GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

APRIL 5, 2000

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The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 11:55 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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| SHEILA CROSS REID | Chairperson |
| ROBERT N. SOCKWELL | Vice Chairperson |

ZONING COMMISSION MEMBER PRESENT:

| | |
|---|---|
| CAROL J. MITTEN | Commissioner |

OFFICE OF ZONING STAFF PRESENT:

| | |
|---|---|
| Beverly Bailey | Office of Zoning |
| Paul Hart | Office of Zoning |
| John Nyarku | Office of Zoning |

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

C-O-N-T-E-N-T-S


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(11:55 a.m.)

CHAIRPERSON REID: Those of you who are existing the hearing room, will you please do so quietly so that we can proceed with the case we have this morning.

The hearing will please come to order. Good morning ladies and gentlemen. This is the April 5 public hearing of the Board of Zoning Adjustments of the District of Columbia. My name is Sheila Cross Reid, Chairperson. With me today is Robert Sockwell and Mr. Moulden and Ms. Mitten will come back later.

Is Mr. Hood on this case?

MS. PRUITT: No, this is a new case so Mrs. Mitten will be coming in. After you read the record we'll get her.

CHAIRPERSON REID: Okay. A copy of today's hearing and agenda are available to you. They are located to my left near the door. All persons planning to testify either in favor or opposition are to fill out two witness cards. These cards are located on each end of the table in front of us.

When coming forward to speak to the Board, please give both cards to the reporter sitting to my right. The order of procedure for special exception variance cases are: (1) statement and witnesses of the applicant, (2) Government reports including Office of Planning, Department of Public Works, etc., report of the Advisory Neighborhood Commission, parties and persons in

support, parties and persons in opposition, closing remarks by the applicant, cross-examination of witnesses submitted 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 when the material is specifically requested by the Board and staff will specify at the end of the hearing exactly what is expected.

Decision of the Board in these contested cases must be based as exclusively on the public record. To avoid any appearance to the contrary, the Board request that persons present not engage members of the Board in conversation. Please turn off all beepers and cell phones at this time so as to disrupt these proceedings.

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

Does the staff have any preliminary matters? If not, let's proceed with the first case.

MS. PRUITT: The case this morning is Case No. 16551, Application of the Welch Family Limited Partnership

#10/Steve Royall, pursuant to 11 DCMR 3103.2, for a variance under Section 2101 of the off-street parking requirements for a "Social Lounge and Dance Place (Public Hall)" in a C-2-A District at premises 1335 H Street, N.E. (Square 1027, Lot 824).

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

(Whereupon, the witnesses were sworn.)

MS. PRUITT: Madam Chair, there is one issue. Linden Place has requested party status and that is Exhibit 21 in your package.

CHAIRPERSON REID: I'm sorry, Mrs. Pruitt. I was interrupted. Could you please repeat that?

MS. PRUITT: Yes. We have one request for party status and that is from the Linden Place neighborhood association. That happens to be Exhibit No. 21 in your package.

CHAIRPERSON REID: Okay. Are they here?

MS. PRUITT: Yes.

CHAIRPERSON REID: Okay. All right. Let's see. State your basis for requesting party status, please.

MR. PITTMAN: Good morning. I'm Robert Pittman. Lisa Greene is with me. She had to go take care of a parking matter. At this time we've not been able to ascertain any additional information on this particular case from the agent of record. We've not been able to speak to the owner. As a matter of fact, we found out the owner of the building has actually been

arrested for some other issues.

We are requesting based on the fact that there is no real parking plan that's been presented that this case simply be dismissed because we don't have the relevant information.

CHAIRPERSON REID: Okay. You're Mr. Pittman?

MR. PITTMAN: Yes.

CHAIRPERSON REID: Okay. Mr. Pittman, I have a couple of questions for you. One is, I don't see -- two things I need. On your letter I see that there is the name of Lisa A. Greene and Robert Pittman but I don't have signatures.

MR. PITTMAN: Yes, you do. The hard copy letters are actually here. I presented them this morning.

CHAIRPERSON REID: Oh, you did?

MR. PITTMAN: Yes.

CHAIRPERSON REID: Okay. All right. I was wondering about that. We had typed signatures.

MR. PITTMAN: That's correct.

CHAIRPERSON REID: The other thing is do you have anything that authorizes you to represent the Linden Place Neighborhood Association?

MR. PITTMAN: I'm the co-president of the Linden Neighborhood Association. The other co-president is here. Again, she had to go move the car. We've been here for two hours so she had to go move the car.

CHAIRPERSON REID: Okay. But is Linden Place

Neighborhood Association a viable entity?

MR. PITTMAN: Yes.

CHAIRPERSON REID: Is it an ad hoc committee or what?

MR. PITTMAN: No. We are a long-standing community group that has existed for over 20 years. We have by-laws which we will be happy to provide to you and we are indeed a long-standing entity.

CHAIRPERSON REID: Okay. And you are appearing in opposition?

MR. PITTMAN: I am appearing on behalf of the entire community. We have minutes to the meetings of our -- we have minutes to our meetings where this issue was discussed on 22 February and it was the consensus of the group at that time, and you should have a letter here on that as well, indicating that given that the applicant had not, in our opinion, provided good faith in giving us information or letting us know what actual plan she had in terms of the parking and the other issues that we raised that we were not in favor of it.

That is also the opinion of the Metropolitan Police Department which we were hoping were going to go ahead and send a fax over. They have also met the PSA510 and concluded the same as we.

CHAIRPERSON REID: Did you submit an application for party status?

MR. PITTMAN: No.

MS. PRUITT: Yes, Madam Chair. They've submitted a letter and that's what I was saying, Exhibit 21.

CHAIRPERSON REID: I have that but --

MS. PRUITT: That's all.

CHAIRPERSON REID: This is it?

MS. PRUITT: Yes.

CHAIRPERSON REID: Could you just tell us how your association is impacted more so than anyone else in the area?

MR. PITTMAN: Absolutely. We live there. Her location is 1335 H Street. We would be impacted -- 13th Street adjourns H Street. 12th Street Linden Place are immediately on that side. Wylie Place is on the north side of H Street. A group of people coming for the type of activities that the agent is indicating would be there would impact adversely on our ability to park. It would impact adversely on our ability to enjoy the peace and quiet of the neighborhood that we currently live in at this time.

CHAIRPERSON REID: How close do you live to the subject site? How close do the people in your organization live?

MR. PITTMAN: 13th and 14th Street residents are within anywhere 1,000 to 1,500 feet. 13th Street is right around the corner.

CHAIRPERSON REID: Okay.

MR. PITTMAN: It greatly -- in addition to that the

backs of the houses on the east side of 13th Street would be impacted by the noise. They are already impacted by a club that's there, the Woodham, which is the club which is above. We have residents in the 700 block of 13th Street who hear the noise and music at this time until 3:00 in the morning. Now what we're talking about is an additional establishment that if this -- yes, we're impacted.

CHAIRPERSON REID: Okay. Now, do you have to be within 200 feet to be able to qualify for party status?

MS. PRUITT: No, but you have to prove that you are not more greatly affected than anyone else in your surrounding neighborhood.

MR. MOULDEN: It's not a distance.

MS. PRUITT: It's not a prerequisite that it has to be within 200 feet.

CHAIRPERSON REID: What you're saying to me, Mr. Pittman, is that -- what I'm hearing is that if that's the case, you talked about another club that's not this particular club or this particular site so we have to keep it germane to this particular site. You're saying that you feel that even though you don't live within 200 feet that you would be more agreed than the people who live within 200 feet, anyone who lives right around there? Or is everyone's concern basically the same?

MR. PITTMAN: The people who live the closest would be on 13th Street. They are a part of our group. We would get

the complaints. We would be the ones to coordinate so, yes, we would be -- our people would be greatly impacted. If I'm understanding your definition of site, if this was granted and they were able to get the public hall license, there would be two clubs on the same site, one above the other. That was my basis for including the other.

CHAIRPERSON REID: But the criteria for your getting party status would have to be that you are uniquely impacted more so than --

MR. PITTMAN: Anybody else.

CHAIRPERSON REID: Right.

MR. PITTMAN: And the answer to that is yes. We would be impacted because of the activities that would --

CHAIRPERSON REID: I said uniquely impacted more so than anyone else.

MR. PITTMAN: We would be because of where our residence along 700 block of 13th Street live. They would be greatly impacted, uniquely impacted by the activity from this establishment.

MR. SOCKWELL: I think the question is what is the specific thing or reason how you would be uniquely impacted.

MR. PITTMAN: The issue again becomes the parking as the immediate and most dramatic concern.

CHAIRPERSON REID: But everyone would have the problem, wouldn't they?

MR. PITTMAN: If you live on Maryland Avenue it would be less of al problem to those who live in the 700 block of 13th Street or in the 1200 block of Linden Place. If you're going to do business on 8th Street, the human nature, what you tend to do is to park closest to where you can transact your business.

That activity would fill over as it does in other areas of the city into the 1300 -- I'm sorry, the 700 block of 13th Street into the 700 block of 12th Street to the 1200 block of Linden. We already have problems. We have a lot of problems as it is in terms of being able to handle our own parking. Now what we're talking about is allowing an additional establishment that's going to bring in more people that adversely impacts our quality of life.

CHAIRPERSON REID: Mr. Pittman, I think that while I sympathize greatly with your position, I think that -- I don't think that party status is appropriate in this regard. Now, if in fact you would like to testify in opposition to the application, you can do so and give us all your reasons why your organization feels that way but party status is typically on an individual basis.

If you're saying the whole organization or many people in the organization are impacted, then that nullifies the whole point of party status. It's unique. In other words, if it's just one or two people that live right next door or something like that who it impacts more. Other than that, it not

appropriate.

MR. PITTMAN: With all due respect, Ms. Reid, we understand that. Again, if you want specific letters from 723 13th Street or from 722 or some of the others that live right there because we are representing them in addition to the whole community organization. It is indeed from their specific concerns, those voters who live right there that are most impacted, who are uniquely impacted and they are expecting us to represent their concern.

CHAIRPERSON REID: But why do you want party status?

MR. PITTMAN: We want the party status because we feel that, again, they are uniquely impacted by this situation.

CHAIRPERSON REID: Okay. Yes, but why is party status so important so much that you just can't testify in opposition?

MR. PITTMAN: We have no problem in being able to testify in opposition. We --

CHAIRPERSON REID: Go ahead.

MR. PITTMAN: Well --

MR. SOCKWELL: I'm not sure that he's really clear on the difference.

CHAIRPERSON REID: To testify in opposition? Okay. Party status allows you to be able to cross-examine and also either receive all the communication that is germane to this

particular case. Is that what you want?

MR. PITTMAN: We wanted that, yes. We did want that. We feel that we have not been provided all of the information germane to this case.

CHAIRPERSON REID: All right. Then so you can testify -- I mean, so that you can cross-examine and you can get some answers to some questions?

MR. PITTMAN: Yes.

CHAIRPERSON REID: Okay. I think it's appropriate. Let him just go ahead and have it.

Mr. Sockwell.

MS. PRUITT: I'm sorry, Madam Chair. I didn't hear the outcome. Is party status granted or not?

CHAIRPERSON REID: Right. By consensus.

MS. PRUITT: Okay. Is this Linden Place Association a homeowners association that has shared common property or is it just an association of individuals?

MR. PITTMAN: It is an association of individuals, homeowners, apartment dwellers.

MS. PRUITT: But it's not like a homeowners association where they pay dues for collective --

MR. PITTMAN: No, ma'am.

MS. PRUITT: Okay.

MR. SOCKWELL: One other question. Mr. Pittman, you mentioned that you represented directly several specific

individuals?

MR. PITTMAN: Yes, sir.

MR. SOCKWELL: Most often when a person represents individuals by specificity as such, there is a letter generated with their names on it that states that a certain individual "will represent me at such and such a hearing." And you don't have such documentation, I assume.

MR. PITTMAN: I do not have that with me today. No, sir, I do not.

MR. SOCKWELL: Okay.

CHAIRPERSON REID: Okay. Now, let's proceed. Okay. Has everyone been sworn in and everything?

MS. PRUITT: Everyone has been sworn in.

CHAIRPERSON REID: Okay.

MS. PRUITT: The applicant can proceed with her case.

Go ahead.

MS. HUNTER: I'd like to make comment --

CHAIRPERSON REID: First give your name and your address.

MS. HUNTER: I'm sorry. Dora Hunter for property 1335 H Street N.E.

CHAIRPERSON REID: Um-hum. Go ahead. You want to make a comment?

MS. HUNTER: Yes, in regards to Mr. Pittman

representing everyone and the location. It should be included just the page of a petition in which applicant signed a letter, Christina Moody, the people who live next door to her. I do have her neighbors who I know did not petition against being that they live on 13th Street, if I'm not mistaken, 720 13th Street.

CHAIRPERSON REID: Okay. Thank you for pointing that out to us.

MS. HUNTER: Okay. In regards to some of the things that were requested or stated in the opposing letter, again, I have given this information. It's been stated they didn't know who they were dealing with. I have letters stating, as Mr. Sockwell had mentioned, as far as representation forms stating that I can go forth in this matter. I do want to make notation of that.

Then the impact dealing with traffic and whatnot is primarily set up where it's a community type of lounge where there will be walking and less parking. I'm a little unclear if there has already been complaints about the club that's held upstairs, why there has not been anything in opposition of that, but yet while mine is being opposed.

CHAIRPERSON REID: Repeat that again, Ms. Hunter.

MS. HUNTER: It was stated by Mr. Pittman that the community has already had some concern about the establishment upstairs and why that has not been opposed.

CHAIRPERSON REID: Okay. He raised that but that

is not what this particular case is about so we have to be just concerned with your case. Are you prepared today to make your case? Basically this is a variance so you have to show how you property is unique and how it would cause you difficulty not to comply with existing zoning regulations.

MS. HUNTER: The uniqueness of the building is that it's 160 feet long. That's the length of the structure. It covers the entire alley way. Being so, it limits parking where I don't have a facility for parking.

CHAIRPERSON REID: Do we have a map?

MS. PRUITT: I'm asking staff to pull it right now.

CHAIRPERSON REID: Okay. Sanborne?

MS. PRUITT: Yes. You do have a plat but that's not necessarily helpful.

CHAIRPERSON REID: We'll look at that. Go ahead and tell us what -- continue.

MS. HUNTER: I'm sorry, Madam Chairman. There was three issues that I need to cover.

CHAIRPERSON REID: Yes. How your problem is unique. You're saying it's unique because it doesn't have parking?

MS. HUNTER: The length of it. It's a long narrow structured building that you very seldom find now.

CHAIRPERSON REID: We'll look at on the map to make that determination. If it causes you a practical difficulty to

comply with the existing zoning regulations, then what you are here for is a parking variance.

MS. HUNTER: Exactly.

CHAIRPERSON REID: Because how many cars are required?

MR. PITTMAN: Seven.

CHAIRPERSON REID: Seven. Okay. What is the practical difficulty that keeps you from being able to provide those seven parking spaces? You need to tell us.

MS. HUNTER: Basically outside of the fact that there is none?

CHAIRPERSON REID: So the building covers like 100 percent of the site?

MS. HUNTER: Of its site.

CHAIRPERSON REID: Of the lot.

MS. HUNTER: Yes.

CHAIRPERSON REID: It does?

MS. HUNTER: Yes.

CHAIRPERSON REID: So you can't?

MS. HUNTER: No, I can't.

CHAIRPERSON REID: Okay. All right. Then what about adverse impact. Tell us about how granting you -- approving your application will not cause adverse impact in the neighboring community.

MS. HUNTER: Again, it's going to -- it's primarily

set up where it is a community. There will be a lot of walking. There will not be any impact. As far as cars and double parking, I'm looking at some things here as far as -- I don't have it. Basically --

CHAIRPERSON REID: Noise? Traffic?

MS. HUNTER: Um-hum.

CHAIRPERSON REID: Parking? You had submitted to us an agreement regarding providing parking off site.

MS. HUNTER: Yes, I have.

CHAIRPERSON REID: Do you want to talk about that?

MS. HUNTER: Yes. It is some blocks away. However, I do have a parking plan that is an overflow if needed for seven parking facilities. I also had spoken --

CHAIRPERSON REID: Where is that?

MS. HUNTER: That's at 10th and H Street.

CHAIRPERSON REID: Is that different from the one at the --

MS. HUNTER: Mason's.

CHAIRPERSON REID: The hair --

MR. PITTMAN: It's the same one.

MS. HUNTER: No, that is the same.

CHAIRPERSON REID: It is the same?

MS. HUNTER: Yes.

CHAIRPERSON REID: The agreement that you gave us that says --

MS. HUNTER: Prior to.

CHAIRPERSON REID: -- Robert Mason?

MS. HUNTER: Yes.

CHAIRPERSON REID: Now, that's how far away?

MS. HUNTER: Two blocks.

MR. PITTMAN: Three and a half blocks away, Madam Chair.

CHAIRPERSON REID: Okay.

MS. HUNTER: Three blocks.

CHAIRPERSON REID: Okay. Now, tell us about that parking. Tell us what you had arranged.

MS. HUNTER: That when my establishment is open, his business is closed and I can use the parking lot an anytime between the hours we had basically set up, hours of 8:00 and 3:00 a.m.

CHAIRPERSON REID: Okay. Is Mr. Mason the owner of the building?

MS. HUNTER: Yes, he is.

CHAIRPERSON REID: All right. He should have noted that in the agreement.

MS. HUNTER: He is the owner's son's establishment.

CHAIRPERSON REID: He's what?

MS. HUNTER: Under the signature.

CHAIRPERSON REID: I see two signatures. One is, it looks like, Robbie Mason, and then the other one is -- oh,

that's your signature.

MS. HUNTER: Yes.

CHAIRPERSON REID: But then what are you saying? That there is -- what are you saying? What point are you making?

MS. HUNTER: It's a father/son establishment of owners.

CHAIRPERSON REID: Okay. But this particular person who signed this agreement has the authority to lease to you?

MS. HUNTER: Yes.

CHAIRPERSON REID: Is it a lease agreement or is he just doing it as an accommodation?

MS. HUNTER: He has authority.

CHAIRPERSON REID: And do you have a lease?

MS. HUNTER: No, I don't have the copy of his.

CHAIRPERSON REID: Are you paying for it?

MS. HUNTER: No, we're doing it once a month.

CHAIRPERSON REID: So this is without any charge?

MS. HUNTER: Exactly.

MR. PITTMAN: But --

CHAIRPERSON REID: You can't talk right now. You will have an opportunity to talk and you will be able to cross-examine so you can right down your questions and you'll be given an opportunity to do that.

MR. SOCKWELL: Typically in parking situations

where it's leased or some just honoring you to use it, there's an agreement written up to justify that use.

MS. HUNTER: Right. We had mentioned that when we had discussed it. He just wanted an VIP pass to enter.

CHAIRPERSON REID: Okay. Now, let's go back to the lot itself.

MS. HUNTER: Okay.

CHAIRPERSON REID: We have a copy of it now.

Mr. Sockwell, can you help me with this? I don't see the building situated on this lot so that it can tell us what percentage of the lot occupancy this is.

MR. SOCKWELL: Okay. It apparently covers --

MS. HUNTER: It covers the entire lot.

MS. PRUITT: Turn on your mic.

MR. SOCKWELL: You said it's 160 feet long?

MS. HUNTER: Yes.

MS. PRUITT: Mr. Sockwell.

MR. SOCKWELL: Sorry. In the --

CHAIRPERSON REID: I'm wondering is it just me, you know? I don't see a building.

MR. SOCKWELL: If I might state, that way some of these appear to show buildings where you don't see any designation. It is just the outline of the lot and then a letter C which probably refers to commercial.

CHAIRPERSON REID: Um-hum.

MR. SOCKWELL: Or the letter R which would refer to residential. In this case, it appears that the building is complete -- covers the complete lot.

MR. MOULDEN: This block of H Street, everything is attached, right?

MS. HUNTER: That is correct.

CHAIRPERSON REID: All right. So Mrs. Hunter, the only reason why we know that there's a building there is because you have pictures because on our sample map it does not show a building. It just shows the lot and we don't know. It's hard for us to gauge what percentage of the lot occupancy. Mr. Sockwell seems to feel that we can assume that the building covers 100 percent of the lot.

MR. SOCKWELL: Madam Chair, if I might state, the building predates the zoning ordinance, under the current zoning ordinance. A C2A structure would be required to occupy no more than 60 percent of the lot by matter of right which would leave a space large enough to accommodate seven vehicles.

CHAIRPERSON REID: Okay. So, now, that would take care of the parking problem in that you have made some effort to diffuse any adverse impact by providing some parking spaces elsewhere. The other issues that have been raised are issues germane to traffic and noise. What is your response to those allegations?

MS. HUNTER: Traffic. Primarily, Madam Chairman, it's a main street. The safety of the people dealing with traffic, there are stop signs on both ends. There is no spacing for double parking. As far as noise and impacting, of course, I can be responsible for the inside of it.

We are on, again, a main street where basically you are hearing cars, the motors of cars and public transportation coming through. The building is long. Then there is another backside behind that where the noise impacting the neighborhood to the pitch of the naked eye right off.

MR. SOCKWELL: How far is the nearest residential units? Does it abut it on the rear of the property?

MS. HUNTER: Yes. It's about 300 feet.

MR. SOCKWELL: Activities start around 9:00?

MS. HUNTER: Yes.

MR. SOCKWELL: Okay. Are there any other retail commercial office uses that would be going on at that time of day that would cause conflict with your use? Not conflict but I mean, you know, just create more activity?

MS. HUNTER: There is a couple of hair braiding places and they sometimes end at 9:00 p.m.

MR. SOCKWELL: Okay.

CHAIRPERSON REID: Mike Woods. Who is Mike Woods, Ms. Hunter?

MS. HUNTER: He's the gentleman who owns upstairs

who is present in the room.

CHAIRPERSON REID: Certificate of occupancy. Why do you have his certificate of occupancy in the file?

MS. HUNTER: They had told me I needed to request it. When I went down to the zoning they had asked if there has been an occupancy for the building.

CHAIRPERSON REID: That's a restaurant or a club?

MS. HUNTER: He's operating as a CR. It's a nightclub.

CHAIRPERSON REID: Okay. In your submission you say that the first 90 days -- if your application is approved the first 90 days will be with no alcohol.

MS. HUNTER: Yes.

CHAIRPERSON REID: All right.

MS. HUNTER: That was to satisfy the ANC community.

CHAIRPERSON REID: Okay. So are you going to eventually apply for one?

MS. HUNTER: Eventually, yes, I think I may.

CHAIRPERSON REID: Okay. Talk about that part of it because that seemed to be an issue.

MS. HUNTER: The public hall?

CHAIRPERSON REID: The public hall and the drinking part of it. Can you just kind of speak to that issue.

MS. HUNTER: Under the public hall it would be set up specifically and totally for sobriety numbers. Anything under

AANA nondrinkers so it would be totally non-alcohol. It will be drinks and beverages served. However, for public hall and why I'm requesting that is I would be able to charge door admissions. Without it I would not be able to sustain business on a financial aspect being that I won't be selling alcohol.

CHAIRPERSON REID: Okay. So you will not be selling any alcohol.

MS. HUNTER: The first three months I had set up where I'm not. Anything after that --

CHAIRPERSON REID: You will be serving alcohol the first three months?

MS. HUNTER: No.

CHAIRPERSON REID: Then after that you said you will be serving?

MS. HUNTER: Then it's optional if I will be applying for a liquor license.

CHAIRPERSON REID: Okay. My question is will you be serving or selling?

MS. HUNTER: Selling, serving, either. No alcohol. Not selling, not serving, not permitting it in. There won't be no BYOB.

CHAIRPERSON REID: Wait a minute. I thought that after 90 days that it would be served?

MS. HUNTER: After 90 days if so I will be applying for a liquor license and in that event I will be selling and

serving within the establishment.

CHAIRPERSON REID: All right.

MR. SOCKWELL: Let me ask you a question.

MS. HUNTER: Sure.

MR. SOCKWELL: What is the reasoning behind this 90 days period? Is it a city requirement of some sort that you can't meet or is it not having the proper bar facilities or what?

MS. HUNTER: Actually, it's going to take at least 90 days after to set up for a liquor license that I'm aware of. Being I am going to do something for the sobriety, I will take that time frame in which I want to be able to just charge admission so that I can financially support my business during that time period. That was the need in the request for public hall totally.

MR. SOCKWELL: Now, public hall notices generally aren't granted as temporary licenses.

MS. HUNTER: Exactly.

MR. SOCKWELL: They are granted as permanent licenses.

MS. HUNTER: Exactly.

MR. SOCKWELL: Once you achieve a public hall license and the you get liquor license, you will have both.

MS. HUNTER: Right. Yes.

MR. SOCKWELL: So you would have the freedom to operate it as a public hall, serve liquor, and whatever else you

want to do in there as long as you --

MS. HUNTER: I will be operating at that point if I apply for an additional license as the last license applied for, which in that case would be a liquor license.

MR. SOCKWELL: Now, the previous establishment there was a restaurant?

MS. HUNTER: There is a establishment, I think, under a restaurant license.

MR. SOCKWELL: Um-hum. That restaurant does not have a liquor license I assume?

MS. HUNTER: Yes, it does.

MR. SOCKWELL: They do. Okay.

COMMISSIONER MITTEN: Can I just interrupt because I want to be clear. Is the restaurant that you're referring to the restaurant on the second floor?

MS. HUNTER: Yes, ma'am.

COMMISSIONER MITTEN: All right.

MR. SOCKWELL: That's on the first floor now?

MS. HUNTER: Nothing. That's the space I will be occupying.

MR. SOCKWELL: Okay. How long has it been vacant, if I might ask?

MS. HUNTER: Oh, gosh, I can't give you the actual time frame.

CHAIRPERSON REID: What was the question?

MR. SOCKWELL: How long has it been vacant.

CHAIRPERSON REID: Oh, okay. Questions?

MR. MOULDEN: Does this project fall within the boundaries of the A Street Development Corporation?

MS. HUNTER: I think it may.

MR. MOULDEN: Because the A Street Development Corporation has plans for commercial validation of that card. Have they signed off on this?

MS. HUNTER: No, it's not that. It's to the right of me. It's a different building. I am beside the Atlas and they are looking at that but it's on opposite sides.

MR. MOULDEN: I mean, have you touched base with the A Street Development Corporation?

MS. HUNTER: I have spoken with them. I didn't get anything in writing. I didn't get anything of opposition or anything. I've been down to the office and they have actually given me some information and pointers and people to speak with. For example, the Mason Hair Gallery. That information came from the A Street Development.

MR. SOCKWELL: Let me clarify something having spoken with staff to clarify some of the definitions on this base map. The distance between your building and that has to be taken from the rear property line or the front property line to the nearest residential is just approximately the distance across the alley probably less than 150 feet and that would be to residential

properties on Maryland Avenue and G Street. The 300 feet that you spoke to is not correct.

MS. HUNTER: Thank you for clearing that up.

CHAIRPERSON REID: All right. Now --

COMMISSIONER MITTEN: I have a few questions. I guess I would also like to highlight a few issues that maybe haven't been brought out yet.

CHAIRPERSON REID: Okay.

COMMISSIONER MITTEN: I think that without some more clarification we're going on the assumption that the building occupies the entirety of the lot. If the second floor is occupied, and presumably the second floor is as big as the first floor, then that's one FAR devoted to commercial use. If we're talking about the first floor being devoted to commercial use in its entirety, that's two FAR that exceeds the commercial maximum in the C2A zone. I think we need some clarification on whether or not --

MR. SOCKWELL: The building predates the zoning ordinance and, therefore, it is.

CHAIRPERSON REID: It is what?

MR. SOCKWELL: It is there.

COMMISSIONER MITTEN: But the use -- I thought this was what you were driving at with your question earlier which is if the first floor has been unoccupied for three years, then it reverts to whatever is permitted by right. There's no legally

nonconforming uses. We need to determine the status of the first floor and the prior use of the first floor.

MS. HUNTER: It used to be a shoe store.

COMMISSIONER MITTEN: But how long ago is the point.

MR. SOCKWELL: I'm not sure that you're quite correct because there are certain less than specific things on there. I'll have to look it up but I understand where you're coming with that.

COMMISSIONER MITTEN: I'm not saying that I am totally correct. I'm saying there's an issue there we need to explore. Do you happen to know, Ms. Hunter, where the other establishment that's on the second floor, where they park cars?

MS. HUNTER: There's nothing that I know of, no.

COMMISSIONER MITTEN: Okay. I don't know if anyone has directed you to read the ordinance in its entirety because I know that some of the correspondence you've been given just quotes a portion of it and then trails off with three dots.

The requirement for parking is one parking space for each 10 seats of occupancy capacity for the first 10,000 seats plus one for each 20 seats above the first 10,000 seats provided that where such seats are not fixed, each seven square feet usable for seating shall be considered one seat. We need to have a physical layout of the space that shows not only the seats but what other space would be involved.

MS. HUNTER: I do.

COMMISSIONER MITTEN: Okay.

MS. HUNTER: I have both.

COMMISSIONER MITTEN: Can we have that?

MS. HUNTER: Sure.

COMMISSIONER MITTEN: Because it may be that there's more than seven parking spaces required.

MS. HUNTER: Okay.

MS. PRUITT: Give it to me and then we'll give it to staff.

MS. HUNTER: This is a smaller version of the larger plan. On the smaller copy the end of the page is the ending of the club. The back part will be sealed off. Also the seating capacity is 50 seats according to the new occupancy instead of 75 seats.

COMMISSIONER MITTEN: So these seats are not going to be fixed seats. These are going to be movable. You can just arrange them however you want to arrange them. Is that right?

MS. HUNTER: Yeah, they will be fixed however but they will be movable, yes.

COMMISSIONER MITTEN: Okay. So that would put us into calculating the number of parking spaces at -- we have to count each seven square feet usable for seating as one seat.

MS. HUNTER: For seats I have the total for that here.

COMMISSIONER MITTEN: Maybe you should give us that as well.

MR. SOCKWELL: Carol, are you in the building code or are you in the zoning ordinance?

COMMISSIONER MITTEN: I'm in the zoning ordinance.

MR. SOCKWELL: Where are you?

COMMISSIONER MITTEN: I'm on page 21-6 under places of public assembly.

MR. SOCKWELL: 2106?

COMMISSIONER MITTEN: Page No. 21-6.

CHAIRPERSON REID: Okay. Where are we now?

COMMISSIONER MITTEN: Did anyone tell you how many parking spaces you needed?

MS. HUNTER: Ed Nunley.

COMMISSIONER MITTEN: Okay. So he calculated it for you.

MS. HUNTER: Yes.

COMMISSIONER MITTEN: Okay.

CHAIRPERSON REID: Any other questions?

COMMISSIONER MITTEN: I have an additional question for Ms. Hunter.

How are the folks that are coming to your establishment going to know that they should be parking three blocks away?

MS. HUNTER: I will have my own staff outside,

parking staff directing. Also to safeguard the patrons walking to and from their cars so they can feel comfortable on H Street.

COMMISSIONER MITTEN: So they are going to be looking for a parking space and then they are going to come up to the front door and there's going to be someone there that says --

MS. HUNTER: Almost like valet.

COMMISSIONER MITTEN: But sort of self-park but directed.

MS. HUNTER: Yes.

CHAIRPERSON REID: Okay. Do you have a question? Let's move forward.

Ms. Hunter, did you have anything else to day?

MS. HUNTER: Not at this direct point.

CHAIRPERSON REID: Okay. Thank you. Is there Government reports? Is there any Office of Planning reports? I don't think so. ANC report? Is there an ANC representative here?

Board members, I don't know about you but I read the submission by the ANC and I was thoroughly confused. Did you all decipher what, in fact, was being --

MR. SOCKWELL: I understood it fully, Madam Chair. It took a little while but --

COMMISSIONER MITTEN: Well, then maybe Mr. Sockwell could clarify it for us.

MR. SOCKWELL: Ms. Mitten, would you prefer that I read it verbatim? It might be --

COMMISSIONER MITTEN: I have the Chair's interest at heart really.

MR. SOCKWELL: Without referring directly to the ANC's letter, it appeared that the Advisory Neighborhood Commissioner who was referenced in this was perhaps did not have the authority to represent the ANC in the capacity that he did and questioned

the --

CHAIRPERSON REID: Mr. Sockwell, are you having some problems there with your interpretation?

COMMISSIONER MITTEN: Madam Chair, I might just make reference to one of the sentences in Mr. Purnell's letter to us that is not inconsistent with anything else we have in the record which is as of now, and that's as of the date of his letter,

February --

CHAIRPERSON REID: Can you tell us where you're reading?

COMMISSIONER MITTEN: I'm reading from Exhibit No. 27.

CHAIRPERSON REID: Where. I have that.

COMMISSIONER MITTEN: I'm on page 2 in the middle of the fourth paragraph.

CHAIRPERSON REID: Okay.

COMMISSIONER MITTEN: As of now there has been no

official 6-A Commission meeting of the whole conducted by the new chair. It's a meeting of the entire Commission, not a subcommittee that's required with a quorum and proper notification to this Board that permits us to give them great weight and I don't think that standard has been met.

CHAIRPERSON REID: Well, I thank you very much for that, Ms. Mitten, because when I started to read this, it was so long and it took so many little turns and things that I wasn't sure exactly what, in fact, they were saying. They did say that Ms. Hunter had made a presentation and that -- this is where I'm confused. It said that the motion was seconded. Let's see. "The motion was seconded by Commissioner Daniel Purnell. The Commission voted to refer the matter to the ANC 6-A Commission and three Commissioners voted to abstain." Okay.

MR. SOCKWELL: Basically --

CHAIRPERSON REID: What vote is that?

COMMISSIONER MITTEN: That was a vote at a meeting of their Zoning --

MR. SOCKWELL: Zoning and License.

COMMISSIONER MITTEN: -- and Land Use Subcommittee.

MR. SOCKWELL: What they call Zoning and License Subcommittee.

COMMISSIONER MITTEN: ZNL.

MR. SOCKWELL: That's the only one that apparently from the chairperson's point of view has made any official move

with regard to this application.

CHAIRPERSON REID: Basically what they're saying is that while the Zoning and Licensing Subcommittee voted to approve the application, the entire ANC had not.

MR. SOCKWELL: But that the only official vote they have is that one.

CHAIRPERSON REID: I understand that. That's not really official either.

MR. SOCKWELL: It's the only vote that they have.

CHAIRPERSON REID: But, whereas Mrs. Mitten just indicated, for us to give it the great weight -- although we will take into consideration the vote made by Licensing and -- Zoning and Licensing Committee, we don't have a position by the ANC so we will not be able to afford them the great weight that they would be entitled to ordinarily had that happened.

Now, we also had a letter from Mr. Fields who is the Chair of the Zoning and Licensing Committee. He's referring to the same meeting, I suppose. This must be the same meeting. Did you all garner that was the same meeting when it says that there was a vote on February 3 and that -- yeah, that's the same one. Okay.

All right. So we got the ANC part. All right. I'm sorry. Let me back up. Mr. Pittman, I failed to give you the opportunity to cross-examine the applicant because I went on to ANC so let me just give you the opportunity to do that now. If

you have questions of her, you can do that at this time.

MR. PITTMAN: Thank you, Madam Chair. I'm joined by Lisa Greene, the other co-president of our organization.

Our first question to Ms. Hunter is, Ms. Hunter, could you establish exactly what is your position with the business that would be known as Dee's Diamond in the Rough?

MS. HUNTER: I would be running the business, business owner, manager.

MR. PITTMAN: Well, you're saying two things. Are you the owner or are you --

MS. HUNTER: I will be the owner of the business and the business manager.

MR. PITTMAN: Okay. In the documents that were presented before the Board, it states that Steve Royall is the owner and that you are the agent.

MS. HUNTER: Yes.

MR. PITTMAN: Again, I ask are you the owner and can you show proof of that or are you the agent and business manager?

MS. HUNTER: I am definitely the agent of it and it's termed that way down at the Zoning and Licensing. So you can say that I am the agent for it. Steve Royall will be --

MR. SOCKWELL: Maybe I can clarify this. Mr. Royall is the owner or owner representative for Welch Family whatever. You can be the owner of your business leasing from the

owner of the property and that is how businesses are generally characterized in the District of Columbia, not necessarily as owning the property on which their business is handled but actually owning the business and leasing the property. It's typical. She can be the owner of her business and have no interest in the property at all except that of lessee.

MR. PITTMAN: Mr. Sockwell, may I speak directly to you?

MR. SOCKWELL: You certainly may.

MR. PITTMAN: I'm learning your procedures here.

MR. SOCKWELL: That's a certificate of occupancy branch of DCRA procedures, not ours.

MR. PITTMAN: Yes, sir. I would point to a document that is notarized on May 14 where it reads, "To whom it may concern."'

MR. SOCKWELL: It can't be May 14.

MR. PITTMAN: Oh, I'm sorry. Her expiration date as a notary 2003. It starts with Dora D. Hunter at the top of the letterhead and it reads, "To whom it may concern. This letter is to let it be known that Dora D. Hunter and Steve Royall, partners of Dee's Diamond in the Rough Lounge, are not affiliated with the Welch Family Partnership, Inc., nor any other incorporated partnership. Dora D. Hunter and Steve Royall are only affiliated with Ken Welch of the family partnership as lease holders of the building property."

I use that statement to ask because there's an additional statement that indicates from Steve Royall that Dora Hunter may indeed transact business as the agent of record for Steve Royall but no where in the document that is in your records does it reflect that Dora Hunter is the owner.

Dora Hunter has expressed to the community and to those that she has spoken with that she is the owner. She has expressed that she is the business owner. However, the records that you have indicate that she is the agent, not the owner. This is one of the concerns that we have is who are we dealing with.

MR. SOCKWELL: I think in the letter that we have dated January 3, 2000, under a stamped letterhead of the Welch Family Partnership it states, "To whom is may concern. This is to advise that Kenneth J. Welch, General Partner for Welch Family Limited Partnership #10, owner of 1335 H Street, N.E., etc., etc., hereby grants Steve Royall, `lease holder,' and Dora Hunter, `agent,' permission to represent the property owner with regard to all certificate of occupancy and D.C. license matters relative to 1335 H Street, first floor."

In this case, at least, Ms. Hunter is stated as the agent because she would be the one to seek the license to operate a business. Steve Royall as lease holder can, in fact, employ or do business with Dora Hunter as his agent for the purpose of achieving the certificate of occupancy and licenses.

But there probably may not be any documents in our

file that state specifically that Dora D. Hunter is the owner of Diamond in the Rough Lounge as a business. If you have applied for a business license under Diamond in the Rough, then that would be what Mr. Pittman would seek to see.

MS. HUNTER: You explained correctly.

MR. PITTMAN: So, again, for the record, I ask are you the owner or are you the agent?

MS. HUNTER: I will be the business owner running it but I am classified for DCRA as the agent.

MR. SOCKWELL: So regardless she has the right to represent the property owner and a lessee, the principal lessee, who, I assume, has the master lease for the building which includes what's upstairs.

Since we've gotten a little quiet here, I want to ask a question. Ms. Hunter, I am still a bit unclear --

CHAIRPERSON REID: Wait, Mr. Sockwell. Is Mr. Pittman done with his cross-examination?

MR. SOCKWELL: I'm sorry. Are you done with your cross-examination?

MR. PITTMAN: No.

MR. SOCKWELL: Go ahead.

MR. PITTMAN: Ms. Hunter, one of the concerns that we had requested from you was an actual plan that included your parking plan. The only thing we receive prior to our 22nd March meeting -- I'm sorry, 22nd February meeting was an additional

version of what you've already submitted to the record.

Can you provide any additional information on how you would be able to ensure that people who have parked their car are now going to go back to their car and take it to three and a half blocks away to where your parking is?

MS. HUNTER: The parking plan is the same one from 1010 H Street from the Masons. I cannot assure that just as I cannot assure that I don't have a ticket on mine right now and I'm parked legally.

Again, I will have people directing. I hope people will comply with it and I did have that set up. There was nothing in amendment to the first parking plan.

MR. PITTMAN: The parking is only -- you are only granted seven parking spaces if you get this variance. We're talking about seven parking spaces and you can't run a business on seven parking spaces. You obviously would need an ABC license which you have already indicated that you would. This is getting off the technical issue here which is the parking variance but I would ask that you allow this.

How are you going to ensure that people are leaving your establishment at 2:00 and 3:00 in the morning and are not causing problems in the community? I mean, what have you done to ensure? How could you assure that wasn't an issue?

MS. HUNTER: I will be hiring Metropolitan Police for my business and that is what I plan on doing outside of my in-

staff security. I can't assure that when I walk out the building here that I will be safe but I will be hiring the Metropolitan Police Department on site as needed for the business and that's the way I plan on securing it as best that I can.

MR. PITTMAN: Chief Ramsey is moving his offices away from working in ABC establishments. I don't know that you will be able to do that.

MS. HUNTER: You don't have to be in the 5 District. I will have off -- they will be on duty. They don't have to be within the District. I will be hiring MPD part-time to work.

MR. PITTMAN: Ms. Hunter, you don't have a lease agreement with Lee Mason's for the parking so could you say at anytime he could revoke your right to use the parking? If so, what is your alternate plan for dealing with parking along the H Street corridor?

MS. HUNTER: My alternate plan is I have a letter sent up to the owner of Auto Zone. I also should have had a letter from the store owner but his wife just had a baby and he's on maternity leave. It had been sent up. He's in Memphis, Tennessee, and I do have the address of where it was sent. Unfortunately, I wasn't able to get this signed so that will be my follow up if I come across that bridge. Hopefully I wouldn't have to.

MR. PITTMAN: The property -- the space that abuts

your property at 1335 H Street in the rear is actually not an alley. It's a court. It's Linden Court. That area, how are you going to prevent people from parking in that area?

MS. HUNTER: Well, people park there now. I'm not sure how they do it. It just has to be enforced by the police department. I just have to make sure that if so that they are ticketed after a certain amount of time. Then eventually maybe they wouldn't. I can't assure that because that's private property. Those are property from business owners behind there.

MR. PITTMAN: Madam Chair, we have no more direct questions for this applicant. We would only say that based on her --

CHAIRPERSON REID: You'll have a chance to testify in just a minute.

Now, thank you very much. We have done ANC so now persons/parties in support. There is no one else here to testify in support. Persons/parties in opposition.

Mr. Pittman, did you want to testify in opposition?

MR. PITTMAN: Yes, ma'am.

CHAIRPERSON REID: Did you want to testify together or what?

MS. GREENE: Hello. I'm Lisa Greene. I'm the co-president of operations with Linden Place Association so I am in conjunction with Robert Pittman.

CHAIRPERSON REID: Are you both going to speak or

one of you going to give the testimony?

MS. GREENE: He is the primary spokesperson.

CHAIRPERSON REID: All right. Go ahead, Mr. Pittman.

MR. PITTMAN: Madam Chair, we have from the various meetings that the ANC has had to our own community meetings where we met, we have been met with very hostile reaction from Ms. Dora Hunter on this particular case. We have offered to assist. We simply wanted to know what the intent was having a public hall license if it was granted.

If you were to grant the variance for parking, you impact on greater issues which become ABC Board, the Metropolitan Police Department, and the demand on resources. Within the 5th District we already have a great number of public hall licenses and the resources that are utilized by the Metropolitan Police Department takes away from the other needs and safety of the community.

One more public hall license -- a public hall license on H Street would not benefit the quality of life of the residents that are here. Given the discussions that we've had with Ms. Hunter and her continual changing or words, owner versus non-owner, agent versus non-agent depending on whatever is necessary has led many of us, and obviously I can't say 100 percent, but many of us in the community including the police to feel that this person, this applicant, is not being forthright

with us.

We've offered every ability to bring forth information to us, who we're dealing with, how it will impact on our community. Any tickets that would be written on this property for a public hall license, again in conjunction with the variance, would not go to Ms. Hunter.

They would actually go to the owner of the property which would be Ken Welch. We would submit to you that Ken Welch in this particular case is the very same individual that was arrested by the Metropolitan Police Department in conjunction with Corporation Counsel's Office for failure to comply with D.C. housing code. We brought copies of the articles that show what has happened at 14th and W N.W. Given that this is the type of individual that we are dealing with in --

CHAIRPERSON REID: Mr. Pittman, let me say this. That is not germane in this particular case. Even thought it's the same landlord, before us today is only the case that the applicant has brought to us. The fact that this particular landlord or owner may have other properties or the condition of the properties is not something that we can allow you to bring into evidence in regard to this particular case. It has to be site specific. You can only give us testimony pertaining to 1330 --

MR. PITTMAN: 1335.

CHAIRPERSON REID: 1335 H Street.

MR. PITTMAN: Respectfully, I would -- I respect what you're saying. I understand that. We simply look at the history of the owner. The site at 1335 if it were to be granted, this particular variance, there's no way to ensure that those -- if I'm managing a club you want people to come in.

People are not going to turn around and say, "Gee, I parked four blocks away. Not I've got to go and pick up my car and take it three and a half blocks away again and now I'm going to physically walk three and a half blocks down H Street at 9:00 or 10:00 at night to a club. Then turn around at 2:00 or 3:00 in the morning." It's simply not a safe issue to do at that time of the morning, especially if you've been drinking.

We would submit to you that the information has been presented to all of those who live in and around the area. Most people are not in favor of this. We simply don't feel that this meets the code. We feel that she should be able to come up with some alternatives for parking. Three and a half blocks away is simply not feasible. That is the basis of our argument.

CHAIRPERSON REID: I am sorry, Mr. Pittman. I am sorry. I was somewhat distracted. Could you just give me the last part again?

MR. PITTMAN: The three and a half block difference creates a huge problem in terms of noise, safety, and it's simply not feasible for a variance in this particular case so we oppose it. We oppose it on the grounds that it does not meet the

standard. We also would ask that you simply dismiss it.

CHAIRPERSON REID: Thank you very much, Mr. Pittman.

Closing remarks by the applicant. I'm sorry. Any questions for this witness?

MR. SOCKWELL: Carol, do you want to go first?

COMMISSIONER MITTEN: I don't have any questions for Mr. Pittman but I did have a follow up for Ms. Hunter whenever that's appropriate.

CHAIRPERSON REID: Okay. Just a moment. Do you Mr. Sockwell?

MR. SOCKWELL: Mr. Pittman, you responded about the parking. That's three and a half blocks away. It is as well on H Street. Correct?

MR. PITTMAN: Correct.

MR. SOCKWELL: So it would be on the more public access portion of the neighborhood rather than on a side street.

MR. PITTMAN: That's correct. May I follow up to your statement, Mr. Sockwell? At that time of the evening between the 1000 block and the 1400 block of H Street very few businesses are open. Again, we're concerned with the safety of the residents or those coming and going along the H Street corridor at that time of the morning. People who have been drinking are susceptible to being robbed and to other things. Again, we are concerned with the safety in addition to the parking issue three and a half

blocks away.

Madam Chair, may I make a comment regarding the ANC's position? There was no official public notice of any activity that either the Zoning and License Subcommittee had done or the Commission itself so based on that, they are not party to this case whether it be the subcommittee's report or the committee itself which did not meet nor have public notice of this particular item as an agenda item.

CHAIRPERSON REID: Mr. Pittman, I agree with you. Remember during that segment we said that due to the fact that there had not been an official meeting or vote taken, then we are unable to give the ANC the great weight to which it is entitled. Even though we did make note of the fact that the committee met and voted and approved it, that is not the official position of the ANC.

MR. PITTMAN: My point, Madam Chair, if I may, is that even as an ANC subcommittee you are still required under the Sunshine Act to post an official notice of your meeting and the agenda items that will be discussed. The subcommittee was negligent in that regard so, therefore, we would ask that you not consider that issue because they simply did not speak on behalf of the community and did not give public notice within seven days of their intent.

CHAIRPERSON REID: Again, the only thing that we are concerned with, Mr. Pittman, is the official position of the

full ANC and without that, we are not bound or pulled in any direction because we don't have it. Thank you.

Ms. Hunter, closing remarks.

MS. HUNTER: Yes. In closing, I would just like to say that I am trying to -- what I plan on doing is of a positive nature. I plan to get a lot of community people involved. We'll be doing a lot of donating to grassroots organizations. I do have some homeless art viewing and people coming in.

I will be giving out jobs and trying to build some esteem back into the H Street community. And also to clean up half of the strip just because I do have a business there so I'm trying to do something positive, trying to rebuild the community. I'm not trying to hurt the community whatsoever.

CHAIRPERSON REID: Thank you. Ms. Mitten, do you have a question?

COMMISSIONER MITTEN: Can I have a couple of follow-up questions? I've had a chance during the subsequent testimony to look at this plan. Are you going to be occupying the entirety of what is shown on this plan?

MS. HUNTER: Up to the rear portion.

COMMISSIONER MITTEN: Could you just point it out?

MS. HUNTER: Yes. It cuts off on the small page.

COMMISSIONER MITTEN: So you're going to be occupying from the H Street storefront back.

MS. HUNTER: From here.

COMMISSIONER MITTEN: You are occupying this much?

MS. HUNTER: This is the entire strip that I have. This is access to the public to the restrooms.

COMMISSIONER MITTEN: Why does it say dance floor?

MS. HUNTER: Because that was the initial plan. I didn't have the other one with me. You guys should have had it.

COMMISSIONER MITTEN: Okay.

CHAIRPERSON REID: Why is it sealed off?

MS. HUNTER: Because it's not going to be used right now, the front portion of the club.

CHAIRPERSON REID: But eventually it might become a dance floor?

MS. HUNTER: It may be. That's a future plan.

CHAIRPERSON REID: Ms. Mitten, I wasn't stopping you from --

COMMISSIONER MITTEN: No, I understand. What I'm trying to sort out is the calculation page that you gave us. It has a calculation that, as I understand it, would indicate that you are required to have 20 parking spaces.

MS. HUNTER: Yes.

COMMISSIONER MITTEN: Okay. Am I misremembering the agreement?

CHAIRPERSON REID: I thought it was seven?

COMMISSIONER MITTEN: No. That was originally what was thought to be the case because the number of seats proposed

was 75.

CHAIRPERSON REID: Okay. But wait a minute.

COMMISSIONER MITTEN: And it was one space per 10 seats. Then if you read the entirety of the ordinance as it relates to this, if the seats are not fixed, you calculate the parking requirement with a surrogate of seven square feet as equal to one seat. When Mr. Nunley made that calculation, as I read this piece of paper, he came up with 20 based on the area where seats could be.

MR. SOCKWELL: If I might interrupt briefly, under the building code which will bear specifically on the occupancy regardless of what the zoning ordinance says, restaurants are calculated based on tables and chairs, not calculated on seven square feet per person.

COMMISSIONER MITTEN: But this is public hall.

MR. SOCKWELL: Yes, so if the building code specifies something different, it could reduce the number of people that might be approved under a zoning based calculation.

CHAIRPERSON REID: Do we have the Nunley letter, Ms. Mitten?

COMMISSIONER MITTEN: All I'm working off of is this paper calculation.

CHAIRPERSON REID: I know, but --

COMMISSIONER MITTEN: Mr. Nunley's letter does not indicate the number of spaces.

CHAIRPERSON REID: Why not? That's the whole purpose of the paper.

COMMISSIONER MITTEN: I guess just to follow up on that while we're looking at Mr. Nunley's letter, which is exhibit No. 8, what he has specified is that each parking space must be nine feet by 19 feet covered with four inches of all all-weather impervious material, be accessible by a 14-foot isle. He is suggesting, according to what the rules state, be located on the same lot as the primary use. We are discussing whether or not it has to be located on the same lot. But the requirements in terms of the quality of the space are still requirements. We need to have a couple of things. One would be that the space that you are talking about using meet that requirement.

MR. SOCKWELL: That would be a given because they are occupiable spaces by another business which would have to have complied before those spaces were made available to it.

COMMISSIONER MITTEN: Have we established that is in fact true?

MR. SOCKWELL: I think that --

CHAIRPERSON REID: Wait a minute.

MR. SOCKWELL: If the business has a license, then the parking spaces are paved.

CHAIRPERSON REID: Before we go there, isn't this an application to waive the requirement for the parking in the first place?

COMMISSIONER MITTEN: No.

MR. SOCKWELL: No.

CHAIRPERSON REID: What is the variance for?

COMMISSIONER MITTEN: This is to allow the parking to be located elsewhere.

CHAIRPERSON REID: I only have the -- oh, off-site parking.

MS. SANSONE: Madam Chair, I believe the application has been noticed as a variance from the number of required parking spaces.

CHAIRPERSON REID: That's what I was saying. That was the point I was making that it is to waive the requirement of the on-site parking spaces.

MS. SANSONE: Yes. And the question of locating the parking offset would require a special exception under Section 703 of the zoning regulations. That was not included in Mr. Nunley's letter and so it has not been noticed for the special exception for the off-site parking.

Mr. Nunley's letter only addresses the number of on-site parking spaces. There's really two issues that will ultimately have to be addressed to allow the parking plan to go forward if that is the Board's wish.

CHAIRPERSON REID: I think that before -- correct me if incorrect, Ms. Sansone, our job here today with the application before us is to determine whether or not there is

adequate information so that we would approve the application. The application is to weigh the requirement for the off-street parking. Is it?

MS. SANSONE: Madam Chair, the application dealt with the number of parking spaces. It was a request for a variance under Section 2101 which relates to the number of parking spaces. That's what Board Member Mitten has been addressing in this question of fixed and non-fixed seats.

CHAIRPERSON REID: Mr. Nunley's letter says, "If you are unable to meet the off-street parking requirement, a variance from the provision of 2107 may be obtained from a public hearing." That's what my understanding was that we were here for today. If she cannot meet it, it is not required unless we have a special exception before us, which we don't, that that off-street parking be provided elsewhere.

MR. SOCKWELL: Because we can't condition the variance.

CHAIRPERSON REID: No. That is something that the applicant just did on her own volition but there was no special exception cited in Mr. Nunley's letter.

MS. SANSONE: Madam Chair, that's correct. However, Mr. Nunley is stating that the parking shall be located on the same lot as the primary use.

MR. SOCKWELL: That would be under the requirements.

CHAIRPERSON REID: Where is it?

COMMISSIONER MITTEN: Right here.

CHAIRPERSON REID: Okay. "Proof of the parking must be shown." Let me read that. Okay.

MR. SOCKWELL: Then it goes to the variance requirement.

CHAIRPERSON REID: All right. Again, the part "if you are unable to meet the off-street parking requirement." Aren't we?

MR. SOCKWELL: That's where we are.

CHAIRPERSON REID: Aren't we there?

MR. SOCKWELL: That's where we are.

MS. SANSONE: Madam Chair, we are there with respect to the number of parking spaces.

CHAIRPERSON REID: Okay.

MS. SANSONE: If we look at Section 2101, that is the parking schedule that talks about the number of parking spaces. Those spaces are on-site parking spaces.

CHAIRPERSON REID: Okay.

MS. SANSONE: The Board has that application before it and that's what was public notice. The other aspect of what has been discussed here today, though, is that these parking spaces are located off site and, therefore, would require a special exception.

MR. SOCKWELL: Or, otherwise, it would be outside

of our area of review for this case.

MS. SANSONE: Yes. That's correct.

MR. SOCKWELL: So we can't bring it in actually. We may have discussed it but it may not be necessary that a special exception be requested because it wasn't part of the requirements of the zoning referral. The zoning referral could say what it says, which is that these parking spaces -- the variance is not to have the parking spaces. The applicant has suggested to provide equivalent parking off site but our review in this case is with regard strictly to the parking being required.

CHAIRPERSON REID: On site.

MR. SOCKWELL: On site. We could consider that a positive response by the applicant to provide off-site spaces.

CHAIRPERSON REID: Over and above what are required.

MR. SOCKWELL: Over and above. Exactly.

CHAIRPERSON REID: Any other questions?

MR. SOCKWELL: Ms. Mitten is still on something and I want her to finish.

COMMISSIONER MITTEN: Well, I'm going to state what I think the issue is, which is there are 20 spaces requires as calculated by Mr. Nunley. What we're going to decide on today is whether we want to waive that entire requirement. Is that right?

CHAIRPERSON REID: Right.

COMMISSIONER MITTEN: Because none can be

accommodated on site.

CHAIRPERSON REID: Whether or not we are going to grant the variance.

COMMISSIONER MITTEN: Okay.

CHAIRPERSON REID: Predicated upon the application of the criteria for which a variance is approved or disapproved.

COMMISSIONER MITTEN: Gotcha. Can I speak to that then?

CHAIRPERSON REID: Um-hum.

COMMISSIONER MITTEN: Okay.

MR. SOCKWELL: Where did you get the 20 from?

CHAIRPERSON REID: Wait, wait, wait. Before we go there, do we want to entertain a motion and then you defend your motion predicated on your --

COMMISSIONER MITTEN: That's fine. I would be happy to. I move that we disapprove this request for a variance to waive the on-site parking requirement for this property.

CHAIRPERSON REID: Okay. I, on the other hand, think that we should approve it. I think that the applicant has met the burden of proof. I think that they have demonstrated that there is a uniqueness about the property and that it is 100 percent occupancy. The building occupies 100 percent of the lot and that there is practical difficulty in putting parking spaces there. You can't do it. It's impossible.

If the perceived adverse impact in regards to not

having the parking spaces is being somewhat mitigated by her attempts to provide the off-street parking elsewhere and steps are being taken to mitigate the other perceived adverse impact in regard to safety or parking or what have you, I don't think that granting the application is going to impair the integrity and intent of the zoning regulations and map. I think she has met her burden of proof in this particular regard.

COMMISSIONER MITTEN: Madam Chair, I think that if we vote to approve the variance, that means that she has no parking requirement and then she'll stop trying to mitigate. She won't have any incentive.

MR. SOCKWELL: That would be a statement that I don't think you can make. You cannot tell an applicant that they will do something when you do something. You may think they might but you can't make the statement the way you made it.

COMMISSIONER MITTEN: I am going to infer that she will be less motivated if we just waive the requirement than she would otherwise be.

MR. SOCKWELL: But we can't condition a variance.

COMMISSIONER MITTEN: That's why I don't think we should vote in favor of it.

CHAIRPERSON REID: In some instances we can.

MS. SANSONE: Madam Chair, you may condition a variance so long as the condition is related to the property or to zoning issues but the conditions cannot be related to the

operation of the business or personal to the individual or to the owner or to the business. It has to be directly tied with the land and the condition will run with the land permanently.

CHAIRPERSON REID: Let me say this. If we condition this variance to have the applicant to provide that the parking -- to provide us with the lease of the parking provision -- which we don't have. The agreement is here but it's not really official because it's not a lease -- before a final order is -- before we have our final order in this particular regard.

But in a situation like this where you have an applicant who is attempting to put a business in an area that is kind of transitional and who has the objective to contribute to the community and to provide the donations or charitable work in the community, we can't put those conditions as a part of this particular order to make sure that is done.

I don't think that any club that goes anywhere in the city has always had the same problem as far as perceived noise or perceived safety and things of that nature, but I think it's incumbent upon us to try to devise -- to weigh both sides of it and to see if, in fact, the situation can be mitigated by the imposition of the conditions.

COMMISSIONER MITTEN: Madam Chair, I would like to speak to the issue of the burden. What our regulations say is that the strict application of any regulation would result in a peculiar and exceptional practical difficulty or exceptional and

unique hardship upon the owner of the property.

Even though she's been authorized on behalf of the owner to represent basically her interest in this matter, she has not made a case as to why the owner of the property will be subject to undue hardship. She's made a case why she would or her business.

CHAIRPERSON REID: Ms. Mitten, that's very true but many of the cases that come before us are with contract holders who are not owners of the property that they are coming to us to get a variance or special exception. A case in point is the case we had this morning, the Kass case, where they were the contract holders. That were not owners of that land.

COMMISSIONER MITTEN: Yeah, but they were perspective owners. She's not a perspective owners. She's a lessee.

CHAIRPERSON REID: Okay. Then it goes to persons who are given -- I'm trying to think of how to best say this -- given certain rights in a property authorized by the owner in the bundle of rights. The real estate term is the right to lease.

Many times lessees come to us for variances and special exceptions where we have to see that the owner has authorized the use or the owner has authorized them to come before us. When we see that, then that gives them the right to apply for the special exception or the variance. They are the ones who are going to use the property.

COMMISSIONER MITTEN: I understand that. The ability of this owner to lease this property and whether or not there is some kind of special characteristic of the property that basically restricts it to the use as it is being proposed. If that were the case, that would be a special circumstance that might require a variance because undo hardship would be created.

We're talking about whether or not it's an appropriate use of this property that the first floor should be used as a public hall which has certain parking requirements. I'm just saying that in my opinion, there has been no case made, as must be made, that there is some special characteristic of this property that says it must be used for a public hall and we must have this variance or the property owner will be somehow disadvantaged. I think that is an argument that has to be made before we can vote in favor of this variance.

CHAIRPERSON REID: Okay. I think that the public hall is a matter of right subject to review by the -- subject to the variance that is before us. The purpose of the variance coming before us to see would be to determine if, in fact, the applicant can meet her burden in regard to, (1) there being a unique and unusual circumstance or situation or something inherent in the property.

I think that has been met. I don't think that is disputable that it is unique in that it is 100 percent occupancy so that there would be a practical difficulty in meeting the

current zoning regulations if the zoning regulations require parking and you can't put parking.

Now, the adverse impact. Therein is a situation where we have testimony that says that there is a perception that certain things would happen. There has not been any burden of testimony to verify that there has been problems with noise. What we have to go to is whether or not the testimony that has been presented to us in regard to adverse impact has been addressed by the applicant.

MR. PITTMAN: Ms. Reid.

CHAIRPERSON REID: Excuse me. The applicant has said that they would provide parking, although they don't have any requirement to do so. We could condition the applicant for parking as well as provide the Metropolitan Police at the facility and some of the other things that the applicant has stated that she would be willing to do in order to have the application be approved.

COMMISSIONER MITTEN: Madam Chair, just to follow up on what you said, I don't disagree that there is this extraordinary condition that there is no off-street parking available. There's no ability for this property to provide any off-street parking because the lot is fully occupied. I agree with that. Then we have a number, many many possible uses of this building in C2A. We're talking about granting a variance for one of the more intensive uses of the

property because the parking requirement is relatively high. I don't think that it's fair to say that because you can't park any cars here that any potential use that would be permitted by right in C2A is appropriate.

I think we have to weigh the fact that this is a relatively intensive use and that other uses may be more appropriate because they don't have the high parking requirement and we haven't had any evidence from the property owner that an undo hardship would be created if he doesn't leave this for public hall and he leases it instead for a shoe store or whatever. Something that would have less parking impact. I hate to keep repeating myself.

CHAIRPERSON REID: What would you suggest? Go there. What I'm thinking is there's a club upstairs so, in my estimation, I think that rather limit the use of what other business would like to go into that facility. I'm wondering what other kinds of businesses would be willing to go -- to me it would be a restaurant or another type of club that would go there. Other than that --

COMMISSIONER MITTEN: We're not supposed to make the case. They are supposed to make the case. That's my point. The case has not been made.

CHAIRPERSON REID: In your opinion. Basically what you and I are doing is you have an opposing view and I have a view in favor and, as such, you have to be able to defend whatever your

position is. Right now we are disputing whether or not we feel that the case has been made or not and giving basis for that.

Mr. Sockwell, can you weigh in, please?

MR. SOCKWELL: I was looking at another issue. I have different questions from the ones that Ms. Mitten has. Those questions revolve more around somewhat of an imprecise program for the facility. The fact that a liquor license will be applied for. The fact that a public hall license would be granted and then a liquor license granted. The public hall license then would stand with the liquor license.

The license that you seek would not require you to serve food.

CHAIRPERSON REID: At this point we're in deliberation.

MR. SOCKWELL: Yeah. I mean, there are things that I'm not clear about with regard to the facility that is above you, which I assume is a public hall.

CHAIRPERSON REID: Above her?

MR. SOCKWELL: Above her proposed space. I assume there is a public hall or restaurant.

CHAIRPERSON REID: A club.

MR. SOCKWELL: Something.

CHAIRPERSON REID: She said it was a club.

MR. SOCKWELL: Apparently there may be some question as to exactly what it is. I didn't get a specific on exactly what it is.

MS. HUNTER: It's a club. I don't know what license it operates under. If I'm not mistaken, it's a CR.

MR. SOCKWELL: So it's a club/restaurant I guess.

MR. PITTMAN: No, sir. A CR is a restaurant. I think for clarity and as someone who has done -- you could be considered an expert on public safety issues, a CR license is a restaurant which means that you are required to have a portion or your business as food. A CN license would be a night club which under the ABC establishment.

The reason to go around the ABC regulations and to get a public hall license would then take us out of the realm to be able to address and impact any adverse actions of the business which is why the issue of the public hall becomes such a major issue.

MS. HUNTER: I don't have a problem going straight after a ABC if that is the event and if it would satisfy the community which I have spoke with since you guys are kind of splitting because even with an ABC license, I still would be holding my sobriety night so with or without an ABC license, the public hall is simply to charge door admissions for the sobriety so that I can make profit off of the business and won't lose out.

MR. SOCKWELL: See, the issue, if I might step in on that, of the public hall license is that the public hall license allows you to drink.

MS. HUNTER: To charge door admission.

MR. SOCKWELL: Yes, to charge door admission, to bring outside groups in, to contract the space out to others at will. I have numerous restaurant clients that do this so I understand what a public hall license grants you.

The problem that I see is that the public hall aspects of the business is the one that creates the greatest negative effects on the community because it's not so much that you can charge admission, it's that you can lease the space out to all who come to you based on your own discretion as to who they are and whether they will pay the going rate or whatever. Then you can split the door and do all these different kinds of things which are creative and we are aware of all that. At least I am. So that's one of my problems.

My problem is that the seven cars that we are talking about work just fine for a restaurant or a club issue, but for a public hall issue, you just pull the seats out and bring the people in at three square feet per person or whatever it is currently and it gives a major impact on the neighborhood that might not be envisioned by an approval that we could give. Do you plan to lease the place out to other groups?

MS. HUNTER: Not at all. Not at all. I am even willing to get occupancy under a CN or CR license as of now if it will satisfy the community.

MR. SOCKWELL: One of the issues that we have is that if we place certain conditions upon you as a business owner,

we would have to make those conditions run with the land and that typically doesn't happen when you're a lessee. We can't put a condition on the Royalls for Diamond in the Rough because that means whatever he does in the future, he's hung with that particular restriction.

I'm not sure to what extent we can restrict you but the issue of the public hall has major ramifications. Even if, as you say, you would have public hall during the time period you don't have your liquor license, which would of course bring in income and that makes sense, but at the same time once the public hall license is granted, it runs with the certificate of occupancy ad infinitum.

MS. HUNTER: If there is a concern with the conditions of a license in a public hall as of date, I do have the forms of all of the licenses that I plan on applying for with Mr. Royall's signatures on them. I think most of them, or some of them, are notarized if the Board would like to see them now to show the license for future dates or what is okay with Mr. Royall as well as myself.

MR. PITTMAN: With respect to the Board, again the public hall license would not belong to Dee's Diamond in the Rough. The public hall license would belong to the owner of the building.

MR. SOCKWELL: No, it wouldn't. That's not true. Public hall license would belong to the occupant of the space. We

have restaurants down town that have public hall licenses that are in office buildings owned by major developers. Public hall license accrues to the business owner, not to the building. There are two businesses operating in the building. Her public hall license would not grant public hall license status to the people upstairs.

MR. PITTMAN: No, it would not grant it to her. Again, she's here at the agent. The applicant is written in the name of Ken Welch Limited Family Partnership #10. The public hall license would be to Ken Welch Family Limited Partnership. She is only here, and by the paperwork, as the agent of record. Therein lies the problem whether she exist one year from now or is gone in five years. I won't get into that but the point is it accrues to the owner of the property.

MR. SOCKWELL: No, that's not quite true. Now, you're talking about her application before the BZA I assume.

MR. PITTMAN: The application before BZA says 16551, application of the Welch Family Partnership, not Dee's Diamond in the Rough.

MR. SOCKWELL: Because they are the owner of the property and the application states that the owner of the property be listed.

CHAIRPERSON REID: Has to be listed.

MR. SOCKWELL: Yes, has to be listed.

CHAIRPERSON REID: Where is the letter from the

Welch family? I thought I saw it in the file.

MR. SOCKWELL: Give us a second to look at some things, please.

CHAIRPERSON REID: Okay. Here it is. The authorization letter from the Welch family, Kenneth Welch, is the one that grants Steve Royall, lease holder, and Dora Hunter, agent, permission to represent the property owner with regard to all certificates of occupancy in D.C. matters. This is what we need to see.

MR. PITTMAN: Maybe counsel could define that. Where I sit, that is a legal issue. They have granted the legal authority to the agent to transact business on their behalf. What does that mean?

CHAIRPERSON REID: The applicant is here. Did you ask her?

MR. PITTMAN: Well, yes, we asked that earlier.

CHAIRPERSON REID: Could you respond to that, please?

MS. HUNTER: I didn't hear the question.

CHAIRPERSON REID: What is the capacity -- Steve Royall is the lease holder and Dora Hunter is the agent.

MS. HUNTER: Yes.

CHAIRPERSON REID: So what status does that give you as a business owner?

MS. HUNTER: According to me and Mr. Royall -- you

guys should have a letter --

CHAIRPERSON REID: Yes, we do.

MS. HUNTER: -- that I'm handling all aspects of the business because I will be actually running the business.

MR. PITTMAN: But what is your title? What is your official title? For the official transcript of this hearing what is your title?

CHAIRPERSON REID: I think that --

MR. PITTMAN: That is the question.

CHAIRPERSON REID: I think that Ms. Hunter and Mr. Royall are partners.

MS. HUNTER: Yes.

MR. PITTMAN: You're answering the question for her with all due respect, Ms. Reid.

CHAIRPERSON REID: No, I'm not answering it for her. This is what is submitted in the file.

MR. PITTMAN: It states partners but also in your records it indicates that she is the agent of record. There is nothing that specifically states that she is an owner other than the paperwork that she has presented to our community which states that she is the owner.

She is the person who is physically appeared. We've not been able to meet with the owner who, based on the information that I have available, Steve Royall is the owner of the business and the owner of the property is Ken Welch but I --

MR. SOCKWELL: Let me ask this question if I might interrupt.

Ms. Hunter, do you have copies of your applications for certificate of occupancy?

MS. HUNTER: Yes.

MR. SOCKWELL: Can you submit copies of those for the record?

MS. HUNTER: Yes, I can.

MR. SOCKWELL: You said those are already signed by the owner.

MS. HUNTER: Yes.

CHAIRPERSON REID: All right. Let's try to bring some closure to this particular issue. We have a motion on the floor. Is there a second? All right. If there's no second, then I would like to -- due to the lack of a second, I would like to put a motion on the floor to approve the application predicated upon what I said previously. I've already gone into detail about my position on that. Is there a second on that?

MR. SOCKWELL: I will second the motion.

CHAIRPERSON REID: All right. All in favor?

MR. SOCKWELL: But there still needs to be a bit more discussion.

CHAIRPERSON REID: With conditions?

MR. SOCKWELL: Yes, there --

CHAIRPERSON REID: I didn't clarify my motion would

be to approve with conditions germane to the parking and to the other things that were indicated by the applicant in order to mitigate adverse impact.

Ms. Sansone, are we able to -- I think the application before us is for the public hall license. If the applicant is willing to change that designation, can we make that a condition that it be changed?

MR. SOCKWELL: The application is for a lounge.

CHAIRPERSON REID: Where's the public hall aspect of it then?

MR. SOCKWELL: That's just one of the licenses that she was looking for so that she could derive a certain amount of income.

CHAIRPERSON REID: Okay. So then condition to apply for a different kind other than public hall if Mr. Sockwell has that concern?

MS. SANSONE: Madam Chair, the application is for a variance from Section 2101 which is the parking schedule so in order to determine what the variance is for, it would have to be keyed to the categories that are in that regulation. The description of her business as provided to the Zoning Administrator's Office fell into the public hall category. That is how the variances for the parking requirements for the public hall --

CHAIRPERSON REID: She can't later modify that

public hall to the other? What was the other thing that you mentioned, Mr. Sockwell, that does not carry the same kind of baggage?

MR. SOCKWELL: She could do --

CHAIRPERSON REID: Could she do that? Is that possible? I'm not really certain that we can do that.

MR. PITTMAN: It would be a CN and if it's a CN, then it doesn't need to be before this body. The issue here again is the variance for parking. The CN would be before the ABC board and we would go there and deal with the issue. Given that this applicant has not been forthright with us, we will probably oppose it.

COMMISSIONER MITTEN: If I could just say, there still would be something for us to decide which there needs to be a parking variance regardless of the use because there is an off-street parking requirement for any commercial use and it can't be met on this property. A lesser use like restaurant is less intense and would have a lower parking requirement.

CHAIRPERSON REID: But can she change that now or is that -- are we still stuck with the public hall?

MS. SANSONE: Madam Chair, the case was advertised as a variance from public hall parking requirements.

CHAIRPERSON REID: We have to but the conditions that Mr. Sockwell had raised in regard to not renting the facility out to any other parties for any other types of events and things

that you find troublesome with the public hall could perhaps be addressed in the conditions. Could it not?

MS. SANSONE: Madam Chair, if I might --

MR. SOCKWELL: I'm not sure. That's the question that is before me.

MS. SANSONE: If I might jump in for a minute, the conditions have to relate to the property.

CHAIRPERSON REID: Right.

MS. SANSONE: It's a property issue.

CHAIRPERSON REID: We can't do that.

MS. SANSONE: You could cap the number of persons that the business will serve at 50 as Ms. Hunter proposed. That would be considered a condition that is restricting the use of the property and would be a legitimate condition.

CHAIRPERSON REID: Would be less intense. What conditions? First, before we do that, let's take the vote and then we can condition it. All in favor?

(Chorus of Ayes.)

CHAIRPERSON REID: Opposed?

COMMISSIONER MITTEN: No.

CHAIRPERSON REID: Okay. So then the motion fails. What we have to do is -- Mr. Moulden had to leave early so he will now have to --

COMMISSIONER MITTEN: Perhaps you could explain to them why the two to one failed.

CHAIRPERSON REID: Right. Because we have to have a quorum.

MR. SOCKWELL: Which we have.

CHAIRPERSON REID: We only have two votes and the one vote then basically makes the motion fail. We need three for a vote to carry and, as such, Mr. Moulden, who is also a part of this particular Board, had to leave early so he will then have to read the rest of the record and then hope we don't have a split. Then I don't know what we'd do. We haven't had that happen.

COMMISSIONER MITTEN: Well, could then Ms. Renshaw read the whole record and then vote?

CHAIRPERSON REID: If that happens, then we can determine what, in fact, we would have to do. At this point, we have to engage Mr. Moulden and get a determination from him on a vote. We can't do it today. Thank you very much.

That concludes this morning's hearing. What we'll do is -- now, do we have to have another hearing?

MR. HART: Madam Chair, before you go ahead, may I read this back to you?

CHAIRPERSON REID: Um-hum.

MR. HART: Mrs. Reid and Mr. Sockwell to approve. Mrs. Mitten against. Mr. Moulden will read the record.

CHAIRPERSON REID: Yes. What we were trying to determine should be take another vote at the next meeting date rather than --

MR. HART: Which would be May 3. It's already crowded but for something of this --

CHAIRPERSON REID: Okay.

MR. HART: I think we should be able to stick it in.

CHAIRPERSON REID: Okay. May 3 and we'll take another vote.

Ms. Bailey.

MS. BAILEY: Are we sending the record to Mr. Moulden and Ms. Renshaw or just to Mr. Moulden?

CHAIRPERSON REID: Well, to Mr. Moulden right now. What we have to find out right now is what the regulation requires as to be able to vote without sitting for any portion of a hearing. Now, at the last hearing was Mrs. Renshaw here?

MR. SOCKWELL: Yes.

CHAIRPERSON REID: Oh, okay. Then we would give it to both.

Mr. Hart?

MR. HART: Yes, ma'am.

CHAIRPERSON REID: Send it to both and they would have to read it and be prepared to vote on May 3. All right.

MR. HART: Okay.

CHAIRPERSON REID: Anything else?

MR. PITTMAN: Madam Chair, may I ask a procedural question? As you make your recommendations, do you look at --

obviously you have information that we haven't seen from this applicant. Do you look at fire code or any other -- how do you make this decision without all of the facts?

MR. SOCKWELL: The building code department, if I might answer your question, under DCR Building and Regulation Administration, would determine the requirements for the occupancy of the space, fire exits, alarms, smoke detectors, noncombustible construction, number of exists, etc., etc.

All of that is outside of our area so there are times when if a case is moved forward from this body, it will not develop quite the same way once it goes to permit. It will have to be inspected by the Inspections Division of DCRA. Those people will make determinations as well.

CHAIRPERSON REID: Thank you. That concludes this morning's hearing. We will -- (Whereupon, the hearing in the matter of the application of Welch Family Limited Partnership #10/Steve Royall, was concluded at 1:51 p.m.)

MR. PITTMAN: Madam Chair, can we get a copy of that --

MS. GREENE: We've been asked repeatedly --

MR. PITTMAN: We've been asked for the schematics.

MS. GREENE: -- where she plans to put this.

CHAIRPERSON REID: Yes. Everything that we talked about here today will be a part of the file, the public record.

You can come into the Zoning Office and if they haven't put it in there yet, just make sure you ask for it.

We will resume in 30 minutes. Actually, we'll resume for the afternoon hearing in 30 minutes.

(Whereupon, at 1:52 p.m. off the record for lunch to reconvene and 2:46 p.m.)

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

2:46 p.m.

CHAIRPERSON REID: Good afternoon, ladies and gentlemen. The hearing will please come to order. This is the April 5th public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Sheila Cross Reid, Chairperson. Joining me today is Robert Sockwell who will be joining us momentarily. Representing the Zoning Commission is Ms. Carol Mitten.

A copy of today's hearing agenda is available to

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

The order of procedure for special exception in variance cases are, (1) statement and witnesses of the applicant, (2) Government reports including Office of Planning, Department of Public Works, etc., report of the Advisory Neighborhood Commission, parties or persons in support of the application, parties or persons in opposition, closing remarks by the applicant.

Cross-examination of witnesses is permitted by the applicant or parties. The ANC within which the party is located is automatically party to the case. The record will be closed at the conclusion of each case except when the material is specifically requested by the Board and the staff will specify at the end of the hearing exactly what is expected.

Decision of the Board in these contested cases must be based as exclusively on the public record. To avoid any appearance to the contrary, the Board request that persons present not engage members of the Board in conversation. Please turn off all beepers and cell phones at this time so as 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 applicants' cases are not completed by 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 hearing has been given. If you are not prepared to go forward with the case today or you believe that the Board should not proceed, now is the time to raise such a matter.

Are there any preliminary matters? Okay. Does the staff have any preliminary matters?

MR. HART: I believe I do, Madam Chair. The first case of 16443 of Rainer Kraus. That case has been continued to July 7th.

CHAIRPERSON REID: Mr. Hart?

MR. HART: The first case on the agenda for this afternoon, 16443, it has been continued to July 5th.

CHAIRPERSON REID: What's that number, Mr. Hart?

MR. HART: 16443, the application of Rainer K. Kraus.

CHAIRPERSON REID: Is anyone here for case No. 16443? Is anyone here who is here for case No. 16443? That case has been continued.

Mr. Hart, anything else?

MR. HART: No, Madam Chair.

CHAIRPERSON REID: Okay. What we are going to do is kind of change the order a little bit and kind of get out a couple of the simpler cases first. As such, we have decided to go forward with case No. 16547 first and then I have Rickert, 16564, and then Siegel and then Malik, 16562. Let me repeat that. Pamela Hess, 16547; then Rickert, 16564; Siegel, 16563; and the fourth one would be 16562, Malik.

Would you call the first case?

MR. HART: The first case of the afternoon, case 16547, application of Pamela Hess, pursuant to 11 DCMR 3103.2, for a variance from Subsections 2001.3(a)(b) and (c) and 403.2 to allow for a proposed addition to an existing non-confirming structure and the allowable percentage of lot occupancy in an R-4 District at premises 521 7th Street, S.E. (Square 877, Lot 902).

Persons planning to testify, please stand and raise your right hand for the Board.

(Whereupon, the witnesses were sworn.)

MS. HESS: Thanks for taking me earlier. I appreciate it. I think this will be pretty quick and simple. I live at 521 7th Street.

CHAIRPERSON REID: You need to first give your name.

MS. HESS: I'm Pamela Hess. I've lived on 7th

Street since 1997. I bought at the end of '96. My property until about 1964 was a conforming property in that it went from 7th Street all the way back to the alley. In 1964 the owner of my property subdivided my property including a swimming pool and sold it next door. Now there's an L-shaped property that backs up my property.

On my property at that time was the addition that is the structure that I'm hoping to expand by a small amount, less than 60 square feet. When D.C. approved the sale of the back end of my property, they made it a nonconforming property because the distance from the back of my addition, or the back of the small powder room was less than 20 feet to the back wall where the swimming pool was. The District essentially by approving that subdivision at that point in the property line turned it into a nonconforming property.

This brings us up to the present day. What I want to do is add, as I said, a small amount of square footage on the foot print of my property. That would put me at about just under 62 percent coverage of my property.

A few years ago a rule was passed that would allow the city administrator to waive the 60 percent requirement as long as it's just a two percent variance and I wouldn't have to be here but for the two and a half feet. The addition in the back is too close to the back wall.

Because my property is nonconforming, it's not

covered under that rule and Historic Preservation will tell you that wasn't their intention at all. This is such a minor matter that they were hoping that these things could be handled without hearings.

What I'm asking for is either for this to be -- for me to be granted a variance which is think is probably the more complicated way, or for it to be remanded back to the city administrator to just assess it and decide whether or not he can waive the two percent requirement. Is this making sense to you?

CHAIRPERSON REID: It is. Keep going.

MS. HESS: Well, that's pretty much it. The back end of the house will be turned into a dining room because I currently have a galley kitchen that is unworkable. When any of the appliances are open, you can't pass through the kitchen and it's too small. There's two and a half feet of counter space for me in there. I'll be moving that up to the current dining room and turning the current kitchen, the galley, into storage. There's really limited storage in my house. My first floor is an apartment. It's not a basement so there's no storage down there. I have two small closets in the public areas of the house except for the bedroom closets. I'll be using the galley to improve the storage on the premises. Then I've lost my dining room so the extra 60 square feet that I would put in on the addition would go towards a dining room.

CHAIRPERSON REID: Ms. Hess, what I don't

understand is, the variance is only for two percent.

MS. HESS: Less than two percent.

CHAIRPERSON REID: Typically, Mr. Hart, isn't that something that is -- a small amount like that, isn't that something that is in the discretion of the zoning administrator to --

MS. HESS: Correct.

CHAIRPERSON REID: Why are we here?

MS. HESS: Because it's a nonconforming property because D.C. allowed the property to be subdivided in 1964. It's nonconforming and that

rule --

CHAIRPERSON REID: So that doesn't apply?

MS. HESS: Well, apparently it's a loop hole or something that they overlooked.

CHAIRPERSON REID: I thought that

whatever --

MR. SOCKWELL: Who made the ruling?

MS. HESS: A couple of years ago. Lyle, maybe you could address that, the ruling.

CHAIRPERSON REID: This is not something that would typically even come before us.

MS. HESS: Correct. But because it's a nonconforming property, it's outside the city administrator's purview. The ruling only applies to conforming properties.

CHAIRPERSON REID: Okay. Let's just try to dispose of it.

MS. HESS: Yeah. That would be great.

CHAIRPERSON REID: In the first place, even though you didn't say, you know, I guess I should mention to you that the reason why you're here is to make your case. We have a three-prong test. Let's address that.

MS. HESS: Okay.

CHAIRPERSON REID: No. 1 is uniqueness. What is unique or unusual about the property. Inadvertently, you did tell us about the property being subdivided and the fact that now it's rather a strange shape. I would say it's unusual or unique.

Then the practical hardship that it would cause you to comply with existing zoning regulations. Can you speak to that?

MS. HESS: Well, the practical hardship, I think, applies to the inadequate kitchen and storage facilities on the property. If I'm to fix that, I end up taking one of the public rooms which is my dining room so I end up with just a kitchen and essentially a living room and that would be all I have. So by adding this small amount, it sort of takes care of that. That's the hardship.

CHAIRPERSON REID: So the hardship is that without this two percent you have a substandard size kitchen.

MS. HESS: Yeah. You can't walk through the

kitchen if there are any appliances open.

CHAIRPERSON REID: Okay. The other thing is adverse impact. We have not been given any letters of opposition. Do you know of any opposition to your application?

MS. HESS: No. There's not. I've checked with both of my neighbors and Historic Preservation is supporting is. None of the neighbors that were notified have showed up or filed any letters complaining. I think everybody would be kind of psyched because it would raise the property value on a house that has been a eye sore for 20 years.

CHAIRPERSON REID: Do you have -- have you had any discussions or have you had any complaints in regard to the application being approved causing adverse impact in regard to noise, traffic, parking?

MS. HESS: No.

CHAIRPERSON REID: Okay. All right. So then the next thing would be -- there's no one here but you and Mr. Schauer which he will probably come up later. First of all, Government reports. We did have a report from the Historic Preservation Review Board which said in pertinent part, "Staff recommends that the Review Board approve the project in concept as consistent with the purpose of the preservation law and delegate final approval to staff." Did we get a letter from ANC or did they not --

MS. HESS: I don't think they acted on it.

CHAIRPERSON REID: What ANC is that?

MS. HESS: I think it's 6-B.

CHAIRPERSON REID: Okay. Typically when we don't receive anything from the ANCs the assumption is that they have no problem with it and, if so, they would let us know. Did you contact them or talk to them at all?

MS. HESS: I didn't talk to anyone, no. But I know folks on the -- I used to report on the ANC 6-Bs and no one that I've run into at Eastern Market has told me anything.

CHAIRPERSON REID: Let's see. They were noticed on the 10th of February. They did not respond. Okay. There are no other Government reports. All right. Persons/parties in support of the application? Persons/parties in opposition? Please come forward.

MR. SCHAUER: Madam Chairperson, members of the Board, my name is Lyle Schauer, S C H A U E R. I'm the zoning chair of the Capitol Hill Restoration Society. We have offices at 420 10th Street S.E. My home address, however, is 1107 Independence Avenue S.E.

I don't intend to read this statement into the record but I do want to cover some of the points. First of all, I think Ms. Hess has missed her calling. She should be a zoning attorney rather than a newspaper reporter.

Be that as it may, we were very pleased three years ago when this Board recommended to the Zoning Commission that the regulations for minor variances for residential properties be

lessened or the requirements be diminished because at that time even a minor addition to a property like Ms. Hess's property here, a two percent variance required the full showing of a variance.

This Board struggled with that as you are going to have to struggle a bit with this case because it is often not practical to show that the practical difficulty exist. As the Commission said in its order, the purposes of the amendments referring to the amendments then put in effect as a result of the request from this Board, those amendments went into effect two years ago and it created two new sections, Section 223 and 407.

They said the purposes of the amendment was to provide a legal basis for making reasonable additions to single family dwellings where the strict test associated with an area of variance are unobtainable and to authorize the Zoning Administrator to allow very minor de minimis deviations from area standards of the zoned districts. Those regulations went into effect and had good effect.

We found them very useful. I'm sure the Zoning Administrators found them very useful, and I think this Board has found them very useful because it is removed from your plate the necessity to deal with cases that have merit but can't always meet the exact requirements of a variance.

But in Ms. Hess's case she has an additional situation. The District government from the evidence that she has presented has created a nonconformity. That is important because

since this is a nonconforming building, the sections that I alluded to, 223 and 407, do not apply. A variance, therefore, is required.

I think this was an oversight on the part of the drafters of the two regulations. We do intend to ask the Zoning Commission when they make their next round of text amendments to extend the benefits of the two new regulations, two variances arising under Section 2001 which is the requirement for nonconforming building additions. We will be forwarding that to you. I would hope that the Zoning Commission will entertain that favorably.

However, at the time that this lot was subdivided, inadvertently, apparently, a nonconforming building was created. Previously this lot had been rather lavish and suddenly something more than a third, maybe almost a half, was lopped off and added to the lot next door leaving a 17 and a half foot backyard, the one feature that produces a nonconforming building. That one feature.

If this lot had been subdivided in such a way that the rear yard was 20 feet, Ms. Hess wouldn't be here. She would have gone to the Building Administrator. She would have gotten her variance -- rather her waiver of the variance and her building permit would have been issued.

Since the evidence strongly indicates that the District created this nonconforming building, I would suggest that

this Board should remand this case to the Zoning Administrator and ask him to treat the building for this case as if it were a conforming building. That would allow the Building Administrator then to grant a waiver on this minor variance and issue a building permit.

That's all in my statement, Madam Chair. Thank you for your attention.

CHAIRPERSON REID: Mr. Schauer, thank you very much for your testimony. I'm confused. Are you in opposition or in support?

MR. SCHAUER: We are a friend to the Board. We are in support of this.

CHAIRPERSON REID: But you came in opposition. I asked for people who were in opposition.

MR. SCHAUER: I missed my cue, Madam Chair.

CHAIRPERSON REID: Now we're working on the same page.

MR. SOCKWELL: When you came up I thought you were in opposition. I was waiting for the kicker and it didn't come.

CHAIRPERSON REID: Typically the Board does not remand back to the Zoning Administrator. The Zoning Administrator's decision can, however, be appealed. Nonetheless, in this instance since she's already here and there's no opposition, then wouldn't it be more expedient just to dispose of it and move on? On the meantime, you would then submit to the

Zoning Commission the information that we were just discussing today and to have a text amendment -- you would suggest a text amendment that would take care of this little loophole that we're dealing with today.

MR. SCHAUER: I certainly would have no objection to granting a variance here. My concern is these little minor variances are difficult to grant and it's hard to show practical difficulty of a really compelling nature. I certainly would not object to the Board doing that.

CHAIRPERSON REID: Just for expedience and your point is well taken. Often when we have changes in regulations and text amendment, there are finer points or loopholes that kind of fall through the cracks and this is apparently one such instance and that can be remedied through going back to the Zoning Commission for them to probably just amend the existing regulations to take into consideration these types of situations with a nonconforming aspect.

MR. SOCKWELL: Madam Chair, I think with regard to Mr. Schauer's concerns, I think -- I don't have the section referenced but in this case the nonconforming lot was created after the zoning ordinance went into effect and was actually, as you said, created by the District by approving the subdivision that lopped off the back half of the land.

There are some specific statements in the ordinance about nonconformances created and what the limitations are there.

I think what you are asking us to do is not to review it as an BZA case but to have the Zoning Administrator handle it as a matter of in the course of his normal duties because of the way the lot came into existence. I assume that's what you're saying.

MR. SCHAUER: That's correct. Mr. Sockwell, this is an unusual case. These kinds of subdivisions that produce nonconforming buildings are hopefully very rare. It's the first one certainly that I have come across. I think it should be treated if it can -- if you possibly can I think it should be treated in the way you suggest rather than go the variance route.

MR. SOCKWELL: I'm not exactly suggesting it. Here's the situation. We have had instances where an attempt would be made to create a nonconforming situation for the advantage of someone. In this case the advantage was not to the owner of the home that was placed upon the smaller lot. At that time the mere fact that this was allowed, it happened.

At that time there was no intention to extend the property, the building, so this is a subsequent issue coming up independently of the subdivision. I think in this particular case we can probably effectively hear this.

Perhaps it would be more appropriate for us to suggest to the Zoning Administrator that certain future cases, should they come up, might be handled differently. I'm not sure that we can do that but I think that we can effectively carry out our duties on this particular case.

CHAIRPERSON REID: Okay.

COMMISSIONER MITTEN: I just think that Mr. Schauer's concerns are that we shouldn't cheapen our standards for variances in pursuit of taking care of this case, that we should maintain the same high standard if I'm understanding. In the case of minor variances like this, the burden is hard to meet. I think that's what he's saying.

CHAIRPERSON REID: I agree. I think that his point is very well taken. I think when the applicant first began making her comments to us, I prefaced my statements with the fact that I couldn't understand why it was even here in the first place. That having been said, now that it's here, I agree. The only thing we can do is just try to change it.

The Zoning Commission is the only entity that has the ability to change it. We don't. We don't have remand powers to the Zoning Administrator so the only thing we can do, I think, is make note of it unless Ms. Sansone has any comments, our corporate counsel attorney, on this issue. We've not had it before and that is the only way that I know that I think we would be able to handle it.

MS. SANSONE: Madam Chair, I believe you're correct. I would just note that the Zoning Administrator did prepare a memorandum in this case as to the relief that he believed was required and so that's what's before us with the application. That was Exhibit No. 5 in the packet.

CHAIRPERSON REID: Okay. So that's all we can do.

MS. HESS: So what happens next?

CHAIRPERSON REID: We will go ahead and dispose of this particular case today. Then Mr. Schauer or the Capitol Hill Restoration Society perhaps will approach the Zoning Commission about taking care of these types of things.

MS. HESS: When you say dispose of the case, does that mean I have my variance or you all still need to --

CHAIRPERSON REID: We're not finished. We're not finished yet. Don't rush us.

MS. HESS: Don't rush? I've been trying to do this for two years.

MR. SOCKWELL: Dispose of merely means come to a conclusion but which conclusion.

CHAIRPERSON REID: Remember, we took you out of sequence and we're trying to get this done.

MS. HESS: I'm so grateful. Thank you. I apologize to everyone.

CHAIRPERSON REID: We're trying to get this done.

Anyway, Mr. Schauer, did you have any further comments?

MR. SCHAUER: I do not.

CHAIRPERSON REID: We understand and we appreciate your testimony.

Ms. Hess, you now will give us your closing

remarks.

MS. HESS: My closing remarks are simply that this is a really minor matter and I hope you'll approve it. It's for the good of the neighborhood. It's a house that needs a lot of improvements in order to raise -- the state of the block things are coming up and I want to do my part as a good citizen and this will be good for property values and won't impact on my neighbors at all as evidenced by the fact that they're not here.

CHAIRPERSON REID: And you would like a bench decision summary order which means that you would get a decision today?

MS. HESS: Oh, sure. That would be great. This has been -- I've been waiting to do this for two years.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: Let me make one statement about this. Normally if a nonconforming addition exist and you want to extend another part of the house, it's allowed that it would be extended to the maximum of but not greater than the maximum of the previous existing projection, in this case into the rear yard area that's there.

The fact this is a nonconforming lot, two percent, etc., still what you are proposing would be normally within the framework of the regulation.

MS. HESS: Right. The main problem here is just the nonconforming.

MR. SOCKWELL: The main problem is this.

MS. HESS: I'm with you.

CHAIRPERSON REID: Okay. Would you like to take a motion today?

COMMISSIONER MITTEN: I move approval of the variance that's been requested here.

CHAIRPERSON REID: Based upon?

COMMISSIONER MITTEN: Based upon the fact that there is -- the lot has been made atypically small because of the subdivision that took place because the difficulty that is --

CHAIRPERSON REID: So you think the lot is unique?

COMMISSIONER MITTEN: Yes, I think it's unique. There's a difficulty in terms of the configuration of the interior rooms that necessitates this small addition to improve the configuration which will enhance the value of the house and be a positive effect on the neighbors. There has been nothing articulated that would be detrimental to the neighbors in any way.

CHAIRPERSON REID: I would second it. I echo Ms. Mitten and I feel further that the applicant has met her burden of proof and that granting this particular improvement application will not impair the integrity and intent of the zoning regulations and map.

MR. SOCKWELL: I believe that the subdivision that created this unusual lot should not have taken place in the first place.

MS. HESS: I'm with you because I then would have a pool.

MR. SOCKWELL: Right. But the fact that the District allowed the subdivision means that someone was not paying attention to what was being created and that you should not be prejudiced for that since it took place before you purchased your home. Therefore, I do not object to this at all.

CHAIRPERSON REID: All in favor?

(Chorus of Ayes.)

CHAIRPERSON REID: Opposed?

(None opposed.)

MR. HART: Staff would record the vote as three to zero to approve, Ms. Mitten, Mrs. Reid, Mr. Sockwell.

MS. HESS: Thank you very much.

CHAIRPERSON REID: Good luck.

MS. HESS: Appreciate it. Thank you.

(Whereupon, the hearing in the matter of the application of Pamela Hess was concluded at approximately 3:15 p.m.)

CHAIRPERSON REID: Next case.

MR. HART: Next case is No. 16564, application of Jonathan B. Rickert, pursuant to 11 DCMR 3103.2, for a variance for an addition to a single-family dwelling under Sections 404.1 and 404.4 from the rear yard set back requirements to add a 6-foot

rear addition in a R-1-A District at premises 6683 32nd Place, N.W. (Square 2351, Lot 16).

(Whereupon, the witness was sworn.)

MR. LAFLEUR: Good afternoon, Madam Chair and Board members. The first thing I would like to do is thank you for changing the docket to get our case up ahead of these gentlemen. I'll be as quick as possible so they don't have to wait too long.

My name is Laurent LaFleur. I'm going to be the builder on this project if it does proceed. My clients have just left for abroad this morning so they asked me to come in their place and answer any questions that you may possibly have. The ANC --

MS. BAILEY: Excuse me, sir. Do you have an authorization from your --

MR. LAFLEUR: I have a letter that I believe was also sent to you all in the file before he left the states. When he found out this meeting was changed from March 29, he couldn't change his plans to go abroad so I believe he sent you a letter which I have a copy of.

COMMISSIONER MITTEN: It's Exhibit no. 21.

MR. LAFLEUR: Thank you, ma'am. The ANC already has reviewed this case and I understand they didn't have any objections. Hopefully they sent their letter ahead as they said they would.

CHAIRPERSON REID: We have the letter.

MR. LAFLEUR: Thank you. Every neighbor that we have spoken to, not one of them is in opposition to this and several are in support of this. The street that these clients live on is under heavy construction all the way around them. The neighbors to their left and right have done similar additions but they don't quite bump into the rear setback as this addition would.

Are there any questions? I think this is a cut and dried case.

CHAIRPERSON REID: Do you know that you have to meet your burden of proof and basically there is a three-prong test that you have to meet?

MR. LAFLEUR: The three points are, ma'am?

CHAIRPERSON REID: Three-prong test.

MR. LAFLEUR: Oh, three prongs.

CHAIRPERSON REID: For a variance. One is that you have to demonstrate there is something unusual or unique about the property.

MR. LAFLEUR: Oh, that was the front of their yard. It's in such an area there is no way for them to do any construction towards the front of the property.

CHAIRPERSON REID: This is a problem with the grating of the property?

MR. LAFLEUR: Extremely sharp angle. There is no way they could do any addition or remodeling in that part of the

property. Towards the other side of the property they have their driveway. They have a very small family room right now and they entertain many people from across the world and there is no place for anybody to gather.

They have tried to redo the interior floor plan by changing the kitchen around and there's just no place. Anybody gets stuck in one corner. They would like to extend this back part of the house that they have to a larger room so they have at least one place for people to collect inside the house. Right now there's no real place inside the house for people to gather.

CHAIRPERSON REID: Okay. Could you come up for one second?

MR. LAFLEUR: Yes, ma'am.

CHAIRPERSON REID: I'm looking at the surveyor's plat and I'm trying to determine --

MR. LAFLEUR: This is the front of the property here, ma'am. This is all driveway back here. This property from here down slopes heavily in this direction. This is the only part of the property that is relatively flat for them to do anything which is back here. There's a big tree here and there's a big slope going down so if they did anything in this area, they would be cutting the roots of this tree and this would die and, in effect, the whole shading area of their property.

MR. SOCKWELL: That's the tree that we see here?

MR. LAFLEUR: That's actually the front of the

house, sir.

MR. SOCKWELL: Is that the tree?

MR. LAFLEUR: Yes, sir. The only area they have to build is that referred area.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: Mr. LaFleur, I assume this to be a retaining wall?

MR. LAFLEUR: That is a retaining wall adjacent to the driveway -- connected to the driveway. Part of that retaining wall goes around the back of the lot where the slope starts going towards the other side of the property.

MR. SOCKWELL: Do you have anything that shows this slope? Any other photographs?

MR. LAFLEUR: No, I do not. Not on that side of the house, sir.

CHAIRPERSON REID: Okay. So the practical difficulty in complying with existing zoning regulations is?

MR. LAFLEUR: Is that if they were to do any addition to their house at all, they would have to go towards the one flat area that they do have which leads you towards the rear setback. They can't do anything to the side or towards the other area because of the slope. It just wouldn't be conducive to the layout of the property of the neighborhood.

MR. SOCKWELL: Did you draw this diagram?

MR. LAFLEUR: I did not, sir. That was part of the

plat.

MR. SOCKWELL: I know but the surveyor doesn't put the house on it. All the surveyor does is block out the lines of the lot. I was trying to get a feeling for this flagstone indicated area. It's difficult to determine what the -- the difficulty that I have is that at the moment I'm not sure that I see enough information but I'm working on it. Give me a moment.

The extreme slope that you speak to occurs only on this one side of the house. From the photographs that I'm looking at, anyway, the sloping is not severe except at the front of the retaining wall where the steps go down to meet the street grade. That's the worse part.

Yes, sir.

MR. LAFLEUR: The other area where you see frame stoop and where you were referring to flagstone patio, from there it slopes down towards the fence and that tree area. They don't want to get into that tree area at all to jeopardize the roots of the tree. That flagstone area is the only area right outside their kitchen that they go out to do any barbecuing or exterior picnicking.

In creating the addition that we are requesting would create a room 17 by 20, whereas if they even considered doing the flagstone area, which they did at one point, would create a very long and narrow family room, not really doing anything that they needed there.

MR. SOCKWELL: I think my questions are going to be a little difficult for you to answer based on a few things. It appears that one could develop an addition elsewhere on the site than within this rear yard area not necessarily getting into the tree roots and perhaps with creative foundation work that wouldn't have to happen. I'm not sure that I see the specific problem with the lot that is used as the basis for the application if that is a uniqueness.

MR. LAFLEUR: That is not the uniqueness of this issue. It's just the layout of the lot. That's just one of the contributory factors that they have.

MR. SOCKWELL: And we don't have any plans of the proposed first floor plan so that we can look at the configuration of the house vis-a-vis the potential addition. Basically I have a blocking of space on a plat and photographs but we have nothing that allows us to see where the hardship to the existing home might be, a result of placing the addition in some other location.

MR. LAFLEUR: Do you not have the set of the blueprints?

CHAIRPERSON REID: It could be a hardship to the home as well as a hardship to the applicant. We do. I'm sorry. It's in the office file.

MR. LAFLEUR: That's fine, ma'am. I believe there's one plan that does show that flagstone area that you were talking about very specifically.

COMMISSIONER MITTEN: That's the wrong case.

CHAIRPERSON REID: That's why. I grabbed it out of the file. Wait a minute.

MR. SOCKWELL: We're working on it.

MR. LAFLEUR: Do you want what I have here, sir?

MR. SOCKWELL: We should have it.

CHAIRPERSON REID: We have it. Mr. LaFleur, why would it be difficult for you to go the long way? What would cause the problem there?

MR. LAFLEUR: It doesn't offer anything that the owner is trying to require. I mean, it would create a very narrow room just nine plus foot wide and very long. It wouldn't act as a very functional room. If you want to put a television in a family room at one end, you would virtually be blocking off the entire room. You have a lot of square footage but it would be fairly useless.

CHAIRPERSON REID: I got you. It would not be as practical.

MR. LAFLEUR: Yes, ma'am.

CHAIRPERSON REID: Okay. All right. Now, to your knowledge you said there was no opposition. We don't have any letters. We have not gotten -- I don't think there is anyone here in opposition.

MR. LAFLEUR: No, there's no opposition at all.

CHAIRPERSON REID: Do you know if there is any

adverse impact in regard to light, noise, traffic, parking, or anything that might be considered a nuisance to neighboring property?

MR. LAFLEUR: Actually, not at all. Like I said before, neighbors both left and right of this property have done similar additions. This would actually contribute to the benefits to the neighborhood. It would be a better done job than some of the other ones that are there.

I wouldn't intrude on anybody's sight or view of looking up or down the alleys. No landscaping would be really destroyed by doing this. No trees would have to be taken down. It would be contributory.

The owners are actually very aggressive on this. They have asked their neighbors for two years about this and every neighbor they've spoken to is also on their side. If there was anyone in opposition, I'm sure we would have been hearing from them by now.

CHAIRPERSON REID: Okay. Now, unless there are any other questions, the ANC did not appear today but they did submit a letter and the letter is basically in support of the application. There was a vote taken, a quorum present so, therefore, they will be afforded the great weight to which they are entitled. There are no other Government reports, I don't think, with this application.

Persons/parties in support of the application?

Seeing none, parties/persons in opposition? Seeing none, closing remarks?

Oh, persons in support, we did receive a petition of support with five names of, I guess, neighbors on it. Thank you. All right.

Now we go to closing remarks by the applicant.

MR. LAFLEUR: The closing remarks I would like to read from the owners letter that he sent forward. "The modest addition that we propose to build has been discussed not only with our five immediate neighbors who all have signed a statement that they have no objection, but also with many other neighbors whose property is not adjacent to ours.

No one has any objections whatsoever to the project. Indeed, most have expressed support of it. We, therefore, hope that the Board of Zoning Adjustment will be able to act promptly and favorable in our application."

CHAIRPERSON REID: All right. It's like a bench decision, summary order, which means you get a decision today.

MR. LAFLEUR: That would be wonderful if you could, ma'am.

CHAIRPERSON REID: All right. Board members, I would like to move that we approve the application. I think the applicant has met his burden of proof, that the property is unusual and unique in that it does have a step slope and that the practical difficulty in being able to comply with the existing

zoning regulations go to the type of room that would be put there. That may not be as prudent as the one in which they are presenting to us today.

There is no opposition. We do have a petition and letter of support from neighbors. The ANC is in favor of it. There's nothing to be of adverse impact and it does not impair the integrity and intent of the zoning regulations and map.

Can I get a second?

COMMISSIONER MITTEN: I'll second it.

CHAIRPERSON REID: All in favor?

MR. SOCKWELL: Discussion.

COMMISSIONER MITTEN: Can I just say something? I think that the case of practical difficulty or undue hardship is very weak in this case. I mean, it's very difficult to just say they would like a bigger room or they would like the room configured differently. I think by contrast with Ms. Hess she had an essential room of her house that was highly dysfunctional. This is not in that category. I'm very reluctant to approve this because I think the burden if it's been met, it's just barely been met.

MR. SOCKWELL: As well, I have great reluctance with regard to this because of the true configuration of the lot. The location of the room is not restricted to that area. It is desired in that area primarily because it does not affect an existing light well which provides light to a lower level. It

does not necessarily intrude upon the tree but it certainly could have been located where the flagstone patio is without major difficulty. I am concerned about an approval that would have such limited practical difficulty being used as its basis.

CHAIRPERSON REID: Okay. Then do you want to rescind your second?

COMMISSIONER MITTEN: I don't have to vote in favor of it just because I seconded it.

CHAIRPERSON REID: You don't?

COMMISSIONER MITTEN: No.

MR. SOCKWELL: She doesn't.

CHAIRPERSON REID: I'm not sure about that.

COMMISSIONER MITTEN: I promise you that's true.

MR. SOCKWELL: It's true.

CHAIRPERSON REID: Okay. All in favor? Aye. All opposed?

COMMISSIONER MITTEN: No.

MR. SOCKWELL: No.

CHAIRPERSON REID: The motion fails. So you want to put a motion on the floor?

COMMISSIONER MITTEN: All right. I move that we disapprove the request for a variance that is put forward in case No. 16564 because I don't believe that the applicant has met their burden of proof related to undue hardship or practical difficulty.

MR. SOCKWELL: Second.

CHAIRPERSON REID: All right. All in favor?

COMMISSIONER MITTEN: Aye.

MR. SOCKWELL: Aye.

CHAIRPERSON REID: I'll vote with you. Aye. Opposed?

(None opposed.)

MR. LAFLEUR: Thanks for your time.

MR. HART: Staff will record the vote as three to zero to disapprove, Ms. Mitten, Mr. Sockwell, and Mrs. Reid.

CHAIRPERSON REID: All right. We are going to recess for just about 15 minutes and we'll return and we have two more cases.

(Whereupon, at 3:40 p.m. off the record until 4:38 p.m.)

CHAIRPERSON REID: The hearing will please come back to order. Let me profusely apologize. I was called down to the city council for a matter of utmost importance and it took longer than what we anticipated so we had no control over that. We will do all we can to try to get you out of here as soon as possible. Mr. Hart will call the next case. We only have two more cases for the afternoon.

MR. HART: Next case, application of 16563 of Mark A. and Judith S. Siegel, pursuant to 11 DCMR 3103.2, for a variance under Subsection 2001.3(a), (b), and (c) to allow the

construction of an addition to an existing nonconforming single-family dwelling, under Section 403.2 from the maximum allowable lot occupancy, and Section 404.1 from the minimum rear yard setback requirements in an R-3 District at premises 2134 Leroy Place, N.W. (Square 2531, Lot 18). Those persons planning to testify, please come forward and raise your right hand to take the oath.

(Whereupon, the witnesses were sworn.)

MS. SIEGEL: Let me be clear. I'm Judith Siegel. This is Keith Peoples. He's our architect and I'll explain in a minute why Mark Siegel is not here.

Before I make brief opening remarks, maybe I should tell you about something that may change things today. Some of my neighbors are here to talk to you. I just found out today within the last hour and I don't know --

CHAIRPERSON REID: First of all, we need your name and your address.

MS. SIEGEL: I'm sorry. I apologize. I'm Judith S. Siegel. I live at 2134 Leroy Place N.W.

CHAIRPERSON REID: Okay. Go ahead.

MS. SIEGEL: And, as I said, this is Keith Peoples. I don't myself know all the intricacies of the procedures. I just found out within the last hour that my neighbors who I think --

CHAIRPERSON REID: She's just starting.

MS. SIEGEL: Hi. I'm Judith Siegel. I just found out that some of my neighbors who are sitting here and planning to testify were not notified. I gather they were supposed to be notified by the city formally. There were a few other slight complications that I would like to tell you that may change how we need to proceed.

There was colossal confusion about the date of this hearing. I was under the impression because I got a letter from the District in February that we would have two hearings, one in March and one at the end of April. Only by some weird strange luck that I won't take up your time with that I find out that was not the correct date, at which point maybe around two weeks ago I called the offices to try to straighten it out. This happened because I spoke to someone representing the ANC and it was like a sitcom about, "I'll see you on this date or this date." She kept insisting April 5 and I kept saying, "No, no, it's not April 5." I found out by phone that it was April 5. Then I got a letter, "We apologize for the error in your first letter." I got that last week.

CHAIRPERSON REID: Who did it come from?

MS. SIEGEL: Jerrily R. Kress, Director.

CHAIRPERSON REID: Okay.

MS. SIEGEL: These are some of the complications. There was confusion about the date. We did not post the sign. We posted the sign on March 27 which was a week ago Monday, 10 days

ago. It hasn't been up for 14 days. My neighbors, as I said -- they can speak for themselves but I might be saving you time by telling you this now before we go through our whole case -- were not informed by letter about the hearing.

When I made contact -- I have recently moved to D.C. so I haven't worked with the District government very much so, you know, I don't know the style or the procedures. I actually found it a lot friendlier and more human than what I was used to in Montgomery County.

When I called only about the dates of the hearing to straighten it out, whichever kind person I spoke to, and I don't know their name, I said, "Thank you very much for straightening it out. By the way, is there anything we should do to prepare for the hearing?"

This person -- this is when I called at the middle of last week reconfirming the date because I got nervous -- this person said, "Oh, you might get some letters of support from your neighbors." Which is not something we had done. Starting Saturday morning my husband -- my husband is not here. He's on a trip which was scheduled because he didn't know the right date of the hearing -- my husband and I sort of split the neighbors, as I told them, and began making phone calls asking for letters of support.

That's the first time -- we did have the sign up but that's the first time that some of our neighbors like really

focused on the whole project because we made the calls because they hadn't got the letters from the District.

I'm telling you all that because I think they are going to tell you that, too, and if that changes the way you want to proceed, I'm putting that on the table.

CHAIRPERSON REID: I see. Let me see if I got this right. The neighbors did not get the notice.

MS. SIEGEL: Correct. I think they can speak for themselves.

CHAIRPERSON REID: The property was not posted in a timely manner. What was the third thing? What was the other thing?

MS. SIEGEL: That we were informed that our hearing would be on two dates that were incorrect. I was told by phone that these were dates for George Washington University's hearing and that somehow our hearing got mixed up with George Washington University's hearing.

The first letter that I got explained that the reason that I had two dates was because the property was near another neighborhood and that both neighborhoods should be prepared to testify, which I thought was a little strange because I didn't think it was that big a renovation. Nonetheless, after the fact I found out why. I have both letters here.

CHAIRPERSON REID: Okay. I still don't understand even with that why would there be two different dates.

MS. SIEGEL: I don't know.

CHAIRPERSON REID: One letter went out to one group of people and another letter went out to another group of people?

MS. SIEGEL: I don't know who went out to what.

CHAIRPERSON REID: Okay. Let's do this. Is there anyone here who is in opposition to this particular property just for the application?

MS. HILLS: Yes, we are.

CHAIRPERSON REID: Come forward, please.

MS. HILLS: My name is Joan Hills and I live directly next door to Mr. and Mrs. Siegel. We share the same wall. Mrs. Siegel came over last night. He had asked us to sign a paper approving the addition and we asked to have them explain it to us which she did last night.

I am here. I didn't know the -- I know they were going to do something but I thought it was just going out a couple of feet with a balcony and I didn't know until 6:00 last night the extent of the addition. My husband and I are in opposition to the addition. I have a letter for you which states my reasoning on this which I would like to submit.

CHAIRPERSON REID: Okay. Mrs. Hills, did you not see the sign?

MS. HILLS: I saw the sign but I also didn't know -- you know, I frankly didn't know what it was all about.

CHAIRPERSON REID: Did you get a letter, too?

MS. HILLS: I never saw a letter. I never got a letter.

CHAIRPERSON REID: You're next door?

MS. HILLS: I'm next door and I never got a letter. No, I did not.

CHAIRPERSON REID: Let's see. The letters went out -- you supplied the addresses of the letters to go out to everyone within 200 feet of the property?

MS. SIEGEL: I have not looked at what was supplied. We had a permit service. I'm told someone has checked what they put out. All the properties but one within 200 feet were on the list. As far as I know, nobody got letters.

CHAIRPERSON REID: All right. Now, we have a list of people who the letters went out to.

COMMISSIONER MITTEN: That would be Exhibit No. 8, Madam Chair. We also have --

CHAIRPERSON REID: I have Exhibit No. 19. Is it 8?

MR. HART: 46563?

COMMISSIONER MITTEN: Yes.

CHAIRPERSON REID: No, No. 19.

COMMISSIONER MITTEN: That's the letter. I'm sorry. I was referring to the list.

CHAIRPERSON REID: Okay. The letter and the list. So it did go out.

MS. SIEGEL: Exhibit No. 15 is Ms. Kress' certification that the letters went out. Then I guess Exhibit No. 19 is the actual letter itself.

CHAIRPERSON REID: Okay. So we have verification that these letters did go out. What is your address?

MS. HILLS: I'm 2132 Leroy Place. I did not see a letter, Madam Chair. It didn't come to me.

CHAIRPERSON REID: What is your address?

MS. HILLS: 2132.

CHAIRPERSON REID: Okay. Now, it says that you got a letter but you didn't get a letter.

MS. HILLS: No.

CHAIRPERSON REID: All right.

MS. SIEGEL: And, of course, as I said, I didn't know that.

CHAIRPERSON REID: One second, ma'am. There are three ways that we notify people. One is through the D.C. register and the other one is posting of the property and the letter. If you did not receive one way of notification, then the assumption is --

MS. HILLS: I'm sorry. I don't know what the D.C. register is. I've been in the District for nine years. Prior to that time I lived in a foreign country so I think part of it is that I don't know what it is. I have been working for an international organization so my life has been centered around

issues that are different than what is happening here in the District of Columbia even though I'm living here.

CHAIRPERSON REID: Okay. Thank you.

Ma'am, did you have something that you were trying to say?

MS. DRISEL: My name is Marie Drisel. I live at 2135 Bancroft Place. I'm 15 feet from the property and I am not on the list. I was not notified but I am also not on the list.

CHAIRPERSON REID: And your address is what?

MS. DRISEL: 2135 Bancroft Place N.W.

COMMISSIONER MITTEN: On the second page at the top.

MS. DRISEL: You will see 2137 Goldfield. He's on the list.

COMMISSIONER MITTEN: There's two pages and the list that we have has you listed.

MS. DRISEL: It does? I got no letter.

COMMISSIONER MITTEN: I think there must be some problem if people that are on the list didn't get a letter.

CHAIRPERSON REID: I don't have a second page.

COMMISSIONER MITTEN: You don't have a second page?

CHAIRPERSON REID: Not here.

MR. SOCKWELL: I have it. It's very small.

MS. DRISEL: And Chris Chapin, who is 15 feet from the property and keeps up on everything in our neighborhood, is

2136 Leroy. He's 15 feet away and he did not receive a letter.

CHAIRPERSON REID: Ms. Drisel, did you see the property posted?

MS. DRISEL: I saw the property posted just over the weekend because I don't go that way. I never go that way. It's not anything -- on the front of the house. I go down the alley.

CHAIRPERSON REID: Are you in opposition or in support?

MS. DRISEL: Well, there's a lot of problems here.

CHAIRPERSON REID: Okay.

MS. DRISEL: Some of us literally found out the extent of the plans in the last 24 hours.

CHAIRPERSON REID: All right.

Ms. Hills, you're saying that you did not -- you did see the sign?

MS. HILLS: I saw the sign last week. You know, I looked at it and --

CHAIRPERSON REID: Did you know what it was?

MS. HILLS: Well, I didn't know what it was. In fact, it entered my head that I thought it was -- I didn't think that they were doing very much and I didn't know so that's the reason why I thought, well, you know, I can't figure it out. I'm afraid I'm not familiar with what happens in the District and I just didn't know.

CHAIRPERSON REID: Mrs. Siegel, you posted the property only 10 days ago and the reason why was what?

MS. SIEGEL: I'm sorry?

CHAIRPERSON REID: You were supposed to post the property within 14 days of the hearing.

MS. SIEGEL: We posted it.

CHAIRPERSON REID: Was that because of the dates on the letter that you received or what?

MS. SIEGEL: Actually, I didn't -- the first letter I got was in February and I focused on the dates and then -- yeah, I forgot for the February letter. I didn't focus on it. Then over the weekend -- two weekends ago I decided to read the letter and I said, "Oh, my goodness, this should have been posted Friday."

CHAIRPERSON REID: Okay. Well --

MS. SIEGEL: Instead it was posted Monday so it was posted 10 days ago. I have a photo of the posting if you would like to see it.

CHAIRPERSON REID: We have it. Ms. Siegel, I have to determine how to expel about this. My feeling is that of the three methods of notification, two of them were flawed in this instance and, as such, perhaps it would be better to continue this case to allow you the time to meet with staff so they can kind of help you to walk through the procedures so that the property can be properly noticed and that the persons -- the aspect of this

pertaining to the fact that we have people here who are on the list who say they didn't get the letters.

Mr. Hart, do you have any insight into this?

MR. HART: No, Madam Chair. I am hearing this like you for the first time.

CHAIRPERSON REID: So I don't know. The whole idea of having the list is for us to verify who got letters. People are on the list but they didn't get the letters. They are saying they didn't get the letters. Do we have returns? Do we know if those letters were returned?

MR. HART: If there are returns, the returns are usually filed so if they are not in the file that you have in front of you, that means what was sent out didn't come back.

CHAIRPERSON REID: Okay. I would like to hear from my colleagues as to what you think about this particular situation.

COMMISSIONER MITTEN: I think there is evidence that there is something flawed about the mailing because there are at least three people who are on the list that didn't get the proper notification. Then compounding that with the fact that the sign hasn't been up for an adequate amount of time. I think your idea is a good one which is that we need to continue it and give proper notice in the meantime.

MR. SOCKWELL: I think that if we didn't have both

of these issues, we could probably proceed but because we have both, it would be prudent for us to make sure that neighbors are notified and that the signage has been adequately posted.

MS. SIEGEL: That's why I raised it at the beginning to save the time of going through our story and then find out that, you know --

CHAIRPERSON REID: If you know --

MR. SOCKWELL: It may give more time for Ms. Hills and Ms. Drisel to review what you propose because very often it's very difficult for someone to make an informed decision with less than 24 hours to do it in even if it is, in fact, perhaps an oversight on Ms. Hills' part for not thinking that sign might have meaning.

MS. SIEGEL: Sure. If I may, I would just like to say for the record that it has always fully been our intention, my husband's and mine, to be as transparent about this as we could. My daughter is in the hospital right now. She's coming home tomorrow but I've been a little preoccupied for the last few weeks. As soon as I read the letter and it was, "Oh my God." We got it up that day which was last Monday. As you say, you saw it.

The phone calls to neighbors, the 24-hour notice is really not what was intended. The phone calls with neighbors were good faith efforts to say, "Hey, heads up." Actually to ask for their support because the sign had been up so I just want to say

that we are really trying to approach this in a transparent way.

CHAIRPERSON REID: We didn't get a response from the ANC. Did you call the ANC?

MS. SIEGEL: I spoke with the ANC. As I said, I've only lived in the District for 11 months so I'm not that familiar with ANCs. I spoke with a -- I got a phone call from a woman named Linda Bumbalo months ago. This is, by the way, how I found out that the date was wrong. I would have been here on a different date. This was like a Marx brothers movie.

She told me to come to an ANC meeting one evening, a certain evening, which I put on my calendar. It was sometime in March. Then she called and left word in my office and said that -- the message was a little garbled not fault of my secretary. The message said, "The meeting is canceled. Hearing is April 5." I understood that to mean the ANC meeting had been postponed to April 5 which is today so I put on my calendar ANC meeting tonight.

Then I just called because I'm kind of -- except for the sign I'm a pretty thorough person. I called to reconfirm because I never spoke to her. We played telephone tag a lot and when I finally spoke with her, this is how I found out that the April 5 hearing, etc., oh my God, and called your office. She said, "No, no, no, no. There is no ANC meeting. It was canceled. April 5 is your hearing." I said, "No, Linda. I'm looking at a letter that says ..." And I gave her the other two dates.

It was a ridiculous conversation. I knew what I was looking at so I said, "Okay, look. I'm going to call the Zoning Office." That's how I found out. I actually thought that April 5 was the ANC. So the ANC meeting that we were supposed to go to was canceled and not rescheduled. I don't want to characterize what she said but it sounded like nothing was problematic. She was aware of the plans.

My husband also met with the Historic Review Board or Committee or whatever a few months ago and met with them and showed them the plans. The ANC, so far as I know, has no objection or, at least, the meeting was canceled and that's what I know.

CHAIRPERSON REID: All right. If we reschedule this case, when would be the next time that we would be able to get them on the calendar?

MR. HART: First off, let's think about this. We would have to actually renotice this case as opposed to continuing it.

CHAIRPERSON REID: Okay. All right.

MR. HART: So the first possible date for that is going to be the 20th of June.

CHAIRPERSON REID: All right. Does that date -- is that date okay with everyone, June 20?

MS. SIEGEL: Well, it's a long ways away. I mean, I would assume.

CHAIRPERSON REID: All right. In the interim, we have to determine what happened with the people not getting their letters who live within 20 feet of the property. The property will be properly posted this time.

MS. SIEGEL: Yes.

CHAIRPERSON REID: You will have the opportunity to, as Mr. Sockwell suggested, meet with your neighbors to try to see if you can reconcile your differences and overcome any opposition perhaps. Your submission to us with the significance of the fact that you may not really be familiar with what you have to do here today and that is to demonstrate how you meet a three-prong test. That wasn't in here. I didn't see that. You submit to us how you meet this test for the Board variance. Are you familiar with the test, ma'am?

MS. SIEGEL: Just from today having heard you and the others.

CHAIRPERSON REID: Okay. You are going to have to --

MS. SIEGEL: I'll educate myself.

CHAIRPERSON REID: You can get with staff but, briefly, you have to meet a three-prong test and the first one is that you have to demonstrate that there is something unique or unusual about your property that would cause you a practical difficulty to adhere to the existing zoning regulations. That's the first test. Staff will help you with that.

Then you have to demonstrate that approving your application will not cause any adverse impact on your neighbors or, you know, your surrounding community and it will not impair the integrity and intent of the zoning regulations and map. That is what the gist of your case should be about when you come back.

MR. SOCKWELL: Marie Drisel, what is your lot number? Do you know?

MS. DRISEL: Something like -- I know the lot is 808. I don't know the square.

MR. SOCKWELL: Okay. Then I know which one it is. That's fine.

CHAIRPERSON REID: And you said the staff had also suggested that you talk to other people in support of your application?

MS. SIEGEL: I have some letters in support.

CHAIRPERSON REID: Oh, okay. All right. Then you can submit those as well.

MS. SIEGEL: Now?

CHAIRPERSON REID: She should submit them now or submit them when it's closer to the time of her hearing?

MR. HART: What I would suggest is you wait until the renoticing comes out. You see, actually we are starting all over again, the 200 feet people and the list you sent. We will check to see what happened. At which point you can start making submissions, oppositions, proponents. They make their submissions

but I would wait until you are notified.

MS. HILLS: Does the letter, Madam Chair --

MR. HART: We will notify this office also.

MS. HILLS: Excuse me, sir. Does the letter indicate if we have a letter to write? Will it tell us where we should send it?

MR. HART: Certainly.

MS. HILLS: So the letter that comes to us will tell us what we have to do?

CHAIRPERSON REID: Sure. You can respond to response of notification. If you would like to write us letters or whatever, then that is fine.

MS. SIEGEL: Do we need to reapply? What should we do in terms of formal steps next?

CHAIRPERSON REID: Talk to staff and they will guide you through the process.

MS. SIEGEL: Can I call you, Mr. Hart?

MR. HART: Certainly. Yes. 727-0348.

MS. SIEGEL: I'm sorry. Say it again?

MR. HART: 727-0348, Hart.

MS. SIEGEL: Yes. Thank you. Could I out of curiosity give you my theory about why nobody -- I think nobody got letters because we walk our dog and stuff and nobody has said, "Hey, we got a letter."

CHAIRPERSON REID: Okay. What's you theory?

MS. SIEGEL: My theory is a word processing error. I think the body of the -- the text of the mistaken letter according to your offices was for George Washington University. I think their information got mixed with --

CHAIRPERSON REID: You think so?

MS. SIEGEL: Why would nobody get a letter? I mean --

CHAIRPERSON REID: What makes you think it was George Washington University?

MS. SIEGEL: Because your office told me. When I called and said I'm totally confused --

CHAIRPERSON REID: You got a letter notifying you of the George Washington University Hearing?

MS. SIEGEL: No. I got a letter notifying me that I was to appear -- oh, no. You're right. Okay. The inserted information is about the Siegels. Two things got mixed up. The hearings were for GW. When I called your office they said those were the two dates for GW and they were postponed or canceled.

CHAIRPERSON REID: Okay. Obviously there was some problem and where the fault lies I don't know but let's just clean the slate and start all over again and try to get you a legitimate bona fide hearing, get your case before us to do your lobbying or your contacts with your community and talk to the ANC again and hopefully when we come back in June everything will be correct.

MS. SIEGEL: Great.

CHAIRPERSON REID: Thank you.

MR. SOCKWELL: And your neighbor, Ms. Drisel, is very familiar with the BZA process and may be able to help you in at least understanding some things.

CHAIRPERSON REID: Yes, Ms. Drisel. Can we rely on you to notify us if, in fact, you don't get a letter again?

MS. DRISEL: Yes.

CHAIRPERSON REID: Because, you know, that's all we can do. As a matter of fact, just talking to your neighbors to see whether or not they get them because they are going to be re-sent out. We don't know what the problem was unless the neighbors all got problems -- I'm sorry, the neighbors all got letters notifying them of the George Washington University change or something like that and it was inadvertently but in the wrong envelope. I don't know but we are going to try to make it right.

MR. SOCKWELL: If we stamp them "taxes past due" they will get opened.

MS. SIEGEL: Thank you.

CHAIRPERSON REID: Thank you.

The last case of the day, please.

MR. HART: Last and also final case, application 16562 of Michael Malik, pursuant to 11 DCMR 3103.2, for a variance under Subsection 2001.3 to allow an addition, alteration and repair to an existing structure, a 4-unit apartment house for one

additional unit, under Section 403.2 from the percentage of lot occupancy limitation, under Section 404.1 from the minimum depth of rear yard requirements and under Section 406.1 from the minimum allowable area of a closed court width and Section 2101.1 for parking in an R-5-D District at premises 1314 Rhode Island Avenue, N.W. (Square 241, Lot 94).

Those people planning to testify, please raise your right hand.

(Whereupon, the witnesses were sworn.)

MR. SMITH: Good afternoon, Madam Chairperson Reid, Mr. Sockwell, Ms. Mitten. My name is Jim Smith and I live at No. 6 Logan Circle N.W.

MR. SOCKWELL: Do you mind if we call you Mr. Permit or would you prefer --

(Laughter)

MR. SMITH: I'm not sure. Let's see how this case comes out.

(Laughter)

MR. SOCKWELL: Good point.

MR. SMITH: I'm appearing today as a land use consultant assisting Mr. Mike Malik who is sitting here, the owner of the property, in his analysis and presentation of his carriage house to apartment conversion proposal which is now before us.

I also have today Mr. Minda Kubaitis. He's an architect with the architectural firm of Zahn Design Architects

who designed the carriage house and the connector redesign.

So I think this changes our witness list slightly because when I submitted my supplemental information, Mr. Malik and I were going to present our case and we added the architect to help explain some of the architectural parts of the story. I would like to start out with Mr. Malik first just saying hello and talking about his motivation for buying the property and some of the developments.

CHAIRPERSON REID: Okay. Mr. Smith is the agent for the owner. Is there a letter of authorization by the owner?

MR. SMITH: Yes, there is. Power of attorney.

CHAIRPERSON REID: Okay. Right. Got that. Power of attorney from Mr. Malik. Okay. Mr. Malik is not here?

MR. MALIK: I'm here.

CHAIRPERSON REID: You're Mr. Malik. Okay. Wait a minute. I'm confused. One second. If you're here, why do you need power of attorney?

MR. MALIK: In case I couldn't make it.

CHAIRPERSON REID: Oh, thank you. Okay.

MR. SMITH: I also prepared the case.

CHAIRPERSON REID: Okay. All right. Go ahead.

MR. SMITH: So Mr. Malik would start out with an introductory comment.

CHAIRPERSON REID: Okay.

MR. MALIK: I moved to D.C. in 1993 and moved into

the Logan Circle area purchasing a property at 1330 Vermont Avenue. Two years later in 1995 the property that was right behind the alley from me, 1314 Rhode Island, came onto the market for sale.

It was a dilapidated building that was in need of some tender loving care so I purchased the building. It was a 4-unit apartment building. It was vacant except for one apartment. Three of the apartments were vacant and one was still occupied and is still occupied by that tenant.

I was able to upgrade the apartments a little bit and get them re-rented and then turned my attention to the carriage house. The carriage house is also dilapidated. It is run down. It was utilized as an office space by the previous owners. It was in applying for the permits to try to redo the carriage house that I learned that I had to come before the Zoning Board.

I have talked to my neighbors and their preference, as well as mine, is that the carriage does become an apartment so that there can be a person that is back in the alley area. There have been some problems with vandalism. There was a car that was actually bombed a few months ago back in the alley. There is a need for more of a presence in the alley way. The neighbors are all in support of making this a residence.

That's basically why I'm here. In order to do anything with the carriage house we need to get a permit.

MR. SOCKWELL: What do you mean by bombed?

CHAIRPERSON REID: You couldn't resist that.

MR. SOCKWELL: No, I couldn't resist that.

MR. MALIK: Bombed. Something was dropped on it's gas tank and it blew up.

MR. SMITH: I would like to point out, Madam Chairperson, that we are here today because we have a nonconforming structure. While the zoning regulations allow a matter of right use of a carriage house as an art studio, because of the size of this particular structure and because it's historic, the only avenue -- I went down for Mr. Malik and applied for a repair permit and to fix some of the windows and the sliding glass door because it is an historical district.

I used to be president of this area for several years, so I am very much into permits and also it's my business. I was informed by the Zoning Administrator that they would not allow any permits on this structure and that I had to pay you a visit. That's why we're here, that they wouldn't let us do anything with the structure whatsoever.

I would also like to point out that we've been before the Historic Preservation Review Board and the plans that you have in your package and the accompanying photographs and our testimony is keeping in mind that we have a conceptual approval from the Historic Preservation Review Board for this adapted reuse.

I would like to turn over the microphone for a couple of minutes to Minda here who will talk about the design of the property.

MR. KUBAITIS: We were commissioned -- our firm, Zahn Design Architects, were commissioned to do design for renovation at 1997. The design was completed June '97 and in order to make the carriage house habitable, we had to change existing situation with the staircase which is completely open. From the first floor of the house leads to the second floor of the carriage house.

Anyway, to get the habitable area there we have to design connector which has to have a roof structure above, so to say a breezewalk, and has to be less than three feet wide. For that reason we designed a little covered staircase and the landing which leads from the house to the carriage house first floor.

Also, after recommendation of the Historic Board staff member, we suggested now a design to erect the wall, brick wall which could keep the roof above this walkway. Then the first floor of the carriage house has a passage through which is required in case of emergency. Also from that passage we have entrance --

MR. SOCKWELL: What was that?

CHAIRPERSON REID: Are we okay?

MR. SOCKWELL: Someone has got to be on the wireless mic.

CHAIRPERSON REID: But why?

MR. SOCKWELL: The wireless mic.

CHAIRPERSON REID: But why?

MR. SOCKWELL: It beats me.

CHAIRPERSON REID: Go ahead. Continue.

MR. KUBAITIS: Briefly what we found there is the second floor of the carriage house has very small kitchen with a bathroom which is kind of not enough for comfortable living. What we design is that in the first floor of carriage house we have bedroom with a bathroom which is master bedroom with also attached workshop. On the second floor we design the little bedroom and open kitchen, living, dining room.

Existing terrace we suggesting to repair it and keep it because, as you see on this photograph, the building badly needs repair and restoration. If we belabor that, it might be cause of neighbors to complain about the bad stage of the building.

As I mentioned, and Mr. Jim mentioned, that all the changes, all the window replacements corresponds -- fits the suggestions or advise of the Historic Review Board.

CHAIRPERSON REID: Did you submit that letter from the Historic Preservation Review Board?

MR. SMITH: I don't believe we did for the record but it was before them.

CHAIRPERSON REID: So do you have it?

MR. SMITH: I don't have it. No, I don't have it today.

CHAIRPERSON REID: Okay. It would be good to submit it.

MR. SMITH: Okay. We can get it.

I'd like to point out a couple of things that make this an interesting case as opposed to a noninteresting case. The former architect owners designed the building to have a direct walk-through from the front door to their architect's office which makes a proposition to use the rear of the building for some habitable use possible.

In most cases when we have a row house dwelling, there's no way to get to the carriage house except through the alley and there's a lot of cases you probably have to hear and turn down because there's no access to the rear of the property directly from the front.

If you see the plan that is in your package, there is a walk-through in the building. This plan here shows a walk-through right there so when you go in the front door of the building, you end up walking through an enclosed stair hall. There's a couple of fire doors and then there's a rear passageway that leads out to the carriage house.

I'm a former developer and this particular architect at the time in 1983 when he had his office there designed a couple of buildings for me and I used to go there quite

often to complain or to get more information about my development projects and had to go through the same hallway so it's been there for some time.

In addition, the Historic Preservation Review Board's desire in their review was to have the wall built as it is shown so that a cover could not be seen. They would rather see a brick wall in between the carriage house and the main house instead of just a roof that didn't seem to be defined or lead anywhere in particular and was sort of a modern intrusion into an historic space.

The architect firm finally grew so much that they moved to the M.A. Winter Building on U Street and moved out of the their office. Subsequently a couple years later their firm broke up and they sold the building at the time that Mr. Malik purchased it.

I'd like to also point out that although the art studio was a matter of right, because of the size of this carriage house which is in excess of 1300 square feet, we were informed that even if we wanted to do a matter of right use, we had to pay you a visit. There's no way that we could do anything at all with this building without your blessing.

CHAIRPERSON REID: Did they also tell you or explain to you about the three-prong test?

MR. SMITH: Yes, ma'am. I'm aware of that. I'm absolutely ready.

CHAIRPERSON REID: Okay.

MR. SMITH: We also have a situation that came up during the course of this case where the property was R-5-D and now it's R-5-B. It was a bifurcated case 97-7I or something like that that the Zoning Commission heard where they changed some of the Logan Circle zoning and then they canceled part of it. Later on they revisited it and then they canceled it again. The third time they changed the zoning so we were not aware of the fact that the bifurcated case 97-7I was heard and decided.

I talked to Mr. Bastida about that and on the 28th of January after we filed our case the actual zoning was changed, down-zoned from R-5-D to R-5-B. I had a long conversation with Ms. Kress about this on Friday trying to figure out what we should do about that.

She suggested that the letter that you now have from Commissioner Helen Kramer that was submitted for the record to show that when we brought the matter to the ANC committee that we discuss the fact that the zoning had changed and that we had an additional variance for R-5-B which is percentage of FAR.

The FAR is actually now -- before the FAR wasn't an issue because we had a 3.5 FAR under the R-5-D zone. Then when we were down-zoned to R-5-B we have a 1.8 FAR. Basically we told the community about this when we discovered it and when they voted to support us and the neighbors and all those folks that have written support letters are all aware of the fact of the zoning change.

Nevertheless, because we have to visit you with this case and we have to decide what to do with this property, then they were all unanimously in support of moving forward even though the particular element of R-5-B, meaning the FAR change, was not advertised.

CHAIRPERSON REID: When was the zoning changed?

MR. SMITH: The 28th. It was effective on the 28th of January. We filed this on the 10th. Well, earlier than that. I can't remember the filing date.

Now, Ms. Kress did tell me that Mr. Nunley should have written the letter slightly differently to refer us here. He should have known that the Zoning Commission had vested itself and that he should have limited us to the R-5-B category. Nevertheless, we were not aware of this change or we would have definitely picked that up with our filing.

CHAIRPERSON REID: Okay. One second, please.

Ms. Sansone, I think that what we're hearing is that Mr. Nunley has referred him here for four variances, none of which refer to the change in the regulations that pertain to the FAR.

MR. SMITH: That's correct.

CHAIRPERSON REID: You are telling us that you feel that should have also been -- that change would have kicked you over here for a variance and for FAR as well?

MR. SMITH: For FAR as well had we known about the zoning change.

CHAIRPERSON REID: All right. Now --

MR. SMITH: When we filed the case it was still R-5-D.

CHAIRPERSON REID: Okay. You just got kind of caught in the --

MR. SMITH: Caught in the middle.

CHAIRPERSON REID: But Nunley is the one who referred you here for these four variances. Ms. Sansone, if the Zoning Administrator did not so indicate, then how do we proceed? I'm not really sure this an anomaly.

MS. SANSONE: Madam Chair, I believe we actually have regulations on how to proceed when there is a zoning change in the middle of the case if you just give me a moment to look that up.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: Mr. Smith, what's the FAR maximum now?

MR. SMITH: 1.8.

MR. SOCKWELL: And what is the FAR proposed?

MR. SMITH: Hold on a second. The current FAR at 1.8 allows for a maximum lot development of 4,363 square feet which is --

MR. SOCKWELL: 4,000 what?

MR. SMITH: 4,363. The total amount of FAR that we have is 6,921.7. The addition that we're doing, i.e., the connector, is only 70 square feet so the existing structure including the carriage house already is in excess of the FAR anyway. This means that the final FAR will be 2.86 as proposed instead of the 1.8 FAR.

There was also a lot occupancy situation that before was 102 square feet, I think, in Edgar Nunley's spreadsheet. The lot occupancy went down from 75 percent to 60 percent but we were already referred to you because of a percentage of lot occupancy issues.

Ms. Kress and myself didn't think that was as big of a problem as the FAR situation. We will have a 82 percent lot occupancy and we would have about an 80 percent lot occupancy without the connector of 70 square feet.

CHAIRPERSON REID: All right. Let us hold on the FAR issue and proceed to present your case and then once Ms. Sansone gives us a reading on that, then we will address that issue.

MR. SMITH: Yes. Ms. Kress did suggest to us that if we brought it up in the case and that it was read into the record and you went along with the matter, and assuming corporation counsel could, she suggested we would be at this very moment last Friday where we are right now. It would probably be sufficient for Edgar Nunley to go ahead and know that it was her

and that it was the subject matter of the discussion.

Let me continue. I would like to get into the three points.

MR. SOCKWELL: Before you do that, let me ask you one brief question. Was that Laniel Manion that had that? Who was the architect?

MR. SMITH: It was Kent Abraham and Milt Shinberg, ABS Architects.

MR. SOCKWELL: Okay.

MR. SMITH: They operated this building. I wasn't in Logan when they redeveloped and I moved here in 1980 so I think what happened was they were going to put the Roosevelt for Senior Citizens originally on that block of Vermont and Rhode Island Avenue and tear all these historic buildings down.

The Logan Circle folks formed a Logan Circle Preservation Society and then they convinced the mayor at the time to put these properties up for sale provided they put low income rentals in the building for a period of 10 years, one in each building.

There was 3 percent and 7 percent loan money at the time which in the late '70s was a pretty good deal. That's why the area was preserved because people were very conscious about the architectural integrity of this block and the facing block on the other side of the alley which is Vermont Avenue and did something to preserve it.

At the time that happened the Shinbergs and the Abrahams purchased this building and rehabed into four units and there was no home office occupation guidelines at the time. I wasn't a zoning person at the time. I don't know if it was legal to have a home office back there or not but, nevertheless, they did. Everybody in the neighborhood was aware of it and used their services quite a bit.

That's why it was an architect's office before.

I don't know why the bathroom was there and stuff like that as you see in the photograph. It might be that they were thinking about renting it out at some point but, to my knowledge, they never rented it out. They just used it for their own office and then when they grew in size, they moved out and never re-rented it. It was pretty run down. They would probably have to rehab it to get any decent rent for it.

MR. SOCKWELL: The envelope was not extended at the time that they had it?

MR. SMITH: No.

MR. SOCKWELL: So all that's there was all of this building as existing and had preexisted except for your proposed --

MR. SMITH: Connector.

MR. SOCKWELL: Yeah. Everything had preexisted.

MR. SMITH: That's correct.

MR. SOCKWELL: Okay. Date?

MR. SMITH: That was at least -- I saw the building in 1982 and 1983 so it had to be done before that but I was actually in the building and took a tour of it because they were showing me how they design stuff to lure me into working with them.

CHAIRPERSON REID: Continue.

MR. SMITH: I think we have a hardship case before us due to the fact that without zoning relief we can't use this building. We can't use it for any other use than an artist studio. But if we wanted to use it for an artist studio, which is provided in the regulations, we'd have to come before you anyway.

CHAIRPERSON REID: Well, first, let's start with what is unique or unusual about this property?

MR. SMITH: It's unique because it's a contributing historic structure in the Logan Circle Historic District.

CHAIRPERSON REID: No, that would not be considered one of the elements of uniqueness. It has to be something inherent in the land itself.

MR. SOCKWELL: Or the property.

CHAIRPERSON REID: Yes. The land or the property itself. Let's start there.

MR. MALIK: Well, I would say it's unique because it has this attached carriage house, it's historic, and the architects that did the building when they redid it built it with access from the front which allows us a unique opportunity to

utilize it.

CHAIRPERSON REID: Do the other houses right there in that particular --

MR. MALIK: Have carriage houses?

CHAIRPERSON REID: Yes. They don't have carriage houses?

MR. MALIK: They do not.

CHAIRPERSON REID: No other house?

MR. MALIK: There's one other on Vermont Avenue that has a carriage house.

CHAIRPERSON REID: Okay. Here's the Sanborne map. Now, your house is the only one. It looks like another one over here.

MR. MALIK: On Vermont Avenue, yes.

CHAIRPERSON REID: No, no, this is on Rhode Island. Maybe it's a garage back there. Are there any garages?

MR. MALIK: No.

MR. SOCKWELL: Is this structure sprinklered?

MR. MALIK: No.

MR. SOCKWELL: Is there a second means of egress? From the units that are provided, is there a second means of egress out of this building?

MR. MALIK: Not currently. There is in the proposal.

CHAIRPERSON REID: So your property is the only one

that has the carriage house that is attached basically with -- what do you call it?

MR. MALIK: Connector.

CHAIRPERSON REID: Connector.

MR. SMITH: There is no connector. That's why we need the carriage house. The only way that we can use the property as an apartment building, as far as I've been told, is that we have to connect it. At one time there was a court of appeals case against the Zoning Commission where they approved a three-foot wide connector.

I was told by Gladys Hicks at one point that a three-foot wide connector isn't enough because the Court of Appeals said no so that's why we came up with a 4 foot 9 inch connector.

CHAIRPERSON REID: Okay.

MR. SMITH: The other part is to provide legal egress we have to have a 44-inch exist isle.

CHAIRPERSON REID: Okay. So it doesn't have the connector now. I think when I was reading your submission somehow I had the impression that it was already there.

MR. SMITH: No, it's not connected.

CHAIRPERSON REID: Maybe I saw it in the drawings or something. That's what you propose to do so as to --

MR. SMITH: Create one building.

CHAIRPERSON REID: All right. So that is what you

say is the unique and unusual aspect of this particular property or the site?

MR. SMITH: That's correct.

CHAIRPERSON REID: This carriage house was there when you purchased it.

MR. SMITH: The carriage house probably predates 1900. It's a very old carriage house.

CHAIRPERSON REID: Because you said yourself that -- you testified that you in '82 went there due to the fact that there was an architect who lived there who you were working with.

MR. SMITH: That's correct.

CHAIRPERSON REID: All right. This is already existing. Go ahead. Now, the practical difficulty, you haven't been able to comply with the existing zoning regulations.

MR. SMITH: I'm sorry?

CHAIRPERSON REID: Practical difficulty for you to be able to comply with the existing zoning regulations?

MR. SMITH: We have a practical difficulty of complying with the zoning regulations because we have a building that we can't use without your permission to use it. I don't know what a practical difficulty that is but it seems difficult to us when we can't process a building permit to just leave it like it is and even disrepair it without having some kind of a acquiescence by the Board of Zoning Adjustment.

CHAIRPERSON REID: Also, could we not say then that

-- well, you're applying for four variances so practical difficulty in regards to lot occupancy or the --

MR. SMITH: The existing structure.

CHAIRPERSON REID: The rear yard requirement and so forth would be privative in that the structure is already there.

MR. SMITH: That's correct. The existing structure.

CHAIRPERSON REID: In order to comply that would mean then -- I'm kind of helping you a little bit.

MR. SMITH: I understand.

CHAIRPERSON REID: -- that you would have to basically raze that carriage house and that would be economically infeasible.

MR. SMITH: That's correct.

MR. SOCKWELL: Razing it wouldn't be economically infeasible.

CHAIRPERSON REID: No, razing it to comply and then they would lose that property. They would have to pay to have it razed and then they would be in compliance so that is the practical difficulty.

MR. SMITH: That's correct.

CHAIRPERSON REID: In order to comply.

MR. SMITH: We are also uncertain if we could get a raze permit because of the historical nature of the carriage house.

CHAIRPERSON REID: Oh, you couldn't get a raze permit in the first place.

MR. SMITH: No, we can't.

CHAIRPERSON REID: Oh, okay.

MR. SMITH: It's protected property. It would be a long ordeal with the mayor's agent to tear it down.

CHAIRPERSON REID: Okay. All right. That's your practical difficulty.

MR. SMITH: Yes.

CHAIRPERSON REID: Then let's go to adverse impact.

MR. SMITH: I would like to point out that the proposal will create no adverse impacts. The addition of another apartment will not adversely impact the overall occupant load and the parking pedestrian load in this neighborhood, especially due to the fact that the current R-5-B zone does not limit the number of apartment units allowed and that someone can redevelop a single-family house, for example, into an unlimited number of apartments.

There will be increased security in the alley which is a goal of the neighbors where there have been numerous break-ins around the vicinity of the abandoned carriage house.

We have a parking waiver for this property and even though we are trying to mitigate and justify our responsibility and develop this into an apartment by retaining a parking space for the use of this apartment, that's why there's an apartment

space still in the building that's proposed.

Since the building is existing, there will be no light or noise or other types of impacts, we believe, on the conversion of this space into an apartment use.

We have been in close contact with the neighbors. You can see several support letters from the neighbors on both sides, from a neighbor four doors down to the west and from Connie Mathon who lives on Vermont directly behind the building. They all feel that an apartment type use is what they would like to see and encouraged us to proceed with this and we have their blessing to do an apartment use there.

CHAIRPERSON REID: Okay. Do your knowledge, you have not had any opposition or any complaints?

MR. SMITH: I know of no opposition.

CHAIRPERSON REID: All right. In regard to traffic, parking, noise, light, or any of the things that would be considered a nuisance?

MR. SMITH: The two people most impacted are Graft and Bigalow who lives next door and that's where the wall will be built. He likes the idea because of security. There's been some break-ins in his house. Mr. Malik has a carriage house and there's a fence on both sides. It isn't a substantial fence.

There is a rear yard parking lot on both next door neighbors. One next door neighbor says that people break in from the other neighbor and break into their house. You go to the

other neighbor and they say the burglary happened because someone climbed the fence on the other side and broke in.

The point is that there have been a number of break-ins and both neighbors think that the other one is responsible. Not Mr. Malik but the two cross neighbors. The way we came up with a solution to that is to build a wall in between them to eliminate the problem.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: Mr. Smith, how much of this carriage house was built after the original?

MR. SMITH: I think it's an original carriage house. If you look at the color photos carefully, you can see --

MR. SOCKWELL: I couldn't find the color photos. There's in a package that I --

CHAIRPERSON REID: Can you see that? Maybe bring it up closer.

MR. SOCKWELL: Okay. The way the windows are put in. You can see how they changed the windows. Also you can see where the new brick is up there on that rake in the front of the carriage house.

MR. SMITH: Yeah, I noticed that. The segmental arch there on that one window toward the side indicates that was a type of construction done at the turn of the century and it has the same brick as on the house which is also something to indicate that this carriage house was probably built around the same time

as the house.

I'm not sure of the exact permit date of the house. Someone told me that when they did the Logan Circle historic district, they didn't require extensive documentation at the time so there was never any archival research done to find out all the permit history. It was built around 1878.

CHAIRPERSON REID: Okay. Have you completed your presentation?

MR. SMITH: No. I have another point.

CHAIRPERSON REID: All right.

MR. SMITH: The intent, purpose, and zone plan and map for the city is not impaired in any way by this proposal. This is already an R-5-B zone, formerly an R-5-D zone, and there is moderate to medium to high density residential development throughout the surrounding neighborhood.

Demolition of the building is not the desire of the neighborhood nor of the owner and is not allowed by the Historic Preservation Division. And it is an existing structure. There is a close proximity within the same block, in fact, within 150 feet of this site the commercial properties that are C-3-A on 14th Street that are severely in need of rehabilitation.

In addition, the entire block of Rhode Island Avenue and the entire block of Vermont Avenue including 1 and 2 Logan Circle with the big mansion on Logan Circle that is part of this block is completely rehabilitated now. The goal of the mayor

and the city council and the Office of Planning 20 years ago was to see this happen and the only building that's left that hasn't been rehabed is this carriage house.

All the neighbors are very anxious now to get this element finished so that we're going to have a block that is completely rehabilitated and we think that will have a spinover effect to encouragement of other folks that are looking at commercial property not to see a derelict carriage house but to see something that is upscale and they will want to bring upscale development on the commercial sector.

CHAIRPERSON REID: Okay. Thank you.

Ms. Mitten, do you have any questions?

COMMISSIONER MITTEN: I just have a question because I think I'm not clear about a point because I'm looking at a chart that was prepared that shows where the variances are being sought. It sort of calculates everything, a computation sheet.

Did you say that there -- I see a truck or something in the one photograph. Is there a parking space now?

MR. SMITH: Well, it's sort of a parking space. You can get a car in there but that's a plywood door and we've asked them to put a regular door on it and they said we can't do anything until we come here so it's a makeshift parking situation.

COMMISSIONER MITTEN: Okay.

MR. SMITH: It's not normal parking. It's very hard to get the car out of there.

COMMISSIONER MITTEN: Okay. Will there be a parking space?

MR. SMITH: Yes. There's a parking space on our plan right here.

COMMISSIONER MITTEN: Okay. Because that wasn't --

MR. SMITH: We're retaining that.

COMMISSIONER MITTEN: Okay. What's written in this chart is that you are additionally seeking a variance of two spaces but it sounds like really only one.

MR. SMITH: No, the letter he wrote -- if you look at the letter that goes along with the chart because we have a parking waiver. I have a copy of it with me. That wasn't appropriate.

COMMISSIONER MITTEN: Okay.

MR. SMITH: Would you like a copy of the waiver?

MR. SOCKWELL: Certainly.

COMMISSIONER MITTEN: That would be great. I guess I just wanted to clarify something and this is not news to any of you. There's a few errors in the application. I don't know what the significance of that might be going forward but the square is listed as 241 and it's 242. Because of the timing of the application, it still says R-5-D and it should probably be corrected to say R-5-B.

CHAIRPERSON REID: Mr. Hart, in a situation like that what do we do, amend the application to reflect those

corrections? It was advertised as the right square or the incorrect square or what?

COMMISSIONER MITTEN: Incorrect.

MR. HART: It was advertised as the incorrect square.

CHAIRPERSON REID: We've had that happen before.

MR. HART: Yes, but what we have done is once we move ahead and realize that everything that was presented was for the correct square and we went ahead and just changed it.

CHAIRPERSON REID: Because the address is there and that is correct.

MR. HART: Yes.

CHAIRPERSON REID: Now, on the application, what do we do about that? Is that something we should be concerned about?

MR. HART: Here is says square 241 and it's really 242. What I've seen done in the past, again, it was regarded in certain situations as a typographical error.

MR. SMITH: I typed it and I know what the square is. I know I made an error.

CHAIRPERSON REID: Well, what I was about to say is when you go for your permit, then all that will be straightened out because it's a serious matter if you have the wrong square reflected on your permit but now that the error has been caught. Were you aware of it?

MR. SMITH: I am now.

CHAIRPERSON REID: Okay. Then Mr. Hart said it's considered a typo so that can just be corrected as such.

Thank you, Ms. Mitten.

Are there other questions? Mr. Sockwell, did you have any other questions?

MR. SOCKWELL: Aside from the roof to be added as a connector, there isn't any other extension?

MR. SMITH: No other extension. There are some architectural changes that we are reflecting which is double-hung windows. Right now there's a sliding glass door on the back of the carriage house. You can fall out of it and die.

There's some plexiglass skylights on the front of it that aren't very good. You can see them there. There are some skylights up here that are falling apart. We can show that to you. There's also these sliding glass doors.

If you look at the elevation drawing, we now have Marvin Wood surround doors that are more in keeping with the intent of the historic district and three skylights with a metal roof to get rid of this plexiglass roof that is an intrusion to the historic district. Other than those minor architectural changes to the exterior, there's no other changes except for the connector and the wall that holds the connector.

MR. KUBAITIS: Also instead of existing sliding glass door, which is not safe, we are suggesting to set the double-hung windows which look historic and contribute to historic

area.

MR. SOCKWELL: So you are going to extend -- you are going to physically move one of the windows?

MR. SMITH: We are going to physically move one of the windows over just a little bit.

MR. SOCKWELL: Which will drop it down to the full height of the double-hung.

MR. SMITH: Moving that window is actually bringing it back to the original window that was in the carriage house. There are signs that it was patched and repatched.

MR. SOCKWELL: Okay. Thank you.

CHAIRPERSON REID: Okay. There are no members of ANC. Is there an ANC representative here? Are you affiliated with this case?

ANC: Yes.

CHAIRPERSON REID: Are you here in opposition or in support?

ANC: Support.

CHAIRPERSON REID: Okay. We do have a letter from the ANC, 2-F. The letter basically is in support of the application. It does refer to that issue about the FAR.

Ms. Sansone, have you come up with anything yet?

MS. SANSONE: Yes, Madam Chair, I have. We do have two zoning regulations that talk about what needs to happen when

the zoning changes during the middle of building applications and certificate of occupancy applications.

A lot of it turns on when the Zoning Commission has its hearing and makes its decision. Essentially it's those two sections. If anyone wants to look at them, it's 3202.5(b) relating to building permits, and 3203.7(b) relating to the certificates of occupancy.

When the applications are filed, after the date on which the Zoning Commission has decided to hold hearings about changing a zoned district, then the application needs to be processed according to the new zoned district or to the most restrictive zone district classification.

In this case the applicant is correct. They would need to be seeking relief for the FAR requirement which is in Section 402.4 of the regulations. This was not included in the application and it wasn't noticed for the public. However, the project was described in the notices and I think if the Board wanted to waive its requirements and go ahead and consider this variance request today, there probably has been adequate notice to the project.

Otherwise, the Board could proceed on the variances that are before it and come back and have the FAR variance noticed and come back at a later date and pick that one up.

CHAIRPERSON REID: I think, Ms. Sansone, according to our zoning director, in situations like this we do have a bit

of latitude given the fact that the changes occurred during the interim while this particular application was in process.

MR. SOCKWELL: Would you clarify with us the circumstance under which the zoning went from R-5-D to R-5-B? It didn't occur during your application process, did it? It was misregistered on DCRA's part? Explain to me how that switch of zoning districts came about.

MR. SMITH: I was aware of the bifurcated case 97-7 because I have customers in other areas that were dealing with that. But then when they handed down the decision in 1999, they omitted a whole bunch of property and said it would be taken up at a later time.

MR. SOCKWELL: I see.

MR. SMITH: So we were not under the impression. I got the reference letter from Edgar Nunley and dealt with the staff here and nobody seemed to be aware of this case. I heard about the case and then someone told me that the zoning had changed, someone that I know. I called up and talked to Ken Karkeet of staff and he said, "I don't know. I'll have to chase it down." It took him a couple of days to figure it out.

CHAIRPERSON REID: That's what I mean when I say in the process.

MR. SMITH: Everyone was confused.

CHAIRPERSON REID: Yes, in process --

MR. SMITH: In process.

CHAIRPERSON REID: -- this regulation changed. Mr. Smith, I think it would be prudent for us given the circumstances and also in order to be able to expedite this and not have it hung up with sending you back to DCRA. They could self-certify that particular portion of it, right? Even though there has not been notice given, we could include that variance in our decision today.

MS. SANSONE: Madam Chair, I believe you could because the notice that was given is very descriptive of the project as to where it is and what the applicant is intending to do. Apparently when Mr. Nunley wrote his memo and the application was filed, the zoning district was R-5-D and the change came later so that if the Board wishes to grant the variance or consider the variance for the FAR requirement today, I believe you could do that.

You would also have the option of dealing with it later if that was your wish if you felt that more notice was needed. I think you can go ahead tonight with it.

CHAIRPERSON REID: Also I think that consideration should be given to the fact that the applicant was forthright in bringing it to our attention which he really didn't have to do that, as well as the fact that it went up to the ANC.

The ANC in their submission to us made note of the fact that it was mentioned to them or presented to them and it says in pertinent part that, "Therefore, the committee took the

excess FAR into account and unanimously approved the motion to support this project." There was a vote taken and there was a quorum present. Let me make sure. Just one second.

MR. SMITH: May I help you with that?

CHAIRPERSON REID: Yes.

MR. SMITH: It was a committee meeting but there was a quorum of ANC commissioners present. In ANC 2-F there are six commissioners. There were four present at the meeting. There's another letter in your file that says that if the ANC would have fully met, the quorum would have voted in favor unanimously of the motion.

CHAIRPERSON REID: Mr. Smith, I'm not following you. There's another letter that says if they would have met, they would have voted. I don't understand that. This is the committee vote.

MR. SMITH: That's correct.

CHAIRPERSON REID: But I guess where I'm going with this is that we have to adhere to the submission by the full ANC and their position with a quorum present and vote having been taken.

MR. SMITH: That's right.

CHAIRPERSON REID: You said there's another letter? This letter even had asked for a waiver because it was less than seven days prior to the hearing and I forgot to say that. We would allow them to submit the letter waiving the time period.

MR. SMITH: I'm confused. You're right.

CHAIRPERSON REID: Now, you're saying that in addition to this there's another one. Do you have a copy of it?

Do you have it Ms. Mitten, Mr. Sockwell?

COMMISSIONER MITTEN: I might just add that even though I'm not questioning Mr. Smith's rendering of the facts, the ANC has to tell us in a letter about who was in attendance and all of that. It can't be relayed orally.

CHAIRPERSON REID: Right. That's what he was saying, that there was another letter. That's where I was confused, Ms. Mitten. He was saying that the letter said that if they had met, they would have voted in a certain way. I'm not familiar with that type of letter coming from the ANC.

MR. SMITH: I have the letter here. I can give it to you if you want it.

CHAIRPERSON REID: Please. Is that a letter from the full ANC?

MR. SMITH: No.

COMMISSIONER MITTEN: What's the date of that letter?

MR. SMITH: March 29. There's another one April 2.

COMMISSIONER MITTEN: We have the April 2. Maybe we should have the March 29.

MR. SMITH: It might have been not Xeroxed. They

might have confused it because it's the same letterhead.

CHAIRPERSON REID: It really doesn't mean anything, right? Okay. Let's not belabor this.

Mr. Malik, if the full ANC does not give us a letter in opposition to or voicing concerns, then we assume that they don't have a problem with this particular application and we do have this letter from the ANC Chairman of the Community Development Committee which means that we kind of got a feel for where they were with this and we cannot give them the great weight to which they would be entitled because it's not a full ANC but, nonetheless, it's a report from some portion of the ANC and that's better than nothing.

MR. MALIK: Right. I think what Mr. Smith was trying to say was that at that committee meeting there was a quorum present for the whole ANC.

CHAIRPERSON REID: I understand that but we still --

MR. MALIK: You still need it from the full ANC.

CHAIRPERSON REID: Exactly. Exactly.

MR. SMITH: I understand that technicality. To be forthcoming we want to let you know that four of the six ANC commissioners were at the same meeting.

CHAIRPERSON REID: Right. Okay. So were there any other government reports? You didn't have the letter from the Historic Preservation in regard to -- what was the Historic

Preservation letter about?

MR. MALIK: It was approving the designs for the carriage house.

CHAIRPERSON REID: Right. Okay. If you don't have that, if your application is approved today, then we would just ask that it be submitted for the record prior to the issuing of any order.

MR. SMITH: We'll submit it tomorrow.

MR. MALIK: We can do that.

CHAIRPERSON REID: Then we do have a waiver from the State Historic Preservation Office of the District of Columbia for the parking, a parking waiver, for the record.

Now we go to persons/parties in support of the application. Hello? Persons/parties in support of the application?

MR. SMITH: They work for us.

CHAIRPERSON REID: Oh. So they are not here to testify.

MR. SMITH: They live in the neighborhood but they can't testify.

CHAIRPERSON REID: Okay. Persons/parties in opposition to the application? Seeing none, closing remarks by the applicant.

MR. SMITH: I think I already made my closing remarks a little early when you wanted me to get the adverse

impacts and stuff like that out but if you are so prone to approve our application, we would like to ask for a summary order.

CHAIRPERSON REID: Right. Okay.

MR. SOCKWELL: All right. I would move that we accept the application No. 16562.

CHAIRPERSON REID: Accept it or approve it?

MR. SOCKWELL: To approve for the modifications requested and the variances requested based upon the fact that there are specific anomalies of the site and it's developed property that make it particularly unique among properties. It is the only property with a carriage house within that block, I believe.

It is sufficiently encumbered by the existence of the carriage house and the area existing not to meet the criteria of the zoning district under any circumstances; and that the additional development including the wall and the connecting roof structure would not present any objectionable effects on the adjacent property owners or the neighborhood in general.

That the improvements to be provided to the carriage house in particular will increase its conformance with the architectural character of the adjacent area and will bring that property back into a level of utility heretofore not provided and will improve the security and, again, the basic appearance of the neighborhood, the alley, and the property.

COMMISSIONER MITTEN: Well said, Mr. Sockwell.

I'll second that motion.

CHAIRPERSON REID: There does not appear to be any opposition or adverse impact germane to us approving the application, nor does it appear to impair the integrity and intent of the zoning regulations and map. So, therefore, there will be a summary order. Excuse me, the vote.

All in favor?

(Chorus of Ayes.)

CHAIRPERSON REID: Opposed?

(None opposed.)

CHAIRPERSON REID: Okay. There will be a summary order.

MR. HART: The staff records the vote three to zero to approve, Mr. Sockwell, Mrs. Mitten, and Mrs. Reid. Summary order.

Thank you.

COMMISSIONER MITTEN: May I ask just procedurally do we have to have a formal vote to waive the rule to accept the letter from the ANC and do we have to have a formal vote to waive our rule related to the advertisement of the category that was advertised?

CHAIRPERSON REID: We don't typically unless there's any objection. It's the prerogative of the Chair to waive or not to waive those types of things. When it is presented, if the Board member has an objection at that point, they let their

objection be known and then, if necessary, we will take a vote. If it's asked for the question, we will do that. If there is no objection, then typically we just dispose of it and keep on going.

MR. SOCKWELL: I have one quick question. Mr. Malik or Mr. Smith, who would probably know. The ANC will take this issue up at their meeting this evening?

MR. SMITH: I'm not sure Ms. Kramer is aware that she was supposed to take up an issue. They had a very busy calendar. In fact, we got our meeting notice originally not in sufficient time for them to hear us because there is so much development and pressure on Logan Circle all of a sudden where it's been sort of stagnant. I'm not sure if they have us on their agenda. If there is a report, they will probably vote to accept the report of Helen Kramer but I don't know if it's going to be specifically discussed.

MR. SOCKWELL: It might be that this would be on their consent calendar. If it appears on the consent calendar, I would request that a copy of that approval be submitted for the record.

MR. SMITH: Okay. You got it.

CHAIRPERSON REID: So you should have your summary order in about two weeks.

Thank you very much for your indulgence. We apologize again because we know you've been here for a long time and you were most gracious in the fact that we had to kind of

excuse ourselves to attend to another pertinent matter downstairs and came back. Thank you very much.

MR. SOCKWELL: I think that for Mr. Malik and the gentleman from Zahn, I would agree with you that for Mr. Smith it's normal for him to be here.

(Laughter)

CHAIRPERSON REID: We saw him downstairs.

MR. SMITH: I enjoy hanging out with the Board of Zoning.

MR. SOCKWELL: Mr. Smith, can you get us a signed copy of this letter? This is a presignature copy.

MR. SMITH: Yes, I can. You can make another copy in case she doesn't have one. I turned it in to Ms. Kress but if it's missing in the record or not in the book, I'll have it resigned tonight.

MR. SOCKWELL: Either that or the invisible ink disappeared.

CHAIRPERSON REID: Are we going to --

MR. SMITH: They stamped a copy.

CHAIRPERSON REID: Again, Ms. Sansone, we are going to include that last variance pertaining to the FAR in this order. That's correct?

MS. SANSONE: Yes, Madam Chair. That's correct.

CHAIRPERSON REID: Okay.

MR. SMITH: So we don't have to do anything with

that. You'll do it.

CHAIRPERSON REID: No. Yes.

MR. SMITH: Thank you very much.

CHAIRPERSON REID: Thank you.

MR. SMITH: Let's go home.

CHAIRPERSON REID: Yes. That concludes the hearing for today. 6:00.

(Whereupon, the hearing was adjourned at 6:04 p.m.)