GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

FEBRUARY 9, 2000

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD	Commissioner

COMMISSION STAFF PRESENT:

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

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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MARTY SULLIVAN, Esq.
Wilkes, Artis, Hedrick & Lane, Chartered
Suite 1100
1666 K Street, N.W.
Washington, D.C. 20006-2897
(202) 457-7814

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9:40 a.m.

CHAIRPERSON REID: Good morning. This room will please come to order. Ladies and gentlemen, this is the February 9th Public Hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Sheila Cross Reid, Chairperson. Joining me today is Robert Sockwell and Mrs. Renshaw, who is our newest Board member. We welcome her as well as Mr. Hood, who is representing the Zoning Commission. Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify either in favor or opposition are to fill out two witness cards. These cards are located on each end of the table in front of us. Upon coming forward to speak to the Board, please give both cards to the reporter, who is sitting to my right.

The order of procedure for special exception and 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 Neighborhood Commission; four, parties or persons in support; five, parties or persons in opposition; six,

closing remarks by the applicant. Cross examination of witnesses is permitted by the applicant or the parties. The ANC within which the property is located is automatically a party in the case. The record will be closed at the conclusion of each case except for any materials specifically requested by the Board, and the Staff will specify at the end of the hearing exactly what is expected.

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

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

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

And also I know the staff does have preliminary matters. Please come forth.

MR. COLLINS: Good morning, Madam Chair and members of the Board. My name is Christopher Collins with Wilkes, Artis, Hedrick and Lane. Seated to my right is William Edwards, who is the general manager of the Hilton Hotel. We are here on case number 16511. I am requesting a postponement in the application.

As you recall, Madam Chair, on December 1 of last year, there was a hearing scheduled in this matter. During the course of that hearing, which actually only dealt with preliminary matters, five parties were admitted by the Board. There was two-and-a-half hours of discussion in that matter and a number of motions were filed at the hearing. There was a motion to dismiss the application, which this Board denied. There was a motion to classify the application as a use variance rather than area variance, and that was denied. There was a motion to require a variance for loading, and that was denied. There was a motion to postpone the application, and that was approved.

During the course of that discussion, several of you may recall, there was a request by you, Madam Chair, and by other members to ask those who were

admitted as parties to consolidate as one party and speak with several witnesses rather than have five separate parties. There was a request also for the parties to meet and discuss the application -- the applicant and the parties. And I am quoting from the transcript of that December 1. This is Mr. Hood speaking. He said, "I would hope that both sides could come to some type of agreement. Not that that would make our job a lot easier, but I would hope that they would go into these discussions open-minded and just not with a closed mind and straight on one side. Because there are some issues, and I would hope that both sides could try to resolve some of those issues before you come back."

The applicant was instructed to meet with the parties. After the postponement, the applicant sent certified letters to each of the parties that were admitted as well as to the ANC's offering to meet to discuss the application at a mutually convenient time. I sent that letter out. I did receive several responses.

A community forum was held on January 6, which was convened by ANC's 1C and 2B. During the course of that public forum, the Hilton was requested to set aside the application and deal first with issues

identified by the community during the course of that forum and in other discussions. Mr. Edwards has also had -- or during the course of that time had also had several discussions with community representatives.

Accordingly, we filed a request for postponement on January 14, and that is the request that is before you today.

CHAIRPERSON REID: The request that was submitted to us, Mr. Collins, was predicated on a continuance until December, correct?

MR. COLLINS: We picked a date. We just picked December as a date that was far enough in advance that we could identify and deal with the issues that were raised. There were a number of issues that were raised.

CHAIRPERSON REID: Okay. I certainly empathize with the situation in regard to this case with the applicant and the community. Nonetheless, I don't think I am clear on why you need so much time.

MR. COLLINS: Well, we picked a date far enough in the future that would allow us to adequately deal with the issues. It is certainly up to you to --

CHAIRPERSON REID: What are you saying? You feel that it will take that much time to deal with the issues? I am not clear on that. I need some

clarification, please.

MR. COLLINS: You can choose whatever date that you would like. We would need probably at least I would think about six months.

CHAIRPERSON REID: Okay, but why? I mean, can you explain to me -- you have been meeting. Are you saying that because you still have some distance to go or can you see the light at the end of the tunnel or what is the situation? What was the outcome of the meetings that you had subsequent to your last appearing here?

MR. EDWARDS: First, I am Bill Edwards, Vice President of the Hilton Hotel and general manager of the Hilton.

CHAIRPERSON REID: You need to give your address too.

MR. EDWARDS: Washington -- 1919 Connecticut Avenue, N.W., Washington, D.C. 20009. As per your instructions, we met with the conglomerate group of the various neighborhood organizations and attempted to explain the parameters of the project and the economic impact of the project. What it is and what it isn't. We had a good exchange with the various members of the community. Clearly some of the members' position was that they have a congestion issue versus

trucks versus cars. That is really the focal point. Like I said, I have been in the building since 1971, so I have seen it through all of its phases.

So from that meeting, it was just presented as a project. Here it is. Let me explain it and go on any further. We then met privately with Councilmen Graham, who was there. And we had two elected individuals who were sent as emissaries representing them, which met in my office. We then covered, okay, what do we want to do, and it ranged from putting the hotel on a two-year test that after two years, they would reconvene and decide what they would like to do. I tried to explain that $20 million of capital dedicated to a city in our corporation is not going to stay for two years. In other words, I have got the request in now for this project and that was extreme, but let's keep talking. I think we made -- it was a civil meeting. I mean, it wasn't a hostile, negative thing. At least I didn't perceive it that way. But I sensed that sitting down and discussing with individuals was going to take a little longer. We picked December just arbitrarily. If you would like to shorten that length, certainly I would be more than willing to do that. That is not a number fixed. So we could shorten it up and work for the next few months

and get back to you. Unless -- what I am trying to do is follow what Mr. Hood said of let's try to get this thing as neat as we can.

CHAIRPERSON REID: Nonetheless, you don't feel that you all came to a degree of mitigation that would allow you to go forward today?

MR. COLLINS: No. The issues that were raised were substantial. And we were unable -- we have not -- it would not have been possible to deal with them in a month's time. We determined shortly after that meeting to request a postponement because there is no way that we would have been ready in order to proceed today.

CHAIRPERSON REID: Okay. Did you frame the issues so that you could basically go down the list and address each one and be able to respond or give some kind of response or proffer some resolution to the issue?

MR. COLLINS: Well, we are not there yet. There is a number of issues that we have to deal with. We don't have solutions yet to the issues.

CHAIRPERSON REID: Is there anyone here from the ANC or from the opposition?

MR. COLLINS: Can I make some other points as well?

CHAIRPERSON REID: Sure.

MR. COLLINS: And that has to do with the parties. There were five parties admitted in the December 1 hearing.

CHAIRPERSON REID: Was it five or four?

MR. COLLINS: Well, it was four plus the ANC, which made it --

CHAIRPERSON REID: Well, the ANC is a given.

MR. COLLINS: Right. So there were five parties recognized at the December 1 hearing. Parties certainly have rights, as you know, under the rules of procedure, but they also have responsibilities. And one of those responsibilities is to serve all of the parties with any correspondence to this Board. We understand that responses to our request for postponement were served on this Board on or about mid-January, sometime after our request was filed, but we were not served with any responses.

CHAIRPERSON REID: You were not served by who, Mr. Collins?

MR. COLLINS: By any of the parties that were admitted by you. The parties were admitted, Madam Chair, without adherence to the rules of procedure.

CHAIRPERSON REID: I am sorry, repeat that.

MR. COLLINS: The parties were admitted without adherence to the rules of procedure of this Board, specifically 11 DCMR 3106. Those are new rules of procedure which went into effect last fall. There was no adherence to the rule. There was no request for a waiver of the rule. There was no good cause shown for any waiver of the rule and no waiver was granted. Specifically, 3106.2 states that "except for the applicant, appellant or the ANC, to participate as a party in a proceeding before the Board, any affected person shall file with the Board not less than 14 days prior to the date set for the hearing the following information." It lists the information to be filed. "Including a written statement setting forth why the person should be granted party status including reference to the following: 1) the property owned or occupied by the person or in which such person has an interest that will be affected; 2) the legal interest such person has in such property; 3) the distance between such person's property and the property subject to the application; 4) the environmental, economic or social impacts that are likely to affect such person and/or such person's property; 5) any other relevant matters that demonstrate how such person likely will be affected or aggrieved. 3106.3 states, "In considering

any request for party status pursuant to 3106.2, the Board shall grant party status only if the person has clearly demonstrated that his or her interests will be more significantly, distinctly or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public."

CHAIRPERSON REID: Do you contend that that was not done?

MR. COLLINS: Yes, I do.

CHAIRPERSON REID: All right, Mr. Collins, I am not aware, if you will, of whether or not that information had been submitted properly. Nonetheless, let us look into it and determine if in fact this is as you say it was or if in fact there was some submission and then we will conduct ourselves accordingly.

MR. COLLINS: Good. My only suggestion is that if the Board is seriously considering its request to the parties to consolidate as one party rather than five, and since those parties have not acted responsibly, then I suggest that this is the proper time to cure that defect and require that they file demonstrating in writing their uniqueness, and that is something that you then can evaluate in whether to continue to allow them to act as parties.

CHAIRPERSON REID: Okay. Let me hear from

the other Board members and staff.

MEMBER SOCKWELL: Mr. Collins, at the time that party status was granted to those additional parties, you were well aware of what the rules of this Board should be, were you not?

MR. COLLINS: And as was the Board. I did object.

MEMBER SOCKWELL: You did object?

MR. COLLINS: I did.

MEMBER SOCKWELL: Did you object on those grounds or did you object generally?

MR. COLLINS: I objected to admission of the parties.

MEMBER SOCKWELL: For the reason?

MR. COLLINS: For the reason that they didn't qualify as parties. That they all -- the record is clear. They came down -- nothing was submitted in writing.

CHAIRPERSON REID: Did you cite the regulations? I don't think you did.

MEMBER SOCKWELL: I don't recall any of those citations.

MR. COLLINS: The discussion was so free-flowing, Madam Chair.

CHAIRPERSON REID: Okay.

MEMBER SOCKWELL: But, Mr. Collins, the free-flowing of the discussion would not be something that you are not more than capable of dealing with under the circumstances.

MR. COLLINS: The Board is required to follow its own rules.

MEMBER SOCKWELL: Understood.

MR. COLLINS: Including either requiring the rules to be adhered to or granting a waiver.

MEMBER SOCKWELL: But you did not cite that the Board might be in conflict with its own rules with regard to those granting of --

MR. COLLINS: Mr. Sockwell, as you may recall during the course of that hearing, there was a lot of free-flowing discussion and a lot of sentences were cut off and a lot of interruptions were made.

MEMBER SOCKWELL: But the Board has not been characteristically unwilling to listen to specific requirements and specific statements from either parties or counsel or any other applicant.

MR. COLLINS: Nonetheless, the rules stand. The rules require that this be adhered to or waived.

CHAIRPERSON REID: I don't want to put the onus of responsibility of the adherence to the regulations on Mr. Collins. Not at all. But, Mr.

Collins, I think that what we are saying is given the fact that we had this discussion and that issue was not brought up -- and the point is that seeing that the Board was leaning the other way, and that is not saying that the Board is beyond error in some instances -- that if you had been diligent enough to point out to us that this is why this can't be done because you don't have this, then we would have stopped right there and looked into it, and then we could have remedied the situation on the spot rather than get to this point now and then to try to remedy it. And I am saying that I appreciate your bringing that to our attention. Nonetheless, it would have been great if you had done it at that time.

MR. COLLINS: Well, since we are requesting a postponement now and a hearing in a future date, there is an opportunity to cure the defect.

CHAIRPERSON REID: That is what I am saying. We will look into it and see what in fact the situation is and whatever the proper procedures are, we will definitely take whatever steps are necessary to remedy and to correct and to be able to be in order as we proceed from this point on.

MR. COLLINS: Thank you.

MEMBER RENSHAW: Madam Chair?

CHAIRPERSON REID: Yes.

MEMBER RENSHAW: Just to clarify, Mr. Collins. The hearing at which you had noted these discrepancies was in December?

MR. COLLINS: That was the last time we met --

MEMBER RENSHAW: That was the last time before the Board?

MR. COLLINS: Yes.

MEMBER RENSHAW: And you did not write any memorandum to the Board and this is now February 9? So you have not brought it to the Board's attention until today, is that correct?

MR. COLLINS: That is correct.

MEMBER RENSHAW: Fine.

CHAIRPERSON REID: Mr. Hood, did you have any comments?

COMMISSIONER HOOD: I have no comment, Madam Chair.

CHAIRPERSON REID: Ms. Pruitt, could you speak on this matter please?

SECRETARY PRUITT: Well, the new regs went into effect on October 10. So anything after that, it is required that under 31 -- I don't have the exact -- 3106 that party status be done two weeks in advance in

writing and that it has all of that detailed information. And it was not done for this case. And that is --

CHAIRPERSON REID: Is there a reason? Were you in attendance?

SECRETARY PRUITT: No, I wasn't. I read the record.

CHAIRPERSON REID: Okay, who was staff in attendance at that time?

SECRETARY PRUITT: That was -- unfortunately, that was one of those late days and I think the hearing didn't start until 3:30, and at that point I unfortunately had to leave.

CHAIRPERSON REID: Okay. I think that it is one of those things that slipped through the cracks. Because we were aware of the fact that those new regulations were being promulgated, and I don't think that it was brought to our attention that they were in effect at that point. And I think this is what apparently happened. Did I hear you say, Mr. Collins, that you would be amenable to allowing the submission of that information that is required from the parties to be submitted and then to make a determination whether or not they would be allowed to be parties in this instance?

MR. COLLINS: I think that would be an appropriate way for the Board to cure the defect, yes.

CHAIRPERSON REID: I have no problem with that unless there are any objections on the part of the opposition. Yes?

MR. HITCHCOCK: Thank you, Madam Chair.

SECRETARY PRUITT: Excuse me, sir, could you turn on your microphone and state your name? Thank you.

MR. HITCHCOCK: Sure. For the record, my name is Cornish F. Hitchcock. I have a law office at 1100 17th Street here in the District. And consistent with the Board's request at the December meeting, I am acting on behalf of private parties and will appear here for them.

CHAIRPERSON REID: Who specifically?

MR. HITCHCOCK: Kalorama Citizens Association, Dupont Circle Citizens Association, Residential Action Coalition, and Mr. Andreas Frank.

CHAIRPERSON REID: Wait a minute.

MR. HITCHCOCK: Okay. Not the ANC.

CHAIRPERSON REID: Mr. who?

MR. HITCHCOCK: Mr. Frank.

CHAIRPERSON REID: Mr. Frank? Is he with the Wyoming Condo Association?

MR. HITCHCOCK: No. He is an individual who lives across the street on 19th Street.

CHAIRPERSON REID: Okay, wait a minute. I have --

MR. HITCHCOCK: And he is present here.

CHAIRPERSON REID: I have four persons -- four entities that have been granted party status and then the ANC would make five.

MR. HITCHCOCK: Correct.

CHAIRPERSON REID: But I don't have Mr. Frank.

MR. HART: Madam Chair, if I can just interrupt. I believe Mr. Frank was the one who was being imposed upon because of the driveway.

CHAIRPERSON REID: I remember him. I remember him. Boy, do I ever remember him. Because he made it very clear as to -- he was very persistent as to wanting to be granted party status, yes. But I don't have him on my last of those who have been granted party status. Do you, Ms. Pruitt-Williams?

SECRETARY PRUITT: No, I don't have that list right in front of me. I can go look it up.

CHAIRPERSON REID: Okay. So what are we talking about? Are there five people -- I mean five entities in addition to the ANC or four?

SECRETARY PRUITT: Madam Chair, you have it in your file that is right there next to you, the office file. We can look for it for you.

CHAIRPERSON REID: Yes, please. You should. I don't -- this is too voluminous for me to try to stop and look through it right now. But I don't have Mr. Frank on my list. This is not to say that Mr. Frank was not granted. It is just that I don't have him on my list. So let's go over the people who -- the entities that have been granted party status in addition to the person, Mr. Frank. What is your first name?

MR. FRANK: Andreas Frank.

CHAIRPERSON REID: Mr. Andreas Frank. And then you are representing Dupont Circle Citizens Association, Kalorama Citizens Association, the Wyoming -- no, I am sorry -- the Residential Action Coalition, right?

MR. HITCHCOCK: Correct.

CHAIRPERSON REID: So you are representing three entities. The Wyoming Condo Association, are they here? Is there someone representing them here today?

MR. CHALMERS: Madam Chair, there are several members of the condominium association here

today, but no representative that the Board recognizes.

CHAIRPERSON REID: I am sorry, can you come to the microphone please, sir?

MR. CHALMERS: Madam Chairman, my name is Frank Chalmers. I live at 2022 Columbia Road, N.W., the Wyoming Condominium. In that condominium, I own units 401 and 403. Those constitute my residence and they are as close as any units in the condominium to the property line of the Hilton Hotel.

CHAIRPERSON REID: But your entity, the Wyoming Condominium Association was granted party status, was it not?

MR. CHALMERS: I do not know that. There has been a great deal of confusion.

CHAIRPERSON REID: Was it not? It was not?

MR. CHALMERS: The board of the condominium association, over the protest of some of the members, has taken a stand on this issue.

CHAIRPERSON REID: But you were not granted party status, is that what you are saying?

MR. CHALMERS: As an individual? No. To my knowledge -- I don't know what the Board of Directors did, but they are not representing the members of the condominium association.

CHAIRPERSON REID: Okay. So basically you

are coming to testify in opposition?

MR. CHALMERS: That is correct.

CHAIRPERSON REID: All right. Thank you.

MR. COLLINS: Madam Chair?

SECRETARY PRUITT: Madam Chair?

CHAIRPERSON REID: Yes.

MR. COLLINS: Exhibit 54 of the record is the letter --

SECRETARY PRUITT: That is exactly --

MR. COLLINS: I am sorry, go ahead.

CHAIRPERSON REID: Okay, what is it?

SECRETARY PRUITT: Exhibit 54 states it is from the condo association and it is a request for granting a party from the association. That is what is in our file.

CHAIRPERSON REID: That is a request. But my question is were they granted party status at that preliminary hearing?

SECRETARY PRUITT: I would have to go back and reread the transcript to verify.

CHAIRPERSON REID: What I am --

MR. COLLINS: They were not -- they were not.

CHAIRPERSON REID: Okay. Thank you. But what I am understanding -- notwithstanding the fact

that there was a request, that there was no granting of party status to that entity.

MR. COLLINS: That is correct. The request was --

CHAIRPERSON REID: So this is an error on my list that they are a party. So let's go back.

MR. HITCHCOCK: Madam Chair, if I may. I believe the request came in after the hearing, which may explain the difference.

CHAIRPERSON REID: Oh, what is the date of the letter?

SECRETARY PRUITT: Correct. December 16 and the hearing was December 1.

CHAIRPERSON REID: Oh, well --

MR. HITCHCOCK: Which would explain why it wasn't ruled upon because they were out of time.

CHAIRPERSON REID: It was inadvertently put in as a party when it should not have been. Okay, so the three entities that I have as parties -- for party status is being represented by you, sir?

MR. HITCHCOCK: Yes.

CHAIRPERSON REID: And one individual who is being granted party status.

SECRETARY PRUITT: Madam Chair, could we just go over them again just to be clear?

CHAIRPERSON REID: All right.

SECRETARY PRUITT: I have Dupont Circle Association, Kalorama, and the third one I am --

CHAIRPERSON REID: Residential Action Coalition.

SECRETARY PRUITT: Residential Action and then Mr. Frank.

CHAIRPERSON REID: There are three.

MR. HITCHCOCK: And Mr. Frank.

CHAIRPERSON REID: And Mr. Frank. So basically those three are going to be represented by you as basically one entity?

MR. HITCHCOCK: Correct -- four.

CHAIRPERSON REID: Four?

MR. HITCHCOCK: Three groups and Mr. Frank as an individual.

CHAIRPERSON REID: Oh, okay. I didn't -- that is what I was not understanding.

MR. HITCHCOCK: Yes.

CHAIRPERSON REID: You are also representing Mr. Frank.

MR. HITCHCOCK: Correct.

CHAIRPERSON REID: So it is rolled in -- basically the whole opposition is going to be presented by you?

MR. HITCHCOCK: Aside from the ANC.

CHAIRPERSON REID: Aside from the ANC.

MR. HITCHCOCK: Correct, private parties.

CHAIRPERSON REID: Okay, great. All right, thank you. I think we have it now.

MR. HITCHCOCK: We tried to streamline it.

CHAIRPERSON REID: I appreciate that very much, sir.

MR. HITCHCOCK: Sure. We will do what we can. Let me respond, if I may, to Mr. Collins' last point about the request to participate. The Board has already voted upon the issue and granted the party status at the last hearing. The time to make an appropriate objection was last December. I guess in practicing law, there is evidence that you would like to keep out, but if you don't make a timely objection, it comes in. And we would object to this effort to raise the issue out of time after the Board has ruled at a time when there was ample opportunity to raise the objection.

Secondly, we are dealing with citizen groups that have been active in this area for many, many years. Surely, the Hilton cannot claim that it was somehow unfairly surprised by the effort to come in. And from our perspective, the issue is closed. The

fact that they have asked for a postponement of the hearing is not grounds for reopening the Board's earlier decision and inquiring further. There is no evidence of any prejudice to the Hilton by allowing these parties who they have been talking with and have been around for some time to participate as parties. And as far as injury, I mean Mr. Frank lives across the street, just to take one example. And the other organizations are membership organizations appearing on behalf of members who include neighbors who are going to be directly affected. So I don't think there is any serious question with respect to the standing.

Obviously, if the Board wants to revisit the issue, we will look at it. But from our perspective, it is time to close preliminary issues and move forward. Which brings me to the request for a postponement. The parties in opposition vigorously oppose the request for a continuance until December of 2000. This is a case that was filed in August of last year, more than five months ago. It has been continued twice. There has been the consultation that Mr. Collins referred to, and despite the issues that he has cited, there are some things that could have been done before now. Issues like having a crossing guard and issues like improving relations with the school that don't

take six months and don't take six weeks, but can be done relatively soon. With respect to some of the issues like the parking, the inadequate parking from our perspective, the inadequacy and nonconformity of the loading docks, those are issues where the community has stated its concern. It is now up to the applicant if it wants to negotiate or talk further to put something on the table. There is nothing inconsistent with putting proposals on the table and negotiating about them at you want at the same time that you are getting ready for a hearing and preparing for the hearing. And in my experience, a firm trial date in the near future concentrates the mind wonderfully.

So we oppose -- and let me just say one other thing. In terms of negotiability of this, the parties have deep concern with respect to the lack of compliance on parking and the loading berths at present, and frankly are not sure how those differences could be bridged. So we would be reluctant to get into a situation where things are put on hold for a very, very long period of time on the theory that maybe there is negotiations. Although we think the case should go forward now, we would be willing to concede to a small delay to the first available date that might be available, sometime perhaps -- I guess March is filled,

but perhaps in April. If they are serious about putting something on the table, we will talk about it. But that shouldn't delay things indefinitely.

Let me add for the record that we have -- it was filed I believe within the last day or two letters expressing opposition to the application -- two letters. One is from Council members Evans, Mendelsohn and Graham saying, "After meetings with the community, we have concluded that a delay in the application is not appropriate." Council member Katania sent a separate letter urging the Board to grant only a short continuance or one that would allow time for the applicant to submit missing materials.

CHAIRPERSON REID: Mr. Evans' letter said what?

MR. HITCHCOCK: The letter from Mr. Evans, Mr. Mendelsohn and Mr. Graham said in its entirety the following --

CHAIRPERSON REID: Do you have three letters?

MR. HITCHCOCK: No, I have two letters.

CHAIRPERSON REID: Because the letter that I have in my file from Mr. Evans was requesting a continuance.

MR. HITCHCOCK: What this -- I am happy to

pass it up. It was entered into the record yesterday. The current letter says from Mr. Evans, Mendelsohn and Graham, "The purpose of this letter is to express our opposition to the above application. After meetings with the community, we have also concluded that a delay in proceeding on the application is not appropriate."

CHAIRPERSON REID: Are you saying now that you have a letter that we don't have in our files?

MR. HITCHCOCK: It was filed yesterday at 12:16. I am not sure -- that is the file stamp date. I am not sure if it got to the members.

CHAIRPERSON REID: Even if it were filed yesterday at 12:15 or 12:16 or whatever you said, then that would have been gotten up to us this morning. And as I read through these very carefully to see -- to try to get, you know, a feel for the atmosphere in which this was being aired, I had -- the letters in January from Mr. Evans and also the letter from Mrs. Harvey of the School Board and Council member Graham

-- I did not have one from Katania. I certainly did not have that joint letter. Could you please give that to staff so that we could take a look at it?

MR. HITCHCOCK: Yes, I would be happy to.

CHAIRPERSON REID: Did we not receive that, Ms. Pruitt?

SECRETARY PRUITT: I went through the box this morning at 7:30 when I came in, and I did not see it. In fact, you have all the other additional stuff.

MR. HITCHCOCK: We will provide copies.

SECRETARY PRUITT: No. Because that was one of the things I did this morning first thing to be sure.

CHAIRPERSON REID: I am sorry, say that again?

SECRETARY PRUITT: I went through my in-box, which meant it has already been clocked in and is in the file, and I did not see anything like that. What you have before you is what was in --

CHAIRPERSON REID: So are you saying we did not receive that?

MEMBER RENSHAW: We do have the letter from Katania -- Council member Katania asking for a short delay.

MR. HITCHCOCK: Correct. You do. Okay, yes. That was the one that I was reading from.

MEMBER RENSHAW: But we don't have the one which you have referenced.

MR. HITCHCOCK: Okay. I will provide that one. Actually --

CHAIRPERSON REID: Are you sure that it

came to us?

MR. HITCHCOCK: It was addressed here.

MR. HART: Let me just ask, does it have a stamp? Has it been clocked in?

MR. HITCHCOCK: I am sorry, the stamp was from Council member Mendelsohn's office. I misread. I apologize.

CHAIRPERSON REID: Because I don't think that we received that.

MR. COLLINS: Madam Chair, at some point can we speak?

CHAIRPERSON REID: Certainly.

SECRETARY PRUITT: I believe, Madam Chair, he just said it went to Mendelsohn.

CHAIRPERSON REID: Let him clarify this issue. Certainly, Mr. Collins. It is just confusing to us that you have a document that -- is it addressed to us?

MR. HITCHCOCK: Yes. It is addressed to the Board at the correct address.

CHAIRPERSON REID: It wasn't submitted. Because we never -- the staff that would basically receive it and then stamp it in and distribute it did not receive it.

SECRETARY PRUITT: Madam Chair, I believe

it may have been mailed. Is that correct?

MR. HITCHCOCK: I don't know. There is no indication whether it was mailed or not.

SECRETARY PRUITT: The stamp is from Councilman Mendelsohn's office. If it is mailed, it may mean that it got there before it got to us.

CHAIRPERSON REID: What is the date?

SECRETARY PRUITT: It is stamped in yesterday, February 8. So --

CHAIRPERSON REID: So if they mailed it, we wouldn't get it.

SECRETARY PRUITT: We wouldn't have gotten it -- if it was stamped in in his office yesterday -- it may be a mail issue. That is all I am saying.

CHAIRPERSON REID: Well, it seems to me that if in fact we have a letter from a Council member who is right in this building and it is dated on yesterday, then it would appear to me that it would just be hand-delivered to us. It would not be put in the mail.

SECRETARY PRUITT: I can't speak to that. I am just trying to figure out how it may not have gotten to us.

MR. HITCHCOCK: I am advised that it was hand-carried down here by the staff. I don't have any -

- yesterday. So it may have slipped through the cracks at some point or not be in the proper place.

CHAIRPERSON REID: All right. Nonetheless, we have it now and we will look at it.

MR. HITCHCOCK: Okay. May I respond to one other aspect of it, which deals with the procedural things?

CHAIRPERSON REID: Excuse me, sir. I had a request from Mr. Collins to speak. So would you please indulge him?

MR. HITCHCOCK: Yes.

MR. COLLINS: Madam Chair, we as the applicant have acted in good faith from the very beginning. We had a meeting here, and I note for the record that there is cackling in the background -- pretty childish. We were here at the BZA Public Hearing on December 1. I went through in response to Mr. Hood's request for who we met with, a long list of the people that we met with who identified themselves as interested to us. We went out and did outreach to the community including several Council members and all the ANC's and the neighborhood groups. We spoke to them. We came down here -- a number of groups came down here and requested a postponement. They requested that we get with those people. We did so. We sent certified letters

so that there was no doubt as to the fact that people did or did not receive those letters, which is something that was raised by several of those people that we met with at the last hearing. Certified letters were sent. Responses were given. A community forum was held. We went to the community forum. We were asked to set the case aside in order to deal with these very substantial issues in the community. We had meetings -- we had that meeting. Mr. Edwards had several meetings -- one or more meetings with members of the community following up on that. Based on those meetings and discussions, it was determined that we would agree to seek a postponement of the application in order to address those substantial concerns. There is a lot of paper swirling around us that we have not been served with. A lot of discussions have been had. People who we met with and were told were available to listen and somewhat supportive, we have now been told have changed their mind. There is a lot going around here that we have not been privy to. This all points to the fact that we do need a postponement in this case. And to correct the record, we have not gotten two postponements, as Mr. Hitchcock represented to the Board, but one at the request of Mr. Hitchcock's clients to address these issues. We have been acting

in good faith --

AUDIENCE: No, no.

MR. COLLINS: We continue to act in good faith.

CHAIRPERSON REID: Order.

MR. COLLINS: We are seeking a postponement and that is all we are seeking today. Thank you very much.

MR. HITCHCOCK: If I may respond -- I am sorry.

MR. EDWARDS: Yes, I am Bill Edwards again. Let me just -- I am not a lawyer, okay? And I am sitting in front of a program or a system of some kind that has to bring opposing parties together and make a justifiable conclusion based on law and impact. And I understand the ambiguities. We came up, we meaning Hilton Hotels, and decided to build a $20 million union possible addition. We understood the parameters. We came here in good faith to have a hearing the first go-around. And for two-and-a-half hours, we listened to all the different organizations and all the different people -- some people who just moved in the neighborhood five or six months prior or maybe seven months -- and we sat there politely and listened to two-and-a-half hours. At which point, we were told go

meet with the members -- a valid conclusion and I agree with that. No one is going to disagree with that premise. We went ahead and did it. Now we are sitting here saying more time is needed and I find it absolutely unbelievable that except for one open period that I met with the ANC as a group that no one -- no one has ever heard me, Hilton Hotels, even explain the project. Yet, we have an avalanche going on and we can't even talk about postponement. I mean I presented this project verbally and explained the parameters once -- once. Never to this Board, after two-and-a-half hours of listening to the other side. Now we are sitting here being bombarded, to use counselor's law about letters flying around. I don't get it. At what point do we have to say -- what is the process supposed to do? What do we have to do to invest capital in the District of Columbia? I understand the hearing process and I agree with it, I might add. But there has to be a point in rule where somebody has to at least hear the project or the merits somehow from our side. We have now reached a point where we can't even talk about postponement, which was at your request, not mine.

CHAIRPERSON REID: Excuse me one second.

MR. HITCHCOCK: Madam Chair, may I respond?

CHAIRPERSON REID: Yes.

MR. HITCHCOCK: I would like to clarify some statements. First of all, there was a presentation before the ANC 1C earlier on after the application came in. There was one scheduled before ANC 2B, the Dupont Circle one, but the Hilton declined to appear after it had been scheduled. Secondly, this is not a new application. This was filed six months ago, and it is somewhat disturbing the notion that they didn't start talking with people until after the first hearing in December. If they wanted to talk to the community and bring these concerns forward, there was certainly time to do so. They surely should not have been surprised that there was neighbor concern about this. But it doesn't suggest that the correct approach is to drag things out to a point 15 months after the application was filed. At some point it becomes -- it has elements of a war of attrition on the neighbors to come back and forth to hearings and to get involved in these types of sessions. There have been at least the ANC presentation. There is a notion of what it involves. Mr. Collins said it was agreed that the Hilton would seek a postponement today. That was their decision. It is not something to which others have acceded. The time has come to move forward with this case and not to let it continue to drag on. And we

respectfully ask that if a continuance is granted that it be set down for the first available date. If they have something to tell the neighbors and tell the community, we can work within that time frame to hear them.

MEMBER SOCKWELL: Madam Chair, in response to Mr. Hitchcock --

MR. HITCHCOCK: Yes, sir.

MEMBER SOCKWELL: Let's first forget about the 15 months part and start with December 1 when the hearing was held. Because that was the first time that the case came before the Board regardless of the preliminaries and any postponements prior -- I mean, post-filing postponements. It is becoming fairly obvious to me and perhaps to other members of the Board, but certainly to me, that the parties are very far apart in terms of even communicating with one another effectively. That means that you representing four parties, the ANC not being one of them, and Mr. Collins representing the hotel group are obviously on very divergent paths at this point. So I am not personally of the feeling that a year is going to mend any of the fences. But I do believe that it is apparent that some delay in proceeding would be appropriate if there is any opportunity or any

potential of the parties coming together with some meaningful resolution of the most important salient issues.

MR. HITCHCOCK: Yes. In response to that, Mr. Sockwell, I am not sure I disagree. I guess the question is how far out it goes. I don't see any objection if you set a hearing date in April. That gives the parties another two months to try to concentrate. There have been the discussions and the concerns have been raised and the ball is in their court to come back with something that they have. And as we mentioned, some of them are fairly straightforward that they could have implemented well before now without consultation like a school crossing guard or better relations with the Adams School as a sign of willingness to work with the community and those sorts of things. So to the extent there is delay, we would respectfully suggest that a point in April or whatever your first available date is --

CHAIRPERSON REID: Let us address that, okay?

MR. HITCHCOCK: Sure.

MEMBER SOCKWELL: And I have one -- if I may, Madam Chair, just to complete this, I wanted to ask something of the applicant. Mr. Edwards, how long

have you been general manager of this hotel?

MR. EDWARDS: I started working at the Hilton in Washington in 1971. I became the general manager in 1984 and the Vice President last year.

MEMBER SOCKWELL: All right. But your duties as general manager and your duties as Vice President are somewhat different, are they not?

MR. EDWARDS: I am responsible for multiple hotels in the region.

MEMBER SOCKWELL: But as general manager of this Hilton, you would be the day-to-day responsible party for all activities?

MR. EDWARDS: Sure, yes. Absolutely.

MEMBER SOCKWELL: That the hotel is involved with, including its community relations. You would oversee the individuals or you would do it yourself?

MR. EDWARDS: That is correct. For example, the principal of Adams School came to me highly incensed over the comments made by others about "his concern". I mean things like that --

MEMBER SOCKWELL: I understand. That is an individual situation. What I am saying is that since 1971, you have been on the premises. Not only since 1971 have you been on the premises, but you have been

in a position to deal with the community since 1986 you said?

MR. EDWARDS: About 1984 or 1985.

MEMBER SOCKWELL: 1984. So there has been a long time period for certain relationships to either have been made, improved or destroyed during that time period. So all I am saying is that you are more than aware of the historical relationship between the community and the hotel.

MR. EDWARDS: Other than the five years that I was in California, 1978 to 1984.

MEMBER SOCKWELL: Right. But it doesn't take 20 years to learn.

MR. EDWARDS: No.

MEMBER SOCKWELL: Thank you.

CHAIRPERSON REID: Mr. Collins, you have heard the proffer of a compromise time frame to April. What response did you have to that?

MR. COLLINS: That is not sufficient time.

CHAIRPERSON REID: And so how much time -- well, let's put it this way. We are somewhere between April and December, but I don't think that we would be willing to extend it that far. Nonetheless, let me hear from you what you feel you could work with. Now also before you answer, let me say this. It is not

uncommon for us to occasionally get cases that are highly contested. And what we have tried to do, as you well know, is to see that the two sides try to work out the conflict with some type of compromise and they try to mediate their differences and find out how they can mitigate the issues to try to bring about a better Washington. And that is what we should be looking at. What is this going to do to bring about a better city for all concerned. Or if in fact this is going to be best for the city. And I say this. We had a case that was highly contentious and the Board members that there was just no end in sight. Surprisingly -- this was in December, and I won't quote the case. In December, both parties came to the Board -- I happened to be absent that day -- and they had come to a meeting of the minds and there was an agreement and everyone was happy. And it seems to me that what had happened is they had gotten some mediation. They had gotten some mediators to come in. Because sometimes when in fact you have two sides that are so far apart, there is no objectivity. I am not telling you to do this, but this is not something that I would rule out as a possibility to try to see what can be worked out in this instance. I think that April is not -- maybe April is not enough time. December is too far apart. And I would like to

hear from the Board members some suggestions as to what we think that we might want to do as to the extension period.

MR. HART: Madam Chair?

CHAIRPERSON REID: Yes.

COMMISSIONER HOOD: I think while we are trying to decide when we want to move forward, if we decide to go that way, one of the things that we have to keep in mind -- not trying to show partiality, but any time you have a community group that is obtaining the services of a lawyer, sometimes the pockets are not as deep as the applicants. So I think --

(Audience outburst.)

CHAIRPERSON REID: Just a moment. Listen, now look. Excuse me, Mr. Hood. Now everyone in this hearing room has been here before -- most everyone has been here before. So you know the rules and you know the procedures and you know that outbursts are not allowed. Now if in fact that type of behavior is to continue, then we will go into recess. And I don't know how long that recess will be. So if you want to get the business taken care of, we need your cooperation in here today. But that disruption is just not going to be tolerated. Thank you.

COMMISSIONER HOOD: May I finish? And

Madam Chair, I was just wanting all of us to keep that in mind. And also, I am listening and I was referenced to by Mr. Collins on more than one occasion. And I have to echo the comments of you, Madam Chair, and also Mr. Sockwell. We were hoping that there would be a meeting of the minds. And again, I am going to ask the community as well as the applicant to please be open-minded so we can make the best decision for the interest of the District of Columbia. It seems to me that from observing, there is a lot of personalities and I understand that. It is a hot issue. But still we need to try to work together. Because if not, this Board will make the decision.

CHAIRPERSON REID: Thank you.

MEMBER RENSHAW: Madam Chair, I would be of a mind, having listened to both sides at this point, I think you both are ready to move ahead. I think Mr. Edwards is very anxious to tell his story to the Board. I think he sees that there is a need at this time to get that story out to the Board. I think that the opposition is ready to go forward. I think the only one who is not ready to go forward may be Mr. Collins. So in any case, I understand the difficulties, and I am certainly glad Mr. Hood brought up the fact that this cannot go on because of the expense to the community.

We have to be aware of that. And I would suggest to the Board that there be a mediator proposed to take on this issue if indeed that party could bring together by a finite date, say April -- no later than, because I am not one to subscribe to a long delay. But if an ombudsman could bring together these parties, all well and good. Now I see some shaking of heads in the audience, so perhaps that has been discussed and just rejected and perhaps the attorney for the opposition, Mr. Hitchcock, could address that point. But I am not in favor of a long delay, and in fact I am in favor of moving forward today.

MR. HITCHCOCK: If I may respond to that, Ms. Renshaw. Let me say, first of all, I am a mediator. I am a trained mediator. I have done it for more than ten years by appointment of the Federal District Court here. So I have considerable experience in that. And I am not opposed to the mediation process. But one of the things they teach you in mediation school is to say to the parties, what happens if you don't reach a settlement. And one of the things that works most effectively in getting parties to sit down and talk and to see if there is a way is the fact that if you don't reach settlement by a date certain in the relatively near future, the case will go forward. If

you leave things open, there is always the human tendency to say, well, the hearing isn't until whenever and you don't necessarily start right away and you don't necessarily finish in time. The suggestion of an April hearing I want to put forth was done basically as a compromise. From my clients' standpoint, they would prefer to have the postponement only until such time as the applicant has filed the papers which they promised the Board they would file in December and which were due back in mid-January and which they have not yet filed. My proffer with respect to April was based upon a review of your calendar that there don't appear to be any dates prior to April. Echoing Mr. Hood's sentiment, one of the problems if you start pushing things back is that from a citizen group standpoint, once you get further into the summer -- well, once you get into the summer, you have people who may or may not be away. There are just other constraints and then you are starting to look at the fall. So if there is something to talk about and if the Hilton has something concrete to put on the table, that is something we could do between now and April. But you can't simply say let's have more time to negotiate if you are not willing to put something on the table. As the question in point, Mr. Edwards is not new to the building. He

is not new to the area, as Mr. Sockwell's questions pointed out. These organizations have been around for many years. It takes two to tango. And from our perspective, a short postponement to the first available date is one that would balance the competing interests. I thank you for your consideration.

CHAIRPERSON REID: A couple of things. One is, Ms. Renshaw, that before us today is a request for postponement from both the applicant and the opposition. So we are just talking now about how long.

MEMBER RENSHAW: I understand.

CHAIRPERSON REID: For postponement.

MR. HITCHCOCK: Excuse me, we are not requesting a continuance. We are ready for the case to go forward.

CHAIRPERSON REID: I am sorry. I am sorry. We have a --

MR. HITCHCOCK: I was arguing in the alternative.

CHAIRPERSON REID: We have a proffer -- we have a request for postponement and a compromise proffer from the opposition of April, is that not correct?

MR. HITCHCOCK: Our position is we are opposed to the continuance. Doing what lawyers do,

which is arguing the alternatives to stay that if the Board nonetheless were to grant it, it should be no later than --

CHAIRPERSON REID: Than April.

MR. HITCHCOCK: The next available date -- I am sorry, than such time as it takes for the Hilton to get what they said they were going to file in January, but they didn't file. And if April is the first available date, we would take that. With that clarification, I appreciate it.

CHAIRPERSON REID: Okay. The other thing is to address the issue of mediation in regard to you, Mr. Hitchcock, in this instance there is -- you could not have -- you could not possibly be unbiased.

MR. HITCHCOCK: I am representing a client, so I am not. But --

CHAIRPERSON REID: All the opposition. So you could not -- you could not in this instance -- your mediation skills are not really best utilized in this particular instance because of the fact that you are hired as counsel for the opposition. Nonetheless, I think that -- let's look first at the granting of the postponement. Mr. Edwards, was the analyses by Ms. Renshaw in regard to your position correct that you -- when you said to us that you wanted to get your side or

your case or your presentation on or out, was that -- were you suggesting that you do not wish more time? I cannot understand how you could say that and your counsel is saying something different. I need to get a clarification on that.

MR. EDWARDS: No, I didn't -- for clarity, I am not trying to say we are going to go forward now. The issues are such that involve -- for example, some are capital issues. You've got to spend some money to do this or do that fix. We have got to meet -- first of all, some of the groups are moving targets. We have an attorney and a member representing an organization, and then the next day we have someone from the organization saying they are not the people that do it. So we have to meet with the right ones, Madam Chair.

CHAIRPERSON REID: So you have not met --

MR. EDWARDS: We would like --

CHAIRPERSON REID: All right. I am telling you this one more time and we are out of here, to reconvene I don't know when. Just one more outburst and I promise you that.

MR. HITCHCOCK: May I respond with respect to the --

COMMISSIONER HOOD: Madam Chair, may I just ask a question? Because we can go on and on for the

rest of the day back and forth. One of the resolutions, I think -- and I don't know if this Board -- if it is in this Board's purview to maybe direct a meeting and if it happens it happens and if it doesn't it doesn't. Let's come to a conclusion. If we decide to move forward with a date or not. If we decide to proceed today. I think we just need to narrow it down and to come to some conclusions and try to get some finalization and move forward.

CHAIRPERSON REID: I don't think that we have the authority to direct a meeting. We have suggested it. And as you can well see, Mr. Hood, there is a fair amount of reticence on both sides or on some side to do that. But I hope that the persons in this hearing room understand that the burden of responsibility that you place on our shoulders is tremendous, and we do not take that lightly. Because this decision, it will have an impact on the District of Columbia as well as the citizens. And we want to make sure that the decision that we make is an adequate and correct and in the best interest of all concerned to our best ability. And as such, we want to give -- I do -- I don't know about the other members, I am sure they can speak for themselves. I want to give every opportunity to make sure that we have left no stone

uncovered in trying to address this. Certainly in all communities, even my own and in the Board members' communities, we have issues and we have our personal positions. But nothing works better in my opinion than when you have people coming together and foregoing sometimes your personal feelings for what is best or what is better or what is in the best interest of the community and the District of Columbia. So if you are talking about December or you are talking about April, then I would suggest that we have a compromise of May or June at the most to have a hearing. I think that if April is the next available date and the applicant is saying that that is not long enough, December is too long. So I would suggest somewhere in-between closer to April than to December.

MR. COLLINS: Madam Chair, if the opposition is willing to compromise by moving two months from February to April, we are willing to compromise by moving five months from December to July.

MR. HITCHCOCK: If I may respond to that. I mean, the citizens organization -- people tend to take vacations. They have lives other than zoning hearings. And it gets -- the April date, as I said, was itself merely -- it was not something that they wanted. I mean, my clients wanted to go forward today. It has

been pending for six months. The fall-back was only to get the material which Mr. Collins promised to provide three weeks ago but hasn't promised. Then April was brought up only in the context that you haven't got anything available before then. I mean, to let things slip into the summer really poses a burden.

CHAIRPERSON REID: I agree.

SECRETARY PRUITT: Excuse me, Madam Chair. Just for a point of information on what type of hearings that are coming up. Because while we do have -- we have actually no free days in April. You have three scheduled meetings already, one of them being the Trash Transfer day and the other one being GW master plan. If you were to schedule this in April, it would be an additional meeting on the 12th. That is the only available day. I am just trying to give you the information.

CHAIRPERSON REID: How does May look?

SECRETARY PRUITT: Okay. In May, you have Georgetown University campus plan on the 17th, which is all day.

CHAIRPERSON REID: That is a big case.

SECRETARY PRUITT: Right. And the third -- I believe this is probably going to be an all-day hearing. So this would have to be -- you could either

do it on the 10th or the 24th. I would suggest not doing it on the 31st, because that is the end of Memorial Day weekend.

CHAIRPERSON REID: Right.

SECRETARY PRUITT: So you would have to schedule it either on the 10th of May or the 24th of May, and that would be an additional meeting in that month.

MEMBER RENSHAW: But you also said that April 12 is open?

SECRETARY PRUITT: April 12 is the only unscheduled hearing day you have in April. The rest of -- every other Wednesday is booked.

MEMBER RENSHAW: Madam Chair, I urge the Board to look very seriously at April 12.

MR. HITCHCOCK: Madam Chair, we could go back to June if we had to.

SECRETARY PRUITT: In the April agenda, you have Trash Transfer and GW.

CHAIRPERSON REID: In April, we have a very heavy calendar and that we would have to add an additional day. If we could go in May -- do we have to add a day in May?

SECRETARY PRUITT: Yes. You would still be doing three hearings a month -- three hearing days a

month. We were trying to break it down to less than three after May.

CHAIRPERSON REID: No, no, no. What I am saying is since we have been doing so many hearings now, it is as if three is the norm. It is not the norm. Two is the norm. Would that third --

SECRETARY PRUITT: That would make three in May.

CHAIRPERSON REID: Okay. So we add another one in May.

SECRETARY PRUITT: Correct.

CHAIRPERSON REID: If we added another one in April, that would be four?

SECRETARY PRUITT: You would have -- yes.

CHAIRPERSON REID: Okay. So I don't want to do that because we need to make sure that our scheduling is such that it gives us the adequate time, particularly in these big cases, to be able to adequately go through the materials and to absorb it and to be able to --

SECRETARY PRUITT: Well, that was my concern. Because with Trash Transfer and GW campus plan, those are both very, very large and multiple cases.

CHAIRPERSON REID: Okay. So we are at May.

SECRETARY PRUITT: Correct. And you either have the 10th or the 24th.

CHAIRPERSON REID: Okay. Board members --

SECRETARY PRUITT: I will just let you know that on the 17th, you have Georgetown University campus plan.

CHAIRPERSON REID: Of May?

SECRETARY PRUITT: Yes.

CHAIRPERSON REID: All right.

MEMBER SOCKWELL: Madam Chair, basically I think that we have the two issues to look at. We have one issue which by at least audience response, like it or not, shows that the community seems to be or at least a portion of the community seems to be quite far away from even wanting to talk with the hotel except in the opposition position. So what we are looking at is having to take enough time to give the community's representative and the hotel's representative the opportunity to try to get the community to listen to something. Because first of all, everyone in this community knows that that hotel or something like it is going to exist there forever. You cannot expect that the Hilton is going to go away unless you would like to see a Days Inn there. And that would probably be a very difficult thing for them to swallow. But I am

saying basically that under the circumstances, there is a certain amount of time necessary to get the parties talking to one another and a certain portion of time needed to get some substantive resolution. If there is no chance for substantive resolution, then we will find that out at the time that we come back together. But I do believe that some time is necessary. Waiting until December doesn't hold water to me because Hilton is a corporate entity and corporate entities have a lot of issues that are not going to be in this room. I don't know whether Hilton's annual meeting or pending sales of property or any such things might be in the wings. So we are not going to deal with any off-the-table issues, but we will deal with the fact that December is too long and April doesn't work with us and anything later than July, I think is too long. Anything later than June, I think is actually too long.

CHAIRPERSON REID: Ms. Renshaw?

MEMBER RENSHAW: Yes. I would urge the Board then to quicken the pace here and decide that the first available May date would be the date where we hear this case. Because I am of a mind that the community and the hotel know the issues cold and they are anxious to bring these matters to the Board's attention. I hope in the interim that the parties can

get together, but just to prepare for the case for the first available date in May. And I would so move.

CHAIRPERSON REID: The first available date in May was the 12th?

SECRETARY PRUITT: The 10th.

CHAIRPERSON REID: The 10th. I have no problem with that. Mr. Hood, is that agreeable to you?

COMMISSIONER HOOD: No, I have no problems.

CHAIRPERSON REID: Then by consensus --

MR. HITCHCOCK: May I raise one other preliminary matter if the Board has concluded on this?

SECRETARY PRUITT: I just want to say that we will not renotice anyone. So please keep this 10th date in mind. Because it will not go out on a public hearing notice. It will be 9:30. Thank you.

CHAIRPERSON REID: And just let me say this, Mr. Hitchcock. What I don't -- I really don't think that the degree of anger and hostility that I am actually feeling in this room is in the best interest of anyone. So that I hope that as you leave here and as you go into these subsequent meetings of trying to come together that you will do so with an open mind and to try to put your personal feelings or to try to somehow not allow your personal feelings or hostility to get involved in this. Because I don't think -- I

don't think that anyone is deliberately trying to do a disservice. I don't think there is any viciousness involved in the application, even though the perceived adverse impact I could understand. But nonetheless, it doesn't serve anyone well to sit at a table with your attitudes already established -- you know, your conclusions already drawn and completely unamenable to at least listening and trying to see if there are ways or means or methods. You know, this is a highly sophisticated community and there is a great amount of skill and expertise there. So I hope that everyone will kind of use those skills and energies and abilities to the greater good of that community. Yes, sir, Mr. Hitchcock.

MR. HITCHCOCK: Duly noted. There is one procedural matter that needs to be clarified. At the December 1 meeting, the applicant was directed to file a number of documents prior to -- on or prior to January 24. They were matters that Mr. Sockwell in particular and other Board members noted. They are in the transcript. Items such as a site plan depicting the property and the loading docks and the point of entries and the area to be developed, schematic floor plans of the additional section, and the numbers or the calculations of the existing and proposed floor area

broken down room by room and corridor by corridor, descriptions of the existing space, the current C of O, the photographs. None of those were provided. In addition, the record still does not have in it the letter from the Zoning Administrator which the Chair referred to at the last meeting. It is not there. We have no -- we can't figure out why they haven't been provided. We need them in order to get ready for the case. Our additional fall-back of a postponement just until we could get the materials was premised on the fact that those are needed. The applicant has not put in the material that we need and is now several weeks late. I would respectfully request clarification from the Board that these items need to be in there. The Board has asked for them. The applicant has chosen to ignore the request to file by the deadline.

MR. COLLINS: Let me explain, if I may, Madam Chair. The deadline was the 17th and not the 24th. The 17th was Martin Luther King, Jr. Day. We filed by the 14th, but instead of filing the documents that were necessary for the public hearing today, since it was clear that we were going for a postponement, we sought the postponement. Some of those things may change. We are going -- we asked for the postponement. We will file those documents at the appropriate time.

CHAIRPERSON REID: Say that again? You did what?

MR. COLLINS: We asked for a postponement. Those documents were asked for by the Board in order for us to have the hearing today.

CHAIRPERSON REID: But that -- but you didn't -- but nonetheless, Mr. Collins, notwithstanding the fact that you were going to ask for a postponement, that was not a given.

MR. COLLINS: No, it was not. But we were not --

CHAIRPERSON REID: So if those --

MR. COLLINS: Madam Chair, let me just state for the record, we are not prepared to go forward today. We are asking for a postponement. We were not -- if you denied the postponement, we were not going forward today.

CHAIRPERSON REID: Suppose it was denied?

MR. COLLINS: We were not going forward. We are not ready to go forward. We don't have our architect here. We don't have our traffic --

CHAIRPERSON REID: So were you going to forfeit your case?

MR. COLLINS: We just were not going forward.

CHAIRPERSON REID: Again, so you were going to forfeit your case? If in fact you did not get the postponement, then the only alternative would be to go forward.

MR. COLLINS: We were asking for a postponement because it was -- the Board asked us to work with the community and the community asked us to work out issues before we came to the Board.

CHAIRPERSON REID: No, Mr. Collins, that does not justify your not complying with the Board's instructions to have those materials in notwithstanding the fact that you asked for a postponement. Because if you didn't get the postponement, you would have to go today or forfeit.

MR. COLLINS: Well, the Board would do whatever the Board would do. I understand that and I agree. We were not -- we were doing this in the spirit of seeking a postponement to work out issues. And that is what we did and that is why we are here.

CHAIRPERSON REID: That is not really a good excuse.

MEMBER SOCKWELL: Madam Chair, the interesting point that comes from this is that Mr. Collins was very direct and specific in discussing the things that the Board did not do to follow its rules in

the December hearing as he spoke earlier. And yet he made no attempt to provide either the documentation requested or any letter or official statement of the fact that that material would not be available in the event that a postponement was not granted. So it does not seem particularly balanced the way he has described the activities of the applicant today.

MR. HITCHCOCK: May I add one comment on that. To answer Mr. Collins, I think the record is quite clear at pages 126 and 127 of the December 1 transcript that the Board set January 24 as the deadline. Later on after the Board had made its decision, Mr. Collins proposed at pages 133 and 134 that it come in a different date. The fact remains the Board didn't accept that. The fact remains that the materials are not here. And if the case is going to go forward, the materials are needed.

MR. COLLINS: We will submit the documents.

COMMISSIONER HOOD: Madam Chair, I will say that I have a serious problem of the last comments that I heard from Mr. Collins about us proceeding forward or not. Again, I too echo your comments. He acts as though it was a given that this was going to be postponed. And I am sitting here and all kinds of things are running through my mind. But I do have some

problems with that. Because nothing is a given.

MEMBER RENSHAW: Madam Chair, that is the very reason I pressed for this case to go forward. Because I sensed, Mr. Collins, that you did not have all your ducks on the table and I think that that is just the wrong way to come to this Board and to try to proceed.

MR. HITCHCOCK: Madam Chair, if I may comment on that. If we are going forward with the deadline, I think it would be essential to specify a date by which the applicant would file the materials. Some of these materials are just -- you know, the dimensions of the loading docks. That is not going to be affected by anything. That could easily have been in the record by January 24.

CHAIRPERSON REID: Okay, that has been established.

MR. HITCHCOCK: Okay.

CHAIRPERSON REID: Mr. Collins, I don't think that you would allow the same problem to come up again. That is once it is determined by the Board that you must submit certain items by a date certain that you will make sure that is done without fail.

MR. COLLINS: The postponement was requested so that we could have time to work out issues

-- look at issues with the community.

CHAIRPERSON REID: You have already said that.

MR. COLLINS: I understand.

CHAIRPERSON REID: I am saying let's move from this point forward and try to make sure that we don't have the same problem again. So you will do that without fail?

MR. COLLINS: We will -- if May 10th is the date, we will submit timely documents.

CHAIRPERSON REID: Ms. Pruitt, what -- excuse me. What date would Mr. Collins now have to have those documents in that were requested by the Board at the last --

SECRETARY PRUITT: Well, by regs, the applicant has a 14-day prior to the hearing -- that is when they should supplement. But you could get it in as early as you want.

CHAIRPERSON REID: No later than --

SECRETARY PRUITT: No later than 14 days before the hearing, which would be sometime in April.

MR. HITCHCOCK: Madam Chair, may we request an earlier filing than the 14 days? I mean a lot of this stuff is stuff that from our perspective should have been in the application and should have provided

information. I mean, two weeks before the hearing will cut it close.

CHAIRPERSON REID: Mr. Collins, could you comply with that request to have it in earlier, given the fact that you did not at this time?

MR. COLLINS: We will get things in. We do have one specific issue, and that is our traffic witness that we had is no longer available. So we need to obtain a new traffic witness.

CHAIRPERSON REID: Well, between now and the May hearing date --

MR. COLLINS: Oh, sure, we will have that.

CHAIRPERSON REID: Yes, but what they are asking is could you get it in sooner than the 14-day period before the hearing date?

MR. HITCHCOCK: Yes.

CHAIRPERSON REID: When? Can you commit to a date certain?

MR. HITCHCOCK: May we suggest 30 days? Mid-April -- I guess April --

CHAIRPERSON REID: Would you be amenable to that?

MR. HITCHCOCK: April 10.

MR. COLLINS: We could do -- it depends on --

MS. SANSONE: Madam Chair, if I might point out. In the Wards Rule 3113.9, if the application includes a report by a traffic expert, transportation consultant or expert, a copy of that report needs to be provided to the Department of Public Works 20 days before the hearing.

CHAIRPERSON REID: Okay. So that would be within that 30-day window.

COMMISSIONER HOOD: Madam Chair, may I just ask -- and I know the Office of Planning is having a few setbacks. But could we ask for an Office of Planning report on this?

CHAIRPERSON REID: No, that is a given. We have to have one for this case.

COMMISSIONER HOOD: Okay. Okay.

CHAIRPERSON REID: I mean that -- while they have been somewhat remiss in getting those reports to us, in this instance we would definitely have to have that.

COMMISSIONER HOOD: Okay. I think -- let me just say -- from what we had to do on the Commission, I think we need to reiterate that to the Office of Planning.

CHAIRPERSON REID: Make sure of that. Okay, Mr. Hart, make sure that staff understands that.

Mr. Collins, are you still figuring out if you can get it in 30 days prior?

MR. COLLINS: Sure. We can do that.

CHAIRPERSON REID: Okay, Mr. Hitchcock?

MR. HITCHCOCK: I am sorry, Madam Chair?

CHAIRPERSON REID: Did you hear him say that he can?

MR. HITCHCOCK: 30 days?

CHAIRPERSON REID: 30 days prior to -- so staff please note that Mr. Collins' submissions should be in no later than April 10. Correct?

MR. COLLINS: The information requested, yes.

CHAIRPERSON REID: Now in regard to that --

MR. COLLINS: Now does that include other pre-hearing submissions or is that -- we can get those documents in. There may be things going on. We have asked for a lot longer time than what we have been given. So we sense that there is going to be work --

CHAIRPERSON REID: The pre-hearing submissions --

MR. COLLINS: Supplemental pre-hearing submissions in addition to those.

SECRETARY PRUITT: Those would be due on

the 26th of April.

MR. COLLINS: Okay, that is fine.

CHAIRPERSON REID: Okay. Now the letter from the Zoning Administrator, that was a request that was made by me, Mr. Collins, in regard to an issue that came up concerning the loading docks.

MR. COLLINS: Yes, that is right.

CHAIRPERSON REID: And I think that you had proffered to me at that time that there was a letter that you received --

MR. COLLINS: Yes, we discussed a letter. It was never submitted into the record.

CHAIRPERSON REID: All right. But the letter was -- the aspect of the letter that you talked about was to corroborate your contention that the loading docks were not needed.

MR. COLLINS: That is correct.

CHAIRPERSON REID: And you were to submit that. But you did not? But you will?

MR. COLLINS: We -- it was not submitted, no.

CHAIRPERSON REID: But you will submit it?

MR. COLLINS: We will submit that as well.

CHAIRPERSON REID: Thank you. Okay, now let's go to the issue of the party status. Mr.

Hitchcock, I understand your position in regard to the position that Mr. Collins has taken. Nonetheless, what we must be very careful about here is that we have to make sure that we are in compliance with the Administrative Procedures Act as well as with the regulations. And I believe it has been made clear that we have not been. So in order to be able to try to remedy that, the only request is that we have the submission of the information from the parties to be turned in to the BZA, which was not done although they have already been given party status. So this is like kind of in hindsight. And so I think that what we did at the hearing was to query the various persons who were seeking party status, and we asked questions of them to satisfy us as to whether or not they were suitable and entitled to party status, and we did that. So basically the information that we are requesting that needs to be in the record is a matter of complying with the procedures to make sure that it is there. But truthfully, it is a foregone conclusion that those persons have already been granted the party status. So we just want to make sure that -- we don't want to have a technical error that would wreak havoc on this case. And that is the only reason why -- that is my take on what can be done. Corp counsel, can you speak to that?

Does that seem adequate?

MS. SANSONE: Madam Chair, I believe that would be adequate to cure this procedural difficulty that was brought up. The rules were pretty new at that time. I don't believe we had put notice of those requirements into our public hearing notice. And so now if you could just comply with that rule and set out the reasons, that should cure the problem. Unless there is something in your statement that would indicate you are not eligible for party status. But I don't think that is going to be the case.

MR. HITCHCOCK: We will supplement the record. When would the Board like to have that filed?

MR. COLLINS: Madam Chair, I would hope that it would not be a foregone conclusion. The new test that came into effect on October 1 is a different test than the one that existed prior to October 1. And this Board applied the pre-October 1 test and not the post-October 1 test. So I would urge that you take a serious look at what is being filed.

CHAIRPERSON REID: Mr. Collins, what was there -- can you tell me what was in there that we did not -- that was unaddressed --

MR. COLLINS: That they must demonstrate -- if I may just look at the document. What was not

addressed is how each could demonstrate "that their interest would be more significantly, distinctly, or uniquely affected in character or kind by the proposed zoning action than any other persons in the general public."

CHAIRPERSON REID: No, Mr. Collins, I beg to differ. We beat that one to death. Particularly in the instance of Mr. Frank. So we did that. Let me just say this. We will proceed as I just said. And if in fact you find or you take issue with any aspect of the manner in which we handled the admittance of the party status, then please so-advise us or take it up with Corp Counsel. That is the only thing I know to do. But I know for a fact that that was a very sticky point that we actually gave a lot of time to.

Okay, now the last thing is --

MR. HITCHCOCK: I am sorry, a clarifying question. What date would you want us to submit those materials?

CHAIRPERSON REID: I am sorry. Is it 14 days, Mr. Hart?

MR. HITCHCOCK: 14 days out?

CHAIRPERSON REID: 14 days prior --

MR. HART: Yes, 14 days prior.

MS. BAILEY: Madam Chair, I think the

applicant's statement is due 14 days prior to the hearing. But I am not quite sure in terms of the -- because that was not done in the very beginning, I think it is pretty much up to you to determine an appropriate time frame at this point.

CHAIRPERSON REID: Okay. I think that given the fact that this is causing some issues, that we have those -- that information submitted to us as soon as possible within the next couple of weeks so that the Board members can have it to put in our package and we can have a chance to look over it. And Mr. Collins will also be privy to reviewing it and if there are any objections or what have you, that can be raised and that can be addressed accordingly.

MR. HITCHCOCK: Okay, thank you.

MR. COLLINS: Do we have a date?

MS. BAILEY: Now the applicant's submission is due on the 26th. So would you want it, Madam Chair, before the 26th? I am assuming you would.

CHAIRPERSON REID: The 26th of?

MS. BAILEY: Of April is the applicant's submission is due. So you would want the opposition's statement of why they are requesting party status sometime in April?

CHAIRPERSON REID: No. I would like it

in --

MR. HITCHCOCK: End of the month?

CHAIRPERSON REID: Yes, if possible.

MR. HITCHCOCK: Okay. I appreciate that. Far in advance. Now the last issue regarding party status was responsibility of the parties. I understand from Mr. Collins that those persons who were granted party status had a responsibility to serve the applicant with their submissions or their pleadings or whatever it is that they -- communicate with each other, and that was not done. So can you speak to that, Mr. Hitchcock?

MR. HITCHCOCK: It is a new issue this morning. I had not focused on it. I will make sure that anything that ought to be served is served.

CHAIRPERSON REID: But you are aware of the responsibilities of parties in these proceedings, are you not?

MR. HITCHCOCK: I am aware of the responsibilities. To be perfectly honest, I was not aware of what was done prior to the time I was asked to come in and do the case. So I did not focus on it then. I will make sure what needs to be complied with will be complied with.

CHAIRPERSON REID: You were brought in most

recently?

MR. HITCHCOCK: Yes.

CHAIRPERSON REID: Okay, Mr. Collins, is that an adequate explanation for you?

MR. COLLINS: Well, I would expect that they would follow the rules of procedure.

CHAIRPERSON REID: From this point on. He has explained to us why in fact that did not occur and has stated that here out, he will make sure that the proper rules and regulations in regard to the responsibility of parties who have been granted status will be adhered to.

MR. HITCHCOCK: Yes.

MR. COLLINS: We also ask that anything else that has been submitted by those parties -- those individuals or groups -- be given -- we be given copies of.

CHAIRPERSON REID: I think that is a given.

MR. COLLINS: I mean I am going backwards.

CHAIRPERSON REID: Yes, sure. That is a given, Mr. Hitchcock. Notwithstanding the fact that it has not been done, to remedy you would definitely have to go back and make sure that whatever they did not receive has gotten to them as a matter of procedure. That is what would be required.

MR. HITCHCOCK: Yes. For the record, I understand that the only items that may not have been served on them were the letters from the parties in opposition saying that I would be representing them at this hearing. So I don't think it is as extensive as Mr. Collins has suggested. But we will address that and look at it.

CHAIRPERSON REID: Well, perhaps the two of you can --

MR. HITCHCOCK: Sure. We can work it out.

CHAIRPERSON REID: You can have some discussion and determine what it is that he is referring to and make appropriate submissions as he requests.

MR. HITCHCOCK: We will work it out.

CHAIRPERSON REID: Thank you. Board members, did you have any other comments? All right, thank you very much. Excuse me one second. You have to come forward.

MR. ROTH: For the record, my name is Alan Roth.

CHAIRPERSON REID: You need to speak into the microphone, please, Mr. Roth.

MR. ROTH: I live at 1845 Vernon Street.

CHAIRPERSON REID: Can we get your name?

MR. ROTH: Alan R O T H. I don't mean to grossly interrupt the proceedings, but there are some of us in the back of the room -- and I understand your frustration with the outbursts you heard before, but there are some of us in the back of the room who are somewhat appalled by the notion that this continuance is even being entertained by the Board at all. And although I recognize that at this moment in time it may be premature to address the merits of the applicant's case, there are some of us who would like to speak on the issue of whether or not the continuance ought to be granted.

CHAIRPERSON REID: What I need to understand is who are you?

MR. ROTH: I am a resident of the community. I am not --

CHAIRPERSON REID: Okay. I just wanted to know how you factor into this whole thing.

MR. ROTH: I am a resident of the community. I live around the corner. I am not a party in the case.

CHAIRPERSON REID: All right. But you have something to say?

MR. ROTH: I have many things to say. But at the very least, if we are going to discuss the

continuance, I would like for those of us in the community who oppose even the granting of the continuance to have an opportunity to speak on that before the Board makes a decision.

CHAIRPERSON REID: All right. Let me just say this, Mr. Roth. Were you here at the December preliminary --

MR. ROTH: I was not. I learned about that meeting later that evening.

CHAIRPERSON REID: At that time, we established those persons who have party status in the case, and we asked if there could be a combination of the various entities that that be done. And then they did that and then today the attorney, Mr. Hitchcock, came forward to represent those persons who had party status in this particular proceeding. In regard to your position -- this is an individual position?

MR. ROTH: Yes.

CHAIRPERSON REID: Okay. And also this gentleman here? I am sorry --

MR. MCCARTHY: Possibly, Madam Chairwoman.

CHAIRPERSON REID: Okay. When I asked earlier -- when we first began this particular preliminary matter, I said does anyone who is in opposition please come forward. And the only person who

came up here was Mr. Hitchcock. At that time, you could have come forth. I have no way of knowing who you are or what your position is or why you are in the back of the room, but the opportunity was granted to you to come forward and to make your feelings known, and you didn't do that. Now after the fact -- after the fact, now you want to come up and give us your position.

MR. ROTH: Well, Madam Chair, let me try to back up a couple of steps and explain the answers to the questions that you are raising, because I think they are fair. First, as to the question of whether or not I should have been here on the 1st of December, there are some of us in the community whose tape measures are apparently somewhat different than the Hilton's. And some of us who believe, perhaps, that we should have gotten the notice that ought to be provided under the law and didn't ever get that.

CHAIRPERSON REID: Within 200 feet?

MR. ROTH: Yes.

CHAIRPERSON REID: You did not receive notice?

MR. ROTH: I did not receive that notice. Now, again, my tape measure and my yardstick may be different than the Hilton's, but at least in the way I measured as the crow flies, I think I ought to have

gotten party status. Now --

MEMBER SOCKWELL: What is your address again, Mr. Roth?

MR. ROTH: It is 1845 Vernon Street. Or at least had the opportunity to get party status. Now, I may be wrong on that question. But if I am, the point you made earlier about the opposition coming forward, I interpreted, perhaps wrongly, to mean opponents with party status. I also had called ahead and inquired whether people who were not parties in the case but who wanted to make statements because they are residents of the community would be permitted to do so, and I was informed that, yes, members of the community could be recognized to make statements and would be recognized to make statements, and I came today with a prepared statement on that basis.

CHAIRPERSON REID: So you didn't understand when I asked initially --

MR. ROTH: I perhaps mistakenly understood that you were speaking of party opponents as opposed to community opponents.

CHAIRPERSON REID: Okay. All right, well go ahead. Can you quickly just give us your position?

MR. ROTH: I appreciate that. Thank you, Madam Chair. On this question of a continuance, if I

understood the exchange before about the question of documents being provided, the Hilton and its counsel presumptuously assumed today that its request for a continuance would be granted, and on the basis of that failed to provide the documents necessary for them to go forward today. And frankly, for the opposition to be able to go forward today. And if I understood the Chair's response, the effect of that would be that if the Board had denied the continuance today or if the Board does deny the continuance today, the Hilton will either be required to go forward and presumably without evidence to present will be required to forfeit its case, or somehow or other to invent some other testimony today that will justify or put evidence in the record that will enable them to have a decision made. And my assumption is that on those circumstances, they probably would forfeit the case or at least that the Board would conclude that there was insufficient evidence to grant the variance. And I would make the point that I think those of us in the community would find that a perfectly acceptable outcome. And if at some point in the future the Hilton wants to refile its case and comply with proper notice procedures, obviously the clock will start running again and everything will go again. But at this point

in time, those of us who actually live in the community are now in the position of having to stand on guard and on watch for some indefinite period of time. And I recognize that May may not seem like a long time to some, but it does seem like a long time to others. And that if the Board denies the continuance today, that will put this case and it will put the attitudes of the parties in a very different posture. And the important and most salient fact that I would like to bring to your attention is this. I went to the meeting at the ANC at which Mr. Edwards spoke. And I have to tell you I went to that meeting with an open mind prepared to listen. And I was appalled at the attitude that I saw demonstrated at that meeting in response to the community's concerns. And Mr. Hood made the point before that in part there seems to be a matter of personalities. And perhaps there is some of that, but I would make the suggestion respectfully to the members of the Board that it is not just a matter of personalities, it is a matter of attitudes. Because those attitudes color people's expectations about how they can expect the party on the other side of the table to behave. It is incorrect for Mr. Edwards to have said that nobody came to speak with them about negotiating a resolution of this matter. Council

member Graham on behalf of the community and with some community members met with Mr. Edwards very shortly after that ANC meeting and got about as far as the rest of the community got with Mr. Edwards at the ANC meeting. Basically, there are a lot of problems associated with this hotel, and Mr. Edwards refuses to take responsibility for any of the existing problems. So for us now to say let's have a continuance so we can discuss whether or not the hotel can force new and additional problems on the community seems to some of us to be a little out of whack. What ought to happen today is that the continuance ought to be denied, not withstanding the presumptuous failure of counsel to submit the required documents. The continuance ought to be denied. The Hilton ought to be required to put on its case. If it doesn't have a case to be put on today, its variance application ought to be denied. And then we should proceed from there.

CHAIRPERSON REID: Thank you, Mr. Roth.

MR. ROTH: Thank you.

MR. MCCARTHY: My name is Matt McCarthy, and I live directly across the street from the Hilton. I became involved in this process when I first heard about it, the same time Mr. Roth did. Like him, I am a lawyer, and I have practiced before adjudicative bodies

for many years. And one of the reasons that we were so agitated in the back is that -- and please understand that at no point would I presume ever to suggest to the Board how it should conduct its business, but nowhere that I have ever practiced can a party with such deep pockets and indeed the city's most legendary or notorious, depending on how you look at it, zoning council simply ignore instructions by the adjudicative body in a situation that carries so much prejudice for the other parties, the citizens. Anywhere -- anywhere that I have ever practiced, that would have been a non-suit. The case would have been ended right there with prejudice. And so we were very agitated in the back. I think what it does is it plumbs for you -- I mean, it allowed you to plumb the measure of frustration that has caused the audience in the room to react. We can't help but react. And we understood well your need to maintain order in your room. But that just is hard, hard, hard to listen to. A party with such deep pockets in the face of ANC's everywhere saying that this variance, certainly not something of right, should not be allowed. It just hurts too much when the counsel comes in and says we are not giving you any of the information. We have had millions of opportunities to do it. We are ignoring it. We are looking right in

the eye of instructions from the Board and not putting in the information that everyone needs to even talk about it.

Now you recall that -- I certainly second what Mr. Roth said about the angst that was caused by Mr. Edwards suggestion that we haven't -- he hasn't been able to find anyone to talk to. Well, I am here to tell you he has looked for no one to talk to. He is not coming here and saying I would like a continuance because I want to talk to this person or I want to talk to that person. I have asked them and I have set dates and those dates are yet in the future. He hasn't tried to talk to anyone. We have tried to talk to him through, I think, the best offices the city can offer, our Councilmen. Our Councilman, who was seeking a compromise frankly, finally came back and said, I am with you guys. This continuance prejudices us deeply. Considering that they have the deep pockets and that they had the opportunity to file the materials and that they ignored explicit instructions from this Board to do that, I think should be dismissal with prejudice -- with prejudice. If it is not with prejudice, it just simply prejudices the community again. Because they just refile and go through the notice periods and do it at a time when we are all on vacation and get what they

want. So you've got two lawyers in the back of the room living across the street from this thing saying how can this be -- how can this be. That is all I want to say.

CHAIRPERSON REID: Can you give me your name again?

MR. MCCARTHY: Matthew M C C A R T H Y. 1931 19th Street, N.W.

CHAIRPERSON REID: Mr. Sockwell? Thank you, Mr. McCarthy.

MR. MCCARTHY: Thank you. I appreciate it.

CHAIRPERSON REID: Just stay right there, Mr. McCarthy. Mr. Sockwell --

MEMBER SOCKWELL: Mr. McCarthy, we appreciate the fact that you and Mr. Roth have come before us with your concerns. And one of the things that you mentioned constantly was the deep pockets of the applicant. And while the Board recognizes each individual that comes before it for their relative level of expertise and experience, financial condition is something that is either obvious sometimes and not so obvious sometimes. Corporate entities versus individuals. All of that does affect some things. But one of the things the Board does attempt to do is be fairly even-handed in the way that it looks at

applicants and opponents. In other words, an opponent with deep pockets versus an applicant who is a citizen trying his or her best to achieve a particular goal doesn't weigh more heavily than an applicant with deep pockets and opponents who are citizens trying to deal with the issues that might be presented by the application. What can be done to obstruct the Board's activities and what can be done to subvert the Board's activities can be done by either, and not necessarily more effectively by the deep-pocketed than by the not-so-deep-pocketed. What we do attempt to do here with regard to your issues and with regard to the applicant's issues is to establish a criterion by which we can get the matter handled effectively. Perhaps reaching a conclusion that gives some balance to the wishes of each group. And at the same time, because we don't look at this as a court of law, we will not handle our rules the same way that one might in a strict court sense. And if you and Mr. Roth had your way, it might be that a Board like this would be much less effective in dealing with a person who didn't have the expertise or knowledge of the law. Because you would make it so strict that that person, your fellow citizens and your neighbors, wouldn't have access to this process. And when you come before us, consider

that. This is not a court of law. You are not attorneys dealing with an attorney/client situation. You are dealing with applicants for zoning variances and zoning special exceptions. And on the basis that this has to be a fair body, you have to look at it a little bit more let's say open-mindedly, I would think. And I do feel that the things that you brought up are important issues. But I do think that you ought to spread your perception a little bit wider. Cast a somewhat wider net.

MR. MCCARTHY: Mr. Sockwell, you know I agree with everything you said and I understand it well and I appreciate that you would respond that way. And I certainly do not presume to suggest to this Board how it should do its business. I just wanted to come up here and say, hey, these guys -- you know, the opposition or the proponents of the variance proposal have had all kinds of opportunities. They have no excuse -- certainly not one of money and disparity of parties and whatnot -- not to have complied with clear regulations and clear instructions from this Board. Now what you say is absolutely true. I can understand well that you have got to be very careful and flexible as often as possible. But I would suggest that this is a different situation. These are people who have come

twice now, each time with major defects, clearly understanding what those defects are. Even if they had not, they have been clearly instructed what those defects are, and they have simply -- and to us lawyers shockingly ignored you and ignored us.

MEMBER SOCKWELL: Let me just say this. Madam Chair, let me just continue on this line. One of the things that I am hopeful of personally is that what has been raised here today will maybe finally in your eyes as the community and maybe importantly in the eyes of the applicant put all of you in a position where you've got to talk to each other. Because the case is going to go forward, either now or somewhat later. And at whichever time it goes forward, if the attitudes of the two opposing forces have not changed, if there is no interest in compromise and no interest in communication, it won't make a difference whether this is postponed until May or handled today. Regardless of the information that might be available or that might not be available as submissions, there won't be any reason for either party to shift or to adjust its way of thinking about this particular situation. The hotel is pre-existing. It has been there a long time. Many of the neighbors have been there a long time. A lot of you haven't been there as long as the hotel. I played

on the property before the hotel was built. So I am telling you --

CHAIRPERSON REID: You are dating yourself.

MEMBER SOCKWELL: Very much so. And I am just saying that there has to be a cooling off. And if the heads that are cooling off don't warm to one another, it will be another cold meeting that we will have. But I think that under the circumstances, there needs to be time for someone to adjust. The community may not adjust, but the community has to consider its position relative to the way things have been presented to it. We weren't there. The hotel has to consider its position relative to the way it presented to the community. We weren't there. But at some point, you are all going to be here, and we are going to work this issue out together. And it will result in either something or nothing being accomplished other than things staying exactly the way they are, which is not palatable to the community at this point. So we have a lot of things to deal with. And we are just asking you to become a bit more open-minded again. Maybe at one point you were open-minded and maybe you are not anymore. But you are going to have to change. Because regardless of what the outcome of these hearings is, something is going to happen. Tomorrow will not be the

same as yesterday. The Hilton as a building, Hilton Hotels as a corporation, the community as people who may or may not be going along with their Boards of Directors of condominium associations and as people who live in their individual homes and do or do not know their neighbors. You all will change. Something is going to occur here. So that is all I have to say about it, and I really appreciate Mr. Roth and Mr. McCarthy coming forward. Because, again, they could harbor these feelings and not bring them out and no one would know. The fact that you are willing to do that means that you have decided to communicate with someone and you feel the Board is the appropriate body and we appreciate that.

MR. MCCARTHY: And we appreciate being heard. One last thing I would like to do though is apologize to counsel for the opposition. Neither of us are zoning lawyers. And in fact your --

MR. ROTH: Some of us don't even admit we are lawyers.

MR. MCCARTHY: Not in polite company.

MEMBER SOCKWELL: Mr. McCarthy sold you out.

MR. MCCARTHY: So he understood that flexibility that is so important and I think he was

trying to be careful and certainly respectful, and we were coming in from a distance with somewhat different experiences, but I think valid points. So I do want to apologize, however, to Attorney for Counsel. I certainly didn't mean to usurp his position.

MR. ROTH: Madam Chair and Mr. Sockwell, if I can just make one final point. I share both in Mr. McCarthy's apology to counsel and to the other party, and to you for coming forward at the last minute. But if I could respond just briefly to Mr. Sockwell's point, I didn't bring up the fact initially that I was an attorney because although I have legal training, I don't really litigate or hold myself out to be anything resembling either a courtroom or a zoning lawyer. And so it really wasn't with the concerns or considerations that you raised, Mr. Sockwell, in mind that I came forward. I came forward really to make two primary points. One is if the basis or the justification for this continuance is the effort that you described, Mr. Sockwell, to try to have the parties come together, I fear that not only will that be a futile act, but rather than being a cooling down period, it will turn into a heating up period. That based upon the performance that we have seen in the past and apparently this is a performance that long precedes

this particular variance application, but certainly has heated up in the course of the last couple of months. But on the basis of the attitudes and performance that we have seen at this hearing and in recent months, that what I believe will happen is that the parties will retreat into their respective corners, build their respective cases, erect the barricades, and that things will only get worse and not better before May. And although we can regret that and we can decry that, I don't have good reason to believe that things will be different. Beyond that, there is an issue in this case -- and I won't get into the merits of it -- I will just put it on the table. There is an issue in this case that goes beyond what the particulars are of the dealings between this hotel and this community. There is a precedent at issue here that can potentially affect other communities and other neighborhoods living with other hotels. So that no matter -- one of the considerations that as a community we have been trying to deal with is the fact that no matter what accommodation some individuals might be able to reach with this particular hotel, we deeply fear the idea that a precedent could be set in this case that could be used by other hotels in other communities or our own community in the future. So it is not simply a matter

of sitting down and figuring out how many trucks a day or where the crossing guard should be or whether or not buses should be parked in a certain place. Those issues are out there. But it really isn't the central issue that the Board has to confront when it ultimately decides on the merits.

And in the alternative, if the justification for the continuance is simply that the Hilton isn't ready to go forward today, then please I implore you, do not reward them for their presumptuous assumption that you would give them what they want. Thank you.

MEMBER SOCKWELL: One thing you are saying, Mr. Roth -- just very quickly -- is that you are assuming all hotels to be the same. And that shows a closed mind in itself.

MR. ROTH: I am not sure I understand.

MEMBER RENSHAW: I differ with my colleague.

MR. ROTH: I am not sure I understand why you say that.

MEMBER RENSHAW: No, Madam Chair --

MEMBER SOCKWELL: You said the precedent for one hotel versus another.

MEMBER RENSHAW: Madam Chair --

CHAIRPERSON REID: Let Mr. Sockwell finish and then --

MEMBER SOCKWELL: Each case is taken separately. Each case is handled separately. What may be a precedent for another hotel may be a good precedent at that time. What may be a bad precedent for this hotel might not be a bad precedent or might be a bad precedent. You just take things and you put them into context, and you are not allowing yourself the flexibility. And you have to think about it. I am not asking you to think about it now. But when you go home, consider the things that you've said and consider the things that you feel. You have a specific point of view that you are not flexible around. That is one of the reasons why a hearing like this might want to be rescheduled. Because you haven't changed your outlook.

MR. ROTH: You are -- Mr. Sockwell --

MEMBER RENSHAW: Madam Chair --

MR. ROTH: No, no. Mr. Sockwell, I understand what you are saying, and I --

MEMBER RENSHAW: Madam Chair --

CHAIRPERSON REID: Let him respond, please.

MR. ROTH: I understand what you are saying. And I am sorry if I put it inarticulately. What I am suggesting to you and to the members of the

Board is not that we have made up our minds that this is a precedent that for all time --

MEMBER SOCKWELL: Don't say we, say I.

MR. ROTH: That I --

MEMBER SOCKWELL: You are not a party. You are an individual, sir.

MR. ROTH: I understand. That I have made up my mind that for all time this particular -- the disposition of this particular application will or won't be a precedent in other cases. What I am saying is that as a member of the community and one who has met with many of his neighbors and fellow residents, one of the issues we have grappled with in this case is that issue. And so when I suggest to the Board that the precedent issue is out there and from our standpoint can't just be swept under the rug or swept under the table as something to be ignored, the issues relevant to the Hilton's particular operations in the community are not the only issues on the table. That is the only thing I was suggesting.

MEMBER RENSHAW: Madam Chair?

CHAIRPERSON REID: Okay, Ms. Renshaw.

MEMBER RENSHAW: Madam Chair, I want to thank Mr. Roth and Mr. McCarthy for coming forward. I noted their hands early on way in the back of the room,

and so I am very glad that they advanced to the table. I appreciate their comments that they have brought up today. It is always valuable to hear additional thoughts and the Board appreciates that very much. I do not think it is the Board's position right now to determine who is going to be flexible and who hasn't been flexible in the past. Just to hear these preliminary matters and take them under advisement. I think that both parties do have room to move. That is why I recommended to this Board that we suggest or push these parties toward mediation. It was done with the Mt. Vernon campus with success, and I feel that if both parties feel that they are going to be locked into -- well, behind barricades, so to speak, Mr. Roth -- that you move toward an independent body to help you move together. Both sides. I don't mean one side moving. But I mean both sides moving significantly to bring this to closure. So that in May on the 10th, when you come back before the Board, we can experience a change in this room and we can move briskly and with all due course towards a resolution of the problem so that Mr. Edwards, who is looking at the economics of his expansion can leave on May 10 or shortly thereafter with some kind of feeling that this is going to be up or down so he can make some business decisions. And

that the community can feel that we have done a fair job from our perspective. So, again, I urge the parties to get together and use a mediator and make progress.

CHAIRPERSON REID: Okay. Let me try to bring some closure to all of this. Because we have been here now --

MR. ROTH: Madam Chairman, thank you for hearing us out of order.

CHAIRPERSON REID: For three hours. I'll hear you in just a moment. Now, Mr. Roth and Mr. McCarthy, I thank you for your comments. However, in regard to -- let me just address the issue of the applicant not having submitted through his counsel the documents that were requested by the Board. We addressed that earlier, and I think that you witnessed a chiding and a reprimand of counsel for having not done as he is to do now. Certainly it is within our purview to have made a decision at that point whether or not we would have just allowed the case to go forward or if we would have allowed a forfeiture on the part of the applicant. It was the Board's position that that type of rigidity would not have served the community or the District of Columbia best. Unlike a court of law, we do have some prerogative, and that is I would not be inclined to throw a case based on the

lack of the responsibility of an attorney to submit a document. I think that we deserve to hear both sides of this case. Personally, I want to hear. Because I think that this is a very, very important case. And there was no objection from any of the Board members in regard to that position after we made it very clear that we were not pleased with the fact that Mr. Collins did not submit the documents as did we in regard to the position that was raised by Mr. Hitchcock -- I am sorry, a point that was raised by Mr. Collins in regard to their not having been the adequate submission of the criteria for party status. So there is a little bit of flexibility. We understand this is not a perfect world, nor is this a perfect entity. I mean, this body is not perfect. And as such, we are just basically trying to have some type of flexibility in both regards to give on both sides. And we have to do that in order to be fair. And I hope that you can kind of take from our -- the way that we try to conduct our proceedings that type of flexibility or that type of compromising positions or compromising attitudes. And your subsequent discussions or deliberations between the two of you, the two entities, it appears very obvious that the way that you have been going about it is not working, and it is not going to work. Mr. Roth and Mr.

McCarthy are precisely correct. And if it continues in that vein, there will be further alienation and more heatedness occurring in that community. This is what I foresee from my five years on this Board. I can see that happening. So it doesn't make sense to keep putting a circle into a square. You are going to have to get outside of the box and figure out a way to address these issues. And if it is an attitude problem or a personality problem -- I don't know if the Hilton has a community liaison person or if there is a mediator. As Ms. Renshaw has said several times, you need an additional entity or some additional support or help coming in other than the way that you are going at it. Because that is just not going to work. You can see it is not going to work. So the time that we are giving you, we are giving you because we feel that there is some type of -- we have seen it with the Mt. Vernon case, which was amazing. Two sides that were almost as similarly opposed or apart as you all are, and then all of a sudden lo and behold they came together. And they came together not saying that they were all extremely happy in the outcome, but each side gave enough such that there was a comfort level. So I beseech you to try to approach this from an intelligent humanistic point of view and understand that you are

not going to get anywhere, I don't think, if you continue the way that you are. Sometimes you may have to try a different approach and you may have to move certain people who -- some people may be like a red flag. You may have to remove those people and have other people to represent or discuss or whatever. As I said before, in that community we have some of the finest minds in the city. And if used correctly, I am sure you can come to some type of resolution I would think.

MEMBER RENSHAW: Madam Chair, we might suggest that the Office of Planning act as the mediator. Didn't the Office of Planning act as the mediator -- wait. Didn't the Office of Planning act as the mediator in the Mt. Vernon case?

CHAIRPERSON REID: No, please, please. They can't do it anymore. Okay. All right, listen --

MEMBER SOCKWELL: May I suggest to the community people --

CHAIRPERSON REID: Excuse me, Mr. Sockwell. Let me finish my statement. That was a suggestion by Mrs. Renshaw, and again we are trying to do our best to make suggestions to you. If what she said doesn't work, then find something that does. That is all we are saying. Okay, now there are two other people who want

to speak. We have to really bring some closure. Sir?

COMMISSIONER HOOD: Madam Chair, before he comes forward, can I just say something about the Office of Planning report I asked for earlier? And I want to make sure that this is on the record. With the Zoning Commission, due to the reconstruction they are doing in that office, a lot of our hearings have had to have been postponed on their part so they can give us a substantial report for us to move forward on. So hopefully that won't happen in this case. We want to make sure -- I want to reiterate again that we want to push for that Office of Planning report.

CHAIRPERSON REID: Okay.

COMMISSIONER HOOD: So we will not have to further delay either side.

CHAIRPERSON REID: Okay.

MR. CHALMERS: Madam Chairman, my name is Frank Chalmers. I came forward once earlier in response to a specific request or question from the Chair. I speak at this point of my own statement. My residence, 2022 Columbia Road, a condominium known as the Wyoming. My units face the Hilton Hotel. In 1984, I was the president of the condominium association of the Wyoming condominium. At that time, Mr. Edwards came to Washington. I wrote a letter to him welcoming him to

town and suggesting that we -- he and members of the association get together in the hope of furthering neighborhood -- better neighborhood or good neighborhood relations. There was no history at that point. Since then, it has been my fortune, I will not say what kind of fortune, to as a member of the condominium association directors, I was on the board for six years, to meet with Mr. Edwards in his offices and to meet with numerous members of his staff on numerous occasions on a number of neighborhood issues. The only time that we were able to resolve those issues, most unfortunately, was when we retained counsel and brought legal action against the hotel. Suffice that to say -- stand on its own. In the recent case, I also happen to be -- in addition to being a member of the Kalorama Citizens Association and a longstanding member of the Dupont Circle Citizens Association, both of whom I support financially, I am also a member of a volunteer organization known as the Dupont Circle Conservancy. That is a group of citizens who volunteer their time to oversee architectural changes made in the community and make recommendations that are non-binding legally to various official agencies of government in the District of Columbia. We had one meeting last night. There was a presentation

and there were several other things that were presented on behalf of developers who wanted to make changes in the neighborhood. These were all discussed. The Hilton Hotel has not at any time made any attempt whatsoever to make any presentation to the Dupont Circle Conservancy on whatever their plans are, which can only be defined when they submit those documents to you, which has been greatly discussed today. They still have not submitted. Therefore, it is undefined as to really what it is they are trying to do. The story changes depending on who tells it and when.

CHAIRPERSON REID: Thank you, Mr. Chalmers. I think that the applicant hears this testimony this morning, and I would think they would act appropriately. Ms. Hubbard?

MS. HUBBARD: My name is Harriet B. Hubbard, and I lived for 11 years across the street from the Hilton, and I am a member of the Residential Action Coalition, and I have been a member of Dupont Circle and chairman of their zoning committee, and I have been recognized as an expert in zoning by the Zoning Commission.

CHAIRPERSON REID: Your address?

MS. HUBBARD: What?

CHAIRPERSON REID: Your current address.

MS. HUBBARD: 2039 New Hampshire. And I represent -- as you know, at the first hearing I represented RAC and now Mr. Collins is going to take over, thank heavens. But I would like, as a preliminary matter, to bring these facts to your attention to assist you with this idea of whether or not there could be any kind of meeting of the minds here. Some of your remarks today have shown me that you yourselves are not prepared to go forward with the hearing as members of the Board. As you know, I have asked in Council hearings for people like you, making administrative judicial decisions on land use matters bearing on transportation and everything else, to first of all go out and look at the site and examine it from all sides. Now it used to be the Board of Zoning Adjustment members, before we had the Administrative Procedures Act, went out in a station wagon the day before the hearings and actually looked at the site. So they knew what they were talking about when they came to the hearing. Now I don't know how many of you have gone up and down that 19th Street side and looked all around that building so that you know why there can't be any kind of coming together of the minds here. I mean, we would never have had this discussion today.

The other thing is you know in Council

hearings I have been for many years asking that you all take examinations and that the BZA members be chosen from a panel that has passed examinations. One of those requirements I had for the examinations is institutional knowledge. In other words, that you should know before you come to the Board something about what happened before. With regard -- now, for example, there is a big thing here -- and I ask you to get copies of this before you come to the next hearing so that you, yourself, will be prepared. And that is a copy of the freeway map of 1958 prepared by the Highway Department.

CHAIRPERSON REID: Okay, Mrs. Hubbard --

MS. HUBBARD: Also, I --

CHAIRPERSON REID: Mrs. Hubbard, let me just cut you off.

MS. HUBBARD: I would like to ask you one more thing. This is so important.

CHAIRPERSON REID: All right, quickly.

MS. HUBBARD: So important. Get a copy of this little book from the American Trucking Association. It is called how big is a truck and how sharp does it turn. Now look, there is no mathematics in there harder than square root and long division -- I mean, square root and sines and cosines. Nothing you

can't do if you went to high school. And if you did this, you would shorten up all your hearings so much if you knew how to do these calculations yourself. It is not so hard. I can do it. There are harder ways mathematically. You read this little book, so that you will prepare for the hearing. Go and see the site. Get a copy of the freeway map.

The other thing is you wanted something from the Office of Planning. Why don't you ask the Police Department to produce all of their recommendations and letters that they have on file with regard to the Hilton since it has opened in 1965. I had a letter ten years ago saying they weren't going to enforce the law there. Why don't you get those. If you had the institutional knowledge to come to this case, you know you could shorten up all your cases if you knew some of these things before you got on the Board and heard it.

Now I just make this because I am going to probably be in Paris in May. But I will hear all about this. I will hear all about this. If you only knew how you could shorten the cases up just by studying the past. You know, the reason we are here today is a cause and effect process. This idea that we should ever have conciliation. You would know why that is

impossible if you had the institutional knowledge and also a knowledge of this little book and also a knowledge of what the Police Department has said.

MEMBER SOCKWELL: Ms. Hubbard --

CHAIRPERSON REID: No. I --

MS. HUBBARD: That is all I have to say.

CHAIRPERSON REID: I wanted to address her when she finished. Ms. Hubbard, let me just say this. I thank you for your testimony, number one. Number two is that today what we are talking about in this preliminary matter --

MS. HUBBARD: This is a preliminary matter.

CHAIRPERSON REID: Whether or not the case should be postponed. What you did was to give testimony as to your position --

MS. HUBBARD: No, it is not.

CHAIRPERSON REID: Excuse me. You did not address whether it should be postponed. Now, as to your personal opinions as to how the Board should be selected --

MS. HUBBARD: Qualifications.

CHAIRPERSON REID: I am not finished. I am not finished. And whether or not there should be tests, that is not something that is not taken up in this forum. It can be taken up with the City Council or

with the Zoning Commission.

MS. HUBBARD: In other countries --

CHAIRPERSON REID: Ms. Hubbard, please do not interrupt. I did not interrupt you. Notwithstanding the way that you feel or whatever your personal opinion is, the fact of the matter that no more so than the Mayor has to take the test or the City Council member has to take the test, there is a procedure already in place. So let's not even waste time going into what your opinion is as to the manner in which the Board members are selected. That is immaterial.

MS. HUBBARD: It is just saving you time.

CHAIRPERSON REID: That is a waste of time. The only way to be able to rectify -- or if you have any suggestions about how it should be done, then that is taken up outside of this hearing. And I thank you for your testimony.

MS. HUBBARD: All right. We have done it for years, you know, and here we are.

COMMISSIONER HOOD: Madam Chair, let me just add, the reason we asked for the Office of Planning -- and Ms. Hubbard, I think that was some excellent comments. But let me just say the reason we asked for the Office of Planning report is the Office

of Planning goes to the MPD and other government agencies and get their feedback so we can proceed with the case. That was one of the major reasons that I asked for the Office of Planning report. And let me just put on the record -- and I don't want to belabor the point -- I did very well in geometry in school, and you can check that for the record. Thank you.

CHAIRPERSON REID: Yes. And then any other information that you have that you feel would be beneficial to the Board members that you think that we may not be privy to, then that is submitted typically within testimony or in pre-hearing submissions that is put to us and then we have an opportunity to review it before the hearing. And that is a given. I mean, everyone knows that. Thank you very much. Are we done now?

MEMBER SOCKWELL: I will just say one thing. And, Mrs. Hubbard, just for your information, I am one of the specialists -- probably the specialist in my office on truck dock loading maneuverability issues. And if you know what CGRA stands for, that preceded ASHO, and I was working with those templates and things since the 1960's.

CHAIRPERSON REID: Thank you. Thank you, now. We have concluded this particular preliminary

matter. I hope that everyone has had adequate opportunity to air whatever they wanted to say. And we can now move to the next case of the morning.

SECRETARY PRUITT: We have a lot of preliminary matters still.

CHAIRPERSON REID: Oh, I am sorry.

SECRETARY PRUITT: We haven't concluded preliminary matters.

CHAIRPERSON REID: I am sorry, we do have a few more preliminary matters. Thank you very much. We have a few more requests for postponement. Ms. Prince?

MS. PRINCE: Yes, good morning, members of the Board. Allison Prince with Wilkes, Artis, Hedrick and Lane. I am here today to formally request a postponement in connection with application 16541. This is a simple matter. The ANC, ANC 3F, was not given notice timely by the BZA staff. They did not want the case to go forward today. We fully agree with the ANC. We are going to the ANC on Monday night, and we would like the first available hearing date after Monday night.

CHAIRPERSON REID: Okay. Ms. Prince, we had received a letter and I don't think that there is any objection by any Board members to allow the proper -- the additional information requested from the ANC.

And if there is no objection --

MEMBER RENSHAW: Madam Chair?

CHAIRPERSON REID: Yes.

MEMBER RENSHAW: Madam Chair, just to point out that the single member District Commissioner had sent in a letter that was not signed, and we did get in touch with him to sign the letter and send it in. But did you bring -- or do you have any correspondence that came from the chair of 3F, David Bardine, saying that this matter is going to be taken up? Do we have that letter? Anything that was faxed in from the chair of 3F?

CHAIRPERSON REID: What is the number of the case?

MS. PRINCE: 16541.

MEMBER RENSHAW: This is Potomac Foods.

MS. PRINCE: Right. It is the Burger King parking lot renewal.

MEMBER RENSHAW: Right. I just wanted to know whether or not we have anything in writing from 3F stating or asking the Board for a postponement.

CHAIRPERSON REID: I think I remember seeing a letter. Just one second. That was what was driving my position.

COMMISSIONER HOOD: Madam Chair, I think if

we can explain to the audience that we are doing preliminary matters and we haven't proceeded with the cases and we do have an agenda for the cases and that agenda will be followed. We are doing preliminary matters at this point.

CHAIRPERSON REID: Yes. But nonetheless, Ms. Renshaw's point is well taken. Ms. Prince -- is there anyone from the ANC here?

MS. PRINCE: No. I have had numerous conversations with the ANC, and they understood.

CHAIRPERSON REID: No. What I am saying is that Mrs. Renshaw made note of the fact that there is an unsigned letter, and we would just request that for the record that there be a signature obtained so that our record would be complete. We have the letter, but it is unsigned.

COMMISSIONER HOOD: For clarification, I was not responding to the dialogue you were having with Ms. Renshaw and with counsel. I was responding to some people in the audience who thought that we were going out of the -- we were not going by the agenda.

CHAIRPERSON REID: Oh, okay.

COMMISSIONER HOOD: I was just explaining to them that we were doing preliminary matters.

CHAIRPERSON REID: Thank you. And I don't

have any problem with it being postponed to the next available date unless any Board members object. Then we will so-schedule it. Ms. Pruitt, what would that be?

SECRETARY PRUITT: We have all -- you have three cases on March 1. So that could be the fourth case in the afternoon.

CHAIRPERSON REID: March?

SECRETARY PRUITT: March 1.

CHAIRPERSON REID: March 1. Okay.

MS. PRINCE: We appreciate your consideration. Thank you.

CHAIRPERSON REID: We should have really taken them up first.

SECRETARY PRUITT: We have one more preliminary matter, Madam Chair.

CHAIRPERSON REID: Okay.

SECRETARY PRUITT: And that next one has to do with application 16542. This is the Georgetown Flea Market, and they are requesting a continuance until the July -- excuse me, January 7 meeting based on the previous -- the Board has already continued the appeal of this application once as a result of pending legislation to try to find out -- to give them time for the legislation to go through and then determine

whether or not it needs to go forward or not. This is just the special exception to the appeal.

CHAIRPERSON REID: Okay.

MR. SHER: Madam Chair, for the record my name is Steven E Sher, the Director of Zoning Services with the law firm of Wilkes, Artis, Hedrick and Lane. We submitted a letter to the Board dated January 26, 2000, outlining the reasons why we think the case should not go forward this morning. Ms. Pruitt-Williams has hit the high points of that. The Board has previously continued an appeal which had been scheduled for hearing back in January to June 7 of 2000. We are hopeful that neither the appeal nor the variance will actually have to go forward. But until we resolve all those issues, we don't know. We ask the Board to put it off in the future so we didn't take anybody else's place on the agenda and then find that we didn't need to go forward We had suggested that the case be heard on the same day, but again we are at the pleasure of the Board.

CHAIRPERSON REID: Didn't we address this -- I am --

MR. SHER: We have two matters. We have an appeal which was scheduled to be heard back on January 19th. That has already been postponed until June 7.

At the direction of the Zoning Administrator, we also filed a variance application.

CHAIRPERSON REID: Okay.

MR. SHER: And that is what was on the calendar for today.

CHAIRPERSON REID: Okay.

MR. SHER: We suggested the same date, but if you wanted to make it later or earlier, that is up to you.

CHAIRPERSON REID: I think that prudence would dictate that we schedule them on the same day.

SECRETARY PRUITT: Because if -- I mean, if the legislation goes through, there is no issue. And if you do the appeal first, then there is no need for a special exception.

MR. SHER: It is a variance, not a special exception.

SECRETARY PRUITT: I am sorry, for the variance. Excuse me.

MR. SHER: But one way or the other, one of those cases --

SECRETARY PRUITT: Will fall off.

MR. SHER: Is probably going to go forward, and the other one -- either neither will go forward or one will go forward. Probably both will not go forward.

But until all that gets sorted out with the District, I don't think there is any reason for the Board to go forward and hear the case.

CHAIRPERSON REID: Sure.

MR. SHER: That has been our position and that Board agreed with that three weeks ago. And I am just here on the second half.

CHAIRPERSON REID: All right. What date did we set for it?

SECRETARY PRUITT: June 7.

CHAIRPERSON REID: June 7. And that gives time for whatever --

MR. SHER: I hope.

CHAIRPERSON REID: Okay. And if we need to, we may have to reschedule again.

MR. SHER: If we have to come back again, then --

CHAIRPERSON REID: Hopefully it will be a done deal by then.

MR. SHER: If we have to come back and have a hearing, we will come back and have a hearing. We hope we don't have to.

CHAIRPERSON REID: Okay.

MR. MLOTEK: Madam Chair, before a decision is made, there is opposition in this case.

CHAIRPERSON REID: Okay. Mr. Mlotek?

MR. MLOTEK: For the record, I am Ronald Mlotek. I reside at 1723 34th Street, N.W. That is within 200 feet, and I was one of the parties noticed with respect to the hearing today. I suppose it is prudent and necessary to also indicate that I am not here in my usual role as an attorney for the federal government, the Department of State. I am here on annual leave and purely on my own.

CHAIRPERSON REID: Okay.

MR. MLOTEK: Just to make sure that there is no appearance --

CHAIRPERSON REID: We have to establish what hat you are wearing today, Mr. Mlotek.

MR. MLOTEK: Yes. And it is very gratifying for me to be here in this role, because it shows to everyone, including the Board, that I do reside here and I also take an intense and intimate interest in these kind of development issues and not just on the side of the Chanceries that I usually am appearing on behalf of. I and others -- I think I am joined by at least one other neighborhood resident here today, from whom you will hear -- were noticed that there was going to be a hearing today and we are prepared to go forward on the merits in opposition.

The developer or the proponent here or the applicant did not do us the courtesy of letting us know that they were going to ask for a postponement. I don't want to raise all of the other issues that were raised in the previous lengthy preliminary matter --

CHAIRPERSON REID: Please.

MR. MLOTEK: Which went on longer than many cases in chief have gone on. But let me just adopt by incorporation much of what was said in that case. And specifically what Board member Hood -- what Mr. Hood said in that case, which I thought was very interesting, where he said that nothing is a given. I don't think anything should be a given. I don't think that it is respectful of the integrity and the role of this Board that an applicant should just presume that they can come in and have a continuance anytime they want. In all of the years that I have been involved in zoning matters, which goes back to 1982, I have never once seen a continuance granted to opposition. I mean I have never seen a case where let's say the ANC Commissioner wanted to come and oppose an application and was on vacation or something and a request was granted for a continuance because of the opposition. I think it is very essential that the Board defend its own integrity and its own impartiality in a case like

this. It is transparently clear, if you see what has gone on just to this point, that the applicant in this case, the Flea Market, just presumed that they would get this continuance without any question at all. They did not send their own attorney. They sent Mr. Sher, with whom I have been close friends for many years. So nothing personal here. Dating back to the date when he worked for this honorable Board. But they did not send actually their attorney of record. They did not even post the requisite notice signs on the property. At no point have those ever appeared. So I think it is very important that we recognize that there is a need for impartiality and a need to at least have some good cause shown. Now you've heard some mention made of legislation. But personally I am not aware -- this is a very murky record. I have tried to find out and other members of the opposition have tried to find out exactly what this legislation is. Perhaps Mr. Sher could exactly tell us and at least have it made a matter of record here. But the bottom line is that I would propose, in line with what was said in the previous case, that the Board not simply grant some open-ended continuance that can go on ad infinitum. That it either a) dismiss the application and require the applicant to refile -- not with prejudice. I would

not argue that it should be dismissed with prejudice. Dismiss it and let them refile it. That is what would happen to a homeowner I think in most cases. And I don't think co-equally -- for example, if I were to ask Mr. Sher on behalf of his client today whether if the Board granted their request, the applicant's request for a continuance today, whether he would also be forthcoming to grant me a continuance if, for example, this comes in August when I am on vacation if it would come up or July. Would the applicant be willing to extend a reciprocal courtesy of a continuance to the opposition. I don't think they would or that they are even in a position to say.

So that is why I say -- and I will conclude now -- that what I would propose that the Board do in this case is to simply dismiss it and require them to refile it with all the requisite notice requirements and this time post the requisite signs and be prepared to go forward in earnest and not to simply toy with this honorable Board as if it is some sort of creation or handmaiden of just one of the parties, in this case the applicant.

CHAIRPERSON REID: Okay. Mr. Mlotek, I am going to let Ms. Pruitt explain to you about notice in regard to this particular case.

SECRETARY PRUITT: Madam Chair, I am not sure what you are asking. Notice went out to people within 200 feet.

CHAIRPERSON REID: Mr. Mlotek said that he was not aware --

MR. MLOTEK: No, just to clarify, Madam Chair. I didn't say I wasn't aware of the case. I received a letter as --

CHAIRPERSON REID: Excuse me, he was not aware -- I meant to say -- I wasn't clear and I apologize for that. He was saying that he was not notified as to the request for postponement.

SECRETARY PRUITT: Party status has not been granted. So that means we would either notice all 200 -- everybody within 200 feet. The office does not do that typically.

MR. MLOTEK: No.

CHAIRPERSON REID: And you did not request party status, is that correct?

MR. MLOTEK: No. I thought if you are within 200 feet, you are a party.

CHAIRPERSON REID: No.

MR. MLOTEK: I see.

CHAIRPERSON REID: No, no. Party status is something that is specifically requested and you would

have to be granted that status. And then once that is done, then you will be so-notified of every aspect of the case. You are so accustomed to coming as a representative of the State Department, which gets everything. But that is not how it is done in regard to the community.

SECRETARY PRUITT: In fact, the postponement -- typically the attorneys would actually serve the parties with a copy that they send to us.

MR. MLOTEK: Oh.

SECRETARY PRUITT: And if you are interested in requesting party status, under the new regulations you must do so in writing.

MR. MLOTEK: Yes.

SECRETARY PRUITT: I just wanted to make sure you were aware of that.

MR. MLOTEK: I followed --

CHAIRPERSON REID: Do you wish to do that?

MR. MLOTEK: Yes, I do wish to request it and I will promptly do so. But I wasn't trying to make an argument -- a legal or technical argument about the lack of notice. Simply I think the other party knows that I was in opposition and could have let me know that there was a postponement. But be that --

CHAIRPERSON REID: Take that up with Mr.

Sher.

MR. MLOTEK: Right. I don't want to belabor this point.

CHAIRPERSON REID: Independent of this proceeding.

MR. MLOTEK: I am just -- my only point -- the only main point is that they had notified that there would be this case. We had come down prepared to go forward today in opposition. It was very clear that they haven't for some time been prepared to go forward. Even to the point of not posting the requisite signs that are required to be posted on the property. So I am not raising as a specific legal objection here that I was personally not notified of the postponement request. I simply think that the Board ought to be toughminded in such cases with applicants and should not simply allow them to go on in an open-ended manner simply for the benefit of one party and not the other party.

CHAIRPERSON REID: Okay. Mr. Mlotek, are you familiar with the aspect of this case in regard to the fact that predicated upon some pending legislation that will have some bearing on the outcome of our decision -- or if in fact we are even going to have to make a decision. That this is the basis for which they

have requested a postponement.

MR. MLOTEK: What is the -- I mean, I have heard in code what is the legislation. I think it should be put into the record.

CHAIRPERSON REID: Let me ask Mr. Sher to explain it to you.

MR. SHER: Madam Chair, if I might just take one second to digress and say that I think the Board knows I have the greatest respect for this process perhaps of anybody in this room. I have been involved with it for almost 30 years from both your side of the table and mine, and I would never do anything that would disrespect the Board or the Commission or in any way the process. I have just stated that for the record. In our letter, we noted that the Council passed emergency legislation on December 21, 1999, which would exempt from zoning the subject use on the subject property. That piece of legislation is known as Act 13-253. It is entitled the Comprehensive Plan Land Use Georgetown Flea Market Exemption Emergency Amendment Act of 1999. It was signed by the Mayor on January 10. It was approved by the Control Board on January 27. The legislation -- let me just get the chronology straight. We filed our appeal in November. The piece of legislation was passed

by the Council in December. When you noticed the hearing for January 19th on the appeal, it had been passed by the Council. We didn't even know it had been signed. When we asked for a postponement, it hadn't been signed by the Mayor. I didn't know it was signed by the Mayor when I was here on the 19th. It had been, but it didn't become effective until the Control Board approved it on January 27. We filed our request for a continuance in this case on January 26, which was two weeks before the hearing, as we thought we should appropriately do. I did not post nor file a statement based on the Board's action the week before in postponing our hearing to June. I am not asking for an indefinite forever postponement. I have suggested June 7. If the Board wants to put some other date on it, the Board could put some other date on it. We thought it was reasonable to have the two cases heard the same day. If you want to hear the two cases on a different day, you tell me. We think -- again, I hope -- and I will state my hope again for the record -- that the Board won't have to hear this case. We think that we will be able to resolve this case with the District of Columbia and no action by the Board will be required. We asked the Board to put the case off in the future far enough so that you didn't put us on a calendar and

then I walk in here again and withdrew the case and we took somebody else's place on the calendar. I am hoping that before you make your decision about cases to be heard on June 7, we will have come back to you and said we don't need those two slots on June 7. Give them to the next two applicants you have in line. That is why I asked for a time so far ahead. If you give me a time in April, then you can't put anybody else on in April. Because I won't probably know by the time you have to notice the April cases whether we are going to be able to resolve this or not. That was my sole reason for asking for that time. Again, whatever you want to do, you tell me.

CHAIRPERSON REID: Thank you, Mr. Sher. Mr. Mlotek, does that adequately answer your concern?

MR. MLOTEK: Well, I don't totally -- I still don't understand. And part of my misunderstanding is also based on conversations I have had with members of the Council and their staffs as well. I have talked to Jack Evans about this legislation as well, and I have gotten a slightly different interpretation of what it would do. If I could just ask the Board to allow Mr. Sher to respond to this question. The legislation that is referred to as the "pending legislation", which they believe -- the applicant believes would relieve

the necessity of any further proceeding, this is legislation which would entirely and in perpetuity relieve this applicant from obtaining any sort of zoning relief or only for a certain period? The way it was explained to me -- the reason I ask the question -- the way Council member Evans explained this to me in January when I spoke with him personally was that the Council had enacted emergency legislation which would allow the flea market -- and would solely allow the flea market to continue operating, notwithstanding the view of the Zoning Administrator of the District -- allow it to continue operating for some period of time, I think he said 90 days or perhaps 120 days -- during which time they could apply for and attempt to receive the necessary zoning approval or permits or what have you -- zoning action, let's say -- favorable zoning action to allow them to go forward. And if they didn't obtain it, then of course they would have to cease. Now I hear something somewhat different -- a different characterization of this legislation. And I think it is very important that it be made a matter of this record or of this proceeding exactly what this legislation would do. I mean for that matter, I think the Board ought to have a copy of the legislation in the record so it knows on what it is acting in this case. In

other words, if it decides to grant what Mr. Sher is requesting, it should at least have the documentary basis to know what it is requesting.

Secondly, to respond to his point about wanting to simply spare the Board the necessity of setting a date and then having to have that date likewise deferred and taking up slots, I again go back to my original specific request to the Board. That can easily be addressed by simply dismissing the case and have them refile it. There is no problem there. That way, there is no slot on some future zoning BZA agenda being taken up. And in that way, there is no requirement or necessity for the applicant to come forward again in April or May or whenever to say, well we are still not ready to go forward and we need another continuance. Just dismiss it and have them refile it.

MEMBER SOCKWELL: Mr. Mlotek -- if I might, Madam Chair, respond to Mr. Mlotek. I had actually referenced some of the questions that you have just asked as questions to ask the applicant. And we would want to have a copy of the legislation submitted to the file, because we would be responding to knowing what it is that is awaiting mayoral signature. As well to continue long enough to let that legislation get the

required signature, should we know what the legislation says, would certainly be potentially -- and I say potentially because we don't know what is in the legislation -- valid. But I have no idea what the legislation actually says. So there is some learning curve that we need here before we go forward with the postponement I really believe.

MR. SHER: Okay. I have a copy of the legislation as signed by the Mayor. It doesn't reflect any action by the Control Board because I don't know how they do that. Okay? I don't know whether -- they don't do it on the same piece of paper that the Council and the Mayor act on. So all I know is that when we tried to determine -- or when we did determine whether the Control Board had acted, they informed my office that they had approved it on January 27. So I don't have a piece of paper that reflects that. I have one copy. I can get copies made or staff can get copies made and you can have it for the record.

MEMBER SOCKWELL: Could you read briefly from the most --

MR. SHER: Yes. I cited the title before. It amends Section 1-250 of the D.C. Code to add a paragraph that says the use of parking area -- and I will quote it. "The use of parking areas of the public

school on lot 850 in square 1297, which is located at 1819 35th Street, N.W., as a flea market on Sundays shall not be subject to zoning."

CHAIRPERSON REID: Yes, well you will submit that for our record, please.

MR. SHER: I can't submit it and read it at the same time.

CHAIRPERSON REID: No, but in pertinent part. I didn't expect for you to read the entire document.

MR. SHER: That is the operative --

CHAIRPERSON REID: I think that should suffice for Mr. Mlotek that in fact there is such documentation and once it is submitted, we will have it for the record. You read the most salient points that we need to hear.

MR. SHER: Do I go on or not?

CHAIRPERSON REID: There is no need.

MEMBER SOCKWELL: If there is anything else --

MR. SHER: Okay. The only other thing -- this was enacted on an emergency basis. A piece of emergency legislation is valid for 90 days from the day it took effect, which again I believe to be January 27. Part of what has to happen at this point is to

determine given this piece of legislation, whether it is enacted on a permanent basis or whether it is enacted on a temporary basis following this, do we need to be back here before the Board or not. At this point, I don't know that. I am hoping the answer will be no, but I don't know that. And that is why we asked for a period of time within which that we could determine -- the first time we asked for a postponement, we didn't even know that this thing had become final. Now we know that it is final. We believe that we will not need to be here. But if we do need to come back here, we will come back at whatever time you tell us you want us back here.

CHAIRPERSON REID: Okay.

MR. SHER: I was trying to make it fit with what you did three weeks ago. If you want to do it on some other day, tell me what the day is and we will be back here.

CHAIRPERSON REID: Let's not beat that to death. We have already established that it would be prudent to have it on the same day. And so can we wrap this?

MR. MLOTEK: Let me just respond to what the legislation says. Basically no applicant has an absolute entitlement to have a continuance.

CHAIRPERSON REID: No.

MR. MLOTEK: That is something that is granted out of the goodness --

CHAIRPERSON REID: That is a given.

MR. MLOTEK: Right. Now in this case, the Board also has to take into account the fact that there is opposition that is saying that a continuance should not be granted and let's go ahead today. But in addition, now that we know what the legislation says, I think there is another very serious matter that the Board needs to take into account in deciding whether it wants to grant something it doesn't have to actually have to grant. What this applicant has done -- let's understand this. This applicant has tried to do basically an end-run around this Board's jurisdiction. An end-run around the way zoning cases, specific zoning cases or requests for variances, are supposed to be adjudicated in our system in the District of Columbia -- in this town. It is this body that is supposed to decide it on a case-by-case basis in a contested case with cross examination of witnesses and with the presentation of evidence. The City Council is not supposed to decide these things legislatively. That is why we have the laws that we have. It just seems to me that where you have a case where an applicant is coming

forward and asking you for a favor essentially -- asking you for something that you do not have to give them and that they are not absolutely entitled to give, and furthermore is asking for it in view of the fact that they have tried essentially to do an end-run around this entire process and have the legislature dictate -- dictate a variance which is going to seriously impact my quality of life on Sunday as a resident. The Board should not be lenient. The Board should not grant this favor. That is my position. We all know -- just one final sentence. We all know how the populous and citizenry of this District and especially the Council of the District react with incredible anger and indignation when another superior body, the Congress of the United States, comes in and vetoes, as they have the legal right to do -- vetoes an act of our legislature. Why would there not be similar indignation when this body, the Board of Zoning Adjustment essentially, is having a legislative body that is not supposed to make these decisions come in and force the decision in this case. And I would remind in the list of things that have to be done to have this legislation in fact approved -- Mr. Sher ticked them off on the list -- the signature of the Mayor and the imprimatur of the Control Board, Congress also has a

period of time to veto this legislation. And the opponents can be assured that we, the opposition, will attempt to secure that. At any rate, my point is this is not a done deal. The applicant is asking for something they don't have an absolute right to have. We, the citizens who are going to be impacted by this, are saying don't grant it. That is it.

CHAIRPERSON REID: Mr. Mlotek, I am not clear on what you mean by the expression of an end-run. What do you mean by that? Is that a football term?

MR. MLOTEK: Yes.

CHAIRPERSON REID: And I am not well-versed in football.

MR. MLOTEK: A very bad analogy for me because I am not a football fan either. You and I must be the only two people in this town that aren't. What I meant was that the applicant in this case is trying to avoid having this Board decide what the law says this Board is supposed to decide by having a special law passed. By having the Council of the District actually act as the Board of Zoning Adjustment and grant the variance without hearing from me and without hearing from Mr. Esteridge, who is back there, and without hearing from all the other neighbors who are really tormented and really oppressed by the hordes of

people that come in every Sunday -- every Sunday except in the most inclement weather -- every Sunday, they come into our neighborhood and just trash it. They take up every parking space and do other things. I mean, I don't want to get into the substance of the opposition. We know this isn't the place for it. But there is opposition here. And this is not an issue the Council should decide. And in view of the fact that this applicant doesn't trust this body enough to have this body decide what it decides routinely in every other case, and that is what you are here for is to decide whether they should have a use variance to operate a commercial establishment in a residential zone. This applicant does not trust this body to do this. It wants to try to manipulate the system politically. That is what I meant by an end-run.

CHAIRPERSON REID: Oh. Now I understand.

MR. MLOTEK: Sorry.

CHAIRPERSON REID: Thank you.

MR. MLOTEK: And so by virtue of that fact, I think they deprive themselves -- if they have done this -- if they have said to this honorable body, we don't trust you to listen to our case and listen to the opposition case and then make your decision based on the ordinary rules that are in this book and that you

do all the time and that you are here to do -- we don't trust you to do this. We want to manipulate the system and have the Council do that. In view of the fact that that is essentially what they are saying -- you can't parse it any other way. That is what they are saying. Then I would request respectfully of you that you not be lenient today. That you not grant them what they have asked for and which they don't have an absolute entitlement to have, and that you say to them in a hard-nosed way, no. We are not going to suspend this thing indefinitely. We dismiss it without prejudice. You can come back and refile it, but you are going to have to come back and refile.

MEMBER SOCKWELL: Mr. Mlotek, one thing I will say if I may -- with Madam Chair not being upset -- is that I am so pleased to see you here before us in the role of the concerned citizen. This is a pleasure that I could not express in words effectively and adequately. The way you have expressed the community view shows me that there is a side of you that we never, ever expected. Anyway, I just wanted to say that.

MEMBER RENSHAW: And we will expect again perhaps.

MEMBER SOCKWELL: That is right.

CHAIRPERSON REID: Well --

MR. MLOTEK: I thank Mr. Sockwell for those very kind comments. And I also omitted to welcome Ms. Renshaw to the Board. I have known her for some time and we have talked sometimes in the past in her capacity as ANC Commissioner in her zone. But this is my first time to appear before her, so I welcome here. And Mr. Hood, whom I have never appeared before as well.

CHAIRPERSON REID: Well, Mr. Mlotek, you do raise some very important issues. My understanding of the proposed legislation was not that it was to circumvent or usurp the responsibility of this Board. I can't understand how it could be so. Because this Board has a very distinct function that has served the District of Columbia. And if that were the case, then I would think that anyone who wanted to circumvent or usurp our particular function or powers here could do so through the City Council. But that is not my understanding of the way it is supposed to be. So let's take a closer look.

COMMISSIONER HOOD: This also, Madam Chair, if I can add goes back to some previous cases. At least one particularly which I served on and have been asking in the year-and-a-half that I have been down

here. Can the City Council legislate zoning? I have failed yet to get an answer -- a direct answer. Because there is a particular issue where we are talking about the buffer, where the City Council said 500 feet and the Zoning Commission said 300 feet. So when the cases come up, the Zoning Commission always uses 300 feet. So this is something that I have been -- personally as a Commissioner have been kind of perplexed and confused on. But can the City Council legislate zoning?

CHAIRPERSON REID: Well, okay. I don't think so. I think that is the purpose of the Zoning Commission, is it not?

COMMISSIONER HOOD: That is the purpose of the Zoning Commission. But as we well know and history will show that they come up with legislation for 500 feet and the Zoning Commission says 300 feet. So that is something that I will be frankly honest that I have never gotten an answer to. Maybe we could do some further research or something. But I think he raises a very valid point. But then on the other hand, before I heard the comments -- your comments -- I looked at this case another way. And that was that if that is true that the City Council is going to pass this legislation through the Control Board and Congress, then our

decision making at that point would be moot. So there is a number of ways that I looked at it.

CHAIRPERSON REID: Let me ask Corp Counsel, do you have a copy of this legislation -- pending -- the proposed? And it says that the use of parking areas of the public school on lot 850 -- so forth and so on -- shall not be subject to zoning. That strikes me as strange. I don't -- I need to be given some clarification on the role of the City Council in regard to the promulgation of the laws that affect zoning.

MEMBER RENSHAW: Madam Chair, it is not only City Council, but it is the D.C. Public Schools. Because we have a letter in our file from Gerald Cook, Director of the real estate office authorizing the attorneys of Wilkes, Artis as counsel for Mr. Sussman to file an application for a variance to continue.

CHAIRPERSON REID: Okay. Let me pull that. What is the date?

MEMBER RENSHAW: November 18, 1999. So the school's involvement in all of this is -- it is their property, but it is a little peculiar the way this letter was drafted.

CHAIRPERSON REID: May I see it, Ms. Renshaw?

MEMBER RENSHAW: Sure.

MEMBER SOCKWELL: It appears to me that under the circumstances, the property is owned by the District of Columbia Public Schools because it is a public school site. And therefore, for any lessee -- and I assume that Mr. Sussman represents the lessee for Sundays, would have to get the approval of the Public Schools in order to go forward with any request other than those which would be for the normal use of the property as is legally accepted.

CHAIRPERSON REID: This is correct. Ms. Renshaw, you always have to have the authorization if it is not the owner who is actually the applicant. Then you have to get authorization from the owner of the property for the case to be heard.

MEMBER RENSHAW: Understood.

CHAIRPERSON REID: Permission.

MEMBER RENSHAW: Understood.

CHAIRPERSON REID: Now let's get back to the City Council. I will just direct the question to Corp Counsel in this regard. Can you please give some light -- shed some light on this for us?

MS. SANSONE: Madam Chair, I believe we would have to presume that this legislative act is valid and not go behind it. It does raise a question, though, about who has authority to --

CHAIRPERSON REID: Legislate zoning.

MS. SANSONE: To legislate zoning. But I think for our purposes -- for the Board's purposes, we would presume that a law that we don't have any reason to believe has been invalidly enacted is a valid law and should be followed.

MEMBER RENSHAW: Could I ask, who brought this to City Council, Mr. Sher?

MR. SHER: Mr. Sussman -- Mr. Michael Sussman, who is the operator of the flea market, initiated those discussions with the members of the Council.

CHAIRPERSON REID: Excuse me, I am sorry. What did you say?

MR. SHER: Mr. Sussman, who is the operator of the flea market, initiated those discussions with members of the Council.

MEMBER RENSHAW: Was there any involvement of the Zoning Office at all?

CHAIRPERSON REID: The Zoning Commission.

MEMBER RENSHAW: The Zoning Commission -- pardon me -- at all?

MR. SHER: No. This is not a matter that has been brought to the Zoning Commission.

MEMBER RENSHAW: Was the Zoning Commission

notified in any way that Mr. Sussman was doing -- having conversations with City Council members?

MR. SHER: I don't know. I don't think that we did. Whether the Council did or not, I don't know.

MEMBER RENSHAW: The Council does have a responsibility. But also if you are going to be before the BZA, I would assume that the attorney for the applicant would on behalf of the applicant bring this to the Zoning Commission's attention as a matter of courtesy.

CHAIRPERSON REID: I have to admit I was somewhat confused about this. Because my understanding was that the legislation was something that was in regard to the entire area or the District or something like that, not specifically this lot. And I have a very -- I am shocked. What can I say? What I don't -- and what really gives me pause is that is this the beginning of the zoning regulations and the Zoning Commission and the BZA being usurped in such a fashion that anyone -- any citizen or any entity who decides that they don't want to comply with the regulations as set forth in the -- I guess it is the charter, then they then can go to the City Council and have lot-specific parcels eliminated from the zoning regulations and the BZA.

MEMBER SOCKWELL: Madam Chair?

CHAIRPERSON REID: Is this true? I mean, is this really happening or am I just imagining things?

MEMBER SOCKWELL: Madam Chair, there is a piece to this that we should keep in mind. The District of Council via the Council has made this ruling for the disposition of land that the District of Columbia owns as opposed to the disposition of land that is in private hands.

CHAIRPERSON REID: It doesn't matter.

MEMBER SOCKWELL: Well, to the extent that the District can assume some sort of authority over its own property --

CHAIRPERSON REID: It cannot.

MEMBER SOCKWELL: If it can, it has chosen to do so. If the legislative body has chosen to do so, it should have done so with some input from its own general counsel, whomever that is. And I am saying that the Council members, many of whom are attorneys, have passed this piece of legislation. Now whether or not it is valid is going to be based upon review by the --

CHAIRPERSON REID: Control Board.

MEMBER SOCKWELL: The Control Board and ultimately by the Congress. And, of course, there is

every possibility that this legislation would be kicked back because it is out of form with the intent of the Comprehensive Plan and other larger legal issues. But I would suggest that we may wish to postpone hearing the case until more information can be gathered on the history of the legislation. I think that because of this problem, it would be more difficult to dismiss such a case because we really are looking at a piece of legislation that could in fact be considered landmark and could be considered precedent setting, and it could be considered illegal. But we will just have to find that out.

CHAIRPERSON REID: Well, just address the -- Ms. Renshaw, I will recognize you. Excuse me -- just let me get this in. In regard to land that is owned by the District of Columbia, it is not exempt from the regulations that have been promulgated by the body that was put in place for that purpose. So this would not definitely fall into a special category. Now, Ms. Renshaw?

MEMBER RENSHAW: Yes. I wanted to ask Mr. Sher who wrote the legislation?

CHAIRPERSON REID: Who drafted it?

MEMBER RENSHAW: No, who drafted it?

MR. SHER: My best answer is I don't know.

I believe it was drafted in Council member Evans office.

MEMBER RENSHAW: I think you know. C'mon, who drafted it? No, I want to know who drafted it.

COMMISSIONER HOOD: Yes, well who introduced it even.

MEMBER RENSHAW: And then who introduced it.

MR. SHER: I am afraid I have to stand on my answer. I don't know. And if you don't believe me, I don't know what else I can do.

MEMBER RENSHAW: Would you bring that information?

CHAIRPERSON REID: Who voted? What was the vote like?

MR. SHER: The vote was unanimous on a voice vote with Council member Orange not present. That is shown on the last page. I believe it was introduced by Council member Evans, and I think it was drafted in his office, but I don't know that for sure.

CHAIRPERSON REID: All right. I definitely agree with Mr. Sockwell and Ms. Renshaw that we need to table this. Even the decision for a postponement until such time that we determine where we are. This is a highly irregular and highly unusual situation. And as

such, I don't feel comfortable moving forward on it. I don't know how the other Board members feel.

COMMISSIONER HOOD: Madam Chair, if I can just add. I am going to ask that the Board of Zoning Adjustment Secretary mention to the Zoning Commission Secretary so we can put this on our next agenda as soon as possible. This issue again -- like I stated earlier, there is another issue out there dealing with 500 feet or 300 feet. And the Zoning Commission is mandated to go by the 300 feet because we have -- what I have been hearing is the City Council cannot legislate zoning. So we are going to try to put that expeditiously on our next meeting and try to deal with it accordingly.

CHAIRPERSON REID: No, and --

COMMISSIONER HOOD: This issue I don't think in the best interest right now -- while it won't help us today, and I agree with you to table this, we can try to find -- get some closure to this. So I see this as coming more and more. Even though it is some isolated incidents.

CHAIRPERSON REID: I mean, why have a Zoning Commission.

MEMBER RENSHAW: And there is further concern in the community I have heard about the use of public school facilities. In other words, this is one

parking area used as a flea market. But our decision, is that going to impact on all the other parking lots of the public schools around the city? And so that is something we have to keep in mind. And it would be good at the next hearing of this matter, if we do go forward, to have someone from the public school system in the audience ready to testify.

CHAIRPERSON REID: That is a good point. You can ask or request from staff that they try to --

MEMBER RENSHAW: We so request.

CHAIRPERSON REID: Secure from D.C. Public Schools someone who is in a position -- a decision-making position to come and speak to that. Mr. Sockwell, did you have any comments? All right. I think that by consensus, we feel that we don't have the adequate information necessary to make a decision as to the postponement of this particular case. And we will make that decision I suppose at our next regularly scheduled meeting.

SECRETARY PRUITT: That is what I was going to ask. So do you -- you would like to have somebody from D.C. Public Schools talk to you at that meeting or separate from this?

CHAIRPERSON REID: I think that --

SECRETARY PRUITT: I am trying to get

straight what you are looking for.

CHAIRPERSON REID: Okay. I was thinking more if we went forward with the hearing.

SECRETARY PRUITT: Okay, so if --

CHAIRPERSON REID: But maybe what we can do in absence of that, Ms. Pruitt, is to address a letter to the specified person, once we determine who it is, to address questions that we have in regard to this issue and to respond back to us by a certain date. I think that is the best we can do, and then we can have that in our package for the meeting -- our next meeting.

SECRETARY PRUITT: And those questions would be?

CHAIRPERSON REID: Mrs. Renshaw will give you that -- her questions.

SECRETARY PRUITT: Okay. I just wanted --

CHAIRPERSON REID: Specifically.

SECRETARY PRUITT: I just wanted to know what the body of the letter --

CHAIRPERSON REID: Yes, predicated on some information that she says that she is privy to from what she has garnered from the community.

SECRETARY PRUITT: Okay. So I will talk to you.

MEMBER RENSHAW: Yes.

CHAIRPERSON REID: Yes, that is what we will have to do. In the interim, Corp Counsel will take up this issue and be able to advise us accordingly as to what is the best manner in which to proceed under these circumstances, which are new to us. Thank you.

MR. SHER: Are you expecting something from us by some date or not?

CHAIRPERSON REID: Well, again, you can come back and --

MR. SHER: I am just -- if I don't need to, I don't need to. I just --

CHAIRPERSON REID: We will -- at that meeting, we will determine whether or not there is basis for granting you a postponement.

MR. SHER: So you don't need anything from me prior to your meeting?

CHAIRPERSON REID: No, I don't think so. Unless the Board members specifically want something.

COMMISSIONER HOOD: I thought someone was going to find out who the author and who introduced it?

CHAIRPERSON REID: Well, we can get that. Staff can obtain that. And then once we make the determination as to whether or not you should be granted a postponement and if in fact we do decide

that, we will then give you the date. We will notify you as to the date.

MR. SHER: Okay.

CHAIRPERSON REID: Or not.

MR. SHER: Okay. Can I just add two things quickly?

CHAIRPERSON REID: Sure.

MR. SHER: One, if you don't give us a postponement and deny the request without prejudice, I guess what that costs my client is $800.00. Because he turns around and files the application again or whatever and we will be back here at some point in the future. So, I mean, if that is the way it turns out, that is the way it turns out. I think my client would rather not pay the $800.00, but if you --

CHAIRPERSON REID: Say that again. If we do what?

MR. SHER: If you dismiss the application as Mr. Mlotek suggested you do without prejudice, that means that tomorrow I come back in here with another application and I pay the $800.00 filing fee and at some point you are putting me back on an agenda and here I am again. So I don't know what purpose that serves, but that is just one possibility.

The second thing, and I don't want to make

this an extended discussion -- if you look at your own regulations in terms of what the Zoning Commission has said reflecting what the law is as the Council has passed it with respect to zoning applicable to properties of the District of Columbia -- I am just going to refer you to Section 106.5. I don't want to spend any more time on it. But that tells you --

CHAIRPERSON REID: 106.5?

MR. SHER: Yes, of the regulation.

CHAIRPERSON REID: Okay.

SECRETARY PRUITT: Madam Chair, maybe it would be helpful if -- I don't mean to give you any extra work, but if Mr. Sher provides his reasoning as to why he thinks that this is properly before the Board.

MR. SHER: You want to -- when do you want that?

SECRETARY PRUITT: I mean in writing so that they could --

MR. SHER: Just when do you need it? Tell me when.

SECRETARY PRUITT: That is if the Board would like. I am just --

MR. SHER: That is all I am trying to find out is what if anything you want. If I don't need to do

anything, I will go back and get ready for the next case. Otherwise, I will write something. Tell me what you want.

CHAIRPERSON REID: I think that would be appropriate if you could please submit that to us prior to the meeting --

MR. SHER: All right, I will give you something by --

CHAIRPERSON REID: 14 days prior to our meeting.

SECRETARY PRUITT: There is no requirement for this. I mean, there is no time requirement for this.

CHAIRPERSON REID: Okay.

SECRETARY PRUITT: So today is the 9th. If you think you -- if it would be possible for you to get it to us by the 25th? Is that too soon?

MR. SHER: By the -- two weeks from Friday. I should be able to do that.

SECRETARY PRUITT: Yes. That gives you enough --

MR. SHER: Whatever it is, we will submit.

SECRETARY PRUITT: And that way we can get it in their package.

MR. SHER: Sure. Okay.

CHAIRPERSON REID: Yes. Obviously the issue of postponement becomes rather moot. Because just by virtue of the fact that we are not taking it up any further then at least --

MR. SHER: We are not going forward today obviously.

CHAIRPERSON REID: And we are not going forward today.

MR. SHER: I am clear on that.

CHAIRPERSON REID: So in the interim, we have to try to gather some more information and you have until at least our meeting date to determine what in fact you are going to do.

MR. SHER: We will get you something by the 25th, and we will be here on whatever date the meeting is.

CHAIRPERSON REID: Okay.

MR. MLOTEK: May I add -- I was just unclear. When is the public meeting?

CHAIRPERSON REID: The first Wednesday of each month.

SECRETARY PRUITT: That happens to be March 1 this year.

MR. MLOTEK: So this one is March 1?

CHAIRPERSON REID: A couple of weeks.

MR. MLOTEK: The one that you are referring to, Madam Chair?

CHAIRPERSON REID: Yes.

MR. MLOTEK: That would be --

SECRETARY PRUITT: 9:30.

CHAIRPERSON REID: What?

SECRETARY PRUITT: I was just going to say 9:30.

MR. MLOTEK: Yes, right. 9:30 on March 1. But that would be a public meeting, not a hearing. So that other parties or no parties would be permitted to speak.

CHAIRPERSON REID: Right.

MR. MLOTEK: All right. Well, if that is the case, then just make sure that the record will reflect -- because I may not have another opportunity to speak. The basic bottom line motion that I made was to dismiss, not to grant postponement. So at that time -- at the time you do decide it, I guess this meeting when you look at this issue, so that the record will just adequately reflect what relief the opposition in this case was asking. And --

CHAIRPERSON REID: You know, I am not really sure. Because, again, a monkey wrench has been thrown into this whole proceeding.

MR. MLOTEK: Correct.

CHAIRPERSON REID: So this is why we need to kind of -- to use a football term, go into a huddle.

MR. MLOTEK: Oh, I see. We are back to football.

CHAIRPERSON REID: To determine what is the best thing to do.

MR. MLOTEK: Right.

MEMBER SOCKWELL: Madam Chair, let me just -- since Mr. Mlotek is here and since the Section 106.5 of the zoning ordinance has been referenced, under Section 106 zoning map, that section states, "Properties intended to be used for public building or use shall become automatically unzoned upon acquisition by the Government of the United States or the Government of the District of Columbia. So under the public use based on my interpretation of the regulation, the building and its site would not be zoned during the time that it is in public use. Now what has happened is that they have overlaid an occasional private use onto that site -- that public use. So a legislation was obviously put into place to make that private use acceptable under the ordinance. As to whether or not that can be done this way is subject to discussion and deliberation.

CHAIRPERSON REID: But doesn't it say a public use?

MEMBER SOCKWELL: Yes, but --

CHAIRPERSON REID: That is the operative word right there.

MEMBER SOCKWELL: Well, public use would be the operative word for the use as a school building and the parking lot as the parking for the school.

CHAIRPERSON REID: But, no. It is a private individual who --

MEMBER SOCKWELL: That is what I am saying. But the operative word is public in that if it is sub-leased for private use --

CHAIRPERSON REID: Does it say that?

MEMBER SOCKWELL: No, it is being used --

CHAIRPERSON REID: No, no, no. I am saying that the regulations specifically do not -- it is silent as to private use. It says specifically public use, correct?

MEMBER SOCKWELL: Right. But what we have is a public building being used privately. Now the question would be the same question if a public school is used by a community organization that is incorporated. There may be a lot of nuances to this that would make it difficult to find a solid piece of

ground to stand on based on other uses of public school buildings.

MEMBER RENSHAW: That is what our Corp Counsel is going to do. But I also want to mention that we have in our file a letter from ANC 3B. What about ANC 2E? Because 2E passed a resolution that was about a month and a half ago, and we don't have that in our file. And they are always very diligent in sending those in.

CHAIRPERSON REID: How do you have knowledge of that?

MEMBER RENSHAW: Because I attended that meeting.

CHAIRPERSON REID: And do you know the person -- the key person who would have been responsible for the submission?

MEMBER RENSHAW: The chairman of 2E would have submitted.

CHAIRPERSON REID: Oh. Then I would suppose that we need to --

MEMBER RENSHAW: To follow up.

CHAIRPERSON REID: Get a call to them to find out why they did not submit it to our file. Because unless we have it here, we have no knowledge as to what position they took. And we assume -- if we

don't receive anything from the ANC, we assume that they have no objection. That is the assumption that we always make.

MEMBER RENSHAW: But I think we do have time now to get back in touch with the ANC and query them as to why we don't have that document in the file.

CHAIRPERSON REID: Okay.

MEMBER RENSHAW: All right.

CHAIRPERSON REID: All right.

MR. SHER: I haven't seen it either.

CHAIRPERSON REID: Okay. Thank you.

MR. MLOTEK: Just --

CHAIRPERSON REID: Mr. Mlotek, another one more thing?

MR. MLOTEK: Yes, this is the last one thing. In a previous case that I am aware of, when there was a concern that was presented by members of the community to the Board about saturation of certain residential areas by non-residential uses, the Board conferred amongst itself and agreed to send a letter to the agency responsible -- in this case NCPC -- for the Comprehensive Plan to express its concern and to ask certain things be done. Perhaps in this case, there is enough information already on the table to enable the Board to address a letter to the Council and ask the

Council in the name of the Board. Because after all the Board -- in a case such as this where there is a proposed commercial use in a residential neighborhood, the Board is really acting as the protector or the possible source of refuge for the residential community to come and seek protection. That is the role that I am in now. What the Council did was done in the dead of night in emergency legislation. So nobody had -- not one single resident to oppose this.

MEMBER SOCKWELL: It was probably done in the early afternoon actually.

MR. MLOTEK: Well, dead of night metaphorically speaking. In the early afternoon but without -- in darkness. Without -- it was emergency legislation. I mean what was the emergency one would wonder. I mean it is not like snow removal or catastrophe or other police protection. Nobody had an opportunity. It is a very serious thing, as the Chairperson noted, this usurpation. It could be used for other non-residential uses or institutional uses as well. Perhaps even foreign Chanceries. Who knows?

MEMBER SOCKWELL: Let me just say this to you, Mlotek. Not only emergency legislation but regular legislation passes through the Council sometimes that same way. The fact that it says

emergency is primarily to meet a particular need immediately. But the regular legislation, much of which doesn't affect foreign missions, can pass through the Council with very little public scrutiny because of the way the Council meetings are or are not announced.

MR. MLOTEK: But this is a specific case.

CHAIRPERSON REID: Here is something else that I really don't understand. Now come to think of it, if in fact the regulations were clear as to the use of the land owned by the Government, that has already been stipulated, then why do we have to have emergency legislation for this particular parcel? If it is already there?

MR. MLOTEK: The answer is that the applicant doesn't want you to make the decision. And they don't want me and my other neighbors who oppose this non-residential --

CHAIRPERSON REID: No, no. What I am saying is it is in the regulation as a matter of right as to the appropriate use. All right? So that being the case, Mr. Sher cited regulation 106.5, which Mr. Sockwell read. So if this is what is the intention of the regulation, then why do we need emergency legislation for this parcel?

MR. MLOTEK: Because clearly Council felt -

- the Council of the District felt that absent such legislation, the applicant would be required to come here and seek a use variance. There was prior legislation. Remember in 1991 or 1992, I believe -- Corp Counsel will have to clarify that for you -- the District did voluntarily make its own public uses and public property subject to zoning. The regulation does not really say -- you have to be very careful in parsing the regulation that was just cited, 106.5. It doesn't say that it is not subject to any zoning limitations or zoning uses. All it says is it starts out unzoned. Then under the legislation of 1992, I believe -- the Council's legislation -- even for public uses it is required to go through the zoning process. It is just that you start off with the land being unzoned. And then there is a process, I believe, that you have to look at what kinds of uses are around that use to determine. But it starts out unzoned.

CHAIRPERSON REID: Okay. You are saying that --

MR. MLOTEK: But still they would have to -- regardless of what regulation 106.5 says -- regardless -- and we can debate this. But whatever it says, it is clear that even the Council of the District thought that without such relief, this emergency

relief, this single applicant for a site-specific issue would have to come before this Board, and they didn't want that to happen. And they didn't want me and my fellow residents, of whom another elderly gentleman is here who made his way here to say his piece as well. They did not want us to have our opposition heard. That is the nefarious aspect of what is going on here.

MEMBER SOCKWELL: You might realize that the flea market could probably continue to exist under a series of special events permits, which would be regulated entirely differently, but believe me it could be done. It would be cumbersome.

MR. MLOTEK: I think that the esteemed law firm of Wilkes, Artis, Hedrick and Lane would have thought of that before and would have done that. That would be my answer to that. I don't think you can have a special --

MEMBER SOCKWELL: No. No one would want to go through the series of special events permits unless they had to. Trust me.

MR. MLOTEK: All right.

CHAIRPERSON REID: All right. I think that we have come to a point of closure for this particular hearing today. We are still on preliminary matters, aren't we -- this preliminary matter today. And that we

need to move forward now to gather the necessary data that we need to be able to make appropriate decisions given the testimony that we have heard here this morning.

MEMBER RENSHAW: Madam Chair, could I also ask that the counsel for the applicant also put together what is not in our file, and that is a history of the flea market? In other words, I have looked through the material, but I am at a loss to know exactly when the flea market started, the type of businesses, how much space, how many people come to the flea market, how is the flea market cleaned up afterwards, how much money goes to the Hardy School? Those particulars are of interest to the Board. So in any case if that is lacking and if this case goes forward, I hope that that is a part of the record.

CHAIRPERSON REID: Thank you. All right, thank you very much. Let us try to now go to the first case. The first case of the morning.

SECRETARY PRUITT: The first case of the morning is Application 16530, Application of Mr. Frank Jackson pursuant to 3103.2 for a variance from the minimum side yard setback requirements under Section 405 to allow the proposed addition 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 ARE SWORN.)

SECRETARY PRUITT: Please come forward. Madam Chair, there is one preliminary issue on this. And that was that the affidavit of posting wasn't filed until late. So you just need to waive the rules. It was filed this morning.

CHAIRPERSON REID: Okay. But the property was posted?

SECRETARY PRUITT: It was posted, correct.

CHAIRPERSON REID: All right. I have no problem with waiving the rules to allow the affidavit of posting unless there is any objection with the other Board members. Okay? All right. Thank you. First, let me apologize for this being such a long preliminary matter. In hindsight, I wish now that I had taken these cases before. But we didn't realize, so I beg your indulgence. Hopefully we can get done with your case fairly quickly. All right, go ahead and start.

SECRETARY PRUITT: Sir, can you push your -- - push the button until the red light comes on. There you go.

MR. JACKSON: My name is Frank Jackson,

Jr., and I live at 2223 Lawrence Street, N.E. We want to build a deck on the side of our house, and we came down to get the variance approved.

CHAIRPERSON REID: That is all you have to say?

MR. JACKSON: Yes.

CHAIRPERSON REID: Okay. Mr. Jackson, I looked over your submission, and it was apparent to me that the time that I did so, sir, that you were not really familiar with the procedures here in regard to how to make a case for your application. Is that true? Were you in any way prepared for coming before this Board?

MR. JACKSON: Not at first, no.

CHAIRPERSON REID: Okay. The information that you have in your file does not give us the information that we need for a variance. You have to meet a three-prong test. No one told you about that?

MR. JACKSON: A what?

CHAIRPERSON REID: Okay, see? This is what we need to make sure we do from now on, Ms. Pruitt.

SECRETARY PRUITT: Madam Chair, this was continued and they were to get in touch, but we weren't able to. Because it was originally scheduled for

January 19. I was just checking with staff people.

CHAIRPERSON REID: Who wasn't able to?

SECRETARY PRUITT: I guess we weren't able to get in touch with them and they didn't get in touch with us. We tried. So we have attempted again. We can certainly try again if you like.

CHAIRPERSON REID: This is really a disservice of us to try to hear this case when we know that they have not been properly prepared for coming before us. And in equity, we try to give everyone an equal opportunity to be able to prepare or present your case in the best light possible. And quite frankly, if in fact you were to go forward today, then you are going to put yourself at a disadvantage. The staff says that they had tried to get in contact with you to try to assist you with preparing for your case today. And they couldn't get in contact with you. So why you were scheduled anyway, I don't know. But --

SECRETARY PRUITT: It was continued.

CHAIRPERSON REID: I know. I am sorry. It was already continued.

SECRETARY PRUITT: Right.

CHAIRPERSON REID: But if they weren't contacted, then could we not have done something rather than have them come?

COMMISSIONER HOOD: Madam Chair, let me just say I think we probably should have acted better on our part here. But I do believe that I have to agree with your comments that hopefully the staff can walk you through the process, whether it is up or down, and make life a lot easier. So you will be fully prepared when you come before the Board. I just want to add that it is going to be key also to get community support. I see where you had mentioned two people on both sides. Make sure you go through that ANC process and make sure that they submit something. That will help your case.

MS. JACKSON: May I say something, please?

COMMISSIONER HOOD: Sure.

MS. JACKSON: We have been -- I have been down numerous times here and went through every procedure that they told me about. I spoke with a Mr. Hart once and another little man. I don't see him in here -- several times. Everything that they told me that I needed to get or to bring, I did that. Everything they told me. Now, I don't know what else that is supposed to have been done.

COMMISSIONER HOOD: Okay, the file -- let me just say the file doesn't reflect that, and I hope the information that you received was accurate. Because

the file that I have does not reflect the necessary items fully that you need to present your case.

MS. JACKSON: I wouldn't have known it except when I first came into this office here and she said you have everything. All I needed was to put the poster up and have my papers notarized and everything. I did everything.

MEMBER SOCKWELL: Ms. Jackson --

MEMBER RENSHAW: Mrs. Jackson, did you go before your ANC? And what is your ANC -- your Advisory Neighborhood Commission? That is the first --

MS. JACKSON: Someone called me.

MR. JACKSON: Ms. Goodman.

MS. JACKSON: A Mrs. Goodman or something called me and said that she thought that everything was right in order and that she would intercede with you all. I talked with her -- last week I think it was.

CHAIRPERSON REID: And they had no objections?

MS. JACKSON: And everything else they said no objection. And I came down and wrote out addresses, addresses, addresses to say -- they told me that they would send these letters out to the neighbors. I said, was I supposed to say -- and they said, no, you don't say anything to any of the neighbors. We will send

these letters out to them. And several people stopped and looked at the poster, and no objections did we have. Not one.

MEMBER SOCKWELL: Mrs. Jackson and Mr. Jackson, this particular deck that you want to build, how high is it off the ground?

MR. JACKSON: It is about 11 feet.

MEMBER SOCKWELL: It is about 11 feet off the ground. Okay. Because we don't have plans for your deck in -- at least not in my file folder.

MS. JACKSON: I gave her everything. She is supposed to have plans -- everything. Drawings -- everything from the architect. Everything. I gave them to the lady out there. And she said she had everything that was needed.

CHAIRPERSON REID: There are some --

MS. JACKSON: Plans from the architect, everything.

MEMBER SOCKWELL: No, no. That is just the plat.

MEMBER RENSHAW: That is not the details.

CHAIRPERSON REID: No, no. She has them here --

MEMBER SOCKWELL: No, they have plans.

CHAIRPERSON REID: There is plans, but we

didn't get them in our package.

MS. JACKSON: Big old plans.

SECRETARY PRUITT: Well, I mean we can start trying to copy you large plans. But typically we have --

MEMBER SOCKWELL: Well, we have plans, Ms. Pruitt, for every other project. There wouldn't be any logical reason why we wouldn't have the plans for this one.

CHAIRPERSON REID: Don't you require that they submit five copies?

MS. JACKSON: Big old plans. She has them.

SECRETARY PRUITT: Generally, we do. And that should have been taken care of up front. But we can make sure that that gets taken care of. We don't copy plans in-house, Mr. Sockwell, I will tell you that. So we just need to make sure that the applicant provides us with the --

CHAIRPERSON REID: Do or do not?

SECRETARY PRUITT: Do not. Because we don't have the facilities to do so.

MEMBER SOCKWELL: Right. Well then we have to make sure that we get them. Because we can't review a project that requires plans. If the applicant has

submitted plans and they are not copied by the applicant or by us, then we are working at a disadvantage.

MS. JACKSON: I submitted plans.

CHAIRPERSON REID: If the applicant submitted plans --

MS. JACKSON: I submitted plans. Big old plans from the architect.

CHAIRPERSON REID: When the applicant came forward, it was rather obvious that there was some assistance needed in this regard. And when they submitted this one copy, then when it was reviewed, then at that time it should have been requested that they supply us with additional copies of the plans for each Board member so that we have them in our file. Mr. Hart, Mrs. Jackson is saying that she conferred with you regarding what was require of them to come forward to this Board?

MR. HART: The last time Mrs. Jackson was here, I instructed her to meet with me about staff who handled this case. In terms of going through her package and looking at her maps, I did not deal with that. What she is talking about is the front desk where your submissions are accepted and you are told whether it is adequate or not. So in terms of talking

with me about that, I was not involved at that point.

MS. JACKSON: No, not about plans, no.

MR. HART: I did say to her though that how we deal with it is you go to the staff member who is -- the appropriate staff member and the appropriate section and let him walk you -- whoever walk you through that section. That will tell you what you need and what you don't need.

CHAIRPERSON REID: And that staff member would be?

SECRETARY PRUITT: John Nyarku.

CHAIRPERSON REID: And you directed her to John Nyarku?

MR. HART: John Nyarku. Because you spoke to him. I --

CHAIRPERSON REID: Did you meet with him, Ms. Jackson?

MR. HART: Yes -- excuse me, he is shorter -- you were talking to him out front. I saw you talking to him.

MS. JACKSON: I talked to him, yes. And he called me. Yes, I spoke with you and also him.

MR. HART: That is right.

MS. JACKSON: You know, he called me.

MR. HART: Okay, that is right.

MS. JACKSON: But so far as the plans, I gave it to the lady right out here. I could go get her now. Everything. I paid the money and everything you needed is in your file. The big copies from the architect.

CHAIRPERSON REID: Who said that?

MS. JACKSON: I don't know the lady's name, but I saw her coming.

SECRETARY PRUITT: Excuse me, Madam Chair, it is probably Linda.

MS. JACKSON: Said everything --

SECRETARY PRUITT: They are the ones that take in the applications.

MS. JACKSON: I made up the --

SECRETARY PRUITT: They sign off on them.

MS. JACKSON: I have copies, but she had the big copies. She said you have got everything you need now. She said you need -- about the poster -- you know the poster thing out in front of your doorway and everything and pictures and copies and have it notarized and everything, which I did all that.

CHAIRPERSON REID: Ms. Jackson, unfortunately the person who you talked to is a secretary who just makes sure that you have all the pieces that you need. But the gist of the case that

you have to present here today is predicated upon a three-prong test. And that three-prong test means that you have to show -- for a variance, you have to show how your property is unique or unusual or irregular. Something about that property that makes it different from the other properties in that block such that it would cause you a practical difficulty to be able to adhere to the existing zoning regulations. That is one. The other is adverse impact. Whether or not granting your application would cause any adverse impact in regard to would it cause any nuisance to your neighbors in regard to traffic, parking, light, noise or the like. And the third one, whether or not it would impair the intent or integrity of the zoning regulations and map. Now I understand that that three-prong test that I just discussed with you is probably not clear hearing it the first time. So you then have to go and sit down with staff and let them explain it to you and then show you how you can address it. Because when I say unusual or unique characteristics of your property, it has to be something inherent in the land. You can't say because I want to entertain. That would not give you the basis for being able to get your variance granted. So the approach that you take will determine -- the correct approach will determine how

your application is assessed and allow us to use the regulations to make a determination for you. I hope that makes sense.

SECRETARY PRUITT: Madam Chair, may I suggest -- Mrs. Jackson, I will give you my card right now and I will work with you personally.

MS. JACKSON: Okay, thank you.

CHAIRPERSON REID: I was going to suggest that next that perhaps another staff member would be more appropriate.

SECRETARY PRUITT: Please give me a call.

CHAIRPERSON REID: And again, I apologize for your time down here this morning and sitting here and then to get to this point and only to find out that you still aren't ready. But it is far better to do it this way and have you get the adequate counsel or consultation that you need so that you will have the best possible opportunity to present your case before this Board. And right now what we need to be able to make the determination is just not in here.

MS. JACKSON: Thank you. But does this make any difference? When we came, she told us we needed photographs of the front side. She has all that. Plus I told you, the architect's plan. Everything that we needed. I thought they could give us

that.

CHAIRPERSON REID: You gave us everything that you thought that we needed based on what they told you. But the fact of the matter is you were given insufficient information.

SECRETARY PRUITT: And I will work with you so that we can get you a file that the Board will be able to make a decision on.

MS. JACKSON: Okay.

SECRETARY PRUITT: Before you leave, we need to reschedule it for a hearing, so we don't have to go back through the process again.

COMMISSIONER HOOD: Also, we want to make sure that you get the ANC support. So there won't be no questions to your neighbors surrounding it.

MS. JACKSON: Okay, thank you. Appreciate that.

COMMISSIONER HOOD: I would hope that we would move as expeditiously as possible. I know our schedule is filled, but I think due to the miscommunication, we need to --

MEMBER RENSHAW: We can squeeze it in.

COMMISSIONER HOOD: We need to deal with that.

SECRETARY PRUITT: I would like to suggest

that we make it the fifth case in the afternoon for March 5.

MEMBER RENSHAW: March 5.

SECRETARY PRUITT: And hopefully that will give them enough time to work with them and get any additional information without putting too much of a burden on the applicant.

MEMBER RENSHAW: Very good. And I do want to say, Mrs. Jackson --

SECRETARY PRUITT: I am sorry, March 1. Excuse me.

MEMBER RENSHAW: All right, March 1. And I do want to commend Mrs. Jackson for the spirit of her submittal. I liked it very much. Especially the line where you said now is the time for your deck. So we will just get these preliminary matters cleared up.

CHAIRPERSON REID: May I just kind of explore one other possibility with you before you leave, and that is on looking at your submission -- looking at the surveyor's plat and where you are going to put your deck, and then I see all this space out in the back. I could understand why -- did you consider just putting it on the back of your house?

MR. JACKSON: Well, if we put it on the side of our house, we can use it as a carport too. We

have a driveway on the side of the house. So if the carport -- I mean, if the deck was on the side, we could drive under the deck and it would serve as a carport too.

MEMBER RENSHAW: I was going to ask you why you were trying to block off your access to your garage by putting it in your driveway. I didn't understand because I didn't have these plans that you were going to have it elevated.

MR. JACKSON: We enter the garage from the rear -- from the alley.

MEMBER RENSHAW: From the alley.

MR. JACKSON: Yes.

MEMBER RENSHAW: But does your driveway go to the back end of your garage?

MR. JACKSON: Yes, but there is no entrance for a car.

CHAIRPERSON REID: But you have a garage. Do you need a carport and a garage?

MEMBER RENSHAW: He cannot access his garage from his driveway. He has to go around to the alley. A solution would be to put a garage door on the other side of your garage. In other words, have two garage doors.

MR. JACKSON: But then we wouldn't have a

deck. We would like to have a deck.

MEMBER RENSHAW: But you can't put your deck on the back of your house? Because you have a lot of land back there it looks like on your map.

MR. JACKSON: The garage is not that far away from the house.

MEMBER RENSHAW: Mr. Jackson, you claim that there is no way that you can put it on the back of your house?

MR. JACKSON: The entrance from the rear of the garage from the alley is at ground level. At the back of the garage, it is about four feet. I mean, if you build -- if you put a door in the back, you would have to have a ramp or something back there.

MEMBER SOCKWELL: Your garage is partially sunken into the ground?

MR. JACKSON: Right.

MEMBER SOCKWELL: Okay, that is fine. We don't have anything that shows the topography of your site. So barring that, we sort of have to interpret or find out what we are looking at. And you have a driveway in the front as well that comes --

MR. JACKSON: Right.

MEMBER SOCKWELL: Is it paved all the way to the --

MR. JACKSON: All the way to the back of the house.

MEMBER SOCKWELL: The back of the house.

CHAIRPERSON REID: All right, Mr. Jackson. We just thought we would kind of explore some other possibilities with you to see if there was another way of being able to get at it.

MEMBER SOCKWELL: And you can get your car under there.

CHAIRPERSON REID: Thank you. So you will meet with staff. That will conclude the morning session of the Board of Zoning Adjustment. And we will recess - -

SECRETARY PRUITT: We have another case.

CHAIRPERSON REID: We do?

SECRETARY PRUITT: Yes.

MEMBER SOCKWELL: Yes.

CHAIRPERSON REID: Oh, I am sorry.

SECRETARY PRUITT: The Application of Little Rock Pentecostal Church.

CHAIRPERSON REID: Wait a minute. Oh, I am so sorry, we do have. I thought we had three postponements. No, no, we are into cases now. I am so sorry. There is another case in the morning. So will you please call it?

SECRETARY PRUITT: The next application is Application 16504, the Application of Little Rock Pentecostal Church of Deliverance, Inc., pursuant to 11 DCMR 3104.4 for a special exception under Section 205 to establish a child development center for a total of 50 children and 15 staff persons in an R-2 District at premises 2114 Naylor Road, S.E., Square 5576 and Lot 39. All those planning to testify, would you please stand and raise your right hand?

(WITNESSES ARE SWORN.)

SECRETARY PRUITT: Madam Chair --

CHAIRPERSON REID: Excuse me, Ms. Pruitt. Mr. Sockwell raised the issue of the last case was continued to what date?

SECRETARY PRUITT: March 1.

CHAIRPERSON REID: Okay. Thank you.

SECRETARY PRUITT: Madam Chair, there was no affidavit of posting for this -- it came in? Oh, this is his copy. It is not in our file, is it? Is it logged in? We don't have a copy of it, but we do have an affidavit of posting. So it was posted. We checked our file as late as this morning, and this one does not have a stamp on it. So --

CHAIRPERSON REID: I am not following this. You say that you don't have a copy of what you have in

your hand?

SECRETARY PRUITT: I just got it, though.

CHAIRPERSON REID: All right. So where did it come from?

SECRETARY PRUITT: Our files do not have this in here. I just got this in my hand. Although we were informed that it was filed in our office five days ago. I have looked in the file and I have checked my books and it is not logged in.

CHAIRPERSON REID: Where did it come from?

SECRETARY PRUITT: This was his personal copy. This is his copy.

CHAIRPERSON REID: Okay, that is his copy. But was it submitted here to the office?

SECRETARY PRUITT: That is what he is saying. And I have looked in my in and out box and I have also -- we have gone through the complete file and we have not found it.

CHAIRPERSON REID: You brought it to this office?

MR. RICHARDSON: I brought it to this office on Friday.

CHAIRPERSON REID: And you gave it to?

MR. RICHARDSON: The lady sitting out there that wears the glasses. But I made two copies because

I said she may misplace it. And I kept one for my file.

CHAIRPERSON REID: All right.

SECRETARY PRUITT: Clearly from this the property was posted and timely so.

CHAIRPERSON REID: So we must waive the --

SECRETARY PRUITT: I just wanted to let you know.

CHAIRPERSON REID: Okay. We will waive the requirement that the affidavit should have been here seven days prior to the hearing. But that is okay. We know that you did post it and why we didn't get what you submitted, I don't know. I apologize for that. I had a special request for -- I am sorry, but it is kind of an emergency. A five-minute recess, and we will be right back.

(Whereupon, at 1:20 p.m., off the record until 1:25 p.m.)

CHAIRPERSON REID: Go ahead.

MR. RICHARDSON: Clarence B. Richardson.

CHAIRPERSON REID: Address?

MR. RICHARDSON: 2214 Naylor Road, S.E., Washington.

CHAIRPERSON REID: Okay.

MS. HODGES: I am Delores Hodges. I reside at 3632 Brothers Place, S.E., Washington, D.C. And we

propose to start a --

MR. HART: Excuse me, Madam Chair. This is the next case, right? Were you sworn in?

MS. HODGES: Yes.

CHAIRPERSON REID: It was called and they were sworn and then we took a small break.

MR. HART: Oh, I see. My apologies.

MS. HODGES: We propose to open and operate a childcare development center at 2214 Naylor Road, which is a historical church in the lower basement of that church. It will serve the children and the community in the area. We propose to bring to that area a network of fostering with foster care children, court order children, and to help better the community. The hours would be from 6:00 a.m. in the morning to 6:00 p.m. in the evening. Hopefully, we would be able to do the extended hour. Because at this particular time, childcare is in demand. There are over 75,000 children that is in need of childcare between the ages of 2 and 5, and school-age care is very prevalent at this particular time, and there is a great need for additional services in the District of Columbia.

CHAIRPERSON REID: Okay. Is that all you have to say?

MS. HODGES: Well, not really. Because I

am a childcare advocate and I am a specialist in childcare. I have worked in the area of childcare for approximately 25 years. I am a director of a center now that has about 72 children. I have started childcare in other areas. I work with the D.C. Government in getting people proposed for contracts and funding for the District of Columbia out of the Office of Early Childhood. I am presently the president of the school-age care allowance in the District of Columbia.

CHAIRPERSON REID: Okay. Thank you.

MR. RICHARDSON: I am the pastor of the church. And we think that it will bring unity in that community.

CHAIRPERSON REID: Sir?

MR. RICHARDSON: Yes.

CHAIRPERSON REID: I am having a difficult time hearing you. Can you pull the microphone closer and speak directly into the microphone?

MR. RICHARDSON: Thank you.

CHAIRPERSON REID: Thank you.

MR. RICHARDSON: I think that we would bring unity in that community, and we would also better the city by bringing children there to teach them the things that are right.

CHAIRPERSON REID: Okay. Thank you.

MR. LAWRENCE: I am James Lawrence, and I reside at 2519 Rosalyn Avenue in District Heights, Maryland. I am the deacon over at the church -- the chairman deacon. I feel that in us obtaining the daycare center, it is known that in the afternoons after school, children tend to get into trouble during the hours after school and 7:00 in the afternoon. By us providing care for the after school children, I feel that we could stop some of the crimes in the area. We have an outreach ministry in the community. On Saturdays, we have various activities. We are an outreach church. So I feel that if we are granted this daycare, we could make a great impact on Naylor Road.

CHAIRPERSON REID: Thank you. The requirement for the special exception that you are applying for is that you demonstrate how you comply with Section 205. Are you familiar with that Section and did you have that prepared for us?

MS. HODGES: No.

MR. RICHARDSON: Not 205. We don't -- I don't quite --

CHAIRPERSON REID: Can staff supply them with a copy of that section so that they can then look at it and respond to questions -- I mean, give us how you comply with the regulations. The whole idea of the

hearing is for you to come to us and to demonstrate that you are in compliance with the regulations as it is germane to child development centers. So they will supply you with that. And Board members may have questions for you.

MS. HODGES: There is a parking lot there at the --

CHAIRPERSON REID: Okay. Why don't you start at the beginning.

MS. HODGES: Okay. It says the center will be capable of meeting all applicant codes and license requirements. We would be able to meet those. Before I got to this point, I was already going through the process. I have my packet. I have staff already in place. And I also have a waiting list of children proposed whenever we get the center open. We have a parking lot that is adjacent to the church and that is not in the thruway of ongoing traffic. So it would be safe for the parents to drop the children lot in our own private parking lot without them having to be in the center of the street in ongoing traffic.

CHAIRPERSON REID: Okay. Where is the parking lot located, ma'am?

MS. HODGES: To the side of the church.

CHAIRPERSON REID: Is this a picture of the

parking lot?

MR. RICHARDSON: Yes, that is the parking lot right there.

MS. HODGES: Yes, that is the parking lot. that is the back. And that is where the children would enter in.

CHAIRPERSON REID: Wait a minute. The children would enter in from the parking lot?

MR. RICHARDSON: From the side door.

MS. HODGES: From the side. There is a parking lot and there is a ramp of steps and then they would go into the church.

CHAIRPERSON REID: Okay. How large is the area for the parking lot?

MS. HODGES: It holds about 12 cars.

CHAIRPERSON REID: All right. Hold on one second.

MEMBER RENSHAW: Madam Chair, is it time for questions now or do you --

CHAIRPERSON REID: I wanted to get -- ask them to finish going over 205, and then open up for questions from Board members and perhaps they may be able to answer the questions. Okay, so there are 12 parking spaces, which seems to be adequate. The Zoning Administrator did not require that you have a variance

for parking or that you apply for a variance for parking. All right, 205.3.

MS. HODGES: Yes.

CHAIRPERSON REID: It should be located and designed to create no objectionable traffic condition and no unsafe condition for picking up and dropping off children. First in regard to the traffic, had you had any complaints or any opposition from anyone in the community in regard to your application once you posted it and informed everyone within 200 feet?

MS. HODGES: No. They only want to know when we are going to open. I haven't had any complaints.

CHAIRPERSON REID: Did you receive any problems with the traffic -- with people bringing their children and dropping them off?

MS. HODGES: No.

CHAIRPERSON REID: You are going to be coming up -- they are going to come into the parking lot?

MS. HODGES: Yes.

CHAIRPERSON REID: Okay. The center shall provide sufficient off-street parking. Okay, we have that. If the center includes any outdoor play space, it shall be located so that it will not be

objectionable or have no objectionable impacts on the adjacent or nearby property due to noise or activity or visual obstruction. Where is the play area?

MS. HODGES: The playground? It is on the back of the church and it is recessed in.

CHAIRPERSON REID: Do we have a picture of that?

MR. RICHARDSON: Yes, we had it. We put all of that in our package.

MS. HODGES: It should be right behind the church.

CHAIRPERSON REID: Is this it?

MR. RICHARDSON: No, that is the parking lot. That is right there.

MS. HODGES: Right there.

MR. RICHARDSON: No.

MS. HODGES: Could I approach?

CHAIRPERSON REID: Do we have original pictures?

SECRETARY PRUITT: If they are not in the file, no.

CHAIRPERSON REID: Okay. Where? Okay, these are the original pictures.

MS. HODGES: Can you see the fence?

MEMBER RENSHAW: Behind the fence.

CHAIRPERSON REID: Okay, but we can't see that.

MEMBER RENSHAW: We don't really have a good picture.

CHAIRPERSON REID: We don't have --

MS. HODGES: A clear picture?

CHAIRPERSON REID: I mean what I -- all I see behind the fence is trees.

MS. HODGES: No, there is no trees there.

MR. RICHARDSON: No, no trees there.

MS. HODGES: The trees might be overlapping from someplace else. There are no trees on that playground. Do you understand what I am saying? They may be from the outside and they might be overlapping, but there is no trees on the playground.

CHAIRPERSON REID: Okay. So the play area is separated by a fence from the parking lot?

MS. HODGES: Yes, yes.

CHAIRPERSON REID: And does it slope down? Is the play area lower than the parking lot?

MR. RICHARDSON: Yes.

MS. HODGES: Yes.

MR. RICHARDSON: The parking lot is up. You walk down the steps.

MS. HODGES: The playground is down.

CHAIRPERSON REID: And the play area is a flat area?

MS. HODGES: Yes.

CHAIRPERSON REID: How large is it?

MS. HODGES: Oh, I don't know the footage, but it is a very large play area.

CHAIRPERSON REID: Is it on here? I think that I would like to have pictures of that play area. It is approximately how large?

MS. HODGES: I don't know the footage, but I could get it.

CHAIRPERSON REID: Approximately I am asking.

MS. HODGES: Maybe you all better --

MR. RICHARDSON: Three-fourths of an acre.

CHAIRPERSON REID: How large?

MR. RICHARDSON: Probably a fourth of an acre.

CHAIRPERSON REID: Three-fourths of an acre?

MR. RICHARDSON: A fourth of an acre.

MS. HODGES: It is big.

MR. RICHARDSON: It is pretty big -- it is real big.

MEMBER RENSHAW: Perhaps you could bring

that information back to us. We would like to have that.

MS. HODGES: Okay.

MR. LAWRENCE: We have additional pictures at the church that we can provide you with also.

CHAIRPERSON REID: The play area is -- are you saying that the play area is like 25,000 or 27,000 square feet?

MR. RICHARDSON: It is a big lot.

CHAIRPERSON REID: The play area?

MR. RICHARDSON: It is pretty big. I can't measure.

CHAIRPERSON REID: I don't think that you would have a play area quite that large. So I need to see what area -- how much of that three-quarters of an acre that you have allocated for the play area, and is it fenced all the way around?

MR. RICHARDSON: Yes.

MS. HODGES: Yes.

CHAIRPERSON REID: We would like to ask you, please, to submit those pictures for us.

MS. HODGES: All right.

CHAIRPERSON REID: Mr. Sockwell just pointed out that the lot itself is 15,000 square feet approximately.

MS. HODGES: I don't know.

CHAIRPERSON REID: All right. So you had no objections or any complaints from the neighbors as far as noise or any objectionable conditions in regard to that play area?

MS. HODGES: No.

CHAIRPERSON REID: You say you have parking all around that play area and you have parking all around the parking?

MS. HODGES: The parking is not where the play area is. It is away from the play area. Because the play area is fenced in.

CHAIRPERSON REID: I see that. What I was saying was that the parking area is fenced in --

MS. HODGES: No, the play area is fenced in. You said the parking area.

CHAIRPERSON REID: On this picture, it looks like the parking area --

MEMBER SOCKWELL: The fence separates the parking area from the play area.

CHAIRPERSON REID: The fence -- okay. The fence separates --

MR. RICHARDSON: The play area from the parking.

MS. HODGES: The play area from the parking

area.

CHAIRPERSON REID: The play area from the parking area.

MS. HODGES: Yes.

CHAIRPERSON REID: And also the parking area from the school itself, right?

MS. HODGES: Yes. The parking area is over here.

CHAIRPERSON REID: All right. No cooking facilities shall be permitted in any of the -- wait a minute, I am reading it wrong. Any off-street play area should be located so as not to endanger the individuals in attendance at the center and traveling between the play area and the center itself. So the access from the center to the play area is what? From the school to the play area?

MS. HODGES: You asked the footage?

CHAIRPERSON REID: No. How do the children get from the school or the building to the play area?

MS. HODGES: Okay. They can exit -- there would be an exit door. They could exit from the inside out. They wouldn't have to go outside to go to the play area. There is a back door.

CHAIRPERSON REID: You have a back door that goes directly onto the play area?

MS. HODGES: Yes.

MR. RICHARDSON: Yes.

CHAIRPERSON REID: They don't have to come through the parking lot?

MR. LAWRENCE: No.

MS. HODGES: No.

MEMBER RENSHAW: What would be helpful is if the church and the play area could be defined on this map and the parking also. Because it is hard to visualize where everything is. Do you want to take this and just doodle? Would you also indicate on that map where the closest homes are? In other words, are there homes on the boundary of your property?

MS. HODGES: Yes.

MR. RICHARDSON: In back.

MEMBER RENSHAW: In back just indicate where those homes are if you would.

CHAIRPERSON REID: Okay, the Board may approve more than one child development center in a square or within 1,000 feet of another child development center. Do you know of any other child development centers within 1,000 feet of your center?

MS. HODGES: No. There is one, but it is farther than 1000 feet. Because it is at the corner of Good Hope Road and Minnesota.

CHAIRPERSON REID: All right. And we don't have a letter from Human Services in this regard. Usually we do.

SECRETARY PRUITT: Madam Chair, I believe there is something in the file.

CHAIRPERSON REID: We did? I didn't see it. I didn't have one.

MEMBER RENSHAW: Yes, we do.

CHAIRPERSON REID: Oh, okay. Here is a letter from Human Services. It says that -- in pertinent part it says -- it is from Julie Williams of the Department of Human Services. It says in pertinent part that "with the increased demand for childcare services, especially services for more infant and toddler providers as a result of the Welfare reform and two-parent working households, the Department is recommending approval of this facility request." All right. Now, Board members, do you have questions?

MEMBER RENSHAW: Yes, I do. Glad to see you all here today and enjoyed reading your proposal. I want to bring to your attention that the hearing notice stated that there would be a total of 50 children and 15 staff. And yet, the statement from you, pastor, said that the daycare center that will be part of this church will start with 50 children attending. So are

you asking for a total of 50 -- a cap on 50 and that is it? Or are you starting with 50 children and hope to grow to a larger number?

MR. RICHARDSON: We hope to start with 50 and hope to grow to a larger number.

MEMBER RENSHAW: All right. What kind of a cap are you going to be putting on this? In other words, the Fire Department is going to tell you you can only have so many children in the --

MR. RICHARDSON: 75.

MEMBER RENSHAW: So you are starting with 50 and you want to grow to 75.

MR. RICHARDSON: Yes.

MEMBER RENSHAW: In what period of time?

MR. RICHARDSON: I don't know that. I don't know exactly how long it will take to do that.

MEMBER RENSHAW: And also would you tell me the ages of the children that you are going to have at your daycare center?

MS. HODGES: Starting at two years of age and up to 12.

CHAIRPERSON REID: Are you going to have daycare and before and after care?

MS. HODGES: Yes.

CHAIRPERSON REID: Okay.

MS. HODGES: To elaborate on the question that you asked the pastor, it depends on -- the reason that we said that we would start at 50 was our starting number. But whatever license -- you know, we have to be binded by license. Whatever license would allow us. But our target goal is 50 in the beginning with whatever license will approve us of.

SECRETARY PRUITT: Madam Chair, I just wanted to let you know that if you get a license for 50 -- I mean, whatever the -- if you get an order and the Board approves it for 50, even if you have a license for more, you can't. So you may want to consider having a higher cap so that you can grow into it as opposed to cutting yourself off. That is one of the reasons you need to -- I believe Ms. Renshaw was asking you that question for clarification.

CHAIRPERSON REID: You would have to stipulate that you want no more -- a maximum of 75 children.

MS. HODGES: Right.

MEMBER RENSHAW: And your hours of operation are going to be from 6:00 a.m. until 6:00 p.m.?

MS. HODGES: Yes.

MEMBER RENSHAW: And is it going to be 7

days a week or 5 days a week?

MS. HODGES: Five days a week.

MEMBER RENSHAW: And you are going to have 15 staff?

MS. HODGES: Proposed.

MEMBER RENSHAW: Proposed growing to what?

MS. HODGES: No. That is what we propose to go to. Depending on the ratio of your children, we won't need that many. But as the children grow, we will need the 15 staff to keep up with the ratio.

CHAIRPERSON REID: No more than --

MS. HODGES: 15.

MEMBER RENSHAW: No more than 15. And you have 12 parking spaces in the lot?

MS. HODGES: Yes.

MEMBER RENSHAW: So if everyone drives his or her own car, are you going to be parking on the street?

MS. HODGES: They would have a place to park if they drove. But I am sure that I won't have 12 staff people that will be driving.

MEMBER RENSHAW: You will not have 12 staff people who will drive?

MS. HODGES: Yes.

MEMBER RENSHAW: All right. Did you go to

the ANC? Did you appear before an ANC?

MR. RICHARDSON: I spoke with them.

MEMBER RENSHAW: Because I didn't see anything in the file from the ANC. What is your ANC?

MR. RICHARDSON: I can't remember his name. He called me on Friday.

MEMBER RENSHAW: But you have not appeared before that --

MR. RICHARDSON: I haven't appeared.

MEMBER RENSHAW: In a public meeting?

MR. RICHARDSON: No.

MEMBER RENSHAW: I think that is a prerequisite, Madam Chair?

CHAIRPERSON REID: I am sorry?

MEMBER RENSHAW: That the pastor would have to appear before the ANC? He has spoken on the phone.

CHAIRPERSON REID: Well, not necessarily. Once the ANC is contacted, they discuss it and they will tell them whether or not they want them to come. And if not, they will simply explain their application and then the ANC will decide if in fact they want to take a position or if they want to oppose it. And if they have no problem with it, then usually they don't even send us a letter. And we assume that if they did have a problem with it, they would let us know. So he

doesn't necessarily have to appear. I guess the ANC did not feel that this warranted an appearance by him.

MEMBER RENSHAW: So you spoke with the chair, but you didn't get anything in writing that said we do not see the need to have you come before the ANC?

MR. RICHARDSON: No.

CHAIRPERSON REID: Also, we notice -- we always notice the ANC, and they were noticed on 11/24. And they did not submit a report. Are you going to provide food for the children -- lunches or a snack or what have you?

MS. HODGES: Yes. we are going to provide two meals and a snack.

CHAIRPERSON REID: And is it going to be prepared on the premises?

MS. HODGES: Yes.

CHAIRPERSON REID: Or is it --

MS. HODGES: We might have it catered.

CHAIRPERSON REID: Do you have a kitchen?

MS. HODGES: Yes, we have a kitchen. So right now we will probably have it catered because we want to have some work done to the kitchen.

CHAIRPERSON REID: All right. If in fact you do provide meals or snacks or what have you, then you are arranging for adequate trash removal?

MS. HODGES: Yes.

CHAIRPERSON REID: And how is that being taken care of.

MS. HODGES: We have a trash bin and we have a trash company that picks up our trash.

CHAIRPERSON REID: Okay, as appropriate.

MS. HODGES: Yes.

CHAIRPERSON REID: Explain to me about the drop-off and pick-up of the children.

MS. HODGES: Okay.

CHAIRPERSON REID: What is the procedure?

MS. HODGES: What would be the procedure? The parent would have to -- if they drove them or walked them, they would have to come into the center. They would have to sign the children in, and then they would leave.

CHAIRPERSON REID: Okay, they have to -- wait a minute. You have 50 parents or so converging on that property at a certain time of day and they have to park and come into the building?

MS. HODGES: Yes. Because they are responsible for the children until they get into the center.

CHAIRPERSON REID: I am sorry?

MS. HODGES: They are responsible for their

children until they have came into the center and given them to a caregiver.

CHAIRPERSON REID: Okay. What is the drop-off time?

MS. HODGES: We will be opening at 6:00 a.m. So they can start at 6:00.

CHAIRPERSON REID: 6:00 to?

MS. HODGES: 6:00.

CHAIRPERSON REID: No, the drop-off time.

MS. HODGES: Well, that would be up to the parent as to what time they would want to drop their child off. It depends on what time they are going to school or what time they have to go to work.

CHAIRPERSON REID: And what time would that be? 6:00 to what? 6:00 to 9:00?

MS. HODGES: Yes, in the morning 6:00 to 9:00. That would be the cut-off time. Then it would start back up again at 4:00 in the afternoon probably.

CHAIRPERSON REID: Okay. So you don't foresee any problem with traffic or the queuing of those cars coming to that one door during that three-hour period?

MS. HODGES: No.

CHAIRPERSON REID: Each person has to park their car and bring the kid -- their child into the

facility.

MS. HODGES: No, I don't see any problem.

MEMBER RENSHAW: Are you going to require a crossing guard at all?

MS. HODGES: I don't think I need a crossing guard.

CHAIRPERSON REID: Because this is from the parking lot. How far is the parking lot from the front door?

MS. HODGES: From the entry door that they will be using?

CHAIRPERSON REID: Yes.

MS. HODGES: About 15 feet, I guess. Because they have to park the car and then they walk down some steps.

CHAIRPERSON REID: I would think that like the older kids could -- the parent could pull up and just drop the kid off.

MS. HODGES: Well, they might want to do it. But by law that would govern me to protect the center, they can't do that. Because I am not responsible for their child until they have given the child to me. That is a government law about a child development center. They have to bring the children in.

CHAIRPERSON REID: Well, sometimes when

people come before us, they have a system where they have a staff member who meets the children --

MS. HODGES: At the door?

CHAIRPERSON REID: At the pick-up and drop-off point to accompany them inside. And that cuts down on a lot of parking and traffic.

MS. HODGES: Well, if it needs to be that and if you have staff and you can afford it. You have to realize what you can afford also in your budget.

CHAIRPERSON REID: The parking spaces --

MEMBER SOCKWELL: Just a question. Your parking lot currently has 12 spaces marked.

MS. HODGES: Yes.

MEMBER SOCKWELL: And it has -- it looks like it has more area than just for the 12 spaces and a drive-in. I may be wrong. It just appeared to be that --

MR. RICHARDSON: If I am not mistaken, it is 13 and a handicapped.

MS. HODGES: Okay. I just made a guess at 12.

MEMBER SOCKWELL: And your staff is being made up of people from the neighborhood and people who come from farther away I assume.

MS. HODGES: Right.

MEMBER SOCKWELL: So what percentage of your staff do you believe would probably walk to work?

MS. HODGES: Not any. They probably would use public transportation. There is a bus stop -- there are two bus stops right across from us.

MEMBER SOCKWELL: Okay. So you believe that they would be using public transportation

and/or --

MS. HODGES: Yes. Because we are right there at a thruway from Pennsylvania and Minnesota, which is a good area. So they probably would be using public transportation.

CHAIRPERSON REID: Okay. You can stay right there. Let me get an idea as to other people who are here with this particular case. Are there any other people here? ANC? We know that the ANC did not submit a letter. Is there any representatives of the ANC here today? Are there any persons and parties here in support of this application? Persons and parties in opposition to the application? All right, closing remarks by the applicant.

MR. RICHARDSON: We would like to get an answer as quickly as possible.

CHAIRPERSON REID: So you would like to get what we call a summary order or bench decision today?

MR. RICHARDSON: Well, if we could, we would like to, yes.

CHAIRPERSON REID: All right. Board members? Make a motion?

MEMBER SOCKWELL: I guess I would move -- I move that we accept the application of Little Rock First Pentecostal Church of Deliverance for their childcare center with a stipulated population.

CHAIRPERSON REID: Do you want to impose some conditions?

MEMBER SOCKWELL: Well, they stated that 75 children was their target and that the number of the staff was going to vary based upon the ages of the children.

MS. HODGES: Right.

MEMBER SOCKWELL: You did say that the children would be up through 12 years old. A 12-year-old child would normally be in public school.

CHAIRPERSON REID: Before and after.

MS. HODGES: This is before and after care.

MEMBER SOCKWELL: Okay, so before --

CHAIRPERSON REID: Morning and afternoon.

MEMBER SOCKWELL: Okay. So then the number of staff people for your center is going to vary as you had stated by the age breakdown of the children because

you do have infants.

MS. HODGES: No.

MEMBER SOCKWELL: Well, you said -- two years old by definition is an infant under the code.

MS. HODGES: Okay.

MEMBER SOCKWELL: Two-and-a-half years old is the break-off point for infants to toddlers. We do childcare centers here fairly often now. So the Fire Department will look at it that way and the Building Department will look at it that way and the Services people for your center will look at it that way. So I am just saying that you will have a break-down -- we are looking at the maximum number of people that you are going to accommodate, and the assumption is that you said 75 was your target maximum. And if the parking requirements can be satisfied for your staff level and the number of spaces provided for pick-up and drop-off are sufficient and then there is curb-side drop-off available I assume, then maybe we can establish a target maximum at 75 and a maximum of 15 staff.

CHAIRPERSON REID: Again, Mr. Sockwell, are you conditioning your motion?

MEMBER SOCKWELL: Well, I am conditioning the motion to a target of 75 maximum children and 15

maximum staff.

CHAIRPERSON REID: Ages?

MEMBER SOCKWELL: Ages two-and-a-half through 12 years -- two-and-a-half being the breakout point for toddler versus infant, and they stated that there would be no infants in the center.

CHAIRPERSON REID: Didn't they say two?

MEMBER SOCKWELL: Well, she said two years old, but she said no infants. So we have to make a decision of whether you are going to have infants. The square footage required for program space for an infant increases when you go below two-and-a-half years.

CHAIRPERSON REID: But if they say two, then it would have to be --

MEMBER SOCKWELL: But she said no infants.

CHAIRPERSON REID: No, what I am saying is that they would have to comply with the regulations or licensing for a daycare center.

MEMBER SOCKWELL: True.

CHAIRPERSON REID: I don't want to limit them --

MEMBER SOCKWELL: Well, if your requirements -- if you are going to have infants, they will tell you that they are infants and they will condition where those infants can be housed. They

cannot be housed above the ground floor. You can't go up steps to get them into and out of the center because they are not able to fend for themselves. There are other requirements as well.

MEMBER RENSHAW: And we also -- if I may make a friendly amendment here that we add that this facility is five days a week in operation. Is it 12 months out of the year?

MS. HODGES: Right.

MEMBER RENSHAW: All right. If we would add that, please.

CHAIRPERSON REID: And the hours would be 6:00 to 6:00.

MS. HODGES: 6:00 to 6:00.

CHAIRPERSON REID: Monday through Friday.

MS. HODGES: Right.

MEMBER RENSHAW: Could you state for the record who is going to be the ultimate responsibility? Who is going to hold ultimately responsibility for this daycare center and what is its name?

MS. HODGES: The name is Delores Hodges. It will be called Faith, Hope and Charity.

MEMBER RENSHAW: Faith, Hope and Charity. And are you going to be licensed as what? In other words, is it going to be a --

MS. HODGES: As a child development center.

MEMBER RENSHAW: A child development center. Thank you.

CHAIRPERSON REID: Okay, second? I'll second. All right. Any other comments, Board members? All in favor?

ALL BOARD MEMBERS: Aye.

CHAIRPERSON REID: Opposed? Oh, I am sorry. The term -- typically we will put a term on a child development center. It depends on the opposition that we receive. In this instance, we have not received any. So I don't want to leave it open-ended. So I would suggest a term of 7 years.

MEMBER RENSHAW: How about 5? It is a new facility and I would say 5 to see how it is progressing.

CHAIRPERSON REID: Okay, five years. All right.

SECRETARY PRUITT: Staff would record the vote as 4 to 0 to approve, motion made by Mr. Sockwell and seconded by Ms. Reid.

CHAIRPERSON REID: Okay, another condition was the trash removal.

SECRETARY PRUITT: Would you like for me to read through what I have as conditions?

CHAIRPERSON REID: We did not address the trash removal as a condition.

SECRETARY PRUITT: Right.

CHAIRPERSON REID: So I wanted to put that in there. That is, trash removal as appropriate.

SECRETARY PRUITT: Also, you talked about drop-off and pick-up. I have requested a maximum of 75 children, ages two to twelve and no more than 15 staff. Monday through Friday, 6:00 a.m. to 6:00 p.m., all year long. Trash removal as appropriate. Drop-off and pick-up, parent must drop the child into center. The drop-off is between 6:00 a.m. and 9:00 a.m. and pick-up is between 4:00 and 6:00 p.m., and approval for five years.

CHAIRPERSON REID: Okay. All right. Thank you. Good luck.

MS. HODGES: Thank you.

MEMBER RENSHAW: Thank you very much.

CHAIRPERSON REID: All right. That then concludes the morning session. I think that we got all of our cases out. In regard to -- prior to recessing for the morning session, I just wanted to mention that for the afternoon session, case number 16547, there is no one here that -- there is? All right. There is a request for a rescheduling of that case? I wanted to

take that up rather than --

SECRETARY PRUITT: A few requests for continuances on cases in the afternoon.

CHAIRPERSON REID: Okay, wait a minute. Just one second. We do?

SECRETARY PRUITT: Yes.

CHAIRPERSON REID: I have --

SECRETARY PRUITT: The first application is requesting a continuance and the last one.

CHAIRPERSON REID: The first one?

SECRETARY PRUITT: Yes, 16544.

CHAIRPERSON REID: Okay, I didn't have that request.

SECRETARY PRUITT: It is from Capitol Hill. It is in your package.

CHAIRPERSON REID: Okay.

MEMBER SOCKWELL: That is two rather than quite a few.

SECRETARY PRUITT: I am sorry, I was -- we had a total of five for the whole day.

CHAIRPERSON REID: All right. Then let us do this. Let us take care of the -- let me just adjourn the morning session and then take up the afternoon session just for preliminary matters. So if you have a preliminary matter for the afternoon

session, come forward and let us dispense with that. And then we will take a short break and then come back and do -- I think there are two cases remaining for the afternoon.

MS. LUSTAG: Good afternoon, Madam Chairwoman and members of the Board. My name is Genine Lustag. I am here from Greenstein, Deloram and Luchs. We represent the applicant for Application 16544. We are requesting a continuance of approximately 90 days. The reason we are requesting this continuance is both the Capitol Hill Restoration Society as well as the ANC have raised concerns about our application. There is currently one contract purchaser for the property. There is two houses which have been constructed. We are seeking relief to construct two garages. The second property, there has been an offer made on the house. We would like to give adequate time for these contract purchasers to go to closing to be able to meet with the community and see if we can address the concerns and come to a resolution before coming before the Board. If there is going to be any redesign of the garages, because this is in Capitol Hill, we will need also time to go back before the Historic Preservation Review Board.

CHAIRPERSON REID: Are you also with this

case? Is there anyone else here that is involved with this particular case? All right. So, Mr. Shower?

MR. SHOWER: Madam Chair, my name is Lyle Shower. I am the Zoning Chair of the Capitol Hill Restoration Society. We have requested party status in this case. You should have that letter in your file. However, we have no objection at all to postponing the case. It might very well be very useful for all parties concerned, and we recommend the Board grant an extension. Thank you.

CHAIRPERSON REID: Okay. Does anyone have any objection to granting the extension as requested? All right. So --

MEMBER SOCKWELL: I'll go ahead and accept that. I do have an objection, but I will leave that alone.

CHAIRPERSON REID: Should we take a vote?

COMMISSIONER HOOD: Well, if it is needed to. But I commend them going that avenue and going that way. If we need to take a vote then --

CHAIRPERSON REID: In this instance, since we do have an objection, all in favor of the postponement as requested?

BOARD MEMBERS: Aye.

CHAIRPERSON REID: First let's get a

motion. I move that we agree to a postponement as requested. Is there a second?

COMMISSIONER HOOD: I second the motion.

MEMBER RENSHAW: Second.

CHAIRPERSON REID: All in favor?

BOARD MEMBERS: Aye.

CHAIRPERSON REID: Opposed? And one abstention.

SECRETARY PRUITT: Madam Chair, when do you want a continuance to?

CHAIRPERSON REID: 90 days they asked for.

SECRETARY PRUITT: Because we have to set a date.

CHAIRPERSON REID: So looking at the calendar --

SECRETARY PRUITT: You wanted 90 -- okay, 90 days. Let me --

MS. LUSTAG: If there is any way we could have early May, that would be acceptable.

SECRETARY PRUITT: Let's see May. We could put you on May 3 in the afternoon agenda.

MS. LUSTAG: That would work. Thank you.

CHAIRPERSON REID: All right. Thank you. All right, the next one -- preliminary matter.

SECRETARY PRUITT: The next preliminary

matter is application 16547. And you should have a letter in our file dated February 3 requesting a continuance.

CHAIRPERSON REID: Okay. There was an error in the notice to the abutting property owners. All right. Go ahead.

MS. CLARKE: Yes, I am Meg Clarke. The addresses that we received from the mapping division of the D.C. Office were -- they gave us incorrect addresses for the abutting neighbors. So the neighbors were not properly informed of this meeting. And so my office typed up a corrected list and we submitted it to Ms. Bailey today so that the neighbors can be informed as soon as possible. And I guess we would like to be on the next agenda as soon as there is a space available.

CHAIRPERSON REID: Okay. Ms. Clarke, what is your relation to the --

MS. CLARKE: I am the architect for the project for Pam Hess, the owner of the project.

CHAIRPERSON REID: You are representing the owner?

MS. CLARKE: Yes.

CHAIRPERSON REID: And do you have an authorization from her to have this case postponed -- to request that it be postponed?

MS. CLARKE: Yes, definitely. We have been speaking about it.

CHAIRPERSON REID: No, do you have written authorization from her.

MS. CLARKE: No, I do not.

CHAIRPERSON REID: Is that required, Ms. Pruitt?

SECRETARY PRUITT: Well, it should be in here.

CHAIRPERSON REID: All I have -- we received these three papers.

SECRETARY PRUITT: But she -- you actually applied for this along with Ms. Clarke on the original application form?

MS. CLARKE: Yes. We applied together.

CHAIRPERSON REID: So she authorized you to represent her?

MS. CLARKE: Yes, in the first submission.

CHAIRPERSON REID: Okay.

SECRETARY PRUITT: Although, just for clarification, if you could have a letter from her saying that you --

CHAIRPERSON REID: Just for the record.

SECRETARY PRUITT: Right. But she is on both the application forms with her.

CHAIRPERSON REID: All right. Then you would like to be rescheduled until --

MS. CLARKE: The next date that we can --

CHAIRPERSON REID: After we have gotten proper notice out?

MS. CLARKE: Yes.

CHAIRPERSON REID: Okay. And that would be, Ms. Pruitt?

SECRETARY PRUITT: Right now it appears that it would be April 5, given our schedule and the 47 day notice requirement. That would be the fifth case on the afternoon agenda.

CHAIRPERSON REID: Okay. All right, thank you. April 5 it is.

MS. CLARKE: Thank you.

CHAIRPERSON REID: This is by consensus Board members? Unless there is an objection to the postponement? Okay. Thank you.

MS. CARNEY: Madam Chair, may I be heard? I am the neighbor directly next door to this.

CHAIRPERSON REID: Oh, I am sorry. Sure.

MS. CARNEY: So I would be requesting -- I am here on behalf of my parents who are directly connected to the property, and they were not notified but for a phone call from Mr. Shower, I believe.

CHAIRPERSON REID: Well, that is the issue. That is why.

MS. CARNEY: That is why if I could request a little bit longer than April 5. My parents are currently out of the country, and I know that they will not be here during that time period.

CHAIRPERSON REID: Okay. Do you live there as well?

MS. CARNEY: Until about a month or two -- several months back, yes.

CHAIRPERSON REID: I don't know if someone who does not live within that 200 foot range can request --

SECRETARY PRUITT: Well, I believe she is requesting on behalf of her parents.

MS. CARNEY: On behalf of my parents.

CHAIRPERSON REID: I am clear on that. Again, I say someone who does not live there. Can a relative come and make a request on behalf of their parents? This is the first time I have heard this. So I just want to make sure that we are correct procedurally if that can be done.

MS. CARNEY: I just got married.

SECRETARY PRUITT: I would assume it would be just like getting an authorization to represent her

family. Just as Ms. Clarke has an authorization to represent Ms. Hess. That if -- we don't have anything on the record, but that would be helpful if you wanted to do it that way.

CHAIRPERSON REID: And you are asking what not?

MS. CARNEY: Perhaps just a couple more weeks from April 5. That is all.

SECRETARY PRUITT: The other thing is that your parents can always -- the record is always open and the testimony can come in in writing or verbally. So that if they have some concerns, they can always put their concerns --

CHAIRPERSON REID: But they won't be back, right?

SECRETARY PRUITT: On the record.

MS. CARNEY: My sister is expecting a baby at the end of March.

CHAIRPERSON REID: Do you have a problem with a couple more weeks?

MS. CLARKE: Well, we have a problem in that we submitted this in November. I guess we are happy to work with her parents. And if there is a way that we can do it -- because I know that we need to be in contact with them. But it just keeps pushing it

further and later for my client, who is wanting to get going on this. We have been working on it for quite a while.

CHAIRPERSON REID: Your parents want to attend the hearing?

MS. CARNEY: I am certain that my father -- he really, I think, wants to speak with the architect. This just came to his attention. There has been no sign posted. There has been no --

CHAIRPERSON REID: Well -- I am sorry, go ahead. I didn't mean to interrupt.

MS. CARNEY: So it just came to his attention. He is concerned. He came and he looked at the plans earlier in the week before he left and late last week, and he is concerned with the plans in that it does slant down right onto his property. So he would like to speak with the architect to ensure that it --

CHAIRPERSON REID: Is there anything that would prevent him from speaking to the architect prior to the --

MS. CARNEY: I hope not. No, no. He will not be out of the country until that time. I just know he will not be here in the beginning of April. So if he can submit in writing, that is fine. I was just making

the request if it were at all possible.

CHAIRPERSON REID: If you can, communicate with the architect and have his questions addressed and submit something predicated upon the outcome of that discussion to this Board, and then we don't have to hold them up beyond April 5.

MS. CARNEY: And we are happy to do that.

CHAIRPERSON REID: Okay. All right, Board members, is that agreeable to everyone?

MEMBER RENSHAW: Do we have the name of the daughter?

MS. CARNEY: Jacqueline Carney.

MEMBER RENSHAW: Jacqueline Carney. And where do you live?

MS. CARNEY: Well, at this time, I now live at 215 Third Street, S.E. My parents are at 523 7th Street, S.E.

MEMBER RENSHAW: Thank you.

MS. CARNEY: Thank you.

MEMBER SOCKWELL: That is C A R N E Y?

MS. CARNEY: Correct.

MEMBER SOCKWELL: You are not related to Allison, are you?

MS. CARNEY: No.

CHAIRPERSON REID: All right.

MS. CARNEY: Thank you.

CHAIRPERSON REID: Okay, thank you. Okay, so now we have two cases remaining for the afternoon session. So we are going to take a short recess and we will come back at about 2:30. And since we disposed of two cases, this will put us approximately where we would be anyway. So thank you for your indulgence.

(Whereupon, at 2:10 p.m. off the record until 2:59 p.m.)

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

(2:59 p.m.)

CHAIRPERSON REID: Let us now convene for the afternoon session. I never read the opening remarks. I have to do that.

Good afternoon. The hearing will please come to order. Ladies and gentlemen, this is the February 9 Public Hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Sheila Cross Reid, Chairperson. Joining me today is Robert N. Sockwell and Ann Renshaw, who is sitting with us for the second time. She is our newest member of the BZA, and we welcome her. And Mr. Hood, who is representing the Zoning Commission.

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

The procedure for special exceptions and variances is 1) statement of witnesses and the

applicant; 2) government reports including Office of Planning, Department of Public Works, et cetera; 3) report of the Advisory Neighborhood Commission; 4) parties or persons in support; 5) parties or persons in opposition; 6) closing remarks by the applicant.

Cross examination of witnesses is permitted by the applicant or parties. The ANC within which the party is located is automatically a party in the case. The record will be closed at the conclusion of each case, except for any materials specifically requested by the Board, and the staff will specify at the end of the hearing exactly what is expected.

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

The Board will make every attempt to conclude the public hearing as near as possible to 6:00 p.m. If the afternoon cases are not completed at 5:00 p.m., the Board will assess whether it can complete the pending case or cases remaining on the agenda.

At this time, the Board will consider any

preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today. I think that we have already addressed the preliminary matters. Right? No more. Okay. So, therefore, let us hear the first case of the afternoon.

SECRETARY PRUITT: The first case for the afternoon is application 16545, the Application of Marshall Heights Community Development Organization, Inc., pursuant to 11 DCMR under Section 3103.2 for a variance under Subsection 401.3 for allowable minimum lot area and width requirements and from Subsection 2101.1 for off-street parking requirements for the construction of a detached single family dwelling in an R-2 District at 1022 44th Street, N.E., Square 5125, Lot 78. All those planning to testify please stand and raise your right hand.

(WITNESSES SWORN.)

MR. NOLAND: Good afternoon, Madam Chairperson and members of the Board. My name is Robert Noland. I am project manager of Marshall Heights Community Development Organization at 3939 Benning Road, N.E., Washington, D.C. 20019. I appreciate the opportunity to present our case, number 16545, the application for variances as Ms. Pruitt has read. We request a bench decision approving our request for

variances.

In a letter dated December 2, 1999, which accompanied our application and is Exhibit 7 in your files, we requested a waiver of fees as provided for in Section 3180.4 of the Zoning Code, in as much as Marshall Heights Community Development Organization is a citizens organization created for civic purposes and is not for profit. I request a bench decision approving waiver of fees.

CHAIRPERSON REID: Let me -- let us address that request. I am sorry, give me your name again?

MR. NOLAND: Robert Noland.

CHAIRPERSON REID: Mr. Noland, while I, for one, have the greatest respect for Marshall Heights -- I think that is a tremendous community development organization and I think that they have done a great service to the community. However, the BZA does not have the authority to grant waiver of fees.

It is beyond our purview to do so. And many times people come before us thinking that we can do that. But it is just not something that we are allowed to do. We don't have the wherewithal to be able to make a decision of that nature. So I am sorry. As much as I would like to, unfortunately we just don't have that --

MR. NOLAND: Well, that is the way it goes. I just read it in the code. And if you don't ask for the business, you never get it.

CHAIRPERSON REID: I understand that.

MEMBER SOCKWELL: In addition, the ordinance where it speaks to associations, would if it could be used not speak to Marshall Heights in its current configuration anyway. Because in your amendment to your incorporation as of 1996, you eliminated item 5, which describes members. You no longer have members. So you do not qualify under a definition of association anymore.

MR. NOLAND: Okay. I withdraw my request for that.

CHAIRPERSON REID: All right. So go ahead and continue with your case, sir.

MR. NOLAND: The property for which we are requesting the variance consists of one parcel of vacant land at 1022 44th Street, N.E., which is lot 78 in Square 5125. It is located on the west side of 44th Street between Sheriff Road and Meade Street in Ward 7. The lot is 3,656.25 square feet in area, 37.5 feet wide, and is zoned R-2, as you can see on Exhibit 2, which is the combination of the surveyor's plat and the site plan.

The parcel is owned by the applicant, Marshall Heights, and was acquired through the Homestead Program of DHCD, and there are no leases on this property and there is no change requested from one non-conforming use to another non-conforming use.

The block in which the property is located, as I mentioned, is zoned R-2 and consists of single family dwellings and one multi-family dwelling. Exterior finishes of the existing buildings consist of a mix of masonry, vinyl siding and painted wood as you can see in the photographs in Exhibit 4.

A few of the single family dwellings have off-street parking, most do not. More specifically, the dwellings adjacent to the property that we own do not have off-street parking. We propose to build a detached single family dwelling on this property. The proposed dwelling will be a slab on grade foundation and have 1,320 square feet of floor space on two levels.

The proposed three-bedroom, two-bath dwelling is contemporary in style, as you can see from the elevations which are Exhibit 6, and will blend well with adjacent buildings, which in the photographs you can see on the one side is a single story dwelling that in fact we completed on the southern adjacent lot two

years ago with vinyl siding, and the multi-storied, multi-family dwelling with masonry exterior on the northern adjacent lots.

As you can see from the photographs in Exhibit 4, the dwellings across the street from our proposed dwelling are mostly two-story, single family dwellings with painted wood exteriors.

This home will be marketed to low and moderate income homebuyers under the District's Home Purchase Assistance Program, and we expect the sale price to be under $125,000.00.

As for the requested variances, we request a variance from the minimum lot area and lot width requirements of Section 401.3. The property parcels on either side of the subject property are developed. There is no other land that we can purchase in order to bring the property into compliance. The lot area requirement is 4,000 square feet. The property has 3,656.25 square feet. This constitutes an undue hardship upon us.

Secondly, the lot width requirement is 40 feet, and in this case the property is 37.5 feet. We are land-locked. We have nowhere else to go.

As for the off-street parking requirements, we are asking a variance from Section 2101.1. With

reference to Exhibit 2, the site plan that is drawn in, you can see that in siting the house that we propose to build with this required side yard setback does not leave enough space for a parking pad. A parking pad in the District of Columbia has to have a 9-foot minimum width. And the flare required by the Department of Public Works at the driveway, which is 1.5 feet on each side.

It is, therefore, a practical difficulty to require 10.5 feet of width for offstreet parking when at most 9 feet exists.

If you were to grant our request, we maintain that there would be no substantial detriment to the public good or impairment of the intent, purpose or integrity of the zoning plan. This property has been vacant for some time. It has repeatedly been the recipient of trash, rubbish, discarded appliances and car parts.

We have had reports of loitering on the property by persons the neighbors would prefer not to be there. Developing this property will have a positive effect on the neighborhood by eliminating a place where litter and trash can be dumped, eliminating a site for abandoned vehicles and appliances, and last but not least eliminating a place to congregate with

little regard for property rights and noise pollution.

Most of the dwellings on this block are more than 50 years old. The addition of another new dwelling will make the neighborhood more attractive, encourage other residents to maintain their dwellings and increase pride in the area. Creating affordable housing in one of the poorest area of the District is for the public good. Affordable housing creates new homeowners who pay property taxes. New construction creates jobs. Indeed, creating affordable housing is economic development.

I appreciate the opportunity to present my case and I request a bench decision approving our request for variances.

CHAIRPERSON REID: Well, Mr. Noland, I must say you get right to the point. Very clear and very concise. The one question I have is you acquired it through the Homestead Program?

MR. NOLAND: Yes, ma'am.

CHAIRPERSON REID: You mean through the lotto?

MR. NOLAND: No.

CHAIRPERSON REID: Was it given to you?

MR. NOLAND: No, it was not given to us. What happens -- the way we got this property is that

after the lottery is completed, all of those lots that no one wants to buy -- because in this case they are non-conforming and nobody else wants them.

CHAIRPERSON REID: Right.

MR. NOLAND: They then make them available to non-profits such as Marshall Heights, who then come before you and say we would like to build something. I think in actuality, we paid less than $500.00 for this property. For paying that small amount, we are obligated to develop it. If we cannot develop it, then we will give it back to the District and it will remain vacant.

CHAIRPERSON REID: Your ability to develop that lot is predicated upon getting the zoning relief that you are requesting in your application, correct?

MR. NOLAND: That is correct.

CHAIRPERSON REID: Okay. Board members, any other questions?

MEMBER RENSHAW: I wanted to inquire, Mr. Noland, whether you keep title -- the Marshall Heights keeps title to the property but the owner owns the house? Or when you sell it, you sell both the land and the house?

MR. NOLAND: When -- after the construction is completed, we sell -- we sell the property and the

house fee simple. Under the provisions of HPAP or the Homeownership Purchase Assistance Plan, the new homeowner has an obligation to the District for five years. So that they just can't go and turn the property.

MEMBER RENSHAW: I was going to ask you about turnover. So they have to be in place for five years?

MR. NOLAND: They have to be in place for five years. I believe -- I am unsure of what I am going to say, but I believe there is some sort of profit sharing or in any event there is a big tax hit. So that if you turn the property before the five years, then you owe the District a fair chunk of change.

MEMBER RENSHAW: Okay.

CHAIRPERSON REID: Mr. Sockwell?

MEMBER SOCKWELL: Yes. Mr. Noland, in looking at the zoning ordinance just for some background for the rest of the Board, the final rulemaking zoning case, 97-2/94-6, which was in the D.C. Register on March 13, 1998 and modifies Section 223 and Section 407, which is a new section that gives minor flexibility to the Zoning Administrator on cases of non-conformance of lot size, you would be asking us to give you a variance of 6 percent on the width of the

lot, which is approximately 94 percent of what would be required under the R-2 zone, and a 9 percent area variation because the lot is 91 percent of the requirement under the R-2 zone. The Zoning Administrator would be able to allow you 2 percent, which means that you are asking for 4 percent and 7 percent respectively basically.

MR. NOLAND: Yes, sir.

CHAIRPERSON REID: You were just -- that was your goal? All right. Just stay right there, please, Mr. Noland. Because I don't think -- is there anyone here form the ANC in regard to this particular application? Let's see, we don't have a letter from the ANC?

MR. NOLAND: That is correct. If I might, I have had several conversations with the chairperson of ANC 7C. And although we have had conversations, there has been nothing --

CHAIRPERSON REID: Well, typically if they don't submit a letter, we presume that there is no opposition or they don't have any problem with your application.

MR. NOLAND: On the other hand, I have noticed that the ANC is given great weight. And I would prefer to have great weight on my side.

CHAIRPERSON REID: Persons and parties in support of the application? Persons or parties in opposition for the application? Were there any letters of support or opposition in the file submitted? Because I didn't see any.

COMMISSIONER HOOD: I didn't see any, Madam Chair. I am looking through the main file now.

CHAIRPERSON REID: I didn't see any other letters. To your knowledge, has anyone had any complaint or any opposition to your application once they saw or received notice that you were coming forward with your application?

MR. NOLAND: Not that I am aware of, Ms. Reid.

CHAIRPERSON REID: All right. Closing remarks by the applicant.

MR. NOLAND: Only that I appreciate the opportunity to present my case and request a bench decision approving my request for variances.

CHAIRPERSON REID: Okay. Board members, I would move approval of this application. I think that Marshall Heights Community Development organization has demonstrated that because of the size of the lot and because of the size of the parking area that is available, in each instance what is deficient and what

is required by the zoning regulations would indeed cause a practical difficulty to comply with the existing zoning regulations.

In addition, there does not seem to be any adverse impact. We have not received any complaints or any letters of opposition or in any way heard from the community that they would disapprove of this application. And I don't think that it would impair the integrity of the zoning regulations or map.

In addition, I think that being able to take this vacant lot that nobody else wants and to turn it into something that is buyable and to eliminate some of the blight and some of the open spaces that contribute to illicit behavior in some of these communities is to be commended.

And I am very happy to make the motion on the behalf of this organization to have the application approved so that they can then build a house and also that it would go on the market for the benefit of another low or moderate income person to convert into homeownership.

COMMISSIONER HOOD: Madam Chair, I will second that motion for all the reasons that you mentioned.

CHAIRPERSON REID: Any comments?

MEMBER SOCKWELL: Yes. Mr. Noland, the property apparently backs up to a walk-in only alley.

MR. NOLAND: That is what it appears to be, sir.

MEMBER SOCKWELL: Because it is very narrow and therefore does not allow vehicular access to the rear of the property from what I can see.

MR. NOLAND: That is correct. And it also allows, therefore, for traffic to go through there -- I mean pedestrian traffic. And from what I understand, it is not the type of pedestrian traffic that most people would like to have going through their neighborhood.

MEMBER SOCKWELL: And of course, in that neighborhood, a vacant lot is merely an invitation, as you have said, for things to appear on the property that shouldn't be there, and for people to congregate on the property when they shouldn't be there. And I think that in any sense of the situation, one wants to in-fill with useful uses -- I mean with uses that are consistent with the neighborhood and would enhance the character and the property values.

MR. NOLAND: Yes, sir, that is our intent.

MEMBER SOCKWELL: And I do think that Marshall Heights is doing a good job in this respect,

and I think this is an excellent project for an in-fill site that is not really too small, but certainly does help you to get a construction project off the ground with a minimum land cost.

MR. NOLAND: Thank you, sir.

MEMBER RENSHAW: I would just like to inquire when you expect to have the house ready to go? Ready to move?

MR. NOLAND: That is kind of subject to the vagaries of DCRA. Despite the -- the new DCRA. My guess would maybe be August or September. I mean, we already have the house plans. All we need to do is the civil engineering and get the building permit and we are off and running.

MEMBER SOCKWELL: This is a no-basement, right?

MR. NOLAND: That is correct.

MEMBER SOCKWELL: A slab on grade?

MR. NOLAND: A slab on grade, sir.

CHAIRPERSON REID: All right. All in favor?

BOARD MEMBERS: Aye.

CHAIRPERSON REID: Opposed?

SECRETARY PRUITT: Staff would record the vote as 4 to 0 to approve, motion made by Mrs. Reid and

seconded by Mr. Hood. A summary order and bench decision.

MR. NOLAND: Thank you very much.

CHAIRPERSON REID: Good luck. All right. The last case of the afternoon, please?

SECRETARY PRUITT: The last case of the afternoon is 16546, Application of Potomac Electric Power Company, pursuant to 11 DCMR, 3103.24, a variance from the maximum permitted height, and from 3104.1 for a special exception to allow a roof structure under subsections 80840.1, 411.11, to allow the construction of a five-story office building in a C-M-1 District at 3400 Benning Road, S.E., parcel 196/114. All those planning to testify, please stand and raise your right hand.

(WITNESSES SWORN.)

MR. GLASGOW: Good afternoon, Madam Chair.

CHAIRPERSON REID: Good afternoon.

MR. GLASGOW: For the record, my name is Norman M. Glasgow, Jr. of the law firm of Wilkes, Artis, Hedrick & Lane. Here with me this afternoon is Mr. Marty Sullivan of the same law firm. And we have here today as witnesses Mr. Ted Trabue, who is seated at my immediate right, Ms. Linda Jo Smith, and Mr. Reggie McCauley, all of PEPCO. Mr. Skip Newcomb is

also here, the project manager.

Additional witnesses are Mr. Tom Eishbaum of the architectural firm of KCFHSG, and Mr. Steven E. Sher of Wilkes, Artis, Hedrick & Lane. Messrs. Eishbaum and Sher are offered as expert witnesses. Mr. Eishbaum in the field of architecture and Mr. Sher in land planning.

We also have here with us Mr. David Nelson of Street Traffic Studies Limited, and Scott Summers of Engineering and Consulting Services. While traffic is not technically a part of this case, we have Mr. Nelson here if there are any questions. Mr. Summers would be available to answer any questions concerning subsurface water conditions on the site should that not be adequately handled by Mr. Eishbaum.

With the permission of the Board, I would like to give a brief opening statement before proceeding with the testimony of the witnesses.

CHAIRPERSON REID: Mr. Glasgow?

MR. GLASGOW: Yes.

CHAIRPERSON REID: Just indulge me for one second so that I can kind of get a status on this particular case. The persons -- is there anyone here in opposition to this particular application? So, everyone here is in support of? All right. I didn't

think there was any opposition. I saw so many people. And we don't have any opposition in our file -- none of us do.

So we have read your submission and as you have done before, we ask that you expedite and just give us the salient points of your presentation. And we can get through this application fairly quickly.

MR. GLASGOW: All right.

MEMBER SOCKWELL: And forgive us for redefining the name of PEPCO. In our records, it is now Potomac Power Electric Company. That makes it harder to write my checks to you.

MR. GLASGOW: All right. With that, I think we understand that the Board understands precisely what we are here for. We want a height variance and we want a special exception with respect to the roof structure setback. We have a very large site.

We have an aerial photograph. We have a number of documents and exhibits that we have in the statement of the applicant. Mr. Eishbaum will be able to discuss why it is that we need to put that site where it is that we are located. Linda will be discussing very briefly that we have had ten meetings out in the community, and I think that is why you can

see there is no -- we have had extensive community input and worked with them on this project.

Mr. Trabue from an overall basis of PEPCO's involvement with this project and commitment to keep this facility in the District of Columbia. The alternative site for the project is Prince George's County, and there has been a commitment to keep these jobs and this facility within the District of Columbia.

So with that part of the background, I will dispense with the rest of my opening statement and turn it over to Mr. Ted Trabue.

MR. TRABUE: Thank you very much, Chairman Reid and members of the Board of Zoning Adjustment. For the record, my name is Ted Trabue. I am the manager for District of Columbia Government Affairs at Potomac Electric Power Company.

PEPCO has been around for over 100 years. We provide electric service to the entire District of Columbia as well as parts of Montgomery and Prince George's County. PEPCO pays just under $100 million annually in taxes to the District of Columbia. We are a D.C.-based corporation. We are currently headquartered at 1900 Pennsylvania Avenue in the Thomas Edison Building.

We have approximately 1,300 employees that

actually work in that building. Unfortunately, we do not own the Thomas Edison Building on Pennsylvania Avenue, and our lease expires at the end of 2002. And we have been asked by the owners of the building to vacate the building by that time.

Last spring, we broke ground on what will be our fourth corporate headquarters, all of which have been located here in the District of Columbia. That new building will be called Edison Place, and it will be located on 9th Street in-between G and H. All of our corporate headquarters, as I have said, have been located here in the District of Columbia.

Although this will be our new corporate headquarters, there is a concern that it may not be large enough to house all of the employees that currently work in the Thomas Edison Building on Pennsylvania Avenue. Therefore, we are looking to build another facility here in the District of Columbia. As Mr. Glasgow mentioned, we thought about building in Prince George's County, but our Chairman and CEO, John Derrick, who is a resident of the District of Columbia, is very committed to this city and wanted to build the building in the District of Columbia. We also wanted to build the building near some of our operations. And we thought from a strategic

point of view, we do have a lot of operations currently at the Benning Road facility, and we wanted to build the structure there.

The proposed building is designed to accommodate up to 700 employees, and we felt that the community may have some concerns, particularly when you are bringing additional people into the community. We made a point of visiting affected ANC's, civic groups, other community associations that may have been impacted by the project. We wanted to understand their concerns and we wanted to assess them and work with the community in order to build this facility.

Like I said, we have been working with the community closely on the issues like traffic, environmental concerns, the aesthetics of the building, the design of the building and how we can be a better partner with the community. I want to state for the record that building this building is not related to our divestiture that is currently underway. As you may know, we are in the process of trying to sell four of the six generators that we own. PEPCO has three generators in Maryland, two here in the District of Columbia, and one in Virginia.

At the request of Mayor Williams and Council Member Sharon Ambrose, we said that we would

not sell our generators that are located here in the District of Columbia, so this does not affect at all our divesture.

Linda Jo Smith, who is our constituent relations representative, will tell you about the meetings that we had out in the community and the community's response to this proposal. Thank you.

MS. SMITH: Good afternoon, Chairman Reid and members of the Zoning Commission. My name is Linda Jo Smith. I am the constituent relations representative of PEPCO's government and corporate affairs. Thank you for the opportunity to testify before you today. I would like to tell you about the briefing that was presented to the community about PEPCO's proposed office building at our 3400 Benning Road, N.E., PEPCO Service Center.

During the month of November, I along with the other PEPCO representatives met with ANC 7D, Eastland Gardens Civic Association, and the River Terrace Community Organization, all of which represent the areas around the Benning facility. The purpose of this meeting was to brief the community on the purpose of the new building at the Benning facility and to ask them to write letters to the Board of Zoning and Adjustment.

All of the residents seemed to be very pleased about the design of the building, but some had concerns about the increase in the traffic that could result from the employees who would be working at the facility. The residents asked for a traffic study and an environmental impact study. The representatives will return to see the community in our November -- I mean, in our January meeting along with any other concerns that they would have.

So then when our January meeting started out on the 11th and the 18th of January 2000, the representative from PEPCO and the Street Traffic Studies Limited had a second meeting with our ANC 7D and our Eastland Gardens Civic Association. The Eastland Gardens Civic Association is in the rear part of where the PEPCO facility is.

We went to address the concerns that the community had about the projects. Mr. Wright, at his meeting on the 11th -- he polled the residents at that meeting to determine who was in support of the project and who was opposed of the project. The vote was 7 in support, 2 opposed, and one was undecided. The Commissioners in their vote was a 3:1 vote to support the project. Only the Commissioner from 7D-07, River Terrace, voted against the project at the meeting in

January on the 11th.

For the past three months, I have attended approximately ten community meetings in Ward 7 about the Benning project. I have received several support from groups. The groups have also noted that this project will be instrumental in the economic development of the surrounding areas of the community. We place a high value on being a good corporate citizen. We conduct our business responsible and in a manner designed to protect the health and the safety of our employees, of our customers, of the general public and the environment.

The ANC commissioner asked us for some commitments. And PEPCO has already started to take some of the striving and comply with the things that they asked if we could do.

Because we are a good community corporate citizen, on February 3, the PEPCO employment department will mail each month to the ANC office a list of all our job opportunities so that they can disseminate it out to the community so that they will know what is going on. And this was one of the conditions -- well, one of the things they asked us to do if they would let them know about the different jobs. So we have started to work on that.

And some of the activities that we have sponsored in the community -- because PEPCO is either sponsoring or always supporting different things in the community. We have two adopted schools. We have River Terrace Elementary School, which is at 420 34th Street, which is south of the plant. And then we have Thomas Elementary School as another adopted school of ours that is in the rear on the north on Anacostia Avenue in the back of the plant. And that is to our north.

PEPCO employees have organized and sponsored Anacostia River Clean-Up Day. Twice yearly we gather with the community as an employees and community group to do something for the Anacostia, since it runs right through Ward 7, and we try to work together with them to make sure we keep that area clean. So that is one of our projects that the community and PEPCO work together on.

With Marshall Heights, we have assisted Marshall Heights in some of the things that they are doing in the community. Due to the fact that they had developed this energy efficiency electric manufactured urban demonstrated type house. It is a house that is out of what you would make mobile homes out of, and they did this one and we were one of the partners with them in doing this house.

Because it looks like an area that is really nice, and it is the same area I think you just gave the zoning thing for this time that they needed help on. As a matter of fact, it is at 4425 Nettie Helen Barnes Avenue in that same section. And we worked with the Kenilworth Parkside Residential manager in renovations. And we do about 80 houses per year in showing them and installing new furnaces and different things like that.

So as a part of the community, of course PEPCO is a part of that community, and we make sure that we partner and work with the community in that area. But we have gone out to every community group we can reach to let them know way before what our plans was and to get their ideas on what would be effective. So we have tried everything we can as far as the community.

Again, Madam Chair and Members of the Board, I conclude my statement at this time.

CHAIRPERSON REID: Thank you. And also thank you for your testimony. I think that the outreach efforts that were made by PEPCO are certainly highly commendable, and I think that in regard to the commitments that are outlined in the ANC letter to us, it sets forth the areas in which PEPCO has agreed to

assist and to support the community. I am wondering, was there a written agreement between PEPCO and the ANC or the community?

MS. SMITH: No, it wasn't a written agreement. We, you know, told them of the things that we would start doing, and we faxed the application. Our department of employment service will mail them the list. They know of some of the things that we are already doing like the educational part of the program.

At our Benning site, we have what we call prevention -- a pollution prevention team. And we partner with some of the schools to do different work. The ANC would like for us to help them come up with a plan in the school, which would be no problem because we already do it with the different schools. We would just do it now with the ANC group and have them be a part of it as to say this is what the ANC is doing as far as the education of the environmental studies with the children.

CHAIRPERSON REID: So basically the ANC just on PEPCO's word --

MS. SMITH: Being a good neighbor.

CHAIRPERSON REID: Has taken the position of support, and they don't feel that a written agreement is necessary?

MS. SMITH: They didn't ask for one. But if they said they needed one, it would be no problem. Because the things they asked for are just things that we would normally try to work with them with anyhow.

MR. GLASGOW: Madam Chair, I think if you look at the bottom of page 1 of the ANC report and the three items that are listed, I think that that is effectively the written agreement between --

CHAIRPERSON REID: Under Section L?

MR. GLASGOW: Yes. That is Tab L.

CHAIRPERSON REID: That is precisely what I was referring to, Mr. Glasgow. It is signed by the chairman of the ANC 7 -- 7B is it?

MS. SMITH: 7D.

CHAIRPERSON REID: 7D. It is proffered to us as the commitment from PEPCO. And from a legal standpoint -- I am sure you being an attorney would agree that any commitment that is made by any one entity is signed by the entity who is making the commitment rather than the entity that it is being made to.

MR. GLASGOW: I think we have authorized representatives of PEPCO, and they can state for the record that PEPCO has agreed and agreed at the meeting to those conditions.

CHAIRPERSON REID: Well, let us hear that on the record.

MS. SMITH: Okay. We have agreed to comply with the commitments that they stated in their letters.

MR. TRABUE: For the record, Madam Chair, we agree to be bound by the commitments that are reduced to writing in Tab L.

CHAIRPERSON REID: Okay. Now the thing about it is if in fact the ANC did not request the agreement to be made in writing, then that is not something that we would require. Nonetheless, we just wanted to make sure that it was an understanding clearly that on record that PEPCO would stand by its commitment to the ANC.

MS. SMITH: We will stand by it.

MEMBER RENSHAW: Madam Chair?

CHAIRPERSON REID: Yes.

MEMBER RENSHAW: I have a question for our PEPCO representative. And that is it is fine to mail the ANC office the listing of jobs, but what is more important is to notify the ANC what has happened to those jobs. In other words, are the people in the community getting the jobs? That is the kind of analysis that an ANC should require. That is what is basis --

MS. SMITH: Yes, I understand.

MEMBER RENSHAW: And so will you agree to do that? Will you agree to communicate with the ANC on a monthly basis and let them know what the past months -- whether the past month's job openings have been filled and whether they were filled by people in the community.

MS. SMITH: Of course, that would be no problem. We could agree to that.

CHAIRPERSON REID: In regard to the educational programs that PEPCO has agreed to -- has it already been put in place? Or has it been initiated?

MS. SMITH: I have to talk -- sit down with the ANC and see just what they would like for us to do. This would be an arrangement we would make with them. We have some programs out in the community already. But from my understanding, they want something that they can say the ANC 7D and PEPCO is doing along with kids directly in the ANC area.

CHAIRPERSON REID: Like training?

MS. SMITH: Well training -- educating them on the environment. Probably we could come up with a program where some of the children in the area -- we have a wetland and different things. But whatever they decide on that they want us to do.

CHAIRPERSON REID: Where I am going with this is are the training and educational programs that are being provided such that it will then enable the persons to become employed in those fields? I mean education -- you see, if you are providing jobs -- the point I am making is this.

If you are providing jobs on the one hand and training on the other hand, then it seems to me that there should be some coordination between the two so that training that is provided will then enable persons to be able to have opportunities for jobs in areas in which they would otherwise not be able to because they do not have the proper training.

MS. SMITH: Okay. Now the program for the environment was mostly with the school children. Is that what you are still referring to?

CHAIRPERSON REID: Well, that is what I was asking you. Is that the only type of training in this case that you are providing? Or is there anything in addition to that?

MS. SMITH: No.

CHAIRPERSON REID: All right. Then the jobs that are -- and this is the other question. The jobs that you are going to be providing in that community, and we are very well familiar with that

particular community, and it is a community in need -- if the people in the community don't have the skills to be able to fill those jobs, then how are you going to bridge that gap?

MS. SMITH: Now on some of the jobs -- when you apply for some of them, some of those jobs call for PEPCO to train them. Because it is our job announcement.

CHAIRPERSON REID: Okay. Let me hear from Mr. Trabue on that as well.

MR. TRABUE: Madam Chair, the listing of the jobs that are provided are ones that are comprehensive in nature -- that are corporate-wide. They could be jobs -- we have hundreds of different types of jobs that are actually done within the corporation. All of these jobs that would be listed and sent to the ANC are jobs that are available to anyone. They are not just held for employees within PEPCO. These are available for anyone.

CHAIRPERSON REID: No, no, no.

MR. TRABUE: I understand what you are saying.

CHAIRPERSON REID: Understand my point.

MR. TRABUE: But I don't think that there is necessarily a correlation between some of the

training programs that we may be doing with the children, particularly from the elementary schools, and then some of the jobs that may be listed in the bulletin. I don't want to draw a correlation.

CHAIRPERSON REID: Okay. That is the exact point I am making is that if you have jobs that are available and the people who live in that area don't have the skills to fill those jobs, then people from outside the area are going to be the ones who will come in and take those jobs.

Now it is one thing to have an educational program for the children. But I feel and I know that in Marshall Heights and that area out there that there is also opportunity for training for adults who don't have certain skills that would allow them to be able to take some of the jobs. As a matter of fact, I would think that those jobs that you have available at PEPCO are highly specialized.

MR. TRABUE: Not always. Not always.

CHAIRPERSON REID: Other than what -- I mean, I am not talking about menial like janitorial or something like that. I am talking about some of the --

MR. TRABUE: We have a lot of administrative positions at PEPCO that -- I mean, they are not highly specialized. They don't require any

specialty in electricity or anything like that. We do have a lot of jobs that do not require expertise in the electrical field itself.

CHAIRPERSON REID: No, no. When I say highly specialized, I am not speaking of the like secretarial or clerical. Is that what you are referring to?

MR. GLASGOW: Mr. McCauley can answer that to.

MS. SMITH: Reggie McCauley. He can answer that for you. He is another representative.

CHAIRPERSON REID: Okay.

MR. MCCAULEY: Thank you, Madam Chair and members of the Board. For the record, my name is Reginald McCauley. I function as plan manager for the two power plants within the boundaries of the District of Columbia and the Benning Road generating station and the Buzzard Point Station. If I can address your question -- and what I perceive your question is goes to the fact that we have several jobs -- many jobs within the company that we bring in what we call the helper position.

Many of those positions are within the power plant and within the area that I function. They come in as helpers. They eventually work their way up

to either what we call senior level electricians, instrument repairers, operators and maintenance mechanics. And at the senior level or the top level, they would be considered I think in most respects well-paid and highly skilled positions.

CHAIRPERSON REID: So in other words, you have an opportunity for those people who don't have skills to come in and become trained in a position that would give them some upward mobility within the organization?

MR. MCCAULEY: That is correct.

MEMBER SOCKWELL: Madam Chair, may I ask a couple of particular questions? Since this has gone toward the jobs, and Mr. McCauley as you are the plant manager for the power plant side, that does not necessarily put you in a position of hiring for the office building, which is a transfer of employees from other locations as well as I assume some new staff to be acquired, am I correct? And at what levels are we talking about job availabilities for the new building in new employees as opposed to relocated ones. That includes Calverton and that includes downtown and that includes other locations that you have?

MR. MCCAULEY: I am sorry, I thought we were --

MEMBER SOCKWELL: You see, because you mentioned the plant. And this is in response to the new building. The plant is there. The plant is not going anywhere and it is not being increased in size. This is for the specific 700 employee base that will occupy the new office building. I am just trying to get an idea of the number of jobs that might be available for the community to look at as potential locations for them. And I am not sure that Mr. McCauley is the one to answer that question.

MR. TRABUE: Mr. Sockwell, let me respond in this way. From a corporate perspective, we have not made a definitive decision at this date as to exactly which employees will be housed in this proposed new building.

So I couldn't say to you that there will be certain types and certain classifications of jobs available. You are also talking about a building that may not even be built for a couple of years, and so I couldn't tell you exactly what types of jobs would be available. I wouldn't want to make a misrepresentation on the record as to the types of jobs that would be there and how many new jobs may be created by the actual construction of the building. How many PEPCO jobs.

MEMBER SOCKWELL: I understand. So basically we are talking about a company that is in transition. I understand that part.

MR. TRABUE: Absolutely.

MEMBER SOCKWELL: And we are talking about consolidation. I am very well aware of the new building which is going behind the building that we designed. But the other question that I would raise, and this is to Ms. Smith, you made a statement that the community requested an environmental impact study and traffic study.

It would be my understanding -- correct me if I am wrong, that such studies would be required by the city government as a matter of course because you are not in the central employment area. And that first you would provide an environmental impact screening form from which the District would make decisions as to the extent of additional environmental studies to be required.

MR. GLASGOW: Mr. Sockwell, I think she answered more of a legal term with the environmental impact study. Because you are correct, we are not required to have one at this point in time. We have done a phase I environmental, and we will end up doing an EISF after the approval of this Board, assuming that

we can obtain approval. And go through the normal building permit process. We also have a -- we had a traffic study done for a number of different reasons, one of which is our own. We want to know for ourselves.

That was one of the reasons why when you see the long listing of what PEPCO and ANC 7D are going to partner with with respect to traffic, anything that positively impacts traffic out there helps the community and helps us. We know that our interests are very much aligned on that. So there were a number of reasons why the traffic study was done, and it was requested by the community. And we were doing it in any event.

MEMBER SOCKWELL: Okay. And the one other thing I would say is that it appears from the position of this building and the employee transfer situation that we are looking at that probably the larger goal that PEPCO has that you have something actually in place to do is the secondary and primary school training programs for students. And the part that is probably most nebulous or least defined is the employee benefit to the community -- per se jobs created. Because these other programs are ongoing because Benning Road is a facility that PEPCO has had for a long time.

So we are not talking about new programs. We are talking about a continuation of programs. So the building itself may not generate jobs at any significant level. It may or it may not. But it is going to be a wholly owned building by PEPCO, which means you will have a responsibility for developing your maintenance worker programs and things like that. Whereas in a leased building, you may or may not handle that directly. It may be a landlord responsibility.

So at some point we would certainly hope, not knowing where this building is going to posture itself from an employee standpoint, that you would do all that you can do to keep the community involved with the process and to try to heighten the capability of this community to acquire such jobs as they might become available. Because it would not be very good for the community to see the new building and not be able to work in the new building should jobs become available that they are not ready for. Part of this is a building community bonding, which you have already done.

But now you have a chance to really take it slightly to another level. Because you are talking about the white collar side of the business.

MS. SMITH: Right.

CHAIRPERSON REID: I think that Mr. Sockwell's points are well taken in that to provide a list of the employment opportunities to the community is well and good. But if we have people all around and about who can't qualify -- even on the administrative level where people may need computer training. Because you can't get an administrative job today that -- I mean few jobs, I think, unless you have some computer training, even for those entry level positions.

And I know that around and about that area, they have the Welfare-to-Work Programs. I don't know if you have been in contact with those programs who are already in a posture preparing folks for being able to make a transition from Welfare or from unemployment to skilled positions in various corporate or various organizations, and that then seems to me would be a good opportunity to indeed be a good neighbor and in effect transforming some of the hardship and some of the unemployment and some of the areas on which that particular community is suffering.

And at the same time, provide you with a very good source of employees right there in the community.

COMMISSIONER HOOD: Madam Chair, if I can

just add to the discussion. While I also want to echo the comments of my colleagues, I just want to thank Mr. Trabue for coming down and being honest. A lot of times you hear we are going to promise the District residents this and that. And then in actuality it is just not carried through. So I want to commend you on being honest.

Because I sat here and I listened and didn't say anything because I wanted to hear that discussion. But I do echo the comments of my colleagues.

And also to Ms. Smith, one question that I didn't -- well, one thing I didn't catch was the discussions -- was the SMD, who is the Commissioner for that area. Was that one of the people who voted against or for?

MS. SMITH: No. What I was saying was that the chair at his meeting -- it wasn't the Commissioner that voted against it. It was the single district that is in front of PEPCO that voted against it.

COMMISSIONER HOOD: So in actuality, it would be where the site is located?

MS. SMITH: That Commissioner did not vote. She did not -- she wasn't at the vote.

COMMISSIONER HOOD: She didn't vote at all?

MS. SMITH: She didn't vote at all. The --

COMMISSIONER HOOD: But the full commission voted?

MS. SMITH: The full commission. They had a quorum. The full commission voted. And the only one that was against the vote was the River Terrace community, which was 7D-07.

COMMISSIONER HOOD: Which is across the street.

MS. SMITH: Which is across the street.

COMMISSIONER HOOD: Also, let me just add I would like to commend you on your outreach to the community. And again, as I believe one of my colleagues stated earlier, if that can continue.

MS. SMITH: Oh, certainly. That is my community also.

MEMBER RENSHAW: Madam Chair, a comment for PEPCO to take under advisement. Perhaps you would consider having a daycare center in this new building. Since you are going to be reaching out to those in the community who may have small children. And since that is a relatively isolated location, it might be something to have as an asset and a real lure in getting new candidates for your office arrangement.

I do have lots of questions for you on the

traffic side, though, and I want to reserve some time for that.

CHAIRPERSON REID: All right. Before we leave this issue regarding the employment, I think that Ms. Renshaw's suggestion regarding not just notice to the community of the job availability but also a report as to how many jobs have been filled in the community each month. I think that that would give a big boost to those people who live around there knowing that there are persons there in their community who have been able to take advantage of opportunities that are made available through PEPCO.

MS. SMITH: And that is true. Because with our summer programs with Marshall Heights, we work with them for the summer jobs for the children in the area. So we work very good with Marshall Heights in having them find candidates for us to have for summer jobs. So I know Mr. McCauley has called them for students to work during the summertime and all that. Because we try to keep it in that area where the kids that live around the area will have the jobs for the summer. So we do do a lot of partnership with Marshall Heights, and we do know about their job training program.

MEMBER RENSHAW: Do you have a baseball team?

MS. SMITH: No, we do not have a baseball team.

CHAIRPERSON REID: Okay, that is --

MS. SMITH: We are bowlers.

CHAIRPERSON REID: That is always well and good. And again, I think that is great. But there are young adults or adults who are unemployed. And unemployment breeds some of the crime that the area is now having to contend with in regard to drugs and robberies and burglaries and the whole yard. And I have always believed that the answer to crime is a job.

MS. SMITH: A job.

CHAIRPERSON REID: And so those are the kinds of things that I hope that you will be open-minded enough to look at as you are setting up your structure for the erection of that corporate headquarters -- corporate headquarters is it?

MR. TRABUE: No. This won't be our corporate headquarters, but it will be our facilities.

CHAIRPERSON REID: The facility over there in Marshall Heights.

MR. TRABUE: The headquarters will be over in Chinatown.

CHAIRPERSON REID: Okay. Thank you.

MEMBER SOCKWELL: Now will this be the

headquarters for PEPCO services?

MR. TRABUE: No, it will not.

MEMBER SOCKWELL: It will not. Okay. Will the RCN Interface Starpower Group be headquartered there?

MR. TRABUE: No, they are located on -- I know they have a place on Connecticut Avenue at about the 1100 block --

MEMBER SOCKWELL: Right, it is 1120 or 1130.

MR. TRABUE: But I don't believe that we would be allowed under the rules that will be promulgated by the Public Service Commission to actually share space with some of our subsidiaries.

MEMBER SOCKWELL: Okay.

MR. TRABUE: So I don't believe that RCN or Starpower will be in this building.

MEMBER SOCKWELL: Okay. All right, thank you.

CHAIRPERSON REID: All right.

MR. GLASGOW: I'd like to call the next witness, Mr. Tom Eishbaum, the architect of the project.

CHAIRPERSON REID: Speak into the microphone. As a matter of fact, it may be a good idea

to bring the easel closer.

MEMBER SOCKWELL: Mr. Eishbaum, if you would like to use this and keep the board there, you may feel free to use the --

CHAIRPERSON REID: I don't know if you can -- okay, next to the microphone.

MEMBER SOCKWELL: Sit next to the microphone and just push the button.

COMMISSIONER HOOD: Commissioner Sockwell is very well prepared.

MR. GLASGOW: Thank you. His pointer has come in handy on a number of occasions.

MR. EISHBAUM: Madam Chair and Board members, I am Tom Eishbaum with the firm of Smith Group, formally KCFSHG. I want to take you through the site first. You see the aerial photo of the site. Benning Road north is up on this site plan. And just take you through some of the uses and how we came to this location site.

As has been previously mentioned, the basic program is 200,000 square feet of office space for approximately 700 people. This would generate a requirement by zoning code for about 248 to 250 parking spaces. Most importantly, of course, is the power generating facility, which is in this area, and those

things that support it. So that was not available.

There is then -- there are two office structures in this area along Benning Road. These then have space for trucks, and this is where some of the dispatching of the service vehicles for PEPCO takes place in these areas.

You then have the materials that they pick up in these areas. And there are also two areas for the distribution of the power. These are switch yards. And we will see this particular switch yard when we look into the site and the building in some of the photographs that we have taken.

And so by process elimination, it appeared that probably the best site was in this area on an existing parking area, and it also had existing parking around it. It meant, we felt, because of the size of the building that we needed that we would have to eliminate one of these storage structures. So that would be consolidated into the others.

Because there just simply wasn't room on the site. So when we first looked at the site, it appeared there were many places where you could have this building, it really worked down to very few.

So from this, we did kind of a master plan document. You see here there are three major entry

points to the site, the main one being off of Benning Road. So we saw that this roadway here that connects two of those major entries would connect all three of the office structures, and that had a nice relationship. It also allowed all three of these to share in some of the parking. So you generate more efficient use of the parking.

CHAIRPERSON REID: Excuse me. Point out to me --

MR. EISHBAUM: I might also add that --

CHAIRPERSON REID: Excuse me. Point out to me while you are there the proximity to the Metro Station?

MR. EISHBAUM: Metro --

CHAIRPERSON REID: There is one right there on Benning Road, isn't there?

MR. EISHBAUM: No. There is not a Metro Station here unfortunately.

CHAIRPERSON REID: Is it on Minnesota?

MR. EISHBAUM: Yes. It is really on the other side there. So it is not --

CHAIRPERSON REID: Approximately how far? I mean, is it accessible?

MR. EISHBAUM: It really isn't conveniently on walking.

CHAIRPERSON REID: You have to catch a bus to it?

MR. EISHBAUM: You would have to have either a shuttle or a bus.

CHAIRPERSON REID: So some of the employees would perhaps catch Metro and then the bus to get to the facility?

MR. EISHBAUM: I think we will touch on that in some of the parking and the traffic discussion later.

CHAIRPERSON REID: I am sorry, what did you say?

MR. EISHBAUM: We will touch on that, I believe, in some of the parking and traffic discussion later.

CHAIRPERSON REID: Okay.

MR. EISHBAUM: So then this was the general master plan concept. Also, there is a somewhat active spur that is still occasionally used of the railroad coming into the site to approximately that point.

So this was also something -- we had to work around that as well. This gives a more detailed look at the site for the building. There is the major entry along the boulevard that we are creating to connect all three buildings and the two entries with

visitor parking in this area and then the 245 spaces which will be created where there is currently some storage area that can be consolidated and parking.

The general layout at the ground level, you see here, is the main entry with security. There is a credit union that will be relocated into the building. There is hope for a cafeteria that would serve all of these uses on the site that doesn't currently exist. Loading is off of this area, and it can use existing vehicle space in this area for maneuvering. And then there would be kind of a dining terrace area. There are some views out into the more natural area in this direction toward the north. So we created that in this area for employees to dine and gather in that area.

If you take the then site and the 200,000, we determined that the best layout for this particular site would be to create a 40,000 square foot floor plate that would be on five floors from ground and above. Your typical office building in D.C. would be more toward a 20,000 to 25,000 or in the suburbs about the same at 8 floors in D.C. or 10 or 12 floors. But because we had this limited area and the height restraint, we went with a 40,000.

And what we are doing is creating an atrium in the middle to get light into the office space, which

is deeper than would be normal. This will also generate efficient floor plate. We are then pulling the stairs out to the outside of the building in order to create the atrium space to bring that light in to the employees. So you have really a double-loaded situation there with your office space. And it is approximately 200 feet by 220 feet in its floor plate.

MEMBER SOCKWELL: I assume you are going post-tensioned.

MR. EISHBAUM: Yes. Those are just under 40 foot bays. In order to keep the height down, we are using concrete rather than steel. And the general look of the building -- while this is still in the schematic phase -- is to blend with the more industrial character.

We are quite proud of the fact that the combined shops building that we did a number of years ago received a D.C. Chapter AIA design award, and we are picking up on some of the themes there. But it is to be a contemporary building. We are using this building also to integrate some energy and environmentally friendly issues as well, especially in regard to lighting and those kinds of issues.

You see here the light tower that also kind of marks the entry. The entry canopy there, and that is

the penthouse, and we will come back to that. It is five stories, as you see here.

There are really two exceptions that we are looking at here. The first is the height, and I think I have followed generally that there isn't available site. So if you started to really create a longer or multiple buildings, it really wouldn't meet the requirements of the tenant, and it would lose its efficiency. So this creates an efficient floor plate that meets their needs, and we think adapts itself well to the site.

The other option that we had was to -- the only other option we felt was to create perhaps two buildings and take the parking and put it below the structure. That is very problematic in this site because there is ground water. Our borings have shown by geotechnical report that the water is about 7 feet below the site here.

You would be essentially constructing a 40,000 square foot kind of boat at two levels, and it has a lot of problems associated with that. The cost goes up from approximately $1,000.00 a space for ongrade parking to about $1,600.00 for normally what would be below grade parking. But in this situation where you are going to dewater and you have sheeting

and shoring and special foundations to achieve below grade levels below the water level, you would be somewhere in the neighborhood of about $24,000.00 or $25,000.00.

So it would have been an extreme hardship and really wouldn't met in the double building arrangement or a linear building the needs that they had.

We then will take you around -- the other issue that we had was the roof structures. In order to break these stair towers out -- and we felt on this site because it is really not seen from outside that this was appropriate to create that atrium space within the building. We wanted to bring those outside, and so they are separated from the penthouse structure that is in the center, and that is at each end of the building. And they come slightly above -- about somewhere 9 to 10 feet above the roof level as you see there.

MEMBER SOCKWELL: Mr. Eishbaum, there is no subgrade level in this building at all then?

MR. EISHBAUM: There is none at all. It is at grade and above. It is a slab on grade working up, and we are hoping to be able to use spread footings. There are some other options with pilings and that hasn't been determined finally yet.

MEMBER SOCKWELL: Okay.

MR. EISHBAUM: But we do have a report that talks about some of those foundations and the situation with the water. We have that here. It is done very recently. We also have a letter from Clark Construction discussing some of these general construction cost numbers that they have given us. And they are consistent with what we found on other similar projects.

What we have done then to show how this would be seen and present itself to the surrounding community -- to the east then, we have taken a section through the site where the green line is. This is the building located on the present site photo. You are looking through the switch yard. And this would be the section that you would see then. This is the closest existing house or residence.

There could also be a residence as close as here. That is 605 feet from the building -- two football fields. And as you see, there is a switch yard, which is really higher in its impact than our building would be. And we have a photo that shows that effect here.

This is the photo without the building. Looking from that site, that could be the closest

residential property through the existing trees on the PEPCO property in this area. That is the switch yard. And then you really have to -- you would not see the building. Here is the building then on the computer dropped into the site where it would be if you could see through the trees and through this switch yard.

MEMBER SOCKWELL: In a wintertime view, because those are deciduous trees, the building will be pretty visible. Because this switch yard is pretty transparent when you get right down to it. It has got big things, but they are not solid things.

MR. EISHBAUM: I hear what you are saying. I would urge you to go and see for yourself. Also, I failed to mention, and I am sorry, that we are going to be putting some evergreen trees -- sprinkling those in with these other plantings in order to address that concern partially.

MEMBER SOCKWELL: You might flip back to the site plan that Mr. Glasgow took down, which was I think your first sheet on that board, which showed the Spine Boulevard Road that you were creating and the landscaping along it, just so that we can get a picture of the real at least tentative landscaping. And if that is just conceptual, let me know.

MR. EISHBAUM: This is conceptual, but I

think it would be very close to what we would ultimately propose. And then we are also proposing additional plantings out along the community.

MEMBER SOCKWELL: And if you will use the pointer and draw a line through the building the direction that you took that cut. Yes, so it goes off at a diagonal in that direction.

MR. EISHBAUM: That is correct. That diagonal is the closest -- that is the 605 feet that is the closest view that you would have from where that photo was taken. I mean, we did make an effort to be as -- take in a sense the least favorable or the most visible views, and we have others that will take you around and show you.

MEMBER SOCKWELL: And a four-and-a-half inch Caliper tree over ten years will tend to hide some of the building, especially the lower two or three floors.

MR. EISHBAUM: And I might also add that in taking this work to the community groups, they have all been extremely happy with the architecture. In fact, it was once mentioned, why are you trying to hide it? When we pointed out these things, why aren't you letting it show. We don't always here that as an architect.

MEMBER SOCKWELL: The assumption will be that PEPCO will use a lot of electricity in the building, right? At night?

MR. EISHBAUM: As we work then toward Benning Road, actually we are taking the view here, which is the other section and photo, which is the last one. We're about 665 feet from the building to -- if you go as the crow flies, which would be through this building to the other side of Benning Road. What we have done is -- and you see then this is the proposed building. This is the existing building.

What we have done then is show you without the existing building, taking kind of an angle view in through this area what you would see. That is the existing building there. So our building would be approximately in that area there. You wouldn't see the bottom of it because there is actually a retaining wall here. You've got the Metro structure there.

MEMBER SOCKWELL: And the existing building is two stories or three?

MR. EISHBAUM: It is two stories, yes. But it is 40 feet. It has got -- it would be equivalent because it is steel and it has got kind of a high bay. We feel we would be actually below that. From this view, we would fall within that structure. We wouldn't

be above it.

MEMBER SOCKWELL: You don't think so? Five stories -- if you took the five stories and assumed them to be four for the additional structure, which would include the -- well --

MR. EISHBAUM: You see, there is that relationship.

MEMBER SOCKWELL: More than four actually.

MR. EISHBAUM: Yes.

MEMBER SOCKWELL: Okay.

MR. EISHBAUM: So that shows that view in. And I think with that, that is kind of it.

MR. GLASGOW: They had to work to find an angle where they could take a photograph across Benning Road where you could see where the site is or where the building is. By the time you have the Metro rail --

MR. EISHBAUM: If you work the other way, the tracks --

MEMBER SOCKWELL: You are on Oklahoma Avenue.

MR. EISHBAUM: Yes, it is not a safe thing to be standing out there with all the turnings that are going on.

MEMBER SOCKWELL: But the building is going to be attractive enough that it should be not a

negative thing, especially at that distance anyway. It is not going to present any light bleeding.

MR. EISHBAUM: And so that concludes the design presentation. Thank you.

CHAIRPERSON REID: Okay.

MR. GLASGOW: I would like to call our last witness, Mr. Steven Sher.

MEMBER SOCKWELL: Mr. Sher, try not to give the same testimony you gave earlier today.

MR. SHER: I think I can manage that. Madam Chair and members of the Board, for the record my name is Steven E. Sher. I am the Director of Zoning Services with the law firm of Wilkes, Artis, Hedrick and Lane. Staff is handing to you an outline of my testimony.

And to respond to the Chair's admonition to try and move this along, I am going to have you turn right to the top of page 3. Pages 1 and 2 describe the site and the surroundings and the requirements of the C-M-1 zone and the proposed development. I think you have heard enough of that and I am not going to repeat it.

What we are here before the Board this afternoon to ask for are two things. A variance from the height requirement. The proposed height is five

stories, 59'4" in height, which exceeds the three stories and 40 feet that are permitted in a C-M-1 district.

And secondly, a special exception to permit the stair towers at the north and south ends of the building, which Mr. Eishbaum just described, without the normal one-to-one setback from the edge of the roof. So we have got the two areas of relief, special exception and variance.

In the middle of page 3, I have quoted from the regulations the standards for a variance. I think the Board is well familiar with that. It is a three part test. Can we find some extraordinary or exceptional situation or condition of this piece of property?

Does the strict application result in exceptional practical difficulties to the owner? And can the relief be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the zone plan.

On the bottom of page 3 through almost the bottom of page 4, I have taken those three criteria and addressed them in turn. The exceptional or extraordinary situation or condition is the size of the property, the location of the existing PEPCO

operational equipment and facilities, and the subsoil conditions.

The water table close to the surface, which Mr. Eishbaum referenced before. Those exceptional situations combine to create the difficulty for PEPCO in trying to configure a conforming building on this site. If we had to keep the building to three stories, the footprint of a 200,000 square foot building would be approximately 70,000 square feet rather than the 40,000 square feet which we can achieve with a five story building.

The parking required for that building would be an additional surface area of about another 70,000 square feet. If you took the 250 spaces at about 285 square feet per space, that is about another 70,000 square feet. So in total, you would need 140,000 square feet to build a conforming three story building and the surface parking required to serve that building.

As Mr. Eishbaum took you around that site, given the location of the existing PEPCO facilities necessary for the primary mission on that site, there is not enough room available to accommodate that footprint with the required parking in close proximity. And the excavation below grade for parking becomes

extremely expensive and impractical, so we wind up with the practical difficulty for the owner. As to the detriment to the public good, as you have seen the description, the building is located in the central portion of the site.

It is substantially removed from any adjoining property. You've got existing natural buffers which surround the property, including the river, Kenilworth Avenue and freeway, the Blue and Orange Line Viaduct, the distance from any surrounding property, which exceeds 600 feet, all of which would substantially screen the view of the building and tend to reduce any adverse impact resulting from the extra height.

As to the standards for the special exception, they are set forth on the bottom of page 4 and top of page 5. I am not even going to repeat them. In terms of compliance with those standards, the operating difficulties which result from the footprint of a building even at 40,000 square feet, which is what is proposed here rather than the 70,000 if we had to keep it at three stories, we need to get light into the middle of the building. And as Mr. Eishbaum indicated in his testimony, the design provides for an atrium in the area where the core of the building would normally

be.

Normally, you would want to try and put your elevators in some kind of central location. In fact what happens is the elevators and the stairs have been pushed more to the edge. The core is open in order to get light down there, so you can load light both from the outside and from the middle. It is not quite a donut, but the principle is the same.

The requirement that the design or that the regulations would be not unduly restrictive and unreasonable.

If we had to move the stair towers back to the center of the site, that would reduce the amount of natural light available to workers in the building, and it would be unduly restrictive in light of the substantial distance from the building and the public streets and buildings on other properties. In terms of impact on other buildings, we have already said that the closest private property is more than 600 feet away, and you have the existing physical conditions which substantially screen the building from surrounding properties.

My conclusions are that the subject property is affected by an exceptional condition. That the strict application of the regulations limiting

development to 40 feet and three stories would cause a practical difficulty for the owner by spreading out the footprint of the building to an extent which cannot be practically accommodated on the subject property.

That the variance can be granted without substantial detriment to any surrounding properties. That the location of the two stair towers results from the need to provide light to the center of the building. That the building is so far removed from adjoining properties that neither the height nor the location of the roof structure will have any impact on the light and air of adjacent buildings. And it is my opinion that the application should be granted.

MR. GLASGOW: Madam Chair, that concludes the direct presentation of the applicant. We certainly would like to have a bench decision granted in this case so that we can proceed forward with this project at the earliest convenience of the Board.

MEMBER SOCKWELL: Mr. Sher, in this case we are asking for considerably more height than would normally be allowed. The 59 versus 40 is a third more approximately.

The location of the building is deep within the compound of PEPCO facilities, and to me that gives you the ability to create a more prominent corporate

identity for PEPCO in this location with that building without harming in any substantial way or even as far as I am concerned any real perceptible way the immediate adjacent surrounding environment from the standpoint of the building's impact -- visually vertically. The stair towers, as I see them, are not really an issue. Certainly to make the floor plan work effectively, you may have to place those stair towers where they fall.

The building itself appears to have sufficient parking and certainly by not sprawling the building, you economize on a number of systems and costly aspects of the construction project. And I do think that relative to its location, it will enhance the neighborhood with that identity that it creates for PEPCO by putting a first class modern office building out in that community in a location where those things are not generally found.

And probably ten years from now -- maybe 15 -- you will be surrounded by other higher intensity uses as the zoning permits. But I think that the project has been sensitively located. I think that the use of the spine road to collect parking and the workers from the two existing buildings and this building is a good idea certainly.

Now the egress path for traffic entering and leaving -- let's say the egress and entry paths -- will be discussed not -- there is no one here to really discuss those --

MR. GLASGOW: It really is up to the Board. Since we don't have any -- we have no parking relief that is being requested. But we have had a traffic report done.

MEMBER SOCKWELL: It was just a question. The question is where do you expect the primary entrance and exit points to be? Because there are three that are shown. And again -- okay, we are back into that. So once again, now I see it again. That one is -- the two larger arrows are the primary. One is coming off of --

MR. GLASGOW: Benning Road will continue to be the principle access. There is also an access off of Kenilworth on the right-hand side.

MEMBER SOCKWELL: Right.

MR. GLASGOW: And then Foot Street on the north.

MEMBER SOCKWELL: Now that Kenilworth access point is from the southbound direction, is it not?

MR. GLASGOW: It is southbound --

MEMBER SOCKWELL: To get back onto Kenilworth, they will still have to go onto Benning Road and then east to get back onto Kenilworth. But they can come off directly from the southbound lanes.

MR. GLASGOW: We have our traffic expert here. He can answer that directly.

MEMBER SOCKWELL: Yes.

MR. NELSON: Good afternoon.

MR. GLASGOW: Yes, please identify yourself for the reporter.

MR. NELSON: My name is David Nelson. I am a principle with the firm Street Traffic Studies, and our office did prepare the traffic impact study for PEPCO at the Benning Road Service Center.

CHAIRPERSON REID: Give your address, please.

MR. NELSON: It is 400 Crane Highway, Northwest, Glen Burnie, Maryland. The zip code is 21061.

MEMBER SOCKWELL: It is Street?

MR. NELSON: Street Traffic Studies Limited.

MEMBER SOCKWELL: Okay. So the -- from Kenilworth Avenue, one would take, I assume, the -- there is a dropoff lane that runs parallel to the main,

and you would come into the property from the north along Kenilworth onto those dropoff lanes, which is sort of a service road, and then turn into the property from that point?

MR. NELSON: That is correct. As Mr. Glasgow indicated, there is three existing access points that the site currently uses to serve the facility. Actually, the one to the service road directly is a card-controlled access point off the southbound service road not directly off Kenilworth Avenue. It is actually a fairly minorly used, for the very reason that you talked about.

MEMBER SOCKWELL: It goes past the new church.

MR. NELSON: That is correct. But it actually serves a very minor element, and we would continue to expect it to do that. The main access point would be the 34th and Benning Road, which is a 24-hour guard controlled gate. And the rear one located at the north section at Foot Street is also guard controlled, but the hours are limited between 6:00 and 6:00.

MEMBER SOCKWELL: Now we have a traffic signal here and no traffic signal here. But this is a principle entry point.

MR. NELSON: That is correct.

MEMBER SOCKWELL: And in your estimation of the traffic flow -- and I know that PEPCO workers get to work very early in the morning and leave before rush hour -- at least they do downtown. So in your estimation of the impacts on rush hour traffic, which can be considerable. And if we ever get another team in RFK if it doesn't get torn down, it could be interesting.

But I assume under the current circumstances, you didn't have to figure that one too much. But basically the traffic flows would be considered to be at levels not to reduce the standard of the road to below a certain point?

MR. NELSON: That is correct. Actually, you hit on one of the findings that was a result of the -- that we found from the report. That is that the existing employment is a very early arriving and early leaving -- approximately 350 staff members now. The proposed site of up to 700 employees would be more of an 8:00 to 5:00 workday. So that what you wouldn't see is the effect of 1,050 employees at the site. They actually are not cumulative. And therefore the effect is not as significant as you would otherwise expect.

MEMBER SOCKWELL: Okay.

MEMBER RENSHAW: When you met with the community, did they have -- did community members have problems with the number of cars coming into the area though? Because it is now going to be a more constant stream of traffic to this site. And there are not a lot of ways in and out. I mean, there are only three.

MR. NELSON: Well, there are three. And actually for a commercial office building, that is a lot. But there were concerns that were raised. But primarily they were concerned about safety and access, focusing on the Benning Road location. And even though when we went through our study we followed the standard procedures and we found that the development of this site can meet the current criteria, in doing our observations there were conditions that exist that we felt that we could improve.

To improve the pedestrian access across Benning Road. Improve the traffic flow in and out of the PEPCO facility that would minimize the impact and actually end up with a net benefit to the community, and that is what we presented to them. And it is my understanding that that is part of where the support came from.

MEMBER RENSHAW: All right. I have some questions about parking, Madam Chair. On -- let's see,

it would be Tab C. I pulled out a color display showing an administration building in yellow outline, and we see a lot of cars parked there now. And then there is a red boundary line around it. Since this is being built on a parking lot, where are those cars going to go? And did you estimate how many cars were in this picture?

MR. NELSON: Did I? No.

MEMBER RENSHAW: How many would you guess? I am just trying to get a feel as to where these cars are going to move if indeed you are going to be building and you said in your material that you only require 248 to 250 parking spaces. And yet you are going to be putting 700 people in this building. So how is -- how are you going to accommodate all this parking?

MR. GLASGOW: Well, I think part of it, Ms. Renshaw, is the parking requirements that the zoning regulations have with respect to the 248 number. That comes from the zoning regulations.

MEMBER RENSHAW: Yes, but I want to know how PEPCO is going to handle this other than what is said in the zoning regs.

MR. GLASGOW: We can introduce the project manager. But also what you don't see, Madam Renshaw

Board member, is that underneath these overpasses here, there are probably on PEPCO's property at least 200 or 300 parking spaces that are essentially unutilized.

You don't see that on the aerial photograph here. So that those parking spaces -- and we have had discussions with PEPCO representatives with respect to -- for instance, if you look across that street, there will be what are transformers there. These sort of black dots that if you look across the roadway in the red area. Those are going to be relocated to other storage facilities.

And we have a lot -- if you look around at the paved areas and the parking spaces, that is one of the ones that is most heavily utilized. It happens to be where our building is. But there are many, many spaces that you can see if you look just immediately south of there. Not where the over -- not even where the overpass is -- that are vacant spaces. So those cars that are there now will migrate to those spaces to the south.

MEMBER RENSHAW: Did you do a count as to where your traffic comes from? In other words, Virginia versus the District? I would like to get a feel as to -- of the 300 people you say are on the site now, how many are District residents?

MR. NELSON: Actually, you would have to do a survey to determine that. And we did not conduct that kind of a survey.

MEMBER RENSHAW: So right at this time with the 300 existing cars that are going into this site, with those 300 employees, you cannot tell me whether they are D.C. people or whether they are Maryland and Virginia people?

MR. NELSON: No. What we -- what you typically do when you do a traffic study is we went out and conducted current traffic volume counts. Where you physically go out there and you count the traffic that is going in and out of the access point by direction.

And where they leave from the region, really from the operation of the intersection is typically not critical. So that there could be -- the majority of the traffic -- and I assume -- the answer might be that the majority of the traffic does not come from the center of the District and out. Most of it comes from Kenilworth Avenue to the east and in towards the site and from the north. But whether they are coming from the District, we don't know that.

MEMBER SOCKWELL: Mr. Nelson, the level of service of Benning Road was not significantly reduced?

MR. NELSON: The level of service on

Benning Road actually was surprising to us. It was a level of service of B in the morning and C in the evening. It carries a significant amount of traffic. It is well over 3,500 cars an hour in the direction inbound.

But what you see is it has four thru-lanes and it has very little cross traffic. So that we have analyzed it in two different methodologies and confirmed that, and our observations actually confirmed it also. When we added the site -- and actually what we did is we also added the balance of the development located to the northeast. As you can see, there is a -- I think it is inactive at the moment, but there is a project to redevelop that area and to build housing. We included the balance of that development and we included the full 700 employees, and it went from a B in the morning to a low level C, and from a C to just breaking into the D level in the evening peak period.

MEMBER SOCKWELL: Thank you.

MEMBER RENSHAW: I have yet another question about traffic. And that is another 700 cars or another 700 employees in that area driving cars in and out may create an environmental problem with pollution. We often have problems in our neighborhoods with cars going through and the exhaust. Are you required to do a

study that looks at auto pollution emissions?

MR. NELSON: We have never been asked to do that, no, on any development case at this level.

MEMBER RENSHAW: Did the community ask that of you?

MR. NELSON: No.

MEMBER RENSHAW: Did they know that this is something they might ask of you?

MR. NELSON: I can't answer that.

MEMBER RENSHAW: Okay.

MEMBER SOCKWELL: One more quickie. And that is has PEPCO considered should there be any need for additional parking that structured parking is an option for future development?

MR. GLASGOW: I think that that has been discussed from time to time, Mr. Sockwell. With respect to this building, I think Mr. Eishbaum showed a plan where we had an additional 210 spaces that were available for this building on top of the 248 that are required under zoning.

MEMBER SOCKWELL: Are there any current plans in the long-term say compound development or campus development for other major employers in terms of constructed buildings or services to be relocated there that would impact significantly the requirements

for parking and for the number of employees to be placed there?

MR. TRABUE: Mr. Sockwell, by other major employers, are you talking about --

MEMBER SOCKWELL: Other major services of PEPCO or PEPCO's affiliates?

MR. TRABUE: No, not at this time there are no plans for such construction.

CHAIRPERSON REID: Or like leasing to other tenants?

MEMBER SOCKWELL: Or building more buildings there.

CHAIRPERSON REID: To lease to other tenants?

MEMBER SOCKWELL: Or to use by PEPCO facilities. PEPCO is doing a variety of joint ventures for expanding their access to the community one might say.

MR. TRABUE: Right. I understand what you are saying. Under the rules that are being promulgated for this whole field of electric competition that legislation was recently passed, one of the strong areas in order to really ensure competition is that we not be allowed to subsidize the operations of some of our subsidiaries. And for those reasons, there are no

plans of that nature at this time. They are really trying to make sure that there is separation of the subsidiaries. Currently, they are housed in separate buildings. They are not housed with us at TEB now. And we would -- the plans are to maintain that relationship in the future.

MEMBER SOCKWELL: And that is primarily so that the regulatory environment can be controlled or can control your operations?

MR. TRABUE: Yes.

CHAIRPERSON REID: Okay.

MEMBER SOCKWELL: Okay, thank you.

MR. TRABUE: Because the wires part of our business would still be regulated by the Public Service Commission.

MEMBER SOCKWELL: Okay.

CHAIRPERSON REID: Thank you. Mr. Hood, do you have any questions? All right. The ANC is not here? Oh, I am sorry. Come forward. You heard us discussing your letter.

MS. MCCAIN: Yes, and I appreciate all the comments that you made.

CHAIRPERSON REID: All right. We would like to hear from you, please.

MS. MCCAIN: I don't think we were properly

sworn in.

CHAIRPERSON REID: Oh, you were not?

MS. MCCAIN: No. We were kind of distracted. I apologize.

CHAIRPERSON REID: Is there anyone else here who needs to be sworn? Please stand at this time.

(WITNESSES SWORN.)

MS. MCCAIN: For the record, my name is Diane McCain, and I am the Advisory Neighborhood Commissioner for 7D-02. However, today I am here representing the entire Commission of 7D. And we appreciate the opportunity to come before you and testify on behalf of PEPCO's request.

Just by way of background, about two or three days prior to our November meeting, Linda Smith approached our chairman with the need to come and talk with us about their proposed building at their Benning Road site. And I mention that because had it not been for that outreach, we would not have had adequate notice from you to be able to be here today to testify negative or for the building.

CHAIRPERSON REID: All right. Wait one second. Are you saying you were not notified?

MS. MCCAIN: We did get notice. Your letter is dated December 30. By law, we are required

to have notice of our public meetings in the hands of our constituents 7 days prior to the meeting. So if we got the notice on December 30, our meeting notice needs to go out by -- well, if it was mailed from your office by December 30, it wouldn't have been to us in time to be mailed to the community.

CHAIRPERSON REID: Let me just check that. Okay? ANC 7D?

MS. MCCAIN: Yes.

CHAIRPERSON REID: It was mailed on the 18th of December.

MS. MCCAIN: Well, I don't know how many notices that we got, but I am looking at one that is dated December 30 talking about the hearing.

CHAIRPERSON REID: There was another -- this was meeting notice of agent and application that went out on 12/30. But there was a memo to ANC 7D that went out on 12/18.

MS. MCCAIN: Even with that, our December meeting -- well, we were in recess in December. And our --

MEMBER RENSHAW: You meet once a month?

MS. MCCAIN: We meet once a month.

CHAIRPERSON REID: Let me check that.

MS. MCCAIN: It is just the timing of the

notices.

CHAIRPERSON REID: Well, let us check that because that is the responsibility of this office to make sure that you are properly notified. All right, on our letter dated December 18, there is a letter that went out to Advisory Neighborhood Commission 7D apprising them of the hearing date of today -- of approximately February 2000. And it said that the application was filed on December 10.

MS. MCCAIN: And your notice was December 18? We were in recess in December. However, had we not been, we would have already had our community meeting for December.

CHAIRPERSON REID: Okay. You are supposed to be noticed -- how many days?

COMMISSIONER HOOD: 40 days.

CHAIRPERSON REID: 45 days. So wouldn't that be adequate for this meeting? More than adequate?

COMMISSIONER HOOD: I think what her concern is -- her problem was their notice that they send to their constituents. Am I correct?

MS. MCCAIN: Yes, I -- you know, I don't want to confuse the issue. If you sent us a notice on December 18, that is probably adequate notice for you all. But it would have been after our December meeting

had we had one. And --

CHAIRPERSON REID: Before your January meeting.

MS. MCCAIN: Right.

CHAIRPERSON REID: All right. So your point would be?

MS. MCCAIN: That had it not been for Linda's outreach in November, we wouldn't have had enough time to prepare for this meeting. And if we had had a meeting in December --

CHAIRPERSON REID: Her outreach in November. She notified you in November.

MS. MCCAIN: Yes.

CHAIRPERSON REID: All right. We wouldn't have notified you in November anyway.

MS. MCCAIN: No, no. I am just --

CHAIRPERSON REID: Procedurally, we wouldn't do that. But once you were notified, you had -- when was your meeting in January?

MS. MCCAIN: January 11.

CHAIRPERSON REID: All right. So then from that meeting date, that wouldn't give you enough time to be prepared for the meeting today? Almost a month?

MS. MCCAIN: We wouldn't have had time to

notify our community -- our constituents in time for that January meeting. That is just my whole point.

CHAIRPERSON REID: Why? You got the notice in December. You didn't have a meeting in December. Do you have to have a meeting to notify --

MS. MCCAIN: Well, the first notice that we got from you all that we are aware of was December 30.

CHAIRPERSON REID: No. This letter went out December 18.

MS. MCCAIN: I don't have that. And if --

COMMISSIONER HOOD: They are saying it went to the wrong address.

CHAIRPERSON REID: Okay. Wait, wait. Let's see. This one was the first one that goes out to give the approximate date. And then another one goes out subsequent to that to give the exact date. Is your address -- maybe it didn't go to the exact address. Because sometimes our addresses --

MS. MCCAIN: Our address has changed. However, we do pick the mail up from our old address regularly.

CHAIRPERSON REID: Okay, I don't know -- Mr. Hart, it doesn't say here what the address was of the ANC that this went to. How do we know where it went?

MR. HART: We have an ANC address that we use. And it is updated as it changes.

CHAIRPERSON REID: Well, I am sorry. Apparently it is -- this one went out on the 30th. This letter is the one that is noted here. It went out to advise them that it would be approximately February 2000. Is it 3801 Minnesota Avenue?

MS. MCCAIN: No. That is our old address. However, as I indicated, there is still someone there and we can pick our mail up regularly.

CHAIRPERSON REID: We need to update the address here.

MS. MCCAIN: And I realize that. And we will do that.

CHAIRPERSON REID: Okay. All right. I am sorry that we had that mail problem. But let's update it and hopefully you had enough time -- well, you are here today.

MS. MCCAIN: Yes, we had enough time.

COMMISSIONER HOOD: Madam Chair, may I just add --

CHAIRPERSON REID: It wasn't ideal, but we will try to make sure that you do get proper notices to the correct address if you supply it to the staff.

COMMISSIONER HOOD: Let me just say that

the Zoning Commission members when we were going through the reform piece, we looked at that issue. They wanted us to cut it back to 30 days, and this is a prime example of why the 40 days is so -- something that really needs to be kept. Because like you say, if you get the notice the next day after you had your meeting, then 30 days will have diminished by the time you come back for a hearing. So that is something that I will let you know the Zoning Commission did fight for to keep 40 days.

MS. MCCAIN: I know you did. And even if we had received the notice in December, we have on other occasions pulled together special meetings in order to respond to these issues. And we would have done that. We just didn't get that one. I don't know what happened to it.

CHAIRPERSON REID: Okay.

MS. MCCAIN: In any event, in November was the first opportunity that we had to have PEPCO come and present its plans for the construction of the new building. And as a result of that presentation, we did go back and ask them to perform a traffic impact study and present that at the January meeting. Notice to the community was provided in our December/January newsletter, and at that meeting there were four of the

seven Commissioners present, which constitutes a quorum.

PEPCO went over the plans for the new building again and reviewed the results of the traffic impact study. And based on that study, they concluded and we agreed that there would be minimal impact on the surrounding communities with the additional traffic coming into the community.

And it has been mentioned earlier that by a vote of 3 to 1, the Commission voted to support the construction of the office building at the PEPCO Benning plant site. And just to kind of go back into some of the questions you had earlier, the Commissioner that voted against the construction was the Commissioner from the River Terrace community. And his concern was that he wanted his community to have another opportunity to hear the results of PEPCO's traffic impact study. And that was primarily why he voted against it.

CHAIRPERSON REID: Did he have an opportunity to do that?

MS. MCCAIN: There was no opportunity. We would not have had time for him to go back to another community meeting and get our report in to you within the allotted time.

CHAIRPERSON REID: Notwithstanding that, did he still have an opportunity to have that -- present that traffic impact study?

MS. MCCAIN: I don't know that PEPCO has gone back to that community meeting. I mean, certainly if they requested --

CHAIRPERSON REID: No, not necessarily a meeting or an appearance, but just to make the report available to them.

MS. MCCAIN: You mean to have PEPCO's report available to them?

CHAIRPERSON REID: Yes.

MS. MCCAIN: I don't see any reason why PEPCO would not agree to do that. I don't want to speak for PEPCO.

CHAIRPERSON REID: That might be something, since there was a concern, that you might try to move along. If PEPCO has an objection providing it to them, it is here. It is public record.

MS. MCCAIN: Okay. The other issue I wanted to speak to that you all got into a little bit about a written agreement for PEPCO to adhere to the things that we outlined in our letter. We never discussed the need for a written agreement.I think PEPCO has demonstrated in past performance their

commitment to the community and to be a good community partner. And I don't think we have any concerns that they would renege on any of the things that they have agreed to help us with. In fact, we have gotten the listing of the jobs that are available.

And we are looking at a way that we can make that available to the community outside of our regular monthly meeting. Last night at our meeting, they attended our meeting to listen to the changes in the traffic patterns that are being proposed for Kenilworth Avenue. And we are going to very soon come together on how we can expand their program on the environment to other children within the community and not just those children who are there within that school -- those two schools that they have adopted. That is really all I have. If there are any questions.

CHAIRPERSON REID: Okay. Okay. No, I think that you have demonstrated to us that your relationship with PEPCO is a good one and that basically the kinds of things that you would like to see them do in the community they are doing and will be doing. You mentioned a written agreement. I don't think that they have a problem with that. They have gone on record here. But that is between you and them to work that out.

And in regard to the employment, I think that we very clearly ought to send the message out as to the kind of manner in which we would like to see them proceed to make sure that not only are the employment opportunities made available, but also that -- Ms. Renshaw had requested that there be notification to you as to who is hired and we suggested perhaps training programs at some point that would give the persons in the community the necessary skills to be employable, as well as looking at the Welfare-to-Work Programs that are over there for a possible source of employees for that particular location.

MS. MCCAIN: And I did jot those ideas down and I appreciate that.

CHAIRPERSON REID: Sure. All right. Ms. Renshaw, questions?

MEMBER RENSHAW: I am sorry.

MR. CREASEY: Good afternoon. My name is Michael Creasey, ANC Commissioner 7D-01. I would just like to reiterate what Commissioner McCain has stated that we didn't feel as if we needed any type of written agreement due to the fact that the PEPCO family has always, especially in my opinion, done right by the residents of Ward 7.

As far as the job thing goes, the only

thing that I can see -- and they had mentioned it -- is about some maybe apprenticeship program. That way, some of the residents can maybe be able to heighten their skills or something, which we could probably work out through the Marshall Heights organization and with the Welfare-to-Work and Department of Employment Services. They have an apprenticeship program and maybe we can get something in conjunction with that.

Possibly add Smothers Elementary and Benning Elementary to the list of schools in the area to incorporate some of the different programs to help with the kids. I don't really believe that it will be that much of an impact traffic-wise, because Benning Road and the Kenilworth Avenue corridors are heavily traveled section anyway.

So I don't foresee the addition of the employees at that facility would be a burden or overburden too much on the community. I am not sure about air quality impact. But even if that was to be an issue, there is the Minnesota Avenue subway station right across the bridge. They have a quite large parking lot there that is generally three-quarters empty. So we could maybe arrange some type of shuttle bus or something to have the employees brought over. Also, if there is the walk-thru to the Minnesota Avenue

subway station over the walkway across the bridge. That would bring them right behind the facility where they are going to have their building, and they would be able to walk in through that back access road.

CHAIRPERSON REID: Is it in walking distance? I thought they said that it was over a mile.

MS. MCCAIN: It is a little less than a mile.

CHAIRPERSON REID: Oh, okay. So it is in -- it is a reasonable walk.

MS. MCCAIN: It is not --

MR. CREASEY: It is not that far.

CHAIRPERSON REID: Have you discussed these issues with PEPCO?

MR. CREASEY: Well, they would have to take that up with their employees. But I wouldn't see why they wouldn't want to make that suggestion. Because some companies do give incentives for catching public transportation and things of that nature.

CHAIRPERSON REID: Sure. It will cut down on the traffic.

MS. MCCAIN: And I believe PEPCO has those types of programs in place for their employees to take advantage of, and I would imagine anyone who comes to that site if they want to do that --

CHAIRPERSON REID: Well, you are in constant contact through the community liaison, Ms. Smith.

MS. MCCAIN: Yes.

CHAIRPERSON REID: And those kinds of things I would think that you would communicate through her to PEPCO and it doesn't appear to me that they would have any problem with accommodating it if it will enhance the -- or to mitigate any additional traffic or cut down on some of the parking problem and help to ensure that they have a successful project on that location.

MEMBER SOCKWELL: If I might add one thing about something that Ms. Renshaw had mentioned earlier, which was a daycare facility. One of the issues that comes to mind in this, and should be seriously considered, and I wanted to put this through to the ANC representatives, is that this particular building is located on a compound that contains a great deal of utility operations along with the office function.

It is a card-access facility to keep the security that is necessary there. It might not be the most logical location for a daycare facility for off-site people to use. Now for the people that actually work there, that is another story and I don't know what

that is. But I wanted to make sure that it wasn't construed that we were talking about an off-site access daycare facility.

MS. MCCAIN: And I didn't take it that way.

MEMBER RENSHAW: Thank you for the clarification, though. That is important to make.

CHAIRPERSON REID: All right. Thank you very much. We do have your letter and it does indicate that there was a quorum present and that your vote was 3 to 1. So, therefore, you certainly will receive the great weight to which you are entitled.

MS. MCCAIN: Thank you.

MR. CREASEY: Thank you very much.

MEMBER RENSHAW: I would just like to add that I hope PEPCO works out with the community some kind of a landscape agreement. That you will put in or you will place on the property X number of trees at whatever caliber is agreed to. The more mature the better. And that you have an agreement about replacing the trees if they die. And whatever the agreement is with the landscape company about watering.

CHAIRPERSON REID: Wait, Ms. Renshaw.

MEMBER RENSHAW: Yes? Those are all important points for a community to note. Because --

CHAIRPERSON REID: As such -- and not to

interrupt you -- but as such, typically with a project of this magnitude, there is a landscape plan that is submitted with the application. I didn't see one. If you would like --

MEMBER RENSHAW: I didn't see it in advance.

CHAIRPERSON REID: You could request a landscape plan that would then address the concerns that you have and they could then submit that to us prior to the order going out. If that is your wish.

MEMBER RENSHAW: Yes, that would be my wish.

CHAIRPERSON REID: That would be the best way to effectuate that.

MEMBER SOCKWELL: The likelihood is that PEPCO would maintain its corporate presence as effectively as one might expect any corporation of the longstanding relationship that PEPCO has had with the community. They don't have to deal with trees downtown, because there are hardly any.

CHAIRPERSON REID: Do you have a landscape plan? Could I get a response for that?

MEMBER SOCKWELL: I think the architect spoke to it briefly.

MS. SMITH: About the plan, what we do is

we have what we call the Employees and Community Environmental -- not Environmental but Beautification Program. So what we do is we have like some of the school kids and all that -- so we try to put it so we have a nice thing. The employees do it too. We do a lot of planting. So we have all of that in place because it is a plant and we try to make it where we have a flower garden here and different things like that. So that is a part of the plant in itself anyhow.

CHAIRPERSON REID: But what we are asking for is the architect to come back and to address that. Where is your architect?

MS. SMITH: Yes, we will submit one.

CHAIRPERSON REID: Oh, I am sorry. Right in my face. Did you not have a landscape plan?

MR. EISHBAUM: I don't think the plan we have is particularly what she is speaking about.

CHAIRPERSON REID: Okay.

MR. EISHBAUM: And we would come back. We wouldn't have any problem doing that.

CHAIRPERSON REID: Sure. And to provide us with a landscape plan for the record. And also, Ms. Smith, I think that that is a wonderful project you have to include the children and the community in it. But nonetheless, we want to make sure that we see what

in fact is planned there for the buffering, I guess, all around the perimeter of the premises.

MR. EISHBAUM: We will submit that.

CHAIRPERSON REID: Thank you.

MEMBER SOCKWELL: One thing that might be added from Ms. Renshaw's interest is that while the new building does show, as all architectural site plans show -- it shows trees and a triangular park in the middle of the parking area. One of the things that has up to this point been missing from the Benning Road site is a coordinated perimeter landscaping plan. There is really nothing that beautifies the perimeter along Benning Road. It is very stark and very foreboding sometimes just in terms of that starkness.

And I think that it would be very helpful to the community to look toward PEPCO to make this the beginning of an upgrading of the visual elements along the Benning Road perimeter. Because it really should be made better. And this is a facility that should be part of an enhancement of that entire are. Because you can buffer the cars and parking lots and the trucks and all those things that are there with some decent perimeter trees and low maintenance landscaping.

CHAIRPERSON REID: Thank you.

MEMBER RENSHAW: Madam Chair, I have one

other request. And that is that this project -- or do we -- I am not sure which party does it -- request of the environmental administration of DOH for an air quality baseline study now so that in the future with all of these cars coming into the area, you might have something to weigh against.

CHAIRPERSON REID: Okay. That has come up before, Ms. Renshaw, and we cannot require that.

MEMBER RENSHAW: No, we can't require it. But the ANC, for instance, could ask that of the city. And I am suggesting that in regard to this project, that some entity request that of the city.

CHAIRPERSON REID: Okay.

MEMBER SOCKWELL: If I might say so -- and Mr. Glasgow, you are fairly well aware of these things. The city usually will make the decisions as to what it needs based on the number of cars to be provided. Those studies will be part of an overall submission to the District before the building permits are issued that would have to be responded to by the developer.

MR. GLASGOW: That is correct, Mr. Sockwell.

CHAIRPERSON REID: And also in regard to government reports in general, although the notices have been sent out to DPW and all the other entities

that are somehow involved with or have some impact or some responsibility for this particular project, and I don't think we have any government reports. No Office of Planning report. Okay, thank you very much. Persons or parties in support of the application? Persons or parties in opposition to the application? Closing remarks by the applicant.

MR. GLASGOW: Madam Chair, I believe that we have submitted the evidence that is required to meet our burden of proof. We would like to get a bench decision today. We will submit the landscape plan for the Board's approval prior to the issuance of the order as has been done in other cases. I don't think that there is anything else that is left outstanding.

With respect to the Benning Road side of the site, there is some of that property that is not owned by us. It has been taken by the subway -- the Metro. So we have some constraints on that side, Mr. Sockwell. We will have to see. That is not our property that comes right up to the Benning Road right-of-way. So we have to take a look at that and see what is Metro's -- what we can touch and what we can't touch over there.

MEMBER SOCKWELL: It might be nice if whatever you do forces Metro to get up off of a few

dollars to do their part.

MR. GLASGOW: We have been trying.

MEMBER SOCKWELL: Too bad we can't get them down here.

MEMBER RENSHAW: Also, Metro has that program, Art in Public Spaces. So it might be something that you can investigate. And whether or not a local artist from the Marshall Heights community could be involved in something like that. It would be a coup.

CHAIRPERSON REID: That is a nice idea. Okay, Board Members?

MEMBER SOCKWELL: I would move, therefore, that we approve the request for a variance to the maximum height in the C-M-1 zone for this particular building, and that the roof setback requirement special exception as well be approved to allow the towers to achieve a lack of setback for the height that they are to be built to.

MEMBER RENSHAW: I second.

CHAIRPERSON REID: All right. I think that the applicant has certainly met his burden of proof and demonstrated that there is indeed a practical difficulty in trying to comply with the given zoning regulations given the constraints which they are operating under. And there is no opposition to their

application. And so, therefore, there does not appear to be any adverse impact in that regard. Nor does it appear to impair the intent or integrity of the zoning regulations or map. Mr. Hood?

COMMISSIONER HOOD: The only thing I would like to add if it is accepted that we incorporate the ANC letter. I think they had three or four items as conditions. If we can just incorporate that into the order.

CHAIRPERSON REID: Okay. I think that that is -- this development will be an asset to that community and it will spur badly needed economic development hopefully in that corridor. So I applaud the effort on behalf of PEPCO.

COMMISSIONER HOOD: And again, Madam Chair, if I can just add. It is good to see both groups -- both parties interested and working together to achieve a common goal. So both sides should be very well commended.

MEMBER SOCKWELL: I would like to suggest that the ANC attempt to establish a meeting to discuss the traffic impacts with the one outstanding objecting Commissioner who objected primarily because he didn't have a second chance to look at the traffic study parameters. I believe that would be a way of making the

community more receptive in the long run, even though we would have at that point approved the project.

CHAIRPERSON REID: Thank you. All in favor?

BOARD MEMBERS: Aye.

CHAIRPERSON REID: Opposed?

MR. HART: Staff will record the vote as 4 to 0 to approve, Mr. Sockwell, Ms. Renshaw, Ms. Reid and Mr. Hood. The order will be issued after the landscape plan has been submitted.

CHAIRPERSON REID: A summary order, bench decision.

MR. HART: Yes.

CHAIRPERSON REID: And you should have your order in about two weeks. So as quickly as you can submit the landscape plan, it would be great so that we could complete the order.

Thank you. That concludes the February 9 hearings of the Board of Zoning Adjustment. Thank you.

(Whereupon, at 5:10 p.m., the hearing was concluded.)