the level that you are looking for, although it would not be our responsibility to determine the architectural adequacy of the plans to accommodate those kids -- it is our assumption that the plans have been looked at by someone who would judge, at least on paper, the appropriateness of the space to house 60 children.

MS. PRUITT: Mr. Sockwell?

MR. SOCKWELL: So you are using a number that has got some realistic basis, that is all.

MS. TUCKER: Yes.

MR. SOCKWELL: It has nothing to do with the approval.

MS. PRUITT: Mr. Sockwell, also for information, we have representatives. When the government report time comes, we do have a representative from the Department of Health here.

MR. SOCKWELL: Thank you.

CHAIRPERSON REID: Okay, thank you very much. Let's go now to government reports. Office of Planning report, I don't think we have one. The Department of Health is present and we would like a report from them and then we go to the ANC.

MS. ALI: Ladies and gentlemen, my name is Zahra Ali, and I am the Human Services Licensing Specialist. I deal with 75 centers of home and the Tucker Day Care Center is one of my centers.

I just want to put first a point of clarification. We -- Tucker Day Care Zoning is 29, but they are licensed only for 26. And we give license according to the Department of Health measurement, which is totally different front zoning. So she cannot operate more than 26 children at the current time. That is why she only has 26 children, although zoning she has 29.

The Department of Health sent a memorandum on March 10, 2000 to the BZA, Board of Zoning Adjustment, Mr. Carras, stating that at this point, the Department of Health do not support any expansion of the Day Care because the Center has been referred for enforcement action with the recommendation of closure on February 28, 2000, due

to non-compliance with Title 29, District of Columbia, Municipal regulations, Chapter 3, Child Development facilities. Specifically, Tucker Day Care Center was found in non-compliance with the following. License capacity had not been observed. Adult/child ratios has not been observed. Group size limitations has not been observed. Adequate adult supervision for all children at all times had not been observed. Maintain safety for all children and provide adequate bedding for all children has not been observed. In view of the above, the Department of Health Regulation Administration Child Residential Care Facilities Division does not support the expansion of Tucker Day Care Center at this time. Thank you. If you have any questions, I am gladly to respond.

CHAIRPERSON REID: Thank you. Questions, Board members? Mr. Holman?

COMMISSIONER HOLMAN: Since that report has been issued, have they since come into compliance, or is that something that they are permitted to do?

MS. ALI: No, since we are in the process of doing the enforcement, and I think it has been forwarded maybe this week.

CHAIRPERSON REID: Ms. Renshaw, did you have a question?

MR. MOULDEN: I have a question. I know that in both --

CHAIRPERSON REID: Did you finish, Mr. Holman?

COMMISSIONER HOLMAN: I guess what I am trying to see is that I am obviously not an expert in running daycare centers. But these seem to be issues that could be perhaps relatively easily resolved. And I was just wondering if this was a continuing pattern or you had just made your inspection and determined this and that there was no appeal or no opportunity to correct it.

MS. ALI: Yes. Madam Chairman, the Center has been doing repeated violations. In June 15, 1999, we have had a complaint received from Detective Michael Wallace that a child has sustained unexplained injury. So on June 17, 1999, I conducted an investigation.

CHAIRPERSON REID: Excuse me, a child has sustained what?

MS. ALI: Unexplained injuries.

CHAIRPERSON REID: Oh, unexplained injuries. Okay.

MS. ALI: And on June 17, 1999, I conducted the investigation. And that is when I found Tucker Day Care Center in violation of the following. Failure to comply with the program space requirements and failure to supervise children under care and failure to observe adult child ratio. I issued them a notice of infraction for 1,500.00. She made an agreement to pay $750.00, and also that she will comply to all regulations. So it is a repeated violation. And that is why we referred her to enforcement.

CHAIRPERSON REID: And that is why you are going to --

MS. ALI: Yes.

CHAIRPERSON REID: Further enforcement you said?

MS. ALI: No, we are going to enforce repeated violations. So the second time, we sent her to enforcement. So, now we are in the process of enforcement. And I think this week, the paper has been approved and I think it was sent by mail.

CHAIRPERSON REID: The enforcement papers?

MS. ALI: Yes, for a hearing. For the enforcement.

CHAIRPERSON REID: All right. Thank you. Any other questions, Board members? Yes?

COMMISSIONER HOLMAN: I am still not understanding. So does that enforcement mean that your intent is to close the Day Care Center? I am just trying to understand.

MS. ALI: Yes, we intend to close the Day Care Center. Intend to close the Day Care Center.

CHAIRPERSON REID: In her letter, it said that there is a recommendation for closure per enforcement with action -- enforcement action with a recommendation of foreclosure. But the closure --

MS. ALI: She has to go in front of a hearing before we have closure. She should have a hearing before we --

CHAIRPERSON REID: When is the hearing going to be?

MS. ALI: I don't know.

MR. ANDERS: May we speak in rebuttal at this point?

CHAIRPERSON REID: She has a lot of infractions and they are going to close her down.

MR. SOCKWELL: Ms. Zahra?

MS. ALI: Ms. Ali.

MR. SOCKWELL: I am sorry, I beg your

pardon?

MS. ALI: Ms. Ali. I am the inspector.

MR. SOCKWELL: So your name is Ali?

MS. ALI: Yes.

MR. SOCKWELL: I am sorry. Ms. Ali, in -- how long have you been involved with inspections of this particular center?

MS. ALI: I joined the Department of Health August 19, 1998. And that is when the day care center was -- which has been given to me.

MR. SOCKWELL: Since August of 1998, approximately how many times have you visited the Tucker Center?

MS. ALI: We do once visit for the renewal of the license. And also we do any visits if there is a complaint.

MR. SOCKWELL: All right. Then on the basis of complaints alone, how many visits have you made to the center?

MS. ALI: Since I was there, I received a complaint, and that is when at first I -- then again, when I went for the renewal, they were the same. And in 1999 also she was in violation. But at that time, I did not issue any tickets, but I sat with her and we talked about ways to improve the center and ways

to comply with the regulations.

MR. SOCKWELL: And Ms. Tucker was responsive verbally to your request for positive changes and improvements?

MS. ALI: Yes, but none was in action.

MR. SOCKWELL: Okay. And the time period between March 10, to the best of your knowledge, when this memorandum from the Department of Health was generated, to the incident of June 11 -- I believe you stated the time frame to me -- primarily the violations have been in providing proper supervision, management and operational safety?

MS. ALI: Yes.

MR. SOCKWELL: This particular issue of the unexplained injury was not a normal occurrence at the Tucker Center?

MS. ALI: I don't know. Because I received the --

MR. SOCKWELL: Let me rephrase that. That was the only injury report that you have responded to?

MS. ALI: Yes.

MR. SOCKWELL: Thank you.

CHAIRPERSON REID: Okay. Thank you very much, Ms. Ali.

MS. ALI: Okay, thanks.

CHAIRPERSON REID: Now we go to --

MS. PRUITT: Madam Chair, the applicant has the opportunity to cross examine.

CHAIRPERSON REID: I don't think I was not going to allow them to.

MS. PRUITT: Oh, I am sorry, I wasn't sure -- I thought you were going to ANC.

CHAIRPERSON REID: I hadn't finished. Okay, we now go to cross examination. If you have any questions to ask Ms. Ali, Mr. Anders.

MR. ANDERS: Yes. I believe that you, ladies and gentlemen of the Board, have an April 19, 2000 memorandum of violations, which appears to be initialed by Ms. Ali.

CHAIRPERSON REID: Do we have that?

MS. PRUITT: If you could provide us with a copy and then I will copy it to the Board.

CHAIRPERSON REID: Is it in this package?

MS. PRUITT: It is in the package we received today?

MR. ANDERS: Yes.

CHAIRPERSON REID: Oh, today.

MR. ANDERS: Ms. Ali, let me ask you first at the outset, isn't it a fact that whenever

you on occasion asked Ms. Tucker to cure what you cited as a defect, was Ms. Tucker not zealous and energetic in taking immediate remedial steps to cure whatever it is that you had pointed out to her, however minor or however major, to conform her daycare with the request that you made of her? Isn't it a fact that she has done that in the past?

MS. ALI: When we go to a center, we give them a statement of deficiencies and lack of standard, which is our procedure. And we give them 30 days to correct the deficiencies. So, yes, whenever I gave her 30 days to correct the deficiencies, she corrected. But this one was repeated violations.

MR. ANDERS: So you --

MS. ALI: The difference between repeated violations and you give them a deficiency and give them 30 days and they correct it.

MR. ANDERS: So you are saying that whenever you called deficiencies to her attention in a timely manner she took care of those deficiencies to your satisfaction?

MS. ALI: Sometimes. If she does not, we give her more two weeks, yes.

MR. ANDERS: But she has --

MS. ALI: Yes, otherwise she won't be licensed.

MR. ANDERS: Very well. So if that is the case, then what is it that you now call to further attention as being not cured by Ms. Tucker?

MS. ALI: Because she -- when a center is doing repeated violations, then the Department decided to send her to enforcement and then recommend for closure. That is the standard for repeated violations.

MR. ANDERS: And what repeated violation is it?

MS. ALI: The repeated violation is -- especially when is the safety of the children -- with regard to the safety of the children. Like adult -- child and adult ratio is not met. The first time, you give them a deficiency notice and you talk to them. If they repeat it again, the same violations, then that time you send them to enforcement and recommend for closure because of the safety of the children.

MR. ANDERS: Are you suggesting Ms. Tucker has a lack of adequate staffing at this time?

MS. ALI: A lack of adequate staffing. A lack of doing -- exceeding the license capacity. Like

when I went, she is only entitled for six infants. Okay, the first time I came, one time she has nine infants and the second time she has 13 infants in a small room and the measurement of the room is 264 square feet. And that is only for six children. And these are repeated violations. You done it once time and you are given a deficiency notice and then you do it again, and that is when you are sent to enforcement and recommend closure.

MR. ANDERS: Madam Chair, by way of rebuttal, may I ask Ms. Tucker to specifically comment on the number of infants that --

CHAIRPERSON REID: Not at this time. You may at the end when you have the closing remarks. You can then do your rebuttal.

MR. ANDERS: All right.

MS. ALI: And an infant by definition is a child under the age of 2 -- from zero to 2, according to the Department of Health.

CHAIRPERSON REID: Okay.

MR. ANDERS: May I read her these violations?

CHAIRPERSON REID: No. Is it a question? This is a cross examination, Mr. Anders. So whatever you want to say -- well, whatever you want to request

has to be posed in the form of a question.

MR. ANDERS: This is to Ms. Ali -- this question --

CHAIRPERSON REID: No. Oh, to Ms. Ali?

MR. ANDERS: Yes.

CHAIRPERSON REID: Yes.

MR. ANDERS: Ms. Ali, you had violated Ms. Tucker for 13 children under 2 years in a small room licensed for six infants, is that correct?

MS. ALI: When was that time?

MR. ANDERS: Do you recall directly when that violation was?

MS. TUCKER: The last time she came out. It was in February when she came out.

MR. ANDERS: Was that in February of 2000? MS. ALI: Okay, yes. There were 10 infants and the maximum -- she was supposed to have only six infants in there.

MS. ALI: Isn't it a fact that all the children in the room at that time were not infants?

MS. ALI: According to the Department of Health, infants is from zero to two. And all the children at that place were under two years old.

MR. ANDERS: Isn't it a fact that since that time Ms. Tucker has taken the steps necessary to

conform her daycare to the Department of Health infant standards?

MS. ALI: I don't know about that.

MR. ANDERS: Did you come back to reinspect?

MS. ALI: No. As long as -- when I sent her to enforcement, I was not -- I did not come back because we are not allowed to go back. The center has been in violation twice. I have other 75 centers and homes to deal with. So I did not go back.

MR. ANDERS: So you don't know as a matter of fact --

MS. ALI: No, and she did not --

MR. ANDERS: The issue has been addressed.

MS. ALI: And she did not relate to us that she corrected the deficiencies. She did not send any information to the Department that she corrected the deficiencies.

MS. TUCKER: I sent everything in. Everything they asked for, I sent it. She is not telling the truth.

MR. ANDERS: You will have your chance.

MS. TUCKER: Okay.

MR. ANDERS: Madam Chair says you will

have your chance to rebut.

MR. ANDERS: Do you know for a fact that there were additional staff hired after you had called it to Ms. Tucker's attention?

MS. ALI: Not to my knowledge.

MR. ANDERS: Had you been out to reinspect whether or not additional staff had been hired?

MS. ALI: After February 2000?

MR. ANDERS: Yes.

MS. ALI: The file has been taken from me and it is with the Attorney General.

MR. ANDERS: So she may well have acquired additional staffing.

MS. ALI: She did not inform me.

MR. ANDERS: You may not know of it, but she may well have.

MS. ALI: I don't know. She did not inform me. So I don't know. She did not inform me.

MR. ANDERS: Okay. And do you know whether or not Ms. Tucker has in fact acquired additional bedding to provide for the infants as well as the toddlers?

MS. ALI: She did not inform me and I don't know.

MS. ALI: So she could very well have the additional bedding in place at this time.

MS. ALI: I don't know. I don't know. I don't know.

MR. ANDERS: Very well.

MS. ALI: She did not send --

MR. ANDERS: Do you know --

MS. ALI: Excuse me, sir, she did not send any information after I came back. She did not contact me. She did not send any information to that effect.

MR. ANDERS: Do you know whether or not all parents were given proper health forms and asked to take their children to the physician? Do you know whether or not that has been done?

MS. ALI: That is the proper procedure for the Department -- for the center to send them -- the children for -- but I did not cite her for this. I did not cite her for this.

MR. ANDERS: Very well. I have no further questions.

CHAIRPERSON REID: Okay. Mr. Anders -- is your name Mr. Anders or Anderson?

MR. ANDERS: Anders.

CHAIRPERSON REID: Anders.

MR. SOCKWELL: Mr. Anders, there was a letter you referenced of April 19, 2000.

MR. ANDERS: A memo, yes, sir.

MR. SOCKWELL: A memo. I assume that you are Anders and not Anderson.

MR. ANDERS: That is correct, sir. That was Ms. Tucker's --

MR. SOCKWELL: Okay. This letter or memo is an attempt to state that issues have been rectified.

MR. ANDERS: Yes, sir.

MR. SOCKWELL: Did you physically visit the daycare center after receiving this memo to verify that any of these things have been done?

MR. ANDERS: No, sir. I cannot personally verify that I visited the daycare center. This was provided to me by Ms. Tucker and I assumed the veracity of her statement.

MS. RENSHAW: Was this statement sent in to the Department of Health?

MR. SOCKWELL: There is no indication that there was a cc to the Department of Health. And as her representative attorney, it would seem to me that you would have made sure that that happened.

MR. ANDERS: Well, again, Ms. Tucker had

advised me that all these documents were properly submitted.

MS. TUCKER: It was. All of them.

MR. ANDERS: I did not look over her shoulder, sir, but I took her representation that these were appropriately submitted.

MR. SOCKWELL: But I am assuming that because you represent her here today that she relies upon you as her legal advisor on matters of licensing and other issues of great importance to her business.

MR. ANDERS: Correct.

MR. SOCKWELL: Then I have no more questions. Thank you.

CHAIRPERSON REID: All right. Thank you. The ANC did not send a report.

MS. RENSHAW: Yes, they did. We have a report from 8E.

CHAIRPERSON REID: It is not an official report, is it?

MS. RENSHAW: Well, it is a letter dated May 3. And then we have another one May 3 from 8E, an official report of a meeting on April 12, 2000. Proper notice of the meeting was given. This is a letter signed by Melvin Sims, the Chairman.

CHAIRPERSON REID: Now wait a minute, is

that the one that has a quorum?

MS. RENSHAW: A quorum present.

CHAIRPERSON REID: A vote of --

MS. RENSHAW: Three out of five elected Commissioners were present. So therefore a quorum was present. And the Commission made the recommendation to request that the BZA disapprove the subject case.

CHAIRPERSON REID: Okay. And that is 8E?

MS. RENSHAW: 8E, and the motion passed 3 to zero.

CHAIRPERSON REID: Okay. And therefore they would be given the great weight to which they are entitled. All right. We move now in persons or parties in support of the application. I am sorry, persons and parties -- Mr. Anders, now you can sit back. And persons in support of the application can come forward. How many people are going to testify in support? Okay.

MS. PRUITT: Excuse me, Ms. Reid, I believe the ANC representative is here and wanted to speak.

CHAIRPERSON REID: Oh, are you ANC? Oh, I am so sorry. I thought you were -- when I said opposition -- I thought that you were in opposition.

I didn't realize that you were the ANC representative. Please come forward.

MS. RENSHAW: I apologize for usurping your role.

CHAIRPERSON REID: That is why I had Ms. Renshaw because I was --

MR. SIMS: Oh, okay.

CHAIRPERSON REID: Please forgive me. I didn't realize it.

MR. SIMS: That is quite all right. Good evening, Madam Chair. My name is Melvin Sims. I represent ANC 8E, and I am Chairman of ANC 8E-02. I am 8E-02 and Chair of 8E-02. We are opposed to the special exception for the Tucker Day Care Center for the following reason. A safety factor for the children, a nuisance to the neighborhood, as some of the letters have demonstrated. I would like to point out DCMR Title XI indicates that the center should be located as to not cause objectionable traffic to the immediate neighborhood. We have had instances where parents dropping off their daycare children, the block the buses. That is a bus route and they are double-parked. Cars going one way and cars going another way and they double park and the bus can't get by. In another instance, the neighborhood had

complained about parents leaving their cars in the neighborhood all day. We don't have ample parking spaces in those areas because it is a neighborhood that don't have ample parking spaces.

Title XI also states that 205.5 says that the daycare center should have ample play area for the children, which they do not have. They bring the children out in the neighborhood and there have been complaints of litter and noise that have been demonstrated by the children and lack of supervision.

DCMR 29 states 328.2 that the daycare center should have 60 square feet of outdoor space for each child. And inside you should have at least 35 feet for children over 2 and for infants under 2, you should have 45 square feet. And from our measurements, it appears that that facility has 2,530 square feet with the exception of the kitchen, staff bathrooms, two closets, a hallway and bathrooms. That comes to 461 square feet. If you deduct that from the 2,530 square feet, that would leave you with 2,079 square feet. For further math, if you have 59 children, as stated in the application, and you need 35 square feet, 35 times 59 is 2065 feet. As I stated, they only have 2079 square feet. Okay, you are going to add six infants to that. And for each

infant under two, you are supposed to have 45 square feet for each infant. Six infants, that is 270 square feet. When you add those two together, 2065 square feet plus 270 square feet, that is 2,335 square feet. Calling your attention to that. The neighborhood, they are upset with the noise that is generated by this daycare center. And I must also reiterate that the community is not in need of a daycare center of this magnitude. For there is not that many children in this community, in the affected community. And we have many other daycare centers such as Headstart programs in public schools, Department of Recreation and churches, plus a multitude of mom and pop operations. We also have grandparents caring for the children. As we know, daycare centers can be a haven for children and they can be a hell hole. Some things that was mentioned today that had not come to the attention of the community as children getting injured -- reported injuries, that is we don't know how many children was injured that -- reports weren't made. But as this facility doesn't have the required minimum square feet of space to operate for that many children, we oppose this. And to put children in an unsafe facility, God forbid if anything happens to them. And

make it known for the record that you as the Board and other citizens and parents present have been informed of unsafe situations. Also, I'd like to point out that Tucker Daycare Center has applied for a special exception to extend their capacity to 59 children plus 6 infants and 8 staff. The question is, had they applied for a zoning change within 5A, I believe that it is required that a facility of this nature should have a zoning of 5D. So that is a matter for the Board to take under consideration. We haven't had any reports from the Department of Public Works as to the impact on the community as far as utilities -- what I mean by that is water and sewage and traffic. Plus Title XI also states that there should be ample off-street parking for the staff and visitors. This facility has no offstreet parking. And as I aforestated, it is a bus route. And the children is outside in the community without ample supervision. So that is my testimony as far as things I would like the Board to take under consideration in denying this petition.

CHAIRPERSON REID: Thank you, Mr. Sims. Board members, do you have any questions for Mr. Sims? Okay, now we go to cross examination of Mr. Sims by Mr. Anders if you have questions. And also,

Mr. Lee, that you wished to question Mr. Sims?

MR. SIMS: I would also like to point out that the supporters that are here today and supporters that have written letters do not live in the community that is affected by this facility. We have people from Temple Hill, Maryland, Suitland, Maryland, Uptown D.C. So I don't think that they would be qualified as testifying as supporters in this thing. We have very few people that use this facility from the affected community. And it would be a shame that consideration would be given to people that live outside of this community to allow this facility to operate. Because they do not have to live with the situation that is generated by this facility.

CHAIRPERSON REID: Mr. Sims, thank you. That point was brought out in your letter. And when people come to testify, they have to give their name and their address. So we can make that determination. And I also did not say to you that your ANC -- what is it, 8E?

MR. SIMS: Yes.

CHAIRPERSON REID: Will be afforded the great weight to which it is entitled, because there was a quorum present and an official position taken

with a vote by the ANC.

MR. SIMS: Yes.

CHAIRPERSON REID: All right. Thank you.

MR. SIMS: Thank you.

CHAIRPERSON REID: Mr. Anders, did you have any questions of Mr. Sims?

MR. ANDERS: Mr. Sims, are you familiar with a letter that had been written by a Ms. Barbara Ferguson Kamara dated March 15, 2000, of the Department of Human Services where she -- and I quote -- states "the great need in the community for additional daycare." Are you familiar with this?

MR. SIMS: No, I am not familiar with that.

MR. ANDERS: May I show this to you, sir?

MR. SIMS: Sure. Sure. Thank you, Mr. Anders. I have read this report. I disagree with Ms. Barbara Ferguson. And if she would like to contact the ANC office, I would demonstrate to her that with her sitting at 717 14th Street, I can more than not demonstrate to her that she is wrong in this assessment. And she also had in this letter that Ms. Tucker is asking for 59 children plus six infants, that is 55 children. She hasn't demonstrated that she can handle 29. So I think 59 and six infants

would be disastrous.

MR. ANDERS: So in any case, you take issue with her opinion?

MR. SIMS: I take issue with her, yes, sir.

MR. ANDERS: And is it your opinion, sir, that the community members would not benefit by having additional resource for their children with Ms. Tucker having a waiting list of 20? Could you respond to that, sir?

MR. SIMS: It has been noted by the community that -- and by the population of children in the community. I am not saying that there are not any small children that may go to that center. But I am saying as a whole, out of the 59 -- out of the 29 which she currently has, there would be a small number -- I would say less than 10 that is in attendance from that school -- I mean, attending that daycare center now. And where the other additional children that is coming from, I don't know where they would come from. But definitely not from the affected community. Because we have retired people in that community and people that don't have children. We have other developments that are being built in that community that are going to be providing on-site day

care centers and things of that nature. But at this time and any future time as I can see, there is not a need for a day care center of this magnitude. And especially with the continued violations that occurred at that facility. I would think that it wouldn't be the right thing to do to the children and the parents. So I think they would benefit by not having that sort of facility there.

MR. ANDERS: Does the expression that you offer here today, sir, represent the overall opinion of your ANC, or is it your own personal opinion?

MR. SIMS: That represents both.

MR. ANDERS: Your indulgence, sir. I would like to show you a letter form Melvin H. Sims, Chairman of the Advisory Neighborhood Commission 8E, dated December 20, 1999. Are you familiar with this letter?

MR. SIMS: Yes, I am. I authored that letter.

MR. ANDERS: All right, sir. Would you like to elaborate about this letter?

MR. SIMS: Would you like to put it in the record?

MS. PRUITT: It is in the record. It is in the package.

MR. SIMS: The content of that letter was an application on Ms. Bertha Tucker's ability to obtain a grant. As I have stated in my report that the people that lives in 8002, they are good people. They are not mean-spirited people. And we weren't aware of the planning of Ms. Tucker to expand in the way that she is planning on expanding. I wrote that in her favor for her to get a grant to beautify her facility. And I see nothing wrong with that, trying to help out someone that is trying to do a good deed. But I think that Ms. Tucker has misrepresented herself by proposing to bring this sort of congestion into the type of community that we live in now.

MR. ANDERS: When you say congestion, are you referring to the additional cars or what congestion are you referring to, sir, let me ask you that?

MR. SIMS: The congestion that I am referring to is the added traffic that is going to be generated by that number of extra people coming into the neighborhood. I am talking about congestion from more people parking in the neighborhood. Because we have a Subway opening down on the corner a block or two in the next year or so. And from observation, people like to park in free spots where they can find

them. So I am saying now with the amount of people being raised to 59 plus the six infants, 55 -- no, is that 65 -- and it has been brought to my attention that with 29 that we are having traffic congestion. So you do the math.

MR. ANDERS: Isn't it possible that some of these parents might drop their children off with use of public transportation?

MR. SIMS: That is a possibility, yes.

MR. ANDERS: And wouldn't that address the congestion issue that you raise?

MR. SIMS: That is only a possibility we are speaking of.

MR. ANDERS: Do you have any questions you want to ask Mr. Sims?

CHAIRPERSON REID: Mr. Anders, does that conclude your cross examination? Because we need to move on.

MR. ANDERS: I was just indulging to see if Ms. Tucker had any particular question that she wanted to raise.

CHAIRPERSON REID: Okay.

MR. ANDERS: No, thank you. We can move on.

CHAIRPERSON REID: Thank you. All right,

now thank you very much, Mr. Sims.

MR. SIMS: Thank you.

CHAIRPERSON REID: Persons or parties in support of the application can come up. I think I saw about five or six hands. If you could come up in panels of three.

MS. PRUITT: Madam Chair, I just wanted to remind everyone that individuals have three minutes each and we will be timing it.

CHAIRPERSON REID: Okay, now Mr. Anders and Ms. Tucker, can you please move back and allow them to come up, please?

MS. TUCKER: Oh, okay.

CHAIRPERSON REID: Now who else is in support? Can I see a show of hands? Okay. All right now. Those persons who are going to testify, these are the rules. You have three minutes to testify. And if someone has already said what you wanted to say, please don't repeat that. Don't be redundant. Because we are under time constraints. Just say I echo what the previous person said or my sentiments or something like that. Unless it is something different that you want to say. Okay? So thank you. Go ahead, first witness. Give your name and address.

MR. JACKSON: My name is Donald Jackson and I live at 875 Barnaby Street, S.E. I am really appalled by this because I am one of the new residents of Southeast. In the midst of all the drug and prostitution problems Mr. Sims has on his block, we should be fighting back. In reality, most of his statements was incorrect. There is no parking problem. I have been by there several times. On the left-hand side of the street, you can't even park. So to say a metro bus can't get through is not correct. Further, when did we come to the point that we have to choose -- we don't have a choice in America to where to send our kids. As a new resident of Southeast, the matter of the fact is that we have the worst services. You take your credit card to the store and you've got to get three ID's. Prostitution -- I was shocked. I live in the new community of Walter Washington Estates, and there is well over 65 of us. And we have just been dealing with issues that no one wants to deal with. And what we have found is that most persons will not come together and work with you. Now with the ongoing crack problem, the young lady who was walking a couple of weeks ago who was killed, there are just several social issues in the community. If this center allows the young

ladies or gentlemen in that community the opportunity to go through the Work To Welfare Program and an opportunity to better their family and their kids, I think we certainly can support it. As we see, Ms. Tucker is a growing daycare institution. There are going to be some violations. But to my surprise -- I don't know what agency Ms. Ali is with -- she has not been back since March. Come on people, we need to work with businesses. We have more liquor stores, chicken wings, fried chicken stores and businesses and not really productive. So I say, let me go by and see the center. The center is beautiful. The renovations have been made. And I finally want to say that we have to work with the businesses in the community. And the fact that there are 20 people on the waiting list, that exemplifies that there is definitely a need in that community.

Now I represent a new community. Yes, we are gated and it is beautiful. But when you go on the outside of the community, it is different. Now for him to say that we don't live in that community? That center is eight blocks from my home. Do I have to go to Rehoboth Baptist Church, which is further from Ms. Tucker's center? None of us live in PG County. That is not correct.

As far as noise, I have been by there several times and have never heard any noise. I find this is a very personal issue. And the last thing I want to bring to your attention is Jonathan Bryant's letter. Yes, the quorum took place, but he rescinded his decision and there is a copy of the letter in the file.

CHAIRPERSON REID: Gee, that was most timely. Thank you very much. And this letter that you refer to, it is a letter of recision on a position?

MR. JACKSON: He changed his decision.

CHAIRPERSON REID: Do we have that in our file?

MR. JACKSON: It is --

CHAIRPERSON REID: The new file?

MR. JACKSON: Basically when I spoke with him -- I know I can say that -- but he said there was some confusion during the quorum. It is in the book.

CHAIRPERSON REID: In the new book?

MS. PRUITT: That was submitted today.

MR. JACKSON: Right.

CHAIRPERSON REID: Okay, wait a minute.

MR. JACKSON: He said there was some confusion during the quorum and he wanted to change

his decision and that he now supported it.

CHAIRPERSON REID: Oh, boy. Okay. Thank you. We will look at that as soon as staff pulls it out.

MR. SIMS: May I comment on that? Five seconds.

CHAIRPERSON REID: We can't bring you back.

MS. SIMS: You can't read it? You can't read the back?

CHAIRPERSON REID: We can't bring you back.

MR. SIMS: Oh, okay.

CHAIRPERSON REID: Because the ANC segment has already passed.

MR. SIMS: He has already voted on the issue, so I don't know how they got him to write the letter.

CHAIRPERSON REID: Well, nonetheless, we -- we will look at it. And we will assess it accordingly. Okay, sir, next? Ma'am?

MS. SIMMS: Hi, my name is Robyn Simms, and I reside at 703 Mississippi Avenue, S.E., Washington, D.C. And I am for additional occupants of Tucker's Day Care for the simple reason that I work

at St. Elizabeth's Hospital and my child goes to Catholic School and there is a need where I had to leave my job and go and pick her up because they got out a half a day. By having that service in the community where I work at, it has provided a great asset for me and my family. I have gone to Tucker's Day Care several times and the occupants, the children, are not outside playing in the front. They are in the back. You do not hear any noise. As far as transportation goes, when I go to her house, they greet me at the door, I sign in and I am out. To me, it has not posed where there has been a problem with transportation at all. If you go by there, you will see that in front of her entrance is not occupied with a lot of cars at all. Also the fact is that the work order of the Department of Human Service where the mothers must go back out to work, this area has provided -- this Tucker's has provided service for the parents for their children and for the infants. And the fact is that a lot of the daycares do not take the vouchers. She has not turned down a child or anything. And I know for a fact that any violations that she had came encountered that it was corrected. And the fact is that the Metro is getting ready to come out there and that daycare is in need of being

available to the people getting off the bus to pick up their kids and drop them off. And I just feel that it is a great asset for the kids to be an occupant in Tucker's Day Care. Thank you.

CHAIRPERSON REID: Thank you very much. Okay, next?

MS. PATRICK: My name is Gayle Patrick, 1118 Columbia Road, N.W. I am responsible for preparing the drawings and getting the permit for the new construction that has been completed this year, and I can verify some numbers here. Right now, the outdoor play space has 1672 square feet of outdoor space fenced in with a 6-foot high wood stockade fence with locks on it. And that would give you enough space for 60 square feet per child for 28 kids at a time.

CHAIRPERSON REID: I am sorry, are you the architect?

MS. PATRICK: Yes.

CHAIRPERSON REID: Okay.

MS. PATRICK: The new addition -- and these are figures including the new addition and old addition, because all of it -- there was renovation throughout. A janitor's closet was added to bring it up to par. There are enough new toilet fixtures in

conjunction with the old ones for 70 people total. The indoor space according to my figures is 2130 net square feet. This excludes the kitchens, toilets and storage areas, which comes to -- divided by 35 square feet is enough for 60 kids. In reality, we are talking about 54 to 55 on the first floor including the new space. And the land that is fenced off right now is not all of the land that is available to do so. But the area that has been fenced off is 28 -- will hold 28 children per session. And adequate alarm systems and all have been added or are in process.

And I also wanted to add if there was some turmoil this past year, the center was under construction. So the land was restricted during the contractor's use of some areas.

CHAIRPERSON REID: I am sorry, are you done?

MS. PATRICK: Yes.

CHAIRPERSON REID: Okay, I am sorry. Thank you very much. Do you have questions? Okay. Excuse me one second please, we have a question.

MR. SOCKWELL: Ms. Patrick, because you are more than just a supporter, you are actually the architect for the applicant, your testimony would

normally come with the applicant's testimony as opposed to with the community support part of the presentation. So since it is somewhat out of form, I will ask you the questions at this time. And if Ms. Tucker or Mr. Anders would want to speak, then that would be recommended. When you did your net square footage for the interior spaces, you did those with the storage spaces, of course, taken out. Did you also take out all built-in equipment which would normally be discounted by the licensing agency? Only folding and/or put-aways would not be included in the space as it would be measured for the actual use of the children.

MS. PATRICK: This was the clear open space in the three large rooms. Actually, it is four. This is the open clear spaces they have for use with the children. There is no built-ins in them.

MR. SOCKWELL: Okay. I mean, I am asking the question. Of course you can answer. I mean I have designed daycare centers, so I understand exactly what it is. But I wanted to know from your point of view what you used to develop your figures since you have presented those figures.

MS. PATRICK: Yes. I used the net square footage of the room. This does not include built-ins.

This does not include closets or storage areas.

MR. SOCKWELL: Yes, but sometimes there are cabinets for children's play things that are actually affixed to the spaces or to the walls. Those things are not foldable and put away like stacking beds and stacking chairs and things like that. But are the things that are actually in the room at all times. That is the question that I have.

MS. PATRICK: That is not included in the square footage. The items that I observed were furniture. But I am only speaking strictly building.

MR. SOCKWELL: Okay.

MS. PATRICK: And I did exclude the rooms they are using -- the spaces they use for storage and janitor.

MR. SOCKWELL: Yes, I understand that. That would be expected. The renovations that you are speaking of -- you said that renovations have taken place.

MS. PATRICK: Yes.

MR. SOCKWELL: And those were all done through the building permit process, et cetera?

MS. PATRICK: That is right.

MR. SOCKWELL: And have been inspected and approved at this point?

MS. PATRICK: Right. And they are all completed.

MR. SOCKWELL: All right. And these renovations took place after the March questions?

MS. PATRICK: These renovations were begun last August -- sometime in late August. It has been under construction most of the year.

MR. SOCKWELL: Okay. So those took place between August and let's say --

MS. PATRICK: About two months ago.

MR. SOCKWELL: All right. To the best of your knowledge, did those take place after hours? The construction took place after hours when the children were not present in the space? Or they took place at times when the children were not present in the space?

MS. PATRICK: They took place while it was in the space -- well, it went on during the daytime. The addition was able to be provided without touching the existing building until the last moment. It is just a door penetration through.

MR. SOCKWELL: Okay. So it was strictly a separate construction?

MS. PATRICK: And the contractor provided separation to protect the children.

MR. SOCKWELL: All right.

MS. PATRICK: But it possibly could have made the yard use a little difficult for the neighborhood during that time.

MR. SOCKWELL: Okay.

MS. PATRICK: Because the bigger yard was not available.

MR. SOCKWELL: That is all right. Thank you.

UNIDENTIFIED SPEAKER: I don't think the violation --

MR. SOCKWELL: No, I just wanted to find out if the construction was taking place with the children in the space. It is an operational question with regard to questions that have been raised and would have some bearing on the way the center protects the children. That is all.

CHAIRPERSON REID: Thank you. Thank you very much.

MS. CANADY: My name is Yvonne Canady. I live at 3065 Stanton Road, S.E., Apt. 201. I have a grandson at Ms. Tucker's Day Care Center, and he has been going there ever since last year. I like the way they present the children when you come in. I have no problem with none of her staff. Every time I bring

him to the Day Care Center, they greet you at the door. When you come back to pick them up, you have to sign the book to let them know what time you are leaving -- what time you are leaving with your child. Okay, I ride the bus every morning to take him to the Day Care Center and there is no problem with no cars since I have been going there that interrupt with the bus line. I work at St. Elizabeth Hospital and I chose Ms. Tucker's Day Care Center because it was more convenient for me at work. Because I had him at another day care center that was about eight blocks from where Ms. Tucker had her day care center, and I prefer Ms. Tucker's Day Care Center because the staff is very nice to the children. And I have never seen anything go wrong there since I have been taking him.

CHAIRPERSON REID: Okay. Thank you very much. Thank you. Okay, now there are more witnesses? I think we have three more. Please come forward.

MS. TAYLOR: Good evening. My name is Mary Taylor, and I am an employee at Tucker's Day Care Center. My issue is the health. She was replying that we wasn't taking very good care of the children. We are taking very good care of the children. I have been at Tucker's Day Care ever since

Tucker's Day Care started. I am there all day.

MR. SOCKWELL: And how long is that?

MS. TAYLOR: From 9:00 until 6:00.

MR. SOCKWELL: No, since the first -- how long have you been an employee?

MS. TAYLOR: Four years.

MR. SOCKWELL: Four years. And your current address? You didn't give that.

MS. TAYLOR: 1326 Congress Street, S.E.

MS. RENSHAW: Would you give your name again, please?

MS. TAYLOR: My name is Mary Taylor.

CHAIRPERSON REID: All right. Go ahead, Ms. Taylor.

MS. TAYLOR: And my comment is she was saying that the kids -- during the time that we had an incident, that incident was taken care of. The child was taken care of. We went back and forth to the hospital. When she -- Mrs. -- the Health Care Center came out to check with us, every time I would try to ask her questions or ask her to help to do the applications for the children at the health center, she would not correspond with us. She would reply about the accurate space of the infants and to the classroom. It was not -- that was not. We have

accurate space for the children. The toddlers -- she was saying that during that time the toddlers was mixed with the infants. That was true because I had to go -- an emergency came up and I had to leave. So I asked the teacher in the back to watch my kids for a few -- just for a few hours until I came back. And so that is why the kids was corresponding with the other kids, the infants with the toddlers. So I was trying to explain to her about that and she did not want to hear what I had to say at that time.

Another time that she came in and we was trying to explain to her -- she was saying about the infants was not -- there wasn't enough workers there We told her that the workers had went out to get her some lunch and she didn't want to hear that either. So we was trying to explain to her why there wasn't enough staff there at that particular time that she came in the door. When she came in the door, she was very angry and upset. She didn't want to hear nothing and she just run out the door. We tried to tell her then what was going on, but she didn't want to hear that. She just wrote down and then she immediately went on out the door saying where is Ms. Tucker as she went on out the door.

CHAIRPERSON REID: Okay. All right.

Thank you very much.

MS. TAYLOR: You are welcome.

MR. BEASLEY: Good afternoon, Madam Chair and members of the Board. My name is Rundi Beasley. My address is 3232 13th Street, S.E., apartment 201. I live right around the corner from the day care. And I just wanted to -- it is just really an honor to me to be able to testify in behalf of Ms. Tucker today. Because she has been a blessing to our community and to me and my wife and our family. We was the first child to come into her daycare. We looked everywhere for daycare, especially daycare. We already put our child in two other ones around our neighborhood. As you know, we don't have a very good neighborhood, and people were doing things with our kids in their home that we didn't want. So when she came, we almost cried because we needed her so bad. And I just wanted to say that like he was saying there was no support in the community -- I mean, the community didn't support it. If the community didn't support it, all of us wouldn't be here. I know that is obvious to see. And if the community was so much against it, some of them would be here. They would write some letters. And I also wanted to let you know that there really is a need for her daycare and

the expansion of it. Because we also have other kids. I adopted another child, and I would like for that child to go to that daycare. And it is just that if she doesn't expand, she can't go. And my sister who also -- I tell her all the time how it goes with the kids and how it is has been a pleasure being at the daycare. She said, I would like to put my kids in the daycare, but she doesn't have any room. Like she said, there are a lot of people waiting to go to that daycare. And I know that it would be -- it would be a blessing for them too as it has been for us. I just also want to say that I appreciate your time and thank you.

CHAIRPERSON REID: Thank you.

MS. BEASLEY: Good afternoon, Madam Chair and members of the Board. My name is Cassandra Beasley. I reside at 3232 13th Street, S.E., Apt. 201. I have two kids that attend Tucker Day Care Center. And to listen here and say that she is bringing down our community I feel as though is very untrue. I was born and raised in this community. I have a family member that lives right across the street from Ms. Tucker. And walking through that community I have found trash -- things that children shouldn't see such as condoms on the ground -- used

condoms. And when Ms. Tucker came into that community, she is out there every morning sweeping up trash and condoms so her kids would not have to see that. Before she came, I never seen not one resident come out of their house and sweep up that mess off the street. But Ms. Tucker cared enough to do so. To say that she is bringing harm to the community, it seems like to me she is trying to clean up our community. And also the incidence about me fearing my child's safety, that is not true. I trust Ms. Tucker 100 percent. I have peace of mind when I am at work. In fact, I have to pry my child away from her daycare. He cries to go home. He doesn't want to go home. So I know that he is safe, because if he wasn't, he would cry to go home. Children are going to fall. My child gets hurt in my presence. He falls. I love my child. I do not want him hurt. But he will fall. Children are going to fall. Accidents do happen. And because someone fell in the presence of the daycare doesn't mean that she is not taking care of her children. If you say that, that means I am not taking care of my child because he has fell many times and put a whole in his lip. I just want to say that she is a wonderful person and she provides peace of mind to me and my husband that we

need when we are at work all day. And I support this expansion because I think other parents in the community should also have that peace of mind. Thank you.

CHAIRPERSON REID: Thank you. Are you the last one? Oh, one more? Okay, come on up, please.

MR. AUSTIN: Good evening. My name is Lawrence Austin. I live in Oxon Hill, Maryland. I have been coming by Tucker's Day Care Center for about the last three years. And every time I come to the community, I have seen street walkers and things like that trying to flag her down and things like that, and I have never seen any unattended kids go back and forth between Tucker's Day Care. From the outside, you don't hear no noise or anything like from the inside or like that. And I seen Ms. Tucker on many occasions pick up trash in front of her daycare. I even helped her a few times. I think she is a very good daycare keeper and I think the neighborhood needs her.

CHAIRPERSON REID: Thank you. I am trying to get a feel for -- are there any other persons to testify in support? Okay, now -- so this -- you are the last two in support? Okay.

MS. SEEGARS: I am Sandra Seegars. I am a candidate for Ward 8 City Council. I live at 1107 Savannah Street, S.E., which is right around the corner from Ms. Tucker. If I walk two doors over, I can see her place. I am the one who said the place was so quiet that I thought it was closed until this came about. The center has hired persons from the community. The public area in front and the rear of her center is clean. As a matter of fact, I was at one of Melvin Simms' meetings, and I am doing a litter can drive. And two weeks ago, they did place a litter can in front of that business so that it would be a help for her when she picked the trash up. I went on that street and talked to the neighbors on her block, on both sides of the street, and also on Savannah Street, 12th Street, Alabama Avenue -- right in that immediate area. The only problem that was said was sometimes there is a traffic problem during the pick-up time. But the reason for that is because of the no parking sign on the opposite side of the street where there shouldn't be any parking has been removed. I have been trying to get the no parking sign put back. The city has not put the sign up. So that is where the problem comes in when they park on the opposite side of the street. Not her people, but

the people who live there. They park on the opposite side of the street and that way the street is congested. And that is any time of the day when the bus is trying to get through. So the no parking sign needs to go back up. I drive that way to go home every time I leave out to go to the north end of the city, and I have not come across any traffic problem. I plan to talk to Commander Robinson too to see if she can drop -- her people can drop the children off in the back of the building instead of the front when it does expand. And as far as the space inside the house, she does have a basement where the children are not and she can store things there. She also has an attic where she can store things. I went in the center. There were four two-year-olds with one person. There was three or four infants with I think there was three in that room. And there was maybe five or six older children, maybe four or five years old, with a keeper or a worker.

The nearest daycare to her is the 600 block of Alabama Avenue, which is about seven blocks. The next one is near Martin Luther King, which is 8 blocks. That is to the west of her. To the east of her, I don't know where they are. In campaigning, I have talked to people in Southeast, and they all are

complaining there is not enough daycare, even with hers. Even with her expansion, they still say there is not enough daycare, especially affordable daycare. And by her accepting vouchers, that is a big help. And I can provide you with the names of the other residents who live on her street that say that it is no problem. They are glad she is there and they do like the fact that she picks up the trash off the street because they are not going to do it. We have problems now keeping businesses in Southeast, and I do welcome this business in Southeast.

CHAIRPERSON REID: Thank you very much, Ms. Seegars. Okay?

MR. ANDERSON: Yes, my name is Charles Anderson. I live at 2301 Hartford Street, S.E. And I am making this statement on behalf of ACORN, not as a resident of the immediate community. I find it necessary to make that distinguished because --

CHAIRPERSON REID: Okay, Mr. -- what is your last name again?

MR. ANDERSON: Anderson.

CHAIRPERSON REID: Mr. Anderson, do you have a letter authorizing you to speak on behalf of the organization ACORN?

MR. ANDERSON: I have a letter that is

included in your packet.

CHAIRPERSON REID: Yes, but I -- I have that letter, but --

MR. ANDERSON: As a community organizer for that particular community, I have submitted a letter.

CHAIRPERSON REID: We have that. What I am saying is an official letter designating you as the spokesperson for ACORN.

MR. ANDERSON: Do I have an official letter from ACORN stating that I can represent them?

CHAIRPERSON REID: Yes.

MR. ANDERSON: No, I do not. I have a letter here of the organization who authorized me to submit this letter as a community organizer for that particular community.

CHAIRPERSON REID: What particular community? ACORN Community?

MR. ANDERSON: In other words, I am assigned that particular community in which Bertha Tucker's Day Care is housed. I am the responsible person that ACORN would go to to find out about this issue.

CHAIRPERSON REID: Okay, but -- okay. Now there are two different things. You are a person

who is in the community who wants to speak in support of the applicant, Ms. Tucker. But to speak on behalf of ACORN, the organization, then we would also need a letter authorizing you to speak -- to be their spokesperson.

MR. ANDERSON: I think you misunderstood me. That is why I was making it distinguished.

CHAIRPERSON REID: Okay. All right.

MR. ANDERSON: I am speaking on behalf of the immediate community of which I represent for ACORN.

MS. SEEGARS: He is the ACORN representative in my community.

MR. ANDERSON: For that particular community.

MS. SEEGARS: He is assigned to Southeast by ACORN.

MS. PRUITT: And in doing so, sir, do you have -- you are assigned to represent Southeast for ACORN?

MR. ANDERSON: Yes.

MS. PRUITT: Do you have a letter from ACORN stating that you can submit testimony to us today?

MR. ANDERSON: No, I do not.

MS. PRUITT: Okay. That is what we were trying to clear up.

MR. ANDERSON: Okay.

CHAIRPERSON REID: But if you want to -- just basically identify yourself as -- just as you did. Not in an official capacity, but just tell us who you are and the role that you play. That is okay. But then when you say that I represent ACORN, that is different and we have to have a letter. But if you just identify yourself and who you are and what you do and then that should be sufficient for us.

MR. ANDERSON: All right. I am a community organizer for an organization called ACORN, the Association of Community Organizations for Reform Now. And, therefore, I am submitting this statement on behalf of myself.

CHAIRPERSON REID: Okay. That will work.

MR. ANDERSON: Okay. The communication is to address the occupancy permit of Tucker Day Care Center located at 3215 11th Place, S.E., Washington, D.C., which is in the zip code of 32. As a representative of ACORN, the Association of Community Organizations for Reform Now, our mission is to knock on doors within the Congress Heights Community seeking concerns and responses from the residents on

issues that they feel necessary to address.

The issue that is presently before you is the zoning approval for the expansion of Tucker Day Care Center. According to the Bertha Tucker proportion, it would be increased capacity from 45 -- I mean, from what it is now to 55. In accordance with the DCMR 29 of May of 1987, based on what I have observed, it is in compliance. The issue was brought to our attention from residents within the community during our membership drive effort in that Congress Heights Community. We actually were knocking on doors trying to find out what was some of the issues in that area. We assessed the situation and we sought a petition for or against. We went around in that particular community and knocked on every door in the immediate three-block radius to get an opinion or a signature. The petition, which is included in this book, shows those that were in support.

CHAIRPERSON REID: We have that.

MR. ANDERSON: In doing so, we saw a need to go further with this issue. The test petition is a reflection of the support --

CHAIRPERSON REID: Go ahead.

MR. ANDERSON: Okay. It is our belief that the expansion was basically misunderstood by the

Advisory Neighborhood Commission. In speaking to some of the Commissioners personally and coming to these hearings, one, I found out from the participants that when that vote was taken, they hadn't even visited the center. They didn't even know about the addition. They hadn't checked the DCMR to see whether that addition would put them in compliance with the additional persons that they saw that were being added. An oversight, but it has been expanded to a major catastrophe now.

I am looking -- and I support the ANC. I was one of the very first and I was in ANC for ten years. Sometimes you have ANC Commissioners that seek to do too much. You have ANC Commissioners who seek to voice their own opinion as that of the community. I was one of them, so I know. When you don't have the support -- and ANC Commissioners, I applaud them in their effort. But a lot of times your ANC is right and right for the community. But in essence it is basically the view of that particular person.

CHAIRPERSON REID: Okay. Now I gave you a little bit more time, because we took up some of your time.

MR. ANDERSON: All right, in closing, I am saying that this particular daycare center is very

good. It is in compliance with the law. And as I said, it has just been misunderstood between the ANC and Ms. -- the Day Care Center. Take that into consideration.

CHAIRPERSON REID: Thank you very much.

MS. RENSHAW: Madam Chair --

COMMISSIONER HOLMAN: I have one question for the two representatives. Since both of you seem to move around the community and have some knowledge of some of the needs in the community -- and I think Ms. Seegars you mentioned it before -- I was reading one of the letters that basically seemed to indicate that there was an abundance of daycare facilities in the neighborhood, and I just wanted both of you to just comment very briefly on that.

MS. SEEGARS: Like I said, the Rehoboth Church has one, which is about six or seven blocks away. On Lumbom Street, which is about four blocks from that one -- okay, Rehoboth is east of Tucker's. The other one, I think it is Dusk To Dawn, is north of -- about four blocks north of Rehoboth. There was one on Valley Avenue, which would have been about a mile from hers, but they tore that one down or they moved it. And I don't know where the next one is.

MR. ANDERSON: And in addition, if DHS --

DHS does do an assessment to find out whether it is needed -- those kids are needed at that facility. And if they say they are needed, believe me they did the homework to say so -- to send more. They even sent them some to go on their waiting list.

MS. ALI: I have a question. Do you have any letter from DHS stating that?

MR. ANDERSON: Pardon me?

MS. ALI: Do you have any letter from DHS stating that?

MR. ANDERSON: Yes, it is in the book.

MS. ALI: Stating that Tucker Day Care?

MR. ANDERSON: Check your book.

MS. ALI: Can I have -- I don't have a book.

MR. ANDERSON: Check your book.

MS. ALI: I would like to have one, please.

MR. ANDERSON: Well, let me see.

MS. ALI: A letter from the DHS?

MR. ANDERSON: I will make reference to it. Wait a minute, just one second.

MS. SEEGARS: While he is looking for it, let me address Mr. Holman. Oh, he found it.

MR. ANDERSON: This is from the Executive

Director. I think her name is Barbara Ferguson Kamara. It says, "The Department of Human Services has reviewed the application numbered 16570 from Bertha Tucker, 3215 11th Place, S.E., Washington, D.C. 20032 requesting a special exception under provision DCMR Title II, Section 205.1 to increase the number of children..." --

MS. ALI: Okay, thank you.

MR. ANDERSON: In the existing facility.

MS. ALI: I have it. Thank you very much.

MR. ANDERSON: Okay.

MS. SEEGARS: Mr. Holman, I am kind of confused here. Because it seems as though what I heard earlier, the zoning has one guideline as to measurements and DHS has another.

MS. ALI: Department of Health.

MS. SEEGARS: And the Department of Health has another.

COMMISSIONER HOLMAN: Yes.

MS. SEEGARS: So there is a problem there too seemingly. Maybe when I become a council member, I will write some legislation to change that.

COMMISSIONER HOLMAN: Okay. I can't comment on that.

MR. SOCKWELL: Ms. Seegars, the building code has some impact on that too based on their definition of children as infants and not infants.

MS. SEEGARS: Right.

MS. ALI: And also now we are having with the zoning that before they go for measurement, we go first. And then they go according to our measurement. And it will start about -- this month. So there will be no more confusion.

MS. SEEGARS: Okay, good.

MR. SOCKWELL: The question that I think really needs to be asked, since this Department of Human Services letter has been circulated and I have had some question about it based upon one thing and one thing only, that is while the Director states that generally there is a desperate need for infant and school age care, before and after school in this area, it does not respond to the Tucker Center specifically for its merits or lack of merits or its condition of compliance or lack of compliance. It is really a general statement to the fact that the neighborhood does not apparently have enough daycare. The Tucker Center is a center that is existing there, requests an expansion, and the Director has seen the application and feels that such applications

are appropriate and that the Tucker Day Care Center application appeared to fall within the guidelines of achieving a goal of responding to a need. And that is all this letter really does say. But it is a supportive letter to the intent of Tucker to expand and the need for the community to have more daycare.

COMMISSIONER HOLMAN: And doesn't it also say that it is recommending approval?

MR. ANDERSON: Yes, it does.

MR. SOCKWELL: Right. But it would possibly have taken a different tone under certain circumstances of information not available to the Director, since at the present time the Center is under the veil of an enforcement action. That is merely what I am saying here. Because this letter was dated five days after the March 10 letter from the Department of Health.

CHAIRPERSON REID: Okay, so it is needed driven.

MR. SOCKWELL: Yes, it is need driven rather than specific information on Tucker Center driven.

MS. RENSHAW: I have a question too.

MR. MOULDEN: I think there is a bigger issue here. It is not that folks -- government and

the community -- don't understand the need for daycare in the community and the need for adequate daycare to house a sufficient amount of children. I think the question here is whether the daycare center -- the existing daycare center complies with all government regulations which protect the community -- the children, the workers -- in order to maintain and operate at a safe level. I mean, that is the issue at hand. So with that in mind, the Board of Zoning Adjustment -- our decision is based on whether this daycare center meets the needs and what can we do to bring things together and make a recommendation that will help us meet the needs. Just consider those things in mind before we make our decision.

MR. ANDERSON: But in doing that, sir -- in doing that, Mr. Moulden, if I may address you, we must look at also the fact that we have got a Health Department that makes one visit and makes a determination that it is not safe and never comes back for another four years.

MS. ALI: I went there twice. I went there twice.

MR. SOCKWELL: Mr. Anderson -- Mr. Anderson, the last visit was a year 2000 visit. And the last letter or the first letter that is in our

file is a March 2000 letter.

CHAIRPERSON REID: So we don't want to argue --

MR. SOCKWELL: We are not going to get into the operation of the Health Department. What we must respond to is the fact that there is an infractions violation notification that is still pending. And it is pending enforcement because it has been turned over to enforcement.

CHAIRPERSON REID: Okay, Ms. Renshaw?

MS. RENSHAW: Yes, just two things. They are both very quick comments. I appreciate Ms. Seegars appearing here today, but I just want to for the record state that you should be identifying yourself as a concerned community representative or as a parent, but you should not be campaigning for public office before the Board and representing yourself as a political candidate.

MS. SEEGARS: Okay, I take it all back.

MS. RENSHAW: And the second point to make is in regard to the letter dated May 18, 2000 from Jonathan Bryant, 8E-03, we have a letter in our file labeled as Exhibit 80. However, there is no signature and no return address on this letter. And nowhere in this letter, which may or may not have

been dictated by Mr. Bryant, is there any language to the effect that he is rescinding what he stated or his vote in the ANC official vote at that meeting. So I just want to point that out for the record. No discussion is necessary.

MR. SOCKWELL: In addition, it should be noted that there are other letters in support and in opposition that are not signed. And unsigned letters do not carry the weight of signed letters. Some are -- one is even labeled a concerned parent with no name. So things like that, while appreciated, we don't understand why they are not named and not signed and we can't give them a great deal of consideration.

CHAIRPERSON REID: We have to move on now. Is there anyone here in opposition who wants to speak? Okay, closing remarks by the applicant. Please come forward. Thank you very much.

MR. ANDERS: Can we ask a question at this juncture?

CHAIRPERSON REID: Sure.

MR. ANDERS: Was an issue raised about the letter --

CHAIRPERSON REID: Microphone, please.

MR. ANDERS: Was an issue raised about

whether or not Jonathan Bryant's letter was signed or not? I believe the package that you all have been presented does have a letter dated May 18, 2000 signed by Mr. Jonathan Bryant. I would just call that to your attention.

CHAIRPERSON REID: Mr. Anders, before I forget, there is a page from our zoning book that you have.

MR. ANDERS: Yes.

CHAIRPERSON REID: Thank you. Mr. Anders?

MR. ANDERS: Forgive me. I was having a comment made to me. Sorry, I was being distracted.

CHAIRPERSON REID: Closing remarks or rebuttal?

MR. ANDERS: Well, by way of rebuttal, if I may, I would like to share my rebuttal time with Ms. Tucker, who would like to address some comments that were made about the Day Care Center.

CHAIRPERSON REID: Okay.

MR. ANDERS: Ms. Tucker, would you respond?

MS. TUCKER: Number one, I have several things to say to Ms. Ali that she stated that is untrue. She was talking about an enforcement letter.

We never got no enforcement letter. We didn't know anything about an enforcement letter and still don't. Number two, as one of the staff has said about Ms. Ali, how she come into our daycare, I have also wrote a letter to Ms. Vati, but I understand she is not down there no more. Because I said that I -- Ms. Ali, if she continued being our license lady, when she come into our center, I want to be treated just like everybody else. When she come in, the way she come in -- staff -- the teachers can't talk to her, nor me. It is just no, no, I don't want to hear it. No, I don't want to hear it. I have already stated a letter and I haven't sent it in yet. I don't want to hear it. I don't want to hear it. And I don't think that is being fair to me. For an example, one time she came in and I think one of the little carts -- we had the children cart labeled and one of the labels had fell off. She said, oh, that is a violation. She came in and a child was in the high chair and he was dozing off. We didn't put him in the bed because a lot of time he cry. So we wait until we know he is asleep and then we lay him down. She said, that is a violation. And that is the way she come in this center. Ms. Ali is not the first license lady I have had. The first one was Ms. Seine, as you all may know

her. We never had this problem until we got Ms. Ali. And I have made it known to my monitor, which is Kathy Manley down at 1717 14th Street, N.W., concerning this matter. And therefore she told me to address a letter to Ms. Vati about this matter. Because I said I don't want her coming to the center no more. Every time he comes in it is nitpicking. And something she said was very untrue. When she said that she sat down and talked to me and explained to me, that is untrue. And you can ask the two staff back here. When I be trying to talk to her, but so on and so on and so on. She just went to lunch -- I don't want to hear it. I don't want to hear it. I don't want to hear it. Nothing I said -- she don't want to hear nothing I said. And I want this on the record. Because I do have wrote a letter that is going downtown. Because I don't think -- when she go into our center, she do not treat me fair. I can't say nothing nor the teachers. And I don't think that is fair to us.

And about the enforcement, we don't know nothing about that. Never heard nothing about it. When Ms. Ali came out, yes, I got some citations. And I immediately corrected them and sent them all down to 941 -- every one of them. You have the papers in

your package. I sent it down to her. Ms. Ali never called me. She never even came back to review the daycare. So we didn't know what was going on. And it was just left like that. Yesterday, after I got a call from Ms. Beverly Bailey concerning this matter -- I don't have a letter in here. What is going on? Because the other two times we came down here, she wasn't down here. And I called to the office and talked to the lady that took the place of Ms. Vati. And that is why she is here today. But I also have a letter going down there concerning the way she come into our center and the way I am being treated. Because it is unfair -- me and the daycare -- the way she do us. When she walks in the door, oh, that is a violation. So and so and so on -- that is the way she comes into the center.

CHAIRPERSON REID: Okay, Ms. Tucker, thank you.

MS. TUCKER: Okay.

CHAIRPERSON REID: We do - you made your point. We do have it. But now you are going into repeating the same thing.

MS. TUCKER: Okay.

CHAIRPERSON REID: But we get the gist of what you are saying. I think that we understand.

COMMISSIONER HOLMAN: If you don't mind, I did have one question to clarify. Because I remember when we were talking about this earlier there was a question as to whether she ever responded to these violations, and I thought I heard you say you sent some papers down to 914 or something.

MS. TUCKER: Always -- always. Everything she violated us for, I corrected and sent it down there. I did, yes.

CHAIRPERSON REID: Did she come back? Did she come back to see you?

MS. TUCKER: No, she never came back. No, ma'am, she never been back.

COMMISSIONER HOLMAN: Did anyone respond?

MS. TUCKER: No, nothing. There just was nothing. The last two -- we came on May 3 and she wasn't here. When I came on June 20, she wasn't here. And by me calling yesterday, that is why she is here today.

CHAIRPERSON REID: Okay, Ms. -- wait on second.

MS. ALI: Okay. Our address is 825 North Capital, N.E., and not 914. We are not 914. We are 825 --

CHAIRPERSON REID: They moved.

MS. ALI: North Capital, N.E.

MS. TUCKER: Yes, okay. Well, I am sorry. I made a mistake with the address.

CHAIRPERSON REID: Maybe that is part of the problem. Maybe this communication issue and the fact that they have relocated and they may not have received what you had sent.

MS. TUCKER: No, they received it, because I talked to Ms. Vati. They received it. Because I called down there just to make sure that all my paperwork was down there. The lady back there, we both faxed it down there.

CHAIRPERSON REID: Okay, Ms. Ali, Ms. Renshaw was just telling me that --

MS. RENSHAW: It is my understanding that this case has been taken from you and is over in enforcement at this time?

MS. ALI: Yes.

MS. RENSHAW: And it stays in enforcement until this is corrected or until there is a hearing?

MS. ALI: Yes. Because it is with our attorney, Ms. Carmen Smith. It is not with me.

CHAIRPERSON REID: Now it goes to enforcement after you have been there. Let's get this straight for the record. After you -- okay, you

went there the first time and then there was a violation --

MS. ALI: Okay.

CHAIRPERSON REID: Wait, wait, wait. And then after -- you turn it over to enforcement after there has been repeated violations? How many times?

MS. ALI: Okay. The first time when I went -- it was actually three times.

CHAIRPERSON REID: Okay.

MS. ALI: The first time when I went there was a violation. I gave her a statement of deficiencies and a plan of correction, but I did not issue any infraction -- notice of infraction.

CHAIRPERSON REID: Ms. Tucker, do you remember that?

MS. TUCKER: Yes, you did.

MS. ALI: I have it in the record.

CHAIRPERSON REID: All right. All right. Go ahead.

MS. ALI: Okay. The second time when I went there, there was the violations and I issued a notice of infraction. On March -- I think it was March 28 -- is it March 28? I don't remember the date. I went back and repeated violations again. And that is when I talked to Ms. Carmen Smith, our

attorney, and she advised -- or Carmen Johnson, excuse me. And she advised that the Center has -- to issue no more tickets and the center has to be sent to enforcement and recommendation of closure.

CHAIRPERSON REID: All right, thank you.

MR. ANDERS: Let me address myself, if I may, to one of the infractions. I am holding a court order here, which I was involved in which notes that there was a noted infraction. That there was a payment of a fine and that the notice of infraction was dismissed with prejudice. I am not able to address myself to subsequent infractions, if there --

CHAIRPERSON REID: What does that mean? Does it mean -- yes, what does that mean? Dismiss without prejudice -- with prejudice. Does that mean that it was -- what we want to know is was it corrected or was a fine paid?

MS. ALI: The fine was paid.

CHAIRPERSON REID: The fine was paid and then it was determined that it had been corrected and that is why it was dismissed?

MR. ANDERS: Yes.

CHAIRPERSON REID: Okay.

MS. ALI: No, no, no. To the record, no. It was $1,500.00 and they make an agreement to

reduce it to $750.00. Ms. Tucker paid the fine of $750.00 with the recommendation that she will correct the deficiencies.

CHAIRPERSON REID: Right.

MS. ALI: When I went back, the same violations were there. That means she did not correct the deficiencies. That is why she was sent to enforcement.

CHAIRPERSON REID: She paid the fine but she didn't correct the deficiencies?

MS. ALI: Yes, she did not. It was repeated again.

MR. ANDERS: Not my understanding. My understanding is that the correction and the payment of the fine were contemporaneous and resulted in the dismissal.

COMMISSIONER HOLMAN: Madam Chair, because what I am not -- wait a second. What I am not understanding is what if Ms. Ali is saying is correct, why would it be dismissed with prejudice. It is not logical. I am not following this. Because with prejudice means you can't bring it again.

CHAIRPERSON REID: And it had to be corrected?

COMMISSIONER HOLMAN: Yes, yes.

Otherwise, it would be dismissed without prejudice meaning if it happened again you could do the same thing again. So I am just -- I haven't seen the document, but logically, that doesn't make --

MR. ANDERS: May I say --

CHAIRPERSON REID: All right, we are just trying to collect the facts here. All right, Mr. Anders, is there anything else you would like to say? Then we can complete this particular case.

MR. ANDERS: Yes. Well, I would only be -- well, I would like to ask for a bench decision and vote. But I would like to again -- and I would only be echoing the words of the many supporters who have come here today to offer support to the expansion of Tucker Day Care. It appears as though there is a need in the community. It appears as though Ms. Tucker provides a valuable service to the community. It appears from the testimony that she keeps a quiet and orderly daycare center. That there is a waiting list of people who would like to participate. And I think there is good cause to take all the testimony that you have heard into consideration and afford Ms. Tucker the opportunity to expand. It was quite appropriately said that with growth there are going to be infractions along the way and Ms. Tucker never

represented herself to be perfect. Yet every time there was something pointed out or called to her attention, she took whatever quick steps, quite aggressively at that, to correct the problem and put it behind her. And I think that is certainly a factor that should be well considered by the Board members at this time.

CHAIRPERSON REID: Okay. Thank you very much. All right, Board members?

MR. SOCKWELL: I would like to be very brief with this statement. I think that I can very much appreciate Ms. Tucker's devotion to the community and to her business and to the children. I think this Board certainly would or should understand the fact that people are not perfect. That anyone can have an infraction of one sort or another under certain circumstances. As well, there are times when the city's officials and the private sector individuals do not see eye to eye, and that can create communication problems and solutions. However --

CHAIRPERSON REID: Are you making a motion?

MR. SOCKWELL: The problem --

CHAIRPERSON REID: Can you?

MR. SOCKWELL: I will, but let me finish.

CHAIRPERSON REID: But then the motion.

MR. SOCKWELL: Yes.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: But my problem is that right now the Tucker Day Care Center is in violation of statutes of the District of Columbia which have not been shown as corrected because enforcement action has been recommended. And I am of the feeling that this Board cannot approve the project with a pending enforcement of an infraction and that we may have to allow for the solution of the problem before we could vote. Because we are aware of this issue. That is what my problem is. And I would recommend or move that the Board table or continue the case until such time as the pending enforcement action is resolved.

MR. MOULDEN: Second.

CHAIRPERSON REID: Okay. I think that I would have to agree that, yes, there is very clear indication that there is a need for Mrs. Tucker's services. Nonetheless, there is still problems. And just as Mr. Sockwell said, no one is perfect and the problems do develop. However, in our position as Board members, I feel that we should move cautiously

because there are children involved and we are talking about the safety of children and we are talking about a situation that could have a negative impact if they are not corrected. And if we move rapidly, then that could backfire and these infractions could continue to the detriment of the safety of the children. I think that we should -- therefore, if we are going to err, err on the side of caution. I always say that. And wait to make sure that Mrs. Tucker fully understands and commits to and demonstrates that those infractions have been taken care of. They don't seem to be insurmountable. They seem to be things that can be easily remedied. And we would like to know that that has happened before we take a position on it. That would be my input to this particular motion.

MS. RENSHAW: I have just an added comment, and I certainly endorse what my colleagues have said. And I would also reflect on the fact that where Mr. Anders had talked about the fact that with growth there will be infractions. With good planning, there should be no infractions. In other words, I urge Mrs. Tucker and her staff to lay out in written form some kind of a growth plan whereby you can plan for emergencies and these infractions then

will never come about. They should not come about. I mean there may be small missteps, but the infractions that would come to the attention of a city agency should not come to bear if your planning is sound and is tight. So I look forward to Tucker Day Care Center coming into code and would suggest that the motion be just slightly amended. At the end of Mr. Sockwell's motion, he urged our tabling or continuing it until the pending enforcement action is resolved. And I would just add the impending enforcement action with the Department of Health is resolved.

CHAIRPERSON REID: Okay. Ready? All in favor?

BOARD MEMBERS: Aye.

CHAIRPERSON REID: Opposed?

MR. HART: Madam Chair, before I call the case, is this -- is this decision time sensitive? Right now it reads almost indefinitely and we need to --

CHAIRPERSON REID: Right. Continue until -- I think we should indicate a date certain. That would be -- after -- do you know when the enforcement hearing is?

MS. ALI: We don't know.

MR. SOCKWELL: Ms. Ali, do you have --

Ms. Ali, do you have any input to these hearings and the dates to which they are scheduled?

MS. ALI: No.

MR. SOCKWELL: You have --

MS. ALI: Ms. Carmen Johnson is our attorney and Mr. Anders knows her. So he can call her and ask her.

CHAIRPERSON REID: Can we -- I mean is it possible for us to request to expedite it?

MR. SOCKWELL: I think we should.

CHAIRPERSON REID: To request that -- since this basically disables Mrs. Tucker from being able to do the expansion part -- I mean, she can continue to operate, but she cannot -- I don't think she can proceed with the expansion until she gets approval here. And the approval here is predicated upon the enforcement hearing. So that we request that that hearing is accelerated or expedited?

MS. ALI: Yes, sure. I will refer that to Ms. Johnson.

COMMISSIONER HOLMAN: Perhaps we could consider some time frame like 120 days or something so that it is not just out there forever.

CHAIRPERSON REID: Open-ended.

MS. PRUITT: And then you can reconsider

at that time. That will give staff time to actually get in touch with the attorney to find out what --

CHAIRPERSON REID: Okay.

MS. PRUITT: Because you know if they are like us, we have a very heavy docket and we are working all the time. But it would be very hard for us to accommodate.

MR. SOCKWELL: I think we can schedule a vote at the next available meeting --

MS. PRUITT: That is September.

MR. SOCKWELL: After we find out what the resolution -- or that this has been resolved.

MR. ANDERS: That was going to be my suggestion. If we could correspond --

MS. PRUITT: I am sorry, Mr. Anders, you are not on the microphone.

MR. ANDERS: If we could correspond the reconvening proximate to the commencement of school. I think that if there is a timing issue, that would be appropriate.

CHAIRPERSON REID: That could be any -- you said commensurate to what?

MR. ANDERS: The beginning of school, which is generally right around Labor Day.

MS. PRUITT: If you would like, what you

could do is put this on the agenda to at least try to make a decision for your September 5. And if they haven't had the hearing, hopefully by then we will have more information as to -- more definitive information.

CHAIRPERSON REID: Okay. So September 5 is the first meeting in September? We recess in August. September 5 is the best we can do.

MR. SOCKWELL: And not knowing that process, there is potentially a situation whereby this can be resolved without a hearing once proof is shown that the issues have been taken care of. And it seems that with your architect and the others involved with this professionally developed addition, that you may be right there where you need to be. It is just that it hasn't been communicated to the system.

CHAIRPERSON REID: Yes. I hope that you are interpreting our position to the extent that we are not in opposition -- we are not opposed to approving. However, in order to do so, we had to do it in such a way that we ensure the safety of the kids, and that is from the hearing. So I hope that you will move forward accordingly and understand that once that is accomplished, that should be your only

hurdle that prevents you from getting approval, I think. That is the consensus I get from the Board members.

MS. TUCKER: Thank you.

CHAIRPERSON REID: We do recommend the need there for such a day care center and we would like to accommodate the community needs. Okay. All right, thank you very much.

MR. HART: Madam Chair, if I -- let me just complete this. On a motion made by Mr. Sockwell and seconded by Mr. Moulden this day, the Board voted 5 to zero to continue the case until the pending enforcement actions with the Department of Health have been resolved.

MR. ANDERS: May I inquire, does that mean we are reconvening here on September 5?

CHAIRPERSON REID: Yes.

MR. ANDERS: At 9:30 in the morning.

MS. PRUITT: So that is an amended motion.

CHAIRPERSON REID: Okay.

MR. ANDERS: Thank you very much.

CHAIRPERSON REID: Okay, thank you. We have to do an assessment here now. We have two other cases. The Potter case we were to -- wait one

second. We were to make a -- have you come back. Wait one second. But also we have the East of the River case. And how many people are here for the East of the River case -- East of the River case?

UNIDENTIFIED SPEAKER: Yes, what was your question?

CHAIRPERSON REID: How many people are here for that case.

MS. PRUITT: I believe they are all the applicant, is that correct?

CHAIRPERSON REID: Okay. All right. But there was an issue regarding the type of relief -- special exception or variance or how many variances. Okay. Wait one second. All right, unfortunately, I know that we told you to come back at 4:30 -- it would be around 4:30. But we need to take a short recess for about ten minutes and then we will come back and then we will take care of that and then East of the River. What we will do is take care of the preliminary matter for Potter. Come up if you have a question. Ma'am, come forward if you have a question and speak into the microphone. Give your name.

MS. LEGION: My name is Virginia Legion. I am the ANC Commissioner for 8C and I am here for the East of the River case. And I am just trying to

get some understanding as to the time frame that we are going to be -- or if we are going to be heard this afternoon.

CHAIRPERSON REID: Yes, we are going to proceed with East of the River after -- come up. You can't speak from back there. We probably -- usually we break about -- we usually complete the hearings at 6:00. We may have to go a little longer this evening. So I have to get an assessment from Board members and the reporter as to being able to accommodate you.

MS. LEGION: Unfortunately, I also have a schedule in which I have a daughter to pick up in about an hour and I have been here since 1:00.

CHAIRPERSON REID: Oh, okay -- oh, I am sorry. You have to leave about what time?

MS. LEGION: At 6:00 I have to pick her up.

CHAIRPERSON REID: Okay, then what we will do is -- by that time, we will have finished with the Potter case and we can take you out of turn to hear your testimony once we call the case up.

MS. LEGION: Okay.

MR. SOCKWELL: You have to use the Southwest Freeway to get back out there, don't you?

MS. LEGION: No. I have to use the Metro to go pick up my car to go pick up her.

MR. SOCKWELL: Oh.

CHAIRPERSON REID: And you have to leave by 6:00?

MR. SOCKWELL: No, she has to be there by 6:00.

MS. LEGION: I have to pick her up by 6:00.

CHAIRPERSON REID: What time do you have to leave?

MS. LEGION: I should have left. But I was hoping that East of the River was going to be next.

MR. SOCKWELL: It is. Do you have a written testimony?

MS. LEGION: Yes, I do.

MR. SOCKWELL: Okay. You please submit that as well. Because if we get caught in your schedule, we want to have that.

MR. GLADNEY: May I ask a question?

MR. SOCKWELL: Yes.

MR. GLADNEY: I am Calvin Gladney, attorney for East of the River.

CHAIRPERSON REID: Okay -- oh, wait, wait

one second. It has been brought to my attention that because of your -- the problems of your case, we may have to continue you.

MR. GLADNEY: Don't we get a chance to speak about that in the process of the hearing?

CHAIRPERSON REID: Well, as a preliminary matter. So if that is the case, then the ANC would not be able to testify anyway if we had to continue the case because of the problem with the notice.

MR. GLADNEY: Well, I guess before we talk about the specific details of that, it would seem to me conceptually we should have a chance to discuss that before we even say whether we are continued or not. So we don't really know whether --

CHAIRPERSON REID: That is true. But the decision to continue rests upon the Board. And in deference to the ANC representative here, who has to leave by 5:30, then what we are saying is that if we -- if it looks like we are going to move toward continuing it because of the problem and that holds you up -- Ms. Pruitt?

MS. PRUITT: The question is I understand East of the River has a big time constraint because of funding. And we have very few hearing dates if you continue. I mean, I don't know how you want to

balance that. As you know, before you you should have a revised BZA schedule.

CHAIRPERSON REID: Okay. But I had just -- when I was saying that we recess and then come back and then we could hear the case, and I was told by Mr. Holman that we would not -- we would probably not hear the case today.

MS. PRUITT: That is yours to decide, yes. You haven't discussed it. So you have to decide whether or not --

MR. GLADNEY: But it would seem to me that we would get a chance to speak towards whether you continue or not.

CHAIRPERSON REID: You would be able to. And were you in favor of continuance?

MR. GLADNEY: We are not in favor of continuance.

CHAIRPERSON REID: Okay. Then we still have to make a determination. So what we need to do now is to recess and then we will come back. And whatever we do, we will definitely take into consideration your time constraints. Thank you.

(Whereupon, at 5:01 p.m., off the record until 5:22 p.m.)

CHAIRPERSON REID: All right. Let's see,

the lady from the ANC had to leave? Okay. All right, let's continue -- let's readjourn with East of the River -- Potter first? Because she has to leave. We are going to have to take a few minutes, I am sorry, to take East of the River first. Do you want to call it please -- oh, Ms. Pruitt, can you call it please, quickly?

MS. PRUITT: Application 16583, East of the River Community Development Corporation, pursuant to 11 DCMR 3104.1, for a special exception under Section 217 for the construction of a three-story general and administrative office building to accommodate office use with access to the parking lot in an R-5-A District at 522 and 524 Raleigh Street, S.E., Square 5988, Lots 52 and 53. All those planning to testify, please stand and raise your right hand.

(Witnesses are sworn.)

MS. PRUITT: Thank you. Please be seated. Madam Chair, as you know, before we start there are several preliminary issues.

CHAIRPERSON REID: All right. Come forward, please? Do you want to address them? Do you want to address them or do you want --

MS. PRUITT: Actually, I believe you --

you probably should address the issue of the continuance with the ANC person because the other things will fall after you -- if you've made a decision to continue or not. Because those are things that are more germane to the case itself like a fee waiver.

CHAIRPERSON REID: Sit down, please. Now in regard to your particular case, there were some issues. You are aware of the issues, correct?

MR. GLADNEY: We are not sure exactly what is being discussed.

CHAIRPERSON REID: All right. In regard to the type of relief that you are asking for, I think that it came in as a special exception and then we later determined -- I think that DCRA came out -- they thought it was an empty lot and there is a building on the lot or something. So then it became a variance.

MS. PRUITT: Madam --

MR. GLADNEY: Well, can I address what you just said?

CHAIRPERSON REID: Just one second. Let Ms. Pruitt explain what the problem is. She can do a better job than I can.

MS. PRUITT: I understand. I think this

has been a very confusing case for everybody. Best of staff's knowledge and recollection and after doing research, originally East of the River went to DCRA with a certificate of occupancy. Based on the certificate of occupancy, DCRA issued a letter stating that they needed a special exception. We have another letter -- that was dated April 21. On May 19, we -- and we then advertised as a special exception. On May 19, we received another letter from the Zoning Administrator saying that they needed a use variance. We have monthly -- bimonthly joint meetings with DCRA and OP, at which time staff discussed with DCRA asking which letter was correct. At that time, upon a cursory review, we were told by DCRA that the special exception was correct, so we did not readvertise.

Upon reviewing for the case this week -- or earlier this week, in reviewing the file and really reading what the applicant had put forth and looking at all the calculations, the applicant in their submission to us stated that they needed a use variance in their actual application. And then if you go further to read it, it also talks about them being over the lot occupancy, FAR and height limit. And so upon that, it is staff's opinion that, one, they need

a use variance plus three area variances.

We also did find out today though that the site -- I believe East of the River was operating under the understanding that the site was split-zone between an R-5-A and a C-2-A. The site is actually zoned all R-5-A. So we are unsure if that will affect the calculations or not. So there is a lot of confusion based on just sort of Murphy's law and happenstance.

MR. GLADNEY: Madam Chair, may I address some of the things that were said?

CHAIRPERSON REID: Sure. Again, I am Calvin Gladney, attorney representing East of the River. In terms of the specific history, the first thing that I believe occurred was that our application was put in.

MS. PRUITT: Your application had to come with a letter from DCRA because it was not self-certified.

MR. GLADNEY: May I -- I can give you a copy. Our application, which was the first thing that occurred, one, asked for a use variance; and two, was self-certified relating to a use variance. So the first thing that is true is that we asked for a variance and not a special exception. The second

thing that is true is that a handwritten change was made on our application -- I can give it to you right here -- which crossed out use variance and says special exception. We were never given -- this was actually gotten from Ms. Major. So we did not get notification that someone at the Board thought that it should be a special exception versus a variance until we started to discuss these issues much later in the process. And when you sent out notice that spoke towards a special exception, when we received that, then we called the Board and said, well one, we asked for a use variance, not a special exception. How was the notice sent out by you asking for something that we didn't ask for? So I just wanted to clear those facts up.

MS. PRUITT: Yes, Madam Chair, he is correct. I am sorry, you did self-certify. And because in self-certification, as you know, the applicant takes the total responsibility of requesting the correct zoning relief --

MR. GLADNEY: And we did.

MS. PRUITT: Often we check with the Zoning Administrator, who is the final arbiter, to be sure so that we don't go back through this process. Because in self-certification what happens is you

come here, the Board assumes that you are asking for the correct relief, we grant it or not. Then it goes to the Zoning Administrator to confirm. If it is not correct, you have to come back through the process. What we do on issues where we are not always sure, because we are not the interpreter of the regs, that is the Zoning Administrator's position, we then forward it to them to get sort of final confirmation. We have a letter dated April 21 which says special exception, which is what we used to advertise. When we were called by -- Ms. Queery called me to ask if it was a special exception. She thought it was a use variance. That is when we met with Mr. Johnson and tried to get this straightened out again. And it was confirmed that it was a special exception, which is why we did not readvertise.

MR. GLADNEY: So, but I just wanted -- I think it should be clear that in terms of the variance versus special exception, we asked for a variance and it wasn't based on something that we did that created a special exception as what relief was asked for.

MS. PRUITT: Well, it was my understanding that the special exception was based on your certificate of occupancy filed to use the

subject premise as an office for a non-profit -- excuse me, this is Exhibit 14 in your file -- will be required to obtain a special exception.

MR. GLADNEY: Now, but I thought -- that is from the Zoning Administrator.

MS. PRUITT: Correct.

MR. GLADNEY: So -- but you also said that later in the process they said that they made an error as to their response.

MS. PRUITT: Correct. And then we asked them which one was correct. And at that time, we were told special exception. So that is why we did not change the advertisement. The Zoning Administrator is the interpreter of the regs.

MR. GLADNEY: So -- but the basic point is that somehow the Zoning Administrator confirmed the wrong relief in terms of the request?

MS. PRUITT: It appears that way. And it depends on -- I am not sure what was actually submitted to the Zoning Administrator in the sense of plans -- floor plans or anything like that.

CHAIRPERSON REID: But I think the bottom line is that -- I think we all agree that the relief is a use variance.

MS. PRUITT: And three area variances.

CHAIRPERSON REID: And three area variances.

MS. PRUITT: Correct.

CHAIRPERSON REID: And what Mr. Gladney is contending is that this is what they had applied for.

MS. PRUITT: Well, they applied for the use variance, not the area ones.

CHAIRPERSON REID: The use variance.

MS. PRUITT: Correct.

CHAIRPERSON REID: Okay. Then somehow in the mix, someone decided that they needed a special exception and then from there it was all downhill.

MS. PRUITT: Correct.

CHAIRPERSON REID: Up hill.

MR. GLADNEY: And we are here today prepared to give both witness testimony and speak towards the legal test for the use variance and the area variances.

MS. PRUITT: That is correct. I did talk to Ms. Perry, when I was informed of the different -- that there was possibly area variances that needed to be handled so that they would be prepared. I didn't want to spring this on them at the last minute. Once staff was sure or once we found that out, we let her

know.

MR. GLADNEY: I wasn't hit with that. When was that? When did you guys talk?

MS. PRUITT: The day before yesterday.

CHAIRPERSON REID: Okay. That being the case --

MR. GLADNEY: Well, we are ready.

CHAIRPERSON REID: Okay. Is it possible for us to -- here is what I would suggest that we do. That we just try to move forward on the application. That we allow the ANC Commissioner to speak.

MS. PRUITT: Madam Chair?

CHAIRPERSON REID: Yes?

MS. PRUITT: Excuse me, there is one more further complication.

CHAIRPERSON REID: Okay.

MS. PRUITT: Today was the first time -- as I say, East of the River was always looking at this as a split zone, C-2-A/R-5-A. It was confirmed today that it is all R-5-A. So I don't know if their calculations -- the calculations they did are correct now that we have the correct zoning.

CHAIRPERSON REID: Okay. Now another thing that was suggested, Mr. Gladney, was -- I forgot the other issue about the split zone and it

being one zone. With all the complications -- so that these can be clarified -- what we would like to do is to continue the case until next week or the week after next and give you an opportunity to meet with Office of Planning and meet with the Zoning Office to make sure you have everything in order so that when you come before this Board, you will have a greater probability of getting approval. Because right now, there is just so much uncertainty that it just would not -- probably not be in your best interest as well as the fact that having read your submission, I think you need to take a look at -- I would suggest you take a look at the relief that you are requesting and the three-prong test that you have to be able to demonstrate that you are able to meet in order to get your variance. Now that three-prong test -- you can go over it with Office of Zoning staff -- is first you have to show there is something unique or unusual about -- inherent in the land of the site. That either something pertaining to narrowness or slope of the land or the size of the site or any other characteristic that makes it unique. That is number one.

MR. GLADNEY: Ma'am?

CHAIRPERSON REID: I am not finished.

MR. GLADNEY: Okay.

CHAIRPERSON REID: Number two, you have to then show -- it is a use variance, so you are going to have to show how it causes undue hardship for you to comply with existing zoning regulations. Then you have to go to adverse impacts and then how it does not impair the intent and integrity of the zoning regulations or the map. Now go ahead. You wanted to say something?

MR. GLADNEY: Well, we were talking about a continuance. But I think the first prong of the test is a little broader than just shallowness and narrowness. Because it also speaks to special conditions or exceptional situations.

CHAIRPERSON REID: Inherent in the land. So when you talk about the need for development or how important it is to the community and to the area, that is not the type of criteria that you could utilize in this particular test. That is what I am saying. I want you to talk to them and let them help you lay your focus on what you need to do to make sure that you are meeting that requirement so that you could have the better probability. That is all I am saying.

MR. GLADNEY: I understand.

CHAIRPERSON REID: Because I did look at your submission. And while well-written -- it was very impressive -- but you have to make sure that you very specifically meet that criteria.

MR. GLADNEY: I understand.

MS. GUILLIAM: Madam Chair, Retta Guilliam, Executive Director of East of the River. You said there was a third one, the uniqueness of the site, the undo hardship --

CHAIRPERSON REID: Staff will help you with that. When you look at the section for meeting a variance in the first place, which would bring you under subsection --

MS. PRUITT: 3104.

CHAIRPERSON REID: 3104.1 -- no, that is special exception. For variances -- 310 what? 3101.

MS. PRUITT: 3101.

CHAIRPERSON REID: 3101. And they will show you based on the regulations what is required. And it is very -- you know, it is very technical and very specific. So that you can come very, very -- you can specifically meet exactly what you have to in order to be able to have the greater probability of getting acceptance. And there are some issues about the measurements pertaining to the zoning -- once it

is established exactly, if it is a split zone or one zone. It is a technical -- there are a lot of technical things that you could find available to you. The answer to which are available to you through the Office of Planning. Mr. Barney Smith has agreed to meet with you to help you with this. We understand clearly that this is a nonprofit and that this is probably the first time you have come here. And that you don't really -- you have never really gone through this experience. And it is rather daunting if you have never done it before. And to kind of give you some guidance and some clarification as to what exactly you need to do. And Mrs. Pruitt-Williams and Mr. Paul Hart are all available to you and willing to assist you in any way possible through this whole process.

MR. GLADNEY: Madam Chair, with respect to continuing to -- did we mention a date?

CHAIRPERSON REID: Well, we have -- we recess in August and we understand that you have to have your hearing before the 31st because we expedited it for you. We had suggested that the last hearing date of this month, which would be the 25th -- is that a Tuesday or a Wednesday -- Tuesday the 25th, we have a very packed agenda that day.

Nonetheless, we are going to just kind of squeeze you in so that we can get you done.

MR. GLADNEY: I think we would be willing -- my client can nod her head yes or no -- to come in early if you want us to meet at 7:00 prior to the other scheduled applicants.

CHAIRPERSON REID: What about us? What about poor us? We -- I think that we would have no problem -- we start at 9:30.

MS. PRUITT: Correct. But you have other cases that you have continued and scheduled for the beginning -- I mean, that have already been announced that they are going to be the first, second and third case.

MR. GLADNEY: Well, because our worry is --

MS. PRUITT: You have four cases on that day.

CHAIRPERSON REID: I understand that. But we didn't do a -- we didn't sequence them.

MS. PRUITT: Yes, some of them we did. And sometimes when you continue them, you actually state.

CHAIRPERSON REID: Oh, okay. But that was starting at 9:30.

MS. PRUITT: Right.

CHAIRPERSON REID: So what he is suggesting is perhaps we could start at 8:30.

MS. PRUITT: That is always an option.

CHAIRPERSON REID: And just get it done. I have no problem with doing that. If the other Board members have some -- can you at 8:30? Ms. Renshaw?

MS. RENSHAW: Yes.

CHAIRPERSON REID: You have to get up a little bit earlier.

MS. RENSHAW: Well, I am here, but I thought that that early time was for pre-meetings, which are always necessary.

MS. PRUITT: I do -- I would suggest that we do have -- on that particular day, we do need a pre-meeting because you have a very heavy agenda and there are a lot of issues.

CHAIRPERSON REID: Okay, before -- usually we talk about getting her at 8:30 and we don't. So if we get here at 8:30, then perhaps we can take them at 9:00? Come at 8:15?

MS. PRUITT: I will be here whenever you need.

CHAIRPERSON REID: Okay. If we come at 8:00 -- Board members, give me some input please. If

we come at 8:15 that one morning and then try -- and then have our pre-meeting and then take them at 9:00? In order to get through what we have to get through. This is why it is very important for you to have met with Office of Planning and Office of Zoning so that it will be so tight that we can get in and out in 15 or 20 minutes.

MS. PRUITT: Also, Madam Chair, you were going to ask them -- you need to provide us with a site plan and also the recalculations based on the new zoning, which is R-5-A.

CHAIRPERSON REID: Okay, when you -- Ms. Pruitt, I would rather for them to meet with you so that you can help them through that --

MS. PRUITT: I understand. But I just wanted to put that on the record.

CHAIRPERSON REID: Yes, the whole recalculation and perhaps to kind of give them some explanation as to the new zoning and how it impacts that particular site and how it impacts their application -- the whole nine yards.

MS. PRUITT: Certainly. I just wanted to put on the record that those are two things we definitely need.

CHAIRPERSON REID: Okay.

MR. GLADNEY: So just so we understand, those recalculations are based on --

MS. PRUITT: R-5-A zoning for the whole site.

MR. GLADNEY: It is based on us receiving the information this morning from the Office of Planning? It is not that we calculated something wrong based on what we knew?

MS. PRUITT: We don't know. The question is the site was split zoned.

MR. GLADNEY: And that is how we made our calculations.

MS. PRUITT: Right. But it was confirmed today that the site is actually all R-5-A.

CHAIRPERSON REID: Oh, at one time it was split zoned? That was the --

MS. PRUITT: No. That is what --

MR. SOCKWELL: That is what it was believed to be.

MS. PRUITT: It was believed to be. And that was the assumption you moved on -- I mean you worked on. It may mean your calculations don't change. But we just need to have that verified based on the new zoning.

MR. GLADNEY: Okay.

MS. PRUITT: That is all. Like I said, I don't know because we haven't -- you know, that is one thing we don't normally do is calculations on that end. But we certainly will help you with it. And we all are just confirming that this morning that it is an R-5-A.

MR. GLADNEY: Well, we made our calculations based on what we were told.

MS. PRUITT: I understand.

MR. GLADNEY: Okay.

MS. PRUITT: And I am just saying what you were told and what we actually confirmed today are a little different. So it may affect your calculations and it may not.

MR. GLADNEY: Okay.

CHAIRPERSON REID: All right?

MR. GLADNEY: So 8:15? Is that what we --

CHAIRPERSON REID: 9:00.

MR. GLADNEY: 9:00.

CHAIRPERSON REID: We have to be here at 8:15.

MR. GLADNEY: I tried to sneak that in there. Thank you, Madam Chair and the Board.

CHAIRPERSON REID: Sure. Thank you very much.

CHAIRPERSON REID: Okay. Now the last --

MS. PRUITT: Okay, the last case of the afternoon, 16588, Appeal of Edward M. Potter, pursuant to 11 DCMR 3100 and 3101, from the administrative decision of Armando Lourenco, Acting Zoning Administrator, Building and Land Regulations Administration, Department of Consumer and Regulatory Affair, made approximately on December 7, 1999, to the effect that the construction of a garage complies with the zoning regulations. The appellant alleges that the construction of the garage does not conform to the zoning regulations and has caused severe damage to their property, destroying portions of the shared driveway and limited access to their driveway in an R-1-A District at 4900 Indian Head Lane, N.W., Square 1512, Lot 33. All those planning to testify, please stand and raise your right hand.

(Witnesses are sworn.)

MS. PRUITT: Madam Chair, when we broke, I think we were trying to -- we are still on preliminary issues.

CHAIRPERSON REID: Okay. Now we go to the issue -- well, which one did you want to present to us first.

MR. O'BRIEN: Actually, Madam

Chairperson, either one. Whatever the BZA would prefer to hear first.

CHAIRPERSON REID: Okay. You were given additional material that we received today. And did you want to speak to that?

MR. O'BRIEN: Yes.

CHAIRPERSON REID: After you have analyzed it and make a proffer to us what your position is accordingly?

MR. O'BRIEN: There are two issues that were raised today. One is the issue of timeliness and the other is the issue of the jurisdiction of the BZA to review something having to do with a building permit. I think the easier -- well, I think the easier one to address is the timeliness issue, so I will do that first.

These building -- the building permits in question -- the stop work orders relating to the building permits were issued in December of 1999. The violations that gave rise to the stop work orders were zoning in nature, as is stated in the application for review in front of you and as stated in Mr. Niedermayer's papers which he submitted on the issue of timeliness. Indeed, the Zoning Office both was instrumental in issuing the stop work order and

was instrumental in overturning it. There are at least two separate statutory provisions which give the BZA jurisdiction in cases of this kind. One is Article 5, Section 424(f), which state that an appeal lies from any department or D.C. government where that decision is based in whole or in part on a zoning regulation. And that includes specifically granting or refusing the grant of a building permit. Similarly, 424(g)(1) states that the Board of Zoning has the power to decide appeals where it is alleged -- not proven, but merely alleged that there is an error in any order or decision or determination of any administrative office or body with regard to zoning matters.

I think what has been advocated is that the stop work order, which was posted on the property, had to specifically refer to a zoning matter on its face. I have never actually seen a stop work order cite too many statutory provisions. But obviously that is not what is going on here and it is not what this case has ever been about. The BZA regulations -- and I am referring specifically to 11 DCMR 3105 -- refers to jurisdiction in the case of building permits. The BZA's decision in waste management in 1999 refers to jurisdiction in cases

involving building permits. And 11 DCMR 3202 requires compliance with the zoning regulations in the case of any matter before the BZA involving building permits. So I don't think there is any question but that this Board has jurisdiction over this particular case insofar as it relates to zoning violations, which has consistently been the position of both parties throughout the proceedings both here and before the courts.

The second issue that has been raised today goes to timeliness. There is a jurisdictional requirement that petitions and appeals to the BZA be filed in a timely manner. There is, of course, no definition of what timely is. And that has been construed by the Court of Appeals to be that which is reasonable under the circumstances.

Now sorting through what happened in this particular case, the stop work orders were issued in December of 1999. They were removed in December of 1999. There is a provision for administrative appeal of these determinations within the DCRA. I would suggest that if that internal appeal is not taken, there is a very good argument that you couldn't go immediately to the BZA because you would not have exhausted your administrative remedies before the

DCRA. We filed that appeal. And at the time we filed the appeal to the BZA, it had never been resolved. We had never been responded to. And that very important point has not been mentioned so far. But we have -- there is no lapse of time involved here. We made phone calls to the DCRA to find out what the status of the appeal was. Those phone calls were never returned. After a series of those phone calls, we filed the instant appeal before you. Because it was obvious that we weren't going to be responded to. But the cases cited by Mr. Niedermayer and by the -- and by Ms. Ray all go to lapses of years. And they go to some sort of surprise of undue hardship on the other party. We are not talking about that kind of a time delay. And we are not talking about a situation where the other party is taken by surprise. This matter has been in litigation since April of last year and it has all been on zoning issues. Indeed in one of their pleadings, the defendant, Mr. Ghafoorian admitted that they were bearing the risk of proceeding with construction under these circumstances. They can't now turn around and say that they have been somehow prejudiced. There is no timeliness issue before you of any real substance, and there certainly is absolutely no colorable claim

that this Board is without jurisdiction.

CHAIRPERSON REID: All right.

MS. RAY: Well, I have got to respond. The jurisdictional issue -- with respect to the jurisdictional issue that Mr. O'Brien's response is I guess to our argument that the stop work order at issue was about zoning in nature. Clearly you have got copies of the stop work order. It is not zoning. It is a building permit. It is related to the building permit. There is a building code and construction code cited on the face of the zoning -- excuse me, on the stop work order as well as signed by building inspector --

CHAIRPERSON REID: Okay, Ms. Ray --

MS. RAY: Secondly --

CHAIRPERSON REID: Ms. Ray, before you go any further, the argument that you are making -- I suppose is a summation of what you made earlier today. And as such, we did kind of confer regarding that issue. And what has come up is that, yes, on the stop work order there is the citing of violations that pertain to code. Nonetheless, when we went back to the application that was filed, then it went to issues that pertain to zoning. So that all -- no? Ms. Pruitt, are you saying no?

MS. PRUITT: No.

CHAIRPERSON REID: And then that kind of was -- presented a quandary for us as to whether or not in fact we did or did not have jurisdiction.

MS. RAY: Right.

CHAIRPERSON REID: So I am not -- so the point I am making is that I don't think it is as clearcut as what you are saying in regard to it being a stop work order that is predicated upon building code violations.

MS. RAY: Well, of course, that is the Government's position. And in addition to the additional argument that Mr. O'Brien made about the granting or refusing to grant a building permit. In those cases, we would agree as they relate to zoning that the BZA definitely has jurisdiction to the granting or refusing to grant a building permit as they relate to a zoning violation. But that is not what is at issue here. This wasn't the granting, which is what should have been appealed, if that in fact was where the Potter's were harmed from.

CHAIRPERSON REID: The granting of what?

MS. RAY: But we are talking about just the issuing of a stop work order on the underlying building permit, which really it was the building

permit at issue, not the stop work order as it relates to zoning. If I went farther, we know that the Board has jurisdiction to decide matters when building permits have been granted or refused to be granted. That is not really at issue here. I could go to the timing issue, but I am going to let Mr. Niedermayer. But as it relates to jurisdiction, where the Board has jurisdiction is in the granting or the refusing to grant of the building permit. This is not the case here. This was a stop work order that was issued pursuant to the building and construction code. If there was any harm here, it was on the issuance of the building permit as it relates to zoning, not on the vacating of a stop work order.

So I hear what you are saying and I understand the Board's dilemma. My intention, of course, is only to make the argument --

CHAIRPERSON REID: To make your case.

MS. RAY: And to clarify as to our interpretation of the D.C. law as it relates to this issue.

CHAIRPERSON REID: Okay, wait one second.

MS. RAY: I am going to stop on this issue.

CHAIRPERSON REID: Wait one second and

let me --

MS. SANSONE: Madam Chair, if I might just point out something that might help clarify this issue. In the --

CHAIRPERSON REID: Please.

MS. SANSONE: In Mr. Niedermayer's motion to dismiss, he has an attached Exhibit 8. And that exhibit is -- relates to when they released the stop work order, the December stop work order, on December 9, 1999. And in it -- it is signed by Edgar Nunley, who as we all know is in the zoning division, and he states that all zoning and building code issues were resolved.

CHAIRPERSON REID: Okay, wait a minute. Exhibit 8?

MS. SANSONE: It is Exhibit 8 to the attachments.

CHAIRPERSON REID: Okay. He states that what now?

MS. SANSONE: He states the stop work order was released on December 9, 1999. All zoning and building code issues were resolved. So clearly in the stop work order, at least part of it related to zoning issues. And that would be the aspect that would give the Board jurisdiction. I don't think

anyone would disagree with Ms. Ray that the building code issues would not be before the Board.

CHAIRPERSON REID: But it is the aspect of it that pertains to zoning that we have to consider as far as the -- that is what brings it here. That is what gives us the --

MS. SANSONE: The jurisdiction, yes.

CHAIRPERSON REID: Jurisdiction, okay. This is what we were trying to come to some resolution of, Ms. Ray. Because as Ms. Sansone just said, certainly there is no argument about the building code portion of the work order, but only as it relates to the zoning aspects does it then come before this Board and gives us jurisdiction.

MS. RAY: But even still, if you are looking at the stop work order, it is still signed by a building inspector. I am not familiar with what document this is or this handwritten note that is on here.

CHAIRPERSON REID: I am not sure. And perhaps someone could answer this for me. Are all stop work orders signed by building inspectors or are they signed by someone in zoning.

MS. PRUITT: It depends on what it is a stop work order for. I mean, there could be zoning

stop work orders or -- I am sorry, there are building code stop work orders.

CHAIRPERSON REID: But the point I am asking about is -- and Mr. Sockwell, can you please weigh in on this since you do --

MS. PRUITT: Madam Chair, Mr. Lourenco is actually here, who is Zoning Administrator.

CHAIRPERSON REID: Are you going to -- come on up, Mr. Lourenco, could you please? Because I am not sure as to the procedure -- the technical procedure. Is it -- my understanding was that a building inspector always came out. Now, I wasn't aware of the fact that you have different inspectors, because usually we just say inspector. So I need to have that cleared up for me as to what hat or what type of inspector does it have some bearing on the type of stop work order, if it is zoning or building code.

MR. SOCKWELL: At least from the documentation and Exhibit 8, the stop work order -- the ticket for the stop work order is on a building inspection division form. Therefore, the stop work order as well states Building Inspection Division, which is not in the Zoning Division. There are zoning inspectors and there are building inspectors

and this stop work order was issued by a building inspector, not a zoning inspector, correct?

E-V-E-N-I-N-G S-E-S-S-I-O-N

(6:00 p.m.)

CHAIRPERSON REID: But Mr. Nunley says that all issues are resolved.

MR. SOCKWELL: Well, without putting any words in anyone's mouth, the way the ticket is written per zoning request, and it says no permit posted per Section 111.1, not working per plans, consumer right to appeal is given.

CHAIRPERSON REID: What does it mean per zoning request.

MS. RENSHAW: It doesn't say per zoning request.

MR. SOCKWELL: Yes, it does.

MS. RENSHAW: It says no permit posted 111.1.

CHAIRPERSON REID: Not it says marked per zoning request.

MR. SOCKWELL: Per zoning request.

CHAIRPERSON REID: It is prefaced by that.

MS. RENSHAW: Sorry.

MR. SOCKWELL: Yes, the --

CHAIRPERSON REID: What does that mean?

MR. SOCKWELL: Well, it could be that --

well, let's put it this way. I don't know that we can speculate as to why it said that. It would probably be improper to make the speculation.

CHAIRPERSON REID: Mr. Lourenco is here? Okay, why don't we --

MR. SOCKWELL: For the Board to make that speculation.

CHAIRPERSON REID: Mr. Lourenco, please. Do you have in front of you the exhibit that we are looking at?

MR. LOURENCO: Is this the one?

CHAIRPERSON REID: Yes.

MR. SOCKWELL: The lack of posting is the issue.

MR. LOURENCO: For the record, my name is Armando Lourenco. For the record, too, I am the Building and Land Regulation Administration Administrator. I am not the Zoning Administrator. I was the Acting Zoning Administrator when the permits were issued, which is a different story.

My interpretation of the way the stop work order is written is that the Building Inspection Division, which has the regulative authority to issue stop work orders, which are only issued under the authority of 12 DCMR, issued a stop work order.

Because of the fact that it says per zoning request, I can only assume that someone in zoning requested that the stop work order be issued. I can't speculate why, but that is clearly what can be inferred from here. Now the stop work order was issued by the Building Inspection Division, in fact by the Construction Inspection Branch. It was issued under the authority of the specific section of Chapter 1 of 12 DCMR, that allows the issuance of stop work orders. And as any other order issued under 12 DCMR, it can be appealed and there is a process under 12 DCMR that Mr. O'Brien just referred to. There is a process of appeal that starts within the Department of Consumer Regulatory Affairs and then goes on to a board if the aggrieved party is not satisfied with the resolution within DCRA. The only difference there is that -- and you can look it up yourself in 12 DCMR, Section -- I believe it is 122 or 123 -- is that the Board to which the process leads is the Board of Appeals and Review, very clearly in 12 DCMR.

MR. SOCKWELL: Mr. Lourenco, could you speak to the fact that if a building inspector arrives at a site and finds no permit posted for the construction that is underway, it would be within his right to place a stop work order on that construction

project?

MR. LOURENCO: That is correct.

MR. SOCKWELL: As well if --

MR. LOURENCO: It is one of the options he has.

MR. SOCKWELL: If even on the argument that a permit existed, if there were official plans on site and the construction was not in accordance with the official plans as observed by the inspector, he could on that basis as well issue a stop work order.

MR. LOURENCO: That is correct.

MR. SOCKWELL: All right. So two things are cited on this stop work order. Either one or both could have been sufficient and would have been sufficient for an inspector to issue the order, is that not correct?

MR. LOURENCO: That is correct.

MR. SOCKWELL: So not having resolved the statement of per zoning request, the other two items completely independent of zoning would have been sufficient for a stop work order?

MR. LOURENCO: That is correct.

MR. SOCKWELL: Thank you.

CHAIRPERSON REID: But my question then

is in regard to the relief -- now, Edgar Nunley is the Zoning Administrator, correct? Okay, what is his title?

MR. SOCKWELL: Chief of Zoning.

MR. LOURENCO: Notice the release is signed Edgar Nunley/Jim Shelton -- well, J. Shelton.

CHAIRPERSON REID: Okay, let me get this straight. Nunley is --

MR. LOURENCO: He works in the Zoning Division.

MR. SOCKWELL: Mr. Nunley is the Chief of the Zoning Reviewing Branch in DCR's --

CHAIRPERSON REID: Okay, who is the Zoning Administrator now?

MR. SOCKWELL: Michael Johnson.

CHAIRPERSON REID: Oh, Mr. Johnson. Okay, all right. Sorry. So Nunley is not just for zoning.

MR. LOURENCO: Yes, he is just for zoning.

CHAIRPERSON REID: Okay. That is what I am -- that is the point I am trying to make. The zoning -- the person who had the zoning authority was the one who released it.

MR. SOCKWELL: Well, there were two

signatures. The person who has building code responsibility --

CHAIRPERSON REID: Who is Shelton?

MR. LOURENCO: He is the chief --

CHAIRPERSON REID: Okay, so here we are back again. Zoning and building code authority released it. So there had to be something to do with zoning to even put the stop work order.

MR. SOCKWELL: Well, not necessarily. Mr. Shelton is the Deputy Chief Building Inspector. So he could -- he has jurisdiction over the building inspectors. Mr. Nunley may have --

CHAIRPERSON REID: Zoning.

MR. SOCKWELL: May have responded to any zoning issue, since there is a reference to zoning on here.

CHAIRPERSON REID: And on the release it says all zoning and building code issues resolved.

MR. SOCKWELL: Right.

CHAIRPERSON REID: And both of them are signing it. So I think that one could deduct from that that Edgar Nunley is signing it as it pertains to zoning and Mr. Shelton as to the building code.

MR. SOCKWELL: Right, yes.

CHAIRPERSON REID: So that then

implicates further the aspect of the zoning being a part of this stop work order.

MR. SOCKWELL: Yes. But it also speaks to the fact that building was a part of the stop work order.

CHAIRPERSON REID: No. We are not arguing that. That is a given. Sure. But the jurisdictional component goes to whether or not it pertains to zoning. And then with that, as Ms. Sansone said, then we get the BZA jurisdiction. It is not just zoning. Apparently it is zoning and building code violation apparently.

MR. SOCKWELL: Yes, but what I am -- what I have to refer to is that the reference -- the code reference was a building code reference not a zoning ordinance code reference. And the not working per plans was a reference to an official set of documents issued under the building code with a zoning implication because zoning has to review all plans that are part of a building permit issuance. So it still speaks to the fact that zoning is a component of the issue, but that the stop work order was issued specifically because there was no building permit posted and the work as well apparently was not perceived by the inspector as being performed under

the or as per the plans that had been issued. And that is assuming that the plans were there because it says not working per plans.

MR. O'BRIEN: Commissioner, if I may clarify this somewhat. I called in the inspectors personally.

CHAIRPERSON REID: Could you speak a little louder?

MR. O'BRIEN: I was the person who called the inspectors and got them there. And Mr. Shelton and Mr. Nunley were the inspectors who appeared. And they made the on-site visit with me.

CHAIRPERSON REID: Both of them came?

MR. O'BRIEN: Both of them came in the same car.

MR. SOCKWELL: Now this was on --

MR. O'BRIEN: I believe that was on -- excuse me.

MR. SOCKWELL: The question is the ticket was written by Mr. Bailey, not by Mr. Shelton.

MR. O'BRIEN: Mr. Ball was not there.

MR. SOCKWELL: Ball, Jr., I am sorry.

MR. O'BRIEN: I have no explanation for why his signature --

CHAIRPERSON REID: But didn't they come

out in order to be able to release it? They made the decision to release the stop work order because the issues had been resolved.

MR. O'BRIEN: Yes.

CHAIRPERSON REID: With Nunley and Shelton.

MR. SOCKWELL: But Ball's signature is on the original stop work order and on the ticket -- both the ticket written at 1:53 p.m. and the stop work order written at 1:52 p.m. on 12 -- I guess this is 7 -- 99.

MR. O'BRIEN: And then the back of the ticket, the release was apparently 12/9/99.

MR. SOCKWELL: 12/9/99, correct.

MR. O'BRIEN: But the inspection occurred on the morning of December 7. I met Mr. Nunley and Mr. Shelton on the site. And it was reviewed specifically for zoning violations, specifically for side and rear yard setbacks, for gross size of the structure. It was entirely a zoning inspection.

CHAIRPERSON REID: I think what we are in danger of here is that once we -- if we make a decision that is not correct as it pertains to the jurisdictional issue, then that then becomes the precedent for future cases. So we should be extremely

careful about how we proceed in this particular issue.

MR. NIEDERMAYER: Madam Chair, may I be heard on this?

CHAIRPERSON REID: Yes, sure.

MR. NIEDERMAYER: I think you made a very excellent point, and I wanted to only introduce one other sentence that the Board needs to consider in deciding this jurisdictional issue. Mr. O'Brien has candidly admitted to the Board that what happened here was that the appellant called the building and zoning people and told them to come out and claim that there were violations which they should look into. Now what you have here is then a situation where the Board, if jurisdiction is granted, is going to run into a situation where the jurisdiction can be voluntarily expanded by any appellant simply by calling up and saying I think there is violations out here. Of course, the District of Columbia Government will respond. They will send inspectors out. If you claim there is a zoning violation, they will perhaps send someone from zoning out. They may say, well we need time to resolve the issue. Let's issue a stop order until we can go and review it for a brief delay. Here it was just a two-day delay. And then

the appellant, who should have appealed earlier to the underlying decisions involving building permits and plans says I have an appealable order. I can now appeal to the BZA and I have created -- I have created a situation where there is now jurisdiction to the Board. They could have a month later or two months later, they could have five minutes before they filed their appeal called someone up from DCRA and said I think there are zoning or building violations here, would you please send someone out and do something. Now if they come out and say there is no zoning violations or there are zoning violations, or they say there is no building violations or there are building violations -- whatever they do, you've got an appealable order. And as long as you claim there is zoning and they say, no, there are no zoning violations here, you have an order of some agent official of a D.C. agency who is making a decision which is now appealable. So what happens is that the time limits or the reasonable time have no meaning at all in these regulations. What happens is that anybody who wants to make an appeal can create the opportunity for themselves. What corporation counsel is arguing is that the case law -- and I am arguing in my time is -- the case law

doesn't support that. What the timeliness relates to is when you have notice and knowledge of the issue that you are raising in your appeal. And that is what I would like to discuss. I am going to stop now. That is what my motion is about. I think chronology is very important. I would like to draw the chronology up. But if you don't want to hear from me more at the moment, I'll be quiet. But when we get to me, I would like to show you why it is that the appellant here knew much, much earlier the issues that were raised here. They elected to go to court and did not preserve their appeal rights by filing an appeal here and then even going to a court if required. But they ignored the Board. Now they have only come to the Board as an afterthought. And the afterthought is they have been to court twice and they have lost twice. And they now said, well, we have lost twice. We have to find some other venue through which we have another opportunity to argue. And that opportunity is before this Board. But they have created that artificially. That isn't something that has happened as a result of the normal administration of the regulations and the laws in the District of Columbia. It is something that they have created. And every appellant will do that from now on

if this Board rules that there is jurisdiction when that happens. Everyone will be able to create that opportunity. And the purpose of the timeliness issue, that is as all statutes of limitations, is to make sure that stale claims and claims that are old and gone away won't be resurrected. Any time that happens, they will just be resurrected again and we could be flooded with all these things. But in any case, it is not up to the appellant to create jurisdiction. It has to be there and it has to comply with existing jurisdiction. What has happened in this case is they have admitted that they created it. They artificially did it by calling somebody out to look at it. Now if you indulge me, I will show you the timeliness as to why --

CHAIRPERSON REID: Well, we haven't gotten to -- are you saying that he timeliness and the jurisdictional are interrelated?

MR. NIEDERMAYER: Well, timeliness is a jurisdictional issue. And what has happened is in this case the appellant is claiming that they get to measure the time from December 9, 1999. I'll address whether that is timely or not as a separate issue. But that isn't really the action of an official that they should have appealed and had to appeal. The

actions that they should have appealed are much, much earlier. In fact, they are almost a year ago.

CHAIRPERSON REID: Okay. Before you go to that, just let me --

MR. O'BRIEN: May I respond, Madam Chair?

CHAIRPERSON REID: Mr. O'Brien is trying to respond.

MR. O'BRIEN: I am sorry that Mr. Niedermayer doesn't like the statute. But what the statute says that confers jurisdiction on this Board is that anybody may take an appeal from any action of a D.C. agency, including the granting or the refusing to grant a building permit, where that decision or that action or that lack of action is based in whole or in part on any zoning regulation. It doesn't say that, gee, it is too bad that people get appealed. It doesn't say that there is some limit on the number of people who can appeal. It doesn't require an appellant to do it when it is convenient for the person engaging in the violation. It simply says that when action is taken or not taken that has zoning ramifications, this Board has jurisdiction. And the statute is absolute on that. I am sorry that it is inconvenient for the other party. But all litigation is inconvenient. The statute on its face

is clear and it is black and white. And the arguments that Mr. Niedermayer is raising are simply irrelevant. I think what he is trying to do is frighten this Board into thinking that they are opening some sort of flood gate for appeals. But if you look at the language of the statute, that is exactly what the statute creates and this is exactly what the statute contemplates. And it could not be more clear.

CHAIRPERSON REID: Thank you. Ms. Sansone?

MS. SANSONE: Madam Chair --

CHAIRPERSON REID: Having heard both, I would just like a legal opinion from you.

MS. SANSONE: Madam Chair, under the Zoning Act, appeals may be taken from any decision, whether it is to affirmatively take an action or to refuse to enforce or refuse to issue a permit where those actions are based on the zoning regulations. In this case, the stop work order is clearly at least partially tied to the zoning regulations, and that would confer jurisdiction on the Board.

Now with respect to timeliness, though, there is a question in my mind of whether the appeal should properly be taken from the permit as really

being the final decision -- administrative decision in this case or whether you can sort of self-impose jurisdiction -- I don't like this self-imposing jurisdiction, but whether you can postpone that through the stop work order mechanism. I think that question really goes to the timeliness of this appeal, and perhaps that is where the attorneys want to go and argue about whether the appeal should have been brought a year ago or even closer in time to the stop work order. The stop work order is released on December 9, 1999, and yet our BZA appeal was not filed until April. In a lot of our cases, we normally look at 60 days as being a reasonable time for appeal or 90 days. And perhaps there are some factual issues that need to be brought to our attention here why a 60-day time period wouldn't have been reasonable after December or even why the appeal couldn't have been brought when the permits were issued and the construction started.

CHAIRPERSON REID: Okay. All right, thank you very much. Now let's listen now to the arguments for the timeliness and see how that correlates with the appeal and see if we can come to some resolution.

MR. NIEDERMAYER: Madam Chairwoman, I

assume that you would like me to go first since it is my motion. What I was going to suggest -- I would like to go to the --

MS. PRUITT: Mr. Niedermayer, the microphone.

MR. NIEDERMAYER: Thank you. The issue of timeliness, the appeal should be taken when there is a decision of a government official that relates directly to the appeal that you are taking. As we heard, the statute says a decision on a permit. There was a permit issued here on April 6, 1999. And you have to file an application --

CHAIRPERSON REID: You can bring the easel up closer.

MS. PRUITT: Mr. Niedermayer, we do have a hand-held microphone. I don't know if that is going to be possible.

MR. NIEDERMAYER: Okay. Can you pick this up now? Is that all right? There is a building permit issued on April 6, 1999, and as part of the application process, you must submit a set of construction plans. The construction plans show the location of the structure that you are going to build in relation to side yards, rear yards, and it shows the type of construction and it shows the height of

the building. So that preceding this or accompanying -- preceding the issuance of this permit on this date, all that information was public knowledge. It was public information known to anyone who wanted to go down to check it. When construction started, the appellant in this case could go down and they saw construction beginning. They saw there had to be a building permit posted. They could have gone down and checked it.

But let's not even talk about this date when they saw what was going on on the site. There is another building permit that was issued on May 24, 1999. And this building permit, the second, also had a set of plans. There were corrections made to certain aspects of the plans and the original permit. And if you will see as an exhibit to my submission, there is the April 6 permit. It is also I think in the appellant's part of the exhibits. There is the May 24 permit which says that there were corrections and it says it is to revise. A copy of the construction plans that were of May 24 have been submitted as an exhibit with my presentation. And if you look on those, you will see the exact location of the structure, which is a garage, which is what we are talking about. You will see it and where it is

located in relation to the side yard, the rear yard, the lot lines, in relation to the other buildings. It will show you where retaining walls are located that were necessary. And it will show you how tall -- how high the building was to be. As of May 24, actual construction was underway and observed by the appellant. I don't think they will deny that they not only observed it all, but they had taken photographs of it and whatever because interestingly enough on May 7, rather than go ahead and file any sort of appeal from either this building permit or whatever, they went to court. And when they went to court, what were they complaining about? They were complaining about violations of zoning. In fact, the suit was against the District of Columbia, to force them -- to force the District to enforce the zoning regulations, which they claim that there were so many violations of.

In this case, they were seeking injunctive relief. They knew as of this date what was shown in these plans as to setbacks and the location of the building, which I have mentioned before. There was a hearing on the request for a temporary restraining order. Initially, the District Superior Court issued a temporary restraining order

to give time to resolve the issues, and there was a hearing before Judge Dixon that concluded on May 19, at which these issues were raised. He rendered an opinion and dissolved the temporary restraining order finding as a preliminary matter that there weren't any violations of the zoning regulations. Mr. Lourenco testified --

MR. O'BRIEN: I am going to object to that because that is not specifically in the finding. I'd like to see what language you are talking about, Mr. Niedermayer.

MR. NIEDERMAYER: It is the opinion of Judge Dixon. Whatever he says in his opinion. The issue really that I am only addressing is that he was addressing zoning issues. He talked about the various kinds of zoning issues. The important point of that is not really what he ruled on those zoning issues. The point of that is that the appellant had knowledge of them. That he had raised those issues in front of the court, however the court resolved them. The court resolved them in one way. But however the court resolved them, the issues were before the court. Then on May 24, there was another building permit and another set of plans. And there was no action taken on this. Indeed in -- I believe

-- I don't remember the date -- it was in September of 1999 that the appellant wrote the ANC. And that is another exhibit in my submission. They wrote the ANC and said that there is something going out on this site which involves setbacks, side yard, rear yard, height, square footage area. The point of that submission is simply to show that the appellant knew in September of 1999 what the zoning issues were. He was very -- or they were very well aware of them. Now that was only a few months later maybe. I am not arguing about the test here. There was no appeal taken then. They wait until December of 1999, where they complain to DCRA and say there is building -- maybe they say there is zoning violations. I think that is what has been represented. And have an inspector come out. A stop work is issued on December 7, 1999. It is vacated on December 9, 1999. No appeal. No appeal. These are important issues. They have been fighting about them in court now since May of 1999. There is no appeal taken. Instead, we go back to court. And in court, the issues are raised again. There is a very lengthy evidentiary hearing that lasts almost a week. And in March of 2000 --

CHAIRPERSON REID: Excuse me, when do you

go back to court?

MR. NIEDERMAYER: Well, the court case was pending simultaneously with this.

CHAIRPERSON REID: Okay.

MR. NIEDERMAYER: That is pretty important because the appellant here chose other remedies. He made an election. That is an issue in whether they were timely or not. Whether they chose to do something else. In the case law of the Board's decisions, it says if you go and elect another remedy and you don't reserve your appeal rights, that is something to be taken into consideration when you decide whether you have acted in a timely way. In any case, this court case was going on. In March of 2000 -- actually, I believe it was -- I don't know if it was March 19 -- there was a decision of the Superior Court again on a preliminary injunction in which the zoning issues again were thoroughly litigated. There were experts on both sides. Mr. Lourenco testified. There are also -- the Court found that there wasn't a basis for giving any injunctive relief. They couldn't find any. They addressed the zoning violations. But an interesting thing happened. In that hearing for the first time, Judge Levy said, you know, the Board actually has

primary jurisdiction here and should have been the place that you went to first.

MR. O'BRIEN: I am going to object to that. Unless counsel can point out where these quotes are coming from.

CHAIRPERSON REID: Okay, sustained.

MR. NIEDERMAYER: They are in the opinion of judges that is attached to the --

CHAIRPERSON REID: Is that testimony -- I mean, I am sorry, in the transcript?

MR. NIEDERMAYER: It is in the transcript of the hearing --

MS. PRUITT: In our case it is Exhibit 20J. And we gave that to you earlier today.

CHAIRPERSON REID: Okay, well, you know, we --

MS. PRUITT: No, I don't have the page number.

CHAIRPERSON REID: Unfortunately, Ms. Pruitt, I don't think any of the Board members have had an opportunity to read this thoroughly. We kind of like glanced through it and got the gist of it.

MR. NIEDERMAYER: I am just giving you an overview. I know you have to read it.

CHAIRPERSON REID: That was almost

impossible to do having received it just before we came into the hearings this morning. Anyway, where is it?

MS. PRUITT: I haven't had a chance to read through it all. He was asking if it was there. I said if it is in the testimony, it is in this particular part.

MR. NIEDERMAYER: You called it something J?

MS. PRUITT: In our BZA Exhibit number -- Exhibit 9 is Mr. Niedermayer's.

CHAIRPERSON REID: I don't have the --

MS. PRUITT: It is this whole big package that you were given. That is it. You have it.

CHAIRPERSON REID: Where? Where? Page 20J? Page 20?

MS. PRUITT: It is our Exhibit 20J, Mr. Niedermayer's Exhibit 9. And it states, "Thursday, March 16, 2000, the above-entitled action came on for preliminary ..."

CHAIRPERSON REID: Okay. I see it. It is right behind the stop work order and the release -- not the stop work order, the inspector's stop work -- yes, the stop work order and the release is the next page over from that. That was easier. Okay.

MR. NIEDERMAYER: The only point of that was that after that decision where there was a discussion -- and it is a question of notice of the issues. It is not a question of how Judge Levy necessarily decided. It is just the question that the appellant had notice of what all the issues were. They had raised them all. It was only after Judge Levy ruled in mid-March that you got an appeal on April 8, 2000 of the December 7 stop work orders. So the issues were known as early as April 6, 1999. Certainly they were known by the end of May of 1999 if there had been a whole court proceeding or hearing, and there had been a building permit and plans issued. And yet there was almost -- I guess it is about ten months -- ten or eleven months before an appeal was actually --

CHAIRPERSON REID: Okay, what? I don't have the same page 8 that you have. Excuse me, Mr. Niedermayer, please excuse us.

MR. NIEDERMAYER: Certainly.

CHAIRPERSON REID: We are looking for the citation or the quote from the Judge regarding to the referral to the BZA.

MR. NIEDERMAYER: I'll find it in a minute.

MS. RAY: I think it is on page 26. It might be --

CHAIRPERSON REID: This is page 8.

MS. PRUITT: Madam Chair?

CHAIRPERSON REID: But my page 8 -- maybe I have a different document. Do you have a different page 8? Wait a minute, let me read this one.

MS. PRUITT: Madam Chair?

CHAIRPERSON REID: Yes.

MS. PRUITT: I would just also like to state that Mr. Niedermayer is talking about timeliness. And what the court ruled really isn't as important as the fact that the applicant knew exactly what was happening. That is what timeliness relates to. Not to what the outcome of the court case was.

CHAIRPERSON REID: He made that very clear.

MS. PRUITT: Okay.

CHAIRPERSON REID: The only thing that I wanted to see was when he referred to the Judge saying that it should have been before the Board of Zoning Adjustment.

MR. NIEDERMAYER: On page 26 of the final exhibit, the Judge says that the conclusions that he reaches is -- and he says "to defer to the

interpretation of those regulations by the agency charged with the responsibility." And that in the first instance of course means the DCRA. But it also means this Board after the DCRA.

CHAIRPERSON REID: Mr. O'Brien's objection is sustained. It says here that "the Board of Zoning Adjustment and the various offices associated with that process, including Building and Land, have a special expertise with respect to analyzing issues of this nature. And when courts are called upon to review their decisions, courts do have concurrent jurisdiction -- concurrent jurisdiction to review the decisions that are made by those governmental officials. However, the Court's review of these types of decisions are limited to a determination of whether or not the decisions are arbitrary, capricious or not in accordance with the law."

MR. NIEDERMAYER: My point about timeliness --

CHAIRPERSON REID: That is a little different from what you said.

MR. NIEDERMAYER: Has nothing to do with what Judge Levy or any other Judge said about how he ruled on the merits. That is not the point.

CHAIRPERSON REID: Yes.

MR. NIEDERMAYER: The point is just that the issues that are all being addressed exhibit a thorough knowledge of the appellant in this case of the zoning issues that are being presented along an extended period of time in which they knew about this and during which they took no appeal. The appeal was finally taken in April of this year. And that was approximately -- just by quick guesstimation -- that is ten months after the building permit by which all the construction was taking place occurred. And it was certainly over four months after the stop work order was issued. So there is no decision that I am aware of in which the Board has found that taking an appeal from an action over 120 days after it occurred would be timely. There is no decision that I am aware of over 90 days that is considered to be timely. And this, even by the very minimum if we use the December dates, is over four months afterwards. Why the appellant waited, we can just speculate. And it is not really that important as to why they waited. They waited. They didn't meet the timeliness. And that is the thrust of my presentation on timeliness. Thank you.

MR. O'BRIEN: May I respond, Madam

Chairman? This is I hope going to be picked up. If you go to 4900 Indian Lane, what you will see is a driveway running down the middle of the property that is shared by the two homeowners -- the Potters on this side and Mr. Ghafoorian on the other. The property line actually runs right down the middle of the driveway. And both parties have a four-foot right of way that basically permits -- well, specifically permits access and egress by automobile only from the two properties. The Potters' house is about here with a garage built into the side. The Ghafoorian residence, on the other hand, was originally over here. The shared driveway went up a hill. In order to enter the Ghafoorian garage, which was built into the side of the residence, you went downhill. Now what happened chronologically is as follows. The Potters went on vacation in the spring of 1999, and when they came back, the side yard, the rear yard and part of the driveway was excavated. There were no permits at that time. Mr. Ghafoorian --

MR. SOCKWELL: That is what date, sir?

MR. O'BRIEN: This would have been late March/early April 1999.

CHAIRPERSON REID: How long were they gone?

MR. O'BRIEN: They were gone for about two weeks. They returned on Easter Sunday of 1999, which was April 4 or 5, to find the entire side yard and the rear yard and parts of their driveway excavated, no permits. No permits had been issued at that time. The Potters called for a building inspection. Nothing happened. The Potters went to court. And at that time, Mr. Ghafoorian and his attorney took the position that all that was being built there was a rear yard structure, specifically a garage entirely in the back of the house where neither the side nor the rear yard setback rules were applicable.

MS. RAY: Excuse me, the Government would just like to object at this point as to relevance. I think the issue I thought we were looking at here was why -- we are discussing the timeliness issue. And I guess Mr. O'Brien is going to relate this somehow to why he didn't come here.

MR. O'BRIEN: I will.

MS. RAY: Or how their appeal was timely.

MR. O'BRIEN: I will. That is exactly where I am going.

CHAIRPERSON REID: I agree.

MR. O'BRIEN: If I can explain --

CHAIRPERSON REID: Mr. Holman is saying go to wherever you are going to get to and get there because it is getting late.

MR. O'BRIEN: Okay. I appreciate that.

CHAIRPERSON REID: Make the point as quickly as you can. I am assuming that you are showing us a chronological explanation as to the timeliness and what happened and when.

MR. O'BRIEN: And why there was no appeal. Because at that point in April, there wasn't an appeal. Because the side and the rear yard setbacks, according to Mr. Ghafoorian and his attorney, were not applicable because it was entirely a rear yard structure. What they later built was a platform running next to the house --

CHAIRPERSON REID: Okay, I am sorry. We are kind of distracting here. Board members -- all right, go back to what wasn't there. At first, there was no --

MR. O'BRIEN: In April, there were no setback issues.

CHAIRPERSON REID: Okay.

MR. O'BRIEN: Because what they were claiming to build and the wall test they submitted and the application for the permits was for a rear

yard structure, specifically a garage. They then built out into the side yard and finally in December of 1999 connected it to the main house, which is when it became apparent what he was really doing. And that was he was building an addition to his house in reverse order. If you come and you look at it now, he has bricked the whole structure. The roof has been built out over the platform. The brick wall extends all the way around the platform.

MS. RAY: Excuse me, the Government is going to object again. We are arguing the merits. I want to get to the timeliness issue. And I just don't believe the fact that what has happened at the site now is relevant to the issue of whether their appeal to this body was timely or not.

CHAIRPERSON REID: I think I have to overrule you. Because what Mr. O'Brien is demonstrating to us is that in regards to timeliness I think this is very pertinent. Because on the one hand you start with one structure that appeared to be one thing and then as time went on and it was -- and they were made more aware of what was actually happening, at the point when -- excuse me, Mr. O'Brien.

MR. O'BRIEN: Oh, I am sorry.

CHAIRPERSON REID: At the point that it became apparent that there was something else going on, that is when the objection arose. Is that the --

MR. O'BRIEN: That is exactly it, Madam Chairman.

CHAIRPERSON REID: And they couldn't object until the objectionable portion of it actually emerged, which was not until sometime later.

MS. RAY: Well, I will reserve the Government's responses because we haven't responded to the motion yet. So --

CHAIRPERSON REID: Sure. You can -- you will have the opportunity. Yes, Ms. Pruitt?

MS. PRUITT: Madam Chair, I just think there may be some points of clarification. Mr. O'Brien stated that a platform was built. Was that actually a platform or a slab on grade.

MR. O'BRIEN: It is 6 feet elevated in the air with interior support walls, steel frame construction and it is filled in with dirt. It is not even close --

MS. PRUITT: I guess there is a difference -- in looking at the drawings and in reviewing them, it appears to me as a slab on grade. I think Mr. Lourenco has been out there and has

looked at the construction drawings. Maybe he can shed some light exactly on whether it is slab on grade, platform. Because those then come to the whole issue as what you are saying, of timeliness and what they knew. Mr. O'Brien says there were walls --

CHAIRPERSON REID: When.

MS. PRUITT: I don't know if there were walls, retaining walls, the height and those types of issues.

MR. O'BRIEN: Even as late as March when we were last in Court, Mr. Ghafoorian and his attorney were denying that this thing was connected to the house and that it was -- and they were still saying even though it was six feet up in the air that it was slab on grade. They are still saying it today. It has become apparent, however, as of about the end of last year that it was connected or about to be connected to the house, which makes the side and rear yard setback rules applicable at that point. We called in the inspectors and the inspectors agreed with us that there were zoning violations.

CHAIRPERSON REID: Do we have pictures?

MR. O'BRIEN: Yes, as part of the record.

MR. NIEDERMAYER: I will object to that. Because they clearly vacated the order, which means

they agreed there were no zoning violations.

MR. O'BRIEN: If I may finish, it is my understanding that the stop work order was vacated by Mr. Lourenco without benefit of an on-site inspection himself. At least that is what they told us after the fact.

CHAIRPERSON REID: Okay.

MR. O'BRIEN: And we filed an appeal in December of 1991. That appeal was never responded to. We filed it internally with Mr. Lourenco, and he never answered it.

CHAIRPERSON REID: Was the appeal supposed to be filed with Lourenco or here, Ms. Sansone? That goes to the timeliness.

MS. SANSONE: Madam Chair, if DCRA has internal appeal procedures, it would have to go through their internal appeal procedures first and then it would come to the Board. So I am not sure --

CHAIRPERSON REID: Is that the procedure?

MR. LOURENCO: The procedure is very specific. I am not sure if it is Section 122 or 123 of the building code. And it has very specific steps. To my knowledge, there was no such appeal filed. I don't have any record in my office.

MR. O'BRIEN: We have a certified mail

receipt, which we would be happy to provide to you.

MR. LOURENCO: You sent me a letter. You did not follow the appeal procedure.

CHAIRPERSON REID: All right. Go ahead.

MR. O'BRIEN: In any case, Mr. Lourenco never responded to whether you want to call it an appeal or a letter. And as soon as it became clear that he was not going to respond, we filed the appeal before the Board.

CHAIRPERSON REID: Do you have that? Is that a part of this record as well?

MR. O'BRIEN: I will make it a part of the record, Madam Chair. I have not filed a record as yet.

COMMISSIONER HOLMAN: What was the gap between when you believed you filed it and when you perceived that they weren't going to respond.

MR. O'BRIEN: We -- I recall it being around the holidays. So end of December or early January. Within 30 days of the stop work order being vacated the appeal was filed. I can get an exact date from the return receipt.

COMMISSIONER HOLMAN: Okay.

MR. O'BRIEN: We made several calls to Mr. Lourenco's office. Those were never returned. And

it became abundantly clear that Mr. Lourenco had no intention of checking the merits.

CHAIRPERSON REID: Okay, let's not go to that. But what we needed to hear and see was your chronology of the events as they occurred and information as to why and what. Now we will go to Ms. Ray and then Mr. Lourenco. Unless you wanted to go first. No, Mr. Lourenco, did you want to go first?

MR. LOURENCO: For the record, I want to clarify a couple of things that were stated here.

CHAIRPERSON REID: Give your name, please.

MR. LOURENCO: Armando Lourenco. I am the Administrator for Building and Land Regulation Administration. I was called to testify on the first temporary restraining order hearing sometime around May 17, 18 or 19 -- around there -- of 1999. In preparation for my testimony, I inspected the site on May 13, 1999. When I looked at the site, I pretty much witnessed something similar to what Mr. O'Brien described that the Potters found coming back from vacation, which is the whole area -- let me just go to the board. Pretty much all those lines that I drew there excavated and you have the impression of

almost a war zone. The whole land in this area was disturbed and there were concrete forms standing up all along here and here and here. It really looked like for the untrained observer that someone was getting ready to build a building starting up there and coming all the way down here and attach it to the existing building. And that was pretty much the message that had been conveyed to my office. Obviously all there was in place at the time were forms.

If you notice, this portion here were the forms to build the foundations for the garage. Because that is pretty much where the garage is located, which is kind of here. And the other ones were forms for other structures, which once the plans were reviewed and everything was clarified turned out to be a retaining wall along here, a retaining wall along here and beams on grade along here to stiffen the slab on grade that was ultimately built here.

CHAIRPERSON REID: Okay. That was in April?

MR. LOURENCO: This was in May -- May 13, 1999.

CHAIRPERSON REID: Okay, wait a minute.

MR. LOURENCO: So --

CHAIRPERSON REID: Wait, excuse me. The permit at that time was for -- to change existing garage, laundry and storage. Build a new three-car garage.

MR. SOCKWELL: No.

MR. LOURENCO: That is correct, yes.

MR. SOCKWELL: But that permit was issued --

CHAIRPERSON REID: In April of 1999.

MR. LOURENCO: 4/6/99.

MR. SOCKWELL: Yes.

CHAIRPERSON REID: So, okay. That -- the first permit was for the garage and retaining wall only.

MR. LOURENCO: The first permit was to transform this existing garage --

CHAIRPERSON REID: No, no. Is that the first permit, Mr. --

MR. SOCKWELL: The first permit was April 1998. 5/29/98.

CHAIRPERSON REID: No.

MR. LOURENCO: No, 4/6/99.

MR. SOCKWELL: No. He has a permit issued 5/29/98 for a building addition.

CHAIRPERSON REID: No, I know that.

MR. LOURENCO: That is out of the picture.

CHAIRPERSON REID: I was referring to the first permit --

MR. SOCKWELL: It is referenced in our materials. Otherwise we wouldn't know about it.

CHAIRPERSON REID: Okay, it is 4/6/99, and that was for a garage -- a three-car garage. So you came in May and your impression -- are you saying that the impression you had was that that was what was being accomplished there?

MR. LOURENCO: What I witnessed was not only the area of the garage, but this area in front solely excavated. Because they excavated to put the forms to put the foundations in the ground.

CHAIRPERSON REID: Okay. Then on May 29, they got a permit for a first-floor addition, closet and bathroom.

MR. LOURENCO: There is a step in-between.

CHAIRPERSON REID: Oh, all right.

MR. LOURENCO: Okay. As I say in May 16 or 17 or 18 or 19 -- around there -- I think it was between 17 or 19 -- the first hearing occurred. One of my conclusions as a result of the questioning was

that the retaining walls here and here were not part of this first permit -- they were not covered by this first permit. As a result -- and I sent a letter to Mr. Ghafoorian to that effect. That he needed to get a permit to represent the full scope of the work. As a result, a permit was obtained towards the end of May of 1999. I don't remember exactly when it was. That not only contained that but also adjusted some details of the original permit.

Now my point is it was very clear from the drawings -- from the detailed examination of the drawings that occurred at the hearing in May of 1999 -- it was very clear that there was something being built here. Not only from the drawings but from the fact that the forms for these beams on grade, which are used to stiffen the slab on grade that goes on top, those forms were in place. You couldn't miss them, because even though the beams end below the current slab, the forms extended maybe another three or four feet. They were just regular forms you would use to build a whole wall, but they were filled only up to the level wherever they needed it.

You also have to understand something. Is that -- this is exaggerated -- but in order to get from this driveway, which is only 8 foot wide, to the

garage, there is a substantial paved area and there was a substantial paved area leading to the garage door. You also have to understand the topography of this location. The land slopes down in this direction and slopes down in that direction towards Indian Lane and from Mr. Potters' to Mr. Ghafoorian's property. So from the moment this project entailed abandoning the existing garage, actually transforming it into a laundry room and so on, and moving the garage function to the rear of the Ghafoorian's property, you obviously have to do something about this. The shared drive is 8 foot wide and runs all the way back to the back property line. But these portions here are an absolute necessity on both sides in order to gain access to the garage. It was very clear at the very early stage that some very substantial structure was going to be built here.

The floor level of this old garage, which is now part of the inside of the residence, is a couple of feet -- two or three feet below the level of this garage and this new access area. As I said, from this preexisting parking or garage access paved area down to the front yard, the land slopes down. It slopes very steeply. There is probably five or six feet difference between here and there. What was

built and what is there now technically is a detached accessory building for the use of a private garage accessory to the main building. It is a retaining wall running like this -- a retaining wall running like this. Remember this platform here -- the driveway access area is higher than the house -- and a slab on grade built with the reinforcement of in-ground concrete beams. That is the situation that is out there.

MR. SOCKWELL: Mr. Lourenco --

MR. LOURENCO: Now that was very clear much, much earlier than December of 1999. And I visited this site regularly. I probably went by a couple of times a month between the time of the first hearing in May of 1999 and the time of the second hearing in Superior Court in March, I believe it was, of the year 2000.

CHAIRPERSON REID: Mr. Sockwell?

MR. SOCKWELL: Mr. Lourenco, apparently from the plans which I am looking at, the retaining wall, which would have resided in this area is to retain the slope that would have ordinarily gone down from the access or I'll call it easement area to the original garage. So that that area could be carved out apparently and it seems to show an elevation --

an average elevation of 101 now, which is at the lower point and you are retaining all this area that is sloped in here and then you've got the new garage over there and then another retaining wall, as you said, along here. But it appears that there is some physical attachment between the new garage and the house.

MR. LOURENCO: What do you mean physical attachment? Right here?

MR. SOCKWELL: Here.

MR. LOURENCO: The sidewalk behind you is attached to the building and is attached to the pavement and is attached to the sidewalk on the other side and is attached to the building. That doesn't make that building the same structure as this building.

MR. SOCKWELL: Well, when -- in previous cases before this Board and in previous interpretations of the ordinance, if a building is attached by a roofed over portion of connection --

MR. LOURENCO: Of course --

MR. SOCKWELL: Then that becomes part of the principle structure as opposed to separate.

MR. LOURENCO: That is correct. That is part of the definition of building and zoning

regulations which state that if there is communication above grade, then there is a single structure. If there is not communication above grade or if there is communication only below grade, then you can't construe it as a single building. So clearly here there is no roofed-over connection between the two buildings which are separated by about six feet.

CHAIRPERSON REID: Okay, we don't want to get into the merits of the case.

MR. SOCKWELL: Yes, I am just not sure exactly from these plans what I am looking at.

CHAIRPERSON REID: I think that -- let's hear from Ms. -- Mr. Lourenco, have you concluded your comments without getting into the merits of the case? We are just trying to see what the timeliness --

MR. LOURENCO: If I could have read the transcript of what Mr. O'Brien said, I would probably have something else to say. But that is okay.

CHAIRPERSON REID: Okay. All right. Now, Ms. Ray.

MS. RAY: Thank you, Madam Chair.

CHAIRPERSON REID: Thank you, Mr. Lourenco.

MS. RAY: I just have a couple --

CHAIRPERSON REID: Please don't be -- you gave us part of it this afternoon.

MS. RAY: No, I never talked about the timeliness stuff. I only talked about the forms.

CHAIRPERSON REID: No, you gave us jurisdictional aspects.

MS. RAY: Mr. Niedermayer -- right.

CHAIRPERSON REID: Go ahead.

MS. RAY: All of this is jurisdictional, though. I just want to tell you all of it is jurisdictional. But I won't reiterate. Mr. Niedermayer really hit the high points of the timeliness issue. And what I would like to do is direct your attention to the packet of exhibits that the Government distributed earlier and direct your attention to your previous decision in the Waste Matter Appeal case, 16451 and 16452, where in here you cite -- and as a matter of fact, I was involved in that case where it was dismissed for an untimely appeal. And even though the appeal in that case had been filed three years after the decision being complained of, the cases cited by this Board are the cases used by the District also that said 90 days at the most was reasonable when considering whether an

appeal was timely filed.

And I have also attached -- that is Exhibit A in your packets. I have also attached Exhibits B and C, two cases used by the Board and by the District cited by the Board and the District in its decision of Gotoo versus the District of Columbia BZA and Woodley Park Community Association just to assist you in your decision making.

Next, I would like to go to -- and of course what we have here is something way beyond 90 days. We agree with your corporation counsel to the degree that the Board has jurisdiction in hearing matters where the issuance of or the denying of a building permit. And so, therefore, we believe of course the issue -- the action being complained of is the issuance of the building permit in April of 1999. Now Mr. O'Brien talked about the fact that the reason for the untimely filing of the appeal was because they didn't realize what was being done. Well, everything about this case and all the evidence in the record kind of disputes that. To go to the expense and the trouble of filing a suit in Superior Court for alleged zoning violations kind of gets around the issue of saying you didn't know that there were problems. And that was the -- the first hearing

was in May of 1999. And in the cases that the District has submitted and the cases that have been cited by this Board previously have really hung on the timeliness issue as hung on the fact of when the person had knowledge or notice of the action. So we know that if the appellant's were aware of the action and there was a building permit issued as early as April of 1999, they filed a complaint in Superior Court in May of 1999, they have to be charged with notice at that point. Now whether it changed and they saw different things as they went on, they were already disgusted, like he said, when they got home in April of 1999, which precipitated the filing of the suit in May of 1999. So in this case, the action being complained of is the building permit -- the issuance. And there was notice and there knowledge back in May of 1999.

Next, if in fact the appellant was really irritated by what the District had not done, they could have preserved their right of appeal and still went to Superior Court, but they chose not to do so. Another comment that Mr. O'Brien made was about that he pursued an internal -- and that is getting to the issue of if the action being complained of in December of 1999 was something that could be

appealable, even if we say that it could, which the Government does not agree that is the kind of action that could be appealable. Mr. O'Brien states that he appealed it to DCRA. Well, pursuant to the rules and the regulation that govern an appeal to Mr. Lourenco here, it also says if the Director does not act within a three working day period that the matter may be appealed directly to the Board of Appeals and Review. That is at 122.2. So even if they appealed this to the DCRA pursuant to -- you know, pursuing their administrative remedies, they should have still took this matter to the BAR next pursuant to the process that is required. Failing to do so, they are untimely today. And as of April 10, even if you considered that there was an action that could have been appealed in December on December 9 or 10, to file an appeal April 10, almost a year after the original building permit was issued and definitely more than 90 days, which the Court of Appeals and this Board has also said was unreasonable, they are definitely untimely.

And lastly, we would just like to say that the only reason -- and it is our position that the only reason that the appellant's are here today is because the matter being complained of, the

Superior Court action in March of 2000, ended. Well, I am going to say they did not get the action that they asked for. There was no injunction put in place. And if it is a coincidence that March 2000 their request for an injunction was denied and this matter was filed April 10 is a coincidence, then so be it. But it is the Government's position that the reason why we are here today is because Superior Court didn't offer the type of remedies or has not -- it hasn't resulted in the actions that the appellant's would ask. And, therefore, they have decided to file this appeal. And either way, whether we are looking at the April 1999 issues of the building permit or we are looking at the December date, it is still untimely. They had notice back in April and May and they could have pursued -- they could have appealed here or anywhere else. But to go to Superior Court and then not pursue their other administrative remedies was a choice. And in the cases that I have cited and submitted for you and the Waste Management decision, you stated that an appellant suffers the consequences for the choices that it makes in pursuing its remedies. The appellant is responsible for its choice. It can't escape the consequences of its action. And, therefore, we would still -- the

Government would still say that the appeals are untimely filed and should be dismissed as such.

COMMISSIONER HOLMAN: Madam Chair, I have a question, I think, for Mr. O'Brien. I am trying to understand if you believed that it was a zoning matter, why you pursued it within DCRA, which only has jurisdiction over building code issues. I am trying to understand that.

MR. O'BRIEN: If I may digress for a moment. I didn't file the original case. There was another attorney involved. That attorney, who thank heaven is no longer a part of this, decided to make the District of Columbia a defendant.

CHAIRPERSON REID: Decided to do what?

MR. O'BRIEN: Decided to make the District of Columbia a defendant in the original complaint. They are no longer a defendant. They have been dismissed out. But I think you should understand that part of the reason for the Government's position all the way along is that they were in fact a defendant at one time in this case. Now --

MS. RAY: No, the Government would object. As a matter of fact, sitting here today the Government has no perspective about being a defendant, and we would take offense. That has not

been our position and is definitely not our position today.

MR. O'BRIEN: Okay. Be that as it may --

CHAIRPERSON REID: I mean, is that the case? Was that how it was filed?

MR. O'BRIEN: Originally it was filed --

CHAIRPERSON REID: By another attorney --

MR. O'BRIEN: By another attorney with the District as a defendant.

CHAIRPERSON REID: Okay, then you would have -- would you not have evidence to that effect? Would you not be able to present that to us?

MR. O'BRIEN: It is in the complaint itself which is before you.

CHAIRPERSON REID: Huh?

MR. O'BRIEN: It is in the complaint itself which is before you. It is part of the package. I believe --

CHAIRPERSON REID: Again, you have to kind of direct us through it because we have not --

MR. O'BRIEN: In the materials which Mr. Niedermayer presented to you --

CHAIRPERSON REID: So within here -- within this material before us, it cites the case that was presented by the other attorney making the

District a defendant?

MR. O'BRIEN: Exhibit 3, Madam Chairperson.

CHAIRPERSON REID: Thank you.

MS. RAY: Is the point to this that we are offended and so therefore we are making the arguments that we have a legal obligation to make here? I am misunderstanding the point.

MR. O'BRIEN: I can see no other reason --

CHAIRPERSON REID: No. All we wanted to do is try to clarify points of contention. He is saying one thing and you are saying no. We need to see in black and white what we are dealing with. Okay, go ahead.

MS. RENSHAW: Mr. O'Brien, would you clarify when you came on board and when you started with this case?

MR. O'BRIEN: In approximately June -- mid-June of 1999. After --

COMMISSIONER HOLMAN: Well, then I go back to my original question. If -- believe me, the chronology is shot in my mind. Except that I do remember that after -- it seems after the court case was dismissed, you said you pursued an internal

appeal within DCRA and you didn't get the response that you wanted and so forth. But what I am saying is if you perceived it primarily as a zoning matter, why did it come here so late? I don't -- I am not understanding that.

MR. O'BRIEN: Because, Commissioner -- and even to this day, they are still taking the position that this thing is a slab on grade, that is a patio.

COMMISSIONER HOLMAN: But irrespective of what they are saying --

MR. O'BRIEN: And as long as it is the -- until that structure was connected to the residence, it was arguably what they said it was. And that is an accessory structure in the rear yard. As soon as they connected it to the house, it became an addition to the house and the side yard and the rear yard setbacks applied. That occurred in December of 1999.

COMMISSIONER HOLMAN: So you are saying that you couldn't perceive this from the drawings? That you had to see it physically before it became apparent?

MR. O'BRIEN: Mr. Lourenco -- yes, actually you can't -- it is unclear from the drawings whether or not it is connected to the house. And in May, Mr. Lourenco under oath testified that it was

not connected and that it was a rear yard accessory building.

CHAIRPERSON REID: But you are saying it is connected?

MR. O'BRIEN: It is obviously and manifestly connected. Along the entire front of the old residence and the new addition, there is one common wall. It is all brick. The same thing on the back and on the sides. This parking platform is six feet in the air with a brick face. The roof has been built out to come over the parking platform. There is an electrical conduit connecting the garage and electrical system to the main house, none of which was there.

CHAIRPERSON REID: Do you have pictures? I mean --

MR. O'BRIEN: Yes, I do. I do not have them with me.

MR. SOCKWELL: The existence of electrical service would be irrelevant since it would be fed from the basic house main panel and is normal. It would be normal for you to connect your electrical service through the main house to the garage under any circumstances.

MR. O'BRIEN: Yes, sir. I couldn't agree

with you more. They denied it up to this point.

MR. SOCKWELL: I have done it many, many times.

MR. O'BRIEN: Yes.

CHAIRPERSON REID: Okay --

MR. LOURENCO: Madam Chair, can I state something?

CHAIRPERSON REID: One more comment.

MR. LOURENCO: One more comment. First of all, what is there -- what is built is a slab on grade. It is not up in the air. The slab on grade is at the higher level than the grade at the other side of the retaining wall. The retaining walls -- the nature of retaining walls is exactly that. To retain the soil on the high side so that it doesn't come crumbling down on the low side. That is the nature of a retaining walls. This city is full of retaining walls of four feet, five feet, ten feet, six feet, twelve feet, fourteen feet. That is the nature of a retaining wall. Anyone who ever designed a retaining wall knows that retaining walls need to be pinned substantially at the ends. It happens that this retaining wall ends against the wall of the main house. It happens that this retaining wall was poured at the same time. It makes sense to pour them

together. The fact that they are attached doesn't mean that the garage in this case, which is the only other building on the premises, is part of the same structure as the main house. It is a garage that you get to through a slab on grade which happens to be supported on this retaining wall which happens to support the wall of the house. There is no communication between the garage and the main building and that is what the definition of building speaks to in the zoning regulations. Communication in the sense that it is covered, it is above grade and I can walk from one to the other without coming outside.

MR. SOCKWELL: Mr. Lourenco, while I understand -- we are not -- I am not going to get into the retaining wall design and what may exist here may be correct. But retaining walls don't have to be pinned in order to withstand an overturning moment. They merely need to be designed correctly.

CHAIRPERSON REID: Okay. Now I think we need to move on.

MR. SOCKWELL: And Mr. Ghafoorian himself is an architect by the statements in here. So he is quite well aware of the structural concepts that would be involved in putting this together, if he is

a trained architect.

CHAIRPERSON REID: Go ahead, Ms. Renshaw.

MS. RENSHAW: Yes, I have a question of Mr. O'Brien -- just a clarification. You stated that you were hired and came on this case about mid-June of 1999?

MR. O'BRIEN: Yes, ma'am.

MS. RENSHAW: And what did you do between June of 1999 and December of 1999 beyond writing to the ANC? What did you do in that six month period regarding this case?

MR. O'BRIEN: We were in the middle of discovery and depositions and documents back and forth. There was very extensive discovery made. We were in the middle of obtaining experts and examining experts. We were basically pursuing the litigation full boar.

COMMISSIONER HOLMAN: If I could interject, how much of the structure was completed at that time around December of 1999?

MR. O'BRIEN: In December of 1999, it became apparent that it was going to be connected to the main house.

COMMISSIONER HOLMAN: No, I asked how much --

MR. O'BRIEN: Well, I am going there.

COMMISSIONER HOLMAN: Okay.

MR. O'BRIEN: These retaining walls -- this slab -- a slab on grade is cement on the ground.

COMMISSIONER HOLMAN: I understand.

MR. O'BRIEN: This is six feet in the air.

COMMISSIONER HOLMAN: What is my answer?

MR. O'BRIEN: It was more or less complete in December.

COMMISSIONER HOLMAN: Okay, thanks.

MR. O'BRIEN: Except in December it was unconnected to the main house.

MS. PRUITT: Just for understanding and clarification, so the garage was up in December or the framing was there?

MR. O'BRIEN: They were substantially working on it at that point.

MS. PRUITT: The beams and the concrete on the beams were also there? What Mr. Lourenco is calling slab on grade and which you are calling platform, was that there?

MR. O'BRIEN: Yes.

MS. PRUITT: And the retaining walls?

MR. O'BRIEN: I don't consider them

retaining walls.

MS. PRUITT: Okay. But at least those two major elements were there.

MR. O'BRIEN: These things were there, yes.

MS. PRUITT: Okay. Thank you, that is all.

MR. NIEDERMAYER: Mr. Holman, the answer to your question is that there is a legal and factual inconsistency between claiming that you appeal the actions through the process to the DCRA and the BAR and appealing to this Board. So I think the answer to your question is there is a logical inconsistency between the positions that were taken by the appellant and they were simply pursuing any and every way that they could think to stop the construction and they did them without thought to the consistency. They just did what was expedient.

MR. O'BRIEN: Which I might add is what the statute contemplates. Secondly, just one other point. Again, this goes directly to timeliness. In order to determine whether or not something is timely, you have to have some starting point. That starting point in the cases which have been cited all refer to some sort of written determination by

somebody. And that is when you start measuring time. And what has happened here is Mr. Lourenco, through the simple expedient of doing nothing, has never given us a starting point within which to take an appeal.

CHAIRPERSON REID: Okay. Mr. O'Brien, what -- just tell us what is it that you want to see happen? What ultimately do you want?

MR. O'BRIEN: I would like a full evidentiary hearing on this project as to whether it complies with the zoning regulations with respect to the start --

CHAIRPERSON REID: Well, that is not -- ultimately, I said, what do you want to see ultimately?

MR. O'BRIEN: I would ultimately like to see a determination from the BZA that this structure as executed and built is in violation of the District of Columbia zoning regulations.

CHAIRPERSON REID: And if it is? If that is so determined, then what?

MR. O'BRIEN: If it is so-determined, we will be proceeding with the case that is pending in the court. We will be seeking damages. We reserve the option to seek some sort of affirmative relief.

CHAIRPERSON REID: Okay. That having been said, let's try to move on here. If I can, I just -- from what I have been able to garner through all of this, which has gotten to be much more involved that what we had anticipated -- nonetheless, this is -- let me just give you some ideas as to where I am, Board members, with this. I think that all things considered, as we started to discuss the timeliness issue -- first let me speak to the jurisdictional issue. I think that in regard to what Ms. Sansone has instructed us and her interpretation of the timeliness issue as well as looking at the stop work order and the release that while it may not clearly indicate that this is a zoning issue, I think that there is enough inference and there is enough illusion to it to make a case that it does have some zoning implication and as such would then be properly before us, as well as having glanced at the -- a quote from the judge -- what was his name?

MR. O'BRIEN: Levy.

CHAIRPERSON REID: Judge Levy, who alluded to the fact that he felt it was a matter that was more properly or properly before the BZA that the jurisdictional part of it would be appropriate as to this body. That is one thing I feel. The other

thing as far as timeliness is concerned, I think that there is some question as to what exactly happened. And I am not sure that we can ascertain that without hearing the case to determine what happened when. On the one hand, we are hearing that the Potters had notice or awareness of the intent of what was being built or what was being done there on the property as early as April and there was not an appeal filed. But on the other hand we come to find out later that there was a complaint filed in court and then he went back and got another permit and then it wasn't until December, when it was determined that it was something that was being create there or built there that was in excess of or more than what was originally thought. And at that point, there was a complaint and stop work order. And then the stop work order was released. And at that point in time, there was an appeal that was filed to DCRA.

Now the murky part for me is when the appeal was filed in December, in the meantime there is a court case pending. There are some issues in court at the same time, concurrently here. And then the -- whatever Mr. O'Brien filed was not responded to, which was not a proper appeal if I am understanding that correctly. Whatever it was was

not a proper appeal, but it was some recognition or some proffer made to Mr. Lourenco that something was amiss and there was no response to it. And then we go to March, when the decision of the court hearing was rendered or what happened in March?

MR. O'BRIEN: There was a motion for a preliminary injunction which was denied.

CHAIRPERSON REID: Okay, that was in March.

MR. O'BRIEN: That was my motion. That was March 2000.

CHAIRPERSON REID: Okay. So in April the appeal was filed by the BZA.

MR. O'BRIEN: Yes.

CHAIRPERSON REID: So then we go to the issue that was raised by Ms. Ray -- by Attorney Ray in regard to timeliness as it pertained to the Waste Management case. And our ruling on that case, if I recall, was predicated upon the fact that there had been a much longer period of time. I think it spanned over a couple of years or something like that -- it spanned over a couple of years at which time there was some misunderstanding or miscommunication with DCRA as far as new regulations coming out through the Zoning Commission and they didn't file. In this

instance, we are talking about a matter of approximately three to four months, which given I think that because of the fact that we don't have all the facts yet to analyze and we have not been able to look at material that was given to us this morning, that in fairness prudence would dictate that we continue this case and hear the case and then after hearing the case, make a decision as we have done before in previous cases as to whether or not it should be dismissed.

MS. RENSHAW: Are you moving that?

CHAIRPERSON REID: Yes, I move that. I will move that.

MS. RENSHAW: That is your motion?

CHAIRPERSON REID: To capsulate, jurisdiction, yes. Timeliness, table. Continuance, yes.

MS. RENSHAW: Jurisdiction, yes.

CHAIRPERSON REID: Yes. Timeliness, table until we after we have heard -- continue the case and then rule on timeliness after we have heard the case.

COMMISSIONER HOLMAN: Madam Chair, did you have a second?

MS. RENSHAW: I second.

COMMISSIONER HOLMAN: Oh. All right. Well, discussion. If you look at the other cases -- the Gotoo and the Woodley Park case, clearly in that situation, at least from what I can read -- in Gotoo, there was two months after the decision was ruled untimely. And I am not really sure about the other one. I didn't get all the way to the end. But --

CHAIRPERSON REID: That is the point I am making, Mr. Holman. I think that in fairness, we need to read the material before us before we can adequately make a determination or decision.

COMMISSIONER HOLMAN: I guess I am saying -- I mean, I didn't read to the very last page of it. But I am pretty sure that was a month or so. And I guess I am having some real difficulty, obviously because it seems to me that if this were the forum that they chose to come to, they could have come anytime from mid-1999 until now, and they chose not to. And I think there should be some consequences for that decision. And that is the reason I won't be supporting your motion.

CHAIRPERSON REID: Okay. If in December -- if they didn't know until December -- I think something like the Forest Hills case, where you know the big house -- where it wasn't manifest until

sometime later what actually was happening.

COMMISSIONER HOLMAN: Well, that is a factual issue that I am not embracing. And that is one of the reasons -- right.

CHAIRPERSON REID: Well, that was my thinking.

COMMISSIONER HOLMAN: I understand.

CHAIRPERSON REID: More discussion?

MS. RENSHAW: No. I agree with the chair. Except I would suggest that the timeliness issue instead of being tabled be postponed. It has something to do with the tabling rather killing off an item. Postponing.

CHAIRPERSON REID: My interpretation of tabling is postponing.

MS. RENSHAW: Well, they are two different things.

CHAIRPERSON REID: Tell me how --

MS. RENSHAW: So what you are saying jurisdiction, yes. Timeliness you are postponing.

CHAIRPERSON REID: Yes.

MS. RENSHAW: Until a later date.

CHAIRPERSON REID: Until after --

MS. RENSHAW: After you hear the case.

CHAIRPERSON REID: That is exactly what I

am saying.

MS. RENSHAW: And then you are wanting a continuance.

CHAIRPERSON REID: Is that different from tabling?

MS. RENSHAW: Yes.

CHAIRPERSON REID: What is tabling? Maybe I am using it incorrectly.

MS. RENSHAW: Well, we don't have a parliamentary procedure manual, but my interpretation is when you table it, you hope to kill it off.

CHAIRPERSON REID: Oh, no. No, no. That was not --

MS. RENSHAW: You table it and it may or may not resurface.

CHAIRPERSON REID: All right. Postponing if that is more accurate. Okay. Ms. Sockwell, did you have any comments?

MR. SOCKWELL: No, actually I don't.

CHAIRPERSON REID: All right, then.

MR. SOCKWELL: I do have --

CHAIRPERSON REID: What is that?

MR. SOCKWELL: Unfortunately I need to ask just one question which may not be germane to exactly what --

CHAIRPERSON REID: May I see that, please?

MR. SOCKWELL: In looking at the drawings that were submitted, I see nothing to express the depth of the intermediate footings. All other footings are shown, but the intermediate footings sort of disappear. And Mr. Lourenco, you testified that this is a grade beam structure that creates the floor of the garage.

MR. LOURENCO: Not the floor of the garage. The slab on grade outside the garage has reinforcements going across.

MR. SOCKWELL: But the four --

MR. LOURENCO: I am not sure exactly what the design was. If it was just like that or if there was any --

MR. SOCKWELL: It is difficult for me to determine for sure whether the floor of the garage is elevated.

MR. LOURENCO: Basically a trench was excavated. A footing was placed. Forms were placed. So a reinforced vertical member was placed there and then everything was filled back again.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: All right. Thank you.

MR. LOURENCO: And then on top of that, there is a slab.

CHAIRPERSON REID: Okay, I would like to see what this motion -- I would like to see pictures. Because I don't -- I just cannot visualize what you are talking about. When the drawing appeared, it looks like it is a slab. But then you are saying there is a wall and then Mr. Sockwell is saying your interpretation of a retaining wall and his interpretation of a retaining wall are different. I want to see visually exactly what is there. I want -- I would like to be able to see that.

MS. RAY: Madam Chair, again let the Government go on record -- I just still want to on the record object. Because I think when you are getting into the drawings and designs, we are getting into the merits and not on the timeliness issue because the timeliness issue relates to them being aware and having knowledge of the action being complained of.

CHAIRPERSON REID: Right. That is right. We are not talking about -- Ms. Renshaw and I just discussed --

MS. RAY: I just want to go on the record.

CHAIRPERSON REID: We are not going to -- my motion was to not take up timeliness. To postpone that. So we are not going to take up that issue right now. Because I don't think that I have enough or we have enough facts. And we can't have enough facts unless we are able to ascertain from the merits of the case, which we don't know all the facts. As they come out, things differ and I am hearing different interpretations from different people. And I don't feel comfortable making a determination like that and setting another precedent. Because this is what happened with that Waste Management and now it is coming back before us using that as a precedent. But in order to properly assess that -- it just so happened that since we were the one who were on that case, I was able to then draw the differences as to that case and this case and the fact that it is not apples to apples.

MS. RAY: But if we were really just looking at the timeliness issue, it would be. Because we are talking about reasonableness. So I understand what you are saying about not wanting to decide the timeliness issue. But the whole proceeding today, we have kind of got into more stuff than the timeliness issue and whether when you are doing

construction it changes. And still the issue of notice. When they had knowledge and when they could have pursued it. They could have went to Superior Court and they could have came here. So when you keep going on, we are getting into issues on the merit.

CHAIRPERSON REID: Ms. Ray, you have already said that. And again, that is something we have to look at to determine the chronological rationale behind what happened and why it happened and when it happened.

MS. RAY: No, but just so it is clear, the Government is on the record objecting to the nature of the proceeding.

CHAIRPERSON REID: That is okay. Thank you. All right, can we vote so we can get out of here?

MS. PRUITT: Madam Chair, you were asking for pictures?

CHAIRPERSON REID: Well, if in fact the motion carries, then I would like that. If it doesn't, then I would --

MS. PRUITT: Okay. I just want -- for the record, if it does, we need to discuss what type. Let's go with the motion first.

CHAIRPERSON REID: Okay, all in favor?

MR. SOCKWELL: Would you repeat the motion please for the record?

CHAIRPERSON REID: The motion is that we --

MR. SOCKWELL: Ms. Pruitt can read it.

CHAIRPERSON REID: Oh, okay.

MS. PRUITT: A motion by Mrs. Reid to, one, postpone the decision to dismiss and that the Board does have jurisdiction to hear this case. And it was seconded by Ms. Renshaw.

CHAIRPERSON REID: And the case will be continued.

MS. PRUITT: Continued to a date certain that we have not determined yet.

CHAIRPERSON REID: And it is seconded. All in favor?

BOARD MEMBERS: Aye.

CHAIRPERSON REID: And also from Mr. Moulden, I have an aye motion to continue and to not take up timeliness.

CHAIRPERSON REID: Opposed?

COMMISSIONER HOLMAN: No.

CHAIRPERSON REID: Okay.

MS. PRUITT: Staff would record the vote

as four to zero to postpone the decision on timeliness and to continue the hearing. Motion made by Ms. Reid, seconded by Ms. Renshaw, Rodney Moulden by proxy and Mr. Holman in opposition to the motion.

MS. RENSHAW: So it would be 4 to 1.

MS. PRUITT: Excuse me, 4 to 1.

CHAIRPERSON REID: And I would like pictures that would illustrate to us exactly what we are dealing with. That scribble up there and the plans don't do it for me.

MS. RENSHAW: Could we ask for a videotape?

MS. PRUITT: Madam Chair, I guess from staff's point of view or for clarification, what type of pictures do you want? I believe the structure is almost complete, isn't that correct?

MR. NIEDERMAYER: Correct.

MS. PRUITT: So if you get a picture of today, it is not going to tell you what they knew about in December. Do you have construction photos? If that is what you are looking for. The building is already up and erect.

CHAIRPERSON REID: I thought that you said that it was your understanding was that there was a slab there.

MS. PRUITT: Correct. But it is completed. The issue goes to when did they actually understand that was what it was going to look like.

CHAIRPERSON REID: I don't know about understanding. What I want to see is what is there. What has ultimately come about from these things.

MS. PRUITT: But timeliness is based on when they knew it.

CHAIRPERSON REID: And then we will determine when they knew it. Because I don't know even what they -- when they say that it was more than what they thought was going to be there in the first place, I don't think that it matters, does it?

MR. NIEDERMAYER: Madam Chairperson, we will provide the Board with construction progress photos. We will show you what it looked like in April and May, June, July, December -- throughout the whole continuous process. You will see exactly what the appellant saw out on that site.

CHAIRPERSON REID: That would be wonderful. I would appreciate that. That would give us the perspective. Yes?

MR. O'BRIEN: Actually, those were requested in the litigation in the D.C. Superior Court.

MS. PRUITT: That has nothing to do with our case here, sir.

MR. O'BRIEN: No, I am just fascinated that they exist.

MS. PRUITT: I understand, but we need to --

CHAIRPERSON REID: That would give us a better --

MR. O'BRIEN: I have photographs as well which I will be submitting.

CHAIRPERSON REID: It can come from both sides.

MS. PRUITT: Madam Chair, we need to continue this to a date.

CHAIRPERSON REID: What date is good for everybody? It would have to be when? Give us approximately.

MS. PRUITT: November? October?

CHAIRPERSON REID: November or October was the --

MS. PRUITT: The first available date in October will be possibly the 24th.

MR. SOCKWELL: Just in case the --

MS. PRUITT: Or actually October 31, excuse me.

MR. SOCKWELL: Just in case any witnesses are not available at that time in their current capacities, we might have some alternative in mind or would it matter?

CHAIRPERSON REID: No. Whoever is here right now is the people who would be notified. We don't have to readvertise. And whoever is not here --

MS. PRUITT: In reference to Board members?

MR. SOCKWELL: In reference -- well, there would be possible Board member changes. There might be position changes among witnesses.

MS. PRUITT: Then I would assume -- well, with Board member changes, the staff would then copy the record and transcripts and send it to the new Board members, so they would have all the information you have now. And I assume in references to changes in personnel, the person that would be handling it would be briefed of the case. I mean, that happens all the time in the District Government. You come in and you take over something and you are then briefed on an ongoing case. That happened to me when I first came here to the Board of Zoning Adjustments.

MR. SOCKWELL: There might not be an individual -- let's say an assignment changes, then

that certainly would be a reason for briefing someone. But if someone leaves the Government, then they might not be around.

MS. PRUITT: But this comes under the domain of the Zoning Administrator. So whoever that is or acting would be representing the other Government agency. And then I guess Corp counsel, if this particular person wouldn't -- Ms. Ray isn't representing them, someone else would and their files would travel.

MR. SOCKWELL: All right. That is fine.

MS. SANSONE: Madam Chair, I would just like to remind the parties that if they are going to file prehearing statements or other written documents that they serve all the other parties to the case. Ms. Ray on behalf of the Zoning Administrator at DCRA, and also serve the ANC, which is a party.

CHAIRPERSON REID: Please.

MS. SANSONE: So that we have everybody prepared for the hearing.

CHAIRPERSON REID: Yes. Because it is very difficult for us to receive a package this thick before we walk in or come on the dias.

MS. RENSHAW: Who notifies the --

CHAIRPERSON REID: We can't really do you

ample justice like that. There is just not enough time for us to be able -- we have to read it and analyze it and absorb it. That is just not that easy.

MS. RENSHAW: Madam Chair, who advertises -- or who contacts the ANC?

CHAIRPERSON REID: The Board -- I mean the Zoning Office. Ms. Pruitt, correct?

MS. PRUITT: Well, normally we don't, but we will because they are not here because they did not know. But also the parties are required to serve them. So they would be noticed on the additional information that you are requesting. Everyone should serve the ANC also. So they will be noticed that way. But we will certainly call -- I will call Ann Herr personally and we will also send her a letter.

MR. NIEDERMAYER: Madam Chairperson, may I request that -- I understand the date is October 31, 2000. I don't have my calendar with me and I don't know about the other parties.

MS. PRUITT: It is a Tuesday.

MR. NIEDERMAYER: May I have an opportunity to at least call tomorrow and indicate whether that date is a date which I am available on? I may have other commitments in court or otherwise.

MR. SOCKWELL: As long as it is not vacation.

MR. NIEDERMAYER: It is definitely not vacation.

MS. PRUITT: The question then becomes if it does change, then how are you going to reconvene to get another date.

CHAIRPERSON REID: Well, if that is the case when we meet next week, perhaps we can --

MS. PRUITT: But then we need to have all these people back or at least -- I mean, if Mr. Niedermayer can't make it on a date --

CHAIRPERSON REID: Let's choose a second date.

MR. O'BRIEN: I will be available on whatever date the Board decides.

CHAIRPERSON REID: Okay, if not -- if he can't be available on that date, then the next possible date is --

MS. PRUITT: November.

CHAIRPERSON REID: November?

MS. PRUITT: 7th.

CHAIRPERSON REID: 7th. So, Mr. Niedermayer, hopefully you would not be unavailable on both dates.

MR. NIEDERMAYER: No, I don't believe I will.

CHAIRPERSON REID: Okay. Do you want to read that back so everyone is on the same page, Ms. Pruitt?

MS. PRUITT: Certainly. Motion to postpone decision on timeliness and to continue the hearing to either October 31 or November 7. All information is to be served on all parties including the ANC and staff will notify the ANC of the new date once we have gotten confirmation from Mr. Niedermayer.

CHAIRPERSON REID: Okay. Does that -- any other comments or questions? Are we done? Thank you. That concludes today's hearing.

MS. RENSHAW: Amen.

CHAIRPERSON REID: Did someone say wait a minute?

MS. RENSHAW: No, I said amen.

(Whereupon, at 7:37 p.m., the hearing was concluded.)