

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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## BOARD OF ZONING ADJUSTMENT

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## PUBLIC HEARING

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TUESDAY  
FEBRUARY 25<sup>th</sup>, 2014

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The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Lloyd J. Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD T. JORDAN, Chairperson

MARJORIE HEATH, Board Member

JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary

CLIFFORD HOLT, Secretary,  
JOHN NYARKU, Zoning Specialist

STEPHEN VARGA Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:  
SHERRY GLAZER, ESQ.  
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:  
STEPHEN GYOR  
STEPHEN MORDFIN  
KAREN THOMAS  
ARTHUR JACKSON  
BRANDICE ELLIOT

DISTRICT DEPARTMENT OF TRANSPORTATION STAFF  
PRESENT:

ANNA CHAMBERLIN  
EVELYN ISRAEL

The transcript constitutes the  
minutes from the Public Hearing held on  
February 25<sup>th</sup>, 2014.

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

(10:08 a.m.)

BZA CHAIR JORDAN: Let's call 18690 and Zoning Commission Member Marcie Cohen will sit in on this particular matter.

MR. MOY: Yes, sir. While we're waiting for her I just wanted to also add another case that I had neglected to mention. It's a preliminary matter that Application Number 18685 of Polinger Shannon & Luchs has also been rescheduled to April 1st. That's for the record, Mr. Chairman.

BZA CHAIR JORDAN: Have I gotten any word back on 18687 yet?

MR. MOY: Not yet, sir. Before I call the next case I just want to make a general announcement that if Mr. William Ricks is in the audience if you would meet with one of our staff in the reception area. Thank you.

Thank you, Mr. Chairman. Okay. So here we go. Application Number 18690. This is the application of Rito Loco. As the

Board will recall, this case was continued from January 14, 2014.

BZA CHAIR JORDAN: I had my restaurants mixed. I knew we had a restaurant and a trash issue. All right. Got it.

We previously took testimony on this case and there were some issues and the Board asked for follow up from the applicant, which we did receive. But for the record would you identify yourselves please?

MR. HANKINS: I'm Louie Hankins, part owner of Rito Loco.

BZA CHAIR JORDAN: You need to make sure you pull your chair up the microphone. Make sure your mike is on.

MR. LAWRENCE: Stephen Lawrence, owner of 606 Florida Avenue.

BZA CHAIR JORDAN: And you both gave witness cards to the court reporter.

MR. LAWRENCE: That's correct.

MR. HANKINS: Mr. Chair, real quick. I neglected to state that I was not here

for the hearing on January 14th, but have read the record and will participate in this.

BZA CHAIR JORDAN: All right. I think the supplemental information was very helpful to the Board. We were close before but we couldn't impose conditions seeing that you didn't own the next property to allow for this.

This is one which I would be comfortable in granting the relief requested subject to the conditions that would be imposed and have been discussed. Ms. Cohen, any issues, anybody, Mr. Hinkle?

COMMISSIONER COHEN: No, Mr. Chairman. I find that the additional information satisfies the concerns that I had.

BZA CHAIR JORDAN: With that if the Board is ready to, well I guess we are deliberating. I don't think there's any real need for evidence in this matter.

I could agree to, then I would move that we grant the relief subject to these conditions. And that would be that the

applicant shall store trash cans at the rear of 600 T Street with all refuse collected from the north/south public alley located adjacent to the property to the west of 600 T Street, N.W.

For all time of use the applicant must utilize the rear of the property for loading and storing of refuse. The applicant shall ensure that the gate between the rear of 600 T Street, N.W. and the public alley is maintained.

And if the applicant operates after 11:00 p.m., then the applicant shall have a security guard on the premises. That would be the conditions. So that would be my motion.

MEMBER HINKLE: I'll second that.

BZA CHAIR JORDAN: Motion made and seconded. Any additional discussion? Seeing none, all those in favor signify by saying aye.

(Chorus of ayes)

BZA CHAIR JORDAN: Those opposed, nay. Motion carries, Mr. Moy.

MR. MOY: The staff would record

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the vote as 3-0. This is on the motion of Chairman Jordan to approve the application with the conditions as he has cited. Second the motion is Mr. Hinkle. Also in support Ms. Marcie Cohen.

At the time we have a Board seat vacant and we have a member not present, not voting. So the motion carries on a vote of 3-0.

BZA CHAIR JORDAN: Summary orders.

MR. MOY: Thank you, sir.

BZA CHAIR JORDAN: All right and we're flipping chairs again. And we welcome back Commissioner May. Let's do this, would you call 18677, Mr. Moy, so we can move that?

MR. MOY: Yes, sir. 18677, yes. Okay. That would be Appeal Number 18677 of James P. Hill and Edward V. Hanlon. This was for the Board's, to recall postponed from its December 17th hearing session.

BZA CHAIR JORDAN: All right. Is anyone, everyone for 18677 please come forward. Good morning, counselor.

MR. BESTUKA: Good morning.

BZA CHAIR JORDAN: Want to introduce yourself for the record.

MR. BESTUKA: John Bestuka, Assistant Attorney General.

BZA CHAIR JORDAN: I believe this matter was continued from, by the request of the Appellant to see whether or not there was going to be an appeal filed I understand. And because DCRA had taken the action of revoking the permit and the permit had 60 days for them to do an appeal, which it's my understanding that appeal has not been taken.

MR. BESTUKA: That is my understanding as well.

BZA CHAIR JORDAN: So as we sit the permit is revoked.

MR. BESTUKA: It is revoked.

BZA CHAIR JORDAN: So therefore the Board will find that the appeal will be moot and I would move that we dismiss this based upon it being moot.

MEMBER HINKLE: I'll second.

BZA CHAIR JORDAN: Motion made and seconded. Any additional discussion? All those in favor signify by saying aye.

(Chorus of ayes)

BZA CHAIR JORDAN: Those opposed, nay. The motion carries.

MR. BESTUKA: Thank you.

MR. MOY: I'll give a vote count of 3-0 on the motion of Chairman Jordan, second by Mr. Hinkle. Also in support Mr. Peter May.

BZA CHAIR JORDAN: Let's call 713, please.

MR. MOY: What was the case number again, sir?

BZA CHAIR JORDAN: 713.

MR. MOY: 713. Okay. That would be Application Number 18713 of Goldstar 1500 Penn, LLC. This is pursuant to 11 DCMR 3103.2 for a variance relief from the parking size requirements under Subsection 2115.2 for a new apartment building. This is as advertised at

1500 Pennsylvania Avenue, S.E.

BZA CHAIR JORDAN: Please identify yourselves.

MS. GIORDANO: Cynthia Giordano with Saul Ewing Law Firm.

MR. MAY: Eric May with Goldstar.

BZA CHAIR JORDAN: I think the record's pretty, for me, the record is pretty clear that based upon the evidence already in the file and the record that you qualify for relief. But I don't know what the other Board members may wish to hear from you.

MEMBER HINKLE: Mr. Chair, I thought it was complete as well. I don't have additional questions.

BZA CHAIR JORDAN: All right. Then as you know our practice you can certainly waive, you can actually sit here and talk all day, put your testimony on and then be subject potentially to saying something wrong and lose the ability to get your relief or we can proceed.

MS. GIORDANO: Thank you, Mr. Chair. No, we have the ANC support, Office of Planning, Capitol Hill Restoration Society. So we'll rest on the record.

BZA CHAIR JORDAN: So then we would go to Ms. Elliot to see if there's something in addition that she wants to add to her fine report that we already have, we've already read and we've already digest.

MS. ELLIOT: Good morning, Mr. Chairman and Members of the Board. For the record I'm Brandice Elliot. And I have nothing to add to the report.

BZA CHAIR JORDAN: Any questions of Planning? Applicant any questions of Planning? Anyone here from the Department of Transportation for this particular case?

We have a letter of no objection to the relief being requested from the Office of, Department of Transportation, excuse me, Department of Transportation. Anyone here from ANC 6B for this case, ANC 6B?

We do have a letter of support from ANC 6B which voted 8-0 in support of the application, which we certainly give great weight to and we appreciate them doing, taking the time to weigh in on this case.

Is there anyone here wishing to speak in support of this application? Anyone wishing to speak in support of this application? Anyone wishing to speak in opposition to this application? Anyone in opposition?

Then we would turn back to the applicant where we normally would have rebuttal, but you kind of already did your closing. So then we would close the record based on what we already have. And I would move that we grant the relief requested by the applicant in this particular case.

MEMBER HINKLE: Second.

BZA CHAIR JORDAN: Motion made and seconded. Any additional discussion? All those in favor signify by saying aye.

(Chorus of ayes)

BZA CHAIR JORDAN: Those opposed, nay. The motion carries, Mr. Moy.

MR. MOY: Staff would record the vote as 4-0. This is on the motion of Chairman Jordan to approve the application for the relief requested. Also in support Mr. Peter May. Seconded and in support of the motion Mr. Hinkle and Ms. Heath.

And we have a Board Member not present today. So the motion carries on a vote of 4-0.

BZA CHAIR JORDAN: All right. Thank you very much. Let's start with the top of the batting order. Summary order.

MR. MOY: Okay. So that would be Application Number 18710. This is the application of Michael Young Chung, pursuant to 11 DCMR 3103.2. Mr. Chairman, this is a request for a variance from the use provisions to allow a fast food restaurant under Subsection 701.1 as advertised in the C-1

District at 607 Chesapeake Street, S.E.

BZA CHAIR JORDAN: Would the parties or persons for 18710 please come forward? All right. Would you pull, make sure your microphone is on. It should be a bright green glow. Would you identify yourself?

MR. AKINNUOYO: I'm Henry Akinnuoyo. I'm representing Michael Chung.

BZA CHAIR JORDAN: Say your last name again.

MR. AKINNUOYO: Akinnuoyo.

BZA CHAIR JORDAN: Did we have an authorization in the file here?

MR. AKINNUOYO: Sorry.

BZA CHAIR JORDAN: Do you have authorization because I thought this was one --

MR. MOY: We're going to double check to see if one has come in to the --

BZA CHAIR JORDAN: Do you have an authorization letter? Did you file an authorization letter?

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MR. AKINNUOYO: Yes, I sent that forward.

BZA CHAIR JORDAN: And did we have an affidavit of posting, did you file an affidavit of posting?

MR. AKINNUOYO: I sent that forward also.

MR. MOY: We're double checking that as well, sir.

BZA CHAIR JORDAN: Do you have copies of the filing?

MR. AKINNUOYO: Sure.

BZA CHAIR JORDAN: Give us one second. But just start finding them because you may need them.

MR. MOY: Mr. Chairman, just for the record the staff is looking in the official file. We don't have those documents. If they were submitted --

BZA CHAIR JORDAN: When did you file them?

MR. AKINNUOYO: I sent the letter,

I got a call from someone from the offices and sent it via e-mail two or three days ago.

BZA CHAIR JORDAN: We typically will follow up if it's not in the file and ask for them. So can we have some copies of them please and give them to, when did you send the e-mail?

MR. AKINNUOYO: I think about three or four days ago.

(Off microphone comment)

BZA CHAIR JORDAN: Let me ask you, we noticed that so it must have been Friday when you, sometime Friday evening is what it appears to be. When did you have, when was the notice posted?

MR. AKINNUOYO: In January.

BZA CHAIR JORDAN: What was the period of time the notice was in?

MR. AKINNUOYO: Sir?

BZA CHAIR JORDAN: What was the period of time the notice was out?

MR. AKINNUOYO: Put it up about

7:00 p.m.

BZA CHAIR JORDAN: For how long?  
How long did the notice stay up?

MR. AKINNUOYO: It's been up since  
then.

BZA CHAIR JORDAN: It's still up?  
MR. AKINNUOYO: Yes.  
BZA CHAIR JORDAN: So it was  
January, what was the date?

MR. AKINNUOYO: January, I think I  
got it January 21st or something, no, January  
5th. I can get you the exact date, one second.

BZA CHAIR JORDAN: And what about,  
and I'm also, did you do a presentation, did you  
or your client do a presentation? I use your  
word client, a presentation in front of ANC 8B?

MR. AKINNUOYO: I did.  
BZA CHAIR JORDAN: And what  
happened with that?

MR. AKINNUOYO: I met with them.  
They had gotten all the documentation from you.  
But I don't think they had deliberated on it

because of the weather. It was a problem at the time.

After the meeting they said they would send forward whatever their findings were. That was how I left it. They had the meeting almost a month ago. The next meeting would be in another two or three days.

BZA CHAIR JORDAN: All right. Thanks. All right. So we will accept this into the record, the affidavit of posting and the authorization letter that was submitted Friday. I'm still trying to see if there was an official record.

That's why these things have to be in, in advance so that our files are complete.

MR. AKINNUOYO: I understand.

BZA CHAIR JORDAN: And not just to you, to anybody else because the Board spends hours and hours before these hearings going through all these documents and it's important that we have the time to look at these documents and understand and analyze the documents.

It's not just you. Others do it too. And the Board is becoming a lot more disciplined in regards to accepting of those things and not accepting those things. So we will accept that. So let's move on with the hearing.

I need to tell you up front I think your application is very defective and you would certainly need to prove to this Board because you're asking for a use variance for a fast food restaurant. And there is nothing really in what's been submitted that supports the requested relief.

And so it's on you to prove to the Board to get those things because there's nothing, absolutely nothing in the file. I just want you to know that up front.

MR. AKINNUOYO: In respect to that I, basically what we had to go on was the actual applicant, the lady who actually bought the business was under the impression that the business was a standing, operable restaurant.

Certificate of Occupancies have been issued as far back --

BZA CHAIR JORDAN: Let me ask you something. Let me go back. Your relationship to the applicant, are you an attorney, an architect, what are you?

MR. AKINNUOYO: I'm a business consultant. So we do interior design.

BZA CHAIR JORDAN: Business consultant.

MR. AKINNUOYO: Yes.

BZA CHAIR JORDAN: And see that also gives very, okay, continue.

MR. AKINNUOYO: So basically just as the OP noted, the, we were under the impression and she was under the impression that this was a standing business as a restaurant. She bought the place with a valid Certificate of Occupancy that was issued when the premises was being purchased.

She went and applied for, to have a change of ownership issued, denied on the basis

that the zoning was incorrect for the business she had intended. The reason why we had put the application forward was that this has been a fast food restaurant for over ten years.

She is not doing any physical changes to the building. It's been running exactly as it was for these past ten years and wanted to see why she would be denied that opportunity to move forward and just continue business as is serving the community as a local restaurant.

BZA CHAIR JORDAN: So when did your client purchase the business?

MR. AKINNUOYO: She purchased in November of last year.

BZA CHAIR JORDAN: Last year meaning 2013?

MR. AKINNUOYO: As in '13.

BZA CHAIR JORDAN: And when did you become aware that this property for the, I guess the ten years that the prior owner operated never had proper or legal, never had a permit

for occupancy to operate a restaurant?

MR. AKINNUOYO: They actually had an occupancy, they had a valid occupancy at the time the business was being purchased.

BZA CHAIR JORDAN: When?

MR. AKINNUOYO: I have copies of the occupancies that --

BZA CHAIR JORDAN: What was the use on there?

MR. AKINNUOYO: Fast Food, carry-out.

BZA CHAIR JORDAN: That was the change of ownership.

MR. AKINNUOYO: No, this is the actual Certificate of Occupancy says carry-out.

BZA CHAIR JORDAN: So that's not the temporary one. Was it a temporary one?

MR. AKINNUOYO: No.

BZA CHAIR JORDAN: So there was a previous use variance granted to this property. I thought it was not.

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MR. AKINNUOYO: Not to my knowledge.

BZA CHAIR JORDAN: That's what I, okay. All right. I'm confused. I'm sorry. So we had an illegal use in the premises is what we really had.

And so your client bought the property based upon the knowledge that it's already an ongoing concern or et cetera and thought it was okay for a restaurant. Is that what I'm understanding?

MR. AKINNUOYO: No, the actual place was being run as a restaurant with a valid Certificate of Occupancy. So I think that was viable enough for her to move forward with the purchase because she said it was legally being run as a restaurant. That's where it ended.

Looking back there might have been some variance issues. But that was not put forth. And they issued a temporary, at some point in the past they might have issued a temporary occupancy for that variance to be

addressed.

That wasn't. Moving past that, an actual C of O was issued and that's where she came into play. So there was a current C of O when she was looking to buy the business and when she bought the business.

BZA CHAIR JORDAN: And so what's the hardship argument that you're making for the Board?

MR. AKINNUOYO: Well she did go in just, what happened basically is just that, two things. The intentions are very much the same as was there for the past ten years.

The understanding as to why the variance was never addressed, we don't know and we don't understand. We have no record of that because there was a valid Certificate of Occupancy.

Moving past that, she's, it's a small take out restaurant in an, you know, densely, moderately dense neighborhood. Serves a quick, you know, meals and take out in

a very healthy fashion in that area. It's been that way for over ten years.

And we don't see her contributing or in any way form of action to the detriment of the area either.

BZA CHAIR JORDAN: Board, any other questions or do you have anything else to present to the Board?

MR. AKINNUOYO: No.

BZA CHAIR JORDAN: I'm trying to get an understanding. So you understand the criteria in which we give use variances. Not only does it have to have exceptional situation or condition, but you have to show that it's a hardship in order to comply with the requirements of the zoning regulations.

MR. AKINNUOYO: I understand.

BZA CHAIR JORDAN: And I think I'm, I think OP has indicated that maybe through conversations with your client and with you and I just haven't heard it here today that it's a hardship, it would be a hardship by the fact

that this place has been already outfitted as a restaurant and that it would be a hardship to convert it to something else. Is that what I'm understanding?

MR. AKINNUOYO: That would be the case in some respects that she had invested a substantial amount of money in purchasing a business. And I'm not so --

BZA CHAIR JORDAN: That doesn't give it. What about the converting to a use that's proper within the zoning regulations?

MR. AKINNUOYO: The business, she doesn't own the building. So as far as converting the space would have to do also with the landlord and his input.

She bought the business as a take out restaurant. Now I don't know if there's any zoning that requires it to be anything other than that or a sit down restaurant.

BZA CHAIR JORDAN: Excuse me a second. Let me ask you. Who owns the building?

MR. AKINNUOYO: Mr. Chung.

BZA CHAIR JORDAN: Mr. Chung owns it, okay. You said the property owner.

MR. AKINNUOYO: Mr. Chung owns the building. Ms. Ganette is a tenant in the building that bought the business that existed within that building.

BZA CHAIR JORDAN: Got you. All right. You threw me for a loop.

MR. AKINNUOYO: Sorry.

BZA CHAIR JORDAN: And so Mr. Chung would have difficulty converting the building to the use which is allowed within the zoning regulations?

MR. AKINNUOYO: At this time I think, I don't know how versed he was with what the situation was. I think it was an assumption on his part and also with Ms. Ganette that the building was valid to be, that space was valid as a restaurant.

To be converted, I don't know what all the conversions or what other businesses

would be appropriate for that space.

BZA CHAIR JORDAN: When did Mr. Chung purchase the building?

MR. AKINNUOYO: I'm not aware.

BZA CHAIR JORDAN: So when you're saying she purchased a business you're talking about the person who now has a lease to --

MR. AKINNUOYO: Renting, correct.

BZA CHAIR JORDAN: Board, any other questions because I'm just --

MEMBER HINKLE: Yes, Mr. Chair, I'm having difficulty with this as well. I understand the, kind of the historic perspective in terms of the story on the C of O's and, you know, somebody dropped the ball in terms of getting a variance initially.

And then somebody at DCRA dropped the ball in terms of, you know, providing a C of O. But, you know, there's, fast food restaurants in any neighborhood are difficult. And that's why we have specific criteria for these within the zoning code.

And what I need is to understand how this use complies number one, with 733 which is the criteria within the code for fast food restaurants. But also the hardship. I mean the big question is why can't there be another matter of right use within this building. And so that's where I'm stuck.

BZA CHAIR JORDAN: And now it's different than what we've kind of seen and I'm going to defer to OP, but is that the building owner has been the building owner. He's not the person who, and I'm not hearing that the building owner bought the building with a restaurant as a concern.

I hear that the leasee is coming in and saying bought the building. Bought the business, but the building owner who should have known all along whether or not there was a proper C of O and that it was proper use. And I'm not hearing that the property owner has the inability to do anything with the property.

Is that right? Is that what I'm

hearing, understanding correctly?

MR. AKINNUOYO: There is a proper C of O with the restaurant.

BZA CHAIR JORDAN: Do we have any other questions of this applicant before I turn to Planning because I have some Planning questions?

COMMISSIONER MAY: No.

BZA CHAIR JORDAN: Okay. I think we might have to come back to, let's go to Planning, turn to Planning.

MR. MORDFIN: Good morning, Chair and Members of the Board. I am Stephen Mordfin with the Office of Planning. And the Office of Planning sees that this is an exceptional situation that results in a practical difficulty is that DCRA did issue a Certificate of Occupancy that states on it that it is valid indefinitely.

BZA CHAIR JORDAN: It was invalid indefinitely?

MR. MORDFIN: It says on it, it's

valid indefinitely. That was the last C of O that was issued on November 18, 2008. And I think that's the crux of the issue is that's the exceptional situation so that the next purchaser of this building then is to assume she could go in and just change the ownership as reported on the Certificate of Occupancy.

But instead what she found out was that what she needed to do was obtain a use variance.

BZA CHAIR JORDAN: When you say when they purchased the building do you mean when Mr. Chung purchased the building?

MR. MORDFIN: I'm sorry. When the business owner purchased the business that's located in that building.

BZA CHAIR JORDAN: But the building owner, Mr. Chung, didn't just purchase the building?

MR. MORDFIN: That's correct.

BZA CHAIR JORDAN: He's the applicant.

MR. MORDFIN: He is --

BZA CHAIR JORDAN: Right?

MR. MORDFIN: Yes. The applicant is, yes. He's listed as the owner of the property.

BZA CHAIR JORDAN: So when you use owner in your report you're meaning the tenant that purchased the business?

MR. MORDFIN: Yes, in the report when it says owner it means owner of the business.

BZA CHAIR JORDAN: Got it. So the 2008, doesn't list an expiration date. That's what you mean?

MR. MORDFIN: That's correct.

BZA CHAIR JORDAN: This is a ZA referral. Is this a ZA referral? Okay. Anything else you want to add? Any questions for OP? I'm really not comfortable with this. Does the applicant have any questions of Office of Planning would you like to ask some questions?

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I'm really thinking about continuing this and letting this record get, because we have nothing from Mr. Chung about --

COMMISSIONER MAY: Are there any witnesses?

BZA CHAIR JORDAN: Yes, I am going to deal with that, but I'm just thinking. All right. Do we have a representative from the Department of Transportation for this case?

We do have a letter of no objection from the Department of Transportation in this case. Is anyone here from ANC 8D for this matter, ANC 8D? Is there anyone here wishing to speak in support of this application? Anyone wishing to speak in support of this application?

Anyone wishing to speak, if you --

MS. MITSUN: My name is Ganette.

BZA CHAIR JORDAN: No, no, no. If you're going to speak in support I need you to do two things. I need you to come forward, make sure you complete witness cards, two witness

cards. And I need you to take because I don't know if you were here to oath from Mr. Moy, you have to take the oath from Mr. Moy before you give us --

MR. MOY: You haven't taken the oath?

MR. AKINNUOYO: No, she didn't.

MR. MOY: You can stand.

(Witness sworn)

MR. MOY: Thank you.

BZA CHAIR JORDAN: Let's, we're going to circle back on this one. Would you please state your name?

MS. MITSUN: Ganette Mitsun.

BZA CHAIR JORDAN: And you wanted to make a statement in support on this application.

MS. MITSUN: I bought this business knowing I would continue the same way as the company for the last ten years. Did the settlement on November 1st. November 5th I came to DCRA to apply for a license and

occupancy, change of ownership and I was told there would be no continuing of the business as it is.

BZA CHAIR JORDAN: Okay. Anything else you want to say to the Board? Do you have any questions? Board, any questions of the witness?

Anyone here speaking to speak in opposition? Anyone wishing to speak in opposition? Then let's turn back to the applicant.

COMMISSIONER MAY: Mr. Chairman, I agree with you that the record is not quite full enough to be able to make a decision on this. And I think the applicant makes a stronger case and not simply rely on the report of the Office of Planning that the variance test has been met in this circumstance.

I also believe that in this circumstance that it would be in the best interest of the applicant to get a very strong endorsement from the ANC in support of this

because I think that's another piece that's missing. I can certainly understand the circumstance that occurred here.

And I don't think it's anybody's fault that we would up in this particular circumstance or at least nobody in the room at the moment. Somebody made a mistake somewhere. And I think that with a more robust case made for the hardship that would be imposed upon the business operator I think that we would be able to move forward on this.

And again, support from the ANC is critical. So continuing the case to allow time to do that would be the most helpful.

BZA CHAIR JORDAN: I appreciate that, Mr. May, because that's where I'm generally leaning. Anyone else on the Board have any thoughts on this?

I think what we're going to do, we're going to continue this matter, give you time to supplement the record. You need to have evidence of the hardship, why this

property cannot be used for any other purpose within the zoning regulations.

Converting this property, we need to see financials to try to convert this property to a use that's allowed. You already said it's going to be difficult to change the property from its use. We need to see that. We need to see the numbers on it. We need to touch it and feel it. We just can't absorb by the statement saying that's happening.

Also Mr. Chung needs to make these representations also. We don't have anything from Mr. Chung. He's the applicant. Because it's a fast food we really would like to see the ANC weigh in on this.

And so I'm thinking we will go ahead and hear this for 60 days to give the opportunity to get those things in because the ANC may not be able to meet, you already requested a meeting for it. I just don't know where they are on their docket.

This is trying to help you or

otherwise we can go through it and deny your request and we're trying not to do that. We're trying to get you where you need to be. So, Mr. Moy, we've got, what if we give, April 1st is about 60 days.

MR. MOY: No, that's more like 30. So if you want 60 days we're looking at --

BZA CHAIR JORDAN: Let's do it April 1st in 30 days and see where you are. If you need additional time, let us know.

MR. MOY: Okay. That would be April 1st. And Mr. May is scheduled to be here with the Board that day, April 1st. What did I say? Was it April 1st?

BZA CHAIR JORDAN: So you have to supplement the record. We need to see the information, why it's a hardship from the financial side or whichever way. We need to get there. You're not there.

And then I'm concerned that representations about Mr. Chung and he's not really participating in this particular

hearing. So let's do that.

MR. MOY: Would the Board care to set a deadline for the additional submissions together a week from April 1st is the 25th. Two weeks would be, I would rather March 25th, two weeks would be --

BZA CHAIR JORDAN: We can get those.

MR. MOY: All right. That would be March 25th.

BZA CHAIR JORDAN: So we need to have your information in by March 25th.

MR. AKINNUOYO: Okay.

BZA CHAIR JORDAN: And you're going to really need to get with and talk to the ANC as soon as possible so that they can try to get you on their agenda. All right. With that we will take a five minute break and come back with the rest of this. Thank you.

(Whereupon, the foregoing matter went off the record at 10:46 a.m. and went back on the record at 10:54 a.m.)

BZA CHAIR JORDAN: We're back at it. Is that better? Mr. Moy, do we have any new announcements we're making?

MR. MOY: Yes, sir, at the midpoint maybe here. I would say maybe we're beyond the midpoint, but on, for the Board and also for the record, on two cases, Application Number 18687 of William Ricks that has been rescheduled to May 6, 2014. And the second case, which is 18686 of Ajaib Toor, the agent has been in contact with the staff and the client cannot appear.

So it's in agreement that this application would be rescheduled to April 1, 2014. That's all I have to say for that.

BZA CHAIR JORDAN: Okay. And as we knock this docket down we'll reshuffle it again. So 18711.

MR. MOY: Okay. Application Number 18711. This is the Application of 3112 13th Street, LLC. This is a request, Mr. Chairman as advertised for a variance from the

lot area requirements under Subsection 401.3, variance for off-street parking requirements under Subsection 2101.1 to allow a four unit apartment.

This is at 3112 13th Street, N.W. And if the applicant can clarify any changes in the relief.

BZA CHAIR JORDAN: All right.  
Please identify yourselves.

MS. MOLDENHAUER: Good morning, Mr. Chairman, Members of the Board. My name is Meredith Moldenhauer from Griffin, Murphy, Moldenhauer and Wiggins. I'm here on behalf of the applicant and I'll allow the applicants to introduce themselves.

MR. GLEE: I'm Ulysses Glee, owner of the property located at 3112 13th Street.

MS. ADEY: I am Kristine Adey, Development Manager for the Fenton Group.

BZA CHAIR JORDAN: Okay. And we had a party status request in this matter from Andrew, is it Krieger? Please come forward

please. Please take a seat. Mr. Krieger, we have, could you please identify yourself.

Make sure your microphone is on. There should be a bright glowing green light. No, you need to make sure, push the button that says push in front of, push, there. That's better, glowing green light. Identify yourself for our record please.

MR. KRIEGER: My name is Andrew Krieger. I'm a resident of the District of Columbia. Live in Columbia Heights at 1309 Irving Street, N.W.

BZA CHAIR JORDAN: Mr. Krieger, you've made an application to be what's called a party status. Just a couple of things I wanted to go over with you. One, your application for party status is deficient in that you didn't complete the application.

There are certain requirements that have to be put forth to be granted party status and you didn't do that. And I understand this is your first time availing yourself through

this process and procedure. But we have certain requirements and certain deadlines that things have to be submitted.

And you haven't. So at this point it's a bit late for you to do that. You do have the right to participate and give your viewpoints on the case as any other citizen does, would have in this matter to discuss the issues and your support or not support.

I think you're here in opposition so you would have the opportunity to do it. But your application itself was deficient to be granted party status.

MR. KRIEGER: Mr. Jordan, can you tell me how it was deficient because when I filed the application I believe I was filing with the guidelines that were set forth to me here in the BZA office?

BZA CHAIR JORDAN: They gave you the application. Did you come here to get the application?

MR. KRIEGER: Yes, I did and I

filled out the application in this office.

BZA CHAIR JORDAN: Well then maybe there's something missing because I have an application that only has your name on it and your address and your signature and none of the questions that are asked that have to be, that are required to be completed, have been completed. Maybe you filed something else that we don't have in our record and if you have it you can give it to us.

For instance, you have to answer how would this property owned or occupied by such person in which the person has interest be affected by the action requested. What legal interest does the person have in the property? What's the distance between the person's personal property, the property and the property subject in the application?

What's the environmental, economic, social impacts, et cetera for this application? Those things are left blank.

MR. KRIEGER: Mr. Jordan, I

submitted supplemental information to this file and to this application. It was received by Mr. Nero on 2/17.

We had a conversation this morning as to this information and photographs being added to the file. And there was some confusion on --

BZA CHAIR JORDAN: Yes, I understand. And basically what you submitted was not the application questions. You basically submitted what we would call like a pre-hearing statement and that would be, your submittal would be deficient regarding what's required for party status.

MR. KRIEGER: Well when my application was accepted for party status, Mr. Jordan --

BZA CHAIR JORDAN: No, it was received. It's not accepted. It's not approved, it's received or accepted in that light. It's received and filed and a decision is made by the Board, I really should have them

before these days.

But that's something else we hope from the zoning rewrite. But --

MR. KRIEGER: Yes. The information that you're asking me for here was not requested when I actually did submit my paperwork and I wasn't informed that was necessary in the submission of my paperwork for party status.

BZA CHAIR JORDAN: The application itself states that. The document they gave you, it's right on the front. It's all throughout the document. Let's --

MR. KRIEGER: I was under the impression that could be the supplemental.

BZA CHAIR JORDAN: Let me ask you, do you know the, what's your intent with party status? Do you understand what a person who receives or a person who received party status what happens when a person receives party status, what it means?

MR. KRIEGER: I live within 200

feet of the property.

BZA CHAIR JORDAN: Let me explain because a lot of times I think it's kind of confusing, it's confusing for me, for most people in regards to the status as, having a right to come and give your viewpoint about whether or not an application should be granted for relief requested.

As a citizen you have, anybody has the right to do that. Party status bestows a whole different level upon you. It gives you the right to actually put on a case, meaning that you have the right to come and cross examine witnesses, have your own witnesses and experts and put them on, put that evidence before the Board to weigh it as similar to what the applicant has the right to do.

So I don't know if that's what you really were seeking or were you really seeking the opportunity to come before the Board and to speak in front of the Board.

MR. KRIEGER: That is what I'm

really seeking because some of the questions that you were addressing just in your statements to this case in the rewriting of the BZA laws are also part of the foundation of this case that's taking place here in Columbia Heights that I've come to speak with you about this morning. You're talking about --

BZA CHAIR JORDAN: Are you prepared, are you going to do any cross examination of witnesses?

MR. KRIEGER: I would love to.

BZA CHAIR JORDAN: Okay. All right. Board, any questions of Mr. Krieger? Your response.

MS. MOLDENHAUER: We obviously oppose the request for party status. We believe that even if you then read his multiple page submission that's attached to the application he fails to satisfy Section 3106.3 in regard to stating a specific or distinctly unique aspect that is affected.

One line does refer to he and his

wife being concerned with the view of the mechanical parking and I think that was one of the only potential elements that may have satisfied the standard. But that has thus been removed because we've amended the application to take away the mechanical parking based on what we believe is an extended dialogue between the community and also with Mr. Krieger.

So based on that we think that, we submit that the request is, does not satisfy 31036.3 and that his party status should be denied.

BZA CHAIR JORDAN: Board, any feedback? It is my, I'm leaning to deny the application for party status.

COMMISSIONER MAY: Yes, I mean it's unfortunate because I think that you probably could have made the case that you should have party status, just didn't answer the questions. And we have to go by the rules.

You've got to answer the questions. And there has to be a certain amount of time in

advance and so on. And it just doesn't, it's not close enough.

MEMBER HINKLE: Yes, I tend to agree with Mr. May. You know your submission is within the record and we have read it. So I just wanted to add that.

But, you know, perhaps he might get a minute or two for his testimony if he would like. It's your prerogative.

MR. KRIEGER: Mr. Jordan.

BZA CHAIR JORDAN: Yes.

MR. KRIEGER: Also entered into the record was a letter of non support that went around to members of --

BZA CHAIR JORDAN: Yes, we have all that. We're just dealing with your issue as party status. All right. Based upon what we've concluded and on the application that was submitted, we're going to deny you party status because your application doesn't meet the criteria for party status.

However, we will give you the right,

you already have the right to participate in a sense of giving statements regarding the application. We have in the file what you've already written and we in fact have read it.

MR. KRIEGER: Thank you.

BZA CHAIR JORDAN: And you will have the opportunity here today to give additional statement to the Board when we get to the point of people who wish to speak in opposition, okay.

MR. KRIEGER: Yes.

BZA CHAIR JORDAN: So you can sit there if you want or you can go back and take a seat and we'll call you back up or whichever you would prefer. But we're not granting you party status, okay.

All right. So with that let's turn to the applicant and let's see where we are. As you know there are some issues, certainly there is push back from OP and others regarding the third floor proposal. So you might want to address that.

Board, is there anything else in particular you wanted to hear so we can make sure in the presentation you do hear that?

COMMISSIONER MAY: Yes, I mean the case seems to hinge on the financial hardship and you need to explain that because what I see here is not enough.

BZA CHAIR JORDAN: So it's on you.

MS. MOLDENHAUER: Then I would like to just introduce by clarifying as we know that there was a minor modification in the relief. Just making sure that we're all on the same page in that regard.

The applicant had revised it's application for relief removing the request for the mechanical parking spaces based on the dialogue. And so we are providing two spaces in the rear of the property which are above and beyond the one required space for the relief or for the number of units that we're requesting.

There would be one space for the four units that were requested. And we're

providing two spaces. The applicant can speak to the dialogue and the work with Zipcar to actually have a Zipcar location on one of those two spaces in the rear of the property.

The additional relief is for, under 2100.3, for an extension of the existing non-conforming court due to the request for the addition on the third floor and the existing non-conforming court which would be, which is currently occupied by the staircase, but which will be now open again based on removing the existing wrought iron staircase.

The initial application, pre-hearing statement and supplemental the ANC support, in our opinion, satisfies the three prongs. What we're going to do is we're going to allow the applicant to walk through those and walk through a presentation here and then have the Board answer any questions or ask any questions.

So I'll first turn to Mr., Dr. Glee from the Fenton Group.

MR. GLEE: Yes. My name is, as counsel indicated, Ulysses Glee. I know that I want to respect your time. You seem to be on task. So I want to just let you know I'm a District resident, been here for 35 years.

I moved into the District when it was unpopular to move in here. As a matter of fact it cost me a divorce because my wife didn't want to move and I said I'm moving. I moved into southeast Washington D.C., bought a home, renovated it. It was featured in the Washington Post. And I said this is fun.

And I continued it while a university official at University of Maryland. And I've completed over 60 projects in the city and not had one complaint by any neighbor during this entire time, including the project that's right around the corner from the one that I'm beginning to work on at this time.

I believed in giving back to the community. So I started a program with the business school of the University of Maryland

hiring interns. And we have successfully hired several of them.

In addition to that, we have been the owner of group homes in the city. We're very proud of what we've done and encourage other younger people to own them. So I own five and have encouraged six additional ones to be owned by others, including my assistant here she has purchased one because it's a need in the community and we can complete that need.

Additionally, the owner of this group home, which rents two additional homes to me approached me about purchasing this home because the population is aging and there was no longer a need to have this home there. So we purchased it and now we're here to try to convert it to a four unit building.

My assistant will go over much of the information. Again, I know you're limited on time so we'll try to be as brief as we possibly can.

BZA CHAIR JORDAN: I want you to

take the time to make your case. Can't stay out on the field. But, no, take the time to make your case certainly.

MS. ADEY: My name is Kristine Adey. I'm the development manager for the Fenton Group. 3112 13th Street, N.W. is located one block from the Columbia Heights Metro Station in D.C. It has proximity to several bus lines, Capital Bikeshare and car sharing.

In addition, we're trying to provide one car share space in the rear of the property. It's located in an R-4 zone district. It's also close to the 14th Street retail and business area, such as the Target located on the next street over. It's also located directly across the street from the Harriet Tubman Elementary School.

It's current existing use is as a community residential facility for intellectually and physically challenged individuals. The C of O is for eight

residents. At the current time there are six residents residing in the property 24 hours a day, seven days a week.

There are also 15 staff members who rotate through the property on a daily basis providing care for the individuals residing there.

BZA CHAIR JORDAN: Will this continue?

MS. ADEY: We are requesting to change it back to a residential use. There's currently one parking space due to the oil tank at the rear of the property. We would be looking to remove that to create an additional parking space.

These pictures illustrate, the first picture illustrates the use as a community residential facility. There's an office in the front of the building and this is a picture of that office space.

Additionally, there is a picture to the right of the oil tank. The oil tank is at

the rear of the property and, as I said, currently occupies one parking space. The oil tank will be removed allowing for a second parking space and the construction budget shows the cost associated with proper removal of the oil tank.

COMMISSIONER MAY: I'm sorry.

What shows the cost of it?

MS. ADEY: The construction budget.

COMMISSIONER MAY: I didn't see it on the construction budget.

MS. MOLDENHAUER: Part of the supplemental, actually we have a line item I believe for it.

COMMISSIONER MAY: I'm sorry.  
Point me to a tab.

MS. ADEY: I'm not sure on the tabs.  
But once she gets to there I can --

COMMISSIONER MAY: So this page?

MS. MOLDENHAUER: It is Exhibit C.

MS. ADEY: Yes, sir.

COMMISSIONER MAY: So where is it on this page?

MS. ADEY: So it says environmental abatement and protection before flooring, molding, painting and tile finish, about the center of the page.

COMMISSIONER MAY: So it's \$20,000. Is that the entirety of the, is that all just related to the tank?

MS. ADEY: Yes, sir.

COMMISSIONER MAY: Okay. Thanks.

MS. ADEY: The next slide shows photographs of the large metal fire stair which wraps around the rear of the property. This was required for the previous use for proper fire safety for the residents. Removal requires demolition and hauling. The construction budget shows the costs associated with the removal of the fire staircase.

Removal also allows for improved light and air to residents as it reopens the dog leg in the rear of the property and it allows

the rear of the property to more closely match its neighbors and retain its original architectural character.

These pictures show the, some of the consequences of the existing commercial use of the property. And there's an extensive fire alarm system and sprinkler system that has been installed to meet the needs of the residents.

Both of these pictures illustrate non compliant aspects of the property that would have to be dealt with upon renovations. The staircase is much too narrow and much too steep to meet current requirements and so it would have to be removed and a new staircase put in place.

Additionally, the entrance to the lower level does not provide enough clearance for a proper entrance. This slide shows the basement, the first floor units, first floor level. We would not be making any changes to the front facade of the building besides repainting. The paint is currently peeling.

We will also be maintaining the tree located in the rear of the property. This was a request by the neighbors and we feel that it does make sense. There is space for two legal parking spaces in the rear of the property.

These show the cellar and first floor layouts we are proposing. And this slide shows the second and third floor layouts that we are proposing. Yes, I know that the Office of Planning did mention that they did not support the build out of the third floor.

We are requesting the build out because without it the fourth unit, which would be located on the third floor, would be limited to 454 square feet of livable space. This would seriously decrease the value of the unit and based on our comparable analysis to well below \$300,000, then putting us back into a loss position even with the four units.

Additionally it would make it very hard to sell this unit. Micro units are not popular in this location.

Financial feasibility developing any project that fully complies with zoning requirements will not be financially feasible based on the information that we've provided. Investment required is substantial due to the existing condition of the property.

The profit and loss analysis submitted to the Board shows the infeasibility of the alternatives. And compliance with lot area requirements will result in a practical difficulty.

We feel that our project does provide several community benefits. It reduces density by returning the CBRF with Certificate of Occupancy for eight individual, intellectually challenged individuals and 15 staff members to residential use. It provides two parking spaces with one space devoted to Zipcar.

We are also agreeing to fund PTA purchase of several lap top computers at the Tubman Elementary School in order to allow them

to participate in the DC testing. And we have agreed to install signs around the block to promote proper disposal of pet waste, which is a neighborhood concern that they brought to our attention.

We've done significant community outreach on this project. We have a history of community outreach in all of our projects. But this one we attended both the January 8th and February 12th ANC meetings. We also held a mechanical parking demonstration on January 27th as well as a community meeting with Commissioner Flynn in order to discuss the project with residents.

ANC 1A voted in support with no disseminating votes at the February 12th meeting. And we received 40 letters of community support from neighbors including both adjacent neighbors, six neighbors from the block which is actually all but one neighbor on that entire block and support from the Church of Christ which is the owner of the property at

the very end of the block at 3100 13th Street,  
N.W.

MS. MOLDENHAUER: That completes  
the applicant's testimony. I obviously have  
some closing remarks then I'd like to open up  
the questions up for Board members if Board  
members have questions before.

BZA CHAIR JORDAN: Mr. May.

COMMISSIONER MAY: Yes, okay. So  
what's the square footage of the existing  
building?

MS. ADEY: The square footage of  
the existing building, 2,764, I believe, yes.

COMMISSIONER MAY: Okay. And how  
much are you adding with the addition?

MS. ADEY: We would be adding  
another 450 square feet.

COMMISSIONER MAY: To the existing  
450, right? Didn't you say it was 450?

MS. ADEY: Yes, yes.

COMMISSIONER MAY: Okay. The bulk  
of the argument, excuse me having to do with the

financial difficulty of developing the property into anything less than four units seems to hinge up on the cost of the removal of the stair and the tank, correct?

MS. ADEY: As well as the removal of the existing alarm system which is throughout the entire building. They have special alarm mechanisms on their doors and windows as well as just --

COMMISSIONER MAY: But aren't you gutting out most of the walls and doors anyway?

MS. ADEY: Yes, we are.

COMMISSIONER MAY: And so there's that much more cost associated with the removal of the alarm system?

MS. ADEY: I mean it's throughout the structure. So there is a cost associated with that, yes.

COMMISSIONER MAY: Is that item broken out in your cost estimate as well?

MS. MOLDENHAUER: I believe that's lumped into the demolition. Is that correct?

MS. ADEY: Yes, I believe so.

COMMISSIONER MAY: Okay. Well maybe you can, maybe it's worthwhile breaking that out for us. I don't know. Certainly the cost of the removal of the stairs which represents .8 percent of your entire budget for the development of the property is not a substantial cost.

And the cost of removing the tank at \$20,000 is 1 percent barely of the cost of the project. So it's hard for me to understand how, you know, a 2 percent total cost actually makes it impractical to develop the property.

Tell me now on the assumptions that you made on the models that were shown, the financial models that are shown on Tab 12, are you assuming that for the two unit development and the three unit development that you're only going to develop two floors and three fours, respectively?

MS. MOLDENHAUER: Can you clarify that? Two floors and three floors.

COMMISSIONER MAY: Well you're showing a model for four units that shows four units at roughly \$500,000 a piece, right and then for the, in terms of what you would sell them for. And then for the three unit version your selling three units at about \$500,000.

And then for the two units you're showing two units at about \$500,000 in terms of the income. So I'm kind of assuming that you're not changing the square footage of those units and that you're just not going to develop the rest of the building. I mean I'm not sure what to assume there because the model isn't very clear.

MS. ADEY: So for a two unit it would be two floors. But it would still remain a two bedroom.

COMMISSIONER MAY: And so it's twice as large and it only sells for, and it only sells for the same amount of money?

MS. ADEY: I believe we were saying

--

COMMISSIONER MAY: Maybe I'm just reading too closely what you put into your notes on it.

MS. ADEY: We feel that we were basing our analysis of the market and the sale price based on what we would be providing, which would still be two bedroom units.

COMMISSIONER MAY: But two bedroom units that are almost twice, one that's twice as large and one that's almost twice as large.

MS. ADEY: Yes, okay. So even if you were to say that, which I do understand your question and even if let's say you were to say that both units were to sell for \$600,000 which would account for --

COMMISSIONER MAY: No, I'm not going to get into sort of speculating about what it's going to be worth. I'm just saying that there's a fundamental flaw in your financial analysis, right because you're projecting two units in the two unit model that sell for exactly the same price as the four units in the

four unit model.

MS. ADEY: Yes, I did make a mistake there.

COMMISSIONER MAY: Yes, so you need to redo that analysis and demonstrate that there actually is a financial case for this because I do not see it. I would also say that for the three unit condo development what you ought to be looking at is, you know, two, two bedrooms and then one that's three or four bedrooms.

And get realistic pricing on those. And present that and then maybe you have a case because what I see here is totally inadequate.

MS. ADEY: I understand. But I don't think we could actually get four bedrooms out of a two floor unit.

COMMISSIONER MAY: You know, you have to decide what you can get into it. But surely what you can get out of something that's a floor and a half is going to be worth more money than what you can get out of a single

floor, right?

MS. ADEY: I actually just completed two, two floor units, both of which were two bedroom units. And they're currently going on the market for in the \$550,000 range.

COMMISSIONER MAY: What is the size of those units?

MS. ADEY: 1400 square feet each.

COMMISSIONER MAY: 1400 square feet each. Okay. So you need to show us that information because what you've shown us here is not demonstrating that.

MS. ADEY: I understand.

BZA CHAIR JORDAN: And additionally I didn't see leasing information.

MS. ADEY: Leasing information, what the rental scenario would look like?

BZA CHAIR JORDAN: Right.

MS. ADEY: Yes. In order, if we were to leave it, if we could only go two units by right or three units by right we would actually choose to keep the property in its

existing use. We could not rent it --

BZA CHAIR JORDAN: So I'm saying I don't see the information in the file.

MS. ADEY: We did --

BZA CHAIR JORDAN: Did I miss it? There's leasing information here.

MS. MOLDENHAUER: We did not provide the rental. I think and what Ms. Adey is trying to explain is why we didn't provide that because the applicant and as she has explained does not believe that there would be a financial ability to provide this project as a rental project and that they would as a business determine to put this back as a CBRE, which is not their intent based on the CBRE, the financials for CBRE's and what potential CBRE use would be able to be located across from a school.

BZA CHAIR JORDAN: But it's still a potential use.

MS. MOLDENHAUER: Yes, absolutely.

MS. ADEY: It is and that's

something that obviously we would need to provide oral testimony to now or we can provide it obviously in a supplemental.

BZA CHAIR JORDAN: Okay. But if you're going to give us the numbers than we need to see all the numbers and the reason why you rejected it.

MS. ADEY: I understand. In that case would we, we would, okay, I understand. So you would just want an illustration as to why we would reject that and then what we would actually do in a rental scenario?

COMMISSIONER MAY: Yes, I mean what you're trying to do is explain to us that there's no financially feasible way to develop this property other than what you are proposing right now. And what you've made at the moment is a flawed case that's missing some pieces.

So if you fill in those pieces you might be able to make the case.

MS. ADEY: I understand.

BZA CHAIR JORDAN: Board, any

additional questions of the applicant? The applicant anything in addition you would like to present before we go to Office of Planning? Then let's go to Office of Planning.

Mr. Jackson. I haven't called you Officer Jackson in a long time. I don't want you to think that we forgot that little bit about Officer Jackson. But that's okay.

MR. JACKSON: Thank you, Mr. Chairman. I appreciate that. Arthur Jackson, DC Office of Planning. You have the Office of Planning's report before you and I apologize for its being delayed.

I don't recall whether you took an action to accept it into the record because it was delayed.

BZA CHAIR JORDAN: Just because it's yours you know we would do that. No, we did not. But thank you for reminding us. We will accept it. And we know that's not your normal course of preparing for hearings.

MR. JACKSON: Thank you very much.

As stated in the report, the Office of Planning normally does not support turning offices or houses into apartments in the R-4 District that exceeds the 90 foot, that do not meet the 90 foot unit standard.

However, in this case since they were converting the CBRE back to a functional residential unit we do not oppose the variance as requested to create one unit per floor. We do not support the third floor addition, however, because we do not think the intent of the regulations was to encourage expansions of additional residential buildings.

Stepping back, I think this regulation is probably in line with other regulations that are in the zoning regulations that allow you to use the larger residential dwellings for other uses then straight apartments and flats with an eye toward eventually the possibility of it going back to a single family dwellings or flats.

When you expand an existing unit

like this, the larger it gets the less likely it is that it will go back to a true low density residential use. But again, that was just an aside.

And so based on that we do not support the third floor addition because we think that would be, the expanse is contrary. However, if the third floor units seem to be too small we would encourage the applicant to pursue three units instead of four on the subject property.

And that's a brief summary of the Office of Planning's report. And we'll wait to answer any questions.

BZA CHAIR JORDAN: Thank you. Let me ask you. Can you explain to me, you said this is going to increase the density. And they already have use for eight residents there. They wouldn't have the same number, it would in fact be less wouldn't it?

MR. JACKSON: Well the assumption is that what you have is three tenants,

basically it's, now the resident is actually only occupying a bedroom, right. They stay in their bedroom and they share facilities or they each, my assumption is it's more like a boardinghouse where you have people who need services who are staying in rooms and then they have shared facilities where they share the services.

So it would be a completely different arrangement then it is now. We're going to have one unit possibly occupied by a family on each floor. Now of course the application makes reference to 15 people. But I don't, it didn't seem to indicate that 15 staff are on site on a continuous basis.

It's more revolving staff. So that I think the unit density obviously would increase and I think the actual living density would increase on site depending on what the configuration of the housing, of the families that lived in the building, whether they were singles, couples or had children.

Now this is opposed to having a single family dwelling which would be one family.

BZA CHAIR JORDAN: Any other questions of Office of Planning? Mr. Hinkle.

MEMBER HINKLE: Yes, thank you. I'm a little bit confused about your concern about the expansion of the third floor. I don't quite understand because they're not requesting any relief to do that expansion. How is that a harm to the zoning regulations?

MR. JACKSON: I think, well the provisions that, this is proceeding on the recent provision to allow conversion. It doesn't say conversion and expansion. We think, from the zoning perspective we think the actual intent is that there be, I hate to say stop-gap.

But there's an opportunity to use a large building in a residential facility for something that's fairly compatible with a residential zone. That would be apartments

and in other cases, as I mentioned, there are regulations that deal with non private organizations and like uses that would possibly maintain the essential building that's there with some interior changes to meet the new use, but in the long term could go back to being a low density residential use.

I think that appears to be more the intent of the regulations as they currently stand.

MEMBER HINKLE: I guess my thought is that if this were being converted into a single family house or a flat they could still do the expansion. And so that doesn't necessarily impact the zoning regulations.

MR. JACKSON: The relative cost of converting it back after the expansion would be greater than it would be right now because now you have a third floor unit and an entire floor. This also would increase the size of the building to be much larger than the adjacent two properties which are also fairly substantial.

MEMBER HINKLE: Sure, sure. I mean I understand it might come to a detriment to the public good. But I'm just not clear as to why it's a harm to the zoning regulations. Thank you.

COMMISSIONER MAY: If I could follow up on that. The existing court is nonconforming, right?

MR. JACKSON: Yes.

COMMISSIONER MAY: And wouldn't a vertical extension be an extension of that nonconformity?

MR. JACKSON: Yes and that's why the applicant requested additional relief.

COMMISSIONER MAY: Right, so there is relief associated with that addition.

MR. JACKSON: Yes.

BZA CHAIR JORDAN: Okay. That cleared it because there's a question I meant to ask because I thought it was staying consistent. But it's not.

Any other questions of the Board?

Any other questions of Office of Planning?

Then the applicant questions of Office of Planning, please.

MS. MOLDENHAUER: I believe though, Mr. Jackson, your, to Commissioner May's point your concern about the addition was not based on the court requested relief, your concern was based on the overall intent of the 900 square foot provision in the regulations or the conversion to apartments.

MR. JACKSON: Well the thought of expansion instead of conversion because this would be effectively an expansion to accommodate it although it appears that the applicant could still secure the four units with the building as it currently exists.

MS. MOLDENHAUER: So then you're supportive of the four units if it wasn't, there was no expansion? You're not opposed.

MR. JACKSON: Not opposed.

MS. MOLDENHAUER: I'd like to clarify that. And then the other question is

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Section 401.11 actually anticipates an apartment building in an R-4 zone expanding. Isn't that correct?

401.11, it actually references, it's parallel language that the Zoning Commission added to parallel the relief that we're asking for here under 403 for the 900 square foot per unit requirement. The conversion in this case obviously going from a non apartment building to an apartment building under .11 it actually contemplates an existing apartment building being expanded to more units. So I think that in that regard, .11.

MR. JACKSON: 401.11?

MS. MOLDENHAUER: I think it's 403, sorry. So in that regard doesn't the zoning regulations actually contemplate the potential expansion of an existing apartment building?

MR. JACKSON: 403.11. My book doesn't have it.

MS. MOLDENHAUER: I'm sorry. 401.11, I said it correctly the first time.

And it says an apartment house in R-4, whether converted from a building or structure may not be renovated or expanded.

So it talks about the ability to expand it if you have the 900 square feet per lot, per unit. It's parallel language of the 900 square foot requirement. I know we're kind of getting off track here.

But I was just pointing out that obviously the regulations do permit an expansion of an existing apartment building.

COMMISSIONER MAY: That meets the 900 foot rule.

MS. MOLDENHAUER: Which is what we're requesting the relief for, absolutely. But it just, it does talk about expansion of an apartment building.

MR. JACKSON: Yes, it does tie it to the 900 square foot requirement.

MS. MOLDENHAUER: Which is why we're here.

MR. JACKSON: Right.

MS. MOLDENHAUER: I understand the circular nature of that argument. So and you did find that the property was unique based on its existing use?

MR. JACKSON: Yes.

MS. MOLDENHAUER: I have no other questions for Office of Planning.

BZA CHAIR JORDAN: Okay. Board, any additional follow up with Mr. Jackson? Then we would turn to Department of Transportation. Is there a representative from Department of Transportation?

We do have a letter from Department of Transportation that recommends, they have no objection to the requested relief. Is there anyone here from ANC 1A?

MR. FLYNN: Yes.

BZA CHAIR JORDAN: Please come forward, please. Give that to Mr. Moy, yes, thank you. Could you please identify yourself for us?

MR. FLYNN: Patrick Flynn,

Treasurer of ANC 1A and single member district representative for the area in which the subject property is located.

BZA CHAIR JORDAN: Okay. Give me one second please. Good. All right. I'm with you. Now do you want to talk about the report or do you just want to stand by the report that's submitted?

MR. FLYNN: The written testimony that you have on behalf of the ANC?

BZA CHAIR JORDAN: Yes.

MR. FLYNN: Yes. And I'm also, I do have testimony if you think it's necessary.

BZA CHAIR JORDAN: We don't. We can stand by the record that the ANC, the vote of the ANC that was 6-0-3, not supporting this application.

MR. FLYNN: Not supporting the parking variance request.

BZA CHAIR JORDAN: Parking variance.

MR. FLYNN: But supporting the unit

variance request.

BZA CHAIR JORDAN: So we can stand by that record or you can say anything more that you think that the Board needs to hear.

MR. FLYNN: The only thing that I would say then rather in the interests of time would be to directly address the petition that you've received. You have a written petition in opposition to the parking variance.

Excuse me, written opposition to both parking variance and the unit variance. And I would like to say for the record that in going door to door and receiving dozens of e-mails and dozens of phone calls in what was a very active civic debate on this subject the reason the ANC voted in the way that it did was because the people who signed that petition actually signed it because they were in vehement strong opposition to the parking apparatus and not the unit variance.

There was maybe not a resounding endorsement of the unit variance, but it was

much more, it was a very, the balance fell on the side of apathy and on the side of sure in terms of the unit variance and much more strongly in opposition to the parking variance. So I just wanted that to be clear.

BZA CHAIR JORDAN: Yes, I think the parking variance, the parking relief and the mechanical parking spaces really got people up in arms. But that's been withdrawn as you said.

MR. FLYNN: And that was addressed. So with that, that's where the ANC stands in that and rests as far as I'm concerned.

BZA CHAIR JORDAN: We appreciate you taking the time coming down. A lot of times we don't get to see ANC. They submit the letter and then we have questions and no feedback. But I really appreciate you taking the time. Board, questions of Mr. Flynn?

COMMISSIONER MAY: Yes, in the ANC's discussions was there specific discussion of the addition to the third floor?

MR. FLYNN: Yes. There was, that was specifically mentioned in the testimony of the applicant and it was more important, from the side of the ANC that the footprint of the building not change. The vertical expansion was of less importance.

COMMISSIONER MAY: Okay. Thank you.

BZA CHAIR JORDAN: Board, any other questions of the ANC representative? Does the applicant have any questions of the ANC representative? No, that's, does the applicant have any questions of the ANC? Did I miss it?

MS. MOLDENHAUER: No, no. I was making a note, sorry.

BZA CHAIR JORDAN: I know. I understand. All right. Then let's move to anyone wishing to speak. You had something else?

MR. FLYNN: No.

BZA CHAIR JORDAN: Thank you. Is

there anyone else in the audience wishing to speak in support of this application? Please come forward. Great. I think your mike is on. Just give us your name.

MR. DUANE: Hi, I'm Darrell Duane. I'm the resident and owner of the property just to the left of this property at 3110 13th Street. Been there 13 years. And I just wanted to speak in favor of the expansion of this.

There is a property at 3118 that has just done the same thing, apparently without any kind of BZA action or hearings that I'm aware of. It just kind of happened so I assume that this is happening in the neighborhood. And I don't see why it wouldn't be the same situation for this property to be able to do the same thing.

The Fenton Group has been quite responsive in my experience. I'm aware a lot of my neighbors are having some frustrations about how they've not been responsive. But

they've held a number of meetings.

They've worked very closely with the ANC Representative, Patrick. And they've worked directly with me around concerns that I've had with my own property next to them, some noise concerns.

And so I see no reason why they shouldn't be able to build out the fourth floor or the third floor.

BZA CHAIR JORDAN: Thank you. Board, any questions of the witness? The applicant any questions of the witness?

MS. MOLDENHAUER: No questions.

BZA CHAIR JORDAN: There we go. Thank you. I'm seeing the court reporter was kind of doodling head shake left to right. All right, thank you. Anyone else wishing to speak in support?

Yes, please come forward and give us your name. And did you complete the witness cards?

(Off microphone comments)

BZA CHAIR JORDAN: I think your microphone may be on. Say something.

MR. JAMES: Now I have a very bright green light.

BZA CHAIR JORDAN: There you go.

MR. JAMES: I'd just like to say that I am a resident of DC.

BZA CHAIR JORDAN: Your name?

MR. JAMES: Glenn James. I am a resident of DC. I've been, I arrived there in 2002. Actually I came to DC because when I was in the military I was in Ramsond Air Force Base and just we were talking with some people and they said well, you know, I'm going to be heading to DC.

And I said well why is that? And he said well DC is really prospering and growing. They're offering many incentives for people like you and I to get property. So I said well okay, I'm going to make sure I call my assignments officer and make sure that I get to DC.

So I came to DC in 2002, purchased a property over in northeast, in 2004 I purchased my present property at 1360 Irving Street. And that is how I came to know Mr. Glee. Just walking throughout the neighborhood one of the properties he was developing, I believe, was at 1345.

He happened to be there and my son and I would just walk down and we engaged him in conversation about the property, the nature of the community and how things were growing and expanding and the excitement that we experienced throughout the neighborhood because of this expansion. And so I went inside the place. It wasn't fully developed at the time but went inside and looked at the things that he pointed out to me all the things that he had done.

And it was a very great job that he had done at the facility. So, you know, and just talking to him about my property he is very knowledgeable about things, has offered me

assistance. And even when I was trying to develop my property or to improve my property he even referred some of the folks that he normally gets to do his work to help me out with my project. And he offered advice.

So and over the course of the years we've become friends and we've stayed in contact. And I was very surprised when I attended the ANC meeting, I don't normally attend ANC meetings. But I decided well I have a civic duty to be involved in the community and I'm tired of hearing the comments of other folks rather than being there myself.

So I did attend those meetings. I did go to the facility Yes! Organic to see the parking apparatus. I was there. The noise didn't bother me. I thought that it was good in order to be able to expand the present parking.

So I thought it was good. Others didn't think that it was good. But the noise didn't bother me or anything like that. So I

thought it was pretty good.

So I think that for developers like Glee and others they're doing a very great service to the community. There are many homes in the community and as you know from that area dating back to, I guess, '68.

A lot of those properties were boarded up but developers like Glee have come in and have greatly improved them. And the area wouldn't really be what it is today if developers like him hadn't come in and refurbished the properties that were there.

So I'm just thankful that he's there and pray that you guys rule in his favor.

BZA CHAIR JORDAN: Thank you. Really appreciate you taking the time and coming down and glad that you participated in the civic nature of being a resident of the District of Columbia. Many more people need to do that and I really appreciate you taking the time doing it.

Board, any other questions of this

witness? Applicant, any questions?

MS. MOLDENHAUER: No questions.

BZA CHAIR JORDAN: Is there anyone else wishing to speak in support of this application? Anyone wishing to speak in support? Anyone wishing to speak in opposition?

Mr. Krieger. Yes, you get three minutes to, we already have your statement. But you get to speak three minutes in opposition, please.

MR. KRIEGER: Thank you all so much. And thank you all for the opportunity to have some inclusion into this process. I'd like to start out by saying that some of the information that has been disseminated this morning is a bit of the continuance of the misinformation that's been revolving around this entire process from the beginning, the inception of the Fenton Group's plans and how they have explained it or not explained it to the community.

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In many instances when they sought letters of support, which I think they stated was 40, those letters of support were garnered possibly under questionable circumstances too with several questionable statements as to how the property was going to be developed, who the owners of the property were and in general the long term common good that the Fenton Group was watching out for of the community.

Similar social services properties that have been in our neighborhood have been developed in a very different way. If you all type up on your computers and check out 1305 Irving Street, 1307 and 1315, those were also social service residences when I moved to Irving Street approximately 30 years ago.

Also around the corner at 1300. At that time there were five homes for the social services actually on our block. Those have all been converted in a very different way. 1305 and 1307 each have two units in them for two families. 1300 has been turned into a four

unit building. 1315 is still a single family, single residence building.

Variances, by the way, were granted for these properties long ago when people did not need, when people needed variances to defray some of the financial hardship to move to our community and build. This is no longer the case.

Anyone can come in our community now and develop a two unit, a three unit building, make a profit and walk away with their reputation, with respect of the community and tremendous accolades. I'm one who is not in favor of over density.

I readily admit this. And I think that several of these projects that are approaching our neighborhood and asking for these types of variances are driving up property values, putting other residents into hardship, affecting the peace and tranquility that we are able to enjoy in our homes and of our homes.

And I think this is just not a condition for my block in Columbia Heights on Irving Street, but a condition throughout the city that I hope the rewrite of the BZA ordinances will address. And thank you for bringing that up and mentioning it.

BZA CHAIR JORDAN: Thank you. We appreciate you taking the time coming down and speaking to us.

MR. KRIEGER: Can I keep on going?

BZA CHAIR JORDAN: No, your time is done. You had three minutes. I can give you another minute. Go ahead, give you another minute.

MR. KRIEGER: Well thanks. I appreciate it. Also to point out that this property is already I believe occupying 61 percent of its lot. Of the 46 signatures that we did get on this community petition most of the members on this block I would like to point out that one of the signers actually is a resident and only part of the 4 percent of the

parishioners that are still in the District that attend the First Church of Christ on 14th Street.

The other residents that did sign this petition are residents of Columbia Heights. They are residents of the District of Columbia. They have clearly indicated that information on the letter of non support for this project. Thank you.

BZA CHAIR JORDAN: Thank you. Really appreciate you taking the time and participating in this process. And this is like ground level, grass root, people getting involved in their neighborhoods and that's what we really need to see a lot of.

And we do appreciate you, you know, whether or not we rule in support of the way you wish we would or not, and that's for everyone, but we're glad people participate. It gives us more information. Cross examination, excuse me, Board any questions of this witness? Cross examination?

MS. MOLDENHAUER: No, but we do have some rebuttal comments and some other additional information we'd like to provide.

BZA CHAIR JORDAN: So when we get to the rebuttal part, is that what you're trying to tell me. Yes, I got you. Any other person wishing to speak in opposition? Anyone else in opposition?

(Off microphone comments)

MR. KRIEGER: I would like to.

BZA CHAIR JORDAN: We've already exceeded the time that's allowed.

MS. MOLDENHAUER: And I would object because I don't believe the model was accurate.

BZA CHAIR JORDAN: Well we don't need to object because I haven't even moved forward on it. So we're good. So now we're getting ready to turn back to the applicant for rebuttal please.

MS. MOLDENHAUER: I would first like to just ask and ask the applicant to answer

some questions in order just to, clarifying the lot occupancy. You're not, your microphone just needs to be turned on.

MS. ADEY: I apologize. The 61 percent that he mentioned previously, that was when we were including the mechanical parking and we were applying for zoning relief to go over our lot occupancy. Since we've removed the mechanical parking we are within the, well below 60 percent of the lot occupancy requirement necessary in R-4.

MS. MOLDENHAUER: You're substantially below. You're about 49 percent?

MS. ADEY: Yes, 49 percent.

MS. MOLDENHAUER: And if in regards to some of the comments that OP was making and the party in opposition was making or the individual in opposition was making in regards to the density, can you explain a little bit about the six individuals and the 15 staff members and the degree of density that's currently being used by this property in its

current use?

MS. ADEY: Yes. These individuals actually cannot live unassisted. They have to have a person within arms reach of them at all times. So there is at least six staff members on the premises with them at all times in addition to themselves.

It is not like a boarding home. They actually live throughout the home. They each have bedrooms, some of which are shared. But they use the common spaces all together. In addition to those six staff members there is also a manager on site at all times.

And then the additional support staff comes in the day time and then leaves at night because the individuals are sleeping and do not need more than just that one person who is directly assigned to them to supervise them.

BZA CHAIR JORDAN: So it's not 24 additional care?

MS. ADEY: So the one person that is assigned to them is 24 hours.

BZA CHAIR JORDAN: One, but not --

MS. ADEY: But the additional support staff outside of those six members and then the manager are, come in throughout the day to assist with meal preparation, activities, exercise and various other activities and needs of the residents.

Yes, additionally, there's a significant requirement for laundry in this facility. A lot of the residents have issues using the restroom and so there's a large requirement on the sewage system and the water demand for the property.

And they also go to day activities and require transportation. So in addition to the staff members who park on the street as necessary to go into the property and help the patients, they also have, I believe one or two vans parked on the street at all times so that they can transport.

Well not at all times. When they take them away they're not there, but so that

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they can transport them to whatever they need to go to.

MS. MOLDENHAUER: And then I believe that you've looked at some of the submissions that we've provided as part of the prehearing statement regarding the MRIS and additional supplemental information. We will be more than happy to supplement the record as well.

But we wanted to just clarify some of the information that was actually already in the record regarding the purchase prices for the different alternatives.

BZA CHAIR JORDAN: Comparables, yes.

MS. ADEY: Yes, I apologize. When I completed this analysis it was a little while ago when we were initially submitting our application and I had forgotten. But under Exhibit A that does reflect the MRIS market analysis that I completed for the single level condominium report.

BZA CHAIR JORDAN: Yes, we're familiar with it if you just want to reference it. We've seen that.

MS. ADEY: So essentially if you take a look at the statistical numbers it does support, the two levels does support the \$513,000 sale price that we are quoting on our model. So I just wanted to clarify that.

MS. MOLDENHAUER: Can you just point out the square footage then on those?

MS. ADEY: Yes. So the first is 1,225. Then we have 1,100. We have one for 888. I'm not sure how they got two levels out of that. But 1,400 and then 1,500 square feet.

MS. MOLDENHAUER: And so, then what we'll do is we'll also supplement the record in regards to the rental analysis and review and provide maybe some additional information regarding the two unit additional financial information.

But we believe that based on the community outreach, the financial hardship

showing that this project financially is a negative for the alternative options and that the only to obviously obtain a profit in this project would be to request for four units that the challenge for having the layout, as articulated in this report and in the additional testimony today, for working within the existing structure and adding that additional 450 square feet in the rear while staying within and significantly under the lot occupancy, we believe that there is sufficient support for that.

And we have OP indicating that this project is exceptional and that they do find it to be not a hardship to the public good or the zone plan if it's four units. Their concern is obviously just the additional square footage.

And ANC obviously, as you heard today, testified in support of the project after extended dialogue back and forth with the community, the modification to remove the mechanical parking and to provide just the two

parking pads on the site, which I again indicate that then reduces the lot occupancy to 49 percent.

We believe the application satisfies the three prongs. But we will work with the Board to obtain a date to supplement the record.

BZA CHAIR JORDAN: Thank you. Questions, Board? You can do your comments. Well then we would, you can do it. Why don't you do it --

COMMISSIONER MAY: Well I think I'd like to offer you some guidance on what you need to submit because, you know, pointing at the multiple listing information and the comparable report and saying that somewhere buried in here is the evidence that demonstrates that a, what would it be, it would be a, excuse me, a 900 square foot, two bedroom apartment and an 1,800 square foot, two bedroom apartment would sell for the same amount of money roughly and that somehow is demonstrated

by this, is not persuasive by any stretch.

So I'm not asking for clarification right now. I'm trying to give you guidance. I mean I'm telling you what I heard and I'm telling you what you need to submit. So information that demonstrates that a reasonable two unit development or three unit development, I mean I could go to three unit.

Three unit is almost meeting the 900 foot rule to begin with. But a three unit development and how it would be reasonably developed. It's not going to be developed as a two bedroom. You know, it could be developed as a four bedroom. I don't know if there's market for that.

That's where the comparables come in. So, you know, pointed information. We don't need a flood of information. We need direct information that says, you know, here are three comparables and these were the square footages and this is how it compares to the three units that we would build.

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If you want to do that kind of an analysis that would be more persuasive. I also think that your budget needs to be tightened up a little bit and you need to put more focus on what's driving the cost.

I mean I can look at this and I can see what's driving the cost. It's not the tank and it's not the stair or the alarm system. What's driving the cost is having to reorganize the walls so you can make this into four accessible units, right?

You've got to move the stairway. That's a big cost. I understand that a lot more than I understand removing a tank. So if you want to make that case it's yours to make and you just need to be persuasive about it.

I also, I mean there are other costs that have been referenced in the ANC report having to do with amenities that you're funding for the community, which, you know, are good things to do. But I don't see where they show up in the analysis.

And if you've got, you know, \$7,000 to \$10,000 or \$20,000 to put into or \$14,000 or whatever it was, to put into buying computers for a neighborhood facility isn't that eating your profit as well? I mean there's something about the money.

I'm not saying that those aren't good things to do. But there's something missing.

BZA CHAIR JORDAN: Are those in your financials?

MS. MOLDENHAUER: No, those would obviously have just then reduced the profit by those values.

BZA CHAIR JORDAN: So they're not in your cost?

MS. MOLDENHAUER: Those were decided after the prehearing statement was finalized and obviously they were, we did not amend the budget.

COMMISSIONER MAY: And I'm not suggesting that the amendment has to be

adjusted per say. But, you know, what you decide to do with your profit is up to you. And if you decide to dedicate it to that purpose that's fine.

But when you are doing things like that and then saying well we have to make, you know, this profit. We can't make, you know, a profit on this other scheme it kind of diminishes your argument. So it should be, you know, you need to make a compelling case that there is absolutely no other way to make this work financially and you've got a ways to go to do it.

BZA CHAIR JORDAN: Any additional questions? Then let's, is the Board willing to have this hearing close and we just receive the supplemental for a decision or do you think you need to keep the record open for hearing purposes?

We will close this hearing based upon the record as we've received it and keep the record open and wait in addition to the,

additional information to be received. And that's additional comparables as explained and the rental information. Was there any other information that we needed from the applicant, Board?

I think that's basically it for the comparables, as what's been defined. And that would be the only submission that we make. We put this one for a hearing date. Meeting for a decision.

MR. MOY: Mr. Chairman, I'm looking at the size of the docket in the month of March. March 11 is doable?

BZA CHAIR JORDAN: Is that Mr. May's date?

MR. MOY: Mr. May won't be here until April 1st if he wants to deliberate for a decision.

BZA CHAIR JORDAN: I'm going to give it to Mr. May --

COMMISSIONER MAY: Depending upon what information is submitted I may be able to

deal with it as an absentee at another hearing between. Well I think the 11th would be as soon as possible. I'm not that I'll be, that it will be persuasive.

And then I'm not available again until April 1st.

BZA CHAIR JORDAN: Yes, which I've vetoed any more April 1st.

COMMISSIONER MAY: This is going to be shorter than some of the other ones on April 1st, I think.

BZA CHAIR JORDAN: I know I was just thinking, what else do we have on, when's the next date, April --

MR. MOY: April 4th.

BZA CHAIR JORDAN: That's not Mr. May.

MR. MOY: I'm sorry. Do you mean in terms of March?

BZA CHAIR JORDAN: April.

MR. MOY: In April. In April then we're looking at let's see the 15th, April the

15th.

BZA CHAIR JORDAN: That day sounds familiar for some important reason. Okay. So that's a bad day. So let's do this. If we put it on, we already have seven or eight cases April 1st, right?

MS. MOLDENHAUER: We would request March 11th if possible and then obviously if that needs to be continued.

BZA CHAIR JORDAN: Ms. Moldenhauer, let me manage this docket please, madam. Thank you. We're dealing with a lot of other issues that you might not be aware of.

If we do and I hear you say, Mr. May, it may not be enough for you to, we could give the option and then put it on for the, we could put it on for the 11th and if need be we may roll it if we think we need some additional information and that way we keep a backup.

Okay. Then we'll do it. We'll put it on the 11th. And we want a submission by May 4th?

MR. MOY: May 4th, rather March 4th.

BZA CHAIR JORDAN: March 4th with the option, put an asterisk there. We may roll it if necessary. Okay. Thank you, Mr. Jackson. Then with that we will conclude this hearing.

Okay. We're going to be in lunch recess for a half hour. We will come back at 12, what is it 12:45, let's say. Thank you.

(Whereupon, the foregoing matter went off the record at 12:03 p.m. and went back on the record at 12:55 p.m.)

BZA CHAIR JORDAN: Okay. Let's go back into the ball game. Mr. Moy, would you call 18712, please.

MR. MOY: Yes. This is Application Number 18712 of Craig Marina. This application, Mr. Chairman, has been advertised for numerous variance relief to court requirements rear yard lot occupancy and non conforming structure requirements.

BZA CHAIR JORDAN: You need to give it to the Board Secretary please, Mr. Moy. You're not on the record. So let me get the case started. Please identify yourself, please.

MR. MARINA: Okay. My name is Craig Marina. I live at 817 I Street, N.E. and I'm the owner of 821 I Street, N.E. I've lived at 817 for 26 years. And I've owned this subject property for 22 years.

BZA CHAIR JORDAN: Is this a self cert or is this ZA referred?

MR. MARINA: I'm sorry.

BZA CHAIR JORDAN: I'm just asking is this ZA referred?

MEMBER HINKLE: ZA.

BZA CHAIR JORDAN: ZA, okay. Do we have the affidavit of posting? Do we have the record of that?

MR. MOY: No, sir.

BZA CHAIR JORDAN: Did you have --

MR. MARINA: Yes, I have an

explanation for that. I went down and filled out all the, you know, went through the process, the 200 foot radius process and made out packages and Mr. Nero helped me.

I never got any notice about that requirement to post. And when I found out about it from Mr. Moy on Friday I went back because I couldn't realize how I missed that. But because I owned two other properties within that 200 foot radius, mine and another rental place, I received three notices of this hearing.

And two of them didn't mention the posting. But the one did. So it was one of those one of these things is not like the other cognitive tests that children take and I failed it. So I basically screwed up and didn't post.

But what I did in lieu of that I had done already before was --

BZA CHAIR JORDAN: It's no lieu.

MR. MARINA: Well what I did to satisfy the requirement, I hope, of publicizing

it is that I went door to door.

BZA CHAIR JORDAN: No lieu.

MR. MARINA: No.

BZA CHAIR JORDAN: No lieu. We understand the circumstances thereof. But it's a public posting and everybody doesn't open their mail, some people are out of town, some people are in town, some people, you know, whatever.

COMMISSIONER MAY: Some people don't even live there but they just happen to be walking by, they're not within, you know, they wouldn't have gotten the notice from the ANC, they wouldn't have gotten a notice by mail. So this why we --

MR. MARINA: The back of the house is only seen by the block that lived there.

COMMISSIONER MAY: No, you're not, please let me finish what I'm saying. Any time there's a zoning case like this we want to have the properties posted so the people who are in the vicinity see what's going on.

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It doesn't matter if there are people who frequent the alley or not. It's just a matter of, you know, the principles of how we handle a business.

MR. MARINA: Okay. So the petition for the neighbors doesn't weigh anything?

BZA CHAIR JORDAN: Let me tell you generally it's an absolute, at least the posting. And even if it had been posted for some time we have some leeway. But it's really very rare that we allow that.

But you have to at least have had it posted. Posting is almost like, no posting, no hearing, no nothing. So we're going to have to continue this for you. You need to get the posting corrected and put up the posting for a new date.

And the beauty of it all, you have the opportunity, you're not going to be locked into any particular date, Mr. Moy, because Mr. May doesn't have to hear this case although you

already prepped for it. So we're going to have to give you another date. So, Mr. Moy.

MR. MOY: Yes, sir. Well I would like to get it in at least, I'm assuming we're going by the requirements it was 15 days for the posting.

BZA CHAIR JORDAN: Yes, I'm not doing any racing here.

MR. MOY: Okay, well I'm just --

BZA CHAIR JORDAN: Some time in April or May or something.

MR. MOY: Going to look in April. March is already pretty --

BZA CHAIR JORDAN: And we've touched April 1st more than we should touch it.

MR. MOY: True, right, so we're looking at the 15th looks good.

BZA CHAIR JORDAN: April 15th?

MR. MOY: Yes, sir.

BZA CHAIR JORDAN: That day is, I know it's important for something. Anyway, yes. So April 15th. You need to be sure to

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coordinate with the Office of Zoning across the hall. Make sure you get the posting, the placards so they can post and do it accordingly.

Take the pictures, file the affidavit timely so we get that all back in time showing that you've actually complied, okay? Sorry, but the rules are the rules and they're kind of --

COMMISSIONER MAY: Before he goes though maybe there are some other tips we should give him about his case.

BZA CHAIR JORDAN: Yes, that would be good.

COMMISSIONER MAY: So you don't have a, the Office of Planning is not supporting the application. I would suggest that you talk further with the Office of Planning and see if there's anything that you can do to convince them that this is appropriate relief.

MR. MARINA: I'll try back. I did talk to Mr. --

COMMISSIONER MAY: I'm not looking

for a debate. I'm just telling you some things. So just listen and take notes, okay.

So and then the next thing is that the ANC we received a note from the ANC but not an official report. So I would suggest that you back to the ANC and make sure that you get it actually in a hearing and a report from their committee.

I think that would be very helpful. And then I think that, you know, what, you need, as I recall, now it's hard for me to remember all of the details.

BZA CHAIR JORDAN: You need to really hit the uniqueness tests.

COMMISSIONER MAY: Yes, I mean it's, you actually have to make a case that this relief is necessary, not just that it's, you know, it's no different from what is happening next door because what happened next door happened before there were zoning regulations.

You need to explain all of the, you know, hit all of the points of the test to be

granted the relief.

MR. MARINA: The heroine syringes in the alley really.

COMMISSIONER MAY: I'm sorry.

MR. MARINA: The argument revolves more around the heroine syringes in the alley and that sort of thing.

COMMISSIONER MAY: You can make whatever you want in there. I'm not sure that heroine syringes are really relevant. But, you know, you can make the case in whatever way want. Just make it and make it as strongly as you can if you want to get the relief granted.

BZA CHAIR JORDAN: And additionally Mr. Gyor indicated in his report that this might need variance relief. So I might, if I was you, touch back again with the zoning administrator or OP so you can make sure you get that straight so you can get it all done. You might need additional relief for a lot area.

It's up to you. But I think you got a ZA referral. So he would be the one who

eventually makes a decision whether or not you need that relief. But I would talk back to him and raise the issue and say do I need this additional relief for lot area because it's been cited in the Office of Planning's report saying that you might need something else in conjunction, in addition to what he's already put in the letter, the zoning administrator.

So I would do stop by DCRA to have the Zoning Office to take a look at the zoning referral letter and ask them and give them a copy of Office of Planning's report where it says --

MR. MARINA: Yes, I have the Office of Planning report and I have the DCRA BCA letter.

BZA CHAIR JORDAN: That's not what I'm saying to you. I'm saying the Office of Planning. First let me, we're really trying to help you --

MR. MARINA: Yes, yes, I have --

BZA CHAIR JORDAN: No, no, let me

stop you. So for us to help you, you need to listen, okay, because we can actually well we could just reject it outright and call it quits. We're trying to help you.

So the Office of Planning has issued a report and in that report it says, yes, the zoning administrator has submitted a letter that said you needed the certain relief that you already asked for. But the Office of Planning believes that in addition to that you need additional relief.

So what I'm suggesting is that you check back with DCRA, the zoning office there and ask, give them a copy of the Office of Planning's report and ask them do you need this additional relief. And if you do then we'll just come in and modify your application so you don't have to keep coming back and forth.

MR. MARINA: So that would be a modification to the DCRA letter?

BZA CHAIR JORDAN: You're just going to amend it. You'll just amend your

application. You can do that no big deal. But just find out if you need that relief.

MR. MARINA: That's the section cited in the 120?

BZA CHAIR JORDAN: Yes, you could, just go talk to them. Make sure that you have all the relief.

MR. MARINA: So these things in the OP letter, these citations are different from the ones in the DCRA letter, is that right?

BZA CHAIR JORDAN: Generally, yes, right. There's one additional relief. OP is saying you also need relief from what's called lot area. You're asking for relief from courtyard requirement, court requirement, excuse me, in your yard lot occupancy and non conforming.

But there may be one more that you need. So just check with DCRA to see if that's correct, okay? Take your OP letter, take it to them and say and ask them to compare the letters and do I need this.

MR. MARINA: To the direction letter that DCRA generated.

BZA CHAIR JORDAN: That's correct.

MR. MARINA: It should be consistent in what they're citing.

COMMISSIONER MAY: It doesn't really matter. What they send to us on paper doesn't really matter. What matters is what relief you request, okay. So if they say, if DCRA agrees with the Office of Planning that you need relief on that count, then you should amend your application.

You do not need to get DCRA to issue a new letter or anything like that. We don't

--

MR. MARINA: On Form 120.

COMMISSIONER MAY: Whatever it is. I don't know what the form number is. But, yes, amend your application.

MR. MARINA: Okay.

BZA CHAIR JORDAN: Well with that then we're moving this to what date, Mr. Moy?

MR. MOY: It is April the 15th.

BZA CHAIR JORDAN: That's right.

And so by April 1st you should have your affidavit in.

MR. MARINA: Okay.

BZA CHAIR JORDAN: Okay. All right. Thanks. Then we will case the next case. Good hard work there, Mr. Gyor, just really have you sweating here today.

MR. MOY: The next application before the Board, I believe, it should be the last, yes, for the day is Application Number 18715. This is the application of Maret School, Inc., pursuant to 11 DCMR 3104.4.

This is before the Board for a special exception. This has been advertised to allow an addition and to increase student and faculty/staff cap at an existing private school under Section 206.

BZA CHAIR JORDAN: All right. Let's welcome them. You guys have been here all day. So thanks. Can you identify

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yourselves, please?

MR. YOUNGENTOB: My name is Bob Youngentob. And I'm am on the Board of Directors, Board of Maret. And I'm head of the Buildings and Grounds Committee.

MR. KADLECEK: Cary Kadlecik from the Law Firm of Goulston & Storrs on behalf of the applicant.

MS. TALBOTT: Marjo Talbott. I'm the head of Maret School.

MR. FEOLA: Phil Feola from Goulston & Storrs on behalf of the applicant.

MR. WHEELER: Tom Wheeler with Cox Graae, Spack Architects.

MR. KABATT: Chris Kabatt with Wells and Associates, the transportation consultant.

MR. WALKER: Darwin Walker, Maret School Assistant Head for Finance and Operation.

BZA CHAIR JORDAN: All right, good. Thank you. Where am I? This, the

representatives from Department of Transportation already here, two guys here. You know getting this report last minute becomes slightly problematic for us and especially in the depth of this report, which we don't necessarily accept into the record automatically because it's late.

But we will, you know, certainly give deference to Department of Transportation knowing the volume of work that you have and we will accept it. However, I'm going to turn and ask the applicant have you had sufficient time to review this report and do you think you're prepared and ready today to address the issues raised by the Department of Transportation?

MR. FEOLA: Yes, sir. And I don't mean to defend the Department of Transportation. But in fairness they have been working with us up through Thursday of last week trying to figure out a mid place. We couldn't get there, but we tried.

BZA CHAIR JORDAN: Okay. Well

that's good for you guys. But the other problem with it is that we review these cases well in advance.

And it really throws us for a loop getting these things late, especially something in depth as this report and trying to get our arms around it becomes, it's problematic for me and I'm sure it's problematic for the members of this Board because we spend, you know, eight to 12 hours prior to these hearings going through all these cases.

And then, you know, you think you're going one way and you think you've got something done and then it's boom, we have something else pop in here because it changes the complexion of how we were going to treat this case especially because we have, I'm going to use a slightly illegal use by exceeding the number of students that you are exceeding.

And in that light I think I'm going to really kind of treat this as a modification

of your previous relief as opposed to coming in looking for completely new relief because it raises a whole, another question about does the illegal use have an adverse impact upon where you are? And it opens up another can of worms.

So let's look at this going forward as the, going from the increase, the legal use to the new increase, kind of skipping the step in the middle like the illegal use because it's such a small number. That's the way I, we can do it the hard way if you want.

But I think this is the easier way and I don't think anybody is going to object to that. So let's handle it that way, kind of as a modification. You're still going to be required to do some of the showings. But we're going to, if we did it as a new request we would kind of have to do some other little steps in there.

With that let me see. I was relatively clear about your use, the need for increase and all the other factors and what's

been going on in this property and that you've gotten relief before, before, before, before and didn't really have problems.

But as you know the DDOT report kicks in and gives us great concern and some pause about the adverse impact upon the neighborhood by the increased traffic. And you said you're prepared to handle that today.

So those are my concerns. And let me see if there's something else the Board wants to hear in your presentation so we can get to the heart of the matter. Anybody else have any other issues on this application other than the transportation matter?

Since you've been here already several times over the years we understand. Okay. Let's hone in on that. I tell you what let me take this a little out of whack. I would like to hear from Department of Transportation first about their report and then give you your opportunity since we're really going to hone in on the transportation issue.

And so let's do that with Department of Transportation if that's all right with the Board. And my first question is the concerns that you raise about the impact, is that, does that arise out of the few people that they have above the number we approved before or is it overall, was this impact something that was created before they increased their staff beyond the numbers that was already approved?

MS. ISRAEL: Good afternoon. Thank you for letting me speak. My name is Evelyn Israel with the Department of Transportation. To answer your question it's ultimately a concern arising from the increase in 2008 in the number of vehicles generated as a result of the BZA approval back then.

BZA CHAIR JORDAN: So it's the BZA approval that gave them initially, what was it 635 and is not from the 644 they are at presently. It was before the 644.

MS. ISRAEL: Well it's both ultimately. It's arising in part from the 635.

BZA CHAIR JORDAN: I understand that. I understand that. The adverse impact that you are seeing, is it based upon the nine additional students that exceeded the cap that we gave from 635?

MS. ISRAEL: No, we believe it's from --

BZA CHAIR JORDAN: It's even before that.

MS. ISRAEL: Yes.

BZA CHAIR JORDAN: That's my point, okay. So I can handle it. I feel better even handling it the way I thought it was, okay.

It's not directly tied through what I'm going to use "an illegal use exceeding the number". It's, it was just overall impact on maybe the earlier projections have not been hit from the 2008 relief.

MS. CHAMBERLIN: Let me just interject a second. This is Anna Chamberlin, Transportation Planner. It's actually both. So the increase from 2008 to 2013, they've

exceeded their projections that they had come up with in 2008.

Thus, the small increase now we're not quite sure what the impacts are going to be because if they keep occurring at the same right, the trip generation rate that occurred from the small increase in 2008, if that same rate occurs with this increase as well, we don't know what the impacts are going to be.

BZA CHAIR JORDAN: So you know that the additional impact, I'm hearing two different things. When did you go to 644?

MR. FEOLA: Maybe we should explain that and then --

BZA CHAIR JORDAN: Yes, please.

MR. FEOLA: I'll ask Ms. Talbott to explain how we exceeded 635 and how that came about.

MS. TALBOTT: We have a K through 12 campus and we went to 635 feeling that was the appropriate amount when we came to BZA the last time. We have over the last couple of years had

an extraordinarily small attrition rate.

The average of an independent school attrition, those kids who can come but end up not coming, of our present students is usually 9 percent. In our area schools it's 5 percent. We've had an attrition rate of 2, 2 and a half percent.

So thinking that when we go into admissions that we're going to have, you know, a certain number of kids who don't return hasn't happened actually. So we've been around 644 for the last couple of years.

And that's why when we decided to come to BZA for the building piece of the project we realized that if we keep on working with the concept of attrition being at what it is typically at 4 percent we miss that by six to 12 kids.

BZA CHAIR JORDAN: So am I hearing you say that you've always been at 644?

MS. TALBOTT: No, we were at 635. But then --

BZA CHAIR JORDAN: When did you exceed 635?

MS. TALBOTT: I think three years ago we --

BZA CHAIR JORDAN: That would be 2011?

MS. TALBOTT: Right.

BZA CHAIR JORDAN: Okay, that's what I'm trying to get to. So going back to Department of Transportation the, you're saying that after 2011, there was a, the numbers they weren't meeting their numbers.

But prior to 2011, they were meeting their numbers. Is that correct?

MS. CHAMBERLIN: No.

BZA CHAIR JORDAN: That's what --

MS. CHAMBERLIN: So they weren't submitting the performance monitoring reports that they had been submitting to DDOT didn't include any trip generation information. It just included this is how many students we have.

This is how much staff we have. The

school continues to promote transit use and everything is great.

BZA CHAIR JORDAN: So you cannot say that this increase of nine students was the reason for, that the increase started in 2011, because it started before 2011?

MS. CHAMBERLIN: Correct.

BZA CHAIR JORDAN: Okay, that's good. That's all I was trying to get to because it changes the complexion to some extent. Great, I'm with you.

So let's talk about what you're finding as an adverse impact.

MS. ISRAEL: Ultimately what we saw was a, well first of all let me take a step back. Because of these modest increase ultimately in the enrollment numbers generally speaking we would not see an adverse impact from that. Because of such we didn't request a level of service analysis, so none was performed.

So we're not 100 percent certain of what the ultimate impact is at various

intersections. However, we can conclude because of a dramatic change or a dramatic increase in the vehicle trips generated from 2008 through today, we can safely assume that there probably is an impact on the roads. We just don't know to what extent.

But continuing on some of things that we noticed when we were looking over their TIS is just the fact that there is a tremendous, aside from the tremendous change from 2008 to 2013, in vehicle trips generated we saw that it was a very high trip rate and also vehicle mode split compared to other area schools, private schools. Actually it was one of the worst that we've seen.

So that was among some of our biggest concerns in the matter. To get specific, basically from the projections that they had in 2008, they had basically a seven fold difference from 2008 to what ultimately ended up occurring in terms of vehicle trips generated today and also approximately a 91

percent mode split, vehicle mode split during the AM peak hour which is the time of our biggest concern.

As Anna had mentioned, they have not been performing a, or providing us with a performance monitoring plan. So one measure that we were hoping would be a part of the approvals process would be a, ultimately a trip cap during the AM peak hour and ultimately various TDM measures to help reduce that vehicle mode split and the total number of vehicle trips generated.

BZA CHAIR JORDAN: That was your report. I understand what was in your report. Board, any questions of DOT? Do you have questions you want to or we can simply turn to you putting on your case if you wish and then we can deal with it differently.

MR. FEOLA: Can I ask one question of Department of Transportation?

BZA CHAIR JORDAN: Sure, please.

MR. FEOLA: And the way, I think I

heard this right. Ms. Israel, you said that the data suggests an assumption that there's an impact, is that correct?

Well let me ask it differently. Do have empirical data that there's an impact based on today's population?

MS. ISRAEL: As far as level of service, no.

MR. FEOLA: Thank you. I just wanted to make sure I heard that right. Thank you.

BZA CHAIR JORDAN: I heard it too. We heard the same thing.

MS. CHAMBERLIN: So can I just give a quick recap of the report.

BZA CHAIR JORDAN: Yes.

MS. CHAMBERLIN: So essentially when we first took a look at this report and did the scoping for the transportation impact study we saw a small increase in numbers, which generally a small increase in numbers wouldn't require a full transportation impact study

requiring level of service analysis for the intersections.

Once we received their report and we looked at the trip generation rates because they did counts, we were surprised by the high figure and looked back at their 2008 projections and realized what a huge increase the school has experienced. This all happened, you know, within the last week two weeks. So the applicant wouldn't have had time to do a full transportation impact analysis of what the level of service impacts would be, are currently due to the school or have changed since the projections from 2008.

So at this time we don't know. We actually do not know and neither does the applicant know what the transportation impacts related to traffic are currently being experienced by the increase or by the existing population and the proposed increase.

If the proposed increase was to imitate in terms of the trip generation rates

that the school experienced between 2008 and 2013, we would see an even huger, larger number of cars, vehicles coming to the school, which is something we were hoping to avoid.

And if we were to follow the trip generation rates as had been projected in 2008, which we were okay with at the time and which the applicant had, I guess aimed to achieve, we're just trying to replicate that exact same trip generation rate for this new increase. So, which would be lower than what they currently have at the school.

So right now there's over one trip per student occurring at the school, which is extremely high compared to other schools in the areas and to schools that are this close to the Metro.

So we do have a concern with the amount of vehicles that it's currently generating and the fact that we don't know if the trend was to continue from their increase from 2008 to 2013, if they were to replicate

that trend we don't, I mean we don't know what the impacts would be. It would be an even higher impact to the network.

BZA CHAIR JORDAN: Is there any other business or something else that influences the amount of traffic in this area?

MS. CHAMBERLIN: I mean they are right off of a major arterial. But Cathedral Avenue tends to be mainly residential. And there's some moderate to high to low density residential uses on Cathedral.

BZA CHAIR JORDAN: Board, any other questions of DDOT? Then let's turn to the applicant.

MR. FEOLA: I want to walk through the traffic. But I do want Ms. Talbott to explain the cohort of the increase in population from 611 to what it is now, 644. So if you might please.

MS. TALBOTT: Thank you. The number of students that have come in, the change from 611 to 644 has all been in the lower and

middle school. And that means that it's much harder for those kids to take public transportation, necessarily bike, et cetera.

So that's where the population increase has been. And I just want to acknowledge that DDOT gave us some excellent suggestions the last time around of how to make sure that we did a good job with traffic.

And I think that the neighbors would let you know that the impact has been a positive one with Maret, but we can talk about that later.

MR. FEOLA: So I'd like then just to turn to Chris Kabatt of Wells and Associates to walk through his analysis of the traffic impacts.

MR. KABATT: Good afternoon. We, excuse me, we did submit a traffic impact statement with this application. And we are also the firm that worked on the case in 2008. I wasn't directly involved in that case, but our firm was.

The 2008 study was a more comprehensive study and did include a level of service analysis. This statement that we did scope with DDOT and gotten sign off on included traffic counts at the school and it included surveys of the students who would walk onto campus or bike onto campus.

Now we did not have to do a full blown traffic study. And again, we did scope it with DDOT because of, it did not hit triggers in the minor impact.

We did compare the traffic counts that we took at adjacent intersections because we had anticipated that we would have to do levels of service. In house we did compare them to the 2008 counts and found them to be relatively consistent.

This would be at off site locations at Cathedral and 29th and Cathedral and 34th. Those counts again, were relatively consistent and since there was not a level of service issue back in 2008, we're confident saying that

there's not a level of service issue in 2013.

Now I want to explain the difference in the trip generation rates that the school, that we counted in 2008, that we projected in 2008 and that we counted in 2013. We counted all cars going in and out of the driveways in September of 2013.

We did that same count, the same activity back in 2008. We also, as I said, counted the students who walked onto campus and we surveyed them asking them questions, were they dropped off on the neighborhood street? Did they park on a neighborhood street or did they arrive using Metro or did they walk?

And so we did include off site counts. And that number led to the 772 AM peak hour trips that we counted in 2013 compared --

BZA CHAIR JORDAN: What was that number again? I'm sorry.

MR. KABATT: 772. And then that compares to the 716 that was counted in 2008.

BZA CHAIR JORDAN: And when was the

772 conducted?

MR. KABATT: Those counts were done in September of 2013, on a normal day in Washington when Congress was in session and other public schools are in session also. Now we saw the increase in the number of trips. And we sought clarification for ourselves as to why there was the increase.

And I'm, things have changed a bit in the neighborhood since 2008. And one of those things that have changed had been the on street parking restrictions around the school in the neighborhood. Previously there was more, shall I say non restricted spaces, in other words anybody could park on the street during the day.

That area has increased and there is not student parking on campus. They have added 15 parking spaces currently. But back in 2008 and even now in 2013, again there's not space for students to park on campus so they would park in the neighborhood.

That pool of parking in the neighborhood was a concern with the ANC and the school. It has worked with the ANC in that again, that area has gone down in number of spaces. So there's not that much opportunity for upper school students to drive to school.

And that's an important point because those students who can no longer drive to school may be dropped off now. And those trips in themselves, the ones that would drive to school, park on the street a few blocks away and then walk, would be one trip in.

And if they're now being dropped off that would be one trip in plus one trip out. And so there's an increase in trips there.

MR. FEOLA: Excuse me, Mr. Kabatt. So your 772 includes two trips really, one in and one out. Is that correct? One car, two trips.

MR. KABATT: That's correct. So for every student that's dropped off that's two trips. One in and one out.

The other point Ms. Talbott had already made but the increase in the students since 2008 has been largely in the lower and middle school sections of the school. And those students are more prone to being dropped off at school as opposed to riding Metro or obviously they're not driving themselves.

The other point that I would like to make is the comparison to the other schools. Our firm has worked on several schools in Washington DC and also in other jurisdictions, Montgomery County, a handful in Virginia.

And the Lab School is one that we worked on, St. Patrick's that we're familiar with and they do have trip rates that are slightly lower than ours. When you look at a comparison of other schools Sheridan, Sidwell Friend's we're more comparable, when I say we, Maret is more comparable to those schools. Actually Sheridan is higher, a bit higher than Maret.

And when we look at the data that we

have, again the private schools that we have done in the Metropolitan area, Maret is somewhere in the middle, slightly higher than the middle, but in the middle. The other point on that is St. Patrick's and the Lab School are on corridors. They are on Reservoir Road and Whitehaven Boulevard.

But essentially you have to use Reservoir and MacArthur or Foxhall to get to St. Patrick's. And St. Patrick's in itself is a road that has a lot of activity because of all the schools along that street. And so the idea there being that there is a lot of congestion on Foxhall and Reservoir.

They're major commuter routes and carry around 12,000 vehicle trips per day. They did mention Connecticut Avenue. Obviously that is a commuter route. But Maret School here is on Cathedral which is a collector road and sees about 3,000 trips per day.

So in conclusion, what we had determined in our evaluation was that the

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increase in students, and we did include the increase from 635 to 650, so to 15 students. We didn't start at the 644. We evaluated an increase of 15 students. There is no appreciable impact on the adjacent road network.

And the ANC supports that and agrees with that conclusion as is found in their letter.

BZA CHAIR JORDAN: So you said from the 635 to 644 or 635 to 650?

MR. KABATT: We evaluated an increase of 15 students which is the 635 up to the requested 650.

MR. FEOLA: And Mr. Kabatt, the way I understand it while that wasn't part of the scoping document, you did do analysis of the level of service on the adjacent streets?

MR. KABATT: Yes, although it was not submitted with the report because it was not required. We do have levels of service that we checked in house and their stop controlled

intersections that operate adequately.

MR. FEOLA: Do you care, could you tell the Board some transportation demand management suggestions you've made and that the school is willing to adopt?

MR. KABATT: Sure. Let me just, we could stay on that slide. The school has, the school does have a transportation management plan. They already have measures in place.

BZA CHAIR JORDAN: Well let me ask is it any different than what you submitted with your conditions or are they the same?

MR. FEOLA: I'm sorry, sir.

BZA CHAIR JORDAN: Is it in addition to what's been submitted, in addition to?

MR. FEOLA: It's in addition. There were things that we have been working with, as I mentioned before, with the Department to try to get to middle ground.

MR. KABATT: The one I did just want to point out here that is a TDM measure but it's

number six. And the school, in working with ANC, they have staggered start times for the lower school.

BZA CHAIR JORDAN: Let me ask, excuse me, do you have that in print so we can look at it? You're pointing.

MR. FEOLA: Mr. Moy has the PowerPoint. It's on the PowerPoint.

BZA CHAIR JORDAN: We've got a PowerPoint sitting over there.

MR. FEOLA: It's the, it's Page 4 and he's going to go to Page 5.

BZA CHAIR JORDAN: So okay the existing TDM and then the new TDM's are the next page or something?

MR. FEOLA: Yes, sir.

BZA CHAIR JORDAN: Enhanced TDM's okay. So they will be the ones that are called existing TDM plus, is it plus the enhanced TDM's or are these skip the existing TDM's and go to the enhanced TDM's?

MR. FEOLA: It's those together,

two of them together.

BZA CHAIR JORDAN: So additional TDM's, not enhanced.

MR. FEOLA: Sorry.

BZA CHAIR JORDAN: All right, no, no. I was just trying to be on the same page with you.

MR. KABATT: But I did just want to stress the staggered start times. And what this does is it helps alleviate the pressure of 644 students that are enrolled there today coming all at one time.

And in fact, the lower school is encouraged to arrive at school at 7:45 and before 8:00 a.m. and then the middle and upper schools are encouraged to arrive at 8:00 a.m. or after. And then so in discussions with DDOT over the last week we did suggest or we did propose some additional TDM measures.

And these are listed here, 1-5. We'll include links on the school's web page to Commuter Connections. And what Commuter

Connections does is that provides you to links of programs such as guaranteed ride home that you can sign up as anyone who uses Metro or carpools.

We would propose to hold a "Transportation to School" night event maybe once or twice a year for students and family. And this would stress the importance of the public transportation and walking to school.

The school would also recognize students, we have found this to be a pretty good strategy peer pressure or the fact that someone's getting an award goes a long way with children. And it's sort of the piling on effect. You know, if your friends are doing it I want to do it. And it's an effective measure.

And then there is the biannual report that is currently submitted to DDOT and to the ANC and we had proposed to increase that to an annual report. And then also we would offer the, a subsidy of \$35 a month to Virginia and Maryland students who use the public

transportation.

There already is the existing measure for the DC students that they get the DC One card. And the other phenomenon, whether it's a TDM measure or a trip generation event, is the fact that there is carpooling going on.

And that's an existing program that is, you could, there's a carpool locator on the web page. And the fact is that carpooling does occur at the school today. And that again is an effective TDM measure to drive down the trip rates. So the school does actively and encourages parents and students to carpool.

But the phenomenon I want to interject here is and especially in the AM peak hour, a lot of students it's logical and it does occur we just hadn't captured it in our trip generation counts, is the fact that students get dropped off by parents or a caregiver, parents on their way to work. Surprisingly, but 75 percent of the students actually live in northwest Washington or the Bethesda, Chevy

Chase, Montgomery County area and would use Connecticut Avenue or Wisconsin, Reno Road, 34th to get downtown and that offers that, again, it wasn't captured in our analysis.

But there's the phenomenon that happens that is what we call a diverted link trip where they would divert from Wisconsin or Connecticut already on the road down to the office, drop off the student at Maret and then continue on.

MR. FEOLA: Mr. Chair, I'll also add with regard to the annual performance report that we are suggesting now we recognize that the requirement in 2008 was less rigorous than what's now required by DDOT and this Board.

And so we would work with the Department of Transportation to have a more meaningful report then, just as Ms. Chamberlin had indicated, had been being filed so that it would be a beefed up annual report, if you will. So we could have benchmarks and try to get there.

So is it, Mr. Kabatt, is it safe to say in your opinion that the current situation is not creating an adverse traffic impact on the neighborhood or the neighboring streets?

MR. KABATT: Yes, that is my opinion. And I would just like to point out again my opinion is backed up by the ANC, the neighbors do not view that there is a congestion problem at Maret.

MR. FEOLA: And the addition of, the 15 additional students from 235 to 250 and the six faculty and staff if the Board were to approve that, would that create an adverse impact on the traffic in the neighborhood?

MR. KABATT: No, it would not.

MR. FEOLA: I would like to ask, excuse me, Ms. Talbott if she could comment just a little bit about some of the requirements that have been suggested by the Department of Transportation in their report.

MS. TALBOTT: First of all, we support DDOT's efforts to limit cars coming

into the city. And we're also totally committed, it's in our mission and it's part of our DNA to be good neighbors and be part of the solutions in the District not be a part of any of the problems.

We have been pleased that the ANC and our own commissioner and others have continually said and used Maret as a model to other independent schools on the work we've done to be a good neighbor. We valued and accepted DDOT's recommendations in 2008.

We have two traffic cops who are there every morning who are a part of our school fabric who make sure that the cars come down Cathedral Avenue appropriately and safely. All of our maintenance staff are out to ensure a smooth drop off.

And so there isn't queuing on Cathedral Avenue where as there is at a number of other schools that are in more trafficked areas. We have staggered the time. We are working with our families to do the carpooling

as much as possible.

As I said, that the increase from 611 to 644 has been almost completely in the lower and middle school. The other issue has been, as was commented on, that kids who used to be able to drive and stay, park in the neighborhood can't do that so we've had an increase of upper school students who are brought onto the campus.

I am somewhat confused by some of DDOT's assumptions. We've responded in ways that we hope are appropriate and we will continue to urge our kids and teachers to take public transportation, walk and bike. If we could do what DDOT put in and suggested that we do we would.

But I think we're a school that always tried to be open, honest, transparent, we can do this, we will do this. But I think what we've been asked is overly onerous and really quite impossible.

I want end with that we want to work

with DDOT to continue to look at that. We do not want to have an adverse impact on the traffic and I think we have not had that at this point. I think we wouldn't have that kind of support from the ANC and others.

And we'd really like to continue to be able to provide the kind of services that we have for the last 100 years and we want to keep within all of the framework of the BZA and be appropriate. Again, the pressure on us in terms of admissions has been the variation of attrition and that kind of thing as we try to figure out how to have a full school but also not be over enrolled or anything else.

MR. FEOLA: One last question, Ms. Talbott. If the Board approved the increase what age levels would the kids be?

MS. TALBOTT: Well as the Chairman has already pointed out, we're sort of at the increase with 644 the other kids that would come in would be also in the lower and middle school, often would be siblings of other kids already

at the school. But we're not expecting to knock up to 650.

We want to stay anywhere between 635 and 640. That's our goal. So we don't see, in terms of the traffic report, increasing the volume. And we're more than willing to work with DDOT to keep a ceiling on what we presently have with the work of trying to get it down.

But their view of us pushing it up or trying to take 180 trips out seems pretty unrealistic.

MR. FEOLA: So, Mr. Chairman, I think there may be some middle ground that I hope the Board would consider. The Department of Transportation would like to see a trip cap. Although the school is not pleased to have a trip cap I think it is willing to have a trip cap at where we are now, even with the increase in students and faculty.

We're at 772, but if we say 770 I think because Ms. Talbott just said it's virtually impossible to be able to roll back the

trips that come to the school 180 trips. What parent did you tell not drive your third grader to school today? It's just virtually impossible.

So we're not adverse to a trip and then performance monitoring. We just don't think we can honestly get there if that were a condition this Board placed on us.

I'm not sure how we could get there and consequently I don't think we would be able to have that condition and we would probably withdraw the application just because we're not going to stay here sitting here and say, you know, in two years we're going to have 180 less trips coming through the school. Just, I don't think we can get there. So --

BZA CHAIR JORDAN: Board, any questions so far? Yes, Mr. May.

COMMISSIONER MAY: Mr. Kabatt, you've mentioned other schools and I'm wondering the, I mean it's very hard to judge the relative performance of schools.

Certainly there are circumstances and proximity to Metro and, you know, the age range of students and things like these are all factors.

But I mean is there some sort of rule of thumb, I mean, DDOT is suggesting what was it .97 trips per student or something like that is the appropriate cap based on what was done in 2008? I mean is that a reasonable level? Is that what you find in other schools?

And the ones that you say that are worse than this are they, you know, up at 1.5 trips per student? I mean how, what's the range like and what's a reasonable measure for this?

MR. KABATT: Well the schools that we have in our database the rates do range from 0.47 trips per student up to and the highest one is 1.63 trips per student.

COMMISSIONER MAY: So I mean if those, what are those represent at that end of the spectrum? I mean .47 is a school sitting

on top of a Metro, all high school students or something like that. Is that what it is or is it, what makes that cap so low or that rate so low?

MR. KABATT: The lower rates, one is the Potomac School. And they have a bussing program for their students.

BZA CHAIR JORDAN: And is that the same student mix, grade levels?

MR. KABATT: I believe the Potomac School is, yes, K through 12. Another school on there is the Field School which has a rate of about .53. The higher range --

MR. FEOLA: Excuse me, Field is 6 through 12.

COMMISSIONER MAY: And why is it so low?

MR. KABATT: Well they, we didn't work on the Field School. We had done some trip generation rates there. It is on Foxhall Road, which again is a congested commuter route. And I think that's a different situation then maybe

at Maret.

MR. FEOLA: And they have, I know from handling the case, they have an extensive bus system. But it's different to put a ninth grader on the subway to be picked up at Tenleytown than it is to have a third grader do that. So I think there's a big difference in the population.

COMMISSIONER MAY: I understand that.

MR. FEOLA: But that's Field. They have a bus system.

MR. KABATT: The Lab School is one that we have worked on and we continue to work on with the, they have a monitoring program. And the most recent data that we had from the Lab School they have a trip generation rate of .94 trips per student. And this is in the AM peak hour. And again, this is both trips in and out.

The Lab School, their main driveway is off of Reservoir Road, again a congested

commuter area. And they have a parking issue on their campus. In fact, I think part of the BZA order there is not only a trip cap but also a parking cap.

And so parking is another situation where if you don't have the parking you have to get to school with some other means.

COMMISSIONER MAY: Okay. That's helpful to get some of those comparables. So I had one other question which is on number five there. Why is the \$35 per month for Virginia and Maryland students and not District students?

MR. KABATT: Well if we go back to  
--

MR. WALKER: The District students use the DC One card program.

COMMISSIONER MAY: Yes.

MR. WALKER: And so we felt to encourage those kids who commute the furthest, those from Maryland to Virginia to try and give them some incentive, monetary incentive to get

them to use public transportation.

COMMISSIONER MAY: Okay. You made two statements. I don't see, I'm not sure how they, I mean I understand them independently. I'm not sure how they connect.

MR. WALKER: Well because the DC students already receive discounted with the DC One card.

COMMISSIONER MAY: So what's that worth? Is it worth \$35?

MR. WALKER: I actually don't know.

COMMISSIONER MAY: Okay. \$35 seems like an odd number. I don't know if it's a good number or a bad number and it excludes District students. It just seems odd. So it's a minor point though. Thank you.

MR. KABATT: If I may add, just back to the comparison. I did want to give one comparison of a higher trip rate and that of the Sidwell Friends which is on Wisconsin Avenue. And they also have the campus in Bethesda, Maryland.

And their trip rate, let me get back to it here. Sidwell Friends, their trip rate is 1.23, which is pretty comparable to what we counted at Maret in 2013.

COMMISSIONER MAY: What's the proximity of Sidwell to the Metro?

MR. KABATT: Well Sidwell, that is several blocks south of Tenleytown Metro.

COMMISSIONER MAY: I don't know.

MR. KABATT: Sidwell is, I'm trying to remember the cross street there. But it's south of Ward Circle. South of Tenleytown. It's opposite Fannie Mae. So to give you a proximity --

COMMISSIONER MAY: I know those landmarks, but --

MR. KABATT: I would say it's about a half mile.

BZA CHAIR JORDAN: I would say it's probably stronger than a mile, half mile.

COMMISSIONER MAY: Yes, I mean Maret is, according to the report we have here

from DDOT's report is a half a mile to the Metro.

So it's about the same at Sidwell?

MR. KABATT: About a half mile. We did have in our report, there is about 10 percent, depending on the peak hour that you look at, about 8 to 10 percent of Maret students do walk to school or take the Metro or take the bus.

It is about a half mile, this exhibit that's on the screen now shows the quarter mile walk shed and then in the lower right corner of the exhibit shows where the Woodley Park Zoo Metro is. And you could walk along Woodley Road and then up 29 to Cathedral or you could go in the Garfield access and then cross the athletic field to get to the main building.

COMMISSIONER MAY: Okay. That's fine. I was just, you raised the comparable. I wanted to know how comparable it was. Thanks.

BZA CHAIR JORDAN: Let me ask you

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regarding the existing and the enhanced where you offered to do some financial supplement to parents and students, teachers, excuse me and students. What's your monitoring of that?

I mean are you just giving money and you're not monitoring? How are you monitoring? So if you give me, if we give a student \$100 monthly, where's the one that really jumps out the \$35 per month for students who use public transportation, how do you know that's being used for public transportation?

MR. WALKER: We put it on their Smart Trip card.

BZA CHAIR JORDAN: Okay. So then and that's how it's being done.

MR. KABATT: Exactly.

BZA CHAIR JORDAN: Okay. And the same thing for the, well I guess the teachers, the faculty and staff who ride their bicycles how do you monitor?

MR. WALKER: Well you know we, there's actually a small percentage of faculty

that ride their bikes and we know who those are. And we give them the \$240 annually.

COMMISSIONER MAY: Besides bicycle riders tend to be impeccably honest.

BZA CHAIR JORDAN: Yes, you wouldn't have any bias to that would you?

MS. TALBOTT: Also we don't give them parking spaces on campus and that's a benefit to us that we have, you know, more space for the kids who have to drive in or whatever. And we know the kids pretty well.

We'll know if they are driving when we've given them, you know, bus passes.

BZA CHAIR JORDAN: Board, is there any other questions we need to ask in regards to the development aspect of this, the expansion request? Okay. And pretty much, so we don't need to hear any architectural stuff. We already have all of that.

Let me before going to the Office of Planning I just want to go back to Department of Transportation. I was really kind of

confused by the transportation report and trying to follow what your recommendations are is kind of, to me, all over the place.

I mean they're in different spots just not consolidated. What you're asking would be imposed in the conditions if the Board saw fit. So do you have that in a consolidated fashion or you can get it to us or can you step through it for us with us together?

MS. CHAMBERLIN: Yes, so I think something the applicant failed to mention, which they have it in their previous presentation that I got a copy of is although the applicant states that they are supporting non vehicular trips and they're supporting transit trips on their actual website at the very last bullet they then state where you can park all day for free, ticket free parking to anybody who is attending the school.

And they, you can click on it and it gives you a map with the locations encouraging people to essentially drive to the school and

walk over to the school. So we're not even convinced that, you know, the small numbers that they show walking to the school are actually not arriving by vehicle and parking in the neighborhood.

We also don't believe that their existing and proposed TDM measures are meaningful to reduce. As you can see the existing TDM measures have failed to reduce the vehicle trip generation rate mode split. So over 90 percent of people are coming to the school during the peak hour by car, which demonstrates a very low carpool rate.

Carpooling could definitely be an answer or a proposal. But they don't seem to be further encouraging this or doing much or putting meaningful, substantial, you know, effort behind that. And the schools that they had mentioned, you know the Field School and St. Patrick's are nowhere near a Metro and as they had mentioned they have very extensive bussing service, shuttle service.

So those we feel would be meaningful ways to reduce their trip generation rates. But the easiest way and the most effective way is to put a trip cap which then would, the applicant would then have to come with really meaningful and put, you know, money where their mouth is essentially to support non vehicular trips.

But right now we don't feel that the TDM measures are sufficient to meet, you know, an average trip generation rate that we're seeing for schools.

BZA CHAIR JORDAN: And I guess somewhere in there was lost. My direct question, can you give us what your recommendations were in a consolidated fashion so that we can write them down and follow them?

MS. CHAMBERLIN: So it would be to match the student trip generation rate that they had in 2008. We don't understand why a 37 increase in faculty and students --

BZA CHAIR JORDAN: Can you do me a

huge favor for the sake of my question? Can you answer that and leave the editorial? I understand the concern that you're having.

MS. CHAMBERLIN: So it's a trip generation rate of 631 vehicles, those are ins and outs during the AM peak hour. And then we would like to review with the applicant the appropriate TDM measures to achieve that rate and the monitoring report.

BZA CHAIR JORDAN: And then the monitoring report. So all the other things that you had in here such as provide free daytime shuttle, survey faculty, students and parents, coordinate with neighborhood schools, offer guaranteed ride home, facilitate forming additional carpools, designate a full-time transportation director, all this other stuff other than these three things --

MS. CHAMBERLIN: Correct. Those are items that they can do to meet --

BZA CHAIR JORDAN: These are the only three things you're asking for condition.

MS. CHAMBERLIN: Exactly.

BZA CHAIR JORDAN: Okay. That's why I asked because it's all in here and it says we recommend the following and you also had some other stuff.

MS. CHAMBERLIN: Correct. Those are ways that they could achieve the trip generation cap.

BZA CHAIR JORDAN: All right. So you know if they did these things that they would meet, based upon their present population or population of 650, if they did these things then they would max a trip generation of 631?

MS. CHAMBERLIN: If they did which things, the our proposed TDM measures?

BZA CHAIR JORDAN: Yes.

MS. CHAMBERLIN: No, we don't know if they'll be able to reach that.

BZA CHAIR JORDAN: That's kind of what my question was just trying to --

MS. CHAMBERLIN: I mean it all depends on how much effort you put into one of

those items. I mean you can have a carpool link on your website but if you're not actually providing real incentives or facilitating that then, you know, just a link on a website is just a link on a website.

BZA CHAIR JORDAN: Like all families who have their children in carpools get an A in their hardest subject automatically. I understand the incentive.

MS. CHAMBERLIN: Well they could get priority when leaving the school, lines, yes.

BZA CHAIR JORDAN: Different things like that, yes. You know, basketball tickets or a big car. Has DDOT received any complaints from the neighbors regarding the trip generation or the amount of traffic generated by the school?

MS. CHAMBERLIN: We didn't reach out to the neighbors on this one unfortunately.

BZA CHAIR JORDAN: Okay, but have you received --

MS. CHAMBERLIN: No.

BZA CHAIR JORDAN: Any other questions for DDOT before we go to Ms. Thomas? Ms. Thomas, we were going to try to leave you out of this, but, you know, you do such a thorough report we have you in a --

MS. THOMAS: Mr. Chair, good afternoon. Karen Thomas with the Office of Planning. We essentially stand on the record of our report.

But given DDOT's concerns we would hope that or we anticipate that the applicant would continue to work with DDOT to arrive at some meaningful TDM measures to mitigate their concerns at this time. So with that I'll take any questions.

BZA CHAIR JORDAN: Board, questions for Office of Planning? Applicant any questions for Office of Planning?

MR. FEOLA: No, sir.

MS. CHAMBERLIN: Sorry. In terms of complaints we get complaints from everywhere

about almost all our major intersections. So nothing, and my office is in the Policy and Planning. So Operations and Customer Service might have gotten complaints but they haven't been forwarded to us, which it would have been ideal had we reached out to ANC to get a better idea, but we didn't.

BZA CHAIR JORDAN: Well, okay. We do have a letter that's very supportive from the ANC so I think they and ANC's are usually not shy in telling us that they have issues like this, especially in regards to driving, traffic and parking. That's probably our biggest receipts of complaints from every neighborhood are those things.

Okay. Any other questions? Applicant, questions of, I asked you of OP?

MR. FEOLA: No, sir.

BZA CHAIR JORDAN: Then we had Department of Transportation. Anyone here from ANC, what is it, ANC 3C? We do have a letter of support from ANC 3C who recommend

support of the application and we will certainly give that great weight.

And they took detail to talk about the project. Is there anyone here wishing to speak in support of the application? Anyone wishing to speak in support? Anyone in opposition? Then let's turn back to the applicant for any rebuttal, if you felt it necessary. I don't know if there's anything you need to rebut.

MR. FEOLA: Just one question for Mr. Kabatt. Ms. Chamberlin indicated that the students parking in the neighborhood were not included, the walkers that weren't included in your vehicles. Did you hear that comment?

MR. KABATT: Yes.

MR. FEOLA: Care to comment on that.

MR. KABATT: Again, when we did a survey of everyone who would walk onto campus and they were asked the question about how they got to school and did they drive, were they

dropped off, did they walk, did they drive and park?

And so we tallied those answers up and there was a percent that did answer that they walked. And there was a number of students who said they did park off campus and then walked from their parked car. And then again the ones that were dropped off.

BZA CHAIR JORDAN: Did you do that like with the white light in the dark room because I wanted to make sure you're getting a true answer. But you did, by that question you did trigger something else.

What about this website where you are encouraging people, it's been alleged that you're encouraging people to drive?

MS. TALBOTT: Our website I think is clear about all of the different options. There are kids who do drive because they live in Bowie or someplace else and that's the way as juniors and seniors that they can get to school.

And it used to be, and I think this was a point made before, in 2008, there was a tremendous number of open parking spaces for kids all over the neighborhood and so more kids drove, left their car and then walked onto campus. That's been totally eliminated over the last number of years.

And so that's why we've now put 15 parking places on campus and the kids that get that are the kids who come from the furthest away, can't do public transportation and who carpool. That's the priority. Carpooling is the top priority and then down with the other things.

We are a regional school. We have kids from Maryland and Virginia. We have Kindergarten through twelfth grade so there are different ways there. We are a school that has done a lot with green initiatives. We totally get the importance of public transportation, walking, biking and we have continued to push our kids to do the healthiest,

most effective way on getting on to campus. We're also a school for our older kids that have a lot of afternoon activities, theater productions at night, et cetera so sometimes needing to be taken to school and also picked up is just part of the reality.

MR. YOUNGENTOB: Can I just add as a parent and as a Board Member just anecdotally with regard to the 15 additional spaces that were added on campus, my daughter is a senior this year. And it became increasingly difficult for these kids to find parking in the neighborhood.

So when the option was provided, and this was actually done after the traffic counts were done in September, she went out and she created her own carpool and picked up two other kids on the way to school now so she could be in priority for one of those on campus spaces. So I know it's hard sometimes to measure TDM measures and do they work.

But I know for a fact, knowing her

peers, that those measures, that specific measure has made a significant difference in reducing trips.

MS. TALBOTT: And that link that I should have answered directly, excuse me, is to tell our kids where they are allowed to park. The map is there so that they do not park in front of somebody's house that they're not supposed to.

So it's information. It's not free parking per se. It's where you are allowed to park trying to be again a good neighbor with our students.

BZA CHAIR JORDAN: Okay. One other thing. I think in the DDOT report there was reference to paving part of the sidewalk or something. Is that, what's that about because I see you shaking your head?

I thought I saw something in your report that said the sidewalk wasn't continuous. Is that correct?

MS. ISRAEL: Yes, the applicant

provided us a walk shed map of all the gaps in the pedestrian network in the sidewalk. And although it's not the focus of our report that was, it is ultimately something to be considered as one of the links or actually two of the links within the network.

There are gaps both immediately adjacent to the applicant's site and one of them ultimately linking or most appropriately linking from the Metro station to the entrance to the school.

BZA CHAIR JORDAN: So can you respond to that please?

MR. KABATT: Yes, actually the map is up on the screen. And the yellow or gold lines are, represent where sidewalks are. So Maret is essentially in the middle of the screen. And that's Garfield on the south side of Maret.

And you can see there that there is a sidewalk on the south side of Garfield. But there is not a sidewalk on the north side of

Garfield, and that is along the, part of that is along the Maret frontage. There's some grades there and then there's some single family homes that are east of Maret along Garfield.

There is a, there's that lead up to the athletic field and then that activities building and a gate so students can walk, get to school from Garfield. And that, the stairs, at the bottom of the stairs there is a cross walk that goes across to the south side of Garfield and then they could use that sidewalk to walk east to the Metro.

And then the other missing link is on 29th Street, which I believe that's mainly the frontage of the Swiss Embassy. But there is a sidewalk, again, on the east side and there are cross walks at the intersection. So if you were coming from the Metro you could walk along the east side of 29th, cross at Cathedral over to Maret.

MR. FEOLA: And there is a sidewalk

on Cathedral in front of Maret. Is that correct?

MR. KABATT: Yes, there is and then up along the driveway up to the buildings.

BZA CHAIR JORDAN: All right. I think we've --

COMMISSIONER MAY: I just have a question. You say that the parking by students in the neighborhood has more or less completely stopped. Is that just because you've told them they can't or are there residential parking permit restrictions that are preventing that or I mean how is it that you actually managed to stop it?

MS. TALBOTT: In the last two and a half years probably, let's say there were 100 spots. There are now probably 15 that DDOT or I think it's DDOT who has put two hour restrictions so kids can't or families can't park there if they're going to be in school for more than two hours.

COMMISSIONER MAY: Residential

parking permit holders excepted or is it just two hour time limit all the time?

MS. TALBOTT: It's allowed for people who live in that area. They have --

COMMISSIONER MAY: RPP,  
residential parking permits.

MS. TALBOTT: Residential parking.

COMMISSIONER MAY: Okay. And what zone is that? Is it Zone 3?

MS. TALBOTT: Yes.

COMMISSIONER MAY: So and don't a lot of your students come from Ward 3?

MS. TALBOTT: Almost all of our students who live within a half mile walk to school. This is --

COMMISSIONER MAY: I understand that. But Ward 3 goes all the way up to the Maryland border.

MS. TALBOTT: But they aren't allowed, the parking piece you can explain that.

MR. YOUNGENTOB: Yes. The parking

passes, actually I've seen them because, they actually have letters on them. And so they're restricted by the letter. So it's like a 3F or 3A or whatever it is that actually provides the limitation within those areas.

MS. TALBOTT: So it's only a neighborhood piece.

COMMISSIONER MAY: That's news to me.

MR. YOUNGENTOB: That's the way it's been explained to my daughter who used to commute.

COMMISSIONER MAY: And park in the neighborhood. I'm not trying to get you into something else that you could get away with. But I mean one of the regular complaints that we hear on the Zoning Commission all the time is that residential parking permits are by ward and so, you know, I mean I live, you know, a couple of miles east of here but I can come down town in certain parts of down town and park in residential areas without any restriction.

MS. TALBOTT: I live on Garfield Street off of Foxhall and I could not park for more than two hours in these parking spaces. It's for the local area.

COMMISSIONER MAY: Okay, so I'd actually like to have DDOT answer that. I mean is there some subdivision of residential parking that I've never heard of before?

MS. CHAMBERLIN: No, they're talking about the visitor parking pass, but not the RPP.

COMMISSIONER MAY: It's the visitor parking pass.

MS. CHAMBERLIN: Yes, the RPP sticker, if you have an RPP sticker and you live in Chevy Chase you can come and park at any residential parking space all day.

COMMISSIONER MAY: Right, okay. So you're talking about visitor parking. I'm not talking about visitor parking. I'm just talking about because, you know, if you live up in Chevy Chase and your car is registered and

it's only \$10 or whatever it is to get residential street parking assuming you're in a zone where you qualify, than those vehicles can come and park.

And you don't do anything to stop them from doing that?

MS. TALBOTT: We do not do anything to stop them, saying that when our students or parents come, even if they live in Ward 3 and have the residential permits they cannot, they get ticketed if they are there for more --

COMMISSIONER MAY: But not if they have a sticker. If your zone sticker has a 3 on it, not a visitor parking permit, but the sticker that's on the window has a 3 on it, you can park there.

MS. TALBOTT: I will check that out, but that's, but we're not trying to have the kids --

COMMISSIONER MAY: No, I understand that and I'm not encouraging that. I'm just trying to understand the entire

picture because, I mean the bare truth of it is that given all of the, you know, everything else being equal the trip generation for this school is relatively high.

And, you know, DDOT is doing their best to try to drive down the trip generation because collectively as a whole, even though the immediate neighbors may not see a real problem, it's not the best thing and we want to drive that trip generation down.

MS. CHAMBERLIN: Mr. May, we have a copy of a presentation that hasn't shown up on the screen. There it is. So that's the map which they provide saying where you can park.

BZA CHAIR JORDAN: We already talked about that.

MS. TALBOTT: And that's where they're not the Zone 3 parking permit piece. And in fact, looking at that map the big line is 34th Street, which is completely filled up with cars most of the time. The one right behind Maret which we would love to use, most

are filled by 5 o'clock from the people who are working on the construction at the Omni or the Marriott.

So that's really not available to our kids because it's open at two. But it's not open at seven in the morning.

MR. YOUNGENTOB: This is not intended to, you know, encourage your kid to go park. It's really to provide information to them so that they don't interfere with the neighbors and the neighborhood parking.

COMMISSIONER MAY: And I understand that and I appreciate your doing it. I mean there are levels of doing that to and we've seen some programs that are maybe not in BZA but in the Zoning Commission we see much more aggressive prohibitions against student parking in neighborhoods mostly on a college level.

And I'm not suggesting that's appropriate here either. I was just trying to understand the bigger picture, that's all.

MS. TALBOTT: We just, for information our upper school is about 305 kids. And that's been consistent over the last ten years. Last year when we tried to find out how many of our kids drove whether or not with carpools or not, but their own cars it was about 45 students.

That's been reduced because of not being able to find parking spaces. But that's about what we're talking about in terms of numbers.

COMMISSIONER MAY: So the only students I know from my neighborhood who went to Maret as soon as they could drive, they drove. I mean, that's, but you know, I did that in high school too.

BZA CHAIR JORDAN: Okay. If there's nothing else let me conclude the hearing based upon the information that's in the record.

MR. FEOLA: Can I just take two seconds, two minutes for closing remarks?

BZA CHAIR JORDAN: Do you really think you need to close?

MR. FEOLA: Just, I want to point out something and --

BZA CHAIR JORDAN: Go ahead.

MR. FEOLA: -- if you don't mind. I think it's important for the Board as it deliberates on this to recognize that there has been no evidence that there is an impact on the street system caused by Maret's traffic.

We, as Ms. Talbott has said, we appreciate the Department of Transportation's goal here, the bigger goal, which is to minimize parking in the neighborhood. But the Board is charged in granting or turning down a special exception looking at the zoning regulations.

And Section 206 says it shall be so located it's not to create objection to adjacent neighborhood properties because of noise, traffic, number of students or other objectionable conditions. So it's hard for me, as a layperson, to see if there's no impact

now that with the addition of 15 kids and six faculty and staff that there would be objectionable conditions in the future.

We intend to work with the Department of Transportation, do as many TDM measures as we can to drive their policy, which is a good policy into a better position. So with that I'll just --

BZA CHAIR JORDAN: Okay. All right. With that we'll conclude this hearing. This is what I'm going to suggest. Is the Board ready to deliberate on this? I think, let me suggest this, I think one that the applicant has made a case for the special exception.

But I disagree with the applicant thinking that there has not been any adverse impact because we've already by its own admission exceeded the traffic generation which was recommended from the 2008 numbers. And we have some other issues there.

So there has been a showing to me that there is some impact. However, I would be

willing to support this relief with a three year cap so that we can take some measures here because we can't let this continue to spiral.

It's an issue for Department of Transportation as it reflects the overall citizenry of the District of Columbia. I would include some conditions to that special exception. It would be that the applicant would have to implement the existing and the enhanced TDM measures as presented.

We would include the, some additional ones, such as I would say that the trip generation should not exceed 772 vehicles, that the applicant shall each year submit its TDM measures to DDOT. The applicant shall collect the mode split and vehicle trip generation rates and provide such annually to DDOT.

And that if there's any change, if the applicant makes any change to its TDM measures that they report that to DDOT immediately. In addition, I would add as

conditions those conditions which were proffered in the previous OP report that said that the maximum number of students shall not exceed 650, that the number of faculty and staff shall not exceed 135 employees for any one period of the day.

The applicant shall submit an annual report to the ANC. We already talked about the report going to DDOT. The applicant shall provide a total of 141 parking spaces on site and no fewer than 10 shall be dedicated to visitor's parking. The applicant shall prohibit vehicles from making a left hand turn onto the campus from Cathedral Avenue during the school drop off and pick up times.

The applicant shall instruct parents not to park on our queue on Cathedral Avenue or to wait for children at school, they have to wait for children at school at drop off and pick up times. The applicant shall continue to provide traffic control personnel at both ends of the driveway during school drop

off and pick up times to facilitate on campus traffic flow and enhance drop off and pick up procedures.

The applicant shall distribute a policy manual to all families prior to the start of the academic year that explains all the relevant policies and procedures about carpooling and all that stuff, stuff that you already have. That would be what I would recommend that we do.

If anybody else. Mr. May.

COMMISSIONER MAY: Yes, I would support those conditions and your intentions with regard to the cap. I mean I think the applicant has made a reasonable case and it's, even though there is some, you know, everything is not perfect we're not seeing an uproar among the nearby residents.

That of course isn't and should not be the only measure. And I think that DDOT is trying to push you in the right direction. And I would just, I would encourage the applicant

in the coming years to be as aggressive as possible in encouraging measures that are going to reduce the trip generation because it's, you know, again it's not just about the immediate impact and whether you're going to be affecting somebody's ability to park in front of their house in this neighborhood.

I mean it's about the much bigger picture and the traffic in the nearby vicinity and air quality and everything else. And I believe all of your statements that your earnest and forward looking and trying to be as green as possible.

So I think that, I'm comfortable enough moving in that direction. And of course we will be able to check on things over the next few years anyway. So if that was, was that a motion?

BZA CHAIR JORDAN: I didn't make a motion as a condition. But I would make it a motion.

COMMISSIONER MAY: I would second

that motion.

BZA CHAIR JORDAN: Then I would make my discussion there a motion with those conditions. So a three year cap with the conditions that I've outlined. So motion is made and seconded. Additional conversation?

All those in favor of the motion signify by saying aye.

(Chorus of ayes)

BZA CHAIR JORDAN: Those opposed, nay. The motion carries. Mr. Moy.

MR. MOY: Staff would record the vote as 4-0. This is on the Motion of Chairman Jordan to approve the relief requested with conditions including a three year time period. Second the motion Mr. Peter May.

Also in support Ms. Heath and Mr. Hinkle. We have a Board Member not participating. So again the motion carries on a vote of 4-0.

BZA CHAIR JORDAN: Okay. Well then that concludes this particular matter and

we appreciate you all coming. Thank you so much.

MR. FEOLA: Thank you for your time. Thank you, sir.

BZA CHAIR JORDAN: Same to Planning, DDOT, thank you. Is there any other business coming before the Board at this time?

MR. MOY: Yes, there is, sir. You have the template.

BZA CHAIR JORDAN: Do I?

MR. MOY: For the month of March.

BZA CHAIR JORDAN: You sent it to me?

MR. MOY: Does that ring a bell?

BZA CHAIR JORDAN: Yes, but I don't have it. That's okay. I'll wing it. Let me wing it. I got it. I know these things. That's why you don't pay me the big bucks.

MR. FEOLA: Excuse me, Mr. Chair, is that a summary order.

BZA CHAIR JORDAN: I think we're safe with a summary order.

MR. FEOLA: With the conditions.

BZA CHAIR JORDAN: Yes, I think we're safe with a summary order.

MR. MOY: Okay. I got it.

BZA CHAIR JORDAN: You better not turn around and try to appeal it. I would be upset. Summary order is fine. Okay. You noticed at the request of the applicant we're doing a summary order. Thank you.

As Chairperson of the Board of Zoning and Adjustment in the District of Columbia in accordance with Section 405(b)4 and(b)15, I think, no, (b)13, I move that the Board hold a closed meeting as allowed under Administrative Procedure Act for us to have closed meetings to receive advice from counsel and to deliberate upon without deciding cases on the docket for the month of April, March, the month of March and that these meetings be held on Monday as will be posted by the Board in all the regular places where it's supposed to be posted.

Did I leave anything out?

MR. MOY: You got the gist of it, sir.

BZA CHAIR JORDAN: Okay. So the Board Secretary please take a vote.

MR. MOY: Yes, when I call your name if you would respond with a yes or a no. Mr. May.

COMMISSIONER MAY: Yes.

MR. MOY: Ms. Heath.

MEMBER HEATH: Yes.

MR. MOY: Chairman Jordan.

BZA CHAIR JORDAN: Yes.

MR. MOY: Mr. Hinkle.

MEMBER HINKLE: Yes.

MR. MOY: And Ms. Allen is not present with us today. So the motion carries.

BZA CHAIR JORDAN: Is there any other business coming before us?

MR. MOY: No, sir.

BZA CHAIR JORDAN: The place is cleaned out now. Everybody leaves. All

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right. With that then we're adjourned. Thank you, everyone, thank you.

(Whereupon, the hearing in the above-entitled matter was concluded at 2:27 p.m.)