GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

Wednesday

March 1, 2000

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The Public Hearing convened in Room 220, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID, Chairperson
ROBERT N. SOCKWELL, Vice Chairperson
MS. ANNE RENSHAW, Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD, Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

OTHER AGENCY STAFF PRESENT:

Mr. Rodney Moulden, National Capital Planning Commission

D.C. OFFICE OF CORPORATION COUNSEL

Marie Sansone, Esq.

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

AGENDA ITEM	PAGE
PRELIMINARY MATTERS.	
APPLICATION OF HAROLD SCHNEIBERG:	
16301 ANC-1C	
NORMAN GLASGOW, JR., Esq.	
Wilkes, Artis, Hedrick & Lane, Chartered	
Suite 1100	
1666 K Street, N.W.	
Washington, D.C. 20006-2897	
(202) 457-7814	
WITNESS	
RAUL A. SANCHEZ	
APPLICATION OF ANNIE B. FULLER:	
16302 ANC-4B	
WITNESSES	
LENORA FULLER	
REYNALDO APARICIO	
APPLICATION OF THE HEURICH FAMILY:	

C-O-N-T-E-N-T-S (Cont.)

AGENDA ITEM	PAGE

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Marie Sansone, Esq.

P-R-O-C-E-E-D-I-N-G-S

(1:11 a.m.)

CHAIRPERSON REID: Good afternoon. The hearing will please come to order. Ladies and Gentlemen, this is the March 1st public hearing of the Board of Zoning Adjustment for the District of Columbia.

My name is Sheila Cross Reid. Joining me today is Robert Sockwell, who will be joining us momentarily, and Mr. Rodney Moulden representing the National Capital Planning Commission.

This is Anne Renshaw, and also representing the Zoning Commission is Mr. Anthony Hood. Copies of today s hearing agenda are available to you. They re located to my left near the door.

Copies of today's agenda are available to you. They're located to my left near the door. All persons wishing to testify either in favor or in opposition are to fill out two witness cards.

These cards are located on each end of the table in front of us. In coming forward to speak to the Board, please give both cards to the reporter who is sitting to my right.

The procedure for special exception and variances is one, statement and witnesses of the applicant, two, government

reports, including Office of Planning, Department of Public Works, et cetera. Three, report of the Advisory Neighbor Commission.

Four, parties or persons in support. Five, parties or persons in opposition. Six, closing remarks by the Applicant. We don t have any appeals today, do we? Staff?

MS. PRUITT: No.

CHAIRPERSON REID: Cross examination of the witnesses is permitted by the Applicant or parties. -- with in which the property is located is automatically a party in the case.

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

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

Please turn off all beepers and cell phones at this time so as not to disturb these proceedings. The Board will make every effort to conclude the Public Hearing as near as possible to 6:00 o clock p.m.

If the afternoon cases are not completed at 6:00 o clock p.m. the Board will assess whether they 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 requested 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 and believe that the Board should not proceed, now is the time to raise such a matter. Does anyone have preliminary matters?

Please come forward.

MS. GIORDANO: Good afternoon. For the record my name is Cynthia Giordano with Linowes and Blocher Law Firm. I have the second case on the agenda this afternoon, and we re going to be seeking a continuance.

CHAIRPERSON REID: What s the case number please, Ms. Giordano?

MS. GIORDANO: I m sorry, I don t have it in front of me. I ll just go get an agenda. I m sorry, it s the third case. 16552, Application of Lynne Hornyak and Michael Petite for SP Office Use for two units in the Lauren Condominiums.

CHAIRPERSON REID: Okay.

MS. GIORDANO: We are in the process of, we received a party request on behalf of another resident in the building. We re in the process of mediating a civil dispute with that individual right now.

And we think that due to that and some of the legal issues that were raised about res judicata in the case that it would probably be a good idea to step back, take a little more time to work with that party and to brief the issue of the res judicata matter.

CHAIRPERSON REID: Is there anyone else here that is really with a stickler case? Please come forward?

MS. SCHNEIDER: Hi, I m Jan Schneider, I presume I, -- thank you. I presume I m the other resident to whom you referred.

MS. GIORDANO: That s correct.

MS. SCHNEIDER: Yes, that s fine with me.

MS. GIORDANO: But what I would like to do, I haven t had an opportunity to talk to Ms. Schneider about this directly. We just haven t had a chance to get together, but we were in mediation last week and Ms. Schneider indicated that the timing of proceeding at this time was problematic for her.

We re not seeking a withdrawal of the application. We d like a continuance at this time. We d like to work with Ms. Schneider and see if we can come to an agreement on a better timing of this application.

But what I would hope is that we might be able to schedule the case for a next available hearing date which I assume will probably be not until May or so.

CHAIRPERSON REID: Do you want the additional time

so that you can come, try to come to some resolution of your differences?

MS. GIORDANO: That s correct.

CHAIRPERSON REID: Okay. Board Members? Discussion?

MEMBER RENSHAW: Madam Chair, I have no difficulties with a continuance, and I would so move that this case be continued to the first available date, as set by Staff.

CHAIRPERSON REID: When would that be?

MS. PRUITT: May 23rd.

CHAIRPERSON REID: All right. Second it?

COMMISSIONER HOOD: Yeah, I ll second the motion.

CHAIRPERSON REID: So what is your pleasure in regards to this motion? Did you have any comments? Okay. All right. All in favor?

(Chorus of ayes.)

Opposed?

(Pause.)

MS. GIORDANO: Thank you very much.

CHAIRPERSON REID: Thank you.

MS. SCHNEIDER: Thank you.

CHAIRPERSON REID: All right. Are there any preliminary matters from Staff?

MS. PRUITT: No Madam Chair. I mean they related to that case, so.

CHAIRPERSON REID: Okay. All right. Then let me, let us proceed with the first case of the afternoon.

MS. PRUITT: Do you want to talk about the --

CHAIRPERSON REID: Oh, the order?

MS. PRUITT: Yes. I mean that s not really a preliminary matter, but.

CHAIRPERSON REID: It is the Board s and my intention that there are some cases this afternoon that are going to be a little longer, and we have a couple of really short cases.

So what we wanted to do is to reverse the order a little bit and to hear Case No. 16426 first and then Case 16530 second, cause these are relatively short cases and it would give the rest of the afternoon to larger cases.

MEMBER RENSHAW: What is the first one?

CHAIRPERSON REID: The first one is 16426. We re hearing in the Application of Seung Won Hong. I hope I pronounced his name correctly.

MS. PRUITT: Correct. First case of the afternoon is Application 16426, Rehearing in the Application of Seung Won Hong, pursuant to 11 DCMR 3104.1 for a special exception under Subsections 743.1 and section 30, 2302 to construct an automotive repair service center in a C-3-C District at 21 L Street, S.W. (Square 648 Lot 22).

All those planning to testify would you please stand and raise your right hand? Mr. Hong, can you stand? Stand

and raise your hand.

(Witnesses sworn.)

Please proceed.

MR. HONG: Hi, good afternoon.

MS. PRUITT: Excuse me Madam Chair. I believe that we have a request for party status in this case, is that correct, sir? We should do that now, yes.

CHAIRPERSON REID: All right.

MS. PRUITT: You re requesting part status, is that, you re Mr. Nathanson?

MR. NATHANSON: Yes, that s correct.

MS. PRUITT: And you are requesting party, you sent in a letter.

MR. NATHANSON: Yes, that s correct.

MS. PRUITT: Okay, the Board needs to make a determination on that.

MR. NATHANSON: Okay.

CHAIRPERSON REID: Mr. Nathanson, come forward please.

(Pause.)

All right now, I m sorry, did we have a written request from you.

MR. NATHANSON: Yes, and I responded, I was sent the copy of the requirements of 11 DCMR 3106.2 and I returned it on February the 7th to this office. I have been in communication

about this case since last year.

CHAIRPERSON REID: Uh-huh. Okay. I see, I do have it, I just didn t see it.

COMMISSIONER HOOD: Madam Chair while we re waiting, trying to get that straight, can I just say something about the application? The application again says a variance to allow construction of an auto service center.

MS. PRUITT: We actually are, that s the original application Mr. Hood.

COMMISSIONER HOOD: Right, but I mean it should, shouldn t we have something in the file stating that he s coming back for a special exception?

MS. PRUITT: The file does, it has a sua spontae order that the Zoning Commission then remanded it back, so, and that should be in your --

COMMISSIONER HOOD: Right, I saw that, this was on the front, and when I looked at it I know that the Zoning Commission --

MS. PRUITT: Confusing.

COMMISSIONER HOOD: The Zoning Commission had specifically did a sua spontae and it was over turned. This forwards our order.

CHAIRPERSON REID: Okay, Mrs. Pruitt, the submission that was supposed to be in, was in in a timely fashion and he basically complied with the requirements.

MS. PRUITT: Yes, Madam Chair.

CHAIRPERSON REID: All right then I have no problem with admitting him as a, giving him party status. Unless there are any objections. Okay, then we ll grant the party status, sir.

MR. N: Thank you.

CHAIRPERSON REID: Okay.

MS. PRUITT: Mr. Nathanson, you should return to your seat and let Mr. Hong give his case and then you can come forward.

MR. HONG: May I start?

CHAIRPERSON REID: Yes.

MR. HONG: Hi, good afternoon. My name is Seung Hong. I live in 8138 Ridge Creek Way, Springfield, Virginia. I m also, been a mechanic in D.C., 31 K Street S.E. for the last 15 years.

I am the owner of 21 L Street S.W., which is an empty lot at this time, Zoned 3, C-3-C. I have plans to build an automotive repair facility, a modern one that conforms to the modern standards of pollution and safety requirements.

And it is located in the vicinity of Washington D.C. Safety Inspection Station, and also NTB which is a tire wholesaler. And also an Exxon gas station. I believe that it fits very well with the surrounding and I also have a strong support from the community, local community.

People who lived in the neighborhood for a long

time, and, with the approval of the Zoning Board I would like to build a shop that will serve the community for a long time to come. That s it.

CHAIRPERSON REID: That completes your. All right, Mr. Hong, that you are in compliance with regulation 741.1, 743.1, sorry.

MR. HONG: Yes.

CHAIRPERSON REID: Sir?

MR. HONG: Yes.

CHAIRPERSON REID: All right, if you could tell us how you are?

MR. HONG: Well the, the C-3-C zoning, it is allowed to build a auto service facility with the approval of the Zoning Board. The Zoning Board I understand will determine whether it, would not have adverse effect in the neighborhood.

The new, the some of the concerns that s been raised or, like a traffic, and, pollution, of that kind.

CHAIRPERSON REID: Uh-huh.

MR. HONG: And a modern repair shop does not generate any hazardous material that would have adverse effect on the surrounding, and as far as, it has parking within the facility that wouldn t, would not overflow to the roadways.

And because the, because of the existing automotive related businesses, in the immediate surroundings, I believe it fits very well with the intent and the purpose of the Zoning

Regulation.

CHAIRPERSON REID: Other than the, the opposition that we have gotten from Mr. Nathanson, have you had any other complaints, or any other people to come forward to oppose your application?

MR. HONG: None. In fact I have a very strong support from the community. I attended the ANC meeting twice and the other residents who were attending the meeting at the time, by accident happened to be already residents who has been used my service in the past.

And they were all happy with me and they had gone as far as to say that I would be an asset of the community if I was to be allowed to build an auto repair shop at the proposed site.

CHAIRPERSON REID: Okay, and then if we, regard to the issue of pollution you re saying that there is no pollution?

MR. HONG: No. Any, for instance engine oil that may result from changing an oil is collected and removed from the site and we keep the record of pick up.

CHAIRPERSON REID: Okay, what about dirt and grease and it being unsightly?

MR. HONG: It will not be unsightly, it would be a brand new building. Not much different from a new car dealership that you would go to. Also, the, in fact it would be, we would be doing a good job in cleaning pollution since more strict emissions

standards of the vehicles requires us to make the cars run better so they can run cleaner.

CHAIRPERSON REID: You mentioned something about traffic.

MR. HONG: Yes.

CHAIRPERSON REID: What was the problem as far as traffic was concerned?

MR. HONG: There really is no traffic, concern about traffic, but I thought it was one of the things I had to mention since any business customers --

CHAIRPERSON REID: Oh you re just saying that there, as far as you know there is no problem for traffic, noise, lights --

MR. HONG: No.

CHAIRPERSON REID: And you provide parking.

MR. HONG: Yes.

CHAIRPERSON REID: Okay, all right, thank you.

COMMISSIONER HOOD: Madam Chair, I just had a few questions. Mr. Hong?

MR. HONG: Yes, sir.

COMMISSIONER HOOD: I wanted to find out, where is the nearest residence?

MR. HONG: A lot is --

COMMISSIONER HOOD: Approximately how many feet?

MR. HONG: I would say at least 600 feet.

COMMISSIONER HONG: 600?

MR. HONG: Yes. It s completely surrounded by commercial properties.

COMMISSIONER HOOD: Okay. Also, for how many feet. How many feet is, how many feet would, how many feet will your operation be to the street?

MR. HONG: Well it has standard curb. I didn t measure the curb but we wouldn t be invading into the curb.

COMMISSIONER HOOD: Okay.

CHAIRPERSON REID: Ms. Renshaw? I m sorry.

COMMISSIONER HOOD: So to the, I guess maybe I need to rephrase my question Madam Chair. How many feet is it, is your entrance to a drive, to the nearest intersection?

MR. HONG: The nearest intersection would be intersection between the South Capitol Street and L Street, and that is about, about 80 feet, I would say.

COMMISSIONER HOOD: 80 feet to the nearest intersection?

CHAIRPERSON REID: Okay?

COMMISSIONER HOOD: Okay, thank you.

CHAIRPERSON REID: And then Mr. Sockwell.

MEMBER RENSHAW: Yes, Mr. Hong, good afternoon. Just several questions. How many vehicles do you propose to service in a day and a week and a year? Have you made those projections?

MR. HONG: Yes. The proposes shop will have six working bays and six bays we will be able to comfortably service about 20 vehicles a day.

MEMBER RENSHAW: All right. Are you selling gas?

MR. HONG: We do not sell any gas.

MEMBER RENSHAW: No gas.

MR. HONG: We have a restriction to keep us from selling any gas in the future as well.

MEMBER RENSHAW: All right. And you said that you had been to the ANC twice?

MR. HONG: Yes.

MEMBER RENSHAW: Do you have, do we have a letter in the file from the ANC?

MR. HONG: There was a letter in the Zoning Commission s file and I noticed that it wasn t there in the Zoning Board file so I did bring copies.

MEMBER RENSHAW: You did bring copies, of 2D?

MR. HONG: Yes, uh-huh.

MEMBER RENSHAW: 2D?

CHAIRPERSON REID: Oh, you do have?

MR. HONG: Yes.

MEMBER RENSHAW: And if you would pass those out.

MS. PRUITT: You have them. In your new arrivals package.

MEMBER RENSHAW: All right.

MR. HONG: Also I have additional letters from the neighborhood residents in support of my application.

CHAIRPERSON REID: To submit or you ve already submitted them?

MR. HONG: It s in the Zoning Commission s file, but I didn t see it in the Zoning Board s file.

CHAIRPERSON REID: Well do you want to give it to staff?

MS. PRUITT: You can give them to us Ms. Hong, we can give them to them.

MR. HONG: Some of them you already have.

MS. PRUITT: Okay, great. Thank you. Are they all, oh, it s all the same package. Excuse me, Mr. Hong? These are duplicates?

MR. HONG: Yes.

MS. PRUITT: Thank you. You ve done our work for us. Thanks.

VICE CHAIR SOCKWELL: Now, Mr. Hong?

MR. HONG: Yes, sir.

VICE CHAIR SOCKWELL: A few questions. You said that you were a mechanic at 31 K Street S.E.

MR. HONG: Yes.

VICE CHAIR SOCKWELL: And the name of that business?

MR. HONG: Is DC Foreign Car Service.

VICE CHAIR SOCKWELL: Right.

MR. HONG: Since 85, May of 85.

VICE CHAIR SOCKWELL: Yes. And DC Foreign Car Service was directly south of the Exxon station, or is that the following block?

MR. HONG: It would be across the street on the other side of South Capitol Street from the proposed --

VICE CHAIR SOCKWELL: I understand. Were you an owner in that business?

MR. HONG: My father is.

VICE CHAIR SOCKWELL: Your father owns that business. Do you have other businesses within that neighborhood?

MR. HONG: Not within the neighborhood.

VICE CHAIR SOCKWELL: Okay. The principal services that you would provide at your facility will be what?

MR. HONG: Mainly to cope with vehicles that have failed inspection. The inspection station is nearby, and we would be mainly serving those cars that need to be reinspected.

VICE CHAIR SOCKWELL: Uh-huh.

MR. HONG: Problems that were cited at the inspection. And also, the existing customers that I have.

VICE CHAIR SOCKWELL: Uh-huh. Now as I recall the previous business location is no longer, is that correct?

MR. HONG: It s still in operation.

VICE CHAIR SOCKWELL: It is still in operation.

MR. HONG: Yes. But the building is very old and

very small, and with a lack of long term lease we couldn t make any major improvements that requires capital investment.

VICE CHAIR SOCKWELL: Uh-huh.

MR. HONG: And the landlord of our current location is reluctant to make any long term commitments.

VICE CHAIR SOCKWELL: Uh-huh. At one time you had access to a fairly large lot fronting, not exactly on, but somewhat behind South Capitol Street, am I correct?

MR. HONG: Um, no sir.

VICE CHAIR SOCKWELL: Okay. Because at one time I, if I m, unless I m missing which business you were, there were, the cars, there were cars in the yard that were damaged cars that were parked there in plain view for a fairly long period of time.

MR. HONG: Um, as a repair shop sometimes we have cars that are damaged, that we must keep because of the insurance process, it prevents us from disposing of them. Other than those occasions we don t keep damaged cars, damaged cars for --

VICE CHAIR SOCKWELL: Uh-huh.

MR. HONG: -- any long time. Unsightliness is very much a concern of mine as well.

VICE CHAIR SOCKWELL: Uh-huh. And, but for this particular business, you would be performing more the tuneup and limited, maybe brake services and things like that, I m asking you.

MR. HOOD: Yes. We are turning towards more of a

faster services rather than in-depth services.

VICE CHAIR SOCKWELL: Uh-huh. And for the record, I want to state that I ve lived within about two and a half blocks of Mr. Hong s proposed business for 26 or 27 years.

So, I understand the neighborhood, the specific location, it s adjacencies and I have a pretty fair picture of what was at 31 or is still at 31 K Street on the southeast side.

And at that time, that business did have a lot full of cars. Now, but from what you re planning or have proposed, you would not be providing a business that would do the same kind of thing because your principal client flow is going to come from the inspection station. Is that correct?

MR. HONG: Yes.

VICE CHAIR SOCKWELL: And how would you advertise to those people?

MR. HONG: Actually the location is, the advertisement in itself because it s faced, directly facing the --

VICE CHAIR SOCKWELL: Okay. Yes, I just thought I d ask. --traffic related issues.

MEMBER RENSHAW: Mr. Hong, do you intend to operate a towing service also for those cars that can t make it from the inspection station?

MR. HONG: No.

MEMBER RENSHAW: No towing service.

MR. HONG: No towing service.

MEMBER RENSHAW: All right.

CHAIRPERSON REID: Okay, Mr. Moulden?

MR. MOULDEN: Madam Chair, I have a question about a storage, a, I guess, old auto parts, engines, transmissions, and other parts, how do you plan to accommodate the storage of old parts?

Will they be inside, will it be outside? If they re outside will they be screened in?

MR. HONG: Well that part of the plan is yet to be planned out exactly, but some parts is beneficial for us to keep, but some parts just, if it s more trouble to keep then it should be disposed of.

The old shop is an old shop where it s, we, it s what they call Mom and Pop store, whatever. But a new shop we have to conform to the new standards, and the appearance of the shop, which may be hampered by surplus parts or surplus vehicles is very much of my concern.

We have plans to make vegetations and landscaping work to make the site pretty.

MR. MOULDEN: But do you plan to store the parts inside or outside of the --

MR. HONG: Out of, inside of course.

MR. MOULDEN: All parts will be stored inside.

MR. HONG: Yes. In fact the new shop, proposed shop is, has plenty of room enough to have its own parts room inside.

MR. MOULDEN: Okay, all right. Okay, do you plan to make any physical improvements to the facility as far as landscaping and just facades? I know the City has various plans for economic and commercial vitalization. Do you plan to make any improvements to landscaping, sidewalks, and so forth?

MR. HONG: The landscaping in the front view of the shop, which is on, would be L Street side, has a curb, a slanting curb, which we re planning to do landscape work. We won t have unsightly fences, and the building would be a brand new building which would look nice as well, and I think it would go very, blend very well with the Exxon station which has been recently renovated and also next to us which is a U.S. Postal Service, which also has a very clean building.

MR. MOULDEN: Yes, well the reason I asked that, I didn t notice a detail or any specific site plan that showed any improvements like that, you know. Do you have anything?

MR. HONG: A copy of the plan was in the record.

MR. PRUITT: It s in your file Mr. Moulden that Ms. Reid has.

CHAIRPERSON REID: Right here.

MR. MOULDEN: Okay. All right thanks.

COMMISSIONER HOOD: Madam Chair, may I just ask, I just have one more question. Mr. Hong where are your grease pits going to be located? You may have answered this previously, but I may have missed it.

MR. HONG: We will not have grease pits.

COMMISSIONER HOOD: Okay, and your hoist, will you have any hoists?

MR. HONG: The lifts?

COMMISSIONER HOOD: Yes.

MR. HONG: It will be above ground, modern, above ground, that does not use hydraulic oil.

COMMISSIONER HOOD: Okay.

MR. HONG: I mean underground hydraulic oils.

COMMISSIONER HOOD: And they will all be in the building.

MR. HONG: Yes.

COMMISSIONER HOOD: Okay.

MR. HONG: No work on the car will be performed outside of the building.

COMMISSIONER HOOD: Okay, thank you.

CHAIRPERSON REID: Okay.

MEMBER RENSHAW: Mr., one more question. Mr. Hong, it s often the case that drivers drop off cars for next day service, do you have adequate parking for that so it doesn t end up looking like a used car lot?

MR. HONG: There is plenty of parking in the yard and also inside the building. There are spaces for approximately 15 vehicles or more depending on the, on whether it s a compact vehicle or full-sized vehicle.

And with the inside being able to store 10 cars, we have more than enough parking for, so daily planned number of cars.

MEMBER RENSHAW: Uh-huh.

MR. HONG: And there s a Metro nearby where people can come and pick up the cars easily.

CHAIRPERSON REID: Okay, thank you.

VICE CHAIR SOCKWELL: I have another question.

CHAIRPERSON REID: You can ask it now or you can ask it in closing. Okay.

VICE CHAIR SOCKWELL: Okay. Mr. Hong?

MR. HONG: Yes.

VICE CHAIR SOCKWELL: Because your family has businesses, has another business on the southeast side of the South Capitol Street in the same vicinity I m sure you re aware of the fact that virtually all of the new proposals for construction in that vicinity are for new office buildings.

MR. HONG: On the southeast side or southwest side?

VICE CHAIR SOCKWELL: On the southeast side.

MR. HONG: Um, I m not aware of that.

VICE CHAIR SOCKWELL: The Traxx site will become a new office building. 300 M Street will become a new office building. Potomac Investments has proposed for the site that s directly across from what is now called the Mirage, and there is a plan to turn the building that Nation is in, into an office

building.

There are no plans for any industrial or service facilities for that general vicinity as I know then.

MR. HONG: Well how that affect me is the fact that the property owner of which we re currently doing business, is reluctant to extend us a long term lease which allows us to make some improvements we really badly need.

And that s precisely why the owner of the property believes that the property will work quite a bit more in the near future than to -- it down to a lease with us.

VICE CHAIR SOCKWELL: That s very true.

CHAIRPERSON REID: All right. Let s now have cross examination. Mr. Nathanson? Is that his name? Mr., are you Mr. Nathanson?

MR. NATHANSON: Nathanson, yes.

CHAIRPERSON REID: Yes, please come forward. Do you have any questions to ask of the Applicant?

MS. PRUITT: Mr. Nathanson, if you will you can sit at that table and you need to push the light so that the mike comes on.

Would you please state your name and address for the record, please, sir?

MR. NATHANSON: Joseph Nathanson, 8 East 76th Street, New York, New York, 10021. I am part of the ownership of the lot immediately adjoining the lot which contains the post

office building.

It was mentioned that, just some minor points before I get into what I wanted to say.

CHAIRPERSON REID: No, no, no. You can only ask him questions at this point. And then you ll have an opportunity to testify later. But at this point just to ask, this is cross examination.

MR. NATHANSON: Um.

CHAIRPERSON REID: If you have no questions then that s all right. It s just an opportunity that is afforded you.

MR. NATHANSON: Yes. No, I, --

CHAIRPERSON REID: No, okay.

MR. NATHANSON: I don t challenge anything.

CHAIRPERSON REID: All right. Thank you very much. ANC Reports? Is there anyone from the ANC here? We do have a letter from the ANC, ANC-2D, and they basically have reported that they support the application with a 6-0 vote.

A quorum was present. And that s about it. There is no one here. All right. Then they did ask their letter had been submitted later than the time from which they were supposed to be in so they asked if we would waive our rules. I have no problem with doing so to allow the letter to come in.

And they would be afforded the great weight in which they are entitled. Any other government reports? Reports, I don t think from Office of Planning, DPW? Or any other

governmental entity?

All right, persons or parties in support of the application? Persons or parties in opposition to the application? Okay, come forward please. And Mr. Hong you can sit back and allow him, then you come back up and have closing remarks.

(Pause.)

MR. NATHANSON: As I understand it, this is a, in effect a down-zoning, and I believe that the proposed use is very environmentally challenging. Not only is --

CHAIRPERSON REID: Sir, first, sir, first you must give your name and your address. Before you start --

MR. NATHANSON: I m sorry. My address? Joseph Nathanson, 8 East 76th Street, New York, New York, 10021. I believe that the proposed use is very environmentally challenging.

I say that for several reasons. We know that cars leave oil. I was, I visited the lot today, the vacant lot, and the vacant lot is covered with oil today. And there s almost nobody using it.

Secondly, the rear portion of the lot was leased by the current owner to the postal service, and they re parking possibly 50 or 100 vehicles there, which is certainly contributing to the pollution as it is without any further garages or auto facilities.

I also believe that there are many other uses for

that property that will be more community friendly. People don t have to walk, there s no sidewalk there in front of this property. But if there were a sidewalk, people shouldn t have to walk down that sidewalk worried about cars coming and going and hitting them.

I believe that there is professional and retail uses perfectly appropriate for that location, and the property doesn t have to be down-zoned to affect that.

Also I, Mr. Hong correctly said that the post office upgraded, the Exxon upgraded and this property in the middle to having an automobile repair facility is a downgrading. It just doesn t make sense.

Further, I understand that the gentleman who purchased the property knows what it is, knows what the zoning is, knows what he bought, made a very good deal renting out half the lot, God bless him, but he doesn t have to have unjust enrichment by down-zoning and negatively impacting on our property.

The history of this case is before the Board. I don t know why it takes a year to come back. The first go around wasn t exactly in accordance, it didn t tell us what was going on, didn t return calls.

It became a secret thing. Today it s here. I don t know what will be tomorrow. I m not too much on to the technicalities, but there s a history that should be considered.

Further, the physical operation of the premises

should be considered. If you go over there today, you can t walk on the sidewalk, you ve got a fence open. I don t know who s parking on the lot.

There are 20 cars parked there. I don t know whose cars they are, I don t know who s controlling them. It looks like an, it s not abandoned cars because they all have license plates.

But I ll tell you the truth, it doesn t look good in my neighborhood. And it doesn t look good on L Street either. This is a property, it should be maintained, and if this is the way a property is going to be maintained, people are going to be in for a lot of problems here.

Just as a side there was a mention that there are no residents within 600 feet of this property. I don t know if that s completely accurate. There is a large hotel maybe 200 feet away, and if my count is correct, there must be a couple of hundred people sleep there at night, and go out during the day.

So we got people within 200 feet of this property. If they re not living permanently they re certainly sleeping over night or whatever. So I would call them residents as well.

If this was a case in New York, and I m not saying that s the rule here. In New York a financial hardship is the basis to request a zoning variance. If you can prove some kind of justifiable financial hardship.

I don t know if that s the case here or not. It certainly is not the case with this property. There is no claim

to any financial hardship. This property was a very good deal for him. He worked out a good deal, let him stay with it.

But to downgrade the neighborhood, it doesn t make sense.

CHAIRPERSON REID: Okay, Mr. Nathanson, just for the record. This is a special exception and the, they did not, well, that s not a test for a special exception. It has nothing to do with financial hardship or, it would, even with the variance if the project were a difficulty, or undue hardship it typically is not financial unless it would require a considerable amount of funds to be able to comply with the existing zoning regulations.

So, but that s not the case here. This is a special exception. The only test here is impact, adverse impact.

MR. NATHANSON: I, thank you. And I didn t mean to make that a point.

CHAIRPERSON REID: Uh-huh.

MR. NATHANSON: It was just out there in my mind.

CHAIRPERSON REID: And a special exception also sir is not downgrading, not down-zoning. A special exception is to allow a use in a particular zone with the sanction of the Board of Zoning Adjustment and, in which they come here to, for us to determine whether or not, if they re putting that particular approval of the application would cause any adverse impact.

That s the purpose of being here.

MR. NATHANSON: Thank you. And I misused the work

down-zoning. I hope I m correct technically in using the word downgrading because that s certainly what is, will potentially be involved here.

We have a modernized post office. We have a modernized station. We have very modern businesses across the street, the 7-11, there s a decent McDonald s there, there s a decent, there s another station on the other side of the street.

The place is coming up. I see they leveled two block fronts there. They tore down buildings. Something is coming there. The neighborhood looks fine to me. On the way up. Why do I want car repairs?

What, where do you see that in an up and coming neighborhood?

CHAIRPERSON REID: Why do they want what? Car repairs?

MR. NATHANSON: Car repairs. I m sorry. Where do you see --

CHAIRPERSON REID: Oh, car repairs.

MR. NATHANSON: -- a car repair shop in an up and coming neighborhood where people are coming to shop and to do their business, and to have, not to have all these pollutions here.

CHAIRPERSON REID: Continue.

MR. NATHANSON: That s about it. I don t think it s any benefit to anybody except to the gentleman.

CHAIRPERSON REID: Thank you very much.

MR. NATHANSON: Thank you.

CHAIRPERSON REID: All right. Closing remarks by the Applicant? Mr. Hong, please come back.

COMMISSIONER HOOD: Madam Chair? I was just wondering, not that I have any, but I don t think we called for any questions if we wanted to question. Maybe you did and I just overlooked it. Or didn t hear you.

CHAIRPERSON REID: Call for any questions --

COMMISSIONER HOOD: To Mr. Nathanson.

CHAIRPERSON REID: The Board Members did not so indicate. I didn t, sometimes I would say but if the Board Members have a question they ll let me know that they have a question, and they can. Did you have a questions?

COMMISSIONER HOOD: Okay. No.

CHAIRPERSON REID: I guess you didn t.

COMMISSIONER HOOD: No. I just didn t know what the time. Well that s okay.

CHAIRPERSON REID: Yeah. Usually the Board Members will put their light on or something and let me know that they want to. Either they ll --to me that they want to ask questions. If they don t then I assume that they do not and I just allow them to go back.

COMMISSIONER HOOD: Okay.

CHAIRPERSON REID: All right, Mr. Hong?

MR. HONG: Yes. I do have the part of the lot leased out to U.S. Postal Service which is next door, and which is also owned by Mr. Nathanson. At the time of the purchase the lease had, the lease to the Postal Service was already existing as something.

It s a lease that I had resumed from the previous owner. And I was also told that the post office existing in the particular location that it is, is only possible with the parking that I was able to provide.

So in fact Mr. Nathanson s leased property is actually benefitting from my presence there. Had it been another investor like Mr. Nathanson who has plans to build hi-rise building, a post office would have had to move out of the area, which is what they have also expressed to me as well.

Also, presently there are cars parked there. I m not using the vacant lot that I m proposing this auto service center. It is vacant. But the postal employees are parking at the present time, and they have asked me and I have told them that it s okay to park their cars there.

The parking lot does not create any pollution. So the portion of the property that s been leased out to U.S. Postal Service, which they re using for parking lot for the postal vehicles, is not generating any pollution.

Also, I am not seeking to change the zoning. I am simply asking for the approval of the Zoning Board for predeemed

acceptable use under C-3-C. So I do not believe that it will be down zoning. It would be using for the purpose and intent of the Zoning Regulations.

Like, and I don t think there ll be any need to worry about downgrading or having a property that s worth less later than it is now, because the whole area is developing.

I m not so concerned about how much it will develop, how fast. I want to be able to serve my customers. And it is, it will be a community friendly facility.

Everyone needs cars to be worked on, and especially in D.C., a lot of the vehicles are being serviced out of the District because they often find more convenient places to take their cars to.

So, in fact District residents are taking their business outside the district --

CHAIRPERSON REID: Uh-huh.

MR. HONG: -- whereas I propose we can keep some of that at least in D.C..

CHAIRPERSON REID: All right.

MR. HONG: Thank you.

CHAIRPERSON REID: All right. Mr. Hong. Excuse me, questions, Board Members?

MEMBER RENSHAW: Yes. Mr. Hong I wanted to ask how many people you would be employing.

MR. HONG: Right now we are employing three people.

And under, if new shops are, the new shop is allowed to be built, when it goes into operation we would right away need at least three more technicians.

VICE CHAIR SOCKWELL: Mr. Hong?

MR. HONG: Yes.

VICE CHAIR SOCKWELL: I assume that by going to the expense of developing your business here with the number of bays and lifts, that you plan to be in business for many, many years.

MR. HONG: Well, I ve been a mechanic for the last 15 years. I started very young. And I like the work and I love the work. Which is one of the reasons I believe makes me good at what I do.

So I go to work every morning with the, full of energy to make it a good day. And I have plans to stay in this business for a long time to come.

COMMISSIONER HOOD: Madam Chair, if this is appropriate. Earlier there was a statement made that this is no benefit to anyone in the neighborhood. But I also recall in the file that I see the people most affected who have come forth and said that this was a good idea, which is the ANCs.

And those are the people who would be, if there were any adverse impact, affected, and I just wanted to state that for the record that that is in the file.

CHAIRPERSON REID: Thank you. Mr. Hong would you like to request a Summary of Order, or a Bench Decision, which

means that you can receive a response today?

MS. PRUITT: Madam Chair you can t do a Summary Order because there s a party in opposition. But you can give a Bench Decision.

CHAIRPERSON REID: Oh, that s right, it s a party.

MEMBER RENSHAW: I have another question for Mr. Hong.

CHAIRPERSON REID: Okay.

MEMBER RENSHAW: Mr. Hong --

CHAIRPERSON REID: Excuse me. Let me ask you this question.

MEMBER RENSHAW: Fine.

CHAIRPERSON REID: Would you like the Bench Decision today? Which means that you can receive a response today but the Order would have to be done after we have a deliberation. Is that right Ms. Pruitt?

MS. PRUITT: Excuse me?

CHAIRPERSON REID: With the party in opposition, we could do a Summary Order, but the, I mean we can do a Bench Decision, but the Summary Order, we d have to have a Full Order, not a Summary Order.

MS. PRUITT: Correct.

CHAIRPERSON REID: Did I confuse you?

MR. HONG: Yes.

CHAIRPERSON REID: Okay. You can get a response

today and you have to wait for us to do a Full Order which means that rather than doing a Short Order, which comes out a couple weeks, a Full Order takes a little big longer, but at least you would have a decision.

MR. HONG: Yes. What s the other choice?

MS. PRUITT: Your other choice is to have the decision made at the next meeting which would be in --

CHAIRPERSON REID: The first meeting in April.

MS. PRUITT: -- April. I m losing track of months.

MR. HONG: No. I would like the first choice.

CHAIRPERSON REID: Okay.

MEMBER RENSHAW: Is it all right, Madam Chair, to ask, I have a question. Go ahead.

VICE CHAIR SOCKWELL: Mr. Hong?

MR. HONG: Yes.

VICE CHAIR SOCKWELL: I notice that on the drawings, which I did not have access to before today, the business is called D.C. Foreign Car Auto Service. Now does that indicate that you will only be servicing foreign automobiles, as opposed to American cars as well?

MR. HONG: The name will be different because the plan was actually drawn long before I ever came to the Zoning Board. That s the name of our business as it is now.

VICE CHAIR SOCKWELL: Uh-huh.

MR. HONG: When we first started out back in 85, we

called ourselves Foreign Car Specialists because there was much to be different from foreign cars and domestic cars.

Well now there is, no foreign cars, we ll they re really all foreign and no domestic cars --

VICE CHAIR SOCKWELL: True.

CHAIRPERSON REID: We intend to provide comprehensive service for general makes and types of. We will have to come up with a different name. That I haven t decided yet.

VICE CHAIR SOCKWELL: Thank you.

CHAIRPERSON REID: Okay. Excuse me.

(Pause.)

MEMBER RENSHAW: Madam Chair, may I ask a question while you re conferring?

CHAIRPERSON REID: Yes.

MEMBER RENSHAW: I know that the inspection station has difficulties in getting personnel who are adequately trained in the new procedures.

MR. HONG: Yes.

MEMBER RENSHAW: And I wanted to find out from you if you plans that you re going to be adding staff. If you plan to do anything in the way of an internship with a nearby High School, whereby you might interest young people in the City into going into auto mechanic training?

MR. HONG: Actually I thought of exactly that, but

I m not at a stage to make any specific plans regarding that. That would be a good idea.

MEMBER RENSHAW: All right, so could we make sure that the ANC understands about your interest in this and perhaps a match could be made? We re just keen on making sure that the young people have training in fields that, which might keep them in the City.

And here is a new business of yours and it might be attractive to some of these young people.

MR. HONG: Um, yes, and also I plan to, I got to know the ANC through what I had to do with this Zoning Special Exception. And it turns out a lot of my customers are involved quite a bit with the work of ANC, and I intend to participate as property owner and also business man, in the neighborhood.

And I m sure we will have some projects of that kind coming up. And I intend to fully participate with the ANC.

CHAIRPERSON REID: Thank you. We re ready for the questions. And a motion?

COMMISSIONER HOOD: I make a motion we accept Case No. 16426. Apparently there are no adverse impacts.

CHAIRPERSON REID: That we approve. That we approve. The wording is that we approve --

COMMISSIONER HOOD: That we approve.

CHAIRPERSON REID: -- the application.

COMMISSIONER HOOD: What did I say?

CHAIRPERSON REID: Accept this.

COMMISSIONER HOOD: Oh.

CHAIRPERSON REID: When a Commission, they probably say accept.

COMMISSIONER HOOD: That we approve Application No. 16426. I guess I got caught up in all that was going on. Anyway, that we approve 16426. It obviously shows that there s no adverse impacts to the community.

It also has the ANC s support. And with that I so move.

CHAIRPERSON REID: I would second it.

MEMBER RENSHAW: Second.

VICE CHAIR SOCKWELL: Second.

CHAIRPERSON REID: Oh, we have three seconds. That S pretty good. Any other comments? I d just like to say that we might want to condition it as far as the upkeep is concerned, to ensure that the premises are kept in a clean, orderly, and neat manner at all times.

And someone else raised an issue about disposal of waste, oils, and --

MR. MOULDEN: And storage of auto parts to make sure that they re inside, and not stored

outside --

CHAIRPERSON REID: Stored property.

MR. MOULDEN: -- of the facility.

CHAIRPERSON REID: Uh-huh. Did someone mention the landscaping?

MEMBER RENSHAW: I, landscaping is another issue that I think we should but in the order too.

CHAIRPERSON REID: Make sure that the premises are landscaped in an attractive, a properly landscaped and attractive manner. And maintained --

MEMBER RENSHAW: And maintained.

CHAIRPERSON REID: -- at such. With removal of. Well when we say clean and neat matter it means that no, there would be no debris or any broken down cars and the like --

MR. HONG: Yes.

CHAIRPERSON REID: -- that would clear up the lot.

MEMBER RENSHAW: Could we also insert in the Order that the Board encourages the property owner to work with the School Systems and with the ANC vis a vis some kind of a training program for --

CHAIRPERSON REID: We can t --

MEMBER RENSHAW: Can we just insert a, I m afraid that that s going to be lost.

CHAIRPERSON REID: Well we can t, it s not --

MEMBER RENSHAW: We can compel.

CHAIRPERSON REID: WE don t have the authority to do that. But what you, the only thing we could do is ask that that, they establish a liaison. But usually that s when there is a

problem. And there does not appear to be a problem with the community at this time.

You could suggest it but we cannot condition it --

MEMBER RENSHAW: Well could we suggest that?

CHAIRPERSON REID: And you did.

MEMBER RENSHAW: I did.

CHAIRPERSON REID: All right.

COMMISSIONER HOOD: Ms., Commissioner Renshaw, I think some time if we ask the Applicant if, like a good faith effort.

MEMBER RENSHAW: Good faith effort.

COMMISSIONER HOOD: You know, we can take their word if they want to try to follow through with this --

MEMBER RENSHAW: Very good.

CHAIRPERSON REID: That is a great idea. Because that s something that will be very beneficial to you as well and at the same time provide a valuable service to the community.

And I think that s what the objective is.

MR. HONG: Yes. It would be to my --

CHAIRPERSON REID: Advantage.

MR. HONG: -- interest to do so.

CHAIRPERSON REID: Okay. All in favor?

(Chorus of ayes.)

Opposed?

MS. PRUITT: Staff would record it as five to zero

to approve. Motion made by Mr. Hood, seconded by Mrs. Renshaw. And I d just like to review the conditions. I believe all auto parts shall be held within the building. Landscaping, site should be landscaped and maintained. And the site should be maintained in a clean manner. Were there any others?

CHAIRPERSON REID: Did you mention about the waste disposal of oils?

MS. PRUITT: No, that s what I was, there were several conversations going on so I wanted to be sure.

CHAIRPERSON REID: Okay. All right.

MS. PRUITT: What was it? The, that one?

CHAIRPERSON REID: That all, I think, is that what you call it, waste, oils, what was the correct word for that? Contaminated oils?

VICE CHAIR SOCKWELL: Recyclables.

CHAIRPERSON REID: Recyclables are to be disposed in the proper manner. And I think that s a law isn t it?

MS. PRUITT: Yeah, it is.

CHAIRPERSON REID: I mean legally, within the legal, you know.

VICE CHAIR SOCKWELL: Madam Chair, let it be known that a sand filter structure has been provided on the Applicant s plans to separate oil from water before it is discharged into the City sewer system.

CHAIRPERSON REID: Oh, okay.

VICE CHAIR SOCKWELL: That s from lot run off. So his drainage is being treated before it s discharged.

CHAIRPERSON REID: Okay. All right. Thank you very much. Who had the votes? Is the vote recorded?

MS. PRUITT: Yes.

CHAIRPERSON REID: All right. Did you --

MS. PRUITT: I read it back and recorded it.

CHAIRPERSON REID: Okay, I was talking. All right. Thank you very much.

MR. HONG: Thank you very much.

CHAIRPERSON REID: And you will receive an Order, a Full Order, talk to Staff and then they will give you some idea as to when you can expect it.

MR. HONG: Yes. Thank you very much.

CHAIRPERSON REID: Thank you. All right. Next case?

MS. PRUITT: Next case on the agenda today is Application 16530, Application of Frank Jackson, pursuant to 11 DCMR 3103.2, for a variance from a minimum side yard setback requirement under Section 405 to allow the proposed addition of a deck to a single-family detached dwelling in an R-1-B District at 2223 Lawrence Street, N.E. (Square 4247, Lot 807).

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

(Witnesses sworn.)

Please be seated and start.

MR. JACKSON: Good afternoon.

CHAIRPERSON REID: Good afternoon.

MR. JACKSON: My name is Frank Jackson, Jr., and I live at 2223 Lawrence Street N.E. We want to add a deck on the left side of our house, and we, the reason we want to build it on the side of the house is because the back of the house is low, and it would only be about three feet up from the ground, ground level.

The houses right across the alley from my house, the heights of the back is about ten feet from the ground. So that s ideal for building a deck, cause we really wouldn t want a deck that low to the ground.

And if we put it on the side, we could also use it as a carport. If we had a, we have a side entrance to the property, and we could come and get out of our car if it s raining or anything like that. We could go right in from the side door.

And the deck wouldn t be a hassle to the neighborhood. And all of our neighbors approve, and --

(Pause.)

And we would use the entrance from the second level to come out on the deck. If the deck was built down low we couldn t, we would only use it in the evening at night.

But if it s built up the deck will be about ten feet up, ten or 11 feet up from the ground.

CHAIRPERSON REID: Okay, Mr. Jackson?

MR. JACKSON: Yes.

CHAIRPERSON REID: Do you recall you were here before and I explained to you the purpose if you were coming before this Board was to demonstrate how you were able to meet a three prong test.

And I, and you didn t understand how that was done, so I suggested you go and talk to Staff to prepare yourself for coming this time.

MS. JACKSON: Yes.

CHAIRPERSON REID: Well did you do that?

MS. JACKSON: Yes, we did.

CHAIRPERSON REID: And did you, do you have, I haven t seen it, do you have in your file the information that we need so that you can show us how, you remember I was saying that you have to show that.

It s a variance, so you have to demonstrate that the property is unique or unusual or there some kind of special situation or conditions that are inherent to that specific piece of property.

Did you do that?

MS. JACKSON: Yes, --

MR. JACKSON: Yes, but what makes it difference is the property is low at the back.

CHAIRPERSON REID: No. I mean, what I m asking is

did you submit that in your package to us?

MS. JACKSON: Uh-huh. Well, this is I think about our third time down here. And she asked the, oh, I m sorry. And she asked the last time we was here that we get pictures made.

Of course the first time we had pictures made, and you might have it in your -- but all side of the house -- showing that.

CHAIRPERSON REID: Okay. So you re showing --

MS. JACKSON: The last time Mrs. Pruitt asked us to bring in more pictures, for showing the back and sides, and all. We have those.

CHAIRPERSON REID: Okay. So --

MS. JACKSON: And she said the letters have already gone out to my neighbors and said that a petition would be good too from some of the, a neighbor on each side and two across the street.

CHAIRPERSON REID: Okay. Wait a minute Ms. Jackson, Ms. Jackson, wait a minute, okay?

MS. JACKSON: Uh-huh. Yeah.

CHAIRPERSON REID: What you have to do is you have to demonstrate, and it should be, it should have been in writing when you came here that there was something. Now you re saying that there is something unique and unusual about your property because it slopes down or up, what is it?

MR. JACKSON: It s low at the back.

MS. JACKSON: Uh-huh.

CHAIRPERSON REID: It s low at the back.

MR. JACKSON: Right. The houses right across the street, the properties are high at the back, so it s idea for a deck. On my block there s only one deck, and it s on the second level. But --

CHAIRPERSON REID: Okay. Well wait, wait Mr. Jackson.

MR. JACKSON: Uh-huh.

CHAIRPERSON REID: Nobody, no other property, can you show that no other property in your neighborhood has the same kind of slope? You re the only property that has a back that slopes like that?

MR. JACKSON: No. All the properties on my side of the block, to, all the backs are low. But everybody right across the alley --

CHAIRPERSON REID: Okay, Mr. Jackson, stop right there.

MR. JACKSON: Uh-huh.

CHAIRPERSON REID: Please.

MR. JACKSON: Uh-huh.

CHAIRPERSON REID: What I directed you to do was talk to Staff to determine what was unique and unusual about your property. Unique meaning that there are no other properties like yours, or that feature is not present in the other properties that

would make your property, as a unique property what is it that s unusual or different or unique about your specific property?

This is what we, that is, we have to base the, our decision on whether or not you were able to demonstrate to us that you have met your burden of proof, and that burden of proof starts with the uniqueness or the unusual conditions of your property.

And what you re saying so far, and, listen to what I m saying to you.

MR. JACKSON: Okay.

CHAIRPERSON REID: Because I keep saying, keep telling you what we need and you keep saying things that are not in keeping with the answers we need to hear.

If I m asking you well, is there, are there any other properties like your property? It s oh, yeah, well the other properties are like my property on this side, but then that means your property is not unique.

We need to hear you tell us what is it that is different about your property specifically that makes it unique. That the other properties don t, something that the other properties don t have.

MR. JACKSON: Well the property that I m talking about isn t, is, the property is in my block, but it s just across the alley on the next street. And these properties are build where you can build a deck to the second level.

And my property, if I wanted to build a deck on the

second level, that would really create a really big problem for me.

(Pause.)

CHAIRPERSON REID: Um.

MR. JACKSON: But if I build it on the side, it would serve as a carport and it --

CHAIRPERSON REID: Um. Let me look at these pictures.

MS. PRUITT: May I see those pictures?

MR. JACKSON: I have some pictures here of --

(Chatter.)

Okay, see --

CHAIRPERSON REID: This is the back right here?

MR. JACKSON: Okay these are, this is my house right here. This is my house. And all these decks --

MS. PRUITT: If you look at the back of Mr. Jackson s house, in order to put a deck on the second floor he d have to cut into the roof and reconfigure the windows.

MR. JACKSON: These --

CHAIRPERSON REID: Okay.

MS. PRUITT: For the second floor.

VICE CHAIR SOCKWELL: But I don t see the slope that we re supposed to be looking at.

MS. JACKSON: She has the pictures which show us -- The pictures will show the slope. She s got the pictures.

(Chatter.)

CHAIRPERSON REID: This is the back of his house? Okay. That s the same --

MR. JACKSON: Uh-huh. The decks you see is right across the alley.

CHAIRPERSON REID: So he wants --

(Chatter.)

That s what he wants. See the gist of what I was saying --

(Chatter.)

CHAIRPERSON REID: Bear with us for one second, please. If you ll bear with us for one second please, but we re trying to determine some things.

(Chatter.)

MEMBER RENSHAW: Mr. Jackson if you put the deck on the side, the access to the deck would be from a bedroom?

MR. JACKSON: No.

MEMBER RENSHAW: What would be the access to the deck?

MR. JACKSON: It would be at the top of the steps coming up --

MS. JACKSON: Going upstairs.

MR. JACKSON: -- going upstairs.

MEMBER RENSHAW: Oh, so off a hallway upstairs?

MR. JACKSON: Off a hallway.

MEMBER RENSHAW: Off a hallway upstairs.

MR. JACKSON: Right.

CHAIRPERSON REID: But Mr. Jackson if you wanted too, you could put that deck out off the first floor in the back. You have plenty of room back there. What would keep you from putting the deck on the back?

You could make it, you have plenty of space back there, and then using the side, why couldn t you just use the sideyard, I mean the side right there for, couldn t he park there if he wanted to on the side?

MR. JACKSON: There s a driveway on the side.

MEMBER RENSHAW: There s a driveway and that s, he wants to build over the driveway.

MR. JACKSON: And there s a door on the side.

MEMBER RENSHAW: Yeah, we see that.

CHAIRPERSON REID: I m saying why can t you park, still park on the side and have your deck in the back?

MR. JACKSON: The deck, cause the deck would be too low to the ground.

CHAIRPERSON REID: Why? What makes the deck too low?

MR. JACKSON: You know --

CHAIRPERSON REID: You could still --

MR. JACKSON: There s only one deck. There s only one deck on my side of the street, and that deck is on the second,

on the second --

CHAIRPERSON REID: All right, but what s too low?

MS. JACKSON: From the back of ours it would be too low, and I think because, you see is the upper level from the back is coming.

MR. JACKSON: All the decks --

MS. JACKSON: It would be too low.

MR. JACKSON: They have five, there s, we counted five or six decks in the next block, and all of them, all these decks are in the second level. We couldn t put a deck on the second level the way the arrangement is made.

CHAIRPERSON REID: Okay.

MR. JACKSON: Now there s one deck on my side of the street, but that deck is on the second level too.

CHAIRPERSON REID: Okay, but what s the, what are you going to use your deck for?

MR. JACKSON: I use. We use the deck for entertainment.

MS. JACKSON: For entertainment and --

CHAIRPERSON REID: All right, so, am I, then let s go back to why can t you put it on the back? What difference does it make if it s lower or higher for the first floor or the second floor?

MR. JACKSON: At night in the summertime, I can sleep on the deck. There s, there ll be no steps coming from the

ground level going up to the deck. We can sleep there on our deck at night if we want to, but if it was on the ground level we couldn t do that.

MS. JACKSON: No -- on the ground level.

VICE CHAIR SOCKWELL: Excuse me, Mr. Jackson.

MR. JACKSON: Uh-huh.

VICE CHAIR SOCKWELL: Let me, let me try to put this into perspective if I may.

MR. JACKSON: Okay.

VICE CHAIR SOCKWELL: On the side of the house where you wish to put the deck, you would put it up high.

MR. JACKSON: Right.

VICE CHAIR SOCKWELL: That would allow you to continue to park three or four vehicles along the side of the house underneath it.

MR. JACKSON: Right, right.

VICE CHAIR SOCKWELL: If you put the deck down low, it would prevent you from parking anything past your front porch. So that means you would loose the ability to get cars back into your lot, you d have to park everything else on the street.

MR. JACKSON: If we put the deck down low on the side we couldn t use it. We couldn t use the driveway.

VICE CHAIR SOCKWELL: That s what I m saying.

MS. JACKSON: Right.

MR. JACKSON: Right.

VICE CHAIR SOCKWELL: Isn t that what I just said?

MR. JACKSON: Right, right.

VICE CHAIR SOCKWELL: Oh, okay.

CHAIRPERSON REID: On the side, but on the back --

VICE CHAIR SOCKWELL: Yeah. So, so we re talking about the side position of the deck at this point.

MR. JACKSON: Right, uh-huh.

CHAIRPERSON REID: So what you want to do is have the advantage of the parking, which is as important to you as anything with regard to the position of the deck on the side of the house.

Also if you put it up high you d open an extend that window, I assume and make that into a door so that you could walk out on the deck.

MR. JACKSON: Right, a door. Right.

VICE CHAIR SOCKWELL: The problem that you have is that because it intrudes into the sideyard and reduces it to far less than what the City would normally allow, you are here before us.

MR. JACKSON: Right.

VICE CHAIR SOCKWELL: You don t want to put it on the back because you don t want it back there.

MS. JACKSON: Yeah, the danger of it --

VICE CHAIR SOCKWELL: And the reason that you don t

want it back there is first, because it would require you to completely redo your roof --

MR. JACKSON: Right.

MS. JACKSON: Right.

VICE CHAIR SOCKWELL: -- access to that second level, which sets back from the first floor.

MR. JACKSON: Right.

VICE CHAIR SOCKWELL: Which would be an additional and extensive expense to you.

MR. JACKSON: Right.

MS. JACKSON: Right.

VICE CHAIR SOCKWELL: All right. The second reason you don t want it on the back, I assume is because the way the rooms are situated, the room you wish to have access to the deck from isn t there?

MR. JACKSON: Well, I don t know how I would work it if I put it on the second level, because it would be, you would have to come out of a bedroom in order to get on the deck --

VICE CHAIR SOCKWELL: So what do you come out of on the second level on the side?

MR. JACKSON: You come out of the hallway.

VICE CHAIR SOCKWELL: Straight out the hallway, all right. So, so that, that s the second reason why you don t want it on the back. And that makes some sense if you want it to be accessed from a more public part of your home rather than through

a bedroom which would be a private area.

MR. JACKSON: Right.

VICE CHAIR SOCKWELL: Okay. Thank you.

CHAIRPERSON REID: Why couldn t you, this, why couldn t it be a deck off the first floor on the back? Not the second floor, but why not a deck on the first floor? A deck is a deck for entertaining.

MR. JACKSON: But a deck would be a --

MS. JACKSON: For the safety, for insurance.

MR. JACKSON: Safety.

CHAIRPERSON REID: I know, I know. I understand. I understand.

MS. JACKSON: And if we wanted to just come out at night.

CHAIRPERSON REID: I understand, but what we re talking about is being able to follow the Zoning Regulations, and I m trying to see what we can do to try to help you here, of alternatives.

MR. JACKSON: Okay.

CHAIRPERSON REID: If you want to, if it s for entertaining or to enjoy it, what have you, and you have room to put it off, out, off the back of the house, it would seem to me that you would go ahead and do that, rather than to try to put it somewhere else and not comply with the Zoning Regulations.

MS. JACKSON: It would lack --

VICE CHAIR SOCKWELL: Mr. Jackson, let me ask you --

COMMISSIONER HOOD: Madam Chair I have a question about the adjoining property I guess. The property that s oriented here, the property adjacent to where you propose to put the deck, do you know how much sideyard setback is from the property line to the house?

MR. JACKSON: To the next house?

COMMISSIONER HOOD: Yes, uh-huh.

MR. JACKSON: Uh, I guess it s about eight, eight, about eight feet.

COMMISSIONER HOOD: Eight feet.

MR. JACKSON: Or more.

COMMISSIONER HOOD: So it s less setback that you have shown on your property. You have 13.2 feet.

MR. JACKSON: Yes.

COMMISSIONER HOOD: Okay.

MR. JACKSON: I d say eight feet. Eight or nine.

COMMISSIONER HOOD: Well the question I have, what if your neighbor proposes to put a deck on also?

MS. JACKSON: They already --

COMMISSIONER HOOD: That s not, that won t leave much space in between the two homes. And, is there any concern about privacy?

MR. JACKSON: Privacy?

COMMISSIONER HOOD: Yes, with the adjacent property?

MS. JACKSON: -- anybody.

MR. JACKSON: No, it wouldn t be --

COMMISSIONER HOOD: Okay, well what I mean --

MR. JACKSON: And the neighbors next door, they approve of it too.

COMMISSIONER HOOD: They approve of it, okay.

MR. JACKSON: All of them approve --

MS. JACKSON: And as the letters went out to all the neighbors, when I went back when Ms. Pruitt asked me to bring in, you know, get a petition, I have each, a neighbor on each side of me and two across the street to bring those in.

MEMBER RENSHAW: But Mrs. Jackson your petition doesn t say where the deck is going to be. It just says a deck.

MS. JACKSON: Yeah.

MEMBER RENSHAW: No, it doesn t say a side deck.

MS. JACKSON: Uh-huh.

MR. JACKSON: It should have said that --

VICE CHAIR SOCKWELL: Mrs. Jackson?

MS. JACKSON: Yes.

VICE CHAIR SOCKWELL: If I might ask. Did you show your neighbors the plan for the deck?

MS. JACKSON: Why, no.

VICE CHAIR SOCKWELL: So they don t know where it s going.

MR. JACKSON: They know, all of them know where the

deck would be built.

MS. JACKSON: Where it s going to be, and before plans --

MR. JACKSON: Everybody know it s --

MS. JACKSON: -- were already into use, you know. The time of that. And so everybody, the letters went out to them and I went back to them, since the last time I was here, and did a petition.

They said they d already received letters and it s fine with me. I said I had the whole block --

VICE CHAIR SOCKWELL: Let me just, let me just make one more request of you. When you took your plans to the permit office and were referred to Zoning and then to the Board, did anyone tell you what you could make your deck out of? Or what you might not be able to make your deck out of?

MS. JACKSON: No.

MR. JACKSON: No.

VICE CHAIR SOCKWELL: It is possible, and I won t say this as a matter of fact, but it is possible and quite likely that because of the distance that you would be from the property line, that you could not have a wood deck.

MR. JACKSON: Okay.

VICE CHAIR SOCKWELL: That it would have to be non-combustible construction if it were approved at that. Which means it would have to be either steel or concrete.

MR. JACKSON: Well we could do that.

CHAIRPERSON REID: Okay. Now, if in fact we are to make a decision regarding your variance, you have to first demonstrate how your property is unique and different and unusual from all the other properties, and so far you ve said that it was, that the rest of the houses slope down like your house?

MR. JACKSON: But --

CHAIRPERSON REID: On that side of the street, but what?

MR. JACKSON: But there s not, our house, our house is the only has that has a driveway.

MS. JACKSON: On that side.

MR. JACKSON: There s one house on the corner that have a driveway. But they have a deck on the second level too. But in the whole block, our house is the only house that has a driveway that we can drive off the street into the --

CHAIRPERSON REID: You put that driveway there, right?

MR. JACKSON: Yes.

MS. JACKSON: Yes.

CHAIRPERSON REID: Are the other houses so that you could put a driveway there? I mean this is a detached house. Are those houses, what is it R? Is it R1? It s a R1 Zone? An R1?

So all the properties are detached --

MR. JACKSON: Yeah but all of them, some of them,

some of them doesn t have enough room to put a driveway in.

CHAIRPERSON REID: Okay, you know what I need, and unfortunately what I m going to have to do is ask Staff to, we don t have a copy of Sandbourne?

MS. PRUITT: Yes.

CHAIRPERSON REID: We do?

MS. PRUITT: -- can get a copy.

CHAIRPERSON REID: No, I mean we don t have one here so what we need to get one. Okay. I need to get that. We look at that and we can see if we can help you.

MR. JACKSON: Okay.

VICE CHAIR SOCKWELL: Madam Chair?

CHAIRPERSON REID: Because other than that, I, to be perfectly honest with you, we re going to try and help you to reach your burden, and we can look on the Sandbourne for to see that your property is unique or different.

We could start there. But other than that it s just still not jelling the way they should be for us to be able to grant you your relief that you re asking for.

COMMISSIONER HOOD: Madam Chair, are we going to take this up under the special exception? Which would make their case --

CHAIRPERSON REID: I don t, I, that was suggested, but I m not sure if we can do that. And

I --

COMMISSIONER HOOD: I believe we can.

CHAIRPERSON REID: And if we, what I was thinking Mr. Hood was if we don t have to go there, perhaps looking at the Sandbourne might give us what we need. And if that s the case we can still just do the variance.

COMMISSIONER HOOD: Right, but even at that, the, from what I m hearing, the special exception, I know we can come down as opposed from a garage to a special exception but I believe that that will provide them and also save us time today and make them plead their case a lot easier and simpler, under the special exception.

VICE CHAIR SOCKWELL: Madam Chair? One of the issues that is apparent to me is that for this, part of the problem is not that they cannot have a deck. Part of the problem is the size of the deck that they want to have.

The Zoning Ordinance is not preventing them from having a deck. It is preventing them from having a 12 foot deep deck. They could, I believe that we could grant a variance to the eight foot sideyard, down to the five foot minimum, which is allowed for houses that pre-exist at the 1958 Act, that a deck which would be approximately eight foot two inches wide, would be acceptable under that procedure.

But the 12 foot deck, which is different from the hardship of not being able to have a deck at all, the 12 foot deck

is their desired deck, puts us in a position to have to approve a sideyard of one foot two inches, and I am very uncomfortable with that.

CHAIRPERSON REID: So what about, an eight foot deck would do what?

VICE CHAIR SOCKWELL: And eight foot deck would allow a five foot sideyard, which would be the minimum --

CHAIRPERSON REID: I see, a compromise.

VICE CHAIR SOCKWELL: Yeah, which would be a compromise. I think that we could work with.

CHAIRPERSON REID: Okay.

VICE CHAIR SOCKWELL: But I am very concerned that we set the precedent of allowing one foot two inch sideyards in our 1B neighborhoods.

CHAIRPERSON REID: Mr. Jackson, could you live with a eight foot deck, an eight foot deck rather than, a deck somewhat smaller, but not, but not as large, but still you would have a deck.

MR. JACKSON: I --

VICE CHAIR SOCKWELL: The width of a standard parking space is nine feet. A compact car parking space width by zoning definition would be eight feet of clear clearance. Your deck would probably be wide enough with its support posts to allow you to get your vehicles underneath it.

But it wouldn t be ideal for that. And that s, and

the question is really, what you re going to wind up with. And the other question is that by attempting to allow you a one foot two inch sideyard, we re really vacating the intent of the Ordinance.

Which is to provide minimum sideyards for all property based on generally existing conditions that are somewhat more restrictive than the Zoning Ordinance would allow at the current time, which is a minimum of eight feet.

Your house, actually, which has a much wider sideyard currently than the eight foot minimum, I m suggesting, could be accommodated with a sideyard that would meet the minimum of existing conditions as a variance to the eight foot.

But to take it down to one foot two inches I think is putting us in a position to be out of conformance with the ordinance and its intent. That is my personal feeling about it.

CHAIRPERSON REID: Another test too, that s the last test. You know, you have to make sure that you don t impair the, granting your variance would not impair an integrity of the Zoning Regulations from that.

So that s another thing that you have to consider. Another way to go with this perhaps may be to come under a special exception, which is, I understand that it is a new provision in the regulations for single-family homes.

Which I don t understand. That being the case, Ms. Pruitt? That being the case, why wasn t that done at first?

MS. PRUITT: They came to us with a letter from the Zoning Administrator s Office for a variance. We have been finding in the past that often the Zoning Administrator s Office makes some mistakes.

Upon reviewing this yesterday with the Corp. Counsel, we came across the idea that possibly this could come under a special exception. But typically when we get a letter from the Zoning Administrator, we do not then go back and double check to make sure that they are --

We take their word is what it is because they are the true interpreters of the regs.

CHAIRPERSON REID: So we couldn t just arbitrarily --

MS. PRUITT: You could amend it only because it s a lesser degree of relief you re requesting. The standards for a variance are much higher.

CHAIRPERSON REID: Okay, um. -- Oh, here -- Oh, okay.

(Pause.)

-- That s --

(Chatter.)

Which is right here.

(Pause.)

Okay, um, all right these, the other houses in your, right there along the line of your street have a garage?

MR. JACKSON: You say?

CHAIRPERSON REID: Isn t this his house right here? That s you, oh, yeah, your house has a garage, it s not on this particular -- All the houses have garages --

MR. JACKSON: No, not at all.

CHAIRPERSON REID: But yours does. You have a garage back here.

MR. JACKSON: Right.

CHAIRPERSON REID: Right here.

(Chatter.)

Do you have a fireplace?

MR. JACKSON: Yes.

MS. JACKSON: Uh-huh.

(Pause.)

(Chatter.)

CHAIRPERSON REID: All right. Now, looking at the Sandbourne Map, it appears that your property, the way that it s situated on to the land, appears to be, it looks like, is your house smaller?

MR. JACKSON: No, no.

MS. JACKSON: No.

CHAIRPERSON REID: It s lower. It s lower and it, on the side, it appears to be more space on the side or something like that?

MS. JACKSON: There s a little more room on the

side.

MR. JACKSON: Are you asking me a question?

CHAIRPERSON REID: Yeah. I think that. All right. All right, if in fact it s deemed to be unique. If we, it would have to kind of be up to our discretion to make that determination looking at what we can see on the Sandbourne, because you haven t given us enough information.

And now I can understand that it s probably because you have not been through this process. You really don t, you know, understand clearly what it is that we re asking for, but we did that then the next test is that you have to demonstrate why there was a, why would there be a practical difficulty for you to be able to comply with the existing zoning regulations?

In other words, go ahead.

VICE CHAIR SOCKWELL: Madam Chair, looking at the sideyard, looking at the deck. If we can come to a conclusion, I would like to suggest for the sake of just basic egress that if we allow --

CHAIRPERSON REID: You have to not use --

VICE CHAIR SOCKWELL: Oh yeah, okay. For the sake of him being able to get back and forth around the side of his deck in a guaranteed path and a minimum distance from the property line. I would suggest perhaps a three foot eight inch sideyard that s based on a, loosely on building code with a 44 inches for egress.

CHAIRPERSON REID: And that would give --

VICE CHAIR SOCKWELL: That would give him a nine foot six inch deck as opposed to an eight foot deck, but would not give him a 12 foot deck.

CHAIRPERSON REID: Mr. Jackson, a nine foot six deck or even a ten foot deck, which gives you two feet or more or less, two feet less than what you re asking for. Could you live with that?

MR. JACKSON: A 10 foot.

VICE CHAIR SOCKWELL: Why not nine six?

MS: Well that s just four inches.

CHAIRPERSON REID: Let s not split hairs here.

VICE CHAIR SOCKWELL: Well, what I m trying to do is use some rational frame of reference for allowing a variance that exceeds what I think the minimum of five feet is.

CHAIRPERSON REID: Uh-huh. Well.

VICE CHAIR SOCKWELL: And the reason for that is it would give him additional space for his vertical supports and would allow him to get his vehicles back and forth under that deck. Unless he buys an expedition --

CHAIRPERSON REID: But you re saying that the other space would allow him to walk around. And the four inches wouldn t make that much difference.

VICE CHAIR SOCKWELL: The three foot eight inches would mean that the cars parked there because the posts would

define the area that he would be using for the vehicles that they would always be a way of getting by on that side of the house, and

MR. JACKSON: We have steps on the side.

VICE CHAIR SOCKWELL: -- it has certain logic.

MS. JACKSON: We have a way of getting by.

MR. JACKSON: Steps, we have steps on the side of the house too.

CHAIRPERSON REID: You already have steps.

VICE CHAIR SOCKWELL: Steps on the side of --

MR. JACKSON: On the side.

CHAIRPERSON REID: So --

MR. JACKSON: If --

CHAIRPERSON REID: Okay, so, okay. If we go with the ten feet, try to go through with the ten feet, then still, the part that involves a practical difficulty for not being able to comply with the existing zoning regulations would have to be addressed. Do you understand that? All right.

MEMBER RENSHAW: Mrs. Jackson?

MS. JACKSON: Yes.

MEMBER RENSHAW: Mrs. Jackson, on this petition that you handed in today.

MS. JACKSON: Uh-huh.

MEMBER RENSHAW: Which name and which address is the neighbor who will be directly impacted if your deck is on the side

of your house?

MS. JACKSON: Oh, uh, Williams. The --

MEMBER RENSHAW: -- is that the second one?

MS. JACKSON: The second name, uh-huh.

MEMBER RENSHAW: Has she given any letter to you stating in writing that she understands the deck is on the side facing her property?

MS. JACKSON: I spoke with her yesterday and she said it s fine with her. In fact all the neighbors. And that she had already received a letter from you, and no opposition from anyone.

MEMBER RENSHAW: And she understands that it s --

MS. JACKSON: And they were supposed to appear down here, the first time. No one came in opposition.

MEMBER RENSHAW: All right.

MS. JACKSON: And all my neighbors, and I think I only have about 12 on my block or something, about 12 or something, and all would have signed if I could have caught them at home. You know, every one. No one disagreed, you know, opposed.

MEMBER RENSHAW: All right, just as long as she understands where you re placing it.

MS. JACKSON: They understand.

CHAIRPERSON REID: The adverse impact part we got to come back to practical difficulty. Well the adverse impact aspect

of it is there, from what we understand, we ve gotten plenty of support from your neighbors, from the community, petitions, and ANC are all in favor of your application.

MEMBER RENSHAW: The ANC I think is, has not made a determination --

CHAIRPERSON REID: Oh, I m sorry, ANC said they have not, I m sorry. I saw the letter and I didn t realize that it was not a letter of support. It says that they wanted to take it up on their meeting tomorrow.

And we could, and they requested that the record be left open, which we could do that. For them to submit it. But did you talk to them, and what was their response?

MR. JACKSON: We talked to Ms. Goodman.

CHAIRPERSON REID: How about Ms. Broadnax?

MR. JACKSON: No.

MS. JACKSON: Never heard of her.

CHAIRPERSON REID: All right, what happened when you talked to Ms. Goodman.

MR. JACKSON: Ms. Goodman said she s going to send a letter down.

MS. JACKSON: She said she d fax the letter down to the --

CHAIRPERSON REID: A letter --

MR. JACKSON: Approve.

CHAIRPERSON REID: Oh, with, okay. They were in

approval. So they haven t had any complaints in regard to anything that might cause some disturbance here, neighbors, parking, light, traffic, noise --

MR. JACKSON: No.

MS. JACKSON: No, no, no.

CHAIRPERSON REID: No complaints, okay. Okay.

(Pause.)

VICE CHAIR SOCKWELL: -- Mr. Jackson? Yeah. Looking at the drawings of your proposed deck, the locations of the supports are not going to allow you to drive your cars under that deck anymore.

MS. JACKSON: Never heard of that.

VICE CHAIR SOCKWELL: You have two rows of posts. One row is center lined two feet off the side of the house, the second row is center lined, it looks like about 12 feet back from the, but this drawing isn t to scale and it says it has a scale, but the scale doesn t work.

So I don t understand how these people that did this drawing came up with what they re proposing. But it seems, it s all out of scale, and I can t, I cannot make it work.

It doesn t look like you can still drive your cars underneath there.

MR. JACKSON: Uh, the way we explained it to him, what we wanted, the first line of posts would be about two feet from the house.

VICE CHAIR SOCKWELL: Uh-huh.

MR. JACKSON: And the next line would be about ten feet.

VICE CHAIR SOCKWELL: So that leaves you eight feet of clearance.

MR. JACKSON: Yes.

VICE CHAIR SOCKWELL: And you said that was unacceptable when we discussed it before.

MR. JACKSON: Uh --

VICE CHAIR SOCKWELL: I don t understand.

MR. JACKSON: That would leave, that would leave about, yeah, about eight feet. You know, including the steps. It should still leave about eight feet.

VICE CHAIR SOCKWELL: Remember when we discussed eight foot and nine foot wide parking spaces and the spacing underneath and you didn t seem to think that was going to work.

MR. JACKSON: But see if the posts, if the posts is two feet from the line, the line is 13 feet. If the posts is two feet from the line.

VICE CHAIR SOCKWELL: Well, let s just assume I had a misunderstanding of what you were saying, okay.

CHAIRPERSON REID: All right. Let s go to practical difficulty. I think that looking at the pictures and the map. I mean the pictures that you submitted and the Sandbourne Map, that now, Mr. Sockwell you said matter of right, he could put the deck

on the back, but if he put the deck on the back it would require, it would incur a considerable expense to be able to have the deck, have the roof flattened so that they can get the deck on the second floor, and he would still have --

VICE CHAIR SOCKWELL: It would, for him to gain access from the second floor, should he even wish to do so, and as he stated the access would be from a bedroom as opposed to from a hallway, which is a more public space.

And because the roof on the rear of the house slopes up to meet the window line, and therefore does not allow direct access at the floor level to anything that might be built at that height, he would have to cut into the roof, restructure the roof and virtually tear up the ceiling of the area below to come in with a new at level or at floor level passage way out to the deck which would be built at some point.

It seems to be, present practical difficulties that are not normally associated with such deck construction.

CHAIRPERSON REID: Okay. All right. So that would be your practical difficulty, which is the second part of the test that you have to meet and the third part is it would not impair the intent and integrity of the Zoning Regulations or the map.

And to your knowledge does that make sense to you?

MR. JACKSON: Yes.

MS. JACKSON: That makes sense.

CHAIRPERSON REID: All right so, what, so you, are you basically proffering to us that if it was not impairing the intent and integrity of the Zoning Regulations or the Map and if in fact you were to have your application approved?

MR. JACKSON: Uh-huh.

CHAIRPERSON REID: Okay, so stay right there. All right. Persons and parties. No, ANC Report. We already talked about the ANC. We ll leave the record open to allow the ANC to submit their report, but as far as you know they were in approval.

They did not object, okay. All right. Persons or parties in support, persons or parties in opposition? Closing remarks by the Applicant. Now this is your time to say a few words or you can ask, and/or you can ask that we give you a decision today, which is a Bench Decision, Summary Order, meaning that you would get your Order in a couple of weeks if in fact it was approved.

MR. JACKSON: Uh-huh. Well we ll do that.

CHAIRPERSON REID: You ll do that. Okay. All right. Can I get a motion? Board Members? There is any other comments?

Well I ll, I think, I ll make the motion. I move that we approve this application and that, and it be amended, the application be amended to 12, 10 feet rather than 12 feet, and that I feel they ve made their burden of proof based on the fact that they have shown that their property is unique in regard to

the other properties in the same line, and their neighborhood, as far as the side yard is concerned.

The side yard area or space. And the size of their building in comparison to the other properties, and that there is, the practical difficulty would be that if they were to comply with the existing regulations they would have to cut into their roof which would be a considerable expense to be able to put that deck on the second floor.

And that there does not appear to be any adverse impact, that there seems to be quite a bit of support, letters and petitions, that are in favor of the application and that it hasn t impaired the intent or integrity of the Zoning Regulations and Maps.

Could I get a second? No seconds?

COMMISSIONER HOOD: I ll second the motion.

CHAIRPERSON REID: Okay, all in favor?

(Chorus of ayes.)

Opposed?

MEMBER RENSHAW: I m going to abstain.

CHAIRPERSON REID: Okay.

COMMISSIONER HOOD: Madam Chair, I know that you, that we have voted on the motion, but I want to do a reconsideration for the simple fact that if we do not include, I think the ANC requested, and I just thought about that.

The ANC had requested that the record be left open

so they can submit. They haven t had time to meet.

MEMBER RENSHAW: Uh-huh.

COMMISSIONER HOOD: So I don t know what s your avenue, but I would like to open it back up for reconsideration, so we can at least put that in there.

CHAIRPERSON REID: I did.

COMMISSIONER HOOD: You did? Okay, well I didn t hear you.

CHAIRPERSON REID: I did that with my motion.

COMMISSIONER HOOD: Okay, I m sorry, I didn t hear that part.

CHAIRPERSON REID: The first thing I said is that I leave the record open for the ANC to submit their report. And I ask --

MS. PRUITT: Do you want to take a vote prior to the ANC report?

COMMISSIONER HOOD: Yeah, that s what I was --That s why I m confused.

MS. PRUITT: Would you not then hold the record open and then make sure you take care of this, take this at the next public meeting?

CHAIRPERSON REID: Typically, if we don t have a letter from the ANC then our assumption is that they re not, they re not in opposition to this application. And this is the second time they ve come before us.

So the ANC has had knowledge for some time. And this has been the way we ve always done it. The only reason why I said, to leave the record open is because the ANC requested that it be left open.

COMMISSIONER HOOD: So they can respond. So that goes back to my original question for, ask for reconsideration for the simple reason that if we vote on it and that comes in not favorable, then we have a problem.

Well we don t have a problem. We didn t give, afford them the great weight that they are afforded.

CHAIRPERSON REID: Well, no, no, no, no. That s not true Mr. Hood.

COMMISSIONER HOOD: Well that is true.

CHAIRPERSON REID: No it s, well, remember, they, this is the second time they ve come before us. Typically an ANC will submit something if they re in opposition. If they don t submit anything then we assume they re not in opposition. That was my point.

COMMISSIONER HOOD: Okay.

CHAIRPERSON REID: So, but you re saying that you think that because they asked to let the, leave the record open, there may be some doubt.

COMMISSIONER HOOD: Due to circumstances, let me just read the. Due to circumstances beyond our control, ANC-5A will be unable to take it up, the above referenced case until its

monthly community of the whole meeting on March 2nd.

CHAIRPERSON REID: Uh-huh.

COMMISSIONER HOOD: So they re asking us to leave it open. And I m just confused about the vote. And that s why I wanted to motion for reconsideration.

CHAIRPERSON REID: Yeah. I feel comfortable with the vote, but you know, I have no problem with having it, having the vote as of the next meeting.

VICE CHAIR SOCKWELL: Madam Chair?

CHAIRPERSON REID: Um, I just, I guess I just took the position that if they didn t oppose, if they opposed it they would let us know.

VICE CHAIR SOCKWELL: Madam Chair, since the ANC did not have an opportunity to meet, and since Mr. Hood has raised a valid point, I would suggest that we rescind the vote pending the receipt of the property documentation.

CHAIRPERSON REID: Okay.

VICE CHAIR SOCKWELL: Of an ANC meeting.

CHAIRPERSON REID: Okay, but I still contend that they did have an opportunity to get their letter in the last time we had the hearing, and they didn t.

MEMBER RENSHAW: It could be the case that the ANC did not meet last month. There were snow days.

MS. PRUITT: Actually --

MEMBER RENSHAW: We don t know, and it s for the ANC

to explain.

MS. PRUITT: You actually had a letter from a Single Member District. But not from the ANC as a whole.

CHAIRPERSON REID: And that, Board Members, District Representative said --

MS. PRUITT: They approved. I mean they have no problem.

CHAIRPERSON REID: There were in approval.

MS. PRUITT: But it wasn t a quorum vote.

COMMISSIONER HOOD: But that doesn t hold. That s not great weight.

CHAIRPERSON REID: Okay. Well, I don t want to mince, I don t want to, you know, get bogged down into logistics. If there is a concern about the ANC s position. I felt that, given the fact that this is the second time that we ve had this Application come before us so that they could present their case.

And I m sure that they re probably anxious to get started. They have their architectural plans. And I thought that, that it would be, would be expeditious to go ahead and vote on it today.

Nonetheless, if in fact there is any doubt that the ANC is in approval of this application, then I have no problem with the vote being rescinded and taking the vote up at the next regularly scheduled meeting of the BZA.

VICE CHAIR SOCKWELL: Is it possible Madam Chair

that the vote could be held in abeyance or whatever the case may be, pending receipt of the ANC report. That report could be delivered to the Board Members and we could by a telephone poll be asked if we had any change, if the ANC decided not to support --

CHAIRPERSON REID: I don t know.

COMMISSIONER HOOD: But they may even come back with conditions and those kind of things.

VICE CHAIR SOCKWELL: Right.

COMMISSIONER HOOD: So that s why I wanted to afford them the opportunity.

VICE CHAIR SOCKWELL: All right.

CHAIRPERSON REID: All right. Well do we have to vote to rescind the vote?

COMMISSIONER HOOD: Yes, we do.

CHAIRPERSON REID: Okay, well you can --

COMMISSIONER HOOD: I make a motion that we rescind our vote in the affirmative with Case No. 16530, contingent upon the 5A ANC report and quorum as a whole after they meet on March the 2nd.

MEMBER RENSHAW: Second.

COMMISSIONER HOOD: And let me just add that we, that we vote on that at the next monthly meeting, the next monthly meeting which will be April.

CHAIRPERSON REID: Okay.

COMMISSIONER HOOD: The first meeting in April.

CHAIRPERSON REID: All right. All in favor?

(Chorus of ayes.)

Opposed? I abstain. All right now. Do you understand what happened? All right, you almost got an approval, but, but --

MR. JACKSON: Yes.

CHAIRPERSON REID: Just a little technicality. I think that you have gotten a feel for the ANC position but we don t. And the Board Members are concerned about that. So rather than take your vote today we re going to let the ANC give us the letter after they have their meeting.

And then on our next meeting date which would be April the 5th?

MEMBER RENSHAW: 5th.

CHAIRPERSON REID: April the 5th. We then will make a decision. And, just so that, for your own edification and so that you won t stress about this, I think that you have an idea as to which way the Board is going, and if you don t have a problem with the ANC then it s very likely that you will have an approval I think.

VICE CHAIR SOCKWELL: Madam Chair?

CHAIRPERSON REID: Thank you.

VICE CHAIR SOCKWELL: Is it fair to suggest to the Jacksons that if they do participate in the ANC meeting and are questioned that they should let the ANC know that the pending

approval was for a ten foot deck as opposed to a 12 foot deck, which might help their position with the ANC.

CHAIRPERSON REID: They should. You should let them know that.

MS. JACKSON: Okay.

CHAIRPERSON REID: All right. So, well, you can come if you d like for our decision meeting. You don t have to. There s no public participation. But we will be taking a vote, and you can some so that you can find out what happened at that time. Okay? Thank you very much.

MR. JACKSON: Thank you. In the event that we will --

MS. PRUITT: Your microphone isn't on.

MS. JACKSON: Oh, I'm sorry. In the event that we can't make it at this ANC meeting, you will then inform --

CHAIRPERSON REID: No, you mean the the BZA meeting.

MS. JACKSON: I mean --

CHAIRPERSON REID: You mean our meeting?

MS. JACKSON: Yes.

CHAIRPERSON REID: Sure. Staff will inform you.

MS. PRUITT: Yes, we will inform you, by --

MS. JACKSON: Okay. Very good.

CHAIRPERSON REID: And immediately after the meeting Ms. Pruitt, after our decision, immediately please see that they are so informed so they can move forward in their project. All

right. Thank you.

MR. HART: All right staff will recall the vote as four to one to rescind the vote until our next meeting which is April the 5th.

MEMBER RENSHAW: I think the vote should be recorded as four to zero to one.

MR. HART: Okay. That s correct.

CHAIRPERSON REID: Yes, we are. Thank you very much. All right. We re going to take a five minute recess and we ll come right back.

(Whereupon a short recess was held.)

We will now continue with the hearing. Let s have the, what is it the third case of the afternoon?

MR. HART: Case No. 16541, the Potomac Food Company II, Inc., pursuant to 11 DCMR 3104.1, for a special exception under Section 214 to continue the use of an existing accessory parking lot in an R-1-B District at premises 4422 Connecticut Avenue, N.W. (Square 1971, Lot 822).

Those persons planning to testify please stand, raise your right hand for the oath.

(Witnesses sworn.)

Thank you.

MS. PRINCE: Good afternoon Members of the Board. I m Allison Prince of Wilkes, Artis. I m here today on behalf of Potomac Foods to seek approval for the continuation of an

accessory parking lot in the R-1-B Zone, located behind the Burger King restaurant at 4422 Connecticut Avenue, N.W.

The parking lot has been in operation for approximately 18 years since the time the Burger King was constructed. It was initially approved by the BZA in 1982 for a three year term. The most recent term of approval was for five years.

Today we re seeking special exception approval under Section 214 for another five year term. To orient the Board this Burger King is located on the west side of Connecticut Avenue.

The parking area that is the subject of the application is access via an alley that also serves several other accessory parking areas, that is the parking areas for the Dry Cleaning Depot, Town and Country Baths and a car wash, an infamous car wash in the neighborhood, which is next door to our site.

The lot contains approximately 16 spaces and has been operating without significant impact on the community for 18 years. As the witness will describe, it is well maintained, and it is buffered from the adjacent residential property by a dense vegetative screen.

The lot serves the patrons of the restaurant and prevents overflow parking on to neighborhood streets. In preparation for the ANC-3F meeting on February 14th, we became aware of some concerns from two abutting property owners to the

west.

We believe that the conditions proposed by the ANC fully address these issues. The witness today is Danny Lopez, a District Manager for Burger King, who is responsible for several restaurants. And he will be testifying today on behalf of the owner.

If the Board has no questions I would like to proceed with the testimony of Mr. Lopez. He is the only witness today. Thank you.

MR. LOPEZ: Good afternoon. My name is Danny Lopez. I reside at 1305A Woodhouse Court in Germantown, Maryland. I m here today on behalf of the owner of the subject parking lots.

We are seeking special exception approval to continue the use of the lot for accessory parking to serve the Burger King restaurant, which is located at 4422 Connecticut Avenue N.W.

The Board of Zoning, the Board of Zoning Adjustments most recently approved the operations of this lot for parking purposes for a five-year term in November of 1994. As the District Manager, I visit the store regularly and oversee the maintenance of the parking lots.

The parking lot contains 16 spaces which serves the -- customers for Burger King restaurant. It is heavily screened from residential properties to the west of, by a wooden fence and mature vegetation.

Due to the difference of topography, the parking lot is located several feet below the residential property on the west. The topography therefore adds to the buffer between the residential and commercial uses.

As set forth in the statement of the Applicant, the lot meets all requirements of Section 214 regarding pavement, paving, lot design, lighting, and screening.

We met with ANC-3F and secured the ANC s conditional support for our application. The ANC support was conditional on our reducing the volume of the speaker associated with drive-thru for the Burger King.

We have made an adjustment to the volume as requested by the ANC. Further the ANC requested a two-year limit on your approval of this lot. The ANC also requested that we move our grease storage container to the inside of the store, which we will do.

The Department of Public Works has recommended approval of this application. We are in full agreement with the ANC s conditions regarding the speaker volume and the grease container.

We will also enforce our company policy which prohibits the use of trash receptacles at the store, of the store closing for both security and noise reasons. The lot is well screened from the neighborhood s property.

The use will only the neighborhood by preventing

overflow parking into the neighborhood streets. Since we keep the parking lot in good condition and take prior condition of the property, we strongly recommend your approval of this application.

In addition I would like to note that given the time on -- associated with the processing of an application before the BZA we will greatly appreciate your approval of this for a five year term.

I m committed to the regular monitoring of this lot to ensure compliance with the conditions. Thank you and if there s any questions.

CHAIRPERSON REID: Um, well, the first question that I have is, in regards to the self purification.

MS. PRINCE: Yes.

CHAIRPERSON REID: The top part wasn t filled out. It doesn t indicate even what property it is. Or did you submit something after this? This is what I had in my file Ms. Prince.

MS. PRINCE: I d have to look at the application. Whatever would have been required for the hearing we would have filled out if it was, let me just check.

CHAIRPERSON REID: Uh.

MS. PRUITT: You have the main file. We can look through it if you d like. But that, that s where the original would be in that file.

CHAIRPERSON REID: All right, but where did that come from?

MS. PRUITT: I believe it should be a copy from the original in that file.

CHAIRPERSON REID: Okay.

MS. PRUITT: It s Exhibit, no I m sorry, there is no exhibit number on there.

(Pause.)

We can look through that if you d like.

CHAIRPERSON REID: All right. Board Members, should you have additional questions?

MEMBER RENSHAW: Yes, I do. This Burger King parking lot is in my neighborhood. And in fact I know the alley very, very well. I know this parking area very, very well, and Ms. Prince will harken back to her words about the infamous car wash that is right next door.

And I was struck by the fact that your March 1st application that you submitted had three pictures of the rear parking lot. And I have never seen it looking like that. In other words I have always remembered the parking lot looking like that, which was your earlier submission.

Yes, this. This is how we in the neighborhood remember the Burger King parking lot. Right here. Because right there is the car wash. And when the cars go through the car wash from Connecticut Avenue, they are dumped out into this parking lot.

And we rarely see cars around there parked for the

Burger King, because the Burger King lot also is directly behind the restaurant. So my question is, since you own this parking lot, correct? Burger King does own that.

MR. LOPEZ: Correct.

MEMBER RENSHAW: What kind of an arrangement do you have with the car wash to allow the use of the property for the car wash? What kind of document do you have?

MR. LOPEZ: Um, well, I don t have any document for them using the parking lot, but you know, they do use it.

MEMBER RENSHAW: Do they pay rent to you to use this?

MR. LOPEZ: No, they don t.

MEMBER RENSHAW: They don t. What kind of liability do you have over their use of this parking lot to wipe off all the vehicles and have them kind of idle there while the drivers are getting into the cars and driving off?

MR. LOPEZ: Yes, they re mainly supposed to use like once a car is washed, directly across the alley, which is kind of like in front of their office where they have like a garage there also.

That s usually the, you know, the space that they use. And then I know like on weekends, well it doesn t show in the picture, right next to the alley where there s like a sidewalk. They use part of that.

MEMBER RENSHAW: Uh-huh. Well they keep the alley

part clear, which is directly behind the car wash. But they do take over that parking lot to of course clean off the cars before the owners get back in and drive off.

So I m just curious. Today you re coming for a special exception to use this parking area for another five years for parking for your restaurant, and it seems that a good amount of the time it is used for the car wash and we re not giving permission for the car wash, we re giving permission to you.

So, this is what I d like you to explain. See, you have no legal agreement with these, with the car wash. You just, informal that they pay you no rent. It seems to be a very lax way of handling things.

(Pause.)

MR. LOPEZ: Yeah, so I would you know, I would agree that you know the car wash would not use our parking lot for their purposes.

MEMBER RENSHAW: Where are they going to go? Because the other day when it was so lovely, we ve had a couple of beautiful days.

MR. LOPEZ: Uh-huh.

MEMBER RENSHAW: I looked in on that alley because I was right in the vicinity driving by, and it was doing the bustling business in your parking lot.

MR. LOPEZ: Uh-huh.

MEMBER RENSHAW: And they re not, if you, if they

don t use that lot then they re going be backed up on Connecticut Avenue, because they will not be able to go through as quickly. And it is an infamous car wash, I agree with that. So, it just presents, it seems to me a difficulty for this Board, giving and okay, or at least hearing your case to give an okay, for us to give an okay for another several years for you to use it as a parking lot when you turn over the use very casually to the car wash to use at their discretion. So.

MS. PRINCE: I need to --

MEMBER RENSHAW: I want to bring that to the Board s attention.

MS. PRINCE: I ve been out to the lot on several occasions, and, and when the car wash is in operation I too have observed the spillover operation. I think I need to understand the Board s concern.

Our case could have been structured to allow that accessory use to occur on our lot, but it is not. It s, this is a case that involves only approval for accessory parking for the Burger King.

If it is the Board s wish to legitimize the drying off of cars on our lot, our application would need to be adjusted. If it s the Board s wish to cease that operation occurring on our lot that could be addressed in a condition.

I think I don t understand what the Board s wishes --

MEMBER RENSHAW: Well I wanted to make it very clear to the Board that it was not, this lot is not strictly used as a parking area for Burger King. And yet you have come in requesting the continued use of that lot for the Burger King.

And all these years it s been used, we feel, in the community, it s primarily the space of the car wash.

MS. PRINCE: Commissioner Renshaw this is, this case has been before the Board before, and I handled the last case, and I have to say that at the Advisory Neighborhood Commission, at that time and on this go around, it was never raised.

And it, and we directly contacted abutting property owners to solicit comments, and it s never been raised. So it s simply not been something we sought to address.

MEMBER RENSHAW: Well they may not use the car wash like I do.

MS. PRINCE: Well, one of the Commissioners on 3F said she uses it very frequently, and is back there all the time and is familiar with its operation. And she had an issue with the speaker volume.

So it s simply not an issue that s been brought up. If, I think from a very practical standpoint the drying off of the vehicles on our, on the Burger King lot prevents the alley from being blocked.

And that s just a condition that s evolved.

MEMBER RENSHAW: Well they would not be allowed to

use the alley.

MS. PRINCE: No. Absolutely not. Absolutely not. The car wash is a matter of right use, but no it would not be permitted to block the alley.

MEMBER RENSHAW: Okay.

VICE CHAIR SOCKWELL: There s no, no formal use of that lot under any circumstances by the car wash. It s just an overflow.

MS. PRINCE: it s just an overflow, and I think there s a historical explanation. That is there was common ownership at one point in time between the Burger King and the car wash.

CHAIRPERSON REID: That s an accommodation that the --

MS. PRINCE: There is no longer a common ownership, but there was common ownership.

CHAIRPERSON REID: No, no, no. I said, the wiping off of the cars is an accommodation that Burger King allows the car wash?

MS. PRINCE: Correct.

CHAIRPERSON REID: And Mrs. Renshaw is that something that is a detriment or is it something that --

MEMBER RENSHAW: No. I, I just feel that the case should be structured as to the use of that piece of property. And

I think that there should be some recognition in our files that that lot is also used as a wipe off area for the car wash.

Just so we keep things very clear. And I m not saying here that I would like the car wash to go elsewhere. In other words, the drying off area to be done in the mouth of the car wash, backing up cars onto Connecticut Avenue.

It s okay. But just to have a document here that explains what the use of that parking area is. It s not just for you, but it s heavy use from the car wash.

CHAIRPERSON REID: Well, I think that we would be able to also glean from, like, letters from the community as to whether or not there was some complaints or opposition regarding the use of the lot for the wiping off area.

And I think I m understanding from the Applicant and Mrs. Prince that that is the use that is existing, going on, as an accommodation but it is not a legal use where there are documents that are actually a lease or anything like that that gives it a legal right to use it.

MEMBER RENSHAW: Correct.

CHAIRPERSON REID: In other words Burger King just doesn t say anything about them using it.

MEMBER RENSHAW: Correct.

CHAIRPERSON REID: And if the neighborhood, if it s good for the neighborhood that they don t back up the alley then it s an accommodation that has been occurring, and if we start to

document it it would have to be substantiated by some type of legal documentation.

VICE CHAIR SOCKWELL: Or even perhaps Madam Chair just a letter of acceptance.

MEMBER RENSHAW: Yeah.

VICE CHAIR SOCKWELL: Between the operators of the car wash and the Burger King. Which would allow at least in this instance for the use that we re going to be, that we re looking at, to include --

MS. PRINCE: The drying off of vehicles.

VICE CHAIR SOCKWELL: The drying off of vehicles as a courtesy allowed, afforded to the adjacent property owner, with no money exchanged hands, exchanging hands and no --

CHAIRPERSON REID: Not that there s, no other commercial use, no other commercial use.

MEMBER RENSHAW: No.

MS. PRINCE: Uh-huh.

CHAIRPERSON REID: I think Mrs. Renshaw just wanted to see something, but we have to be very careful that this is a land use issue in regards to the car wash using that property. There is no lease in place. And it s just something that s been happening.

MEMBER RENSHAW: Uh-huh.

CHAIRPERSON REID: Then you could get into lease issues which would be very complicated as to --how it s going to

be used, and to liability, and to insurance, and I don t think we want to go there.

MS. PRINCE: I don t think that s the Board s concern.

MEMBER RENSHAW: No.

MS. PRINCE: And we d be happy to present into the record a letter from Potomac Foods --

CHAIRPERSON REID: Something that s saying --

MS. PRINCE: -- saying that it s an accommodation of the property.

MEMBER RENSHAW: -- Then it s clear.

CHAIRPERSON REID: Okay. All right. Thank you. Other questions?

COMMISSIONER HOOD: Yeah. I just had a question for Mr. Lopez. I received a letter with some conditions. One of the concerns, I think I heard you say that you would like for it to be granted for five years?

MR. LOPEZ: Correct.

COMMISSIONER HILL: And the ANC is saying, -- First of all let me ask you this way. Did you adopt all of the conditions and have no problems with the ANC conditions that they put forward?

MR. LOPEZ: Correct. We ve already been working --

CHAIRPERSON REID: That s in their submission that they have agreed.

COMMISSIONER HOOD: Okay, so they agree, but I think I head him say five. And then they re asking for two, so I was just wanted to --

CHAIRPERSON REID: Oh, I m sorry, I didn t hear --

COMMISSIONER HOOD: So you re in front of this Board, you re asking for two now too, am I correct?

MS. PRINCE: No. No. We agreed with all the ANC s conditions with the exception of the two year.

COMMISSIONER HOOD: With exception of the two, okay.

MS. PRINCE: And that was stated at the ANC meeting.

COMMISSIONER HOOD: Okay. Thank you. No further questions.

MR. MOULDEN: Madam Chair? I have a question --

CHAIRPERSON REID: Oh, I see, I m sorry, oh, I m sorry, before you start. Okay, I see now, when I first looked at it, at first blush it looked like you were saying that with the conditions of the ANC without the last sentence says that with the exception, except the first two and you d still like to get five years.

MR. MOULDEN: Madam Chair, I didn t hear any complaints or problem from the Committee or ANC about accidents, whether they were pedestrian or vehicular, but just for the record, I just wanted to know the last I guess two, three years, has there been any accidents, vehicular or pedestrian because of

circulation problems, maneuvering from vehicles being parked to go into Burger King and the car wash?

MR. LOPEZ: No, there has not been.

MR. MOULDEN: None? Not at all?

MR. LOPEZ: Not at all.

CHAIRPERSON REID: I just had a couple of questions with regard to the conditions that were put in the previous Order. And Mrs. Renshaw did say something about the parking surface. And the condition of it. Has it or has it not been maintained in good condition at all times?

MR. LOPEZ: Yes. We stripe and surface every year.

CHAIRPERSON REID: So you comply with that. Ms. Renshaw did you say something about the way that the picture looked then and that picture now? I didn t hear --

MEMBER RENSHAW: I was talking about car wash traffic. It was the alley pictures --

CHAIRPERSON REID: Oh, okay.

MEMBER RENSHAW: and this, nothing to do with the --

CHAIRPERSON REID: Okay.

MEMBER RENSHAW: -- condition of the restaurant, no.

CHAIRPERSON REID: And you did establish a community liaison?

MR. LOPEZ: We do seal and stripe the parking lot.

CHAIRPERSON REID: Okay, you did establish a community liaison with the Advisory Neighborhood Commission at 3F?

MS. PRICE: I have been the liaison with Scott Strauss and note that I serve this --

CHAIRPERSON REID: What did you say?

MS. PRICE: I have acted as the liaison on behalf of Potomac Foods, and up until 1998 I was in regular communication with Scott Strauss who is the Single Member District Commissioner who raised the one issue that we had at the last hearing about the speaker volume.

CHAIRPERSON REID: Uh-huh.

MS. PRICE: So every time I had a dealing with Commissioner Strauss I said how s the Burger King doing? And every time he said, haven t heard any complaints. And that was the extent of the follow-up.

When we returned to ANC-3F at this time we touched base with Commissioner Highrich, Heinrich, who s replaced Commissioner Strauss, and he too had not heard anything. But he did some visiting of neighbors and was able to solicit some input to which we reacted.

CHAIRPERSON REID: So you serve in the capacity as the community liaison and you --

MS. PRICE: I have in this particular instance. We recommended a different approach at this time. It seems that the favorable approach would be to circulate the headquarters number,

Danny Lopez s number to the immediately affected neighbors on the ANC so their direct communication not to the Store Managers, who do turn over on a fairly regular basis, but to Mr. Lopez and the headquarters of the District Manager.

CHAIRPERSON REID: Uh-huh.

MS. PRICE: We feel that s a more direct line of communication.

CHAIRPERSON REID: And you also serve in capacity of Counsel for the Burger King?

MS. PRINCE: Yes.

CHAIRPERSON REID: So they could also contact you.

MS. PRICE: They could always contact me.

CHAIRPERSON REID: And the last thing was, how did you resolve the issue about the complaints of the loud speaker?

MR. LOPEZ: We called the company to have the speaker serviced and volume turned down.

CHAIRPERSON REID: But the last, but your Order required that you have the volume not to exceed 70 decibels in the first place.

MR. LOPEZ: Right.

CHAIRPERSON REID: Was it exceeding that?

MR. LOPEZ: No, it s actually less then 70.

CHAIRPERSON REID: So you re saying that 70 is objectionable?

MR. LOPEZ: So we agreed to, --

CHAIRPERSON REID: 70.

MR. LOPEZ: Right.

CHAIRPERSON REID: So you re going to lower it even more to --

MS. PRICE: Correct.

CHAIRPERSON REID: -- to?

MR. LOPEZ: To 60.

MS. PRICE: To 60.

CHAIRPERSON REID: All right. --

MS. PRICE: And it s not at 60 now.

CHAIRPERSON REID: And you will be in contact with the community to find out --

MS. PRICE: To get input.

CHAIRPERSON REID: Okay.

VICE CHAIR SOCKWELL: I believe the Zoning Ordinance specifies 60 decibels.

MS. PRICE: In the Residential Zone.

VICE CHAIR SOCKWELL: In a Residential Zone.

MS. PRICE: And we re applying the residential standard to this restaurant because it is on the, the speaker I should note is in a commercial zone.

VICE CHAIR SOCKWELL: Uh-huh.

MS. PRICE: The speaker is on the other side of the alley at about 100 feet from the property line.

VICE CHAIR SOCKWELL: Uh-huh.

MS. PRICE: Nonetheless, we re applying the residential standard of 60. And the microphone has been adjusted, and we understand that it s less than 60.

VICE CHAIR SOCKWELL: Uh-huh.

CHAIRPERSON REID: Okay in regard to the ANC-3F letter to us, they stipulated that they would not object to the special exception provided that, well they said two years, and then the issue about the dumpster in the parking lot. Has it been replaced or has that been taken care of yet? Or were you in agreement with that?

MR. LOPEZ: Yes.

CHAIRPERSON REID: To replace it with a system that accumulates the kitchen grease inside the restaurant building so it is disposed of off site? You ve done that?

MR. LOPEZ: Right. We, we re working on that. We already put in a request from the grease company.

CHAIRPERSON REID: But you ve agreed to do that.

MR. LOPEZ: Yes.

MS. PRICE: That can be a condition to the order.

COMMISSIONER HOOD: Madam Chair while you re on the subject of dumpsters. I m just looking here. A picture is worth a thousand words. And I was looking at here, at this picture. My concern is the cleanliness of your lot.

Do you keep, does someone goes around, and picks up the trash, and. One thing about it, you were honest. At least if

my eyes don t fail me, it looks like there s a lot of trash back up in here.

If you look at the picture, the middle page.

CHAIRPERSON REID: It looks like what?

COMMISSIONER HOOD: At least you re not trying to hide anything, but it looks like there s a lot of trash and it looks to me like that lot is not kept

up. -- And that s my concern. Do you have somebody that goes around and picks up the trash?

MR. LOPEZ: Yes, we do. We --

COMMISSIONER HOOD: They just didn t pick it up that day when you took the picture.

MR. LOPEZ: The, you know, we pick it up a couple times a day.

COMMISSIONER HOOD: Okay.

CHAIRPERSON REID: Okay.

COMMISSIONER HOOD: I would like to see that put in the --

MR. LOPEZ: And we have also increased the number of pickups on the dumpster. We took care of that like last week.

COMMISSIONER HOOD: Okay.

MR. LOPEZ: But you know it is our intention to keep the parking lot looking clean and free of litter.

CHAIRPERSON REID: Okay, those were ANC issues. Are there any other questions, Board Members? Okay, are there any

other parties of this case except for the ANC. IS the ANC here? All right, then we do have a letter from the ANC and we are just basically referring to that in part.

But for the most part, ANC-3F says that they will not oppose the special exception and that there was a monthly meeting with a quorum present consisting of four Commissioners.

And that the vote was unanimous, and they did ask for two years. And we will come to that when we have our discussion about this particular application. The other things have been complied with in regard to the dumpster and the reduce the volume of the audio system.

And the issue regarding the frequent turn over of managers as being dealt with, with the liaison being put in contact with --

MS. PRINCE: Mr. Lopez.

CHAIRPERSON REID: -- Mr. Lopez is the, what is your title?

MR. LOPEZ: District Manager.

CHAIRPERSON REID: District Manager, as well as Mrs. Prince. Okay, so that s the ANC, any other government reports? I don t think we got any from the Office of Planning or DPW or any other government facilities.

Persons or parties in support? Persons or parties in opposition? Closing remarks by the Applicant.

MS. PRINCE: We would be pleased to enter a letter

into the record from the owner regarding the use, the informal use that s arisen over the years of the lot by the car wash next door.

With that submission we would ask for the Board s approval of the application. The five year term I think is important for a lot that s been in operation for 20 years.

It is a fairly time consuming process to come back to the Board on a regular basis. I think Burger Kind is committed to contact with the community through the liaison process, and by providing Mr. Lopez s number to the community and the ANC Commissioner so there are no interim dealings with the people at the store.

And, with the five year renewal we really will begin the process over again in four years to allow timely processing of the application. So we would appreciate a five year term.

CHAIRPERSON REID: Okay. Did you ask for a -- decision?

MS. PRINCE: We would very much appreciate your decision today.

CHAIRPERSON REID: All right. Thank you. Board Members? Motion or?

MEMBER RENSHAW: The, Mr. Hood do you want to go first?

COMMISSIONER HOOD: No, no, you go right ahead.

MEMBER RENSHAW: Well the ANC-3F has asked for two

years. The Applicant has asked for five years. There are a few worries on behalf of ANC-3F, but the Applicant has stated that it is going to address these issues, and I know that Ms. Prince is very attuned to making sure that her clients abide by the letter of the agreement.

And we do look for that letter informal, concerning the informal use by the car wash. But I would like to propose that the Board perhaps look at a compromise, and since the ANC has said two, and the Applicant has said five that we put the term for three years.

(Pause.)

CHAIRPERSON REID: Discussion?

COMMISSIONER HOOD: That was kind of within the lines that I was in. I was going to say three and a half, but three is, I mean I think that was a happy medium there between two and five.

VICE CHAIR SOCKWELL: Personally I see the lot as having limited additional use capability unless it s something in a non-residential area. I don t see that the lot having been there as long and having been used for the same purpose for as long as it has, presenting a problem for a longer term, based on the limited number of objections to what is taking place on the lot.

I would be willing to accept a period of four years, as being reasonable based upon the circumstances.

CHAIRPERSON REID: I would agree. As a matter of fact I would, my first thought was five years, to allow them to continue, and the, given in fact that the, these complaints or objections are predicated upon some items that they have already agreed to take care of, in addition to strengthening the relationship with the community as far as any concerns or complaints are concerned.

I have, my concern is the lease that they have, and if the lease is for a considerable longer amount of time, and the application is approved for two years, I mean three years, and they have a longer lease, then it might cause them some problems eventually.

MEMBER RENSHAW: Madam Chair? Madam Chair, I would --

CHAIRPERSON REID: But I would go along with the four. Let me put it that way.

MEMBER RENSHAW: All right.

CHAIRPERSON REID: I would go along with four.

MEMBER RENSHAW: All right. I am, in suggesting three years, I did not want to move too far away from the ANC position of two years, and I believe that they scrutinized this very closely. I know the work of the Chair of 3F and so I thought that three years was an accommodation on both sides.

VICE CHAIR SOCKWELL: I would want to say that four years I think is all right. But I would, since this is a special

exception, we could condition it on the continued operation of the same company, and that should there be a change of operational status that it would require a renewal immediately of the, or a re-application.

CHAIRPERSON REID: I don t know if we can do that.

VICE CHAIR SOCKWELL: Can we do that, we can t do that?

MS. PRINCE: It s illegal.

VICE CHAIR SOCKWELL: We can t. Oh. All right, well then.

CHAIRPERSON REID: It is a good try.

VICE CHAIR SOCKWELL: Yeah, it was a good try.

MS. PRINCE: Potomac Foods is the owner.

VICE CHAIR SOCKWELL: Is the owner.

MS. PRINCE: Is the owner.

VICE CHAIR SOCKWELL: Uh-huh.

CHAIRPERSON REID: We need to get to the --

VICE CHAIR SOCKWELL: So the place could become an Arby s and that might --

CHAIRPERSON REID: Go ahead.

MEMBER RENSHAW: Madam Chair, I will move three years with conditions as expressed previously. Including those of ANC-3F.

COMMISSIONER HOOD: Madam Chair, with that I ll second the motion.

MR. MOULDEN: I want to move for four years.

CHAIRPERSON REID: We have a motion and a second.

COMMISSIONER HOOD: The motion was seconded, you just have to call for --

CHAIRPERSON REID: All right, so, we ask for first a vote on the year years. Okay. All right. We have the first vote of a three year motion, it s been seconded. All in favor of three years?

MEMBER RENSHAW: Aye.

COMMISSIONER HOOD: Aye.

CHAIRPERSON REID: All opposed? Aye.

MR. MOULDEN: Aye.

VICE CHAIR SOCKWELL: Aye.

CHAIRPERSON REID: All right. Now, Mr. Moulden you can put your motion on the floor. Now you can make your motion.

MR. MOULDEN: I make a motion that we approve this based on four years.

VICE CHAIR SOCKWELL: Second.

CHAIRPERSON REID: Okay. All in favor? Aye.

VICE CHAIR SOCKWELL: Aye.

MR. MOULDEN: Aye.

MEMBER RENSHAW: Aye.

CHAIRPERSON REID: Opposed? Okay.

VICE CHAIR SOCKWELL: Abstentions.

COMMISSIONER HOOD: I m going to abstain.

CHAIRPERSON REID: All right.

MS. PRINCE: Thank you.

CHAIRPERSON REID: With the, well, no. With the condition, with the conditions as stipulated in the previous Order, regarding the --

COMMISSIONER HOOD: Excuse me, Madam Chair. We re voting on whether to approve it or not approve, we were just voting on three to four years. That s all we were voting on.

CHAIRPERSON REID: I, wait a minute. I thought your motion was to approve it for four years.

COMMISSIONER HOOD: Right.

CHAIRPERSON REID: Yes.

CHAIRPERSON REID: Now with conditions that we were talking about earlier, I just wanted to make sure that it s on record.

COMMISSIONER HOOD: Okay, I don t want to abstain then, I want to be recorded as voting in favor.

CHAIRPERSON REID: In favor of the four?

COMMISSIONER HOOD: Yes, okay. Right.

CHAIRPERSON REID: Okay. So we have a unanimous decision.

COMMISSIONER HOOD: Right.

CHAIRPERSON REID: Okay. Now the --

COMMISSIONER HOOD: Excuse me.

CHAIRPERSON REID: Yes. The conditions were, are

the same as the previous Order, five years, maintain this lot in good condition, the liaison aspect of it with the, not Manager the --

MR. LOPEZ: District Manager.

CHAIRPERSON REID: District Manger. Not the local manager but the District Manager and Ms. Prince and that the loudspeaker would be now reduced, to not exceed 60 decibels. And there was something else.

MEMBER RENSHAW: And the letter --

COMMISSIONER HOOD: Madam Chair we had, oh --

MEMBER RENSHAW: About the informal use by the car wash.

CHAIRPERSON REID: Okay. I got that.

COMMISSIONER HOOD: And also --

CHAIRPERSON REID: Something else on the ANC.

COMMISSIONER HOOD: Madam Chair, can we also add that we also, I don t know if we can put. I guess we could put this in the condition about cleaning up the lot.

CHAIRPERSON REID: Oh, yes. We make, well it says, now the first condition in the previous Order that it was supposed to maintained in a clean order at all times. -- the parking surface, vegetation and the fence along the western boundary of the site should be maintained in good condition at all times, and I m, with, do you want to add to that, clean --

COMMISSIONER HOOD: Let me go back to that Order,

will you please pass --

CHAIRPERSON REID: Here. You can add that, more words to it if you d like. And the thing I was saying about the ANC is that the dumpster. The issue about the dumpster has, is in the process, so we don t have to put that in here as a condition do we, necessarily, I don t think.

Board Members? Okay.

MR. MOULDEN: On the debris, maybe you want to put a statement in to minimize debris and trash on a consistent basis.

CHAIRPERSON REID: Eliminate.

MEMBER RENSHAW: Eliminate not minimize.

COMMISSIONER HOOD: Yeah, eliminate.

MR. MOULDEN: Eliminate debris and trash on the site.

VICE CHAIR SOCKWELL: I think that the Applicant stated that he was having the site cleaned twice a day?

MR. LOPEZ: At least twice a day.

VICE CHAIR SOCKWELL: At least twice a day. Maybe that should be increased --

MR. LOPEZ: We have increased --

VICE CHAIR SOCKWELL: -- to four times a day or something like that.

CHAIRPERSON REID: As needed.

VICE CHAIR SOCKWELL: As needed. With observation at least four times a day.

CHAIRPERSON REID: -- Uh-huh.

MR. LOPEZ: Okay.

CHAIRPERSON REID: All right.

VICE CHAIR SOCKWELL: Condition observed at least four times a day.

MR. LOPEZ: Yes.

CHAIRPERSON REID: Okay. Ms. Pruitt do you have all the conditions?

MS. PRUITT: I m working, we re working on that.

CHAIRPERSON REID: Okay. You just want to reiterate them to make sure we ve gotten them all cause I know we were giving them to you all at the same time.

VICE CHAIR SOCKWELL: Did we say anything about free car wash coupons?

(Laughter.)

CHAIRPERSON REID: You don t miss an opportunity do you Mr. Sockwell?

MS. PRUITT: Madam Chair?

CHAIRPERSON REID: Yes.

MS. PRUITT: We have to include, excuse me, all conditions from the ANC except for the time, it is for a five year approval. That the loudspeaker --

VICE CHAIR SOCKWELL: Four years.

MS. PRUITT: Four years, excuse me. The loudspeaker not exceed 60 decibels. That the informal agreement concerning

the use of the parking lot be added for the record. And eliminate trash --

CHAIRPERSON REID: That wasn t a condition.

MS. PRUITT: Okay. And to eliminate the trash on the site, and that there s at least a visual look at the site four times.

CHAIRPERSON REID: Remove the trash and debris as needed.

MS. PRUITT: As needed, and monitoring --

CHAIRPERSON REID: Monitored accordingly.

MS. PRUITT: Okay.

CHAIRPERSON REID: Cause it may need to be more times. Was that all the conditions? Board Members, that you can think of?

MS. PRUITT: That s all I have.

MS. PRINCE: The liaison?

CHAIRPERSON REID: That s still in there, but to strengthen that with the, a communication being between the District Manager and Mrs. Prince and the, Community ANC, the ANC.

MEMBER RENSHAW: And that there will be this informal letter. This letter about the informal use by the car wash.

MS. PRUITT: Now, excuse me, Madam Chair. That s what I was just reading back. That is or is not a condition? I need to be clear.

MEMBER RENSHAW: Yes.

MS. PRUITT: Cause I was --

MEMBER RENSHAW: Yes.

MS. PRUITT: Okay. I just wanted to be sure.

CHAIRPERSON REID: I don t know. Wait, wait, wait, wait, wait.

MEMBER RENSHAW: Yes.

MS. PRUITT: That s not what was just said, that s all I wanted to --

CHAIRPERSON REID: It s for the file, it s not a condition that goes in the Order.

MS. PRUITT: And that s what I wanted to ask you.

MEMBER RENSHAW: It should be cited.

CHAIRPERSON REID: I don t think we can do that.

MEMBER RENSHAW: Yes, why not?

CHAIRPERSON REID: I don t know if we can --

VICE CHAIR SOCKWELL: Well it s an informal. I don t know. Can we?

MS. PRINCE: We have no objection to having that as a condition. We have to submit the letter to the record if it s a condition to the Order, it won t hold up our C of O in any way because we ll have submitted it for the record.

CHAIRPERSON REID: All right. There s no objection. Like I said, I didn t know. I just wanted to make sure that procedurally we re correct. Okay. All right then we move now to

the last case of the day. Is there one more or two more?

MEMBER RENSHAW: One. Oh, that s right because we, we had the condominiums was continued. Okay. Now, --

MS. PRUITT: The last case of the day is Application 16554. Application of James H. and Julie P. Edmonds for the Studio House School of the Arts, pursuant to 3104.1, for a special exception under Section 206 to permit the establishment of an existing building to be used as a music, to be used for music of art.

The owners will reside on the top two floors in a D/R-3 District at 2306 Massachusetts Avenue, (Square 2507, Lots 4 and 5). All those planning to testify, could you please stand and raise your right hand?

(Witnesses sworn.)

Please be seated. I d just like to indicate that we will be timing. That s what our timer is for, the Applicant has an hour. Madam Chair do you want to run through the other times for --

CHAIRPERSON REID: Yeah, let s give them an idea --

MS. PRUITT: -- give everybody an idea.

CHAIRPERSON REID: May I have a show of hands for persons in support of the application who will testify? Three, okay. Persons that are in opposition to the application?

MS. PRUITT: Excuse me, Madam Chair, I have a question. All those who testified are you part of the Applicant s

case?

MR. HITCHCOCK: We have received one request from a person to testify in support and we d like to set aside five minutes out of our 60.

MS. PRUITT: Okay. Cause I mean they can also testify. Your, one of, my point is like your land use person or your traffic person, they all come within your hour if you d like.

MR. HITCHCOCK: Correct, and we, yeah.

MS. PRUITT: And then you don t have to cede your time to that person if you d like.

MR. HITCHCOCK: Okay, yeah. I mean, well, for the record my name is Con Hitchcock I m Counsel for the Applicant in this case. We have three witnesses to testify, actually four. The Applicant, Mr. and Mrs. Edmonds, Mr. Oberlander, George Oberlander, our planning expert and Dr. Everett Carter. If we can use the full 60 obviously we d prefer to, but we re prepared to cede time to Mr. Graves who has asked for five minutes.

MS. PRUITT: Okay. Great. I will also note that you have three request for party status that s in your package and that s from Liz, excuse me, Richard and Elizabeth Turner, Sheridan-Kalorama (phonetic) Neighborhood Council, and Lois Rice, Rosalie Auster, Simon Auster and Irving Fincer (phonetic), is that correct?

And if you are all here could you please --

CHAIRPERSON REID: Would parties, the parties who --

MS. PRUITT: Identify yourselves. Could you please come forward please and give your name?

CHAIRPERSON REID: The ones who requested party status.

MR. TURNER: Richard Turner --

MS. PRUITT: Sir, you have to speak from the mike please.

MR. TURNER: Richard Turner.

MS. TURNER: Elizabeth Turner.

MS. AUSTER: Rosalie Auster, and the other signatories can t be here.

MS. PRUITT: Okay. Thank you.

CHAIRPERSON REID: Are, certainly, ma am, are you the representative from the Citizens Association or the -- Okay. All right.

MR. HAYES: Alan Hayes for the Sheridan-Kalarama Neighborhood Council.

CHAIRPERSON REID: Okay. Now. They have a, they have submitted their --

MS. PRUITT: -- they submitted timely, in everything.

CHAIRPERSON REID: Okay. In regard to party status for the Turners, is it, I will assume that you all are married?

MR. TURNER: Yes.

CHAIRPERSON REID: Then can we have one of you speak

or to do cross examination rather than both of you?

MR. TURNER: Richard Turner -- I m Richard Turner, will speak for about --

CHAIRPERSON REID: You re speaking because, I m assuming that your concerns are about the same, huh?

MR. TURNER: My wife and I are both concerned about the same thing.

CHAIRPERSON REID: Exactly. Okay. Thank you. All right. Mr. Nettler?

MR. NETTLER: just for the record, it s Richard Nettler on behalf of the Sheridan-Kalarama Neighborhood Council, and I would be doing the cross examination on behalf of the Neighborhood Council. Mr. Hayes is here as the representative of the Council.

CHAIRPERSON REID: All right. Okay. Let s get started.

MS. PRUITT: Madam Chair just for the record to be clear, so you re granting party status to these three who have requested it?

CHAIRPERSON REID: Oh, I m sorry, I didn t say that, but I have no problem with accepting them, I mean allowing them to have party status given the fact that they have submitted their request and that s all in writing in a timely fashion and they appear to be in compliance with the requirements.

If there are any objections from Board Members, I d

like to hear them. Other than that, we have, I have no problem with it.

MS. PRUITT: Okay. Just to continue then, parties would have 15 minutes that will also be timed. If there s any organizations, generally they re five minutes, and individuals are three. So that everybody understands the ground rules, but we ll keep time for you also.

CHAIRPERSON REID: Is the ANC here?

MS. PRUITT: Yes.

CHAIRPERSON REID: Okay. Ms. Pruitt, clarify that a little better. Parties have 15 minutes.

MS. PRUITT: Correct.

CHAIRPERSON REID: And that would be broken down to the five minutes for the organization and three minutes for an individual, is that what you re saying?

MS. PRUITT: Usually you, these, are all these parties in opposition?

CHAIRPERSON REID: Yes.

MS. PRUITT: The new regs actually call for all parties in opposition then to be grouped within an hour and they d divvy up their time however they feel.

CHAIRPERSON REID: Okay, but what did you mean by 15 minutes?

MS. PRUITT: Well, we, you could do it either, we have done it in 15 minute increments before. If you really want,

and there s three parties that actually would be less than an hour, but they are actually allowed up to an hour.

The opposition party is. And then they can determine how they want to divvy up their hour under the new regs.

CHAIRPERSON REID: Okay, you re saying that opposition time is an hour for all the parties combined and then among them they are to decide how much each will take --

MS. PRUITT: Correct.

CHAIRPERSON REID: Is that what you re saying?

Has that been done or do we do it?

MS. PRUITT: No, they actually, actually you ask them to do it. Because you really don t know who parties are until the day of the hearing, because it s not --

CHAIRPERSON REID: So we give them time to do that?

MS. PRUITT: This is a new regulation --

CHAIRPERSON REID: Yeah, --

MS. PRUITT: -- so we re kind of working out the kinks.

CHAIRPERSON REID: Yeah. Let s see how we can accomplish that. If they have an hour and they re going to divvy it up they have an attorney for the Association and then we have individuals. So, I guess give them a couple of minutes, to determine and tell us how they want to do it?

MS. PRUITT: If that s your choice, sure.

CHAIRPERSON REID: All right. Well then, I know, I

don t know any other way to do it. Okay. Well, let me give you a couple of minutes to kind of caucus a little bit and decide how you want to divvy up your time.

COMMISSIONER HOOD: With that Madam Chair can we take a three minute break?

CHAIRPERSON REID: Uh-huh. Sure. We ll recess for three minutes.

(Whereupon a short recess was held.)

All right, proceed with the case at this time.

MR. EDMONDS: Good afternoon, Madam Chair, Members of the Board. My name is Jim Edmonds and with my wife Dr. Julie Edmonds I m pleased to be here today to share a dream. A dream with which we would like to become reality, a dream with which we would like to share with you.

Let me tell you a little bit about myself. I m a native Washingtonian. I ve lived in the City most of my life. I went to John Burrows Elementary, Taft Junior, took eleven years of private music in Washington D.C.

After 23 years of working with the World Bank I retired in 1998, opened a store in Falls Church and excuse me, 1988. I purchased a store in Falls Church, Virginia called Fox s Music. Fox s provides musical instruments, sheet music and just about everything else musical that teachers and educators throughout the Metropolitan Area would want.

Fox s has been described as a place where all the

music teachers go by the Washington Post. This is not a rock shop, it s not a guitar shop, it s not a slick store, it s an educational store.

We currently provide the largest selection of classical music in Maryland, D.C., and Virginia. I also operate a school with, along with the store in Northern Virginia, and we ve taught hundreds and hundreds of children over the last 13 years.

We offer instruction to all band and string instruments. We re again, not a rock shop. I m very proud of the music education program that we ve built at Fox s and my dream has been for many years to open a school here in the Washington D.C. Area in order to give the children in Washington the same learning opportunities, the same appreciation of music that I ve been able to offer in the state of Virginia.

The problem was finding the right building. A few months ago I found it. The Allison Pike Barney Studio House, located at the Sheridan Circle fits the bill perfectly. In a few minutes I m going to show you a short video, not a professional video, I took it myself, which will take you inside the landmark.

It will give you an idea of how we propose to operate the studio, the school of the arts, and how it will operate as a non-profit corporation here in the Washington D.C. Area.

First of all Allison Pike Barney was a pioneer. She built the studio house at the turn of the century. She had a

vision for making this building a Center for the Arts and had a vision which today stands.

She created the Barney Senior House. She created the Sylvan Theater which still operates down Monument Ground each summer. The Studio House has six stories, including a basement and a sub-basement, two first floors which have been landmarked or designed to use for art exhibitions and musical performances.

Only the top two floors were used by Mrs. Barney for her residents. Julie and I and our daughter will use the top two floors as our residence if the application is approved.

We ve listed our house for sale, in fact we now have a contract. We ve started moving furniture in, after Christmas, in December, and we plan to be fully in there once we ve concluded this case.

I can assure the Board that if approval is granted we ll be living on the top two floors. In 1960 Mrs. Barney s daughters donated the Studio House to the Smithsonian Institute. The Smithsonian used it primarily for office space, for receptions, for tours, for entertaining, as well as for some apartment usage by visiting scholars.

The building was closed to the public in 1991, and the Smithsonian began looking for a buyer. Julie and I bought the building late last year. And with your approval we d like to open the School of the Arts during the next academic year.

Let me summarize how the school would operate and

explain why we ve satisfied the requirements for the special exceptions. Let me draw your attention to Table 1 in our pre-hearing submission. I m only going to summarize it here, you may want to look at it in detail because I m sure it s going to raise a lot of questions.

MR. HITCHCOCK: For the record --

MR. EDMONDS: It appears that Page 5 at the beginning of the pre-hearing submission for the convenience of the Board. Private music lessons will be staggered. A group music class for about eight young children will be held in the morning, however, individual music lessons for up to nine students in nine studios will be given after school.

It will be a half day on Saturdays and these student lessons, these private lessons would all be given in the basement, where there are now two studios and where we propose adding an additional seven studios.

A group art class for eight adult students and one teacher, four nights a week, and finally the maximum number of teachers on the premises at any one time in taking all into account would be 17 students and ten faculty members.

It is not an intensive usage for a school. It s considerably less than the levels which have been provided for the Levine School and the Van Ness Center. And I might add you ll see there are recommendations in the file, endorsements in the file from the Levine School of Music.

Let me talk about another facet of our program. An essential ingredient of the school music program is giving students the opportunity to perform. I m a pianist. I remember my first recital 50 years ago. I played The March of the Wooden Soldiers.

I remember how scared I was. I remember because I had to perform, excuse me. That was 50 years ago and I still play the same piece from memory today. A vital method for building self confidence in young students and teaching them the rewards of persevering.

It s also in having to get up before an audience and perform. Through my experience, few things are more satisfying for children than finishing a piece and hearing the approval from family members and from other members of the audience.

There s a problem nowadays in terms of music teachers being able to find teaching facilities, whether it s because of the litigious society, whatever, churches have closed their doors, women s clubs, libraries, community rooms, which were traditionally the sites for student recitals are gone.

Studio House would address this problem by providing a first class facility where students could learn from skilled teachers having experience in performing in a historic landmark that years ago opened its doors to certain giants in the arts such as Enrico Caruso, Sara Bernhart, Ana Pavlova,

Presidents, their wives.

What better opportunity could we offer than to allow these children to perform at the same location? There s another facet of the program which I d like to describe. As important as it is for the children to have the experience for performing music themselves, it s also important for them to hear and learn from professional musicians.

That is why Studio House would offer guest recitals for outside musicians who would perform for the students and be available to discuss the music with them. There are many groups here in town such as the Washington Guitar Society which Charlie, the late Charlie Bird performed with.

String trios from the National Symphony Quartets made up from musicians from other orchestras, I know they would welcome the opportunity to perform. I know that they would share their insights with the students.

I imagine too that some neighbors would welcome the opportunity to attend these recitals and that s why as a part of our commitment to give back to the community we re willing to open these recitals to the public.

We d welcome them to attend at no cost. To be sure, we would accept donations, but no one would have to pay to hear some of the top musicians the City has to offer.

Let me add that my commitment to giving back to the community is not something new. As we said in our application,

we ve given, we will be giving scholarships to needy students in the D.C. Public School System.

We presently offer such scholarships in our Virginia School and will make such a commitment to the District Zoning Board at this stage. I ve long believed in making music education available to students regardless of their economic situation, and let me give you a few examples.

A few years ago I received a Certificate of Appreciation from Wynton Marsalis when I made a donation of thousands of dollars to the Filmore Arts Center. A copy of the Certificate and a photograph of Mr. Marsalis presenting this award is attached in the file.

You ll also see accommodations from the Chambers of Commerce and other people in the Arts, but in any event, I ve also arranged that my counterparts, the Levine School of Music, this is something done a number of years ago, which has also submitted a letter, whereby I donated flutes, some 20 flutes.

Levine donated the teachers at the time. And we gave the flutes to the Adams School at 19th Street. We gave them an opportunity to study free of charge among talented teachers, an opportunity these children might otherwise have never received.

For all of these reasons, the House of, the Studio House, School of the Arts, can and will be an important contribution to the community and to the children of the City.

Let me talk to you a moment about the impact. By

staggering hours of operation we will minimize the number of students present at any one time. To reduce the concerns about noise, we will not have any performances outdoors.

The principal recital areas on the second floor which seats 90 people is located in the rear of the House where there is no common wall in the building next door, no common wall with the building next door at 2304 Mass Avenue.

The studios will also be built with sound proof partitions, and there s a diagram in the file for those partitions by the way. There is a party wall in front of the house next to a small parlor on the first floor, and a small recital room on the second floor.

We plan to install in front of that party wall a special acoustical curtain of the sort typically used to deaden sound. And I believe that this will be sufficient to address any concerns.

Okay, let me talk for a moment about traffic and parking. When the Smithsonian laid out and marked in the yard next to the Studio House nine spaces. We ve measured the area and we can park nine cars at the site using stacked parking.

This is the number of spaces the Zoning Regulations would require during a one hour, during any one hour, Monday through Thursday evenings, when music and art classes will be going on simultaneously.

For all other times, Friday and Saturday, the

regulations contemplate a need for only seven spaces, and we would exceed that. We do not anticipate the stacked parking will pose an issue.

Teachers arrive at roughly the same time, classes will start at 3:00 p.m., teachers will leave at approximately the same time when the classes end at 8:00 p.m. As for parents, my experience in my other school is that they tend not to stay on the premises.

If this is a concern if the Board so instructs we would accept a condition to advise parents in writing that they should not attend or not remain on the premises during the lessons.

To assure a smooth flow of traffic we ll hire a security guard, a parking attendant, who would escort students to and from the parents vehicle. Interrupting myself for a moment, you ll see on the video indeed that there are four lanes of traffic here, and you ll see that in fact this is not generally necessary, but it gives a very clear picture of this.

This will reduce the time the cars need to stop. It will safe parents the effort of having to park, get out of the car, come into the building and return to the car and leave.

There is a curb lane right in front of the Studio House as well as our driveway, so we do not foresee any problem. The concern has been expressed about the number of recitals that we re planning to hold, and about the demand for parking.

Let me call your attention to Table 2, Page 7 in the pre-hearing statement which summarizes our plans.

CHAIRPERSON REID: What tab is it?

MR. HITCHCOCK: It s the statement at the very beginning of the pre-hearing statement before any of the tabs Madam Chair.

CHAIRPERSON REID: Okay.

MR. HITCHCOCK: It s also in No. 3 of the original application.

CHAIRPERSON REID: Okay.

MR. EDMONDS: Dr. Carter, our traffic specialist is also going to address this problem to some extent. We propose 40 student recitals on Friday evenings and Sundays, on Sunday afternoons, during the Fall and the Spring season.

Those are the times the most convenient for parents and for teachers. They are also off peak hours when parking restrictions are less severe. Each parent would present 15 students. Each teacher will present 15 students, and from my experience on the average each student will be accompanied by about two people.

Thus, student recitals would bring in about 45 people to the Studio House. We propose 24 guest recitals during the same time periods with 12 during the Fall and Spring seasons and 12 during other times of the year.

These recitals would be in the large Studio salon

which can hold up to 90 people. You ll see pictures of this as well. We understand the concern that this activity would increase the demand for parking even though the recitals would take place during off-peak hours.

And to accommodate this concern we have contacted and will provide not only the nine spaces on the premises but in addition we ve made arrangements at the Westin Fairfax Hotel, located two blocks away to provide ten additional spaces during Friday and Sunday performances.

Exhibit 16 shows you a letter from the Hotel. We re doing this at our expense so that we can offer 19 off-street parking spaces at recitals. I want to take another minute to simply say that we ve had a reception there prior to Christmas.

Indeed we had 150 guests. We heard no complaints from either the attendees or from the community. We really believe that this is generally a residential area, however and area with quite a bit of parking. The reception was on Saturday afternoon.

At this time am I permitted to move away from the mike and start the video?

CHAIRPERSON REID: How long is your video, sir?

MR. EDMONDS: About 12 minutes.

CHAIRPERSON REID: Okay.

(Pause.)

VICE CHAIR SOCKWELL: Mr. Edmonds, you can push that

television so it s more horizontal or parallel to the Board s table so the audience can see it more. Yeah. Yes, that would help them. We re fine.

Take your time.

(Pause.)

If you would like, I don t know if this will work for that or not, but we provide a laser pen if you want to be closer to a mike, if that will help you, but it may not show up on the screen.

MR. EDMONDS: There s audio on the screen so I ll be quiet.

VICE CHAIR SOCKWELL: Oh, okay. It s on the front far right.

MEMBER RENSHAW: When you talk, Mr. Edmonds we ll turn this off.

(Video showing.)

This video will cover three broad areas, essentially the historical aspects of the building. Two, access to the proposed school, concentrating on the traffic and the entrances, and third, the parking on the premises and also in the community.

The Studio House located at 2306 Mass Avenue was built by Mrs. Allison Pike Barney, a patron of the Arts, and was used as a performance area, a teaching facility and a place where artists could come in the Washington Area to discuss mutual

interests.

The House actually contains about 11,000 square feet, approximately 2,000 of it being sub-basement or basement, which will be used for studios, designed in small cubicles.

The first and second floor have historic designations and that s an aspect which I want to introduce you to right now. The entrance way contains a small courtyard which will be a plus during the teaching sessions as kids will be escorted to this holding area, this courtyard, and where they ll be secure and where they will be allowed to check in.

This is a first floor area, and you can see one of the stages over the lounge chair, the large lounge chair. It s actually a performance area which can be used for 30 or 40 people.

So this will be an ideal location for individual recitals where up to 20 to 40 parents and in-laws can come to attend. This is a first floor dining room where Allison Pike Barney invited some of the guests, including Enrico Caruso, Ana Pavlova, a famous Russian dancer, the wives of Presidents, including Presidents themselves, Taft and McKinley.

The room is actually decorated in furniture which was purchased from the estate making this really a very, very musical and interesting historic location. It s charming, it s very interesting, and as a teaching facility can be used for small groups and meetings among teachers.

This room is actually used as a museum to show the

paintings and material which Allison Pike Barney had drawn during her parish years about 1920. Again, her belongings. We re now on the second floor, you can see the Studio with the curtains on both sides, a piano in the salon.

So this could also be used for a small recital, perhaps up to 30 people. The -- Studio or area of the house is this very large salon which can be used for larger recitals.

Note the historic tile created by the Mercer Tile Company, notice the loft for musicians as well as the stained glass windows and the historical furniture. All of which belong to the Barney House, to the Barney s family, some of the furniture owned by the family.

This is the painting easel used by Mrs. Barney. We know this because there s a rather well accepted biography of Alice Pike Barney and some of the things that she did for the City.

Just to comment for a moment, the Barney Senior House which is one of the largest charitable organizations for elderly people in the City was started by the Barney family, Alice Pike Barney.

The Sylvan Theater still in operation down on the Monument grounds was begun by Mrs. Barney. She s left her mark, and quite honestly one of the aspects in our attempting to achieve something here is the, to provide a memorial to one of the first women of the Arts in the Country.

A memorial and certainly the first women of the Arts in the Washington D.C. Area. The chandeliers and the fine art work throughout actually reminds you a little bit of a castle.

All of the windows are stained glass throughout. As you can see from the lamps and the fixtures, it s just absolutely one of the most wonderful sights in the City.

This fireplace and its mantel were likely brought here from Cincinnati, her family home. It s clearly well over 100 years old. As you can see it is a Christian motif behind it and all the symbols from the unions and the builders and the people who constructed the home.

The home was constructed by a Mr. Wattie B. Woods, who built a number of homes in the -- Area. This house was overbuilt. Please notice that the walls are 18 inches thick, and totally sound proof. This particular French door goes to the front balcony.

This is a third floor area looking out one of the French doors. It, again, overlooks the circle, you can see --

We ll be discussing this traffic as how it passes in front of the house.

-- a little of the artwork. Okay, let s discuss access to the building. This is particularly applicable to the students who will be using this. This is the back of the front of the House, we re in the courtyard area, and this is a door which students will be expected to enter.

And they ll be kept away from historical areas, other than when recitals are -- This is coming right in the door, entering what would be the Registrar s Office, cubby holes for the teachers, an area where all students will be required to pass, checking in before they go to their studio.

There are three studio areas in the basement area, which is where I believe household help may have resided in small bedrooms. This is another one. Actually this about 12' x 12', a good size studio as a separate --

Again these walls are not common with the house next door.

-- This, what was formally a kitchen area back when the House was, had domestic servants in it. This is a basement area, and it s the area where individual studios, some five additional studios would be constructed.

It s approximately 30' x 25'. The cubicles of the studios that would be put here would be about 8' x 8'. We would respect the integrity of the windows, that s very important to teachers.

Teachers like light.

But it s very important for viewers to understand that none of the historical area would be, would be touched. Important to access of the building of course is the parking and the drop-off. This is the circle, as you can see there are three parking spaces here for the public.

These vehicles are parked somewhat away from the curb because there was snow and because there was abutments. But even notwithstanding that, there s actually room to drop off students and still have two lanes for traffic to pass.

This is looking east and this circling wide enough for drop-off and pick-up. This is now looking west. The Studio House is on your left, and look as traffic passes, you know in two lanes there s certainly ample room for drop-off.

It s now 3:30 in the afternoon. Rush hour is approaching. -- you ll see two cars passing at one time here, simultaneously, so you can see that there s still room to back out out of the driveway. There s two cars exactly the same.

There are long spurts with no traffic, and that s because a block west of us is a traffic light, which allows the large gaps with no automobiles coming in.

Professor Carter has described, who is the Professor -- from the University of Maryland, expert in traffic has described this as one of the least congested circles in the District of Columbia, and it s really very, very true.

It is literally no problem. This is, there is little or no traffic during rush hour coming in, even to the point where they don t restrict the parking on the side. You still have the residential parking even though it s rush hour coming in and rush hour going out.

And that s, that s because the street is so wide at

this point. This is our buddy General Sheridan. And I think the light may have turned green again, there seems to be a spurt coming.

But again, never is there a time when you don t have an opportunity where pausing that you can t back out. As I indicated it s now 3:30 and our traffic study shows the patterns as being very, very, very, very slow.

There s very, very little congestion in this area. This is on a work day, at about 3:30 to 4:00, just during the last snow as a matter of fact, and, I guess, okay, we must have a light up there. It s difficult to describe, which is why we wanted to take this video to show you that access to the building is very, very light.

Here is the, here is where you have those spaces in front of it as I pointed out. Okay, the light may have turned green. There is some traffic coming now.

VICE CHAIR SOCKWELL: Mr. Edmonds? We re looking south?

MR. EDMONDS: You re looking west.

VICE CHAIR SOCKWELL: We re looking west.

MR. EDMONDS: On the house -- This is west looking --

Also, you may be aware that this is actually the major route into the City. We re about three blocks from Dupont Circle. There s major bus lines on this Massachusetts Avenue

route, and of course the subway which is seven and a half minutes walking time from Dupont Circle.

Here we go. This car has pulled off, to look at map, I m not sure, but it was not -- I want you to watch.

This is a vehicle that s actually stopped to either read a map or to, it s right in front of the Studio House.

I had to show you the House again. It s just absolutely gorgeous. This is the dead of winter, however there are plenty of rhododendrons and azaleas and certainly one of the best kept secrets in Washington.

This is the driveway to the back part of the house. Notice the carriage house on the right --

This will be very important in later discussions.

Right now there are two vehicles, my own and a friend s. As you can see, there s ample room to get by the cars and into the back. The Smithsonian as you ll note from the report, from the application, actually had nine spaces marked out in the, on the asphalt here.

They re very difficult to see through the camera, but I m going to try to walk you through that. This car actually straddles the white line that is difficult to see there, but anyway, there are actually two spaces.

And again as you can see, the automobiles are not close to the edge where they certainly could be, and further, there s absolutely no difficulty in getting through. Now, two

that you can see it s relatively easy for an automobile to pass through, and people to still traverse it.

There is some question about actually whether all nine spaces would be required to be used and certainly whether --

The spaces are marked off at 10' x 20', which is a foot more than required by the City.

But according to the Code we certainly meet the requirements for the number of teachers we intend to have. Again, you can see the lines here showing the spot. You can see the lines in the ground here showing another spot.

All of these spaces are 20' x 10' which is, which is larger than the -- Code requires. As you can see a little debris here, but that s from the repair of the Carriage House. There s actually a space here --

We ve had to replace the roof on the Carriage House, which also has --

-- for two automobiles, and if you don t use all nine spaces, ample room to turn around and to pull out. Looking back north, again, two spaces, quickly on your right, and ability to pull out with little problem onto the Massachusetts Avenue.

Also note that this area here as well as on the other side --

There is ample space for expansion, however, we d kind of like to avoid it because we d like to save the tree and the planter area that s along there. There is some planter area

there.

On the other side.

We don t feel that it has to be taken out.

About six feet.

But would allow for some expansion if it was necessary. Exiting the building, again, very little problem, and again, I m going to make a continuous run so that you can, so that you can see that there is a little difficulty in pulling out.

Notice in fact there s no traffic here. You can see the, you can still see the snow and the --

It s now 3:40.

We re very proud of the fact that this is one continuous --

Plenty of time to pull out onto the road, back out on to the road, continue around to the circle, on up to Dupont Circle.

One more very quick part I m going to show you. This is taken from the room --

This is the second floor of the Studio House where attempting to show the ease with which you can park out of the driveway, drive out of the driveway in reverse, without affecting the traffic.

You can see traffic is passing.

Not our car.

Sorry, I was just showing how the van is pulling

up. It can stop and traffic can still pass with ease. A student can certainly enter the vehicle and pull away without disrupting any --

This is pretty dramatic, but this is not the way we would ordinally do it. Of course we would -- and pull out. Again we would have an attendant, a security person, which would not, which would mean that the parent would not --

Here we re duplicating the drop-off this time. As you can see a full two lanes of traffic are unimpeded. Dropping off the student, pulling away. And approaching the entrance of the school, easily dropping off students.

I m going to end it here, it s basically just repeating at that point. And I know everybody s tired, I know we have a lot of people to talk. One thing that I will, is Professor Carter going to speak next or will he be next?

UNIDENTIFIED SPEAKER: Mr. Oberlander.

MR. EDMONDS: Oh, Mr. Oberlander. One of the things that I want you to remember when Dr. Carter speaks is that he has some statistics of, I believe of accidents in this area, and I think you re going to find it s quite impressive.

MR. HITCHCOCK: One clarification in response to Mr. Sockwell s question in case it was not heard by all Board Members. When the traffic was flowing it was coming from upper-northwest, eastbound and southbound, through the Circle, heading for downtown.

That s the flow of the traffic during the operations in an eastbound area towards the City, for the parking map again, for the Board s convenience, the very last page of our pre-hearing submission contains the layout for where the parking would be consistent with the Zoning Regulation for nine full spaced vehicles on the premises. And then --

CHAIRPERSON REID: Um.

MR. EDMONDS: That s the end of my presentation. I hope you ll call me with. I want to draw your attention finally to the fact that there are probably six, eight, or nine -- in the file, not only from the Smithsonian, --

CHAIRPERSON REID: You should speak into the mike sir.

MR. EDMONDS: Oh, sorry. But from a number of people in the City, including the Levine School, including the Filmore School, including the Smithsonian, including the Friends of the, Alice Pike Barney House.

VICE CHAIR SOCKWELL: And just for clarification --

MR. EDMONDS: We do have one from the Smithsonian.

VICE CHAIR SOCKWELL: -- the parking space sizes are not in the Boca Code, they are a Zoning Ordinance.

MR. HITCHCOCK: They re 19' x 9' we, I m sorry.

VICE CHAIR SOCKWELL: Yeah, but that s a Zoning Ordinance, not a Boca Code requirement.

MR. HITCHCOCK: Okay. Yeah.

MR. EDMONDS: I apologize, I m not sure what a Boca Code is.

CHAIRPERSON REID: I have a question. On the film there was the drop-off and it demonstrate about backing up out into that, into the circle. What time of day was that?

MR. EDMONDS: Until you saw the -- that was one continuous film. It started at 3:30 and ended at about, thereof or about ten minutes till 4:00. It was a weekday, it was a business day, it was, if I recall it was a Thursday, and clearly it was every bit normal.

CHAIRPERSON REID: Well, --

VICE CHAIR SOCKWELL: If I might state Madam Chair that the traffic flow along Massachusetts Avenue would be strongest in the southbound or westbound, or it s a eastbound direction during the morning rush hour in.

It would be strongest on the other side of the circle in the outbound direction in the afternoon.

MR. EDMONDS: Exactly, and that s coordinated with our schedule, by the way Mr. Sockwell.

CHAIRPERSON REID: I see. Okay.

MR. HITCHCOCK: Madam Chair, our next witness is Mr. George Oberlander who is our planning expert. I m not sure if Mr. Oberlander is familiar to the Board if I should qualify him as an expert.

VICE CHAIR SOCKWELL: By the way, there s one other

thing I would want to say. Because the Bridge is still out, which is the Q Street Bridge, there is a reduction in traffic flowing in that eastbound direction at all times.

MR. EDMONDS: We addressed that Mr. Sockwell, I, we don t believe there s any increase on the P Street Bridge just simply because of the, sorry, we don t believe there s a reduction, we believe there is an increase on the P Street, but as far as the area in front of the school on Massachusetts Avenue, people would still traverse past the school

VICE CHAIR SOCKWELL: But they wouldn t, they wouldn t be tending to use the outbound, the outer lane as much by virtue of the fact that they want to make that turn.

MR. EDMONDS: That s quite true. Yeah.

CHAIRPERSON REID: Um.

MR. NETTLER: Excuse me, point of clarification, are you going to have cross examination after everyone or after each witness?

CHAIRPERSON REID: Well, it s probably easier to just have it after each witness. But before you Mr. Nettler, I wanted to find out if the Board Members have any questions of this witness regarding that, the video. Okay. Now, I think --

COMMISSIONER HOOD: Madam Chair, I think that, I have a question but I think I need to hear from the traffic expert first. But it is going to be pertaining to the video.

CHAIRPERSON REID: Oh, okay. All right, then you

can address it at that time.

COMMISSIONER HOOD: Can I do it at that time? Okay. All right.

CHAIRPERSON REID: But I think that it would be easier to do the cross examination after each one, so go right ahead.

MR. NETTLER: All right, excuse me, unless someone else, one of the other parties wants to start with cross examination, I don t have a problem going last. Okay.

MR. HITCHCOCK: Madam Chair, it might be easier, since this is sort of a unified thing to hear from all of the three witnesses and have them all here to answer questions. So we don t have answers while Mr. Carter can answer that in more detail. We ve got 26 minutes, I think we could wrap everything up within that time and tender all the witnesses then.

CHAIRPERSON REID: The only thing about that is that sometimes it s difficult for people to remember their questions when you ve had quite a bit of testimony and this way we, we re trying this way because this tends to be a little bit more specific and they can kind of ask direct questions directly after someone has testified.

MR. NETTLER: Thank you. Mr. Edmonds, my name is Richard Nettler, I m Counsel for the Sheridan-Kalarama Neighborhood Council. Mr. Edmonds, you had stated in the beginning of your testimony that you plan to be fully in the

premises once this case is concluded.

Does, are you suggesting that if you don t get, do not obtain the special exception relief that you re not going to be moving into the premises?

MR. EDMONDS: No, I didn t make an insinuation at all about that. We ve already made plans, we already have a contract on our house to sell. We ll probably get a settlement in 60 days in likelihood because we ve been so close to it that we ll do it over a period of time.

I m not saying, on the other hand that we won t make other alternatives if in fact we don t get our approval.

MR. NETTLER: Okay. What s the condition, I saw on the video that you had gone through portions of the house and the basement area as well where the studios are. What s the condition of those studios today?

MR. EDMONDS: The Smithsonian when they sold it had a condition they call it Museum Stage, Museum Quality, which, if you ve ever gone to a museum of course you know, it s certainly not close to that, but it s in every way liveable.

And there s certainly no, there are no flaws. You may have recalled seeing some powder cracks along one wall in that basement studio, but we ve had Pro-Tec, a home engineering firm come in and it s gotten a clean bill of health from every light plug, every switch, every, each of the two heating units, and we re quite pleased and quite satisfied that we can move in over

night.

MR. NETTLER: Yet, there are portions of that building that are sinking?

MR. EDMONDS: No longer.

MR. NETTLER: No longer. Okay.

MR. EDMONDS: I can address that if you d like.

MR. NETTLER: Sure.

MR. EDMONDS: James Madison Cutts who is one of the preeminent engineers in the City, in fact was under contract with the Smithsonian Institute, and I believe it was some nine years ago, when corrective measures were taken to stop the slippage.

And as my neighbors well know, it was very, very important. The engineering firm was called back weeks ago, actually, months ago now, at the time where we signed the contract. And they provided us a letter indicating that there s been absolutely no deterioration, no further slippage in ten years.

MR. NETTLER: Okay. I noticed in the application that you filed that the house is on one lot, Lot 5, is that correct?

MR. EDMONDS: That s correct.

MR. NETTLER: And the garage is on Lot 4?

MR. EDMONDS: Correct.

MR. NETTLER: Okay, what s the principal use for Lot 4?

MR. EDMONDS: I m not sure what you re --

MR. HITCHCOCK: Can I clarify an answer to that --

MR. NETTLER: Well, I m asking him a question.

MR. EDMONDS: Well, the actual lots are attached. You may in fact know that there are, if you ve seen the schematic drawing, you ll see that there s actually stairwells from one side to the other. Lot 4 is the one which contains the primary residence. Lot 2 is the one that contains the historic building which was used for carriages, about 100 years ago.

But they re both shown registered together with both the zoning --

MR. NETTLER: Well it s for you to answer the question, not him.

MR. EDMONDS: They are treated together.

MR. NETTLER: Well each of them. There s a record lot for one building and there s a record lot for another building. Are you familiar with the regulations that apply to the use of records lot in the District of Columbia?

MR. EDMONDS: I believe so, yes.

MR. NETTLER: Okay. Are you familiar that unless these are subdivided into one record lot, that you have a principal use, each lot has a separate principal use. What, Mr. Hitchcock, if you could answer the questions themself, I d appreciate, could you tell me what the principal use is of a lot that contains the garage?

MR. EDMONDS: I was pointing out in my dialogue, the garage will also be part of our teaching facility.

MR. NETTLER: But what is the principal use of that lot? A lot can only have one principal use. What is the principal use of that lot?

MR. EDMONDS: The primary use will be for parking.

MR. NETTLER: It will be a parking lot or a parking garage?

MR. EDMONDS: Both.

MR. NETTLER: Okay, and --

MR. EDMONDS: And as I mentioned on the second floor of the building there would be, that would also be used as a school.

MR. NETTLER: Okay, but the primary use, the principal use, excuse me, the principal use is that of a parking lot or a parking garage.

MR. EDMONDS: Exactly.

MR. NETTLER: Okay, do you have a Certificate of Occupancy for a parking lot or a parking garage on that lot?

MR. EDMONDS: No.

MR. NETTLER: Okay, are you going to be seeking special exception relief to obtain the use of that lot as a parking lot or parking garage?

MR. EDMONDS: Of course, if it s necessary.

MR. NETTLER: Okay so then if you obtain the special

exception relief for the school use, you re going to be applying again for another special exception for the parking lot use?

MR. EDMONDS: I assume so --

MR. HITCHCOCK: I have to object, you re dealing with really question of laws. I understand it, if I may respond. I mean he s asking for a legal interpretation, as I understand it, you know, if I may cite the Board to Exhibit 1 at the beginning of the application, which I think may clarify the questions as to where Mr. Nettler is going.

CHAIRPERSON REID: Where is your Exhibit 1?

MR. HITCHCOCK: Exhibit 1 is in the application that we filed in December. It looks like this, it is the --

CHAIRPERSON REID: And you filed this with --

MR. HITCHCOCK: It came in with the application as part of your package --

CHAIRPERSON REID: You don t remember, you re not referring to your submissions, this?

MR. HITCHCOCK: No, I m referring to the initial submission in December, which --

CHAIRPERSON REID: Oh, you had --

MR. HITCHCOCK: Right, here it is.

MS. PRUITT: It s -- here.

MR. HITCHCOCK: If there s not a tab for it I apologize.

CHAIRPERSON REID: Oh, oh --

MS. PRUITT: We copied it so it s not in the binder.

MR. HITCHCOCK: Okay.

CHAIRPERSON REID: But we have it.

MR. HITCHCOCK: Yeah, to clarify that I think that that answer s clearly with respect to where Mr. Nettler is going, with the legal issue. I mean his question really asks for a legal interpretation. You will notice there that the building on Lot 4 is not entirely contained on Lot 4, part of it is on Lot 5, namely the stairs leading across that would be in connection with the use of the Studio House for the lessons.

You will note also on Lot 5 that there are tow uses, there s the stucco garage, which will be used for lessons as well as parking, and the asphalt drive that will be used for the parking.

The parking with a service uses that are in whole or in part on both lots. And I think that s where the questioning is going. So, from our perspective, the fact that the use on Lot 4 is in part, the parking on Lot 5, in part services a use that is on 4 as well as 5, relates to why it can properly be there and have the parking serve both.

MR. NETTLER: If I may respond. First of all the, Mr. Edmonds has stated that he s familiar with the regulations, whether --

MS. PRUITT: Mr. Nettler? It s probably best done in your cross examination, I mean in your testimony.

MR. NETTLER: Well I think it s important for --

CHAIRPERSON REID: Well this is in regards to the objection.

MS. PRUITT: Okay.

CHAIRPERSON REID: I think.

MR. NETTLER: And, I ll get to the whether it s best done in my testimony, but I, with regard to the objection this is not necessarily a legal issue Mr. Edmonds has stated that he s familiar with the regulations. I m asking about what the principal uses are for those different portions of the site that s supposedly included in this application.

And it goes directly, actually to a very important issue, which is --

MR. EDMONDS: But excuse me Mr. Nettler, it sounds like you re just simply trying to trick me, and I m not sure that being, not being a lawyer or a zoning expert that I can t rely on my attorneys. Of course I m familiar with the Zoning Regulations to the extent that it s necessary at my level.

CHAIRPERSON REID: Okay, does that answer your question?

MR. NETTLER: No it doesn t answer my question. I, if I can continue to ask the questions I d appreciate it, because it does go to the very heart of an issue that he certainly recognizes is very important here, and that s the ability to use the one of those lots as a, for parking for the uses that are

being proposed, and in fact the issue regarding, and an issue regarding the traffic study that s been prepared and how it relates to the impacts on the neighborhood.

CHAIRPERSON REID: Uh-huh. But that question has been answered, hasn t it?

MR. NETTLER: Well he s, his answer I guess then is that his principal use for Lot 2 was going to be that of the parking lot and parking garage. I guess that was the last answer he gave.

CHAIRPERSON REID: Yeah, I think that s what he said.

MR. NETTLER: Right, and I was going to.

CHAIRPERSON REID: Is that correct, sir?

MR. EDMONDS: That s correct, yes.

CHAIRPERSON REID: All right.

MR. NETTLER: Okay, and my follow-up question to him was why did he not seek to have a, what, was he planning on getting additional special exception relief to allow him to use that for that purpose after this hearing was concluded on the special exception relief that he was seeking for the school that he is intending to locate partially on one lot and partially on the other lot?

MR. HITCHCOCK: May, I, before you --

MR. NETTLER: When the, when that, any answer to that question was objected to by Mr. Hitchcock.

MR. HITCHCOCK: Yeah, I mean it s a question that asks a lay person for a conclusion of law as to why the regulations apply. And I think, you know, the answer to that is two-fold, and that s, I was hoping Mr. Oberlander could talk about this from a planning standpoint.

You have in here, the regulations Mr. Nettler is referring to does allow parking if the parking is accessory at least in part to the building on the premises. And you ve got at least in part Studio House partly here on No. 5.

You ve also, I mean, just in terms of the space, you know, more of it would be devoted to parking than to the garage, but you ve got both buildings to be serviced here.

CHAIRPERSON REID: But that s the same answer that you gave before, right?

MR. HITCHCOCK: Well that s correct, but I mean he s asking a question why don t, you know, why, you know, asking the Applicant why didn t you seek this relief or that relief, which is a legal question.

CHAIRPERSON REID: But that s been answered. Well, yes. It s been answered.

MR. NETTLER: Well he never answered that aspect of it, that was when it was objected to was why he, he acknowledged that if he needed the special exception --

CHAIRPERSON REID: But it s answered now. So let s move on to the next question.

MR. NETTLER: Maybe Mr. Hitchcock, as, I ll move on. And if Mr. Oberlander is going to address it then I will question him about the issue as well.

CHAIRPERSON REID: Okay.

MR. NETTLER: You stated that there s going to be 17 students and 10 faculty members at any one time on the premises, is that correct?

MR. EDMONDS: That s correct.

MR. NETTLER: And that is what period --

MR. EDMONDS: About an hour during the day.

MR. NETTLER: And what period of the day is that?

MR. EDMONDS: I believe that was the 4:00 to 8:00 or the 4:00 to 5:00.

MR. NETTLER: I have three different answers going on here. If you can tell me what the real one is I d appreciate it.

MR. HITCHCOCK: This is a team effort.

MR. EDMONDS: Yeah, the time where the maximum use that s referred to would be between 7:00 and 8:00.

MR. NETTLER: Okay, so the demonstration that you gave us on the video from 3:00 to 4:00 wasn t reflecting the traffic conditions when the property was going to use at it s most intense period, was it?

MR. EDMONDS: It does represent when it would be most intense, indeed it would in fact lightened up at a later

period.

MR. NETTLER: So that time period that you had on the video was the 7:00 to 8:00 time period?

MR. EDMONDS: No, that was from, that was just at about 4:00 o clock, from 3:30 to 4:00 o clock.

MR. NETTLER: From 3:30 to 4:00 o clock on what day?

MR. EDMONDS: Um, Thursday.

MR. NETTLER: Thursday, and what was the date? Do you remember what date it was of the year, of the month?

MR. EDMONDS: I don t remember the date.

MS. EDMONDS: It was obviously after that snow. Can t I answer?

MR. NETTLER: No, you can t answer.

MR. EDMONDS: Okay, it was obviously after that snow.

(Laughter.)

MR. NETTLER: The snow that was in December, that snow that was in February?

MR. EDMONDS: No, it was actually, we purchased it --

MS. EDMONDS: --

MR. NETTLER: Excuse me, Mr. Edmonds, please answer the questions.

MR. EDMONDS: I m sorry, I can t remember, it s been within the last two weeks.

MR. NETTLER: Within the last two weeks, but you don t know what date?

MR. EDMONDS: I know it was on a Thursday.

MR. NETTLER: It was a Thursday. Do you know if that day was a holiday?

MR. EDMONDS: I know that it wasn t.

MR. NETTLER: But you don t know what date it was.

MR. EDMONDS: I could figure it out with a calendar.

MR. NETTLER: If you could do that at some point I d appreciate it.

MR. EDMONDS: Okay.

MR. NETTLER: The, and your testimony is that then, that time period, that 3:00 to 4:00 on that Thursday reflects the same conditions that would exist at 7:00 to 8:00 when it s, when you would have the 17 students and the 10 faculty members?

MR. EDMONDS: I think it does, yes.

MR. NETTLER: Okay. Do you know why your traffic consultant used a different time period from both, from either the 3:00 to the 4:00 or 7:00 to 8:00 in order to do his traffic count?

MR. EDMONDS: I believe it was just a matter of scheduling, but I believe he also covers that time period at one point in his report.

MR. NETTLER: The 3:00 to 4:00 or the 7:00 to 8:00?

MR. EDMONDS: I believe both.

MR. NETTLER: Both time periods. Okay. But you re

not sure. You think he does.

MR. EDMONDS: I m pretty certain.

MR. NETTLER: Okay. When you provided information to your, I m assuming you provided information to a traffic consultant about the use of the premises, correct?

MR. EDMONDS: Sure.

MR. NETTLER: Okay, and did you give him a break down as to either on half hour, 45 minutes, hour basis, as to the timing of the classes that were to be evaluated in terms of their impact on the traffic?

MR. EDMONDS: Our approach was actually from the other side where in fact he did his study, and we compared it with the impact on the numbers we, we didn t wiggle the figures or change them because of it. We ve in fact had a very rigid schedule throughout, and I m sure Mr. Carter was aware of it.

MR. NETTLER: So, for example in this, the times that you, and I understand that you had staggered the class instruction, correct?

MR. EDMONDS: Well, the staggerings are a natural phenomenon. I mean the lessons are given in 15 minute segment and you break that down to numbers in a 15 minute segment you re probably talking about six students and teachers delay and some teachers are on time, so you even have a staggering effect in that period of time.

MR. NETTLER: Okay, and in order for Mr. Carter to

address the impact that that staggering has on traffic, parking issues, and that neighborhood, was he given a schedule as to how that staggering actually would exist, how that staggering would take place?

MR. EDMONDS: We discussed it, we didn t give him an exact schedule as I told you.

MR. NETTLER: So, do you recall seeing such a schedule in his report?

MR. EDMONDS: No.

MR. NETTLER: Okay. Now you also mentioned that there were going to be a number of recitals, I think your total is about 64 during the year, does that sound familiar?

MR. EDMONDS: --

MR. NETTLER: Mr. Hitchcock just told you it was yes, so --

MR. EDMONDS: No I was doing them with both semesters with the 64, yes, that s correct.

MR. NETTLER: Both semesters, so that s 64 in what, in --

MR. EDMONDS: In a year.

MR. NETTLER: In a year. Is that a 12 month period or is that a nine month period or what?

MR. EDMONDS: It would run in cycles, but it s a 12 month period.

MR. NETTLER: 12 month. And is that what, more than

one recital --

MR. EDMONDS: Oh, I m sorry, I answered that incorrectly. No, I meant that it would be for a 12 month period, but it would be primarily a Spring season and a Fall season.

MR. NETTLER: And so how many in the Spring season, how many in the Fall season?

MR. EDMONDS: About half for each.

MR. NETTLER: So it s about 30 something over a three month period?

MR. EDMONDS: I think it s 32 for a five month period.

MR. NETTLER: So that s approximately one and a quarter a week, is that correct?

MR. EDMONDS: I believe it s more than that, it would be two per week.

MR. NETTLER: More than that? Two recitals per week. And those two recitals per week would be bringing about 45 to 90 people twice a week to the premises?

MR. EDMONDS: Generally it would be 45 at the small recital and perhaps up to 80 or 90 for the outside.

MR. NETTLER: Okay, and where are they parking? In that nine spaces that you have?

MR. EDMONDS: No, in the, our traffic expert s going to comment on that at one point during that time we in fact found some 35 spaces available that as you may have seen from my

explanation we ve in fact contracted space with a local hotel which we feel will be adequate for those.

MR. NETTLER: And are you getting a special exception for that parking also?

MR. EDMONDS: No, we meet the requirements with the spaces which we have.

MR. NETTLER: Well let me try and understand that. You have nine spaces and then --

MR. EDMONDS:

MR. NETTLER: You have seven spaces?

MR. EDMONDS: No, nine.

MR. NETTLER: Nine. Nine spaces, and those nine spaces, and I have been to the premises, so I do recall where those nine spaces are located. At least one of those spaces is in the area that you described as the, as the ingress and egress area, I guess as I ve described it, as ingress and egress, isn t that correct?

MR. EDMONDS: That s correct.

MR. NETTLER: So how do the, and the other eight spaces are parked, the other eight cars would be parked one behind each other, correct?

MR. EDMONDS: That s correct.

MR. NETTLER: Okay, and so where under the, whether it s a Zoning Regulation, or the Boca Code is the access into those spaces and out into that parking area, and out of that

parking area that s required?

MR. EDMONDS: We re not planning to provide spaces for the general public. And when people have to exit from the property indeed cars would have to be pulled out.

MR. NETTLER: But, so how does that comply with the regulations? The regulations require a certain width of access in and out of a parking lot.

MR. EDMONDS: I don t think the regulations apply for performances. The regulations which we re using in fact apply to teaching and teaching facilities.

MR. NETTLER: All right, so let s talk about the nine cars. Where s the access in and out of that parking lot according to the regulations?

MR. EDMONDS: For the teachers?

MR. NETTLER: For the teachers, the nine cars that are being parked there?

MR. EDMONDS: I m not sure I understand your question, but we do have --

MR. NETTLER: There s supposed to be an access lane, where is it?

MR. EDMONDS: There doesn t have to be an access lane. Why does there have to be an access lane?

MR. NETTLER: Well what if the individual that parks first in this parking lot has to get out while the other people are still parked there, how does that?

MR. EDMONDS: As indicated we in fact have, plan to have an attendant on full time, in fact, as pointed out in the video, two of these spaces were moved, pulled out into the driveway, you could access, you could exit from virtually any of the other spaces.

MR. NETTLER: And is there a fire land in there also?

MR. EDMONDS: There is not.

MR. NETTLER: There is not. So how does the fire engine get in there if there s some emergency?

MR. EDMONDS: I don t know that one is required there.

MR. NETTLER: Okay, but you re not sure.

MR. EDMONDS: I m certain that my lawyer would have told me if it was required.

MR. NETTLER: Okay.

MR. EDMONDS: Is there one required, sir?

MR. HITCHCOCK: --

MR. NETTLER: Are you asking your lawyer or are you asking me?

MR. EDMONDS: No, I m asking you.

MR. NETTLER: Well I m not your lawyer.

MR. EDMONDS: Okay, well we re not certain. As far as we know there s not one required.

VICE CHAIR SOCKWELL: Mr. Nettler?

MR. NETTLER: Yes.

VICE CHAIR SOCKWELL: May I interrupt just briefly. You do claim to be very knowledgeable about the Ordinances, don t you?

MR. NETTLER: Yes, I do.

VICE CHAIR SOCKWELL: That s good. Because you mentioned the Boca Code again, which has no relevance to parking.

MR. NETTLER: No, I was only doing it because he had mentioned it --

VICE CHAIR SOCKWELL: All right, well lets go with historic structures. Historic structures qualify for a waiver of parking and loading requirements, do they not? Are you aware of that, sir?

MR. NETTLER: Are you asking me if I m --

VICE CHAIR SOCKWELL: I m asking you if you re aware of that.

MR. NETTLER: I m certainly aware of that.

VICE CHAIR SOCKWELL: Good, okay.

MR. NETTLER: That s not what the Applicant is presenting in his application --

VICE CHAIR SOCKWELL: I understand that. But you are aware of that. I just asked the question.

MR. NETTLER: I m certainly aware of that.

VICE CHAIR SOCKWELL: The second question is that you understand Chapter 20's non-conforming uses requirements and

the definitions therein? And Section 199 as well.

MR. NETTLER: Well I m not sure that Chapter 22's non-conforming uses --

VICE CHAIR SOCKWELL: Chapter 20, not 22.

MR. NETTLER: Chapter 20 non-conforming uses is what s applicable here.

VICE CHAIR SOCKWELL: It has sections on non-conforming structures and non-conforming uses of land, et cetera, and the grand-fathering of certain things based on historical presence and the fact that no new structures might be built.

MR. NETTLER: And I m also aware that the Smithsonian is a Federal, as a Federal entity is not required to comply with those regulations --

VICE CHAIR SOCKWELL: That wasn t the question that I asked. That wasn t my question.

MR. NETTLER: I m certainly aware what Chapter 29 says.

VICE CHAIR SOCKWELL: 20. 20. Chapter 20, sir.

MR. NETTLER: I m certainly aware what Chapter 20 says, 22, or 29.

VICE CHAIR SOCKWELL: Okay, no further questions. I just want to make sure that you understand which references you re making because you are asserting that the Applicant doesn t understand those things and yet you re making some of the same mistakes.

MR. NETTLER: No, I m not, no, the Applicant has made a representation that he understands the Regulations. I m asking him questions related to what his understanding is. I haven t made a reference to any particular Regulation, whether it s Chapter 20, 22 or 29.

I haven t made any representations with regard to Section 214, whether it s Section --

VICE CHAIR SOCKWELL: Well Mr. Nettler, I understand what you re saying, but, I m just asking you to be as knowledgeable of the Regulations that you are questioning your opponent on as he is supposed to be knowledgeable of those same Regulations.

Therefore, it qualifies your questions.

MR. NETTLER: Well Mr. Edmonds had made representations regarding the impact of his use of this parking area on the neighborhood and, which is one of the issues that must be addressed in terms of granting a special exception.

I m asking him questions regarding the use of that parking lot, and then whether he has any knowledge about regulations that may or may not apply to his use of that parking lot.

He s certainly free to testify as to whether he does or does not have that knowledge, and we re certainly free to present testimony as to whether this complies with that or how it impacts it.

I haven t seen any representation, and I don t believe there s been any application for a waiver from the regulations that apply to parking for a historic structure, which of course there, one could have been sought.

That would obviously have an impact on what would be the traffic and parking impacts in this neighborhood. But that s an issue that I m trying to test him on and that s where I ve been going.

VICE CHAIR SOCKWELL: Please continue.

MR. HITCHCOCK: If I could just deal with one thing. Mr. Nettler is an expert -- testify, he is not here as an expert on Zoning issues and legal questions of Zoning. And to the extent the questions are dealing with questions of law.

They may be more appropriately addressed in another forum, so I m going to object to questions that strictly ask for legal interpretations. And he said he s not an expert. He knows what he knows in connection with the case.

So I think he would testify this is the first Zoning case he s ever been involved in. So giving him questions, cross examination about intricacies with this witness are not best.

Mr. Oberlander is an expert on planning and land use and zoning issues and could address those as well.

MR. NETTLER: I have no problem with that. I would therefore move to strike those portions of his testimony which he

specifically stated, and I quote, that the regulations require a need for seven spaces under the Zoning Regulations. To the extent he s making a representation to that and he doesn t have the capacities for doing that, then that should be understood in that context.

MR. EDMONDS: Yeah, I apologize if I miss spoke, however, you know, one of the things that must be realized here is that we know about the historical exception. Regarding the parking and the information that we ve given, we ve provided, because certainly it would be interesting to the Council.

But in fact I know what I feel we have to know as far as the historical designation is concerned. Sorry, if I interrupted you.

CHAIRPERSON REID: -- requesting that, can someone, oh, can you turn your mike off down here, we had some feedback. Okay so you re requesting that that part be stricken from the record in regard to his assertion about the parking spaces that are --

MR. NETTLER: Complying with the regulations.

CHAIRPERSON REID: -- complying with the regulations, and I think that in order to be consistent here, that if he s not going to testify as to being an expert or knowledgeable on regulations that he not proffer any regulation related assertions, and let that be done by the traffic expert, instead, and then that can be questioned by Mr. Nettler. Is that

all right?

MR. NETTLER: Thank you Madam.

CHAIRPERSON REID: All right, thank you.

MR. NETTLER: All right, let me go back then to the recitals, the, both the ones bringing in the 45 people and those brining in 80 to 90 people. Now I understand from your testimony that, and I know that your position is that they re not required to have a parking space for each of those.

But aside from the ten or so spaces at the hotel that s been offered and the spaces that I think you ve stated are already going to be taken up at the premises, where, where do you see those people leaving their cars who are coming to those recitals?

Or where do you see the majority of the people, are you, or do you have any plan for dealing with the majority of those people who are coming to the premises and may be using cars?

MR. EDMONDS: That s about four questions, but --

MR. NETTLER: Sorry about that.

MR. EDMONDS: -- I don t believe, we don t believe that there s a problem. And as indicated earlier, we ve in fact had a reception with more than 150 people there, at that appropriate time, to also check, in fact we ve had no problem.

We believe that the community can absorb that number. Oh, I mentioned that.

MR. NETTLER: Just a very few, that would be two or three.

CHAIRPERSON REID: I d like to try to move this along. Give the other party an opportunity to ask their questions so we can kind of keep some reasonable time frame here with this case, thank you.

MR. NETTLER: You said that the curb lane in front of the Studio House was going to be used for the drop off for individuals coming, both students or individuals coming for recitals.

How often is that curb lane used for parking?

MR. EDMONDS: Do you mean how long will we, how often will we be using it, or?

MR. NETTLER: No, how often do, you ve been there, you ve had the property for I guess now a few, four or five months or six months. How often is that curb lane used for parking by others?

MR. EDMONDS: Well it s regularly used by others.

MR. NETTLER: Okay. Is it used for parking primarily on the weekends, and at night?

MR. EDMONDS: It s generally free on weekends, and many times at night. There are four spaces out in front of the buildings there.

MR. NETTLER: And those four spaces are used by who, do you know?

MR. EDMONDS: My neighbors use them occasionally, and during the work day I notice that there are Embassy employees that use those.

MR. NETTLER: Okay, now you have experience with a school in Virginia, correct?

MR. EDMONDS: Correct.

MR. NETTLER: Okay, and about how many recitals a year do you have at that school?

MR. EDMONDS: Well one of the objectives here is to provide a place for recitals, and that s one of the problems inherent in the school out there. We don t have enough to currently, in fact in the 13 years we ve seen that the, is that, I don t know whether you were listening or not, but the number of spaces have dried up.

We have this, this is a definite problem. We re unable to get the community rooms, the churches, the libraries, to afford the space. So, I m sorry to elaborate, but the question was answered.

The fact is that in fact not enough. We don t have enough spaces. Perhaps, a dozen a year.

MR. NETTLER: You have about a dozen a year. And about how many people were coming to those recitals?

MR. EDMONDS: Generally, about two per child. If a teacher has about, if a teacher has 15 in her domain, she would have those 15 at a recital. About four minutes to a performance

session, taking up about an hour.

MR. NETTLER: So that s about 40 to 45 people?

MR. EDMONDS: About 45 people, yes, sir.

MR. NETTLER: Okay, and that s about 12 times a year?

MR. EDMONDS: Correct.

MR. NETTLER: Okay. And that s also over a five month period, that same type of five month period?

MR. EDMONDS: Um, yes.

MR. NETTLER: Okay, and then what type of parking was provided for those individuals, or was there?

MR. EDMONDS: I hope you didn t misunderstand me. Those places were away from our school, away from our operation. So it would very often depend on that facility whether it was a church or a library, what have you. So I can t really --

MR. NETTLER: Okay. Why didn t you have them at your school?

MR. EDMONDS: We didn t have the space.

MR. NETTLER: Didn t have the space. Okay. Parking space or just space period.

MR. EDMONDS: Oh, we had parking, but we did not have stages or performance space.

MR. NETTLER: You had made reference to the Levine School. Are you familiar with the operations of the Levine School?

MR. EDMONDS: Yes, I am.

MR. NETTLER: Do you know how many recitals they have a year?

MR. EDMONDS: I have it in my records, I m not sure how readily available it is, it s not many.

CHAIRPERSON REID: Mr. Nettler? Mr. Nettler, I don t think that that question has any relevance to the testimony that was given here today.

MR. NETTLER: Okay, I have no other questions.

CHAIRPERSON REID: Thank you. All right.

MR. HITCHCOCK: I have several on redirect.

MR. NETTLER: Is there other witnesses, other parties to provide an opportunity to cross examine?

MR. HITCHCOCK: Oh, I m sorry.

CHAIRPERSON REID: How many people are going to -- Okay. --

MR. TURNER: I am Richard Turner, I m the next door neighbor. We ve had some informal conversations with the Edmonds, and I just wanted to clarify one thing about the curb spaces out in front of our houses, cause I wasn t quite sure in looking at the video.

In some cases it looked like you were using the parking spaces that were right against the curb parking spaces for the drop off. And in others the, other cases it shows that you were dropping off out in the lane of, in the lane of traffic.

And I wasn t sure whether you intended to use, were you going to go back and try to get the parking spaces removed from the curb lane and have them designated as the drop off zone? Or were you going to use the ones out in the circle as the drop off zone?

My personal concern is that we park in those parking spaces and I don t want to lose them.

CHAIRPERSON REID: Pose your question, pose your question -- pose whatever you say in the form of a question. You cannot testify at this time. You will be given an opportunity to testify, but you cannot testify, you just have to, at this point, direct questions to the witness.

MR. TURNER: My question is do you intend to use the curb lanes where the parking spots are now, as your drop off zone, or do you intend to use the ones out in the circle?

MR. EDMONDS: The video clearly showed in my estimation that you could use either. In fact there were two different situations -- and it was brought about by traffic which had used the space and then pulled out.

In one instance we were able to drop off on a double parked basis, where the student got out and proceeded to the courtyard in front of the School. And in another instance we pulled right into that curb parking space there.

Does that answer your question?

MR. TURNER: Well I guess my question is, which lane

are you intending to use for the drop off, the parking spaces or the lane out in the traffic?

MR. EDMONDS: I thought I answered that. We felt that we could use both. But indeed there s been no effort to block those spaces for our school.

MR. TURNER: All right, I guess I ll address my other concerns on that later on.

CHAIRPERSON REID: Okay. Thank you. There is no redirect in these proceedings sir. But you will have an opportunity at the end for closing remarks at that time. You can rebut, if you d like. Okay.

MR. HITCHCOCK: Thank you Madam Chair.

CHAIRPERSON REID: Okay, next witness? Please.

MR. OBERLANDER: Madam Chair and Members of the Board. My name is George Oberlander, I m a urban planning expert. You have a copy of my statement before you and I m just going to try to highlight my statement because of the duration of time and to --

CHAIRPERSON REID: Okay, but, Mr. Oberlander, you, did you request that he be accepted as the expert witness?

MR. HITCHCOCK: We did Madam Chair, should I qualify him?

CHAIRPERSON REID: Please. We don t have, do you have a resume?

MR. HITCHCOCK: His resume appears as Exhibit 18, if

he could give a one minute summary perhaps?

CHAIRPERSON REID: All right. And have you appeared before us before as an expert witness?

MR: OBERLANDER: I have appeared before this Board, not this Membership, as a representative of the National Capital Planning Commission for the last 31 years.

CHAIRPERSON REID: Okay. All right.

MR: OBERLANDER: In fact I have supervised Mr. Moulden and I have supervised Sherri Pruitt as Staff Members.

CHAIRPERSON REID: Okay, why don t you allow to us that you have appeared before the Board as an expert witness, and typically that s --

MR: OBERLANDER: And I ve been before the Zoning Commission more times than before the Board of Zoning Adjustment.

CHAIRPERSON REID: I think you ve demonstrated that you certainly would be more than qualified as such. I have no problem with accepting you as an expert witness.

MR: OBERLANDER: I appreciate that, thank you.

CHAIRPERSON REID: Unless any of the Board Members, --

VICE CHAIR SOCKWELL: Some of us have appeared before Mr. Oberlander.

MR: OBERLANDER: That s right.

(Laughter.)

MR. NETTLER: No I have no objection, but I would

like a copy of the --

CHAIRPERSON REID: Resume? The statement.

MR. NETTLER: the statement that was handed out.

CHAIRPERSON REID: All right you can receive a copy. Do we have extra copies? Okay.

MR: OBERLANDER: Yes.

CHAIRPERSON REID: All right.

MR. NETTLER: Thank you.

CHAIRPERSON REID: Go ahead.

MR: OBERLANDER: As I have already indicated I was with the Planning Commission for 31 years as the Associative Executive Director for District Affairs. Historic preservation was one of my responsibilities besides the overall planning of the City before home rule and after home rule, the federal interests that the Planning Commission has in planning matters of the District Government.

So I m here today to address the land use and historic preservation issues of this application. As you know the Barney House is a District of Columbia and National Register Historic Landmark.

In fact this has been pointed out by Mr. Edmonds, the two interior floors, the first and second floors are also designated as historic on the D.C. Inventory of Historic Places.

I want to emphasize that there are only six buildings in the City out of 29,500 that have their interiors

designated as well as the exteriors. And this makes this building extremely special.

This means that the structure, a 20th Century revival architectural style, cannot be altered on the outside, as well as virtually no structural changes would be allowed on only the two designated interior floors.

The partitions in the basement would be allowed under the Building Code of the District of Columbia, and using the Building Code of the District of Columbia uses the Boca Code, that s why that was referenced.

But in any event, those two floors that are the Historic District s designation can not be altered and the basic point I want to make back to residential use. In fact the building has never been exclusively a residential building.

It has always from the very beginning been a arts and crafts and studio building on the two floors that the video showed and the upper floors as residential.

There s insufficient time at this hearing to describe all of the history of this very special historic landmark. You ll find in the application Exhibit 6, the approved 1995 National Register Form which nominated the property to the National Register, if you have any particular interest in reading that thick document.

I will only highlight the National Register criteria that the property meets and it s areas of special

significance. These are the properties associated with events that have made significant contribution to the Broad patterns of our history.

The property is associated with the lives of persons significant to our past, and the property embodies a distinctive characteristics of a period where the method of construction represents the work of materials or possess high artistic values, or represents a significant distinguishable entity whose components lack individual distinction.

The areas of significance include the social history, architecture, art and performing arts. Now with respect to the land use of this property, the property has been used for more than residential use ever since it was built.

The use of the building is documented in the Massachusetts Avenue Architecture, a book that the Fine Arts Commission has published back in 1971. I have Volume 1 here, the application contains the portions dealing with the Barney House which start on Page 378 and goes on to Page 387.

There are pictures of all of the floors as they were originally furnished and constructed. And that is Exhibit 11 of the application. The Commission of Fine Arts noted that the building, which includes studio and stage facilities was designed as a private cultural center for artistic pursuits and informal entertaining.

When Mrs. Barney moved out of the house, the

property continued to be used for residential purposes and as a Peruvian Embassy from 1925 to 1926, the Columbian Legation, another foreign government entity in 1936 to 1938, the National Capital Film Laboratories Incorporated from 1939 to 1940, and the American Association of Museums from 1962 to 1970.

The Smithsonian Institution acquired the building in 1960 and continued to use it as a museum. It contained the traveling exhibition services of the Smithsonian. It has offices, studios, entertainment and reception space, and the residences for visiting dignitaries and Smithsonian scholars.

The Studio House was open to the public from 1979 until 1991. Since the property became vacant in 1994, a group called the Friends of Alice Pike Barney Studio House proposed to create a public/private partnership to raise funds necessary to re-open the Studio House to the public, and that is Exhibit 12 of the application.

The Friends concluded in their proposal at that time in 1994 that at this point in the life, Studio House has a limited range of viable uses. And that it is uniquely suited to the institution, meaning Smithsonian Institution, proposed plan for exhibition, performance, space and low-level office, and/or residential use.

The organization feels that because of the limited square footage and unique room arrangement, and I emphasize, the building no longer lends itself to full scale residential

occupancy, and the commercial use of the house is not practical.

As you ve seen in the video the building gives the outside appearance of a residential building, however, they cannot establish residential accommodations within the historic interior designated floors where performance and studio space exists.

In fact the original design of the building created this difficulty by placing two floors of performance space in the middle of the structure. The property has not been residential only for most of its life.

I provide you this background to indicate that the property has been used as a mixed-use, quote, since it is constructed, since its construction, even though the Zoning for this area was R3 from 1958 to 1984, when the Massachusetts Avenue Sheridan Circle Area was re-zoned to D-R-3. This mixed-use zoning category was created to allow chanceries to locate in such designated area as a matter of right by a specially composed BZA Board of review and possible disapproval.

I m sure you re familiar with all of that process. This arrangement developed as a result of the Foreign Missions Act of 1982. As you know Section 206 of that Act provides a chancery shall be permitted to locate and I quote, in any other area determined on the basis of existing uses, which include office and institutional uses, including but not limited to any area zoned mixed-use, diplomatic or special purpose.

Now, I made a existing land use survey, and, to

summarize that I m sure you re all familiar, if you ve been to the area recently or if you ve been to the area 20 years ago, it was that way 20 years ago, a good number of chancery is mixed in with residential properties.

My summary of the numbers by Square Nos. and the squares in question are Square 2507, 2506, 2517, 2516 and 2511, which I consider the proximity to the subject property.

In square 2507 there are, which is the subject square, the south side of Massachusetts Avenue, there are 28 buildings and 15 appear in the residential use. I didn t make surveys on the inside, but I looked at it from the outside, and 12 are in chancery or diplomatic use, and the subject history property that make up the 28 in that square.

In Square 2506, 2517, 2516, and 2511, there are 13 chancery or diplomatic uses and three residential uses facing Massachusetts Avenue, and Sheridan Circle on the north side.

There are more chanceries within the interior parts of the blocks, but I did not survey those became they are not directly facing out on to Massachusetts Avenue or the Circle.

From this existing land use survey it is clear that the area examined, the immediate vicinity of the subject property is predominantly used for the mixed use chancery diplomatic use. The survey area contained a total of 25 chanceries and 18 residential uses.

I m very much familiar professionally with this

area due to the fact that I supervised the Planning Commission Staff and worked with the District Office of Planning in the re-zoning of this Area back in the 1980's.

The subject area has the characteristics of a residential area, which is preserved by the historic district designations on both sides of Massachusetts Avenue. The Area was and is now however an existing mixed-use area, as defined and specified for chancery use in the Foreign Missions Act.

That is why the D diplomatic overlay as it was called or the D re-zoning was added to the R-3 classification. In conclusion this summary has highlighted the historic nature of the property and the area.

It has identified the use of the property from its original construction as a residence and a Center for the Performing Arts, art exhibits and musical performances. The predominant existing land use in the area are mixed uses, and mainly foreign government chancery offices and diplomatic uses.

Not to allow the current owner to re-establish, and I emphasize this is the re-establishing, it s not new establishing, it s the re-establishing of the Performing Arts Center in the form of a music and art studio, would be contrary to the historic preservation of this special structure.

In fact the proposal increases the square feet of residential space over that used by the Smithsonian Institution for many years. Two interior floors which are also historically

designated may not be altered into smaller residential spaces, allowing these floors to continue to be used as studio space is directly in keeping with the District of Columbia Historic Landmark and Historic Preservation Act of 1978, which this Board is sworn to uphold.

The Act has a matter of public policy, and that is the preprocuration (phonetic) of properties of historical and cultural and aesthetic merit. That s a quote from the Act. The Barney Studio House is one of those properties.

Requiring the, requiring the owner to use these two floors for residential use would be contrary to the intent of this Act. I would like to add in terms of the research that I did in this case, before I get questioned by Mr. Nettler later.

There is a map that I d like to offer to you which is the assessor s map which shows the two lots, Lots 5 and Lot 4 in Square 570, whatever, the, 5707, 50, 2507, excuse me, as combined.

And that should clear up the question of whether the garage, which is also going to be used for studio purposes and accessory building or principal building, the obviously the garage was originally constructed as an accessory use to the Barney House itself, and it was placed in 1902 on a separate lot.

But the tax assessor s record show it as combined, and I offer that as an exhibit if you d like to have that. I also will offer as an exhibit, a reference to I made to all of the lots

and, in those Squares 2506, 2507, 2516, and 2517.

With that I d be pleased to answer any questions the Board may have.

VICE CHAIR SOCKWELL: Mr. Oberlander, generally just to clarify combined lots. A & T lots which are Assessment and Taxation lots are lots created for the purpose of combining tax bills into a single easily workable payment for the owner of lots that are in single ownership, the same ownership.

The existence of an A & T lot, which would generally be an 800 lot number assigned for assessment and taxation purposes, would have no bearing on the existence of individual lots from the standpoint of recorded deeds that would be still underlying to separate Lots 4 and 5 yet they might be a Lot 804 for tax purposes. That s just a clarification, sir.

MR: OBERLANDER: Well, and if I could further clarify, the practice of the District of Columbia has been over this 31 years that I was with the Planning Commission, is never to assemble lots together unless the owner was redeveloping the site and then the owner would come in for a lot of record.

There was no re-subdivisions because the only agency in the City that has subdivision authority is the Planning Commission.

VICE CHAIR SOCKWELL: Well, I m not sure that I understand exactly what you mean by that. The subdivision of land for the purpose of development, is a requirement under the

building regulations, and that subdivision of land would be required under most circumstances except those in which the lot is encumbered by a highway plan overlay where then the lot cannot be subdivided under the laws of the District.

But what I am saying is that that subdivision would be required only if new construction were initiated on the property, not for the renovation of existing buildings dated prior to --

MR: OBERLANDER: That s exactly right, but what I was referring to is that when land is assembled and lots lines are eliminated per se, it s usually done through a record lot rather than a re-subdivision.

And the re-subdividing authority is only with the Planning Commission and there has never been such while I was there with the Commission.

VICE CHAIR SOCKWELL: Well I guess it s a matter of terms. And the only thing I m saying is that the term for creating a single lot of record out of multiple lots is subdivision. And that s --

MR: OBERLANDER: Not --

VICE CHAIR SOCKWELL: And that s per the Office of the Surveyor, which, in which such subdivisions would be recorded. And I ve participated in many of them. So I m only telling you what is on the forms, and I can even present them to you if you have any --

MR: OBERLANDER: I appreciate that very much, but the, there is a subdivision regulation which the District has and that is enforceable through the Planning Commission. And it has never been utilized, but the, the way around re-subdividing has been through the recording of a single lot.

MEMBER RENSHAW: Madam Chair, if I may just break in for a moment. I have to go, I have a previously scheduled appointment. But I just want to indicate that I will be voting on this case. I will be reading the record, and I m going to hate to miss all of the testimony but I will catch up with the printed words. Thank you.

(Pause.)

MR. MOULDEN: For the record I d also like to indicate that Rodney Moulden will be leaving for, to attend another Board Meeting and I will read the records in order to make a vote.

(Pause.)

COMMISSIONER HOOD: Madam Chair, can we kind of get a feel for about how much longer, I know we have a number of people who ve been waiting to testify, but if we can get a feel we know where we all are, and then we can kind of give a guestimate about how much time we should be.

CHAIRPERSON REID: Yes. We were, that s correct. We were, 6:00 o clock is usually the time that we take an assessment. I was asking you first before I did that were you all

right for time, time wise?

COMMISSIONER HOOD: I was just trying to get a guestimate to see how long --

CHAIRPERSON REID: Oh, before you could answer first, okay.

CHAIRPERSON REID: Yeah, before I.

CHAIRPERSON REID: Mr. Nettler, do you have cross examination questions for?

MR. NETTLER: I did but I thought this was a good --

CHAIRPERSON REID: I agree, but nonetheless, can you answer my question? Do you have questions for him?

MR. NETTLER: Yes, I do.

CHAIRPERSON REID: And do you have questions for him as well? All right, and we have how many more witnesses Mr. Hitchcock? The, Mr. Carter?

MR. HITCHCOCK: Dr. Carter is our last witness.

CHAIRPERSON REID: Dr. Carter.

MR. HITCHCOCK: And we have 12 minutes remaining.

CHAIRPERSON REID: Okay. All right. And then how many persons in support are testifying?

MS. PRUITT: One.

CHAIRPERSON REID: One person, two?

MR. HITCHCOCK: Dr. Carter is with us. Mr. Graves is the person. I don t believe there are any parties in support. Mr. Graves would be --

CHAIRPERSON REID: Not parties --

MR. HITCHCOCK: -- a person in support.

CHAIRPERSON REID: One person in support? Okay. All right, and then we have what was it eight people in opposition. But you re not going to be testifying individually, correct? You will be. No, no.

MS. PRUITT: You have three parties who are in opposition and then you have individuals who are in opposition. Could the individuals who are not represented in the parties please identify by raising their hands?

CHAIRPERSON REID: Two others.

VICE CHAIR SOCKWELL: You have the ANC Member as well --

MS. PRUITT: Of course, ANC is also another person.

CHAIRPERSON REID: And did you allocate, was the time allocated as to how much time? Could you let Staff know?

MR. NETTLER: Yes, I did.

MS. PRUITT: Yes.

CHAIRPERSON REID: Oh, okay. Cause I don t, I wasn t made aware of it. Okay. So, then, with the cross examination of the, Mr. Hitchcock, do you anticipate a great deal of cross examination for the people, persons in opposition or the parties in opposition?

MR. HITCHCOCK: I do have questions on the basis of the written statements, yes.

CHAIRPERSON REID: Okay. All right. Then, it s hard to gauge the time, because the Applicant still has 12 minutes and then the opposition has an hour, and that does include cross examination time, so I would, my best guess would be that we d be here for at least another hour and a half, between 7:30 and 8:00 o clock.

MS. PRUITT: You also still have --

COMMISSIONER HOOD: You and I are on the same wavelength. I was looking at about an hour and a half, and then I ll be fine.

CHAIRPERSON REID: Is that fine? Is that right with you Mr. Sockwell? How are you?

VICE CHAIR SOCKWELL: Fine.

CHAIRPERSON REID: Okay. All right then what we ll do is we will have cross examination to Mr. Oberlander and then we ll break, we ll take a ten minute break and then we ll finish the rest of the case tonight.

MR. HITCHCOCK: I did have one question for Mr. Oberlander apropos of the previous exchange with Mr. Edmonds to ask him if he could refer to Exhibit 1 which shows the uses on both lots and ask if he has a comment on that. I think we got the building with Studio House extends on the both lots and that the use therefore would be on both lots, to which the parking would be accessory.

MR: OBERLANDER: The drawing that I m referring to

is I believe Exhibit 1 in the original application. If you note the stairwell at the back of the building comes across the lot line between Lot 5 and Lot 4, so technically speaking the building footprint including its stairways and the stairwells and, go over two lots.

And the, the wall along the west side of the lot, which is 36.1 feet long, is right on the property line. So the point of Mr. Nettler, I believe is trying to make is an extremely technical point and the usage of this property has been in, for, ever since 1902 is really one lot.

It s been recorded as two, but it is really in effect a one lot operation with a principal building and an accessory garage.

VICE CHAIR SOCKWELL: And I assume that the property has always been transferred as a single piece of activity for such transference --

MR: OBERLANDER: I can t testify to that, I have not searched the exact language of the transfers in each case.

VICE CHAIR SOCKWELL: Uh-huh. Well --

MR: OBERLANDER: Since the surveys show five and Lot 5 and Lot 4, in all likelihood you know, it was --

VICE CHAIR SOCKWELL: Uh-huh.

MR: OBERLANDER: When I bought my piece of property in Bethesda, there was a sliver of land that was another lot and on that plot of land there are two lots, but you know, those are,

as I said it s a very highly technical point that Mr. Nettler was raising.

VICE CHAIR SOCKWELL: Yes it was.

MR. HITCHCOCK: May I inquire of Mr. Oberlander on that, which may clarify Mr. Sockwell s question? I mean Mr. Oberlander, to your knowledge, the building passed from, including the building and the side area passed from Mrs. Barney to her daughters, is that correct?

MR: OBERLANDER: That is correct, and it is recorded in the Commission of Fine Arts document that Massachusetts Avenue Architecture Volume 1 and it shows since Mrs. Barney lived there who else has lived there as a result of the City and telephone directory list since 1904.

MR. HITCHCOCK: But then the property was transferred by the Barney daughter or daughters to the Smithsonian in 1960. Both lots then.

MR: OBERLANDER: That s correct.

MR. HITCHCOCK: And then from the Smithsonian to the Edmonds s in 1999.

MR: OBERLANDER: That is not shown in this because this was published in 1972.

MR. HITCHCOCK: But that list shows phone numbers indicating who was on the premises and there was not a break in the ownership chain to your knowledge, correct?

MR: OBERLANDER: Exactly, right.

MR. HITCHCOCK: Thank you.

CHAIRPERSON REID: One other housekeeping matter before cross examination. I forgot to ask Ms. Sansone, is that time frame good for you?

MS. SANSONE: Yes, Madam Chair.

CHAIRPERSON REID: Okay, and also the reporter, is that time frame good for you? Okay, you re all right. And, okay. All right.

(Pause.)

MR. TURNER: This is Richard Turner, asking, when you did the survey of the area with regard to what was residential and what was embassy use, did you make a distinction between Embassadorial residences versus chanceries?

MR: OBERLANDER: Well the, the word Embassy means the Embassador s residence, but the chancery users or the foreign governments misuse that term in many instances. There are some Embassadors living in the Area, but the predominant Diplomatic use is really a chancery use.

I did not distinguish by number the number of Embassadors versus the number of chanceries.

MR. TURNER: So you didn t, you didn t note that on the Circle that many of them are Embassadors residents and not Chanceries?

MR: OBERLANDER: Well, I did not --

MR. HITCHCOCK: I m going to object to the form of

the question. Many is sort of assumes a statement in fact. If Mr. Turner wants to identify which ones that s one thing, but there s an assumption in that question.

CHAIRPERSON REID: Okay. I m going to sustain. Mr. -- Okay, sustained. Mr. Turner, can you be more specific in your questioning sir? When you say many, can you ask a more direct question?

MR. TURNER: Well, did you know that the Turkish Embassy which is closest was an Embassador s residence and not a chancery?

MR: OBERLANDER: Yes, I do know that that was recently converted back to a Embassador s residence, yes. But that s one.

MR. TURNER: It s the closest one.

MR: OBERLANDER: Yes.

CHAIRPERSON REID: Thank you. All right, Mr. Nettler?

(Pause.)

MR. NETTLER: You are familiar with the District Zoning Regulations, are you not?

MR: OBERLANDER: Yes.

MR. NETTLER: Okay.

(Laughing.)

Now since --

MR: OBERLANDER: Which version, the 1958 version or

the 1995 or --

E-V-E-N-I-N-G S-E-S-S-I-O-N

(6:00 p.m.)

MR. NETTLER: The ones of the Year 2000 and all their changes and permutations. The --

MR: OBERLANDER: That we know about --

MR. NETTLER: That we know about, that s correct, apropos I guess of earlier today. The, since 1974, are you, is it your testimony, in response to the question that Mr. Sockwell asked, that there haven t been any, that the, any subdivision, and I use 74 as home rule date, that any subdivision that s been applied for with the Office of Surveyor must come before the Planning Commission for approval?

MR: OBERLANDER: According to the statutes that exist on the books, there is a, I ve forgotten what year it was passed, but there is a subdivision regulation for the District of Columbia, which is administered by the National Capital Planning Commission.

And during the time that I was with the Planning Commission, there was only one or two actual re-subdivisions of land or the creation of splitting one lot into more than one, during that time.

MR. NETTLER: If I was to tell you that there s been about maybe 500 to 1000 subdivisions every year since 1974, which apparently all but two have come before you, would that surprise you?

MR: OBERLANDER: Well it s a matter of the definition of what you mean by subdivision.

MR. NETTLER: Either, the, excuse me. Let s deal with that first. The definition of subdivision is what s contained in those subdivision regulations that you just referred to, which is the division or assembly of land into one or more lots of record. Let s use that --

MR: OBERLANDER: If that s the definition it surprises me that there were that many. I know of the practice that has been going on in the City for many years, in terms of the assemblage of land for redevelopment purposes, and doing it through the method of recording the lot without a formal re-subdivision or what I call a re-subdivision of land that is the assemblage of land and re, formally removing the lots, the lot lines from the tax map.

MR. NETTLER: Okay, but you re not aware of the, if you accept my statement that the 500 to 1000 subdivisions that are done, by using that definition, have not come before the --

MR: OBERLANDER: Oh, yeah, they have not, for sure.

MR. NETTLER: Okay. Now, in response to the question, in response to your testimony about the, the A & T lot number, I, is it correct you are aware that a tax lot is not the same as a record lot?

MR: OBERLANDER: Yes.

MR. NETTLER: Okay, now are you familiar with the

zoning, those Zoning Regulations which apply to the use of record lots for parking use, or any other principal uses, or any other uses?

MR: OBERLANDER: Well generally, I can t tell you the number off hand, I d have to look it up.

MR. NETTLER: Okay you sat, you were here today this afternoon, and you heard the application 16522, 16541 of the Burger King in which they were seeking a special exception under Section 214 to continue the use of an existing accessory parking lot in an R-1-B District, correct?

MR: OBERLANDER: That s correct.

MR. NETTLER: All right, and you heard that Burger King owned those two lots, did you not?

MR: OBERLANDER: Yes.

MR. NETTLER: And you heard as well that those two lots were contiguous to each other, correct?

MR: OBERLANDER: Correct, yes.

MR. NETTLER: Okay. Are you saying it s a highly --

MR: OBERLANDER: I ve also used that wash, that car wash place from time to time.

MR. NETTLER: So are you saying that this is a highly technical issue? The fact that you have one record lot in which the building might be located and another record lot in which the accessory parking might be located?

MR: OBERLANDER: No, the, the question that you

posed earlier, as I understood it was dealing with the accessory usage or principal usage of the lot. The, in my definition and in my research on this particular property, the garage that exists there, which was a carriage house, originally, was accessory, not principal to the lot upon which it s facing.

MR. NETTLER: Okay, but we re not here for re-zoning, right?

MR: OBERLANDER: No.

MR. NETTLER: Were not here for a chancery use, correct?

MR: OBERLANDER: Absolutely.

MR. NETTLER: We re not here for a use variance, correct?

MR: OBERLANDER: We re here for --

MR. NETTLER: Wait, wait --

MR: OBERLANDER: We re here for a mixed-use property.

MR. NETTLER: We re not here for a use variance, correct?

MR: OBERLANDER: Right.

MR. NETTLER: We re not here for an area variance, right?

MR: OBERLANDER: Right.

MR. NETTLER: We re here for a special exception.

MR: OBERLANDER: Right.

MR. NETTLER: But you, because, correct me if I m wrong, you are not claiming that this mixed use is grandfathered and therefore you come under the special exception provisions for changes in non-conforming uses, are you?

MR: OBERLANDER: No, the use is not grandfathered, the historic building --

MR. NETTLER: Okay.

MR: OBERLANDER: -- designation is.

MR. NETTLER: All right, now, if a use is not grandfathered for a, for purposes of the, for the non-conforming use provisions, then tell me why Section 214 of the Zoning Regulations does not apply to this situation which says that if you have a lot that is accessory, one which you have accessory parking, for an adjacent lot, that you need a special exception approval to use that for that purpose.

MR. HITCHCOCK: I m going to object to the question which characterizes the regulation in a certain way that doesn t --

MR. NETTLER: Well let s, I ll rephrase it --

MR. HITCHCOCK: Okay.

MR. NETTLER: Are you familiar with Section 214 of the Regulations?

MR: OBERLANDER: Yes.

MR. NETTLER: All right, and what are Section 214 govern?

MR: OBERLANDER: It deals with accessory parking spaces in the R-1 Zone.

MR. NETTLER: And does it govern accessory parking in any other zones, do you know?

MR: OBERLANDER: All it says is that this is in the R-1 District.

MR. NETTLER: Okay, do you know if there is a provision with regard to the R-3 Zones that allows you to have accessory parking on a lot other than your own, on a record lot, other than the record lot of which the principal building is located, without going before the Board of Zoning Adjustment? --

VICE CHAIR SOCKWELL: Gentlemen, may I interrupt briefly? Section 214.1 states specifically accessory passenger automobile parking spaces elsewhere than on the same lot or part of a lot on which the main use is permitted, and I ll stop there, because the steps do project over the lot line.

The steps are part of the building, the building is part of the principal use, the accessory parking is accessory to a principal use on that lot, period. Period.

MR. NETTLER: And, well I m not here --

VICE CHAIR SOCKWELL: Period. And that s, and that s period with regard to what s there now. Okay? So we have, I m just telling you that this is going nowhere. Mr. Nettler and I both understand the Zoning Regulations quite well, and I don t intend to have you guys dance on this issue, because Mr. Nettler

wants to create a point that is not really in existence.

MR. NETTLER: Well it seems to be a point that the Zoning Administrator --

VICE CHAIR SOCKWELL: Everything else that you ve said is fairly true, but you re getting into an area where you re not correct, period.

MR. NETTLER: Well I m simply relying upon what I ve been advised by the Zoning Administrator in similar context and similar cases --

VICE CHAIR SOCKWELL: Which Zoning Administrator?

MR. NETTLER: Both the exist, the present Zoning Administrator and past Zoning Administrator, going from Feahey through the present.

VICE CHAIR SOCKWELL: Do you have that in writing?

MR. NETTLER: I don t have it in writing.

VICE CHAIR SOCKWELL: Can you submit it to us?

MR. NETTLER: No, I don t --

VICE CHAIR SOCKWELL: All right, then --

MR. NETTLER: -- self certification case, and there is an issue here with regard to parking and --

VICE CHAIR SOCKWELL: Then I believe that the circumstance really is that we ve accepted the fact that the existing building projects on to Lot 4.

MR. NETTLER: And you had a testimony from the owner who, his testimony is that the principal use of that other lot is

not a use that is not the residential use, that it s either the parking use or something else. And that, that is for purposes of zoning relevant to whether that lot can be subject to Section 214 or not.

VICE CHAIR SOCKWELL: Historically speaking the building has been in existence since when?

MR. OBERLANDER: 1902.

VICE CHAIR SOCKWELL: The parking lot has been in existence throughout the life of the building as an accessory, as a lot on to which part of the building projects. The garage has been there since I assume close to 1902 or sometime prior to 1958.

It s pre-existing and its use up to and perhaps not necessarily including what is being proposed, is grandfathered under pre-existing, and the lot, and the building, exist contiguously.

And therefore, the Burger King example was not relevant because the Burger King lot is separated by an alley.

MR. NETTLER: The, I beg to differ --

VICE CHAIR SOCKWELL: And there are office buildings downtown, if I might continue, that rest on more than two lots, and they are legal, absolutely and totally legal, and they were built after the 1958 Zoning Ordinance was put into place. And they re on 800 lot numbers, and the underlying lots are still there.

And by the way about subdivisions anyway and the

deed descriptions of all property, the underlying original lots are always referenced. There is never any loss of the underlying lots.

And from that standpoint --

MR. OBERLANDER: Because --

VICE CHAIR SOCKWELL: -- the subdivision has not taken place in the formality --

MR. OBERLANDER: Exactly.

VICE CHAIR SOCKWELL: -- situation that you re discussing, I understand that.

CHAIRPERSON REID: Okay, good luck. Let s do this. We have beat this to death this evening. And I think that Mr. Nettler your intent was to bring out a point which you did --

MR. NETTLER: That s one point.

CHAIRPERSON REID: And I don t think we need to belabor this issue as to whether or not the lot, whether or not the building and the lot are contiguous or whether or not the back set of stairs actually are on both lots, extend over to the second lot, will in effect make this be one lot.

I think that --

MR. NETTLER: That s not the point that I was making, but I will address that issue in our matter and I will go into --

CHAIRPERSON REID: Well, then if it s not then I m not understanding where you re going with this, because my

understanding was that you were trying to establish that the second lot was an accessory lot.

And you posed the question and they answered that, the principal lot in effect had the stairway that went, that extended over to the second lot was in effect meant that it was considered to be the same lot.

And that was my understanding. Are you saying that that was not what you were trying to --

MR. NETTLER: No, I don t see anywhere in the Zoning Regulations where it says that, but I --

CHAIRPERSON REID: Where it says what?

MR. NETTLER: -- understand what Mr. Sockwell s point is --

CHAIRPERSON REID: Where it says what?

MR. NETTLER: -- about the, his reference to Section 214.1, but rather than belabor the issue with Mr. Oberlander, since it seems to be more of an issue between the Board and us, I would rather raise that issue, I will address that aspect of it.

CHAIRPERSON REID: Yeah. I think that we, I think that we, I, understand and Mr. Sockwell and Mr. Hood have gotten the answer, and then it s up to us to be able to use it in the way that we deem to be most appropriate.

MR. NETTLER: I ll move on.

CHAIRPERSON REID: Thank you.

MR. NETTLER: All right. Let s go back to the points about the mixed-use issue that you ve alluded to. Is it your testimony that from a planning prospective, that, is it solely your testimony actually that from a planning perspective a mixed-use of this R-3 property is appropriate?

MR. OBERLANDER: D-R-3.

MR. NETTLER: D-R-3 property.

MR. OBERLANDER: Absolutely. That s what the D-R-3 was in fact established for as I indicated in my testimony of the Foreign Missions Act.

MR. NETTLER: Okay, now the D though was created for chancery uses, correct?

MR. OBERLANDER: That s a diplomatic use which includes chanceries and embassies.

MR. NETTLER: Okay, and this is not going to be used for a chancery or an embassy, right?

MR. OBERLANDER: That s true.

MR. NETTLER: So the D portion of the D-R-3, has nothing to do with this, does it?

MR. OBERLANDER: That s no so because this is, the area in which this property, the, both lots or one lot, is a D-R-3 which is a mixed-use category.

MR. NETTLER: But Mr. Oberlander this isn t a Foreign Mission Board Zoning Adjustment case, is this?

MR. OBERLANDER: No, but it s, the issue here Mr.

Nettler is that it s a mixed-use zone, and this property is re-establishing itself as a mixed-use building.

MR. NETTLER: So this is a mixed-use zone like an SP Zone is, is that what you re saying?

MR. OBERLANDER: In fact some of the SP Zones, yes, were a DSP zones as of 1984.

MR. NETTLER: So why does the Applicant need a special exception to obtain this use that you re saying this zone has been zoned for?

MR. OBERLANDER: No, the, it s not a mixed-use, it s not the special exception for mixed-use, but rather special exception for the indicated exceptions which are the, I ve really forgotten at the moment, roughly --

MR. NETTLER: -- because the underlying zone is a residential zone -- overlay, isn t that correct?

MR. OBERLANDER: -- But the music school portion of the mixed-use requires a special exception from the Board, yes.

MR. NETTLER: Okay. Now, since 1960 the property has been owned by, the two lots have been owned by the Smithsonian, correct?

MR. OBERLANDER: Right, until last year.

MR. NETTLER: All right, and the Smithsonian doesn t, isn t subject to the local zoning --

MR. OBERLANDER: Is not subject to the local zoning, no.

MR. NETTLER: Okay. Did you, in your research on this were you able to uncover between 1958 and 1960, any certificates of occupancy for this property?

MR. OBERLANDER: I did not search for certificates of occupancies, no.

MR. NETTLER: Okay, did you, did you, is that just for that period or for the period before 1958 also?

MR. OBERLANDER: I, as I said, I did not look to see the certificate of occupancies for this property, at all.

MR. NETTLER: Okay, so you re not testifying that there s any particular grandfathered use here.

MR. OBERLANDER: No, but there is a provision in the regulations exempting historic sites from meeting all of the certain regulations, including the Zoning Regulations.

MR. NETTLER: Really? Where is that provision?

MR. OBERLANDER: It s in the, I believe it s in the Zoning Regulations.

MR. NETTLER: There s a Zoning Regulation that says that a historic site is exempt from the Zoning Regulations?

MR. OBERLANDER: No, not from the strict interpretation of the various standards in the Zoning Regulations.

MR. NETTLER: Okay, other than parking what else is it exempt from under that regulation?

MR. OBERLANDER: Well that s the main part of it.

MR. NETTLER: Well, it s the main, it is the only

one?

MR. OBERLANDER: I can t recall at the moment.

MR. NETTLER: I have no other questions.

CHAIRPERSON REID: Thank you. Okay, Mr. Hitchcock, why don t we break at this point before you bring your last witness. It s 6:20 and we ll break until 6:30, okay?

MR. HITCHCOCK: Thank you.

(Whereupon a short recess was held.)

CHAIRPERSON REID: Okay, let s get started.

MR. HITCHCOCK: Yes. Madam Chair, a procedural question at the beginning. May Mr. Oberlander be excused, having completed testimony?

CHAIRPERSON REID: He s, and also he has been cross examined.

MR. HITCHCOCK: Yes.

CHAIRPERSON REID: So I don t think that there is any, unless there is an objection by the opposition. Mr. Nettler?

MR. NETTLER: No.

CHAIRPERSON REID: All right, then I have no problem with it. Board Members? Okay.

MR. HITCHCOCK: Okay.

CHAIRPERSON REID: Then we have no problem with that.

MR. HITCHCOCK: Okay. Our final witness is our transportation expert who has testified a number of times before

this Board previously, Dr. Everett Carter, and I would ask that he be accepted as an expert on the transportation, traffic, and parking issues here.

CHAIRPERSON REID: Okay. Mr., obviously he has appeared before us so many times. We know him very well. I don t think that there would be an objection from any of us. Okay, please proceed.

MR. HITCHCOCK: Okay. And his resume is in the record as Exhibit 18.

CHAIRPERSON REID: Yes.

MR. CARTER: For the record my name is Everett Carter. I reside at 10509 Unity Lane, Potomac, Maryland, 20854. Tonight I m going to try to summarize the material that s in the record and my report. 2306 Mass Avenue is and on Sheridan Circle, in fact the property abuts Sheridan Circle, it s the only access, there s no alley.

Sheridan Circle has only three legs, most of the circles have four, five, or sometimes even six legs. So this circle by definition has fewer points of conflict than most circles.

The circle also controls the traffic to move in a counterclockwise direction. No left turns are there, and therefore it improves the safety. As a matter of fact I did a safety, an accident study of this circle, all the elements of this circle.

There were a total of three accidents per year for 1995, 1996, and 1997. Three of those were injury accidents and six of them were property damage only, primarily sideswipes and rear-ends. So there was, it is a very safe, and it s way below the City average in terms of the accident rates.

The data that we collected or had to look into, we went to the D.C. Department of Public Works, we got a layout of the Sheridan Circle showing that the roadway width from the circle, curb, to the property curb is 40 feet, so if you take, only take three eleven foot lanes that s 33 feet.

So it s a very wide lanes in this circle. We have found some 1984 traffic counts, basically for this circle and I did do an analysis of those, but it s not included in what you have, it s been submitted to you this evening and we found the level of service was somewhat lower or worse than it was when our accounts we did in 1999, December of 99.

We did a traffic study in December of 99, and I still have the Sheridan Circle. We also did a traffic study and on Friday from 7:15 to 8:15 that was the highest hour we actually did it from 7:00 to I think 8:25 when we quit because it was starting to slack off.

And that was done because at the ANC meeting two nights before on the 9th of February they said Friday nights are terrible. So we said well let s go out and look at it and we ll get a traffic study.

What we found I ll get into in a moment. We also looked at transit service. Very good transit service at this location. It s been testified it s less than a half a mile from Dupont Circle, Metro s Train Station.

There are also four Metro Bus Lines, total a 44 of buses and, from 3:00 to 8:00 p.m., about a seven and a half minute headway, which is good, very good service. We looked at off-street parking, and there s nine on the site which meets the Zoning Requirements and it s in my report on Page 8, the details.

I don t have time to go into all of those right here. We also have arranged for ten spaces in the Westin Fairfax Hotel, approximately two blocks away. Home Street we did a preliminary study in mid-December 99.

We found some limited curb spaces that were vacant during mid-day. The study on Friday this 11th of February also included a study of parking, and what we were looking for was how many vacant spaces we had, and in my report Table 2 shows this by tour.

A tour was going around all those streets one time, and I did that about every 20 minutes from about 7:00 to about 8:15 or a little over, and the area I studied was north of the Circle and from 24th Street to 22nd Street primarily.

The other thing I might mention is the parking regulations, Section, Title 8, Section 2406 points out the

restriction of parking, and the difference between an office building that is part of an Embassy and a residence.

And the office buildings, even though some of the signs don t have the day, the times on them, it goes from, typically from 9:00 in the morning on the south side of Sheridan Circle to 6:30, after 6:30 most parking restrictions are, go off City-wide.

The analysis we did we looked at trip generation, assuming the worst case which would be half hour lessons for every student and some students have 45 minute lessons, some have an hour, a one hour lesson.

So this is, that s the worst case. -- we ended up with a total of 18 drop-offs and 18 pickups per hour. So we tested this against the capacity and level of service using the worst case of 18 drop-offs and 18 pick-ups, and we found the level of service existing traffic which was the traffic count we did, December 9th, 1999, we found those to be level of service B or better.

A level of service for traffic existing existing plus the site the levels of service remain unchanged cause we re only adding 36 trips maximum. And these are very acceptable levels of service.

You ll see Table 1 in my report, and these, it gives you the details. The thing that I d like to talk about now is the queuing. The reason I m looking at queuing cause this was

brought up as a problem.

When I was out there the first morning that I met Mr. Edmonds, at the site, I observed traffic for about 30 minutes in the morning, from about 7:45 to 8:15 and I saw no back-ups that morning, none in that half hour period.

When I was out there with the students that were helping me do the counts in the evening, p.m. peak on January the 9th, I m sorry, December 9th, I found very small back-ups when the signal at P Street, I m sorry, the signal at Florida Avenue and 22nd Street stopped Wisconsin Avenue on three or four occasions, one or two vehicles came into the Circle.

Other than that there were no, there was no queuing in the Circle. I shouldn t say none, there was a little queuing westbound, but again it was three or four vehicles typically when they were held up by the signal at 24th and Mass Avenue.

Finally in looking at safety I did look at the accidents that I mentioned. I also, as a professional am aware of the safety situation, and parking is such that there are very few spaces in front of the, in front of or near this site.

There s one space immediately to the left as you re facing the house looking at the house, and that s been addressed. If that is vacant that s the ideal space to use to drop-off and pick-up. If it s not available you can park across the driveway, pardon me, stop across the driveway, not park, and let the student out and immediately pull back into traffic.

Finally, I d like to leave some time for my attorney to ask questions cause I think I ve gone over this pretty fast realizing we had very little time, and as the proposed Studio House will not have any significant impact, the numbers of trips that it generates will have no significant impact on capacity.

On parking I did do the parking analysis, as I said, I mentioned that. What I found was in Table 2, over 30 vehicle spaces were vacant in that place from 24th Street to 22nd Street from California Street to Decatur Street, all those blocks in between.

I found up to 38 I believe in one tour. So there was a fair amount of parking on that Friday night. Now whether that s true of all Friday nights, it s a one night sample. But it certainly leads me to the conclusion that there is some parking available.

And by encouraging people to park at public garages and not bother looking I think you can probably not have a requirement for more than 15 or 20 spaces when you have these events.

And with that I would like to recommend that this application be approved because I have not found from a transportation standpoint any great problems. Thank you very much. I d be happy to answer questions of the Board, but from my attorney first, please.

MR. HITCHCOCK: I have several follow-up questions.

With respect to the parking, Dr. Carter, are you referring to the chart that s the very last exhibit, --

MR. CARTER: Yeah.

MR. HITCHCOCK: -- the last page on Exhibit 14. For clarification this was to replicate available on-street parking during the Friday night recitals. These were valid legal parking spaces these that you found?

MR. CARTER: Yes, they were. Quite a few of neighborhood parking.

MR. HITCHCOCK: Uh-huh. And they were, I, okay.

MR. CARTER: But it s after 7:00 o clock. So you could park there for two hours and then the restriction is off.

MR. HITCHCOCK: Okay. Did you provide a copy of your preliminary report to the Department of Public Works back in January?

MR. CARTER: Yes, I did.

MR. HITCHCOCK: And talk with the staff at the time?

MR. CARTER: I talked to the Staff some time in January, I don t remember the date.

MR. HITCHCOCK: Okay, okay. You saw earlier the videotape Mr. Edmonds narrated showing the eastbound flow of traffic past Studio House at 3:30 to 4:00, did you not?

MR. CARTER: Yes, I did.

MR. HITCHCOCK: And you, your survey of peak hour traffic was between 5:00 and 6:00 also, on a Thursday, was it not?

MR. CARTER: Yes, it was also on a Thursday.

MR. HITCHCOCK: Was the level of eastbound traffic heading towards downtown past Studio House at 5:00 and 6:00 the same, significantly more, significantly less than what you saw on the videotape if you can venture an opinion?

MR. CARTER: Oh, it was somewhat more, but not, it wasn t double, no where near double.

MR. HITCHCOCK: And it would not, and it does not affect your conclusion that the level of service during peak hour was still B or better?

MR. CARTER: That s what we found from our data.

MR. HITCHCOCK: Okay. Have you had occasion in the least year or so to examine traffic conditions at any other circles in Washington D.C.?

MR. CARTER: Yes, I have.

MR. HITCHCOCK: Could you describe what that circle was and what your findings were?

MR. CARTER: Washington Circle, and I found that in the morning peak, 23 Street backed up all the way to I Street. A very serious queuing problem and the level of service -- at the circle.

MR. HITCHCOCK: And you testified on, before the Board in that case to that effect.

MR. CARTER: Yes, I did. That was the George Washington Hospital, replacement hospital.

MR. HITCHCOCK: Okay. One or two other questions. The videotape showed the Jersey Wall I think in front of the Turkish Embassy and just to clarify your understanding that pick-up and drop-off will occur behind, or to the west of the Jersey Wall

MR. CARTER: That s my understanding of the plan.

MR. HITCHCOCK: Right. So there is unimpeded access, or access is not impeded by the Jersey Wall in terms of children getting to, out of cars or into cars?

MR. CARTER: No, it should not be.

MR. HITCHCOCK: Okay. And with respect to the recitals you surveyed the Friday evening situation, did you, do you have an opinion with respect to the likelihood of congestion on a Sunday afternoon?

MR. CARTER: Yes, I do. I ve been to, oh, half a dozen Embassy events, in this vicinity on Sundays and I ve never had a problem finding parking on the street.

MR. HITCHCOCK: Okay, I have no further questions, and will leave it to the Board for questions at this point.

CHAIRPERSON REID: Thank you. Board Members, do you have questions?

COMMISSIONER HOOD: Madam Chair, I just have a situation I m trying to, I would want to put in front of either Mr. Carter or Mr. Hitchcock, you can direct it to whoever. My, one of my concerns, if all the parking space on site, I believe we

said there are eight plus the other piece there, I think it s a total of nine, am I correct? Okay.

Is it first then, for example, if the first person gets in all, fills the capacity and the first person wants to come out, is there any room for them to maneuver, some room to maneuver to get out or does everybody have to move to get the first car out?

MR. EDMONDS: I tried to show in the video that in fact there would be ability to leave if two cars were moved. There would have, but to answer your question directly two cars would have to be moved out in order to allow anybody to get out.

And we feel that that s very --

COMMISSIONER HOOD: Okay, so if I m the first car in, and I m trying to capture, recapture what I saw. I m the first car and I m parked all the way to my right, if I m going in to the right.

MR. EDMONDS: Correct.

COMMISSIONER HOOD: You would only have to move two cars to get out?

MR. EDMONDS: To allow you to get out, that s correct.

COMMISSIONER HOOD: Okay, now, in your traffic study Mr. Carter, did you allow for that because you, those cars are going to either back into the Circle or are going to have to go around the block. I just see mass confusion.

MR. CARTER: If there s two cars it could be about the same as two cars that have just dropped off a student three minutes apart, and so it would be very little difference from that. The backing out, if they back out there s a curb space there they can back out into the, into that.

And the width of the roadway there is 40 feet from between the two curbs, so you can back out and still have room for two lanes without any problem. I mean I m not saying you ll never have an accident but there s room to avoid accidents.

And essentially the first car would go around the block, go around the Circle, I assume, unless they didn t, if they wanted to come back.

MR. HITCHCOCK: Mr. Hood if I, I m sorry. If I may, if I could direct your attention to the layout on the very last page of the pre-hearing statement we filed two weeks ago. And I think that may answer the question. You will note according to there and this will recap some of Mr. Edmonds s testimony, Cars No. 1 and No. 9 are somewhat close.

Do you have it?

COMMISSIONER HOOD: So what you re saying is when you back the car out, you re going to be, over enough to the point where it won t, you ll still have two lanes of traffic.

MR. CARTER: Yes.

MR. HITCHCOCK: Uh-huh.

COMMISSIONER HOOD: Now, I said, I noticed also in

the film, and forgive me cause that s been about three hours ago, but I noticed on the film that when you backed out those spots were empty. Is that a no parking area?

MR. CARTER: There is one section of no parking there, yes, as I recall.

COMMISSIONER HOOD: On the same side of the curb where you back out on that side, is that a, I notice it was conveniently weren t any cars parked there, is that a no parking area?

MR. HITCHCOCK: Yes. It is no parking, it is right --

MR. NETTLER: The questions are being directed to Mr. Carter. Mr. Hitchcock --

MR. HITCHCOCK: I m sorry. --

COMMISSIONER HOOD: Well what I did, let me just state for the record what I asked. I asked to give them to Mr. Carter, but the thing was I also asked Mr. Hitchcock to direct it to who he needed to direct them to.

So I think they are satisfying what I needed to here. Okay, but I m not clear. Is that a no parking?

MR. HITCHCOCK: That is correct because it is next to the Korean Embassy as Dr. Carter will now demonstrate.

MR. CARTER: Yeah, there s a sign that says no parking anytime.

COMMISSIONER HOOD: No parking anytime.

MR. CARTER: Anytime. It doesn t say no stopping, it says no parking.

COMMISSIONER HOOD: Okay, no further questions Madam Chair, at this time.

VICE CHAIR SOCKWELL: Mr. Carter.

MR. CARTER: Yes, I m sorry Mr. Sockwell.

VICE CHAIR SOCKWELL: I m sorry, I have two questions. One, you stated that you did a survey of available on-street parking in the general vicinity of the building.

MR. CARTER: Yes, I did.

VICE CHAIR SOCKWELL: And you said that you found up to 38 cars, but perhaps an average of about 30 cars during the times that you checked. 30 spaces.

MR. CARTER: I m sorry?

VICE CHAIR SOCKWELL: You said you found up to 38 spaces on one observance and an average of 30 spaces in the neighborhood, is that what you said?

MR. CARTER: No.

VICE CHAIR SOCKWELL: What did you say?

MR. CARTER: I said I found up to 38 and every tour that I made I drive around and note the number of spaces in each block.

VICE CHAIR SOCKWELL: Uh-huh.

MR. CARTER: And no time did I find under 30. 32 was I think the lowest.

VICE CHAIR SOCKWELL: All right. Let me ask you this question in relation to that question. Was this parking subject to residential parking?

MR. CARTER: Yes.

VICE CHAIR SOCKWELL: Were there, so there were signs that would say Zone X parking two hours unless sticker, et cetera, so, and the time frame for residential parking is generally up to 6:30 p.m. or 8:30 or what?

MR. CARTER: It goes up to 8:00 or 8:30, one of the two.

VICE CHAIR SOCKWELL: All right, so there would be a limitation on the availability of that street parking during most of the operational hours of this facility?

MR. CARTER: Yes.

VICE CHAIR SOCKWELL: All right.

MR. CARTER: The reason I looked at this was the ANC said Friday night is horrible, you can t find parking, there s a lot of queuing. So I was looking at Friday night which coincided with the 7:00 to 9:00 Friday night recitals.

VICE CHAIR SOCKWELL: Uh-huh.

MR. CARTER: So it was, it seemed to fit what we wanted to find out. So on a typical Friday night, if, I don t know if this is typical, but the one I studied there was parking.

VICE CHAIR SOCKWELL: Uh-huh.

MR. CARTER: Now the neighborhood parking was in

effect, but is in effect if you parked up, let s say 6:30, then you could stay parked until 8:30 legally but the band goes off --

VICE CHAIR SOCKWELL: Uh-huh. After the --

MR. CARTER: -- you could remained parked.

VICE CHAIR SOCKWELL: Uh-huh.

MR. CARTER: And the other part is it wasn t all residential. Some of it was diplomat parking --

VICE CHAIR SOCKWELL: Uh-huh.

MR. CARTER: -- that went off at 6:30.

VICE CHAIR SOCKWELL: All right, but in accordance with, where is that chart? I just want to look at the operational times. Lesson schedule 3:00 to 8:00, 7:00 to 9:00, the question would be whether or not on weekdays the parking would be available during the times that people would need to be parked.

MR. CARTER: Well.

VICE CHAIR SOCKWELL: If there is a need for significant overflow. Now 30 spaces of course would be more recital oriented than lesson oriented.

MR. CARTER: Right.

VICE CHAIR SOCKWELL: And the question would be to you if you feel that there s adequate availability of parking for the times that instructors primarily instructors and parents would use this facility.

MR. CARTER: Well it s anticipated that they wouldn t be looking for street parking. But I m sure human

nature, a few of them might look for street parking.

VICE CHAIR SOCKWELL: Well there would be circumstances where there would be recitals, and I think we ve established that there might be as many as two individuals per student attending a recital, which puts a particular parking demand on the facility, and I m just asking a question if that parking demand would be absorbed by adequate parking for the duration of such recitals.

And I don t know that we ever discussed the duration of such recitals.

MR. CARTER: Two hours.

VICE CHAIR SOCKWELL: Two hours.

MR. CARTER: Yes.

VICE CHAIR SOCKWELL: Okay, so --

MR. CARTER: And the Friday night and Sunday afternoon.

VICE CHAIR SOCKWELL: Uh-huh.

MR. CARTER: So the weekdays except Friday there would not be any recital.

VICE CHAIR SOCKWELL: So Friday night could be impacted by a two hour restriction.

MR. CARTER: Right.

VICE CHAIR SOCKWELL: On parking, given the fact that people need to arrive in time to establish themselves in a recital room.

MR. CARTER: Right.

VICE CHAIR SOCKWELL: And should have enough time to basically mill around afterwards congratulating and discussion the issues. The other question is, I had a second question and I think I didn t finish writing it down so I may have to back away from that second question.

CHAIRPERSON REID: All right Mr. Sockwell if it comes back to you obviously you can ask later, I think perhaps when they have the closing remarks. Mr. Nettler?

COMMISSIONER HOOD: Madam Chair, could I just ask one other question? Mr. Carter, I notice in your report, and I believe it was your report, where you said there s more adequate parking two or three blocks away? Did I read that in your report?

MR. CARTER: Uh.

COMMISSIONER HOOD: I read it somewhere, I m just not sure where.

CHAIRPERSON REID: Yeah, the chart that shows parking spaces and how far away they were.

COMMISSIONER HOOD: Right, it was a statement that said, I think I read a statement in the submission that said two or three blocks away.

MR. HITCHCOCK: If I may respond I would cite Mr. Hood Exhibit 15 which is the letter from the Westin Fairfax wherein they advised that they will make available ten spaces during the recital times on Friday evening and Sunday afternoon.

Again, the recitals will not be held at the same time of the lessons, so, in addition to the nine spaces on site, this letter confirms that there will be ten additional spaces that the Edmonds will pay for out of their own pocket.

And that s what, I believe, is that what you were referring to Dr. Carter?

MR. CARTER: Yes.

COMMISSIONER HOOD: Okay. And also the, is that the same thing in relation to the 35 spaces that you spoke to earlier? I m sorry, what s your name? I m sorry.

MR. EDMONDS: My name is Jim, Jim Edmonds.

COMMISSIONER HOOD: Mr. Edmonds.

MR. EDMONDS: That would be in addition to the 32, 38 spaces which Mr. Carter found.

COMMISSIONER HOOD: Okay. Thank you.

MR. EDMONDS: Just one contributing point is that our experience shows that there s less than two, no more than two per student, generally, the same thing applies to recitals.

CHAIRPERSON REID: All right, Mr. Nettler? You want Mr. Turner first, okay.

MR. TURNER: Regarding the backing out of the driveway, you indicated that there was a no parking zone that you could back into. Is there not in fact Embassy parking out on the curb lane that you would be backing into?

MR. CARTER: I don t remember without looking. Do

you want me to look?

(Pause.)

No the Embassy space is further down from the no parking zone. I m sorry, there s diplomat parking after 7:00 in the morning, after I m sorry, after 9:00 in the morning, as well as 7:00 at night I believe or 6:30, 6:30 at night.

MR. TURNER: So in fact the space that you would be backing into would be parking spaces?

MR. CARTER: No, the, immediately there s no parking any time.

MR. TURNER: Is that not the Korean driveway that you re backing into?

MR. CARTER: No.

MR. TURNER: Backing in front of?

MR. CARTER: No. I m sorry, that is a little further away, no parking.

MR. TURNER: You, so would you not in fact be parked, backing in front of the Korean driveway?

MR. CARTER: It depends on the size of the car. If you back out, you might go all the way on to part of the back bumper maybe in the driveway, but you shouldn t have the whole car that far out.

MR. TURNER: What is the distance from the Edmonds driveway to the Korean driveway?

MR. CARTER: This is, if these are the two driveways

--

MR. TURNER: Is it not less than the length of a car? Would you not in fact be pulling back in front of the Korean driveway?

MR. CARTER: This is a one inch equals 30 feet. It looks like it s about ten feet or maybe 12 feet.

MR. TURNER: So your answer is it s 10 feet. So how long is, how long is a car?

MR. CARTER: About 16 feet.

MR. TURNER: So you would in fact be pulling back in front of the Korean driveway.

MR. CARTER: Well that s what I said, i said the back bumper may go into the driveway a little bit, but not the whole car.

MR. TURNER: Thank you.

CHAIRPERSON REID: Thank you. -- Oh, okay.

VICE CHAIR SOCKWELL: Mr. Carter, I m in front of you, sir.

MR. CARTER: I m sorry.

VICE CHAIR SOCKWELL: I m over here. I m sorry. I did remember my particular question, and that is with regard to the backing out, and actually this question should be asked of the Applicant, but I have a question for Mr. Carter, and that is it is consistent with most pulling in and pulling out of driveways that might cross in front of other driveways.

It would be consistent to assume that one would cross an adjacent driveway in any vehicle movement if the two driveways are close together.

MR. CARTER: That is correct, sir.

VICE CHAIR SOCKWELL: The same with pulling into and out of alleys that are next to entrance driveways, you have to cross the front of that driveway.

MR. CARTER: Of course.

VICE CHAIR SOCKWELL: Thank you. And for the Applicant, my question is, you suggested that there would be employed at the premises an individual to act as a security person and one to assist with those people disembarking and or lighting and getting back into cars to reduce the time period that students would spend getting into and out of any car that pulled up in front of the facility.

You said that that person would be employed.

MR. EDMONDS: That s correct.

VICE CHAIR SOCKWELL: Could not that same person be expected to assist with the backing of vehicles out of the parking lot or is that not something that has been considered?

MR. EDMONDS: No, precisely. Indeed Mr. Sockwell, we had, I thought I had mentioned that in fact this would be a security/attendant position.

VICE CHAIR SOCKWELL: Right, but you didn t mention the parking lot at all and that, you mentioned specifically the

dropping off and picking up of students.

MR. EDMONDS: But you are correct, yes, we would indeed have that person on 100 percent of the time that lessons and recitals are going on, and that person could be utilized to assist in backing out of the driveway.

VICE CHAIR SOCKWELL: All right, thank you.

CHAIRPERSON REID: Mr. Nettler?

MR. NETTLER: Yes, thank you.

(Pause.)

Professor Cater, you were asked, I think it was towards the end of the questions that Mr. Hitchcock asked you about your testimony about another circle, and that was in the George Washington University Hospital Case.

MR. CARTER: That s correct.

MR. NETTLER: The Board didn t accept your testimony in that case, did it?

MR. CARTER: I don t know what you mean by they didn t accept --

MR. NETTLER: Well they didn t agree with you that your conclusion in that case that I believe that the use that the special exception was being saw would have an adverse impact, did they?

MR. CARTER: Well they approved the Hospital if that s what you mean.

VICE CHAIR SOCKWELL: If I might interrupt and I

apologize, Mr. Nettler, I don t, we didn t accept the relevance of non or unrelated circumstances, i.e. a circle or a building or a location that s not germaine to this particular location.

And I really don t think that we should bring another circle into the case or we will be going around in circles.

CHAIRPERSON REID: No another case --

MR. NETTLER: I absolutely agree, it goes to the, --

VICE CHAIR SOCKWELL: But it s another circle and it s another case.

MR. NETTLER: I think it was offered more, I hope it was offered more in terms of the credibility of the testimony given with regard to the findings in any particular --

VICE CHAIR SOCKWELL: Unfortunately I don t have access to that testimony and would not be able to confirm or deny whether or not it was credible.

MR. HITCHCOCK: If I may respond, we heard at the ANC meeting some individuals who testified that Sheridan Circle is the worst circle for traffic in the City, and anticipating that that may come from some future witness I asked Dr. Carter the question for that reason.

MR. NETTLER: Well actually Dr. Carter if it was, if the calculations that you made for this case, and your studies are incorrect, would that undermine the position you ve taken with regard to the impact that this has on the neighborhood, the

traffic studies that you did? If those studies are incorrect?

MR. CARTER: Not really because 36 trips worst case and a better case you may only have 25 trips. 25 trips an hour is not much of an impact when you distribute them in different directions, you re talking about 12 trips and if it s 25, 12 trips is not going to change much.

MR. NETTLER: But if your, not with regard to the number of trips coming to the premises, but with regard to the usage of that circle by the, by other vehicles, if that usage was incorrect, wouldn t that have an impact on your own analysis with regard to the ability of whether it s the dropping off, whether it s the parking, whether anything else related to this particular use, wouldn t it have an impact on those findings that are made by you?

MR. CARTER: That s a different question. The question you asked, would it have a difference, make a difference on my conclusions. It would not make a difference on my conclusions about the impact, but yes, if it, it would require a new analysis, which if I have different numbers it s going to be different, of course.

MR. NETTLER: Okay, well we ll get to that in a second then. Let me just ask you one other question about the Friday that you visited to see how many parking spaces there were on a Friday night. That was the Friday before the President s Day weekend, wasn t it?

MR. CARTER: I m not sure.

MR. NETTLER: You re not sure. Do you remember the date?

MR. CARTER: Yeah, the 11th. February 11th.

MR. NETTLER: And that Monday was it not President s Day?

VICE CHAIR SOCKWELL: It was the next week.

MR. NETTLER: The next week, all right.

MR. CARTER: The following week.

VICE CHAIR SOCKWELL: The 19th and 20th.

MR. NETTLER: The, let s look at your findings. Let s go each one of them on your first analysis that was done in December. In your Exhibit No. 2 to your report, where you looked at the peak hour from Sheridan Circle in 1999. Excuse me.

(Pause.)

Bear with me a second. Okay. You have this as Exhibit 2, you have that in front of you? Your Vehicle Turning Movements at Sheridan Circle 1999 Peak, P.M. Peak Hour?

MR. CARTER: Yes. Yes, I do.

MR. NETTLER: Okay. Now this p.m. peak hour was what time?

MR. CARTER: I think in our case it was 5:15 to 6:15. I m not, I don t remember right off hand without looking it up.

MR. NETTLER: You don t remember what, you don t remember.

MR. CARTER: I don t remember the exact but it was 5:00 to 6:00 or 5:15 to 6:15.

MR. NETTLER: Okay, now you have in this particular exhibit, if you look at the bottom of the exhibit where you have traffic coming off of Massachusetts Avenue to the Circle, and you have traffic coming around the Circle, you have 870 cars going, coming off of Massachusetts Avenue, correct?

MR. CARTER: Yes.

MR. NETTLER: And 14 cars coming around the circle. All right?

MR. CARTER: Yes.

MR. NETTLER: So that s a total of 844 cars after you come to the point where they intersect, correct?

MR. CARTER: No it s 884.

MR. NETTLER: 884, excuse me, 884, correct?

MR. CARTER: Yes.

MR. NETTLER: Okay. Then if you take, going around the Circle up to your, doing a counterclockwise up to where it gets to 23rd Street, you have 251 cars going off to 23rd Street and 986 cars going further around the Circle. That adds up to 1237 cars, correct?

MR. CARTER: Right.

CHAIRPERSON REID: Excuse me, Mr. Nettler, where are you?

MR. NETTLER: This is Exhibit 2 of the Traffic

Report that was filed with the, I believe this is a pre-hearing statement or the application.

MR. HITCHCOCK: It s Exhibit 8 of our December submission if that will please help Madam Chair.

MR. NETTLER: That adds up to 1237 cars, doesn t it?

MR. CARTER: Yes.

MR. NETTLER: Okay, what happened to the other 400 cars?

MR. CARTER: I don t know.

MR. NETTLER: You don t know.

MR. CARTER: That s some --

MR. NETTLER: Did they go into the Alice Pike Barney Studio House?

MR. CARTER: No. We had three different people counting, and I m not sure what happened.

MR. NETTLER: So you, so these figures could be completely wrong.

MR. CARTER: Not completely wrong it s --

MR. NETTLER: Well some, one figure is right, but another figure is wrong.

MR. CARTER: That s what I would guess.

CHAIRPERSON REID: What page?

MR. HITCHCOCK: Page 4.

CHAIRPERSON REID: Because --

VICE CHAIR SOCKWELL: I got it.

MR. NETTLER: But the figures don t add up, do they?

MR. CARTER: No, they don t.

MR. NETTLER: Okay. Tell me whether these took into account the, what would happen when the Bridge would be, with the Bridge either being opened or closed? What are these figures based on?

MR. CARTER: These are actual counts.

MR. NETTLER: Right, and what would happen with the Bridge, if the situation changed with regard to the Bridge that s closed now.

MR. CARTER: Well the best thing I can do is I did an analysis of the only data I had which was 1984, which I provided to you earlier this evening.

MR. NETTLER: Okay, let s look at that 1984 analysis, okay?

MR. CARTER: Okay.

MR. NETTLER: That, I believe was submitted to the Board this evening.

MR. CARTER: This evening.

MR. NETTLER: That has, it says Exhibit 6 Vehicle Turning Movements at Sheridan Circle, 1984, P.M. Peak Hour. Now that is with the Bridge being open? Is that correct?

MR. CARTER: Yes, both P and Q were open at that time.

MR. NETTLER: Okay, so this has 1,330, if you look

at the bottom of the exhibit, 1,331 trips coming off of Massachusetts Avenue and 347 trips coming around the Circle as opposed to 14 trips coming around the Circle. That s about what, are you, 90 percent of that figure, would you say?

MR. CARTER: I m sorry.

MR. NETTLER: Well your 884 figure is what percentage of the figure that would actually come around that Circle when the Bridge gets open?

MR. CARTER: I don t know, I m not sure what you mean.

MR. NETTLER: Okay, you re at 844 trips, they re at 13, they re at, what is that, 1,678 trips.

MR. CARTER: Right.

MR. NETTLER: So it would be 1,678 trips coming around the Circle when the Bridge gets opened, at least based on 1984 times, which may of course be different now, but at least based on 1984?

MR. CARTER: Yeah, I believe they could be different, that was, that s one reason I did this late because 84 is old and I didn t feel comfortable using old data.

MR. NETTLER: So you used data that doesn t actually match, does it? The 884 trips coming around the Circle and the 1,237 that seem to be going further around that Circle. So you thought that was more reliable than the figures that were done by DPW back in 1984?

MR. CARTER: Well, yes, I did.

MR. NETTLER: Okay. And then you did a further study.

MR. CARTER: Did you look at the level of service on this?

MR. NETTLER: Let me just ask you further. You looked, then you did a further study in February of the same area, and if you can, now this is getting to the pre-hearing statement. And this is Exhibit 5, Friday Evening Vehicle Turning Movements at Sheridan Circle 7:15 through 8:15.

MR. CARTER: Uh-huh.

MR. NETTLER: That, is that s a different period than the time period you did for your 1999?

MR. CARTER: This is 19, yeah it s 2000, sorry. Yes, it s a seven to, 7:15 to 8:15.

MR. NETTLER: Okay, and correct me if I m wrong, but now you have more trips coming around the Circle then you did at your --

VICE CHAIR SOCKWELL: Mr. Nettler would you help us out by just referring to the page numbers that you are in as you flip back and forth. It s a little bit difficult to follow you.

MR. NETTLER: Page 7 of the --

MR. CARTER: Excuse me. Mr. Sockwell --

VICE CHAIR SOCKWELL: Yes.

MR. CARTER: It was submitted this afternoon.

VICE CHAIR SOCKWELL: Okay.

MR. CARTER: So it s a --

VICE CHAIR SOCKWELL: Oh, all right, so it s not those --

MR. CARTER: It s Figure 6.

VICE CHAIR SOCKWELL: All right, got it. Okay. I m back in --

MR. NETTLER: And it s Exhibit B, Appendix B, Pages, actually it s much easier to look at Pages 6 and 7 to look at the --

MR. CARTER: I m sorry.

MR. NETTLER: -- differences between 19, excuse me, Pages 2 and 7, to look at the differences between what supposedly was the count in 1999 and what is supposedly the count on February 11th, 2000.

(Pause.)

VICE CHAIR SOCKWELL: Two and seven, got it, okay.

MR. NETTLER: Okay. Now on, in, so in, on February 11th, 2000, you re using a later time period than you were using on, in 1999, yet you re coming up with more trips coming around the Circle than you had during the supposed rush hour in 1999, correct?

MR. CARTER: Yes, a few more.

MR. NETTLER: Well, 64 as opposed to 14, correct?

MR. CARTER: Right.

MR. NETTLER: But you still have a discrepancy if you add them up between what s coming into the Circle and what s going around the Circle, do you see that?

MR. CARTER: Yeah, you ve got about a --

MR. NETTLER: So you still don t have an explanation for that discrepancy either?

MR. CARTER: My explanation would be that the students who were doing the counting didn t synchronize their watches and so we had a surge of traffic that was picked up in one time period that s on the verge of the 15 minutes or the hour.

I mean that s the only thing I can --

MR. NETTLER: Okay, but these are figures that you re relying upon, are they not?

MR. CARTER: Yes, they are.

MR. NETTLER: Okay, so we really can t blame the students. These are things that --

MR. CARTER: No, no, I m saying that s the very possible explanation.

MR. NETTLER: Okay. Well let s take the 7:00 o clock time for when these recitals start. Okay? People aren t going to start looking for parking around 7:00 o clock. At 7:00 o clock. They re going to be looking for parking before 7:00 o clock, correct?

MR. CARTER: That s correct.

MR. NETTLER: Okay, did you do an analysis of the

availability of parking before that time period?

MR. CARTER: I started about five minutes before 7:00.

MR. NETTLER: Five minutes to 7:00. Isn t it more reasonable that people would be looking for parking before five minutes to the time when the recital is supposed to begin?

MR. CARTER: Yes, but this was, the purpose of that was primarily to find out whether there was a real parking problem on Friday evenings, which was told to us by the ANC at their meeting two nights before.

MR. NETTLER: Okay, and I guess getting back to the question that Mr. Sockwell asked you, then you then, to determine that there was a parking problem, you were relying on spaces that actually couldn t be used by people who were coming to this site, because they are residential parking spaces, isn t that correct?

MR. CARTER: They re legal spaces after 6:30.

MR. NETTLER: But for residents in the area.

MR. CARTER: For two hours or more.

MR. HITCHCOCK: I m going to object to the question, it contains an assumption that people would be coming from elsewhere when that may not be the case.

MR. NETTLER: Well we re talking about driving to here, we re not talking about people walking. We re just focused now on the driving people coming to this site. I don t know what --

CHAIRPERSON REID: Just let me respond to this objection please. The, let me understand, is your objection is because the assumption is made about where the people were coming from?

MR. HITCHCOCK: Yes, and the question dealt with the residential parking spaces. I think it may have been addressed before that to the extent parking restrictions end at 6:30, it may not be an issue to the extent they end at 8:30.

Somebody arriving between 6:30 and 7:00 would not be affected either, so.

CHAIRPERSON REID: All right, let me, before, Mr. Nettler, where are you going with this?

MR. NETTLER: Well I m trying to show that the parking, that parking and traffic analysis is not credible. It s based on, first of all it s based on assumptions of his students that don t match, that don t, match.

Second it s based on assumptions regarding available parking that aren t accurate.

CHAIRPERSON REID: And then, go ahead, and your last question was in regard to the origin of the people who were parking.

MR. NETTLER: I was then going to get into that, that s correct. I haven t --

CHAIRPERSON REID: Okay, now that, that, I would agree is not something that you, you re speculating.

MR. NETTLER: Well he s the traffic expert.

CHAIRPERSON REID: And then he can t tell you where, I mean, where the parkers originated.

MR. NETTLER: No, I m asking him, well, he can or can not testify as to whether he s been told where most of the people who are coming to these recitals are coming from. I can or could not ask that.

CHAIRPERSON REID: Yeah, but I think that the point that s being objected to is it s hard to ascertain what cars are those cars that are for the people coming to the concert and what cars are for people going elsewhere in the, you know, the shops or the --

MR. NETTLER: Well he s already made, has testimony --

CHAIRPERSON REID: -- dining or whatever, or people who live there.

VICE CHAIR SOCKWELL: Madam, Madam Chair, excuse me. I do believe that some of the questions being directed at Mr. Carter are going to be relevant to Mr. Carter s understanding of what the Applicant had intended or proposed or what the Applicant s assertions were to Mr. Carter with regard to the origin of students and teachers and recital participants based on the assumption that the Applicant had some idea of how these things were attended in his Virginia location.

As well it would be to the Applicant s interest to

be able to at least express in terms of the fact that this is a District of Columbia facility, is it intended to cater primarily to District of Columbia people?

Is it intended to cater primarily to the neighborhood? But those are things that may have been given to Mr. Carter as marching orders, they may not have been. Maybe Mr. Carter s analysis is based primarily on existing 1984 data and limited and hypothetical data that has been produced with the assistance of students whose supervision might not have been as tight as it needed to be.

But those are things that we have to get to.

CHAIRPERSON REID: Okay Mr. Sockwell what s your point?

VICE CHAIR SOCKWELL: My point is that I m not sure that Mr. Carter can answer the questions without assistance.

CHAIRPERSON REID: From the Applicant?

VICE CHAIR SOCKWELL: From the Applicant.

CHAIRPERSON REID: Okay.

MR. NETTLER: I would like to ask Mr. Carter first whether he was given the information then.

CHAIRPERSON REID: Okay.

MR. NETTLER: Were you given information by the Edmonds as to the makeup of the student body where they would be coming from or, or the makeup of the people who d be coming to the recitals?

MR. CARTER: Yes. We, this was discussed, and basically he felt he would be serving the entire City of Washington D.C. However, it would probably serve more people from the neighborhood somewhere between the Levine School to the north and maybe some other school to the south, and be serving an area that is now pretty void of music schools.

And my assumption on the trip generation and on the assignment was that it would be about half the people coming from Mass Avenue from the southeast, half coming from the northwest.

MR. NETTLER: So, but those, those, the half that you re talking about from northwest or the half from Massachusetts Avenue, those are people that are expected to be driving to the premises?

MR. CARTER: Not necessarily. We discussed that and some of the people in the neighborhood within a few blocks would probably walk, at least in good weather.

MR. NETTLER: What was the assumption made as to the percentage of people that would be driving to the premises?

MR. CARTER: We did not get into that. We just looked at the worst case situation that everybody drove.

MR. NETTLER: Oh, that everybody did. Okay.

MR. CARTER: That was the assumption we had.

MR. NETTLER: Okay, and when you talk about from the Levine School to the north you re talking about from Van Ness, Connecticut to the north and what school to the south?

MR. CARTER: I m not sure of what schools are there.

MR. NETTLER: Okay, was there any discussion about people coming from Maryland or Virginia also?

MR. CARTER: The discussion was there would probably be very few.

MR. NETTLER: There would be very few. Were you given any figures as to where the students would be coming from?

MR. CARTER: No, I mean we don t, he doesn t know that yet until the school is in place.

MR. NETTLER: Okay, were you given any figure as to where the instructors would be coming from?

MR. CARTER: Same answer.

MR. NETTLER: So you don t know that either.

CHAIRPERSON REID: Mr. Nettler, how many more questions do you have?

MR. NETTLER: That may have been the last one but let me just check.

CHAIRPERSON REID: Okay. All right. But let s move on. Okay.

MR. NETTLER: That s all. I have no other questions.

CHAIRPERSON REID: Thank you Mr. Nettler.

VICE CHAIR SOCKWELL: Mr. Carter I have one question for you sir. Mr. Nettler has pointed out some inaccuracies in your numbers.

MR. CARTER: Right.

VICE CHAIR SOCKWELL: Are those inaccuracies something that can be corrected easily by revisiting the data? Are these typographical errors? Are these errors that you believe could be straightened out so that at least the numbers that you present are numbers that are quantify-able?

At this point the numbers have been discredited and it is difficult to assume any of the numbers to be correct based on the fact that two and two have not actually equaled to four.

MR. CARTER: Well, if you look at the 84 data that didn t match either. It s the nature of traffic I guess, I m not sure why.

VICE CHAIR SOCKWELL: Well I m just saying were the numbers that are supposed to add together to produce an overall number correct or incorrect, that s all?

MR. CARTER: We could go back and look at the raw data. I think it s still in the computer. We used automatic counters that were downloaded by the computer and to see if there s any data errors there. If there s not any there we could do a new study, a new count.

VICE CHAIR SOCKWELL: What was the actual use of the students if I might ask?

MR. CARTER: Pardon me?

VICE CHAIR SOCKWELL: What did the students do that you used to assist you?

MR. CARTER: They did the counting. I counted one of the locations, and I had two students that counted the other two locations. I counted it at 23rd and Circle and one counted at the eastern part of Mass and Circle, the other, the last student counted at the western part.

And both of these students have had experience. One of them worked, did a lot of this last summer when he worked for a consultant in Baltimore. And so he s done counting before, and it s not, it s not the students that are, not know what they are doing, they know what they re doing. So I don t have a good explanation for it.

VICE CHAIR SOCKWELL: I see. Well it, I can t say what the Board will do but it seems that if there s a way of cleaning up your numbers at least so that we know the numbers are more correct, and I m sure Mr. Nettler would want to have correct numbers to assail if he has to, rather than numbers that he can t even be sure of, it might be very helpful.

MR. CARTER: We could redo the count, a different day, on a different day. I mean this week or next week.

VICE CHAIR SOCKWELL: Well we ll have to look into that, thank you.

CHAIRPERSON REID: All right, thank you. That was your last witness, correct?

MR. HITCHCOCK: Yes, with 46 seconds to spare.

CHAIRPERSON REID: Pretty good. Okay, ANC Reports?

I don t think we have an Office of Planning Report.

MS. PRUITT: No we don t Madam Chair.

CHAIRPERSON REID: Okay, and any other government reports? Okay. Thank you Mr. Carter.

(Pause.)

MS. BUMBALO: Good evening, my name is Linda Bumbalo, I am Chair of Advisory Neighborhood Commission 1D.

CHAIRPERSON REID: Ms. Bumbalo, during the cross examination portion you were aware of the fact that you could have asked questions if you so desired?

MS. BUMBALO: No, I wasn t.

CHAIRPERSON REID: Oh, okay. Because it was brought to my attention, so when I asked for cross examination parties, and ANC as an automatic party has a right to ask questions and when I asked it was just brought to my attention that you never did ask any questions and I didn t know if you knew that you did have the right to cross examine.

MS. BUMBALO: No, and I have appeared here before and never been advised that either. So, no I was not aware of that.

CHAIRPERSON REID: Okay, well, just, for future reference --

MS. BUMBALO: Okay.

CHAIRPERSON REID: -- all ANC, any party, and that s part of the problem, sometimes people don t realize what

the procedures are and what the rules are and what they can and cannot do, but it, when you are afforded the, well, all ANCs are automatic parties, but one of the privileges that parties have is to cross examine and to receive all information which you would automatically do.

But were there any questions that you did have?

MS. BUMBALO: Well I did make some notes on my statement based on some of the testimonies.

CHAIRPERSON REID: Did you? Well, if you d like we could allow you to direct questions, you know, some questions if you, if there was some pressing issues that you thought you wanted answered today.

MS. BUMBALO: I think most of the questions that I would have were answered.

CHAIRPERSON REID: They ve been answered, okay.

MS. BUMBALO: Uh-huh.

CHAIRPERSON REID: All right. Thank you.

MS. BUMBALO: Okay. At a duly noticed public meeting of the Sheridan-Kalorama ANC-1D held on February 9th, 2000, with a quorum present, the Commission discussed the above referenced application to permit the establishment of the music school on the premises.

The Applicants, Mr. Hitchcock, the attorney for the Applicants, and Mr. Carter, the Traffic Consultant were present, and presented the proposal to the residents of the neighborhood.

The properties, the Barney Studio House, located on the northwest quadrant of Sheridan Circle.

The issues that were discussed were the inadequate parking, traffic congestion, the nature of the proposed operation, the intense use of the building, the impracticality of the proposed solution of dropping off and picking up students, and the proposed residential use of the upper level of the House.

Zoning Regulations require that the proposes school is to be located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students or otherwise objectionable conditions.

A special exception is granted if it will not tend to affect diversely the use of neighboring property. The number of students is objectionable. The Applicant proposes a very intense use of the property with a constant stream of persons arriving and departing every day and or night of the week.

The proposed schedule of a two hour morning class, half hour lessons, which is what we were led to believe they would be, for nine persons between 3:00 p.m. and 8:00 p.m. which is the end of the last class, and a two hour art class from 7:00 to 9:00 p.m. on Monday through Thursdays, means that approximately 117 persons would be entering and leaving the house on each of these days.

If all of these persons and arrive and depart by a motor vehicle there will be 234 vehicle trips every day. There

would be an equivalent intense use of the House on Fridays with a morning class, afternoon classes and evening recitals.

On Saturdays approximately 99 persons would be arriving and departing throughout the day, with 198 vehicle trips. There will be recitals on Sunday as the application proposes 64 recitals a year, more than one per week, and the largest recital space holds 90 persons.

The Applicant s proposal for meeting the parking requirements is objectionable because it is unrealistic and unsafe. While just about every available piece of the sideyard is measured off for the nine required parking spaces, no mention is made of the fact that the only car that can leave the sideyard, this as you have to understand was submitted seven days ago, and I cannot offer new testimony, is, no mention was made of the fact that only one car can leave the sideyard without moving other cars onto the street is the last car in.

Also there is a wall on both sides of the entrance to the sideyard and a large tree that you saw in the video that has narrowed the driveway where it meets the sidewalk. Either all of the cars would have to be backed out so they can enter Sheridan Circle going forward, or all of the cars would have to be, to back out into Sheridan Circle.

It is extremely difficult to back out given the narrow opening between the walls. In fact it was partially demolished, you could see that on the video, recently by a vehicle

going through the opening, and the large tree narrows the opening.

And in fact I backed out of that in the dark in the beginning of January when I visited the property and it required two people for me to back out. I needed one person looking out the passenger side and me looking out the driver s side.

Because of this dire situation and the great inconvenience it is the belief of the residents of the neighborhood that the teachers, the Applicants state that they would be using the parking, will not use the sideyard, but would park on residential streets.

In addition while the parking requirements are technically met according to the application, there are only seven parking spaces for nine teachers according to the regs, that s all that s required.

The Applicant will also have a registrar, a director, and security guard on site, the Applicants have not satisfactorily answered the question of where they will park given their statement that they, and given the statement that the Applicants will reside in the house, they have not answered where they will park.

There is likely to be demand for parking be students who are drivers as well. The proposal of the Applicant to have students dropped off in the curb lane is unrealistic, unsafe and objectionable. The curb space immediately before the House consists of two driveways, and I think this was pointed out

that the spaces is actually I think only about three or four feet between the two driveways.

The one to the left is the Korean driveway, the Applicants and the active one used by the Korean Chancery. Beyond that there are only two parking spaces that I counted because the other, while people have said there are four parking spaces, I believe there are two and then the next two are diplomatic parking.

One of the two parking spaces that I think are available all day is inaccessible from the side lot because of a concrete jersey barrier. It is actually located in front of the adjoining residence as well. It goes beyond the Turkish Embassy.

It is located, the jersey barriers are located there for security reasons for the nearby Turkish Embassy. That parking space in front of there is probably the only parking that may be available to that residence.

There is no rear parking. Therefore there is curb space for one car to drop off and pick up students, although as many as 18 will be arriving and leaving at approximately the same time.

One car would have to pull out into the lane of traffic going around the Circle. Other cars waiting to drop off or pick up students then would have to back up into Massachusetts Avenue traffic going around the Circle.

And I think it s already been stated the traffic

study presented by the Applicant was criticized at the ANC meeting as being inadequate because the Q Street bridge is currently closed for construction and therefore the traffic that uses the lane in Sheridan Circle to access the Bridge is not currently using it.

The Bridge, a major cross town thoroughfare is scheduled to reopen in August 2000, just before the proposed school proposes to begin operations. The proposed use of a security guard to assist the drop off procedure does not cure the traffic congestion and the safety hazzard will result.

It was stated at the ANC meeting that the guard by law cannot direct traffic. So the suggestion that the traffic guard could help with cars backing out I don t know how fly-able that is.

The inadequacy of parking was addressed by numerous nearby residents. One who lives near the Barney House stated that he cannot get a repair man to come to his house because there s no place to park.

It was pointed out that the nearby streets are already congested with cars, many of which are parked illegally for events at the nearby Church of the Pilgrims. In addition there are Foreign Missions nearby which use a great deal of the on-street parking at all hours of the day and night.

Many of the embassies have affairs on weeknights. When the Netherlands reopened its embassy which is only I believe

a block from here, they had three nights in a row of 1,000 cars each. There was discussion about the nature of the proposed school, which the residents found objectionable.

Despite the proposed non-profit status, the residents believe that the Applicants will be using the House for commercial and business purposes. It is financially expedient for the Applicant to maximize the use of the space by creating nine spaces, cubby hole spaces for music lessons.

I believe when Mr. Edmonds ran the video and he pointed out the former kitchen area where he would have five, build five studios, in fact it is six, not five, and that is in Exhibit 2, for music lessons, and using the upper space and a one and a half story garage for art classes.

In fact the Applicant in response to a question about the need for the immediate use of the House as a music school stated that they were not running a charity.

While the Applicant states this mixed-use is consistent with the original use of the House by Mrs. Barney, it is not. Mrs. Barney had a salon for celebrity performances, was herself an artist, and did not have money making ventures occurring on a seven day a week basis.

In addition, Mrs. Barney resided in the House. Neither one of the Edmonds is a music teacher. The Edmonds despite the application indicating that the present use of the property is owner occupied do not reside in the house.

At the ANC meeting there was no indication given at the house we occupied by the owners. The fact that the Applicants were misrepresenting their application the occupancy of the House did not appeal to the residents at the ANC meeting.

There is no assurance that other aspects of the proposal are true representations of the uses to which the House will be put. It was also pointed out at the meeting that during the recent snowstorms the side lots in front of the Barney House remained un-shoveled, indicating bad faith to those who raised the issue about the neighborliness of the Applicants.

And you could see in the video the unmelted snow on the front sidewalk. Numerous letters and phone calls were received by the Commissioners in opposition to the application and the letters were submitted. There were about 70 persons in attendance of the meeting. No one spoke in support of the application.

A straw vote was taken, all voted to oppose the application. It was motioned and a resolution was passed to oppose the application. And I was appointed to represent the ANC in this matter.

CHAIRPERSON REID: All right, Ms. Bumbalo, you did indicate that there was a vote taken.

MS. BUMBALO: A straw vote was taken and then the Commissioners voted to oppose this.

CHAIRPERSON REID: There was a quorum present.

MS. BUMBALO: Yes.

CHAIRPERSON REID: When you say a straw vote.

MS. BUMBALO: We, well we always do this when we ask the residents who were in support of this and oppose this.

CHAIRPERSON REID: Okay, but then the, the ANC, the full, you had a quorum of the ANC.

MS. BUMBALO: Yes, yes.

CHAIRPERSON REID: And the vote was taken.

MS. BUMBALO: Yes, yes. All to, but all two of the two Commissioners were there and voted to oppose this.

CHAIRPERSON REID: Okay, and --

COMMISSIONER HOOD: So, Madam Chair, so you only have two Commissioners in your --

MS. BUMBALO: Yes.

CHAIRPERSON REID: We talked about this, I remember the last time, and that was a quorum, and I asked whether or not --

MS. BUMBALO: We need two to have a quorum.

CHAIRPERSON REID: -- you have two people --

MS. BUMBALO: Because one is only 50 percent.

CHAIRPERSON REID: -- acting capacity of a quorum, and I was, my understanding was yes, they, they could do that. But anyway, you will be afforded the great weight to which you are entitled. You raised several issues and we ll get back to, that, it s, the Applicant have any questions? Cross examine?

MR. HITCHCOCK: Yes, I have some. If the Board is finished I have a few questions.

CHAIRPERSON REID: Okay. I don t know if the, did you have any questions?

COMMISSIONER HOOD: I had one question for Ms.?

CHAIRPERSON REID: All right.

MS. BUMBALO: Bumbalo.

COMMISSIONER HOOD: Bumbalo. I wanted to look down so I made sure I pronounced it correctly.

MS. BUMBALO: That s right.

COMMISSIONER HOOD: You mentioned, and this is something I asked about earlier. Backing out you said when you went down to visit it one night, when you backed out you said you had to have two people, you had to look one way.

MS. BUMBALO: Yes.

COMMISSIONER HOOD: And the other person had, my question to you is, why would you have to put a lot of emphasis on the driver s side? I m just curious.

MS. BUMBALO: Well because there s a wall there, and there s a tree there. When you re backing out of the driveway.

CHAIRPERSON REID: Wait a minute --

MS. BUMBALO: While you re not looking at traffic, you have to avoid the wall and the tree, which actually is really growing, I mean it s right at the driveway, it s a huge tree. So you have no latitude to even, you know, six inches or a foot and

you re smash into a tree.

And you need somebody else to look into oncoming traffic, the passenger would have to look, and it was dark. It was, I don t know exactly what time it was, it was 7:00 or 8:00 o clock at night in January. So it was dark out. So visibility was very limited.

COMMISSIONER HOOD: And also you stated that I believe you stated that you would have to move a number of cars as opposed to just one to get out?

MS. BUMBALO: Well that s what we assumed, but obviously that has, people have said different things today.

COMMISSIONER HOOD: Okay.

CHAIRPERSON REID: -- move on into that. -- testimony where they were saying --

COMMISSIONER HOOD: Yeah, they responded to it. I wanted to get, I wanted to hear her side, cause she actually has been in there, and --

MS. BUMBALO: Right, it s very narrow. I don t see how people who are parked in the rear could get out if just two cars were moved.

CHAIRPERSON REID: Okay. Thank you.

COMMISSIONER HOOD: Okay. Thank you.

VICE CHAIR SOCKWELL: Ms. Bumbalo, where do you reside, yourself?

MS. BUMBALO: Where do I reside?

VICE CHAIR SOCKWELL: Yes.

MS. BUMBALO: On S Street N.W., which is one of the streets mentioned as available for parking.

VICE CHAIR SOCKWELL: Uh-huh. And just from your experience when the Bridge was open.

MS. BUMBALO: Uh-huh.

VICE CHAIR SOCKWELL: And that means that it was collecting traffic from Florida Avenue, at that traffic signal that s right there at the confluence of the two Bridge connections.

MS. BUMBALO: Right.

VICE CHAIR SOCKWELL: How did you, what did you, what was your experience with traffic in the afternoons, especially during the rush hour period, in the southbound direction or eastbound direction from Mass Avenue?

MS. BUMBALO: Well there s a great deal more traffic there for the very reason that people who are going across town want to use Q Street rather than P Street because P Street is backed up in all directions for people trying to get on to Rock Creek Parkway at rush hour.

VICE CHAIR SOCKWELL: At 6:30.

MS. BUMBALO: So if you re not going to get on to Rock Creek Parkway you use the Q Street Bridge. So it is very busy. I have had to wait to enter the Circle many times.

VICE CHAIR SOCKWELL: So, just in your, in your

estimation you would say that during the Bridge closing, all traffic going around that Circle is thru traffic at that point.

MS. BUMBALO: No, there is still traffic that does make the turn there.

VICE CHAIR SOCKWELL: Uh-huh.

MS. BUMBALO: Uh, and then they will turn left on Q Street to go to Florida.

VICE CHAIR SOCKWELL: Uh-huh.

MS. BUMBALO: That avoids the back up on Mass Ave., and Florida, if they are going down 22nd.

VICE CHAIR SOCKWELL: Uh-huh.

MS. BUMBALO: So there is still traffic going that way to avoid Mass and Florida.

VICE CHAIR SOCKWELL: I see. Thank you.

MS. BUMBALO: Or to go across town on Q Street.

VICE CHAIR SOCKWELL: Uh-huh.

CHAIRPERSON REID: Okay, Mr. Hitchcock?

MR. HITCHCOCK: Thank you Madam Chair. Ms. Bumbalo, you object to the total number of students even though the total number at any time would be 17, is that correct?

MS. BUMBALO: It s a cumulative total?

MR. HITCHCOCK: Correct, the nine music students and the eight art students during the Monday through Thursday 7:00 p.m. to 8:00 p.m. period, that you object to that as an excessive use, objectionably high number?

MS. BUMBALO: I think so, given the comings and goings and the traffic that would be involved.

MR. HITCHCOCK: For traffic concerns, not the number of students itself. Okay. Well let s talk about that, and you acknowledge then that other than during that one hour peak period the maximum number of students would be nine.

MS. BUMBALO: That s what your statement says.

MR. HITCHCOCK: Okay. And that the, the eight art students are adult students, not children.

MS. BUMBALO: You re talking about the evening class?

MR. HITCHCOCK: Yes, the art students. Is that your understanding?

MS. BUMBALO: That s what you ve said they will be.

MR. HITCHCOCK: All right, now, so in other words the worst case scenario would involve parents dropping off 18 students with 18 vehicles or picking up, I m sorry, dropping off or picking up 18 students at 5:00 o clock, 5:30, 6:00 o clock or something of that nature, is that correct?

MS. BUMBALO: I m saying that s what would happen, yes.

MR. HITCHCOCK: Is it been your experience that if you tell people to arrive at a certain time that they will all arrive exactly at the same point in time?

MS. BUMBALO: Well, as a parent who had four

children going to lessons, if I was paying for it I wanted them there on time to get their full lesson. Yes, so I would assume everyone would try to arrive in time for their lesson.

MR. HITCHCOCK: Okay, but don t some, for a 5:00 o clock lesson might some people arrive at 4:55 and some at 4:56 and some at 4:57?

MS. BUMBALO: Yes.

MR. HITCHCOCK: Okay. And with the attendant there to help the children, isn t it likely that would minimize the time that parents were being, that children, the parents had to stay at the curb?

MS. BUMBALO: That s a possibility, yes.

MR. HITCHCOCK: Okay. Would your concerns about queuing be abated if the school modified the starting times so classes would begin at say 4:00, 4:05, 4:10, 4:15, that sort of thing?

VICE CHAIR SOCKWELL: Excuse me, Mr. Hitchcock, I m going to have to object to that myself, --

MR. HITCHCOCK: Okay.

VICE CHAIR SOCKWELL: -- because Ms. Bumbalo is the spokesperson for the Advisory Neighborhood Commission s decision as opposed to a person who could speak for the Advisory Neighborhood Commission s re-assessment of anything.

MS. BUMBALO: Uh-huh.

VICE CHAIR SOCKWELL: And that, that is something

that she could not answer.

MR. HITCHCOCK: Uh-huh. Okay. Fair enough, thank you. We were talking about the total number of movements, and although I recognize from some of the inquiry there s a question about the numbers, Dr. Carter found about 900 vehicle movements around Sheridan Circle during the peak evening rush hour.

Do you recall that part of the testimony?

MS. BUMBALO: Yes.

MR. HITCHCOCK: Okay, and this is adding 18 or basically 1.5 percent increase, is that correct?

MS. BUMBALO: These would not, this would not be thru traffic, however.

MR. HITCHCOCK: Okay, but we re adding 18 vehicles at most, is that correct?

MS. BUMBALO: I think so.

MR. HITCHCOCK: Okay, and your concern is that the addition of 18 vehicles coming into a Circle where there are 900 poses traffic congestion and safety concerns?

MS. BUMBALO: The ANC s concern was with the total number of students who would be coming and going for the extended hours.

MR. HITCHCOCK: Okay, but a moment ago you told me that it was the number of vehicles more than the number of students, isn t that correct?

MS. BUMBALO: That is the ANC s objecting to the

number of vehicles.

MR. HITCHCOCK: Okay. Your testimony suggested the situation may be unsafe. Were you here earlier when Dr. Carter testified that over a three year period there were no accidents to persons or, and only an average of three a year to property damage, fender benders in the Circle?

MS. BUMBALO: Yes, I was here, I head that.

MR. HITCHCOCK: Okay, do you think that would affect the ANC s view of the issue?

MS. BUMBALO: I can t speak for that.

MR. HITCHCOCK: Okay, fair enough. The traffic, you re aware there is a traffic light at 24th Street, is that correct?

MS. BUMBALO: At 24th and Mass, yes.

MR. HITCHCOCK: Correct, and that that limits eastbound entrance into the Circle, for the time that the traffic light is in effect, doesn t it?

MS. BUMBALO: Yes, it does.

MR. HITCHCOCK: Okay, and doesn t that provide some margins --

MS. BUMBALO: But there is traffic coming down 24th Street in from S Street because there is a green light for people to go south, or what I call south or east on Mass Ave. So traffic is not completely stopped, there is traffic coming through from a different, the traffic that has the green light is entering.

MR. HITCHCOCK: Do you mean R Street?

MS. BUMBALO: No, I mean S, I mean 24th.

MR. HITCHCOCK: Okay, but --

VICE CHAIR SOCKWELL: Mr. Hitchcock, may I interrupt again? I would prefer and perhaps Madam Chair you would agree with me, that the questions be directed as if to the ANC in such a manner as they state do you believe that the ANC would or did consider X or Y, or do you believe that the ANC might consider something else.

That way Ms. Bumbalo can very effectively tell you that she really doesn t know, --

MR. HITCHCOCK: Okay.

VICE CHAIR SOCKWELL: Because she was participant, but she really isn t speaking as the Advisory Neighborhood Commission.

MR. HITCHCOCK: Uh-huh.

VICE CHAIR SOCKWELL: She is speaking for the vote, and is discussing issues as they were discussed by the ANC, but you, you re asking her in a vein that makes it seem like she could give an answer that would stand for the Advisory Neighborhood Commission s position and I don t think she can do that.

MR. HITCHCOCK: Well I m trying --

MS. BUMBALO: The regs say I cannot offer any new testimony, from what I understand I can t --

VICE CHAIR SOCKWELL: The questions are being asked,

he s putting them to you in a way --

MS. BUMBALO: Yes, no, I understand.

VICE CHAIR SOCKWELL: -- that I don t believe that you can effectively answer them.

MS. BUMBALO: Yeah. I can t speak for issues that were not addressed at the ANC.

MR. HITCHCOCK: Well I, and then that goes to the point that I m making which is that if there are facts that were not considered, were they considered by the ANC? I mean, and, and I m, I would respectfully request I be asked, entitled to, what weight those facts were given.

I mean, isn t the fact that there s a traffic signal at 24th Street that limits entrance into the Circle provide a margin of safety for the southbound/westbound traffic?

MS. BUMBALO: This wasn t discussed.

MR. HITCHCOCK: Okay. You stated there that you thought, the ANC had a belief that faculty would park on the street. Could you explain the reasoning as to why faculty would park on the street for five hours when there s off-site parking?

MS. BUMBALO: I believe it was said at the ANC meeting that because the parking, the side yard as I define it, was so difficult to get in and out of that it would be avoided.

MR. HITCHCOCK: Okay. You re aware, did you, did the ANC consider the fact that the Smithsonian had nine spaces on the site for a number of years?

MS. BUMBALO: You presented that at the ANC meeting.

MR. HITCHCOCK: Okay, so you were. And let me show you, this was in the materials that we served on you, the layout I m referring here to the very last page of our pre-hearing submission, which was the last page of Attachment 3 and it contains that layout of the nine spaces.

Let me hand it to you --

MS. BUMBALO: -- my purview at this point.

MR. HITCHCOCK: Well I believe it is because you testified that it was so tight to get out, so I m trying to find out what could be done to mitigate that situation, and if it means, and you also testified about an access lane, and if you pave over some of the grass on both sides, perhaps leaving the tree, perhaps not, wouldn t that deal with the concern?

COMMISSIONER HOOD: Madam, Madam Chair I do think that --

MS. BUMBALO: I cannot address that.

COMMISSIONER HOOD: Hold on. Madam Chair I do think that is not within her purview, because she would be, she s not an expert.

CHAIRPERSON REID: All right.

COMMISSIONER HOOD: She would be speculating and I just ask --

MR. HITCHCOCK: Okay.

CHAIRPERSON REID: All right, I would agree with

that.

MR. HITCHCOCK: Okay.

CHAIRPERSON REID: Now, Mr. Hitchcock?

MR. HITCHCOCK: Uh-huh.

CHAIRPERSON REID: Several people have objected to the line of questioning. So can you please be more specific and more direct to the testimony that s been given.

MR. HITCHCOCK: Okay.

CHAIRPERSON REID: And questions that Mrs. Bumbalo would have the ability to answer, and we can get through this relatively quickly.

MR. HITCHCOCK: Okay.

CHAIRPERSON REID: How many more questions do you have?

MR. HITCHCOCK: Probably ten. I --

CHAIRPERSON REID: Ten?

MR. HITCHCOCK: Yeah, well, we were dealing here with a three page single spaced statement that is entitled to great weight.

CHAIRPERSON REID: Well can you, okay. Well can you, can you in any way combine questions or I guess --

MR. HITCHCOCK: My questions quote directly from the written statement, I mean for example my next question was could she explain why it is the neighbors would consider a non-profit school to be a commercial or business purpose?

VICE CHAIR SOCKWELL: Why don t you ask her why did the ANC, did the ANC consider that, rather than neighbors, because she represents the Advisory Neighborhood Commission, and the larger ANC, not the SMD. She --

MR. HITCHCOCK: Uh-huh.

VICE CHAIR SOCKWELL: -- represents one of or both of those two individuals that have to vote yes, no, with no abstentions or they don t --

CHAIRPERSON REID: But he can ask her does she know the answer to the question. If you don t know the answer to the question, because someone else said it or it was thrown out at the meeting, then you don t have to answer it, you can say I don t know --

COMMISSIONER HOOD: But let me --

VICE CHAIR SOCKWELL: And the paving issue is one that would have been a negotiation with the ANC prior to coming to this meeting if it were, if it would reduce the parking problem, not something that I think he should bring up at the meeting.

It would have been something that you would have offered to the ANC long before it got here.

MR. HITCHCOCK: Well I m what I m trying to deal with Mr. Sockwell, with due respect --

VICE CHAIR SOCKWELL: There s no T in my last name.

MR. HITCHCOCK: -- if I might, I m sorry, I

apologize, as somebody whose first name is Cornish I am sensitive to those issues and it s also, it s, I won t say past my bed time but, --

CHAIRPERSON REID: It s getting late.

MR. HITCHCOCK: -- one of the problems with the statement is that it is very carefully worded to say for example residents believe, now are we supposed to assume from that that that is ANC testimony as well? It s carefully worded that I can t tell without asking questions the way that I m asking them. So that s --

MS. BUMBALO: These were, this is what was discussed at the ANC meeting, and that s what residents stated.

MR. HITCHCOCK: And do you accept --

CHAIRPERSON REID: Ah, ah --

COMMISSIONER HOOD: Madam Chair, just in line with Mr. Stockwell, I mean Mr. Sockwell --

CHAIRPERSON REID: Oh, no, you didn t.

COMMISSIONER HOOD: I know, I know it s going to come back to me, but it s getting late.

VICE CHAIR SOCKWELL: Mr. Hitchcock you re vindicated it s okay.

COMMISSIONER HOOD: I know I m going to pay for that one. But don t you also represent the Single Member District? Is that --

MS. BUMBALO: I am a, yes, each Commissioner has,

this is a --

COMMISSIONER HOOD: No, I mean this is in your Single Member District --

MS. BUMBALO: -- yes it is.

COMMISSIONER HOOD: Okay, thank you.

CHAIRPERSON REID: Okay, Mr. Hitchcock, go ahead, and then if you don t know then all right.

MR. HITCHCOCK: All right then.

CHAIRPERSON REID: All right.

MR. HITCHCOCK: Okay. Ms. Bumbalo is it, the Edmonds s are proposing uses that would open this landmark facility to the general public. Is the ANC opposed to that purpose?

MS. BUMBALO: To opening this to the general public?

MR. HITCHCOCK: Yes, it s a National Landmark, the interiors are on the D.C. Inventory of Historic Sites.

MS. BUMBALO: I don t know the answer to that question.

MR. HITCHCOCK: You don t know the answer to that question.

MS. BUMBALO: It was not discussed.

MR. HITCHCOCK: Okay. The ANC I take it was also unmoved by Mr. Edmonds s record of commitment to the community as donation of flutes to the Adams School, his donation of musical instruments to the Filmore Arts Center, that didn t affect any

kind of positive way your decision?

MS. BUMBALO: It certainly appears that way.

MR. HITCHCOCK: What is it? That he did it or that it didn t affect your decision?

MS. BUMBALO: His, the statements that you say what he did did not affect the decision.

MR. HITCHCOCK: Okay. And so then the ANC was similarly unmoved by Mr. Edmonds commitment to provide scholarships to public school children in the District so they can get music lessons at no cost?

CHAIRPERSON REID: Wait a minute, was that part of the testimony today?

MR. HITCHCOCK: Yes, it was, it was in the written statement, and Mr. Edmonds orally testified it to her.

CHAIRPERSON REID: No, no, no. No, no, no, the testimony from Ms. Bumbalo.

MS. BUMBALO: No. It was not.

CHAIRPERSON REID: You re supposed to be asking her on her testimony.

MR. HITCHCOCK: Okay, and if she, her testimony is that she is reporting what was, she has based on what happened at the ANC Committee --

CHAIRPERSON REID: All right, but there was not, no, but Mr. Hitchcock there was no representation that there were any promises of donations by the Applicant so we don t want to go into

that.

Keep specifically on the testimony of Mrs. Bumbalo today.

MR. HITCHCOCK: Okay, all right, what I m trying to drive at Madam Chair is things that were said at the ANC meeting that were omitted from the statement.

CHAIRPERSON REID: I know what you re trying to drive at, but I don t know if this, this isn t, I don t think this is the correct the venue for it.

MS. BUMBALO: Okay.

CHAIRPERSON REID: You can do that in your, now you do have an opportunity at closing remarks.

MR. HITCHCOCK: Uh-huh.

CHAIRPERSON REID: Okay.

MR. HITCHCOCK: Okay. Ms. Bumbalo, do you anticipate that, do you know whether the ANC would support any other granted special exception for this building?

MS. BUMBALO: That was not discussed at the meeting.

MR. HITCHCOCK: Okay, was it discussed at the meeting, was the sentiment discussed that this building should be residential only?

MS. BUMBALO: There were persons there who indicated that it could be used for residential purposes only.

MR. HITCHCOCK: And were there people there who said it should be used for residential purposes only?

MS. BUMBALO: I don t recall that.

MR. HITCHCOCK: Okay, so the ANC is not taking a position that this should be used for residential only, or are you?

MS. BUMBALO: This isn t, this, the ANC s statement goes to your application.

MR. HITCHCOCK: Uh-huh.

MS. BUMBALO: Not to what you are asking.

MR. HITCHCOCK: Okay. No further questions, thank you.

CHAIRPERSON REID: Thank you. Mr. Nettler, do you have questions, Mr. Nettler? Okay. All right.

MR. NETTLER: Just two questions.

CHAIRPERSON REID: All right.

MR. NETTLER: Actually probably just one question.

CHAIRPERSON REID: Okay.

MR. NETTLER: You were asked by Mr. Hitchcock about the, some of the basis for the position that was taken by the ANC, particularly with regard to the number of students who would be coming to the premises.

Do the ANC in taking its position and considering the impact that the number of students would have, also consider the cumulative impact of having the number of recitals and at the same time that the 7:00 to 9:00 period on Friday and the number of people coming to those recitals as well?

MS. BUMBALO: Yes, that was discussed about the number of recitals and the Friday night recitals in particular.

MR. NETTLER: And the number of that would be throughout the year the --

MS. BUMBALO: Yes.

MR. NETTLER: Okay, no more questions.

CHAIRPERSON REID: Thank you. Mr. Turner has left?

MR. NETTLER: He doesn t know when we re going to finish but he s trying to get back.

CHAIRPERSON REID: Okay. All right. Thank you very much, Ms. Bumbalo. Now, persons or parties in support of the application, please come forward. And the persons in support you have three minutes. Parties have five, persons have three --

MR. GRAVES: Yielded time. He s yielded time.

CHAIRPERSON REID: Huh? He yield his 46 seconds? You want that?

MR. GRAVES: I ll take the 46 second.

CHAIRPERSON REID: All right. So you have 33, four minutes, okay?

MR. GRAVES: My name is Frank Graves. I live on Columbia Road.

CHAIRPERSON REID: Your address, sir?

MR. GRAVES: 1930. I submitted an Exhibit No. 33. Please use the February 29, 2000 version of that. There was a February 28 which you may have, but look at the February 29. Ms.

Pruitt I think has a copy of that from me today for distribution to you.

CHAIRPERSON REID: So this, so basically, this is, this supercedes the other one? --

MR. GRAVES: Yes. They re virtually the same, but there are several statements which are, have been added to the 29.

CHAIRPERSON REID: Okay, I have the 29.

MR. GRAVES: Okay, the 29 is the latest and best issue of that.

CHAIRPERSON REID: All right. Okay.

MR. GRAVES: About this proposal, and I should introduce myself as being an expert in several fields. One is in urban planning. I was a consultant of the New York City Planning Commission, and also as a Traffic Engineer because for nearly a year I studied on behalf of the Mayor s Office in New York, something called the Lower Manhattan Expressway, which was a viaduct to run two miles and cost $6 billion to connect the Holland Tunnel with the Brooklyn Williamsburg and Manhattan Bridges.

When I became aware of the fact that there would be an ANC meeting on this application, I went to it. I spoke neither in favor of nor against the application. Having given it very serious thought, and having visited the site, examined the back-out problem, the pickup and drop-off problem, the parking problem, the access to and travel around the Circle, I have to say that the

Carter study merits complete support.

Whatever deficiencies there are in that are not telling. If one stops to think that at the 1,237 vehicles which would be coming around the Circle, at the peak hour, plus or minus a few hundred, only three out of every two hundred cars passing the Studio House would be pulling over to either do drop-offs or pick-ups.

That arithmetic is in my paper. Now, moreover, if one examines the Circle, one finds that it has a high crown which descends towards the Circle for those vehicles which are traveling through and tips the other way almost until 23rd Street, to separate out those vehicles which are pulling over to the side.

The two inner lane areas amount to 30 feet in width, which is rather wider than the standard avenue width in the District, street width, plain width in the District.

This leaves 16 feet on the right hand side if one takes out that 30 or possibly only 28 feet in the middle. If one looks at the pictures which were shown on the screen here, if that were to be replayed for you, you would see actually mud, ground dirt, on the outer lane and blacktop on the inner lanes, where the vehicles were traveling and the wind from their tires and the continuous motion scattered the dirt, indicating how little used the parking lane is.

Now I personally with my own hundred foot tape and somebody at the other end shown that there is 150 feet from the

tree stump, which is smack in the middle of the property and the tree, public tree space, to the last available spot northwesterly around the Circle for a queue to form including blocking, temporarily the two curb cuts.

How many seconds do we have, three seconds?

CHAIRPERSON REID: Ah, no, that they, I think they gave you the first, huh?

MR. HART: He got -- minutes.

MR. GRAVES: Thank you. In any case --

CHAIRPERSON REID: He s, but wait a minute, wait one second. He hasn t been speaking for four minutes.

AUDIENCE MEMBER: Yes, he has.

AUDIENCE MEMBER: The clock is on four minutes.

MR. HART: Give him another minute.

CHAIRPERSON REID: Yeah, well you just, you just got in to it, didn t you? All right.

MR. GRAVES: The fact is --

CHAIRPERSON REID: Let us give you, there s, you had so much, but can you just summarize for us this time --

MR. GRAVES: I will say this --

CHAIRPERSON REID: -- what I see in your submission sir is that you analyzed the various possibilities and why they would be ruled out.

MR. GRAVES: I looked at alternatives.

CHAIRPERSON REID: First, yeah --

MR. GRAVES: That was the first thing to do.

CHAIRPERSON REID: That was the first thing you did. You should summarize that and then just bring us to the summation that you have at the end, please.

MR. GRAVES: If the BZA turns down the Edmonds proposal, only the alternatives will survive. One has been tested and failed, that was the neighbors trying to set up an endowment together with the Smithsonian.

Excellent ideas but they didn t work. So I say that s ruled out. The second one is diplomatic ownership and that should be ruled out because it could destroy the property as we all know sometimes happens. Institutional ownership is unsatisfactory, because of the inflexibility within the building, and it would cut out public access from all purposes, for most purposes.

And private occupancy would also cut off public access to the 99 percent of the property which is worth saving, which is those two remarkable floors indoors. It s not the stucco out front or that patch of grass, or those two wonderful trees, it s what s indoors on stories one and two.

And so I ve said here that you have a heavy responsibility to historic preservation and preserving public access to this place. And it cannot be operated on a shoestring.

There has to be a significant financial budget and

a long term commitment to save this place and make it publically available, and only the Edmonds proposal as far as I can tell, and I ve given this tremendous thought, meets these stringent requirements.

If anyone else can come forward and do what they re doing with less intensity, and I ve compared in here there intensity versus the Levine School --

CHAIRPERSON REID: We saw that.

MR. GRAVES: You can see that this is not an intense use. So, at the end then I simply say with all the reasons given for why there s safe conditions there, as one who has lived personally through brownstone restoration in New York City.

And if you know anything about that, you know what s involved, it s an honor to vouge for these people and what they re trying to do to bring back to life this remarkable institution which was invented by Alice Pike Barney using her own very substantial money from the Pike family and from her husband Barney. Thank you. Mr. P --, Mr. Graves?

Let me just say that I found your submission to be very enlightening.

MR. GRAVES: Thank you.

CHAIRPERSON REID: And I appreciate the way you framed the issue for us.

MR. GRAVES: Thank you.

CHAIRPERSON REID: And to give us an analysis of the

various uses and why or why not it would be applicable in this particular instance, as well as your analysis of the use of this particular facility to Levine School, which is obviously one, the closest, I don t want to say competitor, but the closest similar type of facility of, for music training.

And I hate that we had to rush you, but I think that we got the gist and we certainly do have your full submission, and I thank you very much.

MR. GRAVES: Thank you ever so much.

CHAIRPERSON REID: Cross examination?

MR. NETTLER: Please.

CHAIRPERSON REID: Mr. Nettler?

MR. GRAVES: I have only February 28 here.

CHAIRPERSON REID: An extra copy to Mr. Nettler? Did you read the February 28th version Mr. Nettler?

MR. NETTLER: No.

CHAIRPERSON REID: Oh, so you haven t seen it.

MR. NETTLER: I just have this version.

CHAIRPERSON REID: Uh-huh.

MR. NETTLER: How long have you been involved with the Alice Pike Barney Studio House? Both in terms of the organization that was set up to negotiate with the Smithsonian or any other endeavor regarding the use of that property?

MR. GRAVES: I ve lived in Washington D.C. since 1971, since I came back from Nigeria where I cleared the Port of

Lagos, and I ve lived at the same address since 1973. I became acquainted with the Edmonds s last year and became aware of the fact that they were in a very strong musical tradition as I am myself.

MR. NETTLER: All right, let s take the period between, excuse me --

MR. GRAVES: And my interest in this building started about five weeks ago when I realized that in fact there was opposition to what, as I had heard about it from Jim Edmonds, was an extremely worthwhile objective of his. And so when I realized that there was a problem with neighbors, with traffic and so forth, I thought I would put my expertise to the test and see if I could not find out at least more about it.

And the more I found out the more pleased I was that the things seemed to fit perfectly with the invention of Mrs. Barney and with the needs of the Area.

MR. NETTLER: So in the past five weeks is when you got involved, is that what you re saying?

MR. GRAVES: Yes, yes, that s right.

MR. NETTLER: Okay, so you aren t aware of any efforts made by the Alice Pike Barney Studio House Organization to find other uses for the premises, or are you?

MR. GRAVES: No, indeed I was, because I read the record. Jim Edmonds lent me the application documents. I went through those, and that s the reason that I have here a statement

that a group of neighborhood activists worked from 1994 to 1999.

It was four and a half years, I put five years, to rescue Studio House, the historically protected studio and salon of Mrs. Alice Pike Barney but failed. They tried but could not find 1,000 donors to pay $1,000 each for renovations cooperatively with the Smithsonian, which owned the property and which was to share in program and upkeep costs.

The program was to include art exhibitions, public performances and uses in educational --

MR. NETTLER: And that s what the Edmonds have told you was the effort that was made, is that correct?

MR. GRAVES: The Smithsonian finally put the Studio House --

MR. NETTLER: Excuse me, was that the effort that the Edmonds had told you that was made for this?

MR. GRAVES: It is precisely what they intend to do, yes.

MR. NETTLER: Okay, so you re not aware as to whether the Smithsonian actually was able to discuss, actually was willing to discuss any future use for the premises other than the, those who they sought for it themselves, with the Alice Pike Barney Organization that was created as an attempt, in an attempt to find the --

MR. GRAVES: I have no idea about their negotiations. All I know is they failed. And to me it s a zero -

- when you fail --

MR. NETTLER: And your knowledge as to why they failed is based on representations that were made by the Edmonds . Is that correct?

MR. GRAVES: No. I simply know they failed.

MR. NETTLER: Okay.

MR. GRAVES: I mean all I have, I could call Philip Hughes I suppose and ask him, but you know, they failed. And so that s the, as far as I m concerned they failed and we have to move on, that s all.

MR. NETTLER: Okay now, you ve said that the only, the only possibilities other than what s being proposed today are efforts or uses or other things that you ve related in your statement that are either failed or that are, or that are uneconomical, is that correct?

MR. GRAVES: No, I said they will cut off public access. Much worse the historically protected rooms, contents, facade and site could well be entirely destroyed by any foreign government. So that --

MR. NETTLER: That s with regard to a transfer use. Have you --

MR. GRAVES: You mean uses --

MR. NETTLER: That s with regard to a chancery use in terms of the public access. Have you done any analysis as to whether a less intense use of the premises before a school or, as

in --

MR. GRAVES: Yes, I have because I know brownstone renovation. I know what it costs to upgrade a building. And as I ve said here there has to, this property cannot be kept going on a shoestring. There has to be a significant, and by that I mean a couple of hundred thousand dollars ever year.

COMMISSIONER HOOD: Excuse me, excuse me. Madam Chair if I may interrupt. We have a letter that was submitted to us, dated, describing this conversation that s going on. Are you aware that we have this in our records?

MR. NETTLER: Yes, you ll see I m on the Advisory Board of the Alice Pike Barney --

COMMISSIONER HOOD: Yeah, I was, this is a support letter too I want you to know, but --

MR. NETTLER: Yes, there s no one here to testify as to who voted for that with that letter.

COMMISSIONER HOOD: Oh, okay.

MR. NETTLER: But I --

COMMISSIONER HOOD: But I think that conversation we do have in writing and I was just going to ask the Chair if we could just move to the next --

MR. NETTLER: Oh, I have moved on, I moved on to the other uses that --

COMMISSIONER HOOD: Okay.

VICE CHAIR SOCKWELL: Mr. Nettler are you attempting

to discredit the letter and the organization that sponsored it?

MR. NETTLER: Well I can deal with that in our --

VICE CHAIR SOCKWELL: No, I m just asking a question. It is a yes or no answer.

MR. NETTLER: Yes, but not --

VICE CHAIR SOCKWELL: You say you re on the Board.

MR. NETTLER: Not through this witness.

VICE CHAIR SOCKWELL: But you re saying you are attempting to, you would like to discredit that letter to some degree.

MR. NETTLER: Yeah, I certainly will.

VICE CHAIR SOCKWELL: Uh-huh. Okay, just trying to figure out who your friends are.

MR. NETTLER: It s not a question of who my friends are, it s a question of what --

CHAIRPERSON REID: All right, please let s move on.

MR. NETTLER: That s not what I m trying to get into there.

CHAIRPERSON REID: Let s move on please.

MR. NETTLER: The, so your testimony is the only use that will ensure a both public access and at the same time something that s economical is the exact type of use that s presented by the Applicants.

MR. GRAVES: No, I would never go so far as to say

exact. In other words there might be occasionally an entertainment for people who might contribute an endowment. I would never limit it to it exactly this, but of course, the President of every university has people --

MR. NETTLER: And do you know that, you stated that it would take hundreds of thousands of dollars to maintain this thing. Do you know what the financial arrangement is that the Edmonds have?

MR. GRAVES: I have not --

MR. NETTLER: Do you, you do know what the financial arrangement the Edmonds s have with regard to this --

MR. GRAVES: I ve been given some private information as to what their costs are and I have to say that from what I know of that they ring a complete truthful bell with me because they represent the kind of numbers that I know about.

I ve owned real estate, and I know what kind of thing it is to own a, I don t know first hand what it would be like to own an 11,000 square foot building on Sheridan Circle with all that vibrating traffic out front.

And it s 100 years old. Nature is an enemy of every building ever built and --

MR. NETTLER: Thank you very much.

CHAIRPERSON REID: All right, thank you. Do we have questions? All right go ahead Ms. Bumbalo.

(Pause.)

MS. BUMBALO: Are you here as an expert Mr. Graves?

MR. GRAVES: What?

MS. BUMBALO: Are you here as an expert?

MR. GRAVES: Yes, I am.

MS. BUMBALO: You were not presented as an expert.

MR. GRAVES: Well, I m sitting, you re asking me a question. I am an expert. Ask me anything.

CHAIRPERSON REID: He was not presented by --

MS. BUMBALO: You were not presented as an expert, you were presented as a supporter.

CHAIRPERSON REID: We would recognize as an expert, nonetheless, he has presented himself, he has presented himself as an expert.

MS. BUMBALO: He has presented himself, yes. Okay. Could you tell me what Advisory Neighborhood Commission you live in?

MR. GRAVES: I live in 1C.

MS. BUMBALO: Okay.

MR. GRAVES: With the Edmonds down the street.

MS. BUMBALO: Okay, the Zoning Regulations talk particularly to considering whether it s objectionable to adjoining or nearby property. Do you live nearby?

MR. GRAVES: Nearby what?

MS. BUMBALO: The Barney House?

MR. GRAVES: I live within a six minute walk of the

vice.

MS. BUMBALO: But you don t live in the ANC.

MR. GRAVES: I live within --

MS. BUMBALO: Do you live in the ANC-1D?

MR. GRAVES: No, I do not live in the ANC, I live in IC.

MS. BUMBALO: Thank you.

MR. GRAVES: I ve already told you that.

CHAIRPERSON REID: All right. Thank you. All right, now, persons and parties in opposition to this application. That s where we are now. And come up, I m sorry, now, you all will move away from the table and then the opposition will come up.

And you ll have a chance to -- okay. Who else is in opposition? Will you please come up, all together? You d like to have a panel?

MS. PRUITT: Well they ve divvied their time up Madam Chair already.

CHAIRPERSON REID: They what?

MS. PRUITT: They ve already decided how they re going to present their time. They re going to do it in individual groups, is my understanding. They have the hour, and she s, and they have already talked about whose, how much time each party would get within that hour.

CHAIRPERSON REID: Ms. Pruitt I wasn t in any way

trying to change that, I just asked them all come up as a panel.

MS. PRUITT: Okay, I just wanted them to, I don t think, they weren t sure of that.

CHAIRPERSON REID: The time frame that they, however they ve decided to do it is fine, but I just asked them to come up at the same time.

Persons and parties in opposition, can you please come up. Have a seat, ma am. Thank you. Now, let s see. How many people are going to be testifying Mr. Nettler?

MR. NETTLER: Well for the Sheridan-Kalorama Neighborhood Council there will be two.

CHAIRPERSON REID: Uh-huh, and then you re an individual, you re a party, okay. Individual, --

MR. NETTLER: And Mr. Turner, hope, may be here by the time that we get to him.

CHAIRPERSON REID: All right.

(Pause.)

Okay, Mr. Nettler?

MR. NETTLER: The woman will go, the lady will go first as a party and then the Sheridan-Kalorama Neighborhood Council will follow.

CHAIRPERSON REID: Okay, all right.

MS. AUSTER: Good evening.

CHAIRPERSON REID: Good evening.

MS. AUSTER: Madam Chair and Members of the Board.

I m Rosalie Auster, one of the residents in the 2300 Block, six houses north of the Barney House.

VICE CHAIR SOCKWELL: How do you spell your last name?

MS. AUSTER: A-u-s-t-e-r.

VICE CHAIR SOCKWELL: Thank you.

MS. AUSTER: You have a letter --

CHAIRPERSON REID: Uh-huh.

MS. AUSTER: -- from myself and my contiguous neighbors already, they couldn t be here for a variety of reasons. And I ve lived here in the District for 35 years, 29 years on this Block in this house.

Only two of the resident neighbors happened to get the notice, and so I had to subsequently canvas the neighborhood and bring it to their attention, and to that end I have a letter to be entered tonight.

CHAIRPERSON REID: Okay.

MS. AUSTER: Okay, shall I bring it up?

CHAIRPERSON REID: Uh-huh, give it to the Staff, please.

MS. PRUITT: Thank you.

MS. AUSTER: I also had a petition signed and that will be presented later by one of the other members of the Sheridan-Kalorama group. Those, I ve been listening to the experts and been very much aware of how they ve had a very narrow

window of time which they ve looked at what goes on.

And I ve decided it would be a good idea to present myself as an expert because I know intimately every foot of parking space between 23rd Street and Massachusetts Avenue, and California Street and 24th Street, which is four blocks away.

Not anywhere, anything you re happy to walk after 9:00 at night or in ice and snow. All of us in our stretch, not all of us, most of us in that stretch from 23rd to 24th Street do not have off-street parking. And we have to scramble for parking on the street with groceries et cetera.

Usually I can find a parking space after 9:00 at night, but I just think the Edmonds have a guardian angel that they were able to get the take that they were able to get because you can never find anything in the afternoon at 3:00 o clock, or almost never.

All of us work with the exception of one man who is approaching 100 years of age and it just makes it very, very difficult. The other thing that struck me as I listened to the testimony tonight was everyone talking about how parking was possible, nights, weekends, and so forth.

But good heavens, if all of those people parked then when the residents come home where do we park, they will have all have been taken by this other traffic. And it also says that we are to have no relief from this on weekends and at night, the traffic.

I ve never seen 35 legal spaces unoccupied in that neighborhood in 29 years, and in those four blocks. Potential, perhaps. In fact the two spaces in front of the Barney House and the Turners house are the only two spaces in that entire block from 23rd to 24th Street on either side of the street that I ve restricted from morning rush hour or evening rush hour that you can park there for 24 hours every day of the year except for snow emergencies.

I don t have any more to say right now.

CHAIRPERSON REID: Thank you very much for your testimony. Was there any cross examination of this witness? Okay. Mr. Hitchcock.

MR. HITCHCOCK: --

CHAIRPERSON REID: Okay, he s going to allow you to sit there.

MR. HITCHCOCK: Thank you Mrs. Auster. Do you have any evidence to contradict Dr. Carter s assessment that the additional traffic generated by this school would not pose a difficulty to the movement of traffic around Sheridan Circle?

MS. AUSTER: No.

MR. HITCHCOCK: Okay. And were you here when he testified that over a recent three year period there were no injuries to persons and only an average of two accidents a year of the Circle?

MS. AUSTER: Yes, I m, but I m not addressing safety

issues. And I think he did say there were two injuries.

MR. HITCHCOCK: Well, no, what it was was an average, fender benders, property damage. I m referring to the, what prompts the question is the statement, the written statement saying that the proposed use will more than likely increase the risk of accidents as cars stop in the right turn lane.

Is your concern with respect to parking limited to the afternoon classes, the 3:00 to 8:00 classes, or the recitals?

MS. AUSTER: All of them.

MR. HITCHCOCK: All of them, okay. Is it your belief, is it your testimony that you think that the faculty will try to park on the street during the 3:00 to 8:00 period?

MS. AUSTER: Well I think that s within human nature, but I can t have the crystal ball.

MR. HITCHCOCK: To park on the street.

MS. AUSTER: Uh-huh.

MR. HITCHCOCK: Okay, even though there are residential restrictions available?

MS. AUSTER: Not all of them.

MR. HITCHCOCK: Not all. What are, you mean there are some that are just available with no limitations.

MS. AUSTER: That s right.

MR. HITCHCOCK: Okay, and somebody would do that rather than park off-site if there s free off-site parking --

MS. AUSTER: Well I would if I were in their shoes.

MR. HITCHCOCK: You d park on the street rather than off-site?

MS. AUSTER: Yeah.

MR. HITCHCOCK: Okay.

MS. AUSTER: In that off-site if I had to move cars.

MR. HITCHCOCK: Okay. Suppose that you succeed in blocking the use of this building as a school. Do you think that the traffic or parking situation would be improved if there was another non-residential use via an exception? If there was a, you know, an office use of the sort the Smithsonian had for um-teen years?

MS. AUSTER: That s speculative, I can t address that.

MR. HITCHCOCK: Okay, so it might be better, it might be worse?

MS. AUSTER: No telling.

MR. HITCHCOCK: Okay. You ve mentioned also, your written statement talked about contractors and service people coming to your home. They don t come during the time of the recitals do they, Friday evenings or Sunday afternoons?

MS. AUSTER: No, they come weekdays.

MR. HITCHCOCK: Okay. And one final comment on the -- you said that some neighbors did not get notice of the hearing?

MS. AUSTER: As far as I was able to determine, only two of us received the mail, the written notice.

MR. HITCHCOCK: Okay, but four of you, well, three households signed it.

MS. AUSTER: Uh-huh.

MR. HITCHCOCK: Okay. And I believe your name appeared in the application as somebody who should receive notice, did it not?

MS. AUSTER: I did.

MR. HITCHCOCK: Okay.

MS. AUSTER: I can t remember who the other one was.

MR. HITCHCOCK: Okay. I believe the others did appear as witnesses to get the notice. I thank you. I have no other questions.

CHAIRPERSON REID: Thank you. Is there any other cross examination of this witness? All right, thank you very much. All right.

(Pause.)

MR. TURNER: I am testifying in opposition to the application. My wife and I --

CHAIRPERSON REID: Your name sir, and your address.

MR. TURNER: Yeah. My name is Richard Turner, my wife is Beth Turner, and my address is 2304 Massachusetts Avenue. We re directly next door to the house. We share a party wall with the Edmonds house.

CHAIRPERSON REID: Uh-huh.

MR. TURNER: We re very concerned about the adverse

effect of the proposed use at 2306, with regard to noise and traffic. And we purchased a home in this area because we believe that the R-3 Zoning would protect the amenities of the neighborhood and provide a stable environment for our family.

We do not believe that the intense use proposed for the music school and the recital hall in the application is appropriate. We re particularly concerned about the recital hall and some of that intense activity.

As I said our home shares a party wall with 2306. Our bedroom and our children s bedrooms are along the party wall and next to the proposed recital halls. The entry way of 2306 is adjacent and just below our bedroom window.

Now since December we ve seen how the Edmonds have occasionally used the house and that, you know, for occasional use, normal residential scale kind of entertaining and all would not be a problem.

But the intense and continuous use proposed in the application, the proposed weekly evenings and on proposed 40 weekends a year would be a major accommodation for us. We can clearly hear the piano playing through the wall even when the windows are closed.

There s been some statement to the effect that there, the walls are sound proof. They are three bricks thick, but there s been considerable settlement on all of those properties.

All the houses are built on fill, the walls have settled, the walls are cracked, the interior brick is cracked, and over the years it s been patched with plaster. So that although it may not appear that way there are, there are holes that sometimes allow the sound to go through, and we do hear the music when it comes through the wall.

And we don t believe that hanging a curtain on the other side is really going to make much difference in that regard. Also some of the mitigation that would be required for the noise to, coming through the wall would be difficult to achieve with the historic restrictions that are in place on the property.

Now the previous uses of 2306 or the most recent use by the Smithsonian Institute was not as intense as the proposed use. The most recent Smithsonian use was primarily residential for one or two or several visiting scholars a year, with some public hours for occasional house tours and occasional entertaining.

It s quite different from the intense and continuous use proposed in the application. Almost any matter of right use not requiring an exception would be more in line with the previous uses and less abusive of the neighborhood, we believe.

Now, if the Edmonds were to live in the residence and also have it a recital hall, there s the question of the separations between the residential use and the assembly use, the

recital hall use that s not really addressed in the application adequately.

VICE CHAIR SOCKWELL: What type of separations do you mean?

MR. TURNER: There s fire separations that would be required between the assembly use and the residential use. It s an open stair. There s no door separating the residential section from, no fire doors separating the residential from the public assembly spaces.

There should be a two hour separation with which would be required a special kind of plaster or drywall that would not be able to be accommodated with the historic restrictions because you can t remove any of the materials in the public, in the restricted floors.

VICE CHAIR SOCKWELL: Well not wishing to make discussion of this, those are Building Code issues and not Board of Zoning Adjustment issues --

MR. TURNER: Well I believe that --

VICE CHAIR SOCKWELL: But they re not something that we would rule upon because we do not issue building permits.

MR. TURNER: Well, it s something that would need to be dealt with.

VICE CHAIR SOCKWELL: And the Historic Wilson Building is the same thing and has been handled quite effectively, so I m just saying that it s not impossible. I m just telling

you. We don t talk about that here.

MR. TURNER: Well I think in their application they say that they would be able to move right into it the way it is and I don t know that that s going to be the case. Um, --

VICE CHAIR SOCKWELL: But again, approval here would not affect whether they got rejected someplace else. Right?

MR. TURNER: That s true.

VICE CHAIR SOCKWELL: Thank you.

MR. TURNER: Um, we re also concerned about the parking and traffic problems that would arise from the proposed use, and the application does not accurately state or at least what we had read in the earlier submission on the application, did not adequately address the parking and traffic situation.

The actual situation as we know it and as we can see and experience every day is that there are three parking spaces in front of the Korean Embassy, they are restricted to the Embassy, to Embassy use.

Then there s the Korean driveway, and then there s the 2306 driveway. The, we re real concerned that we, we don t want to lose the scarce public parking curb side spaces that are in front of our house or in front of the Barney House.

There s just two spaces there, and then beyond that are Embassy spaces which never come open, they re always, they re always Embassy use. Those two spaces are used on a regular basis and are one of the few unrestricted Embassy spaces that are

around.

And regardless of the parking attendant arrangements that they propose, their spaces are usually filled and the drop-off and pickup would have to occur out in the traffic lane.

There s also the issues of the cars backing out of the driveway. Now that parking area that they have in reality only has three or four spaces that you can get in and out of without moving all the cars.

If you have to back a car out of that driveway, you back it out and pull it in front of the Korean Embassy driveway. That takes care of one car. You still have to get several other cars out of there. Those cars would have to back out into traffic and then you ve also got cars trying to drop off in front of the building there.

In addition the Korean Embassy is used, but that driveway is used quite extensively. There s a lot of traffic in and out of there. And in fact my son was almost hit by a car coming out of the Korean Embassy.

We have to watch that very carefully because of the traffic, and they, they just don t, they don t look or slow down when they come and go.

VICE CHAIR SOCKWELL: How old is your son, sir?

MR. TURNER: He s six.

VICE CHAIR SOCKWELL: And you let him out on that

street without an escort?

MR. TURNER: No, he was out there with us. He was standing right next to me --

CHAIRPERSON REID: Let s stay, let s stay germaine to the issues for this particular application, Mr. Sockwell.

VICE CHAIR SOCKWELL: Okay, fine. He asked questions, I was concerned.

MR. TURNER: Well I wouldn t, I don t know why it would suggest I had him out there alone, he was --

CHAIRPERSON REID: Sir, please.

MR. TURNER: I ll go on. The drop-off zone would inevitably occur out in the traffic. It would block traffic, and the traffic situation will be worse in the future when the Q Street Bridge is open, there ll be more traffic there.

At least that s what we believe will happen. Also our experience in parking in those spaces out in front is that it s very difficult to pull out of those parking spaces. The cars come around the Circle very quickly.

They don t slow down. It s hard to even pull out of the parking spaces. I don t know how, how that could work with people dropping off and the volume of traffic that this application would generate.

We believe the onsite parking is insufficient for the 90 seat recital hall use and as I said before we re very concerned about that. The evening parking restrictions on the

spaces out front don t, doesn t go out until about 6:30 and the Turkish Embassy spaces are not available further down.

We have spoken to the Edmonds informally about our concerns, they ve, they spoke to us once and then we, they came back over again to look at the noise situation, and you know we, we like the Edmonds very much and we d love to have them as residential neighbors, but we re, we re just not comfortable at all with the music hall and recital hall use.

We re also concerned that that recital hall use is really used as a public hall and that it could be used, the way it seems to us in the application is it s not necessarily restricted to any particular musical use.

It could be used for any group or corporate function, you know, through rental to outside groups. And we d be concerned that if it was rented out to, for weddings or corporate functions if there was liquor served or if those activities went on.

And we re, we would want to see some, some kind of restriction or understanding about what those alternate uses, other uses would be besides their school uses when they would rent it out to outside groups.

There s also a financial incentive to do that if it s not restricted in some way. We believe the special exception does not meet all the technical requirements or the intent of the Zoning Regulations as we understand them.

And we believe that the goal of the zoning in a residential area should protect residents from objectionable uses of adjoining properties and promote healthy neighborhoods, and we think that this application would detract from that goal in our opinion.

Consequently we are opposed to granting the special exception and request that it not be approved.

CHAIRPERSON REID: Mr. Turner, did you assess with the Edmonds the issue of the noise, the hearing the music? Was there any discussion of there s soundproofing materials that could be installed could there not?

Was there any discussion of trying to mitigate that?

MR. TURNER: They did not propose any particular mitigation of that. I understand from being here tonight that they are proposing a use of some sort of curtain inside the facility.

VICE CHAIR SOCKWELL: If I might add to that, and you were here at the beginning of the presentation. In a way that the Edmonds spoke to that they spoke of building a soundproof wall inside of that wall that would be specifically a soundproofing installation and not a curtain as I recall Mr. Edmonds testimony to be.

CHAIRPERSON REID: I didn t hear anything about, I didn t hear curtain. That s what you?

VICE CHAIR SOCKWELL: Yeah, he said something about a curtain and that wasn t what Mr. Edmonds said, I was very attuned to what Mr. Edmonds was trying to say there.

MR. TURNER: The sound --

MR. HITCHCOCK: May I speak to that?

VICE CHAIR SOCKWELL: Yes.

MR. HITCHCOCK: For --

MR. NETTLER: Objection, this is not time for him to speak to --

MR. HITCHCOCK: I won t take it out of your time --

VICE CHAIR SOCKWELL: You might be right there.

MR. HITCHCOCK: Okay.

CHAIRPERSON REID: At the closing remarks. Make your notes and we can address whatever.

MR. TURNER: What we had discussed was the sound partitions that were in the basement recital rooms. That s what, when I had talked to them. But our personal discussions back and forth did not get into the mitigation.

CHAIRPERSON REID: Okay.

VICE CHAIR SOCKWELL: Yeah, this evening Mr. Edmonds spoke specifically to the party wall and to a sound deadening installation which was something to me as an architect was much further than a curtain. I do have one question for you if I may.

MR. TURNER: Yes.

VICE CHAIR SOCKWELL: And that, the use of the recital hall as a public hall was not a representation that the Applicant made and does require specific licensing by the City, separate --

MR. TURNER: Well it doesn t, when I read it it didn t restrict the use, it says it can be rented to outside groups at certain, for outside musicians or outside events. And I don t know that that s particularly well specified in that application as to exactly what that is or that it s restricted in any way.

And that s a concern to us.

VICE CHAIR SOCKWELL: Uh-huh.

CHAIRPERSON REID: Okay, thank you. All right, any questions of this witness? Okay.

MR. HITCHCOCK: Well it might be easier if I switch places with Mr. Nettler because I have, I wanted to show you several, Mr. Turner, several items on the map that might help you with the cross examine.

CHAIRPERSON REID: Okay. Mr. Nettler has no objection?

MR. HITCHCOCK: Okay. It deals with the -- wall issue.

Mr. Turner good evening. First of all let me just ask one thing. You referred to this as an R3 neighborhood and that s in fact not a correct characterization of the zone is it?

MR. TURNER: DR3.

MR. HITCHCOCK: DR3, which is, contemplates mixed-use, correct?

MR. TURNER: Yes, residential and diplomatic overlay.

MR. HITCHCOCK: Okay, thank you. Now, let me ask a couple questions dealing with the party wall issue and for the Board s convenience this is Exhibit 1. And the upper, my question to Mr. Turner, the upper right hand wall, the upper right hand corner has the little words party wall showing the common wall between the Edmonds house and your house, is that correct?

MR. TURNER: That s correct.

MR. HITCHCOCK: And that is the part of the building that is closest to Sheridan Circle.

MR. TURNER: That s right.

MR. HITCHCOCK: Okay, and the remainder of the House after about 34 or so feet is detached.

MR. TURNER: It steps back, yes.

MR. HITCHCOCK: It steps back, okay. Very good. And it is your testimony that I think your bedroom and your kid s bedroom is along the party wall on the second floor?

MR. TURNER: That s right.

MR. HITCHCOCK: Okay. Let me now turn to, later in the same exhibit the individual floor showing the first levels. They look like this and this is either an Exhibit 3 in our opening

submission or, which is also at the end of our pre-hearing submission. And bear with me.

Okay. You ve been inside Studio House several times?

MR. TURNER: I ve been in there with the Edmonds , yes.

MR. HITCHCOCK: Okay, and does this, I m looking at the page called Barney Studio House First Level Historic Designation. Does this look like the layout of the building?

MR. TURNER: Yes, it does.

MR. HITCHCOCK: Okay, and the party wall is next to the area of performance Stage No. 1 is that correct?

MR. TURNER: That s correct.

MR. HITCHCOCK: Okay, um, and do you know, and there s also then this parlor area over there where there s a seating area of 40 to 55 people.

MR. TURNER: Yes.

MR. HITCHCOCK: Okay, now the, let me turn the page to where it says Barney Studio House Second Level Historic Designation. Does this appear to be the layout of the floor?

MR. TURNER: Yes, it does.

MR. HITCHCOCK: Okay. And your testimony is that your, the common wall is in the lower left hand corner of the page, near the area of Performance Area 3.

MR. TURNER: Yes.

MR. HITCHCOCK: Okay. And the piano that you say you heard is located in this area, is that correct?

MR. TURNER: I don t know where the piano was when I heard the music. It was not at a time when the Edmonds were trying to make any sort of sound test. It was before I had even met the Edmonds and they were playing the piano through the wall and I heard it through the wall.

I had, there were other people with me in the house.

MR. HITCHCOCK: Uh-huh.

MR. TURNER: And they also heard it.

MR. HITCHCOCK: Okay. Do you remember from when you went into the House where the piano was located? Do you remember a piano?

MR. TURNER: I think when I went into it with the Edmonds it was in the front room.

MR. HITCHCOCK: It was in the front room on the second floor.

MR. TURNER: Yes.

MR. HITCHCOCK: Okay, and do you remember, that it was a grand piano?

MR. TURNER: Yes, there was a grand piano.

MR. HITCHCOCK: Okay, and what was the level of sound that you could hear? Was it just muffled? Or was it clear and distinct? How, what was the, I m just trying to get an idea

of how loud or distinct it was.

MR. TURNER: It didn t sound like it was in the same room, it sounded like I was hearing it through a wall. It was somewhat muffled.

MR. HITCHCOCK: Somewhat muffled, okay. You heard Mr. Edmonds talk about installing a curtain in front of the party wall here that would be acoustical curtain or padding that could be covered by a curtain let s say. Are you familiar with such types of curtains in your experience?

MR. TURNER: I m not that familiar with it, I d have to look at the detail of it, I haven t seen that.

MR. HITCHCOCK: You re an architect as I remember.

MR. TURNER: I m an architect, I m not a sound expert.

MR. HITCHCOCK: Okay, thanks. So it s possible then that if something could be worked out with the right kind of curtain, that might address the concern? You don t know? But maybe?

MR. TURNER: Well, my point is just that it should be addressed, and there should be something that we could look at to see what, you know, to see what would be done.

MR. HITCHCOCK: Okay. Let me ask you this. I mean suppose that the piano were to be moved say back to the principal area for any recitals. Do you think that would, where there s no common wall. Would that help to address the concern?

MR. TURNER: It might, it would just, it would depend, you d have to, I believe that you d have to run some tests to sort of see what sound you heard with the piano in various locations.

The two rooms are completely open to each other.

MR. HITCHCOCK: Well the two rooms are open to each other, but it s just the foyer connecting, correct?

MR. TURNER: Yes, how wide is that foyer?

MR. HITCHCOCK: Okay, well, let s take a look. It s also the --

MR. TURNER: It s about half the width of the room.

MR. HITCHCOCK: Okay, about 30 feet would you say?

MR. TURNER: Uh-huh.

MR. HITCHCOCK: Okay, and the total length from the back of, you can probably read this better than I can. From the back of the wall to where the party wall is how much? Could you make a, you could probably make a better guess than I could.

MR. TURNER: It s about 50 some feet.

MR. HITCHCOCK: 50 some feet.

MR. TURNER: 50, 56 feet.

MR. HITCHCOCK: Okay, so it s 56 feet.

MR. TURNER: 65 feet. Something like that.

MR. HITCHCOCK: Okay. So you could move, so this is a point roughly 55 feet or so from where the party wall is.

MR. TURNER: Yes, I understand you re saying you

could move the piano and it might make a difference and it s possible it would.

MR. HITCHCOCK: That s all I m asking. Okay, you expressed concern about let s see. I mean let me, oh, one other question on the piano thing. I suppose though that if a private family owned it and had someone in the house who practiced piano that you would still hear the music.

MR. TURNER: Yes, it just would not be at the intense use level that they re proposing. It wouldn t be continuously.

MR. HITCHCOCK: Okay, the intense use from the recitals, correct?

MR. TURNER: Recitals and receptions and things like that.

MR. HITCHCOCK: Well let s just, we haven t, there s nothing in the proposal dealing with receptions. We re talking about the recitals, I understand your point. I mean, the lessons will be downstairs in the soundproofed studios, correct?

MR. TURNER: That s what you ve said.

MR. HITCHCOCK: Okay. You ve expressed a concern about, let s talk about, you ve referred to receptions. Is there anything in the application to indicate that that s what they plan to do to rent it out to outside entities for weddings or the like?

MR. TURNER: In my discussions with them they said that they might want to do that. It s not, that s not, it doesn t

say in the application that they are going to hold weddings there or rent it out for weddings or corporate functions. But in our discussions they said that they did not want to be precluded from that.

Now since that time they may have changed their opinion of that, but it doesn t say that they won t do that. And that was my concern.

MR. HITCHCOCK: Uh-huh. Okay, so if there was some condition dealing with that, that might address your concern.

MR. TURNER: Well my concern with regard to any conditions would be how that would be enforced. I certainly don t want to be in a position of being a policeman to try to enforce that or having to go and complain about it.

I would be concerned about how that would be set up such that it would not be something where it would be acrimonious for me to go over and say something about it.

You know, that s the kind of concern we have, because we, we would want to get along with our neighbors and not have a situation where we would be interfering with their operations over there if we complained about it.

And that s just the concern that we have.

MR. HITCHCOCK: Okay. You also mentioned a concern about a liquor license. Is that a concern that could be addressed by a condition and I you know, recognize the point you just made.

MR. TURNER: Yes, I suppose it could. It s just I

know, my concern is based on some experiences in other parts of the neighborhood where that s been an issue where they ve had rented out the house or events and then they get temporary liquor license and they just keep getting one temporary liquor license after another.

I wouldn t, you know, I wouldn t be interested in that. I would want it to be restricted such that that s not, not going to be the case.

MR. HITCHCOCK: Okay.

CHAIRPERSON REID: Mr. Hitchcock?

MR. HITCHCOCK: Uh-huh?

CHAIRPERSON REID: How many questions do you have?

MR. HITCHCOCK: Three.

CHAIRPERSON REID: Quick ones?

MR. HITCHCOCK: Quickly, yes. Your written statement talked about a concern about people hanging around outside the building after, during student recitals. When the performers are in fact children isn t it more likely that with a 7:00 to 9:00 o clock recital that you re not going to have intermissions or that sort of concern?

MR. TURNER: I don t know how they re going to run those recitals. I do know that our experience that when they did have some parties there people stood out front and smoked and I could smell the smoke in my bedroom.

MR. HITCHCOCK: Okay. And do you think that would

be a concern that, with a recital for children?

MR. TURNER: I don t know what restrictions they are going to put on people smoking. I just, it just was a concern. It happened and we could smell the smoke and I just wondered whether that would be the case when they had other functions there, whether they re children, there will be adults coming to the functions or whether they had outside music events that would be there that would draw people that that would be a situation that would occur.

MR. HITCHCOCK: Okay. My third and final question, how long have you lived at the house?

MR. TURNER: We ve lived there sine December.

MR. HITCHCOCK: Okay, thank you. Thank you Madam Chair.

CHAIRPERSON REID: Thank you Mr. Turner.

MR. NETTLER: --

CHAIRPERSON REID: Oh, sorry.

MR. NETTLER: I think he answered it in his last statement.

CHAIRPERSON REID: Uh-huh. You don t have a question. Okay, thank you Mr. Turner. All right, next witness.

MR. NETTLER: Well that was mine. That s his case, now we have the party of Sheridan-Kalorama. Excuse me. I d like to make a brief statement on behalf of Sheridan-Kalorama and then present the two witnesses that we have. And I will be brief.

CHAIRPERSON REID: Now who are your two witnesses?

MR. NETTLER: Mr. Hayes and Steve Peterson who is a traffic engineer.

CHAIRPERSON REID: Okay, and is there anyone else who is going to testify in opposition? Okay, well why not allow him to go before.

MR. NETTLER: That s fine.

CHAIRPERSON REID: Okay. Why don t you come up sir, and so you can present yours before the --

MR. BOWSER: Thank you Madam Chairman. My name is Richard Bowser, and I live at 2331 California Street. I have submitted a two-page letter that is based on the predication of what we understood from the ANC meeting.

Some of these requirements have grown such as the number of concerts that they were, or recitals as gone from 46 to 60 something now. What I d like to do is talk about the practicalities of some of these issues.

We talk about traffic, and the traffic situation. If you re a soccer mom and you re bringing your kid there and he plays the trombone, you re going to open your door, you re going to get out, you re going to open the trunk, you re going to have two kids kidding around and all this while you re in a major traffic cariot.

The second thing, practicality of this traffic has not been spoken to. The realities of children, parents and trying

to drop somebody off on a busy schedule has not been pointed out.

I d hope to say that this helps. The second thing I d like to say is I have great sympathy for Mr. Turner. If I had a six year old, and at 9:00 o clock at night I have 90 people in the next room applauding, I don t care what kind of curtains you have up.

If you have windows, those are open imports where sound travels, and a six year old trying to get asleep at night, every Friday night, every Sunday afternoon, evening with six or seven kids in an area playing where there are windows, there is noise.

And I m afraid that you know if it were mine, I wouldn t be as kind as Mr. Turner. The third thing I d like to point out that no one has raised at this issue, Sheridan Circle has a monument 200 feet from the Barney House.

And that monument is for the, memorializes the terrorist car bombing death of two individuals on Sheridan Circle. We have a major security station in front of the Turkish Embassy, and when we re talking traffic the secret service actually parks a car half way into the lane, as you come off of that Circle.

And when you get a stoplight and that car in there and you get traffic going across that Bridge it backs up and it backs up violently fast. People coming off of that Circle are not expecting to see a car in the lane and they slam on the brakes.

And I have seen it, I have been in it, and it

happens at 30 to 40 miles an hour with traffic, it s trying to make a light. They come around that Circle thinking they re going to catch it and it s a surprise.

And when you throw that with somebody opening their car door to get in the trunk and get a trombone out, I m afraid we have a disaster in the making. But from a security standpoint, the 200 cars between 112 and 200 cars parking in front of an adjacent facility opening a trunk size luggage coming in and out it becomes a commonplace thing.

The U.S. Diplomatic Corps would not allow that within 150 feet of any building that the U.S. has a security rating of three or higher on. And I know where I speak on that.

If we are talking about potential terrorist threats we have to address today s world and the neighborhood we re in. We have Egypt across the street, we have Turkey. Both are high threat areas. Across the street we have the Irish Embassy which is subject to bombing.

We have Greece which sometimes doesn t have the most stable of the nations in that area. Up and down the area, Ivory Coast up the street is currently doing construction which further restricts traffic in that area.

We have a serious concern as neighbors of the ANC of the potential of outright terrorism acts as a political statement by other areas. And now we re going to throw kids in the mix.

And the last thing I d like to raise on this is that I was singularly impressed by the presentation they made at the ANC. I felt like I was watching a commercial version of the Music Man. And I felt like we were being treated like the citizens of River City.

I have a Fine Arts Degree. I have been a professional musician in my life. I am not impressed with the business that they are performing here. I think this is a convenient performance spot for all of their various locations around the area, and solves a problem for them.

But does not investigate the nearby commercial resources on Connecticut Avenue, the underground or other sources nearby there that could serve the same function without losing a residential potential and thrusting a commercial entity into the middle of an area that has already been under stress from the State Department allowing office type facilities over the objections of the neighborhood.

I would hope that the Board carefully looks at all these issues with a practical light, and realizes that the entire ANC meeting voted unanimously against this. And I would hope that you would follow through. Thank you.

CHAIRPERSON REID: Thank you.

VICE CHAIR SOCKWELL: Before you go, I would like to ask you --

MR. BOWSER: Yes, sir.

VICE CHAIR SOCKWELL: -- some quick questions. One, how long have you lived in the neighborhood?

MR. BOWSER: 12 years.

VICE CHAIR SOCKWELL: Where do you live?

MR. BOWSER: 2331 California and I walk by that area minimally once a week. I drive that area every morning sir.

VICE CHAIR SOCKWELL: Yes, you said there was speeding in the neighborhood. What has the neighborhood done to deal with that issue?

MR. BOWSER: We constantly raise the issues of trying to get the police to enforce the parking and the speeding regulations in the neighborhood at the ANC meetings and I think the record will show that.

VICE CHAIR SOCKWELL: All right. How many bombings or serious threats have you seen in the neighborhood sine you ve been there 12 years?

MR. BOWSER: Sir, I had a car with four secret service agents and oozie machine guns protecting the house next door when it belonged to the OAS. I came home to find that and they appropriated my driveway for three days running.

We have had two --

VICE CHAIR SOCKWELL: When did that, when did that occur?

MR. BOWSER: This was about four and a half years ago.

VICE CHAIR SOCKWELL: Uh-huh.

MR. BOWSER: This was right after there was an assassination attempt on his, on the embassador when he was in Central America. We have had two cases that did not make the news of having attache bombs in driveways.

VICE CHAIR SOCKWELL: So --

MR. BOWSER: And, let me finish. We do have a major secret service station 150 feet from the door of this facility. They don t put those there because it s a convenient location. They put it there because there is a constant 24-hour a day, seven day a week threat by Armenians against the Turkish.

VICE CHAIR SOCKWELL: I don t want to let your feelings of security scare Mr. Turner who has just moved into the neighborhood and --

MR. BOWSER: I m sure he understands this.

VICE CHAIR SOCKWELL: But you re making it sound like the neighborhood is very dangerous.

MR. BOWSER: Sir, when you are in that neighborhood, you have, the problem we have is the more commercial and the more business type entities that enter that facility or in that area, the more it becomes that you accept non, unknown persons walking the neighborhood, cars entering the area, things parked on the street et cetera, et cetera.

We are raising this issue with the City and with the State Department at the same time. It s not just the school.

But I will tell you at this point I have been robbed in my home bringing in the groceries because you take customary, you get used to seeing cars that you re not used to.

VICE CHAIR SOCKWELL: Was it a Turkish, and Armenian or

CHAIRPERSON REID: Let s go on --

MR. BOWSER: That s beside the point. What I m saying it s a security issue as far as the neighbors are concerned.

CHAIRPERSON REID: Thank you.

VICE CHAIR SOCKWELL: Fine.

CHAIRPERSON REID: All right, cross examination Mr. Hitchcock?

MR. HITCHCOCK: Yes, thank you Madam Chair. I would like to hand up -- I forgot to do so before but, a letter which I received from the secret service in response to a letter we sent in Exhibit 16, which I d like to show to Mr. Bowser here.

MS. PRUITT: Mr. Hitchcock you ve got to make sure you re on the mike, that s all.

MR. HITCHCOCK: I apologize. I would show --

MR. TURNER: Are you providing us a copy as well?

MR. HITCHCOCK: Sorry, Richard. And I would ask you if you could take a moment to look at that letter and see if that speaks to any of the security concerns that you have.

(Pause.)

MR. BOWSER: I understand what this letter says, that they have no objection to the secret service --

MR. HITCHCOCK: Thank you very much.

CHAIRPERSON REID: All right, that s it? Thank you. Thank you very much. Okay. Mr. Nettler? Now.

MR. NETTLER: We will not be taking 45 minutes.

CHAIRPERSON REID: Thank you.

MR. NETTLER: But thank you, thank you very much. I, although I have a brief --

CHAIRPERSON REID: Mr. Nettler, I ve been asked, I m sorry, for a five minute break.

MR. NETTLER: That s fine.

CHAIRPERSON REID: A quick break because people just need to have just a little stretch, and then your case and then there s cross and then there s closing remarks. And hopefully we can get out of here relatively quickly.

COMMISSIONER HOOD: Madam Chair, can we get a feel for that, where we are? How much time. You said not 45, so.

MR. NETTLER: I mean from our standpoint I have two witnesses, they re probably not going to take more than ten to 15 minutes, at least of that 45 minute time, so.

CHAIRPERSON REID: And we have cross.

COMMISSIONER HOOD: Okay. Thank you.

(Whereupon a short recess was held.)

CHAIRPERSON REID: Please come back to order. Mr. Nettler --

MR. NETTLER: Thank you very much. My name is Richard Nettler, and I m here on behalf of the Sheridan-Kalorama Neighborhood Council. I just want to make a few remarks prior to Mr. Hayes and Mr. Peterson testifying.

There s been some discussion as you know about some issues regarding the use of the two record lots and how the Zoning Regulations apply to that. I m not going to go over those at this point.

I will leave that for further discussion and proposed findings of fact and conclusions of law, except to note that there is in the regulations a distinction between the way commercial properties are dealt with in under similar circumstances such as the downtown area and residential areas.

As you know, special exceptions unlike use variances or area variances are situations in which the, the Zoning Commission has recognized that a use is appropriate for a particular district or whether it be residential or commercial, but it has recognized that that particular use may, unlike other uses that it recognizes as appropriate and considers as a matter of right, may have a particular adverse impact on an area that is different than what the matter of right uses are.

And for that reason it give the Board the authority to regulate that and to evaluate it under a number of different

factors. And those factors don t require that the Applicant address every single adverse impact to the satisfaction of anybody who is suggesting an adverse impact.

And it certainly recognizes that as you know with the number of schools that have come before you whether private schools or in other circumstances that schools themselves are not anathema to residential areas.

But the issue really then focuses on what those adverse impacts are and how you deal with those impacts or can you deal with those impacts in light of the proposal that s made before you.

In this case, and actually in that context as well, referencing the, I think a statement made by Mr. Sockwell about the Boca Regulations. In Levie (phonetic) versus Board of Zoning Adjustment the Court specifically recognized that in special exception cases while this Board may not have the authority to resolve, whether it s Boca Code Regulations, whether it may be alley closing issues, whether it may be any other types of issues that other agencies have the responsibility for resolving, they may be relevant to the consideration that the Board has to give to the adverse impact analysis.

Even if they re not issues that get resolved. So if there are Boca Code issues that are, that are out there, even though you may not have the responsibility for resolving them, they may go into the whole analysis that has to take place in

addressing what are relevant issues to any particular application.

And you must determine whether those are issues that are relevant to any particular application because of the adverse impacts that have been raised with regard to them. Also, and I think with regard to this specific application, I think the point raised and questioned also by Mr. Sockwell about whether this is a public assembly or a school raises another issue.

And that is if you look at the recital aspect of this application, recognizing that this is an application for a special exception for a, for a private school use, where, when does the recital aspect of this become something more than a accessory to the public school and essentially become itself the real use that s being sought here or have in terms of the both the number of persons that are coming to the property for those recital use and therefore require a different type of special exception than the one that s being sought.

I would submit that from the testimony that s been given by the Applicant certainly it would seem to suggest that the recital aspect of this case has become something more than the public school aspect of it.

Cause it may very well be that you can conclude that a public school use of these premises may be appropriate in certain conditions, if you should conclude, but that the recital use in all its parameters has gone beyond what you would normally expect to see in this area given its impacts whether it s traffic,

noise and other recognized impacts.

So you have before you on the basis of this application you have a testimony from a traffic expert, which I think has been demonstrated to be unreliable, and in fact in his own testimony if the figures that you relied upon are not accurate then as he stated that testimony should not, those conclusions may not be reliable as well.

And I think with regard to the, to Mr. Oberlander s testimony the testimony as to, you know, the historic character of the building, the fact that this is a mixed-use in the sense that a diplomatic overlay exists, are essentially irrelevant.

What are relevant to the consideration that you have to make with regard to the special exception use are specific to the use as it s been proposed, and I would submit that Mr. Oberlander s testimony actually is not enlightening with regard to that, those issues that you have to address.

And what you re left with then of course is with the testimony of the Applicant himself as to his proposed use and what his beliefs are as to its impacts, which are not, which are at issue here by the, by those in the neighborhood and by the Advisory Neighborhood Commission.

Lastly with regard to Friends of Alice Pike Barney Studio House letter, while I m not here to testify, and while I m noted on here as the Advisor, on the Advisory Board of the Friends of Alice Pike Barney Studio House, I note that the letter is not

signed, at least the copy that I have, isn t signed by anybody, as a Member of the Advisory Board, as the attorney for the Friends of Alice Pike Barney Studio House, as the person who put together the Friends of Alice Pike Barney Studio House, this is the first I ve ever seen or heard of a position being taken by somebody on behalf of the Alice Pike Barney House and I don t know who, whether they have discussed this with other Members of the Advisory Board or other Officers but it s, it certainly doesn t contain a signature on it.

So I guess maybe the question that Mr. Sockwell also issued as to who my friends are is maybe an apt one in some context. Having said all that I would like to present as our first witness Mr. Hayes who has been asked by the Sheridan-Kalorama Neighborhood Council to act on its behalf and presenting testimony with regard to this application.

Thank you.

CHAIRPERSON REID: Thank you very much.

MR. HAYES: Good evening. My name is Alan Hayes, I live at --

CHAIRPERSON REID: Your mike please Mr. Hayes.

MR. HAYES: Oh, sorry. Good evening, my name is Alan Hayes. I live at 2234 Q Street, N.W. From my front window I can see the Q Street Bridge and I can also see the front of the Turkish Embassy which faces on to 23rd Street.

So my property is just around the corner from the

Alice Pike Barney House. First I would like to indicate that you have in front of you a number of signatures on a petition that we have gathered. There are 67 people who have signed this petition.

These by and large I would point out are neighbors that are very close to Sheridan Circle. These are not spread out all over the City. They are all confined to ANC-1D. And in fact there are parts of the ANC that weren t covered because the, we thought they were too far away.

Ms. Pruitt I ll give you the --

(Mr. Nettler falls down on the floor.)

CHAIRPERSON REID: Are you okay?

MR. NETTLER: Oh, I m fine.

VICE CHAIR SOCKWELL: These late hearings do that.

(Laughter.)

MR. NETTLER: It s been a long time sine I ve been at a late hearing.

MR. HAYES: Secondly I want to enter into the record a letter from representative Eleanore Homes Norton, which is written to Secretary Madam Albright at the State Department. And in this letter, and this is very recent, February 10th, 2000.

In this letter Ms. Norton is asking for the State Department to deal with problems from embassies and chanceries that have a very high degree of concentration in the Sheridan-Kalorama neighborhood.

On the second page at the top of the page she ends

that paragraph by saying, Moreover the presence of such chanceries is greatly aggravating in already impossible parking situation in this dense neighborhood.

The, I d like to review a few of the things that I have submitted. In a letter to the Board of Zoning Adjustment --

CHAIRPERSON REID: Okay, sir, before you continue. The letter that is written by Eleanore Homes Norton to Secretary Albright is submitted for what purpose?

MR. HAYES: On the second page she talks about the --

CHAIRPERSON REID: I ve read the letter.

MR. HAYES: -- The presence of the chanceries is greatly aggravating an already impossible parking situation.

CHAIRPERSON REID: Okay, now how does that relate to this particular case?

MR. HAYES: Well, this, Sheridan Circle is right in the middle of this area. And one of the things we ve been discussing is the parking problem.

CHAIRPERSON REID: Okay, but this is more in relation to a chancery isn t it?

MR. HAYES: No, no. This is the parking in the neighborhood.

CHAIRPERSON REID: Okay, wait a minute. It says, more of the presence of such chanceries is greatly aggravating an already impossible parking situation in this dense neighborhood.

MR. HAYES: Yeah, and the Sheridan-Kalorama --

CHAIRPERSON REID: So basically what you re saying is that you are drawing an analogy --

MR. HAYES: No, I m saying that Ms. Norton is commenting on the fact that parking is a problem in the Sheridan-Kalorama Neighborhood.

CHAIRPERSON REID: Oh, is that all?

MR. HAYES: Yeah.

CHAIRPERSON REID: Okay. Well, I was just trying to see how you were relating that to the --application before us.

MR. HAYES: Well there s been a lot of discussion about parking and --

CHAIRPERSON REID: All right, I see.

MR. HAYES: I m going to talk about it in a moment as well.

CHAIRPERSON REID: All right, I just thought that it was something more involved than that.

MR. HAYES: No.

CHAIRPERSON REID: All right.

MR. HAYES: I d like to focus on just two or three issues in my letter.

CHAIRPERSON REID: Sure, uh-huh.

MR. HAYES: And let the rest stand on the record, and some of it has been discussed at great length by other people.

The first thing I would like to point out is that,

as, has been noted. The Q Street Bridge is closed, has been closed sine last September, I believe, and is due to open again in August of this year.

Living on Q Street, I can tell you that there is a lot of traffic going across that Bridge into Georgetown. The traffic that goes across the Bridge can only come to the Bridge from two sources. It either, actually three. It can come on to Q Street off of 22nd, Florida, at that point they re the same roadway, or it can come from downtown, it comes up Massachusetts Avenue and it s forced to go around Sheridan Circle and turn right on to 23rd Street and again right on to Q Street at the Bridge.

The reason that it has to come up to Sheridan Circle is because of the configuration of the one-way streets along Massachusetts Avenue. When the Bridge is opened it is not at all unusual in the evening to find traffic backing up at the Q and 23rd Street light and backing into Sheridan Circle.

There s a lot of traffic that comes around that circle and turns right on to 23rd and it s, that s a very short block, and it s, if there s a light there that traffic backs right up into the Circle.

There has been some discussion about, and there will be some more I believe about the safety issues --

CHAIRPERSON REID: Yeah.

MR. HAYES: -- of children getting out of cars in front of the Barney House. One of the, having lived in that area

and driving in that area frequently, when you are going towards Sheridan Circle from 24th Street, this is coming down from the northwest, going towards the center of town, as you approach the Circle, there is a small diamond shaped piece of ground in between the entrance to the Circle and the exit from the Circle on Massachusetts Avenue.

And in fact on that little diamond shaped piece of ground is the, is a sign, a big sign that says that the traffic in the Circle has the right of way. You have to yield. And as you, traffic coming down there, typically goes very fast.

The other night I was driving down from 24th Street into the Circle and the group of cars I was in the middle of was traveling at about 35 miles an hour. As you come towards the Circle, particularly when there is traffic coming around the Circle that has the right of way, your attention is focused to your left at the traffic coming towards you in the Circle.

And the question, and if you re on Massachusetts Avenue, the thing that you have to consider is who has the right of way, and are you going to try and get in front of that guy or are you going to slow down and go in behind him.

Once you enter the Circle, someone here earlier testified that it s about 100 feet to the front of the Barney House. And I submit it s like one, one and a half seconds and that really is not an awful lot of time to react if now you have some people parked or double parked as has been suggested, loading

and unloading children.

And the problem is that it isn t just one, it s 18 times potentially every half hour. And that s a lot of loading and unloading. Talking about the parking problem, there s a neighbor of mine who has also submitted a letter for the record, and he had a medical emergency today, he had planned on being here and giving testimony himself, but I d like to read a couple sentences from his letter.

CHAIRPERSON REID: Do we have it? Have you submitted the letter yet?

MR. HAYES: --

CHAIRPERSON REID: And what s his name?

MR. HAYES: His name is Alan N. and Heather K. Jacobs.

CHAIRPERSON REID: Just one second, I don t think we have it. Yes.

MR. HAYES: It s Exhibit No. 27?

CHAIRPERSON REID: Uh-huh. We do have it. Okay. We ve read it but you just want to basically hit on a couple of items from it?

MR. HAYES: Yeah, just --

CHAIRPERSON REID: Okay.

MR. HAYES: On Paragraph 2.

CHAIRPERSON REID: Uh-huh.

MR. HAYES: The first half of the paragraph.

CHAIRPERSON REID: Uh-huh.

MR. HAYES: The proposed application will further overwhelm the parking in our already overly congested neighborhood which is inundated with parked cars from foreign embassies and people visiting the commercial neighborhood of P Street and Dupont Circle.

CHAIRPERSON REID: Okay.

MR. HAYES: The Church of the Pilgrims, which is located approximately one block south of the property, we re talking about Sheridan Circle, and directly behind out house as many functions which are held mostly on weekend evenings, and by weekends, these are, when the Church rents the property to organizations which are not affiliated with the church.

By weekend evenings, this is normally Friday or Saturday or Sunday. And there is an event there at least once every week. People attending these events park illegally along Q Street in our rear alley, not only blocking the use of our garage but also inhibiting the ingress and the egress of emergency vehicles.

And I would suggest that the concerts and the performing, guest performing artists with up to 90 people are going to contribute to this kind of problem, just enhancing it, on weekends.

CHAIRPERSON REID: Okay.

MR. HAYES: Lastly, let me just touch and add to what Mr. Turner said. He spoke of the problems of potentially

renting the House for weddings or other functions, corporate functions and so on. We have two examples, one is H.H. Leonard that started out as a museum and now she has affairs in her row, series of row houses that require buses to bring all the people in.

The other is attached, there s an article from the Current talking about problems at Tudor Place which is a museum which has been allowed to have events like this and the complaints that are being made by Mr. Crockitt (phonetic), a Georgetown resident has to do with all the problems created with parking.

And I would like to suggest that we don t know what these recitals and guest performances are apt to lead to but we certainly don t want to have situations similar to H.H. Leonard or Tudor House.

VICE CHAIR SOCKWELL: Mr. Hayes?

MR. HAYES: Yes.

VICE CHAIR SOCKWELL: While the Tudor House is one thing, H.H. Leonard s is a very, very different animal. And I would submit that it is irrelevant to this. It s neither a single historic building, nor was it developed anywhere near the same way that this particular property has existed for its many, many years.

And therefore I would want not to use that as a good example. It s a great place to go, but it isn t a good example to compare to this.

MR. HAYES: Well, the fact that --

VICE CHAIR SOCKWELL: And they, and they, they rented it primarily, and I mean it s been through so many years and so many battles for so many reasons, that it isn t, it isn t relevant to this. And I don t think that you really see it as a similar institution.

You can use it because of the congestion, but it isn t anywhere near similar to this.

MR. HAYES: Mr. Sockwell, the question is not, has not, is not related --

VICE CHAIR SOCKWELL: Nor is it on a circle, by the way.

MR. HAYES: -- is not related to what, the question is what, if the application as it sits right now is approved the way it sits, the question is what can this become? And --

VICE CHAIR SOCKWELL: But it cannot, it cannot become an H.H. Leonards because it is on a circle.

MR. HAYES: Well, H.H. Leonards is on O Street.

VICE CHAIR SOCKWELL: Yes, exactly.

MR. HAYES: As a matter of fact it s very narrow there.

VICE CHAIR SOCKWELL: That s true, but it s not on a circle.

MR. HAYES: Yeah, but the --

VICE CHAIR SOCKWELL: And it s not on a through

major arterial street, is it.

MR. HAYES: No but we re talking --

VICE CHAIR SOCKWELL: All right. So we re not talking about apples and apples. That s all I m talking about. That s the only, that s the only reference I m making. Apples and apples it is not. And you would agree with me there, would you not sir?

MR. HAYES: The things that are of concern to us --

VICE CHAIR SOCKWELL: You re not going to answer the question, I withdraw it. Thank you.

CHAIRPERSON REID: Okay, continue.

MR. HAYES: The things that are of concern are the granting of liquor license, one day liquor licenses, and the large numbers of people that can become invited to such ancillary affairs that have nothing to do with the school -- and that s our concern.

CHAIRPERSON REID: Okay, thank you very much. Cross-examination?

MR. HITCHCOCK: Mr. Hayes, you, you spoke about the diamond shaped area in the curb lane of Sheridan Circle as one is approaching from the northwest. Doesn t that tend to funnel traffic towards the traffic lanes in the Circle rather than towards the House?

MR. HAYES: Yes.

MR. HITCHCOCK: Okay, so doesn t that really provide

some sort of buffer as far as your safety concerns are concerned?

MR. HAYES: Well not if, not if these cars have to double park. And not if there are cars constantly coming in and out.

MR. HITCHCOCK: Okay. With respect to the Church of the Pilgrims, just for the record, that is, the Church of the Pilgrims is located between 21st and 22nd, P, and Q, is that correct?

CHAIRPERSON REID: No, no.

MR. HITCHCOCK: No, 22nd, --

MR. HAYES: Between 22nd, and 23rd.

MR. HITCHCOCK: 22nd and 23rd, okay, so that is essentially east of the property in question, correct?

MR. HAYES: It s south and east.

MR. HITCHCOCK: South and east, okay. Your testimony, you stated in your testimony and I was writing it down that they have many functions on weekend evenings, is that correct?

MR. HAYES: Yes.

MR. HITCHCOCK: And once every week?

MR. HAYES: At least once.

MR. HITCHCOCK: At least once every week. What kind of function did they have there last weekend?

MR. HAYES: Sunday night they had a AA meeting.

MR. HITCHCOCK: Okay. And how many people do you

think attended that?

MR. HAYES: I don t know. The room they hold it in will hold up to 200 people I believe.

MR. HITCHCOCK: Okay, and the Church of the Pilgrims has on-site parking, does it not, on the 22nd Street side of the building?

MR. HAYES: I m not sure they allow that to be used for these functions.

MR. HITCHCOCK: Okay and they also

MR. HAYES: Because all of 23rd Street and everything on Q Street and our back alley often are clogged up with cars going to these meetings.

MR. HITCHCOCK: Okay. So there may be some room there, but you don t, on site for this, but you don t know, is that your testimony?

MR. HAYES: That s correct.

MR. HITCHCOCK: Okay, and they also have a driveway that runs from Q to P within the property, don t they?

MR. HAYES: No.

MR. HITCHCOCK: No. Okay. You had some concern --

MR. HAYES: Excuse me.

MR. HITCHCOCK: Yes.

MR. HAYES: You may be referring to the alley. There s an alley back there.

MR. HITCHCOCK: I m referring to, there is a street

that slopes down along 23rd Street parallel to 23rd Street.

CHAIRPERSON REID: 23rd and Florida.

MR. HITCHCOCK: Yes, within the property. I ll withdraw the question.

MR. HAYES: Yes.

MR. HITCHCOCK: Okay. You cited delegate, or excuse me, Congresswoman Norton s letter about the problems with embassies and chanceries. I mean wouldn t that be an argument in favor of granting this application so it didn t turn into a chancery or embassy?

MR. HAYES: No. I was referring to the fact that she says that parking is a problem in this area.

MR. HITCHCOCK: Uh-huh. Okay, and the fact that the Edmonds s have done things like approached the Westin Fairfax and the like doesn t, doesn t affect your conclusion?

MR. HAYES: No.

MR. HITCHCOCK: Okay. Thank you, I have no further questions.

CHAIRPERSON REID: Okay, thank you very much. Mr. Nettler you have one last witness?

MR. NETTLER: Yes, Mr., excuse me. Yes, Mr. Peterson.

CHAIRPERSON REID: Okay.

MR. NETTLER: Who I would proffer as a expert traffic engineer who has appeared before you on numerous occasions

and has been so qualified.

CHAIRPERSON REID: Okay so is there any objection, of Mr. Peterson?

MR. NETTLER: Yes.

CHAIRPERSON REID: Appearing as an expert witness? If he s been already accepted by the Board as an expert witness, typically we would allow him to, and if there s no objection from the Applicant we will allow you to do so, sir.

MR. PETERSON: Thank you ma am. Yes, I have been a witness here many times, probably not before this Board, there seems to have been some changes in the Board since the last time I was here.

MR. NETTLER: Would you give your name and address.

MR. PETERSON: For the record I m Stephen G. Peterson, I m a Traffic Planning and Engineering Consultant with an office in Gaithersburg, Maryland at 16628 South Westland Drive.

Jokingly during the break I said to Dr. Carter that if I had turned in a paper as a student of his with the bust in the traffic volumes on the Circle he probably would have been very upset with me.

And I think that is a, has got to be a concern to the Board in terms of the fact that there s a 40 percent difference between the volumes that entered the Circle from the west end on Massachusetts Avenue and the volumes that exit that link in front of the site at 23rd Street.

Furthermore, when you go back and look at Dr. Carter s 1984 count that he got from the Department of Public Works and submitted to you this evening, if you compare the entering volumes during the evening peak hour at the west end of the Circle at Mass Avenue with the count that the District of Columbia has as their count is 90 percent higher.

So I hardly think that these are small discrepancies in data. Furthermore what s even more interesting with their count is that we re, Dr. Carter had 17 cars proceeding around the Circle, the District count has 347.

And that goes to the point just made that the traffic in the Circle has the right-of-way and that the attention of the drivers coming down Mass Avenue who have to yield is to play this game of who gets in, its first fender in, if they can beat the guy coming around the Circle.

As was also pointed out there is a no left turn for traffic coming outbound on Mass Avenue, the only way to get to the Q Street Bridge when it s open is via Mass Avenue to the Circle and then south on 23rd, because there is a no left turn prohibition on, facing westbound traffic on Mass Avenue.

And therefore the Q Street Bridge is fed from two different directions. One from 23rd Street by traffic that comes out Mass Avenue or actually can come off of R Street through a little cut through if it wants to go south on to the Circle and into Georgetown.

So these, for all intents and purposes the most heavily used link on that Circle is in front of this site. The issue that then, well, then I also will take issue with the analysis that has been presented to you in terms of quantifying level of service on the basis of an analysis that is essentially looking at volume versus capacity.

Since 1985 the Highway Capacity Manual has defined level of service in terms of vehicle seconds of, average vehicle seconds of delay, vehicles per second delay.

And therefore it s inappropriate to equate a result from a capacity of a, creating a lane volume analysis to a level of service. And as the author of the, of a paper on critical lane volumes in 1971, I ve been very, I ve been following this over the long period of time.

And while we did use critical lane volume analysis to equate the level of service for many years, since 1985 it s not a valid comparison. A more valid comparison would have been to use analysis techniques, computer based analysis techniques which can look at a circle like Sheridan Circle as what it really is, as a roundabout.

If you go through the high -- capacity --check the ten characteristics of a roundabout, at least seven of them, this Circle, excuse me, qualifies for at least seven of them.

Therefore, I don t think the Board really has before it a valid evaluation of the operation of that traffic

circle, or roundabout as it would be more property called.

Furthermore, the fact that the Q Street Bridge is closed and is not, the Circle is at least 30 per, or at least 25 percent less traffic it may be as much as 50 percent less traffic in it now, than there will be when the Bridge is open.

It creates a totally different set of circumstances that you re dealing with for an operation that starts at 3:00 o clock in the afternoon and proceeds through until 8:00 o clock in the evening.

Interestingly, it s interesting to note that the time period for the video that you saw was roughly 3:00 to 4:00. The count that Dr. Carter, in Dr. Carter s report does not start until 4:30. Furthermore, going to your point Mr. Sockwell that there s, the actual use of the Circle is evenly balanced inbound and outbound in the evening peak and is probably more so inbound in front of the site because of the loop up and around the Circle to get to the Q Street Bridge when it s opened.

The issue in this case is not the volume of traffic that this site generates in terms of its 18, the potential 18 trips. The issue is pickup and drop-off with a heavy emphasis on pickup.

Any of you who have a, have seen schools operate, know that parents on the pickup end of the trip will typically arrive early and they will park and wait. Where do they park and wait on Sheridan Circle? Do they double park against the

diplomatic parking that exists in front of the Korean Embassy?

Do they continue around the Circle? They can t circulate blocks very well in this neighborhood without going down 23rd, left on Q, left on 22nd and back up Mass, another left onto Mass. There s hardly a circulation route that we would want to encourage.

I think Dr. Carter was at an extreme disadvantage without having a management schedule for how these classes were going to operate because it is the management of those, of that, those classes that is going to determine how much queuing, how much parking we get on that Circle.

And I think given the prior description of how drivers literally work or drive that Circle, having a row of double parked cars waiting for children to come out is going to create situations from a, from the determination of an impact upon traffic that the Board must make that are not in my judgement tenable.

The, I ve got the, the paper that you will have before you lists the various things that, the sets that go through, that people will go through to drop children. This attendant that we speak of is 60 feet from the front of that, from the front of the building to the point where he has to, will assist children out of a car.

Sixty feet at the design walking speed of four feet per second it takes him 15 seconds to get from the door to the

car, we go through an unloading operation, we get a child out of a car seat, we unbuckle him, we get his instrument out of the car, and then he escorts him back to the door, it s another 15 seconds.

In the meantime somebody has arrived to pick up a child that has just finished a class so then he s waiting. And he goes through that same process again to put a child, strap him into a car, or be sure he gets into his car seat, if we re not going to have the driver of the car get out and do it, load his.

The vision that goes through my mind is the Volkswagen with the base fiddle on the roof, but that may be an exaggeration, but at this hour of the night it s the vision that comes into mind.

I think that this application fails to demonstrate to the Board of Appeals a management scheme that can be relied upon to prevent problems. In fact the only evidence that I ve seen or heard is on Page 8 of the, of Dr. Carter s Report which talks about the fact that lessons are scheduled for different lengths.

But there s no definition of what that is. The presence of the attendant, I ve just dealt with that. A single attendant is not only doing just moving cars in and out of the lot, potentially.

Yes, agreed, all cars don t arrive precisely at the same time, but there is a time element that each one must dwell at the curb to do what they re going to be doing. And finally the

suggestion that you will instruct parents when to drop off and pick up their children does not provide me as a professional engineer a lot of security as to how that is really going to be managed.

And if they don t do that who s going to enforce it? How are you going to enforce it? And as was indicated earlier, there is diplomatic parking west of the driveway for both the subject site and the Korean Embassy, which is in effect until 6:30 in the evening.

I d be glad to respond to any questions that you may have. Thank you.

MR. NETTLER: First, Mr. Peterson, let me just ask you, did you come to any conclusions regarding the reports that you had reviewed regarding, as to the recitals, both the timing, the numbers of people attending those recitals as it may affect both the traffic around the Circle given the number that I think you heard probably the Applicant testified to today and its impact on those issues?

MR. PETERSON: The, I don t see the addition of 36 or 50 cars to the Circle as has been indicated, it s a very small percentage of the total volume. The issue is not the number of cars circulating the Circle. The issue is the number of cars that must be accommodated in the parking.

First park, unload, then depart, then the following, the pick-up, must park, must get the child, and the

fact that people do, they do come together, they do wait, and there really is no specific waiting area for people that are waiting to pick up their child.

And I don t consider double parking adjacent to diplomatic parking on the street as an appropriate way to accommodate that problem. I might add that the parking spaces that were looked at, the comment has been made you need to make, you need to move one or two, actually if you get cars five and six out of the far back end of the lot, if you look at the spaces, the space, there s two spaces that block that.

So you would really have to move three cars and we ve got one attendant and where is he going to put those cars? He s going to back them out on the street and double park them against the diplomatic parking, if somebody has to get out early.

Again, I don t think that is a, these are issues that are to me not well presented in the application. They re issues which I would think the Board would be concerned about from the view of their findings of the adequacy of traffic accommodation, and I don t believe that you have enough evidence in this application to be able to come to a, to make a judgement on those issues. Thank you.

MR. NETTLER: Thank you.

CHAIRPERSON REID: Thank you. Board Members, do you have any questions? Okay. Cross examination?

MR. HITCHCOCK: Thank you Madam Chair, in the

spirit I ve heard Board Members stayed in the past, I ll try to be brief and let Dr. Carter speak for himself. A couple of questions the traffic that we re talking about during the 3:00 to 8:00 p.m. period is coming westbound southbound down Massachusetts, correct?

If it s passing in front of Studio House?

MR. PETERSON: Oh, not site traffic, but other traffic?

MR. HITCHCOCK: Well, yeah, I mean let s focus on the 3:00 to 8:00 p.m. operations when the lessons are taking place. The traffic that passes in front of Sheridan House, or in front of Studio House is the most part coming from the west and then either going down Q Street or continuing down Massachusetts?

MR. PETERSON: As of today, however, we reopen the Q Street Bridge there is another component that s equal to approximately a third of that which comes down Mass Avenue which will be circulating on the Circle and it s the traffic that has the right-of-way, which is the traffic that somebody trying to back out of a driveway has got to be concerned about.

MR. HITCHCOCK: Okay. Let me ask you this question. Somebody coming southbound eastbound on Massachusetts, might want to turn on to 23rd Street, to get to Rock Creek Parkway, correct?

MR. PETERSON: Yes. That s one way they get, the one they turned on to 23rd Street they have two options. One is to continue on 23rd Street down to 22nd, or they turn left on to Q Street and go across doing whatever they want to do further to the

east.

MR. HITCHCOCK: Okay. And they might also, but as I understand your concern is that when the traffic, when the Q Street Bridge reopens some of this traffic might turn either east or west onto Q Street?

MR. PETERSON: My concern is that this traffic that is now diverted to streets such as P Street or other routes in the City will return to its preferred route which is outbound on Mass Avenue, around Sheridan Circle, in front of the site, right turn on to 23rd Street and right turn on to Q.

And that is a pattern that existed. It shows up in the 1984 count that Dr. Carter introduced this evening. I would proffer that it is probably, I can, there s probably less traffic even in a count that s 15 years old than there will be when the Q Street Bridge reopens.

MR. HITCHCOCK: But isn t it possible though that when the Q Street Bridge reopens some of the outbound traffic, traffic leading downtown might go off, take a, head west on Q Street and never come to the Sheridan Circle at all?

MR. PETERSON: It can t get there because of the left turn prohibition on Mass Avenue westbound at 22nd Street.

MR. HITCHCOCK: What if it comes up 22nd and then tries to go?

MR. PETERSON: It can do, some people will do that. But it s, --

MR. HITCHCOCK: Don t some people do that every day?

MR. PETERSON: Some, when the Bridge is open, yes, but they, I, I come back again to the fact that the count submitted by your witness demonstrates that there was up to twice as much volume in some locations on that Circle in 1984 then there are today.

MR. HITCHCOCK: Okay. Let s move on to another subject. You see pick-up and drop-off in the curb lane is the key issue, and you ve stated there was no management scheme that would solve the problem, although you ve cited the fact some lessons might begin, might be 45 minutes in length.

Were you here when Dr. Carter also made the suggestion about having lessons start at say 4:00, 4:05, 4:10, that sort of thing?

MR. PETERSON: I don t know if that suggestion came from him or it was a question by you to one of the witnesses if that would have alleviated the concerns of the ANC. I think that s where that question arose. I didn t hear Dr. Carter make that as a proffer.

MR. HITCHCOCK: Okay, well what about your concern, would that address your concerns as a management scheme?

MR. PETERSON: It s at least something that should be explored. It is not in the application before the Board of Zoning Adjustment at this point, so they can t, I don t see how they can judge whether it has merit or not.

MR. HITCHCOCK: Okay, but you re the transportation expert. You think it might address the problem.

MR. PETERSON: It is a, at least it s a start in terms of addressing the problem. I don t know whether it can address it or not cause I have no idea from reading the application as to really how many students we re dealing with, what their headways are between classes, their, this is the kind of.

A schedule of the operation of this school whether it be 10:00 to 12:00 in the morning or from 3:00 to 8:00 in the evening, or from 7:00 to 9:00 in the evening when the recitals occur, it s not there.

MR. HITCHCOCK: Okay, thank you.

CHAIRPERSON REID: Thank you Mr. Hitchcock. No other cross examination? Okay. It s 10:00 o clock. I can t believe it. Thank you. Mr. Nettler, closing remarks? No I m wrong. Mr. Hitchcock, closing remarks?

MR. HITCHCOCK: May I ask first if Dr. Carter has any comments in the way of rebuttal?

CHAIRPERSON REID: Mr. Carter, that is not --That would not be appropriate in these proceedings. At this point we want to just bring some closure to this particular case.

You have the opportunity to give closing remarks and you can then address in your closing remarks any redirect that you wanted to do that you spoke of earlier, and this is the

appropriate time to do that, okay?

MR. HITCHCOCK: Thank you Madam Chair. I want to make a couple of points. I probably will not cover each and every specific that was reserved at this point but we will have the opportunity on findings of fact and conclusions of law, so our written statement will cover that.

CHAIRPERSON REID: Yes.

MR. HITCHCOCK: This is an unusual case because we re dealing with a rather unusual landmark. A landmark because of its exterior and a landmark with the two interior floors. We ve heard testimony about difficulty in terms of trying to use such a landmark that was built and designed for performance space for exhibitions as something other than some of the prior uses that it had.

The Smithsonian held on to this property for 39 years. The Smithsonian couldn t make a go of it. The Friends Group came along five years ago and said we will raise a million dollars to join in an effort to have this Smithsonian use this building for mixed-use office and for performance and exhibition space.

That didn t go anywhere. And the Smithsonian sold it. The Edmonds s are coming along now five years later after that effort failed to say we will do something along the lines that Alice Pike Barney did.

We will restore a residential use to this building.

Something it has not had for decades, something that we respectfully submit should be important to the neighbors given the pressures for uses here for non-residential means.

The other thing that they are doing is offering a private school. Not offices, but something that will open up this public landmark to the children of the City, will make it available to people who can come and enjoy the unique building that you saw on the tape.

I respectfully suggest that all the elements for an exception have been met here. With respect to noise noting will take place outdoors, there are thick walls. The basement where most of the, where the music lessons will take place, the studios in the basement will be soundproofed and there s been no opposition to that.

We ve talked about the concern that the next-door neighbors have. It s about one instrument, the piano that s in the second floor, and I m sure there s a way to address that concern such as using it only in the rear parlor, the 90 seat parlor in the back.

There are things that can be done to address that. The number of students, 17 at one time, one hour of the week. That is not a lot. But the real concern here is with the traffic and parking, and let me talk about some of those issues.

I think Dr. Carter s testimony talked about some of the discrepancies that may have taken place between some of the

students, but I think the fundamental fact remains that this is a Circle that functions smoothly and you saw the traffic on the video which was like 3:30 to 4:00 when lessons were being held.

And he also testified that what he observed being out there between 5:00 and 6:00 was not that much more difficult in terms of access. You ve got an excellent safety record in the Circle.

We ve got the letter in from the secret service. There s not a security concern. We have tried to deal with these issues in every way that we can. We ve staggered the hours of operation so that there will be nothing during the morning rush hour.

We have tried to limit the art classes to after 6:30 when some of the residential, when some of the embassy spots open up. We ve limited the recitals in number as well as in time to off peak periods, again when residential parking is there, and again when it is convenient for parents and students.

We ve got an attendant to make sure the drop-off and pick-up will move smoothly. We really don t think there will be 18 cars appearing at one time. But there are things that can be done to deal with it.

Let me point out as well that what we re really doing here is not that radically different from what the Board has done in several other cases. We attached as Exhibit 11 the Board s decision recently involving Metropolitan Day School, which

had a far more extensive traffic use.

Thereto I would point out as a footnote, the Applicant came in and said we will deal with some of het concerns about parking by making spaces available off-site, and the Board approved that as a means of alleviating some of the concern.

We ve done the same thing here. The Levine School, which is in upper-northwest Washington is an R-1-A Zone, and it s far more intense in its usage than what we re talking about here as Mr. Graves testified.

So, I think that it will work. The parking, the on-site parking. There has been stacked parking on this site for decades. That s the way the Smithsonian used it. And in terms of questions of practicality. What may have been glossed over in the presentation, during the bulk of the lesson period, the spaces will be taken by the teachers.

And one of the things that the Edmonds s are doing with the school is coordinating it with, through the registrar so everyone s going to be arriving at the same time and everyone will be leaving at roughly the same time, the 8:00 o clock period.

And there are things that can be done if a teacher for example has to leave early to go in for a dental appointment, for example. There is flexibility. The concerns that all of a sudden you ll have to move eight or nine cars to let one person out are just not going to happen. Teachers will know, they will understand the routine, and it s not going to be a concern.

Mr. Edmonds also stated in his testimony that from his experience in Virginia he doesn t anticipate that parents will stay for lessons, and if the Board wants a condition to that effect that is something that certainly we would be happy to consider.

In terms of the recitals, we ve tried to, there has been no criticism that I ve heard of of the concept of students recitals, there s been some criticism of the numbers, the 45 people, and we ve addressed that.

With respect to the guest recitals, Mr. Nettler suggested that we may be tipping over the line into some kind of public hall type of thing. We are holding 12 recital, I m sorry 24, proposing 24 a year of two hours each.

By contrast the school will be in operation for over 40 hours during the week, so this is really minimal and it really does have the educational purpose of letting students hear professional music, talk to musicians, and have a benefit that just is simply not available at the present time.

And let me close by saying, as I think Mr. Edmonds s testimony pointed out, you re dealing here with an Applicant who is no stranger to giving back to the community and trying to work with the community.

There s the exhibits in the records of things that he did to try to bring music lessons to children at the Adams School in 19th Street and Adams Morgan. There was the award he

received from Wynton Marsalis at the Filmore Arts Center here in the District.

These were done while he was running a school out in Virginia but as a Washington resident he wants to do things here in the City. And there are numerous other awards that they ve given over the years.

There will be the scholarship program. Here is someone with a record of trying to do good things for the children of the City. It s a venture that we hope that the Board will approve. With that I have no further comments and appreciate your attention at this late hour.

CHAIRPERSON REID: Thank you. Before we conclude I did have just a couple quick questions for Mr. Edmonds. In regard to your testimony you had today, one is, very quickly, do you live in the House?

MR. EDMONDS: I do not live in the House.

CHAIRPERSON REID: All right.

MR. EDMONDS: I have some of my furniture in the house. I m currently living about six blocks away.

CHAIRPERSON REID: Okay, in the submission that you gave to the Board, that was submitted to the Board is, it said that you had moved into the House and you lived in the first, on the top two floors, --

MR. HITCHCOCK: May I respond to that?

CHAIRPERSON REID: Yes.

MR. HITCHCOCK: I take responsibility for that.

CHAIRPERSON REID: Uh-huh.

MR. HITCHCOCK: I spoke with the Edmonds s shortly before we filed and indicated to them that if they were in the House there may be a benefit in terms of getting a lower filing fee for owner occupancy. And they told me then that they would move in promptly.

And I drafted that part of the report accordingly. When I told them there was no exemption, I think what happened is they stopped moving in, but I didn t say, what are you going to do now? But I think he will testify --

CHAIRPERSON REID: Okay.

MR. HITCHCOCK: -- that I mean they, they do have furniture on the top two floors, and as he said if this is granted they will live there.

CHAIRPERSON REID: They will live there. They intend to be owner occupants but they do not at this time.

MR. HITCHCOCK: No. I mean given the uncertainty I think they wanted to wait until the matter, until the dust had settled in the matter.

CHAIRPERSON REID: Okay, and secondly, the operation of the studios, the music studio, is it, it s going to be a for-profit operation? It s a commercial, business entity?

MR. EDMONDS: This is has been raised a number of times by people of the ANC. I mean the non-profit status does not

prevent us from taking money any more than a church takes a collection.

CHAIRPERSON REID: All right.

MR. EDMONDS: We certainly must make money to operate.

CHAIRPERSON REID: Okay. Well then, the, are there going to be any other types of activities --

MR. EDMONDS: There will be no commercial sales or retail sales ma am, at all, zero.

CHAIRPERSON REID: Are you going to lease the facility to other entities for other types of events, weddings?

MR. EDMONDS: Absolutely not.

CHAIRPERSON REID: Okay. And will there ever be liquor served on the premises sold or served?

MR. EDMONDS: There would never be liquor on the premises.

CHAIRPERSON REID: Okay, thank you.

MR. HITCHCOCK: May I add just one point on that -- Exhibit 13 contains the articles of incorporation as a non-profit corporation.

CHAIRPERSON REID: Uh-huh.

MR. HITCHCOCK: And Mr. Edmonds s statement indicated that they intend to seek tax exempt status under 501C3 of the Internal Revenue Code so they would have to operate to preserve the tax exempt status as a non-profit educational

institution.

CHAIRPERSON REID: Thank you.

MR. HITCHCOCK: Which we provide an extra --

CHAIRPERSON REID: Okay. Other Board Members? No questions. All right. And this will finally conclude today s hearing.

MS. PRUITT: Madam Chair, I just would like, we will take just some closing dates for everybody to be sure.

CHAIRPERSON REID: And I should also, I m sorry, I didn t mention that this particular case will be deliberated at the next --

MS. PRUITT: That s what I wanted to --

CHAIRPERSON REID: Yeah, at our next meeting, which will be April the 5th.

MS. PRUITT: April, no, no, yeah, April the 5th.

CHAIRPERSON REID: April the 5th.

MS. PRUITT: And we would like to have draft orders by March 27th since you re closing the record at this time, correct?

CHAIRPERSON REID: One disk.

VICE CHAIR SOCKWELL: Madam Chair just one question on the liquor item.

CHAIRPERSON REID: Uh-huh.

VICE CHAIR SOCKWELL: What was your specific on the liquor? Were you saying that there would be absolutely no liquor

served in the premises to guests --

CHAIRPERSON REID: I, no, no --

VICE CHAIR SOCKWELL: I mean was that your indication or was the indication that there would be no liquor sold on the premises?

CHAIRPERSON REID: My question was would there be any liquor sold or let me put it this way, any alcoholic beverages sold on the premises or served on the premises?

MR. HITCHCOCK: The answer is no.

MR. EDMONDS: And the answer is no.

MS. PRUITT: I m sorry, that has to be of course only in relationship to the school. I mean we can t, you can t necessarily govern him from not serving liquor --

VICE CHAIR SOCKWELL: No, you re talking about his residential use, and if he lives there he can drinks all he wants.

MS. PRUITT: Right. --

CHAIRPERSON REID: First of all, first of all I did not, I did not in any way indicate one way or the other. My question was simply will there be any alcoholic beverages served or sold on the premises and the answer was no.

MS. PRUITT: I guess I just wanted to be sure you were --

VICE CHAIR SOCKWELL: Yeah, and I don t think Ms. Reid meant with regard to his residential occupancy of the property. That s all

MS. PRUITT: Just trying to keep the record as clear as possible.

VICE CHAIR SOCKWELL: Am I correct?

CHAIRPERSON REID: No, I did not in any way, if I did infer, I did not intend to, the, I thought we were referring to the Studio that is the subject of this application today.

VICE CHAIR SOCKWELL: Right, right. Okay.

CHAIRPERSON REID: And that was the concern of the opposition was that there had been some discussion of or some rumor about alcoholic beverages being served or sold on the premises.

VICE CHAIR SOCKWELL: Uh-huh.

CHAIRPERSON REID: And that s -- okay. All right, now, so do you have the date line? Draft orders.

MS. PRUITT: Just for clarification the record is closed as of now. You re not requesting any additional information, correct?

CHAIRPERSON REID: No, I did not.

MS. PRUITT: Closed as of now and that draft orders will be due on March 27th which is a Monday.

CHAIRPERSON REID: Mrs. Renshaw and Mr. Moulden will read the rest of the record and they will also participate in the vote. All right, thank you. And I would like to especially thank everyone for your patience and your indulgence at such a late hour. We did not have any idea this would go for so long, but

yeah, you have to do what you have to do.

VICE CHAIR SOCKWELL: And you ve set a new record for this session of hearings because the last one ended at 10:00 o clock and you beat it by 13 minutes. 14 minutes.

COMMISSIONER HOOD: I just want you to know that the Zoning Commission has the record.

(Whereupon the hearing in the above entitled matter was concluded.)