GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

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TUESDAY

JANUARY 20, 2004

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The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, DC 20001, pursuant to notice at 9:50 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING MEMBERS PRESENT:

GEOFFREY H. GRIFFIS,	Chairperson
RUTHANNE MILLER	Vice-Chairperson
DAVID ZAIDAIN	Board Member, NCPC

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY,	Deputy Secretary
BEVERLEY BAILEY,	Zoning Specialist

D.C. OFFICE OF CORPORATION COUNSEL:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS,	Office of Planning
STEPHEN MORDFIN,	Office of Planning

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

9:52 a.m.

CHAIR GRIFFIS: Call to order the public hearing of the Board of Zoning Adjustment of the District of Columbia. It is still the 20th of January, 2004. And I wish you all a very good morning.

My name Jeff Griffis, I am Chairperson. Joining me today is Ms. Miller also the Vice Chair. Representing the National Capital Planning Commission is Mr. Zaidain. Mr. Etherly, our esteemed member, has had a scheduled leave today and will not be joining us. And there is no Zoning Commissioner joining us.

Copies of today's agenda are available to you. They are located on the wall where you entered into the hearing room. Please pick one up and see where you are as we progress through our morning's schedule.

Please be advised, as I have said previously, but be advised that all proceedings and the public hearings before the Board of Zoning Adjustments are being recorded. There are two fascinating ways we record that. The most important, of course, is the court reporter who is creating a

transcript. The second we are being broadcast live on the Office of Zoning's website. So, I would ask several things of you importantly to set the record.

First of all, in coming forward to speak to the Board, you will need to make yourself comfortable and speak into a microphone. The microphones should be on. When finished speaking, we ask that you turn that microphone off so that we don't have any sort of feedback and disturbances.

Also, I'll just reiterate, I'd asked everyone to turn off cellphones and beepers so that we don't have a disruption of anyone giving testimony before us.

The order for special exceptions and variances will be as follows:

First, we'll have statements of the applicant. Second, we'll have government reports such as the Office of Planning or Department of Transportation, anything attended to an application. Third, we will have the report of the ANC, the Advisory Neighborhood Commission. Fourth we will hear from persons or parties in support of the application. Fifth, we would hear from persons or parties in opposition to an application. And sixth, finally we will have closing remarks by the

applicant.

All persons planning to testify either as parties or as individuals will need to fill out two witness cards. Witness cards are located at the table where you entered into and -- and they're not available right in front of us. So, the table where you entered into the hearing room there are witness cards. You need to fill out two of those prior to coming forward. Those two witness cards go to the reporter who is sitting on the floor to my right. So, if you would take time just to do that now, we will not have to delay our proceedings.

AT my normal openings I have a very important message to talk about, and that is timing; timing and what is allowed. I am going to skip that this morning so that we can get onto our morning agenda. But just reiterate the fact that people giving testimony as persons are limited to 3 minutes. But I will give instructions as people come forward.

The record that will be established here before us today will be closed at the conclusion of this public hearing any material that the Board specifically requests. And we will be very specific as to what is to be submitted and when it is to be submitted into the Office of Zoning. After that

material is received, of course, it goes without saying that the record would then be finally closed and no other information will be accepted into the record.

The Sunshine Act requires that we hold our public hearings in the open and before the public. This Board may, however, consistent with the Sunshine Act and its rules of procedure enter into executive session. Executive sessions are used for the purposes of reviewing the record or deliberating on a case.

The decision of the Board in contested cases, of which all cases before us are this morning, must be based exclusively on the record that's set out before us. So, we ask that, first of all, you make sure that everything you want to be said is said and it is said into a microphone so it becomes part of the record.

Secondly, we ask that people present today not engage Board Members in conversation so as to possibly give the appearance of us receiving information that is not in the record and therefore, not deliberating solely on the record.

The Board will now consider any preliminary matters attendant to the agenda this

morning. Preliminary matters are issues which relate to whether a case will or should be heard today, such as requests for postponement, continuances or withdrawals. If you are not prepared to go forward with a case this morning or you believe that the Board should not hear an application this morning, now is the time to bring that to our attention.

I will note that if someone has a preliminary matter, if they would take a seat at the table in front of us and be prepared. I would also first go to the staff and, again, say a very good morning to Mr. Moy and Ms. Bailey representing the Office of Zoning and ask if there are any preliminary matters for the Board at this time?

MS. BAILEY: Mr. Chairman and to the Members of the Boards, and to everyone, good morning. There is a preliminary matter. It has to do with the second case this morning, Mr. Chairman, Application No. 17103, Stanton Glenn Ltd. Partnership. There is a request for that case to be postponed to later in the year.

MR. GELL: Mr. Gell, you're representing the party in that case, sir?

MR. GELL: Yes, I am. My name is Stephen Gell. And I'm terribly sorry to have to ask the

Board for the postponement. The signs, although they were delivered and received by the client, apparently were not put up in time. There were some other miscommunications, but we're asking the Board just to give us a postponement to the next available date that you have.

I know in my short note I had asked for June, but that's really not necessary. We can meet the Board's schedule.

CHAIRMAN GRIFFIS: June of what year? Okay. What do we have available?

MS. BAILEY: Mr. Chairman, I was advised by staff before entering the hearing that March 30th would be appropriate, if that's available for --

CHAIRMAN GRIFFIS: 30th of March?

MR. GELL: That will be fine.

CHAIRMAN GRIFFIS: Is it a morning session?

MS. BAILEY: It's open right now, so there's an option.

MR. GELL: We could do the morning session.

MS. BAILEY: Morning session.

MR. GELL: Is that the first case, second case?

MS. BAILEY: 9:30.

MR. GELL: 9:30. That'll be fine. Thank you.

CHAIRMAN GRIFFIS: Okay. Is there anyone here participating in 17103 Stanton Glenn, any other persons? Very well.

The Board see any difficulty in doing March 30th. Let's reschedule this for that morning hearing.

Anything else?

MR. GELL: That's all for me right now, thank you.

CHAIRMAN GRIFFIS: Good. Thank you.

Okay. Any other preliminary matters for us?

MS. BAILEY: Not at this time, Mr. Chairman.

CHAIRMAN GRIFFIS: Very well. Then I'd ask that everyone that is going to give testimony today in any of the applications if they could please stand and give their attention to Ms. Bailey. She's going to swear you in.

(Witnesses sworn).

CHAIRMAN GRIFFIS: Very well. If we're ready to proceed, let's call the first case of the

morning. And that is Application 17102 of Robert and Jennifer Beylickjian, pursuant to 11 DCMR ? 3102.1 for a special exception to allow the construction of a two-story rear addition to a single-family detached dwelling under section 223, not meeting the side (section 405) requirements. The property is located in the R-1-B District at premises 3415 McKinley Street, Northwest, also known as Square 1997, Lot 76 (822).

Mr. Chairman, there is a request for party status in this case, sir.

CHAIR GRIFFIS: That it true. Mary Conroy present? If you wouldn't mind just coming up.

Board Members have you reviewed the request for party status?

VICE CHAIR MILLER: Yes.

CHAIRMAN GRIFFIS: For you have any questions of Ms. Conroy?

VICE CHAIR MILLER: No, I don't have any questions.

CHAIRMAN GRIFFIS: Okay. I think it's pretty clear -- well, there it is.

Mr. Gell?

MR. GELL: Ms. Conroy lives next door, and we don't see how we could object to her being a

party.

CHAIRMAN GRIFFIS: Okay. Any objection to granting party status at this time to Ms. Conroy?

VICE CHAIR MILLER: No.

CHAIRMAN GRIFFIS: Very well. Then we will grant party status and record that.

Okay. That being said, let's move on.

Mr. Gell?

MR. GELL: Thank you, Mr. Griffis and Members of the Board.

I'm here representing Bob and Jennifer Beylickjian, who live at 3415 McKinley Street, Northwest. They're with me seated here at the table.

Also with us is the architect on the case. His name is James Gerrety. I've not proposed him as a witness and he's really here only to respond if there are questions that he might be needed for. So we didn't plan on putting him as a main speaker in our presentation.

We think this is a very simple matter, and I've been before the Board before with similar kinds of cases where the District government inadvertently made some mistakes in the past and now we're trying to rectify them so that people can get on with their lives.

In this case Mr. and Ms. Beylickjian purchased their house and they realized that they needed some additional room. These are fairly small houses up on McKinley Street. And based on surveys that were in the file at the Surveyor's Office, in fact three surveys that have been done beginning in 1925, they were, and everybody was under the assumption, that they had five feet between them and the property line.

CHAIRMAN GRIFFIS: Who did the surveys?

MR. GELL: I beg your pardon?

CHAIRMAN GRIFFIS: Who did the surveys? 1925?

MR. GELL: '25, I think '89 and 2003. Yes. 1925 is the first one.

CHAIRMAN GRIFFIS: And they were done--

MR. GELL: If you look at the attachments.

CHAIRMAN GRIFFIS: Oh, did you put them in?

MR. GELL: I'm sorry, my ears are blocked up. I've not been well.

CHAIRMAN GRIFFIS: You said you attached the other surveys?

MR. GELL: All of the surveys are

attached to the materials that you have, yes. There were four altogether.

CHAIRMAN GRIFFIS: Okay.

MR. GELL: And you'll not that -- let's see, '25, '89 and as late as '03 there are surveys that indeed show five feet, 4.9 feet from the property line. And because these houses existed before 1958 and five feet was sufficient in those days, that would have been fine. They went ahead and built their addition and then were told that they had to get a wall check.

The contractor, apparently, didn't get the wall check immediately but did not believe there was any set time to do that. When the wall check came in, Mr. Lopez had done -- it looks like a complete survey which showed that they were really only 2.9 feet from the property line, not five feet. He -- maybe the others based their surveys on what had been in the record before. He apparently did some measurements.

And we're not contesting his decision, but it obviously put the Beylickjians in a very touch position after they had expended some $100,000 on this addition.

CHAIRMAN GRIFFIS: Okay. Well, without

getting into a strong argument of estoppel, let's get into the special exception which we're here for, is that correct?

MR. GELL: That's correct.

CHAIRMAN GRIFFIS: Okay.

MR. GELL: But that is part of the groundwork.

I would at this time ask Jennifer Beylickjian to read a statement and to make some comments that would set out the case.

CHAIRMAN GRIFFIS: Okay. Are you submitting in the written statement?

MR. GELL: We don't have it in writing.

CHAIRMAN GRIFFIS: Oh, okay.

MR. GELL: She is just going to give it.

CHAIRMAN GRIFFIS: It's one of the written statements that are not in writing? I like those. Okay. Let's go ahead.

MS. BEYLICKJIAN: Good morning, everyone.

I am Jennifer Beylickjian and with me is my husband Bob. We have lived at 3415 McKinley Street for almost five years. We have enjoyed the neighborhood and the welcoming spirit of the neighbors, and we've always had an excellent relationship with our neighbors, especially our next

door neighbor Ryan Conroy. We old the keys to each others houses, watch each others homes when one of us on travel and feed each others pets.

Because of the noise produced by buses and traffic, we decided to expand our living quarters; that includes our bedroom and family room to the rear of the house.

In early 2002 we showed the plans to Ms. Conroy, the only neighbor close enough to be directly effected by the addition. On our east is a water lot.

Ms. Conroy did not object to our plans and even recommended a Baltimore contractor. Had we objected, we would have reconsidered our plans before we committed to them.

Construction began in June 2003. In July the foundation was poured and the city came out to check the construction. We passed inspection and we were told we could continue the project.

By mid-July the framing was complete and the structure was being roofed. In late August Ms. Conroy called the DCRA and complained that our addition violated a height restriction. The city sent an inspector out and determined that we were well within the roof height limits.

1 That same month the city said the project
2 could not proceed without a wall check. Our
3 contractor hired surveyor Ed Lopez. All of the
4 previous surveys showed approximately a five foot
5 side yard. The earliest survey was March 24, 1925,
6 the year the house was built. The next one was June
7 20, 1989 and the latest June 3, 2003.
8 We took great pains to assure that the
9 addition continues the line and stays flush with the
10 house and does not encroach on the current side
11 yard.
12 Since the house was built before 1958,
13 five feet is the normal restriction. However, the
14 surveyor did more than check the wall against
15 existing surveys. He resurveyed the block and advised
16 us that the current side yard is only 2.9 feet from
17 the property line. Therefore, our addition is also
18 2.9 feet from the property line; this after we spent
19 over $100,000 on the addition.
20 The city which had perpetuated this
21 mistake for over 78 years was not able to resolve the
22 issue and instead, advised us to seek a special
23 exception.
24 Our project has been stopped for nearly
25 five months. That's five months that we were exposed

to Hurricane Isabel and extensive rain, snow and harsh temperatures. Our alternatives have been severely limited. Had we known about this at the beginning, we would have built further from the property line. We might have gone to a third story to gain sufficient living space and would have been well within our right.

We do not think that this addition will have a negative effect on our neighbor. There is still over 13 feet between our houses. Moreover, the row of tall trees to the east of our property give the same shading the addition allows, as we are not depriving the Conroy property of available sunlight. And we have photos, I believe, to show the sunshine.

We love our neighborhood and we've lived there for almost five year. Bob and I are very active in it. I'm a fourth grade teacher at our neighborhood parish, Blessed Sacrament. I also serve on the Executive Board of the Parish Council. Bob and I serve as eucharistic ministers at our church. I tutor neighborhood children. We are very invested in our neighborhood, but we are also victims of a District government's mistakes over many years.

We relied on the city plats, surveys and issuance of permits and moved forward in very good

faith as we began building our addition. We need your help in correcting this mistake, and we are seeking relief today.

Thank you.

CHAIRMAN GRIFFIS: Good. Thank you very much.

And have you assessed your addition and its impact on light and air to the neighboring properties?

MR. GELL: I --

CHAIRMAN GRIFFIS: No, no, no.

MS. BEYLICKJIAN: Me?

CHAIRMAN GRIFFIS: Yes.

MS. BEYLICKJIAN: Have we assessed?

CHAIRMAN GRIFFIS: Yes.

MS. BEYLICKJIAN: As far as like taking pictures and --

CHAIRMAN GRIFFIS: No. Do you see any evidence that it will negatively impact the light and air available to the neighboring properties?

MS. BEYLICKJIAN: No, I do not.

CHAIRMAN GRIFFIS: So you don't think it's unduly affected?

MS. BEYLICKJIAN: Not at all.

CHAIRMAN GRIFFIS: Privacy use and

enjoyment, neighboring properties would it be unduly compromised?

MS. BEYLICKJIAN: Not at all.

CHAIRMAN GRIFFIS: And you find -- what is your statement about the addition in terms of its architectural character with the rest of the neighborhood?

MS. BEYLICKJIAN: I think we took great pains in making sure that it stayed in the character of the house, which is you know a very old house with a lot of gingerbread details and our addition has a lot of gingerbread details following all of the little molding details. I think it fits in very well with the neighborhood as well as our house.

CHAIRMAN GRIFFIS: Okay. Other questions? Mr. Zaidain?

BOARD MEMBER ZAIDAIN: I actually have a question for Mr. Gell, if I can?

I'm just trying to get a handle on the number of surveys we have here. And I'm looking at what's attachment to your submission, which is Exhibit 23, the one dated August 28, 2003, I think. There's no page number, unfortunately. It's the page after the D.C. Office of Surveyor plat.

MR. GELL: Yes, I have it.

BOARD MEMBER ZAIDAIN: This is the most updated survey you guys have had?

MR. GELL: This is the most recent one we have, yes.

BOARD MEMBER ZAIDAIN: Okay. And this is not just a survey, right? I take it this -- or this is a blown portion of the bigger survey?

MR. GELL: This is all we have.

BOARD MEMBER ZAIDAIN: Okay. Well, I'm just kind of trying to figure this out. I mean, did the surveyor come out and survey the property and then take an old survey and cross out the numbers and put in what he saw?

MR. GELL: I haven't talked to Mr. Lopez. I don't -- I'm not quite sure exactly how he proceeded. My assumption is that he did a resurvey because had he just done a wall check based on the previous surveys, he would have said that the house -- that the addition is in line.

CHAIRMAN GRIFFIS: Right.

MR. GELL: The same line as the house, and therefore is the same distant and that distance would have been five feet. So I assume that he did much more.

Perhaps Mr. Beylickjian has something

else to add to that.

BOARD MEMBER ZAIDAIN: I find that odd that he didn't come out and do his own survey and recreate the whole -- it's like I said, it just seems like he just took the plot and just changed the numbers, but -- anyway --

MR. GELL: I agree with you.

BOARD MEMBER ZAIDAIN: Yes. Okay. But, I mean, either way, I mean we're on the side of caution you being before us for a special exception I guess.

CHAIRMAN GRIFFIS: Any other questions?

VICE CHAIR MILLER: I don't know if I'm going to be able to pronounce it right. How do you pronounce your last name?

MS. BEYLICKJIAN: Beylickjian.

VICE CHAIR MILLER: Beylickjian. Okay.

I just want to make sure I understand the scenario about your communications with your neighbor, like when -- with Ms. Conroy. When you notified her? I know you said this, but I didn't get it down. When you notified her of your plans for construction?

MS. BEYLICKJIAN: We showed her the drawings before we even committed to doing any

construction. I think we had the drawings for almost a year.

MR. BEYLICKJIAN: Right.

MS. BEYLICKJIAN: Before we even, you know, signed with the contractor. So we showed them to her 2002.

MR. BEYLICKJIAN: 2002. She also recommended a --

VICE CHAIR MILLER: Can you give me a month, because I'm to reconcile this with her statement?

MS. BEYLICKJIAN: I have early 2002. It might have been February, it may have been March.

VICE CHAIR MILLER: Ms. Conroy made a statement that almost all of the construction took place after August 1st when I made the initial call to the city. And I was wondering if -- I mean, it goes to the point that you were on notice that there was a problem, which is basically her allegation, and then you went forward with your construction. And I'm wondering if you could address that?

MR. BEYLICKJIAN: We received a call from the city saying a neighbor had complained about the height. We didn't receive a stop order. We had the permits and there was -- the only complaint was

the height restriction.

VICE CHAIR MILLER: Could you tell me about what the date was for that?

MR. BEYLICKJIAN: I believe mid-August.

VICE CHAIR MILLER: Okay.

MR. BEYLICKJIAN: I spoke to Rochelle Joseph. She did not give me the name of the person. Said there was a neighbor complaining about height. And we couldn't figure it out who would complain about the height. And, so, you know, I mean we did not get a stop. She said she would send an inspector, and that's fine.

When she sent an inspector out, then they gave us a stop work order after finding out that the wall check had not been done.

MS. BEYLICKJIAN: Right after saying the height was fine.

MR. BEYLICKJIAN: Yes, the height -- the height restriction fine. The height issue was fine.

VICE CHAIR MILLER: Thank you.

CHAIRMAN GRIFFIS: Mr. Gell, anything else?

MR. GELL: I would simply refer you to the pictures that we have put into our packages. And I think that the pictures show that in terms of

light, that there's a whole row of trees there behind looking to the east of the Beylickjian's house which shade both their backyard and would shade any other backyard, particularly Ms. Conroy's so that the addition doesn't add anything further to any shad that there may be. That they could have without asking for any special permission or special exception have if had known about this problem with the wall, they could have pulled it back but gone up another story, which would have essentially the same if not a much greater impact on the neighboring properties. So we don't think that this particular addition has that sort of affect.

Moreover, the backyards are much larger than the minimum sized backyard, and therefore in terms of air and so forth there shouldn't be any problem with people not getting sufficient breeze or air or whatever based on this addition.

That's all I would say.

I'll have an opportunity to rebut after we hear the evidence on the side.

CHAIRMAN GRIFFIS: So it's your legal opinion that this meets the test for the special exception?

MR. GELL: Yes. Yes, I do. The question

of traffic has never come up, that obviously is not an issue.

CHAIRMAN GRIFFIS: Right.

MR. GELL: Parking is not an issue.

CHAIRMAN GRIFFIS: But let me direct.

MR. GELL: Have I missed something?

CHAIRMAN GRIFFIS: No. What I'm trying to do is separate so that we don't go into a long -- unless it needed, the Board's discussion and deliberation on the estoppel issue that you've raised. And I think that's -- if we can't get through the special exception, then we will go to that. But at this point unless you see in your legal opinion a need to argue that at this point, I'm perfectly comfortable moving on without it.

MR. GELL: That's fine with us.

CHAIRMAN GRIFFIS: Okay. So anything else to present in your case?

MR. GELL: That's all we have.

CHAIRMAN GRIFFIS: Very well.

MR. GELL: We'll be happy to respond to further questions.

CHAIRMAN GRIFFIS: Okay. Ms. Conroy, cross examination of the witnesses?

And just to be clear, obviously in

setting up this is your opportunity to question the questions. And the cross examination for purposes of poking holes in their argument or their case. You will have a full time afforded you that will be equal in the time that was given them to present the case. So, this is not the time to present the case, but just to ask questions on the information and testimony that you've heard.

MS. CONROY: Thank you.

It doesn't always carry, so let me know.

I appreciate the opportunity to talk to you all today.

CHAIRMAN GRIFFIS: If you wouldn't mind, just state your name and address?

MS. CONROY: My full name is Mary Ryan Conroy. It's been a lifelong confession, but I actually go by my middle name, which is why the letter is signed that way.

My address is 3419 McKinley. And in the wisdom of the District, the numbering system is somewhat erratic, but I am the next door neighbor and the only one effected by this addition.

I have found this, like my neighbors, quite a difficult process and it's been very difficult for me to challenge them on this.

CHAIRMAN GRIFFIS: Okay. I'm going to interrupt you and give you a direction again. This is now only the time to ask question.

MS. CONROY: Can I come back? And they made several statements that I disagree with. Can I just --

CHAIRMAN GRIFFIS: As part of your case presentation, obviously, unless you see a cross examination question that might --

MS. CONROY: Do I have to ask it as a question or can I make a statement.

CHAIRMAN GRIFFIS: Questions only now. And then we're going to do government reports, hear from the ANC and then we're going to go to you to present an entire case. And that's at the point where you can say anything you want, hopefully within reason and rationality, but we give you the time to present your case.

MS. CONROY: I would like to ask, just for starters, who informed them that I had complained about a height restriction?

MR. BEYLICKJIAN: DCRA called me and said there was a height -- Rochelle Joseph.

CHAIRMAN GRIFFIS: Okay.

MS. CONROY: Did she mention anything

else?

MR. BEYLICKJIAN: She did not mention anything else.

MS. CONROY: Okay. I think what I'd like to do is just make my statement, Mr. Griffis. I don't have --

CHAIRMAN GRIFFIS: That's fine. Okay.

MS. CONROY: I'll just leave it at that.

CHAIRMAN GRIFFIS: That's very good. We appreciate that. We'll call you up when the presentation of your case is ready.

Mr. Gell, rebuttal?

MR. GELL: (No audible response).

CHAIRMAN GRIFFIS: Very well.

Any other questions of the Board at this time? If not, let's move on then to the Office of Planning's report. The Office of Planning is recommending approval of the application. It's Exhibit 24.

Ms. Conroy, do you have the Office of Planning's report?

MS. CONROY: (No audible response).

CHAIRMAN GRIFFIS: Let's provide you with a copy then.

Okay. Office of Planning is going to

walk through that memo that is now in everybody's hands.

And, good morning.

MS. THOMAS: Good morning, Mr. Chairman, Members of the Board. I am Karen Thomas representing the Office of Planning in a matter before you.

I believe that the applicant has sufficiently presented his arguments before the Board and the Office of Planning has no objection to the addition to his existing property which predates the zoning regulations with a side yard setback which does not meet the requirements of section 405 officially recorded at five feet and measures approximately 2.9 feet. Therefore the structure is nonconforming due to its west side yard setback whether measured at five feet or 2.8 feet.

The regulations require an 8 feet side yard setback. There is no further reduction of the side yard since the addition aligns with the original structure. Hence, there is no increase in the nonconformity of the structure and the application conforms to all other side yard requirements of the zone.

OP determined that we have no problem with any adverse impact on effect on light and air to

the neighboring property. The adjacent and subject properties are separated by an existing wooden fence which is lined by maintained landscaping on both sides of the fence and the use of privacy of the neighbor and property is not compromised by the addition.

OP is satisfied that the applicant has met the criteria for special exception relief of section 223 and granting relief would not adversely effect the use of the neighboring properties.

And this concludes our presentation. Thank you.

CHAIRMAN GRIFFIS: Good. Thank you very much.

Any preliminary Board questions for the Office of Planning?

Mr. Gell, any questions of the Office of Planning?

MR. GELL: No questions.

CHAIRMAN GRIFFIS: Ms. Conroy, have you had an opportunity to review that? Any cross examination of the Office of Planning?

MS. CONROY: I would like to understand how you can make a determination that this will effect either my privacy, air or mass? This is a

large structure. It's almost -- the original building is 28 feet, this is another 16 feet. And my question has always been that they now are talking about having property that now none of it meets the five foot setback, over 70 percent of the property. That's a huge amount of property. So I have essentially a building now as opposed to a house.

CHAIRMAN GRIFFIS: Okay. If I understand your question, the question is how did you come to your conclusion that this wouldn't adversely effect light and air available --

MS. CONROY: And privacy.

CHAIRMAN GRIFFIS: -- to the adjoining properties? And privacy?

MS. THOMAS: It did not. We looked at it and it did not except the height requirements in that zone. There are also windows to the side of both your property and the existing structure. And it did not exceed the -- it did not increase the nonconformity of the structure. So it did not encroach further on the five -- on the two feet setback that's 2.9 feet setback that was there.

CHAIRMAN GRIFFIS: And did you make a site visit?

MS. THOMAS: Yes, I did. Just from the--

CHAIRMAN GRIFFIS: And you were on all portions of the property; in the rear and also in the front?

MS. THOMAS: We went to the wooded area and looked around, sort of. I didn't enter the Beylickjian's property as such, but I did look the side of Mrs. Conroy's property and the other side.

MS. CONROY: Did you actually go into my property? I'm just curious.

MS. THOMAS: No, I did not.

MS. CONROY: So you really don't know the impact because the impact is in my backyard.

MS. THOMAS: Well, I looked down to the side of the wooded area. I went down --

MS. CONROY: There is no wooded area on my side of the property.

MS. THOMAS: No, not your side. I'm saying I went down to the -- way down to the side of the wooded area to the back and looked to see, you know, what type of impact. How far back that -- their structure.

MS. CONROY: So you were essentially looking at a piece of property more than 45 feet away from the opposite side on the other side of the building to make this determination?

MS. THOMAS: I did look at the fence. I also looked at the photographs that they presented to us.

MS. CONROY: But, again, those photographs are -- when they reflect the trees, those trees are more than 45 feet away from my property.

CHAIRMAN GRIFFIS: Is that clear?

MS. THOMAS: I didn't look at the photographs of the trees.

MS. CONROY: They are.

MS. THOMAS: I looked at the photographs of the addition in relation to your property. And the distance between your property and the fence and their property.

MS. CONROY: And can you explain to me how we're going to do things like basic maintenance or anything; the people -- you cannot do maintenance on their property, especially on this addition, without coming into my property and how that won't effect my privacy and my --

MS. THOMAS: I can't speak to maintenance of the property.

MS. CONROY: But that effects my privacy. I don't believe that they can't complete their property without actually coming onto my property.

CHAIRMAN GRIFFIS: But actually you're asking the Office of Planning if they agree with--

MS. THOMAS: Yes, I can't speak to that.

CHAIRMAN GRIFFIS: -- your belief.

MS. THOMAS: I can't speak to whether --

CHAIRMAN GRIFFIS: Okay.

MS. THOMAS: -- she can maintain the property without going onto yours.

The issues that we looked at, particularly the upper northwest where this case is one of many that we've seen in upper northwest there have been errors by surveyors in measurements like this and we have not had any issues of -- or any complaints about people going onto people's property to maintain their property.

MS. CONROY: Though, but wouldn't that from the Office of Surveyor's view, isn't that the whole purpose in the sense of having this kind of setback? I mean, the point of having a five foot setback, which was only because it's a 1958 or previous structure, but that setback in part is allowing so that each property is a self-contained property as opposed to being dependent on other owners, other property owners just to maintain your basic property?

MS. THOMAS: The setback --

CHAIRMAN GRIFFIS: You have to always end with a little upward turn of your voice so it's a question.

MS. CONROY: Thank you. Thank you.

CHAIRMAN GRIFFIS: Yes.

MS. THOMAS: Setbacks speak to light and air of the property. These properties precede the 1958 zoning regulations.

MS. CONROY: Right.

MS. THOMAS: They were measured at 5 feet, and in many instances the Office of Planning is noticing that it is substantially less than the five feet and varies. And in many of the cases --

MS. CONROY: But then the purpose of the five feet, again, is to ensure privacy, air, mass, all those other things that you listed, is that correct?

MS. THOMAS: That's correct. But it has not exceeded what existed before.

MS. CONROY: I understand that. But the point is of having it subsequently five feet is that the finding was that three feet wasn't enough, so the five feet was the reason for this -- for the code. I mean, there's a reason for five feet, is there not?

MS. THOMAS: There's a reason for the setback -- for setbacks. I can't speak to why they measured it at five feet in 1925 and --

MS. CONROY: But the idea that it's less than five feet means that it compromises the property in some way?

MS. THOMAS: No. It was built as what it was built it and it does not come from --

MS. CONROY: Those people --

CHAIRMAN GRIFFIS: Let her answer the question that you ask.

MS. CONROY: I'm confused, because she's speaking to the 1925 five feet setback.

CHAIRMAN GRIFFIS: Let me bring some clarity then, because --

MS. CONROY: And what -- what I'm looking--

CHAIRMAN GRIFFIS: Excuse me.

MS. CONROY: I'm sorry.

CHAIRMAN GRIFFIS: What she's saying is that we have an existing condition, and that existing condition with the proposed addition is what she went out and assessed. And in her report she is making the opinion that it does not adversely affect the light and air and privacy.

MS. CONROY: Right.

CHAIRMAN GRIFFIS: I think your point is your very clear and I think the Office of Planning understands the point of you don't even have five feet, did you take that into account. Well, we've just heard testimony to the fact that she was physically there, whether she measured it or not--

MS. CONROY: But not physically on the property itself, so she really in that sense, my question is how do you make that determination if you haven't physically been on the property itself?

CHAIRMAN GRIFFIS: Okay. Do you want to address that?

MS. THOMAS: It was sufficient for me to determine. From the places I looked from and looked at it was sufficient for me to determine.

CHAIRMAN GRIFFIS: Okay.

BOARD MEMBER ZAIDAIN: Well, I actually have a question just to follow up on that. You were on the applicant's property, yes or --

MS. THOMAS: To the front of her property, yes.

BOARD MEMBER ZAIDAIN: The front. Okay. So I guess the point you're making is that there's a different perspective on your property then, then--

MS. CONROY: Well, on my property and the fact of the matter is the addition is on the back of the property.

BOARD MEMBER ZAIDAIN: Okay.

CHAIRMAN GRIFFIS: Okay.

BOARD MEMBER ZAIDAIN: And I wanted to get some clarification on the question that she had asked earlier. Are you saying that the applicant will not be able to maintain the new addition without going onto your property in the future?

MS. CONROY: Yes, I am maintaining that.

BOARD MEMBER ZAIDAIN: Okay.

CHAIRMAN GRIFFIS: Why don't we take that up when she presents her case?

BOARD MEMBER ZAIDAIN: Right. I just wanted to make sure I understood. I mean, obviously, that's not something that Office of Planning gets into. But I just wanted to make sure I was clear on where she was going.

CHAIRMAN GRIFFIS: Okay. Any other question of Office of Planning?

MS. CONROY: No. Thank you.

CHAIRMAN GRIFFIS: Thank you very much.

MS. BAILEY: Mr. Chairman?

CHAIRMAN GRIFFIS: Yes.

MS. BAILEY: If I just may add, the government officials unless invited on someone's property really are not allowed to visit, trespass on private property in the city in a government capacity.

CHAIRMAN GRIFFIS: Excellent point.

MS. CONROY: May I ask if normally then the government notifies people so that they would have had the opportunity? I would have been happy to let them if they had let me know they were coming out.

CHAIRMAN GRIFFIS: Okay. I think Office of Planning will note that. That's well beyond our jurisdiction.

Let's move on then. Any other government reports then to this application? I'm not aware of any, unless there are others let's move on to the ANC report.

The ANC did submit Exhibit 20 and it is supporting the application. Is an ANC representative here? Not noting any ANC representative, do we want to just make note of --

MS. CONROY: Mr. Griffis, before you do --

CHAIRMAN GRIFFIS: Yes.

MS. CONROY: -- could I make mention of the fact that I was not notified that this was going to be coming up at the ANC until it came up on a Monday. I was notified by my ANC representative at 5:15 the previous Friday. I was not able at that point to actually do any kind of preparation.

CHAIRMAN GRIFFIS: Okay. Are you regularly noticed by the ANC of the ANC meetings?

MS. CONROY: Excuse me?

CHAIRMAN GRIFFIS: Are you regularly noticed?

MS. CONROY: No. I was told that for something like this because I was an interested party I normally would have been notified.

CHAIRMAN GRIFFIS: True.

MS. CONROY: And so I found that being notified at 5:15 or 4:45 on the Friday --

CHAIRMAN GRIFFIS: Okay. Did you go to the ANC?

MS. CONROY: I did.

CHAIRMAN GRIFFIS: And so you presented there?

MS. CONROY: I did.

CHAIRMAN GRIFFIS: Okay. Anything else?

VICE CHAIR MILLER: I just have a

question for Ms. Conroy about this ANC notification.

How does the ANC normally notify, this ANC normally notify your community?

MS. CONROY: I was told that either Mr. Gell would have notified me or the ANC itself would have.

VICE CHAIR MILLER: But I mean is there general notification to the community that you would normally see and know that this was on the agenda?

MS. CONROY: Again, I don't know because I've never been involved in something like this before, Ms. Miller.

VICE CHAIR MILLER: Okay. Thank you.

CHAIRMAN GRIFFIS: Okay. Well, let's be clear. The ANC is required to do public notice of any ANC meeting --

MS. CONROY: I'm sure that somehow it's publicly notified.

CHAIRMAN GRIFFIS: Exactly.

MS. CONROY: But, I mean -- yes, about this specific thing; again, I was told that I would normally have been notified because --

BOARD MEMBER ZAIDAIN: I'm a little confused. So you weren't notified until like the last minute, but that you were able to participate at

the ANC hearing where this was discussed?

MS. CONROY: Yes.

BOARD MEMBER ZAIDAIN: Okay.

MS. CONROY: I mean, I went.

BOARD MEMBER ZAIDAIN: Okay.

MS. CONROY: But, yes, I did participate.

BOARD MEMBER ZAIDAIN: Okay. Thank you.

CHAIRMAN GRIFFIS: Anything else on the ANC letter? Mr. Gell? I'm not soliciting comments. I'm allowing you to make them.

MR. GELL: No, that's all right.

CHAIRMAN GRIFFIS: Okay. I believe that the letter does meet our high threshold of requirements to be granted great weight, is that correct?

VICE CHAIR MILLER: I really don't know. I mean, I have a problem with the notice in this case. I mean, often ANCs say that the meeting was duly noticed, and I'm not exactly sure what that means. But we've been assuming that they're doing what they need to do to get the message out. But we're hearing from Ms. Conroy that she didn't get the message until Friday and she's --

CHAIRMAN GRIFFIS: This is --

VICE CHAIR MILLER: No, so --

CHAIRMAN GRIFFIS: Our regulations and duly noticed is one thing. But calling specific people to make sure that individuals show up is different and not part of the requirements of granting or great weight for an ANC report.

VICE CHAIR MILLER: I don't know if we want to debate this. But I --

CHAIRMAN GRIFFIS: I do not. I don't want to debate it.

VICE CHAIR MILLER: I'll just comment that we get different types of indications of notices from different ANC and often ANCs say this is how we notify the community and then we're able to evaluate that yes, in fact, you know they were on notice. And duly noticed doesn't really indicate how they notify. We could -- well, I think there's a question here about notice.

CHAIRMAN GRIFFIS: Okay.

MR. GELL: Mr. Chairman

CHAIRMAN GRIFFIS: Yes.

MR. GELL: Mr. Beylickjian wanted to make a quick comment on that.

MR. BEYLICKJIAN: We were not notified either. We read the community newspaper which had that in there.

Also, the Saturday prior to the ANC meeting on Monday, Ms. Conroy met with our entire ANC in her back yard.

CHAIRMAN GRIFFIS: Okay. And I don't want to get into this. This has no bearing on us on how the ANC conducts itself. I mean, we're to look at the report from the ANC and the ANC's report is fairly clear on what happened and the action. Unless they want to put me in charge of the ANCs, in which case I do need to watch what I say, right?

Anything else on the ANC then? Let's move on. I don't have any other attendant reports to the application at this time, then let's move to Ms. Conroy, presentation of your case if you're ready.

MS. CONROY: Yes.

Okay. This has been a very difficult thing for me to do. It's difficult for me to challenge my neighbors, at the same time everybody I talked to, and I talked to a substantial number of people about this, at least 20 including architects, real estate agents, lawyers; every single person said that this kind of structure would effect my privacy in an adverse way and that I needed to actually make that statement.

I am the only person in the neighborhood

1 directly effected, so I would just note that.
2 I think probably one of my biggest
3 problems with this process is the Beylickjians have
4 failed to take note of due process and procedure. I
5 would argue strenuously with the statement that they
6 made that they informed me and went into detail as
7 the implication of that. I knew that they were
8 planning to put a piece of property up, and it's
9 perfectly their right to do so. The implication is
10 that they sat down with me and went through these
11 plans in great detail is absolutely not true. You
12 know, I'm just astounded by that.
13 Assuming that they did, I would assume
14 that they did what they did with everybody else and
15 said that they met the five foot requirement. Again,
16 it is not my job to be the one to say or make sure
17 that they have met their statutory requirements.
18 I am quite clear, as I said in my
19 statement, about the time frame and the time line.
20 I'm in school full time as a student of acupuncture
21 and it's one of those things that focuses your
22 attention quite clearly. I was getting ready for a
23 very large final. I remember very clearly discussing
24 this with my classmates about what I should do. That
25 final was August 5th. Therefore, I am quite sure

that I called either on the 31st or the 1st of August.

I think again I'm not sure whether you all can check the records, but Ms. Joseph would that kind of information for you. I'm equally sure that in the intervening period, because I have worked in bureaucracies in the past and I know that you can't with an office that's overloaded, just assume that you've made one phone and that's it. I called frequently. I stayed in touch. And my purpose was because I didn't understand the process.

I said what do I need to do? I'm not sure about this. My survey says that this doesn't meet the setback requirements. And they consistently told me, as everyone else did, it was dependent on the wall check and that wall check should take place as soon as the foundation is raised.

As they noted, they have a six foot fence, so I didn't see the actual laying of the foundation. But as soon as I did, I called the city. And I must have called them, I don't know, ten times between August 1st and when the city came out on the 11th. And, again, I'm quite sure of that date because I started a new job on the 12th. It was my last free day and I got to spend it, you know, dealing with the

1 District.

2 So my dates are very clear and I'm very

3 certain. And I'm sure that the District can back

4 them up if you can pull their records.

5 I would also say that the reason I'm so

6 concerned about this is this property is my principle

7 investment and my life. It's my principle investment

8 for retirement. What happens to this property

9 matters to me. But as important, it's my home. And

10 this has been very, very difficult to have to go

11 through this.

12 I think I've stated fairly clearly in my

13 letter. I can repeat that stuff for you for you if

14 you need to, but what my concerns were, what I did,

15 what the time line was. And as importantly, what was

16 not done by the architect and the Beylickjians. And

17 I think this is a terribly unfortunate situation, but

18 in the long run this is a dispute between the

19 Beylickjians and their builders, and it shouldn't

20 involve me and I shouldn't be in the position of

21 already having spent a couple thousand dollars.

22 The reason I'm here unrepresented is

23 because I was told if I hired lawyers, it would cost

24 me $10,000 to $20,000 to defend my property. And I

25 just don't have the wherewithal to do that, nor do I

1 think I should be asked to.

2 I would like to address some of the

3 things that they said specifically that I do not

4 agree with.

5 I said I obviously do not agree with

6 their dateline. I actually never "complained" about

7 the height of the property. My issue was always the

8 proximity to the property line.

9 And I would say that since this is, in

10 essence, hearsay possibly not even admissible, I

11 understand that the Beylickjians are totally within

12 their right to build an addition, but I don't think

13 they're within their rights to do this without having

14 conformed to the basic process and procedures. It

15 meant by doing it this way that I never had the input

16 until now.

17 I'm also quite sure about what I said in

18 terms of when the building took place. It was a

19 fairly slow process, but between the 1st of August

20 and the stop work order it really was 7 days a week.

21 And, again, I would be quite aware of this because I

22 had given the Beylickjians permission to let their

23 builders park in my parking lot and they were out

24 there, you know, crack of dawn and they were there

25 when I got home at night. So, again, I'm quite sure

about what I said in my statement and I can back it up, if you'd like.

And I don't understand, again, any argument about the property line itself. It is so clearly marked. It's just amazing. There is a cement wall between the two properties that's always, always existed, as far as I know.

CHAIRMAN GRIFFIS: But why would that be an indication of where the property line is?

MS. CONROY: Well, I guess I would wonder why anybody would bother to put a three foot cement wall between two properties if they hadn't gotten the property line correct. It would at least raise the question, Mr. Griffis, as to where --

CHAIRMAN GRIFFIS: But couldn't it be on or couldn't it straddle the property line?

MS. CONROY: It certainly could. But I mean their contention that they met the five foot -- and I have pictures -- even if they had said that that was the property line, they still don't meet the five foot requirement.

CHAIRMAN GRIFFIS: Okay.

MS. CONROY: So I mean that's --

CHAIRMAN GRIFFIS: Let me tell you my understanding. There's now been a lot of presentation

on due process and such. They did pull permits. They are here now in an application. There would have been no other opportunity for you to have a voice, except for now; that's why we have a public hearing.

MS. CONROY: Right. But wouldn't --

CHAIRMAN GRIFFIS: So what I don't want to do is go back and argue an awful lot.

MS. CONROY: Okay.

CHAIRMAN GRIFFIS: What I want to do is, first, deal with the special exception now.

MS. CONROY: Okay. Let me go back to that then. But my point about that, which I think is if they had submitted a request for a variance early on, we could have had this discussion before the property had the addition half way built.

CHAIRMAN GRIFFIS: But then we'd be here having this discussion.

MS. CONROY: Yes, but we'd be here and at least I would have had a chance to have my say as opposed to now with the argument essentially is we've gotten this far along, you really need to grant me the variance because we've spent this much money.

In terms of what it does, I would argue quite strongly that a property that is 29 feet high and 16 feet long directly effects air, mass and

privacy. There's a big difference between having two houses that are directly against each other where the buildings both end this way as opposed to having a 16 foot property that extends essentially halfway into my back yard. Their property is higher than mine. They look down on me so that -- and, again, the way I've seen from what I've seen of the plans which I pulled, not because I remember them being shown to me, is they are planning a second story deck, there are windows now on the addition on the second floor. So that means my privacy is deeply compromised.

In terms of air and mass, the pictures that they have shown you are 45 feet away plus. They are on a hill on the other side of their house and up and on city property. So I don't think that you can argue that they shade my property. If they do, it's news to me.

And light and mass are directly effected. It is a big mass. It's large. It's -- if the current house is 28 feet, this is another 16 feet plus a ten feet deck. They already have an existing garage there that's 24 feet long. That means almost the entire length of my property has buildings on it of some sort.

From my perspective, this actually is a

pristine example of why people should seek a variance first. It should be your first stop, not your last. And I believe it's been incumbent upon the Beylickjians and their builders to have taken the proper steps and procedures. Without doing that, I think I really feel that I have not been able to state clearly my concerns and that I wasn't given an option.

I guess the last thing just before I end, is the issue around the plats. And they keep saying well they relied on plats. The plats all state and the surveys that they're not meant to be property lines.

I think, you know, if you have any questions, I'd be delighted to answer them.

CHAIRMAN GRIFFIS: Yes. Talk a little bit more about how you've established the fact that there's mass, you've established the fact that you don't want buildings adjacent to your property. Somehow that will be a negative impact. You've talked about privacy, light and air. Give us some substantive data on how you're measuring that, how you view that. How are we supposed to understand what that is?

MS. CONROY: Well, let me go back to the

concept if somebody wants to do any work on the property. If you have less than three feet of property, you can't have a maintenance person come in.

CHAIRMAN GRIFFIS: Why not?

MS. CONROY: Because they can't put a ladder up if you're going to work on the second story.

CHAIRMAN GRIFFIS: Why not?

MS. CONROY: Because it's too -- you couldn't get a ladder to lean this way. It literally is not enough space.

CHAIRMAN GRIFFIS: Okay.

MS. CONROY: Have you -- I have a picture if it's useful to you to see how narrow the space is, if that will be helpful to you.

CHAIRMAN GRIFFIS: If you want to present it into the record. You do need to provide copies or otherwise you won't be getting anything back that you submitted. And you also need to give one to the applicant.

MS. CONROY: I only have one copy. Can I--

CHAIRMAN GRIFFIS: Have them look at first. Okay.

Let's talk privacy, light and air.

If you could give to staff.

MS. CONROY: If you have two back yards where the houses end approximately the same way, you really have a sense that you're not -- you're sort of in an equal space. If you extend that property 16 feet out, so here I am. This is my yard. And I now have a building like this that somebody has -- you know, I never -- I have no sense of privacy now because I got -- it's like living next to an apartment building. Not in terms of actual mass, but that same sense that if you're in an apartment building and somebody can look down at you all the time. I mean, that does effect my privacy.

CHAIRMAN GRIFFIS: But you have windows on the common side currently, correct?

MS. CONROY: I do. I keep the windows--

CHAIRMAN GRIFFIS: And they also on the existing building --

MS. CONROY: They do. And I keep those windows, the curtains closed because they're so close. What I'm arguing for is that if you had a setback, you would at least have some set -- sense that you're not right on top of me. This literally is right on top of me right now.

BOARD MEMBER ZAIDAIN: Mr. Chairman, if I can hop in, because that kind of goes to a question I was going to ask?

CHAIRMAN GRIFFIS: Mr. Zaidain?

BOARD MEMBER ZAIDAIN: I know the distances of side yards are in dispute here. But generally how big is your side yard on that side?

MS. CONROY: I don't have an exact measurement. I think it's about nine feet.

BOARD MEMBER ZAIDAIN: About nine feet from the property line?

MS. CONROY: Yes.

BOARD MEMBER ZAIDAIN: Okay. Well, and it leads me back to my questions about the survey we're looking -- you know. Because this survey from '03 does reflect your side yard at being 8.95 feet but it's got that number crossed out and 3.78. So it's hard to tell. But --

MS. CONROY: I have a little bit more on my side than they do theirs, that I'm certain of.

BOARD MEMBER ZAIDAIN: Okay. Are there any obstructions or any structures in that side yard, anything like that? Trees or is completely clear?

MS. CONROY: In the side --

BOARD MEMBER ZAIDAIN: In your side yard?

MS. CONROY: In the current side yard?

BOARD MEMBER ZAIDAIN: In your side yard, yes.

MS. CONROY: The Beylickjians have a very large hedge in the front of the property and then there are bushes, but nothing --

BOARD MEMBER ZAIDAIN: Nothing in there? Okay. So, frankly, there's probably, taking the survey, so there's obstinately there could be at least, you know, 14 feet between your building and their building, correct?

MS. CONROY: No. It would be 12 feet or less.

BOARD MEMBER ZAIDAIN: Well, that's --

MS. CONROY: I mean, if they're less than three feet and then I'm about nine, that would be about 11 or 12?

BOARD MEMBER ZAIDAIN: Well, but according to this survey -- well, either yours is nine and theirs is five or yours is 3.78 and theirs 2.76, which leads me back to my questions about the survey. But I think I've kind of gotten what I needed. I just wanted to know what the condition was like between the two structures because it obviously has a big impact on light and air in my mind.

CHAIRMAN GRIFFIS: Ms. Miller?

MS. CONROY: I would also ask you to look at th slant of the roof, because that also is going to pose problems for me. The slant is so steep that a snowstorm; everything is so steep that if you follow the line down, it all goes into my property.

CHAIRMAN GRIFFIS: Right. That's what's indicated in the written submission you were also concerned about the snow and the water. Okay.

VICE CHAIR MILLER: Now, Ms. Conroy, I'm not sure at what stage this addition is, but there is an addition there right now.

MS. CONROY: Right.

VICE CHAIR MILLER: I'm wondering what impact you've noticed on your hard from the addition that is there? You know, separate from you know your saying that --

MS. CONROY: It's difficult to give you a total answer to that because the construction took place in August. I mean, I can tell you the damage that took place in my yard because of the construction.

VICE CHAIR MILLER: No, that's a different --

MS. CONROY: That I didn't think you were

asking.

VICE CHAIR MILLER: Right. I know the answer --

MS. CONROY: And it's because it's been winter, it's been very hard for me to say. I said the privacy issue remains. We haven't had any snow to speak of, so I can't speak to that.

I honestly have not spent anytime out in the yard given the weather conditions.

VICE CHAIR MILLER: Because it sounds to me like you're projecting that there's going to be an impact on your garden.

MS. CONROY: I'm sure based on where it is that there is an impact because of light, because of its proximity, because of mass that will effect the air, the circulation. And I said the mass is apparent.

VICE CHAIR MILLER: But you haven't noticed any impact to date, is that correct, on light and air?

MS. CONROY: Again, honestly I have not -- you know, in January I don't spend -- and I don't mean to be sarcastic, but I honestly have not been out there in order to be able to say -- give you an honest answer.

I have noticed it in terms of privacy hugely.

VICE CHAIR MILLER: Also do you think that there's a different -- that two feet makes for your privacy or your light and air?

MS. CONROY: In terms of perspective, yes, I do. I know, again, that may seem that it's not huge and, again, why bother. But if you -- if you have that kind of structure so close, any amount of setback will help. I truly believe that. I mean this is not -- as I said, three feet is what -- it's that far from my property line. It's just right on top of me.

VICE CHAIR MILLER: Okay. Thank you.

CHAIRMAN GRIFFIS: The roof slope that you brought up, is it not the same slope of the existing building?

MS. CONROY: It is.

CHAIRMAN GRIFFIS: And I'm not understanding why that this portion of the addition extending that same slope would cause a new problem?

MS. CONROY: Because I have landscaped my backyard so that I have trees there, I have existing plants and flowers, and the whole thing. The other dilemma there is the way the slope works. And because

it overrides the cement flume, which is the drainage piece, it now means that where I don't have this problem now, it means I will have water draining into my yard directly into the window, which --

CHAIRMAN GRIFFIS: But you say in your statement and it also was clear here that there is actually a gutter on that side that would capture any of the water coming off that roof. Could you have been experiencing a condition where that wasn't in a finished addition or a none finished addition that water wasn't captured and then removed so it would have run over temporarily on your side?

MS. CONROY: Honestly to date, no. I mean, other than the existing damage caused by the construction, I can't say for sure.

CHAIRMAN GRIFFIS: Okay. Do you think that a gutter on that side would eliminate the problem that you're anticipating or that you see?

MS. CONROY: No, I don't.

CHAIRMAN GRIFFIS: And so where is the--

MS. CONROY: Wait a minute. I'm going to go back to the fact that the gutter in order to work has to be maintained. Again, that would mean somebody coming into my yard and putting a ladder up in order to clean the gutters. I mean, gutters only

work if you maintain them and keep them clean. To my knowledge, those gutters on that side of the house have never been cleaned.

CHAIRMAN GRIFFIS: Okay. Anything else?

Mr. Gell?

MR. GELL: Yes.

Ms. Conroy, do you recall after the construction was well advanced that you made some complaints to Mr. Beylickjian about the drainage and the gutters that you were afraid --

MS. CONROY: Yes, I did.

MR. GELL: Yes. That you were afraid that the water would come into your basement?

MS. CONROY: Yes, I did. And I showed Mr. Beylickjian the damage that already happened to my basement. So, yes, he was aware of it.

MR. GELL: And now that we know where the line is, where are those gutters in relation to your property? Are they on your property or his property?

MS. CONROY: I believe they're on his property.

MR. GELL: How far from your property are they?

MS. CONROY: I don't have the capacity to measure that.

MR. GELL: What was Mr. Beylickjian's response when you asked him to do something about those gutters?

MS. CONROY: He was responsive.

MR. GELL: Did he not have his contractor go and fix the gutters so that they would drain properly into the street?

MS. CONROY: I can't make a statement as to whether they're draining properly into the street. He did have his builders put a gutter up.

MR. GELL: You've testified that your privacy would be compromised, but you also said that your privacy has already been compromised because of the main house, which is --

MS. CONROY: I don't believe I made that statement, Mr. Gell.

CHAIRMAN GRIFFIS: Let's let him finish the question and a quick answer and we'll move on.

MR. GELL: Never mind. I don't have any further questions. I think the case is okay.

CHAIRMAN GRIFFIS: Follow up, Mr. Zaidain?

BOARD MEMBER ZAIDAIN: Yes, I just have a quick one so I understand this issue of privacy and the maintenance, because I don't think we've heard

that a lot in these cases.

Is your concern with trespass essentially?

MS. CONROY: No, I'm not worried about trespass. I'm worried about people coming into my yard and tramping all -- and not -- how do I say this? I've already experienced having the Beylickjians' construction workers come in, drop planks, walk over the flower beds, destroy two flower beds this summer.

BOARD MEMBER ZAIDAIN: In walking through your yard?

MS. CONROY: Yes.

BOARD MEMBER ZAIDAIN: That's trespass, right?

MS. CONROY: Well, trespass, I feel like -- I mean, you know, if one of the neighbor's kids falls, comes into my back yard I don't consider it trespass if they come with a ball. What I'm worried more about is the damage. I'm worried about the fact that I know have four inch nails all through my flower beds that I'm going to somehow or another have to figure out to get from the Beylickjians' roof.

I'm worried about that kind of sort of ongoing consistent problem that I believe will exist.

It's not that I -- you know, I'm not -- it's not that I object to people being there. I object to the damage that's done while they're there.

BOARD MEMBER ZAIDAIN: Okay.

MS. CONROY: And I don't know how you--

CHAIRMAN GRIFFIS: Mr. Zaidain, you're saying that the --

MS. CONROY: -- prevent that. I -- you know --

BOARD MEMBER ZAIDAIN: Well, must make sure I'm clear. What you're saying is the condition that you've experienced from the construction you think will continue through the maintenance?

MS. CONROY: Yes.

BOARD MEMBER ZAIDAIN: Okay.

MR. GELL: May I ask Ms. Conroy if she had given permission to the workmen to put the ladders on her property?

MS. CONROY: No, I didn't. As far as I know, they did not put their ladders on my property. My -- to my knowledge, the ladders were not there. They dropped very large planks into the property which, obviously, they had to go get. The nails have come from the roofing job that they did. But, as I said, the damage was significant and clear to me.

MR. GELL: Do you recall at the ANC meeting when you made the same -- voiced the same concerns that Mr. Beylickjian offered to fix any damage that might have occurred to put your garden back the way it was --

MS. CONROY: I -- I --

CHAIRMAN GRIFFIS: I want to move beyond the construction issues, although it's a critical point and is one that needs to be dealt with. It goes beyond our jurisdiction to try and mitigate construction, which is a temporary, and we look at obviously a more permanent situation. So, unfortunately as it is, I understand your testimony to be that look, you have evidence that construction workers are not the most delicate of folk and probably don't appreciate flower beds. I'm trying to be humorous, but I take it very seriously. And the point is is that in terms of the continuing maintenance if they have to come over, how can you rely on the fact that they would take care of your property. And you've made that clear statement, and I think it's understood by the Board.

That being said, let's move on then. Are quick questions for the applicant at this time?

VICE CHAIR MILLER: I was wondering if

the applicant could address, number one, the question of maintenance and the future access having to go to Ms. Conroy's property or what your response to that is and also her concerns about privacy?

MR. GELL: Ms. Miller, we have no intention of trespassing on Ms. Conroy's property. There are other ways of maintaining a wall or painting a wall without going on somebody else's property. It's more expensive, but obviously if Ms. Conroy doesn't want it, we simply won't be able to use her property in any kind of way. And we'll just have to take care of the maintenance in another way.

Obviously, if there are problems that come from the slant of the roof or the gutters, or whatever, these are things that Mr. Beylickjian is going to have to deal with at a later time.

So there are many buildings in Georgetown that have the same kind of problem where it's just very difficult to get access but they manage to do it. And that will have to be the case here as well.

Yes. Mr. Beylickjian reminds me that the houses have always been this far apart and they've had the same issue right along, and that they've managed to maintain their property. And apparently there's not been a serious problem over the years.

We don't expect there will be in the future. We think the neighbors will be able to live together very well, and as Ms. Beylickjian had said earlier, they are good friends and they trust each other. We hope that this will be a very temporary blip in their friendship.

VICE CHAIR MILLER: Do you want address the question of privacy? You know, she's saying there's a great change in the impact of privacy as a result of this addition.

MR. GELL: Well, my -- yes. My thought about that is that apparently Ms. Conroy has been concerned about people being able to look through her windows and has taken steps to have curtains there so that wouldn't be the case. This is not the only place in Washington where you have a situation where windows face windows.

The addition doesn't add anything to that. If there's already an opportunity to look through windows, the addition is further back and in fact the line of sight is even further away. So we don't see how that's going to be a serious impact.

People learn to live in urban settings very, very well. And one sometimes has apprehensions of what could happen in the future that simply don't

pan out. We assume that'll be the case here.

I would -- one other thing I would just mention. In your record you should have a letter from Mr. Nester, who lives in back and who sees the addition and has, where one would expect, some sort of impact. And he supports the application.

There's also a letter from Mr. Gravener who was the former owner of the Beylickjians' household. And I only mention this so that the record is complete. Where he indicates that that the fence was put up jointly between Ms. Conroy and himself, and that that fence was never intended to demarcate the property line, although both of them contributed to it, apparently, they didn't do so in relationship to an actual survey. So, the fence is not an indication of where the line really is. Now we know where the line is, fortunately or unfortunately. At least it's all come out.

CHAIRMAN GRIFFIS: Any cross on those statements?

MS. CONROY: I would just say that Mr. Nester lives directly behind me and his house, the actual setting of his house beyond the ally is probably 90 feet to 100 feet away. So he virtually only sees the addition, you know, if he walks down to

the alley and looks in. But it has relatively minimal impact on him.

And, yes, Mr. Gravener and I did put up the fence together and we weren't interested so much in property line. It just happens that it is on the property line.

CHAIRMAN GRIFFIS: Okay. Anything final? Conclusion?

MS. CONROY: No.

CHAIRMAN GRIFFIS: I'm going to turn to the applicant for their closing remarks at this time then.

Ms. Conroy, you're welcome to have a seat in the audience and make yourself comfortable.

Mr. Gell, are you prepared to present rebuttal witnesses or are you going straight to closing?

MR. GELL: I think the case is pretty well joined at this point. I would mention that we have petitioned from a number of neighbors, all of whom believe that this addition is appropriate and proper in this neighborhood.

And I think all of the other points have been made, so I won't -- except to say that the house across the street on the other side of McKinley had a

similar problem. And this Board had no problem in permitting them to do an addition.

CHAIRMAN GRIFFIS: Very well. In light of this fact, I think we had set this for decision making. Is there any information that we want submitted into the record?

BOARD MEMBER ZAIDAIN: Well, I think you noticed from my line of questioning, I guess I'm still a little perplexed about the survey. And I wanted to hear from the other Board Members and possibly the applicant on what type of information we can -- I don't know if there is any other information we can get. I guess I have to assume that this is -- I mean, it is survey stamped by a professional. I don't know if the Board Members have any other -- have a similar discomfort.

I hate to propose a problem and not propose a solution, but -- it just seems that the party in opposition is maintaining that her side yard is nine feet, which is a number that has been crossed off of this one. Well, I guess either way it's less than five feet, if you look at 4.75, right?

Am I the only one that has an issue?

CHAIRMAN GRIFFIS: No. Was there an architectural site plan that was done for this

project?

MR. GELL: I'd have to ask the architect. I've not seen one. I think we did give you an architectural drawing of the addition.

BOARD MEMBER ZAIDAIN: I just saw the survey plat.

CHAIRMAN GRIFFIS: Yes. I'm not seeing it. What type of drawing was submitted?

BOARD MEMBER ZAIDAIN: You just gave us the zoning submittal.

MR. GERRETY: Hello. My name is James Gerrety. I'm the architect.

CHAIRMAN GRIFFIS: And your address?

MR. GERRETY: It's 8308 Postoak Road, Potomac, Maryland.

And, yes, there was a site plan produced that was on the cover sheet of the drawings. And then that was duplicated for the plat that's required by the Surveyor's Office prior to submission.

BOARD MEMBER ZAIDAIN: Right. So the plat work shows the addition onto it which would have been required in order to get that is the only architectural drawing that we have submitted into this application, is that correct?

MR. GERRETY: I submitted a package of

drawings. Don't you have that? About nine pages.

BOARD MEMBER ZAIDAIN: The half size set that you're holding? Is that's what was submitted?

MR. GERRETY: Yes. Yes, it was.

BOARD MEMBER ZAIDAIN: Well, it's not in the record. Do you know what day you submitted it?

MR. GERRETY: It would have been at the time of the prehearing statement.

BOARD MEMBER ZAIDAIN: It would have been with the prehearing or would it have --

MR. GERRETY: Yes. No, with the prehearing statement. I only brought this one copy, but I'd be glad to leave it --

BOARD MEMBER ZAIDAIN: Well, why don't we just get this submitted into the record for the decision making. Let me do it right now. But I would assume that they're based on surveys of the same drawings?

MR. GERRETY: Yes.

BOARD MEMBER ZAIDAIN: It's a fairly safe assumption.

Will they reflect the old measurements of the side yard before this updated survey or --

MR. GERRETY: Correct. They were submitted with the understanding it was a plot with

side yard setback base don the earlier District of Columbia surveys.

BOARD MEMBER ZAIDAIN: Okay. I'm not sure that's going to bring clarity to it, but why don't we see that and maybe that'll help, I don't know. But the Chair's looking at them, I guess, right?

CHAIRMAN GRIFFIS: Great clarity will be brought.

We're going to make copies so Ms. Conroy can leave with a copy, because she would have to be served. We're going to try and expedite some time.

Yes, Ms. Miller?

VICE CHAIR MILLER: I'm just a little confused. Does that mean the drawings have changed once you found out that there was -- that the side yard was different?

MR. GERRETY: No. The drawings had been completed, submitted for permit. The footing inspection was obtained and passed. And then when the contractor got the wall check, that's -- there was no need to change the drawings because we don't know -- we didn't know the outcome of this process.

VICE CHAIR MILLER: Okay.

CHAIRMAN GRIFFIS: Okay. Then I think

that's all we'll require. We'll have that submitted in. Actually, that is provided into the record at this point.

The party in opposition will be given a copy before she leaves.

I think we'll keep the record open until Tuesday, the 27th, for any statements that directly address the drawings, the new evidence in the case at this time, anything that brings the Board's attention to specific facts of those cases.

Thanks.

Ms. Conroy, you know any comments that you submit, of course, have to be served to the applicant. I'm assuming that you can do that very quickly as you're next door to them. I'm going to allow a very brief time for response to that, which would be if these are -- I think we're going to actually make Monday comments on going to be due on the drawings and then submitted. And then by Friday next we would have the last submissions if there are any on the statements and review of the drawings.

MS. CONROY: (Off microphone).

CHAIRMAN GRIFFIS: If the question from the party opposition is whether the applicant would be required also to serve any information that's

submitted, yes absolutely. Anything that comes into the record at this point has to be served on everybody else. And it will have to be attested to that service. However, to be absolutely clear, the record is only open for that which I've just stated. So anything else you get, anything else that comes in to the Office of Zoning will probably be returned without the Board's review.

Let's run through that schedule to see if in fact it was all clear.

MS. BAILEY: Mr. Chairman, I wasn't in the room at the time.

CHAIRMAN GRIFFIS: Oh, then it was probably very clear.

What I'm asking for is we'll distribute the drawings today so everyone involved the case, obviously the party in opposition will have a copy of that. I'm keeping the record open until Monday for any sort of comments based on the drawings themselves that would be served to everybody. And then I was leaving the record open to Friday prior for any sort of addressing of the comments by the applicant. And that would be it.

Yes?

MR. GELL: That would be the 30th then.

So Monday's the 26th and Friday's the 30th. Are those the two dates we're talking about?

CHAIRMAN GRIFFIS: Yes.

MS. BAILEY: And the decision is scheduled for February, Mr. Chairman?

CHAIRMAN GRIFFIS: Right, the 3rd.

MS. BAILEY: You'll have a full calendar that day.

CHAIRMAN GRIFFIS: We might have a full Board, too.

Okay. Yes? All right. Anything else? Everyone clear? Everyone clear on the process? Any other questions.

Very well. Thank you very much.

Of course, February 3rd will be our public meeting. There would not be any additional testimony. You're obviously welcome to be here to hear our deliberation on this case.

I thank you all very much for your patience and participation in this. And let's move on and call the next case in the morning.

MS. BAILEY: The last case of the morning, Mr. Chairman, is Application 17104 of Jim Roy, pursuant to 11 DCMR ? 3103.2, for a variance from the lot width and lot area requirements

1 under section 401, and a variance from the
2 floor area ratio requirements under section
3 402, and pursuant to 11 DCMR ? 3104.1, the
4 special exception for a new residential
5 development under section 353, to allow the new
6 construction of two single-family row dwellings
7 and two semi-detached dwellings in the R-5-A
8 District at premises 3645-3641 Alabama Avenue,
9 Southeast also known as Square 5671, Lots 63,
10 64, 65 and 66.
11 Are you Mr. Jim Roy, sir?
12 MR. ROY: Yes, I am.
13 MS. BAILEY: Please have a seat at the
14 table.
15 CHAIRMAN GRIFFIS: Good morning.
16 MR. ROY: Good morning.
17 CHAIRMAN GRIFFIS: Just state your name
18 for the record and your address?
19 MR. ROY: Yes. My name is Jim Roy. I
20 live at 4511 Elm Street in Chevy Chase, Maryland.
21 CHAIRMAN GRIFFIS: Okay. I'll turn it
22 over to you.
23 MR. ROY: All right. In July I started
24 the permit process to build four townhomes on a
25 vacant piece of land that I own on the corner of

Alabama Avenue and 36th Place in southeast D.C. Before I can break ground, one of the requirements is to come before the BZA, which brings me here today.

I'm applying for a variance for the floor area ratio, lot area and width restrictions and all who wants to build in R-5-A zoned property, as mine is, as I'm sure you guys know, needs to come before the Board.

The site plans that I'm using are the same that were used 20 years ago when the project was almost completed. The builder who sold me the land, his name is Fred Hayes, left these four lots uncompleted. I brought them this past August. And he's actually continued to work with me for a fee until they're completed.

I met with Ward 7's ANC twice in the last three months regarding neighborhood concerns. The ANC voted in favor of completing Fairfax Village. In fact, if not all who came to both meetings spoke largely in favor of developing this lot. There was one person who was not in favor of it at the first meeting. We had a second meeting, because time was going on too long in the first one. The second meeting she actually was also in favor of building the four townhomes.

I was informed at the end of last week that landscaping plans were required to continue. So I actually have them here today.

As I mentioned, 20 years ago the neighborhood was almost completed. The plans that I'm using have been changed only to meet with today's code requirements, the permit office's requirements as I was going through that process several months ago.

The site hasn't changed, however the zoning evidently has changed, which is why I'm applying for this variance. Because the old plans keep conformity in the neighborhood to meet the new restrictions.

That's all for now.

CHAIRMAN GRIFFIS: Thank you. Any questions of the Board?

Of course, we do have in the record, I don't know if you reviewed it, but the previous order of 1976 that was Application 12147 for the Fairfax Village.

Questions of the Board?

VICE CHAIR MILLER: I don't believe we have in our record a report from the ANC. Do you know if they did a written report or what their vote was?

MR. ROY: Actually, I do know.

VICE CHAIR MILLER: Okay.

MR. ROY: I was told by Mr. Keith that they voted in favor of it. And I'm surprised that you don't have it. They told me they were going to submit a vote of yes, let's go forward with the project.

There was another organization that was also contacted. I can't remember, ma'am, which one that was. I contacted them also. They returned my call and said I don't need to meet with them. But I did meet with ANC's 7 Board twice.

VICE CHAIR MILLER: Do you know what the vote was?

MR. ROY: I don't know how many people voted yes and no. I know that the vote was yes.

VICE CHAIR MILLER: Okay.

MR. ROY: They don't have a problem with it. In fact, I thought they were going to submit that to you guys before today.

BOARD MEMBER ZAIDAIN: I have a general question, trying to get a handle on the information here. Special exception tests are pretty straightforward. Could you give us a little bit more information on the FAR variance that's being requested?

MR. ROY: Right. The middle two properties have smaller lots than the end units.

BOARD MEMBER ZAIDAIN: Well, let me make sure I'm -- as you talk to this, I want to make sure I'm reviewing the right place.

CHAIRMAN GRIFFIS: Right. That's a good point. We need to identify specifically on the site plan that was submitted where these properties are.

MR. ROY: All right. Let me get out my copy of it.

BOARD MEMBER ZAIDAIN: And is this project called Fairfax Village Park?

MR. ROY: Yes, which was almost all constructed --

BOARD MEMBER ZAIDAIN: You're recreating a piece of Fairfax here in the District of Columbia.

I'm sorry, I thought you were going to walk us through the plans.

MR. ROY: Sure. I just wanted to make sure you guys had all your plans out.

Okay. So Alabama Avenue runs here. This is 36th Place. And this is the lot that I own.

BOARD MEMBER ZAIDAIN: Right.

MR. ROY: It's four separate lots. It's one big flat piece of land right now. There's nothing

on it.

BOARD MEMBER ZAIDAIN: Okay. And that's the one that's got the building footprint that's kind of staggered down the street?

MR. ROY: Correct. Yes.

BOARD MEMBER ZAIDAIN: Parallel to the street?

MR. ROY: Yes.

BOARD MEMBER ZAIDAIN: Okay.

MR. ROY: I'm sorry. What was your question, Mr. Zaidain?

BOARD MEMBER ZAIDAIN: We were talking bout the FAR and --obviously we need some more information on why you can't requirements of 402.4.

MR. ROY: Yes. Well, I was contacted by -- I believe her name is Fao in the permit office. And she said that the middle two units because the lot sizes are a little bit smaller, they don't have the bigger lots because they don't have side yards at all, were she tells me six inches too big. The buildings are six inches too big. I need a .9 ratio. So what they did was they calculated the entire size of the lot.

BOARD MEMBER ZAIDAIN: Yes.

MR. ROY: Calculated how much square

footage is on all three levels including the one car garage. They could that as finished space. And when they sum the square footage of all three levels --

BOARD MEMBER ZAIDAIN: This is the FAR calculation, I'm sorry.

MR. ROY: Yes. Compared that --

BOARD MEMBER ZAIDAIN: We're pretty well aware of that.

MR. ROY: Okay.

BOARD MEMBER ZAIDAIN: Are there cellars in these?

MR. ROY: I'm sorry, what was your question?

BOARD MEMBER ZAIDAIN: These are three stories?

MR. ROY: Three stories all above ground.

BOARD MEMBER ZAIDAIN: All above ground? Okay. So there's no cellars?

MR. ROY: Right.

BOARD MEMBER ZAIDAIN: Okay. So basically from what I gathered is you designed these kind of a consistent design between the four of them. And because of the size of the middle lots, you got caught with a very small FAR problem?

MR. ROY: Well, as I mentioned, these

were all permitted before and I'm using the exact same plans as were used for the rest of the neighborhood. So --

BOARD MEMBER ZAIDAIN: Okay. That's true.

MR. ROY: -- what I'm told is that the permitted statute within the D.C. government's rules have changed since 20 years ago when they were built. And now, like I said, the same plans on the same lots that were okay at one time are now too small -- too big. Too big. So I'm asking for a variance for the middle two properties so that I can build them full size rather than have to go back to an architect and spend a lot of money to change those, have nonconformity with these four and nonconformity with the whole neighborhood.

BOARD MEMBER ZAIDAIN: Okay.

CHAIRMAN GRIFFIS: Anything else?

BOARD MEMBER ZAIDAIN: No.

CHAIRMAN GRIFFIS: Well, that's a very unique situation in terms of having --

MR. ROY: Yes, it is.

CHAIRMAN GRIFFIS: -- the entire project have gone through review. And I'm sure Office of Planning is going to touch on this, because it's in

their report, that the overall FAR of the project itself is .69, which is well below that which is the maximum matter of right.

MR. ROY: Yes.

CHAIRMAN GRIFFIS: And I note that looking at the past application how much discussion there was in terms of density and also in terms of impact on the education system, and such.

So, I think in terms of the variance, what I'm seeing in this at this point, and you tell me if you disagree, that there is a fairly unique situation that's created. Situation is one, and also specifically in terms of the land and how it was subdivided which is a given in that it was part of the larger subdivision and development project.

MR. ROY: I listened to everything you said and I'm not quite sure what you're asking me to describe.

CHAIRMAN GRIFFIS: Do you agree with that.

MR. ROY: I don't know whether or not I agree with it. I can tell you that -- well, did you ask me about whether or not the school is effected?

CHAIRMAN GRIFFIS: No, don't worry about that.

MR. ROY: Okay.

BOARD MEMBER ZAIDAIN: Has the land been subdivided?

MR. ROY: Yes.

CHAIRMAN GRIFFIS: When was it subdivided?

MR. ROY: I believe it was subdivided, in fact I'm sure it was subdivided when or before the rest of these were built.

CHAIRMAN GRIFFIS: Right.

BOARD MEMBER ZAIDAIN: To make sure I understand the whole status of the project, everything here, phase 1 and phase 2, has been built except for these four lots?

MR. ROY: That's correct.

BOARD MEMBER ZAIDAIN: Okay.

MR. ROY: And I asked the -- are you guys curious as to why these weren't completed at the time?

BOARD MEMBER ZAIDAIN: Sure, why not? Sure.

MR. ROY: Okay. The reason, and I asked the builder why he didn't build on them fearing that perhaps he just buried a bunch of stuff down there that I'm going to now have to deal with, which isn't

the case. We dug down there just to verify that we had solid ground to build on.

I asked why he didn't at the time. He was running a very, very large company. He had, I think, a weekly payroll of like $90,000 he was telling me. He just didn't have time or the energy to finish this. The guy who was in charge of this project for him was moving on to something else and he just let it go. I mean, he just didn't need to finish it at the time, so that's where it sat until now when I bought from him. I met him through the guy who was supposed to build these. I was going to be his real estate agent. I'm a realtor with Long & Foster. He choose not to build them because he was too busy. So I said okay, I'll take on the job because I had already started the marketing and advertising and had quite a few buyers for these four properties.

BOARD MEMBER ZAIDAIN: Interesting.

So I guess my final question is in terms of the FAR, the FAR regulations or standards changed or was this something that was missed in the original approval?

MR. ROY: Either of those I could be. I was told that they had changed by --

BOARD MEMBER ZAIDAIN: They had changed.

MR. ROY: -- the Board of Zoning, but I don't have information that that's correct.

BOARD MEMBER ZAIDAIN: Oh, it did? Okay. All right. Thank you.

CHAIRMAN GRIFFIS: Okay. Anything else from the Board? If not, let's move on then to the Office of Planning's report.

MR. MORDFIN: Good afternoon, Board Members and Chairman. My name is Stephen Mordfin with the Office of Planning. And this is the application to construct two rowhouses and two semi-detached dwellings in the R-5-A District. These houses are part of the Fairfax Village Park development originally approved the BZA in 1977, although no construction has taken place since 1985. And this application is in conformance with section 353 with the exception of the provision of a landscaping plan.

In addition, the public sidewalks should be provided across the 36th Place frontage of Lot 66 so as to ensure that this proposal does not adversely effect the character of the existing neighborhood.

With reference to the landscaping plan, I did late last week make contact with DDOT with the Urban Forestry Division, and they recommended that

one shade tree be provided on each of the semi-detached lots and one ornamental or flowering tree be placed on each of the rowhouse lots. And the reason for that is the smaller lots in the center aren't large enough to support a shade tree.

And this application is also in conformance with the variance to increase the FAR for the two rowhouses from 0.9 to 0.95 for Lot 65 and to 1.0 for Lot 65.

The proposed development is to be located on four separate lots that have already been legally subdivided. However, if the entire proposal were to be developed as one on one lot, the FAR would be 0.69 which is substantially less than the maximum of 0.9 that is permitted. In addition, this same variance was granted by the BZA in 1977.

And the Office of Planning recommends that the application be granted subject to the following conditions: That a landscaping plan be submitted as a part of the application that would include a shade tree for Lot 63 and 66 and an ornamental tree for 64 and 65 and that the public sidewalk be extended across the 36th Place frontage of the subject property adjacent to Lot 66.

And that concludes the presentation of

the Office of Planning.

CHAIRMAN GRIFFIS: Thank you very much. Question from the Board?

BOARD MEMBER ZAIDAIN: Yes. Just a quick question on the condition, and you may have touched on this and I might have missed it as I was looking through other papers here. But the sidewalk, is this just to fill in a gap in the sidewalk that goes through the rest of the development?

MR. MORDFIN: Yes.

BOARD MEMBER ZAIDAIN: Okay.

MR. MORDFIN: It just doesn't come across the side of that property.

BOARD MEMBER ZAIDAIN: Okay. Are they required by any other regulation to do that, to build that walk, do you know?

MR. MORDFIN: Not by any other zoning regulations.

BOARD MEMBER ZAIDAIN: Okay. That's true. Okay. That's the only question I have.

CHAIRMAN GRIFFIS: Okay. Anything else for the Office of Planning?

Does the applicant have any questions of the Office of Planning?

MR. ROY: No, I don't have any questions.

CHAIRMAN GRIFFIS: All right. Are you amenable to those conditions?

MR. ROY: If I'm required to put a sidewalk on, I'm absolutely willing to do. And I'm also willing to put up trees, although I was going to leave that for the new owners of the properties.

I did meet with Steve out in the hallway briefly. We discussed it and I'm very much willing to put up shade trees on the two end properties and ornamental on the two others, and I have the plans for that here.

CHAIRMAN GRIFFIS: Okay. Do you have those to submit?

MR. ROY: Yes.

CHAIRMAN GRIFFIS: Excellent. If you wouldn't mind giving it to the staff member.

Very well. Let's move on. Oh, wait, we do have the DHCD exhibit 24 which recommended approval. Is there a representative from DHCD here to present that report, because it was timely filed. It is in the record. Do you have a copy of that?

MR. ROY: A copy of which report, sir.

CHAIRMAN GRIFFIS: The Department of Housing and Community Development's report?

MR. ROY: No, I don't think so.

CHAIRMAN GRIFFIS: Okay. Well, at your leisure go to the official public record on this application, you can pull a copy of that. As it is recommending approval of this I won't provide you a copy right now in order to address it.

The ANC report, we've already touched on ANC-7B. We don't have anything in the file at th is point, but we have heard testimony from the applicant that he participated in the ANC meeting and had anticipated having it recorded as a vote supporting the application.

Is Office of Planning, did they have any other additional communications with the ANC at all?

MR. MORDFIN: No.

CHAIRMAN GRIFFIS: No. Okay.

And we don't have anything in from DDOT, although comments were solicited from them. I'm sure this office and also Office of Planning and the D.C. Board of Education. Very well.

Let's move on then. IS there anyone else here either in support or in opposition to Application 17104 that would like to give testimony at this time, they can come forward.

Testimony. Would you like to give testimony? I have to say that, of course, but having

one person in the hearing room I'm waiting to see if that is the case. Not having any indications that there is persons here either in support or opposition or we'll throw in neutral for good measure to give testimony, I think we can move on to any closing remarks.

If you would, I will give you the opportunity to make closing remarks. Obviously there's summation remarks. An important aspect might be for you to talk specifically to the variance test, which of course as laid out needs to establish a uniqueness in the property and how that uniqueness or practical difficulties are created by which you could not comply with the zoning regulations. And third, of course, that it would not impair the intent and integrity of the zone plan or the public good.

MR. ROY: Okay. So in summary I request that the variances be allowed and permit it to continue forward through the permit process to build these townhomes.

As far as complying with zoning regulations, I'm ready to comply with all of them. Obviously, asking for special exceptions for why I'm here today.

As far as the public good, I believe that

none of the neighbors will be harmed. In fact, most of them if not all of them were in favor of developing this vacant piece of land. The neighbor -- actually there's only one who has an adjoining piece of property, that's the one directly behind where the townhouses are. She was actually at the meeting and she was fine with it. In fact, there is a -- kind of like a little trench that runs along here. And I actually met with the -- I know it's tough to see from there.

CHAIRMAN GRIFFIS: Okay.

MR. ROY: But there's a kind of a trench that runs along the very bottom of the page, that dark black line. And some of the neighbors here actually would like to work with me and my builder who has to shore up this to fill in their back yards to some degree, too.

Public good, we're going to put four more townhouses on there. There really won't be any impact on traffic.

CHAIRMAN GRIFFIS: Right. Okay. Let's talk about -- just tell me just briefly what's unique about this and the practical difficulty with complying with the regulations.

MR. ROY: Okay. Well it's unique in that

all of the other ones are built in the same exact plans except amount of proportion for the middle two and rather than having to go make my plans slightly smaller, according to the permit office I could have done that, I've chosen to come here and seek relief so that I don't have to spend a lot of time and money doing that and can keep conformity between the townhouses and not have to explain to my purchasers, the people who are going to buy them from me, why theirs has to be slightly smaller than their neighbors.

CHAIRMAN GRIFFIS: Okay. Very well. Thank you very much.

Last questions of the Board? The Board prepared to move forward with this application today? Very well. I would move approval of Application 17104 for Jim Roy. This is, of course, pursuant to a variance from the lot width and lot area requirements under 401 and the FAR requirements under 402 pursuant to the special exception also for the new residential development under section 353 to allow the new construction of two single family row dwellings and two semi-detached dwellings. Premises are located at 3645 and 3651 Alabama Avenue, southeast, and would ask for a second.

VICE CHAIR MILLER: Mr. Chairman, I would second that with the addition of the conditions proposed by Office of Planning today and agreed to by the applicant.

CHAIRMAN GRIFFIS: Indeed. Excellent point. In terms of the special exception and approval, add the conditions as voiced by the Office of Planning. I'm perfectly amenable to that and think that's well stated.

Let me just run through very quickly I think, because I think first of all the application is very full on this. One, the unique circumstances that was created, of course, is that this was an overall development that was reviewed by this Board for a large development. In terms of impact clearly and then also in terms of the variances and the test of variances was done even to a larger extent with all of the properties combined. That, in fact, our approval has lapsed because construction didn't start on this, has created the practical difficulty of completing a project that was previously approved.

I think in addition to the practical difficulties evidenced by the record and also the applicant's testimony today is the conformity of the properties with the development that's happened.

1 Although, a digression. I think it's too bad to have
2 to build townhomes with garage doors in the front
3 facade, but I'm going to let that go at this point.
4 There is a matter of conformity with the
5 overall development. And, in fact, it's one of the
6 requirements in the special exception test to look at
7 whether this would fit in, essentially and how it
8 does. As this was already subdivided and it
9 subdivided in the manner and the plans were already
10 approved and were, as I said, the basis of an
11 approval by the BZA in 1976 in Application 12147, I
12 think it's a strong enough case for us first to rely
13 on our previous Board and their decisions and their
14 review. I think in terms of the impact that's
15 required of us to review this was even more so in the
16 previous application in terms of larger impacts,
17 traffic, adverse impacts that may have been
18 evidenced. And, therefore, I think we can easily
19 proceed with this.
20 Any other comments? Mr. Zaidain?
21 BOARD MEMBER ZAIDAIN: I'm going to
22 reiterate that I agree with all of your positions and
23 I think reading the conclusions of law from the
24 previous Board order, there is nothing that is
25 evidenced to me that suggested those conditions

stated in that order have changed. So it seems to me that they still lend a lot of weight to supporting the application today.

CHAIRMAN GRIFFIS: Great.

BOARD MEMBER ZAIDAIN: And I guess there is a tie between your comment about the design of the buildings and the fact that we are recreating Fairfax in the District of Columbia.

CHAIRMAN GRIFFIS: Yes. I noted your comments, and it was well said.

You know, quite frankly, does this review have --

BOARD MEMBER ZAIDAIN: I don't think the Board is supporting that.

CHAIRMAN GRIFFIS: I think it would be very clear. If we were looking at this, I think it would be a different situation if we were looking at he overall development and the fact of having now to rely on the aspect that there are no alleys or rear access to these structures --

BOARD MEMBER ZAIDAIN: Right.

CHAIRMAN GRIFFIS: -- is one thing that's a given now. I think in the subdivision it was a grave mistake not to be able to do that, and I think -- well --

BOARD MEMBER ZAIDAIN: We're glad to see architecture has progressed since the '70s.

CHAIRMAN GRIFFIS: That's right. That's right. Indeed. Good.

Yes?

MS. BUCHANAN: My name is Avis Buchanan and I am a neighbor of the proposed structure. Can I ask a question?

CHAIRMAN GRIFFIS: One question? Okay.

BOARD MEMBER ZAIDAIN: Are we in the middle of a motion?

CHAIRMAN GRIFFIS: Yes, we are. We're in a middle of a motion and deliberation. And so I can't actually have anyone address the Board on this unless we table the motion. And so what I'm going to do is just proceed with the vote on this motion and then I'm going to answer your question.

Mr. Zaidain, unless you wanted to --

BOARD MEMBER ZAIDAIN: Wanted to digress.

CHAIRMAN GRIFFIS: Anything else, deliberation on the motion? Not hearing any further discussion, I would ask for all in favor of the motion to signify by saying aye.

ALL: Aye.

CHAIRMAN GRIFFIS: And opposed?

1 If we could just record the vote?
2 MS. BAILEY: The vote is recorded as
3 three-zero-two to approve the application with the
4 conditions identified in the Office of Planning's
5 reports.
6 Mr. Griffis made the motion, Ms. Miller
7 second, Mr. Zaidain is in support. Mr. Etherly is
8 not present, nor is a Zoning Commission member.
9 CHAIRMAN GRIFFIS: Good. Thank you very
10 much.
11 Okay. Yes? If you don't mind, just
12 come. Go ahead.
13 MS. BUCHANAN: My name is Avis Buchanan.
14 I live at 3623 36th Place, Southeast. And so I live
15 around the corner from the proposed development.
16 CHAIRMAN GRIFFIS: Yes.
17 MS. BUCHANAN: And in the same overall
18 development of Fairfax Village Park.
19 I apologize for the lateness of my
20 request, and appreciate the opportunity to ask my
21 question.
22 You made a point during your analysis
23 about whether or not the proposed new development
24 fits within the overall neighborhood structure. I was
25 not able to attend either of the meetings at the

local level because I didn't get notice of what apparently the second meeting until that night that the meeting was held.

I asked Mr. Roy during the morning hearing, the earlier hearing this morning, about the physical structure and he informed me that the back of the structure -- all of the other homes are brick all the way around, including mine. And Mr. Roy said that the proposed structure will be brick on the front and sides, I believe, but not the rear.

So my question is whether or not there's a reason for the back of the homes being siding as he told me instead of brick consistent with all of the other buildings?

MR. ROY: Quick architectural discussion. Mr. Roy?

MR. ROY: It's really just a cost issue. Very few people are going to see the backs of those properties. And in order to keep them affordable to the people who are going to be buying them and still have enough profit that allows me to do with this, I went with vinyl in the back, brick on the sides, brick in the front.

MS. BUCHANAN: And I'm just hoping that that's sufficient for the Board, given the Board's

concerns about conformity with the rest of the structures in the neighborhood. I know that's not the issue before the Board, but that's my questions.

CHAIRMAN GRIFFIS: All right. It's an interesting point to bring up, and I'm sorry I didn't take the opportunity when we were actually within the hearing. I'm not sure it would have had a big enough impact to move on.

I think the important aspect is -- there is a very important review. There are some places where we have jurisdiction to get right into the design and others where we do not.

If it would have been, I think, difficult in terms of this issue to rise to the level of the rear elevation materials as having a detrimental impact on the rest of the area. I mean, really when the regulations for this applications -- of which this application is under tell us that we need to make sure that these conform to the overall neighborhood or somehow relate, a lot of it has more to do with density and placement and somewhat overall design.

But I do appreciate you bringing that to the attention. And I, for one, am no big fan of vinyl. And I think it may be well worth, you're here

and maybe you're heading back in the same direction, to have some discussion of alternative materials that are of the same economic level. I mean, there is an awful lot of cement fiber board type materials that look a little bit better that may be able to be done in a way that doesn't look so out of character or much more like aluminum siding.

So, there's alternatives that may stay within the budget which you may not -- you may want to push a little bit with the developer.

Any follow up comments? Question? Anything else then for us?

MS. BUCHANAN: No, but I do appreciate your out of order consideration of my question. Thank you.

CHAIRMAN GRIFFIS: Yes. And next time, don't be shy. Just jump right in there during the hearings and be a participant.

MS. BUCHANAN: I didn't think about it until -- just now.

CHAIRMAN GRIFFIS: Oh, I see. Okay. Very well.

Ms. Miller?

VICE CHAIR MILLER: I just wanted to clarify on a vote that the conditions that are being

included are not just those in OP's written report, but were those that were referenced in their oral report today. Because the conditions regarding the trees I don't believe are in their written report.

CHAIRMAN GRIFFIS: Oh, I see. Right. Rather than having a landscape plan, there's specific treatment of the landscape that's more specific than the OP's condition. Okay. I think we're clear. We'll have that be reflected. And, in fact, the placement of the trees and the type of trees are now in the record and, of course, we'll look to those. Okay.

Anything else? Anything further?

MS. BAILEY: Yes, Mr. Chairman.

CHAIRMAN GRIFFIS: Yes.

MS. BAILEY: One last thing. There was an outstanding issue concerning the filing fee, sir. Has that been resolved?

MR. ROY: I filed a $2,000 check a couple of hours ago now.

MS. BAILEY: Thank you.

No, Mr. Chairman.

CHAIRMAN GRIFFIS: I would have hated to have to go through this all again. Okay.

That being said, then if there's no other

business for the Board in the morning session, I can adjourn the 20th of January, 2004 morning session of the BZA.

Thank you all very much. Appreciate your patience in coming down here this morning.

I see no difficulty in making a summary order unless the Board has difficulty. Okay. There it is. Thank you.

(Whereupon, at 11:44 a.m. the Board of Zoning Adjustment was adjourned, to reconvene this same day at 1:07 p.m.)

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

1:07 p.m.

CHAIRMAN GRIFFIS: Good afternoon, ladies and gentlemen. I call to order the afternoon session of 20 January 2004. This is, of course, the afternoon public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Jeff Griffis. I am Chairperson. Joining me today Vice Chair Ms. Miller and representing the National Capital Planning Commission with us this afternoon is Mr. Zaidain. We are not accompanied by Zoning Commissioner this afternoon and Mr. Etherly, our esteemed member has had a scheduled conflict for some time and will not be here this afternoon. So you're looking at the roster.

Copies of today's hearing agenda are available to you. If anyone's here outside of the one appeal in the afternoon, you're in the wrong place. But, if you do want to take a look at the afternoon agenda, it is located close to where you entered into the hearing room.

There are some very important and specific things to be aware of. First of all, all proceedings before the Board of Zoning Adjustment are recorded. They're now recorded in two fashions. First of all, and most importantly, they are recorded by a court reporter who sits to my right, and that will create the transcript.

Secondly, we are now being broadcast on the website of Office of Zoning. So this is a live broadcast. And so those that are not in attendance physically are able to watch our proceedings.

So, with that I would ask that everyone just be attentive to that and refrain from making any sort of disruptive noises or actions in the hearing room.

Also, when coming forward to speak to the Board, I would ask that people fill out two witness cards. Witness cards are available for you at the table where you entered into the hearing room and

they're also available at the witness table in front of us. Those two cards go to the recorder who sits to my right prior to coming forward to address the Board. So, please have those filled out if you're anticipating addressing the Board.

Secondly, when coming forward you're going to need to have a seat, make yourself comfortable. Everything that goes onto the record must be said into a microphone. That microphone must be in. So we will give you technical assistance to make sure that that happens. And you will obviously be asked to repeat anything that is said that is not into a microphone.

We ask an additional aspect to that; that when you finish speaking if you could just pay attention and turn the microphone off so that we don't have any sort of feedback as we continue with our proceedings.

The order of procedure for appeals will be as follows: We will first have statement and witnesses by the applicant.

We will second go to the Zoning Administrator or the government official's case.

Third, we will have the case of the owner, the lessee or any of their designated

representatives.

Fourth, we will have the ANC present a case if they are so amenable.

Fifth, we will have any intervenors. If there are intervenors that are established in this appeal, they will then present their case.

And sixth, finally, we will have rebuttal and closing statements by an appellant.

To make note, if you fall into one of those categories and are perceived to be putting on a case but are not the appellant, I would ask that you present your case, you will be cross examined, etcetera, and then you will conclude all in that one time frame.

The appellant is afforded an opportunity for rebuttal and closing statement different and outside of their case presentation.

I will give people further guidance if that isn't exactly clear in all of my opening statement.

Pursuant to section 3117.4 and 3117.5 in the zoning regulations there is a time limit on all of our proceedings, and there's specificity to that today. First of all, we will be establishing 60 minutes for the presentation of each case. That

means the appellant and the intervenors. The ANC, of course, is not limited in time but we do encourage them to stay within the same amount of time with that. So the applicants, appellants, opposition, intervenors are all going to be limited in their time, 60 minutes. We will run the clock on that.

Time that goes into that, of course, is for the presentation of the case. Anytime that goes towards cross examination or Board questions is not counted in that time.

Lastly, of course, you're not required to utilize all that time. Efficiency is effectiveness; so if it's done before then, that absolutely is appropriate.

The record will be closed at the conclusion of each case, except for any material that's specifically requested by the Board. And we are very specific. There will be items of submission, very specific of what is to be submitted and then when it is to be submitted. Of course, it doesn't make it in by the date that we set, it will not be accepted into the record. So, we will make sure that everyone is clear on that and there will be no unknowns.

After information is requested by the

1 Board is received, the record would finally be closed
2 and no other information would be accepted into the
3 record.
4 The Sunshine Act requires this Board to
5 conduct each case in the open and before the public.
6 This Board may, however, consistent with its rules
7 of procedure, regulations and the Sunshine Act enter
8 into executive sessions. Executive sessions are
9 those which are used for deliberating on a case or
10 reviewing the record on a case.
11 The decision of the Board in contested
12 cases must be based exclusively on the record that's
13 established here, which goes to a lot of the points
14 I've already brought up. Anything you want on the
15 record should be said into a microphone, submissions
16 should be made timely so that they will be a part of
17 the record, etcetera.
18 In addition to that, though, we ask
19 people present today not engage Board Members in
20 conversation so that we don't give the appearance of
21 somehow gaining information that is outside the realm
22 of the created record.
23 I believe it's time to consider any
24 preliminary matters attendant to the afternoon case.
25 Preliminary matters relate to whether a case will or

should be heard today, such as requests for a postponement, continuance or whether proper and adequate notice has been provided.

If you believe that the Board should not proceed this afternoon with its case, now is the time to bring it to the attention of the Board.

I would ask that people having preliminary matters for important come forward and have a seat at the table as their indication.

I have a couple of preliminary matters that I'm going to go through first. But I also just want to say a very good afternoon to Ms. Bailey, who is sitting on my very far right from the Office of Zoning, and Mr. Moy closer to me also representing the Office of Zoning. These are the folks that do all the hard work. We're just the volunteers that show up on Tuesdays and listen to great testimony.

That being said, I will go to them. First, I want to update people. As you note, we are just bordering on a quorum. A quorum for the Board of Zoning Adjustment is three. We have had difficult scheduling problems for numerous reasons, none of which will probably interest any of you, so I won't go into it.

We have to recess because we will lose a

quorum at 1:45. We will recess for a hour and a half and then resume, unless we can finish this within half an hour.

And so I'm asking everyone's patience with that. We have taken an entire afternoon for this case. We weren't anticipating having to do that. We like to get through four to five cases in an afternoon, so I think we've given great deference to the time requirement to hear the full case on this.

That being said, Ms. Bailey, do you have any preliminary matters for the Board?

MS. BAILEY: Not at this time, Mr. Chairman.

CHAIRMAN GRIFFIS: Thank you very much.

Does anyone else -- yes?

MR. DONOHUE: Very briefly, Mr. Chairman.

My name is Ed Donohue, and I'll be representing the owners of WagTime. I'll give my information to the clerk.

CHAIRMAN GRIFFIS: Okay. Is it a preliminary matter?

MR. DONOHUE: No, sir. I just wanted to advise the Board, that's all.

CHAIRMAN GRIFFIS: Okay. All right.

1 If there's any other preliminary matters
2 for the attention of the Board, not seeing any
3 indication of that, then I would ask everybody that
4 is going to present testimony before the Board in
5 this application if they would please stand and give
6 their attention to Ms. Bailey. She is going to
7 administer an oath. Anyone even contemplating giving
8 testimony, this is the time.
9 (Witnesses sworn.)
10 MS. BAILEY: Mr. Chairman, should I call
11 the case?
12 CHAIRMAN GRIFFIS: Yes, call the case.
13 MS. BAILEY: That is Appeal Number 17092
14 of Stephanie Mencimer and others pursuant to 11 DCMR
15 ?? 3100 and 3101 from the administrative decision of
16 the Denzil Noble, Acting Zoning Administrator,
17 Department of Consumer and Regulatory Affairs form
18 the issuance of Certificate of Occupancy number
19 CO57903, dated July 23, 2003, to WagTime LLC, a 24-
20 hour dog boarding and grooming facility with retail
21 sales of pet supplies. Appellant alleges that the
22 aforementioned use is not permitted in the R-3-A
23 District. The property is located at 1412 Q Street,
24 Northwest also known as Square 209, Lot 878.
25 Mr. Chairman, there is one request for

intervenor status, as I understand it, from Metropolis Development Company and also perhaps the appellant has representatives who are here. So clarification of those two matters, perhaps, may be important prior to the start of the hearing.

CHAIRMAN GRIFFIS: Excellent. Thank you very much.

Anything else? If there's nothing else, then yes, I'd ask the appellant representatives or whose going to be representing to have a seat at the table. I need the two requests for party status also to come forward, please, and just introduce themselves for the record.

Also, I think I skipped over very quickly, of course, when coming forward to give testimony or to address the Board, on your first time I need you to state your name and your address for the record. You only need to do this once so that we can make sure that any statements that you make get credited correctly.

So, with that, let's just do introductions.

Mr. Chairman, my name is Andrea Doughty. I represent one of three representatives for the appellants. My address is 1417 Q Street, Northwest.

CHAIRMAN GRIFFIS: How do you pronounce your last name?

MS. DOUGHTY: Doughty.

CHAIRMAN GRIFFIS: Doughty. Okay. And you're one of three you said, so there's going to be three people conceivably addressing the Board?

MS. DOUGHTY: Yes. Correct, but very briefly.

CHAIRMAN GRIFFIS: Yes. Okay. I just want to know what I'm faced with. Okay.

Yes, sir?

MR. PANNICK: Hi. I'm Scott Pannick. I'm a principal with Metropolis Development Company.

CHAIRMAN GRIFFIS: And then we have a Gary Ridley and Mark Ravage, is that correct? Are they here?

MS. DOUGHTY: I am representing Mr. Ridley and Mr. Ravage in addition to the original appellants. And I have the duly authorized representation forms here with me.

CHAIRMAN GRIFFIS: So you're conceivably going to put on appellants' case and an intervenor's case or are you going to combine them all in one?

MS. DOUGHTY: We're going to combine them all in one.

CHAIRMAN GRIFFIS: Okay.

MS. DOUGHTY: If that is acceptable to the Board?

CHAIRMAN GRIFFIS: So you're conceivably calling them as witnesses really?

MS. DOUGHTY: No, we do not intend to call Mr. Ridley or Mr. Ravage as witnesses. We filed a request for party status for those two individuals.

CHAIRMAN GRIFFIS: Okay.

MS. DOUGHTY: They wish to join the original appellants group.

CHAIRMAN GRIFFIS: Okay.

Mr. Pannick, where's your property located physically in connection to this instant property?

MR. PANNICK: We are in the process of building 85 condominiums directly across the alley from WagTime.

CHAIRMAN GRIFFIS: Okay.

BOARD MEMBER ZAIDAIN: Do you own the property or are you just developing it?

MR. PANNICK: Own it.

BOARD MEMBER ZAIDAIN: You own it. Okay. But you have ownership in a LLC? Okay.

MR. PANNICK: Yes, I do have an ownership

interest.

MS. DOUGHTY: Mr. Chairman, you can see the property on this -- this is the property owned by Mr. Pannick right here.

CHAIRMAN GRIFFIS: Is that your board?

MS. DOUGHTY: Yes, it is.

CHAIRMAN GRIFFIS: I see. Okay.

BOARD MEMBER ZAIDAIN: And you're currently developing that into 85 unit apartments?

MR. PANNICK: Condominiums, yes.

BOARD MEMBER ZAIDAIN: Condos.

VICE CHAIR MILLER: What is it now?

MR. PANNICK: It was an old industrial building. They were old automobile dealer showrooms for many, many years. They've been vacant for quite some time now.

CHAIRMAN GRIFFIS: This is part of an application before us, was it not?

MR. PANNICK: Yes, indeed.

CHAIRMAN GRIFFIS: Okay. All right. And Gary Ridley, Mark Ravage at 1408 Q Street, can you specify where they're located?

MS. DOUGHTY: Yes. That is correct, Mr. Chairman. They're both located at 1408 Q Street, Unit 32 and --

CHAIRMAN GRIFFIS: But where -- I mean, outside of the address.

MS. DOUGHTY: It is right here. You can see the window sill of the Berret School. Condominium building.

CHAIRMAN GRIFFIS: So the picture was taken from the property.

MS. DOUGHTY: That's right.

MR. DONOHUE: From my property.

MS. DOUGHTY: Correct.

CHAIRMAN GRIFFIS: What I can't have is people speaking in the audience, because you're not going to be part of the record and it's just going to get in the way of everybody else. And, frankly, the proper recording of what's actually being said. So if you need to address, you need to come forward and just have a seat and talk into a microphone.

Okay. Any question of the Board?

Is the property owner's representative here? The business representative? Yes. I'm sorry. We've been through this already.

MR. DONOHUE: Mr. Chairman, Ed Donohue on behalf of WagTime. I haven't got any questions for the intervenors.

CHAIRMAN GRIFFIS: And your position on

granting party status in these two --

MR. DONOHUE: Don't object.

CHAIRMAN GRIFFIS: No objection? Okay

MR. RUSHKOFF: Bennett Rushkoff on behalf of DCRA. The government also does not object to party status.

CHAIRMAN GRIFFIS: Thank you for reminding me to ask you that. I was going to get to it. I promise.

To be clear then, we're going back to Ridley and Ravage; you are maintaining that they want separate party status even though their case presentation will be rolled into the appellants' or are you saying that they're withdrawing their request for party status as they are joining the appellant case?

MS. DOUGHTY: They wish to join the original parties to this appeal.

CHAIRMAN GRIFFIS: So they're withdrawing their party status request?

MS. DOUGHTY: You might need to help me.

CHAIRMAN GRIFFIS: There's a different standing.

MS. DOUGHTY: Okay.

CHAIRMAN GRIFFIS: I mean, there's a lot

of standing in having a party status in any case in proceeding before us.

MS. DOUGHTY: Yes. Yes.

CHAIRMAN GRIFFIS: And it happens to be in their participation now and whatever might happen with this. So, that's why I'm spending a little bit of time and trying to give you an opportunity to be clear on what you're actually saying.

MS. DOUGHTY: Okay. They are not withdrawing their request for party status. They wish to be parties to this appeal

CHAIRMAN GRIFFIS: Right.

MS. DOUGHTY: Now, just for convenience sake for the purposes of effectiveness, their presentation has been already rolled into the presentation of the original appellants, if that is acceptable to the Board.

CHAIRMAN GRIFFIS: Okay. Then the last question is if --

VICE CHAIR MILLER: Well, do they want to be appellants or do they want to be intervenors?

MS. DOUGHTY: They want to be appellants.

CHAIRMAN GRIFFIS: I have no idea how to separate them.

VICE CHAIR MILLER: Ms. Doughty, it

sounds like they don't need separate party status if they're going to be joining the appellants and become an appellant and be represented by the same attorney as the rest of the appellants. Is that acceptable to you?

CHAIRMAN GRIFFIS: And to clarify a little bit, obviously in terms of status, I think party status we have a certain amount of regulated information that we needed. And one of the establishment is how they might be uniquely or distinctly impacted. And if they're saying that they in fact can join, are they then taking away their uniqueness or their impact. And, obviously, we don't want to prejudice anybody from not being able to present a case, but if they're saying that they can actually be represented in presenting a case, it seems to be redundant to start granting party status or intervenor status to anyone that just requests it.

MS. DOUGHTY: Well, when Mr. Ravage and Mr. Ridley filed the request for party status they specified the manner in which they were uniquely effected by this decision of the Zoning Administrator. So that information is on the record with the Office of Zoning.

CHAIRMAN GRIFFIS: But their issues are

identical to that of the appellants and to that of an adjacent property.

MS. DOUGHTY: The issues are I would not say identical. Their issues, Mr. Ravage's and Mr. Ridley's are not identical but they are similar. And therefore for the purposes of presenting the case to the Board there's no need to -- Mr. Ravage and Mr. Ridley did not see any need to make a distinction in the case presented.

CHAIRMAN GRIFFIS: Good. Okay. That being said, any opposition to granting party status to Mr. Ridley and Mr. Ravage. Questions for the deliberation, comment?

VICE CHAIR MILLER: Just to get the procedure correct here. It doesn't sound like they need separate party status. It sounds like they want to join in the appeal. And I don't know if Corporation Counsel wants to address this, but I don't know whether that's an amendment to the appeal to have them join or what, but it doesn't sound like they need separate party status. They don't want to put on a separate case. It sounds to me like they don't want to take on individual responsibilities in this case such as cross examination or any of the responsibilities that a party takes on.

So, I think the proper way to handle this is to have them be joined as appellants in the case, not as a separate intervening party. And it looks like Ms. Doughty is agreeing with me.

Do you have an opinion? Corporation Counsel have an opinion?

MS. GLAZER: Well, the only opinion I have is it's up to Mr. Ridley and Ms. Ravage to make the request. If they want party status and they feel they're entitled to it, the Board has to rule on that. And --

MS. DOUGHTY: Well, Mr. Ridley and Mr. Ravage do feel that way, have made the request. So -- and because Mr. Ravage is not with us today, I hesitate to withdraw that application on his behalf.

VICE CHAIR MILLER: Excuse me. Are you representing the appellants in this case as well?

MS. DOUGHTY: Yes.

VICE CHAIR MILLER: Okay. So the appellants have no objection to their joining the appeal?

MR. DONOHUE: Correct. The appellants commend Mr. Ravage's and Mr. Ridley's request for party status to you.

Excuse me, Mr. Chairman.

CHAIRMAN GRIFFIS: Yes?

MS. DOUGHTY: Perhaps we have caused some confusion here.

CHAIRMAN GRIFFIS: No, we can cause it on our own.

MS. DOUGHTY: Mr. Ravage and Mr. Ridley, their intent was that they wished to join the appellants. Now, they believed that in order to do so, they needed to file a request for party status. So, the intention is that they join the appellants.

Now, if you are saying to me that it is not how one joins the appellants group, a request for party status in not needed --

CHAIRMAN GRIFFIS: That's correct.

MS. DOUGHTY: -- to join the appellants group --

CHAIRMAN GRIFFIS: That's correct.

MS. DOUGHTY: -- then we could withdraw that request for party status.

CHAIRMAN GRIFFIS: Excellent. That brings great clarity to it. And I think that that's absolutely appropriate that you can take them on under the appellant and how you distribute information that's served on you is up to you, and how large the grouping of it.

Okay. That's very clear.

Then are there any objections to granting Mid-City Development Company, LLC with the high esteemed very responsible position of party status? Board Members, questions, concerns? Any objections then? Not hearing any, it is the consensus of the Board at this time to grant party status then to Mid-City Development Company, LLC.

Anything else before we get fired up here? Okay. That being said, we're about to embark on, it may be my opinion, but an exciting appeal.

We have now been afforded the entire afternoon. We will not be taking a break at 2:00 at recessing. We will take a break in the afternoon, but we can go straight through. I believe that we will be able to maintain a quorum up until 5:30 or 6:00 when all of you will be as worn out as we are and we will conclude where we are close to 6:00 hour.

So with that, let's proceed.

Let me have the appellant up, if they're ready. Maybe we can get kicked off.

I'm sorry, Mr. Rushkoff, did you have something?

MR. RUSHKOFF: No. I was just going to sit at the table.

CHAIRMAN GRIFFIS: Oh, okay. Fabulous.

Does the appellant have an estimated time of which it will take for the presentation of their case?

MS. DOUGHTY: We believe we will come well within the 60 minutes allotted to us.

CHAIRMAN GRIFFIS: Okay.

MS. DOUGHTY: And I include in that Mr. Pannick also.

CHAIRMAN GRIFFIS: Excellent. And then also in terms of just trying to gauge our afternoon, how we're going to be doing this, you gave an attachment of, might I say, a plethora of witnesses. How many witnesses are you planning to call?

MS. DOUGHTY: We are planning to call four witnesses?

CHAIRMAN GRIFFIS: Okay. All right. Let's proceed.

MS. DOUGHTY: Mr. Chairman and honorable Board members, the appellants in this case and we as their representatives are fully aware that what is at issue in this appeal is not the noise and other impacts of WagTime's Boarding Kennel on the neighboring property owners. We are not here to talk about WagTime. Rather, as we have explained in more

1 detail in our prehearing submission, we intend to
2 submit evidence today that boarding kennels in
3 general are a use that is not specifically identified
4 by the DC zoning regulations, that boarding kennels
5 are not similar to uses that are specifically
6 identified by the zoning regulations under section
7 741 as being permitted in the C-3 zone.
8 We fully understand that nuisance is not
9 at issue here, neither is the particular operational
10 characteristics of the dog boarding business that the
11 Zoning Administrator's ruling concerns in this case.
12
13 What is at issue is dog boarding kennels
14 in general and specifically whether the 24-hour dog
15 boarding use authorized by the Zoning Administrator
16 in respect to WagTime's Certificate of Occupancy for
17 1412 Q Street is similar to any of the uses
18 specifically identified by the Zoning Administrator
19 in his zoning interpretation regarding WagTime's
20 application, namely: (1) a public boss, physical
21 culture or health service; (2) a veterinary hospital,
22 and; (3) a pet shop or to any other uses permitted in
23 a C-3 zone.
24 Each of our witnesses will direct their
25 testimony and evidence today to precisely that issue.

The original appellants were a group of four people. They include Mr. Wemple, Ms. Mencimer, Mr. Weaver who is in the audience and Mr. Forrest Smith. Those four original appellants plus Mr. Ravage and Mr. Ridley are represented here today by myself, Andrea Doughty and Bonn Macy to my left and Erik Wemple to my right. And we have correctly signed authorization forms for that group of appellants.

And our goal is to present the appellants' case to you swiftly and efficiently.

Mid-City Development Company, as you've heard, is represented by Mr. Pannick. And I understand that following the presentation of the three of us, he will present brief direct testimony to the Board.

As I said, we will all four of us; Mr. Macey, myself, Mr. Wemple and Mr. Pannick stay within the 60 minute limit.

CHAIRMAN GRIFFIS: Okay. Let's be clear on a couple of things. First of all, I'm going to step back because your opening comments are absolutely important and are right on the mark. And so everyone else that's here today, I think it should be -- if I can, summarize and maybe not as well and

1 eloquently as you did, but it is very clear that
2 we're not here under a special exception or variance.
3 We're not here to hear testimony on a specific use
4 or complaints of any sort of aspect. What we're here
5 is an appeal. An appeal is a very legal case before
6 this Board and it argues legal issues.
7 There is actually no opportunity in this
8 proceeding to have persons give testimony. People
9 are called as witnesses as part of those that are
10 participants in this case. And so it doesn't have
11 the nature of what we often have in terms of our
12 public hearings on this case.
13 We have numerous letters either
14 supporting the appeal or opposing the appeal or
15 enumerating disturbances or not disturbances. Most
16 of those, if not all of those, are irrelevant. As
17 they are in the record, the Board will go through and
18 in their deliberation distinguish those that are
19 relevant and not relevant. But certainly -- well, so
20 I want to reiterate that piece.
21 The second piece is -- oh, in terms of
22 just to be clear. Mid-City now as a party in this,
23 has the presentation of their own case. And it will
24 follow that of the government and the ANC's. So they
25 will actually be fourth. So they'll not be directly

in line after you. So we'll follow that process all the way down.

Okay.

MS. DOUGHTY: Thank you, Mr. Chairman.

May I clarify one matter? Is it the case that our 60 minutes is exclusive of cross examination --

CHAIRMAN GRIFFIS: Yes.

MS. DOUGHTY: -- by other parties?

CHAIRMAN GRIFFIS: And my rude interruptions, too.

MS. DOUGHTY: It is also exclusive of that? I wondered, because I noticed for a while the clock was running.

CHAIRMAN GRIFFIS: It's right in front of me, and I keep track. Not to worry.

MS. DOUGHTY: With the permission of the Board, I would just like to summarize what we intend to do.

I intend to present expert testimony from our first witness regarding the characteristics of the C-3 zone, the relationship between the D.C. Comprehensive Plan and the zoning regulations, the assessment of whether or not uses are permitted under the zoning regulations including the judgment, the

similarity. And finally the issue of the Zoning Administrator's authority to condition and restrict unidentified uses.

Mr. Wemple will develop our case by preparing -- by presenting brief expert testimony from three witnesses: a former veterinary hospital employee; a pet shop operator and former pet shop and kennel distributor, that's the second witness, the second of Mr. Wemple's witnesses; the third of his witnesses is a mediator for the Animal Matters Hearing Board in Maryland, is affiliated -- is the legislative liaison for ABKA, American Board and Kennels Association and has been involved in the kennel industry for many, many years'

Finally, Mr. Macy will illustrate through the testimony of our final witness that one distinct characteristic of kennels in general, namely the generation of significant noise levels, is very different from the low noise characteristics of uses that are permitted in the C-3 zone. And in fact is similar to the noise characteristics of uses that are permitted by the D.C. zoning regulations in manufacturing and industrial zones. And by uses, it's also similar to uses that would more commonly be found in an agriculture zone, which is a type of

zoning district that the Zoning Commission saw fit to exclude from the D.C. zoning maps and regulations.

May I have the permission of the Board to turn to my first witness, Mr. George Oberlander?

Mr. Oberlander.

MR. DONOHUE: Mr. Chairman, I don't know if the Corporation Counsel heard this, but what I believe I heard the appellant say was that Mr. Oberlander was going to be introduced as an expert witness. Is that correct?

MS. DOUGHTY: Yes, that is correct.

CHAIRMAN GRIFFIS: An expert witness?

MS. DOUGHTY: Yes.

CHAIRMAN GRIFFIS: Okay.

MR. DONOHUE: In the zoning regulations of the District of Columbia?

CHAIRMAN GRIFFIS: That's what we need to establish. An expert in what?

MS. DOUGHTY: Yes, that is correct

MR. OBERLANDER: Expert in zoning and planning having been the Associate Executive Director of the National Capital Planning Commission for 31 years and having testified before the Board of Zoning Adjustment and the Zoning Commission on zoning matters and BZA matters in that 31 year period.

1 CHAIRMAN GRIFFIS: Any questions from the
2 Board?
3 Did you submit a résumé for all the
4 expert witnesses that your --
5 MS. DOUGHTY: I have with me biographical
6 details for all of our witnesses, which I will be
7 happy to submit into the record.
8 CHAIRMAN GRIFFIS: Yes. I think you
9 should. And do you have copies?
10 MS. DOUGHTY: Yes. I have one copy,
11 actually. I do have multiple copies for --
12 CHAIRMAN GRIFFIS: Okay. Let's make
13 copies. Because I need to give them to everyone
14 involved. How many do you have the first witness?
15 Do you have two copies?
16 MS. DOUGHTY: I have only one of this
17 witness.
18 CHAIRMAN GRIFFIS: Okay.
19 MR. OBERLANDER: Just as an aside, Mr.
20 Moy can testify to my expertise since he was an
21 employee of mine at the Commission when he was at the
22 Commission.
23 CHAIRMAN GRIFFIS: That may actually
24 remove him from the hearing room.
25 Mr. Moy, if you wouldn't mind, let's make

copies?

We're going to take a two minute recess because I'm going to need all the participants in the appeal to review that as they will be weighing in on the appropriateness of establishing expert status. I'm going to have all the biographies that are submitted distributed and the Board will take a moment to look at those, also.

Yes?

MS. DOUGHTY: We have one lay witness who I do have -- I have not submitted into the record biographic.

CHAIRMAN GRIFFIS: You're not proffering them as an expert, is that correct?

MS. DOUGHTY: Not, we're not.

CHAIRMAN GRIFFIS: Okay. Good. Thank you.

We'll be back in a few minutes.

(Whereupon, at 1:42 p.m. a recess until 1:50 p.m.)

CHAIRMAN GRIFFIS: Very well. Does the government have any questions of Mr. Oberlander regarding the establishing of an expert witness?

MR. RUSHKOFF: One question. Could you briefly describe your experience in interpreting or

applying the District of Columbia's zoning regulations in your work?

MR. OBERLANDER: Yes. Yes, I can.

As you know, zoning is an implementation of planning. And although it's not always been that way in this city, the -- any planner that deals with zoning matters has to be able to interpret and read the regulations and interpret them in order to apply parts of the analysis that he makes in reviewing BZA cases or Zoning Commission cases. And that has been my experience during the 31 years in the various hundreds of zoning cases and BZA cases that the Planning Commission has expressed itself on.

MR. RUSHKOFF: Okay. No further questions.

CHAIRMAN GRIFFIS: But isn't there a difference between interpreting for utilization like putting up a master plan or viewing something and making a interpretative decision of the zoning regulations?

MR. OBERLANDER: Well, you're right. I mean, we did -- I was not the Zoning Administrator doing an administrative interpretation as the function of a Zoning Administrator, but a planner, an urban planner that knows that he's supposed to be

doing must be able to interpret the words that are -- and the maps that are associated with the zoning regulations in order to apply those to the analyses of a particular case.

CHAIRMAN GRIFFIS: Okay.

MR. DONOHUE: Mr. Oberlander has forgotten, but I appeared before him a couple of times at NCPC as well. I've got a couple of questions.

CHAIRMAN GRIFFIS: It's like a homecoming.

MR. DONOHUE: I'm going to ask Mr. Zaidain who hired him before we're done with this.

CHAIRMAN GRIFFIS: Yes. Please don't. Okay.

MR. DONOHUE: The question from the Chair was your role in interpreting various aspects of the D.C. zoning regulations, and you referred to some planning cases, a number of planning cases and also earlier on you made reference to special exceptions before the Board of Zoning Adjustment.

The question here is what does the NCPC's role or what did your role in NCPC have to do with interpreting zoning regulations?

MR. OBERLANDER: Well, as I answered to

the Chairman's question, the role of the Planning Commission is not to interpret the D.C. zoning regulations. However, in order to testify before the Zoning Commission or the BZA on individual cases, special exceptions, variances and all the planned unit developments and all the rest of the zoning map changes that have occurred from 1965 to 1996 when I retired from the Commission, you have to be a planner that was responsible for preparing the testimony, has to be able to interpret the language of the zoning regulations.

MR. DONOHUE: In your capacity, in your various capacities at NCPC were you ever involved in an appeal of the decision of the Zoning Administrator?

MR. OBERLANDER: I can't recall the specific case where the Planning Commission appealed a decision of the Zoning Administrator.

MR. DONOHUE: Was the NCPC involved in any party capacity in such an appeal, if you know?

MR. OBERLANDER: No.

MR. DONOHUE: Mr. Chairman, with all due respect to Mr. Oberlander, I'm going to object to his qualification as an expert in interpreting the District of Columbia's zoning regulations. NCPC is a

1 different federal agency. He's an accomplished
2 planner, no doubt about it and a very nice man but I
3 object to his qualification as an expert as stated.
4 MR. OBERLANDER: Could I just for the
5 record indicate that before home rule went into
6 effect, the Planning Commission was both a city
7 planning agency and a federal planning agency and as
8 Associate Executive Director for District Affairs it
9 was my responsibility to know what was in the zoning
10 regulations.
11 MS. DOUGHTY: Mr. Chairman, I believe
12 that Mr. Oberlander just explained to the Board that
13 part of his role as NCPC was precisely this issue.
14 Part of his role during his time at NCPC was to be
15 expert in the zoning regulations so that he could
16 testify before BZA, before the Zoning Commission on
17 matters that pertained to NCPC. I believe that that
18 qualified Mr. Oberlander totally and completely to
19 appear before this Board to speak to matters of
20 interpretation in the zoning regulations; that was
21 his area of expertise at the NCPC during parts of the
22 period that he was there.
23 CHAIRMAN GRIFFIS: Okay. I think this is
24 the difficulty. What's happened is that there's
25 actually a higher level that's being asked of Mr.

Oberlander to be established as an expert witness. And you've introduced the aspect of interpretation.

I mean, I think at the base level, and I'll hear from the owner and government again whether they object or support, I don't think that there would be such concern if there was an expert in zoning regulations. You know, having knowledge of them and the face knowledge of it, I think that could be conferred. But once we get to the level of which he's being proffered as an expert in zoning regulations and the interpretation of them, that's a threshold I'm not ready to go to at this point.

So if you want to reconfigure that. Certainly his testimony is going to go to whether the interpretation was correct or not. But to be offered up -- I think I'm seeing great similarities as to him saying he acted as a Zoning Administrator for some time and is an expert that's going to be before us in that capacity.

MS. DOUGHTY: I apologize, Mr. Chairman. I did not mean to imply that Mr. Oberlander acted as a Zoning Administrator or had that level of day-to-day decision making interpretive decision making role in his work in his time at the NCPC.

I meant to imply that Mr. Oberlander is

extraordinarily familiar with the zoning regulations with --

CHAIRMAN GRIFFIS: And it could insolate out that has had numerous professional responsibilities of which he was engaged in the zoning regulations in the process of reviewing things that may have been going forward either with compliance with the regulations or for variances, special exceptions and that sense.

That being said, let me hear from my Board. Any comments? Concerns?

VICE CHAIR MILLER: This seems somewhat close, and I'm wondering if we could accept him as an expert witness but that the issue of his familiarity with interpreting D.C. regs might go to the weight of that testimony?

CHAIRMAN GRIFFIS: If I understand what you've said, I think it is in fact in line with what my concern was, that there was two thresholds given to us. One as an expert in the zoning regulations, of which quite frankly we have bestowed expert status on architects that come before us that don't process numerous applications but obviously have to have above and beyond a knowledge of the regulations in order to do a compliant or a noncompliant project.

1 There is a different level of which we go
2 to when one is being offered up as an expert in
3 zoning interpretation which rises to the level of
4 Zoning Administrator.
5 So if that's correct, very well. Then
6 hearing from the Board, Mr. Rushkoff, did you have
7 comment on my clarifications?
8 MR. RUSHKOFF: The government would
9 concur with the distinction made by the Chair, and
10 perhaps the way to proceed would be to distinguish
11 between giving opinions on the ultimate question of
12 what a particular provision means as opposed to --
13 which we would have concerns with, as opposed to
14 giving opinions regarding planning policy and just
15 the thinking process as one works through
16 distinguishing between wanted and unwanted uses in a
17 particular zone.
18 CHAIRMAN GRIFFIS: Great. And I don't
19 think the Board is unfamiliar with doing that in
20 terms of even with expert witnesses is decipher the
21 different levels and amount of weight that's given to
22 each of the testimony. I mean, certainly witnesses in
23 expert status of one topic may delve into other
24 topics that they're not the expert of and I think
25 we're -- well, maybe we're smart enough but we

1 certainly do it well enough that we can differentiate
2 between those.
3 MR. DONOHUE: That's fine, Mr. Chairman.
4 CHAIRMAN GRIFFIS: Okay. Mr. Zaidain?
5 BOARD MEMBER ZAIDAIN: I guess since my
6 employer's being thrown around quite a bit, I should
7 disclose that I do know Mr. Oberlander. I've met him
8 before, but we did not work together at the
9 Commission, although we both did work with Mr. Moy at
10 one point. So maybe the three of us need to leave
11 the room. I'm not sure.
12 But I think we should look at this from
13 another aspect. It says in your résumé, Mr.
14 Oberlander, that you are currently a consultant. Do
15 you do zoning work that would lend some additional
16 weight to your application?
17 MR. OBERLANDER: Yes. I've appeared in
18 three zoning cases before the Zoning Commission; the
19 Friendship Heights zoning issue and the Tower issues
20 in the Anacostia section of the city and the third
21 one escapes me right now.
22 BOARD MEMBER ZAIDAIN: But you're
23 appearing here as a professional consultant/expert,
24 not a resident or not a --
25 MR. OBERLANDER: No. I am retained by

1 the group that is appealing this decision.

2 BOARD MEMBER ZAIDAIN: Okay. Thank you.

3 CHAIRMAN GRIFFIS: Anything else? Very

4 well. I'm prepared to take action on this and grant

5 expert status to Mr. Oberlander as an expert witness

6 in the D.C. zoning regulations.

7 Why don't we clear all these before we go

8 on so we get through these and can proceed.

9 Your next is Kara McCabe, is that

10 correct?

11 MS. DOUGHTY: That's correct.

12 CHAIRMAN GRIFFIS: And an expert in?

13 MS. DOUGHTY: Ms. McCabe is a five year

14 veterinary technician.

15 CHAIRMAN GRIFFIS: She's being proffered

16 as an expert witness in what?

17 MS. DOUGHTY: In the activities of

18 veterinary hospitals such as the one in which she was

19 a veterinary technician for five years.

20 CHAIRMAN GRIFFIS: Okay. Okay. So you

21 used the program function of veterinary hospitals.

22 She's an expert in? Okay. And how did you gain that

23 great capacity of expert?

24 MS. McCABE: I worked for two years after

25 I graduated from college and then three years part-

time while I was in law school.

CHAIRMAN GRIFFIS: In a veterinary hospital?

MS. McCABE: Yes. As a technician.

CHAIRMAN GRIFFIS: One?

MS. McCABE: One.

CHAIRMAN GRIFFIS: Have you worked in any others?

MS. McCABE: No.

CHAIRMAN GRIFFIS: And why does that make you an expert in their use and program and --

MS. McCABE: I guess I'm an expert in the use and program of the particular one I worked at.

CHAIRMAN GRIFFIS: Okay. And as a veterinary technician, what did you do?

MS. DOUGHTY: May I just add that veterinary hospitals are subject to standards and --

CHAIRMAN GRIFFIS: I would hope so.

MS. DOUGHTY: Right. And to the extent that those standards have, you know, extremely common features, then --

CHAIRMAN GRIFFIS: Okay. Did you administer the standards for this veterinary hospital?

MS. McCABE: No, I didn't. But I abided

by them.

CHAIRMAN GRIFFIS: So you knew of them and kind of what they were?

MS. McCABE: Yes.

CHAIRMAN GRIFFIS: Did you know all of them?

MS. McCABE: No.

CHAIRMAN GRIFFIS: Okay. I mean, there's absolutely no problem in calling a witness that's going to give testimony. I just don't see this rising to a level of expert.

Let me hear from the government and the property owners.

MS. DOUGHTY: May I just ask one question?

CHAIRMAN GRIFFIS: Sure.

MS. DOUGHTY: If you don't want to call people expert witnesses, then what do you call them?

CHAIRMAN GRIFFIS: Witnesses.

MS. DOUGHTY: Okay. But, you know, witnesses -- witnesses is just fine.

CHAIRMAN GRIFFIS: Yes. We do from everybody.

MS. DOUGHTY: Right. You know, maybe it was just a language misunderstanding there.

CHAIRMAN GRIFFIS: Indeed. Sorry to be so harsh.

MR. WEMPLE: My name is Erik Wemple. I'm at 1414 Q Street.

Is there any less weight attached to the testimony of a witness as opposed to an expert witness that we should be mindful of?

CHAIRMAN GRIFFIS: You should be mindful that there's different weight.

MR. WEMPLE: Okay. Understood. Thank you.

MR. RUSHKOFF: On behalf of the government, I think we want each witness either to be a fact witness in terms of being familiar with the facts --

CHAIRMAN GRIFFIS: Right.

MR. RUSHKOFF: -- here in D.C. or an expert witness if they're not familiar with the facts, if they're not testifying about what's directly before us. Although I think that the way we use the term expert witness doesn't have to correspond precisely to the way a court might use it. In for example, if there is someone who can enlighten us as to how veterinary hospitals work, that's probably a plus. And I think we could be

1 liberal in our use of the term expert.

2 CHAIRMAN GRIFFIS: Right. And it's a

3 good point to bring up. And, frankly, what he's

4 saying which is exactly correct, we are not -- we're

5 quasi-judicial, we're not a judicial body. And so we

6 somewhat throw around the same terms. And frankly

7 I'm not an attorney, so I don't even know what these

8 terms know. Oh, was that recorded?

9 The issue is here, of course experts are

10 obviously established on a certain topic, of which

11 we're going through here. They are also allowed to

12 give opinions or go beyond what, as Mr. Rushkoff has

13 just said, fact. Other witnesses are going to come

14 forward that are just going to give us pure fact.

15 When I worked at the veterinary hospital

16 as a technician this is what happened. And they're

17 not going to say, you know, all hospitals do this

18 based on my -- that's going to be the big difference.

19 So we're going to have fact witnesses and we're

20 going to have expert witnesses that may get into a

21 little bit more of interpretative nature.

22 So that being said, I think it's fairly

23 clear. I don't think we need to deliberate much

24 longer on my decision of the fact that we can take

25 Ms. McCabe -- is that the way you say your name? Ms.

McCabe as a fact witness unless there's any additional information you have to provide on that.

Very well. Let's go to David Baker. David Baker is being offered as a fact witness or an expert witness?

MR. WEMPLE: We'd like to offer him as an expert witness.

CHAIRMAN GRIFFIS: Yes. An expert witness in?

MR. WEMPLE: In pet shops and their operation and as to the distinction between a pet shop and a kennel. And Mr. Baker is right here.

Why don't you take a mike and --

MR. BAKER: Dave Baker.

CHAIRMAN GRIFFIS: Mr. Baker, what's your familiarity with dog kennels?

MR. BAKER: Working with a manufacturer's rep that serviced dog kennels and pet stores and distributors. Also being VP of sales for a distributorship that served kennels and pet stores, veterinary clinics also.

CHAIRMAN GRIFFIS: So you sold the kennel's products?

MR. BAKER: Correct.

CHAIRMAN GRIFFIS: Can you tell me why

you would know anything about how they're operated?

MR. BAKER: You need to know a little bit about how they operate to be able to sell your product to make it advantageous to show them the benefits and features of that product.

CHAIRMAN GRIFFIS: Of course, a lot of sales isn't based in benefits and features that really mean anything.

MR. BAKER: That's right.

CHAIRMAN GRIFFIS: We won't digress there. See, I'm not an expert witness.

So you had familiarity with a lot of them, how they operate, what kind of product they use and the products that are directly related to their functioning and programming and what they do?

MR. BAKER: Correct.

CHAIRMAN GRIFFIS: Okay. And you also have that with pet stores?

MR. BAKER: Correct.

CHAIRMAN GRIFFIS: And you're saying that in fact your experience in that nature of service and in retailing to these you can, there was a great distinction that you're going to somehow going to draw or could have been afforded it with that experience?

MR. BAKER: Correct.

MR. WEMPLE: Mr. Chair, we'd also like to point out that Mr. Baker, we might be shorting him a little bit in terms of the credentials. He's also worked as a store manager for the Westwood Pet Center in Bethesda. So he's been --

CHAIRMAN GRIFFIS: Oh, I see. Right.

MR. WEMPLE: The distinctions we're trying to make here between pet shop and kennel it will be very well illuminated by him because he has been there on the ground floor.

CHAIRMAN GRIFFIS: I see.

MR. BAKER: Mr. Chair?

CHAIRMAN GRIFFIS: Yes?

MR. BAKER: I'm also opening my own pet store at the moment.

CHAIRMAN GRIFFIS: In Washington?

MR. BAKER: No, sir. In Virginia.

CHAIRMAN GRIFFIS: Well, then it doesn't concern me.

Does government have any comment?

MR. RUSHKOFF: No comment. I think this witness having the situation similar with -- to a situation with Ms. McCabe where probably some more information about pet shops would be useful to the

Board, so I don't think we would hold this witness to a strict definition of fact witness or expert witness.

MR. WEMPLE: I'd like to point out that this particular witness has a wide range of experience in managing pet shops. If you look all the way down his résumé he's also been store manager at Companions, which is in D.C. So there's D.C. representation. Doctor's Pet Center in Wheaton, Maryland as well as Quick Shop, that's probably not so veterinary related. But anyhow, he has been not just at one veterinary place the way our previous fact witness is, but he's been all over the industry for a number of years.

We would continue to press to proffer him as an expert witness.

CHAIRMAN GRIFFIS: Okay.

Mr. Donohue?

MR. DONOHUE: Mr. Chairman, I guess I'm a little confused. When asked what he was going to be qualified as an expert with regard to Mr. Baker's experience, he said he knew a little bit about sales to kennels. And a little bit doesn't rise to the level of an expert.

I don't exactly know what an expert is in

pet shop versus kennels. I don't think I've ever heard anyone qualify in that capacity, but I'm willing to go down that road.

CHAIRMAN GRIFFIS: There's my quandary.

MR. DONOHUE: The other thing is, I guess I wonder whether Mr. Baker is not somewhat of a competitor. Westwood Pet Center is River Road, just across the line into Bethesda. And I don't know where the new shop is opening, but I wonder whether Mr. Baker's testimony is clouded by the fact that we've got competitive business.

CHAIRMAN GRIFFIS: Interesting point.

Mr. Wemple?

MR. WEMPLE: I'd like to respond to that.

First of all, I think Mr. Baker was using a figure speech when he said I need to know a little bit about it. I think he knows quite a bit about how these places operate, but he can speak to that in a second.

The other point is, you know, it can be offered that any pet store is a competitor of any as long as we're working within this area. We are trying to put forward a case here. Unless we go to New Jersey or Maine, or something, you know that particular point here that there's a competitor on

River Road does not quite work simply because they are in two completely different universes. Pet shops, by nature, are sort of neighborhood stores and we don't think that the competition argument holds any weight whatsoever.

CHAIRMAN GRIFFIS: Okay. Well, I think the Board would take note of the comment. It is an interesting piece. I don't want to belabor this very long, but trying to establish that a witness before the Board of Zoning Adjustment in kennels and pet stores -- I actually never anticipated by me. So that being said, Board Members comments?

VICE CHAIR MILLER: I have a question for Mr. Baker.

I can see your experience in pet stores. I'm wondering if you can elaborate on your experience with the kennels; what kind of products you sold or how many years experience you had with kennels and what that involved?

MR. BAKER: The experience with kennels being --

VICE CHAIR MILLER: Yes, kennels.

MR. BAKER: Kennels. Managing a sales force and having to go and call on the kennels. They use food, was our major step into the door to feed

the dogs at the kennels. So we were -- we would spend time at the kennels in trying to locate them, number one. Number two, spending time to find out what they were feeing the dogs, to find out what would be the best food for the stress situation that dogs were under in a kennel. And to try to sell our product of the food.

Also, some kennels would have small dry goods within the store, toys and things of that nature. And we had a dry good line also. So we would try to sell and show them what would be good in our product line that we carried for them. And you'd have to know the circumstances of which -- how dogs are boarded to be able to talk with them or otherwise they won't give you time.

And in answer to the question as far as being competition, I'm not longer a manager a Westwood Pet Center. I have never heard of WagTails. I haven't been employed at Doctor Pet Center since January the 2nd due to the opening of my own store.

VICE CHAIR MILLER: With respect to your experience with kennels, how many years did you do that in what area? Was in the D.C. area, was it in--

MR. BAKER: It was all state of Maryland, Northern Virginia, Pennsylvania and two counties in

West Virginia. That was the area that we covered with the distributorship for four years.

VICE CHAIR MILLER: Okay. Thank you.

MR. BAKER: You're welcome.

MR. WEMPLE: Mr. Baker, can you tell them how many kennels you visited over those years?

MR. BAKER: At the time our distributorship was exclusive distributor for Iams and Eukanuba. We were the exclusive distributor and they did have a feeding program. And we had a full time kennel rep on and we tried to hit every single kennel in the state of Maryland, Northern Virginia, West Virginia and Pennsylvania.

CHAIRMAN GRIFFIS: Okay. Anything else?

Board concerns?

BOARD MEMBER ZAIDAIN: I guess I'm just a little perplexed on what type of testimony we'll be hearing from Mr. Baker. I mean, his experience doesn't relate to, you know, zoning matters and what these types of uses and how they interact with zoning regulations either in D.C., Maryland or Virginia. But I -- you know, we're going to have to pull testimony on details of this use, which I guess he can provide. But I guess I have some hesitancy, to be honest with you.

CHAIRMAN GRIFFIS: Yes?

MR. WEMPLE: Can we respond to this?

CHAIRMAN GRIFFIS: No. I'm prepared to move on with this and reviewing Mr. Baker's résumé and the request for expert party status, I too have some reservations and it's also based on the fact that it does kind of go beyond the parameters of which we're used to thinking. But as we are talking about a use and trying to distinguish a use, I think Mr. Baker has ample experience in the pet store. I don't deny that he's an expert and can be offered as an expert witness in that.

In terms of his familiarity and association with kennels, I don't know if I have the correct capacity to ascertain the threshold of which ones becomes an expert or doesn't become an expert. However, I'm a bit convinced just on the familiarity and the relationship with those types of facilities that I think it is not difficult or would not be outrated detrimental for us to bestow the expert status on Mr. Baker and allow him to present as an expert witness.

And clearly it will be the Board's discretion in our own deliberation on the importance and the persuasiveness of all the testimony, and

obviously putting itself up to cross examination. So all will be afforded that opportunity.

One more? Do you have one more request?

MR. WEMPLE: Can Ruth Berman step forward, please?

CHAIRMAN GRIFFIS: Do we have information on her?

MR. WEMPLE: We had a slight complication with her testimony because we thought at one point that she would not be able to appear before you. We do not have her letter. You have the letter from Ruth Berman in your packet, I believe. But she is someone who has extensive experience in kennel, and we would like to submit her as an expert witness in the area of kennel operations.

And would you like to state your qualifications?

MS. BERMAN: Yes. My name is Ruth Berman. I have been a breeder, an exhibitor of dogs for 35 -- approximately 35 years. I was on the Animal Matters Hearing Board in Montgomery County for six years. And since that time for perhaps another six years I have been a mediator for some of the Animal Matter Hearing Board cases that could be resolved through mediation.

I'm a legislative liaison to the American Kennel Club, which is the business that gives pedigrees and so forth to dogs throughout the country. There are some others, but the AKC is the biggest one.

The legislative liaison part is following legislation throughout the country that effects dogs either positively or negatively.

I have -- I suppose I would not be an expert in the District of Columbia because I don't live here. I'm quite familiar with the Maryland laws and some from other states.

I have considerable experience in being at boarding kennels because the professional handlers who show dogs own their own kennels and I have visited a number of them and have been very familiar with them.

CHAIRMAN GRIFFIS: Clearly it's an extensive amount of experience in animal matters. I mean just sitting on the Hearing Board I guess you get animal matters. But I still don't understand the connection right to kennels. I mean, going and visiting kennels and being part of the show dogs, I'm not sure how -- where the level of expertness in it?

MS. BERMAN: Well, the show dogs; if a

professional handler takes them, they may have 30 or 40 dogs at a time, so they have to own a kennel to keep those dogs while they are housing them. And that's why I have been at a number of them.

The -- basically I think it's based on the fact that I have not professionally, not as my profession, but I have been around and been very familiar with the whole industry of dogs for, as I said, 35 years. And I'm particularly familiar with zoning in Maryland and the type of issues that came up, such as this before the Hearing Board.

CHAIRMAN GRIFFIS: Is the type of thing the Animal Matters Hearing Board would hear, zoning issues?

MS. BERMAN: We would hear issues such as it would be more like noise abatement, because someone might have too many animals in a given space. But we also would hear cases where there was a case against a kennel in Maryland complaining about noise. That case was --

CHAIRMAN GRIFFIS: I can listen out of both sides. Keep going.

MS. BERMAN: That case was lost because it turned out that the kennel owner owned approximately 30 acres. And when they were supplying

audio of the barking, you couldn't hear it. So that case was lost for the complainant.

CHAIRMAN GRIFFIS: Yes.

MS. DOUGHTY: May I suggest that Ms. Berman in her role as legislative liaison has direct knowledge of the kinds of requirements and standards that are placed on kennels all over the country.

May I also suggest, and I'm sure that you can follow up with Mr. Berman on this if you choose to do so, that in her capacity at the Animal Matters Hearing Board she hears cases, you know, not just to do with kennels but including cases that concern kennels that involve the kinds of facilities that kennels have, the practices of kennels, how those practices impact the neighborhood.

CHAIRMAN GRIFFIS: So you -- areas of operation and control, and compliance, and standards and all that?

MS. BERMAN: Well, that Board -- you know, the boards and commissions in Montgomery County is by appointment. So you have to be qualified to be on them. And that board, like you --

CHAIRMAN GRIFFIS: We're disappointed.

MS. BERMAN: -- is quasi-judicial also.

CHAIRMAN GRIFFIS: Right.

MS. BERMAN: And the reason that it was set up was to have people who were --

CHAIRMAN GRIFFIS: Well, let's get to the heart of the matter. What she just said is obviously in terms of looking at those kind of cases, you'd have to understand or you would have matters that would be looking at operations and standards?

MS. BERMAN: We would. And --

CHAIRMAN GRIFFIS: And outside of zoning, but you know directly --

MS. BERMAN: Exactly. It was set up as to lighten the case load for the Circuit Court. Our cases on appeal would go to the Circuit Court of Montgomery Country.

CHAIRMAN GRIFFIS: Okay. Any question of the Board? Concerns? Mr. Zaidain?

BOARD MEMBER ZAIDAIN: I guess have no objection to these witnesses. I mean, they're all experts in their field. I guess I'm just concerned about how this is shaping up.

I mean, this case is about how this use fits into -- this specific use fits into the zoning regulations and the ZA issued a permit. I think -- I just -- it seems to me we're kind of setting the stage for a lot of testimony on other kennels and the

industry, and --

CHAIRMAN GRIFFIS: It's a good point to bring up.

BOARD MEMBER ZAIDAIN: -- regulations in other counties.

CHAIRMAN GRIFFIS: Frankly, that will be my charge, to keep people directed and focused and not go off on stuff.

Let's hear from Mr. Rushkoff if he has any objections to granting expert status.

MR. RUSHKOFF: I just had one question. We've been using the term kennel. I want to make sure we're all clear as to what we're referring to. Is a kennel a place for the boarding of dogs as we're using it here, or is it boarding plus something more, such as breeding or something professionally involving dogs.

MS. BERMAN: A kennel can be any number of those things. There can be a breading kennel, and in my experience if you have more than a certain number of dogs, you have to have a license to have a breeding or exhibiting kennel. That's what I have. But boarding kennel is a commercial designation, meaning the dogs come there, are left, you receive compensation for taking care of someone's dogs. And I

1 think the issue here is boarding kennel.

2 I guess one of my questions is if all the

3 people I've heard including myself are not experts,

4 what are you looking for?

5 CHAIRMAN GRIFFIS: Okay. Good point.

6 But I'll clear up that later.

7 Mr. Donohue?

8 MR. DONOHUE: Mr. Chairman, Ms. Berman by

9 her own admission is not an expert in the matters as

10 they relate to the District of Columbia. She said as

11 much. She probably is an expert as they relate to

12 Montgomery County. I dare you to find 30 acres in the

13 District of Columbia where we have a use like this

14 where her expertise would be appropriate.

15 I object to the determination that she be

16 an expert.

17 MS. BERMAN: Well, on the other hand, I

18 know a case where a boarding kennel --

19 CHAIRMAN GRIFFIS: Yes, I understand.

20 We're not going to --

21 MS. BERMAN: -- was applied for and --

22 CHAIRMAN GRIFFIS: We're not going to

23 argue it.

24 Mr. Wemple?

25 MR. WEMPLE: Yes. I'd just like to

respond to that. And this gets to the point of this whole issue of using pet shop and kennel experts. What we're trying to do here is we're trying to challenge a Zoning Administrator's ruling that a kennel or a boarding operation is similar to a pet shop. We cannot do that without bringing in testimony from people who have expertise in what does a pet shop do and expertise in what does a kennel do or a boarding operation.

CHAIRMAN GRIFFIS: Okay.

MR. WEMPLE: We cannot possibly challenge --

CHAIRMAN GRIFFIS: Well said. I understand what you're trying to do.

MR. WEMPLE: -- that, you understand what I'm saying? And the other thing is --

CHAIRMAN GRIFFIS: I disagree -- if I may interrupt you, Mr. Wemple. I disagree with the fact that needs to be a D.C. resident, although you know, I would like that. But it doesn't effect my deliberation.

MR. WEMPLE: It's just we couldn't get any --

CHAIRMAN GRIFFIS: No.

MR. OBERLANDER: Okay.

CHAIRMAN GRIFFIS: And the other aspect is how much familiarity to be an expert witness do you need of D.C. issues. Of course, it's critical and it's actually one of the points that we do look at it. If you're coming in as an expert in D.C. zoning, we expect you to know D.C. zoning. But in terms of the asset that we're looking at here in terms of pet shop operations, is there a difference between a kennel boarding pet shop in Virginia and the District, I don't know maybe that will be provided to me during this hearing. I'm not convinced that there is such a distinct difference in operation.

And so I don't have difficulty and although may not have run a 30 acre kennel in the District of Columbia or had some control or interest in that nature, I don't have any difficulty in granting expert status on kennel boardings to Ms. Berman. Is that correct, Ms. Berman?

MS. BERMAN: Berman.

CHAIRMAN GRIFFIS: Berman. And let's proceed with that.

Let me just put a caveat. I've obviously said this again. It's part of the Board's charge in its own deliberation to filter out all the testimony and the witnesses' testimony and deliberate on the

facts, and that of the expert opinion. And so we will do that with great charge.

Getting through all of that nuts and bolts, I've moved way beyond your question because I can't take time to go through the process. In the regulation it establishes what we are able to establish granting expert witnesses on. And it's laid out, we have full application. It's a form next door. It may be worth picking up and taking a look at and there are certain questions that are asked.

That being said, let's move ahead.

MS. DOUGHTY: Mr. Chairman?

CHAIRMAN GRIFFIS: Go ahead.

MS. DOUGHTY: Mr. Chairman, since we are talking about witnesses, I would just like to discuss the matter of our final witness at this moment so that we don't have to discuss it later, if that's all right. You don't want to do that now?

CHAIRMAN GRIFFIS: Oh, I do.

MS. DOUGHTY: Okay.

CHAIRMAN GRIFFIS: I didn't want to do that. Yes?

MS. DOUGHTY: We have a resident who we wish to testify as a witness. This resident --

CHAIRMAN GRIFFIS: As an expert witness

or as a witness?

MS. DOUGHTY: Well, you are the judge of that.

CHAIRMAN GRIFFIS: So you're proffering up as an expert witness?

MS. DOUGHTY: No. I'm going to -- if that --

CHAIRMAN GRIFFIS: You've got to ask for it. I'm not going to decide, yes, this guy's an expert. I'm going to make him one.

MS. DOUGHTY: Okay.

CHAIRMAN GRIFFIS: Do you want it or not?

MS. DOUGHTY: Well, let's ask for it and let's see --

CHAIRMAN GRIFFIS: Oh boy. Okay.

MS. DOUGHTY: -- where you go with that.

CHAIRMAN GRIFFIS: And what's the topic? An expert witness in?

MS. DOUGHTY: The topic is the noise levels produced by various uses, various uses.

CHAIRMAN GRIFFIS: So a noise expert?

MS. DOUGHTY: We are not claiming that Ms. Chui is a noise expert.

CHAIRMAN GRIFFIS: Right.

MS. DOUGHTY: But she is the person that

has done our research on the subject. She is a researcher by profession. She is qualified.

CHAIRMAN GRIFFIS: She's an acoustical engineer?

MS. DOUGHTY: No, she's not an acoustical engineer.

CHAIRMAN GRIFFIS: What research has she done?

MS. DOUGHTY: She has a --

CHAIRMAN GRIFFIS: This one I'll be very serious about, because we do grant expert status and, you know, noise acoustics, not an unfamiliar issue for this Board.

MS. DOUGHTY: Okay.

CHAIRMAN GRIFFIS: And to establish a throw around decibels --

MS. DOUGHTY: Right. No, no.

CHAIRMAN GRIFFIS: -- their meanings and all that, we're going to need how these things were recorded and that's getting into the substance.

MS. DOUGHTY: Okay. You know, I think we sort of took a detour there, as I said at the outset. We would like to discuss this matter now and then we would like you to attach already at this time whatever label you choose to attach to this

1 particular witness.

2 CHAIRMAN GRIFFIS: Okay. This is a

3 little bit out of process. But let's take a brief

4 section to do this.

5 MS. DOUGHTY: Okay.

6 CHAIRMAN GRIFFIS: Who is this person?

7 Are they here?

8 MS. DOUGHTY: Ms. Chui?

9 MR. DONOHUE: Mr. Chairman?

10 CHAIRMAN GRIFFIS: Yes.

11 MR. DONOHUE: We were provided a couple

12 of rèsumès at the outset, and that practice seems to

13 have ceased.

14 CHAIRMAN GRIFFIS: Yes.

15 MR. DONOHUE: Do these folks have CV or

16 résumé or something we could review? You provided

17 Mr. Baker, McCabe's and Mr. Oberlander.

18 MS. DOUGHTY: Well, I'm afraid that Mr.

19 Moy may have omitted from the package one of the

20 items; that was not because we did not provided it to

21 the Board --

22 CHAIRMAN GRIFFIS: I have Berman's.

23 MS. DOUGHTY: Ms. Berman's, you have

24 that?

25 CHAIRMAN GRIFFIS: Yes.

MS. DOUGHTY: Apparently Mr. Donohue doesn't have that.

CHAIRMAN GRIFFIS: Okay. He has Berman's, but what about the witness we're talking about right now?

MS. DOUGHTY: Right. I do not have in front of me the biographical details to hand to you on a sheet of paper, but I believe that Ms. Chui can speak to that?

MR. DONOHUE: Objection, Mr. Chair.

CHAIRMAN GRIFFIS: Yes, indeed.

Again, the issue is she's being proffered as an expert witness --

MS. DOUGHTY: No, she's not now. Because you --

CHAIRMAN GRIFFIS: She's not being proffered as an expert witness?

MS. DOUGHTY: No, no.

CHAIRMAN GRIFFIS: Again, there's nothing for us to process. We have a fact witness that you can call at anytime.

MS. DOUGHTY: So when we come to this testimony, we will be able to proceed with this testimony without --

CHAIRMAN GRIFFIS: Oh, yes. I'm sorry.

If I wasn't absolutely clear there's two levels of witnesses.

MS. DOUGHTY: Yes, you were --

CHAIRMAN GRIFFIS: You can call anybody you want.

MS. DOUGHTY: Right.

CHAIRMAN GRIFFIS: And they're going to be a fact witness.

MS. DOUGHTY: Right.

CHAIRMAN GRIFFIS: And we'll decipher whether they are or not.

MS. DOUGHTY: Okay.

CHAIRMAN GRIFFIS: I mean, in terms of their testimony.

MS. DOUGHTY: Oh, I'm just, you know --

CHAIRMAN GRIFFIS: Establishing expect witness is something I have to decide. And so if you're not wanting that --

MS. DOUGHTY: Understood. I just thought that if Mr. Donohue has more, he could perhaps, you know, deal with it now rather than us having to stop further and discuss witness matters at the time when we are trying to present Ms. Chui's testimony.

CHAIRMAN GRIFFIS: Oh, that's fine. Well, Mr. Donohue's aware now. I appreciate now, I

understand what you were trying to do which probably shouldn't have involved me, but it did.

So you're going to call Ms. Chui as a fact witness and she's going to talk about the noise impact in the area?

MS. DOUGHTY: No. No, Mr. Chairman. We're going to call Ms. Chui as a fact witness and she is going to speak to the research that she undertook on behalf of the appellants group into this issue. She has some materials to offer to the Board, you know, product of her research and also the state-of-the-art scientific paper on noise levels associated with various uses.

CHAIRMAN GRIFFIS: So the research is on the noise levels?

MS. DOUGHTY: Right. It's not on -- she's not going to speak to noise from WagTime Boarding Kennel, per se.

CHAIRMAN GRIFFIS: Understood. Okay.

MS. DOUGHTY: Not at all.

CHAIRMAN GRIFFIS: Okay.

MS. DOUGHTY: Noise levels in general.

CHAIRMAN GRIFFIS: Very well. We're on notice. Excellent.

Anything else?

Oh, we could almost take a break right now, huh? And we haven't even started.

It is -- well, there it is. Let's move on.

Do you need a few minutes to get organized or do you want to proceed?

A couple of minutes? We're going to take five minutes and we'll be back.

(Whereupon, at 2:31 p.m. a recess until 2:46 p.m.)

CHAIRMAN GRIFFIS: Very well. Let's move ahead.

MS. DOUGHTY: Mr. Oberlander, can you describe the characteristics established by the Zoning Commission under the D.C. zoning regulations for the C-3 zoning district?

MR. OBERLANDER: In general, it is a medium density development zone that includes office, retail, housing and mixed uses. I think you need to look at this zone in the evolution of the zoning regulations which were started in 1958 when they were written.

The residential zones are exclusive. You can only have certain residential uses and as you go from R-1 to R-3 and R-5 they become more and more

intensive in terms of the impact of a number of units on a piece of land.

When you then go to the commercial zones they become inclusive of having residential uses as well as additional commercial uses. And the C-1, 2, 3 and 4 become again more intensive.

The manufacturing uses, which is the third basic characteristic of a zoning regulations are, again, exclusive. It only allowed manufacturing uses. You couldn't put housing in the manufacturing use and you couldn't put offices in manufacturing use.

There have been some amendments to that over the years, and the greatest extent the Georgetown Waterfront reduced from an industrial manufacturing zoning a mixed use category called waterfront zones which allows residential, office and manufacturing uses.

So the zoning regulations have evolved.

In this particular issue, in this instance the zoning regulations for the C-3-A has evolved into an arts district as well as a commercial district. So it has become a mixture of uses generally in the medium density characteristics.

MS. DOUGHTY: Thank you.

I have a photograph. I have copies of this for Board Members if you like to have a copy.

CHAIRMAN GRIFFIS: Copy of what? Oh, excellent. If you would hand it to staff, please.

MS. DOUGHTY: Mr. Oberlander, if I can draw your attention to the photo on the board, the photo exhibit on the easel that shows the zoning boundary line bordering the premises at 1412 Q Street in the C-3 zone and separating the C-3 zone from the neighboring, the contiguous 5-B zone and the neighboring residence 1414 Q Street. In your experience how would you characterize this zoning boundary line? And may I just add that the zoning boundary line on this photograph is shown by the red arrow, the fence line is the zoning boundary line between the two districts, that fence that runs north to south in the upper part of the photograph where you have items B, E, C, D that is the residential, the R-5-B zone. And the lower part of the photograph where you have items F, H, G that is the C-3 zone. Over to the south, to the upper left hand corner of the photograph item A, that is the Loft 14 development. That is also part of the C-3 zone because this zone boundary line that is shown with -- marked with the arrow that runs north/south until the

edge of that -- runs north/south until the edge of this, between the carriage house and this carport. And then the zone boundary line turns and goes down the alley running towards the west.

Mr. Oberlander, in your experience how would you characterize this zone boundary line?

MR. OBERLANDER: Well, you have to look at the whole square. Square 209, which the property is located in, is divided up or was split zoned as the technicians call it and the Administrator would call it.

If you look at the zoning map, which is broader than the photograph, the zoning map shows the R-C-3A area which covers the majority of square 209. And then the white portion on this print shows the R-5-B area which is the area to the upper part of the photograph, the major part of this photograph covers the R-5-B.

MS. DOUGHTY: Could I just note for Board Members that this exhibit was part of attachment 3.

CHAIRMAN GRIFFIS: Attachment 3.

MS. DOUGHTY: Yes. Of our prehearing submission.

MR. OBERLANDER: And to the best of my knowledge the boundary is a north/south boundary of

the R-C-3A area is about approximately 125 feet from 14th Street. So I characterize this as a split zoning square, one of the original squares of the city, square 209.

CHAIRMAN GRIFFIS: And what's the critical nature of what we're talking about? Why do we have --

MR. OBERLANDER: Well, the effect -- the impact of any use on the boundary of the zoning on the surrounding uses. In other words --

CHAIRMAN GRIFFIS: Are we talking about the impact of use?

MR. OBERLANDER: -- you have a commercial use on the C side which has impacts, in my opinion, environmental impacts on the residential portion. And in the interpretation --

CHAIRMAN GRIFFIS: But that's a map amendment case for the Zoning Commission. Why are we doing that here?

MR. OBERLANDER: Well, that's right. That's exactly right.

CHAIRMAN GRIFFIS: Well, we're at the wrong forum then?

MR. OBERLANDER: But in the interpretation of the Zoning Administrator, in my

opinion, he should have considered that.

CHAIRMAN GRIFFIS: So the Zoning Administrator should have considered it, it is your testimony, that this is more appropriate for a map amendment because these two zone boundaries should not connect?

MR. OBERLANDER: In my opinion, this would be more appropriate as a special exception before the BZA than an interpretation by the Zoning Administrator to cut to the quick of this issue, really. That is the issue here as far as I see it.

CHAIRMAN GRIFFIS: So if you -- okay. I'll continue on, but it's not as strong in my mind at this point. I mean, basically if you find the fact that this use is not allowable in the C-3-A zone then, sure enough, there's going to be some relief that may bring them to a special exception or a variance. But just the basic fact that it's a split zone on this and that the boundary line is so close, I don't see the --

MR. OBERLANDER: Well, the boundary line is a line on a map. The use on the ground has the impacts of the adjoining property.

CHAIRMAN GRIFFIS: But the matter before us is either, it's a matter of right use in C-3 or

not. I mean, the adjacent zoning could be R-1 and it may be a mistake to have that, but that's what it would be. I don't see how we're -- how we're -- how we can go into the impact of it --

MS. DOUGHTY: May I just say that I think where we were trying to go here is we were trying to talk about the C-3 zone.

CHAIRMAN GRIFFIS: Okay.

MS. DOUGHTY: We were trying to talk about the downtown urban neighborhoods and the fact that these situations such as this situation where zone boundary lines can be directly contiguous, properties is rather typical of C-3 zones.

CHAIRMAN GRIFFIS: Okay. Understood. In fact, it continues all the way up 14th based on your zoning map?

MS. DOUGHTY: Well, in some cases they're not directly contiguous because of an alley separates --

CHAIRMAN GRIFFIS: The R-5-B smacks right into the C-3-A all the way up on everything that you've shown right here. Okay.

MS. DOUGHTY: In fact, there is a service alley that is 20 feet wide that separates the R-5-B residence from the commercial properties in most of

1 these cases, not in this particular case.

2 CHAIRMAN GRIFFIS: Okay.

3 CHAIRMAN GRIFFIS: Ms. Miller?

4 VICE CHAIR MILLER: I have a question,

5 Mr. Oberlander, based on your knowledge and

6 experience with the zoning regulations. Is there

7 some purposeful rational for this type of split

8 zoning, to your knowledge?

9 MR. OBERLANDER: That's a good question.

10 There isn't rational other than back in 1958 when the

11 zoning regulations that we work under today were

12 established, the whole concept of zoning was to base

13 the existing new zoning on the existing conditions.

14 In other words, there was a plan developed in 1950, a

15 master plan for the city in 1950 upon which the 1958

16 zoning regulations was based. But the plan is

17 general and the Zoning Commission had the problem of

18 where do we draw the boundaries. And that is always

19 -- there are no standards for how you do that. The

20 major arterials became the more commercial areas, the

21 interior parts of blocks remained as the

22 predominately residential areas because that's the

23 way this city was built in existence in 1958. And we

24 have had a zoning regulations since that time, which

25 as I said has been amended from time-to-time to

1 improve conditions but it hasn't changed the location
2 of the boundaries.
3 BOARD MEMBER ZAIDAIN: I've got two
4 questions for Mr. Oberlander just so I understand his
5 testimony.
6 You said that it's your argument that
7 this use would have been more appropriate as a
8 special exception, is that correct?
9 MR. OBERLANDER: That would be the
10 process of -- yes.
11 BOARD MEMBER ZAIDAIN: Okay. Under what
12 special exception are we talking about?
13 MR. OBERLANDER: Because there is no
14 specifically permitted use. A dog kennel is not a
15 specific use. And the interpretation that the Zoning
16 Administrator could have given to it is that there
17 are no standards under which he can issue the -- or
18 the DCRA could issue the building permit or the
19 Certificate of Occupancy, in this case, and therefore
20 there are special exception provisions, I don't know
21 the number of it off hand I'd have to look it up, but
22 to come before the Board of Zoning Adjustment and
23 indicate that for this particular property to apply
24 for a special exception.
25 BOARD MEMBER ZAIDAIN: So you're saying

that ZAs under the regs --

MR. OBERLANDER: Special exception uses, yes.

BOARD MEMBER ZAIDAIN: That the ZA has an authority where the regulations are ambiguous when it comes to matter of uses or there are no similar uses that an applicant can apply for a special exception to this?

MR. OBERLANDER: That's correct.

BOARD MEMBER ZAIDAIN: Okay. I'm not questioning -- I'm not doubting you. If you could let us know at some point during the hearing what section --

MR. OBERLANDER: I'll look it up before the end of the --

MS. DOUGHTY: I can do that right now.

BOARD MEMBER ZAIDAIN: Okay. What is it?

MS. DOUGHTY: Section 31 -- you want to know the special exception section --

CHAIRMAN GRIFFIS: Yes, he wants to know the regulation if we can make it a special exception.

BOARD MEMBER ZAIDAIN: No, no, no. I want to know where it says that the ZA --

MS. DOUGHTY: Section 741 if this use is not -- is determined not to be -- to be not similar

to any of the uses permitted as a matter of right in the C-3 zone, then under section 741 this wouldn't be a permitted use and the Zoning Administrator would be required to turn down the Certificate of Occupancy application and to advise the applicant to either seek a special exception or a use variance.

BOARD MEMBER ZAIDAIN: But those are two hugely different terms. When you guys say special exception, I'm thinking that there's someone here that says that they need to -- there's no either or use variance for a special exception; that's what I'm pushing on. I don't understand why a special exception keeps coming up.

MS. DOUGHTY: Okay. In fact, I think an extremely strong argument can be made that a use variance would be required.

BOARD MEMBER ZAIDAIN: Well, that makes more sense, and that's why I was a little confused with the special exception.

MR. OBERLANDER: Well, I combined the two; the special exception and use variance are in fact from a planning perspective the same.

CHAIRMAN GRIFFIS: Wow, I don't know --

BOARD MEMBER ZAIDAIN: I don't know if I agree with that.

And then the other question was, was the environmental consequences --

MR. OBERLANDER: The procedures may not be, but the effect, the impact is the same.

BOARD MEMBER ZAIDAIN: There is a question about the environmental -- or you made the statement about the ZA should have considered the environmental consequences. So is there again a provision in the zoning regs that says when these ambiguous use comes up, that's something that the ZA must consider in its review?

MR. OBERLANDER: Also in the comprehensive plan and in the zoning regulations.

BOARD MEMBER ZAIDAIN: Okay.

MR. OBERLANDER: The zoning regulations section 101 --

MS. DOUGHTY: point one.

MR. OBERLANDER: -- point one specifically makes reference to when the Zoning Administrator makes an interpretation, he should have reference to other laws as well, including the comprehensive plan and other appropriate laws and the provisions of the zoning regulations.

BOARD MEMBER ZAIDAIN: Okay. I didn't mean to get everybody flipping through there -- there

1 were just some points that I wasn't clear on and I
2 wanted to know where the authorities come in from the
3 regs. Thank you.
4 MS. DOUGHTY: If I might add on that
5 environmental question that you had, that I think
6 partly what Mr. Oberlander was suggesting is that
7 that may have been one of the characteristic of the
8 use that might make it dissimilar to other uses under
9 section 741 as well as the direct reference under
10 section 101.1.
11 BOARD MEMBER ZAIDAIN: Okay.
12 CHAIRMAN GRIFFIS: Are you correct in
13 saying 741 or you meaning 721, matter of right uses?
14 BOARD MEMBER ZAIDAIN: They're saying 101
15 is the section talking about --
16 CHAIRMAN GRIFFIS: I understand 101. I'm
17 in the seven hundreds.
18 MS. DOUGHTY: I'm correct on 741 --
19 CHAIRMAN GRIFFIS: Can you turn your mike
20 on, please.
21 MS. DOUGHTY: 721 is matter of right uses
22 in the C-2 zone. Section 741 is matter of right uses
23 in the C-3 zone.
24 CHAIRMAN GRIFFIS: Okay. All right. I
25 just wanted to make sure. Because the enumeration is

in 721. Okay.

Now, let's clear up also 101.1, because often times we have in our appeal cases reference to that. And if everyone wants to read that through. Of course, these are very broad statements, the introduction to the zoning regulations that basically say, not being a lawyer, in my mind they say, hey, don't break the law, but this is what the regulations are so go follow them. They're not controlling. They're not directive and they're very broad.

In fact, 101.1 is adoptive in specificity in any section of which it has pertinence. It talks about providing light and air, all of which it talks specifically with different zoning boundaries. I have never known and it has never been proven in all the cases that we've had in this Board that 101.1 stands alone. It cannot.

MS. DOUGHTY: All right. I agree with that.

CHAIRMAN GRIFFIS: Okay.

MR. OBERLANDER: We are not contending that at all. What I've tried to indicate is that the opinion or the interpretation that the Zoning Administrator has given is that he says that the service establishments are a matter of right in the

C-2 zone as well as pet shops is a matter of right as a retail use. In my opinion, a boarding kennel is not a pet shop because it is different intensity and environmental conditions, and it is a service establishment. And in my --

MR. RUSHKOFF: I don't think --

CHAIRMAN GRIFFIS: Turn your mike on.

MR. RUSHKOFF: Oh, sorry. I don't think there's a foundation that this witness can testify about these specific uses. Some of the other witnesses who are experts in commercial uses related to dogs. I think this witness was proffered as an expert in zoning regulations. And before I think he opines on specific uses that we should get some foundation.

CHAIRMAN GRIFFIS: Agreed.

MS. DOUGHTY: May I just ask for clarification. Because this witness has been qualified as a zoning expert. I think that the statements that he -- he was making statements toward the zoning characteristics of these uses. I feel sure that if I ask our later witnesses, the pet store operator and the other witnesses, about zoning characteristics that Mr. Rushkoff will object to me doing so.

If we are going to talk about the zoning characteristics of these uses, I think we need to be able to hear from Mr. Oberlander on that subject.

CHAIRMAN GRIFFIS: Mr. Oberlander, do you want to restate your last statement?

MR. OBERLANDER: Well, we started out with the question of what is the intensity of use in the C-3-A. And it is low intensity of commercial uses.

I was trying to indicate and be more specific for you to consider the real issues here rather than, you know, whether the zoning classification runs up 14th Street or not and where the boundary is specifically. Those are all integral matters to this case. But the critical thing as I see it is the location of this existing dog kennel in relation to the boundary of the residential zoning, which is immediately to the west of the dog kennel and the impact that this facility has on the surrounding area. Granted --

CHAIRMAN GRIFFIS: But Mr. Zaidain was-- if you follow that logically, Mr. Zaidain's asking you stepping into the shoes of the Zoning Administrator what specific cites in the regulations make you balance out the adjacent zone with a use in

this zone or how it would establish --

MR. OBERLANDER: I'm sorry, I can't hear you too well.

CHAIRMAN GRIFFIS: -- it would be a matter of right use or not?

MR. OBERLANDER: What would make this as a matter of right use?

CHAIRMAN GRIFFIS: Right.

MR. OBERLANDER: It is not a matter of right. It is not listed in the C-3-A --

CHAIRMAN GRIFFIS: Or not?

MR. OBERLANDER: -- or C-2, or C-1 zoning classification as a matter of right use.

CHAIRMAN GRIFFIS: I understand. I understand that. Okay. Let's continue.

MS. DOUGHTY: Is your question satisfactorily answered then?

CHAIRMAN GRIFFIS: Yes.

MS. DOUGHTY: Mr. Oberlander, so from a zoning perspective, maybe if we can recap here and you please correct me if I say this wrong, but I'm asking you this as a question. The Zoning Commission stipulated that the C-3 districts because they would often be a butting residential zones should contain these medium density office, retail, housing and

mixed use development, as you testified earlier that the zoning maps took the existing conditions and tried to then reflect what kind of uses would be appropriate to the existing conditions, is that --

MR. OBERLANDER: Well, I wouldn't say that they in fact in 1958 looked at what was appropriate and what wasn't. They placed the boundaries in proximity to the major arterials. And in some instances, you know, went back 125 feet and in other instances they went back 90 feet. It varies from square to square.

The important thing here is the compatibility of use between one side of the zoning line and the other side of the zoning line. That is what --

CHAIRMAN GRIFFIS: So you're saying the Zoning Administrator in looking at a Certificate of Occupancy issuance in the C-3-A zone should have noted the compatibility with the use when he --

MR. OBERLANDER: Should have considered. He should have considered --

CHAIRMAN GRIFFIS: He should have considered it?

MR. OBERLANDER: -- the compatibility in his --

CHAIRMAN GRIFFIS: Okay. And now going to Mr. Zaidain's question, what section of the regulation outlined that the Zoning Administrator should be required --

MR. OBERLANDER: Section 101.1 of the regulations.

CHAIRMAN GRIFFIS: Okay. Which talks about he's got to make sure he ensures the public health, wealth and safety --

MR. OBERLANDER: That's right. That's right.

CHAIRMAN GRIFFIS: -- of all our citizens.

MR. OBERLANDER: That's right. And that is all part of compatibility.

CHAIRMAN GRIFFIS: Excellent.

MS. DOUGHTY: Okay. Mr. Oberlander, just for the record, I would like now to turn to the issue of compatibility within the C-3 zone. That was really the focus of my question. Forgetting the zone boundary, forgetting about the R-5-B district and focusing on the compatibility of uses within the C-3 zone --

MR. OBERLANDER: Those uses that are permitted in the C-3 zone supposedly are the

compatible ones because they include residential uses and they include commercial uses of a moderate density type. This particular proposal or this existing condition, really, is an intensity in my opinion beyond what a C-3-A use should be.

CHAIRMAN GRIFFIS: And what's the basis for your opinion?

MR. OBERLANDER: My experience in having viewed in the District of Columbia and in Montgomery County and in Virginia, and in Newark, New Jersey where I was a planning director years and years ago, and in New York communities where I was a consultant back in the '50s --

CHAIRMAN GRIFFIS: Okay. No, let's get specific.

MR. OBERLANDER: In dealing with kennels, dealing with dog kennels because they are a mixed use --

CHAIRMAN GRIFFIS: So substantively what you're telling me is that the intensity of use as a kennel is actually so much more above that that's matter of right in C-3 --

MR. OBERLANDER: As matter of above that if a pet shop --

CHAIRMAN GRIFFIS: Okay. So in fact, a

kennel --

MR. OBERLANDER: -- and a veterinary hospital.

CHAIRMAN GRIFFIS: -- in your opinion is more intense use than a gas station, than a laundromat --

MR. OBERLANDER: No. That's not -- that's not what the Zoning Administrator interpreted. He says that he -- equates public baths, physical culture or health service and veterinarian hospitals and pet shops, which are a matter as a retail use, as compatible or as similar to a boarding house -- a boarding --

CHAIRMAN GRIFFIS: But you're making a statement that --

MR. OBERLANDER: You're getting me roused up.

MS. DOUGHTY: Now, can I --

MR. OBERLANDER: As a dog kennel is, he interprets as being compatible with those uses. And in my opinion he erred in his determination.

CHAIRMAN GRIFFIS: Is it a matter of right use in the C-3 zone?

MR. OBERLANDER: No.

CHAIRMAN GRIFFIS: Because it's not

compatible to a veterinary hospital --

MR. OBERLANDER: No, it's not listed where in any of the zoning classifications. Not even in the manufacturing zoning.

CHAIRMAN GRIFFIS: But that doesn't make it not matter of right that it isn't enumerated specifically in the regulations?

MR. OBERLANDER: Oh, yes, it does.

CHAIRMAN GRIFFIS: It doesn't. It's 721.4 allows the similar uses that wouldn't be enumerated, obviously adapting to the fact that time changes. There's not many telegraph offices opening up, which is a matter of right use, in fact, in the C zone. However, there is the provision of which the Zoning Administrator would be allowed to find similar or distinct that would fall into that nature. I don't think that's a dispute, which is why I say it so definitively.

And my point is going to your statement of in your opinion this has such a higher intensity of use it would not be matter of right. And I'm asking you uses as a matter of right in C-3 list laundromat and dry cleaning facilities less than 5,000 square feet, gas stations --

MR. OBERLANDER: Those are all interior

uses, have no activities associated with the exterior of the building.

CHAIRMAN GRIFFIS: Well, I would assert -- well, maybe we'll hear argument on that. But -- well, I'm not going to make argument.

MR. OBERLANDER: Well, does a laundromat take place outdoors?

CHAIRMAN GRIFFIS: Does a gas station?

MR. OBERLANDER: A gas station does, yes.

CHAIRMAN GRIFFIS: Service station?

MS. DOUGHTY: And, indeed, gas stations are not unrestricted matters of right in the C-3 zone. Gas stations are subject to grandfathering and setbacks and other requirements. Excuse me.

CHAIRMAN GRIFFIS: Okay.

BOARD MEMBER ZAIDAIN: I have a question, because I think Mr. Oberlander really hit on the key issue that we have to deal with, and that is the compatible uses or the uses that the ZA deemed as similar. I mean, I don't think it's a huge dispute that the ZA has the authority under 721.4, I think it is, that when a specific use is not listed they have to find similar uses and make that judgment call.

You listed the uses that the ZA determined as being similar, that being veterinary

hospital, public bath, pet shop. Can you kind of give us some testimony on from a zoning standpoint what the differences are between those two or similarities or how you kind of work through that issue.

MR. OBERLANDER: I can give you --

BOARD MEMBER ZAIDAIN: Because I think that's the key issue we're dealing with here.

MS. DOUGHTY: Yes, that's very important. And I -- you know, what we would like -- I mean what we would like to talk to you about is when exactly that question when a use is not specifically identified, how would one go about assessing under section 721.4 whether or not the use is a permitted use on the basis that it's similar?

BOARD MEMBER ZAIDAIN: Well, I mean I'm not really -- I'm not trying to get that broad just yet.

MS. DOUGHTY: Okay.

BOARD MEMBER ZAIDAIN: I'm sure we'll get there. I mean, let's talk in terms of the specific uses, I think because we'll get into 101.1 I'm sure at some point talking about impacts. We're talking about the commercial zoning and what's compatible and what's not. Obviously, the ZA thinks that those uses are similar to this use. And I'm just wondering what

the opinion is on that issue; do you feel that these uses are not similar or are they more intense, less intense? What's the defining factors that make these things not work?

MR. OBERLANDER: Well it's actually that the pet shop is a less intense use than a dog kennel which may also do grooming and may have food available for sale, and have some retail, but it's a service facility. It services dogs and other animals, possibly. So it is not similar in my judgment to a pet shop. It is not similar to a veterinarian hospital because all the activities in a veterinarian hospital usually take place indoors. The animals are sedated because they are being operated on or treated in one way or the other. They are not as loud as dogs running in the back yard. So those are the environmental differences.

BOARD MEMBER ZAIDAIN: Right. And I see. Just let me interject really quick, would you say that a veterinarian hospital is more intense or less intense than --

MR. OBERLANDER: Less intense.

BOARD MEMBER ZAIDAIN: Less intense. Okay.

MR. OBERLANDER: My experience over the

50 odd years that I've been in the planning and zoning business is that usually veterinarian or/and dog boarding facilities are in suburban locations where you have large land areas where there are standards established by the zoning regulations very strictly enforced as to how the environmental conditions have to be treated, whereas there is no such standards available in the District of Columbia. And this is in my opinion a very inappropriate use next to an R-5-B zone.

BOARD MEMBER ZAIDAIN: How would you reconcile the public bath?

MR. OBERLANDER: It's again indoors. See, the main feature as I see it, you can soundproof a dog kennel. That wasn't required by the Zoning Administrator here.

BOARD MEMBER ZAIDAIN: Okay.

MR. OBERLANDER: So the dogs bark and the sound is heard throughout --

BOARD MEMBER ZAIDAIN: So what you're saying is when the zoning talks about a public bath, as it does in 721.2, that that's an indoor public bath?

MR. OBERLANDER: Normally in my experience and the public baths that used to be in

the District of Columbia, I don't think there are any more, they're swimming pools today and those are outdoor activities. But the public baths were usually done indoors.

BOARD MEMBER ZAIDAIN: Well, you're not saying a public bath in the zoning means swimming pools, though, right?

MS. DOUGHTY: No, it does not. In fact, swimming pools are specified separately under that section.

BOARD MEMBER ZAIDAIN: Okay.

MS. DOUGHTY: If I could just clarify one. I think that the reference to the public bath, and perhaps we'll hear it from the Zoning Administrator later today, but I believe that the reference to the public bath, physical culture or health service is a reference to the grooming aspect of the CFO.

BOARD MEMBER ZAIDAIN: Yes. Well, I'm sure we'll similar testimony from all the parties, so we'll get that cleared up on those issues.

MS. DOUGHTY: Okay. If I may, I would like to ask you, Mr. Oberlander, to speak to the matter of when a use is not specifically use, a use such as this one, the dog boarding kennel when it is

1 not specifically identified in the zoning regulations
2 as a permitted use in C-3 then how does one go about
3 assessing this issue of similar to? What is the --
4 MR. OBERLANDER: Well, that is left up to
5 the Zoning Administrator and his interpretation and
6 what he considers similar. There are no standards
7 that have been established for that either. In my
8 opinion there should be some standards because what
9 in fact the Zoning Administrator has done here, he
10 has in fact changed the zone, as I see it. But BZA
11 may not be concerned about that. But in allowing a
12 use that is not permitted in fact changing the zone.
13 That is a function that the Zoning Commission is
14 supposed to perform.
15 MS. DOUGHTY: So if you could perhaps
16 elaborate on how you believe one should approach this
17 question of making these judgments about similarity?
18 You know, what kinds of factors would you take into
19 account? How do you believe these sorts of decisions
20 should be approached?
21 MR. OBERLANDER: Well, the main thing is
22 the amount of activity that this particular use
23 produces and compare the amount of activity and the
24 similarity of activity with other permitted
25 activities in the area. And in my opinion this

facility as existing has more activities in it which are not compatible with other activities that are in the C-3 zone.

MS. DOUGHTY: So are you talking then about intensity and sort of occupancy, the characteristics of the activity such as noise, traffic, these kinds of --

MR. OBERLANDER: I lump those into the word environmental conditions, yes. Environmental impacts. Because the noise is an environmental impact, transportation is environmental impact; all of these are environmental impacts. And noise, sound, the excrements of animals and all of these are -- have an impact on the environment.

MS. DOUGHTY: They have an external impact? They may have -- there may be characteristics associated with the use that have impacts that go beyond the boundary of the premises, so to speak?

MR. OBERLANDER: Yes.

MS. DOUGHTY: Is that what you mean by environmental impacts, external impacts or external affects.

Mr. Oberlander, I'd like to turn to a slightly different question. I'd like to ask you

specifically for the record did the Zoning Commission provide for any agricultural zones to exist within D.C.?

MR. OBERLANDER: Not to my knowledge, no.

MS. DOUGHTY: In your experience what would be the impact of introducing high intensity commercial uses into C-3 zones or introducing uses into C-3 zones that were akin to manufacturing, industrial or agricultural uses?

MR. OBERLANDER: There's a term that zoning experts use that it becomes a deleterious use. The greater intensity has, again, impacts on the surroundings and it is a deleterious use and not compatible with the uses that are permitted.

MS. DOUGHTY: In your opinion is it the intention of the Zoning Commission that the zoning regulations should be interpreted in a manner that would allow for such deleterious or destablizing or otherwise negatively impacting uses in zoning districts for which they are not intended?

MR. OBERLANDER: Absolutely not.

MR. DONOHUE: Objection, Mr. Chairman. He can't opine what the Zoning Commission thinks, can he?

CHAIRMAN GRIFFIS: No.

MS. DOUGHTY: Intended. What the Zoning Commission intended?

MR. OBERLANDER: Well, in each of the zoning classifications, the introductory into the residential, commercial and the manufacturing have the listing of what the intent for the zone is. And that's what I'm referring to. It's not what the Zoning Commission intended, but what the zone is intended to be used for which was drafted or prepared or adopted by the Zoning Commission.

CHAIRMAN GRIFFIS: Right. I haven't heard anything new yet.

Go ahead.

MS. DOUGHTY: Okay. Mr. Oberlander, what does the law say about the relationship between the D.C. Comprehensive Plan and the D.C. zoning regulations?

MR. OBERLANDER: The law is the Home Rule Act of 1974 and 1975 which states that zoning shall be incompatible with the Comprehensive Plan. It's a negative way of saying it rather than saying it should be compatible. But that's the way the Congress enacted it back then.

CHAIRMAN GRIFFIS: And whose the arbiter of incompatibility?

MR. OBERLANDER: The Zoning Commission and the Planning Commission.

CHAIRMAN GRIFFIS: Okay. And the Planning Commission?

MR. OBERLANDER: Yes.

CHAIRMAN GRIFFIS: Has that been established yet?

MR. OBERLANDER: It hasn't, but in my opinion the Planning Commission hasn't been doing its job since I left in 1996. But, frankly, it is the joint responsibility under the Home Rule Act.

CHAIRMAN GRIFFIS: You're talking about the NCPC?

MR. OBERLANDER: Yes.

CHAIRMAN GRIFFIS: What do we care. Okay.

MR. OBERLANDER: The Home Rule Act --

BOARD MEMBER ZAIDAIN: Should I just ignore this whole conversation, I guess.

CHAIRMAN GRIFFIS: Yes, probably, Mr. Zaidain.

MR. OBERLANDER: Well, the Home Rule Act is very explicit. I would offer that you read the Home Rule Act if you haven't done so. Because the Home Rule Act is very --

CHAIRMAN GRIFFIS: I appreciate that, however -- what is controlling? The Comprehensive Plan is not controlling. In fact, it's directive. It's directed to the Zoning Commission, is that correct?

MR. OBERLANDER: The zoning regulations are directive? No, they're not directive.

CHAIRMAN GRIFFIS: The Comprehensive Plan?

MR. OBERLANDER: The Comprehensive Plan is policy statements, yes, it doesn't direct anything.

CHAIRMAN GRIFFIS: Right.

BOARD MEMBER ZAIDAIN: I think where some of the Board Members are struggling with this is you're putting forth an argument that when the ZA got to this, had this use before it for a permit, went to the zoning regulations, there wasn't anything there that specifically reflected it and so started to look for similar uses. You're saying that the ZA should have pulled out the Comprehensive Plan and made a call -- the ZA I'm talking about, made a call on whether or not this use was permitted under the Comprehensive Plan?

MR. OBERLANDER: Because the general

language --

BOARD MEMBER ZAIDAIN: But first of all, is that right?

MR. OBERLANDER: Yes. Yes, that's right.

BOARD MEMBER ZAIDAIN: Okay.

MR. OBERLANDER: The Comprehensive Plan doesn't deal specifically with dog kennels because the word dog kennel doesn't appear in the Comprehensive Plan.

CHAIRMAN GRIFFIS: How about specific uses?

MR. OBERLANDER: But it -- beg your pardon?

CHAIRMAN GRIFFIS: How about specific uses?

MR. OBERLANDER: It deals with office uses, which is specific uses. It deals with --

CHAIRMAN GRIFFIS: Does it enumerate matter of right uses?

MR. OBERLANDER: It enumerates where the locations of --

CHAIRMAN GRIFFIS: Generalized land use?

MR. OBERLANDER: That's right.

CHAIRMAN GRIFFIS: Right.

MR. OBERLANDER: It doesn't do zoning, it

doesn't create the boundaries.

CHAIRMAN GRIFFIS: Excellent point.

MR. OBERLANDER: But if you look at the land use map in the Comprehensive Plan those differences in the colors reflect pretty much the boundaries that exist in the zoning regulations because, again, in the planning back in the '60s, '70s and '80s and '90s there was an attempt to keep the intensity of development in the District of Columbia basically the way it was and not allow a 100,000 more people to enter the city, as the Mayor is proposing at the moment, which is not part of the Comprehensive Plan but he can certainly do that. And if the Comprehensive Plan is changed to allow another 100,000 people to move into the city, then we have a greater intensity of development everywhere which if it's done appropriately it's fine. But the current plan does not envision that.

The current plan basically intends to keep conditions as they are.

BOARD MEMBER ZAIDAIN: Well, I mean, and does the Comprehensive Plan as you see it have enough information and enough policy guidance and enough specificity in it to give a Zoning Administrator that much information to make the kind of call you're

saying they should?

MR. OBERLANDER: If the ward plans become the more specific items, yes.

BOARD MEMBER ZAIDAIN: The ward plans?

MR. OBERLANDER: The ward plan are the more specific plans, which are part of the Comprehensive Plan. The ward plans as they now exist.

MS. DOUGHTY: If I might add that the Comprehensive Plan certainly instructs the Zoning Administrator to evaluate a Certificate of Occupancy in conjunction with the Comprehensive Plan. Now the Comprehensive Plan, as you've just heard, does not list itemized specific uses. What it does talk about is characteristics. It talks about some of these same characteristics that we've been talking about here; traffic, noise and --

CHAIRMAN GRIFFIS: Well, then let's get into the specifics then, because I don't apply with your appeal which I think Mr. Oberlander is touching upon, indicates that the Zoning Administrator erred in granting a CFO for this 24 hour facility because he failed to considered the D.C. Comprehensive Plan.

BOARD MEMBER ZAIDAIN: And you're saying that includes the -- plan because I think your

opinion that the -- plan is a part of the --

MR. OBERLANDER: That plan has no status in the Comprehensive Plan.

BOARD MEMBER ZAIDAIN: Okay. Because I was going to say, because that's the first I've heard of that.

MR. OBERLANDER: No, no.

BOARD MEMBER ZAIDAIN: So I go back to my original question of you're saying that the ZA should have looked at this document to make this call, and I'm just wondering if there's enough specificity in that to help them to do that?

MS. DOUGHTY: Well, in fact --

CHAIRMAN GRIFFIS: Maybe if you follow my train of questioning, we can get to that. And so item 5 as it is listed is it in conflict with the Comprehensive Plan, this dog kennel facility?

MR. OBERLANDER: It is not in keeping with the general policies of maintaining and enhancing residential and commercial areas, yes.

CHAIRMAN GRIFFIS: I see. But --

MR. OBERLANDER: The dog kennel does not enhance.

CHAIRMAN GRIFFIS: In your opinion.

MR. OBERLANDER: And then the general

policy says "enhance" rather than deter.

CHAIRMAN GRIFFIS: I see.

MR. OBERLANDER: The order that the copy of which is the email that was available on this matter does not make any reference to any other statutes and does not give any basis for his opinion, other than he considers it a similar use. But he didn't describe the standards that he used the similarity. The kind of questions you're asking me --

CHAIRMAN GRIFFIS: So you're feeling that he didn't include all that in the email or are you appealing to the fact that it wasn't --

MR. OBERLANDER: Where is the document of the Zoning Administrator which in fact spells all that out?

CHAIRMAN GRIFFIS: Okay.

MS. DOUGHTY: Mr. Chairman, would you like specific references to those sections of the Comprehensive Plan that we believe this ruling is inconsistent with in addition to the --

CHAIRMAN GRIFFIS: And here I thought my position was so blatantly clear. No, you don't need to give me section 102.2, 112.6(b), 1102; no. Well, I don't need it.

MS. DOUGHTY: Good. Okay. So you're satisfied with this issue of the Comprehensive Plan and --

CHAIRMAN GRIFFIS: Very satisfied.

MS. DOUGHTY: -- and the inconsistency of this?

CHAIRMAN GRIFFIS: Not with that necessarily.

Ms. Miller?

VICE CHAIR MILLER: I have a question for Mr. Oberlander, and that is given that we don't have any agriculture zones in our zoning regulation, where do you think a kennel fits?

MR. OBERLANDER: In a manufacturing zone.

VICE CHAIR MILLER: Okay.

MR. OBERLANDER: That has been my experience in this community and in other communities in the country that dog kennels and that type of activity, veterinarian hospitals, are usually in industrial or manufacturing zones.

VICE CHAIR MILLER: But there are -- veterinary hospitals are allowed in this zone that we're talking about.

MR. OBERLANDER: Yes. But I'm just telling you my experience in other communities. If

you look at the Montgomery County zoning regulations, which in my opinion is superior to the District zoning regulations because it was done more recently, it clearly indicates the size of the establishment. It establishes standards. There is nothing in the zoning regulations which, you know, even if you had a smaller lot than this very small lot, you could under this interpretation put in a dog kennel. And that is erring or being too liberal; let's put it this way. The Zoning Administrator's much too liberal in his interpretation.

VICE CHAIR MILLER: I just have some follow up on that. In other communities, though, ar they treating veterinary hospitals the same as kennels for zoning purposes?

MR. OBERLANDER: No.

VICE CHAIR MILLER: But you just said they put them in the same area?

MR. OBERLANDER: Well, they have. But in my opinion in terms of usage they are not the same, but they have been located in areas where they are, you know, distances apart. Right next to each other.

VICE CHAIR MILLER: Well, distances apart from what?

MR. OBERLANDER: From each other.

MS. DOUGHTY: If I could just -- one issue with veterinary hospitals that we have to be a little bit careful about here is that some veterinary hospitals have within the greater facility, they also have a boarding operations. Some veterinary hospitals and veterinary clinics are specialized purely in the medically related treatment of animals. So those might be, indeed, located in different places.

MR. OBERLANDER: All I was trying to indicate in my experience, and not in the city but in other locations in the eastern seaboard, is that they are usually in manufacturing or industrial zones and they have large land areas their environmental impacts on adjoining properties is reduced to the minimum. I'm not against dog kennel, don't --

MS. DOUGHTY: Okay. In your view, Mr. Oberlander, what would be the difference between allowing a 24-hour dog kennel and, say, a chicken coop or a goat herd or a pig fallow or dairy cows or some other agricultural operation in a C-3 zone?

MR. OBERLANDER: Well, they're very similar in terms of environmental impacts. They are different animals, but the impact on the surrounding area would be the same and it would be --

MR. RUSHKOFF: Objection to testifying

that the relevant environmental impacts of various animals without more a foundation.

CHAIRMAN GRIFFIS: Yes, I don't understand where he's able to --

MS. DOUGHTY: External effects.

CHAIRMAN GRIFFIS: But that means he's somehow been able to measure the level of a chicken coop's environmental impact.

MS. DOUGHTY: I believe that I was just asking Mr. Oberlander for his general assessment of the likely intensity of an example use --

CHAIRMAN GRIFFIS: The more appropriate question might have been, you know, a goat farm which is allowed in the G-2 zone of the District of Columbia, is not? And is it more analogous to the use that we're having here? That puts a little bit more into his expertise, isn't it?

MS. DOUGHTY: I agree. Unfortunately, we don't have an agriculture zone, or fortunately as the case might be, we don't have an agriculture zone in the D.C. so I couldn't use an example from --

CHAIRMAN GRIFFIS: Which may or may not help your argument. But let's go ahead.

MR. OBERLANDER: Well, it does in terms of the intent, again, of the zoning regulations.

Washington, D.C. is primarily an office and housing area and related commercial. It is not an industrial city like Baltimore is. And the founding fathers wanted it to be that way. So the manufacturing zones are really basically warehouse facilities, storage facilities. There is no -- very little actual manufacturing being performed in the manufacturing zones, whereas in these other communities where you have manufacturing being produced, you're producing items, the noise level of dogs in a kennel or other animals, you know, is compatible. That's the theory behind where -- at least the planning theory where such facilities, animal boarding facilities are more appropriate.

CHAIRMAN GRIFFIS: Whose planning theory?

MR. OBERLANDER: Beg your pardon?

CHAIRMAN GRIFFIS: Whose planning theory?

MR. OBERLANDER: General planning principles that are taught in planning schools.

CHAIRMAN GRIFFIS: Well, that confuses me with your argument then. You're saying that Washington, D.C. is set up without manufacturing industrial zones.

MR. OBERLANDER: Well, it has --

CHAIRMAN GRIFFIS: And then the other

cities actually have these manufacturing industrial zones, and that's where the kennels should be because that's where it's more appropriate. So now what do we do with ours?

MR. OBERLANDER: Well what I said is --

CHAIRMAN GRIFFIS: As per zoning regulation has this city then not been so specific to allow or to place these things somewhere?

MR. OBERLANDER: In my belief the founding fathers or the zoning back in 1958 did not consider putting dog kennels anywhere in the city.

CHAIRMAN GRIFFIS: You mean we weren't supposed to have dogs in the District either?

MR. OBERLANDER: No, I didn't say that. Dog kennels.

MS. DOUGHTY: Well, may I point out that the Zoning Commission certainly opted not to identify, specifically identify dog boarding kennels as a use specifically identified under any section of the D.C. zoning regulations. There are many, many specific uses --

CHAIRMAN GRIFFIS: Well, what's your witness' opinion of that? So that they didn't identify it? What's the --

MR. OBERLANDER: If they're not

identified, they're not a permitted use.

CHAIRMAN GRIFFIS: Anywhere in the city?

MR. OBERLANDER: That's right.

CHAIRMAN GRIFFIS: I see. Okay.

MS. DOUGHTY: Unless it's similar to, of course, which we discussed earlier.

VICE CHAIR MILLER: I just want to follow up on that, though. That doesn't mean they can't be in the city, that means that they would have to come for a variance or something like that --

MR. OBERLANDER: And you establish standards and you make sure that there are large enough areas so that the activity, the intensity of activity that takes place there does not have deleterious impact on the surrounding property.

VICE CHAIR MILLER: Okay. And to follow up on that, you talked about this before but it really wasn't clear to me, about the provisions in our regulations. I mean, are we talking variance or are we talking special exception if that were the case?

MS. DOUGHTY: Variance.

MR. OBERLANDER: Variance, a use variance. Okay. The use is not omitted. I probably misspoke in saying a special exception. A use

variance would be the safest.

VICE CHAIR MILLER: Okay. Thank you.

MS. DOUGHTY: You don't need the specific section -- you don't need the reference to variance, Ms. Miller?

CHAIRMAN GRIFFIS: No, she doesn't.

MS. DOUGHTY: Okay. Good.

On this issue of manufacturing and industrial zones, is it your belief, Mr. Oberlander, that the -- in the CM and N zone there are standards set out for external effects, could you discuss please a little bit the rational for setting out such standards for external effects such as those that we have only manufacturing and industrial zones under the D.C. zoning regulations?

MR. OBERLANDER: Well, because a dog kennel has noise impacts and has other environmental impacts as I've grouped them together, there ought to be standards in the regulations which spell out what size of facility there ought to be, what amount of noise would be permissible and enforce anything that is above that decibel level so that the number of animals congregating at one time and the other activities that take place in a dog kennel. The interpretation given by the Zoning Administrator is

it's a similar use to a pet shop and it isn't in my opinion. And a similar use to a veterinary hospital, which has some standards in the zoning regulation, it my opinion it doesn't fall under that either.

CHAIRMAN GRIFFIS: Understood.

MS. DOUGHTY: So if I could just show you these, Mr. Oberlander. Section 825 of the D.C. zoning regulations standards for external effects. These, as you can see from that section of the zoning regulations it goes through a number of items; sound, emission of smoke, odorous gases, noxious fumes, vibration, dust, etcetera, etcetera. Standards of this type, is that what you were referring to?

MR. OBERLANDER: Well, these standards are for manufacturing operations. But they could also apply to the intensity of use that a dog kennel produces. So decibel levels and emissions from the site, and contamination of the earth, yes, are all parts of that.

MS. DOUGHTY: Thank you, Mr. Oberlander.

I'd like to, and very briefly if I may, to go through two topics with this witness. I'd like to ask you, Mr. Oberlander, about the Building Officers Codes Association -- I'm sorry, Building Officials Code Administrators codes, the BOCA codes.

Do you --

CHAIRMAN GRIFFIS: Why are you asking him about BOCA?

MS. DOUGHTY: Because it is in my experience quite possible that --

CHAIRMAN GRIFFIS: Do you have any experience in building code and regulations, enforcements writing or compliance with?

MS. DOUGHTY: I don't want to ask Mr. Oberlander specifically about -- in detail about the BOCA codes. I want to ask Mr. Oberlander whether or not he would have used the BOCA codes, and whether he believes the BOCA codes would be -- whether they were something that he would use.

CHAIRMAN GRIFFIS: For what?

MS. DOUGHTY: To try and assess similarity of uses under the zoning regulations.

MR. OBERLANDER: The answer would be no.

CHAIRMAN GRIFFIS: A good answer.

MS. DOUGHTY: Thank you, Mr. Oberlander.

MR. OBERLANDER: The BOCA code is for building purposes and standards and does not have direct relationships. One could --

CHAIRMAN GRIFFIS: I understand. Let's move on.

MR. OBERLANDER: -- use it as reference, but it's not directly applicable.

CHAIRMAN GRIFFIS: Next, please.

MS. DOUGHTY: Okay. Finally, I'd like then to -- now, what about the notion that the Zoning Administrator may choose to permit a use such as the boarding kennel in the C-3 zone on a temporary basis conditional on certain restrictions being met by the use? And you are aware of the conditions that were imposed on the CFO in this case: The first being no more than 20 dogs being permitted outside at any one time; the second the limitation on the use of the outdoor space between the hours of 9:00 and 5:00; third requiring use of the outdoor space to be supervised by employees, and; fourth the construction of a cover over the rear yard to help protect and enclose the dogs and minimize noise impacts.

Could you discuss please whether or not, you know, in your view whether the Zoning Administrator may choose to permit a use, to almost try and shape a use and permit it when he made choose to conditionize Certificates of Occupancy in this way under the zoning regulations?

MR. OBERLANDER: Well, I'm not aware that there are any provisions in the zoning regulations

which give the Zoning Administrator conditional approvals for such uses. The only thing that's in the regulations is the phase "similarity of use" and that is up to him or her to interpret what are similar uses.

Conditional uses would have to be spelled out either by BZA or the Zoning Commission. And there is no such provision as my knowledge of the zoning regulations at this time.

BOARD MEMBER ZAIDAIN: I just want to make sure that I'm clear on this issue, because this is something that I was trying in reading the materials. Are you referring to the CFO, which is permit #57903, I think, that expired on January 31, '04 or will?

MS. DOUGHTY: Yes, correct.

BOARD MEMBER ZAIDAIN: Okay. And then the conditions that I guess we're accepting are attached that CFO, I'm assuming that are attached to the CFO, stem from a letter on July 30, 2003?

MS. DOUGHTY: The conditions that we believe are attached to the CFO, and of course this is something we will have to hear from the Zoning Administrator about.

BOARD MEMBER ZAIDAIN: Sure, we will.

MS. DOUGHTY: Are entered into the record for this appeal by Mr. Rushkoff as being contained on the CFO at location and detailed in an exchange of letters between Mr. -- and the Zoning Administrator.

BOARD MEMBER ZAIDAIN: Right. Okay. Well, I mean that's kind of what I was asking. They're not reflected on the CFO itself, like they're on the application and they were reiterated in a letter. So, okay. I just wanted to make sure I was clear.

MS. DOUGHTY: Not on the face of the CFO.

BOARD MEMBER ZAIDAIN: Not on the face. Okay. Thank you.

VICE CHAIR MILLER: Excuse me. I missed part of what you said with respect to only who has authority to condition a use. I think you said the BZA or something?

MR. OBERLANDER: The Zoning Commission.

VICE CHAIR MILLER: Zoning Commission or the BZA. Okay. Thank you.

MR. OBERLANDER: The Zoning Commission sets forth conditions on every planned unit development and BZA sets forth, as you know very well better than I do.

MS. DOUGHTY: Mr. Oberlander, finally I

1 would like to ask you is it your view that the
2 portion of the Certificate of Occupancy application
3 relating to the 24-hour dog boarding kennel should
4 have been turned down by the Zoning Administrator in
5 this case?
6 MR. OBERLANDER: Yes, in my opinion it
7 should have been turned down because if I were the
8 Zoning Administrator, which I'm not, but I have
9 consulted with previous Zoning Administrators in the
10 District and they asked me to give them advice, and
11 we have discussions on a variety of things in the
12 past. But that's not necessary for the record,
13 really.
14 This interpretation in my judgment is too
15 liberal an interpretation based on what is in the
16 regulation and the read that this interpretation
17 leads on is the other similar uses. And I've tried
18 to indicate that the dog kennel is not a similar use
19 to veterinarian hospital or to a pet shop, or to a
20 public bath and the other that he's used, health
21 service. It is a health service for animals, but not
22 for humans. So I mean the words that he has used or
23 has referred to in the regulations are not applicable
24 to dogs. They're applicable to humans.
25 MS. DOUGHTY: But, of course, Mr.

Oberlander, if you could please clarify your last statement, a health service for dogs.

MR. OBERLANDER: Well, I didn't say that. I said it says public bath, physical culture or health service --

CHAIRMAN GRIFFIS: Actually, you did say that.

MR. OBERLANDER: -- for humans. I put that in. It does not include for animals.

MS. DOUGHTY: But even if this -- you know, as I think we pointed out very clearly in our prehearing submission and indeed in response to an earlier question, we are not challenging the dog grooming portion of the Certificate of Occupancy. So even --

CHAIRMAN GRIFFIS: Okay. We understand. We've been hard on Mr. Oberlander. He just made a misstatement. But we can move on.

MS. DOUGHTY: Thank you, Mr. Oberlander.

Mr. Wemple, Mr. Macy, do you have any questions for Mr. Oberlander?

MR. WEMPLE: No.

MS. DOUGHTY: Okay. We are done with this witness.

CHAIRMAN GRIFFIS: Not you have first

witness, 345, now we get to go to cross examination.

MS. DOUGHTY: Thank you very much.

CHAIRMAN GRIFFIS: Mr. Rushkoff, would you like to start?

MR. RUSHKOFF: Yes, thank you.

MR. RUSHKOFF: Mr. Oberlander, I'm going to be asking you a few questions.

MR. OBERLANDER: Sure.

MR. RUSHKOFF: Suppose the Zoning Administrator received a letter form the applicant for a Certificate of Occupancy offering to take the Certificate of Occupancy under certain conditions proposed by the applicant? Is it your testimony that the Zoning Administrator would be without authority to agree to those conditions and append them to the Certificate of Occupancy?

MR. OBERLANDER: No, I didn't say that. I said that there are no standards for establishing these conditions because the regulations don't mention it. The Zoning Administrator in his interpretation, and that was a plus for this application, but it's still the conditions that are specified in my opinion are still not sufficient to make a compatible use to the surrounding area.

MR. RUSHKOFF: Okay. So you're saying

that even with the conditions there's a problem with this particular Certificate of Occupancy, is that correct?

MR. OBERLANDER: With the problem with the interpretation that the Zoning Administrator gave as to a use that could be located in the C-3-A zone.

MR. RUSHKOFF: But I think what you just said is there's nothing wrong with the Zoning Administrator accepting conditions that are voluntarily offered by the applicant?

MR. OBERLANDER: Well, I wouldn't call those conditions. I call those conditions that the owner is wanting to operate under and not zoning conditions as such.

MR. RUSHKOFF: Okay.

MR. OBERLANDER: There's a difference in my opinion.

MS. DOUGHTY: I kind of -- maybe I object here. I'm just wondering whether Mr. Rushkoff is testifying that these conditions --

CHAIRMAN GRIFFIS: Testifying?

MS. DOUGHTY: -- that these conditions are voluntary? That these specifics of this --

CHAIRMAN GRIFFIS: I heard a very appropriate cross examination question.

MS. DOUGHTY: Okay. Sorry.

CHAIRMAN GRIFFIS: Let's move on.

MR. RUSHKOFF: In your testimony I think you mentioned that in the District veterinary hospitals have -- well, excuse me. Let me rephrase this. That there are zoning regulations in the District that have standards applicable to veterinary hospitals, is that correct?

MR. OBERLANDER: Well, the locations are. The locations are admitted use in certain zones, yes.

MR. RUSHKOFF: So you were simply saying that veterinary hospitals specifically mentioned in the --

MR. OBERLANDER: That's correct.

MR. RUSHKOFF: Okay. But other than these specific mention of veterinary hospitals as being matter of right uses in certain areas, there aren't any further regulations you're referring to?

MR. OBERLANDER: I don't recall at the moment if the regulations have specific, but to me it's irrelevant in terms of it's not the comparable. A veterinarian hospital is not comparable to a dog kennel.

MR. RUSHKOFF: Okay. Would you agree

that dogs stay overnight at veterinary hospitals?

MR. OBERLANDER: Yes, they do, but they're usually in a sedated, to my experience in a sedated condition.

MR. RUSHKOFF: Suppose the District issued a Certificate of Occupancy for the operation of a veterinary hospital. And suppose that that veterinary hospital customarily accepted animals the evening before surgery and boarded those animals overnight without placing them under sedation. Do you believe that would be a violation of the Certificate of Occupancy?

MR. OBERLANDER: Frankly, I'd like a little more time to think about that. But the basic answer is, again, that in my experience the dogs would become sedated overnight in order to ready for surgery in the morning. They are indoors exclusively, which is another condition which is not the case in the application or this existing condition which has an outdoor run area.

MR. RUSHKOFF: If a veterinary hospital took recovering dogs out for regular walks, supervised walks in the neighborhood do you believe that would be a violation of the Certificate of Occupancy?

MR. OBERLANDER: The zoning regulations or the CFO I don't believe addressed that.

MR. RUSHKOFF: Okay. Do you have any opinion on whether or not the boarding of dogs may under some circumstances be an accessory use of a veterinary hospital?

MR. OBERLANDER: It could be an accessory use. Again, it depends on the conditions. What I've tried to testify to and what is the situation here is that this back yard of this originally residential building which has been converted into a commercial use is abutting one family and multi-family housing. And the nuisance, and again we're not addressing the nuisance issue, but the use is a nuisance. There's no question in my mind that this use is a nuisance to the surrounding residential properties, whatever zone they may be in.

MR. RUSHKOFF: And when you say this use, you're referring specifically to the use being carried out by the WagTime operation?

MR. OBERLANDER: That's correct, yes.

MR. RUSHKOFF: All right. Would you agree that a particular boarding operation as conducted by a particular operator might be appropriate in the country and not in the city?

MR. OBERLANDER: It's more appropriate, I would phrase it that way, in the country or in areas where you have larger land areas. As the Chairman indicated earlier, we don't have any space in the District or 67 square miles to locate six or ten acre animal facilities. So the ones that I'm familiar with in terms of that size are all in non-high density residential areas or medium density or low density residential areas, as is the case.

MR. RUSHKOFF: But you don't have any opinion, do you, on whether or not dog boarding can be done appropriately in a small facility?

MR. OBERLANDER: I don't really have an opinion. If it's done exclusively indoors and the structure is soundproofed, in all likelihood you could get away with putting such a facility in a residential area where you would not have any impact, environmental impacts on the surrounding properties.

This building is not soundproofed and the back yard is open to the surrounding neighbors.

MR. RUSHKOFF: Are you aware that it's a criminal offense in the District to own or keep a dog that by barking or in any manner disturbs the quiet of any neighborhood or any person?

MR. OBERLANDER: I don't have any

specific knowledge of that provision or violation, if that's the way you put it.

MR. RUSHKOFF: So then you don't know whether or not a dog kennel could be subject to criminal liability if it allowed, say, a dozen barking dogs to disturb the peace in the neighborhood?

MR. OBERLANDER: No, I don't. That is a little bit beyond my expertise knowledge. I have not had any experience in criminal cases in the District of Columbia.

MR. RUSHKOFF: Okay. Were you aware that the D.C. Court of Appeals has held that the barking of a single household pet could in some circumstances be an actionable nuisance in the District of Columbia?

MR. OBERLANDER: I'm not aware until you mentioned it.

MR. RUSHKOFF: Okay. Are you aware that a dog boarding operation that interferes with the reasonable use of neighboring land can give rise to civil liability?

MR. OBERLANDER: Well, now I am since you've pointed it out in the previous question, yes.

MR. RUSHKOFF: Okay. Now, in the

1 District of Columbia you would agree that in
2 residential areas people commonly walk dogs?
3 MR. OBERLANDER: Yes. I own two dogs and
4 I walk them, yes, in the morning and in the evenings.
5 In fact, three times a day if I'm home.
6 MR. RUSHKOFF: Do you walk them at the
7 same time?
8 MR. OBERLANDER: Two dogs, no. One dog
9 uses the back yard, the other likes to walk.
10 MR. RUSHKOFF: All right. So you let one
11 dog out to the back yard and you walk the other one?
12 MR. OBERLANDER: Not at the same time.
13 MR. RUSHKOFF: Okay. Okay.
14 MR. OBERLANDER: And this is in
15 Montgomery County, not in the District of Columbia.
16 MR. RUSHKOFF: Okay. Would you agree
17 that many people in the District of Columbia keep
18 dogs in their back yards?
19 MR. OBERLANDER: Oh, yes. I know that.
20 MR. RUSHKOFF: And would you agree that
21 many people keep two dogs in their back yard?
22 MR. OBERLANDER: I haven't made a survey
23 to that effect, but I would imagine yes.
24 MR. RUSHKOFF: Okay. Do you have any
25 idea how many dogs there are living in the District

of Columbia?

MR. OBERLANDER: No, I don't have that.

CHAIRMAN GRIFFIS: Where are we going with this now?

MR. RUSHKOFF: Okay.

MR. OBERLANDER: It's easy information to get in terms of dog licensing.

MR. RUSHKOFF: The opinions that you've expressed regarding the suitability of placing this particular facility where it is -- let me rephrase this.

Would you opinion that this particular Certificate of Occupancy should not have been issued as a matter of right change based on where in the C-3 zone this operation is located?

MR. OBERLANDER: No. It would -- it's specifically to this location that I'm referring to. That's the only one that I'm aware of, you know, along 14th Street on Q Street.

CHAIRMAN GRIFFIS: If I understand his question is is it particular to this situation or is it anywhere within the C-3-A zone?

MR. OBERLANDER: Well, anywhere in the -- a dog kennel is not a matter of right in the C-3-A. And --

CHAIRMAN GRIFFIS: Okay. That answers it.

MR. OBERLANDER: That's all.

CHAIRMAN GRIFFIS: Next question.

MR. RUSHKOFF: And so would your analyses be the same for C-4 zones?

MR. OBERLANDER: Again, if there is no reference to animal boarding and facilities in the C-4 zone. The C zones, as I indicated earlier, are cumulative. They start from the lower intensity and go to the higher intensity, but they also spell out what is allowed in each of those zones.

MR. RUSHKOFF: Yes. And I think your testimony was that you think that the boarding of dogs should take place in manufacturing districts only?

MR. OBERLANDER: The question I think was asked by Commissioner Miller as to where in my opinion it would be more appropriate. And considering all things, considering the planning policies, considering the existing zoning policies in the manufacturing zones if there is larger land areas, not just a lot which is a 100 feet in distance and 50 feet in frontage; these facilities need more land than that. So the answer is a manufacturing

zone, yes.

MR. RUSHKOFF: And I think you testified earlier that manufacturing zones are -- I think you said exclusive with amendments. When you said exclusive with amendments, were you say the manufacturing zones basically exclude residential uses?

MR. OBERLANDER: Yes, but they have now been converted to, as I indicated, waterfront zones in the Georgetown area used to be a manufacturing zone and being converted to a different nomenclature but still allow similar uses.

MR. RUSHKOFF: Would you agree that the reason residential uses are generally excluded from manufacturing zones is that manufacturing zones are not considered to be compatible with human habitation?

MR. OBERLANDER: Well, that was the original intent in 1958, yes. But planning policies and zoning considerations change over time.

MR. RUSHKOFF: Okay.

CHAIRMAN GRIFFIS: The quick answer is it's yes.

Next question.

MR. RUSHKOFF: And other than

manufacturing zones are there any other -- is there any zone in the District that you think is the second most compatible for the boarding of dogs?

MR. OBERLANDER: I wouldn't -- I have no opinion. I never thought of a second zoning classification in which it may be compatible. Obviously, commercial zones are the next or the less intense than manufacturing zones. That's the only one that you could apply to, and in my opinion it is inappropriate to put this in any commercial zone.

MR. RUSHKOFF: Well, no further questions.

CHAIRMAN GRIFFIS: Could we provide a chair? Do you mind, if someone could just give up a chair.

MR. DONOHUE: Thank you, Mr. Chairman.

I think in a departure of some recent testimony, we're going to go back to talking about zoning and planning for just a little bit.

Mr. Oberlander, there was some -- at least there as some confusion in my mind when you were characterizing the C-3 zone district. First of all, without going through the third C-3-A, C-5 PAD, would you please explain how many commercial zoning categories there are, C-1 through --

MR. OBERLANDER: C-4.

MR. DONOHUE: And that the C-3 --

MR. OBERLANDER: Excuse me. However, there are other zones which permit commercial uses.

MR. DONOHUE: No. I'm asking you about the commercial. Not the mixtures. The C-3 zoning category which is described at section 740 of the zoning regulations.

MR. OBERLANDER: Right.

MR. DONOHUE: Would you please read section 740.1 for the record, please.

MR. OBERLANDER: 740.1 says: "The C-3 district is designed to accommodate major businesses and employment centers supplementary to the central business district." In other words, it's going from -- this is an interpretation. It's going from the most intensive commercial C-4 area to a lesser intense use adjoining it; that's what that refers to.

MR. DONOHUE: I asked you to describe what it says, because in your testimony you first said it was medium density and then you said it was low density.

MR. OBERLANDER: That's how the zone is interpreted. The C-3-A district, this is section 40.4, "the C-3-A district shall permit medium density

development." So in one it says to accommodate major businesses and the other talks about medium density.

MR. DONOHUE: Right, neither of which is low density.

MR. OBERLANDER: Major business doesn't have to be extremely intensive.

MR. DONOHUE: What does the Comprehensive Plan land use map say about the 14th Street commercial corridor?

MR. OBERLANDER: I haven't looked at it in the last day or so, but it's commercial --

MR. DONOHUE: Well, in your testimony you said the Zoning Administrator should consider the land use map and we're talking about Square 209 in the 14th Street corridor.

MR. OBERLANDER: It's fundamentally commercial along 14th Street, but there are a considerable number of residential properties within that commercial use. And my point was that the Zoning Administrator should when locating or considering an application in a specific spot, consider the immediate surrounding uses and whether that use is going to be compatible with it.

MR. DONOHUE: Thank you.

I asked you what the land use map said

about the corridor, but we'll move on.

What's the significance of --

MS. DOUGHTY: I object to the significance of 14th Street. The matter at hand is not 14th Street.

BOARD MEMBER ZAIDAIN: I mean I think what he was just asking what the land use designation for the square was, correct?

CHAIRMAN GRIFFIS: Yes, the 14th Street corridor.

MS. DOUGHTY: No, he asked about 14th Street corridor.

BOARD MEMBER ZAIDAIN: No, I heard the square. I think he was describing where the square was, but --

MR. DONOHUE: The testimony of the witness was that the Zoning Administrator had failed to consider the land use maps as codified in the Comprehensive Plan. And I asked him what the land use map said.

CHAIRMAN GRIFFIS: That's right.

BOARD MEMBER ZAIDAIN: For the square, not 14th Street.

MR. OBERLANDER: As far as I can recall, it's basically commercial, yes, in this area.

MR. DONOHUE: Thank you.

What's the significance of the arts overlay to the Zoning Administrator's determination of the CFO that's in question here?

MR. OBERLANDER: The intent of the arts overlay was to create a walk-in type operation on top of the commercial zoning. There were planning policies in the Comprehensive Plan which were being implemented through the arts overlay proposal to enhance the commercial zones with this cultural activities for the walk-in trade from the nearby residential area.

CHAIRMAN GRIFFIS: I heard the question more specific. What's the significance of the arts overlay for the Zoning Administrator?

MR. OBERLANDER: Well, in my opinion it makes it a less desirable arts area if you've got dogs barking next door to an art gallery or to a cultural facilities which the arts district was trying to promote.

CHAIRMAN GRIFFIS: Okay.

MR. OBERLANDER: The arts district was trying to enhance --

CHAIRMAN GRIFFIS: Next question.

MR. OBERLANDER: -- improve conditions.

CHAIRMAN GRIFFIS: I understand.

MR. OBERLANDER: In my judgment --

MR. DONOHUE: Let me ask it slightly different. Maybe I can get -- the Zoning Commission took a good deal of time and considered testimony in public hearings and whatnot in connect with the arts overlay district, and there are a number of both encouraging words in there and discouraging words depending on where you are in the zoning regulations.

CHAIRMAN GRIFFIS: Sure.

MR. DONOHUE: What, if anything, does the arts overlay add to this Board's analyses of the Zoning Administrator's determination of the CFO that's in question?

MR. OBERLANDER: In my judgment, and I had the job of Zoning Administrator, I would consider all of the applicable zoning classifications in the application of whether a other service of a dog boarding facility is an appropriate use in this specific location. And the guidance that I would use is the existing zoning, the regulations, the Comprehensive Plan and other regulations that deal with noise levels and other environmental impacts.

MR. DONOHUE: Okay. Thank you.

There's been a fair amount of question

and answer about veterinary hospitals. And I believe you've heard Ms. Doughty's explanation that she's aware that there are veterinary hospitals that allow boarding.

I guess what I'd like to ask you to do is tell us if there are any limitations on veterinary hospitals as set forth in section 721.2(x)?

MR. OBERLANDER: No. All that section does, it's use as a matter of right and the C-2 allows the term veterinary hospital.

MR. DONOHUE: Does the allowance of veterinary hospital by right in the C-2 district restrict the use to interior use?

MR. OBERLANDER: Not to my knowledge, no.

MR. DONOHUE: Does it restrict the number of dogs that can be kept at the veterinary hospital?

MR. OBERLANDER: No. There are no standards.

MR. DONOHUE: Does it restrict the hours of operations?

MR. OBERLANDER: No.

MR. DONOHUE: And the C-2 district is a more restricted or less permissive zone than a C-3, correct?

MR. OBERLANDER: It's more -- yes, you're

right.

MR. DONOHUE: There was a fair amount of discussion about your familiarity with facilities like this, and I want to ask you about one at the Friendship Animal Hospital, which I believe is at 4105 Brandywine, Northwest. I believe it's a veterinary hospital. Do you know whether the Friendship Animal Hospital boards dogs and other animals?

MS. DOUGHTY: I kind of object to this. I'm not certain how Mr. -- and we're going in the same direction as we were going with the walking dogs here. You know, does he walk his dogs. I'm not sure why Mr. Oberlander as a zoning expert would be an expert on the Friendship Animal Hospital.

CHAIRMAN GRIFFIS: He's just tying in directly. He's just establishes basis of in a C-2 zone, which is more restrictive zone, less the --he's just going to analyze the veterinary hospital, any limits or standards and there's a plethora of issues that were going up, and now he's asking if he's familiar with a specific example, of which he's talked about specific examples in his own testimony of other comparable uses.

Let's answer the question.

MR. OBERLANDER: The question was am I familiar with that particular veterinary hospital? I have some general knowledge of it because it did come up in the zoning case in connection with the rezoning of the Washington Clinic site in that area.

I do not know whether they have boarding facilities or not. I have never been in the place. I have gone by it occasionally. But I have no specific knowledge of what activities go on there.

MR. DONOHUE: Would it surprise you to learn the Friendship Animal Hospital is in the R-2 zone district bordering the commercial district on Wisconsin Avenue?

MR. OBERLANDER: It wouldn't surprise me. It probably has been located there for a long time prior to the particular zoning regulation.

MR. DONOHUE: If it's permitted by right -- I don't know how it's permitted, to be honest. If it's allowed int he C-2 district and in subsequent zone districts, would it also be permitted -- scratch that, Mr. Chairman. Apologize.

We had some testimony, some explanation earlier on, much earlier on as I think about it, about Square 209 in the split zoning, is it uncommon to have a square that's split zoned?

MR. OBERLANDER: No. But the majority of squares in the city are not split zoned.

MR. DONOHUE: All right. If there is a commercial corridor as is 14th Street, as is portions of Wisconsin Avenue, for example, would you say it's fairly common to see split zoning in the lots that are abutting the commercial corridor?

MR. OBERLANDER: Yes. As I indicated in my testimony, the major arterials like Wisconsin Avenue, Connecticut Avenue, 16th Street, 14th Street, in part -- a good number of the other major arterials, Pennsylvania Avenue, all have split zoning away from the major arterial.

MR. DONOHUE: Is it to say that at some point the commercial is going to change to something other than commercial, such as residential? In other words, where you have split zones isn't it obvious that there's going to be order between the commercial and the non-commercial?

MR. OBERLANDER: Of course, yes.

MR. DONOHUE: Let me go to the manufacturing district, because I found that whole line of testimony fascinating.

The use that you've described as a dog boarding kennel, is that permitted by right in the

manufacturing district?

MR. OBERLANDER: I don't believe so.

MR. DONOHUE: Okay. Because I think your testimony went back and forth. I guess what you said was you thought it was most appropriate in the manufacturing district.

MR. OBERLANDER: I said more appropriate, yes.

MR. DONOHUE: But your testimony is that the use you've described as dog boarding is not permitted in any zone district?

MR. OBERLANDER: That's right.

MR. DONOHUE: Let's talk about pet shops a little bit, because there was some testimony and some qualifications early on, some folks were talking about pet stores. And you have consistently used the term either kennel or dog boarding facility. But let's go back to pet stores for a minute.

Appellants have conceded that a pet store is permitted in the subject property, right?

MR. OBERLANDER: That's correct.

MR. DONOHUE: Do you know whether it's common for pet stores to also allow boarding of animals?

MR. OBERLANDER: I don't know whether

it's common. My experience with pet shops is that pets are in cages. They are there for show, for sale. And they're not there for --

MR. WEMPLE: Mr. Chair, we have an objection to this line of testimony. When he --

MR. DONOHUE: He can't object to his own witness.

MR. WEMPLE: No. I'm objecting to your line of inquiry. And the reason is that when we asked Mr. Oberlander these same sorts of questions about the difference between the facilities, his expertise on this was impugned. Now you're going back and asking him to be the same sort of expert. I mean --

CHAIRMAN GRIFFIS: Agreed.

MR. DONOHUE: Well, that's not exactly the truth. The witness was accepted as an expert in zoning regulations but not in the District of Columbia zoning regulations. He did testify and he was given a great deal of latitude to explain his experience both here and in Montgomery County and elsewhere about the nature of these types of facilities. And we didn't object. But now that's he given the testimony as a fact witness, it's open for questions.

I asked him if he was familiar, not if he had an opinion or was an expert.

CHAIRMAN GRIFFIS: Right.

MR. OBERLANDER: So would you rephrase the question?

MR. DONOHUE: Do you know whether it's common for pet stores in the District of Columbia to also board animals?

MR. OBERLANDER: I do not know that, no.

MR. DONOHUE: Okay. Are you familiar at all with the pet store located at 1626 U Street?

MR. OBERLANDER: No.

MR. DONOHUE: A mile or so -- a half mile or so from the --

MR. WEMPLE: Again, he's asking him --

CHAIRMAN GRIFFIS: Right, and I tend to agree. In fact, there was an interruption in the testimony, because first of all I'm questioning the relevancy. I mean, how much of the importance are we going to put on the testimony of Mr. Oberlander about his familiarity with functioning or anything else, especially in light of the fact that we have experts or fact witnesses coming on this specific topic. So I think it might be more prudent to move on.

MR. DONOHUE: Let me ask one final

1 question then. Do you have an opinion whether the
2 decision of the Zoning Administrator is entitled to
3 weight before the Zoning Commission or Board of
4 Zoning Adjustment? In other words, should this Board
5 defer to the decision of the Zoning Administrator?
6 MR. OBERLANDER: This Board was not asked
7 to defer on the opinion. The Board is being asked to
8 consider the opinion and possibly overrule it, which
9 the BZA has the authority to do, as far as I
10 understand it.
11 The issue --
12 MR. DONOHUE: Well, I'm asking a slightly
13 different question. I'm sorry to interrupt. There's
14 a body of law that says that an expert technician, an
15 expert staff person, an expert in various capacities
16 is entitled to a certain amount of deference when his
17 opinion is questioned. And let me rephrase. Given
18 that, what's your opinion of what this Board ought to
19 accord the weight of Mr. Nobel's determination with
20 respect to the CFO in question here?
21 MR. OBERLANDER: Well, I consider the
22 opinion as an advisory opinion to BZA. If this were
23 considered as a special use variance, I would think
24 that the Board would ask his opinion because it isn't
25 -- the zoning regulations are not that clear that

says that if you can -- it says that you can't have it because it's not mentioned, but it -- it isn't clear as to whether you can have it.

MR. MACY: Excuse me. Are we asking about whether or not the Zoning Administrator's an expert in dog kennels and pet shops? I mean, because that sounds like what the question is.

MR. DONOHUE: I asked Mr. Oberlander what weight this Board ought to accord the decision of the Zoning Administrator.

MR. OBERLANDER: I'm sure that the Board has given the Zoning Administrator considerable weight on requested opinions in the past, just as they listen to the Corporation Counsel, they listen to their own staff in their deliberation on a particular case. So certainly the Zoning Administrator should be able to advise the Board of Zoning Adjustment.

MR. DONOHUE: In your opinion as an expert on zoning regulations is the expert of the District of Columbia zoning regulations the Zoning Administrator?

MR. OBERLANDER: The Zoning Administrator's function, as I understand it, is to interpret the zoning regulations. And to review all

building plan applications and all zoning matter to see how the particular development proposal is in conformance with the zoning regulations and indicate on that application which parts of that building plan are not in conformance with the setback requirements, height requirements; all of the other standards that are in the zoning regulations.

MR. DONOHUE: And also the uses enumerated in the zoning regulations?

MR. OBERLANDER: And uses, yes. Of course. Because he stamp -- as I remember, he stamps the drawings that the use is a permitted use, yes.

MR. DONOHUE: Thank you.

That's all I have, Mr. Chairman. Thank you.

CHAIRMAN GRIFFIS: Thank you.

MS. DOUGHTY: Am I permitted to redirect a couple of questions to my witness.

CHAIRMAN GRIFFIS: Actually, is the ANC representative here? Okay. No ANC representatives. So, yes, redirect.

MS. DOUGHTY: Mr. Oberlander, I'd like you to read a section from the zoning regulations for me, please. Section 31 -- I beg your pardon. Section 32. Sorry.

Instead of reading the section, because I'm struggling to find it at the moment, I'd just like to clarify one point with you, that is is it the case that the Zoning Administrator administers and enforces the zoning regulations? Is that your understanding?

MR. OBERLANDER: Yes.

MS. DOUGHTY: So any interpretation that the Zoning Administrator does is within the context of administering and enforcing the zoning regulations?

MR. OBERLANDER: Yes, absolutely.

MS. DOUGHTY: Thank you.

CHAIRMAN GRIFFIS: Recross?

MR. DONOHUE: No, thank you, sir.

CHAIRMAN GRIFFIS: Okay. Board questions and then we're going to take a quick break.

Ms. Miller?

VICE CHAIR MILLER: Mr. Oberlander, I believe that I heard contradictory testimony from you on cross as to what you said on direct, and I want to make sure what your statement is. And that goes to the issue of I thought that you said on direct that only the BZA or the Zoning Commission had authority to condition uses and that it was appropriate for the

Zoning Administrator to condition a Certificate of Occupancy. That's that I thought you said under --

MR. OBERLANDER: That's right, yes.

VICE CHAIR MILLER: But when Mr. Rushkoff was cross examining you I thought you said that it was okay for the Zoning Administrator to condition the CFO if it was voluntarily proffered by the applicant or something to that effect.

MR. OBERLANDER: Yes, but there's a difference to me on who offered the conditions. If the owner or the applicant offers the conditions, it's this is the parameters under which I am applying for as compared to the Zoning Administrator looking at the application and saying now here I want this condition and that condition and that condition fulfilled.

VICE CHAIR MILLER: And what's your authority for that?

MR. OBERLANDER: There isn't any authority for that.

VICE CHAIR MILLER: It's just your opinion?

MR. OBERLANDER: Well, yes. That's my understanding of the process that has been going on for years, since 1958 or this current zoning

regulation were put into effect.

VICE CHAIR MILLER: So your understanding of the process that's been going on for years is that it's common practice for applicants to propose conditions to Certificate of Occupancy?

MR. OBERLANDER: Well, no. That's not what I said. The application may have in it certain conditions. I mean, the height of buildings is a condition.

VICE CHAIR MILLER: I see. Okay.

MR. OBERLANDER: And what has been offered here is additional conditions in terms of the occupancy; number of dogs, for example.

VICE CHAIR MILLER: So if these conditions were proffered by the applicant, that would be okay?

MR. OBERLANDER: If it were before the BZA as a special use variance. Not as an interpretation by the Zoning Administrator as to whether it's a similar use.

VICE CHAIR MILLER: I thought you just said that it's common practice in applications to have conditions proffered by the applicant, and that was okay. How is this different?

MR. OBERLANDER: Well, it doesn't differ

in terms of conditions. But I don't quite follow, you know --

MR. MACY: I think we're mixing up the word conditions. I think what he's talking about are operating parameters. This is how the business is going to be operating. And that's different then, say, setting conditions for Certificate of Occupancy.

MR. OBERLANDER: Stipulated by whom? By the Zoning Administrator as compared to as part of the application of the owner or the applicant.

VICE CHAIR MILLER: Okay. And my other question is if this facility, be it called a kennel or whatever, were soundproofed and did not allow the dogs to be outside in the back yard but instead they were walked somewhere else, would that be comparable to a veterinary hospital?

MR. OBERLANDER: If it's permitted to walk that many dogs. I don't know that particular requirement. It would be better. Absolutely better for the neighborhood to be under those conditions, yes, in my opinion. The neighbors may not like it any better, but in terms of the usage of land, obviously it would be better.

VICE CHAIR MILLER: Do you think it would be similar?

MR. OBERLANDER: I didn't address the similarity. I was talking about the conditions, again, that your suggesting if there's soundproofing.

CHAIRMAN GRIFFIS: It's a pretty direct question, though. Would it be similar to a veterinary hospital use?

MR. OBERLANDER: No. It's still -- because the activity within -- zoning deals with the usage of the activity that's going on in a particular property. The activity of a veterinary hospital is in my opinion not similar to the boarding of animals.

CHAIRMAN GRIFFIS: Okay.

MR. OBERLANDER: They do keep the animals overnight, but the boarding is a different operation.

CHAIRMAN GRIFFIS: Anything else?

VICE CHAIR MILLER: No. Thank you.

CHAIRMAN GRIFFIS: Mr. Zaidain, did you have any cross examination of this witness?

BOARD MEMBER ZAIDAIN: Just to kind of summarize what I think Ms. Miller was going for. If the dogs were inside and they were walked somewhere else, would it be acceptable to that this place got a permit?

MR. OBERLANDER: As I said, more acceptable.

BOARD MEMBER ZAIDAIN: More acceptable? Okay.

CHAIRMAN GRIFFIS: All right. We're through one witness. Three more to go.

We're going to take five minutes, get organized and prepare the next witness, and then we'll move on.

(Whereupon, at 4:25 p.m. a recess until 4:50 p.m.)

CHAIRMAN GRIFFIS: Okay. Go ahead.

MR. WEMPLE: Okay. So you worked at this veterinary facility. Did this facility provide dog boarding services of any kind?

MS. McCABE: Not dog boarding services as they've been discussed today but animals typically after surgery would stay over a minimum of one night, sometimes two. Actually particular cats that stayed two nights.

MR. WEMPLE: As they stayed overnight, what sort of state were they in? Were they sedated, were they awake and alert and yapping or what?

MS. McCABE: The dogs that would stay overnight were morning surgery patients. We would typically do three to five a day in the morning and then they would be brought to their cages after

surgery. And for probably the first two hours they're pretty out of it because they're just coming off the anesthesia. Then we go in and check on them. A lot of times they're standing, they're okay, but they had major surgery --

MR. WEMPLE: Understood.

MS. McCABE: And for a human they'd be in bed for -- you know, three weeks.

MR. WEMPLE: Yes. There are a couple of points buried in that last response of yours. You said, three to five; was that sort of the normal volume of dogs that you'd have there?

MS. McCABE: Yes.

MR. WEMPLE: So no more three to five dogs at anyone time?

MS. McCABE: Three to five for surgery during the day.

MR. WEMPLE: Okay. And you said you bought them in in the morning. Did you ever have a situation in which a person would bring in a dog overnight or the night before surgery and you'd have to hang with them all right?

MS. McCABE: Sometimes clients, as an accommodation to them if for some reason they couldn't make it there first thing int he morning, we

would allow them to bring them in the night before.

MR. WEMPLE: Okay. And you also mentioned in your other response that you put them in a cage. Was there any sort of like free roam sort of situation?

MS. McCABE: No. They're post-surgery patients. We don't want them moving at all.

MR. WEMPLE: Okay. Okay. And did they stay inside the facility throughout their stay or did you like open the door and let them out and roam in the back yard or front yard, or how did that go?

MS. McCABE: We, when we would get there in the morning, we would take them out individually. A lot of times we'd have to carry them down the steps. There was a few steps on our way out.

MR. WEMPLE: Yes.

MS. McCABE: So they could go the bathroom. And then at night before we left, we would do the same thing.

MR. WEMPLE: Okay. So were they ever allowed just to run around outside?

MS. McCABE: No.

MR. WEMPLE: Without, you know, just sort of like --

MS. McCABE: No, they're not allowed to

run at all. They're post-surgery patients.

MR. WEMPLE: Okay. So there's not -- they're post-surgery patients. And help me out a little bit more with that. I mean, post-surgery patients means they're either lame or sick, or you know just sort of --

MS. McCABE: Well, typically it was a small animal hospital, mainly spaying and neutering of dogs.

MR. WEMPLE: Yes.

MS. McCABE: We always have, you know, lump removals, eye removals, you know. I mean, besides the normal spaying there are, you know, another whole set of surgeries that we'd perform.

MR. WEMPLE: Right. Did you ever have neighboring businesses or residents or anybody around there saying, hey, how that sick dog's yelling, you know? Get them out of here. It's bothering me. I can't hear -- I can't hear myself think.

MS. McCABE: The hospital was located in a very densely populated suburb of Boston. And the neighbors would be -- you know, it would be very easy for them to let us know if there was a problem. And I have no doubt that anytime there was one, they would come over. But it was -- it was very infrequent. And

so even though we weren't there at night, we know that our neighbors would let us know in the morning if there was a problem.

MR. WEMPLE: Okay. So you don't remember any noise complaints?

MS. McCABE: No.

MR. WEMPLE: Not a single one?

MS. McCABE: No, actually I don't.

MR. WEMPLE: Okay. So how did you dispose of waste? I mean, you got all these dogs, you know, a sick dog still has certain natural needs that must be taken care of. I mean, they got to do their waste. How do you deal with that?

MS. McCABE: Usually it's vomiting and diarrhea, sorry to be specific. You know, post-surgery because a lot of them have reactions to the anesthesia. So it's loose, but we would pick it up with newspaper, double bag it and then put it in a green bag at the end of the day in the basement.

MR. WEMPLE: Okay.

MS. McCABE: And then it was picked up, I think three times a week; Tuesday, Thursday, Saturday.

MR. OBERLANDER: Okay. Did the neighbors ever complain about the smell or from the waste or

anything?

MS. McCABE: No.

MR. WEMPLE: Could you put these panels up?

What we are showing sort of waste elimination practices in urban use, sort of like in a C-3-A kennel operation in the District of Columbia where you have a power washing using water to wash waste out into the alley. Is that generally similar to or is that how you guys did it?

MS. McCABE: Absolutely not.

MR. WEMPLE: Okay. Would the waste from boarding animals or veterinary patients in your particular facility, would they ever seep into the street or the sidewalk or the alley?

MS. McCABE: No, because the animals were confined to their cages after surgery, so any sort of product that would come from them we would have to pick up right in the cage.

MR. WEMPLE: Okay.

MS. McCABE: So there was no way to wash it anywhere.

MR. WEMPLE: Understood. So can you characterize just generally, I mean if there -- just only dogs, we've only talked about dogs, but you know

conceivably you guys are curing all sorts of animals, you know it's like a wild animal kingdom in there sometimes. Is there any -- can you characterize just in general the noise levels coming out of this facility?

MS. McCABE: Generally the dogs are very quiet. You know, as I said they're post-surgical and they're really not that comfortable. Every once in a while, typically the next morning, we would have a dog that's feeling wonderful and will start barking and driving us crazy. So we normally would call the owner and say, you know, if you're free, can you come down and get your dog because he's driving us crazy.

MR. WEMPLE: Okay.

MS. McCABE: And they would do that. If not, you know, every once in a while a client isn't home and they can't come pick up the dog, we would put them in a cage, put a towel over the crate and turn off the lights. And that usually would take care of the barking.

MR. WEMPLE: Understood. And in your experience as a veterinary technician and also as a dog owner, do you see any difference between the intensity and impacts associated with the dogs in a veterinary facility vis-à-vis like a pet shop or a

board facility/kennel?

MS. McCABE: At the vet hospital, as I've said earlier, the dogs are either sick or having surgery.

MR. RUSHKOFF: Objection. I think we need more foundation on her knowledge of kennels so she can compare the operation where she worked with the kennel operation?

MS. McCABE: My knowledge of kennels? Based on being a dog owner, my dog has been at probably three different kennels and my parents have three dogs, and they've been at two different kennels. That's the basis of my opinion on comparing where I worked to a number of kennels.

MR. WEMPLE: She's a fact witness, Mr. Chairman. We're just doing our best here.

Anyway, in the District a decision was made that basically a veterinary hospital is similar to a pet shop, do you concur with that notion? Excuse me, that a dog boarding operation is similar, a kennel or boarding operation is similar to a veterinary facility in terms of impacts on the neighborhood?

MS. McCABE: I would say they are dissimilar. The dogs, we only had three to five.

You know, sometimes we have six there a day. They're all in cages. There's no outdoor access except when supervised with one of the technicians. They would always go out alone. I mean, we just didn't have a number of technicians so we could take all the dogs out at once. And they, you know, aren't playing around. They're not -- you know, if they're barking we try to get them out of there or quiet them down. There isn't sort of this free time, play time for them to go crazy because they need to be still. They need to heal. So they're very different.

MR. WEMPLE: Thank you very much.

I believe unless my colleagues have any additional questions, that we're set as far I'm concerned.

CHAIRMAN GRIFFIS: Good. Thank you very much.

Questions from the Board. First of all, you indicated that the hospital you worked briefly was in the dense suburb of Boston.

MS. McCABE: Yes.

CHAIRMAN GRIFFIS: That is somewhat contradictory to me. What's dense about it?

MS. McCABE: Dense? It was probably -- it's 20 minutes outside of Boston. It goes Boston,

Cambridge and then Lexington. And it is --

CHAIRMAN GRIFFIS: Was there a commercial area? Was there a large retail or was it suburban homes?

MS. McCABE: No, there was commercial areas, but they had -- you know, the downtown area and other sort of outposts of commercial. But this was actually in a residential area.

CHAIRMAN GRIFFIS: I see.

MS. McCABE: There were houses on either side.

CHAIRMAN GRIFFIS: That's fine. And attendant to that, you've indicated the size a little bit, somewhat indirectly of where you worked. There's two questions to this. First of all, the facility you said had what? One doctor and only several technicians or --

MS. McCABE: No, there's actually three doctors.

CHAIRMAN GRIFFIS: Three doctors?

MS. McCABE: One doctor performing surgery each day.

CHAIRMAN GRIFFIS: Okay. Is that a typical size in your understanding of veterinary hospitals?

MS. McCABE: We had a fairly large practice. There are other practices that --

CHAIRMAN GRIFFIS: As compared to other dense suburbs?

MS. McCABE: Other? In the area where that hospital was, that's pretty typical. If you go--

CHAIRMAN GRIFFIS: What about your awareness of urban areas?

MS. McCABE: I volunteered at one on Newbury Street in Boston, but it was much smaller. I think there was only one or two doctors on at a time.

CHAIRMAN GRIFFIS: Are you familiar at all with anything close to us now?

MS. McCABE: Other hospitals in this area? Yes, well I go to Dupont, that hospital. They, I think, have four doctors. So it's about the same, they may be a little bit busier just because of their location in Dupont.

CHAIRMAN GRIFFIS: I see. You indicated that you weren't aware of any noise complaints in your work there, is that correct?

MS. McCABE: That's correct.

CHAIRMAN GRIFFIS: Would you have been the person that received noise complaints? Was it

part of your part job description and responsibility?

MS. McCABE: To receive noise complaints?

CHAIRMAN GRIFFIS: Yes.

MS. McCABE: Usually we're at the front desk when someone would come in. It was never a noise complaint, it was more the customers parking incorrectly and walking, that way.

CHAIRMAN GRIFFIS: So if someone else was at the front desk, would you be aware of any sort of complaint that came in?

MS. McCABE: Yes.

CHAIRMAN GRIFFIS: How so?

MS. McCABE: Because there's three doctors and four technicians working at one time.

CHAIRMAN GRIFFIS: And you all talked about everything that went on?

MS. McCABE: And, yes, we did, actually.

CHAIRMAN GRIFFIS: Okay. Other questions?

VICE CHAIR MILLER: Do you know if they have soundproofing at veterinary hospitals?

MS. McCABE: We didn't at ours. It was a brick building. And then the kennels were each located in two separate rooms for the kennels. I don't know if it was soundproofed or not.

VICE CHAIR MILLER: And you don't know whether Dupont is soundproofed or not, is that correct?

MS. McCABE: I don't.

VICE CHAIR MILLER: And what suburb near Boston were you actually in?

MS. McCABE: Lexington.

VICE CHAIR MILLER: You were in Lexington?

MS. McCABE: Yes.

VICE CHAIR MILLER: Okay. Did you say that -- how many dogs did they treat during a day at the hospital? I think you said something like maybe six would stay overnight. But do you have an idea as to how many dogs come and go?

MS. McCABE: Yes. We would take appointments from 8:30 to noon and then 1:00 to 6:30. And every 15 minutes there would be two doctors taking appointments. So eight dogs or cats in an hour.

VICE CHAIR MILLER: So you had a lot of dogs during the day, is that right?

MS. McCABE: We did.

VICE CHAIR MILLER: Throughout the course of the day?

MS. McCABE: Yes.

VICE CHAIR MILLER: And given that the dogs that are coming in throughout the course of the day aren't sedated yet, did you have a lot of barking going on during the day?

MS. McCABE: There would be some barking, but usually the dogs -- actually almost all the time the dogs come in with their owners so there's someone there to say, you know, quiet down or -- and it's usually the initial when one other dog comes into the office that they bark a little bit and then they sort of quiet down. But that would be only during office hours.

VICE CHAIR MILLER: Do they bark more when they're left in cages basically, is that when they would bark?

MS. McCABE: Healthy dogs or sick dogs?

VICE CHAIR MILLER: I don't know. I'm just asking -- I'm just following up on your testimony that if they're with their owners, they don't really bark is what I heard you say.

MS. McCABE: Well, when they're sitting in the waiting room with the owner and they're on their leash, usually the owner will say, you know, cut it out. When they're in cages, like I said, it's

normally the sick or post-surgical dogs so they tend to be very quiet until the next morning when they're feeling a lot better, and then they tend to let everyone know.

VICE CHAIR MILLER: Not to belabor this, but are there like pre-surgery situations where they're in cages before surgery before they're sedated?

MS. McCABE: As in the night before that he mentioned or in the morning?

VICE CHAIR MILLER: As in the owner comes in and drops their dog off for surgery?

MS. McCABE: Well, the surgeries are done first thing in the morning.

VICE CHAIR MILLER: Okay.

MS. McCABE: So the second they come in, because you have to start anaesthetizing them and then wait a little while for it to start to work before you can do certain things. So, we would typically get them pretty early.

VICE CHAIR MILLER: Okay. Thanks.

CHAIRMAN GRIFFIS: Mr. Rushkoff?

MR. RUSHKOFF: I want to ask you a question about maintaining healthy dogs. Is there any problem with maintaining healthy dogs in a crate at

night?

MS. McCABE: My advice to people when they would maintain healthy dogs that bark is to cover it up with a blanket, and that usually takes care of it.

MR. RUSHKOFF: Is there any harm to a dog in being maintained at night as you've describe in a crate --

MS. McCABE: In a crate? No.

MR. RUSHKOFF: -- with a blanket over it?

MS. McCABE: No. No. As long as the crate's -- I mean, obviously that it's big enough and they're comfortable and, you know, it's well ventilated.

MR. RUSHKOFF: Are there any industry guidelines for the type of space that healthy dog needs to be given during the day?

MS. McCABE: I don't know. We would never have one in too small a space, and we don't want it too large that they would move around. So, that's sort of how I judged it. I'm sure there's some sort of standard that I'm not aware of.

MR. RUSHKOFF: Is there any guideline that a healthy dog needs to be maintained outside during the day?

MS. McCABE: We're usually dealing with sick dogs. I mean, if you would ask as advice I would give to the client, I think it's great for them for get outside, obviously.

MR. RUSHKOFF: And you say it's great, could you just expand what do you mean when you say it's great for them to be outside?

MS. McCABE: Well, for example, my dog I take her out in the morning and at night and she enjoys her time outside. But depending on the dog is how much exercise they need, how big the place is that they live in, whether or not they get it there or not. It depends on the type of dog.

MR. RUSHKOFF: Yes. Is it sufficient if one regularly walks a dog to maintain the dog indoors all the time?

MS. McCABE: Again, it depends on the dog. My dog is 35 pounds and she's perfectly happy going out twice a day and then laying the couch the rest of the time.

MR. RUSHKOFF: Okay. No further questions.

MR. DONOHUE: I'll be brief, Mr. Chairman.

Ms. McCabe, I'll take you back to

Lexington, Mass for a minute, if I can.

MS. McCABE: Okay.

MR. DONOHUE: You described the nice suburban setting, and I think you characterized it as residential?

MS. McCABE: I did.

MR. DONOHUE: Right. Do you know whether the zoning, the underlying zoning of the property was either residential or something other than?

MS. McCABE: No, I don't.

MR. DONOHUE: Do you know whether the veterinary hospital that you worked in had any, for example, conditions; hours of operations, numbers of dogs, indoors versus outdoors? In other words, would you know the parameters in which the veterinary hospital you worked in was operating under?

MS. McCABE: I don't know if those as a result of some sort of zoning order. I know what we -- how we operated and how many dogs we had and the times we worked. But I don't know if those are as a result of something else.

MR. DONOHUE: Okay. Earlier Mr. Oberlander was here and I think you were here during through the entire testimony. And the line of questioning went what are the controls? What are the

parameters in the District of Columbia for veterinary hospitals.

MS. McCABE: Yes.

MR. DONOHUE: Do you remember hearing Mr. Oberlander's explaining that?

MS. McCABE: I do.

MR. DONOHUE: I think he agreed that there's nothing stated in the zoning regulations with respect to hours of operations or numbers of animals, or size, or outdoor or indoor facilities. So I guess what I'd ask you is this: You were asked a question of how you would compare and contrast a dog boarding facility or kennel with the veterinary hospital. Assume that the veterinary hospital had as many doctors as you like, I don't know how many could actually work in a facility, but upwards of a 100 dogs in an outdoor facility and not soundproofed. In other words, the extreme end of what you would expect to be a good health care facility. You know that the zoning regs don't prohibit that, so isn't it fair that something like that could be comparable to what you characterized as kennel activity?

MS. DOUGHTY: I object. Ms. McCabe is not testifying here as a zoning expert. She can't testify to knowing that as a fact.

CHAIRMAN GRIFFIS: No, he's going directly to use and he's trying to make a parallel use in terms of size. In fact, we started the questioning in her own familiarity with her facility and the number of doctors and dogs.

MS. DOUGHTY: Right. But he did ask her -- he did state to her you know as a fact there are no zoning conditions?

CHAIRMAN GRIFFIS: That's true. So its unrefuted.

MR. DONOHUE: Mr. Oberlander conceded the point, so I think it's fair.

MS. McCABE: If I was working at a facility that had a 100 dogs being boarded there or just as the day went on? Are you saying boarded, overnight?

MR. DONOHUE: Well, let me take you back for a few minutes. Earlier on you were asked whether the veterinary hospital, for example, were you had experience and the vet hospital that you know at Dupont Circle was that comparable to a dog boarding facility or a kennel.

MS. McCABE: Yes.

MR. DONOHUE: And you said no they're entirely different.

MS. McCABE: Yes.

MR. DONOHUE: And what I'm asking you to imagine is a veterinary hospital that's bigger indoor and outdoor, not soundproofed and frankly just out of scale from what you experienced.

MS. McCABE: Yes.

MR. DONOHUE: Does that change your answer to the question?

MS. McCABE: No, it doesn't.

MR. DONOHUE: Why is that?

MS. McCABE: The animals would all be in cages because they'd either be sick or post-surgical, as I said. A lot of times they'd still be out of it during the day. They're not going to stay longer, I mean for -- you know, sort of regular surgeries, they don't stay longer than a day. So they're not there for two weeks. They typically do not go outside because you want to keep them still. So even if there's a 100 dogs, there are going to be a 100 still dogs that are there. And if they do go outside to go to the bathroom, which we technically wouldn't have to do. I mean, they could go in their kennel and we could pick it up, but we like to take them out. Its one-on-one so there'd be a lot more people taking dogs out, but --

MR. DONOHUE: Well, that's your experience, right?

MS. McCABE: Exactly.

MR. DONOHUE: What I'm asking you is let's assume this veterinary hospital --

MR. WEMPLE: Well, I object. Mr. Griffis, he got the answer to the question that he asked. Now he's trying to steer her towards the answer that he wants.

CHAIRMAN GRIFFIS: And you don't like that?

MR. WEMPLE: Well, I mean, it's just like -- you know, it's like I don't like that answer. And he asked the question perfectly clearly and it didn't --

CHAIRMAN GRIFFIS: It was asked and answered.

MR. DONOHUE: Let me ask a slightly different question.

CHAIRMAN GRIFFIS: Indeed.

MR. DONOHUE: Hopefully, that'll get us where we need to be.

Do you recall hearing Mr. Oberlander concede that there were veterinary hospitals that allowed boarding in the District of Columbia?

MS. McCABE: I think you were talking about Friendship Heights?

MR. DONOHUE: Yes, for example.

MS. McCABE: Yes. Okay.

MR. DONOHUE: Right. So in my hypothetical -- this is different. In my hypothetical this veterinary hospital also has boarding facilities.

MS. McCABE: Yes.

MR. DONOHUE: Is it still different from the kennel dog boarding facility that you find --

MS. McCABE: Yes. Because I think what happens, I don't know, but I think what happens at Friendship is that they have their hospital, but also they do boarding. So typically that dogs are being boarded are still the healthy dogs. They're the ones who if there is an outdoor run would have access to that. But the hospital patients would not.

So, it's like a taking a hospital and a boarding kennel and putting them together, but technically they're two separate operations.

MR. DONOHUE: So the recuperating hospital patients, the dogs can't migrate to the boarding facility?

MS. McCABE: Absolutely not.

MR. DONOHUE: By what? By operation of their regulations?

MS. McCABE: Oh, you could actually physically take a dog and put it over there. I'm sure they could do that if they ran out of room. But they're not --

MR. DONOHUE: Dog owner has a --

MR. WEMPLE: Hold on. I have an objection here. We're talking, we need Friendship Animal Hospital here to testify to this. This is crazy.

MR. MACY: It's pure speculation and it's useless.

MR. DONOHUE: I don't know if it's crazy. She has characterized these uses are entirely different. And what I'm asking her to imagine is if you change a few parameters how different is it. And that's a fair question.

MS. McCABE: Well, I can answer that question.

MS. DOUGHTY: What Mr. Donohue is asking this witness about is an accessory use. And, you know, that is quite a separate zoning issue and zoning matter to the one that's before this appeal.

CHAIRMAN GRIFFIS: I don't know if I agree with that. But let's see if you can answer

that last question and then we'll let it go.

MS. McCABE: The main difference, what I've been sort of trying to explain to you, is that the dogs that are in there for the hospital purposes will not be intermingled with the healthy dogs.

MR. DONOHUE: Correct.

MS. McCABE: They may be if they ran out of kennels, you know, for example and they had to use one. But it would still be separate from any healthy dogs and they would not usually have access to the outdoor run, which typically are like 25 feet long in the ones that I've seen. And you would not want a post-surgical or sick patient to be running around. I mean, two weeks after surgery you still don't want them doing that.

MR. DONOHUE: Because they're recuperating?

MS. McCABE: Exactly.

MR. DONOHUE: Have you been to Friendship Animal Hospital?

MS. McCABE: I have not.

MR. DONOHUE: Are you familiar with it?

MS. McCABE: I'm familiar with it, but I have not been there.

MR. DONOHUE: Okay.

Thank you, Mr. Chairman.

CHAIRMAN GRIFFIS: Yes.

MR. WEMPLE: Just one redirect question, if that's --

CHAIRMAN GRIFFIS: Actually, is Mr. Pannick going to cross? I think he left the room.

Okay.

MR. WEMPLE: I just wanted to clarify. There was a question raised about dogs coming during the day. What is the average stay for a dog that comes during the day, say, for a shot or whatever, a checkup? Is it 15 minutes, 30 minutes, hours?

MS. McCABE: We book 15 minute appointments. Sometimes they go over to a half an hour depending on how difficult the case is and the client, how much they want to talk.

MR. WEMPLE: Okay. So the dog is basically in and out real quick?

MS. McCABE: Yes. Yes.

MR. WEMPLE: Okay. Nothing more.

CHAIRMAN GRIFFIS: Any questions on that?

BOARD MEMBER ZAIDAIN: Not for me.

CHAIRMAN GRIFFIS: Okay.

BOARD MEMBER ZAIDAIN: I have no further questions.

MR. WEMPLE: Let's get our other witness right on up there. Dave Baker, please.

Okay. Dave, the clock of doom is running, so we need to make this fast.

You are, as we established earlier, you have a lot of experience in pet shop, kennel, the whole industry. As a general rule, what activities, what products and services would you expect out of a pet shop?

MR. BAKER: Out of a pet shop you've got small animals, some have do dogs and cats for sale. You've got dry goods.

MR. WEMPLE: Okay.

MR. BAKER: Food and etcetera.

MR. WEMPLE: Okay. As a general rule is dog boarding among the services that you'd expect to find at a pet shop? In other words, if I needed my dog to stay overnight, would I go to a pet shop?

MR. BAKER: No.

MR. WEMPLE: Why not?

MR. BAKER: They're not set up for it. They don't have the kennel runs.

MR. WEMPLE: Okay. Well, I mean they have puppies or dogs in there, right? I mean, wouldn't the pet shop sell dogs or no?

MR. BAKER: Some pet shops do, yes. They sell puppies. And there normally are guidelines by either Human Society or a county government limiting the size of the dog per the cage.

MR. WEMPLE: Is that right? I mean, tell me a little bit about -- I mean, since pet shops is a place where you can -- I mean, I got a little boy. What if I wanted to buy a dog for him? Would I go to a pet shop or where would I go?

MR. BAKER: You'd have the opportunity if they do sell them, or going to breeders to rescue leagues.

MR. WEMPLE: And if I go to your typical pet shop, you know, that you've seen in the industry in your experience, how many dogs would I expect to find in the pet shop? What sort of variety?

MR. BAKER: Anywhere from five to 15 to 20 dogs depending on the store.

MR. WEMPLE: Understood. And how mature would these dogs be?

MR. BAKER: Puppies.

MR. WEMPLE: Puppies? Uniformly?

MR. BAKER: For the most part. The older they get the faster the price comes down so that they can get them out. They're generally not there after

about three months of age.

MR. WEMPLE: How far does the price go down? Let's say, you know, you got a three month old puppy and he's a Golden Retriever. If he reaches four months, is he worthless to me as a pet shop owner?

MR. BAKER: Fairly.

MR. WEMPLE: Fairly? Just not to --

MR. BAKER: Usually, yes.

MR. WEMPLE: Okay. So when the puppies -- how loud can they bark? I mean, do they make a lot of noise in there as puppies?

MR. BAKER: At feeding time.

MR. WEMPLE: At feeding time. Okay. And what sort -- how does that noise compare to, say, 20 or whatever, five, six, seven adult dogs?

MR. BAKER: Well, in your pet shop environment, most of them are behind a glass enclosed case in kennels that aren't assessable to the public. And it's for a short period of time until they're fed. But it can get loud at times.

MR. WEMPLE: How often?

MR. BAKER: At feeding time, twice a day.

MR. WEMPLE: Okay. And tell me this, if you don't have that case enclosed and that sort of

noise proofing environment, how conducive is it of an environment is it for sales? In other words, is it a problem if you have people coming in and out of the shop and the place is just on fire with dog barking?

MR. BAKER: Sometimes they state it is. But if they're coming in to see dogs, they're going to be understandable.

MR. WEMPLE: Okay. Do you see the pictures up here, when you guys deal with your puppies in a pet shop how often -- do you deal with waste the same way? I mean, do puppies have access to outdoors or how do you deal with exercising them, first of all?

MR. BAKER: There's exercise rooms generally within the store. They're in cages that have grill crates that fetuses and urine drops into a tray.

MR. WEMPLE: Okay. So is an outdoor run a component of a pet shop?

MR. BAKER: Not normally, no.

MR. WEMPLE: Have you ever seen an outdoor run as a component of a pet shop?

MR. BAKER: Not of a pet shop, no.

MR. WEMPLE: Never?

MR. BAKER: No.

MR. WEMPLE: Okay. And so if you don't have an outdoor run, is all the waste management that takes place for these puppies, is that all interior?

MR. BAKER: Yes.

MR. WEMPLE: And so there's -- so in other words, you take the waste, put it somewhere in a bag or box or big Rubbermaid can or something and then call it a day, is that the idea?

MR. BAKER: Correct.

MR. WEMPLE: Okay. And so the picture that you see which we feel are representative of a use in a C-3-A zone --

MR. RUSHKOFF: Objection. Characterizing the pictures as representative of use rather than just asking him about the picture.

MR. WEMPLE: Okay. I don't have any problem with that objection.

So is that how a pet shop you think would handle waste from its boarders?

MR. BAKER: No.

MR. WEMPLE: Okay. Cool.

Moving the kennels, where in general do you see kennels as being located? I mean, do you say pet shops -- why don't you just give us a quick contrast between like where a pet shop would be

located vis-à-vis a kennel?

MR. BAKER: Most the time your pet shops are going to be a high demographic area where they're going to get the traffic to pull the customers in.

MR. WEMPLE: And the kennel?

MR. BAKER: Most of the time the kennels are in outlying areas because of the length of time of the dogs staying there.

MR. WEMPLE: Okay. Do kennels make use of outdoor space to exercise their dogs?

MR. BAKER: Yes.

MR. WEMPLE: Okay. How common is it for kennels to have that outdoor dog run?

MR. BAKER: Very common.

MR. WEMPLE: Okay. Having seen a lot of these operate, places operate, how do they handle waste? Just say go and take a dump, is that it or something like it?

MR. BAKER: If they're in concrete run, there's usually drainage for it to drain off into and they have some type of filtration or silt system for it. If they're in the exercise area, they're generally out with pooper scoopers.

MR. WEMPLE: Oh, really? Okay. So you just wouldn't hose it into the neighboring lots or

anything like that?

MR. BAKER: No.

MR. WEMPLE: Okay. Drawing on your experience as a pet shop operator and a kennel distributor, how would you characterize the difference between, say, the impact associated with the pet shop and the impact of a kennel?

MR. BAKER: The biggest, I would imagine, or for my end the biggest would be the sound involved --

MR. WEMPLE: Yes. And get into it a little bit. How big of a difference? Like, if you're walking outside of a pet shop or even when they're feeding the puppies like prime puppy feeding vis-à-vis walking outside of a kennel when, you know, dogs are out exercising, give me a --

MR. BAKER: Well, if you're walking, there's not going to be much difference of either one because you're going to be past it in a certain length of time.

MR. WEMPLE: No, but what if you're just sitting there, right outside?

MR. BAKER: If you're sitting outside, the time frame at feeding time, as soon as they're fed, they're going to be quieting time.

In a kennel environment most kennels ask if you want to have puppy playtime, and you have to pay extra for that. You'd get a pack of dogs together running and roughhousing and playing, they're going to be barking because they're pack animals.

MR. WEMPLE: Right.

MR. BAKER: They're going to be loud. And there's also issues of health. If their shots and etcetera are up to date.

MR. WEMPLE: Do you believe that in your experience in both these industries that the impacts from both of these two types of business are similar; the impacts on the surrounding neighborhood?

MR. BAKER: No.

MR. WEMPLE: How dissimilar -- do you believe they're dissimilar?

MR. BAKER: Yes.

MR. WEMPLE: And anything more on that? I mean, is it just the sound, is the waste, is it everything? What --

MR. BAKER: It's a totally different environment. You have an environment where people are coming into the store to look or buy dogs. They're quieter because they're smaller. They're in a

controlled environment as opposed to a kennel. I mean, when I used to call on kennels sometimes we'd just have to actually go inside because dogs are playing and roughhousing and barking. You can't hear each other talks. So there's a difference -- so there's a difference in the time factor.

MR. WEMPLE: Any more questions for this man? Okay. We're set. Thank you.

CHAIRMAN GRIFFIS: Board questions?

BOARD MEMBER ZAIDAIN: Nothing.

MR. RUSHKOFF: The kennels that you're talking about in making your comparison, are these kennels located in suburban areas or semi-rural areas?

MR. BAKER: Almost all the kennels that I called on were in rural areas.

MR. RUSHKOFF: Have you been describing any kennels in urban areas?

MR. BAKER: No.

MR. RUSHKOFF: I guess your -- okay. And were you describing kennels in dense suburban areas?

MR. BAKER: No.

MR. RUSHKOFF: Okay. Do you have any opinions on how one might go about appropriately boarding animals in a dense suburban or urban

environment?

MR. BAKER: If I lived in that environment, I would fight to not have it there. I don't know that soundproofing is going to be a cost effective, not to mention that the decibels on their own dogs or animal's ears in a soundproof building are going to be pretty loud also. I don't know of a way, no sir.

MR. RUSHKOFF: Do you believe that if people are willing to pay for the kinds of prices that are charged by a facility in an urban area, that such a facility can be set up and people can pay for soundproofing and individual attention and other measures that would make that use compatible with an urban area?

MR. BAKER: Compatible? It's possible, yes. Would it be cost effective, I don't know.

There's also in the nature of your bigger dogs, you're going to have to have runs with plenty of exercise area. And I wouldn't do it for an extended period of time.

MR. RUSHKOFF: But you would agree that depending on how much money is invested int he operation that an operation can be much more, less say sound resistent and environmental impact

resistent than another facility?

MR. BAKER: Yes.

MR. RUSHKOFF: Okay.

No further questions.

MR. DONOHUE: Mr. Baker, I'm looking at your résumé and I see that you had experience six years or so working at Companions Pet Store. That's one of the stores that I mentioned earlier. And it's 17th and U, is that right?

MR. BAKER: Yes.

MR. DONOHUE: Was it at that location when you worked there?

MR. BAKER: Adams Morgan. At Adams Morgan. But it wasn't for six years. It was during that time frame as one of them that was listed was there. I worked there and Georgetown. Companions had a store in Georgetown also.

MR. DONOHUE: Right. The one I'm referring to would be the one I drove by, I think it was 1626 U. Did you work at that location?

MR. BAKER: Yes.

MR. DONOHUE: Okay. Did that pet shop board animals?

MR. BAKER: Periodically, yes. For special customers.

MR. DONOHUE: For special customers?

MR. BAKER: Yes.

MR. DONOHUE: Interesting. That's a whole separate line of questions.

MR. BAKER: Yes.

MR. DONOHUE: But they did board animals?

MR. BAKER: Yes.

MR. DONOHUE: Okay. Did it have an outdoor run?

MR. BAKER: No.

MR. DONOHUE: Okay. Is an outdoor run permitted for a pet shop?

MR. WEMPLE: I don't know how he's -- how he'd even know that.

MR. DONOHUE: We had a lot of discussion about his expertise in pet stores and he's worked in two at the District of Columbia, at Companions --

MR. WEMPLE: But that seems like a regulatory question, right, or a zoning question?

CHAIRMAN GRIFFIS: Permitted under what?

MR. WEMPLE: Permitted under what, yes?

MR. DONOHUE: Do you know whether either of the locations you worked at, at Companions in Georgetown and the Companions at 17th at U, did either one have an outdoor run?

MR. BAKER: No, sir.

MR. DONOHUE: Do you know whether it was prohibited, if you know?

MR. BAKER: I do not know.

MR. DONOHUE: Okay. Thank you.

CHAIRMAN GRIFFIS: Mr. Pannick, do you have any cross examination?

MR. PANNICK: No.

CHAIRMAN GRIFFIS: Very well.

MR. WEMPLE: A real quick round of question with our last witness.

VICE CHAIR MILLER: I have a question. I don't know -- I'm not sure if you addressed this or not, but are you familiar with animals in urban areas?

MR. BAKER: No, I'm not.

VICE CHAIR MILLER: And I just wanted to follow up on your soundproofing testimony. Did you say you didn't know if it would work or that it would have some kind of effect on the animals? Could you just --

MR. BAKER: My concern would be cost effectiveness, number one. And if you do have a bunch of them barking, what is the decibel level going to be inside of that building? Would that be harmful,

depending on how many are out loose and playing.

VICE CHAIR MILLER: That's not related to whether it's soundproof or not, right?

MR. BAKER: Correct.

VICE CHAIR MILLER: Do you have some kind of information or knowledge about the cost of soundproofing?

MR. BAKER: I have not in the aspect of a pet store, no.

VICE CHAIR MILLER: In any aspect? I mean, you're saying it would be prohibitive or not cost effective and I'm wondering where you are drawing that from?

MR. BAKER: It came up in one store that we were looking to put into a mall environment. And the owner that I worked for at that time, Erik Balk, Doctor Pet Center, found it to be not cost effective to soundproof the building, the surrounding walls from the stores that were on each side of it.

VICE CHAIR MILLER: Okay. Thank you.

MR. WEMPLE: One quick redirect question. The issue of urban kennels was raised. Do you know why you don't know of an urban kennel, or do you know why that --

MR. DONOHUE: We object, Mr. Chairman. I

1 don't follow.

2 CHAIRMAN GRIFFIS: Actually, I don't see

3 he would not know of something. Can you answer that

4 question.

5 MR. WEMPLE: I -- go ahead.

6 CHAIRMAN GRIFFIS: Why don't you know?

7 MS. DOUGHTY: Mr. Baker, is a distributor

8 to tens or twenties of kennels, many, many kennels in

9 Virginia and --

10 CHAIRMAN GRIFFIS: Are you testifying or-

11 -

12 MS. DOUGHTY: -- Maryland. No, we saw

13 that. We discussed it earlier today. This is

14 testimony that occurred earlier today.

15 CHAIRMAN GRIFFIS: Okay.

16 MS. DOUGHTY: It may well be that he

17 doesn't know of any --

18 CHAIRMAN GRIFFIS: Are you going to

19 answer his question, too?

20 MS. DOUGHTY: No.

21 CHAIRMAN GRIFFIS: Okay. Let's go. Why

22 don't you know?

23 MR. BAKER: Why don't you know what?

24 CHAIRMAN GRIFFIS: Yes, why don't you

25 know of any other urban kennels; that's the

question, right? That's your redirect from your representative. Am I correct?

MR. WEMPLE: Scratch it. It's a dumb question.

MS. DOUGHTY: I think we may have just phrased it wrongly.

CHAIRMAN GRIFFIS: I'll give you time. I'm not rushing you. What is the question?

MR. WEMPLE: Okay. Well, I guess the question is this, you said that you knew of no instances of urban kennels. And the question I had was, okay, no you don't know of any urban kennels. Do you believe that stems from sort of like zoning organization and sort of like the compatibility of a kennel in --

CHAIRMAN GRIFFIS: Now you're asking a question that you objected to.

MR. WEMPLE: Okay. That's fine.

CHAIRMAN GRIFFIS: I understand where you're trying to go with it. I don't think he's going to develop that. Okay.

Anything else?

MR. WEMPLE: No.

CHAIRMAN GRIFFIS: Certainly. Okay. Let's assess. We're at 5:30. Oh, that's right. I'm

sorry. Yes. Let's go. Let's go. I'm sorry.

MR. WEMPLE: Well, I call Ruth Berman.

Ms. Berman, you have a lot of experiences we established yesterday in pulling you in as an expert witness in animal mediation and sort of conflict with respect to animal matters in the Hearing Board and so on and so forth, legislative liaison. And tell me a little bit about your views and your experience about where a kennel should be located. In other words, sort of where a kennel is appropriate?

MS. BERMAN: Well, we've talked about veterinarians, pet shops, kennels. Kennels can be broken down and there's also grooming shops. Kennels can be broken down into breeding kennels.

MR. WEMPLE: Let's just stick with boarding kennels.

MS. BERMAN: And sale kennels. But here we're talking about boarding kennels. The kennels, by in large, should be particularly if they are going to have outdoor exercising for dogs, should be in a -- at least a suburban area or someplace where the impact is not on any neighbor.

MR. WEMPLE: Okay. Can you get a little more specific? When you say "suburban," why

suburban? Is there something about how close it should be to neighboring --

MS. BERMAN: Well, for all the reasons that we've stated here today. You have the environmental impacts that we've been talking about. You have the sanitation problems close -- in a city.

For example, outside runs frequently have gravel that's changed frequently and things like that. And here you're not afford that. Any runoff or any of the defecation if it's not picked up in particular are simply going to go into city--

MR. WEMPLE: Let's talk about noise. If you have a kennel, say your average kennel -- I don't know -- in your experience what's the average dog population at a kennel?

MS. BERMAN: Well, it varies.

MR. WEMPLE: Right.

MS. BERMAN: Some of the larger kennels way out in Montgomery County may house 100 animals or more.

MR. WEMPLE: Okay.

MS. BERMAN: If it were a little bit closer in, it might be 20 to 50.

MR. WEMPLE: Okay. Let's go with that middle range. If you got a kennel that's 20 to 50,

how far away do you want that from a neighboring residence -- excuse me, a neighboring structure whether it be commercial or residential?

MS. BERMAN: Far enough away that there's no impact from odor or noise.

MR. WEMPLE: And can you get a little more specific?

MS. BERMAN: Let me give you an example. I know veterinarian who did apply for a boarding kennel in addition to his practice, much as you were speaking about Friendship. In that application he was permitted to have a boarding kennel. And I think he was probably 150 to 200 feet from neighbors on either side. That's probably even more. I think he owned three and a half or four acres. And he was not permitted to have outside runs because of the proximity of the neighbors.

MR. WEMPLE: And the neighbor was how far away?

MS. BERMAN: I'm just guessing 200 feet at least.

MR. WEMPLE: Okay. And what about cages? Kennels commonly, have you seen in your experience kennels commonly use cages or this sort of free roam environment?

MS. BERMAN: Well, basically using cages and taking dogs out one at a time to run is preferable because earlier there was a comment about when dogs bark. Basically dogs on leashes don't bark. They might when they see another dog, but they're not going to have consistent barking. So ordinarily a boarding kennel will have cages inside and perhaps runs outside with one dog at a time unless an owner has said that they don't mind it being with other dogs.

MR. WEMPLE: Understood.

What about the issue of how the place is soundproof. I mean, do you want in a kennel inside, when the dogs come inside, do you want no noise to permeate or how does that go?

MS. BERMAN: Well, I think when a boarding kennel is built or such as the one of the veterinarian I was speaking about, there were studies made, impact studies made so there was soundproofing and everything else made so that the neighbors would not be impacted.

MR. WEMPLE: And in your experience what's the common duration of stay in a kennel?

MS. BERMAN: I would say either a long holiday weekend or then it would jump to a week or

possibly two weeks.

MR. WEMPLE: Okay. And then drawing on your experience, your abundant experience in Montgomery County and elsewhere, do you see a kennel, a boarding kennel as akin or similar in any respect to the sort of other operations we've been discussing today, namely a pet shop or a veterinary facility?

MS. BERMAN: I don't think there's any similarity at all.

I did live in the District for a long time and I went to a veterinarian on P Street. No, Wisconsin. Well, P Street and the Wisconsin Avenue. But when I had to board my animals I drove them 40 minutes out into the country.

MR. WEMPLE: Is that just because of your civic concern for noise or was it just because that was the only place to go.

MS. BERMAN: Well, we've talked a lot about what is legal here and what's allowed by law. I think what we need to talk about more is what's appropriate.

MR. WEMPLE: Okay.

MS. BERMAN: And I don't think it's appropriate to have large numbers of animals 24-hours a day. I think a pet shop is fine. It opens at 9:30

and it closes at 6:30. I think a grooming parlor is appropriate, probably the same hours. I think a 24-hour operation, particularly considering the environmental issues is not appropriate.

MR. WEMPLE: Thank you very much.

CHAIRMAN GRIFFIS: Questions?

MR. RUSHKOFF: During the period that you drove your pets to kennels in the country were you aware of any alternative kennels that you could have used in the city?

MS. BERMAN: No.

MR. RUSHKOFF: No. From the point of view of the well being of the dog is there any problem for a period of a week or two avoiding any free play between dogs that are being kept indoors?

MS. BERMAN: I don't think so. I think as long as they have human contact, adequate food, clean environment. The same veterinarian I was mentioning does not mix dogs except by request, and those dogs never go out.

MR. RUSHKOFF: Do you find that -- I think there's been testimony before the dogs -- I think you testified that dogs on leashes tend not to bark, is that correct?

MS. BERMAN: That's correct.

MR. RUSHKOFF: What about two dogs on leashes being lead by the same person? Do you find that that leads to barkings or is that more like the leash experience?

MS. BERMAN: It's like the leash experience if you have two dogs on a leash, they obviously -- this is planned and they probably know each other or have gotten acquainted very quickly. And so the issue would be the same.

I'm not saying that they won't bark. I'm saying that there's not consistent prolonged barking.

MR. RUSHKOFF: All right. Thank you.

MR. DONOHUE: Ms. Berman, what I gathered from your testimony is that your preference is that kennel operations either the mid-range ones from 20 to 50 dogs or the large ones with upwards of 100 dogs ought to be on large parcels more than 200 feet from neighbors. Is that a fair recap of what you said?

MS. BERMAN: The 200 feet I got press into, and that was an inside facility. I think it's more appropriate if a dog is going to be there for a long period of time to be able to have some exercise, you know, and move around. On the other hand, if I had to board a dog in a hurry, I would go to that veterinarian who has the indoor boarding facility and

I know my dog would be fine.

MR. DONOHUE: So for a short period of time that would be all right with you?

MS. BERMAN: Yes.

MR. DONOHUE: Is it fair to say that Montgomery County has got a great deal more expanse, open areas, large parcels and agricultural land?

MS. BERMAN: If you get out far enough and it's getting taken pretty fast.

MR. DONOHUE: Fair enough. I think you're right.

Within the District of Columbia, which is a good deal more dense, the operation that's been described here is a combination of uses. Let me recast the question.

The operation that's been described here is a combination of uses. There's a pet shop, there's dog grooming, there's also the ability for overnight stays within limits. What's your opinion about where such an operation ought to be in the District of Columbia?

MS. BERMAN: Again, I think that such an operation ought to either be self contained so there is no outside access or be limited in the number of occupants, if you want to call dogs that, that can be

there. I guess, again, I'm saying that I don't think the District, the really business district of the District of Columbia is particularly appropriate to boarding. It's convenient, but it's not appropriate.

MR. DONOHUE: Are you familiar with the conditions that have been placed upon the Certificate of Occupancy?

MS. BERMAN: No, I'm not.

MR. WEMPLE: WE're not talking about -- we've been using use as a general thing. We're trying to avoid discussing this particular facility as a point of discussion here. And we're talking about the use of --

CHAIRMAN GRIFFIS: How are you going to avoid it? That's the basis of this appeal. That's the only thing we're going to decide on.

MR. WEMPLE: It is the basis of the appeal, but we've been talking very generically about boarding kennels as opposed to, you know, are you familiar with the conditions -- she's talking about the compatibility of a use with close in residential -- with close neighbors. And, you know, we're trying to --

MS. DOUGHTY: There's no reason for her to be familiar with the Certificate of Occupancy.

She's not testifying --

CHAIRMAN GRIFFIS: Well, that's the first question. Are you familiar with the conditions that are attached to the Certificate of Occupancy?

MS. BERMAN: No, I'm not.

CHAIRMAN GRIFFIS: Okay.

MR. DONOHUE: I'm reading the letter that you've submitted. And you're describing American Kennel Club and some of the show dogs.

When you were giving your opinion earlier about the nature of kennel operations, were the kennel operations you were discussing in the nature of the show dog type kennels or was it a more broad population?

MS. BERMAN: More broad. Both. Both. I just meant that even outside of this jurisdiction I was familiar with other kennels, all of which were in areas that could afford outside runs and be far enough away from neighbors not to have impact.

MR. DONOHUE: And you describe the outdoor run as one that you see populated by one dog at a time and the others kept in cages?

MS. BERMAN: I'm sure it's done differently or if there are two dogs that they know for sure get along together, they may put them in

runs. But ordinarily in my experience it's one dog, one run.

MR. DONOHUE: Even in the larger operations that have 100 dogs?

MS. BERMAN: Yes. Yes.

MR. DONOHUE: It must be a very short period of exercise.

MS. BERMAN: Or a big kennel.

MR. DONOHUE: Okay. Thank you.

MS. BERMAN: Yes.

MR. DONOHUE: Thank you, Mr. Chairman.

CHAIRMAN GRIFFIS: Mr. Pannick?

MR. PANNICK: No, thank you.

CHAIRMAN GRIFFIS: Any other follow up Board questions? Very well.

Ms. Berman, thank you much.

Actually, just addressing one of the comments Ms. Berman made, she said we ought to be looking at the measurement of appropriateness and not the letter of the law. I absolutely disagree, that we're actually here on a legal question and not necessarily balancing appropriateness.

So let's move on. Anything further in presentation of the case?

MS. DOUGHTY: Mr. Chairman, we have one

remaining presenter and one remaining witnesses. It will be -- it's very brief.

CHAIRMAN GRIFFIS: Two more witnesses?

MS. DOUGHTY: One. One more. One presenter, one -- and one witness.

CHAIRMAN GRIFFIS: I see. Okay. It's your time.

MS. DOUGHTY: I just noticed the clock has been a little inaccurate as we've gone through. By my reckoning -- by our reckoning of our stop watch, we have eight minutes remaining.

CHAIRMAN GRIFFIS: Stop watch?

MS. DOUGHTY: Yes.

CHAIRMAN GRIFFIS: You're testing me.

MS. DOUGHTY: We did a practice run with our stop watch to make sure we didn't waste your time today.

CHAIRMAN GRIFFIS: Oh, you say you're not running a stop watch now?

MS. DOUGHTY: We are running the stop watch. But we did not want to waste your time.

CHAIRMAN GRIFFIS: Right. No, I don't disagree. I had about 4 minutes and change, so it seems to be appropriate.

Let's just move ahead.

MS. DOUGHTY: Thank you.

MR. MACY: Mr. Chairman, I'd like to discuss the noise impacts of a dog boarding kennel. I've drawn comparisons to activities, other activities and demonstrate what a kennel may be similar to and what it might not be similar to.

There's been a lot of academic and professional research done on noise, and try to understand the noise created by different activities, whether it be industrial, commercial or agriculture. Dog barking is often included in those studies.

These studies give us some sort of objective and scientific standard and means of comparison to know what it is we're talking about. This is not something someone measured, someone discussed, but these are objective standards.

I'd like to call Ms. Chui to the stand to talk about some of the research that she's done.

MS. CHUI: Good afternoon, or maybe evening at this point. My name is Lisa Chui, and I'm a resident of 1448 Q Street, Northwest. I'm also a dog owner.

At the request of the appellants in this case, I researched publicly available information on noise levels for various common and commercial

activities. I interviewed audiologists, agricultural extension specialists, the President of the Noise Pollution Clearing House, I consulted textbooks, encyclopedias, professional societies, EPA, NIH, NIOSH and reports from the U.S. and Australian governments. And in the process, I created a chart that compares some of the noise levels, and I would like you to look at that.

MR. MACY: It's a study and a summary chart and a statement.

CHAIRMAN GRIFFIS: Do we get that whole report.

MR. DONOHUE: Mr. Chairman, what happened to the rule that this should all be submitted two weeks prior to the hearing.

CHAIRMAN GRIFFIS: Yes. What is that?

MS. DOUGHTY: This is the state-of-the-art report that I referred to at the beginning.

MR. DONOHUE: Objection, Mr. Chair.

CHAIRMAN GRIFFIS: Okay. I need to go to them then first.

You have an objection?

MS. DOUGHTY: The reason that we want to enter this into evidence is because we do not want to take the time --

CHAIRMAN GRIFFIS: Can you speak close to a mike?

MS. DOUGHTY: We do not want to take the time of the Board at this hearing.

CHAIRMAN GRIFFIS: Right. And my objection is going to be without even looking at it is what is the relevancy for us to have to read the entire acoustical research report? I mean, I'll gladly take the distilled version and the point you're going to make.

MS. DOUGHTY: Okay.

MS. CHUI: The entire chart is referenced with every decibel level reference from exactly where it came from and you can look it up yourself if you doubt anything.

MR. MACY: Just in case you wanted the report to do further reading.

CHAIRMAN GRIFFIS: Yes, indeed.

MR. DONOHUE: Just a ball park here, it's 48 pages. Where's the chart?

CHAIRMAN GRIFFIS: Oh, the chart's separate, is that correct?

MR. DONOHUE: The summary chart? So that's another page.

CHAIRMAN GRIFFIS: We're going to look at

the chart first and then we're going to assess whether we need the attendant reports that are cited in the chart.

I'm going to take this time while the chart is getting passed out to, perhaps, disrupt your presentation, but did you do a sound study at all specifically on this site?

MS. CHUI: I did not do a sound study.

CHAIRMAN GRIFFIS: Okay.

MS. CHUI: I don't do that. But I know that a sound study has been done.

CHAIRMAN GRIFFIS: There has? Is that --

MS. CHUI: Not a sound study, I'm sorry. There's been measurements.

MS. DOUGHTY: That's correct. We included that with our prehearing submission, a report, a sound study was carried out by Miller Beam Pagnaelli all from the noise emanating from this site. It was carried out on the boundary line. That would be attachment 15, I believe, to the prehearing statement.

MR. MACY: What we're trying to talk about here are generally accepted noise levels used by architects, acoustical engineers and planners when they put together buildings and zone areas. That's a

figure that everyone understands and can use together and there's a consistency there.

CHAIRMAN GRIFFIS: I don't think we need the entire reports that are cited in this. It seems to be fairly clear what this graph is trying to illustrate.

Any questions?

VICE CHAIR MILLER: Well, is the report coming to us to see what it is?

CHAIRMAN GRIFFIS: No.

VICE CHAIR MILLER: No? Okay.

CHAIRMAN GRIFFIS: That would diminish the opportunity not to accept it into the record.

Yes?

MR. MACY: It's the report that's referenced.

CHAIRMAN GRIFFIS: Exactly. And you're not utilizing that for any sort of direct testimony or any sort of factfinding, are you?

MR. MACY: No, it's just the source of the information.

CHAIRMAN GRIFFIS: Exactly. I think it's perfectly appropriate to take this. Any objections?

MR. WEMPLE: Just this?

CHAIRMAN GRIFFIS: That's right.

MR. WEMPLE: Just the chart?

CHAIRMAN GRIFFIS: That's correct.

MR. WEMPLE: And these measurements that are referred to here, I'm going to the second to last line, it says "dog kennel," and it's .02 and then it's got reference to 180 decibel levels. This is not taken from a measurement from any subject property that we might be familiar with?

MR. MACY: No.

MS. CHUI: No, sir. It was taken --

MR. MACY: It's just a standard.

MS. CHUI: It was taken quite a long time ago. This is from a textbook.

MR. MACY: These are what people rely on.

MS. CHUI: These are what's relied on by the acoustical architects.

MS. DOUGHTY: And this is absolutely essential to the issue of similarity.

MR. MACY: These are the types of impacts that you will expect to have from these type of operations. For instance, you know -- well ==

MR. DONOHUE: Mr. Chairman, excuse me for a second.

CHAIRMAN GRIFFIS: Yes.

MR. DONOHUE: Appellant is clearly well

aware of the regs that the Board of Zoning Adjustment operates under.

CHAIRMAN GRIFFIS: Right.

MR. DONOHUE: I mean the appeal about choked us all when we had to read it. There's 33 some pages here and there's I don't know how many attachments. Why didn't the appellants see fit to submit this as an attachment as required two weeks prior to the hearing?

MS. DOUGHTY: In fact, we did refer specifically -- we specifically referred in our prehearing statement. We presented some of this noise information in that prehearing statement. And there are footnotes in the prehearing statement stating that some additional testimony and evidence on this particular matter would be offered at the hearing.

CHAIRMAN GRIFFIS: It is what it is. You know, it's laying jet planes, I don't know, how big is a jet plane, how large is the office. It has some limited use, but I think it sets up what is being asked of us to look at the parameters of sound and what's created on certain of those sources. And we'll see how far it goes.

MR. MACY: Right. In a sense it's a

summary of testimony.

CHAIRMAN GRIFFIS: That's right.

BOARD MEMBER ZAIDAIN: I actually have a question. You've got there are footnotes here that I -- and these are sources, I assume?

MS. CHUI: Yes.

BOARD MEMBER ZAIDAIN: Is there a full bibliography in the report that would -- I mean -- well, no. I mean I think -- I mean if the intervenors wanted to research the information, I mean they would need to know where to find this information.

MR. MACY: Right. And all the data here is footnoted with the source. So there's no other sources that are not listed.

MS. CHUI: Every piece of data has the source where I got it from with most -- with the page numbers.

CHAIRMAN GRIFFIS: So if you want to find the sound of value for the pig --

MS. CHUI: Yes, sir.

CHAIRMAN GRIFFIS: You can go right down to footnote 4, farm noise hazards.

BOARD MEMBER ZAIDAIN: No. Actually my concern is footnote 2, which I assume will be the

subject of a lot of the discussion here.

CHAIRMAN GRIFFIS: Right.

BOARD MEMBER ZAIDAIN: And I think in all fairness that publication should be -- you know, be available to be tracked down by the intervenors so that they could look at it.

CHAIRMAN GRIFFIS: And is that in the proposed submission, *1988 Architectural* --

BOARD MEMBER ZAIDAIN: No, I'm not saying the publication itself. I'm just --

MS. CHUI: We can make those two pages available to you.

CHAIRMAN GRIFFIS: Okay.

MS. CHUI: We can make that chart with all of the references that they used.

CHAIRMAN GRIFFIS: Good point. We'll take into the record page 34 and 35 of *Architectural Acoustics* by Mr. Egan, 1988.

MR. DONOHUE: Mr. Chairman, I'll just state our objection for the record.

CHAIRMAN GRIFFIS: Noted.

MS. DOUGHTY: So just to clarify, please.

CHAIRMAN GRIFFIS: Yes.

MS. DOUGHTY: Shall we assemble the relevant pages of each?

CHAIRMAN GRIFFIS: No, 34 and 35.

MR. MACY: Just 34 -- of that one reference.

CHAIRMAN GRIFFIS: *Architectural Acoustics*.

MS. DOUGHTY: Now, you want to take that reference but this document that we have offered you, which is the source for most of the items at the table --

MS. CHUI: No, no.

MR. MACY: A number of them.

CHAIRMAN GRIFFIS: Mr. Zaidain, would you like all the sheet that are listed?

BOARD MEMBER ZAIDAIN: No, I would not.

CHAIRMAN GRIFFIS: Of course you would. And why would you?

VICE CHAIR MILLER: I would. Well, it sounds like this report backs up all these statistics so that if any of the parties wanted to challenge the conclusions in here, they could look at that report.

MS. DOUGHTY: Only if it's on the record.

VICE CHAIR MILLER: What?

MS. DOUGHTY: Only if I'm allowed to enter the report into the record.

VICE CHAIR MILLER: That's right.

MR. RUSHKOFF: If I may, is it possible to put pages 34 and 35 into the record and produce the report sort of like in discovery, just produce the report to us and then if we want to add other portions of the report, we can?

VICE CHAIR MILLER: Well, let me ask you one other question.

CHAIRMAN GRIFFIS: Let's go.

VICE CHAIR MILLER: There's a lot of websites referenced here. Most of these go to the websites and they're only --

MS. CHUI: That's where it's -- telling you where you can find it yourself.

MS. CHUI: Where you can find the report is at that website. There is one website listed, the League For The Heard Of Hearing, the noise levels that they publish on their website.

The report here, you can download from the web. And that's --

VICE CHAIR MILLER: It's the same, is that what you're saying?

MS. CHUI: It's the same.

MR. MACY: Right. We printed at their convenience.

MS. CHUI: Yes. Exactly.

MS. DOUGHTY: We tried to be helpful. It's an important report on an important issue.

CHAIRMAN GRIFFIS: I just wonder how much relevancy it's going to be to all this. I think I'm going to stand, unless the Board absolutely objects, to taking in the chart that was assembled. And we'll look at the information and, more importantly, we'll look at the testimony that's trying to be evoked out of this. If we run into a difficult position of which it's being so challenged that we need to cite the sources and we need to provide those, then we'll make that available in part of the official record. Other than that, I don't want the appellants to be incumbered on having to address so much of the research information. I don't want the Board to be incumbered with having to read it and know it all in order to have it established into the record and be part of our deliberations.

So this seems to be a very simple appeal in terms of the issues that we have to deal with. I think it's very complex in terms of all the information that relate to it. But the elements have been identified fairly well, and I don't want to move us too far off track.

So I am more inclined at this point not

to accept in the entire source that has created this, but rather to look at the chart for what it is.

Any objections? Okay. Let's go on then.

MR. MACY: Okay. You know, earlier testimony we've talked about the offices and retail uses that were envisioned for a C-3-A zone. Can you tell us about the noise levels that can be expected from these types of uses?

MS. CHUI: According to the research that I did, the League For Hard of Hearing and the noise levels in our environment fact sheet show that the noise inside a small office or library generates about 40 decibels. Large office and retail source generate about 50 decibels. But it's important to note that this is inside the store. They are not external measurements.

MR. MACY: All right. And I should note that these levels are perfectly consistent with the D.C. noise regulations which are 60 decibels during the day and 55 decibels at night.

What do these academic reference material say about the noise of dogs barking?

MS. CHUI: As reported in the Egan's *Architectural Acoustics*, one large dog barking generates 74 decibels on average of noise at a

distance of 50 feet. The government report entitled "Farm Noise Hazards" measured peak levels of 104 decibels from two dogs barking at a distance of ten feet.

Egan also reported that noise levels inside a dog kennel averaged 108 decibels.

MR. MACY: Right. Now these noise levels sound significant. Can you tell us how these figures are relevant for the residential properties that might surround such a dog boarding kennel?

MS. CHUI: Based on what was said -- I mean, based on Egan's reported noise levels of 72 decibels at 50 feet, residents within 50 feet of the boarding kennel could experience 72 decibels. It would depend on what's been reflected.

Because noise dissipates over distance, residents who live closer to the dog boarding facility will experience significantly more noise. This is especially true when you take into account the fact that decibel levels increase by six decibels each time you half the distance. In other words, residents at 25 feet from the boarding facility would be subject to average noise levels of 80 decibels; that's 72 plus six. And residents 12? feet away, which would be those residents on the facility's

immediate boundaries, could experience an average of 86 decibels of noise.

Once more, based on the farm noise report, the immediate neighbors could expect peak noises as high as a 104 decibels.

MR. MACY: All right. As noted by an earlier witness, you know, you put dogs together you're going to get barking.

You located an operation like this with an outdoor dog run in a densely packed area of residential homes and condominiums and it will always be out of compliance with D.C. noise regulations.

Moving on, it's useful to compare this noise level with other activities that produce similar noise levels. Can you tell us what some of the other industrial/commercial activities that produce comparable noise levels?

MS. CHUI: Well, according to the League For The Hard of Hearing, a factory doing light to medium manufacturing measures decibels levels of 78 inside the factory.

Large trucks traveling 55 miles per hour generated 86 decibels of noise at 55 feet.

And two motorbikes generate average decibel readings of 86 and peak readings of 103

decibels for the people who happen to be on them.

A riveter at 35 feet generated 97 decibels of noise.

And a military helicopter at 500 feet generates 80 decibels of noise.

MR. MACY: So essentially dog barking is similar to many activities that people normally find annoying like motorbikes or truck traffic and similar activities that are not generally allowed in the C-3-A zone. What other activities produce similar noise levels?

MS. CHUI: Several of the agricultural activities that I researched also produce noise levels similar to that of a dog boarding kennel. For example, the inside of a chicken shed will be produce average noise levels of 71 decibels and peak levels of 92 decibels.

And autofed piggeries emanate noise of 72 decibels on average and peak levels of 104 decibels immediately outside the piggery. Swine, it turns out, are the nosiest animals on the farm. Who knew?

MR. MACY: But clearly the noise impacts created by dogs is essentially very similar to agricultural activities like raising pigs or

chickens. It is our opinion that a dog boarding kennel therefore is more similar to agricultural activities that are not permitted in the C-3-A zone.

The animal control provisions in the DC regulations regulates to control the impacts created when animals are grouped together.

MR. DONOHUE: Mr. Chairman, are these questions or are they testimony. I'm not clear.

CHAIRMAN GRIFFIS: I was kind of wondering that. But I imagine you're putting yourself up for cross examine with all these statements?

MR. MACY: Sure.

CHAIRMAN GRIFFIS: Indeed.

MS. CHUI: Title VIII of the DCMR chapters 9 and 18 have a lot of regulations that talk about animal control and what has to be done, and so on. One of the important things that was brought up by the District Counsel was that no person shall own or keep a dog that disturbs the quiet of any neighborhood or person. Clearly an interpretation that allows a dog boarding kennel with an outdoor run in a dense populated area cannot be consistent with this.

CHAIRMAN GRIFFIS: With Title 9.

MR. MACY: Title 8.

CHAIRMAN GRIFFIS: Title 8? Okay.

MR. MACY: Okay. Also, it talks about if you have more than five manuals together, you need to have a permit.

VICE CHAIR MILLER: Excuse me. What are you referring to? Title 8 of what?

MR. MACY: DCMR.

VICE CHAIR MILLER: DCMR. Eight DCMR?

MR. MACY: Yes.

VICE CHAIR MILLER: Okay.

CHAIRMAN GRIFFIS: We have no jurisdiction over eight, nine, ten --

MR. MACY: I know. But I am talking about the District believes are important restrictions and controls on groupings of animals.

CHAIRMAN GRIFFIS: I'm clear on that.

MR. MACY: Right. And clearly the dog boarding facility that we've been discussing is a grouping of animals.

CHAIRMAN GRIFFIS: Okay.

MR. MACY: Okay. Now, it talks a lot about how and where you can group these animals. For instance, if you pick chickens which we've talked about having a noise that's similar, it says that

chickens cannot be held at least 50 feet away in any direction from human habitation. You put --

CHAIRMAN GRIFFIS: I don't like chickens. It's a good rule.

MR. MACY: Fine. All right. Dogs are louder. Okay.

CHAIRMAN GRIFFIS: My direct question is how is this pertinent for me understanding that the Zoning Administrator made an error or did not make an error.

MR. MACY: What we're saying is that this use is not similar to a pet shop, that it's similar to other activities that are not allowed.

CHAIRMAN GRIFFIS: Okay.

MR. MACY: So, I mean, if you talk about 50 feet in a C-3-A zone like the one we're talking about that is sort of densely packed, you've not impacted at least 30 homes.

CHAIRMAN GRIFFIS: Your last minute --

MR. MACY: Okay.

CHAIRMAN GRIFFIS: -- for this witness.

MR. MACY: They also talk about animal pens. Clearly the definition of an animal pen is a container for animals, a small container for animals, *Webster's Dictionary*. It says that if you have an

animal pen, it shall be 250 feet from any property line.

You know, the rear yard or even an internal boarding space of a dog boarding kennel must be 250 feet from any property line. In this zone you're talking about over 100 properties that are within 250 feet.

You know, these provisions are in place for a reason. They have to control noise, waste, odor, potential health impacts. This is no different for a dog as it is for a pig, sheep or chicken. They're all living creatures and they produce the impacts.

So what we're saying is that instead of a dog boarding kennel being similar to a pet shop, which we've heard testimony before as it's being relatively minor in impact, it is very similar to the significant impacts of an agricultural operation.

CHAIRMAN GRIFFIS: Okay. Thank you.

That would conclude then. Obviously, you have time for conclusions and rebuttal witnesses as they're coming through.

Let's take Board questions. Any Board questions?

VICE CHAIR MILLER: Just to follow up on

that. Eight DCMR, are you aware of any instances or any areas in the regulations which go to the Zoning Administrator applying any of those regulations or considering any of those regulations in 8 DCMR, or how 8 DCMR relates to zoning?

MS. DOUGHTY: The zoning regulations, of course, we talked about section 101.1. We can go back there. But the Zoning Commission has also in its ruling and in various statements and rulings has referred to the fact that the Zoning Commission intends the zoning regulations of the District of Columbia to be interpreted to the greatest extent possible in the most consistent manner possible with the other laws that govern in the District of Columbia.

CHAIRMAN GRIFFIS: Okay.

VICE CHAIR MILLER: Thank you.

CHAIRMAN GRIFFIS: And consistent with the Comprehensive Plan.

Any other question of the Board? Very well.

In your understanding, I take it that you're the source or both of you combined are the source of the comment kennels are generally known to produce regularly a noise level in the order of 80 to

100 decibels, page 27 of your prehearing submission. Is that based on this information that was assembled in this chart?

MS. CHUI: It was based on information that came from a website that was not as well sourced as I wished it to be. And then I went back and sourced these things better.

CHAIRMAN GRIFFIS: I see. So when you looked at a website that was generally known to you or it's generally known to the public -- well, I won't. Let's move on.

MS. CHUI: It was referred to dogs barking.

CHAIRMAN GRIFFIS: Yes, indeed. Okay.

In your understanding of sound and the measurement of sound, when you have a decibel level and you have 40 decibel levels, a source that's creating 40 and a source that's creating 40 what's the total cumulative decibel level if you are observing that? Is it additive, is it expediential? How is sound added to itself?

We're getting a lot of sound experts.

MR. WEMPLE: The way I understand it --

CHAIRMAN GRIFFIS: Mr. Wemple, I do appreciate that, but I haven't heard any testimony on

sound coming from you. I've heard it from these two.

What's your understanding of how sound is measured? If I have a plane, a jet plane that's going by and I'll pick my decibel level of 200, and I have a decibel level of 80 source. Am I now hearing in my ears 280 decibels?

MS. CHUI: No, you're not.

CHAIRMAN GRIFFIS: How is it measured.

MS. CHUI: Sound is measured on a logarithmic scale. So the way sound -- and it's also measured over frequencies. So in order to crate decibels levels, you have to look at the sound pressures from the different frequencies, make sure that they don't cancel out and then you have sound. So sound is not strictly additive.

I can offer into evidence if you want some equations on how you would go about doing this. I, however, do not like to do them.

CHAIRMAN GRIFFIS: And what I'm trying to establish here is we have one large dog barking at 50 feet was 72. And then we have two dogs barking at ten feet. Now I understand the distance and the subtraction of your testimony of six decibels. And the dog kennel at 108. It seems to be trying to tell

me that somehow you get a lot of them together and they create more and more noise?

MS. CHUI: Yes, they do.

CHAIRMAN GRIFFIS: Why?

MS. CHUI: And you have to remember that inside the kennel --

CHAIRMAN GRIFFIS: Why do they create more and more noise.

MS. CHUI: Inside the kennel what you have going on is it's an enclosed space. So you don't have situations where you have dissipation and you also get reflection of noise.

So if you would like me to -- I don't have it here with me, but I could write you a whole -- I could write you a whole paper on how this would work --

CHAIRMAN GRIFFIS: Which needs to be clear.

MS. CHUI: -- to give you actual numbers. But the most important thing from this is not that inside the kennel it's going to be 108 decibels. The most important thing is on average one dog barking outside will break D.C. noise ordinances. In fact, it does so and one dog can be considered a nuisance.

If I let my dog out in the back and it

starts to bark, I can have my neighbors, you know, get nuisance action against me.

CHAIRMAN GRIFFIS: Okay. Questions?

VICE CHAIR MILLER: Yes. Ms. Chui, I believe you weren't offered as an expert in noise.

MS. CHUI: I am not an expert in noise.

VICE CHAIR MILLER: Could you just tell me what your background is? I mean, you know, as far as much credence to give what you're saying. I mean, what is your knowledge based on?

MS. CHUI: I am -- for the past 11 years now I've been a science and technical writer. And before that, I got a master's degree in biochemistry at Duke University. I am not a noise expert. However, I deal in science, chemistry and physics, biology. I've written work for government, non-government organizations. And my job is to take scientific information and make it presentable to the average person. That's what I do.

VICE CHAIR MILLER: So with respect to the research you did here on noise --

MS. CHUI: Right. I didn't create any of it.

VICE CHAIR MILLER: Right.

MS. CHUI: I went and looked for it and I

looked for sources that were referenced a lot.

For example, the Egan source is referenced a lot by the organization that represents acoustical engineers. I'm not an acoustical architect. It's one that many of the architecture organizations, people who do sound management and stuff like that, put on their website to kind of show noise.

VICE CHAIR MILLER: Have you researched noise prior to this case?

MS. CHUI: Researched noise?

VICE CHAIR MILLER: That issue, yes.

MS. CHUI: I've researched noise and how it would effect people losing their hearing and how hair cells work. And those are the cells -- that's how you hear. That is your external -- the sensor of sound waves that then goes to your brain and let's you know that I'm speaking badly.

VICE CHAIR MILLER: Thank you.

CHAIRMAN GRIFFIS: Okay. Any other questions? If not -- yes?

MR. RUSHKOFF: I'd like to ask you about the inside/outside column on the chart.

MS. CHUI: Yes.

MR. RUSHKOFF: And various noises are

described either as inside or outside.

MS. CHUI: Right.

MR. RUSHKOFF: With respect to the ones that are designated inside?

MS. CHUI: Yes.

MR. RUSHKOFF: Would that be that both the source of the noise and I guess, the listening device are both inside?

MS. CHUI: Absolutely, yes.

MR. RUSHKOFF: And would it be true that for the outside noise, it's both the source and the listening device are outside?

MS. CHUI: No. Actually not. There's one exception to that, and that is the piggeries. The source inside the piggery the monitor is directly outside the piggery.

MR. RUSHKOFF: Okay.

MS. CHUI: So that is the one exception to what you just said.

MR. RUSHKOFF: Okay. And it's not clear from here how far outside the piggery the listening device is or is it immediately outside?

MS. CHUI: It was immediately outside, which is why I didn't list a distance for it. Because that would --

E-V-E-N-I-N-G S-E-S-S-I-O-N

(6:00 p.m.)

MR. RUSHKOFF: It was right up adjacent to the piggery?

MS. CHUI: Yes.

MR. RUSHKOFF: And I think you mentioned that noise inside a kennel, at least based on the sources you've consulted, would be worse as a result of reflection of noise off I guess the walls, ceiling of the kennel?

MS. CHUI: Number of dogs, number of sources and the reflection; that is my understanding of why it is that high.

MR. RUSHKOFF: So the higher the reflection off the walls, the higher the noise inside, the number of dogs being kept constant?

MS. CHUI: To some extent. But I mean because soundproofing deadens sound, that's what It does, it stop the sound waves. So there will be some. Part of the reason that an inside source can be louder than an outside source is simply because it comes back on you.

MR. RUSHKOFF: Okay.

MR. MACY: It depends on the material of the walls.

MS. CHUI: Right.

MR. RUSHKOFF: So the more that the sound is reflected wouldn't -- let me change the question.

MS. CHUI: I may not be qualified to answer this part of your question, but go ahead.

MR. RUSHKOFF: Okay. Well, I'm just trying to follow up what you did testify to. Wouldn't it be true that as the reflection plus absorption increased, the amount of sound that actually left the room would decrease?

MS. CHUI: It depends on the building material.

MR. RUSHKOFF: So it could be that as the reflection and absorption increased in some buildings, there could still be more sound than before leaving the building?

MS. CHUI: More sound leaving than the building than what was starting? No, I don't -- I don't know that -- I have no idea how to answer that question. I don't know the answer to it. And I don't think that that's actually the case. That's not what I was saying. Because this is an inside monitoring.

MR. MACY: But from my lay experience--

MR. RUSHKOFF: Yes?

MR. MACY: -- reflection absorption are

opposites.

MR. RUSHKOFF: Right.

MR. MACY: It would be reflected or absorbed.

MS. CHUI: Right.

MR. RUSHKOFF: Except wouldn't some sound be neither absorbed nor reflected but pass through the wall, isn't that that the sound that people hear outside the building?

MR. MACY: Yes, that's what gets absorbed, yes.

MS. CHUI: Yes.

MS. CHUI: I don't know --

MR. MACY: We're not experts in this.

MS. CHUI: -- we're not saying that any of the -- we're not making any -- any claims that they -- about noise emanating from an entirely enclosed kennel.

MR. MACY: Right. We don't know how to soundproof a kennel, and we would not --

MS. CHUI:And we don't know what's coming from that. We didn't get any information on it.

CHAIRMAN GRIFFIS: Next question.

MR. RUSHKOFF: So is it your testimony that the average decibel levels for inside noises may

or may not have some relation to noise outside of these structures? I mean, it's your testimony you really don't know what relationship, if any, there is?

MS. CHUI: That is not my testimony. And what we are looking at most importantly for an outdoor run is the fact that one dog barking at 50 feet -- you're measuring 72 decibels on average. Two dogs barking at ten feet will peak at the 92 decibels -- the 104 decibels.

So the most important thing that we're pointing out is that if you have dogs outside, you are going to break D.C. noise regulations.

MR. MACY: And they are residential windows within ten feet.

MR. RUSHKOFF: So you're not really making any statements with respect to the line that says dog kennel inside average decibels 108. You're not drawing any inferences from that?

MS. CHUI: I'm not drawing any inferences. I'm just putting it out there as this is a measured amount. It's quite high and people who have been inside dog kennels will attest to the fact that it can get quite noisy.

MR. RUSHKOFF: So all we could really

conclude from that would be that people who don't like loud noises should not go inside dog kennels?

MS. CHUI: Well, actually, no. At 108 decibels you're looking at damaging your hearing.

MR. RUSHKOFF: Okay. Your hearing could be damaged inside a dog kennel?

MS. CHUI: Yes. In fact, I have some information on what the exact -- there's a NIOSH --

CHAIRMAN GRIFFIS: Okay. That's not a question --

MS. CHUI: -- regulations on that.

MR. MACY: And the other conclusion is if you live ten feet from 2 dogs parking, you're going to have 104 decibels.

MR. RUSHKOFF: That's the line about two dogs barking outside?

MR. MACY: Right. Right.

MR. RUSHKOFF: As loud outside?

MR. MACY: Right.

MS. CHUI: Yes.

MR. MACY: So that's a direct conclusion.

MR. RUSHKOFF: Okay. Thank you.

MR. DONOHUE: Mr. Chairman, I'll admit that I'm confused, but let me try.

Ms. Chui?

MS. CHUI: Yes.

MR. DONOHUE: The Certificate of Occupancy that's the subject of this appeal was issued in July last year.

MS. CHUI: Yes.

MR. DONOHUE: To your knowledge has the use been cited for violations of the District of Columbia noise ordinance?

MR. WEMPLE: That's very irrelevant to this.

MR. DONOHUE: It's not irrelevant. She's the noise expert and I asked her --

MR. WEMPLE: No, that's completely irrelevant to the instant case.

MR. DONOHUE: Actually, let's see if it's important or not.

MR. WEMPLE: I mean, if they want to get into sort of like noise impacts from the particular facility, we're prepared to go there. However, when we opened this case we said that we would stick to the legalities of the issue. You emphasized how important that was.

CHAIRMAN GRIFFIS: Right.

MR. WEMPLE: We've tried to stay with that.

CHAIRMAN GRIFFIS: I agree, except for one point. They brought up the fact and they've said it now numerous times that one dog barking breaks the District regulations. So it's a fair question to ask. The testimony that was provided are you aware of any sort of citations that have been made for noise.

MS. CHUI: I'm not aware of any citations, no.

CHAIRMAN GRIFFIS: Okay.

MR. MACY: But there have been several complaints. And I don't have -- again, it's just my--

MR. DONOHUE: I got my answer, Mr. Chairman. Thank you.

CHAIRMAN GRIFFIS: So, next question.

MR. DONOHUE: My next question is for your colleague, and I beg your pardon it's been a long time, and I've forgotten your name, sir.

MS. DOUGHTY: Mr. Macy.

MR. DONOHUE: Mr. Macy?

MR. MACY: Yes.

MR. DONOHUE: The statement that intrigued me earlier, and I'll give you a chance to rethink it. But we were talking about the noise levels. And I'm with everybody else, piggeries and

riviters and all this, it's fascinating. But would you agree that a domesticated animal has different behaviors than an undomesticated animal? For example, chickens, Mr. Griffis' favorite animal, we talked about farm animals. Would you agree that domesticated animals behave differently?

MR. MACY: It's irrelevant to my testimony.

MR. DONOHUE: Well, you said --

MR. MACY: What I testified to was the noise level created. It's based on how those different animals act normally. It's irrelevant whether they act differently from each other. The fact that chickens acting as chickens produce levels. Dogs acting as dogs produce this level. Pigs acting as pigs produce this level. It's irrelevant whether they're --

CHAIRMAN GRIFFIS: I'm going to -- this is taking a long time.

MR. DONOHUE: Let me give it another try, then I'm going to quit.

CHAIRMAN GRIFFIS: Let's move on.

MR. DONOHUE: Exactly. It's late in the day.

Animals in the presence of one's owner,

for example, animals being dropped off for whether it's a surgical procedure or dropped off for happy time at a dog facility; don't you think they'd behave differently than do undomesticated animals outside the presence of their animals?

MR. MACY: I don't know. I have no idea.

CHAIRMAN GRIFFIS: Next question.

MR. MACY: I have no expertise.

MR. DONOHUE: Fair enough. Fair enough. Thank you.

CHAIRMAN GRIFFIS: Anything else?

MR. DONOHUE: No, sir.

CHAIRMAN GRIFFIS: Mr. Pannick left the room again.

Questions?

MS. DOUGHTY: He's right here.

CHAIRMAN GRIFFIS: Any questions? We don't need to get you every time.

Okay. Is that it? Presentation? Witnesses? All done?

MS. DOUGHTY: Thank you.

CHAIRMAN GRIFFIS: Fabulous. Okay. Let's -- it's 6:15.

Well, it was a valiant effort to finish by 6:00 this entire thing. That being said, let's

look at dates.

Mr. Moy, Ms. Bailey, I know we've been -- yes?

MS. DOUGHTY: May i just say that it is my understanding, you may want to check this with Mr. Pannick, but it's my understanding that he has a rather brief, very brief information to convey to you. And with another five minutes or so we may be able to --

CHAIRMAN GRIFFIS: Okay. Mr. Zaidain, is there anything that's brief before the Board of Zoning Adjustment?

BOARD MEMBER ZAIDAIN: No.

CHAIRMAN GRIFFIS: Okay. I'm willing to do that, though, if the Board is so amenable just to take the one last presentation, if we can assume it's going to be about five minutes for the presentation. Is it longer than five minutes? Yes, no doubt. Five minutes and then questions and cross examination.

It would be out of order. So we're going to just have to get the nod -- my Board's not too happy about doing this and to see if it's any disruption.

You know, I tend to reflect in knowing

what the last week and this week has been for the Board. And I think it might be you'd be better served with a fresh afternoon that we're able to hear it and then we can get into pertinent questions and cross examination.

Ms. Bailey, are you on top of the schedule?

MS. BAILEY: Mr. Chairman, March 23 or March 30 are available dates.

CHAIRMAN GRIFFIS: In the afternoon?

MS. BAILEY: Yes, sir.

CHAIRMAN GRIFFIS: Any conflict in the 23rd in the afternoon?

MR. DONOHUE: The 23rd is a problem for my clients, Mr. Chairman.

CHAIRMAN GRIFFIS: Gosh, I wish I had known that after all that argument I just did two minutes ago. It's a problem?

MR. DONOHUE: Yes.

CHAIRMAN GRIFFIS: Okay.

MR. DONOHUE: The owner's out of town.

CHAIRMAN GRIFFIS: How about the 30th?

MR. DONOHUE: The 30th is okay.

CHAIRMAN GRIFFIS: Okay. 30th any difficulties?

MS. DOUGHTY: Can you tell me the day of the week, please?

CHAIRMAN GRIFFIS: Tuesday.

MS. DOUGHTY: Oh, I'm sorry. Yes, it really must be the end of the day.

CHAIRMAN GRIFFIS: Afternoon.

MS. DOUGHTY: 30th.

CHAIRMAN GRIFFIS: 30th.

MR. MACY: That should be okay.

CHAIRMAN GRIFFIS: 30th. That's right.

MS. DOUGHTY: Tuesday, March 30th.

CHAIRMAN GRIFFIS: Okay. Then it's set for a continuance on the 30th of March, the first case in the afternoon at 1:00.

We have only the submissions that I'm aware of is page 34 and 35 of the Egan report, 1988.

I don't recall needing anything else up until the 30th.

MS. DOUGHTY: The noise table, Mr. Chairman. WE also submitted to you the actual table, the noise table.

CHAIRMAN GRIFFIS: You gave it to us today.

MS. DOUGHTY: Yes.

CHAIRMAN GRIFFIS: Right, so I don't need

to submit that before the 30th.

MS. DOUGHTY: Sorry. I beg your pardon. I apologize.

CHAIRMAN GRIFFIS: Okay. Any other questions on procedure?

MR. PANNICK: Mr. Chairman?

CHAIRMAN GRIFFIS: Yes.

MR. PANNICK: Maybe you were under the impression as I was that it was 34 and 35 of this 40 some page document. But that doesn't appear to be the case. It's a different document?

CHAIRMAN GRIFFIS: Yes.

MR. PANNICK: Textbook. I kept looking on page 34 and didn't find anything. That explains it. Thank you.

CHAIRMAN GRIFFIS: Okay. So we'll have that into the record.

Obviously, when we start up again, we're going to have the Zoning Administrator's case and then we're going to go through the owner's case presentation. We'll go to the intervenor's case and then we will go to the ANC's case, and then probably having closings and rebuttals.

Yes, Mr. Pannick?

MR. PANNICK: Can you tell me what sort

of the rules are for whatever -- what am I called?

CHAIRMAN GRIFFIS: Party. Yes.

MR. PANNICK: Can you tell me what the rules are for our presentation?

CHAIRMAN GRIFFIS: What the rules are?

MR. PANNICK: I mean, are we allowed to present? Is there a time limit and --

CHAIRMAN GRIFFIS: I'm going to hold you to your own rules. You have five minutes and then you're going -- okay, I'll be serious.

MR. PANNICK: No, no, no.

CHAIRMAN GRIFFIS: You have a case presentation to make. I mean, as an intervenor what you're going to be doing is telling -- stating to the Board how it is that this is the appeal if it went one way, of which you wouldn't support, would impact you or why. No, I should be more clear.

You should be telling us why it's in your opinion that the Zoning Administrator erred in granting this Certificate of Occupancy on this. That's right. That's right. Okay.

What else? Any other questions procedurally? Everyone's of the understanding of what we're doing when we reconvene? Any questions?

Very well. Any other business before us

this afternoon, Ms. Bailey?

MS. BAILEY: Just, Mr. Chairman, Mr. Donohue had not filed a statement in the record and I was just wondering is he going to file one, and if so can we get it before --

MR. DONOHUE: Sure. Two weeks prior to the next hearing?

MS. BAILEY: Please, sir, we don't have one.

MR. DONOHUE: Yes, ma'am.

CHAIRMAN GRIFFIS: And the government?

MR. RUSHKOFF: I think we'll prepare a legal memo.

CHAIRMAN GRIFFIS: Okay.

MS. DOUGHTY: So, may I just check, do we the appellants then get -- how do we respond to those documents? We met the first deadline for submitting documents. And we've just presented our case --

CHAIRMAN GRIFFIS: Cross examination. They're going to present their case on the 30th.

MS. DOUGHTY: Okay. So via cross --

CHAIRMAN GRIFFIS: And then you have rebuttal time and you have closings.

MS. DOUGHTY: Via cross examination. Okay. But it would have been nice to have their

1 documents in time --

2 CHAIRMAN GRIFFIS: Well, it's an

3 interesting point. It's your burden to prove the

4 appeal. Okay.

5 MS. DOUGHTY: Very well.

6 MR. RUSHKOFF: Excuse me. Are we done

7 with that issue?

8 CHAIRMAN GRIFFIS: I am.

9 MR. RUSHKOFF: Okay.

10 CHAIRMAN GRIFFIS: Without taking

11 everyone's afternoon and obvious time, yes, it's

12 absolutely more favorable especially in the Board's

13 mind, which is what I really only care about, is

14 getting it all in at once so that we can read the

15 entire piece and see how it goes.

16 Clearly in any public hearing and even in

17 the appeals we have evidence that's introduced. So

18 we know we're going to have to be reviewing and

19 looking at new evidence. You know, it's something

20 that I can't change at this point. So just we'll

21 prepare it, they're going to present their case,

22 you'll have it two weeks before. You can set yourself

23 up for cross examination and then, obviously in

24 rebuttal if you need to, and then closing.

25 Okay. Anything else? Procedural

1 questions. Yes?

2 MR. RUSHKOFF: I would just say that if,

3 if the government submits a legal memo two weeks

4 before, we certainly wouldn't have any objection if

5 they wanted to submit something responding to those

6 issues a week before. We wouldn't have a problem with

7 that.

8 CHAIRMAN GRIFFIS: That's fine.

9 Okay. Anything else? Any other

10 business?

11 MS. DOUGHTY: No, sir.

12 CHAIRMAN GRIFFIS: Great. Thank you all

13 very much. Appreciate everybody's patience. We'll

14 see you on the 30th for the first case in the

15 afternoon.

16 This would then adjourn the afternoon

17 session of the 20th of January 2004.

18 (Whereupon, the Public Hearing was

19 adjourned at 6:29 p.m.)