

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY  
MAY 16, 2018

+ + + + +

The Regular Public Hearing convened in the  
Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441  
4th Street, N.W., Washington, D.C., 20001, pursuant to notice  
at 9:30 A.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson  
LESYLLEE M. WHITE, Board Member  
CARLTON HART, Board Member (NCPC)  
LORNA JOHN, Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS  
STEVE COCHRAN  
BRANDICE ELLIOTT

The transcript constitutes the minutes from the  
Public Hearing held on May 16, 2018.

## AGENDA

Page

|  |      |
|--|------|
| Opening Remarks, Chairman Hill . . . . . | .3   |
| Application Number 19722 . . . . .       | .7   |
| Application Number 19747                 |      |
| Applicant remarks. . . . .               | 18   |
| Office of Planning remarks . . . . .     | 38   |
| ANC remarks. . . . .                     | 41   |
| Application Number 19749                 |      |
| Applicant remarks. . . . .               | 59   |
| Office of Planning remarks . . . . .     | 61   |
| Application Number 19748                 |      |
| Party Status . . . . .                   | 64   |
| Applicant remarks. . . . .               | 66   |
| Office of Planning remarks . . . . .     | .101 |
| Parties in support . . . . .             | .107 |
| Parties in opposition. . . . .           | .109 |
| Adjourn. . . . .                         | .130 |

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

(9:42 a.m.)

CHAIRPERSON HILL: Okay, good morning everyone.

We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, Northwest. This is the May 16th Public Hearing of the Board of Zoning Adjustment with the District of Columbia.

My name is Fred Hill, Chairperson. Joining me today is Carlton Hart, Vice Chair, Leslie White and Lorna John, Board Members. And representing the Zoning Commission is Anthony Hood.

Copies of today's hearing agenda are available to you and are located on the wall bin near the door. Please be advised that this proceeding is being recorded by a court reporter and is also webcast live.

Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room. When presenting information to the Board, please turn on and speak into the microphone. First stating your name and home address.

When you're finished speaking, please turn off your microphone so that your microphone is no longer picking up sound or background noise. All persons planning to testify in either in favor or in opposition must have raised their hand and been sworn in by the Secretary.

1           Also, each witness must fill out two witness  
2 cards. These cards are located on the table near the door  
3 and on the witness table. Upon coming forward to speak to  
4 the Board, please give both cards to the reporter sitting to  
5 the table at my right.

6           If you wish to file a written testimony or  
7 additional supporting documents today, please submit one  
8 original and 12 copies to the Secretary for distribution.  
9 If you do not have the requisite number of copies, you can  
10 reproduce copies on our office printer in the Office of  
11 Zoning located across the hall. Please remember to collate  
12 your set of copies.

13           The order of procedures for special exceptions,  
14 variances and appeals, are also listed as you come in through  
15 the door.

16           The record will be closed at the conclusion of  
17 each case, except for any materials specifically requested  
18 by the Board. The Board and the Staff will specify at the  
19 end of the hearing exactly what is expected and the date when  
20 the persons must submit the evidence to the Office of Zoning.  
21 After the record is closed, no other information shall be  
22 accepted by the Board.

23           The District of Columbia Administrative Procedures  
24 Act requires that the public hearing on each case be held in  
25 the open before the pursuant to Section 405(b) and 406 of

1       that Act.

2               The Board, made consistent with its rules of  
3       procedures and the act, enter into a closed meeting on a case  
4       for purposes of seeking legal counsel on a case, pursuant to  
5       D.C. Official Code Section 2-575(b)(4) and/or deliberating  
6       on a case pursuant to D.C. Official Code Section 2-  
7       575(b)(13), but only after providing the necessary public  
8       notice and in the case of an emergency closed meeting, after  
9       taking a roll call vote.

10              The decision of the Board in cases must be based  
11       exclusively on the public record. So to avoid any  
12       appearance, the Board requests that persons present not  
13       engage the Members of the Board in conversation.

14              Please turn off all beepers and cell phones so at  
15       this time to not disrupt the proceeding.

16              Preliminary matters are those which relate to  
17       other cases, will or should be heard today, such as request  
18       for postponement, continuance or withdrawal or whether proper  
19       and adequate notice of the hearing has been given. If you're  
20       not prepared to go forward with the case today or if you  
21       believe that the Board should not proceed, now is the time  
22       to raise such a matter.

23              Mr. Secretary, do we have any preliminary matters?

24              MR. MOY: Good morning, Mr. Chairman, Members of  
25       the Board. I have a few announcements related to today's

1 docket.

2 The first is appeal Number 19713 of Isabelle  
3 Thabolt has, that was a decision case, has been postponed to  
4 June 20th, 2018.

5 Application Number 19689 of MIC9 Owner, LLC, the  
6 hearing of this application has been postponed and  
7 rescheduled to June 13, 2018.

8 Case Number 19712 of Newton Park Apartments  
9 Condominium Unit Owners, again, postponed, rescheduled to  
10 June 20th, 2018.

11 And Appeal Number 19743 of Anyado Group, LLC has  
12 been withdrawn by the Appellant.

13 Finally, on a matter that was before the Board for  
14 action, is a procedural matter. Attended, Case Number 19133  
15 of St. Thomas Episcopal Parish.

16 The opposition party had requested the Board to  
17 waive its attorney client privilege to obtain a copy of an  
18 OAG memorandum, that has been withdrawn by the requestor.

19 And that's it for the Staff, Mr. Chairman.

20 CHAIRPERSON HILL: Okay, great, thank you, Mr.  
21 Moy. If anyone is here wishing to testify before the Board,  
22 if you wouldn't mind standing and taking the oath  
23 administered by the Secretary to my left.

24 MR. MOY: Good morning. Do you solemnly swear or  
25 affirm that the testimony you're about to present at this

1 proceeding is the truth, the whole truth and nothing but the  
2 truth?

3 (Chorus of I dos)

4 MR. MOY: Ladies and gentlemen, you may consider  
5 yourselves under oath.

6 CHAIRPERSON HILL: Okay, great. Just so everyone  
7 knows, we are going to, we have a really light docket today,  
8 and so that's new.

9 We're going to go through a, basically an order,  
10 except we might switch application number 19748 to the last  
11 one, we'll see how it goes as we kind of move through this.

12 So, Mr. Moy, you can go ahead and call our first  
13 case if you like.

14 MR. MOY: All right. I believe that would be  
15 case, Application Number 19722. This is of Kline Operations.

16 For the record, this application has been, as  
17 amended for special exceptions under Subtitle I, Section  
18 205.5 from the rear yard requirements of Subtitle I 205.1,  
19 penthouse use requirements of Subtitle C, Section 1500.3(c)  
20 and under Subtitle C, Section 1504 from the penthouse setback  
21 requirements of Subtitle C, Section 1502.1(c)(4) and pursuant  
22 to Subtitle X, Chapter 10.

23 This is for variances from the loading berth  
24 requirements, Subtitle C, Section 909.2, loading access  
25 requirements Subtitle C, Section 209.3, court requirements

1 of Subtitle I, Section 207.1 and from the interior height  
2 requirement of Subtitle I, Section 612.4. This would  
3 construct a new 11 story hotel D-4R Zone, premises 925 5th  
4 Street, Northwest, Square 516, Lots 827, 828, 829 and 833.

5 CHAIRPERSON HILL: Good morning. Actually, I was  
6 not on this case, I did not chair, the Vice Chair chaired so  
7 I'm going to hand it off to him this round.

8 VICE CHAIR HART: Thank you, Mr. Chair. So, this  
9 case we have a, thank you, we have a request, a motion for  
10 continuance.

11 I know that you all are here so I'd like for you  
12 to just introduce yourselves and please give your name and  
13 address.

14 MS. MOLDENHAUER: Good morning. Meredith  
15 Moldenhauer from the Law Firm Cozen O'Connor. Address is  
16 1900 12th Street, Northwest. I'm here on behalf of the  
17 Applicant.

18 MR. NAHLEY: Stephen Nahley for 450K, LLC on  
19 behalf of Ogden CAP Properties. I'm the general counsel, 545  
20 Madison Avenue, New York, New York.

21 VICE CHAIR HART: Welcome.

22 MR. SCHWALB: Good morning. Lester Schwalb, Ogden  
23 CAP for 450K CAP, LLC in New York, opposing the project.

24 VICE CHAIR HART: Thank you. I thought we had  
25 another party at opposition?



1 MS. MOLDENHAUER: We do. We've been working with  
2 that party and we anticipate having that resolved shortly.

3 VICE CHAIR HART: Okay. Sorry. So, you have a  
4 motion to postpone?

5 MS. MOLDENHAUER: Yes. Since the last hearing we  
6 have been working with Office of Planning, I've engaged in  
7 meetings with them and also had dialogues with parties in  
8 opposition.

9 We would request a postponement in order to simply  
10 finalize the documentation, provide Office of Planning with  
11 the required information for them to obviously supplement the  
12 report that the Board had requested. So, we would recommend  
13 potentially a continuance date for June 13th.

14 VICE CHAIR HART: Okay. Which is different than  
15 what was on your request, which is fine, I --

16 MS. MOLDENHAUER: I believe it was because of the  
17 opposition's request for an additional seven days --

18 VICE CHAIR HART: That's fine.

19 MS. MOLDENHAUER: -- that's why I pushed it back.

20 VICE CHAIR HART: That's fine, we don't, I don't  
21 have an issue with that. Mr. Alley.

22 MR. NAHLEY: Nahley.

23 VICE CHAIR HART: Excuse me, Nahley.

24 MR. NAHLEY: It's okay. We were just hoping for  
25 any day either before that or after that June 13th date, that

1 would just be our, the 21st, I think that's a Wednesday, next  
2 Wednesday meeting.

3 VICE CHAIR HART: It looks like it's the 20th.

4 MR. NAHLEY: 20th, excuse me.

5 VICE CHAIR HART: Yes. Of June. I think,  
6 Commissioner Hood, you're back in the middle of the month?

7 ZC CHAIR HOOD: Yes, it looks like I'm back on the  
8 20th.

9 VICE CHAIR HART: Okay.

10 ZC CHAIR HOOD: But if they want to do the 13th  
11 I'll ask Commission Moy to read the record. He can take it  
12 over I guess.

13 VICE CHAIR HART: Okay. I mean --

14 ZC CHAIR HOOD: If he wants.

15 VICE CHAIR HART: -- I think that we're looking  
16 at the, I think the 20th, since the party in opposition can't  
17 do it until the 20th anyway --

18 MR. NAHLEY: That would --

19 VICE CHAIR HART: -- I think the week before after  
20 --

21 MR. NAHLEY: That would be perfect.

22 VICE CHAIR HART: -- the 20th is fine.

23 MR. NAHLEY: Thank you.

24 VICE CHAIR HART: That will give you more time to  
25 be able to kind of figure out what your, the discussion that

1 you want to have.

2 And just regarding the relief that you requested,  
3 if we could have just a, all of the relief that we need. I  
4 know that we've been kind of back and forth on this, or at  
5 least it's been a lot of different relief that had either  
6 been requested or been sought.

7 And some of it has been changed and it just is,  
8 and since it is so much, it is helpful for us to kind of say  
9 this is the clean, this is where we are, the Office of  
10 Planning knows kind of where we are with all of that. And  
11 I would encourage you to continue working with OP to make  
12 sure you kind of fully understand.

13 Not you, but the communication is open to fully  
14 understand what that relief is. And so that we understand  
15 what the relief is as well.

16 MS. MOLDENHAUER: Absolutely. And that's one of  
17 the things we're working on right now is to clarify, the  
18 penthouse relief various specifically in identifying areas  
19 where the relief is being requested and the specific degree  
20 of relief. So we are finalizing that.

21 And we'll be filing an updated, probably a  
22 PowerPoint, that will include all that information and will  
23 summarize all the relief requested as well.

24 VICE CHAIR HART: Okay. And would that also mean  
25 you would have to submit a revised, amended self-

1 certification?

2 MS. MOLDENHAUER: No. Everything is the same as  
3 it was at our prior hearing.

4 VICE CHAIR HART: Okay.

5 MS. MOLDENHAUER: There is no change, it's more  
6 of just simply, the design has been reduced and revised --

7 VICE CHAIR HART: Sure.

8 MS. MOLDENHAUER: -- to reduce the relief off of  
9 the penthouse relief. It's more just simply making sure the  
10 Board understands each area of the penthouse and the degree  
11 of relief of how much we're requesting for each area.

12 VICE CHAIR HART: Okay. And that --

13 MS. MOLDENHAUER: But the self-service --

14 VICE CHAIR HART: Yes, that's clear to me. I just  
15 wanted to make sure that that was, if you were going to do  
16 that then I encourage you to do that as well.

17 If you could also give me some idea as to how long  
18 you would need to, before you would be submitting your, I  
19 don't know, the PowerPoint or whatever that you're going to  
20 be submitting for this?

21 MS. MOLDENHAUER: That will probably be ready to  
22 be filed at the end of this week, so we could probably file  
23 it either on the 18th or the 21st.

24 VICE CHAIR HART: Okay.

25 MS. MOLDENHAUER: And we'll then want to give OP

1 enough time to then review that and respond. So, we've been  
2 more than willing to file it as early as possible to give OP  
3 enough time.

4 VICE CHAIR HART: Sure.

5 MS. MOLDENHAUER: So, I'll look over to OP for  
6 their timing rather.

7 VICE CHAIR HART: Mr. Cochran?

8 MR. COCHRAN: That works fine.

9 VICE CHAIR HART: If you can introduce yourself  
10 please?

11 MR. COCHRAN: The 18th would be fine.

12 VICE CHAIR HART: If you could introduce yourself  
13 please?

14 MR. COCHRAN: Oh, sorry.

15 VICE CHAIR HART: That's okay.

16 MR. COCHRAN: Steve Cochran, D.C. Office of  
17 Planning.

18 VICE CHAIR HART: So, May 18th is when you're  
19 saying that you'd be able to have your information, and, Mr.  
20 Cochran, you said the 18th is, that you would have enough  
21 sufficient time to be able to review and then provide a  
22 supplemental, supplemental or another --

23 MR. COCHRAN: I've lost track of which  
24 supplemental it would be, but, yes, that will be fine. When  
25 are you suggesting we would need to have that supplemental

1 filed?

2 VICE CHAIR HART: Well, that's what I was trying  
3 to look at. Maybe, I mean, we have some time to work with.  
4 If it's the 18th then June 1st? That's two weeks.

5 MR. COCHRAN: Not a problem.

6 VICE CHAIR HART: Okay.

7 MR. COCHRAN: I'm going to be out of town from the  
8 25th to the 10th of June so I'll get it in before that.

9 VICE CHAIR HART: Okay.

10 MR. COCHRAN: Or I can file it on the 11th.

11 VICE CHAIR HART: I think that would be, let's be  
12 on the safe side and say the 11th.

13 MR. COCHRAN: Thank you.

14 VICE CHAIR HART: That will give you some time.

15 Mr. Moy, do we have all the, those dates down?

16 MR. MOY: Yes.

17 VICE CHAIR HART: So it looks like we have May  
18 18th, when the Applicant would be filing, would it be your  
19 PowerPoint, Ms. Moldenhauer?

20 MS. MOLDENHAUER: Yes.

21 VICE CHAIR HART: Okay.

22 MR. COCHRAN: Excuse me, Mr. Chair?

23 VICE CHAIR HART: Yes. Sure.

24 MR. COCHRAN: Being realistic here just because  
25 of jet lag, could we make it on the 12th?

1 (Laughter)

2 VICE CHAIR HART: We want to make sure that we  
3 you're not jet lagged.

4 MR. COCHRAN: Thank you. I have the zoning  
5 commission the night of the 11th anyway, so.

6 VICE CHAIR HART: Oh, that's fine. So, the Office  
7 of Planning would submit a supplemental report on the 12th  
8 of June. And, Mr. Nahley, I don't know if you all are  
9 wanting to submit anything as well, with regard to this?

10 MR. NAHLEY: Yes. We'll review and submit a  
11 response.

12 VICE CHAIR HART: Response to the Applicant or --

13 MR. NAHLEY: Yes.

14 VICE CHAIR HART: -- or the Office of Planning?

15 MR. NAHLEY: Well, I'm not sure about that --

16 VICE CHAIR HART: Yes.

17 MR. NAHLEY: -- but we would have to --

18 VICE CHAIR HART: Applicant?

19 MR. NAHLEY: Yes.

20 VICE CHAIR HART: So, if we could have your  
21 response, I don't know if the, let's say two weeks after the,  
22 because that would give the Office of Planning at least a  
23 chance to see that as well.

24 MR. NAHLEY: That would be fine.

25 VICE CHAIR HART: Maybe the 1st of June?

1 MR. NAHLEY: That would be fine.

2 VICE CHAIR HART: Okay. So, Mr. Moy, do we have  
3 all the, if you could read all the dates back to make sure  
4 I've got all them correct?

5 MR. MOY: Sure, thank you. So, just to recap.  
6 Working backwards, so, the Board has granted the  
7 postponement, rescheduled to June 20th, a Wednesday.

8 VICE CHAIR HART: Just so, I want to make sure,  
9 I didn't actually ask the rest of the Board. Is the Board  
10 okay with postponing until the 20th?

11 MEMBER WHITE: Yes.

12 VICE CHAIR HART: Okay.

13 MEMBER WHITE: But I did have one question.

14 VICE CHAIR HART: Sure.

15 MEMBER WHITE: So that will include revised  
16 architectural plans as well?

17 VICE CHAIR HART: I'm assuming that that would be  
18 included in that as well.

19 MEMBER WHITE: That would reflect the  
20 modifications with respect to the penthouse?

21 MS. MOLDENHAUER: Those have already been filed.

22 MEMBER WHITE: Okay.

23 MS. MOLDENHAUER: So, actually, the Board should  
24 already have revised architectural plans that were filed in  
25 anticipation of today's hearing that did reduce the penthouse



1 substantially.

2 MEMBER WHITE: Okay.

3 MS. MOLDENHAUER: So that's actually, we're just  
4 simply enumerating the relief in each of the areas. I think  
5 that that was a question that it was maybe not as clear from  
6 the plans.

7 We want to make sure that it was very clear, with  
8 the revised plans. So the plans are not changing, it's more  
9 of just clarifying the relief on the plans.

10 MEMBER WHITE: Okay, thank you.

11 VICE CHAIR HART: Okay, so --

12 MR. MOY: Okay.

13 VICE CHAIR HART: -- I think we're, we've decided  
14 the 20th is we would approve the motion to move the, postpone  
15 the meeting until the 20th.

16 MR. MOY: Okay, the 20th.

17 VICE CHAIR HART: Excuse me, the hearing until the  
18 20th.

19 MR. MOY: The hearing would be June 20th. Let me  
20 go back to the top.

21 So the Applicant would make their filing on May  
22 18th, after which OP supplemental would be due June 12th,  
23 which I believe is Tuesday. And the Opposition will make a  
24 filing on June 1st, in response to the filing from the  
25 Applicant. That's it.

1 VICE CHAIR HART: Then that's correct. Did I miss  
2 anybody?

3 Okay, everything is pretty clear? Excellent.  
4 Thank you all very much.

5 MR. NAHLEY: Thank you.

6 MS. MOLDENHAUER: Thank you.

7 VICE CHAIR HART: Mr. Chairman, the meeting is now  
8 back with you.

9 CHAIRPERSON HILL: I'm quite happy the way it was.  
10 All right, Mr. Moy, whenever you're ready.

11 MR. MOY: Thank you, Mr. Chairman. If we can have  
12 parties to the table to Case Application Number 19747. This  
13 is of Deborah Van Buskirk. Buskirk I believe.

14 Capturing and advertising for special exceptions  
15 under Subtitle E, Section 5201 from the accessory building  
16 gross floor area limitations of Subtitle E, Section  
17 5004.2(b), accessory building rear setback requirement  
18 Subtitle E, Section 5004.1 and pursuant to Subtitle X,  
19 Chapter 10 for variance from the lot occupancy requirements  
20 of Subtitle E, Section 304.1. This would permit an existing  
21 one-story accessory building RF-1 zone at premises 445 15th  
22 Street, Southeast, Square 1062, Record Lot Number 52.

23 CHAIRPERSON HILL: Good morning. If you could  
24 please introduce yourselves from my right to left.

25 MR. SULLIVAN: Thank you, Mr. Chair and Members

1 of the Board, my name is Marty Sullivan with the law firm of  
2 Sullivan and Barros here on behalf of the Applicant.

3 MS. WILSON: Good morning. Alexandria Wilson from  
4 Sullivan and Barros on behalf of the Applicant.

5 MS. VAN BUSKIRK: Deborah Van Buskirk, I'm the  
6 Applicant.

7 CHAIRPERSON HILL: Okay, who's going to be  
8 presenting to us, Mr. Sullivan?

9 MR. SULLIVAN: Yes.

10 CHAIRPERSON HILL: Okay. So, Mr. Sullivan, I'm  
11 going to just kind of start with some of the things I guess  
12 that I normally start with. Like, if you want to go ahead  
13 and explain what it is you're trying to, your Applicant is  
14 proposing and how they are meeting the standard. And after  
15 reading the record, I mean, I think that the variance is  
16 going to be the part that we'd be most interested in hearing  
17 about in terms of the three prongs.

18 But, I'll go ahead and turn it over to you. I'm  
19 going to give you 20 minutes, just so we know where you are,  
20 and you can begin whenever you like.

21 MR. SULLIVAN: Thank you, Mr. Chair. I'll have  
22 a short introduction then I'll turn it over to Ms. Buskirk  
23 to explain the circumstances which lead us to this point.

24 Now, the relief we're requesting is for approval  
25 after the fact of an existing structure. It's in a garage,

1 in the rear yard. And the relief relates to lot occupancy  
2 for the entire lot. That's the variance portion of this.

3 And then there is two areas of special exception,  
4 which related to rear yard provisions. Those rear yard  
5 provisions include the 12 foot center of the alley line  
6 setback and also a provision that states that you can have  
7 an accessory building in a required rear yard, provided that  
8 accessory building is not more than 100 square feet in an  
9 area.

10 That's a new provision under ZR-2016. And so both  
11 of those are special exception relief.

12 And I will go into more detail about some of the  
13 history if this, and also of course the variance argument,  
14 and I'll turn it over to Ms. Buskirk for a few minutes.  
15 Thanks.

16 MS. VAN BUSKIRK: Hello. I purchased the property  
17 in early 2016. I bought a house with a detached garage. And  
18 when I bought it, it had gravel from the door to the street  
19 so, I did not know that there was no curb cut. And neither  
20 did anybody that, my inspector didn't catch it either.

21 So, after purchasing the property I went and filed  
22 to get a curb cut. And as part of that it went through the  
23 approval process, we got to DDOT and they said, we will give  
24 it to you contingent on providing a building permit.

25 So, we went to fill for the building permit after

1 the fact, and then we found that there was some issues  
2 involved and that's why we're here today.

3 I've talked to the neighbors during this process.  
4 They said it has not always been a garage, it was made into  
5 a garage by an earlier owner, unbeknownst to me.

6 And that it had been used in previous, the  
7 structure had been there but it had been used for other  
8 purposes like a mechanic shop and things like that. That it  
9 had not been a residential garage. Is there anything else?  
10 Okay.

11 MR. SULLIVAN: Thank you. So, there is a plat  
12 that we think says 1921, maybe '71, but it looks like '21.  
13 There was a garage there at one time. We don't believe that  
14 this is the same garage that's there now, so we're not  
15 suggesting that it was a pre-1958 garage. But there was some  
16 sort of structure there prior to 1958.

17 From her discussions with neighbors in the  
18 community, and with the ANC as well, it was learned that this  
19 building has been there, as it is, for at least about 15  
20 years or more. And previous to that it was some sort of  
21 either carport structure, something without a roof. And then  
22 eventually they converted it and put a roof on it.

23 And then DCRA was not able to find a building  
24 permit for that, as you would expect, because it would have  
25 been in violation.

1           So, we're dealing with a completed structure. And  
2 I understand what the Office of Planning as said that this  
3 should be looked at in de novo as if there is nothing there  
4 on the lot.

5           However, there is a line of cases that does say  
6 that under certain conditions, and the most recent one was  
7 approved last September by the Board, a situation where a  
8 previous owner has done something to the property that maybe  
9 was not permissible and not permitted, can become a unique  
10 condition in a practical difficulty for a subsequent good  
11 faith purchaser, over the passage of time.

12           And those line of cases mostly relate to  
13 conversations. The typical case would be, and the one that  
14 was approved last September, would be a three-unit building  
15 in the RF-1 zone.

16           And a good faith purchaser purchases a three-unit  
17 building and finds out after the fact that, hey, I'm not  
18 legal. And then they come to the Board and ask for area  
19 variance relief under the lot size requirements. The 900  
20 foot rule.

21           Claiming that it's been this way for 20 years, and  
22 they show proof of that, and that I didn't know about it.  
23 And in those cases, the Board has occasionally approved area  
24 variance relief.

25           And has said that the unique condition is the

1 condition of the property being three units for a long period  
2 of time. And the practical difficulty would be the cost to  
3 the subsequent good faith purchaser in reconvertng it back  
4 to two units, kicking out a tenant.

5 And here I think this is a similar analysis where  
6 the unique condition is the existence of the garage over time  
7 and the fact that we have a good faith purchaser.

8 And I would suggest that a single-family home  
9 owner is even more good faith because somebody that purchases  
10 a three-unit building is essentially entering a business of  
11 renting out units and they should be held to a little bit  
12 higher standard of checking, is there a C of O for this  
13 property.

14 For a single-family, it would be really unusual  
15 for a single-family purchaser to look at a property and say,  
16 hey, is that garage legal or not. Especially something like  
17 this that looks like its matching the property.

18 So, that's the argument we're relying on. And I  
19 don't know that we've fully fleshed that out in the pre-  
20 hearing statement. Because the Office of Planning raised  
21 their issue and then we've had further discussions with them  
22 and we did some additional research.

23 Including those cases. Which we have included at  
24 the end of the PowerPoint.

25 So, the unique condition is the existence of the

1 garage over a period of time. There's evidence that it's  
2 been more than 15 years. And the practical difficulty would  
3 be in removing that garage.

4 Also, I think it's very important that there is  
5 no opposition to that proposition and there is support from  
6 neighbors and full support from the ANC as well. So, we're  
7 available to answer any questions.

8 CHAIRPERSON HILL: Okay, does the Board have any  
9 questions for the Applicant?

10 VICE CHAIR HART: Yes. And this is one of the  
11 statements that you just made, Mr. Sullivan, with regard to  
12 the Applicant not realizing that it wasn't, that Ms. Van  
13 Buskirk, not realizing that it was a not permitted, I'm not  
14 sure if you can say illegal, but there was no permit with it.  
15 There was no curb cut?

16 This was the issue that was the kind of escalated,  
17 not escalated, this is the issue that brought this to light,  
18 so that's kind of the first thing that you kind of look at  
19 is. And you would have to have a curb cut next to an alley,  
20 is that what we're looking at too?

21 MR. SULLIVAN: That's correct.

22 VICE CHAIR HART: And that's also why DDOT would  
23 have an issue with that as well, I'm assuming.

24 MS. VAN BUSKIRK: We actually took it through the  
25 whole process, and the last stop on that is DDOT, the group



1 -- I'm sorry?

2 MR. SULLIVAN: Public Space --

3 MS. VAN BUSKIRK: Public, yes, sorry. And they're  
4 the ones who said that, yes, we will grant you the permit but  
5 you need to provide a copy of the building permit.

6 And it was at that point when we thought it was  
7 just a matter of course to just go, you know, what I had at  
8 the time working with me was my contracting and me. So we  
9 didn't have the attorneys onboard.

10 So we're going through this the best we can. And  
11 it was at that point then, when he went back to the City and  
12 they said we can't find a building permit for this.

13 VICE CHAIR HART: Do you know why DDOT would ask  
14 for a building permit?

15 MS. VAN BUSKIRK: No, I don't.

16 MR. SULLIVAN: I think they have had occasions  
17 where they want to know that it's a legal parking space.  
18 They don't want to approve a curb cut that's not to a legal  
19 space.

20 VICE CHAIR HART: I mean, they probably also  
21 realize that, well, I don't know what they realize, but there  
22 was something that raised their attention that we need to  
23 figure --

24 MR. SULLIVAN: Yes. Maybe they noticed it was an  
25 unusual situation as well. Yes.

1           VICE CHAIR HART: And the garage itself, and I  
2 just wanted to kind of get this on the record, the garage  
3 itself, you cannot reconfigure it, and can you just explain  
4 why?

5           MS. VAN BUSKIRK: No, you can't. Because the  
6 garage itself goes up to, against an eight foot alley.

7           So even if you turned, if what you're saying is  
8 you turn it so that it goes into the alley, there is not  
9 enough space. It's not like I could just pull into the  
10 neighbor's yard a little bit to get my car out it's a wall.

11          VICE CHAIR HART: The image here actually shows  
12 the wall --

13          MS. VAN BUSKIRK: Oh, okay.

14          VICE CHAIR HART: Because I'm assuming the image  
15 that's here, that's shown on the screen in front of you --

16          MS. VAN BUSKIRK: Yes.

17          VICE CHAIR HART: -- is your house to the left --

18          MS. VAN BUSKIRK: Yes.

19          VICE CHAIR HART: -- the garage that has kind of  
20 a side loaded, it's loading from this side as opposed from  
21 the, I guess the right-hand side of this.

22          MS. VAN BUSKIRK: That's right.

23          VICE CHAIR HART: And that alley is what is behind  
24 your house.

25          MS. VAN BUSKIRK: And the alley is actually too

1 narrow to get a car in and out. So the houses that are on  
2 E Street there do not have garages because it's too narrow  
3 to get a car in and out of a parking garage.

4 VICE CHAIR HART: But because you're at the corner  
5 --

6 MS. VAN BUSKIRK: Yes.

7 VICE CHAIR HART: -- you have the ability, there  
8 is some ability to be able to do that, if you had a curb cut.

9 MS. VAN BUSKIRK: Yes.

10 VICE CHAIR HART: And do you currently use that  
11 as a garage?

12 MS. VAN BUSKIRK: I do. It's not easy to get in  
13 and out, but yes, I do.

14 VICE CHAIR HART: Thank you.

15 ZC CHAIR HOOD: Mr. Chairman?

16 CHAIRPERSON HILL: Sure. Please, go ahead.

17 ZC CHAIR HOOD: Mr. Sullivan, in your analysis in  
18 being fair to the purchaser, and I forgot how you phrased all  
19 that, it was very convincing I'll tell you that, is that in  
20 your submission the way you articulated to us just now?

21 Because I think for me to move forward that, and  
22 I'm looking here at your statement and I see where you do  
23 reference some court cases and some appeals, but is that  
24 specifically in your statement?

25 MR. SULLIVAN: It's not in the pre-hearing

1 statement, no, it's in the PowerPoint. And we can supplement  
2 the record with something more official on that.

3 ZC CHAIR HOOD: Yes, depending upon how we move  
4 forward. And that is case law, correct?

5 MR. SULLIVAN: Yes. Yes, sir.

6 ZC CHAIR HOOD: Okay. Depending upon how this  
7 Board moves forward, I would like to see that come into the  
8 record.

9 MR. SULLIVAN: Okay.

10 ZC CHAIR HOOD: Okay. Thank you, Mr. Chairman.

11 MEMBER WHITE: Just a couple questions about the  
12 community feedback that you've gotten. Mr. Sullivan, I think  
13 mentioned that you would ANC support, but unless I'm missing  
14 something, I didn't see anything in the record. Perhaps  
15 they're here?

16 MR. SULLIVAN: Yes.

17 MEMBER WHITE: Okay, hi. And the other question,  
18 so maybe I should just table that question until the ANC  
19 Commissioner comes up, if that's your intent.

20 The second question is, I'm looking at the letter  
21 of opposition from the Capitol Hill Restoration Society. So,  
22 they were pretty firm in their analysis and I just wanted to  
23 know what type of response you have in terms of what they  
24 have submitted on the record. Unless they are here as well?

25 MR. SULLIVAN: Okay. Yes, I'm not aware that

1       they're here.

2               My take on their letter was that it was a legal  
3       analysis, differing with my legal analysis, that you needed  
4       to look at this property as if the garage never existed and  
5       that you cannot approve something that was ever impermissibly  
6       constructed.

7               And I think, as I stated, I think there are cases  
8       where the Board can look at that as a unique condition.

9               MEMBER WHITE: Thank you.

10              CHAIRPERSON HILL: So, following up with that,  
11       again, right with the Capitol Hill Restoration Society. So,  
12       Ms. Van Buskirk?

13              MS. VAN BUSKIRK: Van Buskirk.

14              CHAIRPERSON HILL: Van Buskirk.

15              MS. VAN BUSKIRK: Yes.

16              CHAIRPERSON HILL: Ms. Van Buskirk. So, they  
17       basically are saying, like, there might have been some red  
18       flags to you when you were kind of buying the property and  
19       so I'm just curious, again, did you suspect there were any  
20       red flags when you bought the property about the fact that  
21       there wasn't a curb cut there and that you had any kind of  
22       concerns?

23              MS. VAN BUSKIRK: No. I mean, I feel really  
24       stupid about this, but yes, no, I didn't see any red flags.  
25       My inspector didn't pick it up, the appraisal didn't pick up

1 anything, the title company didn't say anything. So, I  
2 walked in there thinking that everything was fine. I really  
3 did.

4 And, I mean, I didn't walk over there because it  
5 was gravel. So, it looked as though it was a regular  
6 driveway.

7 CHAIRPERSON HILL: You mean before you purchased  
8 it, right?

9 MS. VAN BUSKIRK: Yes.

10 CHAIRPERSON HILL: Right. And you got it in 2016,  
11 so you haven't been there that long --

12 MS. VAN BUSKIRK: No.

13 CHAIRPERSON HILL: -- is that right?

14 MS. VAN BUSKIRK: No.

15 CHAIRPERSON HILL: And then you decided to try to  
16 get the curb cut?

17 MS. VAN BUSKIRK: Yes.

18 CHAIRPERSON HILL: And that's where all these  
19 things started to come to light.

20 MS. VAN BUSKIRK: Yes.

21 CHAIRPERSON HILL: And so prior to you going to  
22 submit for a curb cut, you hadn't checked with an attorney  
23 or anything, you just went to go try to get a curb cut?

24 MS. VAN BUSKIRK: Truth is, I contacted some  
25 landscape people to give me a proposal on putting in a

1 driveway knowing that it required a permit. That's all I  
2 knew.

3 And then fortunately, the guy who I hired to do  
4 this, I don't think he does a lot of stuff in D.C. because  
5 he didn't understand what he was getting into either. So the  
6 two of us were going through the process together on trying  
7 to get this permit through. And so no, I had no idea what  
8 I was up against.

9 CHAIRPERSON HILL: Okay. Okay. On that on, you  
10 might have wanted to stay quiet, is what, you know.

11 MS. VAN BUSKIRK: Oh, sorry.

12 CHAIRPERSON HILL: Yes. No, no, no. Meaning,  
13 they're like, you know, the curb cut is what got you, you  
14 started down the road to try to figure this out and now  
15 you're where you are now.

16 MS. VAN BUSKIRK: Yes.

17 CHAIRPERSON HILL: Okay. All right, anyone else?  
18 No. I turn to the Office of Planning.

19 VICE CHAIR HART: Just --

20 CHAIRPERSON HILL: Oh, sorry, go ahead.

21 VICE CHAIR HART: -- one quick question. I was  
22 looking at the, I guess it's the plat, Exhibit Number 11.  
23 Not the historic one, but just the one that you all  
24 submitted.

25 And the Capitol Hill Restoration Society states,

1 they say something about the project being in the public  
2 space. Is this project actually in public space or how does  
3 that, the garage itself looks like it's, I don't know, it  
4 looks like there is a piece of it that kind of jets out into  
5 the, where the sidewalk is. If you could explain that a  
6 little?

7 MR. SULLIVAN: Yes, is there is an encroachment  
8 it didn't change our zoning application of course but it  
9 would be something that the Public Space Committee would look  
10 at as well.

11 VICE CHAIR HART: Yes, I was just trying to figure  
12 out if what I was looking at was the building or the property  
13 line. I couldn't figure out if I was looking at a property  
14 line or not.

15 MR. SULLIVAN: I'm not clear on that actually.

16 VICE CHAIR HART: It's a little bit --

17 MR. SULLIVAN: Yes. I know we can clear that up  
18 beforehand.

19 VICE CHAIR HART: I mean, they just noted that  
20 there was an issue with part of the --

21 MR. SULLIVAN: Right.

22 VICE CHAIR HART: -- building looking like it was  
23 actually in public space.

24 MR. SULLIVAN: Right.

25 VICE CHAIR HART: Which is, in itself, could be



1 an issue.

2 MR. SULLIVAN: Right.

3 VICE CHAIR HART: Not necessarily for us but for  
4 the Public Space Committee.

5 MEMBER WHITE: Mr. Vice Chair, look at Exhibit 9,  
6 there is another picture there that gives you a full view of  
7 the property and the garage from the curb. I just caught  
8 that. I don't know if that would be helpful for you to see  
9 the configuration there.

10 VICE CHAIR HART: Yes. No, it's helpful, it is.  
11 Like I said, I don't know exactly what the, I was just trying  
12 to figure out where the property line was with respect to  
13 where the building was. It, yes, I was just trying to  
14 understand that, that's all.

15 And I understand what you're saying, the  
16 photograph makes it seem as though the public space is the  
17 sidewalk, but in D.C. there are places that are public space  
18 that are kind of outside of the property line, and I just  
19 don't know where that is exactly.

20 MEMBER WHITE: Okay.

21 VICE CHAIR HART: Even though the image, the  
22 photograph from Exhibit 9 looks like it is kind of within the  
23 property line, it's hard to tell if you don't really have a  
24 plat that actually describes where all that is.

25 MEMBER WHITE: So, you'd like to see a plat

1 showing that?

2 VICE CHAIR HART: They have a plat, I'm just  
3 trying to understand the Capitol Hill Restoration Society  
4 letter. And their making a statement that the garage  
5 encroaches on public space by 3.25, three and a quarter feet,  
6 on the 15th Street side.

7 And I don't know where, I don't exactly know where  
8 the property is. I think I know by looking at the plat on  
9 Exhibit 11, but, again, that's a little bit, yes, actually,  
10 the plat on the second page on Exhibit 11 actually shows  
11 where the public space is. On the second page.

12 And it shows the E Street, the 15th Street right  
13 of way line, and that line actually, again, it looks like it  
14 cuts through a part of where the building is. But, again,  
15 it's hard to tell that, that clearly.

16 MR. SULLIVAN: As I read that plat that's what I  
17 think it is, the garage is over.

18 VICE CHAIR HART: But it's hard seeing that from  
19 the photographs on Exhibit 9, because the photographs are  
20 right at, they're from the street looking in and it's, you're  
21 not really sure where that public space is.

22 Again, it is something just to understand. So,  
23 I was just pointing it out.

24 MR. SULLIVAN: Okay.

25 MEMBER JOHN: I have a question of the Applicant.

1 So, what would be the cost of reducing the size of the garage  
2 so it would fit within this 70 percent special exception  
3 relief?

4 MR. SULLIVAN: So, we haven't done an analysis of  
5 actually the construction cost of that, but we do know that  
6 it would reduce the garage by about 60 percent and wouldn't  
7 be useable at that point.

8 MEMBER JOHN: So, what's the size of the garage  
9 now?

10 MR. SULLIVAN: 288 square feet.

11 MEMBER JOHN: Okay.

12 MR. SULLIVAN: Yes. And 160. It would go down  
13 to something like 168. If we could get within the 70  
14 percent.

15 MEMBER JOHN: So, your legal analysis was very  
16 interesting. And my only question is, so, if we were to  
17 accept that reasoning, how do we put, how do we put a limit  
18 on that reasoning so that in future we don't have property  
19 owners building these illegal structures and then a new owner  
20 coming in five years later to say, in good faith, I had no  
21 idea this is what was happening?

22 I'm concerned about setting a new precedent for  
23 doing that.

24 MR. SULLIVAN: Right. And a great question. And  
25 that's my position is that it's not a new precedent, it's

1       been done in these conversion cases. And I don't know if the  
2       Board, and I don't think the court of appeals certainly has  
3       said, here is why we have said in these cases that that kind  
4       of situation is okay on, in rare occasions.

5               But, from what I glean from all the discussion and  
6       all the different approvals is that, one requirement would  
7       certainly be that you have an innocent purchaser, seemingly  
8       innocent purchaser. So if somebody made the change, even if  
9       they made it 25 years ago and then they show up 25 years  
10      later and say, I made the change, but hey, it's been a long  
11      time, I don't think that would fit within my legal analysis.

12             Passage of time is one of the things that the  
13      Board has looked at in the conversion cases. They've wanted  
14      to see sometimes tax records, if you have tax records from  
15      20 years ago showing that there were three separate units 20  
16      years ago as well.

17             And so those are the three things that I see as  
18      cut offs or blocks. The innocent purchaser, the passage of  
19      time and the fact that they didn't, they weren't the ones  
20      responsible for it. And then of course, throw in the fact  
21      that if there was opposition to it, that would make it more  
22      complicated as well.

23             But I think it's narrow enough. And those  
24      conversion cases haven't happened often. They're once every  
25      year or two one of those have been approved possibly.

1 CHAIRPERSON HILL: Okay, I'm just going to follow-  
2 up again, Mr. Sullivan, with Ms. John's question. To get to  
3 the 70 percent, like I mean, you're saying that it would be  
4 unusable.

5 And I supposed I'm just, I mean, you basically  
6 would have to tear it down or tear down one side of it and  
7 make it, I don't know if you could even make it a one car  
8 garage or, Ms. Van Buskirk, if you've actually looked into  
9 it.

10 I mean, let's just say you didn't get it, right,  
11 like I mean, what would you, you could get special exception  
12 up to 70 percent and then have you done that analysis, has  
13 an architect looked at that yet, like whether or not you pull  
14 the garage all the up against the side of the house or, you  
15 haven't looked at anything yet?

16 MS. VAN BUSKIRK: No.

17 CHAIRPERSON HILL: Okay. And you haven't looked  
18 at the cost associated. And, I mean, for whatever it's worth  
19 I believe you didn't know.

20 And so that's unfortunately not the argument we're  
21 exactly making. Your attorney is making somewhat of that  
22 argument for you and I think he's doing a good job of it.

23 But, I'm just trying to understand what you have  
24 looked at. And you haven't looked at anything else, except  
25 for you're now doing this process and seeing what happens?

1 MS. VAN BUSKIRK: Yes.

2 CHAIRPERSON HILL: Yes, okay. All right, anybody  
3 else for the Office of Planning? Okay. Office of Planning.

4 MS. BROWN-ROBERTS: Good morning, Mr. Chairman and  
5 Members of the Board. Maxine Brown-Roberts from the Office  
6 of Planning.

7 Regarding the variance where we recommend a  
8 denial, when we reviewed this we thought that the Applicant  
9 did not provide enough information for us to, to make the  
10 connection between the unusual situation and the exceptional  
11 situation.

12 And so we have, I have spoken to the Applicant  
13 since, have given him some ideas of things to look at. You  
14 know, what are some of the options that he could have looked  
15 at that would have maybe reduced it or even demonstrated that  
16 they don't work.

17 And so I have spoken to the Attorney about that.  
18 And so I think for us to consider a recommendation of  
19 approval, those are sort of the things that we would be  
20 looking for.

21 And then regarding of course the special  
22 exceptions, we think that the special exceptions can be  
23 approved if the variance test is met. So that's where we are  
24 right now.

25 CHAIRPERSON HILL: Okay. All right, anybody got

1 any questions for the Office of Planning?

2 MEMBER WHITE: My one question is, what  
3 alternatives did you suggest or if that's an appropriate  
4 question because --

5 MS. BROWN-ROBERTS: Well, again, I think it's some  
6 of the same ones that you asked about, if you are to reduce  
7 the size of the, what would happen, what would it look like  
8 if you reduced the size.

9 And, again, expanding it to maybe having, on the  
10 left side to directly touch the house so maybe get rid of  
11 that space there and have a door that goes directly. So that  
12 may help in reducing the size if the garage.

13 So, again, I wasn't sure what sort of expense that  
14 would entail. And so those are things I think that if we  
15 were given that information to show that, oh, these things  
16 absolutely don't work, then I think would be better able to  
17 make a better assessment.

18 CHAIRPERSON HILL: Okay.

19 ZC CHAIR HOOD: Mr. Chairman, let me ask Ms.  
20 Brown.

21 CHAIRPERSON HILL: Go ahead.

22 ZC CHAIR HOOD: So you've given the Applicant, Ms.  
23 Brown-Roberts, you've given the applicant some scenarios that  
24 they can work on to show that it doesn't work. And then once  
25 they provide that information, then you would recommend

1 approval on the variance, or did I miss something?

2 MS. BROWN-ROBERTS: No, no, I'm not saying that  
3 I would recommend approval, but at least it would give us  
4 somewhat additional information or things to, additional  
5 things to take into consideration. Because this, our  
6 recommendation was based on what the Applicant submitted  
7 originally.

8 And quite frankly, I don't think that argument was  
9 made at all. And so that was, we spoke to them and said, we  
10 needed additional information. And so we didn't have that  
11 information. And so we wrote our recommendation based on  
12 what we had.

13 ZC CHAIR HOOD: Okay. So the argument, in your  
14 analysis, the argument wasn't made at all?

15 MS. BROWN-ROBERTS: Yes.

16 ZC CHAIR HOOD: Okay, that's fine, I got it.  
17 Thank you.

18 CHAIRPERSON HILL: Oh, so, Ms. Brown-Roberts, I  
19 mean I think this, this actually, I thought this was moving  
20 along differently than I had anticipated and so we might be  
21 looking at kind of moving this a little bit forward in  
22 another way. Meaning, I don't know.

23 The question I had for you, the argument  
24 concerning the conversions that the Applicant is making in  
25 terms of, that this has been done for conversions, do you



1 have any comments on that?

2 MS. BROWN-ROBERTS: I know that that argument has  
3 been made before. But then again, each application comes in  
4 on its own merits and that sort of thing, and we do take in  
5 precedents, yes.

6 But, as we said in the report that if the Board  
7 finds that the application has, if the Applicant has provided  
8 adequate justification we are --

9 CHAIRPERSON HILL: Okay, I got you. Okay, all  
10 right. Anybody got anything else for the Office of Planning?  
11 Okay. You're not dead yet, Mr. Sullivan.

12 All right, so, let's see, what are we going to do.  
13 Okay, is there anybody here who would like to speak in  
14 opposition?

15 Is there anyone here who would like to speak in  
16 support?

17 Is there anyone here from the ANC? Mr.  
18 Commissioner, if you would please come forward.

19 MR. BURGER: Good morning.

20 CHAIRPERSON HILL: Good morning. If you can  
21 please introduce yourself?

22 MR. BURGER: Sure. I'm Nick Burger, I'm the ANC  
23 Commissioner for ANC 6B06. I'm the Chair of our Planning and  
24 Zoning Committee for ANC 6B.

25 CHAIRPERSON HILL: Oh, great. And Mr.

1 Commissioner, welcome, thanks for coming down. You get five  
2 minutes as a member of the ANC, and you can provide your  
3 testimony, start whenever you like.

4 MR. BURGER: Sure, thank you. And first I'd like  
5 to apologize for not getting our letter to you in advance of  
6 the hearing, but that's part of the reason I'm here today,  
7 and we will get that letter in to you as soon as we possibly  
8 can.

9 I'm here today representing ANC 6B to testify in  
10 support of the application including all relief sought. ANC  
11 6B has heard this case on numerous occasions as the Applicant  
12 has worked through the various approval processes.

13 And we most recently heard this case in April  
14 2018. At our full meeting that month, the ANC 6B voted 8-0  
15 with one abstention to support the application.

16 The ANC 6B supports this application because we  
17 believe the Applicant has meet all standards. The standards  
18 for all reliefs sought for all components, including the  
19 variance for lot occupancy.

20 The Applicant has lived in the house for  
21 approximately two years and she purchased it with the garage  
22 in its existing condition. I moved to Capitol Hill ten years  
23 ago, I live one block from the Applicant's property and her  
24 property is in my single member district.

25 I walk by the house frequently and observed its

1 condition over the past ten years. For a long time the  
2 garage was a shell with CMU walls and no roof, as mentioned  
3 earlier.

4 Prior to Ms. Van Buskirk purchasing the property,  
5 the previous owner improved the garage to its current, and  
6 frankly, much enhanced state. Based on her statements to the  
7 ANC, we believe Ms. Van Buskirk purchased the property in  
8 good faith, in its existing condition.

9 Regarding the most stringent relief sought, the  
10 lot occupancy variance, ANC 6B believes the Applicant has  
11 meet the variance test. ANC 6B regularly sees cases where  
12 an applicant is attempting to improve a structure that is  
13 currently nonconforming with respect to zoning rules.

14 For example, we've seen many households looking  
15 to add a third story to a house that exceeds 70 percent lot  
16 occupancy, triggering variance relief. The ANC consistently  
17 supports such requests since to bring a house into compliance  
18 with lot occupancy in those cases would require removing part  
19 of a structure. Something we view as untenable.

20 In this case, the ANC believes that it would pose  
21 an undue hardship to penalize Ms. Van Buskirk for making  
22 modest improvements to an existing nonconforming structure.  
23 Similarly, it would be unreasonable to ask the Applicant to  
24 reduce the width of the garage to allow access off the alley  
25 as suggested by some comments on this case.

1           Finally, there's been no new neighbor opposition  
2 to this case, an important consideration for ANC 6B and all  
3 zoning cases. To conclude, ANC 6B fully supports the relief  
4 requested for what is a relatively simple modification to an  
5 existing nonconforming structure.

6           Our support is consistent with many previous cases  
7 ANC 6B has considered. In addition, the ANC often considers  
8 whether cases are reasonable and compatible with the  
9 neighborhood architectural form.

10          And we are satisfied that this project, such as  
11 it is, meets those requirements. And that alternative  
12 solutions would not be reasonable for the Applicant. Thank  
13 you.

14          CHAIRPERSON HILL: All right, thanks, Commissioner  
15 Burger. I guess you're on the zoning, well first, are you  
16 there SMD for this?

17          MR. BURGER: Correct.

18          CHAIRPERSON HILL: Okay. And then also, so you're  
19 on the zoning subcommittee, is that what you said?

20          MR. BURGER: Yes. We have the planning and zoning  
21 committee and I'm the chair of that committee.

22          CHAIRPERSON HILL: Okay. And so, just, and you  
23 don't have to go through it all, but I'm just, the problem  
24 that I think or the struggle that we're having here is the  
25 variance test, right, so do you have any different opinions

1 or additional opinions as to how they're meeting the variance  
2 standard?

3 MR. BURGER: Well, as I said, I mean, I'm not --  
4 okay, as I said, the ANC often looks at these cases and we  
5 try to follow your lead, in some sense, in looking at sort  
6 of the legality and the appropriateness with respect to the  
7 zoning code, but we also come at the case with our local  
8 perspective, which is not necessarily a legal argument, which  
9 I think is kind of the reason we exist.

10 So, from my perspective, this case brought back  
11 to me all sorts of cases that I mentioned in the testimony  
12 where we have a house and that house exceeds 70 percent lot  
13 occupancy. Whether it's because it was built that way a  
14 hundred years ago or whether it's because it was modified  
15 sometime between a hundred years ago and now, which is kind  
16 of the average age of most Capitol Hill homes.

17 So when someone comes in to modify that house,  
18 they automatically trigger a variance. They have to get a  
19 variance for already exceeding 70 percent lot occupancy.

20 And so in those kinds of cases, our understanding  
21 is that to meet the 70 percent occupancy, in addition to  
22 whatever the applicant is trying to do to their home, they  
23 would have to reduce the footprint of their home.

24 And that often means tearing down an existing  
25 addition or pulling a wall in. And from our perspective,

1       that's not a reasonable request of an applicant.

2               Again, I think it goes back a little bit to what  
3       the applicant's representative was saying, if there is a  
4       clear case where an applicant has come to us, done something  
5       illegal and then asks us to sort of bless it after the fact  
6       based on their own actions, and we've seen a couple of those,  
7       we don't do that. We don't want people actively violating  
8       the zoning rules.

9               At the same time, we understand that history is  
10      what it is. And if a house has evolved, legally or otherwise  
11      over its long sort of tenure in our neighborhood into a state  
12      where it's nonconforming and then an existing applicant who,  
13      again, purchased the property in good faith wants to make a  
14      modification, and the way to come into compliance with the  
15      zoning code, would be sort of extreme.

16              And I think that's what's, I think that's the  
17      issue in this case, is to come into compliance with the  
18      zoning code would require modifying this garage in a fairly  
19      dramatic way. Pulling it back off the alley, shirking it  
20      maybe to a size that makes it unusable.

21              CHAIRPERSON HILL: Okay.

22              MR. BURGER: So that's our sense, is that there  
23      is just not a clearly viable solution in asking someone to  
24      tear down a structure, again, where there is not a clear  
25      recent history --

1 CHAIRPERSON HILL: Okay. Okay.

2 MR. BURGER: -- isn't appropriate in our view.

3 CHAIRPERSON HILL: Okay. All right, thank you.

4 Anybody have any questions for the Commissioner?

5 MEMBER JOHN: Just one question.

6 CHAIRPERSON HILL: Sure.

7 MEMBER JOHN: So, you've lived in the neighborhood  
8 for ten years?

9 MR. BURGER: Correct.

10 MEMBER JOHN: And you said at one point the garage  
11 was a shell --

12 MR. BURGER: Correct.

13 MEMBER JOHN: -- with no roof?

14 MR. BURGER: Correct.

15 MEMBER JOHN: And the previous owner who sold it  
16 to the Applicant was the one who made the modifications and  
17 put the roof on?

18 MR. BURGER: That's my assessment. I have not  
19 looked at the record of sale. But basically, prior to Ms.  
20 Van Buskirk purchasing the home, whoever owned the home at  
21 the time made some modifications to the home, including  
22 putting a roof on the garage, repainting it, making it look  
23 essentially as you see it in the picture today.

24 MEMBER JOHN: Okay, thank you.

25 MR. BURGER: No problem.

1           ZC CHAIR HOOD: Chairman, I just have a question.  
2           Commissioner Burger, the ANC, I believe in your area, you and  
3           the Capitol Hill Restoration, you all kind of work hand-in-  
4           hand most of the time, is that a fair assessment?

5           MR. BURGER: I would say we work in parallel most  
6           of the time. I mean --

7           ZC CHAIR HOOD: Okay.

8           MR. BURGER: -- our view often aligns with the  
9           view of the Capitol Hill Restoration Society, but our view  
10          often does not align with them.

11          We have less interaction with them directly on  
12          zoning cases. So this is obviously not in the historic  
13          district so they don't, we sort of lean on them for advice  
14          more from their historic perspective.

15          And I'm not saying we disregard their zoning  
16          advice, they have very smart people, but that's, there's less  
17          kind of coordination and interaction on the zoning basis with  
18          them.

19          ZC CHAIR HOOD: Okay. All right, well thank you.  
20          Thank you for all the work that you all do.

21          MR. BURGER: Sure. Thank you.

22          CHAIRPERSON HILL: Commissioner Burger is a  
23          politician.

24          (Laughter)

25          CHAIRPERSON HILL: I meant that in a good way.



1 MR. BURGER: I appreciate that.

2 (Laughter)

3 CHAIRPERSON HILL: Yes. Okay. All right, thanks  
4 so much.

5 MR. BURGER: Thank you.

6 CHAIRPERSON HILL: All right, let's hear back to  
7 Mr. Sullivan. So, Mr. Sullivan, I don't know what the Board,  
8 I know what I'm kind of curious in seeing now is, I mean, I'm  
9 continuing to struggle with, I mean, it's obvious, the  
10 variance, right, and the rationale that you have now proposed  
11 I guess in terms of some of the case law that you've cited.

12 I'd be interested in kind of having an opportunity  
13 I guess to look at some of that case law, but I'd be even  
14 more interested in you working with the Office of Planning  
15 and seeing what kind of, and also, I'd like to see this.  
16 Like, so what other options are there, what other things can  
17 you do.

18 I mean, Ms. Van Buskirk? Ms. Van --

19 MS. VAN BUSKIRK: Van Buskirk.

20 CHAIRPERSON HILL: Van Buskirk, sorry. Ms. Van  
21 Buskirk, I totally don't think that you didn't know about  
22 this. I mean, just speaking for me, and so it's not, you  
23 know, if it was just something that I could, we're just stuck  
24 with the regulations and so that's why we're here.

25 I think the garage looks very lovely, I like the

1 house, I mean I think it's great for you and I wish that you  
2 had just stayed quiet, but, you know, that's just, you are  
3 where you are now.

4 So, I think that if you could show us kind of,  
5 again, so, Mr. Sullivan, you're making kind of a financial  
6 argument, or starting to make a little bit of a financial  
7 argument. Or, you know.

8 I guess, if you could please provide that  
9 financial argument? I mean, I still think that getting to  
10 the 70 percent special exception if, you know, and if you  
11 show some of the things that the Office of Planning has to,  
12 I mean, you would still need special exception to get to the  
13 70 percent. I mean, you would still be here.

14 I mean, it's 60 percent matter of right. And so,  
15 just to get to 70 percent you'd still have to be before us.

16 And so, kind of maybe explain that to your client  
17 and then seeing what things that they could do maybe to get  
18 to the 70 percent and then kind of working with the Office  
19 of Planning and just seeing if another argument can be made.  
20 Because apparently there wasn't a clear enough argument that  
21 the Office of Planning was able to kind of like get their  
22 hands around.

23 And so, I guess, unless the Board has any other  
24 thoughts, I'm kind of interested in, I mean, we might even  
25 continue or --

1 MR. SULLIVAN: Yes, I think so.

2 CHAIRPERSON HILL: -- we can continue it. And  
3 then, if you can kind of provide those things to us.

4 Again, like, what could be done by the 70 percent  
5 and how infeasible is it. And/or maybe, I don't know, the  
6 client might, you might be back here for a special exception  
7 for 70 percent and the client just understands where the  
8 client is.

9 And even to, I don't really understand the DDOT  
10 thing so I mean, I'm still kind of, like the curb cut right  
11 next to the alley, I mean, I still find that kind of  
12 interesting. I don't know if, and this is, I'm not an  
13 attorney in this area, but like, I don't know what that step  
14 is. Like I'm a little surprised that they're going to put  
15 a curb cut right next to that alley.

16 But anyway, it doesn't matter. If you could just  
17 show us again kind of the design, what could be done, how  
18 much it would cost, why it's still, what your argument  
19 continues to be and work with the Office of Planning and then  
20 we'll come back for a continued hearing and see if there was  
21 any movement on anything in terms of the Office of Planning  
22 and/or if your argument, after we review some of these cases  
23 that you put forward, convinces us more I supposed.

24 Does the Board have any other thoughts?

25 VICE CHAIR HART: Yes, I do, Mr. Chairman. I

1 appreciate the comments that you've made and the guidance  
2 that you have given to them and would agree with most of it.

3 I do actually believe that Ms. Van Buskirk, at  
4 some point this would have come up regardless if you went  
5 today or you are here now or if you wanted to sell the house  
6 at some point, it would have come up again. So it's not that  
7 this is, it's just, we are where we are.

8 So, you might have to, you may not like going  
9 through it right now, but I don't think that this was, I  
10 think that this was something that was inevitable and it  
11 would have been, it would have reared itself as you went  
12 through some process. So if it's not this, it would have  
13 been some other point.

14 Did you, and this is a question for you, did you,  
15 were you able to get a, you haven't been able to get a  
16 building permit or anything, has anybody come to look at this  
17 to see whether or not this was structurally sound?

18 Because that's kind of part of the issue too. I  
19 don't know if the construction, the building itself is  
20 constructed in a way that wouldn't require it to be, wouldn't  
21 require some changes.

22 Because, if it didn't have a building permit, then  
23 it would have been inspected and there may be some issues  
24 with the actual structure itself. And that may cause some  
25 problems because you may have to, well, you got to put a new

1 roof on it because they didn't construct it the way that  
2 they're supposed to, and I'm trying to figure that out.

3 MS. VAN BUSKIRK: I actually hired a separate  
4 contractor to see this through, this building permit through.  
5 And what I provided to him was, what they told me was, you  
6 need to get a permit for an existing structure and a building  
7 permit.

8 And what I told the gentleman was, go pull the  
9 permit, meet the inspector out there. If there was anything  
10 that does not meet code, because that's what I thought I was  
11 up against, fix it and we'll move on, we just need to get  
12 this done and get it back.

13 So, his feeling was, he didn't see anything, but  
14 he was going to wait on the inspector just to be absolutely  
15 sure that everything was up to code. And if the inspector  
16 said anything, we were giving him instructions to please fix  
17 it, whatever it is.

18 But we didn't actually get to that point --

19 VICE CHAIR HART: Okay.

20 MS. VAN BUSKIRK: -- because this other issue came  
21 up.

22 VICE CHAIR HART: Yes. I mean, I'm somewhat  
23 curious about that only because, if there is something that  
24 is a problem, they may have to done some changes regardless.

25 And so, then the issue would be, well, if they're

1 already making changes, why are we kind of going through some  
2 of this. And I'm trying to kind of gather where we are with  
3 it.

4 If you go through all this process and I don't  
5 know where we're going to end up on it, but if it does get  
6 approved, then you may run into some other problems as you  
7 kind of go forward.

8 MS. VAN BUSKIRK: It looks, I mean, to me it looks  
9 like it's in great shape and it seemed, to him, that he  
10 didn't see that there was going to be any issues, it would  
11 be minor if anything. But it was based on his expertise that  
12 I was relying on.

13 So, he's had some, he's walked through the space,  
14 he's taken a look at it. And to my knowledge, I don't think  
15 that there's anything major.

16 VICE CHAIR HART: Yes. The only reason I'm  
17 raising it is because you've also stated that you had an  
18 appraiser and all these other folks kind of look at this, a  
19 home inspector and all this, and they didn't kind of raise any  
20 issue with this curb cut issue and now we are here where we  
21 are.

22 So, I'm just saying that people can make mistakes,  
23 and if you have somebody that is actually looking at the  
24 building code issue, which is a building permit issue, then  
25 they may raise some things that say, oh by the way, you need

1 to do this because of fire safety, oh, well, you need to do  
2 this for, X, whatever the reason is.

3 I mean, you have a structure that has, it looks  
4 like a grey change that's right next to it so how do you exit  
5 out of the building, besides the front door.

6 And I don't know if they need to have that or not,  
7 I'm just saying that there may be some changes that are  
8 necessary that may necessitate you to take the roof off, take  
9 the whatever off because of some building code issues. And  
10 it's just hard for us to kind of gauge that if we don't  
11 really know that.

12 MS. VAN BUSKIRK: No, I appreciate that.

13 VICE CHAIR HART: So, it's just an FYI.

14 MS. VAN BUSKIRK: My inspector was probably not  
15 the best inspector, so --

16 VICE CHAIR HART: You're on the record.

17 (Laughter)

18 MS. VAN BUSKIRK: Oh, great. But I have full  
19 faith in the guy that I have hired. He is a construction  
20 person.

21 VICE CHAIR HART: That's fine.

22 MS. VAN BUSKIRK: So, I mean, I think the level  
23 of expertise is different.

24 CHAIRPERSON HILL: Okay. Mr. Sullivan --

25 MS. VAN BUSKIRK: But thank you.

1 CHAIRPERSON HILL: Mr. Sullivan, you kind of  
2 understand what Mr. Hart is talking about, and so maybe if  
3 you can just like, when you come back kind of answer, any  
4 questions to that as to whether or not, just if you can  
5 answer any concerns that Mr. Hart might have about that, what  
6 he is questioning.

7 And I appreciate Mr. Hart also pointing out that  
8 you would have been here, I guess, at some point anyway so  
9 might as well be here now.

10 So, Mr. Sullivan, so, I mean again, my big thing  
11 is, providing the argument, again, as to the variance,  
12 providing the design changes, how you could meet the lot  
13 occupancy and why that's such a problem and working with the  
14 Office of Planning. It sounds like the Office of Planning  
15 is willing to have further discussion with you.

16 And so what I think is, Mr. Hood, you are back  
17 again, you said July 13th?

18 ZC CHAIR HOOD: June. If that's not a, well yes,  
19 I'm back June 20th. But let me, while I have the mic, Mr.  
20 Chairman --

21 CHAIRPERSON HILL: Sure.

22 ZC CHAIR HOOD: -- I would agree with you. I  
23 think if for me I can see myself getting there if we tighten  
24 up, deal with the variance and have, finish having those  
25 discussions.



1           And I think that you've laid out the plan, which  
2           hopefully they'll follow and come back at the appropriate  
3           time and let's see if we can get through this. Because I  
4           think their case law, for me, is very important.

5           And I think, depending upon what comes back, I  
6           think this Board can defend that one. A lot of them, we  
7           might not be able to defend but we can defend this one.

8           CHAIRPERSON HILL: And, again, your encouragement  
9           in working with the Office of Planning and the Office of  
10          Planning working with the Applicant.

11          (Off microphone comment)

12          CHAIRPERSON HILL: Okay. Okay. All right, so the  
13          20th, right. So that's a --

14          (Off microphone comment)

15          CHAIRPERSON HILL: So is the 20th, the 20th will  
16          work. So then, Mr. Moy, if you could work backwards from the  
17          20th as to the dates that you might need? Because we need  
18          a supplemental from the Office of Planning.

19          MR. MOY: Okay, well, let's go one week  
20          separation. So if we continue this, this is a continued  
21          hearing or decision making?

22          CHAIRPERSON HILL: Continued hearing.

23          MR. MOY: Continued hearing. All right, then if  
24          Applicants can make their filing by, let's say June 6th, and  
25          OP with a supplemental the following week, June 13th. Will

1       that suffice?

2               CHAIRPERSON HILL:   Okay, does that work for you  
3       guys?

4               MR. SULLIVAN:   Yes.

5               CHAIRPERSON HILL:   Okay.   All right.   Now, I  
6       always forget, with continued hearings, so we've gone through  
7       opposition, support, ANC, so we don't have to do that again?

8               MR. MOY:   Not unless you want to.

9               CHAIRPERSON HILL:   Okay.

10              MR. MOY:   June 20th.

11              CHAIRPERSON HILL:   I mean, usually I do do it I  
12       guess, so I don't know, let's see what happens.   All right,  
13       so we'll see you on the 20th.   Thank you.

14              If everyone could, I thought maybe we could do the  
15       next case and then take a break.   Is that good?   We'll do  
16       that the one, when I mean the next case, let's go ahead and  
17       do the 19749, Mr. Moy, and then we'll take a break.

18              MR. MOY:   Okay, very good.   Thank you, Mr.  
19       Chairman.   So, if I can call to the table parties to Case  
20       Application Number 19749 of Muksy, LLC.

21              This is caption advertise for special exceptions  
22       under Subtitle D, Subtitle D, Section 5201.   This is from the  
23       rear yard requirements of Subtitle D, Section 306.1  
24       nonconforming structure requirements, Subtitle C, Section  
25       202.2.

1           This would construct a two-story rear addition to  
2           a principle dwelling unit in R-1-A zone. This is at premises  
3           3645 49th Street, Northwest, Square 1507, Lot 4.

4           CHAIRPERSON HILL: All right, great, thank you,  
5           Mr. Moy. If you could please introduce yourself for the  
6           record?

7           MS. WILSON: Alexander Wilson from Sullivan and  
8           Barros on behalf of the Applicant.

9           CHAIRPERSON HILL: Okay, great. So, Ms. Wilson,  
10          I thought that the record was relatively full and I didn't  
11          have a lot of questions about it. If you could just kind of  
12          go over what it is that your client is proposing --

13          MS. WILSON: Sure.

14          CHAIRPERSON HILL: -- and how you're meeting the  
15          criteria for us to grant the relief requested. I'm going to  
16          go ahead and put 15 minutes up on the clock so I know where  
17          we are, and you can start whenever you like.

18          MS. WILSON: Great, thank you. The Applicant is  
19          the owner and resident of the property and lives there with  
20          his family.

21          They are proposing to renovate their house. And  
22          as part of their renovation, they're proposing to construct  
23          a single-story addition at the rear of the building, on top  
24          of an existing one story garage.

25          The homeowner is not planning to change the

1 existing footprint or lot occupancy. The existing garage is  
2 already in the required rear yard, in the R-1-A zone. There  
3 is a 25 foot rear yard requirement. And the current rear  
4 yard is only 18.8 feet.

5 These zoning regulations do allow additions in  
6 required rear yards, but only if it's made to the portion of  
7 the rear yard that was included in the building area before  
8 1958. It's unclear whether the rear addition was constructed  
9 prior to 1958 so, accordingly, we are requesting relief from  
10 the rear yard requirements and from the prohibition against  
11 extending an existing nonconforming structure.

12 Here is a side-by-side of the existing as  
13 proposed. As you can see, we're not proposing to expand the  
14 existing footprint, just to construct the one story addition  
15 on top of the existing garage.

16 The application safely meets the special exception  
17 requirements. The combination of design, distance and  
18 location of the respective yard should keep the proposed  
19 addition from having an undo impact on the adjacent  
20 properties light and air or privacy and use of enjoyment.

21 Even though the addition will not be visible from  
22 49th Street, the traditional design is sympathetic with the  
23 principle portion of the house and surrounding neighborhood.

24 The Applicant is not increasing the lot occupancy  
25 and the existing lot occupancy is only 21.5 percent.

1           The application safely meets the requirements of  
2           D 5201.4 through 5201.6. The proposed addition will not  
3           increase the existing building footprint.

4           Both adjacent neighbors are in support of the  
5           application, the ANC is in support of the applicant and OP  
6           is recommending approval of the application.

7           CHAIRPERSON HILL: Okay, great. Thank you. Does  
8           the Board have any questions for the Applicant? All right,  
9           I'm going to turn it to the Office of Planning.

10          MR. COCHRAN: OP recommends approval and is  
11          standing on the record.

12          CHAIRPERSON HILL: Okay, thank you. Is there  
13          anyone here from the ANC? Is there anyone here wishing to  
14          speak in support? Is there anyone here to speak in  
15          opposition?

16          All right, Ms. Wilson, I'm going to turn back to  
17          you. Do you have anything else you'd like to add?

18          MS. WILSON: No, thank you.

19          CHAIRPERSON HILL: Okay. All right. Does the  
20          Board have anything they would like to add?

21          Okay, going to go ahead and close the hearing.  
22          Is the Board ready to deliberate? Okay.

23          I can start. As I mentioned at the beginning,  
24          after reading through the record, I didn't have a whole lot  
25          of issues with this, I thought it was relatively

1 straightforward.

2 And I thought that the analysis that was provided  
3 by the Office of Planning was very clear and concise and I  
4 would agree with their recommendation and their assessment.  
5 And I would be in approval of this application.

6 Does anyone have anything else that they would  
7 like to add? All right, so hearing none, I'm going to go  
8 ahead and make a motion to approve Application Number 19749  
9 as captioned and read by the Secretary and ask for a second?

10 VICE CHAIR HART: Second.

11 CHAIRPERSON HILL: Motion has been made and  
12 seconded, all those in favor aye?

13 (Chorus of ayes)

14 CHAIRPERSON HILL: All those opposed? The motion  
15 passes, Mr. Moy.

16 MR. MOY: Staff would record the vote as 5-0-0.  
17 This is on the motion of Chairman Hill to approve the  
18 application for the relief being requested.

19 Seconded the motion Vice Chair Hart. Also in  
20 support, Mr. Hood, Ms. White and Ms. John. Motion carries.

21 CHAIRPERSON HILL: Thank you, Mr. Moy. Summary  
22 order?

23 MR. MOY: Yes, sir, thank you.

24 CHAIRPERSON HILL: Thank you. Thank you. All  
25 right, everyone, we're going to take a quick five, five, ten

1 minute break.

2 (Whereupon, the above-entitled matter went off the  
3 record at 10:55 a.m. and resumed at 11:09 a.m.)

4 CHAIRPERSON HILL: All right, Mr. Moy, you can  
5 start whenever you like.

6 MR. MOY: Thank you, Mr. Chairman. The next case  
7 application is Case Number 19748 of Acton Academy Foundation,  
8 captioned advertised for a special exception under the use  
9 requirements of Subtitle U, Section 203.1(1), and the private  
10 school requirements of Subtitle X, Section 104.

11 This would permit a private school in the R-17  
12 zone at premises 2430 K Street, Northwest, Square 28, Lots  
13 172 and 846.

14 CHAIRPERSON HILL: Okay, could the Applicant come  
15 to the table please? Okay, we're going to go through a  
16 couple of things first, but, let me see, if you could go  
17 ahead and please introduce yourselves from my right to left?  
18 Or either way.

19 MS. BRITTON: Katherine Britton, treasurer, St.  
20 Paul's Church. The Church address is 2430 K Street,  
21 Northwest.

22 MS. SMITH: Jeanne Smith, warden, one of two  
23 wardens of the, as lay leaders of the parish St. Paul's K  
24 Street at 2430 K Street, Northwest.

25 MS. GIORDANO: Cynthia Giordano, Saul Ewing Law

1 Firm, 1919 Pennsylvania Avenue, Washington, D.C.

2 MR. KIRBY: And David Kirby, Acting Academy  
3 Foundation, 2737 Devonshire Place, Northwest in Woodland  
4 Park.

5 CHAIRPERSON HILL: Okay. And we also have now,  
6 so we're going to do the party status issue first.

7 The members here for requesting party status,  
8 could you please come forward? If you could please just  
9 introduce yourself?

10 MS. KAHLOW: I'm Barbra Kahlow, I'm Secretary  
11 Treasurer of the West End Citizens Association.

12 (Off microphone comment)

13 CHAIRPERSON HILL: You have to push the button.

14 MS. MADDUX: Sorry. I'm Sara Maddux, I'm  
15 president of the West End Citizens Association.

16 CHAIRPERSON HILL: Okay. Let's see, Kahlow and  
17 Maddux. And then is the ANC here by any chance? Okay. All  
18 right.

19 So, Ms. Kahlow and Maddux, I can't remember who,  
20 I guess either one of you can speak. So what we're trying  
21 to do first is determine party status or not.

22 And so you do know the criteria in Section,  
23 Subtitle Y, Section 404.1(i). If you could please just  
24 explain to the Board why you feel that you should be given  
25 party status?



1 MS. KAHLOW: I'd be happy to. I thought that we  
2 had a very thorough, let me just pull it out, explanation.  
3 We have been a party, just give me one second, we have been  
4 a party to over 20 cases between the BZA and the Zoning  
5 Commission.

6 And in this case, this well within our boundaries.  
7 We have owners and renters in the surrounding buildings as  
8 we, almost every building.

9 We are the only Civic Association that is  
10 participating in this case. The other one doesn't do land  
11 use any more. So it's within our boundaries.

12 And we're concerned because of the objectionable  
13 noise and the effects on traffic. And those are two of the  
14 important criteria for you. And we would have members enter  
15 significantly or distinctly uniquely affected by the noise  
16 and traffic.

17 Is that enough or do you want more?

18 CHAIRPERSON HILL: Well, I mean, I'm just trying  
19 to look here. And I'm looking at the letter that you went  
20 ahead and put forward. But again, how your uniquely affected  
21 versus the general public, and so that's what I'm trying to  
22 understand.

23 And your argument is that you're an association?

24 MS. KAHLOW: We're the Civic Association for this  
25 neighborhood. The name was called West End because it was

1 when the West End didn't even exist. And this is  
2 specifically our neighborhood, Foggy Bottom West End.

3 And this is what we cover. We do all the land use  
4 cases there. And we're the ones that do the land use cases  
5 more than the ANC or the Foggy Bottom Association or anybody  
6 else.

7 We are involved, as Mr. Hood can tell you, in  
8 many, many cases. And we help present the point of view of  
9 the actual residents who live in the community. We --

10 CHAIRPERSON HILL: It's okay, I'm just trying to  
11 understand.

12 MS. KAHLOW: Yes.

13 CHAIRPERSON HILL: So you present the point of  
14 view of certain residents in the community, the ANC is  
15 representing whatever the ANC is representing over there  
16 also?

17 MS. KAHLOW: I understand. But they don't  
18 actively participate, just like they are today, often.

19 CHAIRPERSON HILL: Okay, so, all right, so, let's  
20 see. As far as the Applicant, what are your thoughts in  
21 terms of the party status in how they are or are not meeting  
22 the criteria from Section Y, 404.1?

23 MS. GIORDANO: Yes, thank you. First of all, I  
24 just want to respond to a couple of things that were said.

25 The Foggy Bottom Association does participate in

1 land use matters, and indeed, in this matter. And they are  
2 in support of this project. And certainly the ANC does as  
3 well, and they are in support of the project.

4 Just moving backwards a little bit, the West End  
5 Citizens Association did not make, meet the procedural  
6 requirements for party status requests. There is no  
7 indication that Ms. Maddux or Ms. Kahlow were authorized to  
8 represent the association on behalf of any members that have  
9 any views on this particular matter.

10 There is no indication that there was a meeting  
11 or vote being held, so other than the fact that Ms. Kahlow  
12 and Ms. Maddux may personally have opinions about this, there  
13 is no indication that the West End Citizens Association  
14 actual does. And we have filed a detailed motion in  
15 opposition to party status request by this organization.

16 CHAIRPERSON HILL: Okay.

17 MS. KAHLOW: Can we have a copy, I haven't see it?

18 CHAIRPERSON HILL: I think the copy is in the  
19 record.

20 MS. GIORDANO: Yes. And I mailed it to you.

21 VICE CHAIR HART: Exhibit 58.

22 MS. KAHLOW: I'm sorry, what is the date? It  
23 wasn't in the record when I checked it yesterday.

24 MS. GIORDANO: It was there yesterday.

25 MS. KAHLOW: Oh, maybe --

1 CHAIRPERSON HILL: Well, actually, there is  
2 another issue with that anyway. If we -- so first,  
3 regardless of that, let's go ahead and kind of get through  
4 these issues in terms of, well, I mean, I see the application  
5 for the West End Citizens Association. Does the Board have  
6 any questions for the party requesting opposition? Party  
7 status that is.

8 VICE CHAIR HART: Yes, I do. Ms. Kahlow, welcome.  
9 I had a question regarding the, in your submittal you state  
10 that the, that there are noise and traffic concerns that are,  
11 that you all have.

12 But I've also noticed that the Applicant has  
13 provided, or the neighbors have provided, some of the  
14 neighbors that are in close proximity to this, abutting, have  
15 provided information they don't have concerns about the  
16 noise, even though they are next door neighbors of this or  
17 traffic concerns. How is it that your organization is more  
18 affected by this or uniquely affected by this than the actual  
19 neighbors that are adjacent to the property?

20 MS. KAHLOW: Well, the adjacent neighbors, I think  
21 there were letters from three or four of them, are just three  
22 or four of them. We represent the larger groups.

23 For example, I live a condominium a block and a  
24 half away and it's 51 units in that building.

25 VICE CHAIR HART: But, ma'am, this not a numbers

1 game --

2 MS. KAHLOW: I understand.

3 VICE CHAIR HART: -- it's really about, what is  
4 the impact that you all are having that the people that are  
5 next door to this, that they wouldn't, they've actually  
6 signed off for it. At least they've stated their support of  
7 this.

8 MS. KAHLOW: Well --

9 VICE CHAIR HART: So the impacts of noise would  
10 be less if you are farther away from the site.

11 MS. KAHLOW: I understand.

12 VICE CHAIR HART: So that's what I'm trying to  
13 understand, how is that you all --

14 MS. KAHLOW: Across the street, basically half a  
15 block away, is a River Inn and it has been a case before the  
16 BZA many, many times where they have wanted to have an  
17 outdoor café and the community, the larger community that  
18 lives all around that area, not just the three or four  
19 houses, all was upset about noise and traffic.

20 And we recommended that they have a meeting of the  
21 larger community. The ANC SMD person did not want to do so.  
22 Because, they have traditional done, at one of our board  
23 members was one of those people in opposition to the River  
24 Inn outdoor café. And of course, it's never been allowed by  
25 this group, the BZA.

1 But I'm saying, the larger community, traffic will  
2 affect my building, because of the one-way streets. And it  
3 will affect, especially for fire trucks --

4 VICE CHAIR HART: Okay, I guess what I'm trying  
5 to get to is, how will it affect this, our group more than  
6 it will affect the people that are next door to them? That's  
7 what I'm trying to get to.

8 MS. KAHLOW: I think it will affect more because  
9 there is more people affected. They will uniquely be  
10 affected, but there are more people in the Civic Association  
11 than the three or four neighbors.

12 VICE CHAIR HART: No, I understand that. I guess  
13 I'm just looking at it as, the ANC actually weighed in on  
14 this, another organization weighed in on this.

15 MS. KAHLOW: I think that was just a --

16 VICE CHAIR HART: I'm not asking your response for  
17 it, I'm just letting you know that they've already weighed  
18 in on this.

19 MS. KAHLOW: Okay.

20 VICE CHAIR HART: And that's what I'm having to  
21 look at throughout this case.

22 MS. KAHLOW: Yes.

23 CHAIRPERSON HILL: Okay, does anyone have any  
24 other questions? Okay. All right, so --

25 MS. GIORDANO: Mr. Chair, if I may?

1 CHAIRPERSON HILL: Sure.

2 MS. GIORDANO: There also is an abutting neighbor  
3 who wanted to speak to this issue, would you entertain that?  
4 She is here for that purpose. She came.

5 CHAIRPERSON HILL: Is that the letter that we got  
6 from, yes, I think the, unless the Board wants to  
7 specifically hear from this individual, I thought the letter  
8 was well written when we read the letter and so I don't think  
9 there is any need to speak to the person.

10 So, after hearing the presentation here --

11 MS. MADDUX: Mr. Chair?

12 CHAIRPERSON HILL: Yes.

13 MS. MADDUX: May I have a moment of indulgence  
14 please?

15 As we've read the record and we've seen the  
16 letters that have been submitted for the record, they are  
17 personally pejorative --

18 CHAIRPERSON HILL: No, no that's okay. That's  
19 okay, I don't --

20 MS. MADDUX: Excuse me.

21 CHAIRPERSON HILL: No, no, excuse me.

22 MS. MADDUX: I'm sorry.

23 CHAIRPERSON HILL: I'm sorry, I don't want to get  
24 into that, that's why I didn't bring the person up in here.  
25 The letter is there, I don't want this to get into any shape

1 or fashion in terms of, other than what we're looking at  
2 within the subtitle.

3 MS. MADDUX: We're just interested in --

4 CHAIRPERSON HILL: So I just don't want to bring  
5 up all those things.

6 MS. MADDUX: -- in staying with what the rules and  
7 regulations are --

8 CHAIRPERSON HILL: Yes, I'm just staying in the  
9 regulation.

10 MS. MADDUX: -- and we were very disturbed by that  
11 --

12 CHAIRPERSON HILL: Sure, I understand. I  
13 understand.

14 MS. MADDUX: Okay, thank you kindly.

15 CHAIRPERSON HILL: You're welcome. So, again,  
16 after seeing the application and listening to the testimony  
17 here from the Applicant, I don't think that the Applicant  
18 meets the criteria within the Subtitle Y, Section 404.1, to  
19 allow party status.

20 I do think that when the time comes for  
21 opposition, they, as an organization, will have five minutes  
22 to present. And then also, we'll see how that goes at that  
23 point. Does anyone have any other thoughts?

24 VICE CHAIR HART: I mean, I would concur with your  
25 petition on it. I understand that the organization, that the



1 West End Civic Association may have some concerns.

2 They will have the opportunity to be able to  
3 present those concerns as part of the testimony that anyone  
4 can give, but I agree that I didn't think that they rose to  
5 the level of a party for this and met the regulations.

6 CHAIRPERSON HILL: Okay. All right.

7 MEMBER WHITE: I would just concur with you, Mr.  
8 Chair and Mr. Vice Chair. Just looking strictly at the  
9 criteria and the facts of this case I don't think it rises  
10 to the level of party status. But I am definitely interested  
11 in their testimony with respect to this particular  
12 application.

13 CHAIRPERSON HILL: Okay. So I'm going to go ahead  
14 and make a motion then to deny the party status request of  
15 the West End Civic Association, ask for a second?

16 MEMBER WHITE: Second.

17 CHAIRPERSON HILL: Motion has been seconded. All  
18 those in favor, aye?

19 (Chorus of ayes)

20 CHAIRPERSON HILL: All those opposed? Okay, the  
21 motion passes, Mr. Moy.

22 MR. MOY: Yes, Staff would record the vote as 5-0-  
23 0. This is on your motion to deny the request for party  
24 status. Seconded the motion, Ms. White, also in support Mr.  
25 Hood, Vice Chair Hart and Ms. John. Motion carries.

1 CHAIRPERSON HILL: Okay. So that's one thing.  
2 So then the other is, there was an issue here with the  
3 submission that was, it was a motion basically, to submit  
4 testimony about, in opposition, to the party status.

5 So that actually, I believe, and the OAG can  
6 correct me if I'm wrong, came outside, there was a time  
7 parameter to it and so that's why I made a motion, I believe.  
8 And so now the motion is just moot. So, the motion will  
9 just, and I don't know, I guess it's just moot so that's it.  
10 Okay. All right, so that's been taken care of.

11 MS. GIORDANO: The motion would be in the record.  
12 I think the time parameter is to respond to a party status  
13 request within seven days after service, but we were never  
14 served. So I don't know that our motion is out of time, but  
15 --

16 MS. NAGELHOUT: I don't think the motion is out  
17 of time, I didn't realize that you were not served with the  
18 request from party status. You're supposed to file any  
19 objection within seven days of service, but if there was no  
20 service --

21 MS. GIORDANO: We were not served.

22 MS. NAGELHOUT: Okay.

23 CHAIRPERSON HILL: Okay. So, but the motion can  
24 stay in the record, but now it's moot?

25 MS. NAGELHOUT: Correct.

1 CHAIRPERSON HILL: Okay. All right. All right,  
2 so we've done that.

3 Then the other thing that I just wanted to mention  
4 was that, there is obviously, there is opposition within the  
5 community and there is, or people that are here to testify.  
6 I do appreciate the items that we've been given into the  
7 record, but to speak to what Ms. Maddux had mentioned before,  
8 we would like to keep this just strictly about the zoning  
9 issues and not about what might be anything other than zoning  
10 issues, okay?

11 So, I just wanted to kind of mention that for who  
12 else's testimony was coming up and anything like that, we're  
13 just here to talk about zoning.

14 So, I guess, Ms. Giordano, are you going to  
15 present to us?

16 MS. GIORDANO: The bulk of the presentation is  
17 going to be by David Kirby. And the Church is here in case  
18 there are any specific questions about the Church property  
19 and how this Church, the school proposal might coincide with  
20 any other church activities. But Mr. Kirby is here --

21 CHAIRPERSON HILL: Okay.

22 MS. GIORDANO: -- to present.

23 CHAIRPERSON HILL: Okay.

24 MS. GIORDANO: Would it be appropriate for him to  
25 give some background though on the school? It's not

1 technically a zoning issue but --

2 CHAIRPERSON HILL: Sure. However, you want to  
3 present your case.

4 MS. GIORDANO: Okay.

5 CHAIRPERSON HILL: It's your case, you're welcome  
6 to present it any way you like.

7 MS. GIORDANO: Thank you.

8 CHAIRPERSON HILL: Mr. Kirby, I'm just going to  
9 go ahead and throw 20 minutes up on the clock so I know where  
10 we are, okay? And you can begin whenever you like.

11 MR. KIRBY: Thank you, Mr. Chairman. Thank you  
12 everyone. Again, my name is David Kirby, my wife and I our  
13 parents of a 4-year-old, Madeline. We are also co-founders  
14 of this new school, Acton Academy of Washington, D.C.

15 We're obviously working to open Acton in one of  
16 the rail houses on St. Paul's Parish Campus on K Street and  
17 Foggy Bottom. That's why we're here, because of the zoning,  
18 and we need a special exception.

19 This would be for a small private school, up to  
20 60 students. Acton would be a Montessori Pre-K and  
21 Kindergarten program as well as an Elementary program. So,  
22 we'll serve children ages 3 to 6 as well as children ages 6  
23 to 10. And we plan to open this September.

24 As you saw in our zoning pre-hearing statement,  
25 we've been working very, very hard over the last months to

1 reach out to neighbors, share our plans with them and get  
2 their feedback. I personally knocked on all the doors of the  
3 houses nearby St. Paul's Parish to introduce ourselves.

4 I hand delivered letters about Acton, our project.  
5 We toured the site with neighbors, we presented at the Foggy  
6 Bottom Association meeting.

7 We hosted two separate neighbor's meetings  
8 ourselves to invite people. And we meet with neighbors in  
9 their living rooms and their backyards.

10 We've been extremely, extremely grateful that  
11 neighbors have given us such a warm welcome. Many of the  
12 neighbors who live adjacent to the school actually showed up  
13 at 9:30 at night for an ANC meeting. At ANC meeting, as you  
14 saw in the record, unanimously approved.

15 After the ANC meeting, you'll see in the record  
16 there is ten neighbors, who submitted letters of support.  
17 The neighbors include people who live adjacent to the outdoor  
18 play area, families with small children, the rector of St.  
19 Paul's, president of the Foggy Bottom Association and  
20 residents who've lived in Foggy Bottom for decades.

21 And it's really the number and variety of  
22 neighbors who wrote letters that speaks to the depth of  
23 support for the people who live nearby St. Paul's and who are  
24 most directly affected. Which, of course, is what we care  
25 about for the zoning.

1           So, just two quick things I want to do in my brief  
2 remarks. I wanted to share a little bit about Acton Academy  
3 and our mission and just who we are, and then go right to the  
4 drop-off and pick-up plan and our preliminary plan for the  
5 outdoor area, which obviously are criteria for the zoning.

6           So, at Acton, we believe the children are more  
7 powerful than we've ever imagined. What does that look like?

8           Acton is the host of a annual community event,  
9 it's called the Acton Children's Business Fair. It's where  
10 children 6 to 14 become entrepreneurs for a day.

11           They make something with their own hands, they  
12 sell to real customers and they decide for themselves what  
13 to do with the profits. We just provide tents and tables.  
14 Imagine Dupont Market for children.

15           Now, what's amazing is what children do with their  
16 little projects. They bake and sell bread, they sew stuff  
17 animals, they'll make custom paper airplanes. There was even  
18 a 10-year-old who would fix your broken iPhone right there  
19 on the spot.

20           Now, if you're curious of what this looks like,  
21 my first exhibit is just a little photo montage. We host  
22 this in Cleveland Park every year.

23           And just last Saturday, we hosted 125 little  
24 entrepreneurs, 3,300 customers and the Washington Post  
25 actually ran a beautiful profile on Sunday, on the Metro

1 Section, front page. And I included the article, if you're  
2 just kind of curious, in the packet.

3 Now, the children's business fair is a one day  
4 example of what the School, Acton Academy, is all about.  
5 First, is a belief and learning by doing. Sometimes you  
6 learn best when you do something, make something with your  
7 own hands.

8 The second is the respect for Montessori's idea  
9 of the freedom of independent learning. And third is a  
10 vision for what education is all about.

11 At Acton, we believe it's not just about getting  
12 into college or starting a career, we believe it's about  
13 discovering a calling. Who am, what am I passionate about,  
14 how can my unique talents solve a problem in the world, and  
15 if I can combine those two things, maybe I could bring myself  
16 great joy and even change the world.

17 And it's that idea that's been the motivating  
18 factor for my wife and I to try and open Acton Academy, the  
19 very first one, here in Washington, D.C.

20 Just a word about who we are. My wife and I are  
21 life long Washingtonians. I was born in Washington Hospital  
22 Center, my daughter was born in Washington Hospital Center.  
23 My family, they live here in the City. Dupont Circle,  
24 Georgetown, Capitol Hill.

25 And increasingly, young families like us, we want

1 to stay in this great city. We don't want to move to the  
2 suburbs. But as you are probably well aware, Foggy Bottom  
3 and other nearby neighborhoods, they struggle to find pre-K  
4 options. And pre-K is so hard.

5 Many of the public schools have wait lists,  
6 private schools eye-popping prices. So even though this is  
7 a very small school, we're talking 60 students, we hope it  
8 will make a valuable contribution to Foggy Bottom and the  
9 neighborhood.

10 Thanks for indulging me just on that background,  
11 now let's get into the zoning.

12 So, I just wanted to look at our special  
13 exception. First, the pick-up and drop-off and then, of  
14 course, the outdoor play area.

15 For the pick-up and drop-off there is just a  
16 diagram I included. It's relatively straightforward. If you  
17 want to see here, it's obviously in the record, I just  
18 compiled this to make it easy for you.

19 We worked with DDOT on this plan. You saw DDOT's  
20 report. We would stage pick-up and drop-off in the parking  
21 lot that's behind the Church. There's 24 parking spots that  
22 are mostly empty Monday through Friday.

23 We will be staggering our pick-up and drop-off  
24 window from 8:00 to 8:45 in the morning and then from 3:00  
25 to 6:00 in the afternoon. The rationale here is that the



1 staggered window will actually lead to very little queuing.

2 DDOT had proposed a traffic cap of 24 cars in the  
3 morning. And based on the number of families we anticipate  
4 who will be walking from the neighborhood or taking public  
5 transportation or carpooling. This is totally fine with us,  
6 we think it's reasonable.

7 So, next, just the outdoor play area. What's  
8 wonderful about the St. Paul's campus if they have got a  
9 green grassy area for play. This area is very secluded. You  
10 see there is a picture from K Street that I included here.

11 And as you know, if you have 3 to 6 year olds,  
12 just having an onsite playground is a really nice thing in  
13 the city.

14 We presented the plan for an outdoor play area at  
15 the ANC. And also, this next image is just of the property  
16 lines of the neighbors who live next to the green grass area.  
17 There is six neighbors. Three are renters, three are owners.  
18 I meet with all them.

19 Three of the owners wrote letters in support of  
20 the application because we worked with them to try to get a  
21 sense of how to do this and we wanted to be good neighbors  
22 in that regard.

23 The next page just gives you a picture of what it  
24 looks like, consistent with Montessori pedagogy. We just  
25 plan to use natural materials, an outdoor flower garden,

1 outdoor gathering area, places for unstructured play. We  
2 have no plans for large playground structures, no lights or  
3 anything of that sort.

4 Fencing would be along the property line, open  
5 access to gates. Fencing will have to go through the  
6 Historic Review Board as part of our permitting process,  
7 obviously, but that's about it.

8 So that's all. Thanks in advance for your  
9 consideration and obviously happy to answer questions.

10 CHAIRPERSON HILL: Okay. Just a couple of things,  
11 right. So, as far as the conditions go, right, the drop-off  
12 and pick-up of children being administered per the plan  
13 provided in Exhibit 42D and accompanying narrative in Exhibit  
14 42, subject to DDOT concurrence, you agree with this,  
15 correct?

16 MR. KIRBY: Correct.

17 CHAIRPERSON HILL: The next was up to eight off  
18 street parking spaces being provided for the faculty and  
19 staff used on Lot 846. You agree with this?

20 MR. KIRBY: Agree.

21 CHAIRPERSON HILL: Okay. And then DDOT, you had  
22 mentioned this in your testimony, the Applicant would be  
23 limited to 24 morning trips. In the event the site generates  
24 more than 24 inbound morning vehicle trips, the Applicant  
25 should coordinate with DDOT to develop and implement a TDM

1 strategy.

2 MR. KIRBY: No problem.

3 CHAIRPERSON HILL: Okay. So how are you going to,  
4 what's your methodology for the 24 morning trips? Counting  
5 them.

6 MR. KIRBY: We would ask our parents who plans to  
7 drive, who is walking from the neighborhood. That's kind of  
8 the way DDOT suggested we do it. And we submit by, I think  
9 October or November, we picked the date, the number of  
10 parents for that year --

11 CHAIRPERSON HILL: Okay.

12 MR. KIRBY: -- and what those numbers look like.

13 CHAIRPERSON HILL: Okay. And, Mr. Kirby, so you  
14 have a school now?

15 MR. KIRBY: It's opening in September. It will  
16 be brand new.

17 CHAIRPERSON HILL: No. Oh, no, no, I'm saying,  
18 if this goes through, you'll be opening in September --

19 MR. KIRBY: Correct.

20 CHAIRPERSON HILL: -- but you don't have a school  
21 now?

22 MR. KIRBY: No.

23 CHAIRPERSON HILL: So, do you teach somewhere now?

24 MS. GIORDANO: Just explain a little bit, your,  
25 Mr. Kirby actually quit his day job to do this.

1 CHAIRPERSON HILL: No, no, because, Mr. Kirby, the  
2 reason for, you see very good at talking to children.

3 MR. KIRBY: Oh, thank you. I'm happy.

4 CHAIRPERSON HILL: I feel very soothed.

5 MR. KIRBY: Thank you.

6 CHAIRPERSON HILL: I want to let you know.

7 MR. KIRBY: I'm thrilled.

8 CHAIRPERSON HILL: Right. Right, so I can see  
9 this happening for you if this happens. I feel like a 5-  
10 year-old now if that does anything for you. Okay.

11 MR. KIRBY: I'm a parent.

12 CHAIRPERSON HILL: All right.

13 MR. KIRBY: The things we do for our 4 year olds.

14 CHAIRPERSON HILL: Yes. No, you're in parent mode  
15 right now, that's for sure. All right. Does anyone have any  
16 questions for the Applicant?

17 ZC CHAIR HOOD: Yes. Mr. Chairman, if I could?

18 CHAIRPERSON HILL: Sure.

19 ZC CHAIR HOOD: Mr. Kirby, I appreciate your  
20 testimony. And I also appreciate all the outreach it looks  
21 like you have done, because it looks like the, I know you  
22 still have West End who, let me ask this. Let me rephrase  
23 it. But I appreciate everything you have done this far.

24 West End Civic Association, Ms. Kahlow and Ms.  
25 Maddux has been out here a long time, have you had

1 conversations with them as well?

2 MR. KIRBY: Yes. I meet with them in their living  
3 room as part of my outreach on March 27th. Very early on in  
4 the process.

5 They did have concerns at that time. The one  
6 point they made to me is really going to come down to what  
7 the neighbors who live nearby think.

8 ZC CHAIR HOOD: Okay.

9 MR. KIRBY: I said, ah, okay. You know what,  
10 they're right, and I should also go out and meet all them.  
11 So I knocked on their doors, we hosted the neighbor's  
12 meetings.

13 At the ANC meeting, all those neighbors showed up.  
14 They spoke up, the neighbors stood up and said, no, we don't  
15 agree with you, you don't think there is noise or traffic  
16 concerns, we live right there.

17 ZC CHAIR HOOD: Okay.

18 MR. KIRBY: After the ANC meeting I reached out  
19 to them. I said, hey guys, look, do you have any other  
20 concerns after you've heard what the nearby neighbors think.  
21 They refused to meet.

22 ZC CHAIR HOOD: Okay. I will say, I know we have,  
23 when I was a child, I know I made a lot of noise too so I'm  
24 very respectful of that and I actually appreciate hearing  
25 kids. That's let me know that life is still going on.

1 (Laughter)

2 ZC CHAIR HOOD: Let me just ask you about the  
3 traffic issue. And I know this is one thing to make sure you  
4 really nail down. You mentioned an issue with DDOT and you  
5 had a conversation with the chairman that those who are going  
6 to be walking versus those who are going to be driving.

7 What about the ones, is there going to be any  
8 restrictions that those who will be walking will have to walk  
9 all the time or, you know, one day I don't feel like walking,  
10 I feel like driving, so that might add to your count. How  
11 is that going to be controlled?

12 MR. KIRBY: That's a good question. I would  
13 probably want to hear DDOT because they certainly have  
14 experience with this, with this other schools, of how they  
15 try to estimate that.

16 I mean, if you're a mostly walker, does that  
17 count, if you're taking an Uber when it's raining during the  
18 week, does that mean you're a trip cap count car. So I  
19 actually don't, I don't know the answer to that question.  
20 That would be a DDOT --

21 ZC CHAIR HOOD: Right.

22 MR. KIRBY: -- maybe I'd ask for their  
23 clarification.

24 ZC CHAIR HOOD: I've sat on a number of these  
25 cases and I can tell you that that's one of the things that

1 the community, since you have all that support, you want to  
2 make sure you go on and keep it.

3 MR. KIRBY: Got you.

4 ZC CHAIR HOOD: So you want to make sure you make  
5 good on some of the issues that you all have talked about,  
6 especially with that.

7 Now, I'm not saying you have to be restricted to  
8 that, but if you make a promise --

9 MR. KIRBY: Yes.

10 ZC CHAIR HOOD: -- you to make sure you keep it  
11 to those community people who especially supported in the  
12 beginning.

13 MR. KIRBY: Agreed. Thank you.

14 ZC CHAIR HOOD: All right.

15 MR. KIRBY: Thank you for that.

16 ZC CHAIR HOOD: Thank you, Mr. Chairman.

17 CHAIRPERSON HILL: Yes, and to follow-up with  
18 Chairman Hoods comment, and if DDOT were here we would have  
19 had an opportunity to kind of ask them. But again, it's the  
20 trip count that trying to, I mean, it sounds as though you  
21 think you're going to be so far under the trip count that  
22 you're not concerned about. They're going to be primarily  
23 people walking.

24 But that is something that you are now committing  
25 to and that DDOT is going to, I guess you can again go back

1 to DDOT and figure out a best way to make sure that you don't  
2 go over that 24. Okay.

3 Anybody else have some questions?

4 VICE CHAIR HART: Yes, Mr. Chairman. So, I'm just  
5 trying to figure out how you are, right now you are saying  
6 that you have a limit of 60 students and you have eight staff  
7 that your kind of looking at. How do you come up with the  
8 numbers here, what is it, are you looking at a particular,  
9 I don't know, I'm just trying to figure out how your --

10 MR. KIRBY: The staff count?

11 VICE CHAIR HART: The staff count but also, all  
12 school systems have to deal with some, they have to deal  
13 with, well, if it's really successful then you have more  
14 students that will want to come, and so then you have to plan  
15 for that. And that becomes a question.

16 I just don't know how your, what you're thinking  
17 about in terms of --

18 MR. KIRBY: Sure.

19 VICE CHAIR HART: -- a five, ten year kind of  
20 model.

21 MR. KIRBY: Sure. So, Acton Academy is part of  
22 a network of schools that started in Austin, Texas, there's  
23 many around the country. They go K through 12.

24 And so, what we're proposing here is a primary  
25 Montessori school plus an elementary and the children will



1 age up, and we intend to open a middle and a high school.

2           However, this site really is pretty small, the  
3 space that's available, so we applied for 60. If we have to  
4 exceed 60, at some point we'll have to come back. Or we'll  
5 have to find a nearby location to house additional students,  
6 and that's kind of our plan.

7           We like the Foggy Bottom location because there  
8 is some middle school, high school areas that we could  
9 create. Even an office building. The kind of a, like a we  
10 work style space that could accommodate that. And that would  
11 be sort of separate, a separate thing.

12           So for this, we're really imaging it, it's our  
13 first place, it's a small kind of neighborhood school. It's  
14 just for Montessori age and elementary and we'd grow in  
15 likely other locations.

16           If there were other spaces in the Church, then  
17 that would be subject to another process to go above the 60.  
18 Did that answer your question?

19           VICE CHAIR HART: To some degree. Are you looking  
20 at a five, ten year, whatever is your time frame on this?

21           MR. KIRBY: So we gave ourselves a little room to  
22 get this space under our belt before we want to open a middle  
23 school. So we'd probably be looking two to three years from  
24 now to open the middle school.

25           We're starting in 3rd grade, so then next year

1 they're in 4th grade, next grade they're 5th grade, and we  
2 gave ourselves time to open a 6th grade. So it would be a  
3 two to three year time horizon for middle school, a five year  
4 time horizon for high school.

5 VICE CHAIR HART: And the number of staff that you  
6 are looking at, how do you determine that?

7 MR. KIRBY: So, there would be sort of two  
8 classrooms. They're multi-age classrooms. So children ages  
9 3 to 6 in one, elementary age in the other.

10 You would have a lead teacher and an assistant in  
11 each, that's four. And then two administrators. Plus, you  
12 may add additional administrators or after school staff. So  
13 that's how we got to eight.

14 VICE CHAIR HART: But that would be okay for kind  
15 of the first --

16 MR. KIRBY: Correct.

17 VICE CHAIR HART: -- kind of the first two or  
18 three years. And then if you're looking at adding a grade  
19 per year you would be, because you would have to increase  
20 the, as your students were getting older, you would be  
21 looking at having the next grade.

22 MR. KIRBY: Except, actually, it's a multi-age  
23 classroom. So 1st grade through 5th grade is all in the same  
24 classroom. And so you only need two teachers, one lead  
25 teacher and one, this is a familiar model in Montessori. So

1 a lead teacher plus an assistant would take care of that  
2 whole age group.

3 So when we have a new grade level, we're not  
4 adding a new teacher. Does that clarify?

5 VICE CHAIR HART: No, I understand that, I just  
6 was trying to understand how --

7 MR. KIRBY: Okay.

8 VICE CHAIR HART: -- you were looking at it.  
9 Because really, once you get into the middle school and the  
10 high school, that becomes a little bit more specialized  
11 because there is larger leaps in kind of the maturity and  
12 that sort of thing. I have children too --

13 MR. KIRBY: Okay. Yes.

14 VICE CHAIR HART: -- so I've been seeing mine grow  
15 is, you know.

16 MR. KIRBY: Yes. And we're imaging those would  
17 be elsewhere, it wouldn't be on the site.

18 VICE CHAIR HART: Thank you. Actually, one other  
19 thing.

20 MR. KIRBY: Sure.

21 VICE CHAIR HART: The hours of operation?

22 MR. KIRBY: 8:00 a.m. to 6:00.

23 VICE CHAIR HART: Okay. And you're looking at,  
24 is that the outside time limits? I mean, you don't have any  
25 evening activities that would --

1 MR. KIRBY: So, we would have occasional evening,  
2 back to school night kind of stuff, occasional Saturday, an  
3 info session. And we included kind of that in our  
4 application.

5 MEMBER WHITE: Hi. I think it's a great idea but  
6 I did have some concerns about the level of traffic and  
7 activity in that area.

8 I'm very familiar with that area. I'm kind of  
9 like in the 24th and Penn area, so there is GW, there is K  
10 Street traffic. So, I wonder if you could just walk me  
11 through the drop-off process --

12 MR. KIRBY: Sure.

13 MEMBER WHITE: -- for how people are able to drop  
14 off their kids and pick them up. Because you are picking up  
15 and dropping off at the height of rush hour. So, just to  
16 kind of give me a sense of how that's going to be managed  
17 would be helpful.

18 MR. KIRBY: Sure. So this diagram attempted to  
19 lay it out but I'll kind of talk it through as I did with  
20 DDOT and my kind of response to them.

21 But basically, parents would travel on Snow's  
22 Court, to come in and do a loop through the parking lot. And  
23 at that little star indication there would be a staff member  
24 from our school who is waiting to just open the door for the  
25 children and escort them into the entrance. Relatively

1 straightforward.

2 If you're a parent who's got a 3 year old and  
3 you'd rather just park real quick and walk them by the hand,  
4 that's an option too because all the parking spots are empty.  
5 It's kind of hoe we talked through it with DDOT.

6 And that would be kind of the flow in the morning.  
7 You would just go back out Snow's Court and get back on K  
8 Street and you're on your way to whatever your office is on  
9 K Street, L Street, anywhere downtown.

10 The one piece of feedback we did get from  
11 neighbors was Snow's Court can be a little narrow in that  
12 spot and to please make sure that all the parents realize,  
13 and we put it in our procedures that there is a speed limit,  
14 I think it's like 10 or 15 miles an hour, it's really slow  
15 there. Because it's just got this blind alley kind of  
16 quality to it and if you go too fast people, just, it can be  
17 a little hairy at that corner.

18 So, we would just encourage parents to go slow.  
19 That was one piece for the pick-up and drop-off --

20 MEMBER WHITE: Snow's Court is one-way?

21 MR. KIRBY: It's two-ways.

22 MEMBER WHITE: It's two-way.

23 MR. KIRBY: Yes, that's right.

24 MEMBER WHITE: Okay.

25 MR. KIRBY: So, in the evening, we have this

1 longer window, it's from 3:00 to 6:00. So, how does that  
2 work?

3 It's a little different. Basically parents would  
4 just come in at the time they're ready to pick up. There  
5 would be a 3 o'clock kind of dismissal time so they could do  
6 the same procedure here.

7 But if you're picking up and 4:00 or 4:30 or 5:00,  
8 you just park and come over to the front entrance, you ring,  
9 your child gets brought down. So, relatively  
10 straightforward.

11 And since it's such a long window, 3:00 to 6:00,  
12 we're not expecting a whole bunch of queuing with a line of  
13 cars that are kind of waiting, instead, it's more staggered.  
14 Does that answer your question a little bit.

15 MEMBER WHITE: Yes, thank you.

16 CHAIRPERSON HILL: Mr. Kirby, though, you did  
17 mention something about stagger or something or other?

18 MR. KIRBY: Yes. So basically, the window of  
19 time, it's not like everybody is arriving at 8:00 a.m. They  
20 can arrive at any time between 8:00 a.m. and 8:45 in the  
21 morning. So there is a 45 minute window. So, it kind of  
22 gives you a chance --

23 CHAIRPERSON HILL: Okay.

24 MR. KIRBY: -- to stagger a little bit.

25 CHAIRPERSON HILL: Okay. All right. So, Ms.

1 Giordano, I mean, there is two other people here that are  
2 here, would you like, I mean, I would be curious in hearing  
3 their testimony, they're here.

4 MS. GIORDANO: Okay.

5 CHAIRPERSON HILL: Or a little bit of it. I'm not  
6 really sure why they're here, so that's why I'm trying to  
7 understand.

8 MS. SMITH: Sure. I'm, again, Jeanne Smith, one  
9 of the lay leaders of the Parish. I had more, but it's been  
10 covered, so I want make you go through it.

11 But I noticed when you asked us to focus on zoning  
12 that you mentioned how the Church and the school might  
13 interact or overlap or something like that. And I just  
14 wanted to say that the more, this has been a long process  
15 already for us and we've had to work together a lot, and the  
16 more we have come to know each other's circumstances and  
17 visions, the more we have all come to see that our goals and  
18 needs are highly complementary.

19 And I can give you more details but I'm going to  
20 go right passed that for now. It is a tribute to both groups  
21 that through the very complex process of negotiating with  
22 each and complying with necessary permitting and such, like  
23 with the City, we have only become more convinced that this  
24 melding of visions will be a wonderful thing for all  
25 concerned.

1           We continue to receive very positive support from  
2           our neighbors and our parishioners and thank you all for  
3           considering the Acton Academy's application.

4           CHAIRPERSON HILL: Thank you.

5           MS. BRITTON: I'm here really in case you have any  
6           questions regarding the Church's use of the property. But  
7           otherwise, in general, just to say this has been something  
8           that we will add to the mission of the Church to have young  
9           people in the space and to expand what we are able to do in  
10          the larger campus that we already have. Which we are not  
11          currently using to its full capacity.

12          CHAIRPERSON HILL: Okay, thank you. Mr. Hart.

13          VICE CHAIR HART: Sure. Actually, Ms. Britton,  
14          is it?

15          MS. BRITTON: Yes. So, if you could actually talk  
16          a little bit about the Church itself, in terms of how it's  
17          being used and how frequently you need to use the parking  
18          area behind you and that sort of thing?

19          MS. BRITTON: As in most churches, our primary  
20          activity is weekend. We do use the, we have services every  
21          morning, most of whom, for about somewhere between seven and  
22          ten people.

23          Almost all of them live within walking distance,  
24          so there is very small pressure on our parking lot at that  
25          time. Maybe one, sometimes two cars coming in.



1           We, during the day time, there are miscellaneous  
2           activities that happen and people do come, but we don't have  
3           a full parking lot except when we are offering special  
4           services, which are about ten times a year. And we've spoken  
5           with the school about reducing their use when we will have  
6           those services in the evening.

7           Otherwise, there has never been any problem having  
8           more spaces than we need. We've never had a full parking lot  
9           during the middle of day unless we've had major repairs that  
10          need doing, we have extra. But there has never been an  
11          issue.

12          And during the week we operate, our main activity  
13          is children's choir in the afternoon, so we already have  
14          children coming and going in the building. That's not,  
15          that's part of the Church operation, it's choir rehearsal.

16          And they play in the parking lot area with no  
17          complaint that has ever been raised by any neighbor. They  
18          are exuberant when they get out of there. Quiet time in the  
19          choir.

20          And our other, we are very interested in  
21          involvement in the community. Our two primary community  
22          involvement is, one, the Grape Patrol, which we operate a  
23          feeding ministry where we do the preparation at the Church  
24          then deliver food to about 200 people each Saturday and  
25          Sunday morning.

1           And our other major involvement in the community  
2           is the Foggy Bottom West End Village has an office in our  
3           premises. So neighbors walk to various things that sometimes  
4           take place in the Church.

5           CHAIRPERSON HILL: Okay, thank you, Ms. White.

6           MEMBER WHITE: Since there are kids there all the  
7           time anyway, I guess there could be some opportunities for  
8           some of the kids that are within your parish, with the  
9           Episcopal Church there, to also attend Acton. So, could  
10          there be some carryover there where you're going to have some  
11          existing parishioners' kids attending Acton?

12          MS. BRITTON: I think both parties would love that  
13          to happen. And one of the things that makes it a  
14          particularly good fit is that our Sunday school program is  
15          a Montessori based program already. So there are parents who  
16          are already interested in this form of education. So that  
17          is a parallel.

18          And I know that the music is an important part of  
19          Montessori's mission. And there may be some overlap since  
20          that's a very large part of our mission.

21          MEMBER WHITE: Thank you.

22          ZC CHAIR HOOD: Chairman, I just want to ask. I  
23          just have a question.

24          I just have a question about the children's choir.  
25          They practice five days a week?

1 MS. BRITTON: You're getting me slightly beyond  
2 my exact knowledge. It's either, I believe it's four days,  
3 it may only be three.

4 ZC CHAIR HOOD: Okay.

5 MS. BRITTON: A very small number of novices that  
6 they come on the Tuesday and we otherwise have, they come on  
7 the four different afternoons.

8 ZC CHAIR HOOD: Okay.

9 (Off microphone comment)

10 MS. BRITTON: They come three days? I am  
11 corrected, it is just the three days.

12 ZC CHAIR HOOD: Okay. All right, thank you.

13 CHAIRPERSON HILL: Do you guys serve as a polling  
14 station?

15 MS. BRITTON: Yes, we do.

16 CHAIRPERSON HILL: Yes, that's what I thought.  
17 Okay. Mr. Kirby? Kirby. Yes, Kirby. Can you speak again  
18 to the immediate neighbors, again, as to your outreach and  
19 also what they had to say?

20 MR. KIRBY: Sure. And so, I kind of went door-to-  
21 door to the neighbors who live directly adjacent to the  
22 outdoor play area. There is six of them.

23 Three are renters and the three owners. We had  
24 like extensive conversations. Sally is one of those adjacent  
25 neighbors, you saw her testimony.

1           The feedback they got, they gave us, was around,  
2           how do we do the fence. And the vision of the fence, as I  
3           displayed in those plans, is that we would just fence along  
4           the property line and leave the gate somewhat open.

5           There is a little kind of a sidewalk space there  
6           that's part of the Church property. And that was --

7           CHAIRPERSON HILL: That's okay. So you reached  
8           out to them and you didn't get any push back?

9           MR. KIRBY: Correct. And they gave us some  
10          feedback just on, hey, this is what we use this space for how  
11          would we use it --

12          CHAIRPERSON HILL: Okay.

13          MR. KIRBY: -- and we incorporated that.

14          CHAIRPERSON HILL: Okay.

15          MR. KIRBY: And then the other neighbors that we  
16          kind of got feedback from are the ones who live around Snow's  
17          Court. There's are a lot of renters that live in Snow's  
18          Court near the parking lot. It's kind of this funky little  
19          area where there is no front yards, it's just right on to the  
20          court.

21          Many of them are renters, many of the are Air  
22          B'n'Bs, so obviously those people don't give us as much  
23          feedback. But the ones who were owners, we talked to and  
24          they were enthusiastic.

25          So that's how we kind of did it. We did a

1 neighborhood meeting, two of them. I delivered letters under  
2 the doors of anybody who wasn't home. We invited them,  
3 people came.

4 We kind of had a couple rounds of this to give a  
5 chance for people to give us feedback. And I think because  
6 of these efforts, as you saw in the record, a lot of people  
7 gave us the kindness to write letters on our behalf in  
8 support, which is, as you know, no small thing.

9 People are busy writing the letters and something  
10 like this is not, it's hard.

11 CHAIRPERSON HILL: Okay. Okay, great. All right,  
12 I'm going to turn to the Office of Planning.

13 MS. ELLIOTT: Thank you, Mr. Chair. And good  
14 afternoon Members of the Board. I'm Brandice Elliott with  
15 the Office of Planning.

16 We are, I'm going to go ahead and stand on the  
17 record of our report. We're recommending approval of the  
18 requests.

19 We do have a couple of conditions related to the  
20 drop-off and pick-up plan, which have already been discussed  
21 the Applicant has already agreed to.

22 I just wanted to address one quick thing that came  
23 up regarding the trip generation and how that's counted, and  
24 I'm afraid I can't really provide much input into that but  
25 would continue to encourage the Applicant to work with DDOT

1 and make sure that they capture the trips accurately.

2 CHAIRPERSON HILL: Okay, great. Does anyone have  
3 any questions for the Office of Planning?

4 VICE CHAIR HART: Yes, Mr. Chairman. So, Ms.  
5 Elliott, good afternoon. If you could, actually, it's very  
6 close to afternoon I guess, if you could just describe, and  
7 I know the Applicant has stated that they wanted to have 60  
8 students and eight staff, the report seems like it is taking  
9 that information as kind of, this is kind of given.

10 But is it that they, I mean, could it support 80  
11 students, could it support ten staff?

12 I mean, is this just, I understand that you're  
13 just looking at the amount of the, what the Applicant is  
14 requesting, but it is a little unclear to me if this is, this  
15 is okay for a school as long as it is 60 or is it okay for  
16 a school as long as it is more than that?

17 I mean, is it 100, is it, I don't know what they  
18 are looking at. And the reason that I'm asking is, the  
19 Applicant has stated in a few years that they are looking at  
20 having some gradual increase, and that's kind of how schools  
21 operate.

22 You have to start at some point and then as the  
23 children age you will have to expand at some point. Can you  
24 kind of walk through how you're looking at that capacity  
25 issue in terms of how many students and how staff?

1 MS. ELLIOTT: Sure. So, we only analyzed the  
2 request that had been brought forward by the Applicant. And  
3 honestly, no other numbers had been considered.

4 I think there are a lot of other players in a  
5 situation like this as far as the capacity of the building,  
6 educational requirements, licensing requirements. And so we  
7 don't necessarily get involved in that part of the project.

8 Our analysis is really just a review of the impact  
9 of the, the potential impact of having 60 students on that  
10 site. So, I think there are a lot of other checks and  
11 balances that will come in down the road where someone  
12 determines whether or not there is actually capacity onsite  
13 for 60 students.

14 But given that, the Applicant has requested the  
15 60. And should they determine that they need additional  
16 students, then they would have to come back to modify the  
17 special exception requests, because it would be approved  
18 based on information that they provided, which shows that  
19 they'll have the 60 students and eight members of staff.

20 So any increase in that would require additional  
21 review.

22 VICE CHAIR HART: So, you didn't include, thank  
23 you very much, you didn't include the, kind of the numbers  
24 in the actual, as conditions themselves?

25 MS. ELLIOTT: We didn't.

1 VICE CHAIR HART: And we've heard that in the past  
2 in some other cases, that's why I'm trying to understand this  
3 a little further.

4 MS. ELLIOTT: So we do, we have in the past. I  
5 think that there, and we would certainly be open to including  
6 that condition here if that creates a greater level of  
7 comfort with the Board. We did discuss that with the  
8 Applicant, as far as providing the condition.

9 But we had determined that that was what the  
10 application was specifically requesting and so we weren't  
11 sure that it was necessary in this case. But if the Board  
12 feels that it is a mitigation measure, then certainly we are  
13 open to providing that condition.

14 VICE CHAIR HART: No more questions.

15 MS. GIORDANO: If I might, we can speak to that  
16 issue as well?

17 CHAIRPERSON HILL: Yes, that's okay.

18 MS. GIORDANO: Okay.

19 CHAIRPERSON HILL: Thanks. Or we'll see if we get  
20 there. Anyone else for the Office of Planning? Okay.

21 Do you have any questions for the Office of  
22 Planning? Does the Applicant have any questions for the  
23 Office of Planning?

24 MS. GIORDANO: We do not.

25 CHAIRPERSON HILL: Okay. I already asked about



1 the ANC, is there anyone here from the ANC? No.

2 Is there anyone here wishing to speak in support?

3 If you'd like to speak in support, you're welcome to come  
4 forward. Were you sworn in earlier?

5 (Off microphone comment)

6 CHAIRPERSON HILL: You were not? Okay. If you  
7 could please, I think everybody was sworn in earlier.

8 MS. GIORDANO: He came a little later.

9 CHAIRPERSON HILL: Okay. So, if you could just  
10 take the oath administered by Mr. Moy here.

11 MR. MOY: Do you solemnly swear or affirm that the  
12 testimony you're about to present in this proceeding is the  
13 truth, the whole truth and nothing but the truth?

14 MS. CHARNOVITZ: Yes, sir, thank you.

15 MR. MOY: Thank you. You can be seated.

16 CHAIRPERSON HILL: Thank you. And, Ms. Giordano,  
17 I saw you take the oath also, like, I thought you were an  
18 attorney, you don't have to take the oath.

19 MS. GIORDANO: You know, sometimes you have,  
20 you're actually testifying to service or something, so I  
21 think that it makes sense.

22 CHAIRPERSON HILL: So all the attorneys should  
23 take oaths from now on, is that --

24 ZC CHAIR HOOD: I was just thinking, maybe, yes,  
25 we might have --

1 CHAIRPERSON HILL: Right, we should do that.

2 ZC CHAIR HOOD: Yes.

3 CHAIRPERSON HILL: All the attorneys. Everybody

4 --

5 ZC CHAIR HOOD: Because you're right, they do give  
6 some testimony.

7 MS. GIORDANO: Yes.

8 ZC CHAIR HOOD: Yes. Okay, yes. We figured that  
9 out.

10 (Laughter)

11 CHAIRPERSON HILL: I was confused Ms. Giordano  
12 when you started --

13 VICE CHAIR HART: Good luck with that, Mr.  
14 Chairman.

15 CHAIRPERSON HILL: All right, that's okay. I'm  
16 sorry.

17 So, now, could you please tell us your name for the record  
18 and address?

19 MS. CHARNOVITZ: Yes. I'm Sally O'Brien  
20 Charnovitz and my husband is Steve Charnovitz. And we own  
21 949 25th Street. We are --

22 CHAIRPERSON HILL: Okay, Ms. Charnovitz?

23 MS. CHARNOVITZ: Yes. Charnovitz.

24 CHAIRPERSON HILL: Charnovitz.

25 MS. CHARNOVITZ: Yes.

1           CHAIRPERSON HILL: Okay, just before you start I'm  
2 just going to let you know, so I'm going to put three minutes  
3 on the clock because a member of the public. And also, we  
4 did get your letter --

5           MS. CHARNOVITZ: Yes.

6           CHAIRPERSON HILL: But that was primarily about  
7 the party status situation, and so, what again you're here  
8 for right now is just providing support testimony for the  
9 application in front of us?

10          MS. CHARNOVITZ: Yes, that's right.

11          CHAIRPERSON HILL: Okay, sure. All right.  
12 Please, I'm going to just, whenever you like, you have three  
13 minutes. But thank you for coming down.

14          MS. CHARNOVITZ: Yes, within three minutes, very  
15 quickly. I'm also an attorney, but way in my other lifetime  
16 I was a mother, I have a 30-year-old son and I have education  
17 credits. I have a degree in music as a matter of fact.

18                 And so I'm very interested in the Montessori  
19 method and I know quite a bit about it. And my heart is with  
20 the parents.

21                 I also know a little bit about their music  
22 program. They have this way overly qualified choir leader  
23 right now from Yale. PhD in Yale.

24                 He could be teaching at Yale or Juilliard but he's  
25 teaching these children now. And I listen to the choir

1 practice, I live a few feet from the Church.

2 And I just wanted to say, there is a synergy  
3 between the two uses of the same children, more children  
4 coming in and joining the parish or a community. And the  
5 Episcopal Parish is very flexible in having people join the  
6 community, and it's not strict.

7 And I think it's a wonderful thing for the  
8 children educationally. And so I just wanted to say that.

9 I've listened, I've talked to the other neighbors,  
10 I'm involved in the community, I have a sense of the entire  
11 property. I've been in all the buildings, I've been around  
12 the buildings and I think this is a higher use, highest use  
13 perhaps, of the open area and of the building there  
14 attempting to work with.

15 And so I'm very much in support of that aspect as  
16 well. So thank you.

17 CHAIRPERSON HILL: Okay, great. Does the Board  
18 have any questions for the witness? Okay, thank you very  
19 much.

20 MS. CHARNOVITZ: Thank you.

21 CHAIRPERSON HILL: Okay, would the parties in  
22 opposition like to come forward.

23 MS. KAHLOW: Person.

24 CHAIRPERSON HILL: Person. Person in opposition,  
25 sorry. If you could please, again, introduce yourself.

1 Maybe give us one second, we'll get whatever this is.

2 MS. KAHLOW: It's a testimony.

3 CHAIRPERSON HILL: We don't necessarily always get  
4 it in front of us in written form.

5 MS. KAHLOW: Mr. Hood likes it in written form.  
6 Partially because I speak fast. I'm Barbara Kahlow.

7 CHAIRPERSON HILL: That's good. I'm sorry, if you  
8 could introduce yourself again? I'm sorry, you were starting  
9 to do that.

10 MS. KAHLOW: I'm Barbara Kahlow.

11 CHAIRPERSON HILL: Okay.

12 MS. KAHLOW: I am representing the West End  
13 Citizens Association and I live at 820 5th Street, Northwest.

14 CHAIRPERSON HILL: Okay, thanks, Ms. Kahlow. And  
15 just to let you know, I guess as you do know, you get five  
16 minutes. And the clock is up there and up can start whenever  
17 you like.

18 MS. KAHLOW: Thank you. As indicated earlier, I  
19 live just a few blocks from the site. I'm testifying on  
20 behalf of the West End Citizens Association, the oldest  
21 citizen organization in Foggy Bottom West End.

22 We're primarily interested in maintaining the  
23 quality of life for the existing community. I last testified  
24 before the BZA on behalf of the WCA on April 19th, 2017 as  
25 a party in support of BZA Case 19475.

1 In total, the WCA has been accepted as a party in  
2 over 20 D.C. Zoning cases. And I'm sorry, I looked at this  
3 letter that was, this motion that was handed to me that was  
4 dated on Monday, of course we hadn't seen it so we couldn't  
5 respond appropriately.

6 On April 19th, we asked for party status for the  
7 school to operate at 2430 K Street. And that address is  
8 going to become important.

9 Since then we were disappointed to see several  
10 letters, which were personal. We've already mentioned that.  
11 And the one prime letter is about a brand new owners and a  
12 property nearby.

13 We have successfully representative the community  
14 in many land use cases over the years and we've had  
15 outstanding meeting speakers. Most recently DDOT Director  
16 Marootian, new GW President LeBlanc, we are the first to have  
17 him, Auditor Kathleen Patterson, DCRA Director Bolling,  
18 Council Members Robert White and Jack Evans and the Attorney  
19 General Racine.

20 The WCA party letter stated the new school would  
21 be in the historic district, Foggy Bottom Historic District,  
22 which includes many retired residents and will create  
23 objectionable noise three times a day and a new parking,  
24 outdoor parking lot abutting some homes.

25 In fact, there is already a playground that is

1 nearby and we have asked about that. It's one and a half  
2 blocks away at 26 and K. Notice their address is 2430 K.  
3 It is literally a block and a half away.

4 The Applicant's pre-hearing statement erroneously  
5 states it's at 26 and I, which is not correct. All around  
6 D.C. you chains of kids, including very young children,  
7 transported to and from playgrounds.

8 Also, as we stated, the Applicant says the  
9 assertion that three times a day will occur when most  
10 adjoining residents are likely to be away from home is  
11 untrue. In fact, and like in my building, almost every  
12 single person is retired, 51 units.

13 In addition, we expressed concern about exclusive  
14 use of the public alley with homes for drop-offs and pick-  
15 ups. We have subsequently asked the fire department to check  
16 on this practice because it's in an alley.

17 And they said they don't usually check until there  
18 is a Certificate of Occupancy issued. But they said that  
19 they would review this matter and they have not yet done so.  
20 But we would hope the BZA could wait until they have done so  
21 because this is quite unusual.

22 The DDOT's report, as you have already mentioned,  
23 says a max of 24 morning vehicle trips for the 60 students,  
24 OP agrees. The Applicant's pre-hearing statement says they  
25 expect 30 to 35 schools. Clearly, this exceeds it.

1           So you know, there are no, virtually no children  
2           in the age ranging question in the Foggy Bottom Historic  
3           District so there will be almost no walkers. And for the  
4           other schools in the neighborhood, the School Without Walls  
5           and the School Without Walls at Francis Stevens, they're  
6           filled by D.C. owners who live elsewhere in D.C., not in  
7           Foggy Bottom West End.

8           Today the WCA opposes the proposed special  
9           exceptions and asks the BZA to require Acton to use the  
10          nearby public playground instead of creating a new one  
11          abutting multiple homes and to wait before any decision by  
12          the BZA on the D.C. fire marshal's evaluation of the  
13          appropriateness of use of the only public alley with homes  
14          along it for student's drop-offs and pick-ups.

15          Since, as I've indicated, Acton indicated, people  
16          live along that alley. And since we live, part of the area  
17          is one-way traffic and part of it is two-way traffic in that  
18          immediate area, it could get very congested.

19          Thank you for your consideration and views. I  
20          wanted to note that the motion was dated on the 14th and it  
21          was snail mailed, which we haven't received yet, or else I  
22          would have been prepared to respond to it. We have never had  
23          these kinds of questions before but I would have been happy  
24          to respond. Thank you.

25          CHAIRPERSON HILL: Okay, thank you. Does the



1 Board have any questions for the witness?

2 ZC CHAIR HOOD: Yes, Mr. Chairman. Ms. Kahlow,  
3 you're asking the Board to hold until the fire marshal's  
4 evaluation, but they would have to come up to code,  
5 regardless of what this commission, I mean, this Board does  
6 as well, am I correct?

7 MS. KAHLOW: I'm not sure. What the fire marshal  
8 said to us is, this is premature. They don't look at, and  
9 an alley is quite unusual.

10 So I don't know how that would work. They said  
11 they look at, they don't have time to go out unless there is  
12 a significant occupancy, otherwise would be going out on all  
13 kinds of cases. But I said, in this instance, since it is  
14 unusual, can you please take a look.

15 ZC CHAIR HOOD: Okay, thank you.

16 CHAIRPERSON HILL: So, Ms. Kahlow, I have a  
17 question. So, the particular issues that your organization,  
18 well, I guess a bunch of us, did you guys go to the ANC  
19 meeting?

20 MS. KAHLOW: I did. And I asked the Applicant if  
21 they had considered the nearby playgrounds, they said no.  
22 and then they wrote and said, we'd like to have a subsequent  
23 meeting, and we said, well, would you consider moving the  
24 playground and they said no. And that's why we didn't meet.  
25 It's not because we --

1 CHAIRPERSON HILL: Okay.

2 MS. KAHLOW: -- didn't refuse to me, it's the fact  
3 that they didn't want to consider the public playground.

4 CHAIRPERSON HILL: So you went to the ANC meeting  
5 and --

6 MS. KAHLOW: Yes.

7 CHAIRPERSON HILL: -- you provided testimony at  
8 the ANC meeting?

9 MS. KAHLOW: Not testimony. They don't operate  
10 that way, it's just a very short comment.

11 CHAIRPERSON HILL: Okay.

12 MS. KAHLOW: And we talked about the playground.  
13 We weren't able to give full testimony.

14 CHAIRPERSON HILL: But you expressed your  
15 opposition?

16 MS. KAHLOW: Yes.

17 CHAIRPERSON HILL: Okay. And then also, were  
18 there other members of your organization there at that time  
19 or just you and Ms. Maddux?

20 MS. KAHLOW: Ms. Maddux also was there. The rest  
21 of the board members were not there for that particular  
22 meeting.

23 CHAIRPERSON HILL: Okay. And how many members on  
24 your board?

25 MS. KAHLOW: Five.

1 CHAIRPERSON HILL: Five members on the board,  
2 okay. All right. Let's see. Oh, and then the objections  
3 that your group has, at least from the record that I kind of  
4 got was, again, the noise and your concerns about traffic.

5 MS. KAHLOW: That's correct.

6 CHAIRPERSON HILL: Okay.

7 MS. KAHLOW: Not the school per say. I mean,  
8 that's not the issue, it's noise and traffic.

9 CHAIRPERSON HILL: Okay.

10 MS. KAHLOW: Your standard and your rules are  
11 objectionably impact in noise and traffic or a number of  
12 students and that's not, number of students was not the  
13 issue, its noise and traffic.

14 CHAIRPERSON HILL: Okay. All right, does anyone  
15 have any questions of the witness? Okay.

16 All right, thank you very much. Oh, unless does  
17 the Applicant have any questions?

18 MS. GIORDANO: We do not.

19 CHAIRPERSON HILL: Actually, we're going to take  
20 a quick break here and then we'll be right back. We have to  
21 take a quick break, okay.

22 (Whereupon, the above-entitled matter went off the  
23 record at 12:11 p.m. and resumed at 12:13 p.m.)

24 CHAIRPERSON HILL: All right. Actually, we're  
25 going to go ahead and get started back again. Ms. Kahlow,

1 if you can just come back up. I don't know if, oh no, never  
2 mind, I'm sorry, you can sit back down. I asked whether  
3 there was any questions from the Applicant and there were  
4 none.

5 Okay. Oh good, we got everybody coming back.  
6 Let's see.

7 Okay, so, again, in terms of just some of the  
8 things that I supposed that were brought up by the persons  
9 in opposition, or the organization in opposition of it, the  
10 time that there would be any kind of like noise from children  
11 is during like the day. Is it like at recess or something?

12 And when is it that there is kind of going to be  
13 like recess? I'm just kind of curious, I'm just kind of  
14 trying to understand what the argument is.

15 MR. KIRBY: It would be morning. You know, kind  
16 of a brain break, 10 o'clock-ish. You know, children are  
17 working and --

18 CHAIRPERSON HILL: Right.

19 MR. KIRBY: -- get inside.

20 CHAIRPERSON HILL: Right.

21 MR. KIRBY: Lunch time.

22 CHAIRPERSON HILL: Right.

23 MR. KIRBY: And then in the afternoon.

24 CHAIRPERSON HILL: Right.

25 MR. KIRBY: Kind of three times a day.

1 CHAIRPERSON HILL: Okay.

2 MR. KIRBY: That's how we --

3 MS. GIORDANO: How long?

4 MR. KIRBY: And it will depend. Sometimes you  
5 need 15 --

6 CHAIRPERSON HILL: Okay.

7 MR. KIRBY: -- sometimes you need 30 at lunch,  
8 maybe an hour --

9 CHAIRPERSON HILL: Okay.

10 MR. KIRBY: -- if it's a nice day.

11 CHAIRPERSON HILL: Okay, I was just curious. I  
12 think kids should get all the air they can get.

13 MR. KIRBY: Exactly.

14 CHAIRPERSON HILL: All right. So, does the  
15 Applicant, no. Yes, where are we. So do you have any  
16 questions? Anybody have any questions for the Applicant?

17 VICE CHAIR HART: Yes. There was a question, I  
18 mean, Ms. Kahlow brought up a question about the fire  
19 department issue.

20 I understand that this may be something that's  
21 kind of a little bit premature, but have you spoken to the  
22 fire department about this?

23 MR. KIRBY: So, we're working with Gensler, and  
24 architectural firm that's very well known in the city and  
25 they got experts on house and all this kind of stuff.

1 They've done schools in the city and other locations and they  
2 sort of have been guiding us.

3 We have had a preliminary permit meeting with the  
4 city officials, including a fire engineer from the fire  
5 marshal's office. He reviewed the plans that we presented  
6 in great detail. We gave us some feedback about the few  
7 small things that need to be done.

8 But what's really nice about this property is the  
9 Church updated it. It's a historic house, but they put in  
10 all the kind of fire things that a fire marshal would look  
11 at.

12 So for instance, a sprinkler system, a two-hour  
13 fire rated wall. The kind of things you would expect. And  
14 of course, Gensler Architects and all of them kind of look  
15 through it.

16 Yes, there is a final process at the end of it,  
17 apparently with the C of O where they would bring the  
18 inspector out to make sure that the process has been followed  
19 through, all the way through. So we have already begun those  
20 conversations and have a good indication so far.

21 VICE CHAIR HART: And --

22 MS. GIORDANO: Just to elaborate on that, if I  
23 might.

24 VICE CHAIR HART: Sure.

25 MS. GIORDANO: DCRA has a new process where you

1 pay fee in order to sit down with all of the staff from the  
2 various reviewing department, structural, electrical,  
3 plumbing, fire, et cetera, zoning, to review the plans so  
4 that when you do apply for your C of O and any building  
5 permits that are needed for renovation of any of the spaces,  
6 it's an accelerated review process. So all the issues are  
7 identified up front.

8 VICE CHAIR HART: And so the concern about the  
9 access to a, what was described as a private alley, you're  
10 saying that that would be addressed during that review?

11 MS. GIORDANO: I'm saying it wasn't addressed.  
12 And if it does need to be addressed again or the C of O  
13 process would be the place.

14 And obviously zoning doesn't trump fire, so, if  
15 there is a fire issue, this will not happen. And typically  
16 --

17 VICE CHAIR HART: Oh no, I understood that, I was  
18 just trying to understand where that, if some of that had  
19 gone on during the process already. Because it was raised  
20 I was just wanted to understand that a little bit further,  
21 but you've provided the information. Thank you.

22 CHAIRPERSON HILL: Okay, great. Do you have  
23 anything like, do you have anything you would like to say at  
24 the end here?

25 MS. GIORDANO: Yes. I think that David had a

1 couple of other responses. In particular, the issue of the  
2 children using another playground off site.

3 VICE CHAIR HART: And actually, I had one other  
4 question.

5 MS. GIORDANO: Okay.

6 VICE CHAIR HART: The Office of Planning brought  
7 up an, well, I brought up an issue with them regarding the  
8 number of students and the staff. You were going to say  
9 something and --

10 MS. GIORDANO: I was just going to say that we  
11 would not have a problem with the condition that set a  
12 maximum number of students at 60. And this is a fairly  
13 traditional path to start a school, small, and in a church  
14 and then move on to another location in the future.

15 Hopefully it's successful and the issue takes on  
16 and the school becomes a larger place and maybe can afford  
17 another property of their own.

18 VICE CHAIR HART: Thank you. I'm sorry, I was  
19 just talking to the Chair about something else. About  
20 something that's related to this.

21 I appreciate that, I just was trying to kind of  
22 understand that. Typically we've had that, had something to  
23 that regard.

24 And we've had two, three conditions with this and  
25 we've had some schools that have had more and some schools



1 that have had about the same. So I just was trying to  
2 understand the number of, the types of conditions that we  
3 would be placing on this.

4 And I just needed to understand where that was.  
5 And Mr. Kirby providing information regarding kind of what  
6 he saw as the next few years. And I just needed to  
7 understand that further, so I appreciate that.

8 MS. GIORDANO: Right. And Mr. Kirby is well aware  
9 that if he wants to exceed that amount he needs to come back  
10 for a modification to the special exception.

11 CHAIRPERSON HILL: So, Vice Chair Hart, I'm sorry,  
12 I'm just a little curious. So you're suggesting we do add  
13 a condition for the 60 students?

14 VICE CHAIR HART: I think that we should, just so  
15 that it is really clear. And so that the DCRA in the future,  
16 or the BZA in the future, doesn't say, well, we don't really  
17 know, there were 60 but we're not really sure that's a hard  
18 number. And I think we should do that so that we are very  
19 clear as to where we are with that.

20 CHAIRPERSON HILL: Okay. Okay.

21 MEMBER WHITE: Yes. I was just going to concur  
22 that the condition sounds reasonable, but I also think if you  
23 set the condition it has to be tied to the whole issue of  
24 mitigating adverse impacts to justify including it as part  
25 of the package.

1           ZC CHAIR HOOD: Mr. Chairman, I may have missed  
2 this and I didn't see it, did you all offer a term?

3           Ms. Elliott, was a term ever mentioned to re-  
4 evaluate what's going on or are we going to mentioned a term?  
5 Because if not, they're gone forever.

6           MS. GIORDANO: Right.

7           ZC CHAIR HOOD: Unless you go over 60.

8           MS. GIORDANO: I think that's, we had not  
9 proffered a term but I think it's certainly not the schools'  
10 intention to go on forever. It is their intention.  
11 Hopefully the school will be successful and they will find  
12 additional space elsewhere.

13          ZC CHAIR HOOD: You can build. Okay.

14          MS. GIORDANO: But there is also built into it,  
15 unfortunately I don't know the exact term, but there is a  
16 lease with the Church where I'm assuming that there is a term  
17 involved.

18          ZC CHAIR HOOD: Okay. I think that's something  
19 we may want to ask Ms. Elliott and let's look at, Ms.  
20 Elliott, do you have a response on that?

21          MS. ELLIOTT: Chairman Hood --

22          ZC CHAIR HOOD: You noticed I got your name right?

23          MS. ELLIOTT: -- you got my name right.

24          ZC CHAIR HOOD: I always, I get it right at BZA.

25          MS. ELLIOTT: It's a big day.

1 (Laughter)

2 MS. ELLIOTT: So, no, we did not discuss a term.

3 That does come up in some cases, and I think in most of those  
4 it's actually something that the community comes to agreement  
5 with. And it just, it didn't come up in this particular one.

6 And it's also a smaller school so we weren't sure  
7 that it would be necessary for mitigation purposes. But  
8 certainly, again, if that's something that brings a greater  
9 level of comfort to the Board that's a condition that could  
10 be added.

11 CHAIRPERSON HILL: Okay. Does, yes, so I'm back  
12 to this. So, does the Applicant have anything they'd like  
13 to add at the end?

14 MR. KIRBY: Did you want me to respond at all to  
15 the walking children to the nearby playground thing or --

16 CHAIRPERSON HILL: I don't think there's any  
17 questions coming from the Board.

18 MR. KIRBY: Okay.

19 CHAIRPERSON HILL: So, are you done?

20 MS. GIORDANO: We are done, thank you.

21 CHAIRPERSON HILL: Okay. All right, so the Board  
22 is finished asking all their questions? Okay. I'm going to  
23 close the hearing.

24 Is the Board ready to deliberate? Okay. Did  
25 someone else want to start or I can also start? I can start.

1 I think that the Applicant has made a very good  
2 case in terms of how they're meeting the special exception  
3 requirement. I think that the Office of Planning has  
4 provided a good report in terms to how they are meeting the  
5 standard for us to grant the request.

6 I think that they have done a fair amount of  
7 community outreach. It is disappointing that not everyone  
8 can be onboard, but I guess they do have the unanimous  
9 support of the ANC.

10 The Foggy Bottom Association has also provided a  
11 letter of support, as well as those around the community.  
12 That, again, is not how we, the BZA, views things in terms  
13 of, we go through the standards within the regulations to see  
14 whether or not the special exception has been met.

15 However, I do believe that, as I had said, the  
16 analysis that has been provided by the Office of Planning is  
17 something that I would agree with.

18 In addition to that, I think that the conditions  
19 that have been set forth by, to mitigate the traffic as well  
20 as any other, we're going to put it I guess to 60 students  
21 now, I think would be, something that I would be comfortable  
22 with in terms of moving forward. So, I would be in support  
23 of this application.

24 Does anyone else have something they would like  
25 to add?

1           MEMBER WHITE: Yes, Mr. Chair. I would also be  
2 in support, looking strictly at the criteria for special  
3 exception for private school use.

4           Under U 203.1, regarding private school use. I  
5 concur with your thoughts in terms of Office of Planning's  
6 report was very helpful as well as testimony that's come from  
7 St. Paul Episcopal Church on K Street.

8           I'm very, I know the area pretty well and I know  
9 there were a lot of traffic issues there just on a morning  
10 and an evening basis. But I think that the plan that the  
11 school has in place will mitigate some of those adverse  
12 impacts that could potentially come from having some  
13 additional cars coming in and coming out in the morning. And  
14 also after school.

15           ANC 2A's recommendation for approval was something  
16 that I also gave weight to as well as the testimony that was  
17 given from a number of other people that spoke today.

18           But I am, I do respect the comments that came from  
19 Ms. Maddux and Ms. Kahlow in terms of their concerns about  
20 the additional activity. But I think the school has done a  
21 decent job in terms of being able to mitigate those adverse  
22 impacts.

23           So I would be supportive of this particular  
24 application today with the additional conditions that we set  
25 forth earlier.

1 VICE CHAIR HART: Yes. Thank you, Mr. Chairman,  
2 and Ms. White. Board Member White.

3 Yes, I was asking about the number of students and  
4 I think it's just because I know that the number of students  
5 can increase depending on what the kind of plan is for the  
6 school and the success of the school. And I just thought  
7 that it would be helpful to have a limit to that.

8 But I'm also looking at it as the criteria does  
9 talk about, kind of becoming objectionable to adjoining and  
10 nearby property because of a few things. Noise, traffic,  
11 number of students or other things.

12 And I just thought that there would be a way of  
13 limiting what that was if we had a condition that talked  
14 about the number of students being at 60 and the faculty and  
15 staff being at eight or not exceeding 60 and not exceeding  
16 eight. And so, that's what I thought that that would be  
17 helpful to kind of make that very clear as to what we were  
18 kind of looking at and approving as part of the regulations.  
19 Or excuse me, part of this application.

20 And so the, I don't know if the conditions should  
21 be, the number of students shall not exceed 60 and the number  
22 of faculty and staff shall not exceed eight. And if that is  
23 fine I would like to include that.

24 I'm not exactly sure I'm, I understand  
25 commissioner, excuse me, Board Members, Commissioner Hood's

1 point about the time limit. I just think that if we have a  
2 certain number that they would have to come back to us at  
3 that point to be able to exceed 60 or exceed the number of  
4 staff.

5 And so, I'm not really sure if we, I think we need  
6 one or the other. Either the time limit to say it's five  
7 years or whatever, or that we give them, there's a certain  
8 number that they'd have to exceed to be able to, to have to  
9 come back to us.

10 So, I just kind of went on the, thinking that they  
11 would be, if they had more than these students then they  
12 would have to come back to us at that point. If that's five  
13 or ten years from now then that's fine, but it would set  
14 someway of limiting the growth potential. So that's it.

15 ZC CHAIR HOOD: Okay. I'm not going to push the  
16 term limit, Mr. Chairman, I just know in past, whether it be  
17 60 or 20, there's always that valve for the community to be  
18 able to weigh in, especially with this being a new school and  
19 not having a track record.

20 But I am convinced in what I've heard, from what  
21 they're trying to move on and they don't plan on staying  
22 there anyway, eventually they're going to move somewhere else  
23 anyway and this all may be a new point. So, I'm not going  
24 to push the time limit.

25 But in answer to the Vice Chair's comment.

1 Whether it be 60 or 50, ten years come back after 60, I still  
2 thought a time limit would be good, in most cases, maybe not  
3 in the case but most cases, because this is a new school and  
4 a track record.

5 But let me say this, Mr. Chairman. I think the  
6 merits of this case warrants our approval. And especially  
7 with the daycare center initiatives that are going on here  
8 in the City, and I'm understanding this is underutilized.

9 And I think, as far as I'm concerned, this meets  
10 all the adverse impacts and I think things have been  
11 mitigated for us to go ahead and proceed with the amount of  
12 students requested with, I think 60 and eight faculty. So  
13 I'll be voting in support of this application.

14 CHAIRPERSON HILL: Okay, thank you. So I'm going  
15 to go ahead and make a motion to approve application Number  
16 19748 as captioned and read by the Secretary. Including the  
17 conditions from the Office of Planning that drop-off and  
18 pick-up of children be administered per the plan providing  
19 in Exhibit 42D and accompanying narrative in Exhibit 42,  
20 subject to DDOT concurrence.

21 Number 2, up to eight off street parking spaces  
22 being provided for the faculty and staff, use on Lot 846.

23 Number 3, the Applicant be limited to 24 morning  
24 vehicle trips. In the event the site generates more than 24  
25 inbound morning vehicle trips, the Applicant should



1 coordinate with DDOT to develop and implement a TDM strategy.

2 Number 4, maximum of 60 students, oh, I'm sorry.

3 Number 4, the number of students not exceeding 60.

4 Number 5, the number of faculty and staff not  
5 exceeding eight. And ask for a second?

6 MEMBER WHITE: Second.

7 CHAIRPERSON HILL: Motion has been made and  
8 seconded, all those in favor aye?

9 ZC CHAIR HOOD: Discussion?

10 CHAIRPERSON HILL: Oh, sorry.

11 ZC CHAIR HOOD: Discussion.

12 CHAIRPERSON HILL: Of course.

13 ZC CHAIR HOOD: Only other thing I would ask is  
14 that you continue to work with Ms. Maddux and Ms. Kahlow.  
15 Their institution is in that community. So, thank you.

16 CHAIRPERSON HILL: Okay. The motion has been made  
17 and seconded, all those in favor aye?

18 (Chorus of ayes)

19 CHAIRPERSON HILL: All those opposed? The motion  
20 passes, Mr. Moy.

21 MR. MOY: I'm sorry, Mr. Chair, who seconded the  
22 motion?

23 CHAIRPERSON HILL: I believe it was Ms. White.

24 MR. MOY: All right, Staff would record the vote  
25 as 4-0-1. This is on the motion of Chairman Hill to approve

1 the Application for the relief being requested along with the  
2 conditions that's cited in the motion.

3 Seconding the motion, Ms. White, also in support,  
4 Mr. Anthony Hood and Vice Chair Hart. We have a Board Member  
5 not present, not voting. The motion carries.

6 CHAIRPERSON HILL: Thank you. Summary order, Mr.  
7 Moy.

8 MR. MOY: Thank you, sir.

9 CHAIRPERSON HILL: Thank you. Thank you all.

10 (Whereupon, the above-entitled matter went off the  
11 record at 12:31 p.m.)  
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| <b>A</b>  |  |  |  |
|---|--|--|--|
| <p><b>a.m.</b> 1:11 3:2 63:3,3<br/>91:22 94:19,20<br/><b>ability</b> 27:7,8<br/><b>able</b> 10:25 13:19,21<br/>21:23 27:8 39:16<br/>50:21 52:15,15 57:7<br/>73:2 92:13 96:9<br/>114:13 125:21 127:3<br/>127:8,18<br/><b>above-entitled</b> 63:2<br/>115:22 130:10<br/><b>absolutely</b> 11:16 39:16<br/>53:14<br/><b>abstention</b> 42:15<br/><b>abutting</b> 68:14 71:2<br/>110:24 112:11<br/><b>Academy</b> 63:7 64:2<br/>76:14 78:2 79:4,18<br/>88:21<br/><b>Academy's</b> 96:3<br/><b>accelerated</b> 119:6<br/><b>accept</b> 35:17<br/><b>accepted</b> 4:22 110:1<br/><b>access</b> 7:24 43:24 82:5<br/>119:9<br/><b>accessory</b> 18:15,17,21<br/>20:7,8<br/><b>accommodate</b> 89:10<br/><b>accompanying</b> 82:13<br/>128:19<br/><b>accurately</b> 102:1<br/><b>act</b> 4:24 5:1,3<br/><b>Acting</b> 64:2<br/><b>action</b> 6:14<br/><b>actions</b> 3:17 46:6<br/><b>actively</b> 46:7 66:18<br/><b>activities</b> 75:20 91:25<br/>97:2<br/><b>activity</b> 92:7 96:20<br/>97:12 125:20<br/><b>Acton</b> 63:7 76:14,15,20<br/>77:4 78:2,6,8,9 79:4<br/>79:11,18 88:21 96:3<br/>98:9,11 112:9,15<br/><b>actual</b> 52:24 66:9 67:14<br/>68:18 103:24<br/><b>add</b> 43:15 61:17,20<br/>62:7 86:10 90:12 96:8<br/>121:12 123:13 124:25<br/><b>added</b> 123:10<br/><b>adding</b> 90:18 91:4<br/><b>addition</b> 44:7 45:21,25<br/>59:1,23 60:8,14,19,21<br/>61:2 111:13 124:18<br/><b>additional</b> 4:7 9:17<br/>23:22 40:4,4,10 45:1<br/>89:5 90:12 103:15,20</p> | <p>122:12 125:13,20,24<br/><b>additions</b> 60:5<br/><b>address</b> 3:20 8:13,15<br/>63:20 101:22 106:18<br/>110:7 111:2<br/><b>addressed</b> 119:10,11<br/>119:12<br/><b>adequate</b> 5:19 41:8<br/><b>adjacent</b> 60:19 61:4<br/>68:19,20 77:12,17<br/>99:21,24<br/><b>adjoining</b> 111:10 126:9<br/><b>Adjourn</b> 2:23<br/><b>Adjustment</b> 1:3,12 3:6<br/><b>administered</b> 6:23<br/>82:12 105:10 128:18<br/><b>Administrative</b> 4:23<br/><b>administrators</b> 90:11<br/>90:12<br/><b>advance</b> 42:5 82:8<br/><b>adverse</b> 121:24 125:11<br/>125:21 128:10<br/><b>advertise</b> 58:21<br/><b>advertised</b> 63:8<br/><b>advertising</b> 18:14<br/><b>advice</b> 48:13,16<br/><b>advised</b> 3:14<br/><b>affect</b> 70:2,3,5,6,8<br/><b>affirm</b> 6:25 105:11<br/><b>afford</b> 120:16<br/><b>afraid</b> 101:24<br/><b>afternoon</b> 80:25 97:13<br/>101:14 102:5,6<br/>116:23<br/><b>afternoons</b> 99:7<br/><b>age</b> 45:16 89:1,14 90:9<br/>91:2 102:23 112:2<br/><b>agenda</b> 2:1 3:12<br/><b>ages</b> 76:22,22 90:8<br/><b>ago</b> 36:9,15,16 42:23<br/>45:14,15<br/><b>agree</b> 52:2 56:22 62:4<br/>73:4 82:14,19,20<br/>85:15 124:17<br/><b>agreed</b> 87:13 101:21<br/><b>agreement</b> 123:4<br/><b>agrees</b> 111:24<br/><b>ah</b> 85:9<br/><b>ahead</b> 7:12 19:12,18<br/>27:16 31:20 39:21<br/>58:16 59:16 61:21<br/>62:8 63:17 65:20 68:3<br/>73:13 76:9 101:16<br/>115:25 128:11,15<br/><b>air</b> 60:20 100:21 117:12<br/><b>airplanes</b> 78:17<br/><b>Alexander</b> 59:7<br/><b>Alexandria</b> 19:3</p> | <p><b>align</b> 48:10<br/><b>aligns</b> 48:8<br/><b>alley</b> 9:21 20:5 24:19<br/>26:6,8,23,25 43:24<br/>46:19 51:11,15 93:15<br/>111:14,16 112:13,16<br/>113:9 119:9<br/><b>allow</b> 43:24 60:5 72:19<br/><b>allowed</b> 69:24<br/><b>alternative</b> 44:11<br/><b>alternatives</b> 39:3<br/><b>amazing</b> 78:15<br/><b>amended</b> 7:17 11:25<br/><b>amount</b> 102:13 121:9<br/>124:6 128:11<br/><b>analysis</b> 23:5 27:17<br/>28:22 29:3,3 35:4,15<br/>36:11 37:12 40:14<br/>62:2 103:8 124:16<br/><b>analyzed</b> 103:1<br/><b>ANC</b> 2:10 21:18 24:6<br/>28:13,18 41:17,22,23<br/>41:24 42:2,9,10,14,16<br/>43:7,10,11,16,20 44:2<br/>44:3,7,7 45:4 48:2<br/>58:7 61:5,13 64:17<br/>66:5,14,15 67:2 69:21<br/>70:13 77:13,13,15<br/>81:15 85:13,18 105:1<br/>105:1 113:18 114:4,8<br/>124:9 125:15<br/><b>and/or</b> 5:5 51:5,22<br/><b>animals</b> 78:17<br/><b>announcements</b> 5:25<br/><b>annual</b> 78:8<br/><b>answer</b> 24:7 56:3,5<br/>82:9 86:19 89:18<br/>94:14 127:25<br/><b>Anthony</b> 1:16 3:11<br/>130:4<br/><b>anticipate</b> 9:2 81:3<br/><b>anticipated</b> 40:20<br/><b>anticipation</b> 16:25<br/><b>Anyado</b> 6:11<br/><b>anybody</b> 18:2 20:20<br/>38:2,25 41:10,13 47:4<br/>52:16 66:5 88:3 101:2<br/>117:16<br/><b>anyway</b> 10:17 15:5<br/>51:16 56:8 68:2 98:7<br/>127:22,23<br/><b>Apartments</b> 6:8<br/><b>apologize</b> 42:5<br/><b>apparently</b> 50:20<br/>118:17<br/><b>appeal</b> 6:2,11<br/><b>appeals</b> 4:14 27:23<br/>36:2</p> | <p><b>appearance</b> 5:12<br/><b>Appellant</b> 6:12<br/><b>applicant</b> 2:8,13,18<br/>8:17 14:18 15:12,18<br/>17:21,25 19:2,4,6,13<br/>24:9,12 34:25 38:8,12<br/>39:22,23 40:6,24 41:7<br/>42:11,17,20 43:10,12<br/>43:23 44:12 45:22<br/>46:1,4,12 47:16 57:10<br/>59:8,18 60:24 61:5,8<br/>63:14 66:20 68:12<br/>72:17,17 82:22,24<br/>84:16 101:21,25<br/>102:7,13,19 103:2,14<br/>104:8,22 111:8<br/>113:20 115:17 116:3<br/>117:15,16 123:12<br/>124:1 128:23,25<br/><b>applicant's</b> 42:23 46:3<br/>111:4,24<br/><b>Applicants</b> 57:24<br/><b>application</b> 2:5,7,12,16<br/>6:5,6 7:10,15,16<br/>18:12 32:8 41:3,7<br/>42:10,15,16 58:20<br/>60:16 61:1,5,6 62:5,8<br/>62:18 63:7 68:4 72:16<br/>73:12 81:20 92:4 96:3<br/>104:10 107:9 124:23<br/>125:24 126:19 128:13<br/>128:15 130:1<br/><b>applied</b> 89:3<br/><b>apply</b> 119:4<br/><b>appraisal</b> 29:25<br/><b>appraiser</b> 54:18<br/><b>appreciate</b> 49:1 52:1<br/>55:12 56:7 75:6 84:19<br/>84:20,23 85:24<br/>120:21 121:7<br/><b>appropriate</b> 39:3 47:2<br/>57:2 75:24<br/><b>appropriately</b> 110:5<br/><b>appropriateness</b> 45:6<br/>112:13<br/><b>approval</b> 19:24 20:23<br/>38:19 40:1,3 42:12<br/>61:6,10 62:5 101:17<br/>125:15 128:6<br/><b>approvals</b> 36:6<br/><b>approve</b> 17:14 25:18<br/>29:5 62:8,17 128:15<br/>129:25<br/><b>approved</b> 22:7,14,23<br/>36:25 38:23 54:6<br/>77:14 103:17<br/><b>approving</b> 126:18<br/><b>approximately</b> 42:21</p> |

**April** 42:13 109:24  
110:6  
**architect** 37:13  
**Architects** 118:14  
**architectural** 16:16,24  
44:9 117:24  
**area** 12:10,11 18:16  
20:9 22:18,23 48:2  
51:13 60:7 69:18  
77:18 78:5 80:14 81:7  
81:9,9,14,16 82:1  
92:7,8,9 96:18 97:16  
99:22 100:19 108:13  
112:16,18 125:8  
**areas** 11:18 17:4 20:3  
89:8  
**argument** 20:13 23:18  
37:20,22 40:8,13,14  
40:23 41:2 45:8 50:6  
50:7,9,19,20 51:18,22  
56:11 65:23 116:14  
**arrive** 94:20  
**arriving** 94:19  
**article** 79:1  
**articulated** 27:20  
**asked** 39:6 95:11  
104:25 110:6 111:1  
111:15 113:20 116:2  
**asking** 46:23 70:16  
102:18 113:3 123:22  
126:3  
**asks** 46:5 112:9  
**aspect** 108:15  
**assertion** 111:9  
**assessment** 39:17  
47:18 48:4 62:4  
**assistant** 90:10 91:1  
**associated** 37:18  
**association** 64:11,15  
65:9,23,24 66:5,25  
67:5,8,13 68:5 70:10  
73:1,15 77:6,19 84:24  
109:13,20 124:10  
**assuming** 16:17 24:23  
26:14 122:16  
**attempted** 92:18  
**attempting** 43:12  
108:14  
**attend** 98:9  
**Attended** 6:14  
**attending** 98:11  
**attention** 25:22  
**attorney** 1:19 6:17  
30:22 37:21 38:17  
51:13 105:18 107:15  
110:18  
**attorneys** 25:9 105:22  
106:3

**Auditor** 110:17  
**Austin** 88:22  
**authorized** 67:7  
**automatically** 45:18  
**available** 3:12 24:7 89:3  
**Avenue** 8:20 64:1  
**average** 45:16  
**avoid** 5:11  
**aware** 28:25 80:2 121:8  
**aye** 62:12 73:18 129:8  
129:17  
**ayes** 62:13 73:19  
129:18

---

## B

---

**B'n'Bs** 100:22  
**back** 9:19 10:6,7 11:4  
16:3 17:20 18:8 23:3  
25:11 45:10 46:2,19  
49:6 51:6,20 53:12  
56:3,16,19 57:2,5  
61:16 87:25 89:4 92:2  
93:7,7 100:8 103:16  
115:20,25 116:1,2,5  
121:9 123:11 127:2,9  
127:12 128:1  
**background** 3:23 75:25  
80:10  
**backwards** 16:6 57:16  
67:4  
**backyards** 77:9  
**bake** 78:16  
**balances** 103:11  
**Barbara** 109:6,10  
**Barbra** 64:10  
**Barros** 19:2,4 59:8  
**based** 5:10 40:6,11  
43:6 46:6 54:11 81:3  
98:15 103:18  
**basically** 7:9 29:17 37:5  
47:19 69:14 74:3  
92:21 94:3,18  
**basis** 48:17 125:10  
**beautiful** 78:25  
**becoming** 126:9  
**beepers** 5:14  
**beginning** 61:23 87:12  
**begun** 118:19  
**behalf** 8:16,19 19:2,4  
59:8 67:8 101:7  
109:20,24  
**belief** 79:5  
**believe** 5:21 7:14 9:16  
17:23 18:13 21:13  
37:19 42:17 43:7 48:2  
52:3 74:5,7 78:6  
79:11,12 99:2 124:15  
129:23

**believes** 43:10,20  
**belt** 89:22  
**berth** 7:23  
**best** 25:10 55:15 79:6  
88:1  
**better** 39:16,17  
**beyond** 99:1  
**big** 56:10 122:25  
**bin** 3:13  
**bit** 23:11 26:10 32:16  
34:9 40:21 46:2 50:6  
67:4 78:2 83:24 91:10  
94:14,24 95:5 96:16  
107:19,21 117:21  
119:20  
**bless** 46:5  
**blind** 93:15  
**block** 42:23 68:23  
69:15 111:3  
**blocks** 36:18 109:19  
111:2  
**board** 1:3,12,13,14,14  
3:6,10,18 4:4,18,18  
4:22 5:2,10,12,13,21  
5:25 6:13,16,21 9:12  
12:10 16:6,9,9,23  
19:1 22:7,18,23 24:8  
28:7 29:8 36:2,13  
38:5 41:6 49:7 50:23  
51:24 57:6 61:8,20,22  
64:24 68:5 69:22 71:6  
82:6 101:14 104:7,11  
108:17 113:1,3,5  
114:21,24 115:1  
123:9,17,21,24 126:2  
126:25 130:4  
**Bolling** 110:17  
**born** 79:21,22  
**Bottom** 66:2,5,25 76:17  
77:6,19,20 80:2,8  
89:7 98:2 109:21  
110:21 112:2,7  
124:10  
**bought** 20:17,18 29:20  
**boundaries** 65:6,11  
**brain** 116:16  
**brand** 83:16 110:11  
**Brandice** 1:23 101:14  
**bread** 78:16  
**break** 58:15,17 63:1  
115:20,21 116:16  
**brief** 78:1  
**bring** 43:17 71:24 72:4  
79:15 118:17  
**brings** 123:8  
**Britton** 63:19,19 96:5  
96:13,15,19 98:12  
99:1,5,10,15

**broken** 78:18  
**brought** 24:17 45:10  
94:9 103:2 116:8  
117:18 120:6,7  
**Brown** 39:20  
**Brown-Roberts** 1:22  
38:4,5 39:5,23 40:2  
40:15,18 41:2  
**build** 122:13  
**building** 18:15,17,21  
20:7,8,24,25 21:19,23  
22:14,17 23:10 25:5  
25:12,14 32:12,22  
33:13 34:14 35:19  
52:16,19,22 53:4,6  
54:24,24 55:5,9 59:23  
60:7 61:3 65:8 68:24  
70:2 89:9 97:14 103:5  
108:13 111:11 119:4  
**buildings** 65:7 108:11  
108:12  
**built** 45:13 122:14  
**bulk** 75:16  
**bunch** 94:12 113:18  
**Burger** 41:19,22,22  
42:4 44:15,17,20 45:3  
46:22 47:2,9,12,14,18  
47:25 48:2,5,8,21,22  
49:1,5  
**business** 23:10 78:9  
79:3  
**Buskirk** 18:13,13 19:5,5  
19:22 20:14,16 24:13  
24:24 25:3,15 26:5,13  
26:16,18,22,25 27:6,9  
27:12 29:12,13,13,14  
29:15,16,23 30:9,12  
30:14,17,20,24 31:11  
31:16 37:8,16 38:1  
43:4,7,21 47:20 49:18  
49:19,19,20,21 52:3  
53:3,20 54:8 55:12,14  
55:18,22,25  
**busy** 101:9  
**button** 64:13  
**buying** 29:18  
**BZA** 65:4 69:16,25  
109:24,25 111:20  
112:9,12 121:16  
122:24 124:12

---

## C

---

**C** 7:19,20,21,24,25  
23:12 58:24 118:17  
119:4,12  
**café** 69:17,24  
**call** 5:9 7:12 58:19  
**called** 65:25 78:9

**calling** 79:13  
**campus** 76:16 81:8  
 96:10  
**cap** 8:19,23,23 81:2  
 86:18  
**capacity** 96:11 102:24  
 103:5,12  
**Capitol** 28:21 29:11  
 31:25 34:3 42:22  
 45:16 48:3,9 79:24  
**caption** 58:21  
**captioned** 62:9 63:8  
 128:16  
**capture** 102:1  
**Capturing** 18:14  
**car** 26:10 27:1,3 37:7  
 86:18  
**cards** 4:2,2,4  
**care** 74:10 77:24 91:1  
**career** 79:12  
**caries** 73:25  
**Carlton** 1:14 3:9  
**carpooling** 81:5  
**carport** 21:21  
**carries** 62:20 130:5  
**carryover** 98:10  
**cars** 81:2 94:13 96:25  
 125:13  
**case** 4:17,24 5:3,4,6,8  
 5:20 6:3,8,14 7:13,15  
 8:6,9 18:12 22:13  
 28:4 42:11,13 43:20  
 43:25 44:2 45:7,10  
 46:4,17 49:11,13 57:4  
 58:15,16,19 63:6,7  
 65:6,10 69:15 70:21  
 73:9 75:17 76:3,5  
 96:5 104:11 109:25  
 124:2 128:3,6  
**cases** 5:10,17 22:5,12  
 22:23 23:23 27:23  
 29:7 36:1,3,13,24  
 43:11,18 44:3,6,8  
 45:4,11,20 48:12  
 51:22 65:4 66:4,4,8  
 86:25 104:2 110:2,14  
 113:13 123:3 128:2,3  
**catch** 20:20  
**caught** 33:7  
**cause** 52:24  
**cell** 5:14  
**center** 20:5 79:22,22  
 128:7  
**certain** 22:6 66:14  
 127:2,7  
**certainly** 36:2,7 67:2  
 86:13 104:5,12 122:9  
 123:8

**Certificate** 111:18  
**certification** 12:1  
**cetera** 119:3  
**chains** 111:6  
**chair** 3:9 8:6,6,8,8,21  
 8:24 9:3,14,18,20,23  
 10:3,5,7,9,10,13,14  
 10:15,19,22,24 11:24  
 12:4,7,12,14,24 13:4  
 13:7,9,12,15,18 14:2  
 14:6,9,11,14,17,21,22  
 14:23 15:2,6,12,14,16  
 15:18,20,25 16:2,8,12  
 16:14,17 17:11,13,17  
 18:1,7,25 19:21 24:10  
 24:22 25:13,20 26:1  
 26:11,14,17,19,23  
 27:4,7,10,14,15,17  
 28:3,6,10 31:19,21  
 32:11,16,19,22,25  
 33:3,5,10,21 34:2,18  
 39:19,22 40:13,16  
 41:23 44:21 48:1,7,19  
 51:25 53:19,22 54:16  
 55:13,16,21 56:18,22  
 62:10,19 67:21 68:8  
 68:25 69:3,9,12 70:4  
 70:12,16,20,25 71:11  
 72:24 73:8,8,25 84:17  
 84:19 85:8,17,22 86:2  
 86:21,24 87:4,10,14  
 87:16 88:4,11,19  
 89:19 90:5,14,17 91:5  
 91:8,14,18,21,23  
 96:13 98:22 99:4,8,12  
 101:13 102:4 103:22  
 104:1,14 105:24  
 106:2,5,8,13 113:2,15  
 117:17 118:21,24  
 119:8,17 120:3,6,18  
 120:19 121:14 122:1  
 122:7,13,18,22,24  
 125:1 126:1 127:15  
 129:9,11,13,21 130:4  
**Chair's** 127:25  
**chaired** 8:6  
**chairman** 2:3 5:24 6:19  
 18:7,11 27:15 28:10  
 38:4 39:19 48:1 51:25  
 56:20 58:19 62:17  
 63:6 76:11 84:17 86:5  
 87:16,18 88:4 98:22  
 102:4 106:14 113:2  
 122:1,21 126:1  
 127:16 128:5 129:25  
**Chairperson** 1:11,13,16  
 3:3,8 6:20 7:6 8:5  
 18:9,23 19:7,10 24:8

27:16 29:10,14,16  
 30:7,10,13,15,18,21  
 31:9,12,17,20 37:1,17  
 38:2,25 39:18,21  
 40:18 41:9,20,25  
 44:14,18,22 46:21  
 47:1,3,6 48:22,25  
 49:3,6,20 51:2 55:24  
 56:1,21 57:8,12,15,22  
 58:2,5,9,11 59:4,9,14  
 61:7,12,19 62:11,14  
 62:21,24 63:4,14 64:5  
 64:13,16 65:18 66:10  
 66:13,19 67:16,18  
 68:1 70:23 71:1,5,12  
 71:18,21,23 72:4,8,12  
 72:15 73:6,13,17,20  
 74:1,23 75:1,21,23  
 76:2,5,8 82:10,17,21  
 83:3,11,13,17,20,23  
 84:1,4,6,8,12,14,18  
 87:17 94:16,23,25  
 95:5 96:4,12 98:5  
 99:13,16 100:7,12,14  
 101:11 102:2 104:17  
 104:19,25 105:6,9,16  
 105:22 106:1,3,11,15  
 106:22,24 107:1,6,11  
 108:17,21,24 109:3,7  
 109:11,14 112:25  
 113:16 114:1,4,7,11  
 114:14,17,23 115:1,6  
 115:9,14,19,24  
 116:18,20,22,24  
 117:1,6,9,11,14  
 119:22 121:11,20  
 123:11,16,19,21  
 128:14 129:7,10,12  
 129:16,19,23 130:6,9  
**chance** 15:23 64:17  
 94:22 101:5  
**change** 12:5 32:8 36:8  
 36:10 55:4 59:25  
 79:16  
**changed** 11:7  
**changes** 52:21 53:24  
 54:1 55:7 56:12  
**changing** 17:8  
**Chapter** 7:22 18:19  
**Charnovitz** 105:14  
 106:19,20,20,22,23  
 106:23,24,25 107:5  
 107:10,14 108:20  
**Chart** 121:11  
**check** 111:15,17  
**checked** 30:22 67:23  
**checking** 23:12  
**checks** 103:10

**child** 85:23 94:9  
**children** 76:22,22 77:18  
 78:6,10,14,15 82:12  
 84:2 88:25 90:8 91:12  
 92:25 97:14 102:23  
 107:25 108:3,3,8  
 111:6 112:1 116:10  
 116:16 120:2 123:15  
 128:18  
**children's** 78:9 79:3  
 97:13 98:24  
**choir** 97:13,15,19 98:24  
 107:22,25  
**Chorus** 7:3 62:13 73:19  
 129:18  
**church** 63:20,20 75:17  
 75:18,19,20 80:21  
 89:16 95:12 96:8,16  
 97:15,23 98:4,9 100:6  
 108:1 118:9 120:13  
 122:16 125:7  
**Church's** 96:6  
**churches** 96:19  
**Circle** 79:23  
**circumstances** 19:23  
 95:16  
**cited** 49:11 130:2  
**citizen** 109:21  
**Citizens** 64:11,15 67:5  
 67:13 68:5 109:13,20  
**city** 25:11 79:23 80:1  
 81:13 95:23 117:24  
 118:1,4 128:8  
**Civic** 65:9,24 70:10  
 73:1,15 84:24  
**Claiming** 22:21  
**clarification** 86:23  
**clarify** 11:17 91:4  
**clarifying** 17:9  
**classroom** 90:23,24  
**classrooms** 90:8,8  
**clean** 11:9  
**clear** 12:14 17:5,7 18:3  
 32:15,17 46:4,24  
 50:20 62:3 121:15,19  
 126:17  
**clearly** 34:15 46:23  
 111:25  
**Cleveland** 78:22  
**client** 6:17 50:16 51:6,7  
 51:8 59:12  
**CLIFFORD** 1:18  
**clock** 59:16 76:9 107:3  
 109:16  
**close** 61:21 68:14 102:6  
 123:23  
**closed** 4:16,21 5:3,8  
**CMU** 43:2

**co-founders** 76:13  
**Cochran** 1:23 13:7,8,11  
 13:14,16,16,20,23  
 14:5,7,10,13,22,24  
 15:4 61:10  
**code** 5:5,6 45:7 46:15  
 46:18 53:10,15 54:24  
 55:9 113:4  
**coincide** 75:19  
**collate** 4:11  
**college** 79:12  
**Columbia** 1:1 3:7 4:23  
**combination** 60:17  
**combine** 79:15  
**come** 4:14 22:18 28:7  
 30:19 41:18 45:7 46:4  
 46:14,17 51:20 52:4,6  
 52:16 56:3 57:2 63:14  
 64:8 85:6 88:7,14  
 89:4 92:22 94:4,8  
 95:16,17 97:2 99:6,6  
 99:10 103:11,16  
 105:3 108:22 113:4  
 116:1 121:9 123:3,5  
 125:6,12 127:2,9,12  
 128:1  
**comes** 28:19 41:3  
 45:17 57:5 72:20  
 123:4  
**comfort** 104:7 123:9  
**comfortable** 124:21  
**coming** 4:3 35:20 42:1  
 75:12 96:25 97:14  
 107:13 108:4 116:5  
 123:17 125:13,13  
**comment** 57:11,14  
 64:12 87:18 99:9  
 105:5 114:10 127:25  
**comments** 41:1 43:25  
 52:1 125:18  
**commission** 1:15 3:10  
 10:11 15:5 65:5 113:5  
**commissioner** 10:6  
 28:19 41:18,23 42:1  
 44:14 47:4 48:2,22  
 126:25,25  
**committee** 32:9 33:4  
 41:24 44:21,21  
**committing** 87:24  
**communication** 11:13  
**community** 21:18 28:12  
 66:9,14 69:17,17,21  
 70:1 75:5 78:8 87:1  
 87:11 97:21,21 98:1  
 108:4,6,10 109:23  
 110:13 123:4 124:7  
 124:11 127:17 129:15  
**company** 30:1

**compatible** 44:8  
**compiled** 80:18  
**complaint** 97:17  
**complementary** 95:18  
**completed** 22:1  
**complex** 95:21  
**compliance** 43:17  
 46:14,17  
**complicated** 36:22  
**complying** 95:22  
**components** 42:18  
**concern** 111:13 119:8  
**concerned** 35:22 65:12  
 87:22 95:25 128:9  
**concerning** 40:24  
**concerns** 29:22 56:5  
 68:10,15,17 73:1,3  
 85:5,16,20 92:6 115:4  
 125:19  
**concise** 62:3  
**conclude** 44:3  
**conclusion** 4:16  
**concur** 72:24 73:7  
 121:21 125:5  
**concurrence** 82:14  
 128:20  
**condition** 22:10,25 23:1  
 23:6,25 29:8 42:22  
 43:1,8 104:6,8,13  
 120:11 121:13,22,23  
 123:9 126:13  
**conditions** 22:6 82:11  
 101:19 103:24 120:24  
 121:2 124:18 125:24  
 126:20 128:17 130:2  
**condominium** 6:9  
 68:23  
**configuration** 33:9  
**confused** 106:11  
**congested** 112:18  
**connection** 38:10  
**consider** 7:4 38:18  
 113:23 114:3  
**consideration** 40:5  
 44:2 82:9 112:19  
**considered** 44:7 103:3  
 113:21  
**considering** 96:3  
**considers** 44:7  
**consistent** 5:2 44:6  
 81:24  
**consistently** 43:16  
**constitutes** 1:24  
**construct** 8:3 53:1 59:1  
 59:22 60:14  
**constructed** 29:6 52:20  
 60:8  
**construction** 35:5

52:19 55:19  
**contacted** 30:24  
**contingent** 20:24  
**continuance** 5:18 8:10  
 9:13  
**continue** 11:11 50:25  
 51:2 57:20 96:1  
 101:25 129:14  
**continued** 51:20 57:20  
 57:22,23 58:6  
**continues** 51:19  
**continuing** 49:9  
**contracting** 25:8  
**contractor** 53:4  
**contribution** 80:8  
**controlled** 86:11  
**convened** 1:9  
**conversation** 5:13 86:5  
**conversations** 22:13  
 85:1 99:24 118:20  
**conversion** 36:1,13,24  
**conversions** 40:24,25  
**converted** 21:22  
**convinced** 95:23  
 127:20  
**convinces** 51:23  
**convincing** 27:19  
**coordinate** 82:25 129:1  
**coordination** 48:17  
**copies** 3:12 4:8,9,10,12  
**copy** 6:17 25:5 67:17  
 67:18  
**corner** 27:4 93:17  
**correct** 16:4 18:1 24:21  
 28:4 44:17 47:9,12,14  
 74:6,25 82:15,16  
 83:19 90:16 100:9  
 111:5 113:6 115:5  
**corrected** 99:11  
**cost** 23:2 35:1,5 37:18  
 51:18  
**Council** 110:18  
**counsel** 5:4 8:19  
**count** 86:10,17,18  
 87:20,21 88:10,11  
**counted** 101:23  
**Counting** 83:4  
**country** 88:23  
**couple** 28:11 46:6  
 63:16 66:24 82:10  
 101:4,19 120:1  
**course** 20:13 25:7 32:8  
 36:20 38:21 69:24  
 77:24 80:14 110:4  
 118:14 129:12  
**court** 3:14 7:25 27:23  
 36:2 92:22 93:7,11,20  
 100:17,18,20

**cover** 66:3  
**covered** 95:10  
**Cozen** 8:15  
**create** 89:9 110:22  
**creates** 104:6  
**creating** 112:10  
**credits** 107:17  
**criteria** 59:15 64:22  
 65:14 66:22 72:18  
 73:9 78:5 125:2 126:8  
**curb** 20:19,22 24:15,19  
 25:18 27:8 29:21  
 30:16,22,23 31:13  
 33:7 51:10,15 54:20  
**curious** 29:19 49:8  
 53:23 78:20 79:2 95:2  
 116:13 117:11 121:12  
**current** 43:5 60:3  
**currently** 27:10 43:13  
 96:11  
**custom** 78:17  
**customers** 78:12,24  
**cut** 20:19,22 24:15,19  
 25:18 27:8 29:21  
 30:16,22,23 31:13  
 36:18 51:10,15 54:20  
**cuts** 34:14  
**Cynthia** 63:25

## D

**D** 58:22,22,23 61:2  
**D-4R** 8:3  
**D.C** 1:10,19 5:5,6 13:16  
 31:4 33:17 64:1 76:14  
 79:19 110:2 111:6  
 112:6,6,12  
**date** 4:19 9:13,25 67:22  
 83:9  
**dated** 110:4 112:20  
**dates** 14:15 16:3 57:17  
**daughter** 79:22  
**David** 64:2 75:17 76:12  
 119:25  
**day** 9:25 78:10 79:3  
 83:25 86:9 97:1,9  
 110:23 111:9 116:11  
 116:25 117:10 122:25  
**daycare** 128:7  
**days** 9:17 74:13,19  
 98:25 99:2,10,11  
**DCRA** 21:23 110:17  
 118:25 121:15  
**DDOT** 20:23 24:22,25  
 25:13 51:9 80:19 81:2  
 82:14,21,25 83:8 86:4  
 86:13,20 87:18,25  
 88:1 92:20 93:5  
 101:25 110:15 128:20

129:1  
**DDOT's** 80:19 111:22  
**de** 22:3  
**dead** 41:11  
**deal** 56:24 88:12,12  
**dealing** 22:1  
**Deborah** 18:13 19:5  
**decades** 77:20  
**decent** 125:21  
**decide** 78:12  
**decided** 17:13 30:15  
**decision** 5:10 6:3 57:21 112:11  
**defend** 57:6,7,7  
**definitely** 73:10  
**degree** 11:19 12:10 89:19 107:17  
**deliberate** 61:22 123:24  
**deliberating** 5:5  
**deliver** 97:24  
**delivered** 77:4 101:1  
**demonstrated** 38:15  
**denial** 38:8  
**deny** 73:14,23  
**department** 111:15 117:19,22 119:2  
**depend** 117:4  
**depending** 28:3,6 57:5 126:5  
**depth** 77:22  
**describe** 102:6  
**described** 119:9  
**describes** 33:24  
**design** 12:6 51:17 56:12 60:17,22  
**detached** 20:17  
**detail** 20:12 118:6  
**detailed** 67:14  
**details** 95:19  
**determine** 64:21 90:6 103:15  
**determined** 104:9  
**determines** 103:12  
**develop** 82:25 129:1  
**Devonshire** 64:3  
**diagram** 80:16 92:18  
**dialogues** 9:7  
**different** 9:14 11:5 36:6 44:25 55:23 94:3 99:7  
**differently** 40:20  
**differing** 29:3  
**difficultly** 23:2  
**difficulty** 22:10 24:2  
**directly** 39:10,11 48:11 77:24 99:21  
**Director** 110:15,17  
**disappointed** 110:9  
**disappointing** 124:7

**discovering** 79:13  
**discuss** 104:7 123:2  
**discussed** 101:20  
**discussion** 10:25 36:5 56:15 129:9,11  
**discussions** 21:17 23:21 56:25  
**dismissal** 94:5  
**displayed** 100:3  
**disregard** 48:15  
**disrupt** 5:15  
**disruptive** 3:17  
**distance** 60:17 96:23  
**distinctly** 65:15  
**distribution** 4:8  
**district** 1:1 3:6 4:23 42:24 48:13 110:21 110:21 112:3  
**disturbed** 72:10  
**docket** 6:1 7:7  
**documentation** 9:10  
**documents** 4:7  
**doing** 35:23 37:22,25 79:5 97:10  
**door** 3:13 4:2,15 20:18 39:11 55:5 68:16 69:5 70:6 92:24 99:21  
**door-to-** 99:20  
**doors** 77:2 85:11 101:2  
**dos** 7:3  
**downtown** 93:9  
**dramatic** 46:19  
**drive** 83:7  
**driveway** 30:6 31:1  
**driving** 86:6,10  
**drop** 92:13  
**drop-off** 78:4 80:13,15 80:20,23 82:11 92:11 93:19 101:20 128:17  
**drop-offs** 111:14 112:14  
**dropping** 92:15  
**due** 17:22  
**Dupont** 78:14 79:23  
**dwelling** 59:2

## E

**E** 18:15,16,18,20 27:2 34:12  
**earlier** 21:5 43:3 105:4 105:7 109:18 125:25  
**early** 13:2 20:17 85:3  
**easy** 27:12 80:18  
**education** 79:10 98:16 107:16  
**educational** 103:6  
**educationally** 108:8  
**effects** 65:13

**efforts** 101:6  
**eight** 26:6 82:17 88:6 90:13 102:8 103:19 126:15,16,22 128:12 128:21 129:5  
**either** 3:24 9:25 11:5 12:23 20:20 21:21 31:5 63:18 64:20 99:2 127:6  
**elaborate** 118:22  
**electrical** 119:2  
**elementary** 76:21 88:25 89:14 90:9  
**Elliott** 1:23 101:13,14 102:5 103:1,25 104:4 122:3,19,20,21,23,25 123:2  
**else's** 75:12  
**emergency** 5:8  
**empty** 80:22 93:4  
**encourage** 11:11 12:16 93:18 101:25  
**encouragement** 57:8  
**encroaches** 34:5  
**encroachment** 32:7  
**engage** 5:13  
**engaged** 9:6  
**engineer** 118:4  
**enhanced** 43:6  
**enjoyment** 60:20  
**entail** 39:14  
**enter** 5:3 65:14  
**entering** 23:10  
**entertain** 71:3  
**enthusiastic** 100:24  
**entire** 20:2 108:10  
**entrance** 92:25 94:8  
**entrepreneurs** 78:10,24  
**enumerating** 17:4  
**Episcopal** 6:15 98:9 108:5 125:7  
**erroneously** 111:4  
**escalated** 24:16,17  
**escort** 92:25  
**especially** 23:16 70:3 87:6,11 127:18 128:6  
**ESQ** 1:20  
**essentially** 23:10 47:23  
**estimate** 86:15  
**et** 119:3  
**evaluate** 122:4  
**evaluation** 112:12 113:4  
**Evans** 110:18  
**evening** 91:25 92:1 93:25 97:6 125:10  
**event** 78:8 82:23 128:24

**eventually** 21:22 127:22  
**everybody** 94:19 105:7 106:3 116:5  
**evidence** 4:20 24:1  
**evolved** 46:10  
**Ewing** 63:25  
**exact** 99:2 122:15  
**exactly** 4:19 33:11,19 34:7 37:21 117:13 126:24  
**example** 43:14 68:23 79:4  
**exceed** 89:4 121:9 126:21,22 127:3,3,8  
**exceeding** 45:19 126:15,15 129:3,5  
**exceeds** 43:15 45:12 111:25  
**Excellent** 18:3  
**exception** 20:3,11 35:2 37:11 50:10,12 51:6 60:16 63:8 76:18 80:13 103:17 121:10 124:2,14 125:3  
**exceptional** 38:10  
**exceptions** 4:13 7:17 18:14 38:22,22 58:21 112:9  
**exclusive** 111:13  
**exclusively** 5:11  
**excuse** 9:23 10:4 14:22 17:17 71:20,21 126:19,25  
**exhibit** 31:22 33:5,22 34:9,10,19 67:21 78:21 82:13,13 128:19,19  
**exist** 45:9 66:1  
**existed** 29:4  
**existence** 23:6,25  
**existing** 18:20 19:25 42:22 43:8,22 44:5 45:24 46:12 53:6 59:24 60:1,1,11,12,14 60:15,25 61:3 98:11 109:23  
**exit** 55:4  
**expand** 60:13 96:9 102:23  
**expanding** 39:9  
**expect** 21:24 111:25 118:13  
**expected** 4:19  
**expecting** 94:12  
**expense** 39:13  
**experience** 86:14  
**expertise** 54:11 55:23

**experts** 117:25  
**explain** 19:13,23 26:3  
 32:5 50:16 64:24  
 83:24  
**explanation** 65:2  
**expressed** 111:13  
 114:14  
**extending** 60:11  
**extensive** 99:24  
**extra** 97:10  
**extreme** 46:15  
**extremely** 77:10,10  
**exuberant** 97:18  
**eye-popping** 80:6

---

**F**


---

**fact** 19:25 21:1 22:17  
 23:7 29:20 36:19,20  
 46:5 67:11 107:17  
 110:25 111:11 114:2  
**factor** 79:18  
**facts** 73:9  
**faculty** 82:18 126:14,22  
 128:12,22 129:4  
**fair** 27:18 48:4 78:9  
 79:3 124:6  
**fairly** 46:18 120:12  
**faith** 22:11,16 23:3,7,9  
 35:20 43:8 46:13  
 55:19  
**familiar** 90:25 92:8  
**families** 77:18 79:25  
 81:3  
**family** 59:20 79:23  
**far** 66:20 82:11 84:23  
 87:21 103:5 104:8  
 118:20 128:9  
**farther** 69:10  
**fashion** 72:1  
**fast** 93:16 109:6  
**favor** 3:24 62:12 73:18  
 129:8,17  
**fee** 119:1  
**feedback** 28:12 77:2  
 93:10 100:1,10,16,23  
 101:5 118:6  
**feeding** 97:23  
**feel** 29:23 64:24 84:4,9  
 86:9,10  
**feeling** 53:13  
**feels** 104:12  
**feet** 20:8 34:5 35:10  
 60:4 108:1  
**fence** 100:2,2,3  
**Fencing** 82:4,5  
**figure** 10:25 25:23  
 31:14 32:11,13 33:12  
 53:2 88:1,5,9

**figured** 106:8  
**file** 4:6 12:22 13:2 14:10  
 74:18  
**filed** 12:22 14:1 16:21  
 16:24 20:21 67:14  
**filing** 11:21 14:18 17:21  
 17:24,24 57:24  
**fill** 4:1 20:25  
**filled** 112:6  
**final** 118:16  
**finalize** 9:10  
**finalizing** 11:20  
**Finally** 6:13 44:1  
**financial** 50:5,6,9  
**find** 21:23 25:12 51:11  
 80:3 89:5 122:11  
**finds** 22:17 41:7  
**fine** 9:15,18,20 10:22  
 13:8,11,24 15:6,24  
 16:1 30:2 40:16 55:21  
 81:5 126:23 127:13  
**finish** 56:24  
**finished** 3:21 123:22  
**fire** 55:1 70:3 111:15  
 112:12 113:3,7  
 117:18,22 118:4,4,10  
 118:10,13 119:3,14  
 119:15  
**firm** 8:15 19:1 28:22  
 64:1 117:24  
**first** 3:19 6:2 7:12 24:18  
 42:4 44:15 63:16 64:6  
 64:21 66:23 68:2  
 78:21 79:5,19 80:13  
 89:13 90:15,17  
 110:16  
**fit** 35:2 36:11 98:14  
**five** 35:20 42:1 62:25,25  
 72:21 88:19 89:20  
 90:3 98:25 109:15  
 114:25 115:1 127:6  
 127:12  
**fix** 53:11,16 78:18  
**flags** 29:18,20,24  
**fleshed** 23:19  
**flexible** 108:5  
**floor** 18:16  
**flow** 93:6  
**flower** 81:25  
**focus** 95:11  
**Foggy** 66:2,5,25 76:17  
 77:5,19,20 80:2,8  
 89:7 98:2 109:21  
 110:21 112:2,7  
 124:10  
**folks** 54:18  
**follow** 45:5 57:2  
**follow-** 37:1

**follow-up** 87:17  
**followed** 118:18  
**following** 29:10 57:25  
**food** 97:24  
**foot** 20:5 22:20 26:6  
 60:3  
**footprint** 45:23 60:1,14  
 61:3  
**forever** 122:5,10  
**forget** 58:6  
**forgot** 27:18  
**form** 44:9 72:17 98:16  
 109:4,5  
**forth** 11:4 124:19  
 125:25  
**fortunately** 31:3  
**forward** 4:3 5:20 27:21  
 28:4,7 40:21 41:18  
 51:23 54:7 64:8 65:20  
 103:2 105:4 108:22  
 124:22  
**found** 21:1  
**Foundation** 63:7 64:3  
**four** 68:21,22 69:18  
 70:11 90:11 99:2,7  
**frame** 89:20  
**Francis** 112:5  
**frankly** 40:8 43:6  
**Fred** 3:8  
**Frederick** 1:11,13  
**freedom** 79:9  
**frequently** 42:25 96:17  
**Friday** 80:22  
**front** 26:15 55:5 79:1  
 94:8 100:19 107:9  
 109:4 119:7  
**full** 24:6 33:6 42:14  
 55:18 59:10 96:11  
 97:3,8 114:13  
**fully** 11:12,13 23:19  
 44:3  
**funky** 100:18  
**further** 23:21 56:15  
 104:3 119:20 121:7  
**future** 35:18 120:14  
 121:15,16  
**FYI** 55:13

---

**G**


---

**game** 69:1  
**garage** 19:25 20:17  
 21:4,5,9,13,14,15  
 23:6,16 24:1,3 26:1,2  
 26:6,19 27:3,11 29:4  
 32:3 33:7 34:4,17  
 35:1,6,8 37:8,14  
 39:12 42:21 43:2,5,24  
 46:18 47:10,22 49:25

59:24 60:1,15  
**garages** 27:2  
**garden** 81:25  
**gate** 100:4  
**gates** 82:5  
**gather** 54:2  
**gathering** 82:1  
**gauge** 55:10  
**general** 1:19 8:19 65:21  
 96:7 110:19  
**generates** 82:23 128:24  
**generation** 101:23  
**Gensler** 117:23 118:14  
**gentleman** 53:8  
**gentlemen** 7:4  
**Georgetown** 79:24  
**getting** 31:5 42:5 50:9  
 56:23 79:11 90:20  
 99:1  
**Giordano** 63:25,25  
 66:23 67:20,24 70:25  
 71:2 74:11,21 75:14  
 75:16,22,24 76:4,7  
 83:24 95:1,4 104:15  
 104:18,24 105:8,16  
 105:19 106:7,11  
 115:18 117:3 118:22  
 118:25 119:11,25  
 120:5,10 121:8 122:6  
 122:8,14 123:20  
**give** 4:4 8:12 10:24  
 12:17,25 13:2 14:14  
 15:22 19:19 20:23  
 30:25 40:3 65:3 73:4  
 75:25 92:16 95:19  
 100:22 101:4,5 106:5  
 109:1 114:13 127:7  
**given** 5:19 38:13 39:15  
 39:22,23 52:2 64:24  
 75:6 77:11 102:9  
 103:14 125:17  
**gives** 33:6 81:23 94:22  
**giving** 53:16  
**glean** 36:5  
**go** 5:20 7:9,12 17:20  
 19:12,18 20:12 25:7  
 27:16 30:23 31:20  
 35:12 39:21 44:23  
 53:8 54:4,7 57:19  
 58:16 59:12,16 61:21  
 62:7 63:15,16 68:3  
 73:13 76:9 78:3 82:5  
 82:11 85:10 87:2,25  
 88:2,23 89:17 93:7,16  
 93:18 95:10,20  
 101:16 113:11,18  
 115:25 122:7,10  
 124:13 128:11,15



**goals** 95:17  
**goes** 7:11 26:6,8 39:11  
 46:2 72:22 83:18  
**going** 7:7,9 8:7 12:15  
 12:19 14:7 19:7,11,16  
 19:19 25:10 30:21  
 31:6 37:1 41:12 51:14  
 52:8 53:14 54:1,5,10  
 59:15 61:9,16,21 62:7  
 62:25 63:15 64:6  
 73:13 75:14,17 76:8  
 83:3 85:6,25 86:5,6,7  
 86:11 87:21,22,25  
 92:16 95:19 97:14  
 98:10 101:12,16  
 107:2,2,12 110:8  
 113:12 115:19,25  
 116:12 120:8,10  
 121:21 122:4,4  
 123:22 124:20 127:15  
 127:22,23 128:7,14  
**good** 3:3 5:24 6:24 8:5  
 8:14,22 18:23 19:3  
 22:10,16 23:3,7,9  
 35:20 37:22 38:4  
 41:19,20 43:8 46:13  
 48:25 58:15,18 81:21  
 84:2 86:12 87:5 98:14  
 101:13 102:5 106:13  
 109:7 116:5 118:20  
 124:1,4 128:2  
**gotten** 28:12  
**GOVERNMENT** 1:1  
**grade** 89:25 90:1,1,1,2  
 90:18,21,23,23 91:3  
**gradual** 102:20  
**grant** 25:4 59:15 124:5  
**granted** 16:6  
**Grape** 97:22  
**grass** 81:16  
**grassy** 81:9  
**grateful** 77:10  
**gravel** 20:18 30:5  
**great** 6:20 7:6 35:24  
 41:25 50:1 54:9 55:18  
 59:4,9,18 61:7 79:16  
 80:1 92:5 101:11  
 102:2 108:17 118:6  
 119:22  
**greater** 104:6 123:8  
**green** 81:9,16  
**grey** 55:4  
**gross** 18:16  
**group** 6:11 24:25 69:25  
 70:5 91:2 115:3  
**groups** 68:22 95:20  
**grow** 89:14 91:14  
**growth** 127:14

**guess** 10:12 19:11  
 26:21 31:22 44:15  
 49:11,13 50:8,23 56:8  
 58:12 64:20 70:4,12  
 74:9 75:14 87:25 98:7  
 102:6 109:15 113:18  
 124:8,20  
**guidance** 52:1  
**guiding** 118:2  
**guy** 31:3 55:19  
**guys** 58:3 85:19 99:13  
 113:18  
**GW** 92:9 110:16

## H

**hair** 93:17  
**half** 68:24 69:14 111:1  
 111:3  
**hall** 4:11  
**hand** 3:25 8:7 48:4 77:4  
 93:3  
**hand-in-** 48:3  
**handed** 110:3  
**hands** 50:22 78:11 79:7  
**happen** 39:7 97:2 98:13  
 119:15  
**happened** 36:24  
**happening** 35:21 84:9  
**happens** 37:25 58:12  
 84:9  
**happy** 18:9 65:1 82:9  
 84:3 112:23  
**hard** 33:23 34:15,18  
 55:10 76:25 80:4  
 101:10 121:17  
**hardship** 43:21  
**Hart** 1:14 3:9 8:8,21,24  
 9:3,14,18,20,23 10:3  
 10:5,9,13,15,19,22,24  
 11:24 12:4,7,12,14,24  
 13:4,7,9,12,15,18  
 14:2,6,9,11,14,17,21  
 14:23 15:2,6,12,14,16  
 15:18,20,25 16:2,8,12  
 16:14,17 17:11,13,17  
 18:1,7 24:10,22 25:13  
 25:20 26:1,11,14,17  
 26:19,23 27:4,7,10,14  
 31:19,21 32:11,16,19  
 32:22,25 33:3,10,21  
 34:2,18 51:25 53:19  
 53:22 54:16 55:13,16  
 55:21 56:2,5,7 62:10  
 62:19 67:21 68:8,25  
 69:3,9,12 70:4,12,16  
 70:20 72:24 73:25  
 88:4,11,19 89:19 90:5  
 90:14,17 91:5,8,14,18

91:21,23 96:12,13  
 102:4 103:22 104:1  
 104:14 106:13 117:17  
 118:21,24 119:8,17  
 120:3,6,18 121:11,14  
 126:1 130:4  
**hear** 49:6 71:7 86:13  
**heard** 5:17 42:11,13  
 85:20 104:1 127:20  
**hearing** 1:5,9,10,25 3:4  
 3:6,12,17 4:19,24  
 5:19 6:6 9:5 12:3  
 16:25 17:17,19 19:16  
 23:20 42:6 51:20  
 57:21,22,23 61:21  
 62:7 71:10 85:24 95:2  
 123:23  
**hearings** 58:6  
**heart** 107:19  
**height** 8:1 92:15  
**held** 1:25 4:24 23:11  
 67:11  
**Hello** 20:16  
**help** 39:12 66:8  
**helpful** 11:8 33:8,10  
 92:17 125:6 126:7,17  
**hey** 22:17 23:16 36:10  
 85:19 100:10  
**hi** 28:17 92:5  
**high** 89:1,8 90:4 91:10  
**higher** 23:12 108:12  
**highest** 108:12  
**highly** 95:18  
**Hill** 1:11,13 2:3 3:3,8  
 6:20 7:6 8:5 18:9,23  
 19:7,10 24:8 27:16  
 28:21 29:10,11,14,16  
 30:7,10,13,15,18,21  
 31:9,12,17,20,25 34:3  
 37:1,17 38:2,25 39:18  
 39:21 40:18 41:9,20  
 41:25 42:22 44:14,18  
 44:22 45:16 46:21  
 47:1,3,6 48:3,9,22,25  
 49:3,6,20 51:2 55:24  
 56:1,21 57:8,12,15,22  
 58:2,5,9,11 59:4,9,14  
 61:7,12,19 62:11,14  
 62:17,21,24 63:4,14  
 64:5,13,16 65:18  
 66:10,13,19 67:16,18  
 68:1 70:23 71:1,5,12  
 71:18,21,23 72:4,8,12  
 72:15 73:6,13,17,20  
 74:1,23 75:1,21,23  
 76:2,5,8 79:24 82:10  
 82:17,21 83:3,11,13  
 83:17,20,23 84:1,4,6

84:8,12,14,18 87:17  
 94:16,23,25 95:5 96:4  
 96:12 98:5 99:13,16  
 100:7,12,14 101:11  
 102:2 104:17,19,25  
 105:6,9,16,22 106:1,3  
 106:11,15,22,24  
 107:1,6,11 108:17,21  
 108:24 109:3,7,11,14  
 112:25 113:16 114:1  
 114:4,7,11,14,17,23  
 115:1,6,9,14,19,24  
 116:18,20,22,24  
 117:1,6,9,11,14  
 119:22 121:11,20  
 123:11,16,19,21  
 128:14 129:7,10,12  
 129:16,19,23,25  
 130:6,9  
**hired** 31:3 53:3 55:19  
**historic** 31:23 48:12,14  
 82:6 110:21,21 112:2  
 118:9  
**history** 20:13 46:9,25  
**hoe** 93:5  
**hold** 113:3  
**home** 3:19 23:8 45:22  
 45:23 47:20,20,21  
 54:19 101:2 111:10  
**homeowner** 59:25  
**homes** 45:16 110:24  
 111:14 112:11,13  
**honestly** 103:3  
**Hood** 1:16 3:11 10:6,7  
 10:10,14 27:15,17  
 28:3,6,10 39:19,22  
 40:13,16 48:1,7,19  
 56:16,18,22 62:20  
 66:7 73:25 84:17,19  
 85:8,17,22 86:2,21,24  
 87:4,10,14,16 98:22  
 99:4,8,12 105:24  
 106:2,5,8 109:5 113:2  
 113:15 122:1,7,13,18  
 122:21,22,24 127:15  
 129:9,11,13 130:4  
**Hood's** 126:25  
**Hoods** 87:18  
**hope** 80:7 111:20  
**hopefully** 57:2 120:15  
 122:11  
**hoping** 9:24  
**horizon** 90:3,4  
**Hospital** 79:21,22  
**host** 78:8,21  
**hosted** 77:7 78:23  
 85:11  
**hotel** 8:3

**hour** 92:15 93:14 117:8  
**hours** 91:21  
**house** 20:17 26:17,24  
 37:14 39:10 42:20,25  
 43:15,17 45:12,12,17  
 46:10 50:1 52:5 59:21  
 60:23 89:5 117:25  
 118:9  
**households** 43:14  
**houses** 27:1 69:19  
 76:16 77:3  
**hundred** 45:14,15  
**husband** 106:20

---

**I**


---

**idea** 12:17 31:7 35:21  
 79:8,17 92:5  
**ideas** 38:13  
**identified** 119:7  
**identifying** 11:18  
**illegal** 24:14 35:19 46:5  
**image** 26:11,14 33:21  
 81:15  
**Imagine** 78:14  
**imagined** 78:7  
**imaging** 89:12 91:16  
**immediate** 99:18  
 112:18  
**impact** 60:19 69:4  
 103:8,9 115:11  
**impacts** 69:9 121:24  
 125:12,22 128:10  
**impermissibly** 29:5  
**implement** 82:25 129:1  
**important** 24:4 44:2  
 57:4 65:14 98:18  
 110:8  
**improve** 43:12  
**improved** 43:5  
**improvements** 43:22  
**inbound** 82:24 128:25  
**include** 11:22 16:15  
 20:5 77:17 103:22,23  
 126:23  
**included** 16:18 23:23  
 60:7 79:1 80:16 81:10  
 92:3  
**includes** 110:22  
**including** 23:23 42:10  
 42:18 47:21 104:5  
 111:6 118:4 121:24  
 128:16  
**incorporated** 100:13  
**increase** 61:3 90:19  
 102:20 103:20 126:5  
**increasing** 60:24  
**increasingly** 79:25  
**independent** 79:9

**indicated** 109:18  
 112:15,15  
**indication** 67:7,10,13  
 92:23 118:20  
**individual** 71:7  
**indulgence** 71:13  
**indulging** 80:10  
**inevitable** 52:10  
**infeasible** 51:5  
**info** 92:3  
**information** 3:18 4:21  
 9:11 11:22 13:19 38:9  
 39:15,25 40:4,10,11  
 68:15 102:9 103:18  
 119:21 121:5  
**initiatives** 128:7  
**Inn** 69:15,24  
**innocent** 36:7,8,18  
**input** 101:24  
**inside** 116:19  
**inspected** 52:23  
**inspector** 20:20 29:25  
 53:9,14,15 54:19  
 55:14,15 118:18  
**instance** 113:13 118:12  
**institution** 129:15  
**instructions** 53:16  
**intend** 89:1  
**intent** 28:19  
**intention** 122:10,10  
**interact** 95:13  
**interaction** 48:11,17  
**interested** 19:16 49:12  
 49:14 50:24 72:3  
 73:10 97:20 98:16  
 107:18 109:22  
**interesting** 35:16 51:12  
**interior** 8:1  
**introduce** 8:12 13:9,12  
 18:24 41:21 59:5  
 63:17 64:9 77:3  
 108:25 109:8  
**introduction** 19:22  
**invite** 77:8  
**invited** 101:2  
**involved** 21:2 66:7  
 103:7 108:10 122:17  
**involvement** 97:21,22  
 98:1  
**iPhone** 78:18  
**Isabelle** 6:2  
**issue** 9:21 23:21 24:16  
 24:17,23 32:20 33:1  
 46:17 52:18 53:20,25  
 54:20,20,24,24 64:6  
 68:2 71:3 74:2 76:1  
 86:3,4 97:11 102:25  
 104:16 115:8,13

117:19 119:15 120:1  
 120:7,15 121:23  
**issued** 111:18  
**issues** 21:1 52:23 54:10  
 55:9 61:25 68:4 75:9  
 75:10 87:5 113:17  
 119:6 125:9  
**items** 75:6

---

**J**


---

**Jack** 110:18  
**Jeanne** 63:22 95:8  
**Jerrily** 1:10 3:4  
**jet** 14:25 15:3  
**jets** 32:4  
**job** 37:22 83:25 125:21  
**John** 1:14 3:10 34:25  
 35:8,11,15 47:5,7,10  
 47:13,15,24 62:20  
 73:25  
**John's** 37:2  
**join** 108:5  
**joining** 3:8 108:4  
**joy** 79:16  
**Juilliard** 107:24  
**July** 56:17  
**June** 6:4,7,10 9:13,25  
 10:5 14:4,8 15:8,25  
 16:7 17:19,22,24  
 56:18,19 57:24,25  
 58:10  
**justification** 41:8  
**justify** 121:24

---

**K**


---

**K** 63:12,20,23,24 76:16  
 81:10 88:23 92:9 93:7  
 93:9 110:7 111:2,2  
 125:7  
**Kahlow** 64:10,10,16,19  
 65:1,24 66:12,17 67:7  
 67:11,17,22,25 68:8  
 68:20 69:2,8,11,14  
 70:8,15,19,22 84:24  
 108:23 109:2,5,6,10  
 109:10,12,14,18  
 113:2,7,16,20 114:2,6  
 114:9,12,16,20,25  
 115:5,7,10,25 117:18  
 125:19 129:14  
**Katherine** 63:19  
**Kathleen** 110:17  
**keep** 60:18 75:8 87:2,10  
**kicking** 23:4  
**kids** 85:25 92:14 98:6,8  
 98:11 111:6 117:12  
**kind** 7:11 10:25 11:4,8  
 11:10,12 19:11 24:16

24:18,18 26:2,19  
 29:18,21 32:4 33:18  
 33:22 36:3 40:21 45:9  
 45:15 48:3,17 49:8,12  
 49:15 50:4,5,16,18,21  
 50:24 51:3,10,11,17  
 52:18 54:1,2,7,18,19  
 55:10 56:1,3 59:11  
 68:3 75:11 79:2 83:7  
 87:19 88:7,19 89:6,9  
 89:13 90:14,17 91:11  
 92:2,3,8,16,19,20  
 93:5,6,15 94:5,13,21  
 99:20 100:5,16,18,25  
 101:4 102:9,9,20,24  
 103:23 115:3 116:10  
 116:12,13,13,15,25  
 117:21,25 118:10,13  
 118:14 120:21 121:5  
 126:5,9,17,18 127:10  
**Kindergarten** 76:21  
**kindly** 72:14  
**kindness** 101:7  
**kinds** 45:20 112:23  
 113:13  
**Kirby** 64:2,2 75:17,20  
 76:8,11,12 82:16,20  
 83:2,6,12,13,15,19,22  
 83:25 84:1,3,5,7,11  
 84:13,19 85:2,9,18  
 86:12,22 87:3,9,13,15  
 88:10,18,21 89:21  
 90:7,16,22 91:7,13,16  
 91:20,22 92:1,12,18  
 93:21,23,25 94:16,18  
 94:24 99:17,17,17,20  
 100:9,13,15 116:15  
 116:19,21,23,25  
 117:2,4,7,10,13,23  
 121:5,8 123:14,18  
**Kline** 7:15  
**knew** 31:2  
**knocked** 77:2 85:11  
**know** 8:11 11:4 12:19  
 15:8,21 19:19 20:19  
 22:22 23:19 25:7,13  
 25:17,21 28:23 31:10  
 31:13 32:3,17 33:8,11  
 33:19 34:7,7,8 35:5  
 36:1 37:7,19 38:14  
 40:22 41:2 49:7,8,21  
 49:23 50:2,7,10 51:5  
 51:12,13 52:19 54:5  
 55:6,11 58:12 59:16  
 64:22 70:17 74:9,14  
 76:9 81:11 84:6,21  
 85:9,22,23,25 86:3,9  
 86:19 88:9,16 91:15

95:16 98:18 101:8  
102:7,17 105:19  
107:2,19,21 109:15  
109:15 112:1 113:10  
116:1,15,16 121:17  
122:15 125:8,8 126:4  
126:20 127:16  
**knowing** 31:1  
**knowledge** 54:14 99:2  
**known** 117:24  
**knows** 7:7 11:10  
**Kress** 1:10 3:4

---

**L**

---

**L** 1:13 93:9  
**Ladies** 7:4  
**lag** 14:25  
**lagged** 15:3  
**laid** 57:1  
**land** 65:10 66:3,4 67:1  
110:14  
**landscape** 30:25  
**large** 82:2 98:20  
**larger** 68:22 69:17,21  
70:1 91:11 96:10  
120:16  
**Laughter** 15:1 48:24  
49:2 55:17 86:1  
106:10 123:1  
**law** 8:15 19:1 28:4  
49:11,13 57:4 63:25  
**lay** 63:23 92:19 95:9  
**lead** 19:23 45:5 81:1  
90:10,24 91:1  
**leader** 107:22  
**leaders** 63:23 95:9  
**lean** 48:13  
**leaps** 91:11  
**learn** 79:6  
**learned** 21:18  
**learning** 79:5,9  
**lease** 122:16  
**leave** 100:4  
**LeBlanc** 110:16  
**left** 6:23 18:24 26:17  
39:10 63:17  
**legal** 5:4 22:18 23:16  
25:17,18 29:2,3 35:15  
36:11 45:8  
**legality** 45:6  
**legally** 46:10  
**Leslie** 3:9  
**Lester** 8:22  
**LESYLLEE** 1:13  
**let's** 14:11 15:21 37:10  
41:12 49:6 57:3,19,24  
58:12,16 64:16 66:19  
68:3 80:11 115:2

116:6 122:19  
**letter** 28:20 29:2 34:4  
42:5,7 65:19 71:5,7,8  
71:25 107:4 110:3,11  
110:20 124:11  
**letters** 68:21 71:16 77:4  
77:16,22 81:19 101:1  
101:7,9 110:10  
**letting** 70:17  
**level** 55:22 73:5,10 91:3  
92:6 104:6 123:9  
**licensing** 103:6  
**life** 79:21 85:25 109:23  
**lifetime** 107:15  
**light** 7:7 24:17 30:19  
60:20  
**lights** 82:2  
**likes** 109:5  
**limit** 35:17 88:6 93:13  
126:7 127:1,6,16,24  
128:2  
**limitations** 18:16  
**limited** 82:23 128:23  
**limiting** 126:13 127:14  
**limits** 91:24  
**line** 20:5 22:5,12 32:13  
32:14 33:12,18,23  
34:13,13 82:4 94:12  
100:4  
**lines** 81:16  
**listed** 4:14  
**listen** 107:25  
**listened** 108:9  
**listening** 72:16  
**lists** 80:5  
**literally** 111:3  
**little** 23:11 26:10 32:6  
32:16 34:9 40:21 46:2  
50:6 51:14 67:4 78:2  
78:16,21,23 81:1  
83:24 89:21 91:10  
92:23 93:11,17 94:3  
94:14,24 95:5 96:16  
100:5,18 102:14  
104:3 105:8 107:21  
117:21 119:20 121:12  
**live** 3:15 42:23 66:9  
68:23 77:12,17,23  
79:23 81:16 85:7,16  
96:23 99:21 100:16  
100:17 108:1 109:13  
109:19 112:6,16,16  
**lived** 42:20 47:7 77:20  
**lives** 59:19 69:18  
**living** 77:9 85:2  
**LLC** 6:5,11 8:18,23  
58:20  
**loaded** 26:20

**loading** 7:23,24 26:20  
**local** 45:7  
**located** 3:4,13 4:2,11  
**location** 60:18 89:5,7  
120:14  
**locations** 89:15 118:1  
**long** 12:17 23:1 30:11  
36:10 43:1 46:11  
79:21 84:25 94:11  
95:14 102:15,16  
117:3  
**longer** 3:22 94:1  
**look** 13:5 14:3 23:15  
24:18 29:4,8 32:9  
33:5 38:13 39:7 47:22  
49:13 52:16 54:14,18  
65:19 70:21 78:7  
80:12 83:12 85:19  
113:8,11,14 118:10  
118:14 122:19  
**looked** 22:3 30:5 36:13  
37:8,13,15,17,24,24  
38:14 47:19 110:2  
**looking** 10:15 24:20  
27:22 28:20 31:22  
32:12,13,22 34:8,20  
38:20 40:21 43:14  
45:5 54:23 65:19  
70:13 72:1 73:8 88:7  
88:8 89:19,23 90:6,18  
90:21 91:8,23 102:13  
102:18,19,24 125:2  
126:8,18  
**looks** 10:3,7 14:17  
21:12 23:17 32:3,4  
33:22 34:13 45:4  
49:25 54:8,8 55:3  
78:20 81:24 84:20,21  
**loop** 92:22  
**Lorna** 1:14 3:9  
**lost** 13:23  
**lot** 11:5 18:19,22 20:1,2  
22:4,19 31:4 42:19  
43:10,15,18 45:12,19  
56:12 57:6 59:3,11  
60:1,24,25 61:24  
80:21 82:19 85:23  
92:22 95:15 96:24  
97:3,8,16 100:17,18  
101:6 103:4,10  
110:24 125:9 128:22  
**Lots** 8:4 63:12  
**love** 98:12  
**lovely** 49:25  
**luck** 106:13  
**lunch** 116:21 117:7

---

**M**

---

**M** 1:13  
**ma'am** 68:25  
**Maddux** 64:14,14,17,19  
67:7,12 71:11,13,20  
71:22 72:3,6,10,14  
75:7 84:25 114:19,20  
125:19 129:14  
**Madeline** 76:13  
**Madison** 8:20  
**mailed** 67:20 112:21  
**main** 97:12  
**maintaining** 109:22  
**major** 54:15 97:9 98:1  
**making** 12:9 34:4 37:21  
37:21 40:24 43:21  
47:22 50:5 54:1 57:21  
**managed** 92:16  
**March** 85:3  
**Market** 78:14  
**Marootian** 110:16  
**marshal** 113:7 118:10  
**marshal's** 112:12 113:3  
118:5  
**Marty** 19:1  
**MARY** 1:20  
**matching** 23:17  
**materials** 4:17 81:25  
**matter** 5:22 6:13,14  
25:7 50:14 51:16 63:2  
67:1,9 107:17 111:19  
115:22 130:10  
**matters** 5:16,23 67:1  
**maturity** 91:11  
**max** 111:23  
**maximum** 120:12 129:2  
**Maxine** 1:22 38:5  
**mean** 10:13 11:24 14:3  
19:15 25:20 29:23  
30:4,7 32:19 37:3,5  
37:10,11,18 40:19  
45:3 48:6 49:8,9,18  
49:22 50:1,9,12,13,14  
50:24 51:10,11 53:22  
54:8 55:3,22 56:10  
58:11,16 65:18 68:4  
72:24 86:16,18 87:20  
91:24 95:1,2 102:10  
102:12,17 113:5  
115:7 117:18  
**Meaning** 31:12 40:22  
**means** 45:24  
**meant** 48:25  
**measure** 104:12  
**mechanic** 21:8  
**meet** 42:17 43:11 45:21  
53:9,10 56:12 67:5  
77:8 81:18 85:2,10,21  
113:24

**meeting** 5:3,8 10:2  
17:15 18:7 19:14  
42:14 45:1 59:14  
66:21 67:10 69:20  
77:6,13,13,15 85:13  
85:18 101:1 110:15  
113:19,23 114:4,8,22  
118:3 124:2,4  
**meetings** 9:7 77:7  
85:12  
**meets** 44:11 60:16 61:1  
72:18 128:9  
**melding** 95:24  
**member** 1:13,14,14,15  
16:11,13,15,19,22  
17:2,10 28:11,17 29:9  
33:5,20,25 34:25 35:8  
35:11,15 39:2 42:2,24  
47:5,7,10,13,15,24  
73:7,16 92:5,13,23  
93:20,22,24 94:15  
98:6,21 107:3 121:21  
125:1 126:2 129:6  
130:4  
**members** 1:12 3:10  
5:13,24 18:25 38:5  
64:7 65:14 67:8 69:23  
101:14 103:19 110:18  
114:18,21,23 115:1  
126:25  
**memorandum** 6:18  
**Memorial** 1:10 3:4  
**mention** 75:3,11 94:17  
**mentioned** 28:13 43:2  
45:11 61:23 75:7  
82:22 86:4 95:12  
110:10 111:22 122:3  
122:4  
**Meredith** 8:14  
**merits** 41:4 128:6  
**met** 38:23 73:5 124:14  
**method** 107:19  
**methodology** 83:4  
**Metro** 78:25  
**mic** 56:19  
**MIC9** 6:5  
**microphone** 3:19,22,22  
57:11,14 64:12 99:9  
105:5  
**middle** 10:6 89:1,8,22  
89:24 90:3 91:9 97:9  
**miles** 93:14  
**mind** 6:22 116:2  
**mine** 91:14  
**ministry** 97:23  
**minor** 54:11  
**minute** 63:1 94:21  
**minutes** 1:24 19:19

20:14 42:2 59:16  
72:21 76:9 107:2,13  
107:14 109:16  
**miscellaneous** 97:1  
**missed** 122:1  
**missing** 28:13  
**mission** 78:3 96:8  
98:19,20  
**mistakes** 54:22  
**mitigate** 124:19 125:11  
125:21  
**mitigated** 128:11  
**mitigating** 121:24  
**mitigation** 104:12 123:7  
**mode** 84:14  
**model** 88:20 90:25  
**modest** 43:22  
**modification** 44:4  
46:14 121:10  
**modifications** 16:20  
47:16,21  
**modified** 45:14  
**modify** 45:17 103:16  
**modifying** 46:18  
**Moldenhauer** 8:14,15  
9:1,5,16,19 11:16  
12:2,5,8,13,21,25  
13:5 14:19,20 16:21  
16:23 17:3 18:6  
**moment** 71:13  
**Monday** 80:22 110:4  
**montage** 78:21  
**Montessori** 76:20 81:24  
88:25 89:14 90:25  
98:15 107:18  
**Montessori's** 79:8  
98:19  
**month** 10:6 42:14  
**months** 76:25  
**moot** 74:8,9,24  
**morning** 3:3 5:24 6:24  
8:5,14,22 18:23 19:3  
38:4 41:19,20 80:24  
81:3 82:23,24 83:4  
93:6 94:21 96:21  
97:25 111:23 116:15  
125:9,13 128:23,25  
**mother** 107:16  
**motion** 8:9 9:4 17:14  
62:8,11,14,17,19,20  
67:14 73:14,17,21,23  
73:24,25 74:3,7,8,8  
74:11,14,16,23 110:3  
112:20 128:15 129:7  
129:16,19,22,25  
130:2,3,5  
**motivating** 79:17  
**move** 7:11 17:14 27:21

28:3 53:11 80:1  
120:14 127:21,22  
**moved** 42:22  
**movement** 51:21  
**moves** 28:7  
**moving** 40:19,21 67:4  
113:23 124:22  
**Moy** 1:18 5:24 6:21,24  
7:4,12,14 10:11 14:15  
14:16 16:2,5 17:12,16  
17:19 18:10,11 57:16  
57:19,23 58:8,10,17  
58:18 59:5 62:15,16  
62:21,23 63:4,6 73:21  
73:22 105:10,11,15  
129:20,21,24 130:7,8  
**Mukey** 58:20  
**multi-age** 90:8,22  
**multiple** 112:11  
**music** 98:18 107:17,21

---

## N

---

**N.W** 1:10  
**NAGELHOUT** 1:20  
74:16,22,25  
**Nahley** 8:18,18 9:22,22  
9:23,24 10:4,18,21,23  
15:8,10,13,15,17,19  
15:24 16:1 18:5  
**nail** 86:4  
**name** 3:8,19 8:12 19:1  
65:25 76:12 106:17  
122:22,23  
**narrative** 82:13 128:19  
**narrow** 27:1,2 36:23  
93:11  
**natural** 81:25  
**NCPC** 1:14  
**near** 3:13 4:2 100:18  
**nearby** 77:3,23 80:3  
85:7,20 89:5 110:12  
111:1 112:10 113:21  
123:15 126:10  
**necessarily** 33:3 45:8  
103:7 109:3  
**necessary** 5:7 55:8  
95:22 104:11 123:7  
**necessitate** 55:8  
**need** 11:3 12:18 13:25  
25:5,22 50:12 53:6,11  
54:25 55:1,6 57:17,17  
71:9 76:18 90:24  
96:17 97:8,10 103:15  
117:5,7 118:7 119:12  
127:5  
**needed** 29:3 40:10  
119:5 121:4,6  
**needs** 95:18 121:9

**negotiating** 95:21  
**neighbor** 44:1 71:2  
97:17  
**neighbor's** 26:10 77:7  
85:11  
**neighborhood** 44:9  
46:11 47:7 60:23  
65:25 66:2 80:9 81:4  
83:7 89:13 101:1  
112:4  
**neighborhoods** 80:3  
**neighbors** 21:3,17 24:6  
61:4 68:13,14,16,19  
68:20 70:11 77:1,5,8  
77:11,12,16,17,22  
81:16,17,21 85:7,13  
85:14,20 93:11 96:2  
98:3 99:18,21,25  
100:15 108:9  
**neither** 20:19  
**network** 88:22  
**never** 29:4 69:24 74:13  
97:7,8,10 112:22  
116:1  
**new** 7:8 8:3,20,20,23  
20:10 35:19,22,25  
44:1 52:25 76:14  
83:16 91:3,4 110:11  
110:16,20,23 112:10  
118:25 127:18,23  
128:3  
**Newton** 6:8  
**nice** 81:12 117:10 118:8  
**Nick** 41:22  
**night** 15:5 77:13 92:2  
**noise** 3:23 65:13,15  
68:10,16 69:9,19  
85:15,23 110:23  
115:4,8,11,13 116:10  
126:10  
**noises** 3:17  
**nonconforming** 43:13  
43:22 44:5 46:12  
58:24 60:11  
**normally** 19:12  
**Northwest** 3:5 8:4,16  
59:3 63:12,21,24 64:3  
109:13  
**note** 112:20  
**noted** 32:19  
**notice** 1:10 5:8,19  
111:2  
**noticed** 25:24 68:12  
95:11 122:22  
**November** 83:9  
**novices** 99:5  
**novo** 22:3  
**number** 2:5,7,12,16 4:9

6:2,5,8,11,14 7:10,15  
18:12,22 31:22 58:20  
62:8 63:7 77:21 81:3  
83:9 86:24 90:5 99:5  
115:11,12 120:8,12  
121:2,18 125:17  
126:3,4,11,14,21,21  
127:2,3,8 128:15,21  
128:23 129:2,3,3,4,4  
**numbers** 68:25 83:12  
88:8 103:3,23  
**numerous** 42:11

### O

**O** 23:12 118:17 119:4  
119:12  
**O'Brien** 106:19  
**o'clock** 94:5  
**o'clock-ish** 116:16  
**O'Connor** 8:15  
**OAG** 6:18 74:5  
**oath** 6:22 7:5 105:10,17  
105:18  
**oaths** 105:23  
**objection** 74:19  
**objectionable** 65:12  
110:23 126:9  
**objectionably** 115:11  
**objections** 115:2  
**observed** 42:25  
**obtain** 6:17  
**obvious** 49:9  
**obviously** 9:11 48:12  
75:4 76:15 78:5 80:17  
82:7,9 100:22 119:14  
**occasional** 92:1,2  
**occasionally** 22:23  
**occasions** 25:16 36:4  
42:11  
**occupancy** 18:19 20:1  
42:19 43:10,16,18  
45:13,19,21 56:13  
60:1,24,25 111:18  
113:12  
**occur** 111:9  
**October** 83:9  
**offer** 122:2  
**offering** 97:3  
**office** 1:17,19,21 2:9,14  
2:19 4:10,10,20 9:6  
9:10 11:9 13:16 15:6  
15:14,22 22:2 23:20  
31:18 38:3,3,5 39:1  
41:10 49:14 50:11,18  
50:21 51:19,21 56:14  
56:14 57:9,9,18 61:9  
62:3 89:9 93:8 98:2  
101:12,15 102:3

104:20,21,23 118:5  
120:6 124:3,16 125:5  
128:17  
**official** 5:5,6 28:2  
**officials** 118:4  
**offs** 36:18  
**Ogden** 8:19,22  
**oh** 13:14 15:6 26:13  
31:11,20 39:15 40:18  
41:25 54:25 55:1,18  
67:25 83:17 84:3  
115:2,16 116:1,5  
119:17 129:2,10  
**okay** 3:3 6:20 7:6 9:3,14  
9:24 10:9,13 11:24  
12:4,12,24 13:15 14:6  
14:9,21 16:2,10,12,22  
17:2,10,11,12,16 18:3  
19:7,10 21:10 24:8  
26:13 28:6,9,10,17,25  
31:9,9,17 33:20 34:24  
35:11 36:4 37:1,17  
38:2,3,25 39:18 40:13  
40:16 41:9,9,11,13  
44:18,22 45:4 46:21  
47:1,1,3,24 48:7,19  
49:3 53:19 55:24  
57:12,12,19 58:2,5,9  
58:18 59:9 61:7,12,19  
61:21,22 63:14,15  
64:5,16,17 66:10,19  
67:16 70:4,19,23,24  
71:18,19 72:14 73:6  
73:13,20 74:1,10,22  
74:23 75:1,10,21,23  
76:4,10 82:10,21 83:3  
83:11,13 84:10 85:8,9  
85:17,22 88:2 90:14  
91:7,13,23 93:24  
94:23,25 95:4 96:12  
98:5 99:4,8,12,17  
100:7,12,14 101:11  
101:11 102:2,15,15  
104:17,18,20,25  
105:6,9 106:8,15,22  
107:1,11 108:17,18  
108:21 109:11,14  
112:25 113:15 114:1  
114:11,17,23 115:2,6  
115:9,14,15,21 116:5  
116:7 117:1,6,9,11  
119:22 120:5 121:20  
121:20 122:13,18  
123:11,18,21,22,24  
127:15 128:14 129:16  
**old** 93:2  
**older** 90:20  
**oldest** 109:20

**olds** 81:11 84:13  
**onboard** 25:9 124:8  
**once** 36:24 39:24 91:9  
**one-story** 18:21  
**one-way** 70:2 93:20  
112:17  
**ones** 25:4 36:19 39:6  
66:4 86:7 100:16,23  
**onsite** 81:12 103:12  
**OP** 11:11 12:25 13:2,5  
17:22 57:25 61:5,10  
111:24  
**open** 4:25 11:13 76:15  
76:23 79:18 82:4 89:1  
89:22,24 90:2 92:24  
100:4 104:5,13  
108:13  
**opening** 2:3 83:15,18  
**operate** 97:12,22  
102:21 110:7 114:9  
**operation** 91:21 97:15  
**Operations** 7:15  
**opinions** 44:25 45:1  
67:12  
**opportunities** 98:7  
**opportunity** 49:12 73:2  
87:19  
**opposed** 26:20 62:14  
73:20 129:19  
**opposes** 112:8  
**opposing** 8:23  
**opposition** 2:21 3:24  
6:16 8:25 9:8 10:16  
17:23 24:5 28:21  
36:21 41:14 44:1 58:7  
61:15 67:15 68:6  
69:23 72:21 74:4 75:4  
108:22,24 114:15  
116:9,9  
**opposition's** 9:17  
**option** 93:4  
**options** 38:14 49:16  
80:4  
**order** 4:13 7:9 9:9 62:22  
119:1 130:6  
**organization** 67:15  
68:17 70:14 72:21,25  
109:21 113:17 114:18  
116:9  
**original** 4:8  
**originally** 40:7  
**other's** 95:16  
**outdoor** 69:17,24 77:17  
78:5 80:14 81:7,14,25  
82:1 99:22 110:24  
**outreach** 84:20 85:3  
99:18 124:7  
**outside** 33:18 74:6

91:24  
**outstanding** 110:15  
**overlap** 95:13 98:19  
**overly** 107:22  
**owned** 47:20  
**owner** 6:5 21:5 22:8  
23:9 35:19 43:5 47:15  
59:19  
**owners** 6:9 35:19 65:7  
81:17,19 99:23  
100:23 110:11 112:6

### P

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

3:1  
**p.m** 115:23,23 130:11  
**package** 121:25  
**packet** 79:2  
**page** 2:1 34:10,11 79:1  
81:23  
**paper** 78:17  
**parallel** 48:5 98:17  
**parameter** 74:7,12  
**parent** 84:11,14 93:2  
**parents** 76:13 83:6,10  
92:21 93:12,18 94:3  
98:15 107:20  
**parish** 6:15 63:23 76:16  
77:3 95:9 98:8 108:4  
108:5  
**parishioners** 96:2  
**parishioners'** 98:11  
**park** 6:8 64:4 78:22  
93:3 94:8  
**parking** 25:17 27:3  
80:20,21 82:18 92:22  
93:4 96:17,24 97:3,8  
97:16 100:18 110:23  
110:24 128:21  
**part** 19:16 20:22 32:20  
34:14 42:6 43:18  
52:18 59:22 73:3 82:6  
85:3 88:21 97:15  
98:18,20 100:6 103:7  
112:16,17 121:24  
126:18,19  
**Partially** 109:6  
**participate** 66:18,25  
**participating** 65:10  
**particular** 67:9 73:11  
88:8 113:17 114:21  
120:1 123:5 125:23  
**particularly** 98:14  
**parties** 2:20,21 9:7  
18:12 58:19 98:12  
108:21  
**party** 2:17 6:16 8:25 9:2  
10:16 64:6,7,21,25

65:3,4 66:21 67:6,15  
 68:6,6 72:19 73:5,10  
 73:14,23 74:4,12,18  
 107:7 109:25 110:1,6  
 110:20  
**passage** 22:11 36:12  
 36:18  
**passed** 95:20  
**passes** 62:15 73:21  
 129:20  
**passionate** 79:13  
**path** 120:13  
**Patrol** 97:22  
**Patterson** 110:17  
**Paul** 125:7  
**Paul's** 63:20,23 76:16  
 77:3,19,23 81:8  
**pay** 119:1  
**pedagogy** 81:24  
**pejorative** 71:17  
**penalize** 43:21  
**Penn** 92:9  
**Pennsylvania** 64:1  
**penthouse** 7:19,20  
 11:18 12:9,10 16:20  
 16:25  
**people** 30:25 46:7  
 48:16 54:22 69:4,23  
 70:6,9,10 75:5 77:8  
 77:17,23 87:11,23  
 92:13 93:16 95:1 96:9  
 96:22 97:2,24 100:22  
 101:3,5,6,9 108:5  
 112:15 125:17  
**percent** 35:2,6,14 37:3  
 37:12 43:15 45:12,19  
 45:21 50:10,13,14,15  
 50:18 51:4,7 60:25  
**perfect** 10:21  
**period** 23:1 24:1  
**permissible** 22:9  
**permit** 18:20 20:24,25  
 21:24 24:14 25:4,5,12  
 25:14 31:1,7 52:16,22  
 53:4,6,7,9 54:24  
 63:11 118:3  
**permits** 119:5  
**permitted** 22:9 24:13  
**permitting** 82:6 95:22  
**person** 55:20 69:21  
 71:9,24 108:23,24,24  
 111:12  
**personal** 110:10  
**personally** 67:12 71:17  
 77:2  
**persons** 3:23 4:20 5:12  
 116:8  
**perspective** 45:8,10,25

48:14  
**petition** 72:25  
**PhD** 107:23  
**phones** 5:14  
**photo** 78:21  
**photograph** 33:16,22  
**photographs** 34:19,19  
**phrased** 27:18  
**pick** 29:25,25 92:14  
 94:4  
**pick-** 111:14  
**pick-up** 78:4 80:13,15  
 80:20,23 82:12 93:19  
 101:20 128:18  
**pick-ups** 112:14  
**picked** 83:9  
**picking** 3:22 92:14 94:7  
**picture** 33:6 47:23  
 81:10,23  
**piece** 32:4 93:10,19  
**place** 64:3 89:13 98:4  
 119:13 120:16 125:11  
**places** 33:17 82:1  
**placing** 121:3  
**plan** 57:1 76:23 78:4,4  
 80:19 81:14,25 82:12  
 88:14 89:6 101:20  
 125:10 126:5 127:21  
 128:18  
**planning** 1:21 2:9,14,19  
 3:23 9:6,10 11:10  
 13:17 15:7,14,22 22:2  
 23:20 31:18 38:3,3,6  
 39:1 41:10,23 44:20  
 49:14 50:11,19,21  
 51:19,21 56:14,14  
 57:9,10,18 59:25 61:9  
 62:3 101:12,15 102:3  
 104:20,22,23 120:6  
 124:3,16 128:17  
**Planning's** 125:5  
**plans** 16:16,24 17:6,8,8  
 17:9 77:1 82:2 83:6  
 100:3 118:5 119:3  
**plat** 21:11 31:22 33:24  
 33:25 34:2,8,10,16  
**play** 77:18 80:14 81:7,9  
 81:14 82:1 97:16  
 99:22  
**players** 103:4  
**playground** 81:12 82:2  
 110:25 112:10 113:24  
 114:3,12 120:2  
 123:15  
**playgrounds** 111:7  
 113:21  
**please** 3:13,18,21 4:4,7  
 4:11 5:14 8:12 13:10

13:13 18:24 27:16  
 41:18,21 50:8 53:16  
 59:5 63:15,17 64:8,8  
 64:23 71:14 93:12  
 105:7 106:17 107:12  
 108:25 113:14  
**plumbing** 119:3  
**plus** 88:25 90:11 91:1  
**point** 19:23 25:6,11  
 35:7 47:10 52:4,6,13  
 53:18 56:8 66:8,13  
 72:23 85:6 89:4  
 102:22,23 127:1,3,12  
 127:23  
**pointing** 34:23 56:7  
**politician** 48:23  
**polling** 99:13  
**portion** 20:2 60:6,23  
**pose** 43:20  
**position** 35:25  
**positive** 96:1  
**possible** 13:2  
**possibly** 36:25 42:7  
**Post** 78:24  
**postpone** 9:4 17:14  
**postponed** 6:3,6,9  
**postponement** 5:18 9:9  
 16:7  
**postponing** 16:10  
**potential** 103:9 127:14  
**potentially** 9:13 125:12  
**powerful** 78:7  
**PowerPoint** 11:22  
 12:19 14:19 23:24  
 28:1  
**practical** 22:10 23:2  
 24:2  
**practice** 98:25 108:1  
 111:16  
**pre-** 23:19  
**pre-1958** 21:15  
**pre-hearing** 27:25  
 76:24 111:4,24  
**Pre-K** 76:20 80:3,4  
**precedent** 35:22,25  
**precedents** 41:5  
**preliminary** 5:16,23  
 78:4 118:3  
**premature** 113:8  
 117:21  
**premises** 8:3 18:21  
 59:2 63:12 98:3  
**preparation** 97:23  
**prepared** 5:20 112:22  
**present** 1:12,15,17,19  
 1:21 5:12 6:25 66:8  
 66:13 72:22 73:3  
 75:15,22 76:3,6

105:12 130:5  
**presentation** 71:10  
 75:16  
**presented** 77:5 81:14  
 118:5  
**presenting** 3:18 19:8  
**president** 64:15 77:19  
 110:16  
**presiding** 1:11  
**pressure** 96:24  
**pretty** 18:3 28:22 89:2  
 125:8  
**previous** 21:6,20 22:8  
 43:5 44:6 47:15  
**prices** 80:6  
**primarily** 87:22 107:6  
 109:22  
**primary** 88:24 96:19  
 97:21  
**prime** 110:11  
**principle** 59:2 60:23  
**printer** 4:10  
**prior** 12:3 21:16 30:21  
 43:4 47:19 60:9  
**privacy** 60:20  
**private** 63:9,11 76:19  
 80:6 119:9 125:3,4  
**privilege** 6:17  
**probably** 11:21 12:21  
 12:22 25:20 55:14  
 80:2 86:13 89:23  
**problem** 14:5 44:23  
 47:25 53:24 56:13  
 79:14 83:2 97:7  
 120:11  
**problems** 52:25 54:6  
**procedural** 6:14 67:5  
**procedure** 94:6  
**procedures** 4:13,23 5:3  
 93:13  
**proceed** 5:21 128:11  
**proceeding** 3:14 5:15  
 7:1 105:12  
**process** 20:23 21:3  
 24:25 31:6 37:25  
 52:12 54:4 82:6 85:4  
 89:17 92:11 95:14,21  
 118:16,18,25 119:6  
 119:13,19  
**processes** 42:12  
**proffered** 122:9  
**profile** 78:25  
**profits** 78:13  
**program** 76:21,21  
 98:14,15 107:22  
**prohibition** 60:10  
**project** 8:23 32:1,2  
 44:10 67:2,3 77:4

103:7  
**projects** 78:16  
**promise** 87:8  
**prongs** 19:17  
**proof** 22:22  
**proper** 5:18  
**properties** 8:19 60:20  
**property** 20:16,21 22:8  
 23:1,13,15,17 29:4,18  
 29:20 32:12,13 33:7  
 33:12,18,23 34:8  
 35:18 42:23,24 43:4,7  
 46:13 59:19 68:19  
 75:18 81:15 82:4 96:6  
 100:4,6 108:11  
 110:12 118:8 120:17  
 126:10  
**proposal** 30:25 75:19  
**proposed** 49:10 60:13  
 60:18 61:2 81:2 112:8  
**proposing** 19:14 59:12  
 59:21,22 60:13 88:24  
**proposition** 24:5  
**provide** 9:10 13:21 25:5  
 38:9 39:25 42:2 50:8  
 51:3 78:13 101:24  
**provided** 20:7 41:7 53:5  
 62:2 68:13,13,15  
 82:13,18 103:18  
 114:7 119:21 124:4  
 124:10,16 128:22  
**providing** 5:7 20:24  
 56:11,12 104:8,13  
 107:8 121:5 128:18  
**provision** 20:6,10  
**provisions** 20:4,5  
**proximity** 68:14  
**public** 1:5,9,25 3:5 4:24  
 5:7,11 25:2,3 32:1,2,9  
 32:23 33:4,16,17 34:5  
 34:11,21 65:21 80:5  
 81:4 107:3 111:14  
 112:10,13 114:3  
**pull** 26:9 37:13 53:8  
 65:2  
**pulling** 45:25 46:19  
**purchased** 20:16 30:7  
 42:21 43:7 46:13  
**purchaser** 22:11,16  
 23:3,7,15 27:18 36:7  
 36:8,18  
**purchases** 22:16 23:9  
**purchasing** 20:21 43:4  
 47:20  
**purpose** 71:4  
**purposes** 5:4 21:8  
 123:7  
**pursuant** 1:10 4:25 5:4

5:6 7:21 18:18  
**push** 64:13 100:8  
 127:15,24  
**pushed** 9:19  
**put** 21:22 35:17,17  
 47:17 51:14,23 52:25  
 59:16 65:20 93:13  
 107:2 118:9 124:20  
**putting** 30:25 47:22

## Q

**qualified** 107:22  
**quality** 93:16 109:23  
**quarter** 34:5  
**question** 16:13 17:5  
 28:17,18,20 31:21  
 34:25 35:16,24 37:2  
 39:2,4 40:23 47:5  
 48:1 52:14 68:9 86:12  
 86:19 88:15 89:18  
 94:14 98:23,24 112:2  
 113:17 117:17,18  
 120:4  
**questioning** 56:6  
**questions** 24:7,9 28:11  
 39:1 47:4 56:4 59:11  
 61:8 68:6 70:24 75:18  
 82:9 84:16 88:3 96:6  
 102:3 104:14,21,22  
 108:18 112:23 113:1  
 115:15,17 116:3  
 117:16,16 123:17,22  
**queuing** 81:1 94:12  
**quick** 31:21 62:25 78:1  
 93:3 101:22 115:20  
 115:21  
**quickly** 107:15  
**quiet** 31:10 50:2 97:18  
**quit** 83:25  
**quite** 18:9 40:8 107:19  
 111:21 113:9

## R

**R** 1:10 3:4  
**R-1-A** 59:2 60:2  
**R-17** 63:11  
**Racine** 110:19  
**rail** 76:16  
**raining** 86:17  
**raise** 5:22 54:19,25  
**raised** 3:24 23:20 25:22  
 97:17 119:19  
**raising** 54:17  
**ran** 78:25  
**ranging** 112:2  
**rare** 36:4  
**rated** 118:13  
**rationale** 49:10 80:25

**re-** 122:3  
**reach** 77:1  
**reached** 85:18 100:7  
**read** 10:11 16:3 34:16  
 62:9 71:8,15 128:16  
**reading** 19:15 61:24  
**ready** 12:21 18:10  
 61:22 94:4 123:24  
**real** 78:12 93:3  
**realistic** 14:24  
**realize** 25:21,21 74:17  
 93:12  
**realizing** 24:12,13  
**really** 7:7 23:14 29:23  
 30:2 33:23 34:21 51:9  
 55:11 69:3 77:21  
 81:12 85:6 86:4 88:13  
 89:2,12 91:9 93:14  
 95:6 96:5 101:24  
 103:8 118:8 121:15  
 121:16,17 127:5  
**rear** 7:18 18:17 20:1,4,4  
 20:7 58:23 59:1,23  
 60:2,3,3,6,7,8,10  
**reared** 52:11  
**reason** 42:6 45:9 54:16  
 55:2 84:2 102:18  
**reasonable** 44:8,12  
 46:1 81:6 121:22  
**reasoning** 35:17,18  
**recap** 16:5  
**receive** 96:1  
**received** 112:21  
**recess** 116:11,13  
**recommend** 9:12 38:7  
 39:25 40:3  
**recommendation** 38:18  
 40:6,11 62:4 125:15  
**recommended** 69:20  
**recommending** 61:6  
 101:17  
**recommends** 61:10  
**reconfigure** 26:3  
**reconverting** 23:3  
**record** 4:16,21 5:11  
 7:16 10:11 18:22  
 19:15 26:2 28:2,8,14  
 28:24 47:19 55:16  
 59:6,10 61:11,24  
 62:16 63:3 67:19,23  
 71:15,16 73:22 74:11  
 74:24 75:7 77:14,15  
 80:17 101:6,17  
 106:17 115:3,23  
 127:19 128:4 129:24  
 130:11  
**recorded** 3:14  
**records** 36:14,14

**rector** 77:18  
**red** 29:17,20,24  
**reduce** 12:8 16:25 35:6  
 39:6 43:24 45:23  
**reduced** 12:6 38:15  
 39:8  
**reducing** 35:1 39:12  
 97:5  
**reference** 27:23  
**reflect** 16:19  
**refrain** 3:16  
**refuse** 114:2  
**refused** 85:21  
**regard** 15:9 24:11 81:22  
 120:23  
**regarding** 11:2 38:7,21  
 43:9 68:9 96:6 101:23  
 120:7 121:5 125:4  
**regardless** 52:4 53:24  
 68:3 113:5  
**regular** 1:9 30:5  
**regularly** 43:11  
**regulation** 72:9  
**regulations** 49:24 60:5  
 72:7 73:5 124:13  
 126:18  
**rehearsal** 97:15  
**relate** 5:16 22:12  
**related** 5:25 20:4  
 101:19 120:20  
**relates** 20:1  
**relatively** 44:4 59:10  
 61:25 80:16 92:25  
 94:9  
**relief** 11:2,3,5,14,15,18  
 11:19,20,23 12:8,9,11  
 17:4,9 19:24 20:1,11  
 22:19,24 35:3 42:10  
 43:9,16 44:3 59:15  
 60:9 62:18 130:1  
**reliefs** 42:18  
**relying** 23:18 54:12  
**remarks** 2:3,8,9,10,13  
 2:14,18,19 78:2  
**remember** 4:11 64:19  
**removing** 24:3 43:18  
**renovate** 59:21  
**renovation** 59:22 119:5  
**renters** 65:7 81:17  
 99:23 100:17,21  
**renting** 23:11  
**repainting** 47:22  
**repairs** 97:9  
**rephrase** 84:22  
**report** 9:12 15:7 41:6  
 80:20 101:17 102:8  
 111:22 124:4 125:6  
**reporter** 3:15 4:4

**represent** 67:8 68:22  
**representative** 46:3  
 110:13  
**representing** 3:10 42:9  
 66:15,15 109:12  
**reproduce** 4:10  
**request** 5:17 8:9 9:9,15  
 9:17 46:1 67:15 73:14  
 73:23 74:13,18 103:2  
 124:5  
**requested** 4:17 6:16  
 9:12 11:2,6,19,23  
 44:4 59:15 62:18  
 103:14 128:12 130:1  
**requesting** 12:11 19:24  
 60:9 64:7 68:6 102:14  
 104:10  
**requestor** 6:18  
**requests** 5:12 43:17  
 67:6 101:18 103:17  
**require** 43:18 46:18  
 52:20,21 103:20  
 112:9  
**required** 9:11 20:7 31:1  
 60:2,6  
**requirement** 8:2 18:17  
 36:6 60:3 124:3  
**requirements** 7:18,19  
 7:21,24,25,25 18:19  
 22:19 44:11 58:23,24  
 60:10,17 61:1 63:9,10  
 67:6 103:6,6  
**requires** 4:24  
**requisite** 4:9  
**rescheduled** 6:7,9 16:7  
**research** 23:22  
**resident** 59:19  
**residential** 21:9  
**residents** 66:9,14 77:20  
 110:22 111:10  
**resolved** 9:2  
**respect** 16:20 33:12  
 43:13 45:6 73:11 79:8  
 125:18  
**respectful** 85:24  
**respective** 60:18  
**respond** 13:1 66:24  
 74:12 110:5 112:22  
 112:24 123:14  
**response** 15:11,12,21  
 17:24 28:23 70:16  
 92:20 122:20  
**responses** 120:1  
**responsible** 36:20  
**rest** 16:9 114:20  
**Restoration** 28:21  
 29:11 31:25 34:3 48:3  
 48:9

**restricted** 87:7  
**restrictions** 86:8  
**resumed** 63:3 115:23  
**retired** 110:22 111:12  
**review** 13:1,21 15:10  
 51:22 82:6 103:8,21  
 111:19 119:3,6,10  
**reviewed** 38:8 118:5  
**reviewing** 119:2  
**revised** 11:25 12:6  
 16:15,24 17:8  
**RF-1** 18:21 22:15  
**rid** 39:10  
**right** 4:5 7:14 11:17  
 18:10,24 26:22 29:11  
 30:8,10,13 31:17  
 32:21,24 33:2 34:12  
 34:20 35:24 37:10  
 38:2,24,25 41:10,12  
 44:14,25 47:3 48:19  
 49:3,6,10 50:14 51:10  
 51:15 52:9 55:4 57:12  
 57:13,23 58:5,12 59:4  
 61:8,16,19 62:7,25  
 63:4,17 64:18 66:19  
 70:24 73:6 74:10 75:1  
 75:1 78:3,18 82:11,11  
 84:8,8,12,15,15 85:10  
 85:16 86:21 87:14  
 88:5 93:23 94:25  
 95:20 99:12 100:19  
 101:11 106:1,5,15  
 107:8,10,11,23 115:2  
 115:14,16,20,24  
 116:18,20,22,24  
 117:14 121:8 122:6  
 122:22,23,24 123:21  
 129:24  
**right-hand** 26:21  
**ring** 94:8  
**rises** 73:9  
**River** 69:15,23  
**road** 31:14 103:11  
**Robert** 110:18  
**roll** 5:9  
**roof** 21:21,22 43:2  
 47:13,17,22 53:1 55:8  
**room** 1:10,10 3:4,17  
 85:3 89:21  
**rooms** 77:9  
**rose** 73:4  
**round** 8:7  
**rounds** 101:4  
**rule** 22:20  
**rules** 5:2 43:13 46:8  
 72:6 115:10  
**run** 54:6  
**rush** 92:15

---

**S**


---

**safe** 14:12  
**safely** 60:16 61:1  
**safety** 55:1  
**sale** 47:19  
**Sally** 99:24 106:19  
**Sara** 64:14  
**sat** 86:24  
**satisfied** 44:10  
**Saturday** 78:23 92:2  
 97:24  
**Saul** 63:25  
**saw** 76:24 77:14 80:19  
 99:25 101:6 105:17  
 121:6  
**saying** 13:19 26:7  
 29:17 33:15 37:3 40:2  
 46:3 48:15 54:22 55:7  
 70:1 83:17 87:7 88:5  
 119:10,11  
**says** 21:12 111:8,23,24  
**scenarios** 39:23  
**school** 63:10,11 75:19  
 75:25 76:14,19 77:12  
 79:4 80:7 83:14,20  
 88:12,25 89:1,8,8,13  
 89:23,24 90:3,4,12  
 91:9,10 92:2,24 95:12  
 97:5 98:14 102:15,16  
 110:7,20 112:4,5  
 115:7 120:13,16  
 122:11 123:6 125:3,4  
 125:11,14,20 126:6,6  
 127:18 128:3  
**schools** 80:5,6 86:14  
 88:22 102:20 111:25  
 112:4 118:1 120:25  
 120:25  
**schools'** 122:9  
**Schwalb** 8:22,22  
**screen** 26:15  
**seated** 105:15  
**secluded** 81:9  
**second** 28:20 34:10,11  
 62:9,10 65:3 73:15,16  
 79:8 109:1 129:5,6  
**seconded** 62:12,19  
 73:17,24 129:8,17,21  
**Seconding** 130:3  
**Secretary** 1:18 3:25 4:8  
 5:23 6:23 62:9 64:10  
 128:16  
**Section** 4:25 5:5,6 7:17  
 7:19,20,21,24,25 8:1  
 8:2 18:15,16,18,20  
 58:22,23,24 63:9,10  
 64:22,23 66:22 72:18  
 79:1

**see** 7:11 15:23 27:22  
 28:7,14 29:24 33:8,25  
 36:14,17 41:12 47:23  
 49:15 51:20 52:17  
 53:4,13 54:10 56:23  
 57:3 58:12,13 60:13  
 63:16 64:16 66:20  
 67:17 68:4 72:22  
 77:15 80:17 81:10  
 84:2,8 95:17 104:19  
 110:9 115:2 116:6  
 122:2 124:13  
**seeing** 34:18 37:25  
 49:8,15 50:17,19  
 72:16 91:14  
**seeking** 5:4  
**seemingly** 36:7  
**seen** 43:14 46:6 71:15  
 110:4  
**sees** 43:11  
**self-** 11:25  
**self-service** 12:13  
**sell** 52:5 78:12,16  
**sense** 45:5 46:22 81:21  
 92:16 105:21 108:10  
**separate** 36:15 53:3  
 77:7 89:11,11  
**separation** 57:20  
**September** 22:7,14  
 76:23 83:15,18  
**serve** 76:22 99:13  
**served** 74:14,17,21  
**service** 74:13,19,20  
 105:20  
**services** 96:20 97:4,6  
**session** 92:3  
**set** 4:12 120:11 121:23  
 124:19 125:24 127:13  
**setback** 7:20 18:17  
 20:6  
**setting** 35:22  
**seven** 9:17 74:13,19  
 96:21  
**sew** 78:16  
**shape** 54:9 71:25  
**share** 77:1 78:2  
**shell** 43:2 47:11  
**shirking** 46:19  
**shop** 21:8  
**short** 19:22 114:10  
**shortly** 9:2  
**show** 22:22 36:9 39:15  
 39:24 50:4,11 51:17  
**showed** 77:12 85:13  
**showing** 34:1 36:15  
**shown** 26:15  
**shows** 26:11 34:10,12  
 103:18



**side** 14:12 26:20,20,21  
 34:6 37:6,14 39:10  
**side-by-side** 60:12  
**sidewalk** 32:5 33:17  
 100:5  
**signed** 69:6  
**significant** 113:12  
**significantly** 65:15  
**similar** 23:5  
**Similarly** 43:23  
**simple** 44:4  
**simply** 9:9 12:6,9 17:4  
**single** 42:24 111:12  
**single-family** 23:8,14  
 23:15  
**single-story** 59:23  
**sir** 28:5 62:23 105:14  
 130:8  
**sit** 116:2 119:1  
**site** 69:10 77:5 82:23  
 89:2 91:17 103:10  
 109:19 120:2 128:24  
**sitting** 4:4  
**situation** 22:7 25:25  
 36:4 38:10,11 103:5  
 107:7  
**six** 81:17 99:22  
**size** 22:19 35:1,8 39:7,8  
 39:12 46:20  
**slightly** 99:1  
**slow** 93:14,18  
**small** 76:19 77:18 80:7  
 89:2,13 96:24 99:5  
 101:8 118:7 120:13  
**smaller** 123:6  
**smart** 48:16  
**SMD** 44:16 69:21  
**Smith** 63:22,22 95:8,8  
**snail** 112:21  
**Snow's** 92:21 93:7,11  
 93:20 100:16,17  
**Society** 28:21 29:11  
 31:25 34:3 48:9  
**sold** 47:15  
**solemnly** 6:24 105:11  
**solution** 46:23  
**solutions** 44:12  
**solve** 79:14  
**somebody** 23:9 36:8  
 54:23  
**someway** 127:14  
**somewhat** 37:21 40:4  
 53:22 100:4  
**son** 107:16  
**soon** 42:7  
**soothed** 84:4  
**sorry** 9:3 13:14 25:1,3  
 31:11,20 49:20 64:14

67:22 71:22,23  
 106:16 108:25 109:7  
 109:8 110:2 116:2  
 120:18 121:11 129:2  
 129:10,21  
**sort** 21:16,20 38:19  
 39:13 41:4 45:5 46:5  
 46:11,15 48:13 82:3  
 89:11 90:7 91:12  
 96:18 118:2  
**sorts** 45:11  
**sought** 11:6 42:10,18  
 43:9  
**sound** 3:23 52:17  
**sounds** 56:14 87:20  
 121:22  
**South** 1:10  
**Southeast** 18:22  
**space** 25:2,17,19 26:9  
 32:2,2,9,23 33:4,16  
 33:17 34:5,11,21  
 39:11 54:13 89:3,10  
 89:22 96:9 100:5,10  
 122:12  
**spaces** 82:18 89:16  
 97:8 119:5 128:21  
**speak** 3:18 4:3 41:13,15  
 61:14,14 64:20 71:3,9  
 75:7 99:17 104:15  
 105:2,3 109:6  
**speakers** 110:15  
**speaking** 3:21 49:22  
**speaks** 77:22  
**special** 4:13 7:17 18:14  
 20:3,11 35:2 37:11  
 38:21,22 50:10,12  
 51:6 58:21 60:16 63:8  
 76:18 80:12 97:3  
 103:17 112:8 121:10  
 124:2,14 125:2  
**specialized** 91:10  
**specific** 11:19 75:18  
**specifically** 4:17 11:18  
 27:24 66:2 71:7  
 104:10  
**specify** 4:18  
**speed** 93:13  
**spoke** 40:9 85:14  
 125:17  
**spoken** 38:12,17 97:4  
 117:21  
**spot** 78:19 93:12  
**spots** 80:21 93:4  
**sprinkler** 118:12  
**square** 8:4 18:22 20:8  
 35:10 59:3 63:12  
**St** 6:15 63:19,23 76:16  
 77:3,18,23 81:8 125:7

**staff** 1:17,21 4:18 6:19  
 62:16 73:22 82:19  
 88:6,10,11 90:5,12  
 92:23 102:8,11,25  
 103:19 119:1 120:8  
 126:15,22 127:4  
 128:22 129:4,24  
**stage** 80:20  
**stagger** 94:17,24  
**staggered** 81:1 94:13  
**staggering** 80:23  
**stand** 101:16  
**standard** 19:14 23:12  
 45:2 115:10 124:5  
**standards** 42:17,17  
 124:13  
**standing** 6:22 61:11  
**star** 92:23  
**start** 19:11,12 42:3  
 59:17 61:23 63:5  
 102:22 107:1 109:16  
 120:13 123:25,25,25  
**started** 30:19 31:14  
 88:22 106:12 115:25  
**starting** 50:6 79:12  
 89:25 109:8  
**state** 43:6 46:11 68:9  
**stated** 29:7 54:17 69:6  
 102:7,19 110:20  
 111:8  
**statement** 23:20 27:22  
 27:24 28:1 34:4 76:24  
 111:4,24  
**statements** 24:11 43:6  
**states** 20:6 31:25 111:5  
**stating** 3:19  
**station** 99:14  
**status** 2:17 64:6,7,21  
 64:25 66:21 67:6,15  
 68:7 72:19 73:10,14  
 73:24 74:4,12,18  
 107:7 110:6  
**stay** 31:10 74:24 80:1  
**stayed** 50:2  
**staying** 72:6,8 127:21  
**step** 51:13  
**Stephen** 8:18  
**Steve** 1:23 13:16  
 106:20  
**Stevens** 112:5  
**stood** 85:14  
**stop** 24:25  
**story** 8:3 43:15 59:24  
 60:14  
**straightforward** 62:1  
 80:16 93:1 94:10  
**strategy** 83:1 129:1  
**street** 1:10 3:5 8:4,16

18:22 20:18 27:2 34:6  
 34:12,12,20 59:3  
 60:22 63:12,20,24,24  
 69:14 76:16 81:10  
 82:18 92:10 93:8,9,9  
 106:21 109:13 110:7  
 125:7 128:21  
**streets** 70:2  
**strict** 108:6  
**strictly** 73:8 75:8 125:2  
**stringent** 43:9  
**structural** 119:2  
**structurally** 52:17  
**structure** 19:25 21:7,16  
 21:21 22:1 43:12,19  
 43:22 44:5 46:24  
 52:24 53:6 55:3 58:24  
 60:11  
**structures** 35:19 82:2  
**struggle** 44:24 49:9  
 80:3  
**stuck** 49:23  
**student's** 112:14  
**students** 76:20 80:7  
 88:6,14 89:5 90:20  
 102:8,11,25 103:9,13  
 103:16,19 111:23  
 115:12,12 120:8,12  
 121:13 124:20 126:3  
 126:4,11,14,21  
 127:11 128:12 129:2  
 129:3  
**stuff** 31:4 78:16 92:2  
 117:25  
**stupid** 29:24  
**style** 89:10  
**subcommittee** 44:19  
**subject** 82:14 89:17  
 128:20  
**submission** 27:20 74:3  
**submit** 4:7,20 11:25  
 15:7,9,10 30:22 74:3  
 83:8  
**submittal** 68:9  
**submitted** 28:24 31:24  
 40:6 71:16 77:16  
**submitting** 12:18,20  
**subsequent** 22:10 23:3  
 113:22  
**subsequently** 111:15  
**substantially** 17:1  
**subtitle** 7:17,18,19,20  
 7:21,22,24,25 8:1,2  
 18:15,16,18,18,20  
 58:22,22,23,24 63:9  
 63:10 64:23 72:2,18  
**suburbs** 80:2  
**success** 126:6

**successful** 88:13  
 120:15 122:11  
**successfully** 110:13  
**suffice** 58:1  
**sufficient** 13:21  
**suggest** 23:8 39:3  
**suggested** 43:25 83:8  
**suggesting** 13:25 21:15  
 121:12  
**Sullivan** 18:25 19:1,2,4  
 19:8,9,10,21 21:11  
 24:11,21 25:2,16,24  
 27:17,25 28:5,9,12,16  
 28:25 32:7,15,17,21  
 32:24 33:2 34:16,24  
 35:4,10,12,24 37:2  
 41:11 49:7,7 50:5  
 51:1 55:24 56:1,10  
 58:4 59:7  
**summarize** 11:23  
**Summary** 62:21 130:6  
**Sunday** 78:25 97:25  
 98:14  
**supplement** 9:11 28:1  
**supplemental** 13:22,22  
 13:24,25 15:7 17:22  
 57:18,25  
**support** 2:20 24:5,6  
 28:13 41:16 42:10,15  
 44:6 58:7 61:4,5,14  
 62:20 67:2,3 69:6  
 73:24 77:16,23 81:19  
 87:1 96:1 101:8  
 102:10,11 105:2,3  
 107:8 108:15 109:25  
 124:9,11,22 125:2  
 128:13 130:3  
**supported** 87:11  
**supporting** 4:7  
**supportive** 125:23  
**supports** 42:16 43:17  
 44:3  
**supposed** 37:5 51:23  
 53:2 74:18 116:8  
**sure** 11:12 12:7,9,15  
 13:4 14:23 15:2,15  
 16:3,5,8,14 17:7  
 24:14 27:16 34:21  
 39:13 41:22 42:4 47:6  
 48:21 53:15 56:21  
 59:13 71:1 72:12 76:2  
 84:15,18 86:3 87:2,4  
 87:10 88:1,18,21  
 91:20 92:12,18 93:12  
 95:6,8 96:13 99:20  
 102:1 103:1 104:11  
 107:11 113:7 118:18  
 118:24 121:17 123:6

126:24 127:5  
**surprised** 51:14  
**surrounding** 60:23 65:7  
**suspect** 29:19  
**swear** 6:24 105:11  
**switch** 7:10  
**sworn** 3:25 105:4,7  
**sympathetic** 60:22  
**synergy** 108:2  
**system** 118:12  
**systems** 88:12

---

**T**


---

**table** 4:2,3,5 18:12  
 28:18 58:19 63:15  
**tables** 78:13  
**take** 10:11 29:2 40:5  
 41:4 55:8,8 58:15,17  
 62:25 91:1 98:4  
 105:10,17,18,23  
 113:14 115:19,21  
**taken** 54:14 74:10  
**takes** 120:15  
**talents** 79:14  
**talk** 75:13 92:19 96:15  
 126:9  
**talked** 21:3 87:5 93:5  
 100:23 108:9 114:12  
 126:13  
**talking** 56:2 80:7 84:2  
 120:19  
**tax** 36:14,14  
**TDM** 82:25 129:1  
**teach** 83:23  
**teacher** 90:10,25 91:1,4  
**teachers** 90:24  
**teaching** 107:24,25  
**tear** 37:6,6 46:24  
**tearing** 45:24  
**technically** 76:1  
**tell** 27:19 33:23 34:15  
 66:7 86:25 106:17  
**ten** 42:22 43:1 47:8  
 62:25 77:16 88:19  
 89:20 96:22 97:4  
 102:11 127:13 128:1  
**tenant** 23:4  
**tents** 78:13  
**tenure** 46:11  
**term** 122:2,3,4,9,15,16  
 123:2 127:16  
**terms** 19:17 28:23  
 40:25 49:11 51:21  
 66:21 68:4 72:1 88:17  
 96:16 102:25 116:7  
 124:2,4,12,22 125:5  
 125:19,21  
**test** 38:23 43:11 44:25

**testified** 109:23  
**testify** 3:24 6:21 42:9  
 75:5  
**testifying** 105:20  
 109:19  
**testimony** 4:6 6:25 42:3  
 45:11 72:16 73:3,11  
 74:4 75:12 82:22  
 84:20 95:3 99:25  
 105:12 106:6 107:8  
 109:2 114:7,9,13  
 125:6,16  
**Texas** 88:22  
**Thabolt** 6:3  
**thank** 6:20 8:8,9,24  
 10:23 14:13 15:4 16:5  
 17:10 18:4,5,6,11,25  
 19:21 21:11 27:14  
 28:10 29:9 40:17 42:4  
 44:12 47:3,24 48:19  
 48:20,21 49:5 55:25  
 58:13,18 59:4,18 61:7  
 61:12,18 62:21,23,24  
 62:24 63:6 66:23  
 72:14 76:7,11,11 84:3  
 84:5 87:13,15,16  
 91:18 94:15 96:2,4,12  
 98:5,21 99:12 101:13  
 103:22 105:14,15,16  
 107:13 108:16,18,20  
 109:18 112:19,24,25  
 113:15 115:16 119:21  
 120:18 123:20 126:1  
 128:14 129:15 130:6  
 130:8,9,9  
**thanks** 20:15 42:1  
 44:14 49:3 80:10 82:8  
 104:19 109:14  
**they'd** 123:12 127:8  
**thing** 24:18 41:4 51:10  
 56:10 74:1 75:3 81:12  
 86:3 89:11 91:12,19  
 95:24 96:18 101:8,22  
 108:7 123:15 129:13  
**things** 11:17 19:11 21:8  
 30:19 36:12,17 38:13  
 38:19 39:14,15 40:4,5  
 49:16 50:11,17 51:3  
 54:25 63:16 66:24  
 72:5 78:1 79:15 82:10  
 84:13 86:25 98:3,13  
 116:8 118:7,10,13  
 124:12 126:10,11  
 128:10  
**think** 10:1,5,15,16,19  
 14:11 17:4,13 19:15  
 21:12 23:5 24:4 25:16  
 27:21 28:12 29:7,7

31:4 34:8,17 36:2,11  
 36:23 37:22 38:18,22  
 39:5,14,16 40:8,19  
 44:24 45:9 46:2,16,16  
 49:21,25 50:1,4,9  
 51:1 52:9,10 54:14  
 55:22 56:16,23 57:1,4  
 57:5,6 67:18 68:20  
 70:8,15 71:6,8 72:17  
 72:20 73:4,9 74:12,16  
 81:6 83:8 85:7,15,20  
 87:21 92:5 93:14  
 98:12 101:5 103:4,10  
 104:5 105:7,21 108:7  
 108:12 117:12 119:25  
 121:14,18,22 122:8,9  
 122:18 123:3,16  
 124:1,3,6,18,21  
 125:10,20 126:4  
 127:1,5 128:5,9,10,12  
**thinking** 30:2 88:16  
 105:24 127:10  
**third** 43:15 79:9  
**Thomas** 6:15  
**thorough** 65:2  
**thought** 8:24 25:6 38:8  
 40:19 53:10 58:14  
 59:10 61:25 62:2 65:1  
 71:7 99:16 105:17  
 126:6,12,16 128:2  
**thoughts** 50:24 51:24  
 66:20 72:23 125:5  
**three** 19:17 23:1 34:5  
 36:15,17 68:21,21  
 69:18 70:11 81:17,17  
 81:19 89:23 90:3,18  
 99:3,10,11,23,23  
 107:2,12,14 110:23  
 111:9 116:25 120:24  
**three-unit** 22:14,16  
 23:10  
**thrilled** 84:7  
**throw** 36:20 76:9  
**tied** 121:23  
**tighten** 56:23  
**time** 5:15,21 10:24 13:1  
 13:3,21 14:3,14 21:13  
 22:11 23:2,6 24:1  
 25:8 36:11,12,19 43:1  
 46:9 47:21 48:4,6  
 57:3 72:20 74:6,12,14  
 74:17 84:25 85:5 86:9  
 89:20 90:2,3,4 91:24  
 94:4,5,19,20 96:25  
 97:1,18 98:7 113:11  
 114:18 116:10,21  
 127:1,6,24 128:2  
**times** 69:16 97:4

110:23 111:9 116:25  
**timing** 13:6  
**title** 30:1  
**today** 3:9 4:7 5:17,20  
 7:7 21:2 42:6,9 47:23  
 52:5 66:18 112:8  
 125:17,24  
**today's** 3:12 5:25 16:25  
**told** 53:5,8  
**top** 17:20 59:23 60:15  
**total** 110:1  
**totally** 49:21 81:5  
**touch** 39:10  
**toured** 77:5  
**town** 14:7  
**track** 13:23 127:19  
 128:4  
**traditional** 60:22 69:22  
 120:13  
**traffic** 65:13,16 68:10  
 68:17 69:19 70:1 81:2  
 85:15 86:3 92:6,10  
 112:17,17 115:4,8,11  
 115:13 124:19 125:9  
 126:10  
**transcript** 1:24  
**transportation** 81:5  
**transported** 111:7  
**travel** 92:21  
**treasurer** 63:19 64:11  
**tribute** 95:20  
**trigger** 45:18  
**triggering** 43:16  
**trip** 86:18 87:20,21  
 101:23  
**trips** 82:23,24 83:4  
 102:1 111:23 128:24  
 128:25  
**trucks** 70:3  
**trump** 119:14  
**truth** 7:1,1,2 30:24  
 105:13,13,13  
**try** 30:15,23 31:14 45:5  
 79:18 81:20 86:15  
**trying** 14:2 19:13 31:6  
 32:11 33:11,13 34:3  
 37:23 45:22 53:2 54:2  
 64:20 65:18,21 66:10  
 69:12 70:4,7 87:20  
 88:5,9 91:6 95:6  
 104:2 116:14 119:18  
 120:21 121:1 127:21  
**Tuesday** 17:23 99:6  
**turn** 3:18,21 5:14 19:18  
 19:22 20:14 26:8  
 31:18 61:9,16 101:12  
**turned** 26:7  
**two** 4:1 14:4 15:21 20:3

23:4 31:6 36:25 42:21  
 63:22 65:13 77:7 78:1  
 79:15 89:23 90:3,7,11  
 90:17,24 95:1 96:25  
 97:21 101:1 108:3  
 120:24  
**two-hour** 118:12  
**two-story** 59:1  
**two-way** 93:22 112:17  
**two-ways** 93:21  
**type** 28:23  
**types** 121:2  
**typical** 22:13  
**typically** 119:15 120:22

---

**U**


---

**U** 63:9 125:4  
**Uber** 86:17  
**unanimous** 124:8  
**unanimously** 77:14  
**unbeknownst** 21:5  
**unclear** 60:8 102:14  
**understand** 11:12,14  
 11:14 22:2 31:5 33:14  
 33:15 34:3,22 37:23  
 46:9 51:9 56:2 65:22  
 66:11,17 69:2,11,13  
 70:12 72:12,13,25  
 91:5,6 95:7 102:12  
 104:2 116:14 117:20  
 119:18,20 120:22  
 121:2,4,7 126:24  
**understanding** 45:20  
 128:8  
**understands** 12:10  
 51:7  
**understood** 119:17  
**underutilized** 128:8  
**undo** 60:19  
**undue** 43:21  
**unfortunately** 37:20  
 122:15  
**unique** 22:9,25 23:6,25  
 29:8 79:14  
**uniquely** 65:15,20  
 68:18 70:9  
**unit** 6:9 59:2  
**units** 23:1,4,11 36:15  
 68:24 111:12  
**unreasonable** 43:23  
**unstructured** 82:1  
**untenable** 43:19  
**untrue** 111:11  
**unusable** 37:4 46:20  
**unusual** 23:14 25:25  
 38:10 111:21 113:9  
 113:14  
**updated** 11:21 118:9

**ups** 111:15  
**upset** 69:19  
**use** 7:19 27:10 60:20  
 63:8 65:11 66:3,4  
 67:1 81:25 96:6,17,20  
 97:5 100:10,11  
 108:12,12 110:14  
 111:14 112:9,13  
 125:3,4 128:22  
**useable** 35:7  
**uses** 108:3  
**usually** 58:11 111:17

---

**V**


---

**valuable** 80:8  
**valve** 127:17  
**Van** 18:13 19:5,5 20:16  
 24:12,24 25:3,15 26:5  
 26:13,16,18,22,25  
 27:6,9,12 29:12,13,13  
 29:14,15,16,23 30:9  
 30:12,14,17,20,24  
 31:11,16 37:8,16 38:1  
 43:4,7,21 47:20 49:18  
 49:18,19,19,20,20  
 52:3 53:3,20 54:8  
 55:12,14,18,22,25  
**variance** 18:19 19:15  
 20:2,13 22:19,24 38:7  
 38:23 40:1 42:19  
 43:10,11,16 44:25  
 45:1,18,19 49:10  
 56:11,24  
**variances** 4:14 7:23  
**variety** 77:21  
**various** 11:18 42:12  
 98:3 119:2  
**vehicle** 82:24 111:23  
 128:24,25  
**versus** 65:21 86:6  
**viable** 46:23  
**Vice** 3:9 8:6,8,21,24 9:3  
 9:14,18,20,23 10:3,5  
 10:9,13,15,19,22,24  
 11:24 12:4,7,12,14,24  
 13:4,7,9,12,15,18  
 14:2,6,9,11,14,17,21  
 14:23 15:2,6,12,14,16  
 15:18,20,25 16:2,8,12  
 16:14,17 17:11,13,17  
 18:1,7 24:10,22 25:13  
 25:20 26:1,11,14,17  
 26:19,23 27:4,7,10,14  
 31:19,21 32:11,16,19  
 32:22,25 33:3,5,10,21  
 34:2,18 51:25 53:19  
 53:22 54:16 55:13,16  
 55:21 62:10,19 67:21

68:8,25 69:3,9,12  
 70:4,12,16,20 72:24  
 73:8,25 88:4,11,19  
 89:19 90:5,14,17 91:5  
 91:8,14,18,21,23  
 96:13 102:4 103:22  
 104:1,14 106:13  
 117:17 118:21,24  
 119:8,17 120:3,6,18  
 121:11,14 126:1  
 127:25 130:4  
**view** 33:6 43:19 47:2  
 48:8,9,9 66:8,14  
**views** 67:9 112:19  
 124:12  
**Village** 98:2  
**violating** 46:7  
**violation** 21:25  
**virtually** 112:1  
**visible** 60:21  
**vision** 79:10 100:2  
**visions** 95:17,24  
**vote** 5:9 62:16 67:11  
 73:22 129:24  
**voted** 42:14  
**voting** 128:13 130:5

---

**W**


---

**wait** 53:14 80:5 111:20  
 112:11  
**waiting** 92:24 94:13  
**waive** 6:17  
**walk** 30:4 42:25 86:8  
 92:10 93:3 98:3  
 102:24  
**walked** 30:2 54:13  
**walker** 86:16  
**walkers** 112:3  
**walking** 81:4 83:7 86:6  
 86:8,9 87:23 96:23  
 123:15  
**wall** 3:13 26:10,12  
 45:25 118:13  
**walls** 43:2 112:4,5  
**want** 10:10 11:1 12:25  
 15:2 16:8 17:7 19:12  
 25:17,18 46:7 58:8  
 65:17 66:24 69:21  
 71:23,25 72:4 76:2  
 78:1 79:25 80:1,17  
 84:6 86:13 87:1,4  
 88:14 89:22 95:10  
 98:22 114:3 122:19  
 123:14,25  
**wanted** 12:15 26:2  
 28:22 31:10 36:13  
 52:5 69:16 71:3 75:3  
 75:11 78:2 80:12

81:21 95:14 101:22  
102:7 108:2,8 112:20  
119:20  
**wanting** 15:9  
**wants** 10:14 46:13 71:6  
121:9  
**warden** 63:22  
**wardens** 63:23  
**warm** 77:11  
**warrants** 128:6  
**Washington** 1:10 64:1  
76:14 78:24 79:19,21  
79:22  
**Washingtonians** 79:21  
**wasn't** 24:12 29:21  
39:13 40:14 50:20  
67:23 101:2 119:11  
**way** 18:9 22:21 27:20  
34:13 40:22 45:13  
46:14,19 48:25 52:20  
53:1 54:25 63:18 76:6  
83:8 88:1 93:8 107:15  
107:22 114:10 118:19  
126:12  
**WCA** 109:24 110:1,20  
112:8  
**we'll** 7:11 11:21 12:25  
15:10 51:20 53:11  
58:13,15,17 72:22  
76:22 89:4,4 104:19  
109:1 115:20  
**we're** 3:4 7:9 10:15  
11:17 12:11 17:3,13  
19:24 21:2,14 22:1  
23:18 24:6,20 25:10  
37:20 44:24 49:23,24  
54:5 60:13 62:25  
63:15 64:6,20 65:12  
65:24 66:4 72:1,3  
75:12 76:15,17 80:7  
88:24 89:12,25 91:3  
91:16 94:12 101:17  
109:22 115:19,24  
117:23 121:17 124:20  
**we've** 9:1 11:4 13:1  
17:13 23:19,21 43:14  
46:6 58:6 71:15,15  
75:2,6 76:25 77:10  
78:7 95:15 97:4,8,9  
104:1 110:10,14  
120:22,24,25  
**webcast** 3:15  
**Wednesday** 1:7 10:1,2  
16:7  
**week** 10:19 12:22 57:19  
57:25 86:18 97:12  
98:25  
**weekend** 96:20

**weeks** 14:4 15:21  
**weigh** 127:18  
**weighed** 70:13,14,17  
**weight** 125:16  
**welcome** 8:21 42:1 68:8  
72:15 76:5 77:11  
105:3  
**went** 20:21,22,25 25:11  
30:23 52:4,11 63:2  
65:19 99:20 114:4  
115:22 127:10 130:10  
**weren't** 36:19 104:10  
114:13 123:6  
**West** 64:11,15 65:25  
66:1,2 67:4,13 68:5  
73:1,15 84:22,24 98:2  
109:12,20,21 112:7  
**White** 1:13 3:9 16:11,13  
16:15,19,22 17:2,10  
28:11,17 29:9 33:5,20  
33:25 39:2 62:20 73:7  
73:16,24 92:5,13  
93:20,22,24 94:15  
98:5,6,21 110:18  
121:21 125:1 126:2,2  
129:6,23 130:3  
**who've** 77:20  
**width** 43:24  
**wife** 76:12 79:18,20  
**willing** 13:2 56:15  
**Wilson** 19:3,3 59:7,7,9  
59:13,18 61:16,18  
**window** 80:24 81:1  
94:1,11,18,21  
**wish** 4:6 50:1  
**wishing** 6:21 61:13  
105:2  
**withdrawal** 5:18  
**withdrawn** 6:12,18  
**witness** 4:1,1,3 108:18  
113:1 115:15  
**wonder** 92:10  
**wonderful** 81:8 95:24  
108:7  
**Woodland** 64:3  
**word** 79:20  
**work** 14:3 38:16 39:16  
39:24,24 48:3,5,20  
51:19 57:16,16 58:2  
89:10 94:2 95:15  
101:25 108:14 113:10  
129:14  
**worked** 42:12 80:19  
81:20  
**working** 9:1,6 11:11,17  
16:6 25:8 49:14 50:18  
56:13 57:9,10 76:15  
76:25 116:17 117:23

**works** 13:8  
**world** 79:14,16  
**worth** 37:18  
**wouldn't** 6:22 35:6  
52:20,20 69:5 91:17  
**write** 101:7  
**writing** 101:9  
**written** 4:6 71:8 109:4,5  
**wrong** 74:6  
**wrote** 40:11 77:22  
81:19 113:22

---

**X**


---

**X** 7:22 18:18 55:2 63:10

---

**Y**


---

**Y** 64:23 66:22 72:18  
**Yale** 107:23,23,24  
**yard** 7:18 20:1,4,4,7  
26:10 58:23 60:2,3,4  
60:7,10,18  
**yards** 60:6 100:19  
**year** 36:25 78:22 81:11  
83:10 84:13 88:19  
89:20,25 90:3,3,19  
93:2 97:4  
**year-old** 84:10  
**years** 21:20 22:21 24:2  
35:20 36:9,9,15,16  
42:21,22 43:1 45:14  
45:15 47:8 89:23  
90:18 102:19 110:14  
121:6 127:7,13 128:1  
**yesterday** 67:23,24  
**York** 8:20,20,23  
**young** 79:25 96:8 111:6

---

**Z**


---

**ZC** 10:7,10,14 27:15,17  
28:3,6,10 39:19,22  
40:13,16 48:1,7,19  
56:18,22 84:17,19  
85:8,17,22 86:2,21,24  
87:4,10,14,16 98:22  
99:4,8,12 105:24  
106:2,5,8 113:2,15  
122:1,7,13,18,22,24  
127:15 129:9,11,13  
**zone** 8:3 18:21 22:15  
59:2 60:2 63:12  
**zoning** 1:3,12,15,17 3:6  
3:10 4:11,20 15:4  
32:8 41:24 43:13 44:3  
44:15,19,20 45:7 46:8  
46:15,18 48:12,15,17  
60:5 65:4 75:8,9,13  
76:1,17,24 77:25 78:5  
80:11 95:11 110:2

119:3,14  
**ZR-2016** 20:10

---

**0**


---

**0** 73:23

---

**1**


---

**10** 7:22 18:19 76:23  
93:14 116:16  
**10-year-old** 78:18  
**10:55** 63:3  
**100** 20:8 102:17  
**101** 2:19  
**104** 63:10  
**1062** 18:22  
**107** 2:20  
**109** 2:21  
**10th** 14:8  
**11** 8:3 31:22 34:9,10  
**11:09** 63:3  
**11th** 14:10,12 15:5  
**12** 4:8 20:5 88:23  
**12:11** 115:23  
**12:13** 115:23  
**12:31** 130:11  
**125** 78:23  
**12th** 8:16 14:25 15:7  
17:22  
**13** 6:7  
**130** 2:23  
**13th** 9:13,25 10:10  
56:17 57:25  
**14** 78:10  
**14th** 112:20  
**15** 21:19 24:2 59:16  
93:14 117:5  
**1500.3(c)** 7:19  
**1502.1(c)(4)** 7:21  
**1504** 7:20  
**1507** 59:3  
**15th** 18:21 34:6,12  
**16** 1:7,25  
**160** 35:12  
**168** 35:13  
**16th** 3:5  
**172** 63:13  
**18** 2:8  
**18.8** 60:4  
**18th** 12:23 13:11,18,20  
14:4,18 17:22  
**1900** 8:16  
**19133** 6:14  
**1919** 64:1  
**1921** 21:12  
**19475** 109:25  
**1958** 21:16 60:8,9  
**19689** 6:5  
**19712** 6:8

|                         |                        |                        |
|-------------------------|------------------------|------------------------|
| 19713 6:2               | 93:2 94:5 128:23       | 94:11                  |
| 19722 2:5 7:15          | 3,300 78:24            | 60 35:6 50:14 76:20    |
| 19743 6:11              | 3.25 34:5              | 80:7 88:6 89:3,4,17    |
| 19747 2:7 18:12         | 3:00 80:24 94:1,11     | 102:7,15 103:9,13,15   |
| 19748 2:16 7:10 63:7    | 30 111:25 117:7        | 103:19 111:23 120:12   |
| 128:16                  | 30-year-old 107:16     | 121:13,17 122:7        |
| 19749 2:12 58:17,20     | 304.1 18:20            | 124:20 126:14,15,21    |
| 62:8                    | 306.1 58:23            | 127:3,17 128:1,1,12    |
| 19th 109:24 110:6       | 35 111:25              | 129:2,3                |
| 1st 14:4 15:25 17:24    | 3645 59:3              | 61 2:14                |
| 90:23                   | 38 2:9                 | 612.4 8:2              |
|                         | 3rd 89:25              | 64 2:17                |
| <b>2</b>                |                        | 66 2:18                |
| 2 128:21                | <b>4</b>               | 6B 41:24 42:9,11,14,16 |
| 2- 5:6                  | 4 59:3 84:13 129:2,3   | 43:10,11 44:2,3,7      |
| 2-575(b)(4) 5:5         | 4-0-1 129:25           | 6B06 41:23             |
| 20 19:19 22:21 36:15,15 | 4-year-old 76:13       | 6th 57:24 90:2         |
| 65:4 76:9 110:2         | 4:00 94:7              |                        |
| 127:17                  | 4:30 94:7              | <b>7</b>               |
| 200 97:24               | 404.1 66:22 72:18      | 7 2:5                  |
| 20001 1:10              | 404.1(i) 64:23         | 70 35:2,13 37:3,12     |
| 2016 20:17 30:10        | 405(b) 4:25            | 43:15 45:12,19,21      |
| 2017 109:24             | 406 4:25               | 50:10,13,15,18 51:4,7  |
| 2018 1:7,25 6:4,7,10    | 41 2:10                | 71 21:12               |
| 42:14                   | 42 82:14 128:19        |                        |
| 202.2 58:25             | 42D 82:13 128:19       | <b>8</b>               |
| 203.1 125:4             | 441 1:10 3:5           | 8-0 42:14              |
| 203.1(i) 63:9           | 445 18:21              | 8:00 80:24 91:22 94:19 |
| 205.1 7:18              | 45 94:21               | 94:20                  |
| 205.5 7:18              | 450K 8:18,23           | 8:45 80:24 94:20       |
| 207.1 8:1               | 49th 59:3 60:22        | 80 102:10              |
| 209.3 7:25              | 4th 1:10 3:5 90:1      | 820 109:13             |
| 20th 6:4,10 10:3,4,8,16 |                        | 827 8:4                |
| 10:17,22 16:7,10        | <b>5</b>               | 828 8:4                |
| 17:14,15,16,18,19       | 5 129:4                | 829 8:4                |
| 56:19 57:13,15,15,17    | 5- 84:9                | 833 8:4                |
| 58:10,13                | 5-0- 73:22             | 846 63:13 82:19 128:22 |
| 21 21:12                | 5-0-0 62:16            |                        |
| 21.5 60:25              | 5:00 94:7              | <b>9</b>               |
| 21st 10:1 12:23         | 50 128:1               | 9 33:5,22 34:19        |
| 220 1:10                | 5004.1 18:18           | 9:30 1:11 77:13        |
| 24 80:21 81:2 82:23,24  | 5004.2(b) 18:17        | 9:42 3:2               |
| 83:4 88:2 111:23        | 51 68:24 111:12        | 900 22:19              |
| 128:23,24               | 516 8:4                | 909.2 7:24             |
| 2430 63:12,20,24 110:7  | 52 18:22               | 925 8:3                |
| 111:2                   | 5201 18:15 58:22       | 949 106:21             |
| 24th 92:9               | 5201.4 61:2            |                        |
| 25 36:9,9 60:3          | 5201.6 61:2            |                        |
| 25th 14:8 106:21        | 545 8:19               |                        |
| 26 111:2,5              | 575(b)(13) 5:7         |                        |
| 2737 64:3               | 58 67:21               |                        |
| 27th 85:3               | 59 2:13                |                        |
| 28 63:12                | 5th 8:3 90:1,23 109:13 |                        |
| 288 35:10               |                        |                        |
| 2A's 125:15             | <b>6</b>               |                        |
|                         | 6 76:22,22 78:10 81:11 |                        |
| <b>3</b>                | 90:9                   |                        |
| 3 2:3 76:22 81:11 90:9  | 6:00 80:25 91:22 94:1  |                        |

C E R T I F I C A T E

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In the matter of: Public Hearing

Before: Board of Zoning Adjustment

Date: 05-16-2018

Place: Washington, DC

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