GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

JUNE 26, 2001

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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.

PRESENT:

SHEILA CROSS REID	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
GEOFFREY GRIFFIS	Board Member
SUSAN MORGAN HINTON	Board Member
JOHN G. PARSONS	Commissioner
CAROL MITTEN	Commissioner

STAFF PRESENT:

JERRILY R. KRESS	Director, Office of Zoning
SHERI PRUITT	Secretary, BZA
BEVERLEY BAILEY	Office of Zoning
PAUL O. HART	Office of Zoning
RICHARD S. NERO	Office of Zoning
JOHN K. A. NYARKU	Office of Zoning

OTHER AGENCY STAFF PRESENT:

MARIE SANSONE, ESQ.	Office of Corporation Counsel
JOHN FONDERSMITH	Office of Planning
JOHN MOORE	Office of Planning
STEVE COCHRAN	Office of Planning
ALAN BERGSTEIN	Office of Corporation Counsel

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Holland & Knight
2099 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 862-5990

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(202) 775-0725

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(9:46 a.m.)

CHAIRPERSON REID: All right. The hearing will please come to order. Good morning, ladies and gentlemen. This is the June 26th public hearing of the Board of Zoning Adjustment, District of Columbia. My name is Sheila Cross Reid, Chairperson. Joining me today is Vice Chair, Anne Renshaw, Susan Hinton representing the National Capitol Planning Commission and representing the Zoning Commission is John Parsons and also Geoffrey Griffis. Sounds like Geoffrey Griffis is representing the Zoning Commission. Geoff Griffis is an appointee as well as myself and Ms. Renshaw and only John Parsons who represents the Zoning Commission and I'll make sure I don't read it like that the next time. 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 sitting to my right.

Order of procedure for special sessions for variances, one, witnesses of the applicant; two, government reports including Office of Planning,

Department of Public Works etc.; three, report of the advisory neighborhood commission; four, parties that are in support; five, parties who are in opposition; six, closing remarks by the applicant. Cross examination of the witnesses admitted by the applicant or parties. The ANC within which the property is located is automatically a party in the case. The record will be closed at the conclusion of each case except for any material specifically requested by the Board and staff will specify at the end of the hearing exactly what is expected.

The Sunshine Act requires that the public hearing in each case be held in the open before the public. The Board may, consistent with the rules of procedure and the Sunshine Act, enter Executive Session during or after the public hearing or on a case for purposes of reviewing the record or deliberating on the case. It is the decision of the Board in these contested case must be based exclusively on the public record. To avoid any appearance to the contrary, the Board requests the persons that are present not engage the Board in conservation. Please turn off all beepers and cellphones 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 really should be heard today, as a request

for postponement, continuance or withdrawal, and whether proper or adequate notice of the hearing has been given. If you are not prepared to go forward with a case or if you believe that the Board should not proceed, now is the time to raise such matter. Does the Board have any preliminary matters? If not, let's proceed with the first case.

MS. BAILEY: Madame Chair, should I call the case, are you ready for me to call that?

CHAIRPERSON REID: Yes.

MS. BAILEY: Application No. 16721 of Gordon Bremer and Carla Yates-Bremer, pursuant to 11 DCMR 3103.2 for a variance from Subsection 2001.3 to permit a second story addition to a garage that is nonconforming as to lot occupancy under section 403 on an alley lot and a variance from Subsection 2507.2 to allow said dwelling to be located on an alley that is less than 30 feet wide where it accesses a street in an R-4 District at premises rear of 633 A Street, S.E. The property is located in Square 870 on Lot 833.

All those persons wishing to testify, would you please stand. All those persons. Please raise your right hand. Do you swear that the information that you will be giving today will be the truth? Please say I do.

(Chorus of I dos.)

MS. BAILEY: Members of the Board, there is a preliminary matter in this case. There is a request for party status. The request is from the Capitol Hill Restoration Society. Mr. Schauer?

MR. SCHAUER: Madame Chair, my name is Lyle Schauer, S-c-h-a-u-e-r. I'm the Zoning Chair of the Capitol Hill Restoration Society and we respectfully seek party status in this case. We are a civic association representing a thousand members on Capitol Hill. The interest district which is prescribed in our regulations includes the premises in question. We believe that granting the necessary variances will adversely affect our members and the public in general. Therefore, we request party status, thank you.

CHAIRPERSON REID: I move that we accept this applicant, I'm sorry, accept this proposal for party status from the Capitol Hill Restoration Society.

COMMISSIONER PARSONS: Second.

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Beverley, Ms. Bailey?

MS. BAILEY: Do you want me to record the vote?

CHAIRPERSON REID: Did you record the vote?

MS. BAILEY: The motion was made by Ms. Reid, seconded by Mr. Parsons to accept the Capitol Hill Restoration Society as a party to the case. The vote was 5 to 0.

CHAIRPERSON REID: Thank you. We are proceeding with this case so all persons who are the applicant, please come forward to present your case. Everyone has been sworn, right?

MR. GALLAGHER: Did everyone receive a copy of this. We understand they didn't get out early but, fine.

MEMBER HINTON: Madam Chair, we need to waive our rules to accept that. It's a submittal by the applicant and it did not come in 14 days before the hearing.

CHAIRPERSON REID: Okay. I have no problem with waiving the rules to allow this additional information to come in from the applicant unless there is an objection by any of the Board Members, we can do it by consensus.

MR. GALLAGHER: Okay, we have an extra copy right here.

CHAIRPERSON REID: All right. So we may begin.

MR. GALLAGHER: Okay, just to give everyone

a little background. This is a property that's been owned by a family --

CHAIRPERSON REID: Your name and your address and that is the same for everyone, please. As you begin to talk, turn on your mic and give your name and your address so that the recordkeeper, the reporter may identify everyone properly.

MR. GALLAGHER: My name is Bill Gallagher and I'm with the architecture firm working on this project. My address is 1742 N Street, N.W., Washington, D.C. 20036.

I just want to introduce the project as a property that's been owned by the family since 1958 and inherited and purchased by the Bremers who are the niece of the original owner. The property was always two lots since 1919 or somewhere in that range. We don't know exactly when it was set up as two lots. What we're saying is that the alley property is an individual lot and it's on Brown's Court which is a Court that has other houses on it.

And what I'd like to show, if I can get up and should I bring it and pass it around so everyone can see it?

CHAIRPERSON REID: Just hand it.

MR. GALLAGHER: I'll explain it from here

and then I'll pass it, is that okay?

CHAIRPERSON REID: Okay.

MS. BAILEY: Excuse me, sir, if you'd like they have an easel you can set it up on.

CHAIRPERSON REID: You can't see it though. Right here is better, I think, because it's so small.

MR. GALLAGHER: That's okay and then I'll let you each pass it. I think that's the best way to do this.

CHAIRPERSON REID: Okay.

MR. GALLAGHER: This is a drawing of all the single lots on Brown's Court which are separate from the lots facing the street. In other words, all of these lots only have access to the court and there are 29 of those lots in Brown's Court. And out of the 29 lots, there are 25 that have two story housing units on them. There's only four that do not, one is a lot here which is part of a four parcel ownership by a person and they use that for a garden.

There's a lot over here which is also just not occupied. I think there is some sort of a garage structure on it. And there's two lots here which have a one story garage on them at the moment. And this property in particular is the parcel that we're speaking about. So out of the 29 lots, 25 of them do have two

story housing units on them right now. If I could pass that around.

So, what we're saying is simply that the hardship is that in this block of other freestanding lots that face Brown's Court, almost everyone has been allowed to build a two story structure on them and we think that it's appropriate that this could happen for this lot also.

MS. YATES-BREMER: May I give some background also.

CHAIRPERSON REID: Before you go any further with this, let me just say this. All right. The reason why you're here is so that you can demonstrate to us how you are able to, why we should give you a variance, the relief that you're requesting and you said that the hardship, this is an area variance so it would be a practical difficulty. Before you get to the practical difficulty, you have to first demonstrate that there's something unique and unusual about your property, something that is, that sets it apart from the rest of the properties in the neighboring community or the neighborhood. Something that, it could be inherent in the land on the property itself. It could be a circumstance that makes this property unique or different, unusual, that's the first thing you have to do. Understand?

MS. YATES-BREMER: Yes. I think I'd like to address that, please.

CHAIRPERSON REID: All right.

MS. YATES-BREMER: My names is Carla Yates-Bremer and my husband and I, Gordon, recently purchased the property from the estate of my uncle. When we actually bought the house, we considered what we were going to do with the property and one of the things that we considered was the garage, a second floor to the garage. And I had talked to some of the neighbors and they had said that they had attempted to do it and that it was not possible to do it.

And so then I spoke with someone else and they said well, because this particular property that we purchased actually is a separate lot, there are two lots, that there might be a possibility of us requesting a variance. So I called the District and just talked to someone in the Zoning Office and said what, you know, what are the possibilities for the development of this property and they said it would require a variance and that because there were two lots and because it was Brown's Court and because there were other houses that had already been afforded the variance to build on the Court that we should pursue it. That was, you know, they didn't have any --

CHAIRPERSON REID: That may have been a little bit misleading in the sense that every variance that's granted had to stand up on its merits and each individual application is assessed separately.

MS. YATES-BREMER: Right, and that was clear.

CHAIRPERSON REID: Even though there were other properties that had variances, there was something that would have been done because that particular property was able to meet its burden of proof, a three prong test. So it's not, I mean to say, oh, that there are other properties that have variances --

MS. YATES-BREMER: No, that was very clear and that's why we decided to come forward to say that we believe that we can meet whatever test they met. You know, we feel that we have basically the same.

CHAIRPERSON REID: Okay, but how, let me just try to help you through this. How, what is it that's unique and different about your property, what's unusual, what is it in the land topography or the slope, the shape or, that makes your property unique and different.

MS. YATES-BREMER: From any of the other properties on the alley?

CHAIRPERSON REID: Any other property on the alley. That's the place we have to start.

MS. YATES-BREMER: The fact that it is a separate lot and that separate lots apparently have a --

MR. GALLAGHER: Well, they've all been built to face the alley, the existing other lots in the alley. I realize what you're asking. We're struggling to have an answer for it.

CHAIRPERSON REID: Yes, the thing about it is --

MR. GALLAGHER: It's not different.

CHAIRPERSON REID: -- if, in fact, you come before this Board to ask for a variance, then we try to help because we understand that sometimes it's the first ever that a person will come to this Board and you may not be really well versed on what you need to do and it's important that you understand what your responsibility is for the relief that you're asking for and what I'm trying to do is to see if, in fact, the first prong of the test is being met. And this is why I'm asking the kind of questions that I'm asking because so far, the things that you've said, it doesn't really pertain to, that the first prong of this test and this is what you need to try to address if you can.

MR. BREMER: Good morning, my name is Gordon Bremer, Carla's spouse. I live at 2941 Fort Lee Street

in Oak Hill, Virginia 20171. We are trying to make the arrangements to renovate this property at 633 A Street to move there and to eventually retire there. Without repeating what my wife said about the plans for the lot on Brown's Court, we noticed from the, since, for many years that literally almost all of the individual lots on Brown's Court have carriage houses.

One of the things that makes our property unique, it is one of the very few lots that only has a garage which, frankly, is unattractive. It underutilizes the property, it does not permit the kind of diversity that's called for for the future of Washington under the current leadership and we would like to maximize the value of our property, enhance the beauty of the neighborhood and convert our property to look as good our neighbors.

As our architect mentioned in the very beginning, out of 29 properties on the Brown's Court that have individual lots, there are only four remaining that do not have residences. And we would like conform to the landscape and the historic nature of that Brown's Court. Again, we're unique because we do not have that conformance.

CHAIRPERSON REID: Well, you say one of the few. This is where you're going to have to be more

careful, sir. It has to be something that's exclusive to your lot. So if there are others that are similarly situated, then that defeats the argument. It has to be something that is unique and unusual about this particular property unlike some of the other properties. So if you say one of the few, then that puts you in a category of not being unique. So, what you have to look at is how you can present to us where your property is different from the rest of the properties there.

MEMBER HINTON: Madame Chair, as the applicants contemplate that, I have a request and that is, we have a lot of different information in this file about exactly what the situation is and exactly what relief is needed. Could we take a few minutes with our staff to determine the relief that's needed so that we know what we're looking at. Because I don't, I'm not sure that what was advertised was correct if you read the memo from the Capitol Hill Restoration Society, they talk about other relief that may be needed. I would like, as a Board, just to determine what it is we're actually looking at before we get in to the, sort of the burdens of proof that would be required.

CHAIRPERSON REID: Well, that would all come out within the context of the case itself, would it not.

VICE CHAIRPERSON RENSHAW: However, we did

receive, Madam Chair, more information just before the case was called and we really haven't had enough time to review it.

CHAIRPERSON REID: Oh, okay, I'm sorry. Where is that?

VICE CHAIRPERSON RENSHAW: That was in the packet.

CHAIRPERSON REID: Okay. I haven't had an opportunity to look at that at all. Just give us a moment, please. Thank you, Ms. Hinton, we did receive additional information that we have not seen that we need to look at.

MEMBER HINTON: Maybe at this point, I would ask Ms. Sansone if the relief that was noticed in the public hearing, to your view, is that still the relief that's needed or is there, we had talked about an additional variance from 2507.3 that might also be needed.

MS. SANSONE: Madame Chair, in reviewing this file, I found it very confusing because the public notice had described, in addition to a one family dwelling on an alley lot and, in fact, we're talking about an addition to a garage. The one family dwelling is actually on the street but I think there are quite a few problems with this application and you can start to see that from the material that Capitol Hill Restoration Society has

put in.

CHAIRPERSON REID: I'm looking at that now.

MS. SANSONE: There is a prohibition in section 2507.3 against converting or improving nonresidential structures located on alleys that are less than 30 feet in width.

CHAIRPERSON REID: What section did you just quote?

MS. SANSONE: 2507.3 provides that nonresidential structures located on these alleys, referring to alleys less than 30 feet in width, shall not be converted, altered, remodeled, restored or repaired for human habitation regardless of cost. So that's one potential problem. There's another potential problem in that this isn't a lot of record and section 3202.3 provides that each structure, can only have one principal structure and that structure has to be on a separate lot of record. So at some point, that is something that would need to be corrected.

MS. HINTON: Are you saying that the lot of record is one lot and that when it was made into two lots that's not, those are not two lots of record?

MS. SANSONE: Madame Chair and Ms. Hinton, I believe that this lot is not a lot of record. It appears that it's a tax lot so that would be a technicality.

CHAIRPERSON REID: And would you explain what that means?

MS. SANSONE: Well, the lot of record, it's a system of recording the lots by the Office of the Surveyor and keeping track of lots just for tax purposes and these lots are numbered in the 800 series so they're actually, they've been given that designation for tax purposes.

To create a lot of record, the applicants would have to go to the Office of Surveyor and straighten that out and that could be done after the variance, if a variance is granted, that could be done later but that is a problem with this application.

CHAIRPERSON REID: So what would you recommend?

MS. SANSONE: Well, I think there's some confusion here in the application. I think the applicant possibly doesn't understand the burdens of proof.

CHAIRPERSON REID: Well, and it's self-certified.

MS. SANSONE: It's self-certified and the use variance would require the harder, more difficult standard of proof. So I'm not sure if this application really is in a good posture to --

CHAIRPERSON REID: This is a use variance?

I thought it was an area variance.

MS. SANSONE: Well, the problem stems from this 2507.3 which prohibits improving a nonresidential structure on an alley less than 30 foot wide for human habitation. That's a use restriction and so that would need to be addressed. And I guess the Board would need to decide is this provision applicable. Is this alley less than 30 feet wide.

CHAIRPERSON REID: Is it? Is there something we could measure it, make that determination.

MEMBER GRIFFIS: I think what we may also need is the definition or how we define abutting.

CHAIRPERSON REID: It says Brown's Court 30 foot row, 30 foot right of way.

MR. GALLAGHER: Yes, there's a 30 foot right of way in front of all those properties but to get out to the street, it does narrow down. But there's two locations, a 15 foot access from either side, from 6th Street and from Independence Avenue.

MS. YATES-BREMER: It is a 30 foot, it is 30 foot.

CHAIRPERSON REID: So is this the applicable alley?

MR. GALLAGHER: As far as the 2501 --

CHAIRPERSON REID: Let Ms. Sansone look at

this as well.

MR. GALLAGHER: As far as the 2501, if it's an individual lot in the city of Washington, you are allowed to build a property, a residential, a single residential unit on that property, whether it's on an alley or not is not defined in that case.

MS. SANSONE: Madame Chair, I believe the Board is going to need to look at two provisions of the regulation 2507.3 which states that a one family dwelling shall not be erected or constructed on an alley lot unless the alley lot abuts an alley 30 feet or more in width and has from the alley access to a street through an alley or alleys not less 30 feet in width. And this alley does not have access to the street, it's 15 feet wide at that point.

Then when you come down to the next section, 2507.3, there's provisions again which address the 30 foot wide alley. And so, I guess, for purposes of deciding whether 2507.3 applies, the Board really needs to consider is that getting to the 30 feet at the point where the alley is immediately abutting the property or should the Board consider the alley as a whole and what is the purpose of that provisions. What aspects of the public interest is it trying to protect and those would be questions for the Board to interpret at this particular

--

CHAIRPERSON REID: But the 2507.2 refers to the access to the street being an alley of 30 feet or less, at least 30 feet within itself, I don't know how we can get around that.

MEMBER GRIFFIS: But if I may, on 2507.2, could it be interpreted that alleys not less than 30 feet in width is actually a combined dimension. So that if you had two alleys, you had 30 feet. I'm just asking a question.

MS. YATES-BREMER: May I say something about when we decided to, when we thought we should pursue it. When I talked to the people here, they said that if the shadow cast, it had something to do with casting a shadow across the alley and that had to do with the 30 feet that is indirectly in front of us. And then it was our assumption, perhaps incorrectly, that if there are 27 houses in the alley, that there had to be some exception made for the fact that there are two 15 foot exits rather than one 30 foot exit. That was our assumption.

CHAIRPERSON REID: Staff is also checking something as well so we can determine exactly what relief you're asking for and what you need that you might not be asking for.

MS. YATES-BREMER: Okay. And I think one

thing that I really didn't get to explain, the reason we pursued this at all was that we thought it just was an enhancement. We thought it helped with the mixed hues of the neighborhood. I used to live on the Hill and it was hard to find apartments and we thought it would make the property look nicer, provide, you know, possibly another place for someone to live if we didn't want to use it as our own apartment and it was just, we just thought it looked better to be very honest with you. We just thought it improved our security, helped the alley. It's not something that, you know, we just thought it looked better.

MR. GALLAGHER: They also are making an attempt to solve some of the parking problems by providing street parking.

CHAIRPERSON REID: Excuse me, one second please. Allow us to take a five minute recess because there is some confusion and we need to try and clear it up. So we need to recess for just, for an Executive Session for just about five minutes. We'll be back.

(Whereupon, the foregoing matter went off the record at 10:16 a.m. and went back on the record at 10:42 a.m.)

CHAIRPERSON REID: Okay, the hearing will

resume. Thank you very much. Now, I think that, we think that, speaking on behalf of the Board, that given the fact that there are a lot of issues regarding this particular case and the self-certification, what happens with this particular process is that in order to expedite a hearing, sometimes people opt to self-certify rather than going to the Zone Administrator but that's, based on these circumstances, we feel that a Zoning Administrator letter would be needed because in the Zoning Administrator's letter they would lay out specifically what zoning relief is needed, what would be required here.

And the reason why we're having to do that is because one of the laws of the self-certification, well, one of the liabilities is that if, in fact, even if we were to approve you and then you go to the Zone Administrator and they determine that there was something that you did not put in your self-certification, you can be, you stand the chance of being turned down over there. So we think that it would probably be better for you to go to the Zone Administrator and get a letter. Then that would tell us specifically what you need.

Also, you have two cases that you have coming up, another one coming up and staff feels and also Corp Counsel has advised us that it would be good to have those

two cases combined or at least have them on the same day so that it could be addressed efficiently rather than having them two days and then also the advertising and everything could be correct. And the need to address the issue regarding the tax lots and I think it would be, we think that it would probably be good to have the tax lots recorded as recorded lots.

And based on what the Zoning Administrator tells us in the letter to us, it may have to be readvertised because the fact that the zoning relief that's being requested right now is not, is insufficient and we're not exactly sure what all you need but that's not what we're supposed to do. Nonetheless, we are mindful of the fact that there's a problem and that you may be here without the adequate amount of information that you need. And with that in mind, we would suggest we've spoken to staff and that you sit down with them and talk to them and they can explain to you what problems, we see with this case as well as some methodology in order to address those problems so that when you do come back or if you decide to come back, that you will have before us the best possible case to have the best possible chance of possibly getting the relief that you're requesting.

Board Members, any other comments on this?

MS. PRUITT: Madame Chair, we'll just let

the applicant know there's Mr. Nero, I'm not sure if he's in the room, is the staff person you should be talking with and he'll be helpful. And any information that or new submissions that you make to the Board, you should serve on the Capitol Hill Restoration Society since they were granted party status. Okay?

CHAIRPERSON REID: And the issues, I would suggest that there are some issues with the ANC and with the Capitol Hill Restoration Society and perhaps once you sit down with staff and you get more input and more counsel, then you might want to go back to them and to see if there may be some compromises somewhere to assist you so that when you do come back, you come back stronger and have a better possibility of achieving what you're trying to achieve here today. Actually right now, you're weak and if we were just to take it on its merits as we see it, then you wouldn't, I don't think that you would have, you'd prevail and we just don't want to turn down flat because we can see that there are some problems.

VICE CHAIRPERSON RENSHAW: Madam Chair, is there a date that we have available.

MS. PRUITT: We have to wait for the letter from the ZA and we have no idea.

CHAIRPERSON REID: Okay. Do you have any other questions? Okay and thank you very much. Mr. Nero

is waiting to meet with you in the anteroom and he'll be happy to assist you in any way he can.

MR. BREMER: Thank you very much for your consideration.

CHAIRPERSON REID: Thank you. Ms. Pruitt, the case that was coming up on July 3rd will not be heard on July 3rd, the Zoning Administrator is going to, waiting for a letter for both cases.

MS. PRUITT: Yes, but we would have to, of course, let the public know at that time that it's being consolidated and will be readvertised.

CHAIRPERSON REID: Well, Ms. Renshaw just raised an issue as to making sure that the applicant understands that.

MS. PRUITT: I'll check with Mr. Nero to make sure that they know.

CHAIRPERSON REID: All right, thank you. The next case, please, of the morning.

MS. BAILEY: Application No. 16722 of First F.S. K Limited Partnership, pursuant to 11 DCMR 3104.1 for a special exception to continue the use of an existing parking lot under section 213 in an R-1-B District at premises 4817 U Street, N.W. The property is located in Square 1389 on Lot 816. All those wishing to testify, please stand and raise your right hand. Do you swear

that the information that you will be giving today will be the truth. Please say I do, sir.

PARTICIPANT: I do.

MS. BAILEY: Thank you. Madame Chair, the application is ready to go forward. All requirements from the staff point of view has been met, affidavit and we do have an ANC report and an OP report.

CHAIRPERSON REID: All right. Thank you. Go ahead.

MS. BROWN: Good morning, members of the Board. My name is Carolyn Brown with the law firm of Holland & Knight. I'm here today with Steve Sher, Director of Zoning Services at Holland & Knight, and Steve Myers who is District Sales Manager for CVS. The application before you today is for a special exception to continue the longstanding use of a parking lot at 4817 U Street, N.W. This is the parking lot associated with former the MacArthur Boulevard Theater that is now a CVS store.

CVS leases the parking lot from the owner of the property First F.S. K Limited Partnership for use by its customers and for other customers of local businesses. The parking lot was first established at this site in 1946 pursuant to a series of special exception approvals. CVS obtained approval to continue the parking

lot use in 1998 for a period of three years. We are now returning to renew this parking lot use for another three years.

Through our submissions to the record and the testimony we present today, we will demonstrate that the parking lot use continues to meet the test for special exception approval. But we know there is one issue that we must address up front today and that's maintenance. Up until about four months ago, the lot, quite frankly, was not being maintained as it should have been. In March of this year, however, two things happened to change this. First, Steve Myers was, took over management of the store and immediately began cleanup efforts at the lot. Second, this special exception application was filed and CVS began working with the community regarding the conditions of the lot.

Together, these two factors have resulted in a new dramatic improvement in the appearance and safety of the lot. And as you can see from, you can see the difference in the before pictures that were submitted with the ANC report and the after photos that are under Tab D in our prehearing submission. The lot has been thoroughly cleaned and restriped and new lighting has been installed. These efforts and CVS's continuing dialogue with the community has resulted in unanimous

support for the application from ANC-3D and from the Pallisades Citizens Association.

While CVS had hoped to gain approval for an additional five year period, it recognizes that its track record over the past three years was not good enough to earn it, so it concurs with the ANC recommendation to renew the parking lot use for only a three year period.

Our prehearing statement sets forth in detail how the parking lot meets the provisions of each of the special exception tests in the regulations. And unless the Board finds it necessary for us to go through each one today, our testimony today will instead focus on the maintenance issue and the conditions of the previous approval. And if you have, unless there are any other questions, I'll turn to our first and only witness, Steve Myers.

MR. MYERS: All right. My name is Steve Myers and I am the District Sales Manager for CVS Drug in upper northwest D.C. My address is 9442 Onion Patch Drive, Burke, Virginia. I am the District Manager for the MacArthur Boulevard store location and I have an additional seven stores in the northwest area. And I took over this position in March of this year, around March 4th. And one of the stores I acquired was MacArthur Boulevard.

Arriving at the store for the first time, I went into the lot and noticed that the lot was not what it should be and started to take care of maintenance issues which I considered to be critical to the lot cleanup including the actual cleanup of the lot debris, the landscaping and lighting which were the three primary issues at the lot.

Since that time, we have contracted a company to take care of the cleanup of the lot which occurs three times or once every three days, excuse me. Also we have installed four new lights in the middle of the parking lot which are shielded to protect the neighboring homes from a spray effect of the light, the lights shine directly down. We have striped the lot. However, we will be resealing and restriping the lot shortly. Again, because when we put the lights in, we found that we had to reseal that particular area where we had to trench in the electricity.

At this point, the lot is in good shape. It is landscaped. We have not disturbed natural vegetation on the eastern end of the lot which is the side of the lot going against the homes. And it has a natural barrier there and it's clean and free of debris and we ask that the variance be granted to us for an additional three years.

CHAIRPERSON REID: Okay. That completes your case?

MS. BROWN: Unless you have any questions that you want us to focus on. We would be happy to go through each of the standards of the special exception test if you think that's necessary.

CHAIRPERSON REID: I don't think that's necessary. I think that basically this is a request to extend the use of the parking lot. And I think that the various sections are, basically have been addressed even with a previous order but, as you know, Ms. Brown, there is a problem and that is in regard to and the new manager, Mr. --

MR. MYERS: I'm Mr. Myers, Steve Myers.

CHAIRPERSON REID: Mr. Myers did address it, however, we received quite a bit of opposition because of the fact that you were in noncompliance with the previous order and the fact that you didn't, it was a maintenance but also removal of old vehicles and improving the landscaping and repair the sidewalks and typically what happens is when we see this all the time with special exceptions and you have considerable opposition, then we would impose conditions and the agreement is that you're supposed to live with the conditions so when you come the next time, we can assess how you lived up to

your commitment to us in reference to the conditions so that would be a basis for your receiving a continued relief.

And in this instance, you haven't done that and what happens is that typically the applicant will, just before it's time to come before the Board, they all of a sudden become very conscientious and they all start cleaning up the lots or doing what they were supposed to do so that when they come to us, they can put on a good face. Now, the civic association, the Pallisades Civic Association, did complain but they also voted to support you but my question is how do we know, given your track record, that things will be any different this time?

MR. MYERS: Well, Madame Chair, I can assure you since taking over the store, I took that over in March. At the time I didn't know that there was going to be a hearing coming on board and you mentioned the abandoned cars, that was the first thing I noticed in the lot when I pulled in. I took steps immediately, even before I knew that this was going to come up. I didn't know that this was even, I was unfamiliar with the provisions for the lot until about a month to six weeks later when I got involved in it for preparation for this meeting.

But I can assure you that our company does take pride in what property we have. I also acknowledge

that in this case it wasn't done properly. I can assure you that it will be done properly. I cannot personally stand our stores or our properties being in disarray and in not showing the proper respect done for our customers but also for the community. So I have given to the ANC, I testified with the ANC a couple months ago. I gave them my day, my phone number, they can contact me as well as the Pallisades Civic Association if they have any concerns whatsoever about the parking lot.

I've also been in contact with the local merchants who use the lot. There's a catering service, an Exxon station, Our Lady of Victory Catholic Church, the Presbyterian Church in the area, all of which to varying degrees use the lot for one reason or another and I do assure you that it will be maintained properly.

In fact yesterday, our Director of Corporate, our area Director of Corporate Properties was in the area. We noted the lot with the vendor, excuse me, with the contractor for cleaning just to go over again his requirements and their responsibilities for our lot. Also, our store manager will be checking the lot daily to see if there's any problems that need to be addressed with the contractor or by our company.

CHAIRPERSON REID: Okay. That sounds good but, Mr. Myers, what happens if you leave?

MR. MYERS: The District Manager that follows me will be equally responsible.

CHAIRPERSON REID: Wasn't he responsible before you came?

MR. MYERS: Yes, he was. That's true.

CHAIRPERSON REID: That's a hurdle that we're going to have scale here and Board Members, I'll let someone else.

MS. BROWN: If I may, Madame Chair, we noticed in the OP report that there is a suggestion that we have some sort of semi-annual report submitted to the Office of Zoning on the conditions of the lot. We have been in discussions with the ANC and Pallisades Citizens Association regarding whether or not this would be the appropriate mechanism if we should continue some sort of dialogue with them directly. And I note that one of the conditions of the previous order was that CVS would meet with either the Pallisades Citizens Association or the ANC at those organizations request. We never had a request during the three year period.

CHAIRPERSON REID: Never had what.

MS. BROWN: To meet on the conditions of the lot.

CHAIRPERSON REID: Wait a minute. I saw somewhere in the materials from the ANC that there had

been requests for meetings or something and that they had not been responded to. The ANC is not here. Where is the ANC letter.

MS. BROWN: We raised that issue at the ANC meeting and they did not indicate that they had made any request to CVS.

CHAIRPERSON REID: I can't find it right this moment, but I will. I'll let other Board Members ask and then I'll see if I can find that one.

VICE CHAIRPERSON RENSHAW: Yes, a question for Mr. Myers. Before you took over this assignment of supervising the Pallisades CVS, did you have any involvement with the Pallisades store?

MR. MYERS: No, I did not. I was not at all associated with that store. I had stores in other parts of the city but not that particular one.

VICE CHAIRPERSON RENSHAW: Did you have stores in upper northwest?

MR. MYERS: Some stores, yes.

VICE CHAIRPERSON RENSHAW: Did you hear any complaints through your associates that they were having difficulties in Pallisades?

MR. MYERS: No, I did not. I did not deal with the day to day activity of the store and any contact I had with the other District Manager didn't indicate

to me that there was a situation there.

VICE CHAIRPERSON RENSHAW: In one of our pieces of materials, it said that the community expended an amount of money to pick up the lot from time to time. Is there any indication or would you indicate that CVS will reimburse the community for this?

MR. MYERS: Well, I don't know, I did see that that they did do that. I do not know the extent of that nor the cost involved. I certainly would think that we would consider that. I cannot say that we would do it for sure.

VICE CHAIRPERSON RENSHAW: Why do you think it is so difficult for communities to get in touch with CVS for corrections. Here is a community that has tried. These are very particular people. In other words, they want their community to look the very best and they have detailed for this Board their efforts and it seems to me that CVS management has turned a deaf ear.

Why is it difficult for communities to get a hold of CVS and would you state for our record what your telephone number is and also the telephone number of the area Director of Corporate Properties so we'll have that in the record for the communities to refer to.

MR. MYERS: I will certainly be glad to give you my telephone number. My business number is (301)

336-2369. That's the same number I provided both to the ANC and to the Pallisades group. Our number for our main office is (866) 292-5670 and you can get a hold of Mr. Poppy through that number.

VICE CHAIRPERSON RENSHAW: Mr. Poppy?

MR. MYERS: Poppy, P-o-p-p-y.

VICE CHAIRPERSON RENSHAW: Would you answer the question though as to why it seems to be so difficult that communities cannot get through to CVS?

MR. MYERS: Certainly I don't know, you know, corporately why. We have local offices here like the one I just gave you is the office for our region which I work out of. If there was difficulty getting a hold with the previous District Manager, I cannot answer why or why it was not responded to if such communication was given.

We are open and we do respond to our customers concerns and I can personally testify that any community person that contacted me whether it be from the ANC or from the other group, I have personally returned their call and talked to them about the issues.

VICE CHAIRPERSON RENSHAW: And would you also make sure that your business card is on file with us so that we have that for the record also.

MR. MYERS: I'm getting them printed as I

just moved over but I will be glad to send you one when it comes in.

VICE CHAIRPERSON RENSHAW: Thank you.

MEMBER HINTON: Madam Chair, I have a couple of questions and Mr. Myers, I want you to know that Ms. Reid and I are the two Board Members that were here when the previous application was approved and we're still here, probably unfortunately for you. And I want to tell you that every assurance that you've made to this Board about what a good company CVS is and how you will do everything in your power to keep that lot clean and live by the conditions that are set were said three years ago. And we had the same assurances and the same promises and the same guarantees and none of that was followed through with.

My concern about this project is that this is still CVS and while you, as an individual, are different, it's CVS. Apparently there's no concern at the level above you in the way that these stores are being maintained because no one above this District Manager who didn't do the job here had anything to say about that. And so there is no accountability in this store that I can see and in the corporate management. Nothing happened, one person didn't do his job and it was left that way for three years.

And I have to tell you when I read this application last night, my jaw nearly hit the floor that you had courage to come back here and ask for another five years, that you've now graciously agreed to three, with the same assurances that oh, well, we said we'd do it last time and we didn't do it but we're going to do it this time and you all should just believe us. It's not believable in my mind. And to put absolutely no provision in here to make it any different, that if you go out there after this is approved and you do the same exact thing, we're going to get a letter in our file from the ANC that says you're not playing nice again and so what. This Board doesn't have enforcement power, there's absolutely nothing we could do other than read that letter and say, boy, that's unfortunate that we were suckers for another time from this company. It's very troubling to me.

The timeframe you're asking for, I think, is completely unreasonable based on your track record. I think that I would need to have a better indication that CVS knows what these conditions are and CVS is going to be responsible. If Mr. Myers doesn't work there anymore or if Mr. Myers decides not to do the job that he has guaranteed to this Board he's going to do, I want to know names of other people that are going to be held

accountable. Because there's no guarantee that you're going to be with this company tomorrow or in this same position. So, you know, your personal promises, although I don't question that they are genuine or sincere, I question what they really mean for the operation of this parking lot and I think your neighbors are unbelievably generous in even going along with the request at this point. I think you're very lucky.

CHAIRPERSON REID: I think they have a love/hate relationship over there. But the fact of the matter is that they have not been good neighbors but they need them because of the parking. So they are willing to put up with some of their unneighborly conduct, if you will, because they, it is an entity and amenity that the neighborhood really needs. The drugstore and the CVS facility and also the parking. Any other comments or question, Board Members?

COMMISSIONER PARSONS: I have a question. I'm looking at the first photograph under Tab D and I'm also looking at the order of 1998. And the order says, the existing dwarf Japanese holly along U Street frontage shall be replaced with a private hedge along the sides of the driveway entrance. Does that show in this photograph?

MR. MYERS: The hedges are in place on both

sides of the entrance from U Street. There is hedge there now, yes.

COMMISSIONER PARSONS: Can you show that in this photograph or have I got the right street. I mean, is this is the right angle?

MS. BROWN: If I may, Mr. Parsons, which order are you looking at. Is it 16311?

COMMISSIONER PARSONS: Yes.

MS. BROWN: Okay.

COMMISSIONER PARSONS: Page five. Maybe there's too many orders in here. I'm sorry, there's two orders in here.

MS. BROWN: I believe there is an earlier order.

COMMISSIONER PARSONS: This is 1983.

MS. BROWN: That's an earlier one --

COMMISSIONER PARSONS: So the other one made no mention to the screening along U Street because I don't, this parking lot is not screened. That's my issue, on U Street by this photograph. So I'm groping for a past order that might have instructed you to do that. All right, here's number four, the evergreen private hedge along U Street except along the driveway will be allowed to grow to a height of five feet, I don't see one.

MR. MYERS: Yes, this photo here shows the

hedge, this would be on, from U Street as you turn into the lot, left into the lot. This would be the hedge on the right side and there's a hedge also on the left side.

MS. BROWN: If I may, Mr. Parsons, I believe it was the earlier order that requested that the trees be removed and be replaced with this hedge and this is a wintertime photo so it is not in full leaf but there is a hedge on both sides of the entrance.

COMMISSIONER PARSONS: I don't want to belabor this too long but what am I looking at on Tab D. The first color photograph with the blue Thunderbird in it.

MR. BROWN: That is the view from MacArthur Boulevard looking up the street. On the lefthand side of the photograph, that is the property that is adjacent to the Safeway store and then as you move further up the street to the first car or the last car on the street, the hedge begins.

COMMISSIONER PARSONS: So the red truck is not parked in your lot.

MS. BROWN: No.

COMMISSIONER PARSONS: Thank you. Now I got it.

MEMBER GRIFFIS: Also, just a quick clarification. You testified today that light fixtures

were in and I noticed in the application that they were proposed and the photos don't show them. Do you have any cut sheets or anything that pertains to that. And also to that, I had difficulty, although it was written, you have constructed a screen fence that was, I believe, two and a half feet high brick and then there was a wood fence on top of that. I just need the pointing on location where that is. And I think we could probably go to, let me find a site plan, in Section C perhaps would be the best just to clarify.

MR. MYERS: There is a site plan, do you have that?

MEMBER GRIFFIS: Yes.

MR. MYERS: Okay. And as you look at it, I will just point out a number of things on it all the way through.

MEMBER GRIFFIS: Great.

MR. MYERS: As you look at the U Street entrance, you'll see the hedges on both sides that are already in place. On the right side, you will see an area of natural vegetation and trees. This is the section that borders homes on the right side of the property. To the back part of that there is a, it looks like a retaining wall, that's the thing that you just referred to, that is not on our property.

MEMBER GRIFFIS: Right.

MR. MYERS: The only other parts that, if you look to the left and to the top, those are, it's a cinderblock retaining wall with a metal railing on top of it which is also in place. The lights that you see are the four in the middle. They are installed and working at this time. They have been installed within the past two months.

MEMBER GRIFFIS: Okay. So for my clarification then, basically what were spoke to, the masonry retaining wall is actually not on your property. Perhaps it's attendant to the Safeway parking lot.

MR. MYERS: The one with the wooden top is not. The one with the metal railing is.

MEMBER GRIFFIS: And then I had just a further point and question. In the photograph Section D, which shows just the base for the now existing light, lamp post and fixtures, is the vegetation, the buffer on the right side of that photograph that buffers from the residential area, is that essentially the current condition?

MR. MYERS: The vegetation on the right, is on the right of that.

MEMBER GRIFFIS: Right.

MR. MYERS: Which is the side next to the

homes.

MEMBER GRIFFIS: Right.

MR. MYERS: That's currently in place, undisturbed by the installation of the electric lights.

MEMBER GRIFFIS: Is there any sort of maintenance of a distance away from the curb that keeps a low grass through the trees, so that's part of the maintenance contract that you have.

MR. MYERS: It's part of the maintenance contract is the actual mowing of all grass, not just the property in the parking lot but also across the street at our store.

MEMBER GRIFFIS: Right. I think where I'm going with this and I'll be finished but I seem to recall in the record also that there was one crime talked about that happened in that parking lot and I would think that although it's very important to have a vegetation buffer from the residential to the parking, it's also very important to create a safe environment meaning there shouldn't be places where people can jump out of and surprise people. Lighting will help but I think also setting back the vegetation off the curb, giving it three feet or five feet away so you have that shoulder of grass or whatever you propose would be productive. And that's all I have.

CHAIRPERSON REID: All right, thank you very much. If there are no further questions, we've go to government reports, Office of Planning?

MR. FONDERSMITH: Yes, Madam Chairman, you have our report and I think you've kind of gotten the picture of it. The situation already you have attached to our report the aerial photograph which shows the relationship of the lot. I think it is important to say that the lot is, we think and I believe the community feels, too, an important part of this commercial node on MacArthur Boulevard.

And we, so we looked at the situation and really, it has been already brought out here the main issue here is not so much the lot itself but the whole maintenance issue and so on. So, be glad to respond to anything more about the lot itself but going to our recommendations, we recommend that it be approved for three years and this was the community position, of course, that the conditions adopted in the 1998 order be included in the new order with the possible exception of clarifying 11 and 12 which seemed a little redundant about this screening.

We recommend that the provision for use of community use of the lot be clarified in the order and then we recommended that you have a list of the corrective

steps. And I think essentially that's been given here this morning in the testimony with the exception, I believe, of the sidewalk which is awaiting a permit and we thought it would be useful to get at least the schedule or something back when that was done although that should not hold up approval of this special exception.

And then finally, we were concerned with trying to develop a procedure in this case, not to set an example but not to necessarily set a precedent for other cases but because of the problems that have arisen in the past, to have a report back to the Board or the Office of Zoning. Now, there have been various discussions since then that this may take the form of going to the Zoning Administrator. There's been some discussion understand about the six months, bi-yearly, twice a year meetings with the ANC. This process could take various forms.

We simply think that it's important to kind of send the message and I think the message has been sent probably, but that there be a follow on process of some kind and not just wait until the next three years from now when it comes up again to kind of track the maintenance issue.

So we, let me mention one thing which is a point, on our aerial photograph, I regret to say that

the scale is off if you look at that. That apparently should be, I think the meters to feet conversion didn't get down so the lot, of course, is considerably bigger than would be indicated by that scale. So we do recommend that the special exception be approved and that these conditions be included with some kind of reporting process.

CHAIRPERSON REID: Questions, Board Members? All right. ANC report, is there anyone here from the ANC. All right. We did have a letter.

VICE CHAIRPERSON RENSHAW: Madame Chair, we have a letter, it's Exhibit No. 19 signed by Eleanor Roberts Lewis, the Chair of ANC-3D. The letter is dated May 18th and it states that they held a regularly scheduled monthly meeting on May 2, 2001, that proper notice of the meeting was published in a local newspaper and notices were posted in all of the single member districts of the ANC and notification was given by e-mail and fax to interested party and a quorum of four was present at all times during the meeting.

And that on the agenda that night was BZA application 16722, the special exception for continued use by CVS of the parking lot at 4817 U Street, N.W., that is currently owned by First F.S. K Limited Partnership. The letter goes on to say that the CVS had

ignored BZA's previous order and seriously neglected this parking lot causing great concern to the community. A few examples were cited, abandoned automobiles that were left from before CVS took over the lot in '98 and they were left there until recently. That the lot was never maintained and huge piles of trash accumulated regularly. That neighbors were forced to pay to clean up the trash, that no lighting was installed, no landscaping was done, no resurfacing of the parking lot or striping was ever done.

That unsightly conditions posed a threat to safety and that a local teacher was held up in the lot. And summarized that CVS ignored the BZA order and the conditions included in the order for all three years. That the BZA order has been in place and this spring as the BZA order was about to expire, CVS made a sudden effort to clean up the lot and tow the abandoned autos. So, at the meeting, Mr. Myers, the District Manager presented and CVS's attorney, Carolyn Brown of Holland & Knight, acknowledged that the company had neglected the parking lot and the conditions imposed by the BZA order and they said that steps were being taken to remedy the situation.

So in light of CVS's disregard for the '98 order though, ANC-3D urges the BZA not to grant a special exception for five years and it's the recommendation of

ANC-3D that the BZA limit the approval to three years and that all of the conditions which were specified in the initial 1998 BZA order be included in any new order. Now, the motion was approved by ANC-3D at this monthly meeting on May 2nd. It was seconded and approved by a vote of 5 to 0 to 0. And ANC-3D asks that the BZA afford the ANC the great weight to which it's entitled.

CHAIRPERSON REID: Thank you very much, Ms. Renshaw. Given the fact that they did have the regularly scheduled meeting in which there was a quorum present and a vote taken, they will be afforded that, the great weight in which they are entitled. Persons in support? Persons and parties in opposition. I had said there was considerable opposition and I misspoke because there was not opposition, there was some concern, issues raised. There's no one here in opposition? Oh, all right, please come forward. Have you been sworn, sir? Sir, have you been sworn? Please have a seat at the table.

MR. AICHES: My name is Alan Aiches. I reside at 5839 Sherier Place, N.W. and I'm here on behalf of Penny Pagano who is out of the country. I serve as the Chair of the Zoning Committee for the Pallisades Citizens Association and she asked me to appear in her stead today. I'm appearing in opposition not because we don't support the extension for three years but because

we have the concerns that those of you on the Board simply raised during your discussions today.

CHAIRPERSON REID: Let me make sure I understand who you are because the ANC letter is in support.

MR. AICHES: Right.

CHAIRPERSON REID: But you're saying that you represent Penny Pagano but you're in opposition.

MR. AICHES: Well, we, I have to say this is the first time I've ever been here so I'm a little unsure. I was advised to say that we were an opponent simply because that is my understanding.

CHAIRPERSON REID: Are you a single member district representative?

MR. AICHES: No, I'm here on behalf of the Pallisades Citizens Association.

CHAIRPERSON REID: Oh, okay.

MR. AICHES: Which supports the three year extension but was opposed to the five year extension and has the same concerns that you all have voiced during the hearing this morning.

CHAIRPERSON REID: But really, technically, you're in support with some provisos?

MR. AICHES: Right.

CHAIRPERSON REID: All right.

MR. AICHES: It was simply the way I was advised to make the statement but it won't happen again. We do support the three year extension, not the five. And we do support that the lot be maintained regularly and one of the ways that, it occurred to me during your discussions, one of the ways to do this as far as accountability is concerned, is to maybe request that CVS provide some form of proof of contracts that they have in place with vendors to maintain the lot, other vendors who are responsible for mowing the grass and doing the pruning of the landscape and that they provide the BZA with these kinds of materials on an annual basis so that to the ANC and to the PCA, if necessary, so that we're all at a level of comfort where we feel that the maintenance that is required by the order is being done. It's really all I have to say but I'm happy to answer any questions you may have.

CHAIRPERSON REID: Thank you very much.

VICE CHAIRPERSON RENSHAW: There has been a statement Mr. Aiches, would you spell your last name by the way?

MR. AICHES: It's A-i-c-h-e-s.

VICE CHAIRPERSON RENSHAW: All right, thank you very much. Mr Aiches, there was a statement made by CVS's attorney that had never been a request for a

meeting. Had Pallisades Citizens Association requested a meeting or meetings with CVS?

MR. AICHES: I have to answer honestly that I simply don't know. I had come into the chairship of the Zoning Committee in November and that was really when my formal relationship as a member of the Board of the PCA began. So, because this goes back several years, I'm not aware of anything. There could be but I simply can't speak to that.

VICE CHAIRPERSON RENSHAW: Okay, thank you.

CHAIRPERSON REID: All right. Thank you very much. Closing remarks by the applicant?

MS. BROWN: Yes, if we could just address the enforcement issue. We agree, Ms. Hinton, that it is difficult to submit something to the BZA or Office of Zoning as an enforcement measure because obviously that mechanism is not here. We believe it might be more prudent to work with the people that are most directly affected by this, the ANC and the Pallisades Citizens Association and we would be happy to provide them with some information on the maintenance contract to let them know what the schedule is and we have been, I personally don't mean to testify here but I've had at least 15 conversations with Penny Pagano personally over all these issues. And as recently as June 5th, June 6th, we were

speaking about a swimming pool filter tank that had been left on the lot and each of us was concerned about this because obviously that is something that CVS wouldn't leave there. It's something that's part of the community, that they've started using as a dumping ground.

But that set off a chain reaction of e-mails throughout the CVS hierarchy and I have a page of six, it's six pages long, this e-mail chain showing it going through the route. This is now on the hot list of CVS and they are paying attention to it. And it goes beyond just individual names and people being responsible, it's the person who has the title that is being held accountable.

So we would happy to report to the ANC and the community on these issues and, of course, it's the Zoning Administrator that triggers the enforcement mechanism and, you know, if CVS is not doing it's part, we would fully expect that some sort of civil infraction could be issued or, you know, there's the threat of it all being revoked.

CHAIRPERSON REID: Is that it?

MS. BROWN: And I, not entirely, I guess. I would like to finish up by saying that we do wish that you would approve this for the three years. We know that

asking for five years is too much but we think that three is appropriate. If we were to have to have a shorter period, I think that it would end up being, we'd leave and two months later have to refile for an application. So I think three is a reasonable time.

And I want to emphasize again that this is a lot that is important to the community as a whole. It does not just serve CVS patrons. I think we have a traffic report in the file that refers to the fact that CVS patrons only account for about 40 percent of the use of the lot. So we think that this is a beneficial use for the entire community and we believe that with the maintenance measures that we have in place now, the track record that we have established so far, and the continuing dialogue that we're going to maintain with the community, that this should help address the issues of maintenance and we would ask that you approve the application. Thank you.

CHAIRPERSON REID: This is a summary order?

MS. BROWN: Yes, please.

CHAIRPERSON REID: All right, Board Members, discussion?

MEMBER HINTON: I have just a couple things to say. What we have in front of us is a track record of 28 months of ignoring all the BZA order and conditions

and four months of making an honest effort to comply. And we have statements from CVS that say they have negotiated or signed maintenance contracts for both maintaining the lot and the landscaping. I would like to know what the value of those contracts is. How much does that cost.

And I would be interested if any of my Board Members would be agreeable to having CVS put that much money into an escrow account that would be available to the ANC that if any time during the period that this Board grants an approval if they choose to do so, that that money would be available and the ANC could then undertake cleaning the lot and having the landscaping done and the money would be there so the neighborhood would not have to put up with a lot that's not being maintained.

The ANC would also be able to go through the Zoning Administrator and go the civil infraction route but I think that having the escrow money available would be a more immediate response because the civil infraction route takes years and that's not going to help people who are living with a bad situation in their neighborhood. I would also --

CHAIRPERSON REID: I don't know if we can do that, Ms. Sansone?

MEMBER HINTON: Well, rather than requiring

it, I think if we have the applicant proffer it, it can be done.

CHAIRPERSON REID: Rather than making that a condition, which I don't think we can do, suggest that might be something they consider and see where that goes.

MEMBER HINTON: Yes.

CHAIRPERSON REID: Any other comments?

MEMBER HINTON: Could I just say one other thing about the timeframe, is that even, I think the three years at this point is still too long based on the track record of this exact company maintaining this exact lot and I would recommend if we do approve this that we go with a one year timeframe and see what happens after a year. I would rather have the 12 months plus the four months of a good track record to base a decision on rather than 28 months of completely ignoring it and four months of trying to do something good.

CHAIRPERSON REID: Is that a motion?

MEMBER HINTON: Okay. I'll do that. I'll move approval for, actually we need to find out --

CHAIRPERSON REID: For purposes of discussion.

MEMBER HINTON: -- for purposes of discussion to approve the application for a one year time period with all the conditions that are in the previous

order and with a proffer from the applicant that an escrow fund would be set up with the total amount of money that covers a one year contract for maintenance of the lot and maintenance of the landscaping and that that escrow money would be available to the ANC in order to do that work if that work is not being done by the company.

VICE CHAIRPERSON RENSHAW: Second. Discussion? I just want to go over a couple of things. Mr. Myers has provided his telephone number. That's very good and that of Mr. Poppy, P-o-p-p-y, who is the Area Director of Corporate Properties, that's good. Mr. Myers is going to provide the Board with his business address, that's very good. But in regard to this issue of accountability, I would like to see, would like to request that Mr. Myers request a letter from the CEO of CVS stating that corporate headquarters will agree to maintain all CVS properties per the orders --

CHAIRPERSON REID: No, no, no, not all CVS, just this property.

VICE CHAIRPERSON RENSHAW: All right, this particular property, I would really like all properties but I'll pull back to say this property per order of the DC Board of Zoning Adjustment. And again, that letter can be requested by Mr. Myers and sent up the chain to the CEO of CVS. I would also like for the record a list

of the CVS officials above Mr. Myers, their names, titles, addresses and phone numbers so that the community can look to the file to see who to turn to if the first level of contact leaves or is not accountable.

MEMBER GRIFFIS: Quick question. Is there any sort of identifiable signage on the parking lot that connects it with CVS. I mean it doesn't say CVS parking, parking for patrons or anything of that nature.

MR. MYERS: No.

MEMBER GRIFFIS: Might it be appropriate also just to have a quick discussion on, I wouldn't want it to be obtrusive, I don't particularly like signage necessarily in this condition but maybe even on the new lamp post that might just have CVS parking, keep it clean, if not, call so to speak.

VICE CHAIRPERSON RENSHAW: Like a hotline.

MEMBER GRIFFIS: Yes. Rather than, I mean, I think Ms. Renshaw's idea of a letter is great but a letter in the file doesn't get action. When somebody goes in and sees an infraction and even if it's the manager number, so that they can be aware and they can come out and look at the condition.

MEMBER HINTON: A sign that said something like maintenance of this parking lot is the responsibility of CVS.

MEMBER GRIFFIS: Exactly.

MEMBER HINTON: And then if conditions warrant, please call this number.

MEMBER GRIFFIS: Right.

CHAIRPERSON REID: I think that that would be very good. What I was going to suggest is that they are given a history of this lot and I concur with my colleague, Ms. Hinton, when we first heard this case three years ago, we were just sure that all the conditions would be met and we put the conditions in place to assure the community who, for the most part, was in opposition then and we kind of like stuck our necks out to try to be supportive of what we felt was something that the community would also be able to benefit from and it's rather disconcerting for me to now have you come before us to say that you just weren't paying attention to what we had first discussed and committed to.

And typically I am not a person who is supportive of a one year special exception in an instance where it might do some detriment to the community but in this instance I can see that the community, while not being happy with the way you performed, has come forward and said that we're not happy, this is what they did but let them still stay, don't kick them out. So with that in mind, I think that there should be some provision for

them coming back sooner rather than later because they have not demonstrated that they are trustworthy in this instance because we already know, if we were to glean from what we see so far that we can't really rely, I guess maybe trustworthy is too strong a word, we can't rely on what they're saying but, in this instance, I would be supportive of the one year.

And I would also suggest that they create a community liaison that would be comprised of a CVS and the ANC and the Pallisades Civic Association in which there could be a proactive type of a relationship so that if there are problems, there would be an apparatus set in place whereby they can alert you or they can discuss it with you and that would prevent the kinds of problems that we have right now to include those maintenance contracts which they should have, the ANC, is it appropriate for the ANC to have copies of the maintenance contracts so that if, in fact, things start to deteriorate, they can call upon the contractor to see what's happening, with it if they can't get any redress from CVS and that the names and numbers of management above your level, Mr. Myers, so that if there is a change and we can't come back with the excuse, well, it wasn't me, I wasn't here, the change of management but your superior so that if the liaison members need to, they

can always contact them to discuss any problems they may be having as well as all the other conditions that were put in place before. Any further discussion?

MEMBER HINTON: Now before we vote, Madam Chair, we need to hear from the applicant about the proffer.

CHAIRPERSON REID: Okay, right, suggest how they handle that.

MS. BROWN: Thank you. I think that we can agree to just about all of the additional conditions. We'd be happy to look into an escrow account, we'd be happy to seek out a letter from the higher-ups at CVS to get some sort of guarantee. We would also be happy to look into the signage issue, I think that's a good idea. I know that we had talked to Ms. Pagano about signage and there is some issue about putting a CVS parking lot sign up at the front and we didn't want to do that because it discouraged other patrons from using the lot but, I think if it's something interior, perhaps on a light post about maintenance, I think that's very reasonable.

I still am concerned about the one year limitation that we would end up being back here within just a few short months to refile and I'm wondering if it might be more prudent to maybe do a two year renewal

and then perhaps have some sort of, with the community liaison have that as a triggering factor, if things are not going well that we end up coming back sooner.

CHAIRPERSON REID: But Ms. Brown, be mindful of the fact that were it not for the fact that CVS has not been a good neighbor, that would not even be an issue. If the property had been maintained and the landscaping and the cars removed, then today you'd probably get five years. But given the history, then it may be a somewhat of a discomfort for you to have to come back in a year but I think it's also a signal to the community that you have this amount of time to demonstrate that you can be good neighbors and then you may have to go through this pain in order to be able to get to the next step, which means you come back in a year and if everything is fine, then you can ask for five years. But I think we need this period of time, a demonstration period before we can make any kind of meaningful assessment in all fairness to everyone concerned.

MS. BROWN: Another alternative that's been suggested to me is perhaps you would like to leave the record open for an additional six months to establish the track record and allow us to continue to operate during that period and establish the track record and from there make a decision whether or not it can be a three year

period.

CHAIRPERSON REID: To do what?

MS. BROWN: To hold a decision open on this case for six months.

CHAIRPERSON REID: Like where you can still operate.

MS. BROWN: Leave the record open for us to submit information that demonstrates that we have been continuing to maintain the lot as we should.

CHAIRPERSON REID: Well, when does your order expire?

MS. BROWN: It expires July 16th and if you could extend it during that six month period and then hold the record open and allow us to operate for that six months and then make a decision on a two to three year period.

CHAIRPERSON REID: So give, you're asking for six months, to delay a decision for six months to see how you demonstrate that you can operate properly but still you'd be operating --

VICE CHAIRPERSON RENSHAW: It would be necessary to issue an extension for six months.

CHAIRPERSON REID: Right, because you would not be legally operating.

MS. BROWN: Exactly. And that way we would

not have to burden the Board with additional filing, I mean, additional formal hearings, we can supplement the record.

CHAIRPERSON REID: But six months, the six months --

COMMISSIONER PARSONS: Madame Chairman, I think we have a good motion before us. I think that we should go forward with a one year period as we have stated. Let's face it, this is a punitive circumstance here. They haven't been good neighbors and I think we should --

CHAIRPERSON REID: All in favor?

COMMISSIONER PARSONS: Aye.

VICE CHAIRPERSON RENSHAW: Aye.

MEMBER HINTON: Aye.

MEMBER GRIFFIS: Aye.

CHAIRPERSON REID: All opposed?

MEMBER HINTON: We need an order for the housekeeping on that.

CHAIRPERSON REID: Right. Let's reiterate what the motion is.

MEMBER HINTON: Well, I feel like we need some things into the record before this order is released and that is the escrow account and the conditions that we discussed needs to be put out in writing by the

applicant. We need to have copies of the maintenance agreements for maintenance of the lot and the landscaping so that we can see what the value of that is. We need to have that escrow fund set up. We need to have a copy of all of the managers in CVS from Mr. Myers on up, names, addresses, phone numbers and e-mails. If the company has e-mail, that would be great. Titles, so we know everyone that's responsible.

VICE CHAIRPERSON RENSHAW: The letter from the CEO of CVS.

MEMBER HINTON: Yes. And actually since it's a letter from the company, I think it would be a great idea if the company would reaffirm its commitment to properly maintain all of the lots that CVS has in the District and not just this one in particular. I'm not requiring it, this is a letter that's coming from CVS and I'm just saying I think that would be a good thing to have in the letter.

CHAIRPERSON REID: If they choose to, but for the purposes of this particular case, all that is required is that it be germane to this particular site specific. If you choose to adhere to what Ms. Hinton has suggested, you may do that but I want it to be very clear this is not what we're requiring. Now, as to the escrow account, I think that if you say that you want

it before the order is released that you see that it's been set up and how it's going to be maintained and everything, I don't know if we can do quite that.

I think that we might receive from them a letter, we may ask that they submit that but I don't think that that can be required that they do that before we release the order. Ms Sansone, I just want to make sure that, I have no problem with it but I don't know if we can. We have to be very careful and you don't want to set a precedent that that can be something that can be requested from us routinely.

MS. SANSONE: Madame Chair, I think the escrow account is probably an excellent suggestion especially if the applicant is agreeable but I guess the other party to this arrangement is the ANC and we haven't heard from them if they're willing to take on this responsibility so that would be just one of my concerns.

CHAIRPERSON REID: But my question is can we require it, we can suggest it but can we make it a condition before the order is released that they get that to us?

MEMBER HINTON: I just want to reiterate for the record, we're not requiring it, it was proffered by the applicant and it was proffered by the applicant as a part of our vote. It was on the table by the applicant

before we voted. We're not requiring it as a condition, it was an offer by the applicant. That's why it was done that way because we can't require it but it was offered and it needs to be established before the order is released otherwise there's no way for us to enforce that it be done. All that we have to hold is our written order.

CHAIRPERSON REID: Can we enforce something that they proffered to us?

MEMBER HINTON: Yes.

CHAIRPERSON REID: All right. If it's not a condition, it can be enforced?

MS. PRUITT: Actually you're not enforcing it, you're asking them to submit something for the record before the order goes out so that they can then legally --

CHAIRPERSON REID: We're asking them to submit what they have offered to us.

MS. PRUITT: To the record.

CHAIRPERSON REID: To the record.

MS. PRUITT: It's not a condition, it's just part.

MS. BROWN: And excuse me, if I could make a point of clarification. We, here, do not have the authority to set up that escrow account. We have to check with the CVS corporate headquarters to see if that is

possible but we have offered to look into it. I want to make sure that that's clear that we do not have the authority to guarantee anything like that right here.

CHAIRPERSON REID: She said she'd look into it, she didn't really say she would. So how do we, let's get past this so we can move on. If, in fact, you can, if after checking with corporate headquarters and if, in fact, that can't be done, it should be reflected in the letter that you send to us but you need to basically respond to it appropriately. Either you can or you can't, however, if you can, then that would become a part, if you can't, it also should be submitted before the release. All right, does that satisfy what you're trying to accomplish, Ms. Hinton?

MEMBER HINTON: My vote, that proffer was important in the consideration of my vote and my vote certainly would change if there was no escrow account to be set up because then there's absolutely no way for the neighborhood to take care of this lot if CVS chooses not to do it. So I guess if at what point this comes into the record and before our order is released, if CVS decides not to put the escrow account into place, then I think the Board would need to reconsider the vote.

CHAIRPERSON REID: All right, let's do this. Let's take the vote, let's take your vote as with the

escrow, all right? And I think that I would be satisfied to move that we dispose this case today and ask that they send a letter to let us know if they can and if they cannot, then I would still not hold up the one year, I don't think.

MEMBER GRIFFIS: Quick comment. I mean, I think the escrow account is an excellent idea but it is also trying to get us to an end goal of a well maintained parking lot so that within a year, when they come back, if an escrow hasn't been established, if the maintenance hadn't occurred, then that would be part of what the next decision is based on. So I would think we conclude this today on this motion anticipating the proffer coming in as the escrow but knowing that we are reviewing within a years time.

VICE CHAIRPERSON RENSHAW: We spoke about this earlier, Madame Chair, but could we also ask the, Mr. Myers and the attorney to look into whether or not CVS can reimburse the neighbors that have maintained this lot and spent money out of their pocket.

CHAIRPERSON REID: I don't think that we can do that. Ms. Renshaw, I can understand your concern but that's beyond the privilege of this Board I do think.

VICE CHAIRPERSON RENSHAW: I thought perhaps the applicant would also --

CHAIRPERSON REID: Voluntarily?

VICE CHAIRPERSON RENSHAW: -- voluntarily agree to check into whether that can be done.

CHAIRPERSON REID: I don't think that, I think we should be careful here that we utilize the authority that we have prudently. We don't want to actually tie people's hands or strong arm them in the exercise of our duties. Nonetheless, I think that I would like to amend Ms. Hinton's vote that we proceed for one year without the proviso of the escrow account, with or without that, given all of the other conditions that we discussed here today.

MS. PRUITT: Excuse me, Madame Chair, are you amending the current motion or asking to take another vote on it.

CHAIRPERSON REID: Amending the current motion.

MS. PRUITT: Well, you've voted on that so this would have to be a new motion to actually, I guess, revoke the one that you've just approved.

CHAIRPERSON REID: Reconsideration, I'm sorry, we approved it for the one year and what the problem is with the conditions.

MS. PRUITT: Before issuing the order, they're not conditions.

CHAIRPERSON REID: Right.

MS. PRUITT: They are not conditions.

CHAIRPERSON REID: Well, I mean, I'm calling it a condition but if you have a stipulation.

MS. PRUITT: Exactly. Prior to issuing the order they would have to be in is what my understanding.

COMMISSIONER PARSONS: Possibly, Madame Chairman, what you're seeking is a response from CVS before we vote.

CHAIRPERSON REID: A response, that would be fine but that is not something --

COMMISSIONER PARSONS: I think that's probably best that we give them time to respond to what we obviously want and see what happens and vote on this at the next monthly meeting.

CHAIRPERSON REID: If they don't respond favorably as far as the escrow account, then --

COMMISSIONER PARSONS: Then we'll take that up at that point. That's what's missing here.

CHAIRPERSON REID: So we want to vacate the vote.

COMMISSIONER PARSONS: The letters that you've asked for and all these things and I think we acted prematurely.

CHAIRPERSON REID: Okay, then the motion would be to vacate the vote?

COMMISSIONER PARSONS: Yes. I so move because --

CHAIRPERSON REID: I second it. All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: No opposition, okay. So what we'll do is await the letter from CVS and we will take this up at our next, well, let me --

MS. PRUITT: I was going to suggest, Madame Chair, our next meeting is, of course, next week, unfortunately that's not a lot of time but we do have a meeting at the end of July to sort of catch up. We do catch ups. Or you can do a special public meeting. I think we may have, I'm not sure of everybody's availability.

CHAIRPERSON REID: Let's just do it at the last clean up meeting in July at which time we will have gotten a response from CVS and then we can, our vote can be done more intelligently based upon what, in fact, how we assess the response from CVS in regard to the escrow.

MS. SANSONE: Madame Chair, there is a problem with timing in that the order will be expiring on July 16th.

MS. PRUITT: In the past, it's, you know, as long as they have filed for, you know, a renewal of,

for relief, it has been basically a practice that the Zoning Administrator doesn't fine them as long as they're in the system of trying to get the relief in so it would be two week period, more like a month but if it were to be approved, or a month before an order would be issued.

CHAIRPERSON REID: During which time they would not be in --

MS. PRUITT: In the past, the Zoning Administrator has not taken action when it's been in the Board's jurisdiction.

VICE CHAIRPERSON RENSHAW: Madame Chair, I would like to ask a question. Since the application was made by the First F.S. K Limited Partnership for the special exception, I would like to know is there any requirement for First F.S. K to appear before the Board and present to this application in addition to CVS.

CHAIRPERSON REID: Isn't there an authorization letter to authorize the law firm of Holland & Knight.

VICE CHAIRPERSON RENSHAW: It is just to check for the record, Madame Chair.

MS. PRUITT: Madame Chair --

CHAIRPERSON REID: I'm sorry, Ms. Pruitt?

MS. PRUITT: Madame Chair, I'm, I can't remember right off the top of my head where it is in the

zoning regs but anyone is allowed to represent an applicant before the Board. They don't have to be an attorney, they don't, usually that's what we have but anyone can, with authorization from the owner of the property.

CHAIRPERSON REID: Well, that's what I'm looking for the owner authorization letter.

MS. BROWN: Madame Chair, if I may, the application was signed by the owner.

MEMBER HINTON: What's the relationship between the First F.S. K Limited Partnership and CVS?

MS. BROWN: CVS has a lease with the ownership for the parking lot and the CVS store.

MEMBER HINTON: What's the timeframe of the lease?

MS. BROWN: I don't know the timeframe of the lease.

MR. MYERS: I do not know the definite date. I can find out.

VICE CHAIRPERSON RENSHAW: I think we should have a copy of the lease in the file.

CHAIRPERSON REID: I don't think that we need to have a copy of the lease. Ms. Sansone? I don't want to get more technical and more bogged down than what we need to. I think we need to proceed in such a way

that we are able to provide the community with some assurance that the negligent manner in which the property has been maintained will not continue and beyond that, I don't think it's really necessary.

MS. SANSONE: Madame Chair, since the applicant's going to be submitting some materials, maybe they could simply put in a letter cleaning up the authorization so that the file will be complete.

CHAIRPERSON REID: And then we'll take this up at what date is that?

MS. PRUITT: July 31st.

CHAIRPERSON REID: July 31st.

MS. PRUITT: In the morning.

MEMBER HINTON: Could we also hold the record open in case the ANC wants to make any comment regarding the escrow account, establishing it or the way that it's set up since it's our intention that they would be a party to that.

CHAIRPERSON REID: Okay and also the establishment of the community liaison, if that could be initiated, that we could have some kind of timeframe as to when the regularly scheduled meetings will be set up, already set out, I would appreciate having that come into the record, too, since we're not going to make the decision today. Did we ask for the maintenance

contracts? Maintenance contracts, the parking lot, for the cleanliness of the, maintenance of the parking lot as well as the landscaping contract and also who removed the vehicles, is that the maintenance, is that within the maintenance contract?

VICE CHAIRPERSON RENSHAW: That would be.

MR. MYERS: Madame Chair, who moved the vehicles as far as the abandoned vehicles, is that what you're asking?

CHAIRPERSON REID: Who does that?

MR. MYERS: That was done by special contract.

CHAIRPERSON REID: That's a different contract than the maintenance contract?

MR. MYERS: That is done, we do not maintain a contract for that specific thing. If it happens, we will go out and get someone to remove it.

CHAIRPERSON REID: Well, you can. I mean, they have companies that you can contract with that tow the cars routinely if need be.

MR. MYERS: Well, that's probably true. I don't know for sure about that.

CHAIRPERSON REID: Well, that's what we're asking for.

MR. MYERS: Okay.

MS. BROWN: Madame Chair, if I may, the removal of abandoned cars is an exceptional situation. If there's a continual maintenance contract and landscaping contract, that would trigger any need for an abandoned car or vehicle.

CHAIRPERSON REID: When you say exceptional, wait a minute, if I'm not mistaken, I think that those cars sat there for several months, didn't they?

MS. BROWN: It's if you're not maintaining a lot that you will have an accumulation of abandoned cars but if you have a routine maintenance contract in place that --

CHAIRPERSON REID: All right. In the maintenance contract, Ms. Brown, could it be reflected that whoever has the maintenance contract would take responsibility to make sure that, you know, that they have the cars removed if they are abandoned on the lot and that they will take that responsibility to call whoever or whatever, you don't have to have a separate contract then with a towing company but as long as it's reflected in the contract you have with the maintenance, that's part of the responsibility for maintenance. All abandoned cars that have been left there since 1998, all right, and then the schedule at the regular meetings then will be established for the liaison, community liaison

and the letter from the CEO of CVS, the escrow.

VICE CHAIRPERSON RENSHAW: The escrow account, copies of all maintenance agreements, copy of all the manager's names from Mr. Myers and above so that we know whose accountable and that's names and titles and addresses and e-mails and phone numbers, and a letter from the CEO reaffirming that the maintenance of all lots in, as Ms. Hinton requested not required, but asked all of the CVS lots in the District of Columbia but specifically the Pallisades. And also we had requested signage and the applicant's attorney had agreed to that signage on the interior of the lot.

CHAIRPERSON REID: All this is not coming in before.

VICE CHAIRPERSON RENSHAW: No, no, no but I read initially would come in in time.

CHAIRPERSON REID: Now the escrow account would be maintained by who? Who was maintaining the escrow account?

MEMBER HINTON: I think they were usually set up with a bank, with a financial institution with the two parties. The money would be deposited by the applicant and the money would be available to the ANC under certain conditions.

CHAIRPERSON REID: And those conditions

would be established by the ANC?

MEMBER HINTON: Well, that's why you have to have it in writing but the conditions as far as I'm concerned would be if the lot, parking lot is not maintained on a regular basis as written in the maintenance contract or if the landscaping is not maintained on a regular basis as required by the landscape contract that are going to be put into our record, then the ANC would have the opportunity to access that money to have that maintenance performed.

CHAIRPERSON REID: And how long is the escrow account to be in operation?

MEMBER HINTON: The entire year that the --

CHAIRPERSON REID: For that one year.

MEMBER HINTON: Yes.

CHAIRPERSON REID: And we have to determine whether or not the ANC has the capacity to act --

MEMBER HINTON: Whether they have capacity and wish to and I would think if they don't wish to, we would offer the Pallisades Citizens Association an opportunity to do this.

CHAIRPERSON REID: Well, what about the liaison, the community liaison that's going to be established. That is their function.

MEMBER HINTON: I would think that would be

a function of one of those two bodies.

CHAIRPERSON REID: But yet if they can't. I was just suggesting that they are going to create a liaison committee that would consist of representatives from CVS, Pallisades, the ANC, that that might be possible. But the escrow account within itself, if it can be, then fine. If it can't be, then we need to know that, too. That's why we can't make a decision today. Are there any other further discussion, questions? If not, then that would then conclude this particular case. And I think everyone knows or understands that it will be decided on the 31st of July.

MS. BROWN: Thank you, Madame Chair.

CHAIRPERSON REID: Thank you.

MR. MYERS: Thank you. Thank you very much.

CHAIRPERSON REID: All right. Next case, please.

MS. BAILEY: Application No. 16720 of Gyden Camp, Jr., pursuant to 11 DCMR 3103.2 for a variance from the off-street parking requirements under Subsection 2101.1 to permit a church with 70 seats in a C-M-2 District at premises 314-316 Randolph Place, N.E., Square 3571, Lot 18. Please raise your right hand. Do you swear that the information that you will be giving today will be the truth. Please say I do.

PARTICIPANTS: I do.

MS. BAILEY: Thank you. Madame Chair, all of the requirements for this case have been met. There is a report from the Office of Planning and a waiver is needed to accept that report into the file. The case is now ready to go forward.

CHAIRPERSON REID: Okay. Thank you very much. Mr. Nunley?

MR. NUNLEY: Yes, good morning, Madame Chairperson. We also met with the ANC on the 19th of this month and we found by checking the record this morning that that letter has not come in yet either. We got a unanimous decision from them. They informed us that they would get the letter down within the seven day period or ask for a waiver and apparently neither of those things have taken place at this point.

MS. PRUITT: Madame Chair, I understand we have not received that information, just check with staff.

CHAIRPERSON REID: All right, the information from the ANC and what else, just the ANC?

MR. NUNLEY: Just the ANC at this point.

CHAIRPERSON REID: All right. Go ahead and proceed.

MR. NUNLEY: My name is Edgar Nunley and I've been commissioned to assist the pastor, Gyden Camp, and

the Glorious Church in seeking a variance from the parking requirements to establish a church at the subject premises, 314-316 Randolph Place, N.E. This application is pursuant to section 3103.2 of the Zoning regulations for a variance from the off-street parking requirements, section 2101 to permit the establishment of this church for 70 persons in the C-M-2 zone at the subject premises 314-316 Randolph Place.

The applicant proposes to establish the church in the C-M-2 zone. It is a matter of right use in that zone. Establishment of the church is contingent upon the parking requirements. The building was built in 1938 and occupancy records indicate that at least between 1950 and 1972, the subject property has been used for a variety of heavy commercial uses consistent with the intent of the C-M-2 zone. A church is a permitted use in the C-M-2 zone but although there is no occupancy record, the building has, in fact, been used as a church from 1980 to the present.

In support of that contention, we received a letter from the former pastor of the Christian Men and Women United Evangelistic Center which occupied the church in 1980 and I'd like to submit that letter into evidence. We are also in receipt of a letter from the Department of Finance and Revenue dated October 8th of

1981 granting exemption from DC real estate taxes to the Christian Men and Women United Evangelistic Center.

Now, in the letter, Pastor Whittacker indicated that when she took over the church in 1980, she made an attempt to obtain a Certificate of Occupancy, was informed that the certificate was on file in the Department of Consumer and Regulatory Affairs and directed to come and pick it up. She further says she was reminded a second time that the document could be picked up and she says "in passing time I completely forgot about it since I was so involved in other aspects of this endeavor such amending the Articles of Incorporation, applying for exemption from real estate taxes, etc. I pastored the church for approximately 20 years at this location and withdrew pastorship in May, 2000, due to illness. As of April 25, 2000, I was issued my last Certificate of Good Standing.

She's unable to be here today. She's physically unable to come and that's why she's written that letter. But, Madame Chairperson, I have been in this forum many times but only once on this side of the counter so I would like to submit these and I'm just not sure how to do that.

CHAIRPERSON REID: You can give them to staff.

MR. NUNLEY: I refer to submit that off-street parking requirements were interpolated to use the term of the Zoning Act, into the Zoning Act of 1942. The building was built in 1938. A parking accommodation was not designed because there was no requirement. This results in the extraordinary condition that will not allow the applicant to provide the required number of spaces. The building is set back 15 feet from the front property line and the land slopes up approximately five feet to the entrance to the building, so front yard parking would not be possible.

The side yard is only eight feet six inches wide. The required width for a parking space is nine feet so we couldn't use the side yard even for one parking space. Neither is the side yard large enough to access the rear yard. Further, the topography of the site, the site slopes northward and even if the driveway were large enough to access that rear, it would be physically impossible to get a car from the Randolph Place back to the rear. There is no alley access to the rear so it's physically impossible because of the construction of the site, construction at the site to provide the parking.

Now, we've brought some pictures and in fact, they should be part of the package. The pictures that were submitted with the application will indicate both

the slope at the front of the building and the picture that shows the side view through the side yard shows how the land slopes up where the steps go up to the deck at the rear. And, as I said, there is no alley access so it's physically impossible to provide access to the rear. The narrowness of the side yard, the topography of the site don't allow it.

Now, the small church, we expect that this small church will have, not have an adverse affect on the community. The Glorious Church currently has a membership of approximately 35 persons with a building that will accommodate up to 70 in the sanctuary. Again, the church was established initially in 1980 and has been used as such from that time forward. The sanctuary is substantially the same as it was when the church was established in 1980 and with the exception of possibly bringing up to current building code standards, no major renovation is contemplated. So that's why we're asking for 70 seats in the church.

During the period that the church was in operation from 1980 forward, there's been no indication of any complaint, no indication of any problem that it may have caused to the surrounding community and that was reiterated in the meeting with the ANC on the 19th and that's another reason that we really want to have

that letter because they did show us great support and once we get that letter, I think that will bear out.

So, we feel the continued operation of the church will result in a less intensity of use than the heavy commercial businesses previously operated at the subject property and they're listed in the revised statement of use that I have submitted to you as well as the currently, as well as those uses currently in operation near the subject property. Commercial businesses in close proximity generally operate Monday through Friday, occasionally on Saturday and usually end their operation by 5 p.m. The business immediately to the east of the property is a lower level and set back from the property line a distance sufficient to provide front yard parking for customers and employees. And the church has gotten a letter granting them the use of that parking on Sundays and late in the evenings when their operation is, when their business is not in operation.

All right, I apologize. We gave a copy of that letter to the Office of Planning but they were unable to provide the original today. We can provide it at a later time if you feel the need.

CHAIRPERSON REID: What letter is that?

MR. NUNLEY: This is a letter from the adjacent property granting the church the use of their

parking facilities during the time of church services, the church operation. The adjacent business has space in front for at least four cars, possibly more, I haven't done an exact measurement on it. But I do have a picture of it. I'd like to submit it into evidence. In that picture, you should see that the building is set back from the church approximately four feet and it has entrance to the parking from the front. This is a C-M-2 zone and parking is allowed in the front yard in a C-M-2 zone.

The church congregation meets on Sunday 9 a.m. for Sunday school and prayer meeting at 11:00 for worship. There are occasional small gatherings during the week in the evening normally after 5:00. There'll be less traffic to and from the site than there is when the commercial businesses are in operation and the church operation will occur during periods when the on-street parking is readily available without spillover onto adjacent streets. Again, what we did, we went to the site on a number of occasions at different times on different days just to get a feel for what the parking situation looks like both during the day when the commercial operations are going on as well as in the evening when the commercial operations are closed and the church would potentially be having these occasional

evening meetings.

Now, I have a number of exhibits taken from a number of different perspectives dated different days and time stamped that show what the parking situation on Randolph Place looks like at various times during the day. And at the bottom of each of the pictures is the perspective from which the photograph was taken. We also have a series of pictures taken on Sunday, which is the primary time of operation of the church beginning at 7:50 in the morning before any church operations start, again at 9:00 when the Sunday school prayer meetings begin and again at 11:30 after the service, the main service is going on. And, again, these are also date and time stamped.

As you'll notice, during the weekdays when the commercial businesses are open and the primary commercial business, if you will, is the facility operated by the Department of, the DC Public Schools. That facility is located across Randolph Street on the south side and extends and encompasses the entire square south of the square where the church is located.

And in those pictures, you'll see how they kind of take over the entire neighborhood between the morning hours 8:15 until they close shop at around 5. You'll see from those, well, unfortunately I didn't have

any evening pictures but when, in the evening, the staff leaves, staff cars leave and the DC Public School vehicles are parked on two parking lots off-street and overflow is on the street. You'll see that in the pictures dated 6-17-01 which was a Sunday. There are no vehicles there from employees but you'll notice that DC Public School vehicles are parked on the street during the weekend. But you'll also notice that there is plenty of on-street parking available even with those vehicles being parked there.

Now, I have one other picture to give and this is a picture of Randolph Place annotated to show the vehicles that were driven by the worshipers at the Glorious Church.

We believe we've met the burden of proof for variance, we've met the test. The pictures show that the exception on narrowness, shallowness, the shape of the specific piece of property will not allow them to physically provide the parking required. There is enough off-street parking, on-street parking, I'm sorry, to accommodate the limited needs of this church and thirdly, we do have an agreement to provide parking off of the street and we will get that letter to you. So we request that the variance be granted.

CHAIRPERSON REID: You know, Mr. Nunley,

typically I, in a case where there's no opposition, always ask that anyone here in opposition to the case and seeing, yes, I understand, thank you very much. I just wanted to find out if there was anyone in opposition to the case and there were no letters of opposition in the file and typically in cases like that, we ask that you expedite, but it's kind of late.

MR. NUNLEY: I wanted to make sure you got to see those good pictures. I'm sorry.

CHAIRPERSON REID: But I think that we've gotten the gist of it and if you want to basically stand on this submission, which you've read, I'll let you submit it, then you can, at this point, give us the, well, you've already given us the whole case so these are your witnesses from the church if they can say a few words or just give us some highlights and answer questions from the Board, then you can probably, we can probably dispose of this fairly quickly.

MR. NUNLEY: That's fine.

MR. CAMP: Madame Chair, my name is Gyden Camp, Jr., Pastor of the Glorious Church and first of all I want to thank the Board for just hearing our request. And our church isn't meeting the people's needs where they are and we want to bring up the community, not bring people into the community but we want to survey the

community, support the community and lift up the community in any way that we can find. Because we found out that we can do more. We are in the process now of putting computers in and getting things straightened up so we can meet the community needs and we want to go from church to church and talk to each pastor so we can coordinate an effort to bring the community up if it's approved by the Board.

CHAIRPERSON REID: Thank you very much.

MR. ELLIS: Madame Chairman, I'm the Church Administrator, Deacon Ellis, and in support of my pastor --

CHAIRPERSON REID: Give your address, please, Deacon Ellis. Give your address, please.

MR. ELLIS: 2303 Woodvale Lane, Rectorville, Maryland. And I'm in support of my pastor. His vision of supporting the community, we have brought James Barry and ANC and Ms. Bertha Johnson by to visit our church who was real impressed with what we are attempting to set up to support the community as my pastor mentioned with computers at the, you know, bible studies with math games to educate the community.

Also to develop AA classes and NA classes for what support the community may have to send people to speak with the churches to jointly do clean up programs

for the neighborhood and clothing programs but we wanted to do things in decency and order and we wanted to be legit. We didn't want to operate outside of what we should be properly licensed for. So all this has been on hold until went through the steps of what was necessary for us. And I do thank Mr. Nunley for giving us good guidance and Ms. Curtis who has been real supportive of us.

CHAIRPERSON REID: Thank you very much.

MS. CURTIS: Madame Chairman, my name is Shirley Curtis. I live at 4903 Forest Creek Court in Buoy, Maryland. I'm the former Deputy Administrator of the DC Fire Department, retired ten years ago. I helped Paster Camp in the acquisition of this building and has visited the building myself in the past and has recognized they do have a three foot fire door in the building. I'm very supportive of this project is what I'd like to say to you and the committee.

CHAIRPERSON REID: Thank you very much. All right. Any questions, Board Members? All right, Office of Planning reports, government reports?

MR. MOORE: Good afternoon, my name is John Moore, Madame Chair. I'm disappointed you didn't ask me to stand on the record.

CHAIRPERSON REID: Well, you know the

routine by now, Mr. Moore.

MR. MOORE: I would like to say and further clarifying the pictures taken by Mr. Nunley that the adjacent parking lot on the west will accommodate at least ten vehicles. I've been by there on three occasions, weekend and evenings, to make sure that the spaces on the public space were available for church members when they are in session. Since their hours are different from the normal business, that's not a problem and I did talk to Public Works --

CHAIRPERSON REID: I'm sorry, the only problem is what?

MR. MOORE: I saw no problem.

CHAIRPERSON REID: No problem, okay.

MR. MOORE: With them using public space for parking. In addition to the consent letter that they have and I can provide you with a copy of that this afternoon, I do have it. The Department of Public Works had no problem with it recognizing that there's no public access to the back of the building because there's no alley back there. And the way to prop this up, it's almost a financial impossibility, so with that comment being made, I will stand on the record as in the report.

CHAIRPERSON REID: Thank you, Mr. Moore. Okay, ANC, your ANC is not here nor do we have a letter,

however, the applicant has stated that he has talked to the ANC and that they are in support of this application. Typically, we have to have a letter from the ANC that would corroborate that but the contention, nonetheless, when we don't get anything from the ANC, then typically we assume that the ANC has no problem with this application. So persons in support, would you like to come up and give us your testimony, sir?

VICE CHAIRPERSON RENSHAW: We should also note for the record that the Office of Planning report did state in regard to ANC-5C that the chairperson was provided a tour of the project site and supported the application.

CHAIRPERSON REID: Right. And the applicant also told us that the ANC did come to tour the site.

MR. FELTON: Good morning. My name is Duery Felton, Jr. I reside at 306 Randolph Place, N.E., Washington, D.C. 20002. I am a neighbor of the Glorious Church and I want to state categorically that they are good neighbors. They are fresh air in the desert. Some of the things they do and I admire is that they keep their lawns manicured. They have installed a trash can to accommodate people who have a problem using trash cans. They seem to be very active in the community.

On Sundays, they sometimes park in front of my house, I do not mind because they are only there for a few hours and I know if I were to put what they were doing on the scale, it's worthwhile. It's worthwhile. I have no problems with Glorious Church being in my community.

CHAIRPERSON REID: Thank you very much, sir. Board Members, any questions? All right, closing remarks by the applicant, Mr. Nunley?

MR. NUNLEY: No, Madame Chairperson.

CHAIRPERSON REID: Would you like to ask for a bench decision?

MR. NUNLEY: Oh, yes, I'm sorry. I thought I had done that. Could we have a bench decision, please.

CHAIRPERSON REID: Okay, Board Members?

VICE CHAIRPERSON RENSHAW: All right, Madame Chair, I would move that we approve application no. 16720 to grant relief from the off-street parking provision. I believe that the applicant has met the burden of proof and it is certainly supported in the report of the Office of Planning.

CHAIRPERSON REID: Second?

MEMBER GRIFFIS: Second.

CHAIRPERSON REID: Any further discussion? All right, all in favor?

(Chorus of ayes.)

CHAIRPERSON REID: All opposed?

MEMBER HINTON: Madame Chair, can we hold the record open to receive the submittals that were talked about, the letter from the adjacent property owner that acknowledges that the parking can be used.

CHAIRPERSON REID: We can ask that these be submitted before an order is released and Mr. Nunley, you know when you can get that to us?

MR. NUNLEY: I'll fax it to you within the hour.

VICE CHAIRPERSON RENSHAW: And we would like to have a letter from the ANC-5C since the ANC voted unanimously to support the variance request.

MR. NUNLEY: I will contact them.

VICE CHAIRPERSON RENSHAW: All right, thank you.

CHAIRPERSON REID: I don't want to hold it up for that letter in case they're a little sluggish. Sir, you have to speak into the mic.

MR. ELLIS: James Barry assured me he would fax a letter over. I have been trying to contact him for three days. His voice mail has been filled up and the voice mail at the ANC has been filled up.

CHAIRPERSON REID: Okay.

VICE CHAIRPERSON RENSHAW: And Mr. Barry is very good about turnarounds on letters.

MS. BAILEY: Staff will record the vote as 5 to 0 to approve the application. Motion made by Ms. Renshaw, seconded by Mr. Griffis. Ms. Reid, Ms. Hinton and Mr. Parsons in agreement and there are two submissions that consist of letters to come into the file prior to the issuance of the order.

CHAIRPERSON REID: Thank you very much. I'd like to commend you on the effort that you are embarking upon in that community. I know that there is a lot of need for the type of work that you're about to do and I wish you good luck and if you can get those guys off the street over there, it would be help, I'm just joking about that. But it would be great if you could. All right, thank you very much.

Okay, that would then conclude this morning's session but before we adjourn for this morning --

(Whereupon, the foregoing matter went off the record at 12:36 p.m. and went back on the record at 12:37 p.m.)

CHAIRPERSON REID: And I guess I have to open the record to be able to take the vote on it. Are you

here for that case? You are, you're not. Okay, there has been a request for it to be continued and we're going to commence the afternoon session at about 1:10, 1:00, 1:10. Now, just one second. There is a request for continuation and the Board is probably going to continue it. I don't know if you wanted to wait.

PARTICIPANT: Well, I think I'll leave my testimony here then.

CHAIRPERSON REID: Is there a date set?

PARTICIPANT: Because I doubt if I'll be able to, I don't know when you're planning to --

MS. BAILEY: Ms. Reid, the gentleman needs to come to the microphone and be on the record.

CHAIRPERSON REID: Mr. Hart is the clerk, no, no, he's not the clerk, Mr. Hart is a member of the staff who is one of the assistants for the Zoning Specialist. Get the title straight. We are off the record.

(Whereupon, the foregoing matter went off the record at 12:39 p.m. and went back on the record at 1:53 p.m.)

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

(1:53 p.m.)

CHAIRPERSON REID: Good afternoon, ladies and gentlemen. This part now delay this afternoon. This is the June 26th public hearing of the Board of Zoning Adjustment, District of Columbia. My name is Sheila Cross Reid, Chairperson. Joining me today is Anne Renshaw, Vice Chair, which she will be joining us very shortly and Geoffrey Griffis. Susan Hinton's representing the National Capitol Planning Commission and representing the Zoning Commission is Carol Mitten. Copies of the today's hearing agenda are available to you. They are located to my left near the door.

All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located at each end of the table in front of us. When coming forward to speak to the Board, please

give both cards to the reporter who is sitting to my right.

The order of procedure for special exception variances is one, statement of the applicant; two, government reports including Office of Planning, Department of Public Works, etc.; four, reports of the advisory neighborhood commission, I'm sorry; three, report of the advisory neighborhood commission; four, parties who are present in support; five, parties who are present in opposition; six, closing remarks by the applicant. Cross examination of the witnesses is permitted by the applicant or parties.

The ANC within which the property is located is automatically a party in the case. The record will be closed at the conclusion of each case except for the materials specifically requested by the Board and the staff will specify at the end of the hearing exactly what is expected.

The Sunshine Act requires that the public hearing of each case will be held in the open for the public. The Board may, consistent with its rules of procedure and the Sunshine Act, enter Executive Session during or after the public hearing on a case for purposes of reviewing the record or deliberating on a case. The decision of the Board in these contested cases must be based exclusively on the public record. To avoid

appearance to the contrary, the Board requests that persons present not engage the members of the Board in conversation. Please shut off all beepers and cellphones at this time so as not to disrupt these proceedings or put them on vibrator. The Board will make every effort to conclude the public hearing as near as possible at 6:00 p.m. If the applicants of a case are not completed at 6:00 p.m., the Board will assess whether it can complete the pending case or cases remaining on the agenda.

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

MS. BAILEY: Madame Chair, good afternoon. The staff does have a preliminary matter. It concerns application no. 16676 of the Washington Hebrew Congregation. There was a request from the applicant to have that case postponed.

CHAIRPERSON REID: Okay, Mr. Brown?

MR. BROWN: Madame Chairman, Members of the

Board, Patrick Brown from Greenstein, DeLorme & Luchs, Counsel for the applicant. I filed a written request for continuance noting September 25th or early October as a good date. Negotiations are ongoing in this matter. The newest development which actually in my letter I point out, I think, will help close the issues at least as it relates to site conditions.

An adverse possession claim was filed by the Lightfoot family immediately adjacent property. I think that puts some information on the record that it will help us in reviewing it. I will say that discussions had moved forward addressing some of the issues that were raised when we were here previously, the number of units, the elimination of English basement apartments, parking and so progress was made and recollect that the Office of Planning and the Parks Service were supportive of the application.

We've continued to work with them and more work needs to be done primarily generated by the fact that the land that will actually be involved in the site will drive the project, how many units, where they're situated, the location of parking. So I think as we move forward, things will take shape so that all the pieces will fall into place so that September, early October, at the Board's next opportunity, we can move forward.

Hopefully with all the parties issues addressed in a way that I think the Board would be pleased.

CHAIRPERSON REID: Thank you, Mr. Brown. Is there anyone else here who is involved with this case? Come forward please.

MR. D. BROWN: Madame Chairman --

CHAIRPERSON REID: Speak into the mic, please, sir. Your name and your address.

MR. D. BROWN: Madame Chair, my name is David Brown, from the law firm of Canuff and Brown at 1050 17th Street. I represent the Lightfoot family. Mr. Brown has correctly noted that we did file an adverse possession lawsuit and it was filed in Superior Court last Friday. It was filed to, in an effort to resolve a boundary dispute about what the proper boundary is for the property that is the subject of the application. That property was sold by the Lightfoot family back in 1941 to the predecessor entitled to the Washington Hebrew Congregation and there is an ongoing dispute about how much of the property is Lightfoot property and how much of the property is Washington Hebrew property. And that necessarily affects the configuration of the streets and the houses on the property.

Frankly, I thought the negotiations were over and that we had reached an impasse, such that we

had made our last and best offer with regard to settlement of this matter and they had made their last and best offer and when those were still apart, that's when we filed the lawsuit last week. It is somewhat news to me that there may still be some room for negotiation because we intend to go forward with the lawsuit.

So, we are neither, I guess my client has instructed me to say we are neither in favor or against the postponement. It's possible that some further negotiations might result in an offer that my clients can't refuse, I don't know, but we intend to go forward with our lawsuit.

CHAIRPERSON REID: The issue of the adverse possession, when will that be resolved to determine actually what percentage of ownership the Lightfoot family would retain or would obtain.

MR. D. BROWN: That's, the issue is what is going to be the boundary line of the Lightfoot homestead. Our position is that includes about three thousand more square feet than they say it includes and that has a material implication on the plans.

CHAIRPERSON REID: No, I understand that. I was asking you when would that lawsuit be resolved.

MR. D. BROWN: Oh, the initial scheduling conference with Judge Reed Winston in Superior Court is

scheduled for September 21st but that's only the beginning step. At that point, the Judge would set forth a schedule for completion of discovery, pretrial conference, settlement mediation and actual trial of the matter. I would anticipate that we're many, many months away from a final resolution in court of the matter unless the matter is resolved through mediation.

CHAIRPERSON REID: Mr. Brown, were you saying, do I understand you to say that you are desirous of finding out how that lawsuit is going to be resolved or what the result of the lawsuit would be before actually having the case heard?

MR. BROWN: The resolution of the claim, as Mr. Brown has indicated, will bear on what the site is, its boundaries, the configuration. I guess I'm a little more optimistic than he is that the matter will go ultimately to the full route in litigation. And I think, I can't speak for the Washington Hebrew Congregation, but I think Mr. Poretsky's desire is to move forward with the development project in a manner that meets the Lightfoot's needs as well as his. And I think that can be accomplished prior to the end of litigation. I may be wrong.

CHAIRPERSON REID: Were you suggesting a date?

MR. BROWN: September 25th, I thought was a good day. It's an available date, the last I heard.

MS. PRUITT: The first available date would be October 2nd in the afternoon. It's the following week.

CHAIRPERSON REID: If we were to continue it on October 2nd, the date that would be amenable to your clients and yourself?

MR. D. BROWN: Yes, ma'am.

CHAIRPERSON REID: Board Members, any discussion, questions?

MEMBER HINTON: I do have a question, Madame Chair, and that is how can this Board proceed with a proposal when the property boundaries haven't been established. I'm not sure what it is exactly that would be in front of us on September 25th or even in October if the property boundary is still in dispute.

CHAIRPERSON REID: I thought that they were negotiating this issue and that they could resolve it prior to the lawsuit being finalized, they would just perhaps settle it. That's what my understanding was. I don't know if Mr. Brown may have to restate it a little bit better for us.

MEMBER HINTON: Mr. Brown for the Lightfoot family has said that the lawsuit is going ahead and to his knowledge, they've both put their best offers on the

table and they're not together. My only hesitation is that, as you know, the Board's schedules are very full and I would hate to have time in October reserved for this case if there's no possible way that this case will actually be in front of the Board because there are other cases that could take up that space.

CHAIRPERSON REID: Well, let us hear further from Mr. Patrick Brown.

MEMBER HINTON: If you could just answer the question, if it is not resolved at that point, what action could this Board take if the property disputes are still in controversy?

MR. BROWN: It would be very difficult to go forward if the adverse possession matter hadn't been resolved. Again, my view is that, particularly if the lawsuit provides information that clarifies facts and positions, I'm, again, not speaking for Washington Hebrew Congregation, but I think the information available will make it possible to resolve the matter as a prerequisite to moving forward and the Board ultimately, I guess, we could accept their claim for discussion purposes and go forward on a plan that way. I don't see that happening. That's the best offer I can give with my crystal ball right now.

CHAIRPERSON REID: Is what? What are you

saying? Do you want to have that date of October 2nd or not.

MR. BROWN: I very much would like to have that date.

CHAIRPERSON REID: But taking into account what Ms. Hinton just said, there's no probability of having you reach some resolution by that time and that date would just be for naught.

MR. BROWN: I understand. Again, my view is that the matter will be in a position, as it relates to the adverse possession claim, such that we'd be able to proceed on the Board of Zoning Adjustment matter. I can't guarantee that but that's my view.

CHAIRPERSON REID: Okay, Mr. Brown with the Lightfoot family?

MR. D. BROWN: Well, as I said, the Lightfoot family has certain expectations with regard to this lawsuit that they hope to realize. If those expectations can be realized in a settlement rather than complete litigation, that's fine. My goal is to preserve my client's personal interests in this matter and ensure that from the prospective of impact on them, that this development is not significantly adverse.

However, this Board has other community spokespersons who are concerned about this particular

development from a broader perspective of the community than the adjacent landowner's interest that I'm trying to represent. So I'm not speaking to that at all.

CHAIRPERSON REID: All right. I asked if there was anyone else, ANC representative or any other parties who are here and would like to speak on this issue please come forward.

MS. HINTON: I have one other question, Madame Chair. We have letters in the file that refer to revised proposals or amended proposals and I'm wondering if the applicant could make a statement as to when a complete set of drawings could be put into our record because, as you know, that needs to be at least 14 days before the hearing and, in this case where there's so much community interest, it should be substantially before that so that the actual proposal has already been presented to the ANC and any other community interest group that might want to hear about it. Is your proposal finalized at this point?

MR. BROWN: No, it's not because, again, the underlying adverse possession issue and what will be the exact boundaries of the site. When I wrote that letter, there was a proposal that I thought came to the middle ground where the parties would agree. Once we resolve the land issue, what we're talking about as far as the

site, all the other issues will flow from it as far as developing a plan and sharing it with the community as a basis of discussion.

I mean, I think there are a lot of issues that are perhaps off the table because they've already been resolved, some that were essentially 12 units now with no English basement and conceivably we could go lower than that. So I think you'll see the plan responding to circumstances as we kind of narrow the gap in issues. And then obviously file with the Board well in advance of the hearing and then also mindful that the ANC only meets once a month and there are other parties and the Office of Planning has been active in this case and supportive in the process as well as the project. And also the Parks Service who have adjacent property. So a lot of people need to and will be kept apprised as we move forward.

MEMBER HINTON: There is a reference also to exterior renderings of the buildings which doesn't seem to me to have anything to do with the property boundaries. Are those done at this point or are they still being worked on.

MR. BROWN: Well, one of the problems there was cost in finalizing those and also ultimately, depending on the number of units and the configuration

of those units, what the renderings look like. Again, as you recall when we were here previously, we showed not just renderings of individual units but of the row of townhouses and so that if we're talking about a row of three or four or five houses, these renderings are obviously different.

So, and that's expensive quite frankly to prepare those in a fashion that meets the Board and other people's needs. Until you come to a point where in your planning and discussions that you're able to really pull it together. But, as you recall what you saw were detailed renderings that allowed you to look at the perspective and respond and the Board offered some real guidance last time around on those issues.

CHAIRPERSON REID: Okay, all right, sir?

MR. JONES: My name is James H. Jones.

CHAIRPERSON REID: And please put the mic on and give your address as well, please.

MR. JONES: My name is James H. Jones. I am the ANC Chair of 4A and my address is 4600 Blagden Terrace, N.W. I am here in regard to the meetings that we've held. We have held three meetings, three public meetings regarding this issue and the dates are as follows. The most recent meeting being June 5th at 7 p.m., March 6th at 7 p.m. and February the 6th at 7 p.m.

At the most recent meeting, the applicant indicated that he had reduced the number of units to be built. However, he did not have drawings available at that time to present to the Commissioners.

CHAIRPERSON REID: Okay, sir. Now, we're not getting into the merits of the case today. All we want to know is at this point in time, whether or not you are supportive of or in agreement with or not of the motion for a continuance.

MR. JONES: I am not in agreement with the motion to continue.

CHAIRPERSON REID: Because?

MR. JONES: And the basis is that the applicant has had ample opportunity to present what they were going to present and they haven't. It was my opinion at the last hearing, they did not make their case and should not have been granted a continuance even at that time. The case should have been opposed until they would come back with ample plans. How many bites of the apple are they going to get is my question.

CHAIRPERSON REID: Okay, thank you very much. All right, you, sir?

MR. POWELL: Oh, yes, my name is Charles Powell. I'm the President of the Military Road School Alumni Association.

CHAIRPERSON REID: Are you a party in the case?

MR. POWELL: No, we are neighbors or concerned citizens in the Ward 4 area.

CHAIRPERSON REID: You did not request party status? I don't remember.

MR. POWELL: No, what I did was I placed a witness card with the Board. What I wanted to do today was --

CHAIRPERSON REID: Wait a second. I'm not sure that they're going to have party status, they can't speak on the motion, can they? Or can they, I'm not really sure. Okay, go ahead.

MR. POWELL: Yes, I'm not speaking to the motion. It's just that I have letters from several organizations, concerned organizations and parties and I would like to submit them to the Board today to include because they might not be able to come and make personal testimonies in the future.

CHAIRPERSON REID: Okay but the issue is in regard to continuance.

MR. POWELL: Yes, we have no, we take no side as to whether they are granted a continuance or not.

CHAIRPERSON REID: All right and thank you very much.

MR. POWELL: And is it okay to submit these?

CHAIRPERSON REID: You can submit them, Ms. Pruitt, over there. Thank you. Board Members, comments, questions in regard to the continuance.

VICE CHAIRPERSON RENSHAW: This is a tough call because I understand David Brown's, for the Lightfoot family's, case although he has said he has got to have this boundary line or this adverse possession lawsuit dealt with, he is not adverse to continuing today or you're not adverse to having a postponement, am I correct in that, Mr. Brown?

MR. D. BROWN: Let me put it this way. My clients are not supportive of the postponement. They would like to see this project go away. If opposing a postponement would make the project go away, I would be here pounding table in opposition to the postponement. And, therefore, I am not saying that we are supportive of the postponement. I guess the best I can say is that looking at the matter strictly from the point of view of my client's interests rather than the broader community interests, we are not going to be supportive or opposed to the proposal.

We are skeptical that anything is going to happen in the next couple of months to change the status quo regarding the boundary dispute. But I always, the

door is always open and if they come back with something that I need to present to my clients and that will materially change the situation, we certainly will.

CHAIRPERSON REID: Mr. Griffis?

MEMBER GRIFFIS: Just briefly, I'd be in support of the continuance based on the fact that we will be making decisions and looking at cases that may not be applicable because the boundary line and property lines have not been established.

CHAIRPERSON REID: You said that you would support it?

MEMBER GRIFFIS: I would indeed.

CHAIRPERSON REID: Ms. Mitten, do you have any comment?

COMMISSIONER MITTEN: I didn't sit on this case so I'm not going vote on it.

CHAIRPERSON REID: All right, Board Members, any further discussions. Ms. Hinton, did you or let's go ahead and take a vote?

MEMBER HINTON: I'm ready to take a vote.

VICE CHAIRPERSON RENSHAW: I'll make a motion. I'll make a motion that we do not accept a continuance and we go forward with the case as of today. I think that is, we've given the applicant ample time and I think now is the moment to press it. We need a

second?

MEMBER HINTON: I guess I will second that because my thinking is in line that this, actually I think at this point, this project really isn't ready to be submitted to the Board for any kind of decision and I'm basing that on the fact that the applicant isn't ready to go forward even though this project was submitted many months ago and I think at this point the best thing for the applicant to do would be to withdraw the project and when everything is worked out, to refile with the BZA. Since the applicant hasn't done that, I would think that the best thing that the BZA can do then is to deny the request for continuance.

CHAIRPERSON REID: We have two different things. One is a motion to deny the request for a continuance.

MEMBER HINTON: That's what I'm seconding.

CHAIRPERSON REID: And the other, and to go forth today. And the other, the second is to deny the request for continuance and to have the applicant withdraw to refile when he's ready to go forth, that's two different motions.

MS. HINTON: Well, no, Madame Chair, I think that if after we resolve the first issue, that is if the continuance is not granted, then we'll get to the second

question very quickly.

CHAIRPERSON REID: Well, the motion is for the applicant to go forward today.

MEMBER HINTON: That's correct.

CHAIRPERSON REID: But that the applicant is not prepared to go forward today.

MEMBER HINTON: Then the applicant would either have to withdraw their proposal or the Board would have to dismiss the application for failure of the applicant to proceed. But that can only happen after we decide whether the continuance would be granted or denied.

CHAIRPERSON REID: Okay. All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Opposed? Record the vote, please.

MS. BAILEY: Motion was made by Ms. Renshaw, seconded by Ms. Hinton. Ms. Reid and Mr. Griffis in support not to hear the case today.

MEMBER HINTON: No, to deny the continuance.

CHAIRPERSON REID: Okay, now the issue of whether or not we should hear the case today or are you saying to throw it over to Mr. Brown as to whether or not he wants to withdraw or what.

MEMBER HINTON: Well, the Board has decided

not to grant the continuance which means the case is on our agenda for this afternoon. So at this point, I would think that we would want to ask the applicant if he's prepared, if they're prepared to go forward with their case today.

MR. BROWN: Madame Chair, Members, I'm not prepared to go forward today. Can I, and I think we've gotten ourselves perhaps, or at least I've gotten myself slightly confused. Can I withdraw or dismiss the case where we're in the current posture where I think the applicant would like to go forward but would like to do so in a way that's responsive. It places a burden on, an unfair burden on the applicant. A middle ground that I think, excepting the points made by Ms. Hinton and Ms. Renshaw and others, is to essentially continue this case for some period of time without setting a date so that, again, there is an imposition on the Board's schedule without the, kind of, the form over substance of making my client file a new application and, quite frankly, pay another fee in this case might be a better course of action and allow the adverse possession matter to proceed to fruition.

CHAIRPERSON REID: I'm not sure if you have to pay another fee. That's what I have to check out with the staff.

MS. PRUITT: If the applicant withdraws the application, then once they refile it would be another fee, it would actually be a whole other case. They would get a new number and everything.

MS. HINTON: But the fee structure is one of the Board's rules and it can be waived and in this case, if a similar application came back within a reasonable amount of time, I'm sure the Board would be willing to waive the additional fee.

CHAIRPERSON REID: But we have to make that decision today because then we don't know what the Board will look like whenever they come back and I think in all fairness, if we're going to do this, if he is to withdraw, then given an opportunity to better prepare for presentation and at that point in time, when you do reapply, if the Board's amenable to it, we can waive the fee so that you can just bring it back once you're better prepared.

MEMBER HINTON: I would think that maybe a years timeframe, if it is refiled within a year and a complete application, then the Board will waive the fee.

MR. BROWN: Can I also request, in addition, should the Board proceed this way is that there be no interim bar from filing sooner so that both as to the fee being waived and also --

CHAIRPERSON REID: Excuse me one second. Why should we put a timeframe as to when he, he can come back whenever he wants to.

MEMBER HINTON: Well, I don't think that we want to continue this forever. I don't think that this case should come back 15 years from now and expect not to pay the fee again. That's the only thing.

CHAIRPERSON REID: I think we need to clarify and you said a year but we could say a year or less because we don't want to --

MEMBER HINTON: Sure. Anytime within a year a new application could be filed.

MR. BROWN: Absolutely, without any prohibition on coming back sooner.

CHAIRPERSON REID: Mr. David Brown, is that all right with you?

MR. D. BROWN: That's fine with us, Madame Chair.

CHAIRPERSON REID: Sir?

MR. JONES: Oh, that's perfect.

CHAIRPERSON REID: Okay, all right, thank you very much.

MS. PRUITT: Excuse me, just for a point of procedure. Mr. Brown, then you will be submitting a formal letter requesting withdrawal?

MR. BROWN: Absolutely, yes, absolutely.

CHAIRPERSON REID: Okay. That being the case then I'd vote that we waive the fees for the Washington Hebrew Congregation if, in fact, they resubmit their application within the next 365/366 days, within the next year, within or within a year or less.

MEMBER HINTON: I second the motion.

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

MS. BAILEY: Staff will record the vote as 4 to 0 to waive the fee within the next year for resubmission of the application. Motion made by Ms. Reid, seconded by Ms. Hinton. Ms. Renshaw and Mr. Griffis in agreement.

CHAIRPERSON REID: Okay, we'll move now to the first case of the afternoon, the first and only case?

MS. PRUITT: Correct, Madame Chair, then you go into a public meeting.

MEMBER HINTON: Could we just make that clear on the record that the applicant has withdrawn the case, is staff going to make that clear?

MS. PRUITT: Sure, the applicant has withdrawn the case. We will formally then send a letter and it will be, an order will be placed in the order book.

CHAIRPERSON REID: I'm sorry, I'm sorry.

Also, Mr. Parsons submitted a proxy in favor of a continuation. So the vote should be recorded to reflect a 4-1?

MS. PRUITT: A 4-1-0.

CHAIRPERSON REID: A 4-1-0?

MS. PRUITT: Yes. Because he was in opposition to the continuance, correct?

CHAIRPERSON REID: No, he's in favor.

MS. PRUITT: Okay, so it would be 5-0-1.

CHAIRPERSON REID: 5-0-1, okay.

VICE CHAIRPERSON RENSHAW: And would the record also reflect that ANC-4A is in agreement with this proposal as stated.

CHAIRPERSON REID: Well, we asked them and it's reflected, it is in the record.

VICE CHAIRPERSON RENSHAW: It is in there.

MS. PRUITT: The only thing that will come out of this will be minutes not, you know, there won't be an order or anything. Then the letter acknowledging the withdrawal only comes from the applicant and so --

MEMBER HINTON: But the vote would be a 4-0-1, not a 5-0-1.

CHAIRPERSON REID: Thank you, Mr. Brown. You have a question Ms. Hinton?

MS. HINTON: I think that Ms. Renshaw and

I were just concerned that we get Mr. Parsons vote counted in the correct category. And I think his vote was for a continuance. So that would be 4-1-0.

MS. PRUITT: 4-1-0, correct. That's how I have it.

MS. BAILEY: Ms. Reid, are you ready?

CHAIRPERSON REID: Yes, we're ready.

MS. BAILEY: Application No. 16618 of The Phillips Collection, pursuant to 11 DCMR 3103.2 and 3104.1 for variances under Subsections 402.4, 403.2, 400.7 and 2001.3 from the maximum allowable floor area ratio, from the maximum allowable lot occupancy, and from the enlargement of nonconforming structures; and for a special exception under Subsection 411.11 for a location of roof structures and for a special exception under Subsection 2516.1 for two or more principal structures on a single lot to permit improvements and the expansion of the Museum in the D/DC/R-5-B and DC/SP-1 Districts at premises 1600 21st Street, N.W. and 1618 21st Street, N.W. Square 66, Lots 74, 819 and 827.

All those wishing to testify would you please stand and raise your right hand. All those persons wishing to testify, please stand and raise your right hand. Do you swear that the information you will be giving today will be the truth. Please say I do. Thank

you, please be seated.

MR. CAIN: Ms. Reid, Members of the Board, my name is Michael Cain. I'm counsel for The Phillips Collection, the applicant in this case. The first matter I'd like to bring to your attention is a housekeeping matter. This case originally filed with plural applicants. Mr. and Mrs. Janitazio have since sold the property at 1618 21st Street to the Museum and we would ask that they be deleted as parties. We have now just one applicant, The Phillips Collection.

The second item that I would like to bring to your attention is that as a result of a lot of hard work by a lot of people, we have modified our proposal and technically, before talking about the substance of it, that has resulted in the removal of the need for one variance, the removal of the need for one special exception and a substantial reduction in the magnitude of another variance so that specifically we will no longer need to ask the Board to consider the special exception for restructure setback.

We will no longer need the Board to consider a request for a lot occupancy variance. The recomputed design leaves us with a FAR variance of approximately 817 square feet instead of almost 6800 square feet but we do still ask that you consider the variance in case

we are somehow stumbling on a nonconforming structure to allow us to make these changes without violating that regulation. And we also, although we believe the carriage house will constitute an accessory structure as a matter of right, we nevertheless, would like you to approve it as a special exception to remove any doubt from the Zoning Administrator's mind. I'm submitting a summary for your record of what these specific changes are.

CHAIRPERSON REID: Okay, staff, did you make note of the request for the amended variances and that will then be, do we have to vote on, we have to vote on it.

MS. PRUITT: No, they're just amending the application. It's actually been revised.

CHAIRPERSON REID: To remove some of the requests for the variances.

MS. PRUITT: Actually, I did make note because the only new information I had today was that the application was going to be modified. The applicant had sold, the co-applicant has sold it.

CHAIRPERSON REID: So they're asking for less relief than originally so that's okay.

MS. PRUITT: Correct.

MR. CAIN: So we'd be ask for a conforming

amendment to the application if that's required in order to proceed.

CHAIRPERSON REID: I have no problem with that unless the Board Members have any objections.

MR. CAIN: Principally what we've been able to do is to reach an agreement with our neighbors who had been admitted as parties in opposition to this application. You may recall we had originally been able to report an agreement with the Cosmos Club which is a neighbor to the west. We had also reported an agreement with the Indian Embassy and they have withdrawn their request for party status as a result.

We had a number of neighbors represented by Mr. Gel and Mr. Kulker who were still not happy with the plan as it existed and we have worked long and hard to try to come to agreement on the points that separated us. We believe we have done that and last week, or late the week before, we submitted a copy of the neighborhood cooperation agreement which was executed by The Phillips Collection, the remaining neighbor parties in opposition and Advisory Neighborhood Commission-2B that we think was an omnibus solution to many, many issues both operational and technical that related to the proposed expansion of the Museum. And we hope you will look favorably upon that.

The net result is that we have reduced the size of the building that we were asking you to approve substantially and principally by taking off a story and by moving the building closer to 21st Street, actually lopping off the rear portion of it, such that we are only now about 800 square feet over the allowable FAR.

Our architect, Mr. Spack, is here should you have any questions about the details of that change in configuration, bulk, height. But we believe and it's so represented that this revised scheme is acceptable to our neighbors and they have, in fact, authorized us to represent that to you. Before I go any further, you may care to hear from Mr. Micone on behalf of the ANC. I know Mr. Kulker --

CHAIRPERSON REID: Well, the ANC has a segment.

MR. CAIN: I know that Mr. Micone has some time pressure. I know Mr. Kulker has time pressure.

CHAIRPERSON REID: Okay, go ahead.

MR. CAIN: I wanted to be able to accommodate their time requirements if we could do that.

CHAIRPERSON REID: They want to be taken out of sequence? All right. Mr. Micone, I have no problem with that. Do you want to go ahead and give your report so you can leave early?

MR. MICONE: Thank you, Madame Chair, Members of the Board. First, I would like to thank the Board for granting --

CHAIRPERSON REID: Give your address, please.

MR. MICONE: Oh, I'm sorry. Vince Micone, Chair of the Dupont Circle Advisory Neighborhood Commission ANC-2B. My address is 2007 O Street, N.W., #105. Members of the Board, thank you so very much for granting a continuance to this case on two occasions which allowed the neighborhood to pursue negotiations with The Phillips Collection on the matter of the expansion into 1618 21st Street which the time you provided us allowed us to negotiate an agreement which mitigated our concerns and, in fact, we believe provides a long term solution to issues related to The Phillips Collection that will allow us as it's been said before, to start anew in our relationship with The Phillips Collection and the neighborhood, something that I think will benefit the entire Dupont Circle community. And we believe we have developed a model agreement which can be applied to other difficult cases in parts of the community.

So I first wish to thank you and thank Sheri Pruitt as well as the Office of Planning, particularly Steve Cochran who got us on the roll of going towards

mediation which was very helpful. We sat down in a room, around a table for somewhere between 35 and 40 hours. At some point we lost count. And we began first establishing the fact that we supported, as a neighborhood, The Phillips Collection and The Phillips Collection supported the concerns of the neighbors but we wished to have that area remain a residential neighborhood where there is a great institution called The Phillips Collection, where our housing stock wouldn't banish or disappear. Once we established those two principles as being principles that we could all agree to, we got to work.

We talked about the extent of the proposed building, we talked about the neighbors interests in making the building a bit smaller in terms of its overall scope, we talked about operational issues. What are the concerns that the neighbors have had for the past several years. How were we concerned that this expansion would impact those and what resolutions could we find.

We talked about even issues like the auditorium size. How big should the auditorium be. How does that compare to other auditoriums at similar art institutions around the city. How can we resolve some of these issues.

What we found when we sat around the table

together with attorneys present, with the principals from The Phillips Collection, from the neighbors who were parties and with the ANC. We found that when we really got to the nuts and bolts, there was more than we agreed to than disagreed on and we came up with a 57 point document which addresses our concerns and resolutions to those but does something different as well. It creates by agreement, a way that we will work together to address future concerns. We developed both a neighborhood committee that's been formalized and a liaison committee. The liaison committee represents the neighbors, ANC-2B, and The Phillips Collection where we will formally meet on a quarterly basis to address any issues of concern and establish ways to communicate with each other.

We have used this BZA process as a way to resolve future concerns which I think is a credit to the process when it can work. Also, one of the concerns that the neighborhood has consistently had with zoning matters is enforcement. We know that the Board is not responsible for enforcement and if something doesn't go right, ANC and neighbors are faced with the problem of how to get the city to enforce the zoning regulations. We worked very closely with The Phillips Collection and came up with what we consider a model where The Phillips Collection agreed that first of all, there are going to

be no problems that would be construed as violations of our agreement but if they did, they voluntarily agreed to a fine structure that we could go to a third party mediator to resolve issues of complaint. That is included as one of the counts of the proposal.

As you know, ANC-2B initially supported this after the zoning notification went out to the neighbors, the neighbors had some great concerns. We became neutral parties for a while and tried to negotiate. The Office of Planning worked very hard to negotiate some issues. We were unsuccessful. ANC-2B then subsequently voted to oppose the proposal but I was authorized to continue negotiations. Mediator, David Julian, who was recommended by the Board was the Mediator that all parties chose and we shortly, in March, began mediation, April and May, and were very thrilled to be able to bring to the ANC our agreement to resolve our issues --

CHAIRPERSON REID: What was that mediator's name?

MR. MICONE: David Julian. And we were able to have the unanimous support of ANC-2B and the neighbors. I think in my short time in civic involvement here in the District, one of my proudest moments was when I could sign on the dotted line that we had negotiated what could have been a very nasty case that would need to be decided

here instead of in our neighborhood where it should properly be decided. So we are very thrilled. We thank all of those folks who have helped this process along, the parties here, the neighbors, the attorneys. You are looking right now at a very happy neighborhood. And when we were last before you, we could not say that and we believe that with this agreement in place and with the Board's support, we will have a long term assurance that our neighborhood will remain a neighborhood with one of the best art museums in our country.

CHAIRPERSON REID: What's your name?

MR. MICONE: Vince Micone.

CHAIRPERSON REID: Mr. Micone, I cannot tell you how very pleased I am to hear you come today before this Board and to demonstrate to us what can be done in the city when you have two opposing forces and everyone has the interest of the city at heart and everyone pulls up their sleeves and tries to do the best they can to give and take, to talk, to negotiate until you get it done. Rarely have I seen that kind of commitment since I've been on this Board.

Nonetheless, I really commend the effort. I know it hasn't been easy but from the very beginning I remember there was quite a bit of hostility but it was guarded because everyone gave deference to the fact that

The Phillips Collection is a very renowned, very prominent institution and that it really does, it brings a certain amount of ambience to the community but at the same time the growth was problematic. Particularly what to do with the parking and the fact that people took their time and effort and demonstrated such concern for that community that they were willing to try to work it out and to come up with a peace that I think is really marvelous to the point that you even got to enforcement and how you were going to police the conditions and to impose fines and to make sure that you kept The Phillips Collection's feet to the fire and I daresay that this certainly would be a model that could be used for similar situations all over the city where you have the contention between the applicant and the neighborhood or the community. And again, I really applaud the effort, I think it's fabulous.

MR. MICONE: Well thank you, Madame Chair, and I wish to acknowledge the neighbors who were involved Dick Sussman, Solange MacArthur Muller, Tim Boggs who were representing the neighbors as we sat around the mediation table and their attorney's, Peter Kulker and Steve Gel and also Mike Cain, Rich Rutledge and Jay Gates, the Director for Phillips. I think the spirit that we all brought to the table and it was tense at times.

CHAIRPERSON REID: I'm sure.

MR. MICONE: It did not start out as a love fest but --

CHAIRPERSON REID: Slugged it out.

MR. MICONE: The folks who were around the table, I think, all agreed, as you pointed out, that fundamentally we support The Phillips and we support the neighborhood and if we can get to that point, then we certainly can move forward.

CHAIRPERSON REID: Absolutely. Thank you so much. Any other comments, Board Members.

COMMISSIONER MITTEN: If I may, I would just like to say that we encounter this kind of contentiousness often and I know that through the nature of your agreement, you've gone well beyond mitigating any adverse circumstances that would be created solely by these special exceptions and variances that you requested. And I don't want that to be lost on anyone because I really do think it takes both sides to come together in a sense of cooperation and I hope that the word will go out that it really is the way to have institutions and their neighbors live happily together. Thank you.

VICE CHAIRPERSON RENSHAW: I would just like to say ANC to ANC, well done. And I hope that your 57 point document is laminated and perhaps used as placemats for the BZA Board. We would like to certainly use it

in that regard but it is a horrendous effort for the community and the applicant to get together in this way. So many parties have, and I mean parties meaning neighbors and other organizations, having a point of view on this very delicate, very sensitive project.

We're so proud of The Phillips Gallery. We hope for a place to park when we go down there to view the treasures within the gallery. But I do feel that this is a monumental effort on your behalf. I commend all of you for the good work, the hard work that you put into reaching a deal and it's going to be a deal that works. Thanks.

MR. MICONE: Ms. Renshaw, there's something about valet parking in there, even the streets where it happens.

VICE CHAIRPERSON RENSHAW: I'll look back on that.

MR. KULKER: Madame Chair, if I may because I'm under some considerable time pressure.

CHAIRPERSON REID: Okay and give your name.

MR. KULKER: My name is Peter Kulker and I'm the attorney for Solange MacArthur Muller and I just wanted to add my note to what Mr. Micone said without repeating it but also to make a special mention of the fact that Mr. Julian really served as the catalyst to

bring the parties together in what was a contentious matter and kept us on track. At times we had our very different views.

As a result of the agreement that we've reached now, Ms. MacArthur Muller is withdrawing her opposition to the plans that The Phillips had submitted because they are submitting their revised plans, has already been put forward to you and these are reflected in both the neighborhood cooperation agreement signed June 13th and the revised drawings that are dated June 6th. With that in mind, Ms. MacArthur Muller withdraws her opposition to the requested variances and special exceptions as now outlined and we also withdraw our Motion to Dismiss which we had filed in the expectation we were going to have a contentious hearing which has now been obviated. So if I'm, unless there are any questions, if you'll excuse me because I have another court obligation that I am late for.

CHAIRPERSON REID: There's just one thing, I'd like to thank you for your participation and the fact that, by virtue of the fact that you even had to be retained, is indicative of the fact that it was a very serious problem but I'm sure that you participated in the negotiations to bring about the withdrawal of the opposition and I really appreciate that.

MR. KULKER: Well, thank you, Madame Chair. It was a difficult but ultimately successful resolution and my co-counsel is largely responsible for that success. Thank you.

MR. GEL: Madame Chair, I'm Steve Gel.

CHAIRPERSON REID: I remember you.

MR. GEL: As you know, I represented some of the parties, the Sussman's, the Shusheim's, the Missionaries of Africa and Carol Roetger as well as several other neighbors who were not granted party status but who had retained me to represent their interests. And I did want to say to the Board that those times when I came before you and asked for a continuance believing very strongly that there was a possibility of a deal, I really did believe it. I was convinced that given enough time, we would be able to put together a deal which would satisfy the parties. I do want to thank The Phillips. I think The Phillips deserves a great deal of credit for having revised its plans, pulling back on the size of the building and agreeing to some very significant operational limitations.

In addition, also agreeing to a, I think, a very workable program, a liaison committee which will decide issues, which can turn to arbitration if necessary, which has some fines attached for violations of the

agreement and which I think could serve as a model for other parties who are in dispute in this same way. So I do want to thank The Phillips for that. I want to thank Peter Kulker, he provided a very important assistance in this.

Of course, David Julian did an excellent job as mediator and the ANC as well played an important role in bringing this together. But most particularly I want to thank the neighborhood. The neighborhood stayed together on all of the issues that were important to it. It did not fracture, they supported each other and ultimately they made some very significant decisions in favor of an agreement, giving up something in favor of getting something which was even more significant for them. I think that what we are going to wind up with is not just less of a bad thing than we would have had but in fact a net plus.

And there will be some significant changes to the traffic in the area where the buses will be, all of these things which were made possible by the fact that we were able to come together in agreement. I would also say that we do join in withdrawing our objection. We, on the contrary, we urge you to grant The Phillips their request, to give us some time to provide some conditions. It's not going to be all of the conditions that are in

this 57 article thing but it will be some and I think we may be able to do that jointly rather than separately and have you have to sort it out.

So we would appreciate your giving approval to what the neighbors and The Phillips and the ANC have come to an agreement on. And, again, thank you for being patient with us. I think it's paid off to all of our benefit.

CHAIRPERSON REID: Mr. Gel, again, thank you so much for your participation and also the fact that it appears to me that I'm really seeing a sense of pride, you know, from everyone who was involved with the fact that, hey, we were able to slay this dragon and you did so well. And again, I definitely think that this type of model is certainly to be utilized in similar situations. Obviously this is part and parcel of what we do in regard to issues that affect neighborhoods and communities where there are opposing sides and points of view, this is a given but it's the way you approach it and how you handle it, I think, that makes the big difference.

MR. GEL: I would also say that we got significant help from the three people that were involved from the neighborhood, that is Tim Boggs, Solange MacArthur-Muller and most particularly Dick Sussman who

was in touch with all of the other neighbors on a regular basis and, to a great degree worked with me, but representing the other interests in the neighborhood. So I think they really deserve a round of applause and I wanted to note their specific work. It was very, very hard, long, long hours. People were available on a constant basis to me which was absolutely essential. So they deserve a lot of credit.

CHAIRPERSON REID: I think you all do.

MEMBER HINTON: Madame Chair, I would just like to say that I think it's really a shame that the news cameras left so early because the most significant thing that happened here this afternoon is this case and I think neighborhoods and applicants don't really understand that when things are contentious and there are a lot of issues to work out, the Board will work it out but usually the Board doesn't just give one party everything and the other party nothing. We try to make compromises and what we end up with is the applicant doesn't get everything they want and the neighborhood doesn't get everything they want and five people who don't live in the neighborhood are making the decisions.

And, in this case, the neighbors made the decisions, they got to decide and compromise and keep what was most important and give up what was less

important. And I really think that this project is going to be better for it because the Board didn't have to decide. The neighbors and the applicant got to do that. So somebody should have called the television cameras and let them know.

MR. CAIN: Madame Chair, as a technical procedural matter, I would like ask after Mr. Cochran makes his remarks that the Board approve the application as amended, that if you see your way clear to giving us a bench decision on the merits today and allow us until July 13th to submit proposed conditions, most of which will track the neighborhood cooperation agreement and our reference to paragraph 46 of the agreement.

We need to make some editorial changes to cast them into conditions instead of agreement language, and I need to make sure that no party other The Phillips is being visited with a zoning obligation because they are identified or mentioned or somehow referred to in the language of those paragraphs. We are the applicant and it's our, we are subjecting ourselves to the conditions. We think we can submit joint or consent conditions if we have that time.

CHAIRPERSON REID: All right, thank you. Mr. Cochran?

MR. COCHRAN: For the record my name is Steve

Cochran with the Office of Planning. The Office of Planning obviously supports this agreement and wants to congratulate the parties on reaching this agreement. We have submitted a letter for the record. I'd be happy to read it if you think we should.

CHAIRPERSON REID: I think we have to waive the rules to accept this latest submission.

MS. PRUITT: No, Madame Chair, because they've given their original report.

CHAIRPERSON REID: So this is just a supplement?

MS. PRUITT: Right. So it's timely.

CHAIRPERSON REID: All right.

MR. COCHRAN: Do you want me to read it for the record or you want me to just let it go.

CHAIRPERSON REID: Just give us a summary.

MR. COCHRAN: Okay. Well, first I'd like to congratulate everyone involved in this in coming up with even more conditions than the Office of Planning had in its last report. That's quite an achievement. But we do hope that this is a model for what we can do throughout the city. If the parties are willing, the Office of Planning would really love to be able to debrief the parties, take notes, maybe even videotape and then seriously edit because we would like to learn exactly

what went on behind the closed doors so that we can help other neighborhoods from this and so that other neighborhoods themselves can learn how this kind of agreement is reached.

Because we strongly encourage mediation, we even have some new grant money to promote more and more mediation and we hope that this will be the first of many successful agreements that will be worked out through the city.

CHAIRPERSON REID: Mr. Cochran, they gave you some credit, was that undeserved?

MR. COCHRAN: Madame Chair, I don't believe that I've ever had a bushel basket among what I usually wear so I'm just going to let it go at that.

CHAIRPERSON REID: I think that it's obvious that you did have some participation and for that we do thank you. It takes all of the entities trying to work together.

MR. COCHRAN: The Office of Planning may have shown the parties that there, or tried to indicate to the parties that somewhere on a map, there was a place to drink but it was clearly the parties and the mediator that got everyone to drink of that water.

CHAIRPERSON REID: So that means you're going to be going up there with your notepad and taking

notes as to how to?

MR. COCHRAN: Oh, absolutely.

CHAIRPERSON REID: Take notes to other neighborhoods and use that?

MR. COCHRAN: We would very much like to do this because this was a difficult case and we're very impressed that it came to such a harmonious conclusion.

CHAIRPERSON REID: Well, it just goes to show that, you know, the government doesn't always know everything about everything. Often they think that the bureaucrats are the ones that come in with all the knowledge but it just goes to show that sometimes the baby leads the adult to the knowledge.

MR. COCHRAN: Absolutely. We have, I hope, no problem with being humble, wrong or used for good purposes.

CHAIRPERSON REID: Just openminded. I think that's the operative word. Everyone was openminded which we'll try to be after the fighting, they became very openminded but anyway, thank you very much Mr. Cochran.

VICE CHAIRPERSON RENSHAW: Madame Chair, I would just like to say that we often think of the term smart growth as it relates to suburban development but I'd like to use the term here in an urban setting. It

is smart growth that we see in this neighborhood. And again, our congratulations.

CHAIRPERSON REID: Thank you. We now move to, I don't want to even use the word opposition. Is that a dirty word in this case? Opposition? Okay, great. Seeing none, the persons and parties in support, all right. Come up, please. Just two people want to testify in support?

MR. CAIN: They're part of the agreement.

CHAIRPERSON REID: Okay, all right. Any persons? Is there anyone here that wants to testify in support. All right, then closing remarks by the applicant.

MR. CAIN: Thank you, Madame Chair. I think I've basically already made my closing remarks.

CHAIRPERSON REID: Right, you did.

MR. CAIN: If you would like, we'll submit the full size set for the record.

CHAIRPERSON REID: Okay, all right. What numbers? Did you wish to ask for a bench decision summary order and then I think you mentioned conditions.

MR. CAIN: I wish to ask for a bench decision on the merits and opportunity, I recommend July 13th to submit proposed conditions which I firmly believe will be jointly submitted.

CHAIRPERSON REID: Okay, so we'll vote only on the case today and then on the conditions in July, is that correct?

MS. PRUITT: That's correct.

MEMBER HINTON: Can we ask the applicant to submit an entire draft order?

MS. PRUITT: Actually I was going --

MEMBER HINTON: Not the conditions, the whole thing.

CHAIRPERSON REID: A draft order on this, that would include that.

MR. CAIN: You might make the question where there are findings of fact, conclusions of law or the summary order with the 872 conditions that we're going to submit.

CHAIRPERSON REID: That doesn't usually have a full order or does it. How are we going to handle this?

MEMBER HINTON: Summary order does not but I think that we probably should go through and ask for a full order with findings and conclusions and conditions.

MR. GEL: Perhaps, Ms. Hinton, I don't believe you were involved at the time but we never did put on our case.

MS. PRUITT: The applicant put on the case.

There was opposition. There is no longer opposition. It was withdrawn so technically it does set the merits of a summary order which can usually be granted if there's no party in opposition.

CHAIRPERSON REID: Right. And then the aspect of the findings of fact, the proposed order with the findings of fact, conclusions of law, doesn't that then become a full order.

MS. PRUITT: Well, I mean, you can, a summary order is something you choose to do. You don't have to do that. You know, this could be a full order even though it meets the standards for a summary order.

CHAIRPERSON REID: So are you saying that you'd like to see a full order even though we're doing a bench decision?

MR. GEL: My only concern, I'm sorry I didn't mean to interrupt. My only concern is that the only facts that you will have before you are those facts which the applicant had prepared. So perhaps it won't be necessary.

MR. CAIN: On the other hand, we will submit a full complement of proposed conditions which the Board typically would impose even in the ordinary unopposed case.

MEMBER HINTON: My concern is that if we're,

I think that we're going to have a lot of conditions and since we're going to have so many conditions, I would like the order to have some findings and conclusions that support those conditions. And in this case there's not opposition to worry about but nevertheless, I think the full order would really be a good thing to do here.

MS. KRESS: I believe they're stating that they're missing certain information from the record.

MR. COCHRAN: Madame Chair, the Office of Planning. I'm wondering if it's possible to, if it might be advisable to go with the fewest findings of fact possible. There is now agreement. Is it advisable to revisit what a fact is.

MR. GEL: In addition to which some of those facts have changed now.

CHAIRPERSON REID: Let's get a read from Corp Counsel on this so that we can assure that we're procedurally correct.

MEMBER HINTON: After conferring with the staff, I think it might be advisable to go with a summary order that lists out the conditions that are going to be proposed in draft form by the applicant.

MR. CAIN: Thank you. We'll make every effort to make them joint conditions.

CHAIRPERSON REID: All right, thank you.

Vote? Was there a motion?

COMMISSIONER MITTEN: I move that we approve the amended application pending receipt of the conditions from the applicant.

MS. PRUITT: Excuse me, Madame Chair, I believe it was the request on just the merits and then you can vote on the conditions at the next meeting.

COMMISSIONER MITTEN: All right. So I would move approval of the amended application.

CHAIRPERSON REID: Second it. Any further discussion? All right, all in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Opposed?

MS. BAILEY: Madame Chair, I didn't hear who seconded the vote.

CHAIRPERSON REID: Ms. Reid.

MS. BAILEY: Okay. And also, did Mr. Griffis vote on this because he did not hear the original application. Did you vote, Mr. Griffis, on this.

MEMBER GRIFFIS: Yes, I'm sorry, and I neglected to state that I had read the file and was prepared to hear it today so I did vote.

MEMBER HINTON: I also need to state that I did read the record.

MS. BAILEY: So the vote is 5 to 0 to approve

the application, conditions to follow. Motion made by Ms. Mitten, seconded by Ms. Reid. Ms. Hinton, Ms. Renshaw and Mr. Griffis in agreement.

MS. PRUITT: Just as a follow up, you are to submit the conditions by July 13th, is that the date, and then the Board will make a decision at their monthly meeting on July 31st in the morning.

MR. GEL: Madame Chair, if after the words approve the application if you could insert the words on the merits, I think that would be more in line with what was requested.

CHAIRPERSON REID: Again, thank you and good luck. I really appreciate, again, we really appreciate all the effort and as an aside, the Jacob Launt Exhibit is incredible. It's incredible. Thank you.

Okay, that then concludes this afternoon's session. We do have a special public meeting.

(Whereupon, the public hearing of the Board of Zoning Adjustment was concluded at 3:03 p.m.)