GOVERNMENT OF THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY
JULY 5, 2000

+ + + + +

The hearing was held at 1:00 p.m. in the Office of Zoning Hearing Room, Suite 220, 441 Fourth Street, N.W., Washington, D.C., 20001, Sheila Cross Reid, Chair, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD	Commissioner

OFFICE OF ZONING STAFF PRESENT:

Sheri Pruitt, Secretary, BZA
Beverly Bailey, Office of Zoning
Paul Hart, Office of Zoning
John Nyarku, Office of Zoning

OTHER AGENCY STAFF PRESENT:

Steven Cochran, Office of Planning
John Fondersmith, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

C O N T E N T S

AGENDA ITEM PAGE

PRELIMINARY MATTERS 4

APPLICATION OF MARY HARDING STEVENS,
DAVID ANTHONY STEVENS AND DR. FANN HARDING:
16585 ANC-1D
.....8

WITNESS

MARY STEVENS
.....9

APPLICATION OF GALLAUDET UNIVERSITY:
16582 ANC-5B
.....43

CHRISTOPHER H. COLLINS, ESQ.
.....44
PAUL TUMMONDS, ESQ.
Wilkes, Artis, Hedrick & Lane, Chartered
1666 K Street, N.W.
Suite 300
Washington, D.C. 20006-2897
(202) 457-7800
FAX: (202) 457-7814

WITNESS

DR. I. KING JORDAN
.....47
JOHN BAXTER
.....48

APPLICATION OF CHARLES E. SMITH COMPANIES
16586 ANC-3C
.....75

RICHARD B. NETTLER, ESQ.
.....93
Robins, Kaplan, Miller & Ciresi
1801 K Street, N.W.
Washington, D.C. 20006
(202) 775-0725
FAX: (202) 223-8604

WITNESS

M. JON VRONDRACEK
.....75
JIM KANE
.....95
MAURICE WALTERS
.....98
RICHARD NETTLER
.....124
LOUIS SLADE
.....145

AGENDA ITEM PAGE

APPLICATION OF DOUGLAS G. JEFFERIES
16584 ANC-2B
.....208

JAMES F. SMITH
.....209

Mr. Permit, L.L.C.
6 Logan Circle
Washington DC 20005
(202) 462-7662

WITNESS

DOUGLAS G. JEFFERIES
.....211
GREGORY ZAHN
.....213

APPLICATION OF GREGORY G. ZAHN
16537 ANC-2B
.....236

JAMES F. SMITH
.....237

Mr. Permit, L.L.C.
6 Logan Circle
Washington DC 20005
(202) 462-7662

WITNESS

GREGORY ZAHN
.....248

P R O C E E D I N G S

1:04 p.m.

CHAIRPERSON REID: Good afternoon. The hearing will please come to order. This is the July 5th Public Hearing of the Board of Zoning Adjustment for the District of Columbia.

My name is Sheila Cross Reid, Chairperson. Joining me today is Robert Sockwell; Rodney Moulden, representing the National Capital Planning Commission; Anne Renshaw; and representing the Zoning Commission is Mr. Hood.

Copies of today s hearing agenda are available to you. They re located to my left near the door. All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located at each end of the table in front of us.

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

The order of procedure for special session and variances is one, statement witnesses of the applicant; two, government reports including Office of Planning, Department of Public Works, etcetera; three, reports of the Advisory Neighborhood Commissions; four, party or parties in support; five, party or parties in opposition; six, closing remarks by the applicant.

Cross-examination of witnesses is permitted by the applicant or parties. The ANC within which the property is

located is automatically a party in the case.

The record will be closed at the conclusion of each case, except for 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 to the contrary, the Board requests the persons present not engage any 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 request for postponement, continuance, or withdrawal; or whether proper and adequate notice of the case -- 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?

MS. PRUITT: Yes, Madam Chair. Staff has two preliminary matters. The first is Application 16443, Application of Rainer Kraus.

The applicant has requested a withdrawal of this particular case.

CHAIRPERSON REID: Okay.

MS. PRUITT: And the second matter that staff has is Application 16585, Application of Mary Harding Stevenson, David Anthony Stevenson and Dr. Fann Harding. They re requesting to be moved up first on the agenda because Mrs. Stevenson just has a new baby with her.

CHAIRPERSON REID: Okay, and we also have another matter as far as sequencing is concerned, and that is to move a couple cases to the end.

Let s just deal with this one in regard to moving Mrs. --

MS. PRUITT: Stevenson

CHAIRPERSON REID: Mrs. Stevenson s case to number one. Are there objections by anyone to do so?

MS. RENSHAW: No, Madam Chair.

CHAIRPERSON REID: Okay, fine. And we ll move her to the number one, and then -- and then the next case will be Gallaudet. All right.

Then would the next case be Jefferies?

MS. PRUITT: No, actually, there s a second issue.

Mr. Jefferies Application 16584 and 16537 are both being represented by Mr. James Smith. CHAIRPERSON REID: Okay. That was the other one, okay.

MS. PRUITT: And they would like to go at the end of the agenda.

CHAIRPERSON REID: So they move to the end, and then the next case following -- so Gallaudet would be Charles E. Smith.

MS. PRUITT: Correct.

CHAIRPERSON REID: Okay. So let s number them. One is going to be Ms. Stevens.

MS. PRUITT: Correct.

CHAIRPERSON REID: And then two is Gallaudet, three would be Charles E. Smith, and then Jefferies, number four.

MS. PRUITT: And Zahn, five.

CHAIRPERSON REID: Or, Zahn, number four, and Jefferies, five. Okay. I hope everyone followed that.

For the sequencing, should we repeat it again? Would you like it repeated? Okay, all right.

So let s move now to call the first case of the afternoon.

MS. PRUITT: Okay. First case of the afternoon is Application 16585, Application of Mary Harding Stevenson -- Stevens, excuse me, David Anthony Stevens, and Dr. Fann Harding, pursuant to 11 DCMR 3103.2, for a variance under Subsection

2001.3(a) from the available -- allowable percentage of lot occupancy for the construction of an addition to an existing garage in a D/3 -- excuse me, D/R-3 District at premises 2119 S Street, N.W. (Square 2532, Lot 8).

All those planning to testify, please stand and raise your right hand.

Do you swear or affirm the testimony you re going to give today is the truth?

MS. STEVENS: Yes.

MS. PRUITT: Please be seated. Proceed.

MS. STEVENS: Hi. Thanks for taking me out of order. I m Mary Stevens, and I m here to get a variance to build a roof deck on a detached garage of our home in the Dupont-Kalorama-Sheridan neighborhood.

It s considered nonconforming, but the house was built in 1901 -- I mean, 1907, and then the zoning laws were passed. So it became nonconforming due to the laws and not due to any additions to the property or changes after the zoning laws were passed.

And we purchased this house from the Montessori Institute, where it was in use as a commercial building, and it s now in lower use as a residential building. So, we ve, you know, improved the zoning situation with our purchase of it.

With respect to the roof deck, the whole neighborhood is in favor of it except for one person, whose letter

is the file. We have three letters of support from people who are directly across from it and will look down on it, and be impacted by it.

And the ANC held a meeting in April and unanimously voted to strongly support the roof deck. And, as you know, the ANC, under the zoning regs, is given great weight.

The one letter in opposition seems to claim that there would be no public benefit for this roof deck. However, as outlined in the ANC letter, the Ann Stefanski letter and the Bob Hirshberg letter, because there will be more people on the alley, it will help with increased safety on this busy thoroughfare between Connecticut Avenue and Phelps Place. There will be more people out there monitoring the alley, and it will also enhance the presence space by adding greenery to the urban setting, to the concrete area.

I was wondering if you had any questions for me with respect to my application.

CHAIRPERSON REID: Yes, Mrs. Stevens.

MS. STEVENS: Yes, ma am.

CHAIRPERSON REID: Your case is to request relief for a variance, and -- a variance under Subsection 2001.3(a), and are you familiar with the procedures as far as the test for a variance --

MS. STEVENS: No.

CHAIRPERSON REID: -- is concerned? All right. In

order for a variance to be granted here for this Board -- you ve appeared before this Board, and you have to demonstrate to us that you meet the criteria and the three-pronged test, and the three-pronged test consists of, one, whether or not the property -- whether or not there is something that is unusual or unique about the property inherent in the layout of the property that would cause a practical difficulty for you to be able to adhere to the existing zoning regulations -- this is an area of variance a practical difficulty to adhere to the existing regulations and to demonstrate that there would be no adverse impact in regard to light, air, traffic, parking, noise, or the surrounding neighbors in the community and that granting you the relief would not impair the integrity or intent of the zoning regulations or map.

Are you prepared to do that today?

MS. STEVENS: Yes. With respect to the first one, which was the unique situation of the property, it was built in 1907, and so we got what was there. It covers more than the percentage lot occupancy allowed under the zoning regulations.

However, it did this before the zoning regulations were passed.

CHAIRPERSON REID: Okay. So you re saying that the lot -- say that again, the lot covers more than?

MRS. STEVENS: Than the percentage allowable amount on that plat.

CHAIRPERSON REID: What are you saying, it has 100

percent occupancy?

MRS. STEVENS: I m not sure of the exact percentage, but I think it s over the required amount, which is, I believe, 80 percent.

CHAIRPERSON REID: Okay, let s look at -- let s take a look at that. All right? Show us, in your package, what you re referring to.

MRS. STEVENS: If you look at the plat, which --

CHAIRPERSON REID: The plat, okay, you mean the survey? Or the --

MRS. STEVENS: Yes, the Office of the Surveyor.

CHAIRPERSON REID: Okay, all right.

MRS. STEVENS: More than -- more than 80 percent of the property is covered by building. So that s what makes it nonconforming.

CHAIRPERSON REID: Right, it s nonconforming. Okay. But let s look at the other houses -- the other properties that are on your -- on your -- to your left or to your right. How does it compare to the adjacent properties?

MS. STEVENS: It s all the same.

CHAIRPERSON REID: They all have the same type of siting

MS. STEVENS: Yes, I think the --

CHAIRPERSON REID: on the lot?

MS. STEVENS: It s very similar.

MS. PRUITT: Madam Chair, you have a copy in your file of a base map showing the --

CHAIRPERSON REID: Okay. She wasn t -- she wasn t -- she was referring -- she was referring us to first the survey.

MS. PRUITT: I know, but you were asking about the adjacent lots.

CHAIRPERSON REID: Yes, but looking at these lots, I was asking specifically with the buildings on the lots -- I was asking her -- this won t tell us how the other -- how her property compares to the adjacent properties. That s what I m trying to garner from her right now. And she s saying that they re similar. Are you saying that?

MS. STEVENS: It is my belief that the people on either side of us have similar nonconforming -- they have just as much land covered by their buildings as we do.

CHAIRPERSON REID: Well, that being the case, then, what would then make your property unique and unusual in comparison to the other properties, if they all have the same similar characteristics?

MS. STEVENS: Well, we have a detached garage, which is two stories, and their buildings go, you know, all the way to 80 percent and go up, like, five or six stories.

So the reason I m asking for the variance is the roof deck, and it s unique in that there s a unique space for the roof deck on our property because it s lower than the others.

MS. SANSONE: Madam Chair, I noticed we have a zoning memorandum from Edgar Nunley, and he s indicating in his attachment there s a required law to occupancy, a minimum -- or the lot occupancy requirement is 60 percent and that the variance that s being sought would only be a two percent variance of 31 square feet. I believe that would perhaps affect -- the applicant had mentioned it was 80 percent lot occupancy, but actually it s 60.

CHAIRPERSON REID: The variance that she s requesting is a two percent, but isn t that something that would be within the auspices of the zoning administrator to make that determination as to whether she can receive a variance rather than coming to this Board?

MS. SANSONE: I ll have to check the section, Madam Chair. It might not apply to lot occupancy.

CHAIRPERSON REID: Okay. Ms. Pruitt, do you know?

MS. PRUITT: No. I agree with Ms. Sansone. We d have to check because I don t know if it does apply to lot occupancy.

CHAIRPERSON REID: Well, I thought that that was one of the reasons for that particular --

MS. PRUITT: As I said, we can check it to clarify.

CHAIRPERSON REID: Okay, let s check it, because if it s a mere two percent, that s altogether different. That would be such a negligible amount that it would then be, you know,

determined. You wouldn t even have to be here in the first place. That s what we ll try to determine.

MS. STEVENS: Well, Mr. Nunley, at the Zoning Review Branch, told me that it was considered to be an addition to a nonconforming, and that s why I had to come here.

MS. SANSONE: That would be correct.

MR. SOCKWELL: If approved by B.Z.A., additions probably in that zone would be allowed.

CHAIRPERSON REID: Even if it s only a two percent amount of relief?

MS. SANSONE: Madam Chair, the minor flexibility rule, which was added in 1998, doesn t cover the nonconforming variances from the nonconforming structures section.

CHAIRPERSON REID: Okay.

MS. SANSONE: So the applicant is seeking a variance from 2001.3(a), and she needs to be here even though it s two percent --

CHAIRPERSON REID: So even though it s two percent, then she still have to go through the entire meeting the three-prong test and all of that.

MS. SANSONE: That s correct.

CHAIRPERSON REID: Sorry. It just seems like that that s a --

MR. MOULDEN: Yes. I think because there s structural changes, any changes to a nonconforming use, just the

use itself requires, you know, application to the Board of Zoning Adjustment. I m not sure whether I clearly understand the hardship.

CHAIRPERSON REID: The practical difficulty.

MR. MOULDEN: The practical difficulty. I m not sure.

CHAIRPERSON REID: She hasn t gotten to that yet. She hasn t gotten to that. We re trying to get through the first part, and that s the one about the uniqueness, and she s saying that the other properties are similarly sited on the lot; however, I trying to understand about the -- she has an attached garage and the other ones are not having a detached garage.

MS. STEVENS: Correct.

MS. RENSHAW: Does the applicant have any drawings on perhaps one of these photographs that you have submitted that would give us an indication of what you are trying to explain?

MS. STEVENS: Yes. If you look at what I ve labeled C-2 and C-3, those are pictures.

CHAIRPERSON REID: I can t see it, wait a minute, let s look at the map --

MR. MOULDEN: I have a question, too. In the area, how many other homes have detached garages, and how many had improvements made that are nonconforming use. Do you know that information?

MS. STEVENS: Not off the top of my head. I could

make a guess. I know that I didn t submit photographs of the views up and down the alley, and I know this doesn t help with uniqueness, I mean, just about everybody else has a roof deck of some sort, so I don t know if there is a fairness principle, but whether they got variances for them or not, whether they re legal roof decks, or not, I m not sure.

MR. MOULDEN: But there are other similar structures which have had improvements over the years, and there are roof decks?

MS. STEVENS: Correct. There have been improvements made.

CHAIRPERSON REID: Tell us about your picture C-2. What are you showing us here?

MS. STEVENS: You can see that s the detached garage upon which we propose to build a roof deck. On C-3, the building behind it --

CHAIRPERSON REID: That s the alley. That s the alley behind your house?

MS. STEVENS: Correct.

CHAIRPERSON REID: And that, your house goes -- okay, you have a two-story detached garage, and you re saying, okay, and this is something -- this is a very sticky point because many times people come before us and apply for a variance and they say, well, other people have these things in their neighborhood, and, unfortunately, those people may very well have things that

are illegal.

MS. STEVENS: Yes, yes.

CHAIRPERSON REID: They never came to even try to get a permit.

MS. STEVENS: Everyone told me I was -- everyone told me I was crazy to go through this process.

CHAIRPERSON REID: Well, no, the thing about it is, unfortunately when that happens, people come to us and say, well, we want to do it the right way, and get the permit, what have you. There are other people who haven t, you know, who have this. But you can t go by what they ve done, because we re not sure if they have the correct permits or if they ve gotten a variance in order to have done what they did, so that s kind of hard.

MS. STEVENS: Yes. And I don t know that information.

MS PRUITT: I m sorry. You re either -- you re not quite on the record. You either need to speak up or

MR. SOCKWELL: We were reviewing the photographs, the original photographs from the master file, which appear to show a condition of one-story garages directly opposite the subject house on the opposite side of the alley onto which decks have been constructed on --

CHAIRPERSON REID: These?

MR. SOCKWELL: No, this is her side.

CHAIRPERSON REID: Okay, what side are you

referring to?

MR. SOCKWELL: This side. And that on her side of the alley most of the homes are seemingly set back from the property line a considerable distance on the rear, yet hers has a garage that projects probably out to the property line --

MS. RENSHAW: To the alley --

MR. SOCKWELL: At the alley with a --

CHAIRPERSON REID: Does yours come out further than the other houses?

MR. SOCKWELL: That s the appearance of the photographs.

MS. STEVENS: Yes.

CHAIRPERSON REID: It does?

MS. STEVENS: Yes.

MR. SOCKWELL: And as well --

CHAIRPERSON REID: So that would make yours unique.

MS. STEVENS: Yes.

CHAIRPERSON REID: That s what we re looking for, something about your property that is not -- is not characteristic of the other properties.

MS. RENSHAW: Ms. Stevens, is the second floor of your garage a work area, or is that liveable space? Is that somebody s house? Is that your house?

MS. STEVENS: That s part of our --

MS. RENSHAW: Part of --

MS. STEVENS: It s a room with linoleum tile and a bathroom in it.

MS. RENSHAW: But is it for -- are people living there where the deck would be for them rather than for you who live in front of this garage?

MS. STEVENS: No. It would be for us. We use that room, as well. My mother sculpts and she uses it to do sculpture and art.

MS. RENSHAW: Throw pots.

MS. STEVENS: Yes.

CHAIRPERSON REID: Okay. The other part of this is -- the other part, Ms. Stevens, is as it pertains to the practical difficulty. The practical difficulty goes to what, how, the relief that you re asking for, or not having the relief causes a practical difficulty for you not to be able to comply with the existing zoning regulations.

MS. STEVENS: I m not able to comply with the existing zoning regulations because the structure is nonconforming to begin with. I believe that if the structure was conforming, that I could have gone to Mr. Nunley and gotten approval for the roof deck without any trouble, without having to come here for a variance.

So my practical difficulty is that I m above the percentage lot occupancy. And I m requesting a two percent variance.

CHAIRPERSON REID: All right. Mr. Moulden Mr. Moulden and Mr. Sockwell, you had a question about this aspect of it and you wanted -- just one second.

MS. STEVENS: Okay.

CHAIRPERSON REID: Okay. So she cannot -- the practical difficulty -- Mr. Sockwell, is it because of the nonconforming aspect of it that she s not able to comply with these

MR. SOCKWELL: Ms. Stevens, Stevenson?

MS. STEVENS: Stevens.

MR. SOCKWELL: Stevens, yes. Under the circumstances, you apparently have approximately ten feet of space between the brick garage and the face of the rear of your house.

MS. STEVENS: Correct.

MR. SOCKWELL: And that space appears to be probably -- it looks like you have maybe 10 by 12 plus the side yard areaway between the property line and the actual garage for egress from the yard.

MS. STEVENS: Correct.

MR. SOCKWELL: And I can t say exactly what that real dimension is, but I would say that it s somewhat less than four feet along the side, that walkway.

MS. STEVENS: I believe it s five feet.

MR. SOCKWELL. Okay. So it s five feet. All right. Now the adjacent properties to either side have rear yards

that open, that go all the way to that brick property wall that runs along the alley. Is that correct?

MS. STEVENS: Correct.

MR. SOCKWELL: The house on the west side of you, to the best of your knowledge, is about how far back from that wall?

MS. STEVENS: About as far back as the garage. Maybe less. So maybe about 20 feet.

MR. SOCKWELL: Okay. And the house to the east of you is set back a similar distance?

MS. STEVENS: No, that one s less, probably about 10 to 12 feet.

MR. SOCKWELL: But, I mean, within limitations you re not attempting to create an enclosed living space addition.

MS. STEVENS: Correct.

MR. SOCKWELL: You re attempting to utilize the roof of the existing two-story garage structure, which is really more of a -- it s more of a carriage house --

MS. STEVENS: Yes.

MR. SOCKWELL: In concept than garage in concept, I would think. It appears that your rear yard is nonexistent because of the garage, and a stair enclosure of some sort appears to occupy part of the intermediate yard between the rear of the house and the back side of the garage.

MS. STEVENS: Correct.

MR. SOCKWELL: And so it might be stated that --

MS. STEVENS: We don t have appropriate outdoor --

MR. SOCKWELL: Yes. It might be stated that there s a practical difficulty to providing adequate outdoor space at grade --

MS. STEVENS: Correct.

MR. SOCKWELL: Based on the existing configuration of the house.

MS. STEVENS: That is correct.

CHAIRPERSON REID: Okay. The next portion of the test, three-pronged test, is adverse impact. And while you do have a letter in support from one of your neighbors, Janet Campbell, in saying that they re in favor of your addition, you are familiar with the letter of opposition by Mr. McFeeley.

MS. STEVENS: You also have a letter from Mr. Hirshberg.

CHAIRPERSON REID: Mr. Hirshberg?

MS. STEVENS: Bob Hirshberg.

CHAIRPERSON REID: I m sorry.

MS. STEVENS: And a letter from Dr. --

CHAIRPERSON REID: Hirshberg and Stefanski. Okay. Stefanski. Okay, we do have three letters of support for your application, but can you please speak to the letter in opposition, and basically he feels that his issue was in regard of the density and open space and the light, so I think that his issue is not

just adverse impact, but multiple -- it goes to the impairment of the intent and integrity of the zoning regulations and map. And we ll talk about that in a moment, but as far as light is concerned, how close does he live to your house?

MS. STEVENS: I m not sure where he lives. He lives in the building.

CHAIRPERSON REID: He s not an adjoining neighbor?

MS. STEVENS: Well, the address on his letter is 2115, and the adjacent building to us is 2117, so I think there s a building between him and us.

CHAIRPERSON REID: Okay, would that building -- do you know if that building where he lives at -- would approving your application have any impact on his property as far as light is concerned?

MS. STEVENS: I don t believe so if I understand correctly where he lives by his address. I don t.

CHAIRPERSON REID: Is anyone here opposed to application -- anyone in opposition or in support of the application here? I meant to ask that earlier. Okay.

MR. HOOD: Madam Chair, can I just ask a question? Ms. Stevens, is 2115 -- that s a condominium?

MS. STEVENS: Correct. They re adjoining -- they re two houses that were put together into a condominium. 2115 and 2117. My next-door neighbor and then the one next to that.

MR. HOOD: Okay, Madam Chair, I want to go back to your question. I don t know if you got an answer because I was interested in the Chairperson s question that she asked you.

MS. STEVENS: About the light?

MR. HOOD: Light, right.

MS. STEVENS: My understanding, from the address on his letter is that there wouldn t be an impact on his light because he is a building over from where my property is and where I proposed to build the roof deck.

CHAIRPERSON REID: Mr. Sockwell. Mr. Sockwell, let me ask you this before you ask your question. In this particular configuration, in your opinion, do you think that a building that is one door over from the property can be impacted as far as light is concerned? Does that seem to be logical? Unless it was -- I mean, I could see if it was towering, and somebody put a building up in the air, but in this instance --

MR. SOCKWELL: I think that the answer to this is that the Stevens house is on the south side of that street, so it s rear -- it s on the north side of the alley.

The additional height, which is approximately six feet of solid or nearly solid construction because of the two by ten joists, the floors, and the five foot approximate fence height before the posts go up to the roof trellis, is a significant change to the massing so close to the edge of the property.

The primary mass has been there, and its impacts

would be known. Primarily in the winter you would have a greater morning and evening impact. The morning impact would be placing the property to the east in shade; the evening impact would be placing the property to the west in shade. In the summertime, with the solar angle being higher, some of that shadowing is taken care of. But a five feet or six feet increase in height could affect to some degree but not necessarily to a great degree the available sunlight for plants and things like that in the two adjacent yards at different times of the day.

From the south looking toward the north the view per se won t be affected. There won t be any shadowing of property to the south side of the alley because the sun s always on that side. But it seems to me that the primary impact would be on the next-door neighbors. The height of the fence at five feet is for privacy, I m sure. But at the same time, looking across the alley, most of the fencing across the alley is much more transparent and open, and I believe that it s -- well, not in all cases, in some cases it is, in some cases it isn t. But it is much lower because the garages upon which the decks have been built are lower. They re one-story garages. This is a two-story garage.

So its overall visual impact on the subject houses -- it s going to have a much more overall impact in some respects, but because it s on the north side of the alley, it s not going to do much to affect the sunlight. If anything, it might affect, as

I said, a neighbor to either side, but certainly no one across the alley, and the only way to minimize that effect would be to reduce the solid aspects of the fence on the north -- or on the west and east faces but could possibly not make any difference on the north face -- or on the south fence -- south fence face.

CHAIRPERSON REID: Thank you, Mr. Sockwell.

MS. STEVENS: I wanted to --

MR. MOULDEN: Do you want to respond to that?

MS. STEVENS: Yes. On page 7 of the architects drawings, there s a picture of the proposed fencing and it s not a solid stockade fence. It has space built between it.

MS. PRUITT: Madam Chair, on their drawing, Roof Deck 2, there s a note that says one-by-four picket fences at seven inches on center.

CHAIRPERSON REID: Which?

MS. PRUITT: On the drawing, it says, roof deck on garage --

MS. STEVENS: On page 7.

MS. PRUITT: 2119 S Street. There is a note that says one-by-four pickets and seven inches on center --

CHAIRPERSON REID: Okay.

MS. PRUITT: And if you also look at the section cut on 5.

CHAIRPERSON REID: Okay. Thank you. All right. Okay, question, Mr. Moulden.

MS. MOULDEN: Ms. Harding, have you exhausted all alternatives to look at maybe a smaller deck and maybe, excuse me, along the rear of the house?

MS. STEVENS: No, because I didn t know that the neighbors objected to it until I came down here and read the letter that he wrote. I sent out my own -- when I had to get my 200 feet radius of address labels to mail, you know, to give with my application, I sent a letter to all the neighbors saying, the B.Z.A. s going to write to you. I sent them copies of the plans and asked to please tell me if you have any difficulties with this, and, you know, that we could, you know, modify it or change it in any way, and if they would please write letters of support. And I got three letters in support and I never heard anything from -- anything negative until I came and looked at the file, you know, five days before the hearing.

MR. MOULDEN: Okay.

CHAIRPERSON REID: Okay. And on the letter in opposition, back to that, he makes note of the fact that he feels that the density and basically the assertions that the plan -- that your plans would impair the intent and integrity of the zoning regulations. That was not the intent. There should be greater open space, so. Be that as it may --

MS. RENSHAW: He also wonders what is the public benefit to your adding this deck. He is opposing any project that would increase the building density without a countervailing

public benefit.

MS. STEVENS: The public benefit is recognized in the ANC letter of support, which is that there will be more people on the alley and therefore. greater safety.

MS. RENSHAW: How would you explain that because you re not going to be using the deck through the winter months. So if you re not going to be up there

MS. STEVENS: Correct.

MS. RENSHAW: How is that going to be a greater public benefit?

MS. STEVENS: Probably not. Well, at least during the spring, summer, and fall months there will be people that can see the alley that are observing that are back there keeping an eye out.

CHAIRPERSON REID: I think, Ms. Renshaw, that while this letter spoke the matter of not being able to see any public benefit, that s not a requirement.

MS. RENSHAW: I understand. I understand.

CHAIRPERSON REID: That s not a requirement that she has to meet for the Board, that it meet - that there s be a public benefit. Okay.

MR. SOCKWELL: If I might say, Madam Chair, even if -- fortunately, there is no requirement for public benefit because there is a very limited public benefit here as far as I can see in real terms.

But it s not a requirement.

CHAIRPERSON REID: Okay. Then, the next thing we go to is the government report, and we do have a letter from the ANC. There s no Office of Planning report. And Ms. Renshaw, will you please summarize for us, or just give us the salient points of the ANC letter. You did mention it earlier.

MS. RENSHAW: Yes, I did. It s the ANC 1D. It s a letter to the Board, dated June 28, 2000. And it s signed by Marlis Carter, the vice chairperson of ANC 1D. The ANC had a duly noticed public meeting of the Sheridan Kalorama ANC 1D, and it was held on April 18, 2000, and there was a quorum present.

And two of the two commissioners of the commission discussed the above application, and they voted in favor of the application because the addition would increase the presence of residents activity on the alley bordering the property and would help to increase the safety of the area, and felt that the addition would enhance the present space.

And so they voted to support.

CHAIRPERSON REID: With a quorum present.

MS. RENSHAW: With a quorum present, as I stated.

CHAIRPERSON REID: And they will receive the great weight to which they re entitled.

There are -- there s no one else here, but we do have -- we note there were letters of support; there was a letter of opposition. We explored that and went through that.

So the last thing is the closing remarks by the applicant which is for you to do.

MS. STEVENS: Just that I hope that I can get the variance for this 2 percent additional and I think that s everything.

CHAIRPERSON REID: You re requesting a bench decision summary order so you can have a decision today?

MS. STEVENS: Yes. I would like a decision today.

CHAIRPERSON REID: Thank you. Mr. Sockwell has a question.

MR. SOCKWELL: Ms. Stevens, when did you find out about the opposition letter from your adjacent neighbor at 2115?

MS. STEVENS: When I reviewed the file.

MR. SOCKWELL: How long ago was that?

MS. STEVENS: Five days before the hearing when I filed my affidavit of posting.

MR. SOCKWELL: Have you had any communication with the gentlemen, Mr. McFeeley, since that time? Have you attempted any?

MS. STEVENS: No, but it was my understanding that he was in Florida. He had left for the summer.

MR. SOCKWELL: I see.

MS. STEVENS: Florida, or somewhere else. Some other place than here.

MR. SOCKWELL: But you didn t make any attempt to

contact him or find out if that was correct?

MS. STEVENS: That he was in Florida? No.

MR. SOCKWELL: Or that he was away and not available for your --

MS. STEVENS: Correct. It was from one of his neighbors who had asked -- who had found out about the letter and who had decided to tell me about it before I reviewed the file, the day before I reviewed the file, and he said that he was out of town.

MR. SOCKWELL: Within that building, that adjacent condominium unit, is basically above, below, or at the same level of your existing garage roof?

MS. STEVENS: Mr. McFeeley?

MR. SOCKWELL: Yes.

MS. STEVENS: I noticed from his address, he s on the third floor. He s in unit 3B, and the garage is two levels. So he s above the existing garage.

MR. SOCKWELL: And when the new fence and deck would be in place, where would the approximate top of that fence be assuming that you stood on your own roof at some point to determine what you were going to do with it with regard to his windows?

MS. STEVENS: It s hard to tell, because he s flat against and far over here, but I think it would probably be about the middle of his, I believe.

But I didn t actually, you know, when I ve been on the roof I wasn t looking at his property.

MR. SOCKWELL: See, the part of the issue here in his case may be, and I have to speak to the issue since he wrote a letter to the B.Z.A. with regard to your roof deck -- your proposed roof deck, his issue may be that now people will be able to look directly into his private windows.

MS. STEVENS: I don t believe that would be possible.

MR. SOCKWELL: Well, from a distance -- from a distance, it is quite safe to say that at least someone will be standing eight or nine feet higher, at minimum, than they were previously, because previously they would have been inside of the building; now they will be outside of the building.

And, as you said, what was approximately a three inch space between each picket on the proposed fence, and if the alley is easily viewed that way, then his property may be easily viewed that way.

The other thing is just to know that since the sun s going to be at some angle to the fence at all times, there s less openness with the angle of the sun will go through the fence than you might imagine because you re looking at it at the one angle where there s more blocking the sunlight most of the day at one side or the other.

It may not be a problem generally, but the issue of

privacy is the only one that I see as being particularly pertinent in a case of an adjacent neighbor who suddenly finds someone standing close to the height of his own windows, looking in.

CHAIRPERSON REID: But, Mr. Sockwell, if I might -- if I might, the issue that was raised in the letter of opposition was not pertaining to privacy, it was about light. They re two different issues. He did not raise that as an issue.

MR. SOCKWELL: Well, his statement of open space and light may not necessarily relate to exactly what he means. But it is quite obvious, charting what the addition of a roof deck will do to the privacy side, because it places people where there were no people before.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: It also places those people outside, where the greatest amount of noise from those people s use of space will penetrate into any adjacent property.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: And that s a very important thing.

CHAIRPERSON REID: Thank you very much. Can we now move to taking a vote and dispose of this today, Board Members?

MR. HOOD: Madam Chair, I believe that Ms. Stevens has met all her -- has shown that she does have a difficulty and that -- I don t see where the one opposition letter of Mr. McFeeley -- his letter has any impact on it, and I understand the concerns that my colleague raised, Mr. Sockwell, but I think we

need to deal what s in front of us and the facts that we have in front of us to make our decision.

So with that, I would like to make a motion that we approve Application number 16585.

MR. MOULDEN: I second.

CHAIRPERSON REID: Okay. I also feel that she s met her burden of proof, and shown that her property s unique, and there is a practical difficulty and that there would be no -- it would not impair the intent and integrity of the Zoning Commission -- I mean, of the zoning regulations or map in that as far as adverse impact is concerned, there was only one -- that one letter that spoke to any kind of adverse impact, and we did explore the issue of light and that the ANC gave their support to this particular applicant. Any other comments?

All right. All in favor?

MR. SOCKWELL: Yes, I have a comment. And my comment is, under the circumstances, if the Board is to approve this application, I believe that the approval should, if possible, be conditioned that the fence along the east property line be modified to admit sunlight but to as much as possible prevent viewing into Mr. McFeeley s property, if possible, because his is the one that seems to be most potentially affected.

MS. PRUITT: Madam Chair, traditionally, we have not really conditioned variances, and Corp Counsel spoke to this earlier today.

My other concern or question would be, I m not sure if we could actually do that variance, if we were even allowed to, because of code and requirements of pickets being close enough together.

I m not sure what you re asking, if you re asking them to remove pickets, have spaces wider?

MR. SOCKWELL: It might be a change of angle, but it s difficult to look at it in a way that -- at one point it s going to push light into the -- it will stop light from going over there to the other side. In the afternoon it could be oriented actually so that generally the adjacent neighbors view into the deck would be restricted, and that would be pretty much all day long by turning the pickets at a 30 degree angle, even.

MR. MOULDEN: It sounds like to me that we re talking about the design issue.

MR. SOCKWELL: Yes, it is. It s an attempt to --

MR. MOULDEN: I don t believe we are suggesting or requesting that this proposal be modified.

CHAIRPERSON REID: I think that Ms. Pruitt raised a good point that we don t generally condition variances typically. And in this instance as Mr. Moulden said, it s a design issue, and we can suggest, if you d like. And Ms. Stevens certainly has heard the concerns and, you know, perhaps she may just want to consider that in her design to try to mitigate any adverse impact it might cause. It may, once you make the assessment, it may or

may not have an impact, and if it does, then perhaps she would consider doing that, and I think that would be about what we could do in this instance today.

MS. SOCKWELL: Because the fence is going to outlive the residents, once the deck is there, it s going to remain in perpetuity. Ms. Stevens may be in the house two years, three years, five years, or 50 years, we just don t know.

MR. HOOD: Madam Chair, I think even though we cannot hold her to -- put a condition on it, I think we can ask her for good faith so we can resolve the issues that Mr. Sockwell has, but I want to refer back that we do have a motion on the floor, and we can maybe ask her for a good faith effort. Obviously she s honest because she came down here in front of us.

CHAIRPERSON REID: She was the only one in her neighborhood that came down here.

MR. HOOD: Right. I don t think we need to belabor that point, we can just ask her.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: Unfortunately, we understand that Mr. McFeeley may not be back until whenever, and you ve got your permit under review now, and will be back on the review very shortly, and you may be built before Mr. McFeeley returns.

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Opposed?

MS. RENSHAW: Abstain.

MS. SOCKWELL: And Madam Chair, I m going to put an abstention on mine.

CHAIRPERSON REID: Okay.

MS. PRUITT: Staff would record the vote as three to zero to two to approve. Motion made by Mr. Hood, seconded by Mr. Moulden. Mr. Sockwell and Ms. Renshaw in abstention.

CHAIRPERSON REID: Thank you.

MS. PRUITT: And a summary order.

CHAIRPERSON REID: Thank you. You should receive your order in approximately two weeks. Good luck.

MS. STEVENS: Thank you.

MS. PRUITT: Next application on the case is -- the next case up for application is 16582, Application of Gallaudet University, pursuant to 11 DCMR 3104.1, for a special exception under Section 210, for the review and approval of an amendment to and further processing of a Campus Plan to construct a new student academic center along with additions to Ely Student Center Union Building, and an addition to the existing Washburn Arts Center, and a new grandstand/pressbox/concession stand for the Athletic Field, in an R-4 District at 800 Florida Avenue, N.E. (Parcel 141/69, Square 3591).

All those planning to testify, please stand and raise your right hand.

(Witnesses sworn.)

And we ask that everyone talk -- if you d talk a little slower and please do not talk over each other.

CHAIRPERSON REID: Okay, Board members.

MR. HOOD: Madam Chair.

CHAIRPERSON REID: Board members, excuse me. I just wanted to clear, Ms. Renshaw and Sockwell, that there was a request from the University, due to the fact that they re going to have an interpreter

MS. PRUITT: You need to speak

CHAIRPERSON REID: An interpreter --

MS PRUITT: We do have an interpreter here.

CHAIRPERSON REID: An interpreter, that we speak slowly and not speak together or at the same time.

MR. SOCKWELL: We ve never had an interpreter for Mr. Collins, and we ve had some issues.

MR. HOOD: Madam Chair, I just want to put on the record that I attended the ANC meeting at which Gallaudet made their presentation.

I want to assure the Board members and all interested involved that that will not have an impact on my decision in this case, and I wanted to put that disclosure on the record.

CHAIRPERSON REID: Thank you, Mr. Hood. Are there any objections to Mr. Hood participating in this case due to his disclosure? Okay, seeing none --

MS. RENSHAW: No objection.

CHAIRPERSON REID: Thank you. Mr. Collins.

MR. COLLINS: Good afternoon, Madam Chair, members of the Board. My name is Christopher Collins with the law firm of Wilkes Artis, and with me is Paul Tummins, of our firm. Seated to my right is Dr. I. King Jordan, President of Gallaudet University.

Also joining us today is Mr. John Baxter, with Einhorn Yaffe Prescott, Architects.

This application is for special exception approval.

CHAIRPERSON REID: Excuse me, Mr. Collins, before you proceed --

MR. COLLINS: Yes.

CHAIRPERSON REID: Let me just say who -- is there anyone here who s affiliated with this case? Anyone in opposition? Is there anyone in support of any of your parties, or people that you re going to -- okay. I just want to say that the Board recognizes that this is a rather straightforward case, and we have read the materials that have been submitted to us. There is no opposition, and we ve garnered that from all that we have that the University of -- Gallaudet University enjoys a very good relationship with the community and is very actively involved in many of the things that occur, and, as such, do have the -- are considered held in high esteem in that community and so you can just give us the highlights, truncate your case, you know, give us

-- you don t have to go through every aspect, just give us the salient points so we can probably get through this pretty quickly.

Thank you.

MR. COLLINS: Thank you. Thank you, Madam Chair.

This is an application for an amendment to the Campus Plan and further processing for three projects, which you have before you in the statement that we have filed.

First, the new Student Academic Center. In addition, we have an addition to the Washburn Arts Center, and grandstands for the athletic field.

The statement that we filed with you describes the three projects in detail, and the witnesses will also describe the specifics of those proposals.

We have the support of the Advisory Neighborhood Commission, we have the support of the Gallaudet Community Relations Council, and we have the support of the Office of Planning, and we are unaware of any opposition to this application.

So unless there are any questions at the outset, I d like to go to my first witness, which is Dr. Jordan.

CHAIRPERSON REID: All right. Thank you.

DR. JORDAN: Thank you. Madam Chair -- okay? Okay. Madam Chair, and members of the Board, I m very pleased to be here today.

Is this working -- it s working now?

And given your very kind comments at the beginning of the hearing, I doubt that I will go through the written testimony that I had prepared.

Instead, I will say that we do enjoy a very good relationship with the community and that all three of these projects have been put to the ANC and to the Gallaudet Community Relations Council. All three have been discussed in detail, and all three have the enthusiastic support of both those groups, as well as many of the neighbors who I talked with when we -- when we re on the track together.

The three projects very briefly are the construction of a new building. In 1992, our ten-year master plan was approved by bench decision on summary order here in July of 1992, and included in that plan was the notion that the Hughes gymnasium would be torn down, and we would construct a new School of Management Building.

In the ensuing period, we ve learned that we don t need a new School of Management Building. But we do need new space for a high-tech building. So instead of a School of Management, we will build a Student Academic Center there that will be a state-of-the-art technology building with teleconferencing and multi-media facilities, and so forth. You can probably guess that visual information processing is very important to deaf people, so this will be a very visual building that we ll create.

Related to that is some minor window and renovation work that we ll do on the adjacent Ely Center, a Student Union building, so that we ll have a new building and then a renovated Student Center for a new part of the campus, a Student Activities Center.

The Washburn Arts Building also had included in the master plan approved in 1992 a new ramping system to make it more accessible. While it didn t have the expansion that s included here, we ve come to see a large increase in the number of people who are taking visual arts majors, so we need additional space to house programs that have grown or outgrown the space that they have in different locations around the campus.

The final project is for a grandstand on the football field. And I think maybe the most important thing I can say about that is that the size won t increase. The number of seats will be the same, so we re not talking about an increase in the number of people who go to the games or an increase in the number of people who come to the campus, we re just talking about a better grandstand. This one is 50 years old. And it s not angled correctly, and lines of sight are very important for people who communicate visually, and we re going to enhance that.

All of the buildings that I ve talked about will be bricked in a way that makes them blend into the other buildings on the campus. Very exciting set of construction projects, and I hope that the Board will endorse this modification.

Thank you.

CHAIRPERSON REID: Thank you very much, and we will submit your testimony for our record. Your written testimony.

DR. JORDAN: Oh, thank you. Thank you, I d be grateful.

CHAIRPERSON REID: Thanks.

MR. COLLINS: Thank you. The next witness is Mr. Baxter, from Einhorn, Yaffe Prescott. Mr. Baxter, mindful of the comments by the Chairman at the beginning, would you please just summarize your testimony and highlight those points where the application meets the requirements of the special exception.

MR. BAXTER: I ll just go right to --

MR. COLLINS: Yes, please.

MR. BAXTER: Certainly. I d just like to say it s a pleasure to be here today, and to spend a minute going over where we feel the application complies with the requirements of Section 210 of the zoning regulations.

It complies with Section 210.2 as the proposed construction is located so that it will not cause any objectionable noise, traffic, to the neighboring communities.

Section 210.3, the FAR, will still be considerably lower than the maximum permitted in the R-4 residential zone of 1.8.

Section 210.4, At Gallaudet University s Campus Plan was approved in 1992.

Section 210.5, there will be no interim use of land associated with the application.

Section 210.6, the application does not involve movement of any buildings or programs off-campus.

210.7, we believe the proposed construction is in compliance with the District elements of the comprehensive plan.

Section 210.8, as previously stated, the proposed construction is by far within the allowable FAR for the campus.

And Section 210.9, the application has been submitted to the Department of Public Works, and I believe they have recommended the approval, and, again, in conclusion, we believe the additions do comply with the requirements of the zoning regulations, and request the Board s approval.

Thank you.

MR. COLLINS: Madam Chair, would you -- would you like Mr. Baxter to briefly go through the drawings for you on these different projects?

CHAIRPERSON REID: Yes, yes.

MR. COLLINS: Mr. Baxter, could you just briefly describe in using first the layouts of the campus to show the location of the three projects, and then go through each individual.

MR. BAXTER: Can everybody hear me?

CHAIRPERSON REID: You need to slip on the -- it s not working now? Let s try it again.

MR. BAXTER: Can you hear me? Should I get it up a little higher?

CHAIRPERSON REID: Yes.

MR. BAXTER: How about that?

CHAIRPERSON REID: Can reporter -- can reporter hear?

MR. BAXTER: The three areas of the campus that we are talking about, this is the Student Center, Student Union Building. The site for the new Student Academic Center is adjacent to that building.

The new grandstand is in this location of the existing grandstand.

And the Washburn Arts Center is placed in the Northwest Corner of the Campus near the Teleconference Center.

You take a look at these plans here, this is the main level plan of the renovations to the Student Union Building and the -- adjacent to the Academic Center, the existing Student Union Building, as you can see here, is shown in a lighter tone, and we are proposing some minor facial alterations to this.

The new Student Academic Center is over here, and it s approximately 53,000 square feet, right over two stories with some minor small basement area. As Dr. Jordan had said, the building will house a series of high-tech classrooms, as you can see, with these horseshoe shapes of seating, and then we ll also have the School of Undergraduate Studies and the Multi-Media

Center.

Excuse me. On the second floor is continuation of the School of Undergraduate Studies with additional classrooms. Okay?

You can see on the exterior of the building, the Student Union Building is shown again in light tones, the new Student Academic Center, is shown to the left of this elevation, the west elevation. And you can see the Student Academic Center is a two-story building with a mechanical penthouse on top.

Going on to the Washburn Arts Center, which I previously stated will be down this building here, this number nine building over here. Currently we re proposing an addition on the front of the building which will help to redefine the entrance for handicapped access to the building.

And to the rear of the building, we re proposing an addition, approximately 10,000 square feet, two-story addition, which will house additional art studios and a photography studio. The second floor, the same shape.

As you can see from the elevation, we re proposing to keep the addition the same height of the existing building with an added skylight, which will make a total height of about 30 feet.

The West elevation is the rear elevation, two story addition is going to be the same height as the existing building.

The grandstand -- as you can see here, the existing

grandstand is built into the ground. The visual lines are not that great, so what we re proposing to do is raise the grandstand enough so that all the students can see the football game at all times, as Dr. Jordan mentioned. The number of seating will remain the same. We re not trying to increase the number of seats.

And we are proposing a brick wall along the back that is opposite the new student academic center so that it will give us an opportunity to create, bring this piece into the architectural context of the campus.

And that s all I have.

CHAIRPERSON REID: Okay. Thank you. I don t know if Board members want to ask questions now or hold it until the end. How many more witnesses do you have, Mr. Collins.

MR. COLLINS: Madam Chair, that concludes our presentation. If the Board has any questions, we d be happy to answer them at this time.

CHAIRPERSON REID: Thank you. Mr. Sockwell. Did you have a -- I thought you had a --

MR. SOCKWELL: I had a question.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: I was prepared for several more witnesses, I don t know what to do with my time now.

Mr. Baxter, the new building, as proposed, and the modifications to the Washburn Arts Center, are all proposed fairly deep within the campus, as well the grandstand is to the inside of

the field.

Now, what is the elevation change from the -- in our case, right side of the running track to the property line? Is that a fairly gentle slope downward? Is it pretty much straight with a drop off? I don t remember because I haven t been on that street to pay attention in a while.

MR. BAXTER: I believe it s relatively flat with a small drop off towards West Virginia Avenue.

MR. SOCKWELL: And most of the buildings that line West Virginia, if you re on the West side -- or East side of West Virginia, are in the two-story to three-story walkup.

MR. BAXTER: I believe so, I believe so.

MR. SOCKWELL: And is the proposal, as I see in the illustrative master plan, to increase the buffering trees along the West Virginia Avenue perimeter?

MR. BAXTER: Yes.

MR. SOCKWELL: Good answer.

MR. COLLINS: Mr. Sockwell.

MR. SOCKWELL: Yes.

MR. COLLINS: Excuse me for interrupting. That is part of the master plan from 1992.

MR. SOCKWELL: Which looks like it hasn t been --

MR. COLLINS: The photograph before you is the same photograph we used in the 1992 hearing. It was a such a good aerial photo, we decided to bring it along.

MR. SOCKWELL: Okay.

MR. COLLINS: It does not include all the new buildings built since 1992 nor does it include the other features that were part of the improved campus plan.

MR. SOCKWELL: Can you point out the new buildings that exist now that aren t on that since it s usually very good to have a recent photograph --

MR. COLLINS: Yes.

MR. SOCKWELL: or one that s indicative of existing college --

MR. COLLINS: Mr. Dan Kirby, who is the Director of Construction Services for Gallaudet, is approaching the easel and will point out the new buildings constructed since the approval of the 1990 campus plan.

MR. KIRBY: Since the approval of the plan --

MR. COLLINS: Would you flip the illustrative master plan on its edge so that orientation of the two would meet forward on the sample completely. Thank you.

MR. KIRBY: Since the approval of the plan, we have constructed the Kellogg Conference Center, right here, Item A. All right --

MS. RENSHAW: To your right, is that Florida Avenue?

MR. KIRBY: This is Florida Avenue here.

MS. RENSHAW: All right.

MR. KIRBY: The front campus. This is West Virginia Avenue. Sixth Street, Northeast. And Brentwood Parkway, and Mt. Olivet Road, bounding the campus. The Kellogg Conference Center was constructed first. The Sixth Street parking garage, and addition to our field house. Those are the buildings that we have constructed since the inception of the master plan, and we have demolished the Hughes gymnasium already that s on this site in preparation for the construction of the new Student Academic Center.

MR. SOCKWELL: All right. Now where was the Hughes gymnasium?

MR. KIRBY: It s right in this vicinity, right here. On the photograph, where the red arrow is, is the Hughes gymnasium.

MR. SOCKWELL: Okay. So it s right there.

MR. KIRBY: That s correct. And the new facility will be built right adjacent to it, connected to the Student Union Building, to renovate the Student --

MR. SOCKWELL: I see, and the other buildings, you said, were produced in this area?

MR. KIRBY: Right. Kellogg Conference Center occupies this site, the Sixth Street parking garage occupies this former lot, and the proposed addition to the Washburn Arts Building will be constructed here.

MR. SOCKWELL. Okay.

MS. RENSHAW: We would like to request that the University supply the Board with a map showing these additions because the maps that we have in our material did not have any indication of where these buildings were going to be laid out. So it was a bit confusing.

MR. SOCKWELL: I would say that it is to our disadvantage as a Board to be presented with an aerial photograph that we believe to be current campus conditions, and find that it is eight years old, because the project that you are proposing is to further processing under the campus plan.

It is no more valid to see an eight year old map than it would be to see a 28 year old map. An inconvenience, I understand, but there s been more recent aerial photo mapping of the city that s available.

MR. COLLINS: We could take it off the easel and simply use the illustrative master plan because that shows the new --

MR. SOCKWELL: That works much better.

MS. RENSHAW: And if the Board could have a copy of that with those indications for the file, please.

MR. COLLINS: The Board does have it in its files. We will make a copy. It is in the master plan document.

Dr. Jordan wanted to make a statement.

DR. JORDAN: Mr. Sockwell, if I may speak to your question about the sloping along West Virginia Avenue. The

illustration that you see here, rather, that the aerial photograph, is a much better representation of what that looks like today.

There is a substantial number of trees along that road, and the slope is high. It is higher than this ceiling. I run on campus in the mornings, and if I run along West Virginia Avenue, you can t even see up across to the football field and the grandstand.

So the houses which are on the other side of West Virginia Avenue, there won t be any -- there won t be any change to that buffer that is there.

MR. SOCKWELL: Dr. Jordan, in that the University constantly updates its brochures for prospective students, have there been any more recent aerial photographs of the campus taken than the 1992 photograph?

DR. JORDAN: I will check to see if we do have a recent aerial photo, but I m honestly not aware of one.

MR. SOCKWELL: All right. I think that takes care of my questions at this time. I may have one more before you are through. Thank you.

MS. RENSHAW: Madam Chair.

CHAIRPERSON REID: Ms. Renshaw.

MS. RENSHAW: Mr. Collins, you spoke about having the support of the ANC. I did not find an ANC letter in my file. So that would be ANC 5b? Do you have a letter?

MR. COLLINS: We do not have a letter. We have called there several times. There was a meeting. They did take a vote. That vote is reflected in the Office of Planning s vote, which was submitted, I understand, today.

But we have asked the ANC several times for the written letter and they ve not given it, and I do understand that Mr. Hood was at the meeting and perhaps might be able to shed some light on that as well.

MS. RENSHAW: All right. We would like to have a copy of that letter for the file. Absolutely.

MR. COLLINS: As we would and we will pursue that.

MS. RENSHAW: And also the letter that is in our material from the Gallaudet Community Relations Council, I would like to know if the meeting on March 8, 2000, was there a quorum present, and how many of the residents who abut the college are on the council, and who are the voting members?

MR. COLLINS: Dr. Jordan, could you answer that question?

DR. JORDAN: I will have to submit for the record who the members are, but the Gallaudet University Relations Council is made up of business people, community activists, people from the neighborhood, church leaders.

We ve been there for 25 years. We recently celebrated the 25th anniversary of the Community Relations Council. We also, of course, have to have posted the zoning

notice on several prominent places on the campus. We have a -- we have a track where many neighbors come and exercise on our track and walk on our campus, and in the mornings I have conversations with people from the neighborhood about what the new buildings are going to be.

I honestly -- we have enthusiastic support from this group. I can get that information for the record for you.

MS. RENSHAW: Thank you.

CHAIRPERSON REID: Okay. Is that it, Ms. Renshaw?

MS. RENSHAW: Yes.

CHAIRPERSON REID: All right, thank you.

DR. JORDAN: Excuse me, I m sorry. Mr. Collins shows me that on the letterhead, it actually lists the names of the members, and I can describe the individuals. I know most of those individuals.

MS. RENSHAW: It s the case, Dr. Jordan, that with the ANC, we always ask if there has been a quorum present for the vote. So since you have submitted the Community Relations Council letter also, and there was an official meeting on March 8, I would just like to know, was there a quorum present for the vote.

DR. JORDAN: Yes, ma am, there was a quorum.

MS. RENSHAW: Thank you.

DR. JORDAN: Yes, ma am.

CHAIRPERSON REID: Okay. Thank you.

MR. SOCKWELL: Mr. Baxter, one more question. And

that is, the building that was torn down to make way for the new Student Academic Center was approximately how tall?

MR. BAXTER: It was mostly one story, but did have some large spaces, such as a gymnasium.

MR. SOCKWELL: So, you don t know what the actual height of it was?

MR. BAXTER: No, I don t know what the actual height is.

MR. COLLINS: If I could answer that question?

PARTICIPANT: Certainly, Mr. Collins.

MR. COLLINS: I m referring to the 1990 campus plan document, which I realize you don t have before you, but it does -- there are several appendices, one of which is called, Proposed Facilities Elimination. And it lists the three buildings that were to be demolished. And the Hughes gymnasium was listed at a height of 30 feet.

MR. SOCKWELL: Okay. Thank you very much.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: So the Student Academic Center is going to have a total height of approximately 58 feet from what I can see of your drawings. Is that correct?

MR. BAXTER: Yes, including the penthouse.

MR. SOCKWELL: Okay, so you re about 20 feet above what was previously there. How does -- and that becomes based on the drawings a -- in its location, it s relatively significant,

but, again, it sets some what 300 feet inside of the property line at that point?

MR. BAXTER: Yes. It s at least 300. It s well, well, far back.

MR. SOCKWELL: All right, thank you. And the grandstand is 35 feet, 10 inches from what I see there. The existing grandstand height to the top of the bleachers is approximately --

MR. BAXTER: It s actually built into the ground.

MR. SOCKWELL: So it s approximately zero?

MR. BAXTER: Well, the site slopes --

MR. SOCKWELL: Yes. So --

MR. BAXTER: Five to ten feet.

MR. SOCKWELL: So it s built into the slope of the hill.

MR. BAXTER: Probably about ten feet, when you take into account the slope.

MR. SOCKWELL: Thank you.

CHAIRPERSON REID: Okay. Now we go to government reports. Office of Planning report, Mr. Fondersmith.

MS. PRUITT: Mr. Fondersmith -- is he still here?

CHAIRPERSON REID: Yes, he s here.

MR. FONDERSMITH: Madam Chair, I m here to give you the report. I think that the best thing that I can say is just that the office supports this project, and I might note that this

was filed according to the stamp last Friday.

CHAIRPERSON REID: We need a waiver right? Are you going to request a waiver?

MR. FONDERSMITH: Yes, we would request a waiver.

CHAIRPERSON REID: Okay, I have no problem with waiving the rules to accept it late, or not within the seven day period, unless there are any objections from any of the Board members? Okay, thank you.

MR. FONDERSMITH: And in this we simply go, you know, go through the conditions that were outlined and did not find any impacts coming from this, from these additions, mainly because as indicated in the report, the location of the buildings within the -- more or less in the center of the campus, and somewhat removed from -- or considerably removed from the adjacent residential areas, and the fact that there s not an increase in students, or not an increase in the -- as has been testified here, in the number of seats in the stadium, and so we went through and recommended approval of this -- of these revisions to the campus plan.

CHAIRPERSON REID: Thank you, Mr. Fondersmith. Any questions of Mr. Fondersmith? The only other government report that we received was from the fire department, James N. Short. And we referred to the fire department, I suppose, by the Office of Planning, and they did respond, and said basically, that they have no objection to this application, and this is from James N.

Short, the Battalion Fire Chief. Thank you.

The ANC report. Do we have one?

MS. RENSHAW: The Office of Planning s document, as Mr. Collins pointed out, does mention an ANC approval, voted five to zero, but we have no letter.

CHAIRPERSON REID: Yes, did you have a letter, Mr. Fondersmith?

MR. FONDERSMITH: I have to say that I did not actually work on this report, and so I assume given the testimony -- I mean, the fact that we don t have the letter and the testimony was given that this is also based -- it is my assumption that it s also based on a verbal report of the ANC action.

I mean, I think if we -- I don t know of a letter, per se.

CHAIRPERSON REID: Did you, Mr. Collins, did you actually receive anything from the ANC?

MR. COLLINS: We did not receive anything in writing, as I mentioned to Ms. Renshaw when we were discussing it. We had asked several times, but it is my understanding that the Office of Planning and the staff person who prepared that report did make contact with the ANC and that s where that information came from about the nature of the vote.

CHAIRPERSON REID: Okay, well, that s well and good, because typically if the ANC is in opposition or they have any problem with an -- as you well know, they will send a letter

to us and the verbal communication that came to the staff at Office of Planning is reflected in the Office of Planning Report.

The only thing is that because we don t have a letter from them, we can t give them the great weight -- we can t give this applicant the great weight to which they re entitled. Nonetheless, the assumption is that the ANC is on board with this. So that s definitely in your favor.

In regard to support, there s no one here to testify in support, but we did make mention earlier of the letter that came from Gallaudet Community Relations Council, and Mrs. Renshaw asked and it was responded to that there was a quorum present, and the vote was unanimous to support of this application. And also there was no opposition that we know of for this application.

We move now to closing remarks by the applicant.

MR. COLLINS: Madam Chair and members of the Board, we appreciate your time this afternoon to describe our three projects on campus, and we simply request that you approve this at your earliest convenience, and we request a bench decision and a summary order.

Thank you very much.

CHAIRPERSON REID: Okay, Board members, I d like to move that we approve this application for special exception. I think that the applicant has demonstrated that they meet their burden of proof.

The granting of the application does not seem to in any way increase either the population or the number of seats, or parking, or any of the other factors that would pertain to adverse impact in regard to the community. There is no opposition to it.

As a matter of fact, they seem to enjoy a very favorable relationship with their community, and are considered to be very good neighbors. There does not appear to be any -- it does not appear to impair the integrity or intent of the zoning regulations or map.

MR. HOOD: Madam Chair, I ll second the motion.

CHAIRPERSON REID: Further discussion?

MS. RENSHAW: No, only that the University have a liaison person so designated for the construction phase so that it eases any possible tensions in the community that they have a way of relating to the University.

CHAIRPERSON REID: You d like to --

PARTICIPANT: This is --

MRS. RENSHAW: Yes, I would.

CHAIRPERSON REID: Mr. Hood.

MR. HOOD: I think a lot of that s done through the Council, and I really want to get -- I wanted to separate the two, but I will say that the Chairperson of the Council is also the Chairperson of the ANC 5B, Mr. George Boyd.

But I think they work that through the Council, if I m correct. So I think that s already set up.

MRS. RENSHAW: As long as that is understood.

CHAIRPERSON REID: Is it? Can you respond to that question as to whether or not there is an existence of liaison.

DR. JORDAN; Yes. The Council meets every month. So the chair of the Council will be kept apprised of the developments on these projects.

CHAIRPERSON REID: Does the Council consist of representation from the University? Is that what I m understanding? So that s already in place. Correct.

MRS. RENSHAW: I think my remarks -- my remarks were to the point that if during the construction phase there is a problem on a specific day over a specific period of time, in other words, during that week, that the residents of the neighborhood have someone to call immediately to get some relief, or to get a question answered.

CHAIRPERSON REID: You want that Mr. Collins designate that individual who is on the Council from Gallaudet to be that liaison person in regards to the

DR. JORDAN: I would say that process is already in place, because Mr. Boyd has been Chair of the Council since its inception 25 years ago, and everyone in the community knows if there s an issue that needs to be brought to Gallaudet, he can bring it, and he has ready access to my office.

CHAIRPERSON REID: So that s already--and if you, Ms. Renshaw, if you could stipulate that.

MS. RENSHAW: If we could stipulate that in our decision, then.

CHAIRPERSON REID: Not a condition of, but within the scope of the order to make mention of the existence of this liaison, I think is what would be applied. Do you, Ms. Renshaw?

MS. RENSHAW: Yes.

MR. SOCKWELL: Mr. Collins, could you just speak briefly to the height of the Student Academic Center as it relates to the allowable height within?

MR. COLLINS: The allowable height of an institutional building in a R-4 zone is 90 feet. An institutional building can rise to a height of, I believe, it s 40 feet. This is from memory, 40 feet and then as long as set-back distance equal to its height. Beyond that point

MR. SOCKWELL: From what to what?

MR. COLLINS: -- property lines, right.

MR. SOCKWELL: All right, that s all I needed. Thank you.

CHAIRPERSON REID: Okay. All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Opposed?

(No response.)

MS. PRUITT: The Staff would record the vote as five to zero to approve. Motion made by Mrs. Reid, and seconded by Mr. Hood in summary order.

CHAIRPERSON REID: Okay. Thank you, Mr. Collins, and good luck to you. A very fine University.

MS. PRUITT: All right. The next case on the agenda is Application 16586, Application of Charles E. Smith and Companies pursuant to 11 DCMR 3104.1, for a special exception under Section 214 for the construction of an underground parking garage to be used by Alban Towers, or in the alternative, pursuant to 11 DCMR 3103.2 for a use variance from Subsection 300.3 to use the portion of the underground garage for non-required accessory parking for the adjacent apartment building in an R-2 District at 3700 Massachusetts Avenue, Northwest, Square 1929, Lots 13, 14, 803, 804, and 805.

All those planning to testify, would you please stand and raise your right hand.

Okay. I noticed that there s not everybody here.

MS. PRUITT: Anyone who wants to testify on any level should stand and be sworn in, but we ll wait until everybody gets here, if we can.

Where is Steve Geld?

All those planning -- let me just start over again. All those planning to testify on St. Alban Towers, could you please stand and raise your right hand.

(Witnesses sworn.)

MS. PRUITT: Please proceed.

MR. NETTLER: Thank you. My name is Richard

Nettler. I m with the law firm of Robins, Kaplan, Miller & Ciresi.

MS. PRUITT: I m sorry, Mr. Nettler, before you start, we do have a couple of preliminary issues which is party status.

In your file, you ll see you have a request -- excuse me, a request from several people who will be represented by Steve Geld requesting party status. And so you need to make a determination on that.

And I believe there is a gentleman in the audience who is requesting party status, if you have submitted your statement.

No, he isn t. I am surprised.

MR. NETTLER: Mr. Geld, Mr. Vondracek is your --

CHAIRPERSON REID: Could you speak to the mic then, please. Will you be representing people instead of Mr. Geld?

MR. VONDRACEK: My name is M. Jon Vondracek. I live at 2924 38th Street, N.W., and I represent a group of 10 and maybe 11 people. There s one person we haven t been able to contact, and Mr. Geld has been working as our legal counsel. In an effort to keep down legal costs, we didn t invite him here today --

CHAIRPERSON REID: I ve got it.

MR. VONDRACEK: And so I m going to step forward and try to be a one-time lawyer here.

I do have a letter of support for this project as well as -- and it also combines a request for party status. If I could submit that to the record at the appropriate time, I d be glad to do so.

CHAIRPERSON REID: Your organization -- spell your last name, could you?

MR. VONDRACEK: Vondracek. V, as in Victor O-N-D, as in dog -R-A-C, as in cat-E-K.

CHAIRPERSON REID: Vondracek.

MR. VONDRACEK: Yes.

MR. PRUITT: Exhibit number 24.

CHAIRPERSON REID: You are requesting party status, and you re also in support.

MR. VONDRACEK: That is correct.

CHAIRPERSON REID: Okay.

MS. PRUITT: Madam Chair, Exhibit Number 24 is a letter, dated May 30th, requesting party status from Mr. Geld on behalf of various people.

CHAIRPERSON REID: I have that.

MS. PRUITT: Mr. Vondracek, your name is on here.

CHAIRPERSON REID: I have that. I have that before me. Could you explain to us your reason for requesting party status?

MR. VONDRACEK: We re requesting party status-- well, I think I stand as an unique spokesman here, having been

asked by the Charles E. Smith Company last winter to form a group to consult with them and to work with them in crafting an agreement between ourselves and Charles E. Smith regarding the development of this site behind Alban Towers.

And we ve done so, and there are a number of provisions in that -- in that agreement that we would like the Board to incorporate in its order.

CHAIRPERSON REID: Do you have the agreement?

MR. VONDRACEK: We have a draft of the agreement with us, but we have just concluded it this afternoon.

CHAIRPERSON REID: I see.

MR. VONDRACEK: And would like to have the record open so that we could --

CHAIRPERSON REID: Submit it.

MR. VONDRACEK: Submit to you a fully authorized and --

CHAIRPERSON REID: Okay. Mr. Vondracek, contained within the agreement that you all crafted earlier, that agreement speaks to the issue that basically you were concerned about in regard to the construction traffic, opposite the garage side of the house to be built are and other issues. Has it all been contained there in that agreement?

MR. VONDRACEK: Yes, it has been. That s correct.

MR. NETTLER: Madam Chair, if I might help a little bit. I spoke with Mr. Geld just before the meeting. We do have

an agreement that we re going to submit for the record today.

The reason why he wanted to have the party status established was because he wasn t able to reach one of the neighbors, Mr. Hyde, I believe. He didn t want to prejudice any of his rights to the extent that he might have any.

So he just wanted to have that on the record that he was seeking a party status, and that was the reason that he wanted me to explain to the Board.

So we have no objection to the party status, and as you have heard we do have an agreement, so--

CHAIRPERSON REID: Okay, well, what I m trying to get my arms around is if in fact there is an agreement, and there is no objections, two things, the person who you re representing, Mr. Vondracek, do we have anything in writing from them delegating you as their spokesperson or representative?

MR. VONDRACEK: I have a signature, their signature on the agreement.

CHAIRPERSON REID: On the agreement, but do you have anything that designates you as their spokesperson, representative, and for the party status?

Okay, that s one. The other thing is, the basis for party status. Is there an application completed that -- Ms. Pruitt do you know about an application that specified the reason why and under what basis they want to be granted the party status?

MS. PRUITT: It s actually -- it s listed in their

May 30 letter. That s what they ve given as justification. Our properties is across the street.

CHAIRPERSON REID: This is it?

MS. PRUITT: Yes.

CHAIRPERSON REID: Okay. Well, is there anything about the person that you are supposedly representing that -- is there anything that makes them more aggrieved or more affected than anyone else in the community or the neighborhood?

MR. VONDRACEK: I would not think so.

CHAIRPERSON REID: Okay. You see, the criterion for party status is for those persons who have some special issues or special concerns that make them more affected or more aggrieved than anyone else in the community, and that is the criterion by which we are able to determine whether you be granted party status. That s one. And also the fact that we need to have some type of authorization from the entity or group, or whatever, designating you as their spokesperson. And without that I don t -- I don t think we have a basis for granting party status in this instance.

MR. HOOD: Madam Chair, but aren t the people, at least on the list here, aren t they right across the street, or on the same street, I believe?

CHAIRPERSON REID: Well -- I mean not more so than any other neighbors who live on the street.

PARTICIPANT: That s not how they make up that

block.

MR. VONDRACEK: This is all of the people that live on that block, Madam.

CHAIRPERSON REID: Again, that would not make -- then it would be everybody. So it s not anybody that has a special concern. And this is -- this is where we have to really be careful with this party status granting. The reason why we have the application is so that we can, you know, determine what persons has a special type of standing in order to get party status. I don t see it.

MS. RENSHAW: But, Madam Chair, if this is the entire block face of those across from the development on 38th Street, I would think that that would indicate that they should have party status.

CHAIRPERSON REID: Why?

MS. RENSHAW: Because they are the closest.

CHAIRPERSON REID: Well, then --

MS. RENSHAW: They are the most affected

CHAIRPERSON REID: Are we then as a Board going to start to grant party status to everyone and anyone who requests it? Because that s what --

MS. PRUITT: No, Madam Chair, but just as an example, Georgetown University. You granted party status to Hillendale Condominiums, which is across the street. And you granted it to everyone who lived in that condominium association.

The same thing with the Field School. You granted party status to a group of homeowners.

CHAIRPERSON REID: Everyone.

MS. PRUITT: Right.

CHAIRPERSON REID: Everyone who applied for it.

MS. PRUITT: Right. But they were not -- they were not necessarily abutting the property. They were across from it. So there have been instances where the Board has granted party status to groups of people who are affected more so than the general public.

CHAIRPERSON REID: But with the Jewish Primary Day School --

MRS. PRUITT: I didn t say Jewish Primary Day School.

CHAIRPERSON REID: No, I am. When we did party status for the Jewish Primary Day School, we specifically went down and we had to ask each person if they could demonstrate and prove whether or not they should get party status and several people did not.

MRS. PRUITT: Right, because several people were located three and four blocks away from the school who were --

CHAIRPERSON REID: No, no, no.

MRS. PRUITT: They used a form letter.

CHAIRPERSON REID: But nonetheless, nonetheless, I don t want to belabor this. Okay. That s my -- I m only one

person on this board of five, and I -- and that was my position. That was my thought in analyzing this. I can t see anywhere this is -- that this group of people is any more aggrieved than the rest of the people in the community. And the second part of it is --

MR. VONDRACEK: Madam Chair, could I address that point for just a moment that you re raising? I think it s a very good question. And I do have particulars for each member of that group, but since they have been incorporated and resolved within the context of this, I think a unique

CHAIRPERSON REID: Agreement.

MR. VONDRACEK: Person s deliberation process, I thought we would save your time and effort by just seeking one sort of unique party standing and status here and --

CHAIRPERSON REID: Sure, but we also have to be correct procedurally, and that is to Ms. Sansone, the question then becomes, without any authorization, designating Mr. Vondracek as their representative, how do we proceed with that, if in fact the rest of the Board wants to -- feels that we should grant party status?

And I think this is symbolic for the most part, and that s the impression I m getting, Mr. Nettler. This is a symbolic type of thing. They re not in opposition. You have an agreement, and so it s --

MR. NETTLER: That s correct. But in assistance to

Mr. Vondracek, since he is here, and he is one of the neighbors, and he does live across the street, he can individually have party status.

CHAIRPERSON REID: Sure, he can, individually, but he s speaking in terms of representing a group of ten people.

MS. SANSONE: Madam Chair, I agree. It is problematic if there s no written authorization for Mr. Vondracek to represent this group of neighbors.

However, he did state earlier, that he had a copy of the agreement, or a draft of the agreement, and perhaps that provides some evidence that he is properly representing this group. Maybe Mr. Nettler could clarify that.

CHAIRPERSON REID: We could leave the record open for him to submit --

MS. SANSONE: To submit --

MR. NETTLER: If he could submit a letter, I will be providing you with the agreement today, which does recognize all the neighbors as a group who are designated neighbors in the agreement, and I ll provide that to you during our case, so you ll have that as part of the record.

CHAIRPERSON REID: We will keep it open, keep the record open, if it s during the case.

MR. NETTLER: I will provide you with the agreement and you can have him submit a letter this week, which just --

CHAIRPERSON REID: Have it signed by them that --

okay. All right, then. That s all right, then.

Let s just go ahead and proceed.

MR. VONDRACEK: Could I have more input? Does that letter need to be notarized? And does each signature need to be notarized.

CHAIRPERSON REID: We don t usually --

MR. VONDRACEK: I don t know what your procedure requires --

CHAIRPERSON REID: Ms. Pruitt?

MS. PRUITT: No. We have never in the past.

CHAIRPERSON REID: No. All right, so then, as to the acceptance of Mr. Vondracek individually, in granting party status to him, can I have a motion and a second and vote on that?

MR. HOOD: So you re just granting party status just to Mr. Vondracek?

CHAIRPERSON REID: Yes.

MR. HOOD: Okay.

CHAIRPERSON REID: Is that your motion?

MR. HOOD: No, I m not making a motion on that.

MS. RENSHAW: But are we also going to take up today that he -- giving party status to this block face of 38th Street?

CHAIRPERSON REID: With the submission of --

MS. RENSHAW: With the submission of a letter.

CHAIRPERSON REID: Right. So a conditional kind of

motion, I suppose, that would be too --

MS. RENSHAW: So we re doing two party status, one to Mr. Vondracek, and then another to Mr. Vondracek representing this block face, keeping the record open --

MS. PRUITT: Excuse me. I think, for clarification, Mr. Vondracek didn t really request party status as an individual, but was going to represent the group, is that correct, sir?

MR. VONDRACEK: That was correct in the first instance, but I m happy to amend that request if it would facilitate the work of the Board.

MS. PRUITT: Understood.

CHAIRPERSON REID: Okay, so, the motion is.

MS. RENSHAW: I move that we accept party status for the block face across from the development as set out in the May 30th, 2000 letter from Attorney Steven Geld, and with Mr. Jon Vondracek as its spokesperson today with the record left open for a letter confirming that from the parties that would be submitted to the Board this week.

MR. HOOD: I ll second.

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Opposed?

(No response.)

MR. VONDRACEK: Do you want our letter here from

our attorney Mr. Geld at this point, or does that come later in your proceeding? I m sorry --

CHAIRPERSON REID: The letter, what --

MR. VONDRACEK: That basic -- our letter of support but also requesting party status.

MS. PRUITT: I believe, sir -- is it dated May 30th?

MR. VONDRACEK: No, this is a July 5.

MS. PRUITT: No, we don t have that. We d like to have that, please.

MR. VONDRACEK: Would you like to have that at this time?

MS. PRUITT: Yes, we ll take that and copy it --

MR. VONDRACEK: Who do we want to give it? Okay.

MS. PRUITT: The staff would record the vote for granting of party status to all those individuals listed in the May 30th letter of the year 2000. Motion made by Ms. Renshaw, and seconded by Mr. Hood.

CHAIRPERSON REID: And there was another one, wasn t there?

MR. HOOD: Yes. Ms. Canzoneri, I believe.

CHAIRPERSON REID: Can you come up, please?

MS. CANZONERI: Can you hear me okay? Oh, thank you.

I m Sarah Canzoneri, and as you ll see from the

statement that we submitted, my husband and I live in a property -- or we own that house directly across the street from the property.

We are also directly across the street from the driveway which will become the main entrance and exit to the parking garage and will also be, I understand, the main entrance and exit for trucks during the excavation of the garage. So obviously we re impacted by the construction.

In addition, parking spaces will be lost on Garfield Street across from our house, so there will be less parking on our block after the garage is constructed. And I think those were the main reasons I had listed for our being particularly impacted.

CHAIRPERSON REID: And also the fact that you work at home and --

MS. CANZONERI: Yes, I work at home. Yes, and my 16-year-old who is sleeping late in the summer, has a bedroom at the front of the house, so, yes, we re right where --

CHAIRPERSON REID: You re impacted by the noise from the construction?

MS. CANZONERI: Yes, and the dust. So we re pretty directly impacted.

CHAIRPERSON REID: I have no problem Board members with Ms. Canzoneri being granted party status.

MS. RENSHAW: Are you making a motion, Madam Chair?

CHAIRPERSON REID: Yes.

MS. RENSHAW: All right, I second.

CHAIRPERSON REID: Okay, all in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Opposed?

(No response.)

MS. PRUITT: Staff would record as five to zero to accept Ms. Canzoneri s party status. Motion made by Mrs. Reid, seconded by Ms. Renshaw.

Now the last little bit of -- sort of quick preliminary matters that we have is there s a letter, Exhibit Number 17 in your file in which, as you noticed when I called the cases was called to be advertised in two alternatives.

And we did it at that time because we had not -- we were not able to get in touch with the zoning administrator to find out exactly which one was going to be needed, so to cover all bases we did both.

You should have just received a letter dated May -- excuse me, June 28th that states that from Mr. Lourenco, or Michael Johnson, that the application only needs a special exception. Under Section 214, 20004, and 2116, so that when you re reviewing the case you need to review it under special exception.

CHAIRPERSON REID: Do any of the Board members have that letter?

MS. PRUITT: Everybody should have it.

MR. HOOD: It was passed through to me.

CHAIRPERSON REID: This, we just got it. Hot off the fax. Okay. All right. Let me take a moment and look at it.

Thank you.

MR. HOOD: Madam Chair, if you don t mind, I would like for Ms. Pruitt to repeat what she said so that I can, you know, understand.

MS. PRUITT: When we first advertised this, which you know, was 45 days ago, so that was a while ago, we advertised it for a special exception, and, in the alternative, for a use variance. And, of course, the standards for proving both of those are very different. And in the interim Mr. Nettler met with Mr. Johnson, the zoning administrator, and the zoning administrator gave us an official memo basically stating that the type of request needed would be a special exception so that you only need to look at it as a special exception under Section 214, 20004, and 2116.

CHAIRPERSON REID: Well, that certainly is most helpful. We appreciate that. And we have to waive the record to accept Mr. Johnson s letter?

MS. PRUITT: No, the record is still open. This is not one that s time sensitive.

CHAIRPERSON REID: It s not?

MS. PRUITT: No.

CHAIRPERSON REID: So that s that. Then that clears it up as to what type of relief, which would be a special exception, which is a lot better than having to go the use route.

MS. RENSHAW: Madam Chair, there are two of us who need copies of the fax that was sent in.

MR. NETTLER: May I begin? May I begin?

CHAIRPERSON REID: Yes, sure.

MR. NETTLER: My name is Richard Nettler. I m with Robins, Kaplan, Miller & Ciresi, and here on behalf of the applicant. And as a way of an introduction I thought maybe starting off from a fuller explanation of the letter was also a way of getting us into this matter.

CHAIRPERSON REID: Okay.

MR. NETTLER: This is a self-certification case. Actually, almost a year ago, and you ll hear from Mr. Kane, who is here on behalf of the Charles E. Smith Company, the property was purchased by Charles E. Smith for the purpose of renovating, rehabilitating, restoring the Alban Towers apartment building, a significant landmark in the District of Columbia, and purchased the rear of the site also.

We had proceeded along and tried to develop a way in which the semi-attached houses, which are being constructed on the site of the rear portion, could be done as a matter of right, and had worked with the zoning office and Mr. Lourenco in doing so.

In meetings with the community, a number of issues arose as to how we could assure that the use of that garage would be limited, and how we could, as well, sell the semi-attached houses in a way different from the manner in which we were discussing with the zoning office, the zoning administrator.

And we ended up in filing to a self-certification process the application that s before you, which is for -- which was for a special exception.

In discussions with the community, we wanted to be sure that we did not have a situation where once we had gone through the Board of Zoning Adjustment and the garage was constructed, and hopefully constructed at a time when the apartment building was then opened so we can have the tenants immediately being able to park in the garage, that we then wouldn t be able to use it because we would need a variance.

So we discussed with Ms. Pruitt about the possibility of advertising this in the alternative, and I would take on the responsibility for getting the zoning office -- the zoning administrator and Mr. Lourenco to get you a memorandum that outlined exactly what it was that we needed, which they did, finally, last week, which was to set the stage for the special exception hearing.

And as you will hear, this is for the purpose of using a garage that is going to be built for semi-attached houses to use it as non-required accessory parking. So it s a garage

that would have been built, will continue to exist, but it will be a garage that will hopefully, after you ve heard all this testimony, be able to use by the tenants of the apartment building on the adjacent lot.

We have a number of witnesses here. I don t believe -- I m not aware of any party who has sought to oppose us on this. The ANC has voted unanimously to support us. I thought the Office of Planning was going to be testifying in support as well, and I have a number of letters in support, so we will be trying to abbreviate the testimony, if you would like.

CHAIRPERSON REID: Excuse me, Mr. Nettler. Mr. Vondracek did give his -- he apologized most profusely to the fact that he had to leave earlier and he was here to testify but he had submitted to us his report in favor of the application. And we do have it front of us.

MR. NETTLER: Well, thank you. I will present as our first witness Mr. Kane, and I will submit some written testimony that he has prepared for this application.

CHAIRPERSON REID: Excuse me, and you were saying that given the fact that you don t -- you don t think -- and let me just check. Is there anyone here who will be testifying in opposition to this particular application? Okay.

And how many persons are going to be testifying in support? Okay. All right. Well, then, Mr. Nettler, proceed.

MR. KANE: Good afternoon. My name is Jim Kane,

and I m the project manager for the development by Charles E. Smith.

Last August the Charles E. Smith Companies and its affiliates bought the Alban Towers apartment building and the rear site. The Alban Towers apartment building, located at 3700 Massachusetts Avenue, Northwest, is in an R-5-D district, and was constructed in two phases. The first comprising 125 apartments was built in 1928. The second, comprising 80 apartments, was built in 1929. The rear lot is zoned R-2. The exterior and portions of the interior of the building are designated as historic landmarks by the Historic Preservation Review Board here in the District.

The restoration of the apartment building is being conducted in accordance with the Secretary of Interior Standards Rehabilitation Guidelines for Rehabilitating Historic Buildings.

Although the zoning regulations provide that a building certified as a historic landmark need not provide any additional parking, it became clear that additional parking has to be provided for the tenants of the apartment building if the rehabilitation is to be viable and to help mitigate adverse impacts on the community. So we looked at how we could use the rear lot to accomplish this purpose.

We decided to construct a garage on the 38th Street side of the square under matter-of-right semi-detached townhouses. The rear lot contained three open parking lots, utilized by the

residents and workers at Alban Towers. The parking, therefore, is the grandfather use.

In 1999, as I said, August, we purchased the building and rear lot. We determined that the Alban Towers apartment building could be rehabilitated for 229 apartment units if we developed the rear site with the matter-of-right semi-detached townhouses and constructed an underground garage for their use, for the use of the owners, and the tenants and workers of the apartment building through a condominium regime.

After many discussions with the neighbors, Smith filed the instant application so that if they sell the semi-detached townhouses on a fee simple basis, rather than as part of a condominium, and to provide parking for the tenants of the apartment building, and assurances to the community that the garage will be only used for the stated purposes in this application.

To ensure that our plans would not have an adverse impact on the neighborhood, we began meetings with both the ANC and neighbors even before we purchased the building. We have subsequently met with the neighbors on more than 15 occasions and have agreed to construction guidelines to reduce impacts. These guidelines are contained in the attachment to the ANC s resolution.

We believe that we have almost unanimous support of the neighborhood and the ANC, and we seek your approval today.

Thank you.

CHAIRPERSON REID: Thank you. Okay.

MR. NETTLER: Our next witness is Maurice Walters, who is the project architect, and I would proffer him as an expert, and I believe he s appeared before you before in the same capacity and I provided his qualifications with the pre-hearing statements.

CHAIRPERSON REID: What exhibit is that?

MR. NETTLER: It s in front of Exhibit A, which contains all of the witnesses and the outlines of their testimony and their qualifications.

CHAIRPERSON REID: I don t remember you having appeared before the B.Z.A. before. Do you know when that was?

MR. WALTERS: I believe it was last fall. It was a PUD hearing for the Walter Washington Estates in Anacostia.

CHAIRPERSON REID: That was the Zoning Commission.

MR. WALTERS: Okay.

CHAIRPERSON REID: Okay. You were accepted as an expert witness for the Zoning Commission?

MR. WALTERS: Yes.

CHAIRPERSON REID: All right. Then, typically -- Mr. Hood if that is appropriate for them to be able to appear before the B.Z.A., if they have been accepted by the Zoning Commission previously?

MR. HOOD: Right. They are considered an expert

witness.

CHAIRPERSON REID: Thank you.

MR. HOOD. But, again, Madam Chair, it s up to this Board whether you all want to accept him or not.

CHAIRPERSON REID: I have no objection. And looking over -- I looked over his submission to us, I have no objections. Unless any other Board members do. Okay, then, go ahead.

MR. WALTERS: Thank you. Good afternoon. My name is Maurice Walters. I m a principal with Torti Gallast & Partners, CHK Architects. We re the architects on the restoration of Alban Towers, the parking garage, and also on the semi-detached town homes behind the project.

I was going to get up and present some boards to you, if that s okay.

CHAIRPERSON REID: Do you have the -- who has it? Oh, just a moment.

MR. WALTERS: Now. Okay. This is a site plan of the site of Wisconsin Avenue, here. Garfield Street, here. 38th Street, Cathedral Avenue, and Massachusetts Avenue, cutting across the side. The National Cathedral is here, and this is the Alban Towers Building, which is currently being renovated. The site for the parking garage occurs back here. It abuts the site for the Alban Towers.

The garage is contiguous to Alban Towers. The way

it is being configured is that this dimension of the garage, the top of it will be developed as a landscape plaza, which will be an amenity for the public and for the residents of Alban Towers. So there will be a garden back there, and later on the landscape architect will walk you through that and explain it to you.

And this dimension back here is being developed as the 15 semi-detached town homes on lots that conform with the zoning requirements, 30 foot wide, eight-foot side yards, etc. They re set back generously from the street, approximately 20 feet to the back of the sidewalk, that s the way the lot lays out.

There are seven pairs of homes there, and then one single detached and given the odd number of lots that are back there. The way this area of the site will function is there s an existing private drive, through the site, that will be maintained and enhanced. It will help some service spaces. There s some accessory parking spaces, handicapped vans, and a service drop-off back here that will run along the back of the site.

The entrance to the garage is on Garfield Street. It is the lowest part of the site. The site slopes downhill. The high point would be over Cathedral, and it drops approximately about 14 feet down to here, so that the site is falling down.

If you were to go out to the site today, you would see a big hill out here where the earth kind of comes up and then drops precipitously down at this edge. Again, the garage entry then kind of makes the most sense practically to come in low and

into the garage. That way we don t have to excavate and ramp down. It s the logical place to get into the garage.

The other thing we ve worked on very carefully in laying out the garage and the town homes is to let them follow the slope of 38th Street down, to step down with the street, as you will, if you will, and not to let them sit up too high on the garage and be looming over the neighborhood.

So that s been something very -- a very delicate arrangement of the garage. When I walk you through the inside of the garage that will -- I think that will be explained further.

But, again, we have the entry to the garage on Garfield Street. We have a exit stair pavilion that s required for fire exit from the garage. The garage goes down approximately two levels below grade, and we have to have a fire stair that brings people safely up to grade and out of the building. Also that pavilion will also have a air intake for the ventilation of the garage. That will be -- it will be inconspicuous from Garfield Street. It will be located on the back side of the pavilion.

We also have a second pavilion in the middle which will serve as an elevator and communicating stair to bring the people using the garage up into the plaza. They will then walk across kind of a landscaped paving area into Alban Towers. This a back door, if you will, that they will come in and then get into the elevators to come up to their apartments.

And then, lastly, we have another pavilion up at

this end. It s our other fire exit for the garage. Also, it contains the garage exhaust ventilation that will bring the air up. And that s to comply with all the regulations of the code for ventilation of underground garage structures.

I d like to go ahead and just show you some streetscapes that will give you kind of an idea --

CHAIRPERSON REID: Can people over there see?

Mr. Walters: Is that better? Okay. Here is an elevation along Garfield Street. You can see the side of Alban Towers. Here s the existing service drive. This is the pavilion with the exit stair. We put windows in this so it s kind of friendlier to the residential buildings around it, and the garage door. So this is the spot on the site where the garage most manifests itself. Everywhere else around the site it is concealed by the town homes and it sits below grade.

The garage door here, the landscaping of the park beyond, and then the side of the first semi-detached home -- actually the two end-homes we ve arranged so that their doors are on the side streets, so that we get some activity on those streets, too. We don t want to turn the blank slide to that street. So, the Garfield Street elevation.

Over here is the Cathedral Avenue elevation. The impact of the garage here would be the service drive, which exists today coming through, the pavilion with the exit stair beyond. It s pushed back away from the building face and there ll be

landscaping in front of it.

And then the first semi-detached home at the intersection of Cathedral and 38th, again with the entry arranged around the side, to activate the street.

I wanted to quickly kind of just take you through drawings of the garage, just to help understand how the garage functions. This is the drawing of the first garage level, the G-1 level. This is Garfield Street, this is the door that we saw in the landscaping plan where you enter the garage, and you can see that there is no garage space at this lower level, and that is because we ve omitted the parking at this corner so that we can push the semi-detached homes down in the grade, and they ll sit down more in relationship to the street, as opposed to being up kind of on a plank.

And then there s a natural kind of stepping up of the garage in this way, as the street grade follows. But the garage enters here and then gently slowly ramps down in here and by the time we re over here we re well below the grade of Cathedral Street. Then we tuck that back down and start to work into the lower level, or you can turn over here and this aisle has access directly to independent garages for the town homes. They ll have their own garage, approximately 20 feet deep by 22 feet wide, and from there they ll go -- there ll be a garage door there they can come in, go through the garage door, park in there, and then go through a door into their stair and up into their

dwelling units.

This aisle continues along and it has a few parallel parking spaces on the side, and then when it get down to this end, it s actually tucking up above this level. You can see here the garages for the last two semi-detached homes up at the intersection of Cathedral and 38th, and then there s a small kind of mezzanine parking area that hooks back over here underneath where that one s ramped.

So when you see some of the sections you may actually see an area that looks like a three-story garage, and that is the case for this little area in here, because we ve ramped down to get under there, we can actually capture a little parking mezzanine there.

Okay, the garage continues over here and then tucks back under for the G-2 level over there, and then we come back down a slight ramp and when you get back down to here, at the lower level we can go into the garages for the last three semi-detached homes here, and they function the same way. You can go up the stairs directly into the dwelling units.

Over here we have a doubled-loaded row of parking spaces, and then we also come back over here, and have more spaces here, and then continue back over there for the remainder of the parking spaces, approximately 258 spaces, 30 of those, two per semi-detached dwelling, are dedicated to the dwellings.

The existing Alban Towers has approximately 40

spaces within the building. When the building was built that s all that was provided for. That is one of the reasons for building this garage, as Mr. Kane mentioned. It needs to be brought up to modern amenities to provide an adequate amount of parking.

Real quickly, this purple color indicates on is a fire stair that s on Garfield, and the communicating stair and elevator that bring people up to the back door, and then the other exit stair and exhaust pavilion.

If it helps at all, I have some section diagrams through the garage. It may be a little difficult to see there, a bit abstract, but you can see this is the two lots at the corner of 38th and Cathedral, up at the highest point, and then you can see how we ve stepped the garage down and ramped it down to follow the grade of 38th Street. Those are the last three at the Garfield and 38th intersection. You can see how we omitted that first level of the garage so that we could push those houses down and let them follow the grade. These sections are cut sideways through the houses. Again you can see the semi-detached house, the two levels of garage, the plaza, and then the beginnings of the outline of the Alban Towers structure.

I believe that concludes all the points I wanted to made. If there s any questions --

MR. NETTLER: Let me just ask you a couple questions. You re familiar with the zoning regulations that apply

to the need for a special exception for accessory parking?

MR. WALTERS: Yes, yes.

MR. NETTLER: And are the spaces located in their entirety within 200 feet of the area in which they are accessory?

MR. WALTERS: Yes. The lot of Alban Towers backs -- you can barely see here. This is the lot of Alban Towers. So this garage immediately abuts.

MR. NETTLER: Could you maybe pick up the entire square site plan so you can -- you can show the Board how the -- the awkward shape of the lot?

MR. WALTERS: The shape of the Alban Towers lot comes across here, and then hooks back like that. So the garage lot actually just abuts it. The two lots are touching each other.

MR. NETTLER: And do all the spaces comply with the provisions of Chapter 23 regarding the size and the place of --

MR. WALTERS: Yes, they re all designed. We have a proportion of compact spaces and full-sized spaces.

MR. NETTLER: And is it at all feasible to build a garage underneath the Alban Towers apartment building?

MR. WALTERS: No, it would basically involve either demolishing the structure or very very very painstakingly removing it, and for all purposes it would be impossible.

MR. NETTLER: I have no more questions.

MR. SOCKWELL: First, tell me where the zoning district boundary resides within these two zones?

MR. WALTERS: It is the property

MR. SOCKWELL: It is the property line. And in my experience with zoning ordinance, there in Section -- in Chapter 20 under Nonconforming Uses and Structures, it has generally been interpreted that one cannot use a more restrictive zoning district for accessory parking for a structure in a less restrictive zoning district. And Section 2004 in particular, 2000.4, states that any nonconforming use of a structure or land or any nonconforming structure lawfully existing on May 12th, 1958, that remains nonconforming, and any use or structure lawfully existing that became nonconforming on May 12th of 1958, may be continued, operated, occupied, or maintained subject to the provisions of this chapter, which is Chapter 20. It does not anywhere say that it can be modified, extended, changed, redeveloped, structured, changed from structured to nonstructured.

And Section 2000.6, which is referenced in the Zoning Administrator s letter, states that a nonconforming use of land or land with structures incidental to the use of the land shall neither be extended in land area nor changed to any use except a use permitted in the district in which the property is located.

And, unfortunately, the way I read it, and it has been applied in projects that I have participated since 1988, there is a change being necessitated in abandonment of the existing nonconforming parking, which was the open lot, and the

replacement of that with a residential use under which accessory parking that would be germane to the residential use could be constructed but not germane is the parking that would be used for the Alban Towers building.

MR. NETTLER: Well, if I might respond to that.

MR. SOCKWELL: Please.

MR. NETTLER: What s happening here is a couple of things. You have actually not a complete abandonment of a nonconforming use, which was parking, as you ll note on the adjacent -- let me, if I just --

MR. SOCKWELL: Just answer one question. How long has Alban Towers been vacant?

MR. NETTLER: Alban Towers? Alban Towers, if you recall from my pre-hearing statement, has been vacant pursuant to a voluntary agreement which authorized the purchases of the building in 1995 to rehabilitate the building and then move those tenants in to that part of that voluntary agreement. So it s been vacant but not -- it hasn t been abandoned for the purpose of rehabilitating the building. The problem has been the time it s taken to get both the plans approved, since this the Secretary of Interior s Section, a tax-credit project, getting that approved by the Park Service, and being able to come up with the scheme that would allow for the tenants to be moved back in, it has unfortunately taken this amount of time. But it was never abandoned in the sense that the uses were given up.

MR. SOCKWELL: So you re saying that in the District of Columbia s eyes the certificate of occupancy on Alban Towers is currently in order?

MR. NETTLER: That s correct. The District recognizes this as simply under the rent control laws, which is how this --

MR. SOCKWELL: So the building could be occupied today. Some of the people could move into it, it s

MR. NETTLER: As long as --

MR. SOCKWELL: -- systems are functioning, windows are all there.

MR. NETTLER: As long as we comply with the voluntary agreement which required its rehabilitation.

MR. SOCKWELL: Yes, but that s different.

MR. NETTLER: No, no, that s -- for purposes of the District of Columbia, a certificate of occupancy is not abandoned if you have no intent to --

MR. SOCKWELL: That s really not the way it s written in Chapter 1 of the building code, but --

MR. NETTLER: Well, it was --

MR. SOCKWELL: There is neither gas nor electric nor water service to the building at this time, correct?

MR. NETTLER: That is not correct. There is service being provided to the building, and that service is being utilized while it s being rehabilitated.

MR. SOCKWELL: Okay, well, I mean, I won t disagree with you on this moment about whether there is gas, water, or electric. But I could very easily disagree with you on the applicability of a certificate of occupancy for the building has been out of use for ten years.

MR. NETTLER: Well, it hasn t been out of use for ten years. First, it was -- the last tenants left, as I said, in 1995. It was used as a dormitory for a portion of the time. The District has recognized since it s been having hearings on this thing since 1995 that there has been an attempt to rehabilitate this so those tenants can move back in. And that s the -- that s the effort that the Charles E. Smith agreed to become a part of when it acquired this building in a year ago as part of the group that has been proceeding with the plans with the District of Columbia and the entities that have been in existence since 1995.

MR. SOCKWELL: Are you familiar with 2100 Martin Luther King Avenue, Southeast?

MR. NETTLER: Very well. I --

MR. SOCKWELL: Particularly R-4? We were the architects for it.

MR. NETTLER: And I represented the owners of that project.

MR. SOCKWELL: Right. And none of the accessory parking for the office building could be located on the R-4 portion of the lot.

MR. NETTLER: Actually --

MR. SOCKWELL: However, access to the parking spaces was allowed. I did the zoning on it, so I know.

MR. NETTLER: And I got the Department of Consumer and Regulatory Affairs to do a waiver notwithstanding -- without having to go through a special exception or a variance to allow them to use that parking.

MR. SOCKWELL: It wasn t used for parking. That s the point I m making. There was parking where access was allowed under the zoning ordinance. It wasn t anything that required special exception or a waiver.

MR. NETTLER: It therefore has no applicability to the situation.

MR. SOCKWELL: Oh, yes, it does. But anyway --

CHAIRPERSON REID: Thank you.

MR. SOCKWELL: We ll go further on that, because it is an issue of whether or not the zoning ordinance in fact where it seems to be specific in nonconforming uses is either saying yea or nay to the fact that you can use an adjacent more restrictive zone for parking for the less restrictive zone where it is not specified within the ordinance that that can be done.

MR. NETTLER: Well, if I might just respond to that specific issue, because what s happening here is that you have, one, as the zoning administrator has recognized in his memorandum to you, you have one that a lot that is being turned into matter-

of-right uses, which are the semi-attached houses, so that the -- well, what were the principal uses of this lot, the parking that was used for the Alban Towers, is not going to be the principal use anymore on that site, but the semi-attached houses. Two, you have some of the parking that as you see on the site plan there, that is immediately adjacent to the Alban Towers apartment building, albeit in a lesser number -- lesser number, that is continuing, and three, a recognition on their part and, in fact, as well stated in here. And in their memo and is in their reviews of various permits that have been sought that because this does not required accessory parking, that the effort to utilize the parking for what is not required parking, but to join -- but to use the larger parking garage for the -- not just the semi-detached houses but for the Alban Towers apartment building is in their view appropriate through a special exception process.

Now, of course

MR. SOCKWELL: You don t have to agree.

MR. NETTLER: You don t have to agree. Nobody has appealed this. I m not aware that anybody is interested in appealing this. The community wants it.

MR. SOCKWELL: The question of whether the community wants it or not is really a secondary question when the zoning ordinance may not speak to the issue effectively or speaks to the issue seemingly effectively.

CHAIRPERSON REID: Thank you, Mr. Sockwell.

Nonetheless, I think that ultimately these decisions will be made through the DCRA, the submitting process once we get through this process here, if I m not mistaken.

MR. SOCKWELL: That s not -- that s not a DCRA issue.

CHAIRPERSON REID: Then who --

MR. NETTLER: If Mr. Sockwell would like us to present evidence on the variance aspect of it, we can certainly do that notwithstanding the zoning administrator s memorandum.

CHAIRPERSON REID: Wait one second, Mr. Nettler. Ms. Sansone?

MR. HOOD: I think Mr. Sockwell was --

CHAIRPERSON REID: Could I get a read on this particular exchange that s going back and forth?

Ultimately, how is it -- how is it determined as to the issues that are being raised?

MS. SANSONE: Madam Chair, perhaps at the conclusion of the hearing, if this is still an issue, we could do some more further legal research into the questions Mr. Sockwell is raising.

But it is my understanding what we have before us through the ZA believing that the special exception was the appropriate type of relief for the project that the applicant wants to build.

CHAIRPERSON REID: But if there is some discrepancy

or some misunderstanding, is that determination also to be made by DCRA, the Zoning Administrator s office, or us?

MS. SANSONE: Madam Chair, the DCRA hasn t identified a discrepancy, but if the Board feels that the ZA s interpretation is not correct or that some additional issues need to be looked at, then we can look at it perhaps after the conclusion of the hearing, or leave the record open for additional briefing. I m not prepared to, right at this moment, to answer Mr. Sockwell s issues, but I d be happy to look at them.

CHAIRPERSON REID: Okay.

MR. HOOD: Madam Chair, I think that s an order for corporation counsel to look at --

CHAIRPERSON REID: Inappropriate?

MR. HOOD: -- and inappropriate for us. That is very -- that was an interesting dialogue out there is something that may have missed. So I would feel comfortable --

CHAIRPERSON REID: And I don t feel comfortable as a board to make a decision or determination one way or the other, and I d rather defer to those entities that are best equipped to do so, and Mrs. Sansone will look into it and then so advise us as to how it should be best handled.

MR. NETTLER: Well, since Mr. Sockwell raises the issue, and since we are here today, as has been properly advertised, I d rather then have a full record that would address what the issue was I think that Mr. Sockwell is raising that might

be a variance issue even if the ultimate determination is that a special exception is all that is needed.

At least you ll have on the record an ability to resolve either one of those without us having to have another hearing, without us having to have any other proceeding other than what you have on the record, which is, we think, sufficient to support either one of those requirements.

As you know, the ANC has supported either one of them, the submissions by the neighbors supports either one of the avenues of relief that were sought, or at least that were advertised.

And Mr. Kane is certainly able to testify to the issue regarding the uniqueness of the site and the hardship that would result on being unable to use a garage for parking which I think the community recognized would be an enormous hardship on themselves, as well, but I understand that that s not the issue before you.

CHAIRPERSON REID: Well, I think that under the circumstances, Mr. Nettler, the best thing for us to do is to do is proceed, predicated upon the letter from the zoning administrator, from Michael Johnson, that has designated specifically the type of relief that is appropriate in this instance.

And then if at the conclusion of your hearing, Mr. Sockwell then determines that more relief is needed, or whatever,

then that -- Mrs. Sansone will still advise as to how that could be best accomplished.

Nonetheless, we ll just proceed with what we have before us today.

MR. NETTLER: I would request the -- if I might respond, because we have a situation where, as I said, it has been advertised, there s an issue raised, and we don t want to have another hearing because

CHAIRPERSON REID: It has been advertised as an special exception.

MR. NETTLER: And as a variance. It was advertised as both. The Zoning Administrator

CHAIRPERSON REID: It was advertised as both, but then the letter -- the memo that we received today specifically speaks to just the special exception.

MR. NETTLER: But Mr. Sockwell is suggesting that the letter may not be -- he may not be in agreement with the memorandum from the Zoning Administrator. I don t want to have this record --

CHAIRPERSON REID: Okay.

MR. NETTLER: -- left without having the testimony --

CHAIRPERSON REID: Okay, so you re saying that you re going to basically make a case for both?

MR. NETTLER: I m certainly willing to do so.

CHAIRPERSON REID: For the variance, and then that would take care of it?

MR. NETTLER: That would take care of it.

CHAIRPERSON REID: Okay.

MR. NETTLER: That s right.

CHAIR REID: All right. I think that will probably -- Mrs. Sansone --

MS. SANSONE: I think that that would be the most efficient way to proceed.

CHAIRPERSON REID: Okay. Thank you.

MR. NETTLER: And I ll recall Mr. Kane so he can address those issues, so let me ask him some questions.

If you could, Mr. Kane, address the issues regarding the uniqueness of the site, the hardship that would be entailed in trying to and being unable to use the site for parking for both the Alban Towers apartment -- for the Alban Towers apartment building.

MR. KANE: As I mentioned, the existing building is in an R-5-D district, and it s 326,961 square feet. The exterior and portions of the interior have been designated as a historic landmark.

The building is obsolete and cannot sufficiently be renovated to be used as an up-to-date modern apartment building. The problem, however, for any developer over the last five years has been the fact that the cost of the rehabilitation far exceeds

any reasonable return on investment from the rent-controlled property.

As I ve been told by my attorney, under a decision by the Court of Appeals, the interior and exterior historic landmark designation alone provides for an exceptional or extraordinary condition. The structure may not be demolished, since it is protected under D.C. Law 2-144. Thus, because of the historic preservation constraints, neither a new apartment building, nor an underground garage for the existing building, can be constructed on the site.

The total square, which is irregularly N-shaped, is split-zoned and has a significant slope in the R-2 portion of the square. And it also presents several environmental problems which require abatement.

The apartment building has 1700 lead-painted windows which must be completely replaced. The building had asbestos throughout the structure, which was abated, and underground storage tanks which had to be removed and any contamination mitigated.

This entailed substantial expenses, the magnitude of which would tend to exclude any successful rehabilitation since the cost associated with remediation, and the profits to be derived from a rent-controlled building in this instance are not adequate to generate sufficient capital to both acquire the building and rehabilitate it.

As has been found by previous developers who have attempted to restore the apartment building, the premises cannot be put to a conforming use with a fair and reasonable return to the applicant without parking being provided to the tenants.

Thus, the only portion of the site -- of the larger site owned by us which could accommodate the parking was the rear portion in the R-2 district, which has historically been used for accessory parking above ground.

MR. NETTLER: If I might maybe take an unusual step and have myself as a witness since I have transferred with the property with every subsequent developer, in terms of who s looked at this property has come to me to try and find a solution for rehabilitating the building. And if I might provide you with some back ground so you understand even to a greater extent than what Mr. Kane said, that Charles E. Smith just came into this a year ago, to really understand the problems associated with the site of the building and why this parking is needed for variance purposes.

If you have no problem with that, I know it s unusual, but I think perhaps given the questions raised by Mr. Sockwell, I d certainly be willing to respond to those if you would like.

CHAIRPERSON REID: Let s check with Board counsel. Is that --

MS. SANSONE: Madam Chair, I believe that would be permissible. Mr. Nettler wasn t sworn in, if I remember, and he

would be subjecting himself to any cross-examination from the parties that --

CHAIRPERSON REID: He should be sworn.

MS. SANSONE: Yes, he should be sworn.

MR. NETTLER: And since Mr. Slade was neither, you could swear him in at the same time if you d like to.

CHAIRPERSON REID: Mr. Slade wasn t sworn?

MR. NETTLER: He came in late, unfortunately.

CHAIRPERSON REID: Okay. All right.

(Witnesses Richard Nettler and Mr. Slade were sworn.)

MR. NETTLER: My name is Richard Nettler, and I reside at 3811 Grovesner Drive, Ellicott City, Maryland 21042.

I was asked by IBG, which purchased this building from Georgetown University in 19 -- I believe it was 1995 -- to represent them in seeking the rehabilitation of the building for use by the tenants who were then signed and who at that time were interested in staying in the building.

The building had over a number of years been vacated by Georgetown University which was using it as a dormitory and for an apartment building, and by 1995 there were approximately 10 tenants left.

Georgetown University was using the rear portion, there was a small house on the rear portion on Garfield Street, and it was using the rest of the site as had been used for a very

very long time. Historically with the site for some parking. There were three parking pads on there on the rear of the site which in the R-2 section.

The IBG developed plans for the rehabilitation of the building, had those plans approved by the Historic Preservation Review Board in 1996 and it became clear as soon as those plans were approved that it was financially infeasible to rehabilitate the building in accordance with the plans.

So the ability to move those tenants back in required IBG to find somebody who was willing to come in and do this work, and IBG at that time was seeking rehabilitation tax credits.

There were, as Mr. Kane said, a number of environmental issues that confronted them, the lead-paint windows, the asbestos, the underground storage tank, the rear portion was completely overgrown, except for the portions that were being used for parking.

I was asked to develop a plan for being able to use the rear so that it would make the rear portion of the site make the Alban Towers feasible for rental property. And a number of suggestions were discussed with the Office of Planning, including the rezoning of the site, including going through the comprehensive planning process, including even building out the rear of the site to a more dense number of houses still permitted under the R-2 as a matter of right.

The Office of Planning and I had reviewed the situation in terms of being able to put a more dense apartment building on the rear as impractical, and, in fact, the Zoning Commission had in the 1960's rejected a rezoning petition for the rear of that site for that purpose.

The IBG then obtained a partner; I transferred with that partner to Starwood, which is a large national organization that is a used to developing a variety of different parcels of property and Starwood came into this, and after a substantial period of time of trying tow ork something out with the community, also found it to be infeasible to rehabilitate given the enormous costs associated with the rehabilitation and the other measures that needed to be undertaken on the rear of the site.

Starwood then replaced IBG, but Starwood then sought another partner who might be willing to do this, which was Folger Pratt, and we may be starting going through most of the major developers now in the area who became interested in this, and Folger Pratt, out in Maryland, also saw this as a possibility, but instead they brought in another partner, which was the American Retirement Corporation as the possibility of turning this into a residential use that would be used by senior citizens, again, using the rear of the site to provide accessory uses for that senior living situation.

However, the problem with the senior living situation was that because the property is rent controlled, the

American Retirement Corporation could not convert the building to the type of use it needed for the American Retirement Corporation, and because the rents are limited under rent control by this voluntary agreement that was entered into between the former tenants and IBG, it couldn t accumulate enough money that would solve that problem.

In particular, with regard to the rent control, unlike most other projects in the city where you do a complete gut and rehabilitation of a former apartment building that has previously been under rent control, which you can then take out of rent control by doing that work, because this was subject to a voluntary agreement you could not get out from under the rent control situation, so you had that limitation that was placed on the property as well by the City.

Charlie Smith came into this, had looked at this property for a number of years and came into this and looked instead at a condominium approach to the rear of the site. The condominium approach, which actually the City had suggested, which would allow for matter-of-right development of the semi-attached houses, again, through a condominium, a separation of the R-2 lot from the R-5-B, again through a condominium situation, and a utilization of an underground garage, which could be constructed under this condominium s regime as a means of providing the parking spaces they felt were necessary to generate the basis for rehabilitating the Alban Towers apartment building.

As I said at the beginning of our presentation, because of the community concerns about restricting the use of the rear of that because of the desire to sell the parcels as fee simple, because of these other issues that you will see that have been resolved, I think, in the agreements we have with the community and the ability to provide this landscaped amenity in the rear, everyone came together actually and concluded that the best way of insuring the rehabilitation of a building that had been vacant for that long and of assuring the community that the use would be for residential uses -- that is the parking garage for residential uses -- was to come before you in seeking a special exception.

And the special exception process, I might say, and advertises of variance as well, was aimed at one additional primary objective, and that was to ensure that by January when the apartment building could begin to be occupied that there was going to be a garage to put the cars into, rather than having 200 and something cars around the site or in the neighborhood, precluding other people from being able to park their cars.

So as a consequence we have a very, and what I believe is a certainly unique condition under the Court of Appeals decision in *United Unions Inc. v. Board of Zoning Adjustment*, which directly addressed the situation when you have a historic landmark in the city and what its impact is on getting a variance, which presents the first criteria, and secondly, in terms of the

hardship that would -- attended to any person who would attempt to develop the site, both from a matter-of-right standpoint with the apartment uses and the rear of the site for the semi-detached houses in terms of generating the income that would be necessary to complete that work and to take what was once, in 1929 and thereafter, a not only a historic building but a significant apartment building in the history of the District of Columbia, and which has been recognized as such and one of only three in the City that has its interiors as well being designated to where we are today where we have the very real situation of having a building rehabilitated because of what can be generated from being able to have those cars parked underneath the semi-detached houses.

I would -- any questions that you might ask of me? I m free to answer.

CHAIRPERSON REID: Well, I must say, that was rather succinct and it for me clarified quite a bit of the issues that we had about previously. Do any of the Board members have any other question for Mr. Nettler in regard to his testimony?

MS. RENSHAW: Questions for perhaps Mr. Kane, or the architect?

MR. NETTLER: We do have two other witnesses, the landscape architect who will give you an idea of what -- there really is something special that s being done back here, which I think is the first time in the City; and the traffic expert who

has to address the traffic issues.

MS. RENSHAW: Well, why don t we get through all of the testimony.

MR. McCLURE: My name is Craig McClure, and I m a landscape architect with Lee & Liu Associates here in the District of Columbia.

MR. NETTLER: I had submitted a resume for Mr. Liu, who couldn t be here. I have one from Mr. McClure, who s worked with him, as well as some copies of what you see today.

MR. McCLURE: May I go ahead?

CHAIRPERSON REID: Just one moment, please.

Okay. All right. Board members, are there any objections to accepting Mr. Liu as an expert witness?

MR. NETTLER: Mr. McClure.

CHAIRPERSON REID: Mr. McClure? Wait, wait, wait. What did you -- you said that you --

MR. NETTLER: Mr. McClure is here, who works with Mr. Liu. I m passing out his credentials right now.

CHAIRPERSON REID: Oh, okay. I m sorry. I was thinking it was just the opposite, that Mr. Liu was here.

MR. NETTLER: You ll see from his resume that he has substantial experience as a landscape architect with a enormous number of projects, including here in the District of Columbia, the Federal Triangle, the FBI offices, Pepco-D.C. headquarters, Hillendale, Georgetown.

MR. SOCKWELL: Mr. McClure, how many years have you been a practicing landscape architect?

MR. MCCLURE: Thirteen years.

MR. SOCKWELL: Thank you.

CHAIRPERSON REID: Okay. Do the Board members have no objections to accepting Mr. McClure as an expert witness?

Okay. Fine, thank you.

MR. McCLURE: And everyone can hear me? Is that any better?

I d first like to begin with the existing Alban Towers structure building area. With the street trees that are required by the D.C. City street tree master plan on Wisconsin Avenue we have northern red oaks that are required there, some existing red oaks here, and we re going to add red oak trees to augment the streetscape along this street.

Then on Massachusetts Avenue, there are two existing oak trees that we re going to retain, then on Garfield Street we have Norway Maples. These will be proposed street trees here. The City requires 4- -inch caliper trees, and we are proposing to place 6-inch caliper trees to get a good immediate effect when we open the complex.

The sidewalk treatment around this portion of the site is going to be the standard D.C. scored concrete paving, three by three grid, and at the back edge, we re going to implement a radius curb that s 12 inches; it s concrete and it s

very reminiscent of how the building looked when it first opened back in 1928. You see that treatment done at a lot of National Park Service parks in the City.

MR. SOCKWELL: Wold you repeat that last statement about the 12 inches?

MR. McCLURE: There s a radius curb that runs around the back side of the sidewalk, and it s 12-inch radius; you see it in a lot of the parks down here in town.

At the major entry points around the site, we re going to do some special paving that will be bluestone paving with a pattern to it, to denote the entrance spaces, and the drop-off area also will be treated with special pavers as well.

Between the sidewalk and the building -- it is in the public right-of-way -- there is a slope that occurs from the radius curve to the building it s about three feet in height. It will slope down to the radius curve from the building, and it will be planted with -- it will be - there ll be a foundation planting along the building that will be exposing some portions of the building, which is very much like the way it was treated when it first opened. It s an English landscape treatment, where you ll see portions of the building popping out of the ground plane, and in the other portions of the slope we ll have liriope, it s a small ornamental grass. And the liriope will be used in the tree-planting spaces here, as well, to continue that theme.

You ll notice that there are recessed bays in the

building, and in those recessed bays, or in front of the recessed bays, we ll have columnar hornbeam trees to denote those special areas within the building. However, they re not accessible, but I ll talk about those in a moment.

There ll also be ornamental tree accents along the streetscape as well. They re represented in the pink shapes.

In the front there will be a more formal landscape treatment. It won t be broken up as much as you have here on the sides. And that is to set the building up and give us a grand entry to the building. And we ll also have areas of seasonal color that will occur at the corner, at the entry here, and at the front entry in this space.

I spoke earlier of these spaces here, the recessed bays. These are going to be visual gardens that can be seen from above in the apartments that surround the spaces. There ll be an iron security fence that will close that off for security purposes and it will be very -- there ll be very little detail on it, so it will recess in the landscape so that that won t be what you re looking at, and there will be a maintenance gate -- a maintenance gate there.

These three spaces are located on top of the structure, so they have a limited soil bed, so we ll be doing patterning in these spaces that we ll use gravel, ground cover, and perennials to make a nice visual appearance from above.

MR. NETTLER: Could you focus on the area around

the proposed garage and park and above it?

MR. McCLURE: I ll talk about the treatment of the streetscape on this portion here, also. Cathedral Avenue is pin oak, that s Cathedral here, pin oak. Thirty-eighth Street will be red maple, and Garfield Street will be Norway maple. We ll retain several existing trees if it s at all possible.

The sidewalk treatment in those zones also be in the scored concrete paving that I spoke of earlier, and there will be low retaining walls around this portion here, and this zone here will be treated by another landscape architectural firm.

Then that brings us into the zone here, which is a wonderful opportunity that we ve gotten to design an urban park or plaza between the two -- the two facilities. A little bit of an overview, it s a linear garden covering about one-third of the garage structure below, and the purpose of the garden, there s several good purposes for the garden. It s a pleasant view from the towers. It provides a good buffer between the two -- between the two uses, and it s an excellent opportunity for an amenity for the residents of the tower -- for the residents of the homes here, the semi-detached homes, as well as the surrounding community.

The design origin, it s a very linear English bordered art, is where we started with this, and it features levels and terraces as it steps from the higher zone here to the lower zone in grade, and it s divided into five distinct garden rooms that you can see here in the plan. It s divided into these

rooms so that we can have a variety of use.

You ll notice that there are hardscaped areas planned for the areas closest to the stairway pavilions, where you ll have more foot traffic, and then there ll be lawn spaces that will connect all those hardscaped spaces.

So, we started to think of this as an opportunity to do something greater than just that, and what we ve done is we ve designed a butterfly garden. And with this drawing you can get a good sense of how the -- how the parking structure works with grade.

So what we did is we hired a butterfly consultant, who worked at the National Arboretum and also with the Smithsonian Butterfly Garden downtown here. And we also had a design charrette. With the Washington Butterfly society, so we got quite a lot of involvement from the community on this. A lot of people were very excited about this process.

And what we did was we identified a list of butterflies that we hope to attract, and this represents the butterflies that we figured that we could get here. And we even included a few that we hope to get that we might not get, just to see if it could be done.

Then after we determined what butterflies we wanted to get, we looked at the types of plants that would attract those butterflies. You need two kinds of plants to attract butterflies. One are nectar plants, and the other are host plants. And what

we did was we grouped -- we grouped the plants. The host plants are mainly located in these two areas, and the nectar plants are located in the three nodes near the stairway pavilions. And each individual space has its own distinct treatment, to give diversity for the space.

Each end we have -- here and here we have plants that we figured would be like a neon sign advertising the butterfly garden to butterflies. We picked the plants that most attracted butterflies and put those at those zones.

Then in Zone A here we have a pink and lavender scheme with herbs in the focal point and perennials in the ground plane, and we have crepe myrtle surrounding that zone. And we have a black gum tree as the terminus which gets a beautiful orange fall color.

Zone B has an evergreen border, zelcoba trees, and ground cover border in there as well as a lawn below.

Zone C has sweet bay magnolia trees and perennials around the border.

Zone D has columnar hornbeam trees, which you ll remember were out front, so we re trying to tie the front and the back together, and there are perennials around that as well. That s not right. There s lawn actually here with host grasses in that zone.

And then Zone E is a more natural approach with another black gum tree as the terminus to that dead end of the

garden.

MR. NETTLER: Will those zones hide the access into the alley or garage?

MR. McCLURE: They ll help blend it into the landscape more softly. And they re integral to the scheme that we re trying to do with the garden and the architecture. The transition is done really between the two, between the two spaces.

Then, paving, we have in the end, middle, and -- well, the two end zones, the two end gardens, we have precast concrete pavers with a precast concrete border band.

In the middle node, it s a little more detailed with bluestone border and brick infill, and then the connecting spaces use crushed gravel paving, similar to that that you see down on The Mall.

Other elements of the garden include sculpture focal points, and these two spaces, there s a four to six foot high garden wall that runs the length of the garden and interior divider walls here at this end with ornamental gates.

Other things that butterflies require, they require a place to bask in the sun, so there s plenty of hardscaped spaces, stones here and there, and the walls, they can bask on the walls. And the walls, stair pavilions, and the host plants provide shelter for those butterflies.

MR. NETTLER: Thank you very much. Let me also explain that this area, as you can see from the site plan, is

within the rear yards of the houses, and what doing this will result in is a limitation on anybody being able to build onto -- create any more density on the rear of those semi-detached houses, so there ll be a reciprocal easement agreement that actually will preclude that from happening, so you ll have a landscaped area maintained in perpetuity, and that s also part of the agreement with the neighbors, to ensure that was -- that you have this landscaped area and it s not a gated landscape area, it s one that s open to the entire community.

CHAIRPERSON REID: Thank you. That appears to be a very pretty design. I like the idea of the butterfly garden.

MR. MOULDEN: I didn t notice any other amenities such as benches, or special things like that. Do you have them?

MR. McCLURE: Yes, there are benches.

MR. MOULDEN: Okay.

MR. McCLURE: In fact, in this space there are custom-made 32-foot-long --

CHAIRPERSON REID: People sit out --

MR. MOULDEN: -- at the other end too?

MR. McCLURE: There are four benches and there are eight four-foot benches.

MR. MOULDEN: Okay, Now between the rear of the homes and the landscaping, what is that, like a little alley, a walkway?

MR. McCLURE: This is the -- this piece here?

MR. MOULDEN: Yes.

MR. McCLURE: This is the garden wall.

MR. NETTLER: No. This is the back yards to the houses.

MR. MOULDEN: What s between the back yard and the landscape, is it a walkway, or just --

MR. McCLURE: This right here is a brick wall.

MR. MOULDEN: That s a brick wall? Okay.

MR. NETTLER: What we re trying to do is, we re not trying to have the owners of the houses assume that this is just theirs, so what we want then is to be, they, like the rest of the community, to access the garden, even though it s in the back of their back yards, the same way the community will, which is on the sides of the street, and through the actually what is a private alley that runs, not even a private alley, it s used as a private alley that runs adjacent to the Alban Towers apartment building and this landscaped area, which is essentially in the property line within the --

MR. MOULDEN: So to access the garden, you have to kind of walk up the block, come around --

MR. NETTLER: Again, we don t want anybody to perceive this as theirs, as opposed to a group of people s.

MR. HOOD: Madam Chair, we have some questions. Who s going to maintain that?

MR. KANE: Charles E. Smith.

MR. HOOD: Fifteen years from now, Charles E. Smith is going to come back and maintain that butterfly garden?

MR. KANE: Yes, sir.

MS. RENSHAW: Is it guaranteed? Do we have guarantee?

MR. HOOD: So you re going to enter into agreement for what is it, 99 years, or --

MR. NETTLER: It s in perpetuity. Charles E. Smith is a REIT, is on the stock exchange, the reason it has Alban Towers is because it s a rental property, so it can t be a condominium, so Charles E. Smith and the agreement actually provide that to the extent that Charles E. Smith should sell its right to that, whoever purchases those will also be required to maintain that area. So as long as there s a building there, as long as there s a landscaped -- as long as there s a building there, it will be maintained by the owner of that apartment building.

MR. SOCKWELL: Mr. Hood, just for information on histories, it s like death and taxes. You know, they re always there.

MR. HOOD: Mr. Sockwell, that was the joke, but I m saying --

MR. SOCKWELL: That s not in a negative sense, but they re a long-term owner, occupier, maintenance, management company with a very very high standing in the community. They ve

been around for a --

MR. HOOD: I m very familiar with Charles E. Smith, but my concern is I know how things are done. I m not saying Charles E. Smith -- I m not putting you in that category. But I have seen things, and they look nice in the beginning. Ten years later they look like nobody s ever taken care of it. So that s the concern that I wanted to --

MR. NETTLER: And actually the agreement that provides for that, it will be a matter of public record. It will be a recorded document. That we re actually asking -- we ll be asking for it to be a part of this B.Z.A. order as well.

MS. RENSHAW: So the company will maintain the design of this garden and the front of the building?

MR. NETTLER: All landscaped areas that are not --

MS. RENSHAW: All landscaped, thank you.

MR. NETTLER: Public landscaped areas, and as well, the agreement provides for Charles E. Smith to be maintaining one of the public parks across, is it Massachusetts Avenue? Massachusetts Avenue as well, for the City. That s right.

CHAIRPERSON REID: Okay, let s --

MR. NETTLER: We have one, who I think will be brief, which is Mr. Slade.

CHAIRPERSON REID: What I wanted to do was --

Mr. Slade is the last witness?

MR. NETTLER: He s the last.

CHAIRPERSON REID: Okay, then let s -- we ll let Mr. Slade make his presentation and then we ll have a ten-minute recess and then come back with questions. How is that? Okay?

MR. SLADE: Madam Chair, members of the Board, for the record, I m Louis Slade, I reside at 3500 Quesada Street, I m a principal with Grove Slade, and our firm is the traffic and parking consultant to the Smith Companies and this project.

I m going to make reference to Garfield Street as a collector street, and I mean on the traffic sense, not in the butterfly sense. That s my little joke this afternoon.

This will be a brief presentation. I ll talk about the site access for parking, the traffic impacts of the projects, the parking provisions of the project, and a brief note, and then my conclusion.

The architect spoke about the way the garage access works on Garfield Street from the standpoint of the design of the garage, and keeping the townhouses at a lower elevation. Fortuitously, it s also the best location for the garage access. The square has access to five streets. Wisconsin Avenue and Massachusetts Avenue, which are major arterials; Cathedral, which is a minor arterial; Garfield, which is a collector street; and 38th Street, which is a local street.

Ideally, we would have access, and we do have access in this case, on Garfield Street, which is a collector, because our traffic turning in and out of that driveway won t

interfere with the heavy, faster traffic movements on the arterials, and it will have a minimal impact on the local community street, 38th Street.

I want to note that Garfield plays an important role in the street network here. When you are heading southbound on Wisconsin Avenue, and you want to turn left to go downtown on Massachusetts Avenue, you can t make that left turn at the Wisconsin and Massachusetts intersection, but you come down to Garfield and make a left turn across from the site. So that portion of Garfield is heavily used. And the portion of Garfield that abuts the site collects traffic from this immediate neighborhood, but it also is a connection from the New Mexico Avenue corridor over to Mass. Avenue, Wisconsin Avenue, so, it s a very important little street that we are locating our driveway on.

From the traffic standpoint, as I have testified before on other residential projects, projects of this type and in this kind of neighborhood, which has very good bus -- metro service -- metro bus service, the tenants in the apartment building and the homes tend to not use their cars for commuting as much as people do in single-family neighborhoods. People will own cars, but they ll for the most part store their cars during the weekday in the garage, use public transportation or walk to work, and then use their car on weekday evenings and on weekends to a greater extent than in other locations.

So, based on experience we ve had at other projects where the building was already occupied and we ve done traffic counts, we expect that the traffic generation here will be very low. We made a conservatively high estimate of traffic generation in order to test what the impacts would be, and we determined, first of all, that most of the traffic will be oriented to the east to get to Wisconsin Avenue and Massachusetts Avenue, and, therefore, the impacts will be concentrated at the intersection of Garfield and Cathedral -- I m sorry, Garfield and Wisconsin.

At the present time, that intersection is not operating well. It s operating in the morning peak hour at a level service F, and that s because of the heavy southbound traffic on Wisconsin Avenue, some of which is trying to turn left onto Garfield and another portion of which is trying to continue south toward Georgetown.

What we determined, however, was that even with the addition of our traffic, that traffic signal can be made to operate better. It currently is a three-phased traffic signal. If you ve used it, you know that there is a left-turn arrow there. What we are proposing, and we will work with the Department of Public Works, is to actually add a phase so that when traffic is coming from Garfield Street, from the west, it will have its own phase, so left-turning cars don t block cars that want to go through or turn right. And while there s a small amount of left-turning traffic coming from the west heading eastbound on

Garfield, one car, of course, can block a lane while it s waiting to make that left turn. So we would split the phase on Garfield so those left turns can move freely without opposition from the opposing traffic. That would actually improve the level of service and reduce the delay and congestion at this intersection to better than what it is today.

This project will have very little impacts at other intersections. It disburses -- the traffic disburses as it gets away from the site, and so this is the focal point of where our impacts are. As I said, we can mitigate those impacts.

From the standpoint of the parking supply here, this project will provide quite adequately for the needs of the tenants and their visitors and companies who are servicing these residents in this square. There ll be two parking spaces for each of the detached homes -- I m sorry, attached homes, semi-attached homes, and there ll be one parking space for each of the apartment units, and based on research we ve done in the District of Columbia, in these kinds of locations that will be quite adequate to ensure that there should be very little cause for anyone to have to park on the street who has a destination in the square.

Then, finally, with regard to a just a note I want to make --

MR. NETTLER: Let me just ask you a question.

MR. SLADE: Yes.

MR. NETTLER: Do you -- I had filed a copy of the

study that you had done earlier this year, when one of the streets was being repaired. Did you go back and look at that study, and the situation once the street s now been repaired?

MR. NETTLER: Yes, Cathedral was under reconstruction, and was operating either carrying no traffic at all during certain times of the day, or one way only during other times of the day. When we did our traffic counts in January and February, that was the condition, so we had to do some guesstimating as to what the conditions would be when Cathedral was fully open to traffic.

We were able to go back last week and to a traffic count and confirm that the assumptions we made were roughly right and were, in fact, on the conservative side showing worse levels of service than actually are occurring. So we were able to correct or to augment the information with this new data and confirm that the conclusions of the study that were submitted are still accurate.

I do want to note that the proposed parking use in this application is a non-required -- is accessory use and not a principal use, but the parking use is very important to the viability of Alban Towers for tenants who will want to have cars here, and therefore it would be inappropriate to put a time limit on the special exception that would allow this accessory use to take place.

In conclusion, from the perspective of traffic and

parking, this is an excellent project. It allows people to live in the City, to park their cars on-site and not have an impact on the neighborhood and have minimal traffic impacts to the design and to the commitments of the Smith Company made to -- with DPW and to continue to work with the neighbors and the community on other traffic mitigation measures that may be done in the vicinity of this square.

In my opinion, the Alban Towers project will have no adverse impact on traffic and parking conditions.

Thank you.

CHAIRPERSON REID: Okay.

MR. NETTLER: I would like to provide you with a copy of the agreement as well that we have been referencing, if I could submit that to the record.

CHAIRPERSON REID: Thank you. Now we ll recess for ten minutes and we ll come back and pick up with questions from Board members and cross-examination.

Thank you.

(Whereupon, the foregoing matter went off the record at 4:17 p.m. and went back on the record at 4:35 p.m.)

CHAIRPERSON REID: Is Mr. Slade here?

MS. RENSHAW: I have several questions, and I ll kind of hop through all of them as we re looking at the clock here.

I d like to know about -- something about that

garage door, because it s going to be opened and closed what could be hundreds of times during the day, and I d like to hear what kind of materials it s like. How are you handling that?

MR. WALTERS: It will be a coiling metal door, and the intention now is to have a sensor mounted on the building. There might be something like a decal on the bumper of the car as soon as they pull up, it would automatically raise itself, and then as they pull through, it would lower itself.

MS. RENSHAW: Is it going to be without sound, or will there be the clanking of the metal door?

MR. WALTERS: I think, you know, through maintenance, the attempt would be to keep it well lubricated and functioning properly so that it wouldn t be an annoying distraction to the neighborhood.

MS. RENSHAW: Okay. All right. And is that maintained by the company, or is that a separate company? Is that maintained by the Smith Company?

MR. KANE: It will be maintained by Smith.

MS. RENSHAW: All right. Thank you. Is that area behind the apartment house an official alley, or is it just a pass-through?

MR. WALTERS: It s a private drive. It s on private property.

MS. RENSHAW: All right. But trash pickups will be made from that area?

MR. WALTERS: That s correct.

MS. RENSHAW: And can you tell me how many times a week you re going to have to have trash pickup? Twice? Three times?

MR. KANE: We anticipate maybe two to three times a week, and what we try to do is group the trash pickup in the middle of the property to mitigate the impact with the neighbors.

MS. RENSHAW: I ask the question because we have complaints to the ANC, to my ANC, for instance, about trucks, commercial trucks, backing up into alleyways or private ways and the noise of the -- the sound of the backup.

MR. KANE: And that concern has been shared with us by the neighbors. And so what we re trying to do is come up with a circular pattern so there won t be any backing up of trucks with the beepers.

MS. RENSHAW: All right. And the noise of the garage exhaust system is -- how noisy is that going to be?

MR. WALTERS: The fans will probably be located lower within the garage, so there shouldn t be a perceptible noise, and the discharge is approximately 15 feet above grade, so at the ground plane -- it s occurring above where people will be.

MS. RENSHAW: All right.

MR. KANE: And again, that s a concern the neighbors raised, and we tried to move that as far away from 38th Street and Garfield Street neighbors as we possibly can.

MS. RENSHAW: Okay. Are you going to have to do blasting?

MR. KANE: No, there s no blasting.

MS. RENSHAW: No there s no blasting?

MR. KANE: No blasting anticipated. In fact, we ve paid extra to do auger cast piling on the garage, approximately $50,000, and in our agreement with the neighbors we do not anticipate doing any pile driving, and for -- if there are unforeseen circumstances where that comes up, we have a minimum of 72-hour notice to the neighbors, and we are striving to make sure that that exceeds that and we will explain to them the reasons for the blasting.

MS. RENSHAW: All right. I wanted to ask some questions about the back ends of those houses. Now, is the Smith Company going to be developing those townhouses?

MR. KANE: No, the Smith Company will be selling those townhouse lots to an outside developer.

MS. RENSHAW: And has that been done, or is it in the process of being done?

MR. NETTLER: There is a contract to sell them. The same architect, who s sitting on my right is working on the designs of those, and, in fact, it provides the opportunity to actually have designed rears of the houses that you don t otherwise have, and that is the plan, and you ll see in the agreement also the community will have an opportunity to comment

on the designs, as well, even though those are matter-of-right houses. They will have an opportunity to comment.

MS. RENSHAW: Well, I just had the vision of a lot of decks coming out the back ends of those houses, hanging over the gardens, almost, and would ruin the look of that --

MR. NETTLER: Well, they won t be allowed to, actually because --

MR. WALTERS: There are no above-grade decks -- there s a terrace at grade, there s possibly a small French balcony that will not -- it will just allow you to open French doors and lean out.

MS. RENSHAW: All right. Is there going to be a restaurant in this building?

MR. KANE: No.

MS. RENSHAW: And why not?

MR. KANE: There ve been a number of discussions about that. In our early meetings with the neighbors, the idea of parking, delivery, trash pickup for the restaurant came into play, and we decided to eliminate that to help mitigate some of the situations.

MS. RENSHAW: All right, and is Mr. Slade back in the room? Mr. Slade, I want to direct your attention to this business of one parking space for each apartment unit. These people may have friends. Where are they going to park? On the street?

MR. SLADE: Our research and the U.S. Census shows that in neighborhoods like this the number of cars per occupied unit is a fraction of one. Usually down around .65 to .7, and so there ll be that fraction available even at 2:00 in the morning when everyone s home. During the middle of the day, some portion of the tenants do leave, and these spaces won t be rigorously assigned to each unit, so that there s vacancies during the daytime in kind of shared parking arrangement so that if you or I were living here and we had a guest coming or we had a vendor coming to fix -- the plumber coming to the fix the faucet, or to do something like that, there would be space within the garage --

MS. RENSHAW: How would those people get into the garage if the door is on a sensor system?

MR. KANE: There s actually two garages. As you know, there are existing 40 spaces in the building, and that s where we anticipate capturing either visitors during the day and/or service personnel. And they ll be keyed into the front gate through a security system.

MS. RENSHAW: And the parking garage for the existing building is exactly where? Where is the entrance?

MR. WALTERS: It s placed right there. It s off the service drive.

MS. RENSHAW: All right, okay. Thank you. And how are you handling the townhouse garage separation?

MR. WALTERS: We have a concrete block wall around

the garages and then they have their own garage door that will come down within the garage to define their parking space.

MS. RENSHAW: And what measures are you putting into place to provide for air quality for these -- for the whole area?

MR. WALTERS: There is the --

MS. RENSHAW: With the addition of all of this traffic?

MR. WALTERS: I m sorry, within the garage, or?

MS. RENSHAW: Well, in the area surrounding the garage opening.

MR. NETTLER: You ll see -- excuse, me, you ll see Volume Two of our prehearing statement is a study that was done actually of the impact of all of these uses on air quality, which found that we are certainly within - we are way within the limits, and I know it s a lengthy report, but we did have a study done --

MS. RENSHAW: I took a look at it. I did indeed.

CHAIRPERSON REID: But, Mrs. Renshaw, how many more questions do you have? You did ask a series of several questions.

MS. RENSHAW: I know, and I m going through this very quickly, and I have just one more statement that -- Mr. Slade, I really do believe that the traffic impact is going to be a lot heavier than you have maintained today, and perhaps this will come up with the residents from the neighborhood who are

talking to this point. But I am looking at Garfield Street, which is just a neighborhood Street, and I foresee that Garfield Street and 38th Street are going to be impacted with the traffic, the overflow traffic from this development, and if you could address the last comment at this time to those concerns.

MR. SLADE: The concerns you raised, MS. Renshaw, are the same concerns the community s raised, and we ve been discussing them with them. Ideally, all of this traffic would come out of that garage entrance and turn left and head toward Wisconsin Avenue, and/or continue to Mass. Avenue and have minimal impact on the community, but, of course, some people will want to go to the west, or will, for some reason, want to go around the block and head toward Cathedral.

What we ve discussed in very general terms, admittedly, with the community, is working with them and DPW on a neighborhood traffic mitigation plan that would try to minimize that, if not eliminate it completely, so that the Alban Towers traffic has minimal impact on the neighborhood streets.

The section of Garfield between Wisconsin and 38th does a lot of work moving traffic through there, and one of the people who, I think, will are maybe asking some questions today or testifying today is concerned about -- mentioned her concern about curb parking there. We believe that adjusting the curb parking and perhaps losing some spaces will be -- should be done now regardless of the Alban Towers project to make that section of

Garfield work better so that cars don t back up the length of the block and can queue up and efficiently move through that intersection, and then by redoing the signal phasing the way I described, improve traffic conditions on Garfield in the section of street, so having said all that, we don t disagree with your concerns and the community s concerns. I think the Smith Company has been very forthcoming in trying to become a positive factor here to make things better.

MR. NETTLER: You ll see from the agreement that there are some specific items that the community wants Smith to do that will deal with some of the traffic issues, and there are other things that they don t -- that we are not going to undertake without the community being involved.

And last, I think, because this has sort of been a joint endeavor over the last ten months in terms of looking at this, it was with a realization that without having parking for Alban Towers, as I think we repeated as a number of times, that the parking situation and traffic situation actually would be substantially worse if we didn t accommodate what is expected to be the parking that s needed for the square, but I think, again, as you ll see from the agreement, as Mr. Slade said, working with the DPW and working with the neighborhood together will ensure that whatever impacts are significantly mitigated.

CHAIRPERSON REID: Mr. Sockwell.

MR. SOCKWELL: First question is actually to Mr.

McClure. We were talking initially about the street trees, and you spoke to the fact that there would be additional red oaks placed along Wisconsin Avenue. Those tree placements have to be coordinated with the locations of things like street lights. As you know, the Department of Public Works requires 15 feet between the center line of the tree and the center line of a street light. I don t know where those street lights are, but I assume that any additional trees will have to be dealt with on that basis.

You spoke to the caliper of trees at four and a half inches, which is really about the maximum the City will accept, two-to-four and a half-inch caliper trees, and it s more based on the size of the root ball and whether or not it gets into that four-foot planter strip. But you said that you were going to provide six-inch caliper trees, and I assume that for a red oak, a six-inch caliper tree will have a root ball that will fit within the designated tree space.

CHAIRPERSON REID: Is there a question, Mr. Sockwell?

MR. SOCKWELL: I wanted to know if -- well, it s obvious you re going to use paving that s going to require a covenant, so I won t get into any questions about things like that.

The garden between the apartment building the houses is richly developed with different species of plants. Are you doing anything, or is anything being done to coordinate storm

water managements for bio systems that would utilize this rich vegetation? Because that s the new thing that the city s doing. I was just wondering whether we re doing anything, or you re doing anything, with that.

MR. McCLURE: Yes, all this drainage that comes off of the garden goes through a sand filter system.

MR. SOCKWELL: But the garden itself is not being used as a biosystem for storm water management?

MR. McCLURE: No, it is not.

MR. SOCKWELL: It s actually a less invasive and less expensive solution to the storm water management sand filter stuff. We re done one recently. I just wondered if you were doing it? Okay.

MR. MCCLURE: Not currently, okay.

MR. SOCKWELL: Mr. Slade. In regard to the circular drive that s shown on the drawings, as its proximity to Massachusetts Avenue, its intersection, and the fact that it s on a diagonal, could present problems for traffic exiting, and because I don t know whether the circular drive is different in design from the original existing drive, which seems to be there, and if it is, it s probably designed to accommodate more vehicles more effectively within the drop off area and probably has wider inlet/outlet.

MR. KANE: Actually, Mr. Sockwell, I can address that.

MR. SOCKWELL: Yes.

MR. KANE: It s the existing drive. And all that we have done is work with the National Park Service to come up with an additional lay-by in front so that it would be able to handle any type of emergency access, whether it s ambulances, that sort of thing. As you know, there s quite a delicate port co-share there, and it s narrower, and the fear of the National Park Service was that any trucks going in there might damage the historic fabric, so we had to come up with some additional lay-by parking in front. They ask us to, if we landscape that with a hard surface, to take out some more of the other hard surfaces in the area, so we ve eliminated some of the retaining walls that you ll see there now as you go by, so that s working in close cooperation with HPD and NPS.

MR. NETTLER: Also a condition of the tax credits.

MR. SOCKWELL: So the impact of the circular drive on that intersection is likely not to change too significantly.

MR. KANE: It should not change. That s correct.

MR. SLADE: Yes, it will not change significantly.

MR. SOCKWELL: Any bus stops within the general vicinity, still; is there one at Garfield?

MR. KANE: Actually, there s one right in, that s not shown on this map. If I may show you where they are.

Right. And then show them also the bus stop across the street where we ve adopted that park and will fix that.

MS. RENSHAW: How about Wisconsin Avenue?

MR. WALTERS: There is also a bus stop.

MR. SOCKWELL: How is the lay-by configured into this? You ve -- Yeah, okay. With regard to the lay-by and its configuration with the circular drive, can you just point out what is what there? You said there was an additional lay-by. And lay-by ---

MR. KANE: I m talking about the front area of that drive. I may have misspoke.

MR. SOCKWELL: Oh, okay. Oh, that part.

MR. KANE: Yes, sir.

MR. SOCKWELL: Okay. By definition, in the district, I think of a lay-by as an eight-foot cut in the sidewalk with two ten-inch -- ten-foot diameter radii. Okay. I was just trying to make sure that you weren t pushing the sidewalk back and creating a drop-off at the front there. Okay.

That s all.

CHAIRPERSON REID: Mr. Hood.

MR. HOOD: Madam Chair, I just have two quick questions. In looking at your illustrations site plan, could you show me where the nearest, on Garfield Street, where the nearest homes that are currently there, where they re located to the garage entrance? The ones that are across the street?

So you do have homes right in front of the garage entrance?

Right, okay.

Next question, Mr. Slade. If I m coming from the north side of -- I m looking at it, from the way I m looking at it here, if I m coming from the north side of Garfield Street, and I m going to make a left -- First of all, let me back up. There s parking on both sides, am I correct?

MR. SLADE: There is parking on both sides of Garfield.

MR. HOOD: Okay. If I m coming from the north side of Garfield Street and making a left into the garage, what type of -- in your study, what type of traffic problems will I be causing?

MR. SLADE: With existing parking there would be a constraint -- with constraint if there were cars parked on both side. We re proposing to remove the parking on the -- actually north is to the right on this -- it s on the north side of Garfield, and when you get closer to the intersection with Wisconsin, we re proposing to remove some parking there so we can get two full lanes out of Wisconsin Avenue.

But back to the specific movement. That left turn, you know, if it were to occur at 5:00 at night, I mean, that s a time there is traffic heading westbound on Garfield, and the individual would have to wait and maybe one or two vehicles waiting behind it. So there would be some delay, but there is a signal at Garfield and Wisconsin, and that signal creates gaps in the Garfield traffic movement, so that would allow you to turn

into the garage. Give you breaks that allow you to turn into the garage, you know, every 90 seconds.

MR. NETTLER: Let me just make it clear that although Mr. Slade said that there s a suggestion about removing some parking, we re not removing any parking unless the DPW and the neighbors go along with that. That s part of the agreement.

MR. HOOD: That was an assumption on my part. I already knew that was going to be an assumption. Let me just ask, and you may have mentioned this earlier, but the door for the garage is going to be automatic?

MR. WALTERS: That s correct.

MR. HOOD: Okay. No further questions.

MR. SOCKWELL: One quick question on the parking. How many spaces total are going to be provided for the use of the Alban Towers residence? Is it --

MR. SLADE: I don t have the number in front of me. It s a little over one per unit, so it s like 240.

MR. NETTLER: It s close to 240, that s correct.

MR. SOCKWELL: And the number of spaces that was existing previously was?

MR. NETTLER: About -- well, there was 40 in the building, there was 40 on the rear lot.

MR. SOCKWELL: So any spaces lost on the street will be balanced considerably by spaces provided in the garage, even if it s parking zone, there s going to be less impact from

the previous condition of occupancy of the building. Because I don t want to say it like it s a current change, but there ll be a benefit of some sort.

MR. NETTLER: We believe it s a benefit. I think you should understand, and I think there may be testimony, or not, from some of the neighbors that this was a dormitory before, and it was an apartment building, together, so the number of parking vehicles that were needed may have been less than what would be needed now, but it s still to the extent that you had to provide parking for the number of people who were there who had their vehicles. You didn t have enough parking to provide that. So you re essentially correct.

CHAIRPERSON REID: All right. Thank you.

MR. NETTLER: And I should also point out, actually, since the garage was built in 1928-1929, the way the spaces were set out were not for cars the way they re built today.

CHAIRPERSON REID: Okay, now, cross-examination. The two persons who have party status, did you wish to cross-examine any of these witnesses? If so, come forward.

MR. VONDRACEK: Madam Chair, would you prefer to have the other people go forward as a --

CHAIRPERSON REID: There s just two. There s only you and --

MR. VONDRACEK: These are very short questions -- up here. I m Jon Vondracek.

Sorry. I wanted to make sure I heard you correctly that the set-back of the houses on 38th Street, the new houses, is going to be 20 feet, or what is the exact distance? From the curb, if you would, please.

MR. WALTERS: The curb is 30 feet.

MR. VONDRACEK: Thirty?

MR. WALTERS: Yes.

MR. VONDRACEK: Okay, that s fine. Then, to Mr. Nettler, you were, if I m not mistaken, leaving the impression of the majority of this back lot was being used for parking. In fact, I think very little of it was being used for parking. I guess no more than 25 percent of it. Is that correct?

MR. NETTLER: No, I didn t suggest that the majority of it -- there were -- there was 1-2-3-4 parking areas. There was a parking pad in the middle of it, there was the spaces that are adjacent to the building, and then there were other spaces, another parking area that was just across from the rear of the building. It was approximately 40 spaces which, I think, is -- is depicted on a plat that I had submitted a survey that shows that you can see it s not -- it s not the entire rear lot that was being used.

MR. VONDRACEK: No, but would you agree that the majority of the lot was a green space almost, it was almost like a park? It was zoned R-2 is my only point.

MR. NETTLER: I wouldn t say it was a park. I

mean, it was a green space, clearly. It was overgrown --

MR. VONDRACEK: It was a large green space and I -- and I would disagree with you that it was overgrown, but --

Then on the traffic report, I have a question -- I hadn t understand that you d agreed on the traffic study, and could we have a copy of the revised traffic study at such time as you -- not today, but you did it last week, and I have a concern about that being in a non-school period, because this is a neighborhood that has a lot of schools. And did you take that into account that there s a lot of school traffic, particularly during the rush hour?

MR. SLADE: We did new traffic counts last week, and you re very correct, Mr. Vondracek, that there is less traffic at this time of year than when schools are in session. We ve only completed the counts and a reanalysis so far, and so we can, if it s appropriate and Mr. Nettler says so, then we ll get something to you that addresses that question.

MR. VONDRACEK: Because, did you redo the Environmental Impact Study as a result of this recalculation? Because the Environmental Impact Statement as I read it in here is based on that previous traffic report.

MR. SLADE: It has not been redone at this point, and what the counts show is that the assumptions we made back in January and February, which is the basis of the Environmental Impact work, were roughly right, probably meaning that the

environmental work is accurate.

MR. VONDRACEK: Okay. And I just had a question that relates to the actual traffic pattern after the garage is open, that our concern is that people are not going to try to go across the traffic flow on Garfield. They re going to go out, take a right, and those that want to go downtown are going to go right on 38th Street, and turn this into a heavily traveled street, now. We ve gone at this not as something in contest. We re trying to solve some problems in the neighborhood. And I think this is the spirit we worked with Charles E. Smith. How do you propose to resolve that little bit of human -- expected human activity?

MR. SLADE: I think you know we don t disagree that that s a possibility, and the reason for not having a specific answer at this time is that the common wisdom in doing traffic mitigation planning is that everyone needs to be involved. And if we were to, for example, adjust 38th Street in some way so that people couldn t use it, then that traffic may go down to the next street. And the people on that street need to be engaged so for that reason it s been, I believe, about to be agreed to that this neighborhood mitigation plan will be done so don t squeeze the tube here and we get a bubble someplace else.

In simplest terms, though, to give you a specific answer, if you look at a number of commercial uses near arterials like this, simply putting a sign up is often done, that says no

right turn, left turn only. And it s probably effective to a 90 percent level. You know, it s more a matter of people who live in Alban Towers and in the town homes respecting the community and going out using the arterial street instead of the local street. So, you know, 90 percent effectiveness will be pretty good.

MR. VONDRACEK: If we get a sign.

MR. SLADE: Yes, yes.

MR. VONDRACEK: Are you saying you re going to work with us to try and get a sign? Is that what --

MR. SLADE: Well, we re going to work with -- the Smith Companies is agreeing to work with you on whatever the best solution is, and, you know, typically, you try something, and if it doesn t work effectively then you still have flexibility to try something else.

MR. VONDRACEK: Just one last point for clarification. Mr. Nettler, did I understand you to say that it was the City that suggested that condominiumization of this property in order to facilitate the construction of the garage?

MR. NETTLER: This was a collaborative process between the City and Charles E. Smith.

MR. VONDRACEK: But did you say earlier -- I was just trying to understand if the City suggested it or if this was something that --

MR. NETTLER: Well, we were looking at a variety of different developments that were done similarly and had worked

with the City to come up with one that would do so and the Administrator of the Building and Land Regulation Administration said, to utilize this approach that this would be a way of doing it.

MR. VONDRACEK: Okay. Thank you.

CHAIRPERSON REID: Thank you. All right. The next person is Ms. Canzoneri. No questions? Okay. Thank you.

All right, we now go to Office of Planning report. Mr. Fondersmith did have to leave. However, now, Mr. Steve --

MR. COCHRAN: Cochran.

CHAIRPERSON REID: Mr. Cochran will give a report on behalf of the Office of Planning. Thank you.

MR. COCHRAN: Madam Chair, I think I should give a few caveats here. As you know, the Office of Planning is under reorganization, and I think it would be advisable for the office simply to restate its recommendation that this project be approved by the B.Z.A., and then let me answer any questions that you might have.

The assignment of this project to me is of fairly recent date.

CHAIRPERSON REID: Okay, then. Well, first of all, I forgot Mr. Fondersmith did ask for a waiver because it did not come in a timely span, which it should have, so we ll waive it if there are not any objections. That s one thing.

The other thing is, basically, you re saying that

the Office of Planning has approved this application, and if you could just speak to the basis. Are you familiar enough with it to be able to --

MR. COCHRAN: I think so --

CHAIRPERSON REID: In other words, what was underlying criteria or analysis that you utilized in order to come to the conclusion of the approval? Just quickly. You don t have to --

MR. COCHRAN: If you look at the intent of the Historic Preservation Regulations and where there are exceptions to the requirements for the parking spaces, the developer is not required to provide the parking spaces, as I m sure has already been discussed. Nevertheless, the market, especially in the particular market that exists in this neighborhood, does usually generate at least .65 or even one full vehicle per parking -- per unit.

It seems unrealistic to both be attempting to renovate in a very substantial way an important historic structure in Washington and yet deny the developer the ability to market that expensive-to-rehabilitate property by denying parking spaces. These are not required parking spaces.

So, frankly, in reading through some of the regulations which do seem to apply to accessory uses for required parking spaces, I do not feel competent to address some questions right now.

But we were looking at it more from the standpoint of the historic preservation objectives of the comprehensive plan from the relatively little impact that the parking spaces would have on the nearby residential structures and on the concerted effort that the developer has made to work with the ANC and other community groups and the almost exponential diminution in opposition to the project that has occurred over the last six to eight months.

CHAIRPERSON REID: Okay, Mr. Cochran, not to throw you a curve ball, but in the interim, from the time that this was written and even after Mr. Fondersmith left, we then decided that this case would be also heard as a variance. Because there were some issues that were raised by Mr. Sockwell and in order to -- instead of having to -- than having to come back possibly, Mr. Nettler requested that we go ahead and hear it as a variance so that those issues would be addressed, and, as such, could you comment on the variance relief that is now being requested for this particular case?

MR. COCHRAN: Having not been here for that, I don t feel competent to address that. I m sorry.

CHAIRPERSON REID: I think, Ms. Sansone, would we not need to have some input from the office of planning in regard to the variance aspect of the case? And that we changed it earlier and we decided that we would go ahead with that? What s your read on that?

MS. SANSONE: Madam Chair, if the Board wishes to consider this as a use variance, it probably would be appropriate for the Office of Planning to evaluate that. However, during the recess I was able to speak with Mr. Sockwell, and I ve looked at the regulations a little more closely, and it does seem to me, I m willing to do further research, but it does seem to me that the case is properly before the Board as a special exception under the regulations that were cited, Section 214, and 2116, and also the Zoning Administrator has raised another potential section, 2000.4. However, the correct citation would be 2000.6. 2000.6 is the section cited in the special exception table and refers back to 2000.4.

So I believe the Board can properly go forward as a special exception under those three sections.

CHAIRPERSON REID: So now that you ve made your case for a variance, we go back to the easier relief test for a special exception, and in so doing, Mr. Nettler, it that way you don t have any fear that you have to later come back for -- okay, fine.

MR. NETTLER: No.

CHAIRPERSON REID: Let s just move forward. Thank you very much.

Okay. Are there any questions for Mr. Cochran?

MR. COCHRAN: No, I just apologize for my relative lack of familiarity.

CHAIRPERSON REID: Well, actually, what happened was, it was something that -- an issue that was raised and it got to be a little cumbersome, so we felt that if we were going to err on the other side of caution, and to go for the variance relief, and then he made the case -- and he presented the case for variance, and obviously you were just stepping into it. I prefaced it with saying, it s not throwing you a curve ball, but, as we now know, Ms. Sansone says that it s not necessary, so, all s well that ends well.

All right now, moving forward, are there any questions for Mr. Cochran in the office of planning? Yes, sir. Come forward, cross-examination.

MR. VONDRACEK: Jon Vondracek. Yes, I just had a question, Mr. Cochran. If the Office of Planning had looked at a number of the projects that are going on in that general area such as the proposed Giant parking lot, the Sikh temple, and all, to see how these things are going to interact with each other on the traffic patterns in that part of town? Sometimes we get too narrow when we look at these projects.

MR. COCHRAN: I m only generally familiar with the Sikh Temple. I did just finish writing the report on the proposed Newark Street Giant and other shops this morning. We have not done a full-blown analysis of the cumulative impact of these projects on the Wisconsin Avenue corridor.

MR. VONDRACEK: Would you plan to do so?

MR. COCHRAN: Realistically, I would say, not.

MR. VONDRACEK: Is there any way that we as citizens could encourage you to do so?

MR. COCHRAN: I don t want to give any false impression. The office -- It would be very unlikely that the office would be able to do that kind of study, given that it has looked at Wisconsin Avenue and the various overlays within the last ten years, it is unlikely that given other priorities that we would be prepared to readdress that same area of town again.

MR. VONDRACEK: Thank you.

CHAIRPERSON REID: Thank you. The ANC report -- is there a representative from ANC here today? Oh, okay.

MR. BLANCHARD: Good afternoon, Chairperson Reid and members of the Board of Zoning Adjustment. My name is Lyle Blanchard, and I represent single member district 3C-07, and I believe there is a letter hopefully in the record --

CHAIRPERSON REID: Yes, we do have a letter.

MR. BLANCHARD: dated -- the more recent one I think is June 27th, from Ruth Ann Miller, Chair of the ANC.

CHAIRPERSON REID: The one that I have is a resolution, an undated resolution, and then the letter of June 23rd that came from you.

MR. BLANCHARD: Okay. I have additional copies of the June 27th letter. I m just making sure that --

CHAIRPERSON REID: The June 27th one has not yet

been submitted. This is the first submission.

MR. BLANCHARD: No, I believe it was filed.

CHAIRPERSON REID: Does anyone have that?

MS. RENSHAW: No, we don t.

CHAIRPERSON REID: All right, then, Mr. Blanchard, we do need you to ask that we waive the record -- waive the rule --

MR. BLANCHARD: Yes, I realize --

CHAIRPERSON REID: allow you to --

MR. BLANCHARD: request that waiver --

CHAIRPERSON REID: Okay, I have no problem with doing so.

MR. SOCKWELL: In addition, the real Lyle Blanchard has a mustache. We have a picture.

(Laughter.)

MR. BLANCHARD: Right. He s my -- I m his twin brother. No, I shaved that off so that it would be hard for people to recognize me in the neighborhood.

The later dated letter -- the June 27th letter, I believe was filed on that date. Just to ensure that we are following the B.Z.A. s rules that it did come from the Chair of the ANC, and that we met all the requirements in 11 DCMR 3115, and essentially the resolution that was attached to this more recent letter and the resolution in the earlier letter are the same, so there s no difference in that.

We did meet on June 19th. There was a quorum present. We voted five to zero in favor of the resolution as duly noticed by the ANC, and we had a quorum.

And essentially, we re in support of this project. The property has been vacant for many years. We re glad to see that it s being renovated under and getting the Federal tax credits, so we know that renovation s going to be held to high standards, and we re in support of the request for either the special exception or the variance, so that the parking garage can be built.

(Laughter.)

I missed some of the testimony because I had to leave for a little while, but I understand that whichever it is, and we ve in our resolution supported either request by the applicant, with the conditions in the attachment which are construction mitigation measures, the landscape development plan, compliance with the Cooper code, and I know one of the members of the B.Z.A. was instrumental in establishing that code.

And so, I m trying to do the right thing, and I know the neighbors are working very diligently, and Mr. Vondracek and others, the most impacted neighbors on that portion of 38th Street, and to achieve some understanding on that, and we try to incorporate most of the issues where there was agreement by the time of our June 19th meeting. I understand there s still -- they were working on a few others between the date of that meeting and

today and also Ms. Canzoneri, who s most impacted on Garfield Street, so the ANC is working with the applicant and with the Department of Public Works and neighbors into trying to mitigate some of the parking traffic issues in the neighborhood.

CHAIRPERSON REID: We did not have a DPW report, did we, in this case?

MS. SANSONE: Madam Chair, I believe it was referred by the Office of Planning to DPW because the staff and I looked into that earlier --

CHAIRPERSON REID: Yes, I saw that it was referred, but we didn t get a report plan. The conditions that you have included in your resolution, or in your letter of support, have been agreed upon, everyone s happy with -- well, on the same page with this, but, with the agreement that you have attached, there are no signed agreements. I don t understand. An agreement is not -- it doesn t have signatures affixed thereto, so, it s just a list of things, and --

MR. BLANCHARD: We understand that the Charles E. Smith Company is willing to agree to these conditions that we put in our resolution.

CHAIRPERSON REID: So, is it going, Mr. Nettler, is it going to be something that you all --

MR. NETTLER: They re in the agreement that I handed out before.

CHAIRPERSON REID: That s the signed, that s

signed? Because I haven t -- I know you handed it to me -- I don t know if they have given it to me, but

MR. NETTLER: It s actually what -- what I ve worked out with Mr. Vondracek is the individuals who were all parties to that agreement which have all those conditions in it, had initialed by their names, and I m going to work the way of getting them to make sure that they re all notarized signatures so the thing will be recorded, so I will get you a copy of that. I gave you --

CHAIRPERSON REID: Okay, and included -- and contained within the agreement that you re referring to are these conditions?

MR. NETTLER: Right.

CHAIRPERSON REID: Okay. That will be fine. Thank you. All right.

MR. BLANCHARD: All right.

CHAIRPERSON REID: Thank you very much.

MR. BLANCHARD: Thank you.

CHAIRPERSON REID: You will be afforded the great weight ANC 3-C in that you did have a quorum present and that there was a vote taken. You will be afforded the great weight to which you are entitled as such.

Thank you.

All right. Persons and parties in support of the application who might wish to testify?

MR. VONDRACEK: I am Jon Vondracek, and I simply wanted to say that we support this project. We have had some questions about it. I hope that I didn t mislead the panel in any way with my cross-examination of the people today, but there was some new information on the table that I felt needed clarification and some things, but all ten members of our group have signed, and potentially an 11th member.

CHAIRPERSON REID: Thank you.

MR. VONDRACEK: Thank you.

CHAIRPERSON REID: Are persons and parties in opposition, please come forward. Another person in support? Are you in support?

PARTICIPANTS: Yes.

CHAIRPERSON REID: Oh, okay. I thought that -- for some reason I thought you were the opposition.

MS. CANZONERI: I m sorry about that. I think we stated that in our cover letter that we were in support of the proposal, but with certain conditions. But I think I didn t say that when I spoke earlier.

And I guess, we, as I mentioned --

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

MS. CANZONERI: Okay, sure. Sarah Canzoneri, 3716 Garfield Street, Northwest. We moved into our house in 1988, and that was at the time when the project was still being used by

Georgetown as a dormitory. But since then we ve sat there and watched the project deteriorate, and it has been very disappointing to see.

We are on the side of the project where you really see the back of the building and the house that is actually -- has been vacant for a number of years, and I know -- I know from talking to my other neighbors on Garfield Street that we ve all been troubled by seeing the building deteriorate and decay, and so we re very much in favor of it being redeveloped.

I think that the big concern that we had was whether they would be able to provide adequate parking for the building, and this seems to be the most sensitive and appropriate way to provide the parking that really is needed.

As I mentioned in my statement, there is a real demand for parking. Our block of Garfield Street is already pressured, partly because we re close to Wisconsin, where there are some buildings that don t have parking for all their tenants, and partly because three of the five houses in our block are rented out as group homes, and so there were more than -- there are more than one or two cars per house.

I think that parking should be removed on Garfield Street. That said, clearly the spaces that are going to be closest to entrance to the parking garage on the north side are going to have to go in order to make adequate flow, in answer to your question, about either turning left or right. There are

currently on Garfield Street, there s parking on the South Side all the way up the street. On the north side there is parking not beside the Alban Towers building but from the alley of the Alban Towers building down with the exception of the driveway which is there now.

So there are about three or four spaces, sometimes five, depending on how people park, and those spaces on the north side really are going to have to be removed. Also it would be a good idea, as Mr. Slade said, to remove some of the spaces on the south side right close to Wisconsin, at least during rush hour, because that s part of what clogs up the -- part of what clogs up the intersection, which is a problem.

I think -- I think that your concern about whether people are going to be able to turn left coming out of this parking garage at rush hour is a legitimate concern. We really can t tell because if they change the traffic light, that may make a big difference. Right now, realistically, anybody coming out of that garage would go right and go around because it s very hard to turn -- it s hard to merge into the traffic. But I m willing to believe, Mr. Slade, that if they change the traffic light, that can make a big -- that can make a big difference.

And I think our feeling is that all of the benefits of the parking garage really outweigh the traffic problems and the added traffic, and the benefit of having the building renovated.

I think a point to be made about this neighborhood

is that it really is a mix and historically has been a mix of basically luxury apartment buildings and single-family houses. Historically right from the time the neighborhood was developed, it included large apartment buildings like the Westchester, like Alban Towers, which, actually, Alban Towers is the second building built west of Wisconsin after the zoning began to allow that. The one across the street on Massachusetts was the first.

So this is really -- this way of using the back lot I think is very consistent with the way the neighborhood is developed and is a really appropriate use. If you haven t seen the building, it is a lovely building, and a real benefit to the City.

The one thing I would say, we would support -- my husband and I have not been a member of this group that Mr. Vondracek is speaking with, and we are in support of the project with the provisions in the ANC resolution. I really can t speak to the agreement that is -- that Mr. Nettler has given you because we have not seen a copy of the agreement. I understand from him that it includes pretty much the same conditions as in the ANC resolution, but I just don t know.

CHAIRPERSON REID: Once you have bene granted party status, you would automatically receive any of the materials or agreements that have been passed back. And we ll see that you get a copy of it --

MS. CANZONERI: He said he d give me a copy but he

didn t have another today, so our support is of the project with the -- basically our support is the ANC resolution. We agree with that.

CHAIRPERSON REID: Thank you so much.

MS. CANZONERI: Okay.

CHAIRPERSON REID: Okay. Any other persons in support? Okay. Persons in opposition.

MR. ZAIA: My name is Anthony Zaia, and I live at 2812 38th Street, Northwest, and I ve lived there for the past 35 years, and that s just about a half a block up south of this site on 38th Street.

I m also an architect and I have viewed the development of this area for all of these years. My main concern is traffic. I believe that the solution that the architects have come up with and Charles E. Smith, that they ve come up with, is a very excellent solution to what to do with that site.

I do have a problem, though, with some of the facts about traffic. I know Mr. Slade has conducted a very highly technical traffic study, as such, and I ve heard some of his comments, and I don t mean to dispute them, as such. But I have conducted a traffic study there for the last ten years, not as highly technical as he has, but walking my dog three times a day throughout that neighborhood, and I mean every inch of that neighborhood, and what I have observed is somewhat different from Mr. Slade s comments.

That neighborhood is made up of a lot of private dwellings. Contrary to what most people think, many of those houses, not only adjacent to this site, but in the neighboring areas, contain many houses that are being leased by group occupancy, and by that I mean five and six people to a house, and many basements are being leased to one or two people, and each one of those houses have many many more cars than one could imagine.

Every morning when I walk the dog and during high traffic hours and every evening -- every morning, especially, those cars are gone. They do not leave them to go to work. The reason I know is that I walk those streets with that dog, and I can see the empty places, and every night, when I walk in after and during high traffic hours, I also see the high occupancy of cars in that area. You can t park anywhere. And unless you have your own parking lot, you have a big problem.

When I walk the dog in the morning, it is interesting to watch the behavior of the automobiles coming up Cathedral Avenue toward Wisconsin Avenue, and those that come up Garfield after having come up Fulton and crossing over Watson Place, and those coming up Fulton. It s an amazing behavioral pattern. Those that come up Cathedral Avenue look at the lights at Cathedral Avenue and then find that if they re going to have wait, they cut down 38th. And when they get to Garfield and 38th they look at the light at Wisconsin Avenue, and if they can t make it there in time so they don t have to wait, they proceed on to

Fulton and make that left turn. And as a result those local streets which are 38th Street, Belleview Terrace, and 39th Street, become crossovers for these automobiles, some of whom may not appear on your studies. Your studies are made during certain periods of time. I have seen it every single day. I ve seen it during school years where the children go to school. I ve also seen it when the kids come back and go to college, because we have an awful lot of college students who live in that area.

So I have seen in other parts of cities solutions to this kind of problem, and I think that some sort of remedy has to be considered at this time that we hold Charles E. Smith and the developers responsible for, is to remedy -- to assure a remedy that these behavioral patterns not continue in the future.

CHAIRPERSON REID: Are you -- are you recommending something?

MR. ZAIA: Yes, I m recommending that, like you see on Foxhall Road, if you drive down Foxhall road, there s little communities, Wesley Heights, and so on, have those signs on Foxhall Road that say, during high peak traffic hours, that is seven to nine-thirty in the morning and four to six-thirty in the evening, you can make -- you cannot make a turn onto these residential streets. During the rest of the day you can. And I believe that will help alleviate the problem.

Let s get the traffic back on Cathedral Avenue as a main arterial connecting to other arterials like Wisconsin Avenue.

Let s select a street that is a crossover local street that will deter cutting over. There are people that drive this pattern every day and I see them cutting up our side alleys, so that they can avoid traffic, and all of this is happening now, without Alban Towers, and its access from Garfield. So it s going to get worse in the future. There is no -- there is no control. It is an ugly situation that has to be seen on a day-by-day basis.

CHAIRPERSON REID: Okay.

MR. ZAIA: And that s what I m asking for.

CHAIRPERSON REID: Thank you. I will have the applicant address that when they come back for the closing remarks, sir.

MS. RENSHAW: Would the gentleman spell his last name for us, please.

MR. ZAIA: Yes. Z, as in Zebra, -A-I-A.

MS. RENSHAW: Thank you.

CHAIRPERSON REID: Mr. Nettler. Closing remarks?

MR. NETTLER: Thank you. If I might just respond to the last comment, because I think as both Mr. Vondracek s questions of many of us have made clear, and hopefully the ANC and others is where Charles E. Smith is committed to working out something with the community that will do precisely what the witness just stated, and that is to come up with a scheme for resolving many of the traffic issues that currently exist and that may be impacted by the existence of the garage.

What I didn t hear, obviously, was an opposition to there being a garage; actually another reason why there should be a garage, and that is because we will only create more of these problems by not having a garage located on this square to serve the Alban Towers, and will only exacerbate the situation.

CHAIRPERSON REID: The signage that he referred to, this is something that has to come from DPW, does it not?

MR. NETTLER: It does, and I think as what Mr. Slade said, the best way of approaching any traffic and parking problem is to do so as a whole, and that is to involve both DPW, Charles E. Smith, and the neighbors, and there may be some situations that warrant one measure that turns out not to work, but Charles E. Smith has to be committed to working with everyone to reach a solution, and that s clearly what they re interested in doing and willing to -- and willing to use Mr. Slade s services for.

CHAIRPERSON REID: And ANC also would be involved in this endeavor. So, give me the pronunciation of your name again.

PARTICIPANT: Zaia.

MR. ZAIA: Zaia.

CHAIRPERSON REID: Mr. Zaia, then perhaps working through the ANC as well, and what I m hearing from the applicant s attorney is that they are amenable to addressing the issue that you raised and try to come to the resolutions, however it has to

be done in conjunction with the various entities that are necessary in order to bring about, but I believe, at least, there s open-mindedness about trying to accomplish it.

MR. NETTLER: Well, I think, as was also demonstrated at the ANC meeting, was there are many people who have different perspectives on what the problems are, and the more knowledge that everyone has, the better able to respond to those problems, whether where the driveway s located -- where the driveway s located, whether it s still going to be used, this was an issue at the ANC meeting, which it is, where the entrance to the garage is located.

The idea here is Charles E. Smith is committed to dealing with all of those issues.

With regard to the specific provisions of the special exception, I think which the architect has gone through, I think we clearly meet those provisions. I didn t hear anyone really in opposition to any of those specific issues as much as trying to ensure that we address consequences, and as you know from the many decisions that you ve issued, that in terms of addressing a special exception, you re dealing with a use that is permitted, albeit that has different impacts and therefore comes before you in that context, but we re not able to resolve, and aren t required to resolve, every single issue. We re trying to resolve as many as possible. And I think that s clearly the case here.

And I think Charles E. Smith has gone even beyond that. They have taken on the initiative of finally rehabilitating this important building in the district s history; they have agreed to a program that provides for an amount of landscaping that usually is not associated with a project like this, and certainly not with a special exception proposal; they ve agreed to involve the community in a variety of different issues that are not normally open to the community, certainly not in a special exception proposal as distinct from other types of relief that are sought from the district; and I think that they have gone beyond in trying to ensure the community is involved in each of those steps.

I think Mr. Kane spoke about the fact that we ve had something close to 15 meetings over the last eight months for the community, including a course just on this, to make sure everybody understands what s involved in construction and what are the different issues that are going to be involved.

We have -- this agreement has created a liaison committee that will ensure an ongoing, not only during construction, but after construction, relationship with the community for as long as that agreement remains in effect, which is supposed to be in perpetuity to ensure that there are these issues, and we long that these issues get resolved, and we ve also provided in that agreement as well a opportunity to ensure that any other issues that come up can be resolved, not only through

the zoning process, but through a variety of other different processes.

So the attempt here, I think which has been met by Charles e. Smith, is to ensure that a project will be built that the community can be proud of, that the district will be proud of, and that we ask for you to endorse by granting us special exception, and if possible to do so, if you feel it s appropriate, by bench decision, which we would then, has as been requested, supplement the record with the two items that you ve asked for, both the agreement itself and Mr. Vondracek s letter.

CHAIRPERSON REID: Mr. Netter, did you say that you had already submitted the agreement?

MR. NETTLER: I submitted an agreement which was -- which has my signature on it but as I said Mr. Vondracek and I have to get notarized signatures for the individuals.

CHAIRPERSON REID: Okay. I don t see that. Did anyone else see it? Maybe -- nonetheless, we need the one -- the updated one. So we ll just hold the record open.

MR. NETTLER: That s fine.

CHAIRPERSON REID: The request for bench decision and summary order is appropriate in that we don t have a party in opposition, and Board members, what is your pleasure as far as disposing of this today? If so, may I have a motion?

MR. HOOD: Madam Chair, I just want to ask a procedural question. We have some things that I don t know how to

actually -- how we have some things that are lingering that we don t have that --

CHAIRPERSON REID: Leave the record open prior to the order

MR. HOOD: Right, but if we have some concerns about that, and say, for instance, that doesn t go through, then we have a problem. We ve already voted on it. You follow what I m saying?

CHAIRPERSON REID: The agreement. I think that the agreement has already been --

MR. HOOD: But it hasn t been signed by both parties.

CHAIRPERSON REID: has not been signed, but --

MR. NETTLER: Actually, we have one that s unfortunately been initialed and not the right place, but Mr. Vondracek and I, who are both the people who are here who can make that representation that it is agreed to and it is final, and for all purposes it is, I just have to get you a copy that s good for -- that has a notarized signature and them signed in the right place.

CHAIRPERSON REID: And we can leave the record open.

MR. HOOD: I would not want to vote against this project for that sake, so will withdraw my comments, but I did want to make sure I put that on the record.

CHAIRPERSON REID: A motion? I ll make the motion. I would move that this application for a special exception be approved. I feel that the applicant has met his burden of proof in regard to the sections in which the application is being submitted, and that s section 214 and 300.3, and the ANC is in full support of the application with conditions, with the conditions as are annotated in the agreement which will be forthcoming. The Office of Planning has approved the recommended approval. The adverse impact aspect is being worked on, so as to be mitigated, in regard to the impact on the community, and does not seem to have impaired the intent and integrity of the zoning regulation on that.

More importantly, it appears that this is something that is desirable for the community, when you re taking an otherwise unused, but nicely plot area or site and bring it into something that will be very -- will enhance the community. I feel that it should be -- relief should be granted based on the above.

MR. MOULDEN and MS. RENSHAW: Second.

MR. SOCKWELL: Madam Chair, I think that -

CHAIRPERSON REID: Discussion?

MR. SOCKWELL: Yes. I think that Section 2006 should be part of the special exception.

CHAIRPERSON REID: 2006?

MR. SOCKWELL: 2000.6.

CHAIRPERSON REID: 2000.6. That, if that --

MR. SOCKWELL: It s in the nonconforming condition situation.

CHAIRPERSON REID: Is that --

MR. SOCKWELL: It s referenced in the Zoning Administrator s memorandum. It was 2000.4, but 2000.6 is really the more applicable section.

CHAIRPERSON REID: Okay, now, does it have -- was that advertised?

MR. SOCKWELL: I don t think it needs to go there.

CHAIRPERSON REID: Oh, you re saying that, you re making that correction? That s --

MS. RENSHAW: He wants that to be --

MR. SOCKWELL: Yes.

CHAIRPERSON REID: Oh, I see, you re correcting what was -- all right. I have no problem with that.

MR. SOCKWELL: Because actually the original application was strictly for 214, but this --

CHAIRPERSON REID: 2006.

MR. SOCKWELL: Yes, this really should have 2006, and the Zoning Administrator s memorandum occurred after the original application was filed. It would make it more -- and Ms. Sansone would --

MS. SANSONE: Madam Chair, I believe the full set of provisions are 214, 2000.4, and 2116 --

CHAIRPERSON REID: What happened to 300.3? I m

looking at the agenda. And looking at Michael Johnson s letter. But let me see what it says there, because I think that that is.

MR. SOCKWELL: See, Michael Johnson stated 2000.4 or 2116. He didn t say 2000.4 and 2116. I think that it s more applicable under 2000.4 and 2000.6 because the two relate back and forth to one another.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: I mean, that would be -- that s my way of looking at it. Mr. Nettler hasn t said a word, so --

MR. NETTLER: I have no problem with it.

CHAIRPERSON REID: The motion that s on the floor and seconded and with the agreement that has been -- will be attached, and the record will be open, left open and will be prior to the order being sent out.

All in favor?

(Chorus of ayes.)

Opposed?

(No response).

MR. SOCKWELL: And I want to say one thing at the end of this, is that Alban Towers has been off-line for far too long. It has been, regardless of the circumstances, certificate of occupancy, there s nobody in there. And as long as there s nobody in there, as long as the original residents had an agreement by which they felt that they were going to return to their domiciles and it hasn t happened, whatever that can speed

this project along to completion once the order is issued by the Board should be done at break-neck speed if at all possible with a strong construction quality.

CHAIRPERSON REID: thank you, Mr. Sockwell.

MR. HART: Staff will record the vote as five to zero to approve the conditions. Mrs. Reid made the motion, seconded by Mr. Moulden. The record will be left open for a submission as indicated.

CHAIRPERSON REID: Thank you. Okay, now, let s do an assessment. Mr. Smith, you have two cases. All right? And we re going to try to -- let me do an assessment with the Board members. And your cases, I don t think, looking at the packages that you ll have any opposition, and they seem to be straightforward, so we should be able to get through it pretty quickly.

Okay, vote? Okay. Okay, recorder, is it okay, until 6:30? Can you stay until 6:30? Is that okay?

How about Board members? Is six-thirty okay? You have to leave at six? Six-ten? Okay, let s do the best we can. Okay, wait, wait, wait. Mr. Moulden has to leave, but there ll be three of us here. Yes, there ll be three of us here for quorum, and Mrs. Renshaw has to leave at six.

But there ll be three of us here. And then the other two will have to just read the rest with the record. She ll be here for one of them. Both of them will be here for one of

them, but for the last one, we may just have three members, but those two members have to leave and read the record, the rest of the record, and who doesn t leave, will take a vote because we have a quorum. Yes, okay. Sorry.

As a matter of fact, Mr. Moulden has said that he will leave a proxy for the Board if he has to, and Ms. Renshaw, if you have to leave before the last one, perhaps you can leave a proxy, if you have a position, if you -- we ve read -- we ve read the materials and we are very well versed on the case, so with that having been said, let s get sworn in and let s try to get through these two fairly quickly.

Call the case and let them be sworn in.

MR. HART: The first case, Case No. 16537, Application of Gregory Zahn, pursuant to 11 DC --

CHAIRPERSON REID: Wait, wait, wait Mr. Hart.

Oh, okay. Do I take the -- what is it, the Jefferies case first? Can you call that one first, please? He has to leave.

MR. HART Okay. Ready? The case that s going to be heard now is Case Number 16584, Application of Douglas G. Jefferies, pursuant to 11 DCMR 3103.2, for a variance from Subsections 2001.3, subsection a, b, and c, to allow a second-floor addition to a non-conforming structure of an existing single-family dwelling for a variance from 2507 for buildings on alley lots, setbacks and lot occupancy requirements in an R-3

District at premises 1520 22nd Street, Northwest, Rear (Also known as 2208-1/2 Q Street, Northwest), (Square 2510, Lot 813).

(Witness sworn.)

CHAIRPERSON REID: Okay.

MR. SMITH: Good afternoon, Madam Chairperson and the members of the Board of Zoning Adjustment. As a preliminary matter I would like to recognize my mother, Hazel Sadler, who s come from Colorado to see me do something.

So here she is, she s been waiting all day for this event.

CHAIRPERSON REID: We re pleased to have her and we did read in your letter where the family reunion was this weekend?

MR. SMITH: Yes, ma am. It was a great week.

CHAIRPERSON REID: And we re pleased -- we re pleased to have her here.

MR. SMITH: Thank you very much.

CHAIRPERSON REID: Thank you for coming.

MR. SMITH: For the record, my name is James F. Smith, of the firm, Mr. Permit, L.L.C., and I live at 6 Logan Circle, Northwest, Washington, D.C.

To my left is Mr. Douglas George Jefferies, known as Doug Jefferies, the owner of the subject property.

On my right is Mr. Gregory Zahn, of Zahn Design Architects, the project architect.

I am appearing before you as the team leader. Our

presentation today will consist of four parts and shall require approximately 15 minutes to present. The first part of our presentation will be by the applicant, Mr. Douglas George Jefferies. Mr. Jefferies will speak to you concerning his circumstances leading to the purchase of the property and his plans for his expansion, which will -- which will require a second-floor addition. Following the presentation by Mr. Jefferies, a project architect, Gregory Zahn, will present his design to you.

Following Mr. Zahn s testimony, I will be presenting the zoning issues of this case. And finally after all the questions are asked and we make a summary statement, I will try to connect all the dots and make a summary statement sufficient for you.

As a preliminary matter, I would like to submit a copy, which was not available until today, a copy of the proposed subdivision to make Lot 813 a record lot. We ve been told by the Office of D.C. Surveyor and the Zoning Administrator s office that we cannot subdivide this property from an ANT lot to a record lot unless you all approve this application today.

But I want to submit it, nonetheless, for the record.

For the record, it should be noted that we turned in a copy of the Historic Preservation Division conceptual approval of this project in which they designated the final

approval to Suzanne Ganschnietz of the staff.

Also for the record, please note that we turned in the Commission of Fine Arts recommendation, which approves a concept design of this proposal, but that requires that once we get through all the boards and commissions we have to go through that we resubmit final drawings so that they can take a look at them.

But basically, they ve seen the exact drawings that we re presenting to you in our package.

I would now like to ask Mr. Jefferies some questions, if he will respond to them, so we get all of our proper facts on the record and save some time.

Mr. Jefferies, for the record, can you please state your name and residence address?

MR. JEFFERIES: Douglas Jefferies -- Thank you. First time doing this. Douglas Jefferies, 1520 22nd Street, more commonly known as 2208 Q Street, Northwest.

MR. SMITH: Mr. Jefferies, can you please tell us when you first became familiar with this property?

MR. JEFFERIES: I became a renter of this property in 1993.

MR. SMITH: Mr. Jefferies, can you explain the circumstances leading to your purchase of this property?

MR. JEFFERIES: I have been a renter since 1993, and my landlord put the building on the market. I ve been -- I m very

familiar with all the neighbors. I m friendly with every neighbor, and love the neighborhood, didn t want to leave it, so my option was to purchase.

MR. SMITH: Mr. Jefferies, can you please tell us why we re here today so -- and why you re seeking to add a second floor addition to your property?

MR. JEFFERIES: I lived there for seven years, loved the neighborhood, the neighbors, and the building, and I ve outgrown the space. It s basically a studio single-family house.

MR. SMITH: Mr. Jefferies, can you please explain to the Board what practical difficulty would result if zoning relief is not granted.

MR. JEFFERIES: My apologies, I ll turn off my phone.

CHAIRPERSON REID: What a time for that to happen.

MR. JEFFERIES: That is my mom, so I m sure she s wanting to know how it s going.

(Laughter.)

MR. JEFFERIES: If I couldn t expand the space, I ve already outgrown it, and I would probably either rent it out or sell it.

MR. SMITH: Okay, thank you very much, Mr. Jefferies. I would now like to turn to Mr. Zahn.

Mr. Zahn, for the record, can you please state your name and residence address?

MR. ZAHN: Gregory Zahn.

CHAIRPERSON REID: Wait, wait wait. Wait minute.

MR. ZAHN: I m the architect for this case.

CHAIRPERSON REID: And you also have your own case?

MR. ZAHN: Yes.

CHAIRPERSON REID: Okay, you know what, I thought that you were really playing some sleight of hand and doing both of them at the same time.

MR. SMITH: Only if you wanted to.

(Laughter.)

CHAIRPERSON REID: Okay. All right. Go ahead.

MR. ZAHN: He may be good, but he s not that good.

MR. SMITH: I m so pleased the Board is in a good sense of humor at this late hour.

MR. ZAHN: Gregory Zahn, 1727 21st Street, Washington, DC.

MR. SMITH: Mr. Zahn, can you please state your occupation.

MR. ZAHN: Architect.

MR. SMITH: can you describe the existing conditions of the site and of the existing structure?

MR. ZAHN: The existing structure is -- the existing structure is a carriage house, it s approximately 28 feet wide and 34 feet long. It s situated in the center of the site. Formerly a carriage house, fairly well intact, the old garage

doors have been infilled when the garage/carriage house was converted into a residential unit, probably in the 1960's.

MR. SMITH: For the record, we have already submitted photographs of the interior. We have them on display up here, showing that there are electric meters just separate to this property. There s a gas meter. There s also a water service to the property, and the property s actually, even though it s an alley dwelling, is totally separated and separated from any adjacent property.

Can you please explain your design for the alteration and repair in the second floor addition.

MR. ZAHN: Okay, here s a 3-d rendering of -- this would be the existing carriage house. These are the existing garage doors that have been infilled. Do you need me to use -- okay, is that better? Now, can you hear me?

Okay, so again, this is the limits of the existing structure and what we are proposing is a modest one-story addition covering approximately half of the footprint. It equates to an addition of about 600 square feet. The remaining area of the footprint is used for recreation space.

This is a view looking south. This is the north facade -- here is the existing pipe to the parapet wall, our addition at this eve height comprises a height of only an additional seven feet. This architectural element here extends to a maximum height, additional height, of approximately 12 feet.

So the design is, is meant to be very inobtrusive to the neighborhood, using materials, copper, limestone, and wood, which are present in the neighborhood.

MR. SMITH: Mr. Zahn, can you please review any adverse circumstances which may be created as a result of this proposal? Such as light and air or ventilation issues to the neighboring properties.

MR. ZAHN: Well, since the property to the south, as shown in the diagram has no facing the proposed project, there s no adverse affect to that property. The surrounding rear and north side are currently church parking lots and present no issues of light and air. And then the front facade faces the alley.

MR. SMITH: Thank you. Mr. Zahn, this proposal has already been submitted to the Historic preservation Review Board and to the Commission of Fine Arts. Does this project meet their approval so far?

MR. ZAHN: Yes, both bureaus have approved the project.

MR. SMITH: Madam Chairperson, I would like to now present the zoning issues of the case. We re already half through.

The subject property is a single-family dwelling legally known as premises address 1520 22nd Street, Northwest, but it is also known by the post office as 2208 Q Street Northwest,

Washington, D.C. This property is an alley dwelling located in Square 2510 on the ANT lot 813.

The practical difficulty and hardship of this case is that it concerns an alley lot and a single-family residence upon it. The subject property contains no street frontage due to the fact that this is an alley lot, and as a result any modification to the massing or footprint of this property requires Board of Zoning Adjustment approval.

In addition, due to the size of the building upon the lot, there was no useable outside recreational areas, such as a useable rear yard; currently the rear yard is only four feet. Side yards, currently one side yard is three feet and the other side yard is 6.5 feet. And there s no other City-owned green space or public property frontage that you find on a traditional lot that s not an alley lot to use for a recreational area; thus, the applicant felt that the recreational package could be put on the rooftop with a second-floor bedroom additional.

The subject property consists of a nonconforming structure devoted to conforming use. Section 2001.3 of the zoning regulations state that the enlarge more addition may be made to the structure, provided that the following requirement shall be met.

Subsection (a) requires the structure shall conform to percentage of lot occupancy requirements. However, this provision is not possible in this case due to the fact that the

existing building occupies more than 40 percent of the lot. The building actually occupies 59 percent of the lot. While the current proposal does not propose the addition to any footprint, nevertheless variances are required from the provisions of subparagraph (a) due to this fact.

Section 2001.3(b) of the zoning regulations requires: The addition or enlargement of self shall conform to use and structure requirements. Again, this is not possible due to the fact that the structure itself does not conform to percentage lot occupancy requirements. And it is the desire of the owner to construct a second-floor addition which is still not conforming to the structure requirements, a minimum rear yard and minimum side yard.

Also, Section 2001.3(c) of the zoning regulations require, The addition or enlargement of self shall not increase or expand any existing nonconforming aspect of the structure and shall not create any new nonconforming structure and addition, combined.

The unique shape of this lot, due to its narrowness, and due to the fact that there are less than required side yards provided, and also due to the fact that the building is sitting right smack dab in the middle of the lot and it could have been set back when it was built, one way or the other, but it is not, are prohibitions that do not allow for a conforming second-floor addition.

There s also in the design an existing cellar that has a staircase in the back part of the lot that -- you can look at your drawing to see that it goes down. And we can t set the addition back at the second floor level to eight feet because we can t take advantage of the staircase and the small footprint.

So, therefore, we re not asking to be held to this standard, but otherwise have an exception to it.

Therefore, the new building, which includes a second-floor addition, will not come into conformity with the zoning regulations with respect to subsection 2001.3(c).

Except for my summary statement, that concludes our presentation.

CHAIRPERSON REID: Mr. Smith, in regard to -- and you did kind to allude to, but not directly, that the test, the three-pronged test for a variance, which is unique and unusual, and go ahead.

MR. SMITH: Well, it s because it s an alley lot, we have an unusual hardship because we cannot do anything with the lot unless we come before the Board of Zoning Adjustment.

CHAIRPERSON REID: That s the practical difficulty. Speak to the uniqueness of this particular property that will cause a practical difficulty for your client to be able to comply with the existing zoning regulations.

MR. SMITH: Well, there s a practical difficulty.

CHAIRPERSON REID: No, no, before that. Speak to

the uniqueness. Remember, there are three -- it s a three-pronged test. The first one is, something unique and unusual inherent in the land.

MR. SMITH: Well, it s unique and unusual because there is no street frontage on this property and that there is also because of the siding of the original building, and because it is historic and protected under D.C. Law 2-144, and is also protected by the Commission of Fine Arts, we don t have the ability to tear part of the building down to make it usable and come in conformity with the zoning regulations.

CHAIRPERSON REID: How does it compare to the adjacent properties?

MR. SMITH: There is one adjacent property in the alley that s an existing two-story building, and, if you notice the addition height, in that one -- that building right here, the Commission of Fine Arts approved the concept, but they said that Mr. Jefferies building cannot be taller than the house next door to it.

CHAIRPERSON REID: Okay. So then. We know the practical difficulty. You talked to us about adverse impact.

MR. SMITH: Yes.

CHAIRPERSON REID: As far as you know, we have not heard any opposition to it, so the last thing is whether or not you won t impair the intent and integrity of the zoning regulations.

MR. SMITH: I was going to get to that in my summary statement.

CHAIRPERSON REID: Okay. If you could do that in your closing remarks --

MR. SMITH: Can we do it now?

CHAIRPERSON REID: Closing remarks. Thank you. All right, now. Any questions? Okay.

MS. RENSHAW: I want to ask questions about the letter that we had received from the School for Friends.

CHAIRPERSON REID: Is that in opposition or in support?

MS. RENSHAW: A safety concern during the construction phase.

CHAIRPERSON REID: Let s come back to -- let s do that during the opposition.

MS. RENSHAW: Okay.

CHAIRPERSON REID: Now, the ANC report. Is there an ANC here?

MS. RENSHAW: Yes, well, we have a report dated June 19th, 2000, from the Dupont Circle Advisory Neighborhood Commission ANC 2-B, and it is signed by Kyle Pitsor, who is the Chair of ANC 2-B. They held a meeting on June 14th, 2000. There was a quorum present, five of the seven commissioners, and they discussed the request, and Mr. Smith was in attendance, and he presented the application, and they had discussion in this public

meeting, and there was a unanimous approval, a motion. So they support the variances of Douglas Jefferies --

CHAIRPERSON REID: And they will be -- they will be afforded the great weight to which they re entitled as a result of that, the quorum being present and the vote being taken.

We don t have an Office of Planning report?

MS. RENSHAW: We have a letter from Donna Hays as a member of the Sheridan Kalorama Historic Association Review Board.

PARTICIPANT: She s also present.

MS. RENSHAW: Is she present. Very good.

CHAIRPERSON REID: Did you wish to speak? Will you willing to speak or testify?

MS. HAYS: If you wish me to speak.

CHAIRPERSON REID: Please, come. Since you re here and you ve been so patient, waiting, I would like if you could just say a few words. We do have the --

MS. HAYS: Okay.

CHAIRPERSON REID: Historic Preservation Review Board report, but -- please.

MS. HAYS: Yes. Several months ago we reviewed the application, and I involved all the neighbors, including the church, which I did not put in my letter. And including the little apartment house next door, and everybody -- we had problems, as Greg can tell you, about materials. But we had no problems whatsoever about the second-floor addition.

CHAIRPERSON REID: Thank you. Did you give you name and your address?

MS. HAYS: Oh, Donna Hays. I m at -- H-A-Y-S. And I m at 2234 Q Street, Northwest.

CHAIRPERSON REID: Okay --

MS. HAYS: And I have -- I also own a garage on that back alley.

CHAIRPERSON REID: Mrs. Hayes, let s see. Now, what is your connection? Because the letter that we have is signed -- it s from a staff reviewer by the name of Suzanne Ganschnietz, page 33 of notes.

MS. HAYS: I m a member of the Sheridan Kalorama Historic Association. The preservation of local --

CHAIRPERSON REID: Oh, the local one. Okay. --

MS. HAYS: And that s where it started --

CHAIRPERSON REID: This is a different report. Okay. All right. I see. All right. Okay.

MS. HAYS: And we gave our report to Suzanne.

CHAIRPERSON REID: Okay. All right. Thank you very much. And then we also have a report from the Historic Preservation Review Board, Suzanne Ganschnietz.

PARTICIPANT: Ganschnietz.

CHAIRPERSON REID: something like that. Say it for me.

MR. SMITH: Ganschnietz.

CHAIRPERSON REID: Thank you. And it says in pertinent part, basically, the staff recommend that the review board approve of the project in concept and delegate file approval to the staff, so, that s good.

Persons or parties in support. Persons or parties in opposition. Final remarks by the applicant.

MS. RENSHAW: Do you bring up this letter?

CHAIRPERSON REID: I m sorry, I forgot. I m sorry, Mrs. Renshaw. Please.

MS. RENSHAW: We have a July 5th, 2000, letter from James Clay, the director of the School for Friends. Mr. Jefferies, you re knowledgeable about this letter?

MR. JEFFERIES: Yes.

MS. RENSHAW: And they have 37 children at the school who play two or more hours per day, five days a week, on the playground, and Mr. Clay, the director, expresses a concern for the children s safety during the construction phase of the project.

And he attempted to meet with you, but he has only had a phone conversation with you. And you assured him there would be no problem, but he wanted more concrete plan agreed upon. So could you --

MR. JEFFERIES: Sure. Like I said, I ve lived there for seven and a half years, and I ve never had a problem with them. I d actually contend that it s more than 37 children,

at least it sounds like it. But I d be happy to put up a plywood, 15 feet in height, to make sure that no debris -- I have a four-foot backyard, and then a fence, and then it s the day -- then it s the playground for the day school, or for School for Friends, rather.

And I would have no problem having the general contractor build a 15 foot plywood wall -- it s only during construction is their concern.

CHAIRPERSON REID: Okay, now. How do we effectuate that? Could he enter into agreement with the school? And then give us a copy?

MS. SANSONE: madam Chair, I believe that would be -- the best mechanism would be for the applicant to enter into the agreement with the school and then have them submit it to the Board. It really -- since he s asking for a variance, it wouldn t really be appropriate to include a condition. We can address it in the written orders, as well, that it s part of the finding that there s no adverse impacts.

CHAIRPERSON REID: Okay. And that hopefully will be satisfactory to the school and that would take care of their concerns.

MR. JEFFERIES: Madam Chair, I was at a meeting at the church about a bunch of issues and this came up, and I don t remember what James Clay looks like, but when I had suggested -- I said, what are all your concerns? The only concern is during

construction, and I said I ll be happy to build a wall so that no debris or tools get into the play area. And they were all great. They said, Oh, great, it s a dead issue.

So this is new to see this letter.

CHAIRPERSON REID: Well, if you can just -- I guess they want to reassure

MR. JEFFERIES: Right.

CHAIRPERSON REID: -- that it went beyond, Oh, yeah, I ll do it.

MR. JEFFERIES: Right.

CHAIRPERSON REID: Put it here and before the order is -- before the order is released, and we ll have that. Have it as a part attached to the order.

MS. SANSONE: Madam Chair, if Mr. Jefferies were to write a letter, and then the School of Friends could just sign off on the bottom that that will be accept -- that might be the most efficient way to get it done.

MR. JEFFERIES: Okay.

CHAIRPERSON REID: Mr. Smith.

MR. SMITH: Yes. I would like to point out to the Board that to get a construction permit for a fence in excess of seven feet requires written permission from the adjacent property owner anyway.

CHAIRPERSON REID: Okay.

MR. SMITH: So it s perfectly appropriate.

CHAIRPERSON REID: Thank you very much. Now, your closing remarks, Mr. Smith.

MR. SMITH: Section 3103.2 of the zoning regulations reads as follows:

As set forth int he D.C. Code, whereby reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the zoning regulations, or by reason of exceptional topographical conditions or other extraordinary exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Code would result in peculiar hardship and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property to offer upon an appeal relating to the property a variance from the strict application so as to relieve the difficulties or hardship.

The owner of this property has an extraordinary and exceptional situation of hardship due to the fact that the subject property is an alley lot that has no street frontage.

Due to this one simple fact, should the owner of a piece of property in R-3 zone, which also happens to be an alley lot, want to add to the zoning matter-of-right development features cannot be taken advantage of without B.Z.A. sanction.

Turn it off.

MR. JEFFERIES: It s off.

MR. SMITH: Any modification of an existing single

family residence, which the owner may desire to make, requires B.Z.A. approval.

In addition, due to the fact that the building is existing, and it is subject to the Commission of Fine Arts and falls under the jurisdiction of Historic Preservation Division pursuant to D.C. law 2-144, and is -- as such is a contributing building to the nature and purpose of the historic district. The building cannot be torn down or made smaller to provide required side or rear yard setbacks, which would result in useable recreational space.

The architect has shown us in his presentation the design constraints of adding the second-floor addition, setting back the second floor to include a side yard setback at the second-floor level is not possible, due to the location of the interior staircases accessing the existing cellar, and will be extended in excess a new second-floor addition.

Part of the architect indicated in his presentation of required rear-yard setback of 20 feet, cannot be met at the second-floor level, again due to the fact that existing cellar staircases the back of the building and lies within four feet of the rear lot line.

Therefore, due to practical -- due to practical difficulties of constructing an additional existing single-family residence in an alley due to zoning, historic, and fine arts constraints, applicants seek relief from Subsection 2001.3(a),

(b), and (c).

We have been presented with an extensive and extremely attractive second-floor addition to this property by architect Greg Zahn, which will also require a substantial alteration repair of existing building in order to accommodate it. It is quite possible that this new construction will be right at or exceed one-half of the value of the structure immediately prior to the time of the addition, so the applicant also seeks relief from Section 2507 of the zoning regulations as it was advertised.

Seeking relief from Subsections 2001.3(a), (b), and (c) also triggers a necessity to seek relief from Section 403, which is percentage of lot occupancy. The building exceeds the percentage of allowable lot occupancy of 40 percent. Our proposal will not increase the size of the building for the purpose of percentage of lot occupancy calculations, but the fact that existing building is in excess of the required 40 percent allowable, at 59 percent, zoning relief must also be sought and granted from the provisions of Section 403.

In addition, the existing rear yard, pursuant to Subsection 404 is required to be 20 feet. The existing building has a rear yard setback of four feet. The zoning application before you to make the second floor addition will not enlarge the encroachment into the existing required rear yard setback, but due to the fact that the existing building does not have a 20 foot setback, we must also seek and have approved relief from

Subsection 404 of the zoning regulations.

The provisions of Section 405 of the zoning regulations require a side yard of eight feet. The existing building has a side yard setback in the amount of six and a half feet on the northernmost side of the lot and three feet on the southernmost portion of the lot. The proposed second-floor addition does not further encroach upon the existing yard setbacks; nevertheless, due to the fact that the existing building doe snot have the required sideyard setbacks, we must also seek and have granted approval from the provisions of Subsection 405.

There will be no adverse impacts created due to the second-floor addition, which is the subject of the application today. Immediately surrounding this building on the northern and eastern sides are parking lots for use by the Church of the Pilgrims, which is immediately adjacent to the applicant s property. On the western side of the property is an alley, which is 20 feet wide. On the southernmost side of the property is another alley lot, which has a two-story single-family residence structure upon it. It is set back about three feet from its property line, also, and there are no windows on that side of the building facing the subject property.

Therefore, no neighbors windows will be blocked from available sunlight. There will be no noise created as a result of this project, which would tend to be any more noisy than the existing single-family residence would already be.

There will be no air blockages or ventilation or air-flow modifications to adjacent properties as a result of this application.

And finally returning to the zoning regulation, Subsection 3103.2, which further states, Provided that relief can be granted without substantial detriment to the public good, without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map, the proposal before us today is for a conforming use as a single-family residence in an R-3 zone.

While the building itself is not conforming due to the fact that it is an alley structure and does not have the required setbacks of an ideal R-3 lot, whereas setbacks are possible, there will be no public harm should this proposal be granted, and the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map will not be harmed in any way.

For the record, we would like to point out that Ms. Hays, representing the Sheridan Kalorama Historic Association, and Advisory Neighborhood Commission 2-B, as well as the surrounding neighbors interviewed by Mrs. Hays, as well as the Commission of Fine Arts and the Historic Preservation Review Board, all concur.

In closing, should the Board consider approving our application today, we would ask respectfully that the Chair provide us with a summary order and bench decision.

Thank you.

CHAIRPERSON REID: Thank you. Okay. Board members, what is your pleasure in regard to this case? I m sorry.

MS. RENSHAW: Make a motion.

CHAIRPERSON REID: Yes, why doesn t someone else make a motion. I have made two or three today.

MR. HOOD: Madam Chair, I ll make a motion we approve Application Number 16584. I believe they have demonstrated their unique and unusual situation and have practical difficulty, and there is no adverse impact to the surrounding neighborhood.

CHAIRPERSON REID: And did someone second?

MS. RENSHAW: Second.

CHAIRPERSON REID: And they have the support of the community, the ANC, there s no opposition, and also the Kalorama Historical -- Sheridan Kalorama Historic Preservation Association and as such, I also concur that this application should be approved. All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: And we have a proxy from Mr. Moulden who had to go catch a 6:15 train to Baltimore. All opposed?

(No response.)

MR. HART: The staff would record the vote as five to zero to approve. The motion by Mr. Hood, and seconded by Mrs.

Renshaw. The full order, final order, will be pending an agreement submitted by the applicant between the applicant and the adjacent school.

CHAIRPERSON REID: Okay. Well, good luck. All right. One down, one more to go.

MR. SMITH: We re going to set up now for the next one.

CHAIRPERSON REID: Okay.

MR. SMITH: I believe we re already sworn in. Can we stay sworn in, or do we have to be sworn in again?

MR. HART: No. A different case. Let me just -- Let me check with her.

CHAIRPERSON REID: Yes, Mr. Hart.

MR. HART: Do I re-swear them? It s a different case.

CHAIRPERSON REID: Yes, well, they were sworn in the old case --

MR. HART: Yes, so --

CHAIRPERSON REID: So they have to be sworn again for this case.

MR. HART: Okay. Final case, No. 16537, Application of Gregory G. Zahn, pursuant to -- let me --

CHAIRPERSON REID: Wait a minute --

MR. HART: Not yet let me read this.

CHAIRPERSON REID: Okay. All right, go ahead.

MR. HART: Pursuant to 11 DCMR 3103.2, for a variance under Section 402.4 from the floor area ratio limitations requires and Subsections 2001.3, Subsections (a) and (c) for variances to allow a second-story addition and roof deck from the allowed percentage of lot occupancy, the gross floor area and to extend the existing nonconforming rear yard set back requirements in an DCOD/R-5-B District at premises 1727 21st Street, Northwest, which is Square 92, Lot 22. Please stand to be sworn in.

(Witnesses sworn.)

MR. SMITH: Good afternoon, Madam Chairman, once again. For the record, my name is James F. Smith, of the firm Mr. Permit L.L.C. and I live at 6 Logan Circle, Northwest, Washington, D.C.

To my left is Mr. Gregory Zahn, the owner of the subject property, who is also the principal architect of the firm, Zahn Design Architects.

This case concerns a proposed addition to an existing single-family residence of premises address 1721 21st Street, Northwest, Washington, D.C. An application of the Board of Zoning Adjustment has been filed and duly noticed as Case No. 16537.

MR. SOCKWELL: Excuse me, Mr. Smith, would you repeat the address?

MR. SOCKWELL: 1727 20 -- I m sorry. I read it

wrong. It s 1727 21st Street, Northwest.

MR. SOCKWELL: 27th Street is what we have here.

MR. SMITH: 1727 21st Street.

CHAIRPERSON REID: I have 21st Street. 21st Street.

MR. SOCKWELL: Mr. Zahn s letter is wrong. Your opening is wrong.

CHAIRPERSON REID: Okay. What is the correct address?

MR. SMITH: 1727 21st Street. Is that what you have in the announcement? Yes. Okay.

As a preliminary matter, I wanted to briefly discuss the unofficial zoning regulations, which are published on the web site. And the official zoning regulations, which are only available through the Office of Documents in this building, which are inaccurate.

CHAIRPERSON REID: Which one s inaccurate?

MR. SMITH: The ones that you buy from the Office of Documents. They haven t been updated for several years.

CHAIRPERSON REID: Okay, but the unofficial ones, that is the one that -- isn t that the one --

MR. SMITH: The unofficial one is the one your staff uses.

CHAIRPERSON REID: the ones on the web site. Yes. Okay.

MR. SOCKWELL: The one we here at the Board use is updated.

MR. SMITH: That s correct.

MR. SOCKWELL: The one I use is updated. Let s let that one --

MR. SMITH: I understand that. I just want to point out that I just got called to this case last week, and when I reviewed the case, I realized that we are probably -- should have been here under Section 223, which is Addition to One-Family Dwellings or Flat, instead of the variance requirements of 2001.3 (a) and (c), and I don t believe that the zoning administrator s office recognizes or has a copy of your unofficial zoning regulations.

CHAIRPERSON REID: Repeat that. You should, that you think --

MR. SMITH: We do not believe that the Office of the Zoning Administrator maintains the unofficial set of regulations.

CHAIRPERSON REID: I understand that, but what did you say earlier when you said that you think you should be under what --

MR. SMITH: We thought that we -- it would be more appropriate for us to be before you under Subsection 223, Additions to One-Family Dwellings or Flats. Now I didn t know about the unofficial web sit in the copy that you all used until I

filed Doug Jefferies, which we just heard, and Jerrily Kress said, no, you ve got a problem in a couple of your paragraphs citations because we have an unofficial official document.

And I think this is creating a great deal of concern among the folks that I ve chatted with, some of the developers and stuff, because they don t know what set of regulations they re supposed to deal with.

But at any rate, I think that we have an after-the-fact memorandum of filing from Edgar Nunley, and he doesn t even go into the aspects of Section 223, so I think it s really important that we try to instruct the staff to get a copy of the zoning regulations in the hands of those folks in the Zoning Administrator s office that send work to the Board of Zoning Adjustment so they can be familiar with the changes and act accordingly, because I don t believe that this case was properly noted -- I think we can proceed along the way the case is constructed now, but it would have been a lot simpler case, not to have to prove two variances and to go into the special exception area afforded by the new section 223 which is not published in the official document.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: Well, actually the issue is one that presides with those who publish the document, and not with the Office of Zoning, which does map and text amendments because this information is all published within the D.C. Register, and that s

where I have to get it. It is not being updated; the Zoning Ordinance is not being updated, the zoning map hasn t been updated, especially since 96. So we have this problem, the problem exists internally within the Office of Zoning, and exists over at DCRA, and unfortunately, if it s up on the website incorrect, I have no knowledge of it. I don t use the --

MR. SMITH: It s on the website correctly.

MR. SOCKWELL: Okay.

MR. HOOD: The problem is, it s on the website correctly and may not -- let me just say this to you, Mr. Smith. If you could write us a letter, the Zoning Commission, and send to also copy to Ms. Croft. This is an issue with the Office of Documents. We re trying to get the right to make the version on the web site the legal document, but there are problems with some legality issues there, some financial issues, who is going to get the money.

Let me just finish. This issue has come up before, so if we can get more input from those people who are using those regulations, then that way we can expedite some of the red tape that we re having to deal with and go through. So I think you bring a valid argument, and I agree with you.

We just need to move forward on this.

MR. SOCKWELL: No one should have to be vigilant about getting accurate copies of the zoning law. It should just be something that you can go to an office and pick up and it s

always right. There always has there should be update packages. We re the only ones around that don t do it right.

CHAIRPERSON REID: I ll say to Mr. Hood, Mr. Smith if my memory serves me correctly, was the one to testified at the -- yes, testified at the hearing before Croft regarding the budget hearings about the same issue. And that was, what, two or three months ago?

MR. SMITH: Yes.

CHAIRPERSON REID: and it s still occurring.

MR. SMITH: April the 5th.

CHAIRPERSON REID: Yes. And that is. So they are aware --

MR. HOOD: So you heard the discussion -- you heard the discussion about the document.

MR. SMITH: Yes, sir.

MR. HOOD: Okay.

MR. SMITH: About six months ago I was told by Linda in the staff that the zoning regulations that I had, I brought in an old book, and she said, that s out of date. And I didn t understand that there was a web site. So I went out and purchased for several of my contractors about $125, five sets, of the zoning regulations from the Office of Documents, through my runner, and he brought them back to me, and I discovered it was the same set that I had already. So this is a serious problem, and we really need to buckle down on this --

CHAIRPERSON REID: And not only that

MR. SMITH: because this created -- this could create a hardship on this case --

CHAIRPERSON REID: But not only that, but we also --

MR. SMITH: because we re starting the one chapters.

CHAIRPERSON REID: We also have regulations, new regulations that are going to be promulgated just within the next month --

PARTICIPANT: Two months.

CHAIRPERSON REID: that s going to be brand new revision of the regulation. So that should also alleviate some of the problem.

MR. HOOD: But let me just say, even though you did testify a couple of months ago, I still think it s key that we still pursue it. Write a letter, and that way that will add fuel to the fire.

CHAIRPERSON REID: Or you can share copy of the testimony. Just attach these lines.

MR. HOOD: Where are you with this?

CHAIRPERSON REID: Where are you with this, you know, kind of thing.

Wait, wait. But it s 6:25 now, we have to move forward. Let s deal with the problem and see how we can best

address it right now.

MR. SOCKWELL: And Mr. Smith, if you write a letter, at least put in it that the Office of Documents should publish an errata list with any document that s not correct.

MR. SMITH: Exactly.

CHAIRPERSON REID: Okay, now. That was the question I had raised earlier today. We have your self certification and we have the Nunley letter. And the Nunley letter does not have some of the things that you have for your self certification. So I want your clarification -- exactly, you tell us exactly what are you coming before us, on what regulation?

MR. SMITH: Well, it s been advertised to come forward on 2001.3(a) and (c). I don t know at this time if you can consider this to be a special exception under 223?

CHAIRPERSON REID: Also, isn t it also Section 402.4?

MR. SMITH: And 402.4, yes.

CHAIRPERSON REID: Okay, so those two sections are what you are appearing here today.

MR. SMITH: That s correct.

CHAIRPERSON REID: Okay, now. In the Nunley letter it does say 402.4, and it also has 2001.3.

MS. SANSONE: Madam Chair.

CHAIRPERSON REID: 001.3(a) and (c)

MS. SANSONE: If I might just jump in for a minute

here. Under Section 223, which we frequently do forget or skip over because it s not published, that does not -- that s the minor flexibility rule, and it does not cover Section 402, the floor area ratio that Mr. Zahn has applied for. So it wouldn t be a special exception proceeding.

CHAIRPERSON REID: It would not?

MS. SANSONE: It would not. And also, it does not cover the minor flexibility under the nonconforming provisions, which is very similar to the case we had earlier today.

CHAIRPERSON REID: So, he s a variance.

MS. SANSONE: He s a variance.

CHAIRPERSON REID: Variance as set forth by Edgar Nunley.

MS. SANSONE: As set forth by Edgar Nunley

CHAIRPERSON REID: So Mr. --

MR. SMITH: I m sorry, I don t -- 402. --

CHAIRPERSON REID: Notwithstanding the fact that, you know, we ve had this mixup, the Nunley letter is what you ve come before us under. And this is what we have to go by, and that is the one that has the 204. -- let me, 402.4 and the 2001.3(c) and 2001.3(a). That is the variance on which you re currently under.

MR. SMITH: Can you hold one second?

(Chatter.)

CHAIRPERSON REID: Are you still with us? For few

more minutes. Okay.

(Chatter.)

MR. SMITH: Okay. We re ready.

CHAIRPERSON REID: Okay. Mr. Smith, as you re making your case, just go into the three-pronged test, and the unique and unusual aspect of the property, as you did before, but, I m thinking, is, do that now. And then, in your summary, just simply, at that point, we can just kind of truncate this. You can just ask for --

MR. SMITH: Approval.

CHAIRPERSON REID: Right. You can --

MR. SMITH: Or disapproval, as it were.

Mr. Zahn and I are here before you today to present our case, which shall require approximately 10 to 15 minutes.

For the record, it should be noted that we submitted a copy of Historic Preservation Conceptual approval of the project. Please note that Steve Raiche wrote on the bottom of that, Steve Raiche is a program manager at the Historic Preservation division, that it is okay to issue the permit as a proposed second-floor addition, as in keeping with the spirit and intent of D.C. law 2-144.

I would like to ask Mr. Zahn some questions for the record. Mr. Zahn, for the record, please state your name and residence address.

MR. ZAHN: Gregory Zahn, 1727 21st Street

MR. SMITH: Mr. Zahn, for the record, please state your occupation.

MR. ZAHN: I m an architect.

MR. SMITH: Mr. Zahn, can you please explain the circumstances leading up to your purchase of the property and rehabilitation of it as a single-family residence.

MR. ZAHN: I purchased the property in 1997. It had been last occupied as a graphics studio. I intended to move my architect s office there. There were some issues with the grandfather of the commercial occupancy and resistance from the neighbors to have the property used as commercial, so I converted it to my personal residence.

MR. SMITH: Mr. Zahn, can you please explain why you were seeking to add a second-floor addition to your property.

MR. ZAHN: Currently the property has a windowless basement, a windowless mezzanine, which only affords a very small bedroom with windows opening to a noisy -- directed to a noisy alley which serves the restaurants on Connecticut Avenue, and there s also -- the property covers 100 percent of the lot. And there s no recreation space.

MR. SMITH: Mr. Zahn, can you please explain to the Board what practical difficulty would result if zoning relief is not granted.

MR. ZAHN: The property is not suitable for single-family residence, for issues of safety and light and air. I would

pursue use groups allowable in R-5-B, such as gallery uses or commercial uses available in R-5-B. However, this is against the wishes of the -- the general wishes of the neighborhood.

MR. SMITH: And Mr. Zahn, does it also require you to come back before the Zoning Board, or Zoning Adjustment, at a later time seeking relief, is that correct?

MR. ZAHN: Yes.

MR. SMITH: Mr. Zahn, can you please explain your design of the second-floor addition to your property to the Board.

MR. ZAHN: It s a small approximately 600 square foot addition with approximately a 300 square foot deck set back 15 feet from the front property line, extending all the way to the rear of the property line.

MR. SMITH: Can you tell us if there are, as far as you know, any adverse circumstances which may be created as a result of this proposal, such as light, air, or noise?

MR. ZAHN: The existing property. Okay, the existing property is surrounded on two sides by public alley, on the rear by commercial space, and to the south by a apartment -- a four-unit apartment building which is significantly taller than the existing structure. So therefore, any addition to my property would not inhibit light and air from adjacent properties.

This is a view looking down the alley. These are all commercial properties on Connecticut Avenue. The areas are used for loading docks. This is the -- these are the buildings

across the street, which are all three and a half stories, and would have no -- would not be affected by the height of my -- the addition to my property.

This shows the elevations along 21st Street. This is the existing commercial building to the north of the alley. The alley. This is my existing property, and the building next door, and this constitutes the addition.

MR. SMITH: I would like to now -- if there s no questions at this no point, I can get into the zoning issues.

The subject property is a single-family dwelling known legally as premises address 1727 21st Street, Northwest, Washington, D.C. The property was originally built as a commercial building occupying 100 percent of its lot, and when the zoning regulations were adopted and the R-5-B Zoning District overlay was adopted, this commercial building became a nonconforming use building.

The property was purchased by Mr. Zahn in 1997, and he proceeded to modify the existing building into a single-family residence at that time. The rehab as it now exists consists of a first floor, which occupies 100 percent of the lot, and includes a living room, kitchen and bathroom. There is also a mezzanine which has no windows, which is part of the first floor, which is used by Mr. Zahn as a study.

There is also a windowless cellar underneath the building, 100 percent cellar, by definition, and it cannot be used

as sleeping rooms due to the problems with the building codes having insufficient light and ventilation to a cellar.

There is no opportunities because there is already a historic bay projection on the front and because it occupies 100 percent of the footprint, there s no opportunities for window wells or other types of doors or entrances to the basement from the outside -- or to the cellar from outside, which would allow use of the lower level as sleeping accommodations.

The applicant is proposing insulation of a second floor addition of approximately 20 feet by 34 feet located at the rear of the property and a roof deck located in front of that approximately -- that property with approximate dimension of nine foot six deep by the width of the lot, which is 20 feet.

The property lies within the Dupont Circle Historic District. We are here before you today seeking zoning relief due to the fact that the Historic Preservation Division will not allow the applicant to make a second-floor addition near the front of this building as they require a setback from the street. Actually, the drawing, there s a flat elevation, is slightly misleading because if you stand on the sidewalk across the street, you can t see the addition from the street across.

This applicant has negotiated his second-floor addition and roof-deck addition through the historic preservation process, and since she was on vacation he did his negotiations with Steve Raiche, other than Suzanne Ganschnietz, the historian

for the area.

The subject property consists of a non-conforming structure devoted to conforming use. Section 21, 2001.3 of the zoning regulations state that the enlargement or additions may be made to a structure, provided that the following regulations be met.

Subsection (a) requires that the structure shall conform to percentage of lot occupancy requirements, which is not possible in this case due to the fact that existing building occupies more than 60 percent of its lot. In fact, the building occupies 100 percent of the lot, and due to the fact that it is historic, the Historic Preservation folks won t allow us to raise part of the building to make the building come in accordance with the zoning regulations.

In addition, I don t have a statement on this, but I noticed that Edgar Nunley s memo talks about relief from 402.4, which is a floor area ratio. Right now the existing building has a floor area ratio of 1875 square feet. The addition will make it at 2387 square feet, which makes a variance on FAR of 32.5 percent, according to Mr. Nunley.

CHAIRPERSON REID: Mr. Nunley. Wait one second. 32.5 percent.

MR. SMITH: Proposed.

CHAIRPERSON REID: Okay. I see it. Is it that much?

MR. SMITH: I don t think it s that much. I haven t calculated, however.

CHAIRPERSON REID: Mr. Sockwell, can you help us with this? This is his comp sheet. Is it that much?

MR. SMITH: It s only five --

CHAIRPERSON REID: The floor area ratio.

MR. SMITH: 1800 is allowable. And it says you have 1875. That s not true? Calculate it for me real fast.

CHAIRPERSON REID: Twenty-five percent?

MR. SMITH: Can we come back to that point, and I ll ask Mr. Zahn to calculate his FAR for us.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: Okay.

MR. SMITH: Subsection 2001.3(c) of the zoning regulations require the addition or enlargement itself shall not increase or expand any existing nonconforming aspect of the structure and shall not create any new nonconforming of structure and addition combined. The Historic Preservation Review Board does not allow us to construct a second-floor addition near the front of the building, in that it is required to be set back as not to be directly visible from the street.

Therefore, the resulting new building, which includes a second-floor addition and roof deck, will not be in conformity with the zoning regulations for percentage of lot occupancy at the second-floor level.

In a real world, we could have designed a building that had a front addition and we could have picked up the required rear yard setback at the second floor by putting the deck behind the second floor. But because of the Historic District, they ve requested to put it on the front of the addition instead of on the back, which is unusual.

In addition, it s probably good for the applicant, because I ve been back in the alley, there s a lot of noise from commercial establishments, trash, and stuff like that, so if he has a peace and quiet when he s not doing architectural work to reflect on life and other matters, it seems to me that a sun deck would be more appropriate in the front of the building on the second floor as opposed to the back, just because the siding is much more favorable under these circumstances.

The applicant has an extraordinary and exceptional situation with respect to the fact that the original and existing building has 100 percent lot occupancy, having been originally built as a commercial building. He has an extraordinary and exceptional situation due to the requirements of the Historic Preservation setbacks of not being visible from 21st Street.

Did you calculate the FAR s?

MR. ZAHN: Not exactly. However, I think what Mr. Nunley -- I think what Mr. Nunley did was include this pieces floor area, which is the existing ceiling/attic structure, which needed to remain in place for structural reasons because this is

an end, it is an end building and this floor structure is needed for lateral support on the wall. So this area is about 250 square feet of floor area, and also on this mezzanine, the ceiling height goes below six foot, six inches, and therefore, that s not counted as actual FAR.

So I estimate that this existing square footage is approximately 400 square foot more than is currently existing.

MR. SMITH: So what would that do?

MR. SOCKWELL: Based on Nunley, Nunley s right -- Nunley would right if he s saying that it s approximately -- from his numbers you re approximately 33 percent over your FAR if you use the 2387 square foot number that he has.

MR. SMITH: right. I haven t had a chance to do the math, but I - we were questioning whether we re really at that level because of the --

MR. SOCKWELL: Based on his numbers, yes, he is. It s approximately 35 percent.

MR. SMITH: Okay.

MR. ZAHN: We re not questioning the percentage, we re questioning the --

MR. SOCKWELL: Yes, if his numbers calculated on a faulty basis --

MR. ZAHN: Correct. I believe that the existing 1875 square feet is in reality 1475 square feet.

MR. SOCKWELL: And you re saying this because you

have a partial high ceiling area, or something?

MR. SMITH: Yes, show him that again.

MR. ZAHN: This area -- this area is not habitable area. It is -- this is the level of the -- of the original building ceiling joist which were required to maintain -- remain in place for structural reasons.

It is, however, open. It s an open area with a railing. But it has -- it has a ceiling height of less than six foot six, and is therefore not counted in FAR. Similarly --

MR. SOCKWELL: It appears that there s a sloping ceiling in that space, based on the drawing that I have a copy of, which appears to be the same thing as yours, except for the first --

MR. ZAHN: Okay.

MR. SOCKWELL: But, I mean, I m not judging the ceiling height if the floor area that can be attributed to FAR is less than the number than Mr. Nunley calculated, then we can work with that.

MR. ZAHN: Should we come back to this if it s an issue?

MR. SOCKWELL: Yes, we should probably know what that floor area really is, because otherwise, we re just not -- we re not accurate, and accuracy is required on our side and on the zoning s side. I just want to --

CHAIRPERSON REID: We can request that the two

calculations be done and verified by Nunley and submitted to us.

MR. SOCKWELL: Well, Nunley s working against information provided by the applicant.

CHAIRPERSON REID: Well, the applicant just said that the only discrepancy is in the way that it was calculated, so wherever it s correct is what we need to achieve, and perhaps we can just ask that that be done.

MR. SMITH: We ll be glad to work with Edgar this week and submit something for the record, and I ll ask Ms. Kress to help out his schedule to hurry him along a little bit.

CHAIRPERSON REID: Sure.

MR. SMITH: Okay. If there is an FAR requirement situation, I think that we would ask for zoning relief under Section 402.4

CHAIRPERSON REID: That s what s been indicated by Nunley, that zoning relief --

MR. SMITH: That s correct.

CHAIRPERSON REID: Yes, so.

MR. SMITH: Assuming that we need any relief under that paragraph, we would ask for it.

CHAIRPERSON REID: In regard to this particular application, if in fact it is approved, then that would be included therein.

MR. SMITH: Okay.

CHAIRPERSON REID: So.

MR. SMITH: We ll cover it, even if it s not necessary.

CHAIRPERSON REID: Exactly.

MR. SMITH: There will be no adverse impacts created by the second-floor addition to the applicant s property. The adjacent building is a three-story plus basement apartment building, which is at substantially greater height than the applicant s proposal.

Adjacent and immediately behind the property is an alley. A second-floor addition will provide no impacts with respect to light, noise, and air on these neighboring properties which are immediate to the alley.

It should be noted that the buildings across the alley on both sides and rear are commercial buildings. The building that backs up to the back of the property which faces Connecticut Avenue is about five stories in height. The rear of this particular property serves as a dumpster, loading dock, and accessory use parking lot, so that any additional second-floor addition would not create any impacts to the use and enjoyment of the neighboring properties. In fact, his light is blocked by the other buildings already, and the addition of the second floor won t help him any, but it doesn t hurt him either, or it doesn t affect anyone else.

Section 3103.2 reads as follows: Whereby reason of exceptional narrowness, shallowness, or shape of a specific

piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary exceptional situation or condition of a specific piece of property. The strict application of any regulations adopted under D.C. Code, the result of a peculiar and exceptional practical difficulties, or to exceptional and undue hardship on the owner of the property, to authorize upon an appeal relating to the property or variance from the strict application so as to relieve the difficulties or hardship.

The owner of the property has an extraordinary and exceptional hardship due to the fact that the building was originally built as a commercial building occupying 100 percent of its lot. This building is protected by Historic Preservation Law 2-144.

Even though a second-floor addition is allowed under R-5-B zoning regulations, under certain circumstances, due to the fact that this property is located within the Dupont Circle Historic District, a second-floor addition would require a setback of 15 feet, if the addition level is not possible, due to the fact that they want the addition in the back of the building other than the front of the building.

Therefore, this applicant has come before you asking for a variance to allow a second-floor addition which is set back to the rear lot line, and allow the construction of a deck at the second-floor level, which would normally be located at

the rear of the building, to be in front of the second-floor addition, to allow the Historic Preservation Division s required setback to have this addition at all.

There will be no adverse impact created due to the second-floor addition and roof deck, which is subject to the application.

And finally, returning to the zoning regulations, Section 3103.2, which further states, provided that the relief can be granted without the substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map, the proposal before us today is a conforming use as a single-family residence in an R-5-B zone of property that was formerly of nonconforming use in an R-5-B zone as a commercial building.

I think that allowing this proposal to go forward will ensure that it stays as a single-family house because it will have more than one small bedroom, which will make it a viable single-family house product, if you will, instead of being basically a windowless basement and mezzanine with just one small bedroom and living room type, more like an apartment use.

While the building itself is not conforming, the addition of the second floor of this property and the surrounding adjacent properties substantially higher and also to occupy 100 percent of their lots. There will be no public harm should this

proposal be granted.

The intent, purpose, and integrity of the zone plan and map will not be harmed in any way by this addition.

We would like to also point out that the Advisory Neighborhood Commission in its letter to you concurs. There was one other letter in the record, Madam Chairman, that was submitted, and they were objecting to the use of the front of the building as a parking lot, and I have a copy of their letter, and they really didn t get into the merits of the proposal, but they were concerned that because there was a -- this is a unique lot because it has an alley on the side of it. So that in the past everyone who occupied the building used the front parking area of public space, as a place to park a motor vehicle. And if you look at the letter, it goes on about --

CHAIRPERSON REID: this letter, is it -- what s the date on the letter?

MR. SMITH: One from January.

PARTICIPANT: It s from --

MR. SMITH: February the 1st, 2000, Deborah and William H. Johnson, signed by several folks in the neighborhood.

CHAIRPERSON REID: February 1st.

MR. SMITH: Yes.

CHAIRPERSON REID: Or January, okay. Yes, I have that one. I thought you said January. Yes, I have that.

MR. SMITH: Mr. Zahn was aware of that at the time

and actually hired my firm, Mr. Permit, to acquire a public space permit for him to close off that area and abandon the parking on that particular part of public space, and he can show you on the photograph what he has done to affect that.

He puts four boxwoods there where there used to be an area you could pull right through there, and now that s now a planter, and we had to get a permit to provide for lead-walk in front of that. So that now he has a landscaped front yard that has a planter all the way around it, as before it only had a planter on the -- on the street side toward the sidewalk and allowed a car to pull in there.

So I think that the -- I can introduce this permit as an Exhibit, if you would like to show that we got the permit and we have the photograph, which he s made copies of for you, to submit for the record showing that that particular concern of the neighbors has been solved and there s no more cars parked out in front of this building.

So I don t believe that there is any objection, that s further stated in the letter, if you read it carefully, other than that.

MR. SOCKWELL: Mr. Smith, if I might just ask, when was this installation done?

MR. SMITH: This installation was done -- the permit was dated March 13, and Mr. Zahn just completed it -- when did you complete it?

MR. ZAHN: It was completed within two weeks of the permit issuance.

MR. SOCKWELL: Okay, so you re saying that that s been there for several months now.

MR. ZAHN: Yes, that s right.

MR. SOCKWELL: Was there any attempt made to contact the Johnsons with regard to their acceptance of your modifications?

MR. ZAHN: Oh, they live two doors down from me and I see them on the sidewalk and they complimented me and commented on the space.

MR. SOCKWELL: But they didn t rescind their letter?

MR. ZAHN: No.

CHAIRPERSON REID: What about the aspects of it that pertain to the fence -- they re saying the Office of Planning recommended that there be a fence backyard property be surrounded with a fence.

MR. SMITH: Yes, Madam Chair, they re referring to a previous B.Z.A. case that was before your predecessors where someone wanted to create an art gallery.

CHAIRPERSON REID: I see, I see.

MR. SMITH: Now the attachment concerns the case for an art gallery, which is not before us now.

CHAIRPERSON REID: Right, okay, I m sorry --

MR. SMITH: I think they want to make sure --

CHAIRPERSON REID: our contacts.

MR. SMITH: that whatever this building is used for, that nobody parks out there. That s loud and clear to us.

CHAIRPERSON REID: Okay.

MR. ZAHN: Let me just add also that the main area of that front yard is a recessed flagstone patio, approximately eight feet square and about 18 inches below the level of the sidewalk. So it s difficult or impossible to convert that area back to parking.

CHAIRPERSON REID: Okay. All right, now, let s --

MR. HOOD: Mr. Smith, I just have a quick question. Why did you -- I m just curious. Why did you self-certify and then also be certified by the Zoning Administrator?

MR. SMITH: It s quite often the case. I ve done several cases, and Ms. Kress, because she doesn t want to take up the Board s valuable time with coming back and also upsetting the public when they re told by the Zoning Administrator, well, gee, I know you want to self-certify your case, but we still have a problem here.

So Ms. Kress always tells us as a matter of practical nature what happens when we file a self-certified case -- this happened to me three or four times. She calls Edgar Nunley or writes a note to him and asks us to go back to him to affirm it. So he ll take the time off to go ahead and do this right

away, but at the same time, if you just file a case with him, it takes them several months sometimes to tell you what they ll tell you in a couple of days when Ms. Kress calls them.

I think that we need to sometime speak to that problem, but at any rate I think that the corporation counsel was made aware of this on my last case before you with Mr. Hardy, that this is quite a common occurrence for this staff, your staff, to go back and inquire of the Zoning Administrator, are you sure this is what you want because we don t want to see this case again after we dispense of it.

CHAIRPERSON REID: Okay. Now we go to the Office of Planning report. I don t think we have one.

The ANC report. You said that we did, but I don t -- I didn t see one. ANC, do we have -- MR. HOOD: Yes, we have a letter from the ANC. Case No. 16537, there was a quorum present, six of seven commissioners. ANC 2-B supports the request of the variance and B.Z.A. Application 16537 for proposed additions to a non-conforming structure at 1727 21st Street.

It was also signed by Mr. Kyle Pitsor, Chair of the ANC 2-B.

CHAIRPERSON REID: And a vote was taken.

MR. HOOD: Vote was taken.

CHAIRPERSON REID: And they will be -- you will afford -- they will be afforded great weight to which they re entitled. First to the parties in support, are you -- I m sorry -

- Okay. First the parties in opposition, closing remarks by the applicant.

MR. SMITH: I presented my closing remarks already, Madam Chair, and I would just ask if you decide to vote in the affirmative, we have a summary order bench decision.

CHAIRPERSON REID: Okay. All right. Board members, Mr. Sockwell, did you want to make a motion?

MR. SOCKWELL: I move that we accept the applicant s request for a second-story addition to the existing structure at 1727 21st Street, under Section 3104.1, Special Exceptions, that there is no adverse impact. The property has unique features which make the -- make the use of the property, under normal zoning requirements, difficult in regard to the proposed extension of the residential use, and that the second-floor addition will provide a minimum of change and no negative effects externally, and will provide a much more useable interior space and outside recreation space for the tenant/owner and therefore is positive influence in the community.

MS. SANSONE: Madam Chair. I believe we re dealing with a variance under Section 402.4 and Subsection 2001.3(a) and (c) under Mr. Nunley s letter --

CHAIRPERSON REID: yes.

MS. SANSONE: not the special exception that Mr. Sockwell referred to.

MR. SOCKWELL: I m sorry. I was reading straight

off the --

CHAIRPERSON REID: Did you say special exception? Oh, okay. The variance. As set forth in Mr. Nunley s letter. Okay.

MR. HOOD: And I ll second the motion.

CHAIRPERSON REID: Okay. All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: And there was a proxy from Mr. Moulden to approve. Opposed?

(No response.)

CHAIRPERSON REID: Okay.

MR. SOCKWELL: I just wanted to clarify the record that under the variance procedure the hardship has been proven and that there are no --

CHAIRPERSON REID: There s a practical difficulty.

MR. SOCKWELL: yes, the practical difficulty has been proven and there are no negative effects, and that the intent of the zoning has been maintained.

CHAIRPERSON REID: Okay. Just one second. And Mr. Hart.

MR. HART: Staff will record the vote as four to zero to one. Mr. Sockwell made a motion, Mr. Hood seconded, proxy by Mr. Moulden and Ms. Renshaw not voting, not being present.

CHAIRPERSON REID: All right.

MR. SMITH: Thank you, Madam chairman.

CHAIRPERSON REID: You re quite welcome. Good luck. You should have your orders, both orders in about two weeks.

BEVERLEY BAILEY: Madam Chair, it s important that the applicant provide the appropriate information concerning the FAR.

CHAIRPERSON REID: Yes, as we have indicated earlier, the correct calculation to be provided prior to the order being issued, so that our record can be consistent and correct because there was some question about that.

Thank you, Ms. Bailey.

MR. SMITH: Madam Chairman, do you want me to submit a proposed order?

CHAIRPERSON REID: No. A summary order. This is a very short --

MR. SMITH: I understand.

CHAIRPERSON REID: Yes. No --

MR. SMITH: One of my last cases the staff asked me to present one anyway.

CHAIRPERSON REID: Yes, that is only if there s opposition. A party in opposition. Otherwise, usually not, okay? All right, thank you very much.

That concludes today s hearing, July 5, of the Board of Zoning Adjustment.

Thank you very much.

(Whereupon, the Board of Zoning Adjustment Public Hearing was concluded at 7:02 p.m.)