GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

DECEMBER 8, 1999

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
ROBERT SOCKWELL	Board Member
JERRY GILREATH	Board Member

ZONING COMMISSION MEMBERS PRESENT:

KWASI HOLMAN	Commissioner
JOHN F. PARSONS	Commissioner

NATIONAL CAPITOL PLANNING COMMISSION MEMBER PRESENT:

SUSAN MORGAN HINTON	Commissioner

COMMISSION STAFF PRESENT:

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

OTHER AGENCY STAFF PRESENT:

Mary Vogle, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.
Mary Nagelhout, Esq.
Marie Sansone, Esq.

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SARAH SHAW, ESQ.
Wilkes, Artis, Hedrick & Lane, Chartered
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1666 K Street, N.W.
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(202) 457-7814

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(9:40 a.m.)

CHAIRPERSON REID: Good morning. The hearing will please come to order.

This is the December 8th, 1999, public hearing of the foreign missions, the Board of Zoning Adjustment, District of Columbia.

I am Sheila Cross Reid, Chairperson. Joining me today are Robert N. Sockwell and Susan Hinton, representing the National Capitol Planning Commission, and representing the National Park Service is John G. Parsons.

Copies of today's hearing agenda are available to you. They are located to my left near the door.

Please be aware that this proceeding is recorded electronically. So we must ask you from making disruptive noises or actions in the hearing room.

If you desire to give any information to the Board, do not speak from the audience, but rather, come forward to a microphone, state your name and home address, then proceed to make your wishes known.

All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us. After we finish this statement, please proceed to pick them up, fill them out so that when your case is called you will have them ready to be

handed to the reporter.

When coming forward to speak to the Board, please give both cards to the reporter, who is sitting to my left.

When seated at the witness table, please give your name and home address. I repeat: please give your home address rather than your business address. After this you may proceed to give your testimony or statement.

The agenda for a foreign missions case will proceed as follows:

One, statement of witnesses of the Applicant;

Two, government reports, Secretary of State, and the Office of Planning on behalf of the Mayor;

Reports or recommendations by other public agencies;

Report of the ANC within which the property is located;

Persons in support of the application;

Persons in opposition to the application.

The record will be closed at the conclusion of each case, except for any specifically requested by -- offered to and accepted by the Board. The Board and staff will specify at the end of the hearing exactly what is expected and the date when the persons must submit the evidence to the Office of Zoning.

After the record is closed, no other information will be accepted to the Board.

The Board has instructed staff to return any material after the record is closed to the persons who submitted it.

The decision of the Board in this legislative proceeding must be based exclusively on the public record. To avoid any appearance to the contrary, the Board requests that persons, counsel and witnesses not engage the members of the Board in conversations during any recess or at the conclusion of this hearing session. While the intent of the conversation may be entirely unrelated to any other cases that are before the Board, other persons may not recognize that the discussion is not about a case.

The staff will be available to discuss procedural questions.

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

The Board will now consider any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today, such as requests for postponement, continuance, or withdrawal, or whether proper and adequate notice of the hearing has been given.

If you are not prepared to go forward with the case today or if you believe that the Board should not proceed, now is the time to raise such a matter.

Are there any preliminary matters? Please come

forward.

MR. KAPLAN: Good morning. My name is Louis Kaplan. I reside at 2120 Kalarama Road, which is adjacent to the subject property.

I've submitted or our attorney has submitted a petition to postpone this hearing on the grounds that we never received notice of the hearing.

CHAIRPERSON REID: Is your attorney here, sir?

MR. KAPLAN: Excuse me?

CHAIRPERSON REID: Is Ms. Furster here? I don't see her.

MR. KAPLAN: No, she's not here.

CHAIRPERSON REID: Okay.

MR. KAPLAN: She's not here. I'm speaking on behalf of the motion.

CHAIRPERSON REID: All right.

MR. KAPLAN: We submitted an affidavit from our managing agent from the Smithy Company to the effect that they had not received notice.

I have been advised by a number of the residents in the area that none of them received notice, the ones I spoke to, and some are in the audience now and can so state.

We did find out about the hearing about ten days ago through the ANC. We have not had adequate time to prepare our position, and as we're entitled to have 40 days, and we

respectfully request that this hearing be postponed for those reasons.

Thank you.

CHAIRPERSON REID: Okay.

MS. PRUITT: Madame Chair, obviously you should let the Applicant respond.

CHAIRPERSON REID: All right.

MR. COLLINS: Good morning, Madame Chairperson, members of the Board. My name is Christopher Collins with Wilkes, Artis, Hedrick & Lane, representing the Applicant in this case.

We have filed in this application a list of owners of property within 200 feet as those records are reflected in the files of the city government at the Office of Tax and Revenue. The notice to 2120 Kalorama Road, N.W., which is a cooperative, went to 2120 Kalorama Road, Incorporated, in care of William Smith & Company, 1220 L Street, N.W., Suite 300. That is the address as reflected on the city's records. This is our normal procedure in these matters.

We have filed an affidavit of posting in this case. The matter was included in the D.C. Register, both with the notice of filing and the notice of public hearing.

We have an affidavit indicating how our list of owners within 200 feet has been prepared, and that address, as I just stated, is shown on that list.

CHAIRPERSON REID: Okay. Mr. Collins, then you're

disputing the assertion that there was no notice given to the cooperative.

MR. COLLINS: No, quite to the contrary, there was notice given to the cooperative.

CHAIRPERSON REID: That's what I'm saying, the assertion that there was not. They asserted that they did not receive any notice.

MR. COLLINS: But, in fact, notice was given.

CHAIRPERSON REID: That's what I'm saying.

MR. COLLINS: Yes.

CHAIRPERSON REID: So you're disputing that contention that they did not receive any notice.

MR. COLLINS: Notice was mailed by this office --

CHAIRPERSON REID: That's what I'm asking.

MR. COLLINS: -- pursuant to a list that was supplied by us.

CHAIRPERSON REID: Okay.

MR. COLLINS: And the list included that address which I just gave to you, which is the address registered for that cooperative.

CHAIRPERSON REID: According to the letter from Ms. Furster, their attorney, it indicates that that it's incumbent upon the resident manager to notify the residents of the cooperative once a notice is received. So in this instance we have a situation where you're saying that it was sent, and there's

a list of the addresses of the persons with interest, which they were included, and they're saying that it was not received.

MR. COLLINS: Well, if it's -- if their own document states that it was their responsibility of their resident manager to disburse the notice and that was not done, that cannot be the fault of the Applicant.

CHAIRPERSON REID: They didn't say -- what they -- what they are alleging here is that it was not distributed because they did not receive it. So --

MS. PRUITT: Madame Chair, I would just like to note for the record that we've not received any return mails from our notices on this particular case.

MR. COLLINS: And this is, if I understand correctly, this is the property next door. Notice was posted on the property. There was an ANC meeting on November 30th. It was attended by about 20 to 25 people, including the person who is raising the issue.

So as far as we understand adequate notice was given. The Applicant did everything the Applicant was supposed to do. The Zoning Board did everything the Zoning Board was supposed to do.

CHAIRPERSON REID: Okay. Thank you very much, Mr. Collins.

MR. COLLINS: Thank you.

CHAIRPERSON REID: All right. Come forward. I'm

sorry. Right after him I'll have you come up, please.

MR. BAKER: Madame Chair, my name is Philip Baker.

MS. PRUITT: Excuse me, sir. Can you sit down and turn the mic on so that we can get you on tape, please?

thank you.

MR. BAKER: All right. It's on.

My name is Philip Baker, and I reside at 2126 Connecticut Avenue, N.W., which is also immediately adjacent to the proposed 2124.

I wonder if for the record Mr. Collins could indicate to whom the notice was mailed at the Dresden Condominium Association, for we share the same confusion. No one in the building seemed to know anything about the hearing until we hear of it through the ANC meeting.

It may well be that notice was mailed, but I wonder also if those notices are mailed certified mail, return receipt so that there is some proof that they were received. There are volumes of mail. So --

CHAIRPERSON REID: No, they're not. They're not. They are not mailed return receipt. However, typically if there is mail returned, it was returned to this office, and there's an indication from the BZA secretary that there was no return of that particular mail that had been mailed to that particular address.

MR. BAKER: Well, it just would occur to me that since this is a matter of legal statutory affair, that there ought

to be some record of that. Now, I'm certain that his record is going to show that probably somebody received the mail, but again, we didn't know of it. So I just wanted that on the record as well.

Thank you.

CHAIRPERSON REID: Thank you.

Mr. Collins, did you want to comment further?

MR. COLLINS: Yes, I do. Madame Chairperson, the board that is to my right mounted is a board showing properties in the vicinity, and it's color coded, and I'll get to that in a minute, but -- the color coding -- but you'll see two circles that are centered around the property that is in orange, which is the subject site. 2126 Kalorama Road or -- I'm sorry -- 2126 Connecticut Avenue, which this gentleman just spoke of, is outside the inner circle. The inner circle represents properties within 200 feet.

What has been our practice recently is to create a second circle which is 220 feet and to mail notice to all owners of property within 220 feet, and that includes the Dresden Condominium, which is the one that the gentleman just spoke of.

I just counted up on our list of property owners. There were 62 notices that went to the Dresden, to the individual owners of property of record in the District of Columbia Office of tax and Revenue. I find it difficult to believe that no one got the notice.

CHAIRPERSON REID: Okay. Thank you.

MR. MLOTEK: Thank you, Madame Chair. I'll be very brief.

For the record, I am Ronald Mlotek, Chief Legal Counsel of the Office of Foreign Missions of the U.S. Department of State, and just briefly to respond on the issue of postponement here, merely to remind the Board that the Board operates in this case under a statutory framework, a federal statute, the Foreign Missions Act, and that statute has a time limit built into it of 60 days.

Now, I don't -- well, I'm sorry. Six months, but from filing of application till the final decision.

Thank you, Ms. Pruitt, for correcting my misstatement.

Six months, but I don't know how that calendar would play into the issue of a postponement, but I just bring that to the Board's attention because it would also impact on the issue of writing the order, you know, the decisional meeting and then the drafting of an order.

I also believe that in this case that Mr. Collins can raise it if he wants to, but in this case I believe that there are contractual issues, as well, between the Chancery and the seller of the property, which would militate against postponing today's hearing.

That's all I have. Thank you.

MR. COLLINS: Madame Chair, I just want to make sure that that's clear, absolutely clear that we vigorously oppose any postponement. All proper notice has been given in accordance with the regulations. The property has been posted. Notice have been mailed by this office beyond the 200 foot radius. The notice appeared in the D.C. Register.

We met with the ANC. We met previously with representatives of three neighborhood organizations, which will become clear during the course of our presentation.

We have notified everyone that we could possibly notify in this case.

Thank you.

MS. PRUITT: Madame Chair, staff would just like to add a few -- a little bit of information.

This is not a contested case. This is a rulemaking case, which is very different for the Board. There will be no cross examination by anybody, and no party status is granted to anyone.

CHAIRPERSON REID: Right.

MS. PRUITT: So information that is taken today is strictly testimony, and I just wanted you to know that it's a different procedure or proceeding than our normal contested cases.

So since there are no party statuses, so nobody can be aggrieved or affected more so than anyone else in this particular type of process.

CHAIRPERSON REID: Thank you, Ms. Pruitt.

I'm reasonably aware of that, but for purposes of information to those people in the hearing room, it is important that they are aware of that.

Now, in regard to the request for a postponement based on the lack of notice, as many of you are not aware, the BZA does not rely on simply one type of notice. There are three types of notice that go out each time that there is a case, and the purpose of that is to insure that if, in fact, somehow someone is missed in one, on one of the methods, that at least they have two other methods that would basically support or to shore up the fact that there is proper notice being given.

In this instance it was published in the D.C. Register, as well as the property. We have pictures in our office file to indicate that the property was posted properly, serving also to give notice to the public about this hearing.

Now, the issue as to whether or not the persons at the cooperative received or did not receive notice, I think, does not bear too heavily because there were two other methods in which they were able to be notified, as well as the fact that some of them, I understand, some of them did attend the ANC meeting in which this particular application was discussed.

So in our opinion, in my opinion anyway, I feel that adequate notice has been given, and I'll let the other Board members speak to that issue.

MR. PARSONS: Madame Chairman, I would agree, but I would hope we could hold the record open to give these individuals the opportunity to comment on what they hear here today if they're not familiar with the case rather than have them scramble to testify on something they've recently learned about.

CHAIRPERSON REID: Ms. Pruitt, in regard to them being able to -- being given time to submit additional information predicated upon their having met, how does that affect this case?

MS. PRUITT: Well, I mean, it depends. This case could potentially first be available for decision at your January meeting. So you have between now and probably January -- let me pull up a calendar.

CHAIRPERSON REID: I think it's the 5th.

MS. PRUITT: The hearing is on the 5th, but you would also need to leave time for the Applicant to respond to anything that was submitted.

CHAIRPERSON REID: Could that be done?

MS. PRUITT: Well, we need to look at Mr. Collins, too, to find out if they would be able to turn around information. It's on the 15th. If the Applicant or, rather, the people who are requesting the postponement could get something in by the 22nd, which is a week -- I'm sorry. Today is the 8th. If they can get something in by the 18th -- I mean the 15th, which is next Wednesday, or even the 17th, then if we can get some response from the Applicant, they need seven days to respond from there, which

puts it at Monday, the 27th, and that's still in time for your January meeting.

CHAIRPERSON REID: I have no problem with that.

MR. COLLINS: Can I just make a point? There were two people who approached who indicated lack of notice. One was -- the second gentleman was from the 2126 Connecticut Avenue, the Dresden Condominium.

Well, the Dresden Condominium Board of Directors filed a letter in opposition to this case. So I don't see how no one in the building could have gotten notice when, in fact, the board representing the owners filed a letter stating their position in this case.

CHAIRPERSON REID: Thank you, Mr. Collins.

Ms. Sockwell.

Just one second, please. The Board members now are speaking and then you can speak again if you like.

MS. HINTON: I concur that I think adequate notice has been given, but I would agree that if a short time could be left open for the record for those who would like to submit their statements, but I think that a week or two would be adequate for that.

CHAIRPERSON REID: Thank you.

MR. BAKER: I'm sorry to occupy your time again, but since Mr. Collins has more or less spoken, we did receive notice. Let me make clear. I think I said in my remarks to the

Board that our notice came from the ANC. So I did say that we did know about this.

CHAIRPERSON REID: Okay.

MR. BAKER: I didn't say it didn't come from no one. We got it from the ANC. We did not get it, as far as I know -- that's what I said. There's a question of course -- but I did not receive such notice -- I know that. I live in the building -- from the agency representing the Applicant. So I think the record should be clear on that.

Yes, we did hear from the ANC, and we were active in that from the moment we heard about it, but we did not hear from the representative of the Embassy.

Thank you.

CHAIRPERSON REID: Thank you.

MS. HINTON: Madame Chair, may I ask a question?

Sir, when did you receive notice from the ANC?

MR. BAKER: Actually my knowledge of it came from a meeting I had with our two ANC commissioners I would think on or about the 15th of November, prior to Thanksgiving.

MS. HINTON: Thank you.

CHAIRPERSON REID: Okay. I think that an equitable solution to this is what has been proposed here today, and that is, number one, that we move forward with this particular application today, and that we afford the persons who are alleging that they did not receive notice an additional amount of time to

be able to submit to this Board information or make a submission, any type of report that they would like, letters, what have you, prior to the deliberation, which would be on January the 5th.

Thank you.

All right. Now, are there any other preliminary matters that staff have this morning?

MS. PRUITT: No, Madame Chair.

CHAIRPERSON REID: Okay. Can we proceed now with this case?

MS. PRUITT: Good morning. The first case on the docket is 16519, application of Adel Partnership on behalf of the Embassy of the Republic of Benin, pursuant to Section 206, Subsection (b) of the Foreign Missions Act and Subsection 1001.1 of the zoning regulations to permit the location of a chancery in a D/R-1-B District at premises 2124 Kalorama Road, N.W.,. Square 2527, Lot 835.

MR. COLLINS: Good morning, Madame Chairperson, members of the Board. My name is Christopher Collins with the law firm of Wilkes, Artis, Hedrick & Lane.

Seated to my left is Sarah Shaw from our office, and seated to my right is Ambassador Lucien Tonoukouin. Ambassador Tonoukouin is the Ambassador of the Republic of Benin to the United States of America.

This is an application for approval of a chancery for the Republic of Benin, 2124 Kalorama Road, N.W., in the

diplomatic overlay zone. This square received the diplomatic overlay zone designation by the Zoning Commission in Order No. 509 in 1987.

That designation at that time also extended to the square to the west, which is Square 2522.

The property is surrounded on three sides by chanceries, and there are other chanceries in the area as well. You can see from the Exhibit H -- I'm sorry -- Exhibits I and J of our statement of the Application at pages 31 and 32 of the statement the location -- Exhibit I is the location of the proposed chancery, and Exhibit J is a list of other chanceries in the area.

If I just may, I'll go to the map. Will this pick up?

You can see I'm gesturing to a map on the easel which is a representation of Exhibit I in the statement of the Applicant. The orange site is the subject site. The yellow, pure yellow, are other chanceries in the area, and yellow with a hash mark are foreign government properties that are purely residential.

We have to the south of the subject site is the Algerian Embassy annex. To the immediate west of the site is the Ethiopian Chancery. Across the street, directly across the street is the Embassy of China, the Chinese Chancery. To the north of that are residential units for the Chinese Chancery.

Over behind the Chinese to the west is the Embassy of Portugal. Again, continuing on Kalorama Road in the same square, one lot removed from the subject site to the east is the Algerian Chancery. The Chancery Annex is diagonally behind it, and then over to the east along Wyoming Avenue is the site where the Embassy of Macedonia obtained approval from this Board coming up on three years ago for a chancery, and my understanding is that has not gone forward.

This Square 2527 includes the property on the other side of Thornton Place. This square is bisected by Thornton. On the west end of Square 2527 is the Syrian Chancery, and then there are several residential parcels owned by the foreign governments in that same square.

Continuing on 2522 are three chancery properties, one of which is Afghanistan, which is under the control of the United States government at this time. There are several along the south side of Wyoming Avenue, a Polish Chancery Annex at Wyoming and 23rd; then Sri Lanka and Senegal and Barbados also along the south side of Wyoming.

But the subject property we're talking about is in Square 2527. Square 2527 received the diplomatic overlay designation in 1987 as did Square 2522.

This application is governed by the Foreign Missions Act, specifically Section 206 of the Foreign Missions Act. There are several members on this Board this morning who

have not previously set at a foreign missions case,a nd I have for your convenience copies of the Foreign Missions Act if you'd like.

I'd like to call your attention to the Foreign Missions Act, which is referred to. You'll hear it referred to as Section 206. It's been codified in Title 22 of the U.S. Code as Section 4306.

The particular provision we're dealing with today is Section 4306(b)(2)(B), which is indicated in the first page there, which states that a chancery shall also be permitted to locate a certain matter of right areas, 206 -- Section 4306(b)(2)(A) allows the chancery to be permitted to locate in any area which is zoned medium high or high density residential. That's R-5-C -- I'm sorry -- R-5-D and R-5-E.

And then (b)(2)(B) states, "In any other area determined on the basis of existing uses, which includes office or institutional uses, including, but not limited to, any area zoned mixed use diplomatic," which is the D overlay, "or special purpose," which is SP, "subject to disapproval by this Board of Zoning Adjustment in accordance with this section."

There are six criteria which this Board must look at in making that determination. Those are set forth in the next page, 4306(d). The six criteria are listed in Section D.

There are three federal criteria and three local criteria. The three federal criteria have been addressed by the U.S. State Department in a letter to this Board. I will not

repeat them. Mr. Mlotek is here and will discuss that issue.

The three local criteria are historical preservation, parking, and transportation, and the municipal interest. Let me please just briefly address those.

With regard to historic preservation, the only changes to this building that are proposed in this application are the addition of a flagpole and a plaque, which is typical of every chancery that appears before you.

There was an application to the Historic Preservation Review Board for a plaque adjacent to the front door and a flagpole which was to be free standing, mounted on the ground in the front yard.

We met with the Sheridan-Kalorama Historical Association, and we, at their suggestion and request, relocated the flagpole so that it would be over the front door, mounted on the building at a 45 degree angle, a much smaller flagpole and a much more discreet location.

The Ambassador agreed to that. We agreed with the Sheridan-Kalorama Historical Association, and we thanked them for their input, and we understand there's a letter from the Historical Association in the record in this case.

Secondly, with regard to parking and transportation, that will be addressed in detail by Mr. Morris, who is our expert witness in transportation.

The driveway to this property can accommodate four

cars. It is approximately 77 feet long from its front property line to the rear end of the driveway.

There have been several letters in this file that you've seen, including the OP report and the ANC report, which indicated that the 77 foot dimension goes out to the curb, which is simply not correct, and if you look at Exhibit H to our statement of the Applicant on page 30, you'll see that the plat of the property indicates approximate dimension of 77.4 feet to the front lot line.

If you look on the map on the easel in front of you, if you squint, you will see that there is a public -- there is ten feet of public space between the front lot line and the curb where the sidewalk is located, where the tree boxes are located.

We are not 77 feet to the curb. We are 77 feet to the front lot line.

There are four cars proposed to be brought to this site on a daily basis, a maximum of four cars, and we agreed to that. There is the Ambassador's car and the Embassy's staff car, both of which have a driver assigned to them. Plus there would be two other diplomatic cars to be parked in the driveway.

Only two of those cars will require access during the day, the Ambassador's car and the staff car. There will not be a tremendous amount of shuffling cars back and forth for that purpose.

The two cars of the Embassy staff members who drive themselves will be parked in the drive and will remain during the day. Any others who drive to work will park at the Embassy's Cathedral Avenue site, which is being retained as a Chancery Annex for the Visa and Consular Sections, and will arrive to the site by staff car. There's a very few number of people. There are seven people total at this site. There will be maybe two, possibly three people who will need to obtain a ride to the site, but it's very minimal, and we'll discuss that in more detail.

Any others -- that's a maximum of two or three -- others who currently take public transportation will continue to do so.

There are very few visitors to the site now, and that will continue as well. Now on average there are three to four visitors per day for consular and visa purposes. We expect that will remain, and that will remain at the Cathedral Avenue site.

Other than visa or consular visits, there are on average two visits per week for other purposes. We have documented that. We have kept records of our visitors so that we have a good idea as to exactly what the breakdown is. It averages two per week, and that's what we can expect at this site.

The Consular and Visa Office, as I said, will remain at the Cathedral Avenue Chancery Annex after completion of renovation of that property.

Third, the municipal interest. The diplomatic overlay was established for this square and the square to the west, as I mentioned, in 1987 by the Zoning Commission in Order No. 509 based upon a recommendation of the Office of Planning. The area has a mix of uses. This square has a residential, single family residential apartments, chanceries, school, and hotel uses as well.

We met on November 12th with the Office of Planning, explained our proposal in detail, answered their questions.

We met on November 16th with representatives of three local neighborhood groups, the Sheridan-Kalorama Neighborhood Council, the Sheridan-Kalorama Historical Association, and ANC -- the two ANC-1D Commissioners to discuss our application and answer their questions.

This was a meeting that was called by the Applicant, and one of the members of the Sheridan-Kalorama Neighborhood Council graciously offered his home as the location for the meeting, Mr. Sukanik (phonetic), and I want to publicly thank him for that. The meeting was very cordial.

At the conclusion of that meeting we were asked by the neighborhood representatives to draft a list of agreements that were to be modeled on neighborhood agreements used in other chancery cases, and we were specifically referred to the Embassy of Algeria case, which is directly to the rear of this side, which

was before this Board in the early 1980s, one of the first cases under the new Foreign Missions Act at the time, and also the Embassy of Belize which is on Massachusetts Avenue near the Mosque.

Now, we referred to those two cases as good examples where we could find agreements with the neighborhood groups, and we did so and drafted up that agreement, and we were asked to, given coming up on the Thanksgiving holiday, we were asked to coordinate with Mr. Berger, who was one of the representatives there, Mr. Howard Berger, who is with the Sheridan-Kalorama Historical Association, the president of that group, to confer with him and to transmit the document to him.

And we did that, and I'd like to submit to you copies of that agreement. We were asked by Mr. Berger to submit that to the record, which we agreed to do and are doing so now.

You will see that in that agreement it reflects a number of things. The purpose of the agreement was to get the commitments of the Embassy to retain as much as possible the residential character and appearance of the property.

The Embassy has agreed to this, has submitted this. Now, including exterior landscaping and maintenance, interior lighting visible from Kalorama Road, exterior lighting, use of draperies, and/or shades in the windows, maintenance of the driveway and the walkway, and minimum use of signs.

We even agreed that no new fluorescent light

fixtures would be installed in the building because the appearance of fluorescent lights tend to suggest office as opposed to residential.

We agreed about deliveries and pick-ups of equipment and supplies during working hours in a quiet and orderly manner. There is an agreement about trash, an agreement on the maximum limit of the number of cars. The agreement states that the Embassy has not requested the diplomatic parking privileges on Kalorama Road.

The Ambassador has gone further to state that the Embassy will not request diplomatic parking in respect of the neighbors and their concerns about the issue of availability of off-street parking, and there are several letters in the record on that.

The Embassy of Benin does not intend to hold social functions at the premises on a regular basis. In fact, as the Ambassador will testify, they have never held diplomatic social functions at their chancery where they've been located since 1963. All diplomatic social functions are held either in a hotel or in the Ambassador's home.

The Embassy intends to have a caretaker reside at the Chancery who will look after the premises. You'll hear more about that.

Security systems will be maintained and installed on the premises. We are requested to retain the existing brick

fencing along the property which you'll see in the photos when I go through them with you.

We were asked specifically not to install any new security fencing along the front perimeter of the property, and we will not do so. It's not necessary.

And also we were asked specifically not to install any exterior security cameras visible from outside the property.

Finally, we agreed about not installing any intrusive telecommunications equipment or antennas without obtaining the necessary approvals.

Mr. Berger responded back by E-mail indicating his belief that that agreement fairly reflected the concerns that were raised at that meeting.

We then met with the ANC on November 30th. We discussed their proposal and reiterated our commitments to them, and you will hear more about the ANC's position this morning from the ANC directly.

I would like to review the statement with you and the exhibits that we have attached. You've all had copies of the statement, I trust. I understand that Ms. Hinton is here representing the National Capitol Planning Commission, and let me just ask: do you need a copy of this statement or do you have one?

MS. HINTON: Which statement is that?

MR. COLLINS: The statement of the Applicant that

we filed in this case.

MS. HINTON: I have that.

MR. COLLINS: Thank you.

The exhibits begin at page 9. Pages 9 and 10 show the subject site. Page 9, which is Exhibit A-1 shows the property from the Sanborn map outlined in red. Page 10 is a tax map of the property showing the same location of the property.

You can see it's immediately adjacent or immediately west of Connecticut Avenue, at the intersection of Connecticut Avenue and Kalorama Road.

Exhibit B on page 11 is the zoning map. You can see the subject site outlined in red. It is immediately west and abuts the R-5-D zone. It may appear a bit confusing. There is a D/R-1-B designation in there, but if you see the arrow there, it points to a 150 foot wide piece of property along Wyoming Avenue which is where the school and the Macedonian Embassy are.

The remainder of the property you can see is also zoned -- the square and the square to the west are both zoned D/R-1-B.

Exhibit C, beginning on page 12, is a series of photos of the property. The top photo on page 12 is standing directly in front of the driveway looking south down the driveway. The building to the right behind the trees is the embassy building.

You can see at the rear of the driveway 77 feet

down the driveway a door in a brick wall. That doorway leads to the gardens in the rear.

The middle photo on page 12 is a more close up photo of that same shot looking down the driveway with the building to the right.

The bottom photo was taken standing directly in front of the Ethiopian Chancery, which is located directly to the west. The camera is facing generally in a southeast direction looking at the site. You can see the security fencing of the Ethiopian Chancery in front. We will not have that same type of fencing in our property.

On page 13, the top photo shows on the left the front door of the building up several steps, and to the right is another door in a brick fence along the property that leads to the garden in the rear. That fence, that brick fence will be retained, will not be replaced.

The bottom photo on page 13 shows the front of the building looking kind of through the threes. You can see it's a three story brick building at that point. Some portions of the building are two stories. It is a two or three story building, depending on which section of the building.

On page 14 at the top is a close-up of the front door, which is tucked kind of in a niche along the side of the building. The flagpole will be located above the front door at a 45 degree angle, and the plaque will be located to the right of

the front door.

And the picture on the bottom of page 14, again, standing farther away from the building, standing again in front of the Ethiopian Chancery, you can see their fence, and you can see behind the building a taller building to the rear, which is 2120 Kalorama Road.

Pages 15 and 16 are the records of the Historical Preservation Review Board where conceptual approval is granted for the flagpole and the plaque, and you have also a transmittal from the Historic Preservation Division reflecting the modification to include the flagpole on the building.

Pages 17 and 18 are portions of Zoning Commission Order No. 509, which indicate if you look at page 18 Item No. 4, which is checked in red, Square 2527 was specifically rezoned, one of five squares rezoned in that case, to include the D overlay.

Page 19 begins the federal elements of the comprehensive plan, those that were adopted by the National Capitol Planning Commission. You can see page 21 the goal of the federal government to facilitate the efficient exercise and satisfactory performance of its diplomatic and international functions in harmony with the planned development of the Capitol.

Page 22, the criteria for chancery facilities. Item No. 3 on page 22 is checked there. You can see among locations which meet the criteria the foreign missions shall give preference to locations B which are either on special streets or

places in historic districts or historic landmarks. This site is in an historic district, Sheridan-Kalorama Historic District.

Page 23 is the implementation proposals for foreign missions in the NCPC's comprehensive plan. Item No. 3 in the bottom, the criteria and policies for foreign mission facilities in the District of Columbia will be implemented through the zoning regulations of the District of Columbia and the zoning maps forming a part thereof.

I will have more information on how that all transpired later.

Page 24 begins the report of Mr. Morris, who is our expert witness, traffic and transportation.

Page 30 is the plat showing the property. North is generally at the top of the page. Kalorama Road. You can see the house has a fairly small footprint. It is about 4,200 square feet in size. The driveway is to the right on that plan and goes back as far as the brick fence.

Exhibit I, page 31, is a small version of the plat that is on the easel to my right. J is a listing of other chanceries in proximity to the site, and Exhibit K is the outline of testimony of the Ambassador.

Unless there's any questions about those, I'd like at this time to go to the testimony of Ambassador Tonoukouin. I have copies of the Ambassador's testimony which I'd like to hand in at this time.

AMBASSADOR TONOUKOUIN: Good morning, honorable members of the Board My name is Lucien Tonoukouin, and I'm Ambassador of the Republic of Benin to the United States of America.

It is my distinguished pleasure to speak to you this morning regarding out application to relocate our chancery from our present location at 2737 Cathedral Avenue, N.W. to 2124 Kalorama Road, N.W.

I know that you have received our statement. So I will not repeat all of that information for you. However, I would like to address certain of the issues that have been raised about our application and to assure you that we have every intention of being a good neighbor in our new building.

We have been at our present location since we established diplomatic relations with the United States in 1963. We have had very good relations with our neighbors, and we will continue being good neighbors at our new location.

We are pleased to have obtained the support of the State Department, of the Department of State and the D.C. Historic Preservation Review Board for our application.

And we will be pleased, and very pleased, to receive your support as well.

You have already received a letter from the Department of State indicating that our application meets the three federal criteria, namely, the international obligation of

the United States, the adequacy of federal protection, and the federal interests of the United States.

I understand that a representative of the Department of State is here today and will address those issues.

We are a small chancery, and we will not become a burden on the neighborhood, never. We will have only seven people at the new chancery, and one of those will be a caretaker, who will live there inside the building.

The other seven staff members will be located at our existing building, which we will renovate and retain for our visa and consular sections.

Our hours of operation will be 9:00 a.m. to 5:00 p.m., Monday through Friday. Most of the visitors to our chancery are for visa and consular proposals, which will continue at our existing chancery on Cathedral Avenue.

We have kept a careful record of all visitors, and those records show that we have two or three visits per week that are not related to our visa and consular sections. Therefore, the number of visitors to our new chancery will be extremely small.

We have three to four visitors per day for visa and consular matters, and this will occur at the Cathedral Avenue property. We conduct most of our business by mail, telephone, fax, and messenger.

Most of our visitors use taxis, and we expect that this will continue.

With regard to historic preservation, we have every intention of keeping the property in its present condition, and we have no plan for any modification to the outside of the building or the property.

Our requests to the Historic Preservation Review Board for a small flagpole and a small sign next to the front door were approved. We worked with the Sheridan-Kalorama Historical Association on the plan which is before you today.

We have no intention at all of constructing a security fence around the front of the building or installing intrusive camera or antennas on the building.

I understand the need to obtain historic preservation approval before we begin any repair work to the outside of our property, and we will do that.

I understand also that several letters have been submitted which refer to the condition of our current chancery building as a reason for denying our application for our new building. When we made our decision to purchase the new chancery, we postponed the maintenance of our chancery until our plan became final. I now see that this decision has been misinterpreted, and I am very, very sorry about.

It is clear that our existing chancery building needs repair. When we move to our new location, we will undertake a total renovation of that building, which I understand will take between two and three months to complete.

During that time, all of our chancery functions will be located at Kalorama Road. When the renovation is complete, seven of our staff will return to Cathedral Avenue for our Visa and Consular Sections.

A caretaker will maintain both the inside and the outside of the property on a daily basis. We will be receiving proposals from contractors for repair and renovation work in the very near future. My country has already committed the necessary money for this work.

When we move to the new location, we will hire a caretaker to maintain both the inside and outside of the property on a daily basis, too. We will also hire a property maintenance company which will make sure that our properties get in good order, including such things as the painting, roof repairs, heating system, and other general maintenance on our property. Our government has also committed the necessary money for this service.

If you visit my home, you will see that we are committed to maintaining our property. We have a caretaker who maintains that property, and we will devote the same attention to our chancery property.

With regard to parking and transportation, our plan is described for you in our statement. We will have seven staff, including the new caretaker at the new chancery, and seven other staff, including a caretaker, at the Chancery Annex.

We will have no more than four cars at the new chancery, and all be parked in our driveway. Only two of those cars will be needed at any time during the day, and we can easily obtain access to them. Our staff car and my car, both of which have drivers assigned to them, can be easily moved when necessary.

The staff car is currently used for visits by embassy officials to other government and official meetings and functions, as well as for deliveries and other short trips.

It will also be used to transport the two or three embassy staff members who park at our Cathedral Avenue annex and work in the new building.

We see no problem at all with this arrangement, and I commit to you that we will maintain it. We have not requested a diplomatic parking privilege on Kalorama Road, N.W., and we will not do so because we believe that this is not necessary for our needs.

We have never had diplomatic functions at our chancery, and we do not intend to hold such functions at the new building. Currently our national celebration and other functions are held either at a local hotel or at my home. We will continue this practice.

Embassy staff who currently travel to and from work by public transportation will continue to do so at our new location.

We have six diplomats and seven non-diplomats,

diplomatic staff. All diplomatic posts and staff positions are now filled in my Embassy. We need no additional staff, except for the new caretaker at our new location to take care about the building.

The Office of Planning report states that our staff does not use public transportation. This is not correct. We have only five cars with diplomatic license plates at our chancery, and only two staff with non-diplomatic license plates. Two of the seven non-diplomatic staff are our drivers. So we will have five people who do not come by car. One of those will be the new caretaker who will reside at the new chancery, and he will not have a car.

Our new building is surrounded by other embassy buildings on both sides of Kalorama Road and the rear on Wyoming Avenue. We believe that this is an appropriate location for our chancery. There are many other chanceries and diplomatic missions in the surrounding neighborhood.

We have had several meetings to discuss our plans and to assure all concerned that we intend to be respectful of the neighborhood and our new neighbors.

We met with Mr. Altman and Mr. Colby of the Office of Planning on November 12th and had a very good meeting with them. We reviewed our proposal with them and answered all of the questions. We left that meeting with the understanding that we had obtained their support.

On November 16, we met with representatives of the three neighborhood organizations and described our proposals in details. As I mentioned earlier, we were asked to relocate our flagpole and we have done so. We were also asked to provide a list of agreement in order to protect the residential character of our building and to send that list to the designated representative, Mr. Berger. We have done so.

We received a response back from Mr. Berger that these agreements address the concerns raised by the neighbors at the meeting. We were asked to include that list of agreements in this application, and we have done so.

We met with the Advisory Neighborhood Commission on November 30th. We learned at that meeting that votes were already taken in the neighborhood to oppose our application, even before the neighbors had an opportunity to hear our proposal or to consider our agreements.

We hope that when they read our application and listen to our proposal, they will see that we will not be a burden on the neighborhood, and that we will be good neighbors.

In conclusion, honorable members of the Board, I can assure you that we will be very respectful of the neighborhood, and we will honor our promises and commitments made to you today.

My country is a peaceful country and a strong democracy. We have been cited by your Congress and your

administration as a success story and a showcase to the world.

Once again, on behalf of my government and my country, I would like to assure you that the Benin Chancery at 2124 Kalorama Road will be a place of peace and friendship, and that we will be good neighbors.

Thank you so much for the opportunity to appear before you this morning. God bless you all.

CHAIRPERSON REID: Thank you, Mr. Ambassador.

Do the Board members have questions at this time or do you want to hold it until the end?

Okay. We'll hold. We'll hold the questions until after everyone has spoken.

MR. COLLINS: Thank you.

The next witness is Mr. Morris. Mr. Morris has appeared before the Board of Zoning Adjustment and the Zoning Commission many times as an expert witness in traffic and transportation, and I would like to have him so qualified.

CHAIRPERSON REID: I'm sorry.

MR. COLLINS: Mr. Morris is our next witness, and he has appeared before this Board and the Zoning Commission many times.

CHAIRPERSON REID: Oh, of course. I'm sorry. I'm -- I just -- we're very familiar with Mr. Morris, and we routinely have him appear before us. So certainly it's quite all right unless any of the Board members have any objection.

Then Mr. Morris is accepted as an expert witness.

MR. COLLINS: Thank you.

MR. MORRIS: Thank you, Madame Chairperson.

I am Robert L. Morris, traffic engineer and transportation planner.

I have prepared a report which is in the material before you. It's Exhibit G, beginning on page 24, and I'll just touch on the highlights of that report and be happy to respond to any questions you may have with regard to it.

You're heard the description of the property, where it's located. I have indicated what the existing traffic conditions are with respect to the surrounding area, and the availability of public transportation. I've made a survey of the use of curb space in the area, and I've shown by diagram on page 4 of my report, page 27 of the application, what the existing conditions are typically mid-day in the area.

Then I have indicated how the chancery would operate in terms of personnel, and the Ambassador has explained that in much better detail than I can.

As noted the Cathedral Avenue Property would be maintained. There is space on site for parking 12 to 15 cars at Cathedral Avenue, and so that there will be no impact in terms of parking conditions at the subject site on Kalorama Road.

And my bottom line is that from a traffic engineering viewpoint that the proposed use of this property would

be appropriate.

Now, Madame Chairperson, there are a number of letters and other material in the record that take issue with the traffic and parking situation as proposed for Kalorama Road, and I would like to briefly discuss those points with you.

CHAIRPERSON REID: Okay.

MR. MORRIS: The Dresden Condominium Association says the new embassy will have dedicated parking spaces. I assume they mean on street. That is not correct. There will not be any dedicated parking spaces on street.

The Chancellory Condominium Association notes that the chancery staff and visitors will make use of street parking. Again, that is not correct. That will not happen.

I guess this is the -- well, I'm not sure whose this is. Oh, it's Residents of Kalorama, it says, has a letter in the record which includes which includes petitions signed by people who live in the neighborhood, and I want to make some comments about that.

First of all, they state that in terms of parking with the use of the driveway with the four vehicles would necessitate shuffling of the vehicles. That's not correct. Two of the vehicles would arrive in the morning, stay there all day, leave in the evening. The other two vehicles, the Ambassador's car and the staff car, would be used on occasion, and that would be a minimal situation in terms of maneuvering vehicles.

I would state, Madame Chairperson, that I have been involved in more than two dozen chancery applications before this Board, and this is the only one in which the Applicant has provided for fringe parking and committed to no on street parking to make sure that there would not be a parking problem for the residents of the community.

As a matter of fact, in the future, just as today, the residents will be able to park right in front of the chancery. There would be no interference with the chancery operations.

As already noted, the driveway, 77 feet, is clearly adequate to provide for four spaces. That is on the subject property not including the space, the ten feet from the curb line to the property line.

Now, the petitions that were signed by members of the community contain some information that unfortunately is not correct. It says, for example, "Were the Republic of Benin's Chancery to be approved, it would cause the removal of yet more parking spaces from the limited supply available to residents." People who signed this petition thought that they were going to lose on street parking. That will not be true.

The petition also stated that it would cause an increase in traffic congestion with the coming and going of day workers and chancery visitors. That, again, is not true. The coming and going of day workers, the people who drive the two cars that will be parked on site arrive in the morning. They leave in

the evening. There's no coming and going for the day workers.

As far as chancery visitors are concerned, three to four visitors for visas and such will go to Cathedral Avenue. They will not come to this site. The visitors to this site are two or three per week, hardly a major impact.

The ANC in their letter stated 77 feet are not available for parking and four cars could not be accommodated as alleged by the Applicant. It's not correct. Seventy-seven feet are available.

And they refer to diplomat parking on the street. Not correct. There would not be diplomatic parking on the street.

The letter from the ANC further states that where I show in my report the L1 bus operating on Connecticut Avenue, it says that what is not stated is that this route operates only in one direction and not all day. That's quite correct.

But they further state the route is operational southbound during the morning rush hour and accommodates the people coming to the site in the morning rush hour. Incidentally, there are eight buses that come down there during the morning rush hours, and they go back northbound in the evening, which is when the people will be leaving the site, and again, there are eight buses between 4:30 and 6:30 going northbound.

The ANC letter further relates to the close of the Q Street bridge and says that that has overburdened the neighborhood with traffic. I can't dispute it, nor can I support

the statement. I simply have no before and after data. The only thing I can say is that bridge construction will be completed in August of next year, and I would expect that when it's completed people will use Q Street as they did in the past and not drive as the ANC letter suggests, up Wisconsin Avenue, over to Massachusetts, and back down and come through their neighborhood.

That essentially is my response to the concerns of the people in the neighborhood.

I would say, finally, Madame Chairperson and members of the Board, that you would be hard pressed to find a chancery anywhere in the District of Columbia that would have less of an impact in terms of traffic and parking than the proposal that's before you.

Thank you.

CHAIRPERSON REID: Thank you, Mr. Morris.

Mr. Collins.

MR. COLLINS: Madame Chairperson, that concludes our witnesses. There are several letters in the file in opposition, and I understand there will be some testimony here. We wish to comment on those positions, but I am seeking your guidance. Should we do that now or should we wait until that is delivered? How do you wish us to proceed?

CHAIRPERSON REID: You're going to be able to come back, Mr. Collins. I said you're going to be able to come back.

MR. COLLINS: I see.

CHAIRPERSON REID: So perhaps some of the issues that you're referring to may be diffused somewhat during the testimony here today, and then you can then have an opportunity to come back and address only those that are still wanting, if you so desire.

MR. COLLINS: That is fine. Thank you.

CHAIRPERSON REID: All right. Now, wait one second.

Board members, did you have questions?

MR. PARSONS: Yes, I do.

CHAIRPERSON REID: Okay. Please. Remain seated.

MR. PARSONS: Mr. Tonoukouin, I wanted to ask you about this memorandum you sent to Mr. Berger, which has the seven points, and some of them are I would call commitments. You will do something, and others I'm not quite sure.

Number three, for instance, says that the Embassy has not requested diplomatic parking privileges, but the tone of the testimony is that you will not, and I think there's a great deal of difference between those two statements.

You don't have to respond to that right now. Let me keep on going.

And number four, that you do not intend to hold social functions at the premises on a regular basis. That, again, is apparently not a full commitment.

And number five says the Embassy of the Republic of

Benin intends at this time to have a caretaker reside.

Is there something in these three areas that causes you to hold back on a commitment to have a caretaker, to not have social functions, to not request diplomatic spaces?

AMBASSADOR TONOUKOUIN: Thank you. Thank you so much, honorable member of the Board.

Yes. You could be -- you could be surprised, you know, after my statement and trying to see a difference between the question you have raised and the points I have, you know, mentioned in my statement, but I would like to say that this statement, this memorandum has been written before the meeting we had with the neighborhood, and if my statement of today is a little bit, you know, different on the points you have mentioned, it is because of the requests made or raised by the -- during the meeting we had with the neighborhood because some of them wanted to know if we will apply after for on side parking.

Is it on side or -- on street, please. On street parking, and I did mention in my statement that we will not, we will not, you know, request for on side parking, on street parking. That will be -- that is a response to, you know, the question raised by -- the concerns raised by some of the neighborhood members.

Coming to your second question about, you know, the social functions, yes. I mention in my first letter, my first memorandum that I have written that we do no intend to hold social

functions at the premises on a regular basis, but today I want in my statement to be more clear, more clear.

I don't find a difference -- please excuse me to say that -- I don't find a difference between what I write, I have written before and what I state today. I just want to clearly, you know, and with, you know, very force, with a great force, I wanted to say that I don't intend to do that in the future.

That is not to change anything, but to -- yes, under my testimony said that we will not, we will not, we will not, we will not hold social functions at the premises. We will not do that.

I just wanted, you know, to testify that I will not never do that in the -- in the -- in the building.

The third question is about --

CHAIRPERSON REID: The caretaker.

AMBASSADOR TONOUKOUIN: The caretaker, yes, to have a caretaker reside in the chancery.

MR. PARSONS: The words "at this time" I was focusing on. You do intend to have a caretaker living here.

AMBASSADOR TONOUKOUIN: Yes, we'll have a caretaker, yes. Yes, yes, but I also want to say that we don't want to change anything, you know, on this memorandum. We just want to testify that we will be respectful, you know, on the law, and that we will do everything to keep the house, you know, in good condition as the neighborhood people has asked.

MR. PARSONS: All right.

AMBASSADOR TONOUKOUIN: If my lawyer want to add something.

(Counsel conferred with the witness.)

MR. COLLINS: Madame Chair, members of the Board, the Ambassador has asked me to explain the difference as he's explained it to me between the items that Mr. Parsons has called out and the testimony that's been given.

The memorandum that was prepared was dated November 22nd, was as a result of a meeting that was held on the 16th of November. That was prior to our November 30th meeting with the ANC and prior to receiving all of the correspondence that's been filed in the record to date in opposition raising several questions that pertain to these three issues.

The Ambassador's testimony today has clarified those three items. Item No. 3, where it says, "The Embassy has not requested diplomatic parking spaces on Kalorama Road," that is a correct statement.

The Ambassador has gone further today and said, "We will not."

Item No. 4, "the Embassy of the Republic of Benin does not intend to hold social functions at the premises on a regular basis." The Ambassador's testimony today clarified that. That's a true statement and he clarified it today to say, "We will not hold social functions or the Embassy will not hold social

functions, has never done so, and does not intend to start."

And Number 5, it was on November 22nd that the Embassy in the Ambassador's memo said that the embassy intends at this time to have a caretaker reside at the chancery. That was a new concept to the embassy at the time. It was requested of the neighborhood. We considered it. Time has now passed, and the embassy has now committed that that is their intention.

MR. PARSONS: So if these seven items now rephrased here today were part of the conditions of this Board, there would be no objection?

AMBASSADOR TONOUKOUIN: Yes. Yes, honorable member, I agree with that. We will not request diplomatic parking, and we will not hold social functions, you know, in the premises, and also we will not -- we will have a caretaker reside in the chancery.

MR. PARSONS: Thank you very much.

AMBASSADOR TONOUKOUIN: Yes.

CHAIRPERSON REID: Thank you.

Ms. Hinton, did you have questions?

MS. HINTON: I don't have questions. Thank you.

CHAIRPERSON REID: Okay. Mr. Sockwell?

MR. SOCKWELL: Just a couple of questions. With regard to the Cathedral Avenue facility, Mr. Ambassador, there was some issue raised as to its condition, and you spoke to the fact that you withheld making repairs to that once you were in the

process of dealing with the Kalorama Road acquisition.

One of the things that was stated was that there was a boarded up window in the Cathedral Avenue facility. It seems that such an obvious sore eye or black eye in the building, something very obvious and unattractive would have been taken care of as maintenance if it was just a maintenance issue, as opposed to a renovation issue.

Can you speak to that and the commitment which would be in Item 1 of your letter, memorandum of November 21st, where it does say the Embassy of the Republic of Benin will use its best efforts to maintain?

And of course, Mr. Parsons' statement and your response would tend to say that you would take out "use its best efforts to" and just say, "The Embassy of the Republic of Benin will retain and maintain the residential character," as a fact of not just being a good neighbor, but certainly maintaining the image of the embassy and the Republic of Benin.

AMBASSADOR TONOUKOUIN: Yes, honorable member of the Board, you are fully right. It is one of, you know, the best things we should do as an Ambassador here, to keep the image of the country, you know, correct and well, and I fully agree with you also that we will. We will retain and maintain the original feature and appearance of the premises. We will do that, yes.

MR. SOCKWELL: And thank you very much.

A question for Mr. Morris in particular. With regard to

the parking issue that has been raised and the potential of jockeying cars in and out of the property, while it may be the stated goal of the embassy to park two cars and those cars would not move during the day, there's no way of being absolutely certain that the two cars that would be parked would arrive at the appointed hour, that they would be parked, and that there is an opportunity for some shuffling of automobiles.

It was also stated in the community's, say, opposition that cars backing out into Kalorama Road could cause traffic congestion. It might be possible that those cars, rather than being pulled into the 77 foot driveway be backed into that driveway. Therefore, when any shuffling has to be accomplished, it will be done in the most appropriate way, which is with the driver facing forward seeing what's going on, no potential for just sticking the back end of a car out into the street.

And I would certainly recommend that if the application is approved, that that be the modus of operation for parking under all but the most difficult circumstances.

MR. MORRIS: Mr. Sockwell, I quite agree with that. It was my assumption that that's the way it would operate. That's a safe way to operate a driveway, and I would assume that people who live in the area who have driveways do that. They back into the driveway, and then they can pull out safely where they can see traffic coming, and I would assume the same thing would happen here.

MS. HINTON: Madame Chair, could I ask a question?

CHAIRPERSON REID: Sure.

MS. HINTON: In that same paragraph, there is language about minimal use of signs. Could you explain what sort of signs are contemplated?

AMBASSADOR TONOUKOUIN: The plaque, the plaque. The sign is the plaque, and we will put on the plaque Benin Embassy, Embassy of Benin, Embassy of Benin Chancery.

Okay. Embassy of Benin Chancery.

MS. HINTON: Okay. So that language could change to say that the only sign on the property would be a small plaque on the building.

AMBASSADOR TONOUKOUIN: Of Benin Chancery.

MS. HINTON: Yes.

AMBASSADOR TONOUKOUIN: Benin Chancery.

MS. HINTON: Yes.

AMBASSADOR TONOUKOUIN: Yes, we can write Benin Chancery. Yes, I think so. Benin Chancery.

Benin Chancery will be just one sign on the property.

MS. HINTON: Okay.

AMBASSADOR TONOUKOUIN: We agree for that, one sign, only one sign, yes.

MR. SOCKWELL: Mr. Ambassador.

AMBASSADOR TONOUKOUIN: Yes, please.

MR. SOCKWELL: One additional question. With regard to the major upgrade or alterations to the Cathedral Avenue facility, what is the expected time frame under which those modifications would take place, to the extent that the staff would be housed at Kalorama?

AMBASSADOR TONOUKOUIN: Thank you.

I think we will -- the work will take about three months, but not exceed three months, and just after that, you know, the people who live -- who be at the current chancery will return there, return back there to operate on visa and consular, you know, affairs.

MR. SOCKWELL: So it would be --

AMBASSADOR TONOUKOUIN: And we have funds for that, yes.

MR. SOCKWELL: So it would be pretty easy to say that the major impact of shall we say overcrowding the Kalorama road facility would be for a 90 day period at most. Then all of that activity would return to Cathedral Avenue. There would not be a maintaining of any of those relocated offices because it would be more comfortable than to remove the equipment and personnel and return them to the existing facility.

AMBASSADOR TONOUKOUIN: Yes.

MR. SOCKWELL: Correct?

AMBASSADOR TONOUKOUIN: I think we have equipment, and we have waiting already in our current chancery. The

equipment is already there, and I don't think we will move those equipment to the new building and return them back again to our current chancery.

What we will do is when we will remove it, you know, we finish with the renovation of our current building; we will buy new equipment in -- after renovation, new equipment, and we have signed already an agreement with the company, and contact (phonetic) is here. We have already signed an agreement with a company, furniture company, to, you know, provide equipment for the new building and also the current building after renovation, yes, and we have money for that in the bank.

MR. SOCKWELL: Yes, Mr. Collins.

MR. COLLINS: May I please?

MR. SOCKWELL: Yes.

MR. COLLINS: Mr. Ambassador the question had to do with when, as I understand it, when you move the personnel temporarily to the Kalorama Road site, during the renovation of Cathedral Avenue, you've stated that there will be seven returning to Cathedral Avenue to operate the Visa and Cultural Sections.

Is there a possibility that you might change you mind and they might all stay or some of them might stay rather than go back to Cathedral Avenue after the renovation?

AMBASSADOR TONOUKOUIN: No, because in my statement we -- I said that. I was speaking on behalf of my government and my country, and I am an Ambassador. I know that when we make a

promise we should respect that, and I can assure you that we will respect that, and people will return back to the chancery.

If no, the chancery will be empty, and the same thing could happen again. The chancery could, you know -- we need to use the chancery, and they will return back to the current chancery.

MR. SOCKWELL: And if I might ask, Mr. Ambassador, how long have you been tenured as the Ambassador.

AMBASSADOR TONOUKOUIN: In the States?

MR. SOCKWELL: Yes.

CHAIRPERSON REID: Five -- I am in my fifth year.

MR. SOCKWELL: Fifth year.

AMBASSADOR TONOUKOUIN: But in Africa, you know, the relation is not like in the States. I know that the U.S. Ambassadors in post, you know, used to be for maybe three or four years, but in our case, we can stay, you know. It depends on the work you are doing and the appreciation your country, you know, can give to you.

The African diplomatic corps today is here, you know, 12 years ago. He is spending his 12th year, and also the dean of the whole diplomatic corps, who is from Saudi Arabia, is about 20 years here.

MR. SOCKWELL: Thank you very much.

CHAIRPERSON REID: I have a couple of questions. One is in regard to the movement of the employees from the

chancery on Cathedral Avenue to the embassy.

Now, in your submission it indicated that most personnel would park at the chancery, and then they would be shuttled up to the embassy, and those that were not would catch the buses.

Now, the bus, there was an issue raised about the time of day that the buses run. So the personnel who would be using the buses would be using the buses during those time periods when the buses ran, the rush hour time periods only.

In other words, they would not be coming -- they would have no need to come back and forth on the buses other than the time that the buses were actually running. Is that my understanding?

AMBASSADOR TONOUKOUIN: Yes. Can you respond?

I will let our expert respond to this.

Do you remember? We talk about.

MR. MORRIS: Yes. Yes, Madame Chairperson. The employees who use public transportation will use the buses during the normal rush hours, seven to nine, as I mentioned. There are eight buses that are southbound, 4:30 to 6:30.

CHAIRPERSON REID: Yeah.

MR. MORRIS: That's the time they arrive between seven and nine. They leave between 4:30 and 6:30.

CHAIRPERSON REID: So in other words --

MR. MORRIS: Any movement between the two sites

would be with a staff car.

CHAIRPERSON REID: Other than that. In other words, that's sufficient to take care of the transport of those who need to catch the bus to and from the facility.

MR. MORRIS: Yes, indeed.

CHAIRPERSON REID: Or the embassy.

My other question is to Mr. Ambassador. Sir, in your submission on page 5, you said that you met with three neighborhood organizations. Which ones were they?

MR. COLLINS: May I respond?

CHAIRPERSON REID: Please.

MR. COLLINS: Those are the -- it was a meeting that we called, that I arranged with the two ANC commissioners, with representatives from the Sheridan-Kalorama Neighborhood Council, Mr. Sukanik, and he is the chair of the embassy or Chancery Liaison Committee, I think, of that organization, and then two representatives of the Sheridan-Kalorama Historical Association, Mr. Howard Berger and Ms. Kindy (phonetic) French.

It was a meeting that I called. It was not an official meeting of the neighborhood. It was a meeting that I called with representatives who I know have expressed interest in previous cases like this, in order to meet with them before the ANC meeting, explain the situation, you know, answer questions so that we could kind of, you know, well answer their questions, give them our proposal and answer any questions that they have.

And it was at that basis that they asked us to refer to those two previous agreements and to craft an agreement that was based upon those two, and that's what we did, and that's what's before you today, and that's been since modified by the Ambassador's testimony here today.

CHAIRPERSON REID: Okay, and the effort was essentially to address concerns and to be able to diffuse whatever negative impact that was foreseen by those persons that met with you.

MR. COLLINS: That's correct. They certainly are here and can speak for themselves, and I don't intend to do that. I know that one issue that's very important to the ANC was that that was not an official ANC meeting, and the ANC members did not take official ANC positions there. It was simply an attempt by the Applicant to do outreach with those people who we knew have been involved in previous chancery applications in that neighborhood and discuss the application and to answer any questions that they might have.

CHAIRPERSON REID: And at that meeting, when the concerns and issues were proffered, there was an attempt to address these issues and to come to some resolution at that time from what I garner from the submission.

MR. COLLINS: Those which we could address we tried to address them. Of course, there was an expression that you'll hear later on today about the number of chanceries in the

neighborhood, and while --

CHAIRPERSON REID: Well, to the best of your ability, of course.

MR. COLLINS: Exactly. While we did not intend to just withdraw our application at that time, our intention was to address the concerns, the effects that a chancery might have in the neighborhood; to address them in a way that's been previously addressed to the satisfaction of those community groups, relying upon the two specific agreements that were cited to us as good examples of how we might wish to proceed with those agreements.

And the Algeria application was one, I believe, that I might have come up with, and they agreed, and then the other cited to us was Belize, and we crafted this based upon those. The language of this agreement is modeled heavily upon those two.

And then, of course, subsequent to that, when we met with the ANC, heard additional concerns, have read the record and seen the additional concerns, we have since modified those agreements before you today in the Ambassador's testimony.

CHAIRPERSON REID: Okay, and indicated also in the Ambassador's submission -- and I don't know who would answer this -- it says, "We learned at that meeting that votes were already taken in the neighborhood to oppose the application even before the neighbors had an opportunity to hear our proposal and to consider our agreements."

Can you elaborate more on that for me, please?

MR. COLLINS: If I may, it was announced at that meeting that the Dresden Condominium Board of Directors on behalf of the unit owners had taken a vote in opposition. I believe that letter is in your file, and we were told at that time that there was a petition being circulated in the community in opposition, which I believe you also have in your file.

And it may have been -- I may not be clear -- that the Chancery Condominium, which is on Wyoming Avenue, also took a position in opposition.

So we learned that that evening.

CHAIRPERSON REID: Okay. Thank you.

MR. COLLINS: Thank you.

MR. SOCKWELL: Mr. Collins, to your knowledge, have any of the opposition parties, residents made any statements to you or assertions to the Republic of Benin Embassy that their positions have softened as individuals, although you have met with the organizations?

MR. COLLINS: I don't want to characterize anyone else's position for fear of mischaracterizing it. I can tell you, however, that there are people that have been notified of this in the community who, while they have indicated to representatives of the Applicant that they support the application, they for one reason or another -- I don't want to say fear -- but for one reason or another are hesitant to come forward and express their

support for the application.

MR. SOCKWELL: Or at least for one reason or another have no responded to this Board.

MR. COLLINS: Well, I --

MR. SOCKWELL: The "for one reason or another" is sufficient.

MR. COLLINS: Well, I guess it's hearsay if I say it, but I can just tell you what I was told.

MR. SOCKWELL: All right. Thank you.

CHAIRPERSON REID: Okay. Thank you. Thank you, Mr. Collins.

MR. COLLINS: Thank you.

CHAIRPERSON REID: Now government reports. Secretary of State.

MS. PRUITT: Madame Chair.

CHAIRPERSON REID: No, government reports.

MS. PRUITT: Including --

CHAIRPERSON REID: Not including. The Secretary of State is a part of the federal government, correct?

MS. PRUITT: Right.

MR. MLOTEK: May it please this honorable Board, I am Ronald Mlotek, for the record once again, Chief Legal Counsel of the Office of Foreign Missions at the U.S. Department of State, and when I left this morning my office we were still a part of the federal government, but of course we know things can change

quickly in the world.

I'm very pleased to appear today on behalf of the Department of State to present the Secretary of State's views. I note for the record that I have been appearing in these cases for 16 years, so virtually since the time that the act came into being, and I'm very pleased to welcome a new member of the Board before whom I have not had the opportunity to appear before.

I will be brief in summarizing the position that we've already communicated to the Board in writing because I do need to take some time either now or being recalled later at the Chair's discretion and pleasure to address some very serious and weighty legal issues that have arisen in this case.

CHAIRPERSON REID: You can do that at this time.

MR. MLOTEK: All right. Briefly just to summarize what we have said formally in our letter, we strongly support application. We believe that the federal criteria are fully met, in specific, our obligation or most importantly, our obligation to facilitate the location of chanceries here, foreign chanceries, on a reciprocal basis, and we've noted for the record that the government of Benin has been very helpful and forthcoming and cooperative to the United States government in terms of our meeting our needs, diplomatic relations needs, in their country, and although we do not own property there yet -- we lease basically -- they have assured that we can buy when we are ready to do so, and this is important because there are a lot of

countries in the world still where we can't actually buy property, and this is an ongoing and continuing diplomatic irritant in our relations with a number of countries, but we don't have that with Benin.

So this even raises the profile of this case diplomatically for us. So I will just allow then the letter that our Deputy Assistant Secretary has entered into this record to stand on its own merits and proceed to these other issues that I alluded to.

To a certain extent I will be anticipating unfortunately what may come afterwards both in the Office of Planning report and from any opposition. So I excuse myself for that, but I think it's better that I lay these things out now and address them.

Now, before I do, I note that Mr. Collins did present to the Board copies of the Foreign Missions Act,b ut the Office of Foreign Missions also has some very nice presentation copies of the act that we've produced for just these purposes, and if I could, I'll --

CHAIRPERSON REID: Please.

MR. MLOTEK: -- present these.

These are up to the date, accurate, and hopefully will assist the Board in its deliberations, and if the staff of the Board needs additional copies, we would be glad to supply as many as anyone needs, or Corp. Counsel or Office of Planning or

anyone else.

I do have to interject this note of unpleasantness in the proceeding. We were, the Department of State was taken very much off guard and by surprise by the content of the OP report. We have had a very productive relationship with OP over the last decade.

Prior to the last decade, as some old hands may remember, there was a great deal of conflict for several decades, in fact, going back into the '60s between the District government and the Department of State on the issue of chancery location and these land use issues.

In large measure, this Congress sought to bring an end to this by adopting the Foreign Missions Act in 1982, and after an initial period of five or six years or so of the Act being assimilated by everyone and procedures and routines being developed, I think we've settled into a very good and, from the Department of State's view, satisfactory relationship with both the regulatory bodies and the Mayor's designee, the Office of Planning.

We don't always agree. We understand that there will be differences of opinion on substance about various aspects of land use policy, but the report that we saw -- and, incidentally, we only saw it a few days ago and haven't really had time to respond to it other than here, and in the past it's been the practice that we would receive this as a courtesy, and we

would discuss issues that would arise between us.

The report that we received, I must say, contains numerous and serious legal, in our view, legal errors and areas of severe deviation from the statute, the Foreign Missions Act, the federal statute, which is supposed to control these proceedings.

In addition, it even deviates from the District of Columbia's own land use policies that it, the District, adopted in conjunction with NCPC as well through both the comprehensive plan elements, as well as Zoning Commission Orders 509, which you've heard mentioned today. It's a very important order, which codified and remapped the diplomatic overlay.

So I need to address these very, in our view, grievous legal misstatements, issues of law in the OP report, but before I do I want to address also the other issue that has arisen today already. I can see it's a concern of members of the Board, and that is on the issue of conditions, the conditions that an embassy or chancery might agree to in the context of such a proceeding, a BZA proceeding, in order to try to broker a compromise with neighborhood or community residents, in order to show the neighborhood, as well as this Board, that it is willing to live within defined rules of conduct and preserving residential character of its site and so forth.

These issues of conditions arise in many hearings, as some of the old hands, again, will recall, and the Department of State always responds in a consistent manner along the lines

that I'm now going to respond.

It is totally in keeping with the Foreign Missions Act statute that conditions could be agreed upon or even not agreed upon. The Board could unilaterally impose conditions that it believes are appropriate in exchange for its approval or favorable action, failing to disapprove.

Now, are these conditions enforceable? That's the next question that arises, and for this I again have to have recourse to the statute and direct the Board's attention to, in the United States Code, whatever version you may be using in front of you, 22 USC 4306(g), small letter G, which is entitled "Compliance with District of Columbia Building and Related Codes."

CHAIRPERSON REID: Mr. Mlotek, what page are you?

MR. MLOTEK: Oh. Unfortunately, you know, we have to take our handy -- oh, yes. Chris Collins', Mr. Collins' statutory pamphlet is superior to ours in that it has page number.

CHAIRPERSON REID: Okay.

MR. MLOTEK: We could not have page numbers because we took ours off the Internet because we were concerned about copyright infringement issues having to do with the United States Code Annotate.

CHAIRPERSON REID: Okay.

MR. MLOTEK: Which is a proprietary document, and I'm glad to see that Wilkes & Artis resolved that copyright issue more satisfactory than we did.

But at any rate, does everyone --

CHAIRPERSON REID: I think we have it.

MR. MLOTEK: Okay. And 4306(g) simply says, "The Secretary," speaking of the Secretary of State, my boss, "shall," "shall require foreign missions to comply substantially with District of Columbia building and related codes in a manner determined by the Secretary to be not inconsistent with the obligations of the United States."

This essentially means that chanceries have to obey, notwithstanding their immunities; they must obey whatever are the applicable land use regulations and building code regulations of the District of Columbia. It does say "substantially," which gives a very small area of maneuver or area of out, but I will tell you having practiced in this specialized field for 17 years, there has never been a case where we have found that a chancery could comply substantially and not fully.

The Congress put it in there simply to preserve certain very sensitive areas of an embassy's operation, such as their communications center or their secret vault areas in a chancery where they would not want the District of Columbia, let's say, electrical inspector to enter. Certainly the United States government would never permit a Chinese, you know, City of Beijing electrical inspector to go into those areas. That's what "substantially" meant.

Now, if an order issues from this Board which

embodies certain conditions about what a chancery can do at a certain location, be they conditions that arose, as I said, from a voluntary agreement or from a condition that the Board unilaterally imposed, that would be part of the related laws, the building and related codes of the District of Columbia, and they would be applicable to a chancery in the same way as the basic underlying zoning code and zoning regulations are applicable, and the Department of State would have the job of seeking to enforce those.

I will say for the record that we have never had a case in all the years that we have practiced under the Foreign Missions Act, since 1982, where a chancery has violated conditions and the State Department knew about it. That's a big "if," and the situation was not addressed. I can cite many examples.

I believe the opposition today, based on my prior discussions with some people in the community and with some members of counsel, the opposition here today may raise an issue of the Embassy of Albania, for example, which had a case and was approved, had a favorable decision from this Board some years ago. A condition was placed in the order regarding parking, that there would not be on street parking, but there would, in fact, be leased parking facilities obtained by the embassy for a certain number of cars; that they would not park in certain locations in the driveway; and the feeling of some in the community that these conditions or this condition that this condition has been

continuously and grossly violated.

All I can say to that is that the Department of State was not aware of these allegations of violation until the context of this case, and we have immediately contacted the Embassy of Albania, written to the Ambassador and asked him to look into these and to explain what the facts are, and reminded the Ambassador of the fact that this was a condition of his country's occupancy of that property.

But this leads to the second point that I also make in every hearing when issues of these conditions arise and when questions of other chanceries, of their upkeep or their alleged lack of upkeep of their facilities or the alleged violation of certain conditions or certain laws arises, or in this case where for the first time ever in my experience, we are looking at allegations of the upkeep by this country of another building in another neighborhood completely, and this is my response to that.

Neither this Board nor the Department of State should take seriously objections to property conditions alleged to be carried out by chanceries. As a matter of law should not take legal notice of these matters is what I mean, when the first time they are ever raised is in connection with another zoning proceeding.

The Department of State is open 365 days a year. I and my colleagues, most of whom who operate in the area of property are here today in this room, are well known to

neighborhood activists and the leaders in the various communities where the chanceries are located. They know how to contact us.

We have procedures. We have legal obligations, as I've just cited in the statute. So if there's a bona fide concern about how the Embassy of Benin, for example, is maintaining or failing to maintain, which OP has cited very prominently in this report, is failing to maintain its existing chancery in the Woodley neighborhood, completely removed Cathedral-Woodley neighborhood, completely removed from Sheridan-Kalorama, then the proper procedure would have been for people who had these concerns to raise them to the State Department, not to bring them to this Board and to cite them as a grounds for opposing the current application.

We have never in all of these years heard one complaint from Cathedral-Woodley neighborhood about the Embassy of Benin's upkeep of its present chancery, and we are simply aghast -- I don't know what other word to use -- to see this now cited in a report issued under the name of the Mayor of the District.

Members of council, Charlene Jarvis, for example, who has had concerns about certain property that is within her jurisdiction, knows where to find us and has been dialoguing with us for many months now about a certain situation. People know where to find us, and I would say it would be totally appropriate for people to raise such issues in opposition to a chancery location if it could be documented that the Department of State

was notified of these and knew about these conditions and was doing nothing about them, but that is not the case in this record.

And we suggest and submit that it is entirely inappropriate for anyone to raise before this Board, and certainly for the Office of Planning to raise before this Board, the condition or the alleged condition of another property which is not at all subject, involved, relevant, or material to this case as a grounds for opposing this application when there is nothing in the record to indicate that the Department of State or even the chancery itself had been notified of these alleged conditions in time to take any corrective action.

That addresses the issue of conditions, if anyone has any question that they'd like to direct to the department about the conditions or about the enforceability of conditions or how that is done.

All right. Then let me just proceed on to the even more slightly complex issue, but more important issue, and that is the so-called diplomatic overlay, the Zoning Commission Order 509, and the issue that has been raised both by the opposition and, again, amazingly without any discussion with the Department of State taken up in the Office of Planning report, and that is this issue of saturation, that an area could be so saturated by chanceries that the Board of Zoning Adjustment under the municipal interest criteria should disallow or disapprove a specific chancery location.

Madame Chair, in the view of the Department of State, this is a position which finds utterly no sanction at all in the statute. It is totally contrary and totally inconsistent with the statutory framework in which this Board operates and with the legislative history that underlies that statute.

The statute provides in 206(b)(2)(B), which Mr. Collins previously summarized to you, and is the operative provision under which the Board has jurisdiction on this case; that is, in any other area, in any other area, an application that is located in any other area of the District determined on the basis of existing uses, which includes office or institutional uses, and then including and not limited to any area zoned mixed use diplomatic or special purpose, subject to disapproval by the BZA.

So where in another area determined on the basis of existing uses. So what does that mean, "existing use"? That was the subject of some debate at the outset of the promulgation of the Foreign Missions Act, but the District in conjunction with the National Capitol Planning Commission, that is, the statutory land use planner for the entire Capitol region here, embarked upon an effort, a very diligent and long term and expensive effort, lasting from approximately 1983 to 1986, of mapping the entire District of Columbia, zoning square by zoning square, and determining using computerized methods the existing uses in those squares, every single one of them.

And in consultation with community leaders and community activists and in consultation with the Department of State, came up with a notion that there would be a test of one third/two thirds.

All of this, incidentally, is explained very cogently in Zoning Order 509, Zoning Commission Order 509, which you all have, and determined there would be a formula by which it would be calculated whether or predetermined, prior to a BZA proceeding, determined by the Zoning Commission itself whether an area, based on its existing uses, based on its existing uses, was suitable or not suitable for chancery location, that is, the entire area.

And if it were deemed there were sufficient nonresidential uses, including chancery uses, but other institutional uses as well, in that zoning square, then that zoning square would be considered as being mapped under what we call the D overlay.

The Department of State participated in that process and also appeared in Zoning Commission Case 509. I did personally, and our positions there are made a matter of record, and they are summarized accurately in 509.

Essentially what was determined at that point by the District of Columbia Zoning Commission itself is that it is presumed, rebuttably but it is a presumption, that an area is deemed satisfactory for chancery location if there are more than

one third nonresidential uses already in that square.

Nowhere in this process and nowhere in the Foreign Missions Act and nowhere in the legislative history of the Foreign Missions Act did anyone talk about a maximum threshold for how many nonresidential or how many chancery uses there could be in a square before the area would be deemed unsuitable.

We were looking at a minimum threshold. The legislative history makes clear and the very part of the comprehensive plan, the D.C. element of the comprehensive plan which was cited by OP, but cited, oddly enough, against their own position; this was a recent amendment to the comprehensive plan, says that it shall be the policy, the land use policy of the District to discourage location of new chanceries or the expansion of existing chanceries in any area that is essentially a residential use area, and it's very clear when you read that and read the legislative history, you read the plain words of the statute that what everyone is concerned about is a chancery seeking to locate in an area that is purely or less than one third at least by the overlay criteria, less than one third noninstitutional already.

In other words, an embassy, a chancery should not be permitted to just move in and destroy that sort of residential character.

Nowhere, nowhere in this process did anyone say, "Well, we would also have an additional criteria that if there are

too many chanceries there already we will also determine that area to be not appropriate." This is an astounding sort of argument which finds no legal sanction.

And I can tell you that had the Department of State understood in 1986 when we participated in that process that this was going to -- that that might be the end of the road on that, we would have objected very vociferously then and taken whatever other action, legislative or legal, that we thought was appropriate.

But it gets even more interesting because this very provision, which the Office of Planning cites here, again, in opposition to the embassy, the provision I just read to you from the District's part of the comprehensive plan, that very language was negotiated in most particular detail between myself, between the relevant official of the National Capital Planning Commission, Mr. Gilreath, and Mr. Colby of the Office of Planning, and all three of us -- and we worked very hard on this over a period of weeks because, of course, anything that is entered into the comprehensive plan in this nature by the District has to be found not to be inconsistent under the National Capitol Planning Commission. In other words, the National Capitol Planning Commission has a veto over any such language, and we didn't want that to come about so we wanted consensually to agree upon language, and we did.

And nobody at the time, not Mr. Colby and not the

representative of NCPC, and certainly not the representative of the State Department, had any notion that this would one day be used, this language which we agreed upon would one day be used and then dished out again in opposition to an embassy that was seeking to locate in an area where there were already a lot of chanceries.

The plain intent of this language is that they should not be able to locate in areas where there aren't a lot of chanceries already or other nonresidential uses.

So this we take the greatest exception to. If this sort of opposition, if the logic that is used or the illogic that is used by the Office of Planning were accepted by this Board, the Board should know well what sort of a logical inconsistency you would arrive at. You would have to arrive at the conclusion that (a) a chancery should not be allowed to locate in an area where there aren't any chanceries already and (b) a chancery should not be able to locate in an area where there are a lot of chanceries already.

So of course, the question the State Department would ask OP and any other party who espouses this is: where would you submit that chanceries are permitted to be located?

It would establish a standard that was totally subjective, this idea of saturation. I mean how much is saturation? And how would the Board possibly operate this?

Now, let me just clarify one other aspect about the D overlay. The D overlay does not mean simply because a chancery

wishes to locate or a site is located within the D overlay that this Board must approve it. Of course we know that's not the case, and a number of applications have been disapproved, and some people in the real estate field and some people in chanceries don't understand what the D overlay means. They think it means automatically you can locate there, and the State Department continually attempts to educate people that this is not the case.

But when disapproval is going to be contemplated for a proposed chancery location in the D overlay, the analysis and, of course, the order that follows that would implement such disapproval has to focus on site specific issues, not these general amorphous issues of saturation of an entire area, Kalorama, Sheridan-Kalorama as a whole or that block or that zoning square.

Site specific issues. In other words, would the nonresidential use of a chancery in a specific site in that area impose detriment, identifiable and articulable detriment to one or more residents, and presumably that means one or more residents who live close. In Mr. Collins' diagram there, the circle of 200 feet, 220. I mean I'm not going to suggest where the limits should be, but at least someone would have to argue before this Board and this Board would have to accept that there would be one or more residential users in that vicinity that are going to be placed at specific identifiable detriment, not that the general area would suffer because there are too many chanceries there

already.

That could not in consistency with the statute be a rationale. Only site specific issues could be used.

Finally, and as a factual matter, we note that the notion of saturation is even more bizarre and outlandish in this case because there has been virtually in this specific area, by which I mean this zoning square; there has been virtually no change in the level of chanceries there since the time of the Foreign Missions Act. In fact, as Mr. Collins reminded me yesterday and perhaps in his continuing, ongoing comments later will point out to you, there was the removal of one major chancery, an annex of the Egyptian Embassy, that vacated here to move into the International Center that is operated by the Department of State behind UDC.

So we've actually had chanceries that went out of this allegedly saturated area, and the Office of Planning apparently did not even look into this, did not even look into the flow over the last 17 years or so, since the Foreign Missions Act came into existence of chanceries in and out.

And in this case, most particularly, and I will tell the Board this as well, the Department of State, one of the first things that we look at when we are informed that a chancery wishes to locate in a certain site in an R zone, the first thing we look at is: what are the other uses immediately around and how many of them are residential and how many of them are

institutional? Because we know from prior experience that if there is an individual residential user that could allege immediate impact, this could be a problem, and we need to address it.

In this case, there is virtually none except as you've heard, the multi-family dwelling that is next door, and multi-family dwellings, of course, are permitted in that area, but the detriment that could be alleged to a multi-family dwelling is a little bit different in the case of a chancery because, arguably from what you've heard here presented today, the type of activity or intensity of use at any rate that this chancery would impose on this multi-family dwelling that is immediately next door, I would argue would be far less great than another multi-family dwelling next door, which presumably no one would object to.

So we think that in this case when you focus -- when one focuses on the facts of this specific site selection and what is around there, namely, other chanceries, it is virtually impossible to see any site specific detriment that occurs to a residential interest.

So for all of those reasons, we urge favorable action on this, and if there are any questions -- what is even more important to the Department of State is that the process be fair and that the process be one which is consistent with this statute that took so many years and controversy to have the Congress agree upon, and which we think provides a good blueprint,

and we think the process should adhere to and hew to this as much as possible.

So if there are any questions about the statutory framework as it applies to this case, I'd be glad to answer then, and that would conclude my presentation.

Thank you.

CHAIRPERSON REID: Thank you, Mr. Mlotek.

Board members, do you have questions? Okay, Ms. Hinton.

MS. HINTON: Mr. Mlotek, you refer to Board Order No. 509. In my package I only have two pages of that, the two pages that are contained in the Applicant's submittal. If you have the full order, I think the Board would be interested in reading that.

The excerpt that we have does not talk about the one third/two third ratio that you had discussed.

MR. MLOTEK: Mr. Collins informs me that he is going to submit this entire document as part of the package that he will submit, that he is going to present.

MS. HINTON: Post hearing.

MR. MLOTEK: Unfortunately I use for my purposes this very excellent Foreign Missions land use manual that is produced by Wilkes, Artis, Hedrick & Lane. If someone, you know, if staff would like to copy it from this book, it might be a little difficult. It might be easier to receive it from Mr.

Collins.

MS. HINTON: That's fine.

MR. MLOTEK: But one way or another, we will, of course, get it to you.

MS. HINTON: That's great. thank you.

CHAIRPERSON REID: Yeah, if Mr. Collins would provide that, that would be great because we don't have it.

Thank you.

MR. SOCKWELL: If we copied it, it might be copyright infringement with a representative of Wilkes, Artis right here in the room.

(Laughter.)

MR. MLOTEK: They couldn't copyright this book because it's mostly public source, but thank you for that copyright warning.

MS. HINTON: I have one other question. Has the notion of saturation been raised in any other foreign mission case before the BZA?

MR. MLOTEK: Never, and I've been involved one way or another with every one under the Foreign Missions Act since '82, not prior to that.

CHAIRPERSON REID: Mr. Mlotek, Mr. Mlotek, there has been an issue raised, not necessarily by the Office of Planning, but from some of the neighborhood organizations, and I've been on the Board now for over four years, and on occasion

they do raise that as an issue to proffer to us their rationale for opposition.

MR. SOCKWELL: If I might say, Mr. Mlotek, when I read -- it's Mlotek? Mlotek -- when I read the Office of Planning report, I was quite shocked to find it not only biased, but very unprofessional, and in contrast to other Office of Planning reports, I found that it was quite jaded in its assertions, which you have spoke to fairly eloquently today, and it was quite a shock to me, as I say.

It was not expected, and I did not think that the report as it was generated should have gone out under the Director's signature. It may not have been properly reviewed.

CHAIRPERSON REID: Thank you.

MR. MLOTEK: Could I just make a quick response to that because it has implications for federal --

CHAIRPERSON REID: I was going to segue. My comments would segue from his comments.

MR. MLOTEK: Oh, sorry.

CHAIRPERSON REID: Okay. Dovetailing on what Mr. Sockwell just said, we're going to hear the report to see if the report is further embellished. However, I felt it was not clear to me after having proffered to us a series of rationales as to why they were taking that position; once that was done, it was not clear to me exactly what they were asking from us.

It was alluded to, but there was no actual

recommendation made per se. So I had questions about that as well.

MR. MLOTEK: Well, I would just like to respond to both of your comments by saying that if I displayed some intemperateness or anger in my reaction to the report, I'm sorry. The primary emotion that I'd like to express with regard to what Mr. Sockwell just said is that the Department of State and I personally were disappointed. I would use that term.

We've had very productive relations in the past with OP, even though we don't always agree substantively on outcomes and recommendations, but in the process, and possibly because of changes in personnel and new people coming in and so forth, this has broken down, and it should be repaired, and I look forward to doing so.

CHAIRPERSON REID: Thank you.

Further, it was interesting to me to see within the Ambassador's testimony that after having met with Mr. Altman and representatives from the Office of Planning, there was some understanding that they were on the same page and that there had been a meeting of the minds, and then the report comes out that is almost 180 degrees different from what was surmised from the tenor of that particular meeting that they had.

So I will be very interested to hear now, if you don't mind, Mr. Mlotek. Have you completed your presentation?

MR. MLOTEK: Yes, I have.

CHAIRPERSON REID: Okay.

MS. PRUITT: Excuse me, Madame Chair. Staff has one --

CHAIRPERSON REID: Oh, okay.

MS. PRUITT: -- point of clarification. I'm sorry.

Mr. Mlotek, in reference to the conditions that you spoke about earlier, if for some reason the community feels that an order has been violated, should they first then go to DCRA, get them to cite it, and then bring that proof to State Department?

MR. MLOTEK: As a general rule, the procedure for complaining about a chancery, whether it regards conditions of a BZA approval or simply any sort of land use regulation or building code regulation is the same, as a general rule. There are some exceptions I'll get to. As a general rule.

As a general rule, the complainant, the complaining party or community should first address the relevant District of Columbia authority or agency that has --

CHAIRPERSON REID: DCRA.

MR. MLOTEK: That's right. In most cases DCRA, but in some cases it might be DPW. In some cases it might be the Fire Department if it's --

CHAIRPERSON REID: Correct.

MR. MLOTEK: -- a fire hazard or whatever. Most cases DCRA.

And have that agency investigate, and then have

that agency certify to the Department of State because, again, we're not the experts and we don't have jurisdiction over determining what does and doesn't constitute a violation of D.C. law. That's D.C. jurisdiction.

So we need to have certification from the appropriate and duly authorized agency or officer in the D.C. government to tell us that a condition of a zoning -- BZA order has been violated or some other provision has been violated.

Then we take it up diplomatically with the mission. Now, the one exception to that is if there is something -- an exigent circumstance. For example, a construction site, construction equipment has arrived at the site, and it looks like an embassy is undertaking demolition or construction without a building permit. Then the Department of State will act immediately without waiting for some sort of a bureaucratic rigmarole to go through before ascertaining it.

And I will also just for the record note that in the case of Albania that I mentioned to you here where an objection was raised in the context of this zoning proceeding, we did make a small deviation from this procedure that I just enunciated as a courtesy to a member of council, since it was raised to us by a member of the District council, and as a courtesy we took our initial action immediately without waiting.

Does that respond, Ms. Pruitt?

MS. PRUITT: Yes. Thank you very much.

MR. MLOTEK: Thank you.

CHAIRPERSON REID: Thank you.

MR. SOCKWELL: Mr. Mlotek, one other thing, and that is with regard to your statement about representations of lack of maintenance having been raised, the residents who raised the lack of maintenance issue may not have had any interest in that had there not been an application for another facility and, therefore, would not have raised it with the Department of State, would have had no reason to and perhaps no desire to.

So you cannot say that any allegations that have not existed in the past make it fine or make it inappropriate for such allegations to be raised today in this situation by these neighbors of this proposed facility.

MR. MLOTEK: I would simply say that perhaps they can be allowed to raise it, but it should be not given all of the weight that it would otherwise be since there is no record, and as I say, the very people who are in the neighborhood who allegedly are suffering from this lack of maintenance, that is, the residents of Calvert, the Cathedral-Calvert-Woodley neighborhood, have not raised it.

MR. SOCKWELL: But again, in many hearings we have received complaints from residents about a proposed use based upon some other factor dealing with the same applicant in another location. So it is not unusual.

CHAIRPERSON REID: Let me clarify something here,

if I may. The responsibility of this Board in making any decisions for terminations is to analyze and assess the materials, information, testimony, submissions, and what have you that have been proffered to us in regard to the subject property only, specifically. We are not allowed to consider any other location owned by the same applicant or occupied by the same applicant because that information is not germane to the instant application that is before us.

And as such, the only thing that we can consider, regardless as to who -- sometimes there may be people who are not aware of what our information that we cannot use or we deem otherwise immaterial to our decision making, we have to focus, laser focus specifically on the property or the application that is before us at this time, specifically.

Thank you.

Mr. Mlotek, have you now finished?

MR. MLOTEK: Yes.

CHAIRPERSON REID: Okay.

MR. MLOTEK: Thank you.

CHAIRPERSON REID: No more questions?

Okay. Thank you very much.

All right. Office of Planning report, please.

MS. VOGEL: Well, first of all, I've never submitted or given a report that has been so thoroughly criticized ahead of time, but --

MS. PRUITT: Pardon me, Madame Chair. Before you start, just a procedural issue. You need to waive the rules to accept the OP report on the record, and then I would have Ms. Vogel continue.

CHAIRPERSON REID: I do have the letter. I was -- okay. I do have a letter from the Office of Planning requesting a waiver of our rules to allow them to submit their report, and I would so rule, allow them to do so.

Now.

MS. VOGEL: Okay. Well, first, we do want to assure both members of the audience and the Foreign Missions Board of Zoning Adjustment that we recognize that as the nation's Capitol, we can expect to find a substantial presence of international organizations, embassies, and chanceries, and that we feel that the District benefits immeasurably from these uses, both in its diversity, and it basically increases the diversity and richness of our city.

Though in certain instances --

CHAIRPERSON REID: Excuse me. I'm sorry. Would you give your name?

MS. VOGEL: Oh, yes. My name is Mary Vogel. I'm Community Planner with the Office of Planning, the Strategic Planning and Development Review Division.

In any case, we recognize that typically nations involved in our embassies and chanceries make significant

investment in their residents and offices and thereby convey a positive sense of the specific country.

However, there have been -- and there are -- some situations that are better served by having particular chanceries, especially when they are located in residential areas, locate elsewhere.

Again, this can occur when a given area becomes saturated by other chanceries and jeopardizes the residential character, and frequently when a specific facility is operated or is seen likely to operate in a manner that detracts from the neighborhood in which it is or would be located.

The three -- I think that the site and area description have been covered quite well by Mr. Collins. I have no further to add to that.

The three areas that our report specifically addresses are the three that specifically impact the District of Columbia or are addressed by the Mayor, and that is historic preservation and the historic district. I guess actually it's four, that we combined two, the two that deal with historic preservation, historic districts.

The Historic Preservation Review Board staff assured us that their own passage on the or review of this particular application was in no way a determination of the appropriateness for either land use or whether the historic district would be substantially impacted by this use. That, in

fact, is the job of the Mayor and the Office of Planning, as the Mayor's representative.

The Office of Planning did note the lack of property maintenance on the current Benin Chancery at 2737 Cathedral Avenue, and the Director of the Office of Planning, as the representative of the Mayor, believes that a similar circumstance in the proposed location would have an adverse impact on the historic district.

In terms of parking, the Office of Planning believes that a single lane driveway used by four cars has the potential to create a dangerous situation, especially when being rearranged.

The Director of the Office of Planning also believes that four cars would negatively impact the residential character of the neighborhood.

In terms of public transportation, the Office of Planning did not state that staff do not use public transportation. We simply state that while both sites are approximately equidistant from public transportation, the current chancery still feels the need to maintain a ten to 12 car lot, and actually Mr. Morris testified that it was 15 car lot.

In terms of the municipal interest, we are well aware that this is a diplomatic overlay zone within the Sheridan-Kalorama historical district. However, we do believe that the cumulative impact of chancery use upon this residential

neighborhood needs to be taken into consideration.

The Director of the Office of Planning, as the Mayor's representative, questions whether another chancery use in such a chancery saturated residential area is in the municipal interest of the District of Columbia.

And that's substantially our report.

CHAIRPERSON REID: Mr. Sockwell.

MR. SOCKWELL: Ms. Vogel.

MS. VOGEL: Yes.

MR. SOCKWELL: One question I'd like to ask you relative to the four cars. Are you familiar with the physical appearance of the site?

MS. VOGEL: Yes, very.

MR. SOCKWELL: When one stacks four cars behind walls that rise vertically on the sides, on both sides and pushes them into a rear courtyard, how many cars could generally be seen from the street?

MS. VOGEL: Well --

MR. SOCKWELL: Just a question. You could say one, two, three or four.

MS. VOGEL: In this case three could be seen from the street. I would --

MR. SOCKWELL: And how would you --

MS. VOGEL: -- say, well, actually --

MR. SOCKWELL: -- see those cars?

MS. VOGEL: -- all four could be seen from the street.

MR. SOCKWELL: You would be looking over the roof of the first car, over the top of the first to the second, to the third, to the fourth.

MS. VOGEL: Well, generally when you're coming down a street, you would see it from the side rather than from over the roof.

MR. SOCKWELL: Then you're not familiar with the site.

MS. VOGEL: Yes, I am.

MR. SOCKWELL: Then this photograph is incorrect.

MS. BAILEY: Mr. Sockwell, you need to speak into the microphone.

MR. SOCKWELL: What the photograph actually shows is a driveway completely shrouded in trees and walls, also with parking on the street at the curb on both sides of the driveway. It would be physically impossible for an individual to see more than the front end of the first car if all cars were parked back to back in the driveway, unless, of course, Ms. Vogel sees it a different way from a different angle.

And even a pedestrian wouldn't see the first care until the pedestrian actually got to the edge of the shrubbery.

MS. VOGEL: All right. Well, when I was out there, I think that some of the shrubbery is, in this case, deciduous and

so the leaves were off. So the driveway was far more apparent in my site visit.

MR. SOCKWELL: But even without leaves on those shrubs, those shrubs as you can see are old and very mature, and even the branch structure wouldn't allow you to see anything, I mean, realistically, but that was just one question, and thank you for your answer.

The second question I had related to maintenance of the Cathedral Avenue facility. How long was it observed that the maintenance issue existed? In other words, the boarded up window and other items were observed over a period of several weeks. Is there any way that the Office of Planning could know when the unacceptable appearance actually occurred, under what circumstances or how long it persisted?

That's just the question.

MS. VOGEL: Well, a member of the Mayor's staff who is in direct association with our office lived in the same block as the current Benin Chancery, and stated to us that it's been this way well over ten years. This member of the Mayor's staff was once on the Zoning Commission himself and also a member of this -- this body, the Board of Zoning Adjustment.

MR. SOCKWELL: So that person offered expert testimony to the Office of Planning for the development of the report?

MS. VOGEL: He certainly did comment on the report.

He also was involved in reviewing the report, yes.

MR. SOCKWELL: Thank you.

CHAIRPERSON REID: I have a question. The report that was submitted to us, Ms. Vogel, was a little different from what we're accustomed to receiving, and I wasn't clear, and could you please clarify it for the record today, what specifically, exactly is the recommendation of the Office of Planning.

MS. VOGEL: The original report that I submitted had a recommendation. I was asked to take it out. The --

CHAIRPERSON REID: Why?

MS. VOGEL: Well, the Director of the Office of Planning was -- though he certainly did review and had several members of the Mayor's staff review the report that was submitted, felt that the -- I guess in deference to the Department of State and to the country itself that we would not make a recommendation specifically, just raise issues.

CHAIRPERSON REID: It's a little baffling to me that you all chose to take that approach because we rely on the submission by the Office of Planning to give us some idea, direction, and to frame for us the issues, and to as a result of your -- your -- your investigation or your analysis, to then make a recommendation specifically that we may or may not, you know, choose to accept.

Nonetheless, when looking over this, I thought it was rather interesting, the way that it was structured, and then

I'm always looking for closure, and I get to the end of it, and it says, "And in summary," but it does not specify for us a definitive position, and I -- I -- I have problems with that, that kind of vagueness.

MS. VOGEL: I will certainly take that feedback back to my Director, who asked me to change it to a summary in the first place.

MR. SOCKWELL: Ms. Vogel, in fact, to support the Chairperson's statement, it really is interesting that the report made very pointed comments as to the negative impacts, not just generalizations, but very pointed statements, and then did fail to take that to conclusion.

MR. SOCKWELL: I agree, and as I said, I will take your feedback back to the Director.

CHAIRPERSON REID: Thank you.

Let's see. How are we doing time-wise?

MS. HINTON: May I ask a question?

CHAIRPERSON REID: Sure. Ms. Hinton.

MS. HINTON: When the Zoning Commission decided to change this or put the diplomatic overlay on this square, the Office of Planning participated in that hearing and had a recommendation. Is that true? Do you know?

MS. VOGEL: I'm sorry. I didn't -- could you repeat the question?

CHAIRPERSON REID: Could you repeat it, you know,

louder?

MS. HINTON: Sure.

CHAIRPERSON REID: Because I didn't hear it very well myself.

MS. HINTON: When the Zoning Commission mapped the diplomatic overlay zone on this square, as is written up in Order 509, the Office of Planning participated at that time, and I assume took a position, and I'm asking whether you are aware what the position was at that time.

MS. VOGEL: Yeah. Well, I have read the Zoning Commission Order 509 that you alluded to earlier, yes, and in fact, I mean, this was a question that was raised with our office as recently as yesterday and discussed by us, and yes, we were certainly aware of it.

MS. HINTON: And the Office of Planning was in favor of the mapping at that time or supportive?

MS. VOGEL: Yeah, at that time we did support the mapping, yes.

MS. HINTON: Is it true that since that time there haven't been any additional chancery or diplomatic uses moving into this square?

MS. VOGEL: That is our understanding. I mean we don't dispute the State Department's suggestion to that effect. The State Department is the body that keeps track of that.

MS. HINTON: Okay. So with the diplomatic overlay

mapped on the square and the Office of Planning's position that this square is not -- would not be an appropriate location for any chancery function or chancery facility, are there other diplomatic facilities that you would feel would be there or are you now saying that the entire square should not be used for any additional diplomatic purposes?

MS. VOGEL: I don't think we commented on the particular -- the square itself; solely on the particular subject site.

MS. HINTON: Okay, but, well, you refer to it as "siting yet another chancery in such a chancery saturated residential area." I'm assuming that chancery saturated residential area goes beyond this site.

MS. VOGEL: Yeah. I guess I'd have to say I don't know the position of the Director of the Office of Planning in that regard.

MS. HINTON: Thank you.

MR. SOCKWELL: Ms. Vogel, two questions. One, did the Director, Mr. Altman, review the report before it was sent over to us?

MS. VOGEL: Yes, he certainly did on a number of occasions. In fact, this report has gone through I would say close to a dozen revisions.

MR. SOCKWELL: I see. And one other question. In considering the negative effects upon surrounding residential

community, would it be your belief as a community planner that a property converted to a chancery use that is situated between other properties on four sides basically is more of a negative or has a more negative impact on a community than would a property converted to chancery use that was located, say, to the outside of the existing grouping where it would then interact directly with the residential buildings, especially single family or low rise?

CHAIRPERSON REID: Excuse me, Mr. Sockwell. Are you referring to chancery or embassy?

MR. SOCKWELL: Chancery. This is a chancery.

CHAIRPERSON REID: No. Are you referring to this particular application?

MR. SOCKWELL: This particular application.

CHAIRPERSON REID: And the application is for an embassy.

MR. SOCKWELL: I'm sorry. Okay. For -- it's a chancery. It's a chancery.

CHAIRPERSON REID: Okay. All right.

MR. SOCKWELL: Yeah, this particular chancery on Kalorama is located principally between other chancery structures, generally speaking, and is on a block that has chanceries on both sides of it, although on one side it isn't direct, and has a chancery behind it.

Would you feel that that would be a more appropriate -- it also has the whole Chinese diplomatic mission on

the other side of the street. Would you say that that's a more appropriate location than would be one on the fringe of development of chanceries, if one had an opportunity to make a choice?

MS. VOGEL: I suppose I would say, yes, that it would be a more appropriate -- being surrounded rather than on the fringe would be more appropriate.

MR. SOCKWELL: Thank you. I appreciate that.

CHAIRPERSON REID: Any further questions? Mr. Parsons.

MR. PARSONS: Ms. Vogel, there seems to be a lot of misinformation that at least the community seems to have had during this process. Is there anything you've heard today about this proposal that you didn't know when you wrote this report?

MS. VOGEL: Yeah, when we wrote the report we were not aware that the -- that the Embassy of Benin intended to have an on-site caretaker. I think that has been a recent addition in response to the neighborhood's concerns.

MR. PARSONS: So you knew of the fact that they weren't going to seek diplomatic parking on the street?

MS. VOGEL: Yes, we did.

MR. PARSONS: And all of the other conditions that the Ambassador shared with us?

MS. VOGEL: Yes. And in the meeting between the Office of Planning and the Benin Embassy, we -- that, by the way,

I was not in attendance at because I had not been informed ahead of time, and I was at a doctor's appointment, but the -- at that meeting we were informed about the driveway situation, and my understanding is that we asked them to reduce the number of cars in the driveway in deference to the neighborhood down to three, and that the Ambassador was quite willing to do that at the time, or we suggested that three may be more appropriate than four cars in the driveway.

When I asked the Director about direction in writing this report himself, he said that he -- he did not indicate that he had agreed with the Applicant that this was an appropriate use in the area. I mean, you know, he considered that meeting an informational meeting that he needed to study and think about.

And I'm sorry. I probably went beyond answering your question. I was also --

MR. PARSONS: A little bit.

MS. VOGEL: -- responding to some of the other allegations that the Office of Planning had given the Applicant the nod that we were in support at the time.

MR. PARSONS: So is there anything in what you've heard today that you feel might change the opinion of the Office of Planning, regarding the caretaker to give a more residential use to this property? Was that a primary concern of yours?

MS. VOGEL: Well, certainly the caretaker and the

residential or, rather, the property management company would certainly overcome one of our concerns, our major concerns.

Well, actually, in essence, yes. The caretaker and the property management company combined could alleviate our -- a major concern.

MR. PARSONS: I'm trying to get at this word "saturation" or "saturated" or whatever. Have you spent a lot of time thinking about that term?

I guess what you've cited here is there are 12 chancery or diplomatic facilities in the immediate vicinity. That must be some threshold of saturation for you.

I mean, is that a percentage of properties, 20 percent, 30 percent? Where did you come to the term "saturated" or how did you come to that term?

MS. VOGEL: I guess we --

MR. PARSONS: I guess it's not clear to me whether you believe that's the case here or not. You say at the bottom of the first page, "Both may be the situation in this application." So if I'm pushing you beyond where you want to go, that's fine, too, but if --

MS. VOGEL: No, we also mention it under municipal interests, that, in fact, we do believe that it is chancery saturated. So yeah.

And, again, no, we didn't come to any numerical decision in this regard for this, this particular area.

MR. PARSONS: So how did you come to that term then? Just a feeling about the place?

MS. VOGEL: Yes.

MR. PARSONS: Is there anything that would cause you think that there might be an opportunity to revise this report based on what you've heard here today if you were given that opportunity?

MS. VOGEL: Well, I will certainly take the comments that we've gotten here today back to my Director, and you know, we'll again discuss it.

Again, back to the issue of the property maintenance and the caretaker issue, I think that should come into further -- you know, should cause us to have further discussion on this.

MR. PARSONS: I think that would be helpful.

Thank you.

MR. SOCKWELL: Ms. Vogel, I have just one more question. I was looking for the citation. On the security issue and property, was it in the OP report or was it not that there was an issue of the property being vacant at night or was that --

MS. VOGEL: That was not in our report.

MR. SOCKWELL: That was not in your report.

MS. VOGEL: I think it probably --

CHAIRPERSON REID: That was probably one of the other submissions.

MR. SOCKWELL: Okay. Thank you. That's all.

CHAIRPERSON REID: Okay. Thank you.

Let's see if we can conclude this before we recess for lunch.

Other government reports. We did have a submission by the DPW, which stated in pertinent part that the Land Use and Public Works Section, Office of Document and -- Issuance, states that they have no objections. One second.

Oh, "has reviewed the attached notice of proposed rulemaking and find it legally sufficient," and that they would be happy to review the final order. That's all we have from them.

And then historic preservation, from the Historic Preservation Review Board, the meeting of November 18th, in pertinent part it states that the staff recommends -- that the Review Board recommends to the Foreign Missions BZA that the project be approved.

We have also from the Commission of Fine Arts a letter dated October 21st that states in pertinent part, "With respect to the Foreign Missions Act and its application to the Shipstead Luce Act, the property at 2124 Kalorama Road does not fall within the jurisdiction of the Commission of Fine Arts."

So those are the other government and public agencies that have submitted reports.

Now, the ANC, please come forward.

MS. BUMBALO: Good afternoon. My name is Linda

Bumbalo. I am Chairperson of Advisory Neighborhood Commission 1D, which is the Sheridan-Kalorama ANC.

I would ask that a waiver be granted for the submission of our report, which I believe was one day later, and there was an explanation and a request for waiver.

CHAIRPERSON REID: We do have that request, the letter that you submitted, and we do waive the rules to allow you to submit your report.

MS. BUMBALO: Okay. At a duly noticed public meeting of the Sheridan-Kalorama ANC-1D held on November 30th, 1999, with a quorum present, two of two commissioners, the commission discussed the above-referenced application.

The proposal is to expand the chancery to a second building. The existing chancery at 23 -- at 2737 Cathedral Avenue would continue to be used as a chancery. The Ambassador for the Republic of Renin and his legal counsel were present.

Parking, access to public transportation, and traffic congestion were discussed. The Applicant presented its case to the neighbors stating that it would park four cars in a 77 foot long driveway; that this location had better Metrobus access because it is within the first block of Connecticut Avenue; that nondiplomatic staff uses public transportation; and that there are about two visits per week to the chancery.

The next paragraph of my written statement, which you may or may not have in front of you, says, "The proposal to

park four cars in the driveway includes parking a van which will shuttle employees who would park their cars at the existing office which accommodates 12 to 14 cars."

Exhibit H of the application indicated to us at that time that the 77 foot driveway includes the driveway to the curb cut. I did ask the attorney at that meeting where the 77 feet ended, and he did not know, and I have not gotten -- he had not gotten back to me.

As far as street parking goes, we are aware --

CHAIRPERSON REID: Excuse me.

MR. SOCKWELL: Ms. Bumbalo, I can answer that question for you.

MS. BUMBALO: Okay.

MR. SOCKWELL: Having measured the plat drawing that shows the house, which is part of the Applicant's submission, and having added up all of the linear distances from the property lines front and back, the distance to the property line from the back of the property to the front property line is approximately 76 feet.

MS. BUMBALO: And a half.

MR. SOCKWELL: Maybe just under 77 feet --

MS. BUMBALO: Okay.

MR. SOCKWELL: -- exclusive of sidewalk and anything else.

MS. BUMBALO: Okay. Thank you.

MR. SOCKWELL: You're welcome.

MS. BUMBALO: An increased usage of the residence driveway would be an exponential increase in traffic and parking for this area. The building is currently a residence, has only one car, and only one car has been parked in the driveway.

Driving and parking three or four cars there would be an increase of 300 to 400 percent usage and congestion. As pointed out earlier, just moving the cars in and out of the driveway would increase traffic.

The trips of the shuttle van would increase traffic.

The residence is located on a narrow street that is already overburdened because of the traffic and congestion associated with the existing foreign missions located there.

There are frequent demonstrations within feet of the site associated with the Chinese chancery, and the street at times is impassable, inaccessible because of diplomatic functions occurring on that street.

The traffic analysis in Exhibit G of the application states that there are few on street parking spaces and the driveway. Well, that's already been resolved.

Page 3 of Exhibit G, the traffic analysis states that the 01 bus operates on Connecticut Avenue. What has already been noted is that it is operational one way during rush hour. What has not been put on the record is what direction these

employees are coming from. We have no idea if in the morning they are coming from the north or south.

CHAIRPERSON REID: Excuse me. I think the testimony borne out here today was that the direction would be consistent with the bus route during the rush hour. I specifically asked that question.

MS. BUMBALO: Yes, that's true, but we -- but what was not stated was whether the employees would actually be coming from that -- from the same direction as the buses are running.

CHAIRPERSON REID: That's what I'm saying. That's what I asked, if in fact the route taken would be consistent with the rush hour, the direction of the rush hour buses during those hours going to in the morning and coming from in the evening, and they responded to that that it would be.

Did you --

MS. BUMBALO: I did not get the answer that the employees would actually be coming in those directions. Just the buses would be coming in those directions.

CHAIRPERSON REID: I wasn't -- I was asking specifically about the employees, not the --

MS. BUMBALO: Okay. No, I guess I didn't understand that.

CHAIRPERSON REID: -- that their travel would be consistent --

MS. BUMBALO: With the bus routes?

CHAIRPERSON REID: And the time, that that would be consistent with the bus routes on a daily basis.

MS. BUMBALO: Thank you.

CHAIRPERSON REID: And they said yes.

MS. BUMBALO: Thank you.

The fact that other people would be accessing the property by taxis would increase traffic as well.

The Sheridan-Kalorama neighborhood is already overburdened with parking and traffic, and due to the description about the recent closure of the Q Street bridge and its impact on our neighborhood, people can no longer use Q Street. So the cross town traffic is going through our neighborhood.

Another issue discussed at our ANC meeting was historic preservation. We all know Sheridan-Kalorama is an historic district, and we do not believe that the proposed office will be maintained in a manner in keeping with the historic district.

The exterior of the existing chancery is very poorly maintained. Paint is peeling extensively everywhere, and the grounds are not maintained. I visited there before Thanksgiving. The leaves had not been raked this season, and some weeds by their very height indicated that they were at least several years old.

CHAIRPERSON REID: Ms. Bumbalo, not to cut you off, but we've already asserted that this is not before us.

MS. BUMBALO: All right.

CHAIRPERSON REID: Okay? So that you can kind of -- continue. Proceed.

MS. BUMBALO: Okay.

CHAIRPERSON REID: But that aspect of your letter is not before us today.

MS. BUMBALO: Okay. Another issue of importance is the fact that this location, while in a diplomatic overlay is residentially zoned. We understand the need to balance the local and federal interest in the expansion of chanceries. However, this chancery is already located in the District and that location will continue to be used. There is no expansion of staff and very few visit. It is not clear why there is a need for more space.

If there is a need for more space, it would be much more efficient to move into one building designed for office use. In fact, just south of the residence is the site of the Macedonian foreign mission, which is new to our neighborhood. It was approved to that square. It was added three years ago.

There was allegations that there have been no new foreign missions in that square.

It would be of great benefit to the historic preservation of the neighborhood -- this was brought up at the ANC meeting -- if the Benin government acquired that large building already approved for diplomatic use and renovated it. It has been standing empty surrounded by a chain link fence for three years

and is being demolished by neglect.

This site for Macedonia was approved by the Foreign Missions Board of Zoning Adjustment.

We believe the security of the residents of the neighborhood is at risk. Sheridan-Kalorama contains more than 125 foreign missions, even though it is the smallest ANC, with only two commissioners, in the District. Many of these countries are or become unstable, but the residents receive no support regarding their concerns.

The State Department has had to take control of some of the properties. There had been an assassination by a car bomb explosion in Sheridan-Kalorama, and there have been recent street closings due to bomb threats.

In light of what has occurred over the past years, the District City Council amended the district elements of the comprehensive plan in 1998, approved the NCPC effective 4/27/99 to include the language and policies in support of residential neighborhood objectives, to discourage the location of new chanceries and the expansion of existing chanceries in any area that is essentially residential use.

I would like to point out that the Williams administration has made one of its priorities the stabilization of city neighborhoods. There was a recent major neighborhood summit to hear the concerns of District residents.

We believe it is in the municipal interest not to

further erode the historic, residential character of Sheridan-Kalorama. We believe the District's tax paying residents have a legitimate right to maintain the residential use of their neighborhood.

It was motioned and a resolution was passed to vigorously and adamantly oppose Application No. 16519. The commissioners appointed Linda K. Bumbalo, SMD-1-D-02, in whose SMD the application is located, to present at this time.

I would like to further add some comments about the things that were raised earlier about this agreement or conditions that Mr. Berger was involved in.

Originally Mr. Collins offered to meet with the ANC. He said that the Ambassador would like to meet us. This meeting was at his invitation. It was originally set to be in Mr. Collins' office.

That morning it was changed to a residence, and we met around somebody's dining room table. The ANC, the Sheridan-Kalorama Neighborhood Council, the Sheridan-Kalorama Historic Association was present.

The Sheridan-Kalorama Neighborhood Council and Sheridan-Kalorama Historic Association do not speak on behalf of the ANC, and their concerns were the only ones that were raised.

The ANC was not involved in any of Mr. Berger's negotiations, and I would like to point out that this memo is not signed by Mr. Berger.

At the ANC meeting on November 30th, Mr. Collins presented the memo, read from it at the ANC meeting. No one from the Historic Association spoke for it or about it. No one from the Historic Association even spoke.

The ANC pointed out to the public that the ANC was not involved in this agreement because Mr. Collins kept saying "community representatives," "community representatives," and I wanted to make sure that my constituents knew that that did not include the ANC.

There was no further discussion about this, and no questions were asked about it.

I would also like to point out that at this meeting on November 16th about historic preservation, Mr. Berger noted his dissatisfaction that they had not gotten notice about the review of the flagpole and the plaque which was going to occur in two days. So they had not been involved in this process.

There were several things. Mr. Morris said that he did not know of any previous embassy that had not asked for parking. Well, I was involved in one as a neighbor. The Albanian Embassy agreed not to ask for any parking, and their conditions were to seek three off site parking spots.

Mr. Mlotek has raised the issue that there is concerns about this, and he has talked to the Ambassador from Albania. There is a curb cut in public space that accommodates two cars, and I don't know when Mr. Mlotek talked with the

Ambassador, but now there are three cars parked there instead of two cars.

As far as the enforceability of conditions, our ANC has problems. We have to rake the leaves and cut the grass and do everything else for the neighbors. We have asked Mr. Mlotek to come to our ANC meetings because of the concerns in the neighborhood, and Mr. Mlotek has told us that he will meet with us between nine and five, unless he has changed his mind. We haven't asked him lately because he has said that he would only meet with us from nine to five in his office.

Thank you.

CHAIRPERSON REID: When you had your meeting, the ANC met, two people comprised a quorum, correct?

MS. BUMBALO: Well, there's only two commissioners. Yes, the entire two were a quorum.

CHAIRPERSON REID: Okay. I'm not sure I understood you to say that -- you said that there was an invitation for you to meet with Mr. Collins and the Ambassador --

MS. BUMBALO: That was a --

CHAIRPERSON REID: -- at Mr. Collins' office.

MS. BUMBALO: Yes.

CHAIRPERSON REID: And that did not occur?

MS. BUMBALO: It was changed to the residence of Mr. Sukanik, whom Mr. Collins -- the meeting that Mr. Collins referred to is the meeting that was supposed to have occurred at

his office. It was changed that morning to the private residence.

CHAIRPERSON REID: So they did make a presentation to the ANC. They were given an opportunity to make a presentation?

MS. BUMBALO: There were two meetings. Mr. Collins asked before the ANC meeting on the 30th to meet with the ANC commissioners. He set that meeting up for November 16th at his office. That morning I was told the meeting would now occur at Mr. Sukanik's house, and that's the evening I went, and the Historic Preservation and the Neighborhood Council were there.

The ANC meeting was on November 30th, and Mr. Collins and the Ambassador did make a presentation. There were about 60 people there. We took a straw vote. No one voted in favor of this.

CHAIRPERSON REID: All right. Okay. Other questions, Board members?

MR. SOCKWELL: Just one. You alluded to a car bombing.

MS. BUMBALO: Yes.

MR. SOCKWELL: Where was that?

MS. BUMBALO: That was right on the circle, Sheridan-Kalorama Circle on Mass. Ave. I have documentation. It was in conjunction with Chile about 20 years ago. There is now a plaque there, and I actually did -- I archived; I researched the archives of the Washington Post, and there are still stories about

it. I think there are 100 stories about it.

MR. SOCKWELL: I sort of remember it, but it wasn't in relation to a destabilization of the government per se, was it, or was it?

MS. BUMBALO: Yes, it was.

MR. SOCKWELL: Okay. Do you have any idea of how long the nation of Benin has had a stable government?

MS. BUMBALO: I believe they have been stable, but in our area there are governments that are stable and then become unstable. We had the uprising in Kosovo. In the middle of the night, the State Department came and evacuated the Embassy on or the Chancery, the Yugoslavian Chancery.

Egypt is in our ANC. There was a -- as you know, there was the Egypt air crash that there was talk about problems.

We have Ireland. We have China. We have North Korea. We have Pakistan.

MR. SOCKWELL: And Canada almost --

MS. BUMBALO: There was just a bombing in Pakistan.

MR. SOCKWELL: And Canada has had mailbox bombings and almost destabilized some years ago. So it could happen anywhere.

MS. BUMBALO: So it could happen in Benin then, too.

MR. SOCKWELL: That's true.

MS. BUMBALO: If you take that farther.

MR. SOCKWELL: But there is no --

MS. BUMBALO: So you are saying there is no --

MR. SOCKWELL: I'm saying there's no particular profile of nations that might undergo such changes.

MS. BUMBALO: That's right. So Benin could become unstable as well based on your logic.

MR. SOCKWELL: That's right. That's quite true, as could our own White House.

MS. BUMBALO: Yes.

CHAIRPERSON REID: Are there any other questions? Board members?

MS. HINTON: I just have one question because it's still not clear to me. Did you attend both of the meetings?

MS. BUMBALO: Yes, I did.

MS. HINTON: And I thought that at your testimony you said at the first meeting there weren't any NAC issues raised. Only the --

MS. BUMBALO: Only the other people raised their issues.

MS. HINTON: And you chose not to raise issues?

MS. BUMBALO: Well, no. The point of the meeting was for the Ambassador to get to know us, to present his case so we would get to know him. That was how it was presented to me.

MS. HINTON: And you didn't take the opportunity to ask about any issues that concerned you at that time or did you

not have these concerns at that time?

MS. BUMBALO: At that time, the issues about the fact that this would be a residence changed to an office, I raised that, that that was a concern.

MS. HINTON: One of your concerns is the number of cars that are in the driveway; is that correct?

MS. BUMBALO: Well, I believe one of the criteria is parking, public transportation and congestion, and what I am saying is anything is going to be an increase in parking and congestion because this was a residence.

MS. HINTON: It appears to be a big residence though, and there's --

MS. BUMBALO: There's 4,500 square feet, I believe.

MS. HINTON: Yeah. As long as it's been a residence there's never been more than one car in the driveway?

MS. BUMBALO: Well, perhaps two, but it has not had the intense use that an office has, nor the occupation by that many people.

MS. HINTON: It seems to me that it would be possible were even just a single family to move in there that that family would have more than one car though. By today's standards I would think two would be the minimum for a family. Wouldn't you agree?

MS. BUMBALO: That's true.

MS. HINTON: Okay. Thank you.

MR. SOCKWELL: One thing. As a general rule, I don't know how many cars people own. I happen to be a single person, and I own four cars.

MS. BUMBALO: And where do you park them?

CHAIRPERSON REID: And where do you live?

(Laughter.)

MR. SOCKWELL: Of course, I garage two of them.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: But what I wanted to ask you was with regard to the increase in parking, you stated a 300 to 400 percent increase in usage and congestion accruing from the potential of four cars being used or being parked at the site. It probably would have to be broken down into potential vehicle trips to really give you the representation of how much additional traffic would be generated and the actual time of such trips based on the other usage patterns of the street, would determine the amount of congestion.

So it might be a bit of an overstatement to use an arbitrary 300 to 400 percent figure without backing it up with some kind of data.

Thank you.

CHAIRPERSON REID: Thank you very much.

We've had a request from Council member Graham. He's asked to be heard. Sir, can you please come forward, and we'll give you this opportunity?

This would be the time for persons and parties in support of the application. I don't know what your position is, but we will afford you the opportunity to speak at this time.

MR. GRAHAM: Well, thank you very much, Madame Chair. I appreciate this opportunity.

I have come by a couple of times this morning.

CHAIRPERSON REID: I saw you a couple. I saw you earlier.

MR. GRAHAM: I was just --

CHAIRPERSON REID: I'm sorry that we weren't able to accommodate you at the time.

MR. GRAHAM: No, no, I understand that, but I was just running out of options, and so I appreciate this courtesy. I will be brief.

I'm here in support of the neighborhood, and the neighborhood opposes this project.

I'm not going to review a lot of the points that have been previously made, but I do want to touch on just a couple of things, and I want to say at the outset that as I have found, I'm a brand new council member. This is my first year in office. I represent Ward 1, which includes Sheridan-Kalorama, as well as the Kalorama portion east of Connecticut, and I am finding that the issues surrounding embassies are extremely complex and also delicate.

However, I think it's also pretty clear that there

are issues that we have to have a local interest in, as well. I mean this is not just about the State Department. It's just not about the international relations of this country. It's also about places where people live.

And there are expectations quite properly associated with quality of life by our neighbors to these embassies.

Kalorama, as you know, is already overburdened with diplomatic missions. I'm advised in this two block area which has been illustrated here that there are 14 diplomatic properties in that two blocks and probably comprising as much as 40 percent of the total space. That's the way it is today.

There has been as a result various consequences in terms of street parking which have been described for you. The fact of the matter is that -- and I'm finding this in my own experience as a council member -- is that far too often embassies make very poor neighbors. They make very poor neighbors, and the problem, the particular problem associated with that is that once an embassy takes root, once an embassy is in place, once there is a diplomatic property, there is precious little recourse available to us, and this is what we find over and over and over again.

So that when there are complaints associated with diplomatic use of a property, we're pretty much stuck with whatever's going on.

I have with me, which I'd like to formally

introduce into the letter -- into the record, rather, a petition signed by 50 residents of this area, if you would accept this as part of the record, opposing, opposing this application.

In addition, I have photographs which I would also like to introduce into the record, which shows not only the subject property, but it also shows the current embassy, or is it the chancery? The chancery rather of Benin and where they are currently situated and what this property today looks like, as well as some other diplomatic properties which are located in Sheridan-Kalorama, which give, I think, a very clear illustration of the challenges that we face in an issue like this.

And if this particular embassy is going to, you know, conduct itself on Kalorama Road the way in which it currently conducts itself at 27th and Cathedral, we know there are going to be problems associated with this property.

So I'm not suggesting that this is an easy task for you, but I do really encourage you to pay very serious consideration, which I know you're in the process of doing during this lengthy hearing, to the views of this neighborhood because the fact of the matter is that once this hearing is over, once you act on this application, whatever happens at this property on Kalorama Road, once it becomes a diplomatic property, as we all know, once that happens, you know, this is pretty much beyond our control.

So this is our opportunity, and it is a very

important opportunity for us to come here and say to you today that we have major reservations about this application.

Thank you very much for your attention.

And may I introduce this?

CHAIRPERSON REID: Wait one section, Council Member Graham. I don't know if you were in the -- I don't know if you were present during the time that we discussed the other property where the chancery is now located, and I asserted to the persons here in the hearing room that our responsibility is only to assess the subject property, the instant application that's before us today. It is not within our purview to be able to make any analysis or assessment or any judgments pertaining to any other properties that may be owned by the Applicant, and as such, we can only view the submission that has been given to us on its own merits.

And some of the testimony here today by the Embassy proffered to us the manner in which this particular property is to be kept. The Ambassador in his testimony asserted to us that there would be a property management company that would be hired to insure that the property is properly -- that this site is properly maintained, as well as a caretaker who would be permanently housed on the premises to see to it being properly taken care of on a day-to-day basis.

So I don't know -- Ms. Pruitt, if you can please give me some counsel on that -- whether or not we can accept

pictures of a property other than the property that we are -- that we are --

MS. PRUITT: That up to you. You certainly can accept the petition of the 50 people. That's very much in --

CHAIRPERSON REID: Well, I think that the petition -- is it the same petition that we already have? Because we do have --

MR. GRAHAM: Prior to this?

CHAIRPERSON REID: Yeah. We do have in our records a petition that has been submitted --

MR. GRAHAM: Okay.

CHAIRPERSON REID: -- from the Kalorama neighborhood.

MR. GRAHAM: Yeah, this one has more signatures than the one that you have.

CHAIRPERSON REID: Certainly you can submit that.

MR. GRAHAM: But I think if I may suggest, and I don't want to -- you know, I recognize this to be your decision, et cetera -- but, you know, the issue of how the current chancery is maintained goes to the credibility, the credibility of the promise that's being made to you today, and so I see it as relevant for you to have a look at what is being done today as you assess whether or not, how much importance to attach to these promises that are being made.

Promises are easy to make. Promises are easy to

make, particularly in the case of a property that once they have this land, once they have this use, you know, they're beyond your jurisdiction; they're beyond my jurisdiction.

And I just think that you should look at this and ask yourselves, you know, to what extent you can rely upon the promises and the representations that are being made, judges based on what is, in fact, the reality today at their current location.

I mean I think it's relevant, but I certainly respect your decision not to consider it. I think you should look at these photographs. I think they tell a story.

CHAIRPERSON REID: Well, it's not a matter of decision. It is a matter of what is within our purview. We cannot make an assessment of any other properties that are owned or that are occupied by the Applicant other than the property or the site that is being proffered to us as a matter of the application before us today. I mean, it's not a matter of decision or opinion or judgment. It's a matter of what we can and cannot do by -- by -- by statute.

MS. PRUITT: Madame Chair.

CHAIRPERSON REID: Yes.

MS. PRUITT: I know Mr. Graham was not here earlier when Mr. Mlotek, representative of the State Department, did state and it sort of follows, just to let you know.

I know there's a lot of concern that the community does not have any recourse. However, we found out that the

community does in the sense of any type of land use violation or violation, such as fire or parking, the community should go and get that enforcement cited, and then take that to the State Department, which will then remedy it.

It's very similar to our process, but so there is some recourse.

MR. GRAHAM: Well, I'm glad you used the word "some."

MS. PRUITT: Well, there's a --

MR. GRAHAM: There's a real qualification.

MS. PRUITT: There's a process of recourse. How about if I --

MR. GRAHAM: Yeah, but a process that is distant and remote and complex and well beyond our jurisdiction. You know, I would question whether that's much of a recourse, frankly.

You know, I don't mean to dispute what you're saying, but I can't -- I would be remiss in my responsibility if I -- if I suggested to my constituents that they should take much solace in that kind of process because we know from actual experience that there's not much there.

And I'm sorry that you won't look at these pictures because I think they go to the credibility of what's being promised to you, and you need to evaluate whether you should be relying on those promises.

I mean you have expressed those promises in

response to my concerns, and so -- but I leave that to your judgment.

MR. SOCKWELL: Madame Chair.

CHAIRPERSON REID: Thank you.

MR. SOCKWELL: Madame Chair, in previous applications before the Board, we have taken into consideration at least generally the conduct of a business or operation as being relevant in some way to the applicant's position within the community based upon the facility that they were applying for, not taking into consideration per se the other structure as being evaluated, but looking back to the organization through the existing situation.

And I think that there is a way that we might include the interests of the council member by looking at it that way rather than looking at the building itself, but stepping beyond that to say that perhaps the organization has faults that need to be assessed.

I believe we've done that on previous occasions or we've certainly allowed in testimony issues that revolved around the way the business was conducted.

CHAIRPERSON REID: I think that the particular application that you're referring to was one in which there was some concerns nationwide as to the conduct of their activities, and when proffered to us, we were not and could not allow that testimony to in any way sway our decision. We had no -- just as

today there has been testimony proffered here regarding the condition of the chancery over at Cathedral Avenue, we can't stop that.

The point I'm making is that notwithstanding the fact that the testimony may be proffered either in written testimony, I mean, written or either in oral testimony, we can -- there are only certain things that we can consider, and we cannot use that information as a basis for our deliberations.

MR. SOCKWELL: Council member, I would like to make a statement to you directly. You may not have ever lived very close to some diplomat individually who was not the kind of neighbor you would want to have, but I do, and there are times when a diplomat -- and no disrespect intended to the gentleman from the mission from Benin -- but there are times when an individual living in our midst holds him or herself so far above the law due to the diplomatic immunity that there is no way that we can communicate with that individual on issues that would probably gall most of us in this room.

However, the mission itself or the diplomatic house, as we will call it, stands above the individual and stands to scrutiny by the world above that of the individuals, and I believe that we do have a greater opportunity to control the mission when sometimes the missionary would not be the one that you would want to have in your midst.

And because the embassies and chanceries are the

identity of the governments that reside within them and use them in their daily business, they have to hold themselves to a higher standard for the conduct of that business and the care and maintenance of those facilities than they might if they were living in their own homes within your neighborhood.

And, believe me, I have been through some very unique situations with the missionaries, but I do believe that we have to look at the mission as we would look at our own homes and our own businesses, and consider that in most cases we do intend to keep them as they should be kept.

Thank you.

MR. GRAHAM: Well, I think we're able to predict to some extent the future by what has happened in the past, and I think if you would look at these photographs, you would have serious doubts about some of the representations that were made here today.

I also have other photographs. Are you willing to take the ones of some of the other embassies or some of the surrounding areas? Have you seen photographs of this particular property? Are you interested in seeing any of these?

CHAIRPERSON REID: Yes, yes.

MR. GRAHAM: I have 11 --

CHAIRPERSON REID: We do -- we have --

MR. GRAHAM: I have 13 photographs. Do you want any of these?

CHAIRPERSON REID: Okay. If it's germane to this particular site, certainly, the site itself or other properties that are adjacent to or abut this particular property, by all means, as long as it is contained within the offices of this particular site and this application.

MR. GRAHAM: Why don't I leave these with your counsel and have them screen it and so that you don't have anything enter the record that you find --

CHAIRPERSON REID: Sure.

MR. GRAHAM: -- irrelevant.

CHAIRPERSON REID: You can give it directly to staff --

MR. GRAHAM: Okay.

CHAIRPERSON REID: -- at any rate.

MR. GRAHAM: Okay. Well, thank you very much. I appreciate it.

AMBASSADOR TONOUKOUIN: Thank you. Thank you very much, Council Member Graham.

I see another council member here today, Mr. Catania. In recognition of your time constraints, I also would acknowledge you at this time, taking you out of sequence nonetheless, but I know that you've been here a couple of times already today.

So are you -- give us your position and then your testimony.

MR. CATANIA: Madame Chairman, thank you very much for taking me out of order.

I have actually a mark-up on Human Services Committee in which I serve, and my vote is needed for the mark-up for a quorum, and so I appreciate very much your taking me out of order.

Again, my name is David Catania. I live at 2127 California Street, exactly one block away from this site, and I think it's important, and let me just put on the record that I am opposed to this foreign mission application and to put on the record that I had been the ANC chair of this particular ANC prior to being elected to the council, and the very issue that got me involved in local politics concerned the outrageous nature in which these missions conduct themselves.

And I didn't stay for Mr. Mlotek's speech. I don't know if Mr. Mlotek is here, but with all due respect, I've heard it all before, all before. Broken promises. This is about promises made and promises broken.

There is nothing to distinguish this one or this person changing the course and the pattern of behavior.

You, sir, mentioned your issue with a particular diplomatic presence. Let me tell you about the innumerable ones that I have had not only as chair, but as a council member.

We have an embassy between Bancroft and Phelps Place that used the alley as its personal dumping ground, period.

There's no reason for them to have private trash pick-up in their view. It's simply where you put the trash.

Parking on the street, a nice place one would expect one to park. Embassies, however, view their front yards in violation of historic preservation as parking. So they pave over the front of their property and use it as parking.

I'd like to bring one example that actually got me involved in my ANC to begin with, and that was the Albanian Embassy. The application was made. The same counsel that is here today, Mr. Mlotek, the same person from the State Department here today, told us that the Albanian Embassy would present no problem, that they would take care of all the parking concerns, off site parking, et cetera.

Actually within the order that the BZA wrote granting permission, there was the notion that off street parking would be required. Well, three years later, no off street parking. No returned letters. I have written the State Department, asked, made an inquiry just as Mr. Mlotek said.

His big thing is process. If you follow the process, we'll respond. You know, if you give me a pint of flesh, right, I'll respond.

Never happens. Never a response. Do you know what the Albanians are doing to this day? They're in the process of paving over their driveway, parking illegally against historic preservation rules, right? And when it came time after their

first year to cut their grass, after their grass grew as tall as this table, their response was, "The government takes care of that."

So you now have Dr. Jeffrey Singer, who lives next door to the Albanians, who is taking care of their lawn because the Albanians won't. So you ask this man who lives next door, whose property and life is invested in this community to do not only his yard work, but that of a foreign mission.

I was told there was a process when I joined the council. It had to do with amending the comprehensive plan. Along with my staff, we did that, and the language that appears is the language that with NCPC approval to discourage the location of new chanceries and expansion of existing chanceries in any area that is essentially a residential use area. That is this neighborhood.

There is a process. We followed it.

The neighborhood basically is exhausted with this constant onslaught. If you were to list and itemize the chanceries and embassies within this very small community, there are over 200. Every resident, every residence you take off the tax rolls is a minimum of 10,000 in property taxes, not to mention the personal income tax of the resident or residents who would live there.

The District of Columbia is, in my view, you know, on the hook between ten and $15 million any way you estimate it in

lost property taxes within this small geographical area.

I heard federal payment in the background. There's no such thing as a federal payment. It doesn't exist anymore, right?

So when they put their trash in the alley and DPW picks it up, we pay for it. Right? When they take their homes off our tax rolls, we pay for it.

Anyway, I would ask that you respect at long last the wishes of the residents of this community who have been good hosts. Okay? But there is only so much that this neighborhood can take before you do tip the scale and make it essentially a community of office buildings with pretty, you know, colored material out front. And that's exactly what is happening.

The neighbors have been and will continue to be good hosts, but I think the time has come and the delicate balance has been put in jeopardy. I would hope you would respect the process that has been put in place. We did amend the comprehensive plan to take this into consideration, and I would echo the words that Council Member Graham has mentioned earlier that these have not been good neighbors by and large.

The use of the Libyans, for instance, on Wyoming is a perfectly good example. If you look at, again on Wyoming, all within the same community, the Macedonians who bought the foreign -- the past French mission on Wyoming Avenue with the promise three years ago to renovate; haven't touched it. Does anyone want

to know why? Because to renovate it consistent with historic preservation is too expensive, and I'll put on the record exactly what I think this is all about. I think they're hoping it will catch on fire, burn down, and they will be no longer subject to historic preservations.

But until that fire happens, that property will be an eyesore for the residents of that neighborhood, again, who through good times and bad have picked up and suffered the injustices of the State Department's unwillingness to respond to the concerns and problems associated with the very commercial enterprises they are putting in our presence.

So with that I would urge you very sincerely to not accept this and to honor what has been a very hard fought process within the NCPC to discourage the location of new chanceries in essentially residential areas, and to respect the balance, the very difficult balance that exists between residences and these embassies and chanceries in our neighborhood.

I'd be happy to answer any questions that you would have. I absolutely have unfortunately a wealth of information in terms of how the neighborhood has been wronged by these, and just to put on the record, I'm sure parking has been raised. You should know that it has actually been accelerated when you consider that across Connecticut Avenue there is a large, new Kalorama development. I know because my office is absolutely inundated with complaints about parking, that in the midst of the

ANC due east a very large condominium development was put in place that is pushing parking further west, right, already making a very difficult situation worse.

The State Department knows this because we have personally given them the information of how many times the parking regulations of this city have been violated. For instance, when a chancery is located on a corner, it may have one front but not two. Well, let me tell you there are two front diplomatic parking throughout the community.

Within one block of my house I can point to 30 diplomatic parking spaces. So at night when I come home from doing my council business, I routinely have to park four blocks from my house because I cannot park in my own neighborhood.

So you take this expensive property off the tax rolls, right? You inconvenience the residents. You add no benefit, yet costs to the city by having to clean up after them. And yet you want to do more.

And I would, again, sincerely urge you to take the stand that enough is enough and follow the language in the NCPC.

MR. SOCKWELL: Council Member Catania.

MR. CATANIA: Yeah.

MR. SOCKWELL: I'd like to ask you two questions. Do you think there is an enforcement issue, even though it is not before this Board, that would help clean up some of the parking problems?

MR. CATANIA: Well, I would like to, if it is within your authority, I would certainly appreciate some enforcement of the parking regulations because throughout the community -- and let me add, again, it's not just embassies that have a commercial presence in this community. There are also a good many not for profits, and very importantly, on the west side of this ANC, there is the mosque that is in the corner of Belmont and Massachusetts, and my office has been working very, very hard with the mosque and with the Office of Emergency Preparedness in this city to figure out a solution because every Friday you see the worshipers will come into the community, and the parking literally consumes that neighborhood all the way up to and including Kalorama Road, and Mr. Mlotek knows that very, very well. Okay?

We have last year, just by way of coincidence, just to give you by way of illustration to show you how serious this issue is, the day before Ramadan -- actually Ramadan is this Friday -- the day before Ramadan last year, there was a fire in the neighborhood. Had that fire occurred on Ramadan because of the double parking, et cetera, the neighborhood would have basically burned up.

The more commercial entities you bring to the neighborhood, the more broken promises in terms of parking, the more pressure. This is a very real safety concern.

And had 200 diplomatic residences gone up in flames

last year, right, that certainly would have been a front page story.

MR. SOCKWELL: A second question for you, sir, is the subject site is more of an in-fill site within a fairly well bordered diplomatic segment of that particular area, bounded on the north by the Chinese compound and separated on both sides, although not directly to the east, but framed on both sides generally by diplomatic missions and also directly to the rear by a diplomatic mission, and it is more of an in-fill than a fringe site.

And in looking at it that way, the impacts outward to the community are somewhat encased or encapsulated or I would say at least the framing of this particular application is one that does not extend a perception of diplomatic missions beyond itself because it is surrounded and virtually land locked by other --

MR. CATANIA: The neighbors immediately to the west, however, the building immediately to its west is a condominium if I'm not mistaken.

MR. SOCKWELL: East.

MR. CATANIA: East. I'm sorry. Okay. If you're talking about actually touching this residence, you are correct, but if you go simply 250 feet around, you have the Dresden that is very significant, and across the street you have four very large -- 2101 Connecticut Avenue, for instance -- very large apartment

building, and on the corner of -- is it Altmeade? -- there's also a very large one, and then on the corner of Belmont another very large one.

I wish I could lay it out for you, but there are very, very substantial condominiums that are located maybe not immediately adjacent to, but certainly in view of. Right? And these individuals are looking for scarce parking spaces. Their guests and visitors are looking for spaces, and there is already a substantial diplomatic presence on that block.

And so all we're saying is, you know, kindly let us have an ecosystem that is not an office building, I mean, not an over, you know, concentration. I appreciate your comments very much, but there's always an excuse why one more is acceptable.

MR. SOCKWELL: I will just end by stating that probably the largest impact on the community was the Chinese complex, and it occurred a long time ago when they took over that building --

MR. CATANIA: I agree.

MR. SOCKWELL: -- and made it their own. Most of the larger buildings to the east running along Connecticut Avenue will not be converting to anything. They will remain the same.

MR. CATANIA: What I'm talking about is the parking.

MR. SOCKWELL: Yeah, and in terms of impact, it is certainly an additional impact, but I believe the neighborhood may

have itself closed ranks around what will and will likely not be converted to diplomatic use, but there again, I'm only stating that there won't be much change east of or immediately west of the subject site because what can go to the west has been taken. The building to the east is not suitable for a diplomatic mission and is condominium, and the larger structures to the east of the next embassy over are not going anywhere, nor would be converted.

That's all.

MR. CATANIA: My understanding is one of the bases for rejecting this application concerns parking, right? And so on the east you have this very new complex that was constructed that is putting enforcing parking pressures to the west. You have on the west side of the ANC, you have this mosque. Since Rock Creek is to its east, there is no parking option there. The Park Service has been very helpful in terms of assisting us in creating more spaces, but you have 1,300 worshipers who come every Friday from 12:30 to 2:30 competing with already many diplomatic spaces that have been removed from an opportunity for anyone to park at.

So the 12 to 1,300 worshipers and competing for the fewer residential parking spaces, and it's forcing those folks to move east. So you've got a convergence of west and east right at this very point, and you can always really make the point that one more isn't going to hurt, but, you know, with all due respect to this panel, we have been, as residents of this neighborhood for many years, been told the same line, that there is a larger

national interest.

Well, maybe, but right now there is a law and a process, and we have worked within it, and we are showing and demonstrating how it will be a detrimental impact on the neighborhood, and that there has been ample bad faith.

You know, I apologize if Mr. Mlotek doesn't like hearing this, but there has been ample bad faith on the part of the State Department, in general, and Mr. Mlotek, in particular.

I do not have faith in promises made because there is no history of promises made and promises kept, and you know, I hope to be a part of a new District of Columbia, one that does have some respect for the long standing District residents who pay the bills.

We cannot continue to run roughshod over them year in and year out under some proclaimed federal interest.

MR. SOCKWELL: Council Member, has Mr. Mlotek made himself available to you historically when that was desired?

MR. CATANIA: I approached Mr. Mlotek a couple of months ago about the parking issue and about this very issue, and we had a very terse and unpleasant conversation, and I'll be frank about it, and I'm sure he'll recount it as the same, and it went something like this.

You know, you cannot continue, much as my testimony was here today, you cannot continue to pile on in this neighborhood. You are going to destroy the residential quality of

this neighborhood. You are going to run people out of this community who for a very long time have contributed and contributed significantly to the treasury and the quality of life in this city in the name of the federal interest and do that at the same time you break the promises that you made to get the last embassy here.

The gentleman from Wilkes, Artis was the same lawyer for the Albanian Embassy that again today if you travel by there, you will see them parking essentially on the sidewalk in front of the embassy. Where is the enforcement?

And so it's not a matter of Mr. Mlotek making himself available. He knows all too well that he has at least to accept phone calls, but the issue is as soon as he accepts them, you know from the get-go it is a wasted dime.

MR. SOCKWELL: The sidewalks do belong to the city, and the city can enforce the parking regulations if the parking regulations apply to the sidewalks.

MR. CATANIA: That is absolutely the case, and you know that this city is in the process of trying to reconstruct itself in an appropriate, proactive way. The issue though is until we are there, it could be assisted. The city could be assisted when these issues are brought to the attention of the State Department. Some support from the State Department in this effort.

MR. SOCKWELL: Well, perhaps this Board can review

past diplomatic missions cases and see whether or not the approvals have been conformed with.

MR. CATANIA: I think I would welcome that.

MR. SOCKWELL: Because it is certainly something that may be very necessary.

MR. CATANIA: I would welcome that, and also with the threat of revocation, there is no reason why the Albanians three years later have not lived up to the letter of your edict. You told them what to do, and they're not doing it and show no intentions of doing it, and in fact, as I've said with respect to their neighbor, they have put an additional burden on an already overburdened District taxpayer, and this in the name of the federal interest, the same federal interest that -- you know, I don't mean to get on a soapbox -- but it doesn't give the District a right to vote in Congress.

CHAIRPERSON REID: Mr. Catania, let me just ask you one question. In regard to the parking and traffic congestion issue, the testimony here today is from the main embassy of the Ambassador, was that the operating hours are nine to five Monday through Friday. Now, the impact of the parking I would think would be for the most part like in the evening and on the weekend.

With those hours of operation and the embassy being closed except -- I mean the chancery being closed except for the caretaker who will not have a car, would that not give some solace to the community in that there would not be any additional burden

of traffic or parking during these hours?

MR. CATANIA: Madame Chairman, thank you for an opportunity to answer that question because I think if you'll go back and look at past testimony from Mr. Mlotek and also from this law firm in prior applications, it is verbatim what they have said in every other application. I mean it is extraordinary how similar the line is: that there will be a caretaker and no car.

Before you know it, again, as is the case with the Albanian Embassy, I know I live in the neighborhood. I walk by. The place is lit up like a Christmas tree after seven o'clock. There's not just one person living there, and there's no way we can condition just one person living there.

And after that person, I mean, you know, more than one individual it's certainly possible will live here and cars follow, and I'd encourage you to look at the Libyan Embassy or the former Libyan Chancery on Massachusetts Avenue.

If you want to look at a disgrace, the Libyans turned it over to the United Arab Emirates. Okay? It is in the process of falling down on Robert Haft's house. It's a total mess.

There was an entire family living in this, you know, as a residence. So once you let the horse out of the barn and they tell you what you want to hear, you know, that's the game, you have no control over that, and we have every reason to believe based on current practices that that promise will be

broken.

And this is nothing to impugn the fine folks from Benin. I mean this is nothing personal against the Ambassador or against this mission. It is just a neighborhood that is fed up with the broken promises and one that wishes to remain at least on its face a residential community.

CHAIRPERSON REID: So it's not this particular application that you oppose. It is any -- are you saying that it is any application for any --

MR. CATANIA: Well, there are reasons --

CHAIRPERSON REID: -- chancery to come into that particular neighborhood. Is that what I'm understanding you to say?

MR. CATANIA: If I had my way, I cannot envision one which I would support, okay, candidly within that diplomatic overlay. I cannot candidly think of an additional conversion.

Now, if it is already a diplomatic presence, I'm fine with it continuing under a different flag, but as far as additional residential conversions to diplomatic residence, I can't think of one I would support.

I do know, and I have not seen their location on Cathedral, but I know Linda Bumbalo, who is the Chair of the Commission has, and she has reported to me that it is in very bad condition, and I know Mr. Graham has seen it, and he reports it's in very bad condition.

I have not seen it with my own eyes. So I'm not going to comment, but I've seen plenty. I've seen what Myanmar has done. I've seen what the El Salvadorans have done, what the Ghanis have done, the Albanians, I mean, the Macedonians, the Libyans, United Arab Emirates.

I mean, you know, we could spend all day here. It's not one. It's not two. The neighborhood has actually gone so far as to recognize those embassies and those chanceries who do a good job. I mean that is how committed the neighborhood is. We have sent letters to Ireland, to the Netherlands, to China on a well maintained presence in an effort to incentivize that kind of behavior.

But those who have broken promises far exceed those who have met them.

CHAIRPERSON REID: Thank you.

MR. PARSONS: Mr. Catania, you must be running out of time.

MR. CATANIA: got to be for a two o'clock. I've got about 30 minutes.

MR. PARSONS: Oh, plenty of time.

MR. CATANIA: I know how these things go.

MR. PARSONS: I guess you are familiar with the regulations and the reason we're here.

MR. CATANIA: Right.

MR. PARSONS: And I don't mean chapter and verse

regulations, but we went through a process many, many years ago to try to determine what communities or what locations in this city were appropriate for this use. So we have zoning in place that has a diplomatic overlay that is unfortunately impacting this community by your testimony and that of many others.

And I'm trying to assess the best way to fix this because it's not this Board that can fix it.

MR. CATANIA: Right.

MR. PARSONS: It may make a decision about this one case up or down and send some signal to the State Department and others, but the law still says that this is an area of the city that these facilities can be located in.

So I'm trying to follow the intent of your amendment to the comprehensive plan of last February. Was it your intent to revisit the comprehensive plan, that federal element called the foreign missions element, and encourage NCPC to undertake a review of this and, in turn, the Zoning Commission?

MR. CATANIA: That would have been my hope. That was my hope.

MR. PARSONS: All right.

MR. CATANIA: And let me tell you we are not a -- I mean the District government is not in the position to really advocate on its own here. All right? This is something that the forces of the State Department have made it very clear they'll fight tooth and nail.

It's convenient for them to have administrative and for our uniformed Secret Service purposes to have these, you know, consolidations of a presence. You need one car to drive down one street at one time, and you sit six embassies and five chanceries. It's administratively convenient.

But the nature of the Foreign Missions Act was not to just shove these down our throats without any recourse. That's why standards were put in place, and one of the standards concerned a municipal interest in parking, and I think we've heard what the municipal interest is. It's opposed to this. We've heard that parking is definitely a problem.

I mean, the District was not an equal party in the participation and the negotiation of the Foreign Missions Act. You did not have two equals sit down together and say, "Well, there is a meeting of the mind among equals, right, and therefore, for you, District, to change the deal now is somehow unfair and in violation of the spirit of what we intended." You did not have that.

You had a direction from the Hill down to the District and some piecemeal on their face -- a few possibilities, a few examples where we can counteract that very significant power, and one of them is a municipal interest and the parking issue. I think they have been addressed.

My own experience when I try to park in that community because of the abundance of diplomatic parking spaces is

oppressive, and I understand when folks say, "Well, you won't see diplomatic cars in Zone 1 parking."

Yes, you do, all the time. There's no respect for that. They take the zone -- they take the spaces immediately in front of their property, and they take whichever other spaces they need irrespective.

MR. PARSONS: How many other communities or squares in your knowledge have this kind of impact? I mean is this --

MR. CATANIA: This is the most heavily -- this is the highest concentration of diplomatic embassies, of embassies and chanceries in the city, bar none. One of our neighbors, you know, actually went through the land records, and I believe he came up with between 150 and 220. I apologize. I've forgotten the number, but just an extraordinary number.

And many of these homes are rather large, and so you can have blocks where, you know, it's 50-50 at best. Okay?

You will hear, and I'll let my neighbors speak to this better than me; you will hear all of the reasons why having, you know, this additional concentration tips the scale away from a residential and in favor of a commercial, and what that means for their own quality of life. Okay?

I know how it affects mine, and to answer your question, I would hope very much that we would have the ability to go to the federal government as equals and come up with a future solution to this, but I think you send a message right now if you

reject this that the current system isn't working, and that what we ought to do is maybe look at a different approach.

But as long as this BZA continues to say yes, yes, yes, it never gets past Mr. Mlotek that there's a problem with the State Department.

MR. PARSONS: So you don't sense, not that you're all knowing about the city, but you don't sense that if the Zoning Commission and Planning Commission were to revisit this block, this square, this community, that other communities throughout the city would come and, say, "Me, too"?

MR. CATANIA: No.

MR. PARSONS: "I'm saturated."

MR. CATANIA: Well, I think that there may be some along the 16th Street corridor, right. There is, I know, some view there in that community that there are too many, but I think we should in the District -- and this is me as a council member -- we ought to work in partnership with the federal government and find a better solution.

The current situation is not good enough, and I think that if we were to spread these chanceries and these embassies throughout the city and, you know, spread what is the federal presence throughout the District. If there are some compelling fiscal reasons as a District Council member I'd like to see that. Right?

I would love to see chanceries and embassies in all

eight wards of the city because in all eight wards of the city I want uniformed division Secret Service officers patrolling. I'm not kidding.

We are making it administratively easy for the federal government to save money on their part, to destroy this very important and historic community. This is the second largest historic community in the District of Columbia. You know that. Capitol Hill is the first. Sheridan-Kalorama is the second.

And so as was the case with the Albanian Embassy, it was an historic property designated as such, right? It was the home of the first Postmaster General, and again, today you can't get the grass mowed. That's what we're doing to the historic treasurer of the city, turning it over and allowing it to be destroyed.

Go to Wyoming Avenue and see what is happening in the former Libyan Embassy on Wyoming Avenue or their other place on Massachusetts. It's appalling, and there's nothing Mr. Mlotek or the State Department will do or can do about it. It's great talk. There' no action.

MR. SOCKWELL: Council member.

MR. CATANIA: Yes.

MR. SOCKWELL: Just a quick question if I might. You spoke to the new housing development that's to the east that's down --

MR. CATANIA: Right.

MR. SOCKWELL: Was that a matter of right development?

MR. CATANIA: You know, I can't speak about that. I don't know what the zoning was of that. I know, you know, it moved forward. There were representations about what the parking impact would be, that there would be a certain amount of parking spaces that would occur, and you know, according to the residents that I hear from, the parking impact is much greater than that which was represented.

And as is typical with the case, developers will say, "We're going to build 200 new condominiums or townhouses. Really only 80 parking spaces will be needed." Two hundred people have cars, right? Their kids have cars, and when their guests come, they just spill off east and west.

MR. SOCKWELL: And then it's a pretty tight little road system back in there.

MR. CATANIA: It is extraordinarily tight.

MR. SOCKWELL: Yeah, and I know it predated your arrival on the council. At least its approvals did.

MR. CATANIA: Right.

MR. SOCKWELL: And all of that. Okay.

CHAIRPERSON REID: Okay. Thank you very much, Council Member Catania.

Given the time, I don't think anyone anticipated that we would be here this long, but let's take an assessment as

to the persons who are here in support of --

MR. CATANIA: Thank you very much.

CHAIRPERSON REID: Thank you very much.

MR. CATANIA: We appreciate it very much.

CHAIRPERSON REID: Persons who are here in support of the application, can I see your hand, a show of hands?

(Show of hands.)

CHAIRPERSON REID: Persons are here -- you? Okay.

Persons who are here in opposition to the application?

CHAIRPERSON REID: All right. Did you all intend to testify? So there's five people? Okay.

(The Board conferred.)

CHAIRPERSON REID: Okay. Then we're going to go ahead and complete the application for the Embassy of Benin, complete this case.

The persons in support, could you please come up? Ma'am, did you not raise your hand?

MS. PRUITT: Madame Chair, I believe that's Ms. Samadani, who is here for the afternoon agenda.

MS. SAMADANI: I just wanted to mention --

CHAIRPERSON REID: Excuse me. Excuse me.

MS. SAMADANI: Yes.

CHAIRPERSON REID: I'm getting confused. Are you

here for this, for the Embassy of Benin application?

MS. SAMADANI: No, not for them, but I had opinion.

(Laughter.)

MS. SAMADANI: And it's a good solution.

CHAIRPERSON REID: Well, you can if you'd like to say a few words. This is for the Embassy of Benin application.

MS. SAMADANI: Yes.

CHAIRPERSON REID: All right. Now, what you need to do is give your name and your address, and just quickly give us, please, your opinion.

MS. SAMADANI: Okay. If you'll just make solution for parking, make them --

CHAIRPERSON REID: No, give your name and your address.

MS. SAMADANI: Oh, I'm Ms. Samadani. I live in Maryland, but --

CHAIRPERSON REID: Address, home address.

MS. SAMADANI: 10913 Brookwood Avenue, Upper Marlboro, Maryland.

CHAIRPERSON REID: Okay.

MS. SAMADANI: But you know I have my case later on. That's about my changing two units to three units. You extended to today.

But then I just was hearing. Why you don't solve the problem of parking? Make a bus come and pick up all the

employees and take it to the parking lot and solve all the solution, and then control the cleaning and whatever the people were against it.

CHAIRPERSON REID: Thank you.

All right. Any other persons here in support?

(No response.)

CHAIRPERSON REID: Persons in opposition, please come forward, and I ask that you limit your testimony to two or three minutes, and please don't be redundant or repetitive. If your concerns or issues have been addressed by the preceding spokesperson, then just give us whatever different issues you may have.

Please come up together.

MS. PRUITT: We can take four people at the front, please, because there are four mics, and then you can just rotate in.

MR. DANIEL BROWN: Yes. My name is Dan Brown, and I live at 2141 Wyoming Avenue, N.W., which is in the same block as the subject property.

And I would like first to speak to the questions that the panel had about the signatures on the petition. I was one of the two people who organized the petition drive, and I wanted to let the panel know that the bulk of the signatures landed on that petition following the November 30th ANC meeting. In fact, a number of the petitions were signed at that meeting

after hearing the proposed conditions from the Ambassador. So I think that's significant that they still registered their opposition practically in the same moment after the Ambassador gave his assurances that you've already heard.

And moving on to those assurances, I find it, too, very difficult to believe that the State Department is at all interested in enforcing, in particular, the conditions that have been proposed here today and, in general, the problems that we've already discussed.

I was offended and irritated at the November 30th meeting to hear the Ambassador of this nation basically threaten the neighborhood and say that, you know, "If you don't approve this application, we're going to make it really difficult for your embassy over in the United States," and I thought that was really unneighborly and it kind of goes to the whole sentiment that you've heard expressed here today.

The State Department attorney invited us to think about a test for saturation, and I think we already have one, and that is the fact that the subject property has been on the real estate market for months and months and months, and the real estate professionals in the market have told me, "It's not selling because it's surrounded by embassies."

So I think that's a very significant point.

Earlier there was a suggestion to address the parking issue. I think Mr. Sockwell was the one to make the

suggestion that the cars be backed in so that when they're shuffled around, the shufflers have a view of the traffic on Kalorama Road.

Well, that, too, presents a problem. If you've ever been on that street there, you wouldn't want people coming in off the street backing into the parking area. It would really slow things down on the street.

Now, I appreciate the suggestion, but I don't think it's a good solution to have people backing in rather than coming in frontwards onto the street.

MR. SOCKWELL: Unfortunately the back in or back out, it creates the problem one way or the other.

MR. DANIEL BROWN: I almost think the back in might even be a little slower. People tend to drive faster when they're going in frontwards rather than backward.

So I did appreciate the suggestion, but I still see that as problematic, and that's the content of my testimony. Thank you.

CHAIRPERSON REID: Thank you.

MR. LA BOSSIERE: My name is Doug La Bossiere. I live at 2141 Wyoming Avenue. My wife is with me here today, Gloria.

And there were a number of things we were going to say, and many of them have been covered. So I don't think that there's any point in going over them, except to say that we

support them very strongly, particularly Mr. Catania's remarks I think being not only representative of that area, but living in it speaks very well to what is actually going on.

My concerns are a couple, and I want to make reference specifically to the District of Columbia municipal regulations, Chapter 10, mixed use diplomatic district. Item 100.3, "the D district is an overlay district and shall be mapped in combination with another district and not instead of the underlying district."

I think the end result of this saturation is that there will not be an underlying district. It will all be D unless at some point there's a limit. I don't know what that is. I think that we're beyond it in our particular area right now.

The second issue I wanted to mention, which was of a particular concern, was just the reference again to the specific Item 1001.5, and that's where it does indicate that the Board shall consider the adequacy of off street parking.

I think notwithstanding any of the suggestions that have been made as to how to improve it, it is a horrible problem now, and this can only make it worse, and before we try to do things like this, we should consider how to resolve it.

We've called the police. They don't respond. They don't enforce the parking. We've called the Secret Service. We've had cars towed from our own parking lots, people abandoning cars for weeks and months. It's just beyond, I think, what most

people would expect is normal, and therefore it's difficult to sort of relate to some of the things that we're saying, but it is a very, very difficult problem.

I also wanted to make a couple of other points.

One, that the gentleman from the State Department, Mr. Mlotek, made having been there 17 years and never had a problem with enforcement. We live among all of these places. I myself called his office on the 1st of December, my complaint. That's within your tenure. I spoke to a gentleman who basically said to me -- I think it's Mr. Massey -- that the State Department's position is they support the petitioner. They have no interest in the residents. They take no time to come out and assess the situation. They have no follow-up.

This particular gentleman lives in the neighborhood on the east side, and he indicated he's familiar with the Macedonian Embassy. They know full well this place is not only in disrepair, but it's disintegrating.

The pictures that we presented before I think also will show you they don't just go to Benin. They go to this larger problem that we're talking about, and I think it is germane to your consideration today.

The gentleman who lives next door is living next to a property that's falling apart. How do you think that impacts him to sell his home? It's beautiful. He's put a lot of work into it, a lot of pride. It's a neighborhood. It's where

everybody likes to live, and it has impacted it tremendously.

The gentleman who is currently selling the property, I think, to Benin is Rhett Bulic (phonetic), is it not? They've had problems selling that property for exactly the same reason. That's being transferred to the remaining residents in this area. It's a huge problem, and the whole area will start to disintegrate, and then this wonderful area that everybody wants to locate in will not be so wonderful.

And it's an historic area. There just are not that many areas like that, and I think we have to take special efforts to try to preserve it.

I think we've been wonderful hosts to all of these other embassies that are there. We're simply saying: what is a reasonable share?

At the ANC meeting we extended the invitation to the Ambassador: please, maybe even move in as a residence. There are properties available, but as a chancery, it's an office building behind a facade of a home. These homes are built to contain a family, not the heavy use that they all have.

We live right amidst them all, and every one of them has traffic far beyond what you could imagine. You would have to be there in the middle of the day. We even considered taking a video, but we were hoping that, you know, the evidence we're presenting would be sufficient, and that if any of you have the time, we would invite you please come over, visit us; come and

see what the neighborhood actually looks like while all of this is going on.

I thank you very much for your consideration, and I cannot stress strongly enough how important this issue is to us to retain some kind of a neighborhood sense, and I think that's what this item that I just referenced here, that not instead of the underlying district refers to, that there is a limit; that it's already provided for.

We've got to decide what that is. You've got to decide.

Thank you.

CHAIRPERSON REID: Thank you.

MR. BUSSELL: My name is Trevor Bussell. I live at 2115 S Street, in the District. I also own two other residential properties within 400 yards of the application.

And my concerns, I was involved with David Catania originally to some extent with trying to oppose the Albanian Embassy, which is virtually across the road from where I live. So I can attest to how that performance has gone, with your approval.

And they have a caretaker on the property who has turned it into a domestic -- almost a domestic slum. They hang their washing out the back yard that's visible from Florida Avenue.

About a month ago I saw them illegally on a Sunday. They decided they'd churned up the grass so much that they would

cement over the drive, the problem, mid-day on Sunday, and now they park on the pavement, which is government property, and they also park wherever they like in the neighborhood, and they have diplomatic immunity. They probably don't pay parking fines. I can't attest to that, but we know the records of past embassies in that regard.

I also believe that the parking loss is very important to the neighborhood. It not only makes it very difficult for all the residents increasingly to park, and I've noticed it getting a lot worse. I've lived at 2115 S Street for eight years, and with the development on Connecticut Avenue, with the refurbishing of office buildings and the growth of restaurants and valet parking, that all impacts on our neighborhood, along with embassies that constrict the parking in the neighborhood.

This eventually, as a property owner and with residences, diminishes the value of my properties, which I feel is unfair because I'm offering properties as residential in a nice residential neighborhood, where the Mayor is encouraging residents to live in the city and regrow the city, and I think these things don't encourage that.

I think it's about greed. I think the owner -- I had a call from I won't name the realtor, but I believe the selling price is approximately 2.5. Now, on their own testimony today they said that the property is 4,200 square feet, and I know that the top price as quoted by the developer for the ex

Scientology Building, which also the lawyer from Wilkes, Artis represents, they quoted $400 a square foot as the maximum price they could achieve in that area.

And if you calculate that out and put that price on this building, it comes out at 1.68. So, you know, there's 900,000 to play with when someone like an embassy buys it. So I think greed has a lot to do with it, too.

I also, you know, consider and concur totally with what the other gentlemen and people have said, particularly Mr. Catania's comments about what's happening to our neighborhood, and I think that, you know, somewhere we've got to have some common sense about these problems rather than saying, "Oh, it's not within our purview," and "it's not this."

Mr. Mlotek was here at the Albanian Embassy before, and he is 100 percent or 101 percent behind these embassies, as is Chris Collins who makes his living, and I don't deride him for making a living from it, but they are 100 percent behind getting these approvals, Mr. Mlotek doesn't live in our neighborhood, and I don't believe Mr. Collins does, and the Ambassador on his own admission lives in Potomac.

You know, it's impacting us 365 days a year. They can go back to their house in Potomac and not be impacted, not being worried about their diminishing property values.

That's all I've got to say. Thank you very much for your time.

CHAIRPERSON REID: Thank you.

MR. KAPLAN: My name is Louis Kaplan. I reside at 2120 Kalorama Road, which is the adjoining property to the subject project on the east.

Our cooperative contains four units, each of which has about 3,000 square feet. So basically we're four homes that are about five feet from this proposed chancery.

Our concerns are very real. We vigorously, adamantly oppose this application, and I hope you'll give me a few minutes to go over points that I don't think have been adequately addressed, and to show you some pictures which I think speak more than 1,000 words.

I have a prepared statement which I will not read, but I would like to submit it for the record.

I want to first talk about the parking. The proposal is to use their driveway for four parking spaces. What this constitutes basically is the operation of a parking lot, a surface parking lot in front of their property and in front of our property.

Cars will have to be moved in and out. There's no doubt about it. Where do these cars go when they have to be reshuffled? They have to be double parked.

Of course, there are no available parking spaces on Kalorama Road during the business day. Now, can you imagine what this will be like with double parked cars occurring all during the

day? You've got a shuttle coming in back and forth, a shuttle which I understand is a van, a larger than ordinary vehicle. You have deliveries and pick-ups. You have an impossible situation here.

They should not be permitted to turn this driveway into a surface parking lot. It is totally unacceptable and inconsistent with the residential community as this still is in part.

I'm going to go through these quickly.

This first picture -- and I took these this past Saturday with a small camera, blew them up so you could get a good look at what we're talking about -- this first picture is a picture of the subject property, for sale sign. It's a lovely property.

I'm going to pass this up.

CHAIRPERSON REID: We have pictures of the subject property in our package.

MR. KAPLAN: Okay.

CHAIRPERSON REID: We have that. Several.

MR. KAPLAN: The second one is a picture of the driveway, and there was discussion about whether the cars can be seen or not. I think this might help you get a vision of four cars in this driveway moving in and out, a van coming in, deliveries, pick-ups. This adjoining property is where I live,a nd this is the driveway on which this surface parking lot will be

operated.

MR. SOCKWELL: Mr. Kaplan, when was that photograph taken or when were your photographs taken?

MR. KAPLAN: On Saturday, this past Saturday.

MR. SOCKWELL: Thank you.

MS. BAILEY: Mr. Kaplan, did you realize that once you submit these documents we'll have to keep them? You won't be getting them back?

MR. KAPLAN: That's all right. That's what they're for.

The next photograph is a photograph of the back yard of 2124 Kalorama Road, which we look onto. That's the subject property.

The next photograph is the Ethiopian Chancery, which is directly to the west of the subject property.

The next photograph shows the paved over side and back yard of the Ethiopian Embassy. When I was there yesterday, there were 16 cars parked there. The photograph was taken on Saturday, and there are only a few cars parked.

The purpose of showing you this is an example of parking lots illegally created within the immediate area of this property and which continue to operate and which concern the residents.

The next photograph (pause) -- may I proceed?

CHAIRPERSON REID: Certainly.

MR. KAPLAN: The next photograph is a photograph of the parking lot of the Algerian Embassy which is directly east of where I live and one building away from the Benin Embassy, and they, too, have blacktopped their back yard, and it functions as a parking lot.

CHAIRPERSON REID: Mr. Kaplan, is -- you can go ahead -- is the intent -- is your objective here to demonstrate by showing how the other parking lots have been treated, to demonstrate to us what? I'm just trying to follow your trend.

MR. KAPLAN: Well, I want to show you how intensively Kalorama Road is used in terms of cars coming in and out. We have a great deal of, in effect, commercial traffic in this residential mixed use area, residential and chancery. We have all of these parking spaces.

Another concern I have is that this four car proposed driveway, which will be operated as a surface parking lot, will not work. There's no way it's going to work. It's just inconceivable that it's going to be continued.

And there will be great pressure on the community and on the chancery to do what the other embassies have done, the other chanceries right in this very block. They've blacktopped their side yards and back yards and created parking lots.

And there's no question in my mind that that's what will happen here because this line-up of four cars coming in and out just isn't going to work.

Now, I know that, Madame Chairperson, you have ruled that you will not consider evidence with respect to the Cathedral Avenue chancery of the Benin Embassy.

CHAIRPERSON REID: No, Mr. Kaplan, what I said was -- I've said it three times now. So I'm going to reiterate it again.

MR. KAPLAN: No, I --

CHAIRPERSON REID: Not that it is not a matter of a ruling or a judgment. It is a matter of what is beyond our purview, and what I said was we cannot consider another location of another property owned by the same applicant that is not germane to the instant application before us. It is just something that is beyond our ability.

MR. KAPLAN: I would just like to urge you to reconsider that. I understand that it is not germane in the sense that this is a different location, but it couldn't be more germane, more relevant to the testimony of the Ambassador that they will take good care of this new property.

CHAIRPERSON REID: I think that we get the gist. I mean it has been brought up so many times today that --

MR. KAPLAN: Okay.

CHAIRPERSON REID: -- even though -- I mean, we cannot accept that testimony. We cannot use that -- I'm sorry -- we cannot use that in out deliberations. Obviously it has been brought to our attention so many times now --

MR. KAPLAN: Right.

CHAIRPERSON REID: -- that we are aware.

MR. KAPLAN: Okay.

CHAIRPERSON REID: Now, how that will be utilized is what I was saying to you. That is, the determination of that information is beyond our purview to accept that -- use that in our deliberations. That's the whole point I'm making.

MR. KAPLAN: Yes, I understand, and I would like to show you these pictures.

CHAIRPERSON REID: Is it the subject property?

MR. KAPLAN: It's the Cathedral Avenue property.

CHAIRPERSON REID: Mr. Kaplan, maybe you didn't understand what I just said. I don't know how much clearer I can make it.

MR. KAPLAN: I would like to proffer them then because I think you're abusing your discretion and not looking at pictures of the very chancery that wants to expand into this property. It made representations. They've given testimony. How else can we cross examine that testimony?

This is a rulemaking proceeding.

MS. PRUITT: Mr. Kaplan.

MR. KAPLAN: You have broad discretion to admit evidence of this kind.

MS. PRUITT: Mr. Kaplan, the Board has already made a determination that they weren't going to accept Mr. Graham's

photos. So it truly would be unfair to accept yours.

MR. KAPLAN: Well, I'd like --

MS. PRUITT: That determination has been made.

MR. KAPLAN: I'd like to proffer them for the record.

MS. PRUITT: The determination was made that those photos would not be part of the record either, and they aren't. In fact, what he did was give me the photos. I pulled them out, and I passed on to the Board only the photos of the embassies that surrounded that property.

MR. KAPLAN: Well, I'd like to make it very clear that I object strongly to this ruling.

MR. SOCKWELL: Mr. Kaplan.

MR. KAPLAN: And I am proffering --

MS. PRUITT: We understand, and we know. It will be noted on the record.

MR. SOCKWELL: Mr. Kaplan, this is a question, just a rhetorical question. Have you ever been in a court of law?

MR. KAPLAN: I certainly have.

MR. SOCKWELL: Good. Then you understand what we're saying. Thank you.

MR. KAPLAN: And I understand that proffers are appropriate because appellate courts have to see what was offered in evidence to determine whether the ruling excluding that evidence was appropriate, and if you don't accept them as a

proffer, then how can an appellate court review your decision?

MS. PRUITT: Mr. Kaplan, the decision has already been made by the Board, and I want to --

CHAIRPERSON REID: I don't know how many ways I can say it.

MR. KAPLAN: Pardon me?

MS. BAILEY: Have you finished with showing the Board the photographs?

CHAIRPERSON REID: Okay. Are you -- have you concluded your testimony, Mr. Kaplan?

MR. KAPLAN: Excuse me?

CHAIRPERSON REID: Have you concluded your testimony?

MR. KAPLAN: No, I have not.

CHAIRPERSON REID: Okay.

MR. KAPLAN: I have an additional set of photographs regarding the Macedonian Embassy which is directly behind this property, which I would like to offer into evidence.

CHAIRPERSON REID: Okay.

MR. KAPLAN: Thank you.

Just one point on the saturation issue. At some point it was argued that this area really isn't saturated. On the other hand, the Applicant itself, the petitioner, has argued that it makes no difference to have one additional chancery since there are so many already.

They can't have it both ways. There are a lot of chanceries in this area, but there are a lot of private residential homes, as well, and there is a delicate balance here that clearly is being upset.

If this BZA grants this application, that means you're going to have a steady stream of additional one because you're going to have a proliferation of new nations looking for small residences of this kind, and the signal you're giving is the wrong one if you approve this application.

And you're also giving a signal that it's okay to maintain that Cathedral Avenue chancery in its current derelict condition, and it is truly a derelict property which has been in this condition for ten years, and it is astounding to me that the Benin government would come in before this BZA and allow its existing chancery to be in the condition it's in. It is just remarkable.

Thank you.

CHAIRPERSON REID: Thank you, Mr. Kaplan.

I had a question in regard to this picture. Is this an occupied building or is it a vacant building?

MR. KAPLAN: That's a vacant building. That's the Macedonian Embassy.

CHAIRPERSON REID: The Macedonian Embassy.

MR. KAPLAN: Proposed Macedonian Embassy. It's right behind --

CHAIRPERSON REID: Proposed?

MR. KAPLAN: Yes.

CHAIRPERSON REID: Okay. Now, the purpose of showing us this is?

MR. KAPLAN: It's showing you what is happening to our neighborhood, that promises about maintenance of buildings are not being kept, and that's an extreme example.

CHAIRPERSON REID: Well, this is not --

MR. SOCKWELL: Madame Chair.

CHAIRPERSON REID: -- this is not a diplomatic occupancy?

MR. SOCKWELL: I think we need to ask Mr. Kaplan the difference between an unoccupied, unoccupiable building and an occupied building.

MR. KAPLAN: In the case of the Macedonian Embassy --

MR. SOCKWELL: No, in the case of any building, sir.

MR. KAPLAN: I'm not sure I understand the question.

MR. SOCKWELL: You are comparing apples and oranges to come up with a pear, I believe. You have an unoccupied, unoccupiable building in dilapidated, deteriorated condition with windows hanging out, and you have another building which would be occupiable, and you are trying to compare them as having relevance

to one another, and I don't understand --

MR. KAPLAN: No.

MR. SOCKWELL: -- how you are bringing that conclusion.

MR. KAPLAN: I'm showing you the condition of the neighborhood, that there are some very wonderful properties. There are some derelict properties --

MR. SOCKWELL: Yes.

MR. KAPLAN: -- as a result from BZA approval of conversion from residential to chancery.

MR. SOCKWELL: The derelict property did not result from BZA approval. It resulted from the actions of the property owner, regardless of how the property came into the hands of the Macedonians.

MR. KAPLAN: But the Macedonians have promised to convert this into a chancery, and they haven't done it. It just sits there empty, derelict, getting --

MR. SOCKWELL: I understand, but the Embassy of Benin is not Macedonia, nor is Mr. Kaplan Mr. Brown.

MR. KAPLAN: If you look at the Cathedral Avenue chancery --

MR. SOCKWELL: It is occupied.

MR. KAPLAN: -- you will find a direct relationship. It's occupied, and --

MR. SOCKWELL: And you're saying the windows are

hanging out of it. Of course it has something boarded up. You're saying it's not being used. You're saying --

MR. KAPLAN: Well, you --

MR. SOCKWELL: -- that it has buses parked in the parking lot.

MR. KAPLAN: You don't want to look at the pictures. If you wanted to look at the pictures you'd see the dereliction for --

MR. SOCKWELL: Actually I know this building for other reasons, which I can't discuss here, but let's talk about the fact that you're talking about apples and oranges. We don't have time for apples and oranges. We have time for relevant questions with relevant issue relationships.

If you cannot give us that, please pass your time on to someone else you can.

MR. KAPLAN: Well, you're asking the question. I was completed. I complete my testimony a few minutes ago.

CHAIRPERSON REID: Are you done --

MR. SOCKWELL: Well, thank you.

CHAIRPERSON REID: -- Mr. Kaplan? Are you done, Mr. Kaplan?

MR. KAPLAN: Yes, I am.

CHAIRPERSON REID: Thank you, sir.

MR. BUSSELL: Might I add something?

MR. SOCKWELL: Certainly.

MR. BUSSELL: Not to that particular thing, but just a thought. When we did the -- we opposed the Albanian Embassy in front of you people, I think it was like four years ago. I'm guessing now. Marie Drizzel (phonetic) who is part of the Mayor's office --

CHAIRPERSON REID: Board of Commissions.

MR. BUSSELL: Board of Commissions. She was an activist in the neighborhood at the time and opposed it, and she did a survey along with a couple of other people digging our records and so forth, and my memory serves me best that she surveyed an enormous number of embassies in the area and came up with over 35 embassies that had illegal driveways that have been put in after the approval.

Thank you.

CHAIRPERSON REID: Is there anyone else who has not spoken who was here in opposition to this application?

(No response.)

CHAIRPERSON REID: All right. Just a quick --

MR. LA BOSSIERE: I know that we had submitted some pictures before, and Macedonia is an overlap, and I think that it was introduced by Council Member Graham, and Council Member Catania also brought up the issue of once these approvals are granted, effectively we have no control, and the commitments and promises that are being made are not being kept.

And I think that picture illustrates just that. I

think the Macedonian went through about three years ago and was in the ownership of the French before that, and clearly his property has been derelict for years and years and years. This isn't just a short period of time.

But I think it goes to that issue. As we carve pieces out of this neighborhood, we're giving them up. The State Department doesn't monitor it. They don't respond to complaints to it, contrary to their protestations to the opposite.

And, therefore, we have no means of holding them to what they commit to, either the embassies themselves and the applicants or the State Department in terms of enforcement. There is no way to do it, and I think that's really what this picture sort of demonstrates.

CHAIRPERSON REID: Okay. I just have one quick question, and that is given the fact that this property stayed on the market for months and months and months, and I know, being in the real estate field myself, that that is something that most neighborhood would not like to see, is a property that just kind of stagnates on the market.

Rather than the proposed use before us today, what then would you prefer -- what would you prefer seeing that property be developed into or what would you rather have it sold to?

MR. DANIEL BROWN: We'd rather have it used as it is now, for a residence.

CHAIRPERSON REID: It's not used for anything right now, right?

MR. DANIEL BROWN: Well, the people who occupied it before were a three -- it was a three person family.

CHAIRPERSON REID: Okay. So now that being the case, you would like for it to remain a residence. It's a 4,500 -- it is 4,500 square.

PARTICIPANT: Forty-two.

CHAIRPERSON REID: Forty-two hundred square feet. So then I would think that for a residential use, you'd probably have a family, and a family would consist of three, four people.

MR. DANIEL BROWN: It could be a family, and it could be a single person if he wants to live in a big place. I mean I don't care.

CHAIRPERSON REID: Well, I'm just basically kind of looking at what it would be rational -- what we would consider in the real estate industry to be a rational use of that particular property.

A family, a family of two people with kids, whatever, maybe older kids, teenagers or what have you, or three, four people.

Nonetheless, the point I'm making is if, in fact, you had a family there that had three or four cars that would be in constant use in the evening, during the day, and on the weekend. That would be more -- that would -- that would be -- do

you consider that to be something that would be better than having any chancery put in that place?

MR. DANIEL BROWN: Yes, that's my personal view. Others might disagree with it.

MR. BUSSELL: May I respond to that?

CHAIRPERSON REID: That would be -- that would be -- you'd be more amenable to that intensity of use vis-a-vis the proposed use?

MR. DANIEL BROWN: I'd rather -- yeah, I'd rather it be a family that was using three cars because you don't have all the other issues that we just brought forward.

CHAIRPERSON REID: Okay. Sir?

MR. BUSSELL: Just to make one point, we're taking the Ambassador's word that all of the people that work there don't have a car and are not going to drive there. I mean it's hard for me to really understand that seven or eight people in a diplomatic chancery don't own at least one car.

And secondly, Madame Chair, to your reason why it didn't possibly sell as soon as you could like or in the normal time frame in this current market, what one might consider is that the property may have been over priced.

Thank you.

CHAIRPERSON REID: Be that as it may, that did not prevent offers being made on that particular property, and if you -- if you have a choice of the property sitting there vacant as

opposed to it being sold and that property being brought into use in the marketplace, are you saying -- do I understand you to say that until such time that a family decides to buy that house you'd rather see it vacant?

MR. BUSSELL: Now, that's not true. My experience --

CHAIRPERSON REID: I'm not trying to cut you out. I'm just trying to get my arms around, you know --

MR. BUSSELL: My experience of real estate is that when someone puts their place on the market for sale, they want to sell it, and usually they can't always price it accurately, and if it's over priced, the market tells them that, and eventually they come to their senses mostly, most of the time, and reduce the price accordingly to make the sale.

CHAIRPERSON REID: That may -- be that as it may, nonetheless if, in fact, a property is put on the market and it's a desirable property in a desirable neighborhood and we have had a very brisk market within the last 18 months, if that property isn't selling, then there is a reason why, and notwithstanding the fact that it could be price, but that does not prevent or preclude someone from making an offer on the property and then negotiate the price.

MR. BUSSELL: That is true, but, you know, I have a lot of experience with auctions, and I know that when you put something into an auction you have a reserve on it. If that

reserve is not sensibly priced, people don't even bid on the item.

CHAIRPERSON REID: Well, be that as it may, this is not a situation where you had an auction. This was a property that put on -- excuse me, sir -- put on the market by a real estate brokerage house --

MR. BUSSELL: But --

CHAIRPERSON REID: -- that stayed for many months, and the only offer or the best offer they got was what's on the table right now.

Notwithstanding that, you would say -- I'm trying to understand -- you would rather see it stay vacant until such time that you did get an offer from a family that was amenable to the seller.

MR. BUSSELL: Yes. The answer is yes, and it might have been also restricted by the crowding of embassies that may have devalued the desirability of the place.

CHAIRPERSON REID: That's exactly -- that's exactly --

MR. BUSSELL: And that's exactly Mr. Catania's point about what's happening with embassies.

CHAIRPERSON REID: Well, my point is that in a situation like this where you have a property because of its location, a desirable property because of its location has been rendered less desirable, then you have a problem. So what would happen if --

MR. BUSSELL: Well, who creates the problem?

CHAIRPERSON REID: What happens in a situation where you have -- because of the impact of the other embassies, if that's what we're deducting here, if in fact that property is not moving, then what -- because of the fact that it's not attractive to families, then what other recourse do you have? I mean what would compel a family to want to move there under these circumstances.

We're making assumptions, a lot of assumptions here, and I would say quite clearly that if that property was correctly priced in this market it would sell quickly.

MR. SOCKWELL: Let me ask you a question, sir.

CHAIRPERSON REID: I don't agree with that.

MR. SOCKWELL: Let me ask you a question and strictly assuming that I can consider you an expert in both the auction property purchase arena and the absentee owner/renter arena from what you have already said to us today. Is that not incorrect?

MR. BUSSELL: I wouldn't say I'm an expert. I have some knowledge.

MR. SOCKWELL: Yes. Let's say you wouldn't lose money in a deal.

MR. BUSSELL: I try not to.

MR. SOCKWELL: Okay. The property in question is not only impacted. It is surrounded by embassies and a multi-

family building which makes it an island, and as an island property with the Chinese complex across the street and these things immediately around it, it might be very undesirable to a family purchasing for the neighborhood because generally a neighborhood is created by at least several properties of like dimension and like interest with a family orientation, et cetera. This property is even backed up to an embassy facility, and I'm not through.

What I'm saying is that if this property is to become a viable part of the neighborhood, if the price has to be right, it might sell to someone that you really don't want in there, and let me explain.

If it can't sell at a market rate, which is what the rest of the neighborhood would sell at, then it either stays vacant for a long time and deteriorates, unless the current owner is willing to try his best to keep it up even though it becomes a financial hardship or just a load, or the owner can sell it to a worthy buyer and in any situation the adjacent neighbors have to deal with what or whoever moves in. It's not always absolutely a certainty that because it's purchased by a residential buyer or not an embassy in this case that it will wind up in the hands of the same kind of people that you'd like to have in your neighborhood.

It could wind up an absentee owned property of more problems, but then again, because it's surrounded by the

embassies, you won't pay much attention to it.

MR. BUSSELL: We're making a lot of hypotheticals and assumptions here, and I'm making --

MR. SOCKWELL: It's the only say you can deal with the real estate market.

MR. BUSSELL: -- and I'm making assumption, too, but it's my experience that someone that buys a residence is proud to maintain it and keep it, and certainly an investor that bought it as a residence would want to present it in its best face even if he wanted to make a profit or rent it or whatever he wanted to do with it.

MR. SOCKWELL: Or depreciate it as an investment.

MR. BUSSELL: Or depreciate it. He would want to maintain the appearance of it to preserve the value of his equity in it, and I think that there was already a resident in it, and apparently reasonably well maintained. So there's no reason to assume that suddenly Mr. Bad Guy comes along and buys it unless we turn our whole Kalorama district into 50 or 60 percent of embassies and diminish our parking and diminish our values.

MR. SOCKWELL: Well, Mr. Previous Resident may have been there a long time. I don't know how long the family was there.

MR. BUSSELL: Neither do I.

MR. SOCKWELL: And the reason that the previous resident moved may have had something to do with the proliferation

of the embassies around it, and that's something that we can't answer here today.

MR. BUSSELL: No.

MR. SOCKWELL: Mr. Brown, you're an attorney? No?

MR. DANIEL BROWN: No, I'm not.

MS. PRUITT: Madame Chair, I'd just like to state unfortunately our new chairs are blocking the clock that everyone usually watches, but it is 2:30, and we have eight cases left on the agenda, and so I just wanted to -- since you can't see the clock.

CHAIRPERSON REID: I think we -- I think we're trying to move this along as rapidly as we can, and this concludes the portion for persons in opposition. I appreciate your remarks.

Thank you.

MR. BUSSELL: Thank you.

CHAIRPERSON REID: We do have to give the Applicant an opportunity to have closing remarks, and the State Department has asked for also -- as a part of the closing remarks with the Applicant to be able to again speak.

MR. COLLINS: Thank you, Madame Chairperson and members of the Board.

I'll be as brief as I possibly can.

I'd like to make some comments with regard to some of the issues that have been raised and then make a few closing comments if I may.

In response to the Office of Planning report, a lot has been said about that. I'm not going to dwell a whole lot on that. The OP report did not take any issue with the federal criteria. It did point out some issues about historic preservation, most importantly that we have met the historic preservation criteria with the flagpole and the plaque.

Parking and public transportation has been discussed. I won't go over that again, but there has been a discussion about the municipal interest, and there were some issues raised about Section 206(b)(2)(B) and the Order No. 509. I'd like to go through that briefly if I can with you because it's important to have a full understanding of the background of how the Foreign Mission Act applies and how it came to be and how the diplomatic overlay zone came to be as well.

I've given you a copy of Section 4306 of the Foreign Missions Act. The Foreign Missions Act was approved in October 1 of 1982 and established a brand new process for chancery review in the District of Columbia. It set forth the six criteria. It set forth the specially constituted Board of Zoning Adjustment, and said that the Board of Zoning Adjustment -- I'm sorry -- the Zoning Commission was to adopt the map and rules to implement the Foreign Missions Act.

The first thing that happened after that on the local level is that the Zoning Commission took action, and I'm passing up to you copies of Zoning Commission Orders No. 400 and

509. Five, oh, nine is just attached to the rear. I'll go through them each individually, and I've highlighted for you the relevant portions.

Zoning Commission Order No. 400, dated May 16th of 1983, which is within six or seven months after the enactment of the Foreign Missions Act, the Zoning Commission took action.

The first page gives a little background to the Foreign Missions Act and what that is all about and what the case was all about, the Case 83-3 that became Order No. 400.

If you turn to page 2, you'll see that in that case the Office of Planning, and I'm again reading from the second paragraph from the bottom, the Office of Planning, by memorandum dated April 1, '83, and by testimony presented at the public hearing in April 11 supported the proposal to adopt regulations and maps as advertised in the notice of public hearing.

Office of Planning believed that until major planning and policy issues were resolved, the Commission should proceed with rulemaking that would permit the BZA to review chanceries only in those enumerated zones.

The Office of Planning noted out of the issues not resolved with this set of amendments, the most important is likely to relate to Section 206(b)(2)(B), the one we're here before this afternoon, of the Act which allows chanceries subject to BZA disapproval in any other area determined on the basis of existing uses, which includes office or institutional uses.

The Office of Planning noted that the determination of what those locations should be is a complex matter for which zoning regulations should be adopted only after careful analysis and negotiation.

Accordingly, the Office of Planning believed that the National Capitol Planning Commission should first amend the Foreign Missions and International Agencies' element of the comprehensive plan so as to provide planning and policy guidance before the Zoning Commission and the BZA attempt to determine the meaning of that section.

It's also interesting to note that halfway down that page the zoning order finds that ANC-1D by letter and by testimony supported the proposed amendments to the zoning regulations to create the D overlay zone.

What happened then is that the National Capitol Planning Commission adopted a new foreign missions and international organizations element of the comprehensive plan and adopted a map, and I'll go to the easel and I'll try to speak as loud as I can.

The National Capitol Planning Commission then in their action to modify and amend the foreign missions and international organizations element adopted a map which has a reference number, if I may read to you. NCPC Map File No. 61.30/100.00-29856. This map was the map that revised the foreign missions and international organizations element of the

comprehensive plan to add -- and it's called Diagram No. 1 -- chancery facility locations permitted pursuant to Section 206(b)(2)(B) of the Foreign Missions Act.

And you may not be able to see from where you're sitting, but if I can point to you right here where I'm gesturing, this is Connecticut Avenue going in generally southeast to northwest orientation, and this area in blue that I'm pointing to is the area between Kalorama Road to the north, Wyoming to the south, extending over to 23rd Street.

This is subject Square 2527 and the adjacent lot is Square 2522. I have copies of that map, a copy of that map for the record. I don't have multiple copies. I'll be happy to hand this into you for that purpose.

If you refer to page 19 of our statement, you will see the foreign missions and international organizations element that was amended. This is the map. I'm referring to the text, and specifically on page 22, Paragraph 2 under chancery facilities, "The areas described in Section 206(b)(2)(B) of the Foreign Missions Act are generally indicated on Diagram No. 1, chancery facility locations permitted pursuant to Section 206(b)(2)(B) of the Foreign Missions Act, as amended," and it gives the same NCPC file number as the map in front of you today, "annexed hereto and made a part hereof."

CHAIRPERSON REID: What page are you --

MR. COLLINS: I'm referring to page 22 of the

Applicant's statement.

And when you find that page, if you look at paragraph numbered two under chancery facilities, and it says, "The areas described in Section 206(b)(2)(B) of the Foreign Missions Act are generally indicated on Diagram No. 1," the map that I gestured to earlier, the map that's before you today, "annexed hereto and made a part hereof."

So that is the map. That's the NCPC guidance that was requested by Office of Planning before getting into the mapping.

If you now turn to Order No. 509, you'll see on the first page the paragraph toward the bottom of the page. "District and federal government agency staffs cooperated in numerous meetings and discussions over several months to attempt to resolve issues about the impact and interpretation of the Act."

Now, at the bottom of that page and highlighted, "because some portions of the zoning regulations were not consistent with Section 206 relative to the regulation of chanceries, the Zoning Commission, pursuant to hearing process and by Order No. 400 amended the zoning regulations and the map to implement portions of the Foreign Missions Act."

And in the middle of page 2 -- Yes?

MS. HINTON: I'm sorry, Mr. Collins. I have lost where you are. Could you --

MR. COLLINS: I am now in the middle of page 2 on

Order No. 509.

MS. HINTON: Did we get 509?

MR. COLLINS: It's at the back. It's stapled to 400.

MS. HINTON: Thank you.

CHAIRPERSON REID: Oh, okay.

MR. COLLINS: And on that page 2 of Order 509 in the middle of the page it states as follows. "The key portion of the Foreign Missions Act which was not implemented at that time," at the time of Order No. 400, "was Section 206(b)(2)(B). That section permits chanceries subject to BZA disapprove," and then it quotes what the section says.

"The District of Columbia Office of Planning took the position that the determination of any other area determined on the basis of existing uses was a complex matter for which zoning regulations should be adopted after careful analysis and negotiation.

"Subsequently, on December 1, 1983, the National Capitol Planning Commission amended the foreign missions and international organizations element of the comprehensive plan for the purpose of conforming that element to the provisions of the Foreign Missions Act and to provide planning and policy guidance to the Zoning Commission and the BZA."

Going on to page 3, the highlighted portion, it talks about how the Office of Planning came to the determination

that they did, which resulted in their recommendation to the Zoning Commission on the adoption of the D overlay, and I won't read that to you.

I'll just refer to it about the various methods explored by Office of Planning to come up with a method to calculate the proper locations of the D overlay, and there are sections or paragraphs numbered or letters A, B, C, and C on page 3, which goes through a very carefully and almost laboriously details how the Office of Planning went through this extended analysis to determine the appropriate locations of chanceries for the D overlay.

After they did that, after that exercise was done, if you turn to page 6 of Order No. 509, you'll see that the Zoning Commission, once they've turned it in, once Office of Planning turned it into the Zoning Commission, the Zoning Commission requested them to modify it yet again, to take yet another look and further craft it and refine it, to run a modified Magis (phonetic) computer program which included only those lots outside the R-1-A through R-5-B districts, et cetera, et cetera, et cetera, to further carefully craft and refine this system, which they did.

And then over on page 7 of Order No. 509, OP responded by memorandum dated May 8th how they did it and what they did. Then they responded by yet another memorandum on June 27th with a field check.

Once they finished their analysis, their analysis again, they then did a field check and reported back to the Zoning Commission on June 27th, 1986, as to which of those areas were in their view within the -- you've heard reference to before, the one third/two third criteria, meaning that squares which contained at least one third office or institutional use as appropriate for chancery locations.

You'll see down at the bottom of page 7 how the Zoning Commission concurred with the position of the Office of Planning as revised in its June 27th, 1986 memo, the one where they finally reported their final analysis.

Now, during the course of that hearing, the hearings before the Zoning Commission on the D overlay, there were a number of people who testified, including people who testified in opposition, and beginning on page 8, the Zoning Commission reported as to their responses to those people who testified in support or opposition.

The first full paragraph on page 8, "the Commission is persuaded that the mapping of the areas will be beneficial to the State Department and the foreign governments because the degree of certainty which will result will allow them to plan more effectively. As to the concern of State regarding the use of a square as an area, the Commission concludes that defining an area as a square is a reasonable and logistically manageable manner of implementing the Act. As to the concerns of the ANCs and others

regarding the methodology that was used to identify squares that qualify for rezoning, the Commission believes that the alternative methodology that was included in the OP memorandum dated June 27th, 1986," the finally, finally, finally revised version, "represents an appropriate, fair, and balanced mechanism to further implement Section 206(b)(2)(B).

"As to concerns of the ANCs and other regarding the negative spinoff effects of chanceries in residential areas, for instance, noise, security problems, potential terrorist attacks, demonstrations or traffic and parking problems, the Commission is mindful of both the international and diplomatic role that is played by the District of Columbia and the concerns of the residents of the city. The Commission believes that its decision in this case strikes a reasonable balance in addressing the interests of all persons concerned."

(Pause in proceedings.)

MR. COLLINS: Oh, I'm sorry. And then at the end of Order No. 509, you can see beginning on page 11, the bottom of page 11, the mapping that the Zoning Commission undertook after that careful analysis. The Zoning Commission mapped 26 institutional uses in the D overlay, including all of the major universities, hospitals, some senior citizen homes, and things of that nature.

In addition, they rezoned only five squares in the D overlay, including Square 2527, which is the subject square, and

Square 2522, which is the adjacent square to the west.

That order was adopted on April 24th of 1987. That is the planning and zoning background of how this square came to be in the D overlay in April of 1987.

OP crafted it. The Zoning Commission approved it, and NCPC endorsed it.

Now, there's been a lot of discussion about saturation of the square for chanceries. So I ask: what has happened since 1987 when Order No. 509 was enacted? What has changed in Square 2527 that now makes it inappropriate for chanceries? Why does the same Office of Planning that developed the methodology to include this square now back away from it?

Well, what has changed with regard to 2527 with regard to chanceries? Two things. First of all, the Embassy of the Arab Republic of Egypt, Cultural and Educational Bureau, which was located on the west side of Thornton and on the south side of Kalorama, moved out. They moved out.

There were 25 staff members in that chancery. They had 15 cars coming on a regular basis. This is all documented. They moved to 1303 New Hampshire Avenue, N.W., and in Order 15509, this Board approved that move. I submit a copy for the record. I don't have a copy for everyone, but I'll just read to you in the background section on the first page of Order No. 15509.

"The Bureau" -- that's the Educational and Cultural Bureau of the Embassy of Egypt -- "is presently located in leased

space at 2200 Kalorama Road. The Bureau handles matters of educational, cultural, and scientific affairs. Visitors to the existing location average less than three a day, and this number is expected to continue. The Bureau employs a total of 25 individuals."

And later on down the line under parking provision they talk about "at present 15 employees drive to the Bureau's current site."

So we had 25 embassy staff members and 15 cars leave. That's the first thing that happened after 1987 when this overlay was enacted.

The second thing that happened was that this Board approved the Embassy of Macedonia in Order No. 16195 on February 21, 1997, just almost three years ago now. You can see from that Order 16195 that there was to be ten staff members at the site. There were to be ten cars to be driven to the site on a daily basis.

That application was supported by the Office of Planning, and in that order you will see -- and I'm quoting -- the ANC, quote, strongly recommended approval of that application.

Now, granted that was a property in the state of disrepair for an extended period of time, and it may have been a good solution to that problem that was sought at the time, but from a planning standpoint, the Office of Planning supported the addition of another chancery in that neighborhood. Why two years

later did they back away from that?

Has NCPC's foreign missions element changed? No. Has the diplomatic overlay zone changed? No. Has the Zoning Commission taken any action to amend the diplomatic overlay? No, they have not.

There is one thing that has been mentioned that has changed, and that is the District of Columbia element, a section of the comprehensive plan which talks about chanceries in residential zones. Now, you've heard reference made to that by numerous people here. I'm handing to you a copy of the amendment as it went through the process, the amendment from the council's deliberations.

You've heard tell of it a bit from Mr. Mlotek, how that was crafted, how that transpired. The original language of that amendment was to say -- was to read as follows: "discourage the location of new chanceries and expansion of existing chanceries in predominantly residential neighborhoods."

Now, that was revised to say "discourage the location of new chanceries and the expansion of existing chanceries in any area that is essentially a residential use area," and everyone forgets to include this language, "consistent with Section 206(b)(2) of the Foreign Missions Act."

What that means, that chanceries are to be discouraged in essentially residential use areas. There's no quarrel with that, but that's still -- an amendment of that

language and as a rationale for that amendment down at the bottom of the page means that chanceries are still permitted to locate in Section 206(b)(2) areas. There can be no other interpretation.

The District cannot discourage chanceries to locate in those areas, in 206(b)(2) areas because that would be inconsistent with the federal interest, and it would be disapproved by NCPC.

Now, we've heard talk about the one third/two third test, and where do we get saturation? This square became zoned diplomatic because it met the one third and two third test. At least one third of the square was in diplomatic use.

Mr. Graham mentioned in his testimony that his calculation indicated that the neighborhood has 40 percent of foreign government use. Now, somewhere between 33 and 40 percent, is that the test? That's never been stated anywhere. The test is one third office or institutional. There has been no change in the regulations, no change in the comprehensive plan, no change to the law that would suggest that this area is inappropriate for chanceries in the District of Columbia.

I believe that OP's report in the municipal interest section does not reflect the full understanding of the background of the Foreign Missions Act and the D overlay.

The Egyptian Embassy site which I referred to, 25 people, 15 cars left. This application from Benin, seven people, four cars. If you add that to Macedonia, ten people, ten cars,

those two numbers don't add up to what Egypt took with them when they left.

PARTICIPANT: Replaced it.

MR. COLLINS: Not exactly. It didn't totally replace it. Even if Macedonia is built.

So how can there be a saturation if the net result, even if Macedonia goes forward at some point in the future, is less than what they had when the map was enacted?

You can come to no other conclusion.

There's been much told -- mentioned about the ANC report. I believe that we've responded to those issues through our testimony with the Ambassador and Mr. Morris and questions by the Board members, as well as the Dresden and the Chancellory Condominium.

I know that the Ambassador would like to make a couple of points of clarification, and I would like the Ambassador to make a point or to make his response to the allegation that threats were made at the ANC meeting.

AMBASSADOR TONOUKOUIN: Okay. Thank you so much.

Honorable member of the Board, excuse me. When I left temporarily the room to go to the restroom, my people told me that one of the members of the neighborhood or the opposition group has mentioned that I have said at the meeting we held, at the meeting held on 20th November that if I'm not allowed to buy, you know, the proposed chancery, the proposed building, I will ask

my government maybe to create trouble to the U.S. mission in Benin.

I will clearly, very clearly deny that. It is not true at all, and respectfully I want to let the honorable member of the Board know that the goal, the key goal, the key principle of a diplomat is to try to promote understanding between the country he is representing and the country where he's represented.

And I try my best to do so. I can assure you that since I'm here I try to promote, you know, this good understanding. A lot of, you know, Congressmen went to Benin for visit. Several, you know, officials from the administration went to Benin for visit, and we have a very good relationship with business people, American business people, and I'm very disappointed to hear that.

What I said is what I heard from the honorable member Robert Sockwell, please. When the neighborhood people who have attended the meeting of 30 F November (phonetic) told me that as a kind of principle and they will show a strong opposition to our application, to the application of Benin government, Benin embassy, to relocate, you know, in the proposal premises.

When they told me that and trying to convince me about the wrong things done by Macedonia Embassy, I replied, and I told to our friends of the neighborhood that Benin is Benin. Macedonia is Macedonia. Benin is different than Macedonia, and they cannot, you know, because of the wrong things done by

Macedonia, oppose or deny our application, application made by Benin, and I told them that.

And I came to the conclusion that as well as Benin is different than Macedonia, we cannot say that United States is same than Canada or France, but I never say that. I will oppose or I will do my best to make trouble. That worries me small, and I wanted to let the honorable members of the Board hear from me that is not correct at all.

And several people of the neighborhood have been to that meeting, and they can testify that I never say that, never.

My second comment would be about the former -- the current Chancery of Benin. I told you that I will sign an agreement with a maintenance company and with the proposal to try to keep very clean, the proposal, you know, premises, but I want also -- I would like also to say that we don't have in the current chancery -- we don't have wood, wood, you know, by the window or on the window or things like that. There are windows -- all our windows are on glasses, and we had -- we had maintenance during the year 1995 in that chancery.

I didn't, you know, make again because I was asked by my government to try to purchase another chancery, and now we are moving to the proposal chancery to be, you know, to be free to start the renovation of our current chancery.

Finally, I would like to thank the honorable members of the Board and everybody here, even the opponents. I

understand them, but I want -- I would like to assure all of them, the neighborhood people, the opponents, that we will be very, very correct neighbor. We will be very, very good people, and our place will be a place of friendship. If they allow us to be among us, they will be happy, and they'll maybe one day come in front of to this Board and testify that Benin is a showcase in the neighborhood.

Thank you so much.

CHAIRPERSON REID: Thank you, Mr. Ambassador.

MR. COLLINS: Finally, just to make a few points in closing, you've heard a number of comments about enforcement issues with regard to other chanceries in the neighborhood. The Foreign Missions Act sets forth a process for approval. It also has language in it that allows for enforcement.

The solution to the enforcement issues for the chanceries is not to disapprove this chancery. The solution for enforcement is to enforce, and if the existing regulations and laws are not strong enough, then they should be strengthened to allow for that enforcement whether it comes from the Congress or the District or the two entities together. That is the solution.

We are simply here for an application for one chancery in a site, a specific site in the D overlay that's surrounded on three sides by their chanceries. We're not requesting any on site diplomatic parking. The Ambassador has made commitments in writing that have been modified orally today.

Our application is consistent with the D.C. zoning regulations and map. It's not inconsistent with the comprehensive plan, and it is a reasonable use under the jurisdiction and control of the BZA in this process.

I thank you for your time, and that concludes our presentation.

CHAIRPERSON REID: Thank you, Mr. Collins.

MR. LA BOSSIERE: Madame Chairperson, the gentleman --

CHAIRPERSON REID: Excuse me. Excuse me. You can't speak from the audience.

MR. LA BOSSIERE: I was just asking if I could speak because I guess --

CHAIRPERSON REID: Well, actually you can't because the time for your --

MR. LA BOSSIERE: I understand, except the gentleman introduced new evidence --

CHAIRPERSON REID: -- participation is -- that time has now passed.

MR. LA BOSSIERE: Except that the gentleman --

MS. PRUITT: Excuse me, sir. This is a rulemaking. So there is no cross examination and just testimony is taken. So you can add comments. The record will be left open for comments. So you can address it then.

MR. LA BOSSIERE: Right. I just --

CHAIRPERSON REID: I understand that, but as Ms. Pruitt said, you know that the record -- well, we really have stated that the record will be left open, and if you have comments, you can submit them --

MR. LA BOSSIERE: Thank you so much.

CHAIRPERSON REID: -- in written submissions to the record.

Okay. Thank you.

The last testimony here today is Mr. Mlotek, and hopefully they will be brief.

MR. MLOTEK: For the record, Ronald Mlotek once again.

I know we're all tired and hungry and many miles to go before we sleep. So I will, in fact, be brief, but inasmuch as my name was directly and repeatedly fired upon by a member of the District Council, I think I should have a slight response, and I appreciate the opportunity.

I think it behooves us all to take a step back and to take a deep breath and to recall a very important point. The Foreign Missions Act was born, as I said, out of a period of 15 years or more of extremely bitter and extremely vituperative and extremely unproductive controversy between the federal government, the D.C. government and the communities. This reached a climax shortly after home rule went into effect when, as we all recall, the federal -- the Congress retained the right of disapproval of

legislation, and the first time ever that that right of disapproval was used was in the context of foreign missions land use. We should all recall that.

It was not a happy time. It was extremely -- it was a focal point of extreme comment and protestation here at the time that that happened in 1978. We don't want to go back to that time, and I don't think it is helpful for a member of the council to engage in such vehement and vituperative comment, particularly directed toward an individual in my case. I'm merely an attorney for the Department of State,

To symbolize this fact, I've brought up with me now my colleague, Richard Massey, who is the Director of our property operation, whose office and whose staff handled these issues and complaints and issues of compliance and enforcement with orders or existing regulations with regard to property and who have spent innumerable hours toiling in this field and have many stellar successes also in the area of parking, for example, and in rationalizing and in harmonizing and opening up parking opportunities in Sheridan-Kalorama, increasing the numbers.

At any time anyone would like to know about this, Mr. Massey would be delighted to report on it, but it is not helpful to engage in what Mr. Catania engaged in and, in particular, I respond to the following point.

At no time since he has become a member of council, notwithstanding these protestations regarding how often and

frequently he and others have protested this, that, or the other condition brought about by diplomatic entities and share in common; at no time since he has become a council, notwithstanding that he's known me for many years and knows where I am has Mr. Catania ever come to me to protest any condition in Sheridan-Kalorama or in any other area of the District, so has jurisdiction, responsibility for the entire district, other than in the context of this one case.

And in the context of this one case, he has raised one issue, the issue of Albania, which as I have said we are in the process of responding to and taking rather vigorous action on.

That is a very important point to state in the public record. He asserted that there were an innumerable list of complaints which he and his constituents have filed with us, but he hasn't listed one of them. Where are they? Where are these complaints?

With respect to the question of saturation and inundation, Mr. Collins, I think, has done an excellent job showing that this is a canard and a strawman and hasn't occurred, but I would even go beyond what he said to point out some other aspects in this very square and in the square abutting.

In this very subject square that we are talking about, we had the chancery, the principal chancery of Ethiopia. The Ethiopians are in the process of completing their chancery at the International Center and will be moving the bulk of their

heavy duty diplomatic representation to the International Center hopefully before this year is out. The way the building is progressing, I'm sure it will be before the year is out.

They will probably retain the site, and they will probably retain some sort of diplomatic chancery activity there, but the level of intensity of use, the numbers of employees, the numbers of cars that would be brought to that site are going to be diminished radically.

In the immediately abutting square adjacent to this you had the Chancery of Thailand which moved out of that area years ago to Georgetown. They have retained the building, but it's been empty for years. There's been no traffic. There's been no activity there. They're in the process of converting it into some sort of a cultural section for the embassy, but when that is done, again, the level of intensity of use will be drastically reduced.

I don't believe that people who come before a legal and an adjudicatory body like this and make statements about conditions that are objectionable can do so successfully at least without citing some factual support and factual data for these assertions. And the factual record in this case indicates that there has not been an increase in this area, how everyone wants to define the area. This square, the several squares next to it, there has not been an increase in chancery use or in intensity of chancery use or in raw numbers of diplomats present not merely

since '87 or '80 -- '87 when Order 509 was promulgated, but going back to 1982 when the Foreign Missions Act was promulgated.

Every chancery that we are talking about here or that you have seen portrayed was there in 1982, in October 1982 when the act was promulgated with the exception that Algeria did have an expansion of existing chancery, but they were already there. They were all there.

There is -- although it's been repeatedly asserted, there is no inundation. Then just a brief final note about the issue of the condition of existing chancery and the ability to cite matters about it or to introduce photographs. I'd just like to state this for the record.

I would have no objection to the Board even receiving testimony, including photographs, about something such as the condition of this chancery if there had been some prior notice and opportunity to the chancery to do something about it. We have never had a case in which the treatment of another property unrelated to the one in question has been brought into the Board. If we want to change that procedure and have that be a matter of credibility as Council Member Graham said to test the credibility of the members of the mission, I wouldn't have a huge problem with that, but at least let us give people a notice and opportunity.

The Embassy of Benin, if it had known that they could be made subject to detriment before this body by virtue of

their existing chancery would have had the opportunity to do something about it.

If there was a record, a historical record or documented record of complaints unanswered by the chancery and/or the Department of State with regard to that property, I would have no problem with that being brought in.

But to bring this in in sort of a surprise and just spring it on everyone, I think offends just common due process and notice concepts.

MR. PARSONS: Mr. Mlotek.

MR. MLOTEK: If anyone has any question of myself or my colleague --

MR. PARSONS: I do.

MR. MLOTEK: -- Mr. Massey, who actually does the actual yeoman's job on many of these property related issues, we'd be glad to entertain them.

MR. PARSONS: Mr. Mlotek, Mr. Massey, I've heard a lot of these cases in the past 25 years, and the accusations that were made here today about you and your colleagues I have heard before, and it seems to me it would be well for you, Mr. Massey, to produce some kind of a report, and obviously it can't be specific to who you arrested or who you sent off to jail or who you stopped from doing this and that and the other thing.

But all we hear is one side of the story, that you don't answer the phone, that you don't do anything, that nothing

happens, and I sense that's not the case. Otherwise you wouldn't be in the job you've had for so long.

So I don't know whether you prepare an annual report for your superiors or what, but is there any device that you could share with us that would show that, yes, there is enforcement occurring within the city? I know it's beyond the scope of this case, but I sense with Mr. Catania's initiative here that it's not going to end with this case, not his harassment of you, but rather his pursuit of this issue. And I think not within the next two weeks, but I think you would do yourself well to defend yourself, had you don't have to do it here today.

MR. MASSEY: Well, we're all tired here today I'm sure. My name is Richard Massey. I'm the Office Director in the Officer of Foreign Missions for Real Estate.

I have been doing this kind of work for 20 years, starting with the Office of Protocol. I've certainly been dealing with problems of complaints from neighbors and these kinds of incidents for those full 20 years, not by myself.

One of the reasons I was here, I thought it was remarkably unfair of Council person Catania to attack Mr. Mlotek because, although he is our legal counsel, he's neither the Director, the Deputy Director, or the Office Director in the Office of Foreign Missions. There's a large office there that works on these issues, as well as other agencies and other offices in the department, and there's a lot of issues involved, political

as well as all the other things.

What I would like to say, we do have a process that if -- what we try to do to keep some control is if we get a letter from a citizen about a problem, we follow up on. Now, what we ask is has that citizen contacted the embassy first because in my many years of experience I have found -- and I think this may have been the case in Benin -- there's surprise that no one has contact them about a particular problem before they go to the State Department.

To have the State Department contact a foreign government about something is not just something you just pick up the phone and call somebody and complaint. It is the federal government calling them.

So we ask for these ANCs or for these other groups, yes, they may be dissatisfied when they pick up the phone and call me, and I do not immediately turn over and call the Ambassador. It can't work that way. They have to show a little more effort and interest by writing that letter so that we can then pass it on to those embassies.

We have written to government of Albania about the issue that the council person brought up. I drafted it myself. So I know what it said, and it's been signed by the Deputy Assistant Secretary, and we will pursue it.

They are parking apparently in the driveway in front of their chancery. I understand that, but it's the first we've heard about not maintaining the grounds and things like

that. So we'll bring it up.

So we do pursue these. I would like also the citizens, I think, to recognize the status, for instance, of the custodial properties, all of the Iranian properties that are in their midst that are maintained, the Afghan property, the Iraqi Ambassador's residence, which is all in the custody of the State Department and the Office of Foreign Missions. I think they should be pleased how well they're maintained.

Somalia, we had that property sold at our initiative rather than keep it because there was no funds to maintain it.

We don't hear too many compliments from any of these entities in the neighborhood. They are quick to complain though as I know full well.

The parking issue, very sensitive, very touchy. I will say this, that from my point of view we have to deal with the complaints from all the other foreign governments who say we provide the State Department, our embassies, much more parking than you provide here, which is true.

We don't issue parking on the basis of reciprocity. They would very much like it to be. If we did, of course, there would be no more parking left in this city, but we take quite a lot of pressure from the other side about how much we do not help the embassies on parking.

So maybe I'm doing it somewhat right because I have

both sides angry about the parking. There is no satisfactory answer to that, as we know who live here.

I live in the neighborhood, by the way. I had to look for parking around those very same streets. So it's not that I live in Potomac. I can't afford it.

So myself and my staff do work on all of these issues probably never to the satisfaction of the neighbors, but it does not mean that we don't make the attempt and actually have a lot of successes that they know nothing about.

I think I'd like the council person to contact his colleague Charlene Drew Jarvis about the Liberian Embassy that's now being renovated on 16th Street. She was directly involved with us with that. That renovation is now going on, thanks I think in large part to our efforts to find funding to get that done.

Anyway, thank you.

CHAIRPERSON REID: Thank you very much.

MR. SOCKWELL: Mr. Massey, since we are on the subject of maintenance and property management per se, is there any public policy document in the Foreign Missions Office that describes how one would respond to complaints with foreign missions? In other words, is there a document for the public to use as a procedural guide? Have you ever put anything like that together? Have you ever thought there was a reason to?

Second, do you have in the --

CHAIRPERSON REID: Let's let him answer --

MR. SOCKWELL: Well, it could all work in the same question, but go ahead.

MR. MLOTEK: Okay. If it's all right, I'd like to take that question directly because I have personal knowledge.

In fact, paradoxically in view of what preceded here today, the Department of State, myself, Richard's office as well, but primarily myself, I think, in that case worked very closely with the neighborhood itself, shared this neighborhood in specific, shared in Kalorama in putting together precisely such a handbook. It was not the ANC. It was the private community organization, the SKNC, the Sheridan-Kalorama Neighborhood Council, which several years ago established -- and I thought was a very laudable thing -- a foreign missions subcommittee or sub-working group to address specific issues such as this.

It was highly productive. John Sukanik, whose name you've heard mentioned here several times, who's not here but who's a neighborhood activist of long standing led this effort, and it produced precisely such a handbook, and it says, Mr. Sockwell -- the procedures which you've heard myself and my colleague here lay out before you at least in the Sheridan-Kalorama neighborhood where the present issues arise was set forth in collaboration with the Department of State and was distributed, very widely disseminated through Sheridan-Kalorama as to exactly the procedure to follow when one has any sort of a complaint.

MR. SOCKWELL: If someone were to call your office, that document could be made immediately available. Is that what you're telling me?

MR. MLOTEK: Well, I have to find where I put it, but I'm sure the SKNC would have it.

MR. SOCKWELL: Yeah.

MR. MLOTEK: If you think that we ought to have such a document, the point is well taken.

MR. SOCKWELL: The reason I'm asking is because I wasn't talking about just the Sheridan-Kalorama neighborhood. I was talking about impacted neighborhoods, period, in the District.

I mean if the Department of State has a commitment to the community, then the Department of State shouldn't have a document stuck in a corner somewhere where you you'd have to look for it.

MR. MLOTEK: It's an excellent suggestion and we will, I think, pursue it.

MR. SOCKWELL: And the other thing: is there any staff in your office devoted to inspecting, and are there any in-house procedures in your office for documenting complaints and making an accessible record?

MR. MLOTEK: Well, as I think I indicated in my prior -- previous principal testimony, we are not inspectors. We can't be. That would be arrogating to ourselves a role which belongs to the local government. We don't have building

inspectors or zoning inspectors or historical preservation inspectors.

MR. SOCKWELL: I understand, which sort of means that as an office you are moving paper, but you are not moving on issues.

MR. MLOTEK: I think that we would run into a very serious problem and criticism by the municipal government if we were to start trying to hold ourselves out as zoning or building code inspectors.

MR. SOCKWELL: Well, let's say this.

MR. MLOTEK: We have a very productive relationship with DCRA, and they know. The people who are the section heads and the heads of inspection and the people, for example, in HPRB know exactly what to do and who among us to call.

MR. SOCKWELL: Okay. That cannot be correct because I deal with the District of Columbia all the time, and that's not possible.

(Laughter.)

MR. SOCKWELL: So let's forget that.

(Applause.)

MR. SOCKWELL: What we really -- what we really need to get down to is the fact that you don't have any in-house procedures for dealing with these issues that you could provide to the public so that they would know how and if you can deal with these issues. You don't have any procedures at all.

MR. MLOTEK: We have -- oh, yes, we do. We have established procedures that --

MR. SOCKWELL: Well, what are they?

MR. MLOTEK: We don't have them written --

MR. SOCKWELL: Can you give me something in 24 hours?

MR. MLOTEK: We don't have them written.

MR. SOCKWELL: Could you give me something that's written down? If it's not written down, it's hearsay. If it's hearsay, it doesn't exist.

MR. MLOTEK: We don't have it in a brochure or a pamphlet form, and --

MR. SOCKWELL: Or on a piece of paper.

MR. MLOTEK: (Pause.)

MR. SOCKWELL: So should you get sick and pass away, along with you would pass the entire history of such procedures.

MR. MLOTEK: Well, both of us would have to pass away simultaneously.

(Laughter.)

MR. SOCKWELL: Well, he'd be at the funeral. So there wouldn't be anybody in the office.

MR. MASSEY: And all of my staff.

MR. SOCKWELL: All right.

MR. MASSEY: And the staff of the Office of

Protocol. So I don't think so.

MR. SOCKWELL: Okay, but you see where I'm coming from. There's an obvious difference between what your perception of response is and what's available as a documented methodology for achieving such, and without that, it's very difficult to have any relationship with a community that is impacted by the foreign missions that reside there. Regardless of the quality of the service provided by the Embassy of Benin or Argentina or anyone else, you have no policies and no procedures and nothing written down to show the community how they can guide themselves through the situations that occur with foreign missions in their neighborhoods.

I mean it's got to be there, and I think that this is a form whether either it's identified or it isn't, and I'm trying to identify methods by which you can improve your standing within the community. Apparently there are a lot of people who don't feel very highly of the State Department and its way of doing business.

Now, the other thing I wanted to say, which does not relate to you but to Mr. Collins, you spoke of nothing having changed since 1987. That isn't quite the way I see it. I see the fact that the community is a neighborhood of people as well as buildings. The buildings are still there, but the people have changed. The people are more interested, more concerned, more impacted. Even though it is not strictly a foreign missions

issue, it is a neighborhood issue.

As neighborhoods grow up, the children grow up. They get cars. They live at home with those cars. The missions change. The neighborhood is not going to be exactly the way it was in 1987 when things came together to designate the Sheridan-Kalorama district. That's what's changed, and that's why they're here today.

CHAIRPERSON REID: I hope that concludes this case.

PARTICIPANT: Madame Chairperson, if I can just make a remark that --

CHAIRPERSON REID: It was far longer than any of us had anticipated. Nonetheless we do have the responsibility of getting all the information out and to allow everyone who would like to testify to testify once.

So with that having been said --

PARTICIPANT: Madame Chairperson --

CHAIRPERSON REID: With that -- with that having been said --

PARTICIPANT: -- I have the right to respond.

CHAIRPERSON REID: Sir. Excuse me. Excuse me, sir. You do not. There is a procedure here, and that procedure is specified in the regulations, and let me just reiterate them very quickly, and I -- and in my opening remarks I laid it out.

Statement of the witnesses of the Applicant.

The government reports.

The Secretary of State through his representative.

Office of Planning on behalf of the Mayor.

Reports or recommendations by other public agency.

Report of the ANC.

Persons in support.

Persons in opposition.

Then the Applicant has closing remarks, and it's always the procedure --

PARTICIPANT: (Inaudible.)

CHAIRPERSON REID: -- as a part of the closing remarks he can -- he can -- he can make a statement.

One thing that I did not say was that the Applicant had letters, although there was no one here to testimony in support other than one person who gave their opinion, that we did have letters of support that came from the Embassy of Senegal, Ethiopia, Rule Thai (phonetic), Argentina, and Algeria that are a part of our records.

And this case is completed. Thank you very much.

PARTICIPANT: Is the record closed?

CHAIRPERSON REID: The record is not closed, as Ms. Pruitt specified earlier. She gave a time line. Check with staff. There is a time line by which additional submissions will be accepted, and time given to be responded to by the Applicant.

PARTICIPANT: I would like you to know --

CHAIRPERSON REID: This case will be -- this case

will be heard on -- this case will be -- I'm sorry -- deliberated and decided on December the -- I mean -- I'm sorry -- January the 5th, which is the first meeting of year 2000.

MR. COLLINS: The schedule, again, for submissions?

MS. BAILEY: December -- December 16. Responses are due on the 23rd, and the findings of fact are due on the 30th. All of these dates are in December.

MR. COLLINS: I'm sorry. December 16th, and that was for the two individuals who alleged no notice? And what are we responding to? What are the issues outstanding?

CHAIRPERSON REID: Ms. Pruitt is not in here, but basically it's been such a long time ago now it was to allow the persons who testified that they had not received notice. That's how we began.

MR. COLLINS: The two people that didn't receive notice?

CHAIRPERSON REID: It was -- excuse me. I think that it was the -- there were the persons who were in the co-op. Was that the Dresden Condo. or Co-op?

MR. COLLINS: Dresden is a condo., but they filed a letter in opposition. So they already had notice.

CHAIRPERSON REID: Okay. Now, there was -- there was the condominium association, 2020 Kalorama.

MR. COLLINS: 2120?

CHAIRPERSON REID: 2120 Kalorama.

PARTICIPANT: That's it.

CHAIRPERSON REID: That was the only one? And as a result of that we did say that we would allow them to submit into the record comments.

MR. COLLINS: And then out responses are to that?

CHAIRPERSON REID: Correct.

MR. COLLINS: On the 23rd?

CHAIRPERSON REID: Correct.

MR. COLLINS: And then the draft order is due?

MS. BAILEY: The 30th.

CHAIRPERSON REID: Mr. Parsons, you had requested from the State Department a report on what their procedures were with regard to enforcement or did you not wish them to do that?

MR. PARSONS: I was just suggesting to Mr. Massey he might do that in his own defense, but not, I mean, as a programmatic matter, not to influence this case.

CHAIRPERSON REID: Okay. I think that that then concludes this case. I think those are the only other matters.

Okay? All right. Thank you very much. Thank you.

Now, in regard to the time -- no, this case is done.

In regard to the time aspect, no one anticipated this case would take so long. I did want to address a case that we have for this afternoon on which there has been a dismissal and postponement requested, and I wanted to make sure that those

persons who were here not have to continue to wait, and we just take care of that now, and that's Case No. 165.

Quickly, do we have both sides? The attorneys for the Applicant as well as the opposition.

MR. PAT BROWN: Madame Chair, Mr. Nunley was en route as the Zoning Administrator's representative in this matter. He may be in the outer room. I think he would --

CHAIRPERSON REID: Can you check, please?

We'll take that up. It's out of sequence, but the day has been kind of crazy. What I will do is just allow before -- okay. He's not here. Before we can continue the morning's session before the recess to allow this particular case to be determined as far as the preliminary matters are concerned because it makes no sense for you to continue to stay if we're going to handle it as a preliminary matter. So --

MR. PAT BROWN: We appreciate that.

MR. TUMMONDS: Madame Chair, my name is Paul Tummonds. I'm an attorney with the law firm of Wilkes, Artis, Hedrick & Lane here on behalf of the Applicants in Case --

CHAIRPERSON REID: Wait one second. I do not have a quorum. Everybody just kind of --

(Pause in proceedings.)

CHAIRPERSON REID: After we do the preliminary matter, we're going to break for about 20 minutes. So anyone who wants to leave can go ahead and leave if you're not involved with

this particular preliminary matter germane to Case 16521.

PARTICIPANT: Can come back?

CHAIRPERSON REID: Un-huh, in about 20 minutes or so. Huh?

PARTICIPANT: You will hear all of the cases on the schedule?

CHAIRPERSON REID: We will.

(Pause in proceedings.)

CHAIRPERSON REID: We lost a member. He's been sitting here all day. So he'll be back.

(Pause in proceedings.)

CHAIRPERSON REID: All right. We're ready. Go ahead.

MR. TUMMONDS: Yes. Thank you, Madame Chair, members of the Board.

My name is Paul Tummonds. I'm an attorney with the law firm of Wilkes, Artis, Hedrick & Lane on behalf of the Applicant in Case No. 16521, Charles Sisson.

On November 24th, 1999, a request was filed in the record of this case to postpone this public hearing, waiting for the Zoning Administrator's office to issue a memorandum discussing the appropriate areas of relief in this case.

At this time we would ask that you make a ruling on this request for postponement with as much influence as you can give to the Zoning Administrator's Office to encourage the

issuance of that memo, and that we can come back in January or February to address this issue.

CHAIRPERSON REID: Okay. Thank you.

Mr. Brown.

MR. PAT BROWN: Madame Chair, members of the Board, my name is Patrick Brown from Greenstein, Delorman & Lucks. I'm here on behalf of Ms. Mildred Crary. She's the next door neighbor. She was also, as you may recall, the Appellant in the underlying appeal Case 16405.

This matter is premature to, quite frankly, in my view, to have even been filed with the Board, let alone scheduled for hearing, one, because the underlying appeal case has not been decided, the Board having not issued a decision. Mr. Sisson through his counsel has indicated that his desire to either pursue a motion for reconsideration of the appeal decision and/or go to the court of appeals in that case. So we clearly do not have a final decision.

Also, on the issue of the request for postponement for a zoning memorandum, Mr. Nunley is expected here shortly. His boss, Michael Johnson, is preparing a letter which Mr. Nunley could testify to to indicate two points.

One, until the order is final in the appeal case, he's not in a position to issue a zoning memorandum.

And, two, the Applicant, Mr. Sisson, has not

submitted the materials necessary, the as-built drawings, the information, the data for the Zoning Administrator's Office to conduct the zoning computations and prepare a zoning memorandum.

So that we're in a situation where the Applicant in this case has proceeded forward and is unable to go forward, and in a case that shouldn't be here. They're not able to bear their burden of going forward. They haven't even provided the information to the Zoning Administration necessary to provide the zoning memorandum.

So in my view, the best approach, the only approach is not to postpone. We're not sure how long that postponement would be, but to deny the current application or dismiss it.

At such time as the Applicant has a real matter to come forward for purposes of a BZA application, he'd be able to refile, and at that time also we presume would have submitted the materials to the Zoning Administrator's office to allow the computations to be made and the zoning memo prepared.

So I think a postponement which I think at this point would have to be at best indefinite, one, because we don't know when the order is going to be issued in the appeal; two, we don't know when that order will become final. Mr. Sisson has rights both for reconsideration as well as appellate rights, and then obviously the question of taking some final decision and using it as the basis for zoning memoranda.

MR. TUMMONDS: If I may respond, the basis for this

application it's my understanding was based on Commissioner Gilreath's request that as a result of that appeal, that the Applicant in this case come back for relief via a special exception and a variance relief. That's what we're here for.

So waiting for this order to become finalized from the Office of Zoning is just going to tell the Applicant he needs to come back for a special exception and variance relief. That's what we're here for.

With regards to the ability of the Zoning Administrator not to be able to issue a zoning memorandum in this case, waiting for the order to be finalized, if there was no appeal we could still go to the Zoning Administrator's office, show him our plans, and they could issue a memorandum saying, "You, Applicant, are required to obtain this sort of relief."

So there was nothing based on the fact that the order for the -- in the appeal case has not been issued which prevents the Applicant from going forward in this case. In fact, this case is because of that appeal.

What we think is appropriate is you can encourage the Office of Zoning to issue that order as soon as possible. Then that would take care of one of Mr. Brown's concerns, and then with regard to the Zoning Administrators now, we would love to get them to do that as quickly as possible as well so that we can move this case forward.

MR. PAT BROWN: Can I respond, Madame Chair? And I

don't want to belabor this point because I think the most important person to be here is Mr. Nunley, but speaking, if I can, to how he's told me his office is approaching this case is, one, they're not prepared to prepare a zoning memorandum until the appeal case is decided; that they view that as the starting point, as well as the documents that have not been submitted for their computations.

And so we're in a situation where the application was filed prematurely and not in a position to go forward to provide the Board the nature of the relief sought.

I have my own view that the relief sought will be different than anticipated, and certainly that's been noticed in this case, and I suspect ultimately the Board would look to the Zoning Administrator's office to make that determination, which should occur, but under the circumstances, again, that is not going to occur is my understanding, nor could it because the raw data, the materials have not been submitted by the Applicant.

So, again, we go back to, I think, the appropriate response is to deny or dismiss this application, and at such time as conditions are right, it can proceed.

I believe Mr. Hart may have a letter from the Zoning Administration; is that --

MR. HART: Yes.

MR. PAT BROWN: Madame Chair, will there be a copy for us to share at least?

CHAIRPERSON REID: Sure.

(Pause in proceedings.)

CHAIRPERSON REID: I think that in this instance there has been a series of inconsistencies, if you will. One is that the final order of the Board has not come out, and as such it really should not have appeared on the agenda yet.

Also, the Board members sitting here today were not the ones that were initially involved in the case. So they would have to read the record to be able to make a decision.

So in all fairness, my recollection would be that this particular case be deferred, postponed, and the timeliness of it I really can't say, and I just have to defer to staff because I don't know when that order is forthcoming, but we need to at least make sure that we have things structured in such a way that we do have what we need to be able to make decisions, as well as give the Board members ample opportunity to be able to read over the merits of the case so that we'll be able to make a decision.

MR. PAT BROWN: Madame Chair, I mean, one, obviously I don't think that's appropriate, but it raises some practical questions that we'd have to resolve if that's the Board's wish on how to proceed. There's no way I don't think that we could sit down here and anticipate when this case would be ripe to go forward. There are at least two variables.

One of which is when the Board will issue its order, and related to that is when that order will become final

if, in fact, the matter is put before the Board again for reconsideration or it goes to the appellant courts, which Ms. Dwyer has indicated is the case. It would be premature to proceed at that point.

And the second unknown generally is when, in fact, one, the Applicant will submit the necessary materials for the Zoning Administrator's office. He's indicated in his letter he's not prepared to act, to begin to act, until --

CHAIRPERSON REID: The Board has issued a final decision.

MR. PAT BROWN: And that becomes final for whatever purposes that may mean, whether it's reconsideration or the appellate courts and then submission of the materials and then a zoning memorandum.

So we could be looking at three months. We could be looking at, quite frankly, two years if we're going to the court of appeals. So it's generally been the policy of the Board in my career here not to leave cases open indefinitely, and I think that's what you'd have to do in this case if you were just simply to postpone or defer.

CHAIRPERSON REID: I don't think that we have left costs open, not indefinitely, but in given -- if we did not have adequate information or for whatever reason we could not schedule a date certain, we would leave it open until certain things had occurred, and then the case would be scheduled and all parties

would be notified. That's how we've handled it in the past.

And I'd like to hear from other Board members on this issue, please.

MR. GILREATH: Well, is it possible to simply defer consideration of this case without -- if we say we vote for a postponement, that's an official act, but if we just say because of the lack of information and things that will occur subsequently we just say we defer consideration because we cannot clear this case in a timely manner.

CHAIRPERSON REID: Well, its' the same.

MR. GILREATH: Is that the same as a postponement? One is --

CHAIRPERSON REID: We're still postponing. In other words, we're not taking it up today, but to continue.

MR. GILREATH: Well, does the case have any kind of -- any legal difference in terms of whether you say we divert? We're not even going to hear it because of the uncertainties, and the others we say we are looking at its merits. However, we feel it should be postponed. Does it really matter?

If it doesn't matter, then I have a problem with it.

CHAIRPERSON REID: I think that typically we either -- we hear the case or we postpone or -- continue and postpone it or we dismiss it. We take some action.

MR. TUMMONDS: And if this case was dismissed, the

only difference would be compared to the postponement is the Applicant would come in and repay a filing fee.

CHAIRPERSON REID: Which would impose an undue burden on Applicant.

MR. TUMMONDS: Right. You know, if we just postpone it to a later date, and I think we have -- there are -- you know, it's not an amorphous kind of thing of what we're looking for. We have pretty specific instances of information that needs for this case to move forward.

That's why I think a postponement or a deferment, whatever you want to call it, is the appropriate remedy.

CHAIRPERSON REID: Okay. Mr. Brown. Before you --

MR. PAT BROWN: Sure.

CHAIRPERSON REID: Let me -- let me let counsel weigh in on this.

MS. SANSONE: Thank you, Madame Chairman.

Marie Sansone from the Office of Corporation Counsel.

I believe if you wish to on the motion to postpone, you could do so and take it up at a later date. At that time perhaps the application will be ready to proceed or perhaps it will be clear at that time that it should be postponed further or dismissed.

CHAIRPERSON REID: Thank you.

MR. PAT BROWN: Madame Chair, you raise a point and

you're concerned about the Applicant's hardship. In reality, the Applicant chose when and how to file the application. So the situation here is, by and large, of its own making. My client is the one who's suffering because a number of things have happened to get to this point.

There's been an ANC meeting. The ANC has taken up its time and provided a letter. I filed the motion, and I'm here today, which unfortunately has taken longer than anybody has expected.

So I think in fairness the Applicant always bears the burden of one going forward and the burden of proof. They're here today not ready to go forward, and they chose the time and the place to go forward. So I think a postponement, even though it's open ended and I believe that the Board's rule would frown on postponements beyond 30 days, seems inappropriate under the circumstances.

CHAIRPERSON REID: Well, Mr. Brown, also the ANC stipulated in their letter, November 3rd, 1999, that they voted unanimously to communicate the following to the Board, and that is, in pertinent part, the application for variance and special exception is premature because the underlying BZA appeal is still pending.

And then further on they say given the facts and the complexity of the many applicable zoning requirements this application should not proceed until the Zoning Administration has

completed a detailed review and issued the customer a detailed zoning memorandum to the Board, and then we've already established the fact that he can't do that until after he gets the final order from the Board.

So obviously for things to take place in a correct manner procedurally, we can't go forward today, and I would not want to suggest that we dismiss the case.

Now, Mr. Sockwell, could you comment? Because you will be involved even though you're not now.

MR. SOCKWELL: Having been put on notice, I don't think that the case should be dismissed. I don't think that the case can go forward, and I assume that, Mr. Brown, the hardship that you alluded to is what?

MR. PAT BROWN: I mean, this case has been going on for two years now, but that the Applicant filed an application at the time they knew wasn't ripe, was premature because the order hadn't been issued. They moved it forward without -- by their own admission the documentation, both the order and the Zoning Administrator's memorandum, that they knew they needed.

And then so that my client has had to respond. The community has had to respond, and, you know, quite frankly, my client has spent legal fees, and the community has spent their time and effort, the ANC.

And that's the process, but again, the Applicant in this case, in my view, was never able or in the position to go

forward, and all of that has been wasted to this moment, and I think the proper response to that is the applicant, you bear the burden of going forward; you bear the burden of proving your case. You're not able to do that by your own admission, and postponing is just --

MR. SOCKWELL: Well, Mr. Brown, then let me ask this question. Is it your belief that it is the responsibility of this Board having accepted the application prematurely to dismiss it without prejudice, i.e., retaining the fees paid and start this thing again once the proper order has been issued?

I mean we're talking ways to get this done properly. If it should not be before the Board, if the application should not be before the board at this time, then it was someone's responsibility to have determined that that wasn't correct. Since the Board was in the process of issuing a decision, I would think that the Board should not -- properly would not have accepted the application.

Am I not correct?

MR. PAT BROWN: Well, the staff accepted the application, and the Board's regulations or procedures clearly provide that applications are accepted, you know, kind of at your own risk should the Board determine --

MR. SOCKWELL: But this is a particularly cumulative situation.

MR. PAT BROWN: Well, it is, but all the more

importance for the Applicant to exercise care. They didn't, and in this case the staff did not reject this application at the doorstep I don't think is appropriate. I mean the staff and the Board always has the discretion to find, and it's laid out in the regulations, that an application was filed, that it's not complete or --

MR. SOCKWELL: Well, it might have been Mr. Tummonds' assumption or Mr. Tummonds' client's assumption or Mr. Tummonds' firm's assumption that the decision would be issued before the application actually came before the Board, and therefore, there would not have been this overlapping.

MR. TUMMONDS: Well, in reality everything we've done by filing this application as soon as we could has served to move this process along in a more timely fashion.

MS. BAILEY: Madame Chair, excuse me. We have three more cases on the morning agenda. We haven't broken for lunch yet, and it's now quarter to four. If I could maybe help just a little bit, a draft of the order has been written. It's being reviewed by Corp. Counsel. I think the order should be issued some time in January; certainly I would hope no later than February, but that's where the process is now as far as the issuance of the order is concerned.

MR. PAT BROWN: And that's the concern, Madame Chair, that we're -- you know, and staff has had to work very hard on this case.

CHAIRPERSON REID: Okay. Mr. Brown, just let me just interject this again. In order for us to take a vote, we have to have a quorum of the parties who participated, who were involved, in the case.

MR. PAT BROWN: Not as to this case, not as to the application.

CHAIRPERSON REID: No, no, no. What I'm saying is that the parties that are here today, the Board members who are here today don't have any knowledge except for myself and Mr. Gilreath, don't have any knowledge of this case whatsoever. So it couldn't go forward anyway for lack of a quorum to vote on it.

MR. PAT BROWN: But, but --

CHAIRPERSON REID: But, Mr. Brown, I think by consensus I think we've all agreed that it will be postponed, and so it serves no purpose to continue to belabor that issue. Let's just move forward now with setting up -- if we can set a date certain with the understanding that the order will be forthcoming in the interim, and if it should not be -- if it has not been issued by that date in a timely enough fashion, then we'll have to make the adjustments accordingly.

MS. BAILEY: Madame Chair, the next available date that this could go on the agenda is for February 16th in the year 2000. February 16th.

CHAIRPERSON REID: Given the fact that the order will be issued and --

MS. BAILEY: We hope.

CHAIRPERSON REID: Okay.

MS. BAILEY: Corp. Counsel is represented here today, and she's listening to this discussion. So maybe she'll want to take those comments back with her.

CHAIRPERSON REID: All right.

MR. PAT BROWN: So, Madame Chair, the concern with that date, and you're suggesting that date is a hearing date?

CHAIRPERSON REID: Yes.

MR. PAT BROWN: Is that, one, the order has to be issued and become final; and, two, should there be -- the zoning memorandum has to be prepared and provided to this Board. The possibility exists that the relief requested will be different than the current case sets forth. So then you've got a notice problem because you've got a minimum 40 day notice period for a hearing.

CHAIRPERSON REID: Okay.

MR. PAT BROWN: So -- and Mr. Nunley is here, and I --

CHAIRPERSON REID: We -- given what you just said, that is correct. It has to be issued and then final, and it will be -- what time frame for after it is issued for it to become final? Before it could be scheduled, correct? Ms. Bailey? I'm relying on input from staff here, now.

MS. BAILEY: I believe, Madame Chair --

CHAIRPERSON REID: Is that correct?

MS. BAILEY: If the February 16th date --

CHAIRPERSON REID: No, no, no, no. The question is the order would have to be issued and become final, and what's that time frame? Because, you know, we don't want to have the same problem we're having right now that it's being put on the agenda when it's put there prematurely.

MR. PAT BROWN: Because the 40 day time period going back from February 16th is almost upon us already, and there's no order, and there's no Zoning Administrator's memorandum.

So, again, you know, I think we have to be looking out much further.

CHAIRPERSON REID: Okay. Well, then I think perhaps we will not -- we will not schedule to a date certain.

MS. BAILEY: Madame Chair.

CHAIRPERSON REID: Just to be on the safe side -- excuse me -- just to be on the safe side, like we're going to err on the side of caution and not schedule for a date certain, rather wait until the correct procedures have been followed and then schedule it and notify all the parties accordingly.

That is, I think, the best way to proceed.

MR. PAT BROWN: So, Madame Chair, I understand that. The proper procedures would be, for clarification, one, that the appeal order has been issued, it's final, and has not

been challenged either by reconsideration or the court of appeals as the --

CHAIRPERSON REID: Mr. Brown, I'm not certain of that. I would rely on Corp. Counsel to give guidance in that regard, but nonetheless, the importance of what we're doing here today is to try to better insure that here forth it will be done in a procedurally correct fashion.

MR. PAT BROWN: And I understand that, and I'm trying to set the milestones in a mutually understood way so that we're not having a discussion about whether the case is in a posture to go forward come the next time we set a date, and I think -- and if the Board needs to get further guidance, that's, I think, prudent.

But, again, if we set the milestones so that the Applicant and, quite frankly, my client and the community knows what has to occur and when and what time frame, the chances of us having a motions dispute before you is diminished. So that's what I'm trying to get at.

And the other issue would be receipt of the Zoning Administrator's memorandum. I think how we'd set those milestones, but the two milestones that appear to be here are, one, that the appeal order is final. How we define that is something we can discuss, and then receipt of the Zoning Administrator's memorandum.

CHAIRPERSON REID: Okay.

MR. PAT BROWN: But before we're ready under the Board's view to go forward.

CHAIRPERSON REID: Okay. That's what we'll do. We'll make sure that everything is in order before we move forward on this particular application. So we will not run into the same problems that we are facing here today.

MS. BAILEY: But, Madame Chair, just in sum, this application is going to be held in abeyance until some decision is made as to when it's to be rescheduled?

CHAIRPERSON REID: I wouldn't say held in abeyance. I think that what we're saying is that we have to make sure that the order is issued and become final prior to it being -- and then I don't know if the motion for reconsideration or whatever is going to happen. We have to wait until we -- it is determined at what -- at what procedures have been already taken care of before we move forward.

And the point of the matter is that we shouldn't be here today. That's number one, but since we are here today, then we have to now make sure we don't make the same mistake again, and the next time this matter comes before us, it will be done in the proper manner. It is not properly before us today.

MS. BAILEY: Thank you.

MR. PAT BROWN: Thank you, Madame Chair, members of the Board.

CHAIRPERSON REID: Thank you.

Okay. Well, at four o'clock just about we'll recess for about 20 minutes for a short recess, and then we'll resume with the other cases from the morning and hopefully we'll be able to get through the remaining cases at the end of the day.

Twenty minutes.

(Whereupon, at 3:55 p.m., the meeting was recessed for lunch, to reconvene at 4:15 p.m., the same day.)

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

(4:17 p.m.)

CHAIRPERSON REID: We'll proceed with the rest of the morning's agenda. We'll try to do the best we can. We're going to try, given the hour, to try to facilitate things, expedite, and try to get us out of here at a reasonable hour, some time between now and midnight. Just joking.

Okay. Can you -- are you okay with the time? We're going to go beyond six a little bit probably. I hope we're not too much, but as long as you can stay that would be great.

All right.

MR. HART: All right. The second case of the morning is the Case 16518 of Rafael Rodriguez, Jr., pursuant to 3107.2, which the new section is 3103.2, for a variance from the use provisions of Subsection 350.4 to use premises as general office us, first through third floors, to be consistent with the existing use of the building in an R-5-D district at premises 3105 Mt. Pleasant Street, N.W. This is Square 2595, Lot 1051.

Those persons planning to testify in this case, please come forward. Would you come forward? Please raise -- that's right -- please raise your right hand.

(Whereupon, the witnesses were duly sworn.)

MR. HART: Thank you.

CHAIRPERSON REID: All right. Go ahead.

MR. RODRIGUEZ: Good afternoon, Chairman and the

Board, members of the Board. My name is Rafael Rodriguez. I live currently at 3105 Mt. Pleasant Street, and I'm presently the owner of the building.

Right now I still have a space used, and I do have permits for office space in the first floor right now and request the Board and the members of the Board to see if I can change the space as a general space use just as my next neighbor, just like they have it currently. Right now it's a commercial area.

CHAIRPERSON REID: Okay. Mr. Rodriguez, are you familiar with the procedure before this Board and what your responsibility is here today, to demonstrate that you can meet a three pronged test? You're asking -- you're asking for a use variance, relief of a use variance, which is the strictest or the most difficult relief to obtain here from the Board, and you have to show, one, that the property has something unique and unusual or different that is inherent in the land of the property that would cause you an undue hardship to comply with the existing zoning regulations.

Are you familiar with that procedure?

MR. RODRIGUEZ: Yes, ma'am.

CHAIRPERSON REID: Okay.

MR. RODRIGUEZ: Right now the area, the Mt. Pleasant area that I'm requesting, is a 98 percent commercially zoning. This property, it was previously 15, 20 years ago, it was commercial, and then it was changed by the Board only to full

house or four premises. This is all we have in this corner.

CHAIRPERSON REID: Only to what?

MR. RODRIGUEZ: Four premises.

CHAIRPERSON REID: Four residential?

MR. RODRIGUEZ: Yes, ma'am, in valued upon it (phonetic) between Columbia Road all the way to Park Road. They're all right now currently commercial.

So I would -- that's why I estimate that that must be more than 98 percent of the area. It is currently commercial.

CHAIRPERSON REID: So are you saying that that makes your property unique? How is your property unique or unusual? What is it about your property that makes it different, I guess, from the rest of the properties there?

And also I didn't see a site map in your -- in your submission, sir. Did you supply us with a site map of the neighborhood, of the square in which you're located?

MR. RODRIGUEZ: I don't -- ma'am, I don't know if I understand your question correctly, but if you're talking about the plat --

CHAIRPERSON REID: Well, you gave us this.

MR. RODRIGUEZ: Okay.

CHAIRPERSON REID: This is from the Surveyor's Office.

MR. RODRIGUEZ: That's what I have.

CHAIRPERSON REID: Okay. Well, I guess -- I guess,

and sometimes staff provides it, but nonetheless, let's see if we can help you out. Okay?

And one thing is that the first thing you have to demonstrate is that there's something unusual and unique about your property. Okay? And you did supply this surveyor's map, surveyor's plat of the property, which appears to be irregular in shape, very irregular, and so I think that that would, therefore, satisfy the requirement that there's something unique or different or irregular inherent in the land of the property that would cause you undue hardship to comply with the existing zoning regulations.

And you want to change the -- right now it's an office on the first floor, and you want to now increase that office use to all three floors?

MR. RODRIGUEZ: That's correct. I want to make the complete building as a general space use.

CHAIRPERSON REID: Okay. A general space use or an office space?

MR. RODRIGUEZ: For the three levels, ma'am.

CHAIRPERSON REID: Office space?

MR. RODRIGUEZ: Office space, yes.

CHAIRPERSON REID: Commercial.

MR. RODRIGUEZ: That's correct.

CHAIRPERSON REID: Okay, and right now what's there now?

MR. RODRIGUEZ: We do have an accounting office in

the first floor right now.

CHAIRPERSON REID: No, on the second and third floor?

MR. RODRIGUEZ: I was living there.

CHAIRPERSON REID: Okay.

MR. GILREATH: Madame Chair, couldn't the argument be made that if there are only four houses in the whole area surrounded by commercial development and these three or four houses there are residentially zoned and so forth, that you could say this is a unique situation?

CHAIRPERSON REID: Well, that's what we're trying to -- trying to determine now.

On the pictures that you submitted, Mr. Rodriguez, are they -- this is the front of your building, right? This one the front of your building?

MR. RODRIGUEZ: that's correct.

CHAIRPERSON REID: And these other, are these the residential properties? Are these the ones you said that are the four that are --

MR. RODRIGUEZ: This is my building, which is the one in the center right here.

CHAIRPERSON REID: Okay.

MR. RODRIGUEZ: Do you want to take a look at this?

CHAIRPERSON REID: Now these other buildings that you're sending us pictures of, what are they?

MR. RODRIGUEZ: This is a store, a boutique store, and this is a beauty salon next door, next to me.

CHAIRPERSON REID: Point to it again.

MR. RODRIGUEZ: Beauty salon here, a beautation (phonetic), a beauty salon, and a store right here on the left side of my house.

CHAIRPERSON REID: On either side of your building there are commercial uses.

MR. RODRIGUEZ: That is correct.

CHAIRPERSON REID: All the way up the second and third floor as well or just the first level?

MR. RODRIGUEZ: This one has the first in the basement, and this one has only the first level.

CHAIRPERSON REID: And what's above the first level on those buildings?

MR. RODRIGUEZ: They live currently there.

MR. GILREATH: They're residential as well, just like his.

CHAIRPERSON REID: Okay.

MR. HART: Madame Chair, please excuse me. I'm looking at my notes here. This is a little irregular. Mr. Rodriguez did not submit an affidavit of posting, and according to my notes, he has posted the property.

MR. RODRIGUEZ: That is correct.

MR. HART: But he did not submit the affidavit; is

that correct?

MR. RODRIGUEZ: That is correct. I was not aware I was supposed to bring that in, and I have my poster and things the 21st, and I received it here on the 19th.

CHAIRPERSON REID: You posted the property?

MR. RODRIGUEZ: For more than 24 days so far.

CHAIRPERSON REID: And you were supposed to bring the affidavit of posting in within what?

MR. HART: It should be posted at the minimum 15 days before --

CHAIRPERSON REID: No, the affidavit of posting.

MR. HART: The affidavit, yes.

CHAIRPERSON REID: When is that --

MR. HART: The posting should -- huh?

CHAIRPERSON REID: When is the affidavit due here in the office?

MR. HART: At least seven days before the -- he could have brought it in today. We would have accepted that and asked for it to be waived into the record.

CHAIRPERSON REID: Okay. Well, do you have it?

MR. RODRIGUEZ: No, ma'am.

CHAIRPERSON REID: Well, can't he just do it?

MR. HART: That's my -- that's my thinking since he attests that he has posted the site and he just did not know or forgot to or omitted to bring in the affidavit of posting, if we

can give him a couple of days maybe he can tell us also and he can bring it in.

CHAIRPERSON REID: Well, wait a minute. With the affidavit, don't you have to have the pictures?

MR. HART: Yeah, that's what we need.

CHAIRPERSON REID: Okay. So he --

MR. HART: Because the pictures are attached to the form.

CHAIRPERSON REID: So he -- oh, so you're saying if he had brought the pictures and affidavit to day --

MR. HART: He would have been all right, yes.

CHAIRPERSON REID: -- he would have submitted it.

MR. HART: Yes.

CHAIRPERSON REID: So how soon can you do that?

MR. RODRIGUEZ: I can bring it to you by Friday, ma'am.

CHAIRPERSON REID: All right.

MR. SOCKWELL: Mr. Rodriguez, when did you post the building?

MR. RODRIGUEZ: On the 21st.

MR. SOCKWELL: Of?

MR. RODRIGUEZ: Of December.

MR. SOCKWELL: December. I'm sorry. No. You mean --

MR. RODRIGUEZ: November.

MR. SOCKWELL: Of November. Thank you.

CHAIRPERSON REID: So, Mr. Rodriguez, can you tell us how you would suffer an undue hardship if you have to comply with the existing zoning regulations?

MR. RODRIGUEZ: Okay. Can I tell you -- would you repeat that question again, ma'am?

CHAIRPERSON REID: You have to demonstrate that it would pose what we call an undue hardship, you know, some burden or some type of problem for you, some difficulty for you to be able to comply with the existing zoning regulations, and the existing zoning regulations allow the use as we have it now, commercial on the first floor and residential on the floors above, correct?

MR. RODRIGUEZ: That's correct, ma'am.

CHAIRPERSON REID: So what is it that would cause you some difficulty or some problem with complying with the existing zoning regulations? Why can't you do that?

MR. RODRIGUEZ: Well, because an inspector came in, and they say that -- they fine me because they say homeowner keeping the permit because the square footage I was utilizing did not comply according to them to the actual space that I had, even though others -- other members in the -- the four houses that is there on the corner, they do have the commercial license legally, and I did have mine back in 1994 originally before they did, when I originally purchased the house.

So then I had a decline by the DCRA when I was trying to submit for the same type of commercial license. So that's what really forced me to go and request this general space use, request for a variance.

MR. GILREATH: You're saying your ground floor does not have enough space to accommodate your business and, therefore, they cannot provide you with the license? Is that the problem?

MR. RODRIGUEZ: No, sir. What I was trying to say is that when the inspector came in, they will not allow me to use the first floor because according to them the square footage needs to be 250 square foot, and then he told me that -- then I requested to have a general space use then. Then he say that I needed to ask for a variance, to come in and bring here. So that's what really forced me to do this situation.

MR. HOLMAN: So, in other words, what you're saying is for the commercial use that you're trying to conduct, you can't really do it with the square footage that's available on the first floor. So you, in order not to just close your business down, you have to use more of the second and third floors in order to conduct your business.

MR. RODRIGUEZ: That is more likely you can say. Okay.

MR. HOLMAN: Okay. All right.

MR. RODRIGUEZ: I mean, I do have parking space. I do have three parking space.

MR. HOLMAN: In the back?

MR. RODRIGUEZ: In the back.

MR. SOCKWELL: What I want to understand is what are you using the first floor for now exactly?

MR. RODRIGUEZ: For an accounting office, bookkeeping, and more likely tax preparation.

MR. SOCKWELL: All right. Now, the second floor you are using for?

MR. RODRIGUEZ: I was living in there.

MR. SOCKWELL: You were living there, and the third floor you were living?

MR. RODRIGUEZ: I was living in, occupying the second floor.

MR. SOCKWELL: Second?

MR. RODRIGUEZ: Yeah. It's a two dwelling house. It's not really a three. It's a two flat and a half.

MR. SOCKWELL: Oh, okay. So the second floor is a unit. The third floor is a unit, and the first floor you were using for your office.

MR. RODRIGUEZ: That's right.

MR. SOCKWELL: And because you were an accounting office, you were a Business B use and the square footage that was required for your use was inadequate for what you were doing on the first floor.

MR. RODRIGUEZ: That is correct, sir.

MR. SOCKWELL: If you had had another kind of use, you might have been okay or was it just they said you didn't have enough square footage to occupy the first floor for your business?

MR. RODRIGUEZ: That is correct.

MR. SOCKWELL: Okay, and at the time you did not -- what was the use before you started operating your --

MR. RODRIGUEZ: It was a rental. They used to rent the first floor and rent the second floor. So it was a two family apartment unit.

MR. SOCKWELL: Okay. So you just sort of converted it into your office on your first floor.

MR. RODRIGUEZ: As a home occupancy owner, yes.

MR. SOCKWELL: Okay. Oh, okay. So actually you were using more space than the code allowed for a home occupancy.

MR. RODRIGUEZ: That's what they say, based on square footage, correct.

MR. SOCKWELL: Okay. So you had too much square footage devoted to your home occupation on the first floor rather than not enough. It's how you look at it.

In order to have a business on the first floor, you have to convert it away from a home occupancy, but you had a licensed home occupancy, home occupation, but you were using all of the first floor for your home occupation.

MR. RODRIGUEZ: Okay.

MR. SOCKWELL: So that was more square footage than

is normally acceptable for a home occupation because on the fact that you occupied the first and second floors only and somebody else was on the third floor, right? Yes? You were on the third floor? Who's on the second floor? Who's on first? No.

(Laughter.)

CHAIRPERSON REID: I knew you had to go there.

(Laughter.)

MR. SOCKWELL: I don't know who's on second.

Okay. I think I understand.

CHAIRPERSON REID: Okay. Of the square footage, he has a home occupancy permit, and of that square footage, the total building, he is not supposed to allocate more than it's 25 percent to the home occupancy, and so you're saying that you're occupying more than that.

But my question is: on your certificate of occupancy it states that you'd have -- you're using the first and second floor for your business. It says, "To use the suites on the first and second floor." That's what your certificate of occupancy states.

So you were using the second floor for your business?

MR. RODRIGUEZ: No, ma'am.

CHAIRPERSON REID: Okay.

MR. RODRIGUEZ: Maybe I can clarify.

(The Board conferred.)

CHAIRPERSON REID: I don't know. That's what your certificate of occupancy says. Un-huh.

MR. RODRIGUEZ: Okay. Maybe I can clarify this a little bit.

If you go back to your rules and regulations, they say 25 percent square footage. The first floor is less than 25 percent of my livable space total. So I went on and did it based on that, which is approximately, I think close to 425 square foot in the first floor.

However, in my second floor and third floor I have a total square footage of approximately almost 2,200, 2,200 square foot. So I went on and did it based on what you're saying, 25 percent square foot.

However, they say 25 percent, which I learn afterwards, 25 percent square footage not to exceed 250 square feet.

CHAIRPERSON REID: Not to exceed?

MR. SOCKWELL: Yeah. And I don't have a -- I thought I had a form here, but the home occupation, as I understand it, is intended to be a low intensity, low customer flow usage. In other words, it's for you to do your home based business and to operate primarily by phone and externally from your residence, not have a lot of people coming through.

So if they put a maximum size of a home occupancy as 25 percent or 250 square feet, then they limit the amount of

traffic that you can have because they're squeezing it down to basically one room, and you had 400. You had the whole first floor.

MR. RODRIGUEZ: Correct.

MR. SOCKWELL: So that was --

MR. RODRIGUEZ: Four hundred and 25.

MR. SOCKWELL: So that exceeded by almost twice the amount that would be maximum or at least probably 70 percent more than you were supposed to have.

MR. RODRIGUEZ: Okay. You might be correct, but however, when I first --

MR. SOCKWELL: So then it became a business, and under a Business B occupancy you weren't allowed in that zone or whatever. You're outside of your allowable --

CHAIRPERSON REID: Okay. It says -- it says no more than the larger of, well, 250 square feet or 25 percent.

Okay. So it appears then --

(The Board conferred.)

MR. SOCKWELL: Sir, what is your total square footage in all three floors?

MR. RODRIGUEZ: Approximately 2,200, plus 2,200.

CHAIRPERSON REID: Okay, and the first floor was how large?

MR. SOCKWELL: Four hundred.

CHAIRPERSON REID: Four hundred?

MR. RODRIGUEZ: Four hundred and 25, something like that.

CHAIRPERSON REID: That 425 you're saying was less than --

MR. SOCKWELL: Was the second and third larger directly --

MR. RODRIGUEZ: Larger. They're larger because you have the stairs.

CHAIRPERSON REID: It was larger than --

MR. RODRIGUEZ: Then upstairs, you don't have stairs. So you do have that open area there.

MR. SOCKWELL: But what about the third floor? Don't you have stairs going up to the third floor?

MR. RODRIGUEZ: Yeah, the third floor is also livable. You can say similar to the second floor.

CHAIRPERSON REID: Okay. Now, if the two buildings that are adjacent to you on either side, if those two buildings have a business on the first floor and residential on the second and third floor, again, how is your property unique? How is your property --

MR. RODRIGUEZ: Okay. When I went to try to get myself a commercial for the first floor only, I was denied.

MR. SOCKWELL: Because you're in a residential zone, and you're asking for general office?

MR. RODRIGUEZ: No, because I was only requesting

a, first, a commercial license just like everybody else, but I was denied. So then I says so what should I do.

First of all, I got into all of this mess because I was mislead or mis-assist at DCRA to try to get myself the proper license from -- to get going when I came out of the university. So I was trying to do a small business myself, and like the members, Mr. Sockwell is saying, that I was trying a -- that is only for making phone calls and all of that. To be honest, the home occupancy permit would allow you also to work as a -- from an office, from inside. So having a small business yourself, and you can do that and provide that through appointment basics, which is what I was doing. That's why I have three parking space when I originally applied for it.

But nevertheless, when I went in, they said, no, they made a mistake. They could not give me a license because they made a mistake and gave out a license to someone else.

And so they gave me a fine, which I went to a hearing. It came into the judge himself or the jury or the hearing guy. He knew that it was incorrect. So he told me -- he advised me how to proceed on this matter to see how can we resolve it because for only four houses in the entire block having this area when we're all commercial because them two are commercially as well.

So what's the purpose of or what's the need to have a residential is only four houses in about three or four blocks of

commercially.

CHAIRPERSON REID: Those four houses all have commercial retail on the first floor or commercial office space on the first floor or commercial something and residential above, just those four houses?

MR. RODRIGUEZ: Well, no, ma'am, not the floor. Three of them, three of the four has it.

CHAIRPERSON REID: Okay. In that row.

MR. RODRIGUEZ: That's correct.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: And the fourth one?

MR. RODRIGUEZ: The fourth one is just a rental. So you rent and you make money out of that. Still I consider that commercial myself.

MR. SOCKWELL: No, but rental for what use?

MR. RODRIGUEZ: For residence.

MR. SOCKWELL: It's 100 percent residential?

MR. RODRIGUEZ: That's correct.

MR. SOCKWELL: Okay.

MR. GILREATH: Do you know if the other houses that have the commercial if they're operating under the home occupancy permit provision? Do they have a variance? How are they operating as commercial on their ground floor?

MR. RODRIGUEZ: They're operating regularly commercially. That's why they can have a sign up there. I cannot

have a sign myself because I only have a home occupancy.

MR. GILREATH: Are those buildings any larger or smaller than yours?

MR. RODRIGUEZ: The same size, sir.

MR. GILREATH: I don't understand that, how they could be granted a commercial license and they have the same square footage and everything, and yet you're not permitted to.

MR. RODRIGUEZ: Well, what they're saying was that those licenses was issued by mistake. So that's what they told me afterwards, when I went there, that they could not allow me a license because those previously was issued by mistake, and they cannot issue anymore.

MR. GILREATH: Madame Chair, he said that the other houses there that are operating commercial on the ground floor, they have a commercial license, but he was told they had been issued by mistake.

CHAIRPERSON REID: I heard that.

MR. GILREATH: When he got his. So this is a unique situation.

CHAIRPERSON REID: To say the least.

MR. SOCKWELL: So they can't take the others away, but they denied you yours.

MR. RODRIGUEZ: That's correct.

CHAIRPERSON REID: Okay. Excuse me one second.

(The Board conferred.)

MR. GILREATH: Madame Chair, having heard the presentation thus far, it seems to me that, well, you asked him how was his property unique. It seems to me that all four houses are unique because that they're surrounded by commercial, and that the uniqueness of all four houses accrues to him individually, and if the other people wanted to get a legitimate commercial license, they can make the same arguments.

So I feel that his house is unique as all of the other four are. So that they all accrue the same uniqueness, and in the larger picture they are -- it's a unique situation.

CHAIRPERSON REID: Let me ask a question.

MR. SOCKWELL: I've got this down now.

MR. GILREATH: Okay. Well, if you've got a better solution, fine.

CHAIRPERSON REID: The characteristic of uniqueness is one that is individual and specific and germane to a particular piece of property. So if they have to demonstrate to us that they're unique, they have to show how they're unique not as to a row of houses or properties, but how they are unique to the other properties that are on that block or that square.

MR. GILREATH: But couldn't you argue that this house is unique relative to the surrounding commercial development?

CHAIRPERSON REID: Not -- well, what we have to then go to is how is it more unique than the other four properties

that are in that same predicament.

MR. GILREATH: Well, they could come in and make the same argument if they were so inclined. We take only one property at a time, and we say this property is unique relative to the others.

CHAIRPERSON REID: Well, I think that to be on safer ground, then we should establish that this property within itself is unique, notwithstanding the other properties that might be right there.

And I think that given -- we go back to this surveyor's map, and looking at the configuration of the building on the land -- I'm sorry -- looking at the configuration of the lot within itself, I don't think anyone could argue that this particular property is unique.

Now, if the other four properties that we're talking about are similarly configurated (phonetic), then that would then defeat that premise of uniqueness, but in looking at this I dare say that the rest of the properties would be similarly configured as far as the lot is concerned.

MR. SOCKWELL: Could be. Let me just interject here. Apparently what I didn't understand I think I understand now. You have a certificate of occupancy for a single flat on the first floor and a two story unit on the second and third floors as a single unit. The second and third floors are one unit by your certificate of occupancy issued in 1994.

Your first floor is one unit by the certificate of occupancy in existence as of 1994.

When you converted the ground floor to your home occupation, you converted the entire unit to the home occupation use, but the way the property has been certified for occupancy, that meant that if the first floor unit is 425 square feet, instead of using one quarter of that, which would be 107 square feet, you're using all of it because it's one unit. The first floor is a unit by itself.

If you used the entire first floor for your home occupation, then you have used 100 percent of what the first floor is supposed to be used for as a residence rather than 25 percent of that registered unit.

Now, if you want to use the first and second floors for your occupation, then what you are going to have to do is convert the upper unit from a two floor single unit to a third floor single unit with the second and first floors as a single unit, but even then you'd be exceeding the requirement.

So you'd have to convert the entire building into one unit so that using the first floor, if you just used the first floor for your home occupation, you would be using from what you say 25 percent, no more than 25 percent. I think you'd be closer to 33 percent because only the third floor wouldn't have the stair going up through to the roof. So you'd have all of the third floor. Maybe you'd save that. Maybe you could get 20 -- maybe

you could squeeze 25 percent out of it, but my understanding is that in reality you have a problem that's different from that which I thought you had. You have a building that per the certificate of occupancy is two units.

You own the entire -- do you own the building?

MR. RODRIGUEZ: Yes, sir.

MR. SOCKWELL: Okay. So in 1994, have you owned it since then?

MR. RODRIGUEZ: Yes, sir.

MR. SOCKWELL: So you had a certificate of occupancy issued for this building. You have two distinct units. The second and third floor are one unit, and the first floor is one unit by this certificate of occupancy. Am I not correct?

MR. RODRIGUEZ: That is correct.

MR. SOCKWELL: Okay. So when you took the first floor and converted it, even though you're the only one living in the building, I assume?

MR. RODRIGUEZ: Yeah, you're correct.

MR. SOCKWELL: You converted the entire unit to this commercial use. So you exceeded your home occupancy requirements by 75 percent. Upstairs, the second and third floor are by this certificate of occupancy one unit. So it's separate. It's out of the picture. It's not part of the picture.

So when the inspectors came, all they had to go on is the certificate of occupancy for the building which says that

this first floor is one unit. You can use 25 percent of it, and you're using 100 percent of it for home occupation.

I'm willing to listen to what you have to say. Go ahead.

MR. RODRIGUEZ: Okay.

MR. SOCKWELL: That's just the document itself.

MR. RODRIGUEZ: I understand. The three stories, it was separated just by one door, which I removed before I even applied for the certificate of occupancy, and I have in my application that I was going to utilize the complete, whole floor. It was nothing hidden. So --

MR. SOCKWELL: But that's not -- the problem is that when you told the home occupation people, all they have to go on is what you tell them.

MR. RODRIGUEZ: Which is correct.

MR. SOCKWELL: Yes, but you didn't show them your certificate of occupancy that said that the first floor was a separate unit, did you?

MR. RODRIGUEZ: Of course. They know that by zoning. You have to go through zoning before you can see that thing.

MR. SOCKWELL: So they know that you have one unit on the first floor, and your home occupation license says -- I mean the license doesn't say anything about where it is.

MR. RODRIGUEZ: It should. It said first floor to

be utilized for bookkeeping and accounting.

SOCKWELL: Where is that?

MR. RODRIGUEZ: It should be on the file there.

MR. SOCKWELL: Well, it's not on the license itself.

(The Board conferred.)

CHAIRPERSON REID: Okay. While he's looking for that, let me ask you a question, Mr. Rodriguez. We need to move this on.

What is the practical difficulty -- I'm sorry -- the undue hardship, undue hardship meaning what problem or what kind of difficulty would you have in complying with the existing zoning regulations.

MR. RODRIGUEZ: Well, right now, you know, I cannot comply or go back to a 100 square foot. As you know, 100 square foot is more likely --

CHAIRPERSON REID: What do you mean 100 square --

MR. SOCKWELL: That's what you don't understand, Madame Chairperson. His problems are different from the one that you think he has.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: The problem that he has is that his building is certified for occupancy under the assumption that there is a single unit on the first floor and another unit on the second and third floors as a second unit. His occupation, his

home occupation license was issued with the understanding that he would not exceed 250 square or 25 percent of the unit.

The unit would either --

CHAIRPERSON REID: The unit, not the building?

MR. SOCKWELL: Not the building, the unit. The unit would either be the unit on the first floor or the unit on the second and third floors because you cannot convert two units without doing a conversion.

MR. RODRIGUEZ: Yeah, but what you're saying, you're going based on the legality.

MR. SOCKWELL: Well, that's the only thing we can go on unfortunately.

MR. RODRIGUEZ: Well, yeah, but let me explain to you. But what it is is that when -- I told you when I first --

MR. SOCKWELL: You took the door off, but taking the door off is a physical change. That has nothing to do with licensing and the city.

MR. RODRIGUEZ: Okay.

MR. SOCKWELL: You took the door off --

CHAIRPERSON REID: But, Mr. Sockwell --

MR. SOCKWELL: You took the door off on your own. You could take all of the doors off, and it still says downtown that you have a certificate of occupancy for a two unit rental building. This is a building -- it's a two unit apartment building. That's what you have.

MR. RODRIGUEZ: Mr. Sockwell, when I initiated this conversation I told you I went to court, and I went to a hearing.

MR. SOCKWELL: Okay.

MR. RODRIGUEZ: And then I learned that I was only entitled to a 250 square foot. It's not my responsibility. It's the legal office over there to tell me what is it that I actually need as a citizen or coming out from college. I don't know none of those things. I came in. I told him what I wanted to do, and I put it down in writing, in black and white. It's legible, and it's in English. They understood, and they knew what I was going to do.

MR. SOCKWELL: Okay.

MR. RODRIGUEZ: If they want to change it today that's something that -- well, if they're telling me the lawyer says this and this and that, they should have read that book and let me know today.

MR. SOCKWELL: Even if the law was incorrectly given to you --

MR. RODRIGUEZ: Okay.

MR. SOCKWELL: -- even if they said the wrong thing and led you down the garden path, as we say here, the matter of fact is that in order for you to expand a home occupation, you would have to still convert the building. You'd have to convert out of that ground floor residential unit and take it away and call it something else.

Now, what you're coming before us to do, you want the first and second floors for your -- for your business.

MR. RODRIGUEZ: No.

MR. SOCKWELL: I thought that's what you said.

MR. RODRIGUEZ: No, sir.

MR. SOCKWELL: You just want the first floor.

MR. RODRIGUEZ: I want the general building.

MR. SOCKWELL: The whole building?

MR. RODRIGUEZ: Yes, sir.

MR. SOCKWELL: Okay. So what you want to do is convert from a two unit residential building to a three story commercial building.

CHAIRPERSON REID: I thought he said that the first floor is commercial.

MR. RODRIGUEZ: It's already --

MR. SOCKWELL: No, it's not commercial by law. It's illegally being occupied as a commercial because you're using 100 percent of the space of one unit. You have no legal right to use more than 100 and about 10 square feet of the first floor

MR. RODRIGUEZ: Okay, Mr. Sockwell. Okay, Mr. Sockwell.

MR. SOCKWELL: By law.

MR. RODRIGUEZ: Mr. Sockwell, by law they already have issued two more licenses to those two buildings right here, one and two, next door to me, commercially.

MR. SOCKWELL: I understand.

MR. RODRIGUEZ: And they was approved. When I went -- when the inspector came in and told me, then I wanted to say okay, but if you say I'm wrong, which is not my fault --

MR. SOCKWELL: I didn't say it was your fault.

MR. RODRIGUEZ: -- I want to go back -- I want to go back and correct this.

MR. SOCKWELL: Right.

MR. RODRIGUEZ: When I went there, they say, "I'm sorry. We cannot do it for you," but yet they did it for the other two.

MR. SOCKWELL: Right, but before we can act on your request, we have to know what we're acting on. We can't grant you without understanding what the problem was that existed with your property. You had two problems. One, you were occupying an entire unit for your business when you weren't supposed to be there with more than 100 square feet or so. Okay? And you did it.

And whether you took the door off the second or third floor and made it all one thing or not, it didn't exist that way. So you were illegally operating.

But at this point, that's not important, and they fined you for being like that, and they denied you your certificate of occupancy because they said that they issued the other ones in error. Okay. Now we'll get beyond that.

I understand what you have now, and I understand what you want. What you want is commercial C of O for the whole building. So the building is in an R-5 -- what is it, R-5?

CHAIRPERSON REID: What, this building?

MR. SOCKWELL: Yeah.

CHAIRPERSON REID: R-5-B.

MR. SOCKWELL: It's an R-5-B, and you'd have to be in a C-2-A in order to have a general office occupancy by matter of right.

Anybody disagree with that?

So we would have to grant you a variance to allow you to have that. Now, the hardship is, I mean, in this case it's the issue of by exceptional situation. I think the exceptional situation of your piece of property is that it is bordered by two legally, if not erroneously, issued commercial occupancies. They're nonconforming occupancies in the R-5 zone.

Your nonconformity is being used against you, but the reality is that we should be able to find a way to take the special condition of your site, which is that you are flanked by occupancies that are legally operating as commercial buildings or at least part commercial --

CHAIRPERSON REID: You said legally or illegally?

MR. SOCKWELL: Well, they're legally. They are legally operating even if the certificates of occupancy were issued in error. The city has not revoked them. So they're

legally operating as at least commercial first floors.

You said one of the buildings is commercial first floor. You said there are three other buildings. One is a commercial first floor, residence up above, right?

MR. RODRIGUEZ: Un-huh.

MR. SOCKWELL: Another one has commercial first floor, residence up above, right?

MR. RODRIGUEZ: And the basement.

MR. SOCKWELL: Huh?

MR. RODRIGUEZ: And a basement.

MR. SOCKWELL: What's in the basement?

MR. RODRIGUEZ: A beauty salon.

MR. SOCKWELL: Beauty salon. Okay.

And then the third building other than yours is all residential.

MR. RODRIGUEZ: Correct.

MR. SOCKWELL: So three of the four buildings that surround you --

MR. RODRIGUEZ: Commercial.

MR. SOCKWELL: -- are commercial, and is there anything that says that you cannot -- if it says that you can't have a beauty salon in residential neighborhood, R-5, and they're legal because they have certificates of occupancy, then --

CHAIRPERSON REID: Mr. Sockwell, you lost me.

MR. SOCKWELL: Well, I didn't mean to, but --

CHAIRPERSON REID: If, in fact, this is an R-5-B district and it has -- D? -- D district, and it has these commercial properties that are there legally, I don't understand. I don't understand unless they have some type of special exception or some kind of variance how they are there, and then you have -- your building is R-5-D, correct?

MR. RODRIGUEZ: That's correct.

CHAIRPERSON REID: And then they gave you a certificate of occupancy for a home occupation, but after the inspector came there, he determined that you needed more than that and said that you should come here for a variance.

Now, my question -- I go back to what is the undue hardship that you're caused by not being able to comply with the existing zoning regulations.

MR. GILREATH: Madame Chair --

CHAIRPERSON REID: Why couldn't it be used for residential?

MR. GILREATH: -- may I offer an explanation for him? He's operating illegally. He's been fined. So he will have to close down his business unless he either works this out with DCRA or gets a variance.

CHAIRPERSON REID: Or it would have to revert to residential.

MR. GILREATH: Yeah.

CHAIRPERSON REID: That's the whole point I'm

making. You know, why? What is the undue hardship of him not being able to comply with the existing zoning regulations?

What would prevent you -- what would cause you undue hardship to -- if you wanted that building to be a residential apartment building?

MR. RODRIGUEZ: Well, because I am -- I already have my business established there in that area, and like the Chairman say, I'm going to have to move maybe my building out of the area, or my business actually.

Another thing is that like I indicated, I do understand. I do have previous cases that was approved here, similar case, by Ernest C. Smith back in June 12th, 1991, I think it was.

CHAIRPERSON REID: Did you submit that?

MR. RODRIGUEZ: No, ma'am.

CHAIRPERSON REID: Well, that would have been helpful.

MR. RODRIGUEZ: Okay.

MR. GILREATH: Madame Chair, what would prevent him from going back to I guess it's DCRA and saying he wants to declare his house as one unit. It's residential, and he wants a home occupancy permit, and they calculate it on that, and he could only -- he could partition off part of the ground floor for 250 feet. He's only one person. He's a one man business.

CHAIRPERSON REID: Two, fifty or 25 percent,

whichever is larger.

MR. GILREATH: Okay. Of the whole house, in other words, this is a residential property and he wants a home occupancy permit. Why couldn't that be done rather than having to go through this?

CHAIRPERSON REID: Because -- I don't know -- because Mr. Sockwell said that they were -- in making a determination regarding the size that was allocated to home occupancy, they only took the measurements of each unit, not the whole building.

MR. GILREATH: So 250 feet they would have calculated onto the ground floor there. So if you take the whole building, you come up with a much larger amount, part of the --

CHAIRPERSON REID: I would think, and I always thought that you did, that it was the entire building.

MR. SOCKWELL: Mr. Rodriguez, while they're talking, let me ask you a quick question. You said there's a beauty salon next door.

MR. RODRIGUEZ: That is correct.

MR. SOCKWELL: In the basement.

MR. RODRIGUEZ: No, first and basement.

MR. SOCKWELL: First and basement, and how many floors does the building have?

MR. RODRIGUEZ: That one have four.

MR. SOCKWELL: Four. Now, a beauty salon is an

allowable home occupation in your district unless it exceeds the square footage allowable. Now, what other businesses are adjacent to you?

MR. RODRIGUEZ: Okay. Before I can answer that other question, the last question, it might be allowable, but she doesn't have a home occupancy permit. She has a commercial license.

And to answer to your last question, we have a boutique or clothing store.

MR. SOCKWELL: Okay.

MR. RODRIGUEZ: As you can record, an accounting office, actually, based on the rules and -- your rules and regulations, an accounting office is more visible and acceptable by the law than will be a beauty salon and a clothing store due to the fact of the traffic of people that you would have.

In my case, I never have no more than ten at that point, ten clients per day, one per hour by appointment.

MR. SOCKWELL: Can you --

MR. RODRIGUEZ: And when I was fined, going back to something that you mentioned before, I was fined, but then when I went to a hearing, they find out that I was not guilty. So they waived that fine.

MR. SOCKWELL: Okay. Do you have in your records the licenses or certificate of occupancy permit copies from the adjacent businesses? Because in order --

MR. RODRIGUEZ: From whom?

CHAIRPERSON REID: -- have that.

MR. SOCKWELL: You said the other businesses are licensed and they wouldn't give you one. You couldn't get one. You said the beauty salon has a license. You said -- I assume that you say the boutique has a license. You need to provide -- they must have a certificate of occupancy to be in those buildings to be legal, and you said that although they were apparently legal, the city stated that they had issued those in error, but would not issue one to you.

MR. RODRIGUEZ: That is correct.

MR. SOCKWELL: Okay. I would like for us at this Board to have evidence of those certificates of occupancy so that we can substantiate your claims.

CHAIRPERSON REID: Okay. Further -- okay. Go ahead.

MR. SOCKWELL: I mean you can get copies from DCRA. They will do that.

MR. HOLMAN: But I thought that the Applicant said that unlike the other two businesses, his is a home business. So they had regular commercial licenses as opposed to home occupancy licenses.

MR. SOCKWELL: Right. That's what they have, and that's what he wants.

MR. HOLMAN: Right.

MR. SOCKWELL: But I mean I can't go on his word that they have those. I have to see evidence. The Board has to see evidence that those licenses exist because if the city issued them in error but did issue them, then that's certainly a good reason to believe that they should have been able to issue one to him.

CHAIRPERSON REID: Well, that makes his property unique.

MR. SOCKWELL: And makes his property unique because it's surrounded by such licenses, licensees.

MR. RODRIGUEZ: After that reason was conducted by the -- by the hearing adjuster at DCRA, it was why he went on and dropped my fine. I don't know if those persons are supposed to give me or provide me copy with that, but like you say, I can call the DCRA.

MR. SOCKWELL: You have to ask for it.

MR. RODRIGUEZ: And maybe request it. Yes, no problem.

CHAIRPERSON REID: Mr. --

MR. RODRIGUEZ: By Friday I can have it here.

CHAIRPERSON REID: Mr. Rodriguez, this order you just gave us was Application No. 15513. This is not a similar one because it says this is a variance from the use provisions of Subsection 350.5 to allow an office on the first floor of a structure in an R-4 district.

that's not what you're asking for. You're asking for a change of use of the entire building, not just the first floor.

MR. RODRIGUEZ: That is correct.

CHAIRPERSON REID: So what --

MR. RODRIGUEZ: So I was --

CHAIRPERSON REID: So how is it that you --

MR. RODRIGUEZ: Well, I was going to -- the point I was trying to make, to be honest, is that that particular case that was awarded, it was in a 90 percent residential area. I am in a 98 percent commercial area, 98, only four houses.

CHAIRPERSON REID: How are you -- how are you convincing us? What are you doing to substantiate the fact that you're in a 98 percent commercial district?

Let me just say this. What I think that you need to do, Mr. Rodriguez --

MR. RODRIGUEZ: Yes, ma'am.

CHAIRPERSON REID: -- is to have your case continued today because I think that there's some more homework that you need to do. One thing might be to give us the site map with all the other properties and then color code for us what the use actually is for those particular properties.

I mean to say to us, "Oh, 98 percent," that means absolutely nothing. You have to substantiate for us what exactly -- what the situation is there as far as the use is concerned.

In addition, if you can come up with another order, that would be fine, but this order doesn't have any relevance to your case, and to find something similar, consult with staff and let them help you because obviously this is your first time here and understandably you may not really fully understand exactly how to approach this.

And before you would allow us to make a decision on your case, you was to give us the strongest case you possibly can in this regard, and I don't think that you are prepared to do that today.

MR. RODRIGUEZ: Okay.

MR. SOCKWELL: In addition, if I might say, Madame Chair, what Mr. Rodriguez is asking for is 100 percent of his building to be commercial, which is not the norm in the area in question. The norm is that the basement and/or basement and first floor are commercial, and the second and third floors are residential.

And for you to ask for relief that gives you 50 percent more commercial space than anyone else would be able to occupy is well outside of the realm of possibility.

CHAIRPERSON REID: Okay? So --

MR. GILREATH: Why can't he ask for just like the other buildings though, the ground floor?

MR. SOCKWELL: Because it would be more beneficial to him to have 100 percent commercial building.

MR. GILREATH: But he is a one man business. He only wants to put it on the first floor.

MR. SOCKWELL: I understand that. What I'm saying to him and to you is that he's asking for all of the building when even his neighbors are not commercial top to bottom.

MR. GILREATH: Well, if the neighbors are able to do that, why can't he make a similar appeal to us or --

MR. SOCKWELL: Well, his appeal really should -- if I were to make the appeal, I would be appealing for the first floor. I would not be appealing for the first and second.

MR. GILREATH: Well, that's what I'm saying.

MR. SOCKWELL: If I had a basement walk-down, I would have --

MR. GILREATH: -- second floor or commercial or third. You're simply wanting relief so that you can operate the ground floor for business purposes; is that correct?

MR. SOCKWELL: That's what you need.

MR. RODRIGUEZ: Okay.

MR. SOCKWELL: What you want is -- is not a hardship case. That's a greed case.

CHAIRPERSON REID: The first floor and the basement -- do you have a basement?

MR. RODRIGUEZ: No, ma'am.

CHAIRPERSON REID: You don't have a basement.

MR. RODRIGUEZ: No, ma'am.

CHAIRPERSON REID: I see. So basically you want your business to utilize just the first floor, and then you're going to have residential above that? Are you still going to live up there?

MR. RODRIGUEZ: Well, I am in the process to buy another building myself.

CHAIRPERSON REID: You may not live there?

MR. RODRIGUEZ: And I was going to live in that area in the District of Columbia as well.

CHAIRPERSON REID: Okay. I think that what you may want to do is bolster your case with having met with staff and to bring more information to better substantiate what you're asking for here today, and what we can do is give you additional time to do so, so that when you come the next time you will be better prepared.

MR. RODRIGUEZ: Okay.

CHAIRPERSON REID: Because the reason why I'm saying that, Mr. Rodriguez, is not trying to give you a hard time. We'd like to try to help you, but if we had to make a decision on this case today, for myself I couldn't vote -- I could not vote for approval. I'd have to see more, and rather than to do that, I would suggest that you allow us to give you more time to come back so that you could better convince us that you are entitled to -- or that you should receive the relief that you're asking for.

I don't know how the other Board members feel.

MR. GILREATH: No, I agree with that.

Can anyone with the staff see if there is some kind of provision whereby he can just request the ground floor?

CHAIRPERSON REID: But see, he has to substantiate.

I'm sorry. What were you saying?

MR. GILREATH: Well, could he work with the staff and see if there's perhaps a different provision whereby he would just request commercial use or variance for the ground floor only. Is that possible?

MS. BAILEY: Mr. Gilreath, the only way he could do that is under the home occupation provision, and as he has indicated, I'm not quite sure if it's been worked out how much square footage he could use under the home occupation, but other than that, it would require a variance for either the first floor/second floor. The only other alternative is home occupation.

CHAIRPERSON REID: Well, he said he's not going to live there anymore. So he can't do home occupation there.

MR. GILREATH: Well, what would you do with this? IF you move, what will happen to this second and third floor? Are you going to convert that to commercial or are you going to let people live there for residential use?

MR. RODRIGUEZ: Well, if the -- when I leave people there, they really destroy my house, and I end up spending a lot of money.

MR. GILREATH: If you move though, what --

MR. RODRIGUEZ: If I moved I was going to utilize it for an office there and to do consulting in the third floor myself.

MR. GILREATH: Oh, so you're wanting the whole building to be converted to commercial purposes?

MR. RODRIGUEZ: Preferable.

MR. GILREATH: All right.

MR. RODRIGUEZ: It is preferable.

MR. SOCKWELL: Mr. Gilreath, what I am looking at is trying to see a way to grant parity. I'm not trying to grant him a quantum increase over that which his neighbors would be allowed to have because it is not fair.

MR. GILREATH: Well, I agree. I concur with that. I was thinking about the ground floor, but now he says he wants to use the rest of it.

MR. SOCKWELL: Right.

MR. GILREATH: But I have problems with that, too.

MR. SOCKWELL: Apparently the previous certificates issued, if they exist, were issued for ground floor or walk down basement and ground floor, but none were issued for second-third floor.

CHAIRPERSON REID: We don't know that.

MR. SOCKWELL: So far --

CHAIRPERSON REID: That's why he has to bring that

to us.

MR. RODRIGUEZ: That's right. That's right.

CHAIRPERSON REID: That's what I'm saying.

MR. SOCKWELL: But I will by the time you come back.

MR. RODRIGUEZ: I'll bring it back and --

MR. SOCKWELL: You don't have to. I grew up in the neighborhood.

MR. RODRIGUEZ: Oh, I grew up there. I've been there 20 years.

MR. SOCKWELL: I've been there 50.

CHAIRPERSON REID: Well --

MR. SOCKWELL: Well, I was there 40. Let's put it that way.

MR. RODRIGUEZ: You're not that old.

MR. SOCKWELL: Yes, I am.

CHAIRPERSON REID: Mr. Sockwell, even though you may know, we don't.

MR. SOCKWELL: No, but I think we can find the stuff.

CHAIRPERSON REID: But that's my charge to Mr. Rodriguez, to pull together a tighter case and come back to us and then we'll see what we can do for you. Okay?

Can you give him another date?

MS. BAILEY: Madame Chair, would you want to put it

on the agenda for January, for your first meeting in January? Is that --

CHAIRPERSON REID: Well --

MS. BAILEY: You usually have a meeting and a hearing. Did you want to continue it after your meeting?

CHAIRPERSON REID: All right. That's fine with me.

MS. BAILEY: January?

CHAIRPERSON REID: But there is ample room to accommodate him? Okay.

MS. BAILEY: Madame Chair, Mr. Hart just advised me that it would be safer to continue it t February 16th.

CHAIRPERSON REID: From January 5th? Really? Okay.

MR. SOCKWELL: Why?

MS. BAILEY: It's a continuance.

CHAIRPERSON REID: February 16th, is that okay?

MR. RODRIGUEZ: I was going to say that's a little bit too far. Then how would I be able to operate with the tax season coming in, as you know, I approach here on January 5th, as an accountant I am, in tax preparing myself, and this is my only source of income that I have.

MR. GILREATH: Yeah, we're getting into his season.

CHAIRPERSON REID: Okay.

MR. RODRIGUEZ: And I have five kids.

CHAIRPERSON REID: What's wrong with January 5th?

MR. HART: January 5th is the meeting here in the -- but this is all your decision. If you want to stretch it for that day, yes, you can put it on because --

CHAIRPERSON REID: Okay, and given the fact that that is his season, the accounting season, he needs to have a decision as soon as possible. So I have no problem with the 5th.

MR. HART: Okay. Then we need to give him some dates for his submission.

CHAIRPERSON REID: Okay.

MR. RODRIGUEZ: Okay, sir.

MS. BAILEY: The two submissions from what I understand are the certificate of occupancies and a map or chart showing the surrounding land use, what is adjacent, the surrounding land use. We'll work with you on that.

When can you get that into us?

MR. RODRIGUEZ: I can get that by Friday, this Friday. I'll go tomorrow. If Mr. Sockwell is correct, I can go there tomorrow and request it at DCRA, and then bring the picture from the sign, posting sign.

MR. HART: And the affidavit.

MR. RODRIGUEZ: And the affidavit as well.

MS. BAILEY: Well, if you can get it to us by Friday, then that would be December the 9th -- I'm sorry -- December the 10th.

MR. RODRIGUEZ: That is correct.

MS. BAILEY: Madame Chair, is that okay?

CHAIRPERSON REID: December the 10th?

MS. BAILEY: Mr. Rodriguez said he can get it to us by Friday, this Friday. That's what he just said.

CHAIRPERSON REID: Well, we only have one more hearing date this year. I think that's on the 15th, isn't it?

MS. BAILEY: Okay. So would you want to put it on for the 15th then?

MR. HART: No. Madame Chair, let me make a couple of suggestions here. One, the 15th, if you recall is a major case and we anticipate it lasting the entire day. That the George Washington-Mount Vernon Square case. So I don't suggest you put anything on that date.

What I'm suggesting also is that Mr. Rodriguez take a little bit more time because today is Wednesday, and to try to bring it back Friday, you know, if you know that you can do it, fine, but we are right now looking at January the 5th, and shouldn't that work for you? Can it work for you?

MR. RODRIGUEZ: Okay.

MR. HART: You see, we're assuming that you would be approved.

MR. RODRIGUEZ: So would the court grant me a permission to operate that I can show the inspector when they come in?

CHAIRPERSON REID: Well, typically if you have a

case pending -- correct me if I'm not right -- before the BZA, any fine will be stayed until his hearing.

MR. HART: Yes, until the hearing is over. Now, what are you expecting from us? Are you expecting us to -- if you bring it on Friday, that we have it at the next meeting? You know, there's a time line that we as staff have to follow.

MR. RODRIGUEZ: Well, what I'm trying to do is bring the information as soon as possible because I know the rush that I personally have to get myself prepared, and also what I expect is for you to go ahead and grant me my petition.

MR. HART: Madame Chair, let me say this. On a time line which I am not quite sure, let's say he brings it in on Friday, the 10th. Packages go out to the Board on Friday, the 10th. Now, we're talking about it has to be here before 9:10 Friday. Do you see? We've cut you down. It would be two days.

And then we get the information out to the Board for the meeting the next week, which is the 15th, and I'm advising against us having a meeting on the 15th.

However, the Board has the wherewithal of putting you before the meeting or after the meeting on the 15th. These are decisions that the Chair can make.

MR. GILREATH: Madame Chair, I would suggest that we tack this -- this will not be so complicated once we have the information we need.

CHAIRPERSON REID: Right.

MR. GILREATH: And if we put that at the very beginning, prior to the Mt. Vernon hearing --

CHAIRPERSON REID: Okay. Next week?

MR. GILREATH: -- so that we just have to move --

MR. GILREATH: No, the 15th, I believe. So we need some time to --

CHAIRPERSON REID: The week after next.

MR. GILREATH: The week after next. Oh, that's next week, isn't it? That's next Wednesday.

MR. HART: Next Wednesday.

MR. GILREATH: That's next Wednesday?

MR. HART: Yeah.

CHAIRPERSON REID: You're saying to have it in by the 10th.

MR. GILREATH: Well, if he can get the material in and get it to us, I don't quarrel with that. Because this can be dealt with quickly once we either have the information that's satisfactory to us or he doesn't, and we'll dispose of it.

CHAIRPERSON REID: Okay. Mr. Holman, you'll be here on the 15th as well?

MR. HOLMAN: Sounds like I need to be.

CHAIRPERSON REID: Okay.

MS. BAILEY: Okay. Madame Chair, just to just wrap it up, on the 10th, which is this Friday, Mr. Rodriguez is going to submit three documents, and on the 15th, which is next

Wednesday, prior to the start of the case on G.W., you will review the information that Mr. Rodriguez has submitted. Am I correct?

CHAIRPERSON REID: Un-huh.

MS. BAILEY: Okay, and possibly make a decision.

CHAIRPERSON REID: Un-huh.

MR. HART: So that will be a special public hearing.

CHAIRPERSON REID: Meeting.

MR. HART: No.

MS. BAILEY: It's a continuation?

MR. HART: Yes.

CHAIRPERSON REID: I'm sorry. Hearing.

MR. HART: Yes, it's a hearing, yes.

CHAIRPERSON REID: It's a continuation, but prior to the George Washington case.

MR. HART: Sure.

CHAIRPERSON REID: We'll take that up. Did you say nine or 9:30?

MR. HART: Would you -- that's my next question now.

CHAIRPERSON REID: Nine. Why don't we do that at nine o'clock?

MR. HART: Nine? Right.

CHAIRPERSON REID: That's okay. Nine o'clock.

MR. HART: Just say it so I can hear it.

CHAIRPERSON REID: Oh, at nine o'clock so that everyone, you know, can have an opportunity to be able to address this, and then 9:30 would be the G.W.

MR. RODRIGUEZ: Thank you.

CHAIRPERSON REID: All right. Thank you.

Next case, please.

MR. HART: Okay. The next case, Application No. 16516 of Geraldine Perkins-Barrow, pursuant to 11 DCMR 3107.2, which is a new Section 3103.2, for a variance from Sections 2001.3, Subsections (a), (b), and (c), to allow the enlargement of an addition to an existing nonconforming structure, and Subsections 403.2 and 404.1 from the maximum lot occupancy and from the minimum rear yard setback requirement in an R-2 district at premises 621 Quintana Place, N.W. That is Square 3200, Lot 183.

Those persons planning to testify, please stand to take the oath. Raise your right hand.

(Whereupon, the witnesses were duly sworn.)

MR. HART: That's it.

CHAIRPERSON REID: Okay.

MS. PERKINS-BARROW: Okay. Good afternoon, Madame Chairperson and Board of Zoning.

My name is Geraldine Perkins-Barrow. I live at 621 Quintana Place, N.W., Washington, D.C. 20011.

This is an application for a variance for a

proposed rear addition to 621 Quintana Place, N.W. Due to my health hardship, I'm mobility impaired because of conditions that I have: severe arthritis, incontinence, some words I can't pronounce, a pacemaker, high blood pressure. My knees and joints get so very sore and stiff, and it's very difficult for me to get to the bathroom on time, which is on the second floor or in the basement.

Therefore, and the medication that I take also makes me dizzy; my poor vision, blurred, and the prednisone that I'm on also is making me lose the vision in my left eye, and it's also hard on your bones and joints, which I have also now developed diabetes as a result of that.

My son is also disabled due to depression and diabetes, and having a powder room on the first floor would also benefit him, and since it's difficult for me to do a lot of walking, I could also put a stationary bicycle in that little area since I do need to exercise.

I hope I have sent in all and filled out all of the necessary forms, and I did post, do the posting of the orange sign, and I got the affidavit notarized. I also took photos of the sign and filed that in the office here.

Letters were also sent in the 20 -- 200 feet radius, were sent to neighbors in the 200 feet radius, and I guess you would have to help me out by asking questions of anything that I have failed to ask since I am not familiar with doing this. I'm

1 not a lawyer. Okay.

2 I did receive a letter from my doctor, which I hope

3 has some weighting on getting the permit to complete the addition.

4

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

(6:00 p.m.)

MR. SOCKWELL: May I ask you a question, please?

MS. PERKINS-BARROW: Okay.

MR. SOCKWELL: From the photographs that we have, the rear photographs of the house, the structure that I see to the rear of the house is largely existing as we speak.

MS. PERKINS-BARROW: Yes.

MR. SOCKWELL: And that structure was undertaken at some point prior to an application for a building permit.

MS. PERKINS-BARROW: Yes, yes. It was.

MR. SOCKWELL: And was largely completed, and then I assume that an inspector might have appeared at your property and --

MS. PERKINS-BARROW: yes.

MR. SOCKWELL: -- requested the required building permits.

MS. PERKINS-BARROW: Yes.

MR. SOCKWELL: Okay. Who was building the structure for you?

MS. PERKINS-BARROW: McLauren & Brown Construction.

MR. SOCKWELL: And they are a licensed home improvement contractor?

MS. PERKINS-BARROW: They -- yes. I found out since then that they are licensed in Maryland. I did not know

that they weren't licensed in the District of Columbia.

MR. SOCKWELL: So they never made any representation to you that building permits were required for what you were doing?

MS. PERKINS-BARROW: I asked them if they had a permit, and they told me they did, and I asked to see it, and he said, well, -- named someone had it around there somewhere, but I never saw it. I asked him on several occasions. I said, "You know you have to have a permit."

And he said, well, I'd have one. Then after the post or stop work sign was placed on the house, I think he came down to try to get one. Then he told me it was -- that they had approved it, but then someone came in and said something, and then they scratched it out and disapproved it.

I -- I don't know, but anyway, he did not get a permit, and I started trying to find out what I had to do and where I had to go because I had no idea.

MR. SOCKWELL: Is your contractor now -- he's waiting for a permit so that he can finish the work?

MS. PERKINS-BARROW: I have not talked with him.

MR. SOCKWELL: Okay.

MS. PERKINS-BARROW: And he has not contacted me other than he sent the architect to help me get what is it that I -- the variance?

MR. SOCKWELL: Yeah. Who's your architect, if I

might ask?

MS. PERKINS-BARROW: Stephen White.

MR. SOCKWELL: And is Mr. White a licensed architect in the city?

MS. PERKINS-BARROW: Yes, I believe so. I have his -- I think his -- he lives in Maryland, but I think he has his name and address on something that I turned in. I know I saw it somewhere. I have so many papers that I have gone and filled out until --

MR. SOCKWELL: Oh, I see his name here, and on the application.

MS. PERKINS-BARROW: Do you see his address?

MR. SOCKWELL: Yes, it's Mercantile Lane in Largo.

MS. PERKINS-BARROW: Does it have his license number?

MR. SOCKWELL: But under the license number issue it says "not applicable," and for small constructions like this in a district a license for residential work would not necessarily be required, but a permit is always require, and Mr. White and your contractor are both fully aware of that. They don't -- contractors always know. Architects always know.

MS. PERKINS-BARROW: I have been going -- I have been -- this has been going on over a year.

MR. SOCKWELL: Now, there is a reference to the allowable square footages and things like that in the submission

documents. I guess basically your lot area is nonconforming in that your lot is only 1,755 square feet in a required 3,000 square foot lot size zone. The lot width required is 30 feet. The lot existing is 27. The percentage of lot occupancy allowed is 40 percent, and existing, I guess this is 702 square feet rather than 70-2. Anyway, the existing footprint of the house is 732.06. The proposed addition os 104.47 in square footage, and the total would then be 833.53 square feet, and approximately seven and a half percent more lot coverage than would be allowed under the ordinance.

The variance amount os 131.53 square feet, which is 18 -- I don't understand some of this. I'll have to look at that again.

Rear yard, 20 feet required. You have 6.5 with the addition shown, I'm sure, which is 13.5 foot variance or 67 percent.

The side yard required is eight foot. You have a nine foot side yard, I assume, with the addition location, and zero for one side of the house because it is attached on one side to its adjacent neighbor.

MS. PERKINS-BARROW: Yes.

MR. GILREATH: Is the addition occupiable now or it's only partially so and not livable?

MS. PERKINS-BARROW: It isn't livable because it isn't sealed, and it's too hot. You know, it's cold. I'm afraid

the wind is going to blow the windows out because they were not stabilized.

MR. GILREATH: So additional work is required before --

MS. PERKINS-BARROW: Additional work is required.

MR. SOCKWELL: So they set them and maybe shimmed them, but hasn't attached them.

MS. PERKINS-BARROW: Well, when the man came out and put the stop work on, you know, he said he was going to fine me if he didn't stop immediately. So I asked him if he could make the windows stay in so they wouldn't fall out of it, you know, and he said he had to stop. So --

MR. SOCKWELL: Hopefully you haven't paid him all of his money. Well, okay.

MS. PERKINS-BARROW: No, no, I haven't paid him all, but I have paid quite a bit, and the remaining --

MR. SOCKWELL: And he -- yeah.

MS. PERKINS-BARROW: -- the remaining supplies have been out in the weather and holes were left in the back, and I have an eight year old grandson, and mud and dirt and stuff run right into the sewer, the drainage there, and it's -- it's just terrible.

MR. SOCKWELL: So he's installed the room and plumbing for the bath?

MS. PERKINS-BARROW: No, the plumbing hasn't been

done.

MR. SOCKWELL: All right.

MS. PERKINS-BARROW: I haven't gotten that done.

MR. SOCKWELL: All right. Let me ask you one last question. This application that we have here was filed by whom, the permit application? Who did that? I mean it looks like it was printed by someone who printed.

MS. PERKINS-BARROW: Me. I guess I did.

MR. SOCKWELL: Okay. So it's your printing that's quality printing here. Okay.

MS. PERKINS-BARROW: Well, I taught school in the District for 20 years and 17 in Connecticut. So I've been consistent for 37 years.

MR. SOCKWELL: Oh, okay.

MS. PERKINS-BARROW: I'm retired now. An elementary school teacher, so I did.

MR. SOCKWELL: Petworth?

MS. PERKINS-BARROW: I say elementary school.

MR. SOCKWELL: No. I said Petworth.

MS. PERKINS-BARROW: No, I was at Simon and Douglas for a while and Peabody.

MR. SOCKWELL: Oh, okay. So anyway, under contractor, the contractor's name should probably go in that number 36 spot because that is applicable on the second page of the application.

MS. PERKINS-BARROW: Oh, boy.

MR. SOCKWELL: When that -- it wouldn't be N/A.

MS. PERKINS-BARROW: Okay. You don't know how much I don't know about this. It's not over there?

MR. GILREATH: Well, Madame Chair, perhaps this is useful. It seems to me that rather than the deficiency, that apparently the contractor was deficient in some respect already.

CHAIRPERSON REID: Right.

MR. GILREATH: So it seems to me we almost need to start addressing whether or not there's something unique about this.

CHAIRPERSON REID: Exactly.

MR. GILREATH: And whether or not she can be granted some relief.

CHAIRPERSON REID: Exactly. We need to go to the case, and Ms. Perkins-Barrow --

MS. PERKINS-BARROW: Yes.

CHAIRPERSON REID: -- as you heard discussed with the previous applicant, this is a variance case. You're asking for a variance, and as such, you, too, have to demonstrate that you comply with the three pronged test, and the three prongs are, first of all, is there something unique or unusual or different or irregular about the lot, about the property itself?

MS. PERKINS-BARROW: Is it anything unusual?

CHAIRPERSON REID: Unique, un-huh.

MS. PERKINS-BARROW: I don't think there's anything unusual because other neighbors have built extensions onto their house, and it's --

CHAIRPERSON REID: Well, the thing, Ms. Barrow, Ms. Perkins-Barrow, the test is that it has to be something unique. So what we have to do in trying to assist you in this because obviously you've never been here before is try to determine what is it that is different or unique about your particular property.

MS. PERKINS-BARROW: Oh.

CHAIRPERSON REID: Not -- not --

MS. PERKINS-BARROW: All right.

CHAIRPERSON REID: -- the other properties, the neighbors' properties, but what is it? Can you tell us something about your particular property that's unique?

MS. PERKINS-BARROW: Well, okay. Well, it's unique in that I gave up my porch, sun deck, had it enclosed, and took a portion of that -- I wanted them to take a portion of that to make a little bathroom there, with just the stool and a wash bowl off from the kitchen. It is not -- you know, it's where the existing porch was. It's not an additional extension to anything. It's just what was there, but they said that it was -- the sun deck was a little larger than it should have been.

MR. GILREATH: Well, is your lot --

MR. SOCKWELL: It's a little larger than the existing porch, which was 7. -- well, it was 8.17. That's what

they say.

MS. PERKINS-BARROW: Yeah, that's what they say, but they say this building itself, the house itself is not built -- was not in conformity, was not built right.

MR. GILREATH: Was your lot the same, roughly approximately the same size as all the other houses adjacent to you on each side or is it smaller or larger?

MS. PERKINS-BARROW: It might be a little larger. I think it's a little larger.

MR. SOCKWELL: Can I speak to this? Because we've actually had this before, and I had a solution to the problem at the time.

Your house is at the end of a row of houses, I assume.

MS. PERKINS-BARROW: Yes. Well, it isn't a row house. It's a semi-detached.

MR. SOCKWELL: I know your house is, but the other houses --

MS. PERKINS-BARROW: Are also semi-detached.

MR. SOCKWELL: They're all semi-detached?

MS. PERKINS-BARROW: Yes, all of them are semi-detached.

MR. SOCKWELL: Okay. All right. So you're truly in a 40 percent zone, I think.

MS. PERKINS-BARROW: Yes, un-huh.

MR. SOCKWELL: All right. That does make something -- make a difference.

CHAIRPERSON REID: Okay. Continue with that.

MR. SOCKWELL: If she were -- unfortunately, if she was at the end of a row, we could work with the hypothesis that I had used in a previous case to get closer to a similar building -- build-out capability.

Now, you say the other houses have additions.

MS. PERKINS-BARROW: Well, some of them do, yes.

MR. SOCKWELL: Some of them do, and there's no way of you knowing whether or not those additions were built with permits.

MS. PERKINS-BARROW: No.

MR. SOCKWELL: And I wouldn't ask you to respond to that.

MS. PERKINS-BARROW: No.

MR. SOCKWELL: But I'm working on something. So I won't ask any more questions until I finish my numbers.

MS. BAILEY: Madame Chair, would it help because the Applicant has a physical disability, and she needs to have the bathroom in order to continue to live on the premises? So would that help because of her physical condition that that could be in part justification for granting the variance?

CHAIRPERSON REID: Ms. Bailey, my understanding of the use variance is it does not speak to a physical disability.

It speaks to --

MS. BAILEY: Did she apply for a use variance or an area variance?

CHAIRPERSON REID: Excuse me.

MR. GILREATH: An area variance.

CHAIRPERSON REID: It's an area variance. Okay. I'm sorry.

A variance doesn't speak to a physical disability. It is -- it has to be something unique, unusual, irregularly shaped lot, something that's inherent in the land. The operative word is inherent in the land itself.

We have cases wherein persons come before us with situations that were physical in nature. Nonetheless, and not that we're unsympathetic to it, but in applying the zoning regulations, there is nothing in a variance, the definition for a variance, that stipulates anything about a physical disability, if I'm not mistaken.

MS. BAILEY: But a part of the test is a practical difficult, and her practical difficulty is --

CHAIRPERSON REID: No.

MS. BAILEY: -- she would not be able to --

CHAIRPERSON REID: You have to get --

MR. SOCKWELL: No, but --

CHAIRPERSON REID: You have to get to the first test, and that test is unusual, irregular, unique.

MR. SOCKWELL: But, Ms. Bailey --

CHAIRPERSON REID: First. Then you get to practical disability.

MR. SOCKWELL: Just to clarify that, should the Applicant move from the house the day after a variance is granted, the only thing left is the house. There is no -- she can't take the addition with her when she moves her physical disability to another state or another block. That's why you can't use that. It's not relevant to the issue.

You cannot bind an answer's disability into a variance for the property under this particular circumstances.

CHAIRPERSON REID: Okay.

MS. PERKINS-BARROW: I don't understand.

MR. SOCKWELL: Because she doesn't have to live there. Suppose she moves. She needs to have a bigger house, and she could sell it, and that's it.

MS. PERKINS-BARROW: I can't. I'm retired.

CHAIRPERSON REID: Okay. Let's get to the test for a variance or area variance.

Now, Ms. Perkins-Barrow, is your property on an alley?

MS. PERKINS-BARROW: Yes.

CHAIRPERSON REID: Is one side of the property on an alley?

MS. PERKINS-BARROW: The back part, the back.

CHAIRPERSON REID: The back is on the alley?

MS. PERKINS-BARROW: Yes.

CHAIRPERSON REID: This back that's right here, this is the alley right here? That's a part of your yard?

MS. PERKINS-BARROW: Yes, that's the --

CHAIRPERSON REID: So you don't have too much of a yard. Okay. You don't have too much of a yard.

MS. PERKINS-BARROW: No.

CHAIRPERSON REID: The side of your -- the lot area that's required is 3,000 square feet. You have 1755 square feet. So --

(The Board conferred.)

CHAIRPERSON REID: Okay. Your property, the actual plat that you've shown here today where you have your actual residence, and then there's a deck, and then there's the existing porch --

MS. PERKINS-BARROW: This is -- this is my neighbor's house.

CHAIRPERSON REID: No. I'm referring -- so all the properties -- let me ask you this. The other properties that are on that block, that are on that -- in that square on the side of the street where you are, are those houses all similarly configured? Is it like cookie cutters?

MS. PERKINS-BARROW: Some of them are different, a little different, but they're all -- am I understanding you right?

CHAIRPERSON REID: What about the lot itself? I mean the houses are lined up. I'm looking at the back of --

MS. PERKINS-BARROW: Yeah, they're basically the same on that street, but the ones across on the other side of the street are -- the backs are smaller.

CHAIRPERSON REID: Are all the lots on this side of the street where your house is about the same size?

MS. PERKINS-BARROW: Yes.

CHAIRPERSON REID: Does your lot -- I can't really -- let me look at --

MS. PERKINS-BARROW: Do you want to look at mine?

MR. SOCKWELL: Ms. Perkins-Barrow, the deck that is now enclosed was there previously?

MS. PERKINS-BARROW: Well, yes, before this construction was put on, yes.

MR. SOCKWELL: Was the deck at the same height of the floor of the new addition?

MS. PERKINS-BARROW: Yes, the same height.

MR. SOCKWELL: How long had that deck been there?

MS. PERKINS-BARROW: Well, I think about ten years, about ten years because the other one fell down, and then -- well, they first condemned it. Then I had to put up a porch. So then I had the check put up.

MR. SOCKWELL: Are the posts that are holding up the addition the posts that were holding up the deck?

MS. PERKINS-BARROW: No, these are new posts that they put up.

MR. SOCKWELL: Did they take the original deck down completely?

MS. PERKINS-BARROW: No, they didn't take it down. They used some of the old material.

MR. SOCKWELL: Okay.

MS. PERKINS-BARROW: Some of it's new, but some of it they left.

MR. SOCKWELL: Okay. Last question. Was the deck built with a permit?

MS. PERKINS-BARROW: No.

MR. SOCKWELL: Okay.

CHAIRPERSON REID: Mr. Sockwell, just one second please.

(The Board conferred.)

MS. PERKINS-BARROW: It was building by someone else. I don't whether he had a permit or not. I have no idea.

(The Board conferred.)

CHAIRPERSON REID: Is this a shed?

MS. PERKINS-BARROW: Yes.

CHAIRPERSON REID: Is that shed -- is it on your property, that shed?

MS. PERKINS-BARROW: It's on my property.

MR. SOCKWELL: It is? Oh, so it's butted up

against the shed.

CHAIRPERSON REID: The shed, is that one of the portable, mobile sheds that you can put there or take out?

MS. PERKINS-BARROW: Yes, you can tear it down?

CHAIRPERSON REID: It's put there permanently? It wasn't one of those sheds like you can --

MS. PERKINS-BARROW: It's one that you buy like from Home Depot.

MR. SOCKWELL: Right, and you had that installed?

MS. PERKINS-BARROW: Yes.

MR. SOCKWELL: Okay, and I know you didn't have a permit for that because the shed takes up side yard that's required and goes right to the fence to the adjacent property.

MS. PERKINS-BARROW: Yes, I had that before.

MR. SOCKWELL: You have several deficiencies here. The shed leaves you -- that's why they're showing nine foot and zero side yard, because you weren't required to have a side yard on the abutting wall. You're -- that's why this shows nine and zero. You've got side yard up to a certain point, and then it goes to zero where the shed is.

MS. PERKINS-BARROW: Oh, I see.

MR. SOCKWELL: A lot of people put up sheds, and they don't realize that they're supposed to meet certain regulations. So I'm not faulting you for the shed. It would be a common error.

But on the deck, if the deck existed previously and had been constructed with a permit by the people who owned the house before, and a record of that permit could be found, then at least there would be justification for the addition, enclosure of the existing deck because the existing deck would have already been accounted for legally.

The enclosure, while built without a permit, would have fewer issues tied to its existence. The real issue would be whether or not the enclosure had a building permit. Zoning wouldn't have a problem with it. There wouldn't be any side yard or rear yard issues as well. It would just be whether or not there was a permit for enclosing that and the electrical and plumbing permits associated with putting in the rest of the equipment.

That's part of the fact that your deck is so high in the air it would have to have been approved by zoning for construction as an impingement upon your required rear yard. If it already existed and you weren't extending it, then we'd have a much less significant issue to deal with.

MS. PERKINS-BARROW: But the porch was up -- that's where the existing porch was. That's how it's built. That's the way it's made.

MR. SOCKWELL: Okay.

MS. PERKINS-BARROW: I mean we --

MR. SOCKWELL: But you bought the house after the

deck was there. You said the deck wasn't put on by you.

MS. PERKINS-BARROW: No, because the original porch fell, you know, rotted.

MR. SOCKWELL: Right, but you weren't there then.

MS. PERKINS-BARROW: Yeah, I was there.

MR. SOCKWELL: Oh, I thought you said that the deck was there --

MS. PERKINS-BARROW: No.

MR. SOCKWELL: -- before you bought the house.

MS. PERKINS-BARROW: No, no, no, no. I was there.

MR. SOCKWELL: Okay. So when you had the porch replaced with a deck, you said it was condemned.

MS. PERKINS-BARROW: Right. Somebody came down.

MR. SOCKWELL: It seems that if it had been condemned --

MS. PERKINS-BARROW: It was high because it had those posts, you know, and if someone had gone out there --

MR. SOCKWELL: right.

MS. PERKINS-BARROW: -- they could have fallen down, but it was already built high.

MR. SOCKWELL: Okay. I understand that. What I'm saying is that because it was condemned, I can't understand how you would have replaced it without a building permit if the city told you that it needed to be replaced.

MS. PERKINS-BARROW: I don't either.

MR. SOCKWELL: Because you would never have the city inspectors come out and tell you you need to replace something and then have the audacity to go out and try to build it without a permit.

MS. PERKINS-BARROW: Well, whoever. Well, it was built. I don't -- you know, I didn't know you had to have a permit. The person that I -- it wasn't the same people that did the work today, you know.

MR. SOCKWELL: I understand.

MS. PERKINS-BARROW: This work. It was someone else.

MR. SOCKWELL: You said it was ten years or so ago that the deck was done.

MS. PERKINS-BARROW: Yes.

MR. SOCKWELL: Okay. I don't have a solution to this, except that obviously we don't have any records of whether or not the deck was done with a permit. There was an existing porch at some point replaced by a deck. If the porch could be documented as having existed, then some of this issue would be less relevant because it's a high porch.

MS. PERKINS-BARROW: It was built like the rest of these houses down here. It was a porch built like those. That's an original one right next door.

MR. SOCKWELL: Yeah, but that little porch -- that little porch is not what you have. That little porch is a little

porch.

CHAIRPERSON REID: Well, she enclosed her porch.

MR. SOCKWELL: No, she extended her porch. The porch that's here is approximately 36 to maybe -- maybe it's 36 to 42 inches deep. Yours is more than eight feet deep. So you have extended it beyond that which was allowed under the ordinance.

And although your house was built when? Probably in the '50s or '40s?

MS. PERKINS-BARROW: Those houses were built like late 1800s.

MR. SOCKWELL: Okay. So they're ancient. They predate the zoning ordinance.

MS. PERKINS-BARROW: Yes.

MR. SOCKWELL: So what was there at that time you wouldn't have to have done anything for, but because you extended the porch, it brought you under the current zoning ordinance, and that extension was done since the advent of the zoning or since the institution of the zoning code in 1958. You built that porch, the deck after 1958.

MS. PERKINS-BARROW: Yes, right.

MR. SOCKWELL: Okay. So we've got problems.

CHAIRPERSON REID: Okay. Just one second.

(The Board conferred.)

CHAIRPERSON REID: All right. Ms. Barrow.

MS. PERKINS-BARROW: Yeah.

CHAIRPERSON REID: Let's try to move this along. In looking at this whole scenario, it appears that the lot within itself was substandard in that to comply with the lot occupancy within itself created a practical difficulty in that you didn't have too much lot there in the first place, and then compounded with the fact that you relied on -- and this happens a lot unfortunately -- contractors to do the work who are licensed who don't perform in a professional or ethical manner, and then people come to us and say, "Well, we were told that we had to come here because there was a stop work order," and you've already spent your money to have this work done.

Okay. So having said that, let's go to the practical difficult. I'm sorry. The adverse impact, and that's the third test -- sorry -- the second test, I mean, and the adverse impact is have you had any complaints or have you had any opposition to your application from anyone in regard to causing a nuisance, with regard to traffic, noise, light, parking?

All right. No one has opposed it?

MS. PERKINS-BARROW: No one has opposed --

CHAIRPERSON REID: Is there anyone that is here today that is affiliated with this particular case?

(No response.)

CHAIRPERSON REID: Then the next thing is whether or not it would impair the intent and integrity of the zoning regulations or map, and personally I don't think -- I don't think

that it does. We have not spoken to that, but of course, in the case you put here today, unfortunately you have not addressed those tests that you're supposed to address when you come forward, and that's why we're kind of like putting together for you.

So just suffice it to say that we're trying to work it out for you.

(The Board conferred.)

MR. SOCKWELL: I need to explain to you that you need a variance from Section 404.4 which is a rear yard variance, which states specifically that in case of a building existing on or before May 12th, 1958, which obviously yours does, an extension or addition may be made to the building into the required rear yard, provided that the extension or addition shall be limited to that portion of the rear yard included in the building area on May 12th of 1958, which would mean that you could extend up to the edge of the original rear porch only, which is as the porch of your next door adjacent neighbor is projecting back from the house because of its height above grade being greater than four foot, zero. It's included in the area of the building for the sake of Zoning's purposes.

In your case, you extended beyond that. So you are not in conformance with Section 404.4 of the zoning ordinance.

CHAIRPERSON REID: Thank you, Mr. Sockwell. So that's why she's here.

Okay. Do I have any government reports or the ANC?

Is anyone from the ANC here today?

(No response.)

CHAIRPERSON REID: Ms. Perkins-Barrow, did you speak to the ANC?

MS. PERKINS-BARROW: I spoke to Mr. Mustafa.

CHAIRPERSON REID: And what was the result of that conversation?

MS. PERKINS-BARROW: Well, when I talked -- spoke with him, I gave him my case number, which they said I was supposed to give to him, and I had a difficult time trying to contact him, but we did not talk that much about it because I was just told to give him my case number.

I also talked with a Ms. Patricia or Pat -- Pat -- oh, brother. I don't recall her name. It was on my mind all morning. After I ate I forgot. Pat -- well, I did speak to a Patricia someone, and she said she would get back with me, which she did not.

CHAIRPERSON REID: Okay. Well --

MS. PERKINS-BARROW: We did talk about the case, and I told her what was going on, what I was trying to do, and she said she was very sorry, that she did not know of anything about my case, but because she had been ill, and -- but she would get back with -- you know, try to find out more about it and what I was supposed to do, but she never called me back.

I also, when I came down to see if anything was in

my file, and the lady in there checked, and she said nobody had put anything in it at that particular time.

CHAIRPERSON REID: There was a letter to ANC-4B that was sent out the 7th of October, and we have not received any letter back from them, which typically means to us that they had no objection to your application. If they did, they would be here, and they would let us know.

Persons or parties in support of the application?

(No response.)

CHAIRPERSON REID: Persons or parties in opposition?

(No response.)

CHAIRPERSON REID: We had a letter. I thought we had a letter of support. A Louise McDonald had submitted a letter of support on your behalf.

MS. PERKINS-BARROW: Yes.

CHAIRPERSON REID: For the application.

MR. GILREATH: There are two letters.

CHAIRPERSON REID: And a letter from a Ms. Anderson who said that she would not be able to attend the meeting, but she has no objection, and she lives at 622 Quintana, and Ms. McDonald -- well, it didn't say where she lives, but do you know Ms. McDonald?

MS. PERKINS-BARROW: Not personally, no.

CHAIRPERSON REID: Okay. Well, does she live in

your block? Okay. Well, she also submitted a letter of support.

MS. PERKINS-BARROW: There were neighbors that said they would come down, but I didn't submit their names, and testify and write more letters, but I didn't --

CHAIRPERSON REID: Okay.

MS. PERKINS-BARROW: -- I didn't submit their names.

CHAIRPERSON REID: Okay. Now, Ms. Perkins-Barrow, you may have closing remarks.

MS. PERKINS-BARROW: I would just like to thank the Board for listening to my case and hope you will give it all the consideration possible because it is, indeed, necessary --

CHAIRPERSON REID: All right.

MS. PERKINS-BARROW: -- for me to have a powder room on the first floor because it is very, very difficult for me to get up and down those steps.

CHAIRPERSON REID: Ms. Perkins-Barrow, would you like to have a decision today, which is called a bench decision, a summary order?

MS. PERKINS-BARROW: If it's favorable, yes.

(Laughter.)

CHAIRPERSON REID: Let's see. Board members?

MR. GILREATH: Well, Madame Chair, it seems to me the crux of the matter is the substandard lot. If the other Board members are inclined to think that -- I'm not really familiar with

how it's been dealt with in the past, but a substandard lot suggests there is some uniqueness involved. They cannot normally do what they would normally be able to do.

And my inclination is I'm willing to say that in my best judgment the substandard aspect of it does give it a unique quality, and in terms of its impact on the zoning, I feel there's really no problem there at all, and there is a substantial difficulty which I feel can be interpreted as a practical one.

So I make a motion that we approve the application.

CHAIRPERSON REID: Is there a second?

All right. Second the motion.

I feel that the Applicant has made -- has met her burden of proof, and there is no opposition to this particular case, and so, therefore, there does not appear to be any adverse impact. So as such, I would second the motion to approve this application.

Comments or --

MR. HOLMAN: I agree.

CHAIRPERSON REID: Vote?

MR. SOCKWELL: I have to say these things. First, I personally believe that under the circumstances the Applicant has received poor direction from her architect and contractor with regard to the permits.

At the same time, because this addition already exists, it would be an extreme hardship to the Applicant to have

it removed, since I do not believe that the addition problem is in fact the responsibility of the Applicant.

But at the same time, there is a nonconforming shed on the property which reduces the rear yard to zero. In approving the deck enclosure as if it were a virgin project, this Board could not approve the shed that reduces the rear yard or the side yard to zero, and I do not believe that this Board should approve the enclosure without conditioning that approval on the removal of the nonconforming shed.

There is an emergency egress issue. Side yards are part of our zoning charge, and because the shed is huge and accomplishes that closure of the side yard, it would seem that the Board would be approving something that we might have no recourse but to continue to approve in the future.

CHAIRPERSON REID: Okay. Mr. Sockwell, what is your vote? What is your position here?

MR. SOCKWELL: My recommendation is that we condition the approval of the enclosure of the deck on the removal of the shed.

The roof of the deck, the under side of the deck actually might have some utility, but I personally believe that the shed should not be there.

CHAIRPERSON REID: Okay. Mr. Sockwell, understanding from Corp. Counsel on this is that we don't typically condition a variance, and if we -- if we're going to

grant the variance, we just grant the variance without conditions.

MR. SOCKWELL: Well, if it is not our charge to condition the variance, you may -- the Applicant may find that the city will not approve the final inspections of the shed without seeing the -- I mean of the addition without seeing the shed removed because it will be a zoning issue.

So I will withdraw.

CHAIRPERSON REID: Okay. Well, again, it's been properly moved and seconded that this application be approved. All in favor.

(Chorus of ayes.)

CHAIRPERSON REID: Opposed?

(No response.)

CHAIRPERSON REID: All right.

MR. SOCKWELL: And let the record reflect that the zoning section for which relief is requested should be 404.4, not 404.1, for the record.

MS. BAILEY: Madame Chair, Mr. Sockwell, did you approve or disapprove of the application?

MR. SOCKWELL: I approved it.

MS. BAILEY: Okay. Madame Chair, staff will record the vote as four to zero, motion made by Mr. Gilreath, seconded by Ms. Reid, to approve the application with the issuance of a summary order.

CHAIRPERSON REID: All right. Thank you.

Ms. Perkins-Barrow, you will have your order in about two weeks. Good luck.

MS. PERKINS-BARROW: Thank you. Thank you both. Thank everyone. God bless you.

CHAIRPERSON REID: All right. Our next case, please, the last case of the morning.

(Laughter.)

MR. HART: Application 16524 of EastBanc, Inc., pursuant to 3107.2, new Section 3103.2, for a use variance under Section 2507.3 and Subsections 933.3 and 932.1, to permit the construction of housing on an alley lot less than 30 feet wide; and an area variance under Subsections 933.3 and 932.1, to encroach on 12 feet rear yard and to exceed the lot occupancy requirements in a W-1 district at premises 3336 to 3340 M Street, N.W. This is Square 1184, Lots 46 and Lot 835.

Those planning to testify, those persons present planning to testify in this case, please stand and raise your right hand.

(The witnesses were duly sworn.)

CHAIRPERSON REID: Okay. Mr. Nettler, good evening. How are you? Please accept our apologies for the lateness of the day in which we're getting to your case. We've been here all day. I know that, but it just couldn't be helped.

Is there anyone here in opposition to this particular case?

All right. As such, then you'd be pleased to expedite your presentation. We have read your submission and basically can stand on much of that, and just kind of give us the highlights of it and let's just try to move through this quickly.

MR. NETTLER: I will try to move through it very quickly.

Richard Nettler on behalf of the Applicant, EastBanc.

Let me just, one, for the record, correct one thing in terms of their reading of the application that was done by the staff. Actually the application, as you know from your booklets, both the prehearing statement and the application itself, covers more than just the 3336-3340 M Street and the squares and lots that were read. It covers -- it's 3316, 3320 M Street and 3336-3342, Lots 46, 835, 806, 820, and 820, which is the way the application was submitted and stamped and given a number for. So just for the record you should note that.

Let me give you the highlights myself, and then give you an opportunity to go through this somewhat quickly, given the other cases that are pending and the time of the day.

This is an application for both a use variance with regard to the two addresses and for area variances for each as well, only one of which requires an area variance, one area variance and one two (phonetic).

This is a project that's located on the alley.

It's in a W-1 district. The use variances are required for the residential portion of each of the sites. The area variances are because of a rear yard with one -- with regard to both sites and a lot occupancy issue that affects one of the other sites.

You'll see from the materials that are in the file that we've submitted, actually while these show up as large lots, these are actually very oddly configured lots, and given the unique W-1 district, are unique within the W-1 district as a district that, as Ms. McCarthy I think can give you a greater idea of, was intended to be both a mixed use district in an historic area, the Old Georgetown Historic District, and unfortunately because of the condition of what used to be warehouses which are now vacant and which are going to be put to a use in the future, the ability to deal with both the historic preservation issues that apply to these, as well as the Park Service issues that apply because they do abut the canal, the residential actually makes possible the ability to -- the residential uses make possible the ability to both rehabilitate and reuse these former warehouse structures, which when the Zoning Commission adopted the W-1 district in this area, recognized as the idea of it being a transition from what was once an industrial warehouse zone into a mixed use zone that has both commercial and residential.

And as we've discovered in terms of the W-1 area, which is very limited, there is really no other sites that have this particular condition where you would be able to put

residential on an alley because of the other areas which have been either already developed with full commercial uses or with uses that have been approved in other contexts.

That is the -- in very much a nutshell of the case that's before you. I think it's worth understanding specifically the particular aspects of the projects.

Ms. Moltershead is here on behalf of the EastBanc and the architects are here as well, each site having a different architect, Sogen Associates (phonetic) and Schlessinger & Associates (phonetic) and Ella McCarthy, an urban planner who's been recognized before this Board as an expert is here to discuss the specific planning issues as well.

And if we might be very, very brief, Ms. Moltershead.

CHAIRPERSON REID: Did you say that you were proffering her, too, as an expert witness or is she just testifying?

MR. NETTLER: Ms. Moltershead is here on behalf of EastBanc. She's a representative of EastBanc.

CHAIRPERSON REID: Okay.

MS. MOLTERSHEAD: I'm Mary Moltershead. I'm the development partner for EastBanc which is the developer for the properties before you today. EastBanc is a 12 year old D.C.-based real estate firm that acquires and develops primarily urban properties. We're most active right now in the West End and

Georgetown areas who are acting as local developers for two large mixed use projects both with Ritz Carlton Hotels at 2,200 M Street and the Georgetown Incinerator.

In addition, we've recently purchased a number of buildings, probably over 20 retail buildings in Georgetown to redevelop them and re-tenant them.

It's for one of these projects that we're here before you today. Over the last year we've purchased quite a few buildings in the 3,300 block of M Street. If you look at this board, you'll see the properties in yellow are the properties that we have acquired.

The 3,300 block for a number of years has been a very run down and under developed block, and it's our intent to come in and redevelop these buildings, add to them, bring in new tenants, fix them up for the tenants that are in the marketplace today.

As you can see, these properties include not only ones facing onto M Street, but these buildings along the rear on the alley where their only access is from the alley. There's no other way to get to those buildings.

These are historic buildings. The buildings on the alley side right now are in terrible condition. They are vacant, run down. As the neighbors like to point out, they are rat infested, and in much need of being redeveloped.

Our idea here has been to add to the backs of the

buildings along M Street, as well as to fix up the buildings along the alley, and then what we want to do is to repave the alley and make it a sort of muse type environment where storefronts would exist on the backs of the buildings along M Street facing into the alley, as well as to have these buildings facing from the rear onto the alley.

The rear buildings would have the commercial use on the ground floor in the basement level, and then would have the residential uses on top of them. These units would have entrances off this really nicely redone alley, on the one hand, and then, on the other, they would also face on the south side overlooking the canal. So they would be very light and airy units that we would be introducing here, and they would be along this canal area where right immediately to the west you see there are already residential units.

Those have access, however, from the 34th Street side, but they have the same orientation that our units would have, primarily facing onto the alley on the one side and the canal on the other side.

We've been working with five different architects to develop this block and have gone through an extensive approval process already. We have had the support of the Advisory Neighborhood Commission. We've worked and had the support of the National Park Service, and we've also gotten conceptual design approvals from the Old Georgetown Board and the Commission of Fine

Arts.

So we're here today for the final approvals that would be necessary for us to make this 3300 block redevelopment a successful endeavor.

This site is unique in that it's on the -- it's in an historic district. It has only this alley access, and it's also on a very steep, sloping site overlooking the canal. It's these residential units that make it possible for us to redevelop these properties, because it will enable us to use all of our FAR and then to generate the revenues that we would need to be able to fix these properties up.

Also, it will enable us to enliven the alley and make the alley, canal sides both safer and more attractive. This has been a factor in working with the Park Service. They've liked the fact that there would be 24 hour use on this site that would kind of overlook an area of the canal which has been dark and has not had the security problem or security that they would like to see there.

Not to be able to have these residential units would be a hardship for us and would not enable us to redevelop these properties, but it would affect us in our concept of trying to redevelop the properties on the other side of the alley and enliven this whole area.

Anyhow, from the feedback we've gotten everybody in the community seems to think that this would be an attractive

addition to the community. In fact, we've eve had requests from people already who would be interested in renting these units.

At this point we would ask that you grant us the zoning variances as requested.

Thank you.

CHAIRPERSON REID: Thank you.

MR. NETTLER: Thank you very much.

What I'd like to do maybe given, again, the time constraints is ask Ellen McCarthy to testify, and then we have available to go through the specific architectural aspects the architects and architectural historian as well to deal with the historic preservation constraints of the property, but why don't I have Ellen go next so that we can get through the zoning issues? And then we can get, if you would like, to ask questions about the specific aspects of those things I just mentioned.

CHAIRPERSON REID: Is that all right with you and ask questions at the end or did you have a question now? Mr. Sockwell?

MR. SOCKWELL: Fine.

CHAIRPERSON REID: Okay.

MS. McCARTHY: Good evening, members of the Board. I think in the interest of time I will try to be very brief and realize that if there's anything that you want further detail on, please feel free to ask.

In summary, we do meet the basic tests for

variances. We have no adverse impacts, and we provide substantial benefits.

I didn't mean to be quite that brief. In terms of uniqueness, we have a situation where, because of the configuration of the lots, the location next to the C&O Canal, the steeply sloping nature of the sites, the fact that it's the only area in the W-1 zone that has the potential for housing that would be off of an alley and with access only from an alley, the fact that there are the market constraints that Mary Moltershead referred to, that these are severely deteriorated buildings as you saw from the photos; some of the buildings have had periodic fires which have substantially destroyed them.

Because of the fact that they are in the historic district and because of the fact that the design approvals that we've gone through with regard to OGB, Old Georgetown Board, and the Commission of Fine Arts have constrained us in terms of being faithful to the outlines the way that those different buildings relate to both the alley and the canal and in terms of the design treatment.

The fact that each of those buildings is responding to a different set of historic cues in terms of how it relates to the alley, one of them which goes all the way to the alley and, therefore, covers the entire site and had the lot occupancy problem as well as the rear yard problem, and the other one which was based on a different set of buildings that related to the

canal differently more in a saw toothed fashion, that also has a rear yard problem, but they are both -- because of the fact that the architects have had to operate within the constraints of existing historic buildings, that it sort of dictated those issues.

So all of those, I think you would agree, combined make for a very unique situations on these two sites.

And in terms of undue hardship and practical difficulty, essentially because the zoning regulations prohibit residential units off of an alley, it means that we can't build any residential without zoning relief. Not only is that a hardship on us, but it's a hardship on the community both as Ms. Moltershead mentioned, to the perception of safety on the canal, which has been the basis of our support from the Park Service, and a lot of the support that we've received from the ANC.

The idea of putting residential units above these has been perceived by the community as extremely beneficial, but the other aspect of the undue hardship with regard toward the use variance that we're requesting, which is to be able to put the residential there, is that we can't come close to filling the zoning envelope. If we were unable to put residential on there, we would be filling only 40 percent of the zoning envelope on the site. As it is, even with the residential on the second floor of those two sites, we're only filling 60 percent of the zoning envelope.

With regard to the area variance and the serious practical difficulty, I think the architects could go into that each in a little more detail if you wanted to, but I think you can see from the outlines of the projects that if we had to maintain a 12 foot rear yard along the slant along the canal, it would make it very difficult to have -- this is the rear of the property along the canal, and let's see. This is a dotted line which shows you where the setback line would come. This is regard to the 3316-3320 project.

So in effect, we actually almost make -- we're about 100 square feet short of what the setback would be in total square footage, but because of the sawtoothed nature of the buildings that we're adding onto, we exceed the setback with regard to this building, but we don't meet it with regard to the corners of these buildings.

So we're pretty close to the spirit of the law, even though because of the buildings we're responding to we can't make the letter of the law.

Oh, I'm sorry. These buildings, these plans essentially follow the lot lines, and as you can see, the lot line which relates diagonally to the canal, the original building already follows that lot line.

What we have done is to do terraces which also follow the spirit of the law, but because the terraces through technicalities of the fact that there's a covering can't be

counted as open space, we technically don't fill the lot occupancy requirement, and we also, because the building that we are building onto is entirely along the lot line in the rear, we can't meet the rear yard requirement even though that's the solution which has been approved by the Commission of Fine Arts and the Old Georgetown Board.

So that is basically the hardship and the practical difficulty issue.

Then with regard to lack of adverse impact on the neighborhood, I mean, essentially we are talking about four residential units, all of which at this point in time come with their own parking space, although there is a design issue to be worked out with regard to one parking issue at Commission of Fine Arts, but the intention is to provide garaged parking spaces for each of these units.

So four residential units in and of itself is such a small increase in terms of the density in that area that it has little impact, and that's with regard to the use variance.

With regard to the area variances, the lack of setbacks in this case provide no hardship on the neighbors or provide no adverse impact on the neighbors, first of all, because as Ms. Moltershead pointed out, there's only neighbors on one corner there.

But, secondly, the usual problem for neighbors with regard to rear yard or lot occupancy requirements would be the

lack of setback, lack of privacy, but in this instance since you're backing up onto the canal, there's no issue with regard to that, and there's certainly no issue with regard to loss of privacy, light or air on the part of the neighbors.

In terms of adverse visual impact, that's clearly been safeguarded by the fact that we've had to go through both Old Georgetown Board and the Commission of Fine Arts, but not only are there no adverse impacts. There are substantial benefits in terms of taking these, you know, fire gutted, vacant eyesores, putting these vacant buildings back on the tax rolls, and creating a sense of eyes on the street or in this case eyes on the canal for safety purposes.

The last basic variance test in terms of consistency with the integrity of the zoned plan. I think, first of all, we should point out obviously we are consistent with the zone plan, and that W-1 is a committed -- provides for residential as a permitted use in W-1 zones. So we are providing a use which is a permitted use. The only reason it's not permitted on this site is because it's off of an alley, but that is a throw-back to a time when there was a problem with tenements, alley dwellings. Clearly that's not the kind of building that we're providing, and those old rules which were passed to prohibit alley dwellings because of problems with light and air clearly don't apply in this instance.

We're providing a great southern exposure. We're

providing lots of light and air, large windows, terraces, balconies, open spaces.

In addition, I think it's clear W-1 places a preference for residential because it says that you can have up to 2.5 FAR total on the site, of which all can be residential, but of which no more than one FAR could be a nonresidential use.

And yet without the use variance, we couldn't provide residential on the site. So I think in summary, we are consistent with the zone plan. We're certainly not impairing the integrity of the zone plan, and we're talking about sites that are unique with no adverse impact, but the lack of flexibility in the zoning regs. would provide a serious practical difficulty and an undue hardship.

CHAIRPERSON REID: Thank you.

MR. NETTLER: Unless you'd like me to extend this further with the architects and architectural historian, I'd like to open it up to questions for them or for any other panel member here.

CHAIRPERSON REID: All right. Board members, questions?

MR. GILREATH: Access to the retail on the alley, to get to the ground floor on the alley, there will be the access point there. How will the people who come in there by car -- can they park there, and also the people who have parking there, is that alley going to be wide enough to allow all of this egress and

so forth to occur?

MS. MOLTERSHEAD: Actually the way it's set up, the storefronts facing onto M Street are one level above the storefronts that will be facing onto the alley because of the sloping site.

Also as part of this development, the building immediately across the street marked "Eagle" will be providing the parking for this. We will be putting about 100 cars below grade there, and then in addition, on this map if you see, there's a section there coming through from M Street to a courtyard to the right there that is a passageway from M Street. So most of the pedestrians would come through that way as well as through the alley.

In addition, we've had concept plans approved for redoing the alley with a paving pattern that would show a designated side for the pedestrians and then also space for the vehicles to get through as well.

But our intent would be to limit the loading and deliveries to our tenants to non-business hours, and it's not a heavily trafficked alley currently.

MR. GILREATH: So none of the properties on the lower side of the alley -- they will not have private garages. They'll be parking in this kind of central place then, whatever it is?

MS. MOLTERSHEAD: The actual residential units have

their own garages or a courtyard area in which they can park. So that's --

MR. GILREATH: Well, how do they get to that then?

MS. MOLTERSHEAD: They would come into the alley and park in those spaces.

MR. NETTLER: The alley is wide enough.

MS. MOLTERSHEAD: The alley is wide enough.

MR. GILREATH: Okay. Thank you.

MS. MOLTERSHEAD: Yeah, it's a 20 foot wide alley for most of it, and there are only two sections that are narrower that go down to 15 feet.

MR. NETTLER: It's also a unique alley. It's one of the few alleys that is historically bridged, which is actually the first piece of the project that was started, and the bridge, I think you can see at the joint there which goes back almost actually now more than 100 years.

When the alley was deeded to the city to use as an alley, that the right to maintain that bridge was maintained.

CHAIRPERSON REID: Do you have a question?

MR. HOLMAN: No. No questions. I'm quite impressed.

CHAIRPERSON REID: Mr. Sockwell?

MR. SOCKWELL: So, Ms. Moltershead, you're everywhere, aren't you?

(Laughter.)

MS. MOLTERSHEAD: I don't know about that.

MR. SOCKWELL: I recall the DCBIA, I guess, meeting where we discussed the incinerator in this other project not too long ago.

MS. MOLTERSHEAD: Right.

MR. SOCKWELL: Anyway, two questions. One, the walkway between M Street and the courtyard is about how wide?

MS. MOLTERSHEAD: It's about 15 feet wide. It's actually through one of the old buildings. So we open it up and make the storefront entrance actually an entrance into a passageway through a building, and then it comes back outside again and goes down the stairs to the courtyard and out to the alley.

MR. SOCKWELL: I see. So it's wider than it actually appears in relationship --

MS. MOLTERSHEAD: Yes.

MR. SOCKWELL: -- on that drawing?

MS. MOLTERSHEAD: Correct.

MR. SOCKWELL: And the residential units, you said, open to the canal side --

MS. MOLTERSHEAD: Yes.

MR. SOCKWELL: -- with their courts, with their sort of --

MS. MOLTERSHEAD: Terraces.

MR. SOCKWELL: -- inset terraces.

MS. MOLTERSHEAD: Balconies.

MR. SOCKWELL: Which are not open to the sky. They are just deep.

MS. MOLTERSHEAD: No, they are open to the sky. It was a trellis overhang that was there that they were referring to.

MR. SOCKWELL: Okay. So that area in there is trellised over?

MS. MOLTERSHEAD: Yes.

MR. SOCKWELL: And that one is trellised over?

MS. MOLTERSHEAD: Right.

MR. SOCKWELL: Okay. Just for my own personal benefit since we always talk these numbers, what's the -- these are going to be sold units?

MS. MOLTERSHEAD: No, they will be rental units.

MR. SOCKWELL: Okay. They will be rental units.

MS. MOLTERSHEAD: Yes.

MR. SOCKWELL: Any idea of the range at this point?

MS. MOLTERSHEAD: Not at this time.

MR. SOCKWELL: See, we only talk about units that sell for four to $500 a square foot. So I assume that these are going to be high level rental units.

MS. MOLTERSHEAD: Not as high as the other ones. We don't provide the Ritz services here.

(Laughter.)

MR. SOCKWELL: Once they clean up the canal, you

can just dive off your balcony into the water, I assume.

MS. MOLTERSHEAD: Right.

MR. SOCKWELL: Okay. It's a very interesting conceptualization. My only question is that you are using the pedestrian alley as access to the garage parking for those units on the --

MS. MOLTERSHEAD: It's a vehicular and pedestrian alley. We are not asking for an alley closing at this time. So there's room actually for the pedestrians to walk down the side, as well as for vehicles to get by.

MR. SOCKWELL: But the vehicle use of the alley is primarily for late night loading and access to the garage, as it is not a condition for through travel for tourists looking around saying, "Oh, what quaint shops we have," as they run over the pedestrians.

MS. MOLTERSHEAD: Correct.

MR. SOCKWELL: Okay. Is there any way of controlling -- are you controlling access to the alley or is it just like 30 -- like the alley between Wisconsin and 31st, I guess it is, where Blues Alley is, where you can sort of drive up in there if you want?

MS. MOLTERSHEAD: We're not -- we won't be controlling it to the general public. As we said in our leases, we'll try to control the loading through that mechanism for our own tenants, but it will still be open to the general public.

MR. SOCKWELL: Okay, and the way out is it exits?

MS. MOLTERSHEAD: It goes through in both directions.

MR. SOCKWELL: All the way. Okay. But it's one way traffic or two?

MS. MOLTERSHEAD: It's two ways.

MR. SOCKWELL: It is two lane traffic. Okay.

MS. MOLTERSHEAD: It's primarily used one way because 34th Street goes one way in one direction and 33rd the other on the other side.

MR. SOCKWELL: And the sidewalk, there won't be a demarcked (phonetic) sidewalk per se, except in different pattern?

MS. MOLTERSHEAD: A different paving material.

MR. SOCKWELL: Okay.

MS. MOLTERSHEAD: And we'll add some bollards in some areas where we think there might be a safety issue.

MR. SOCKWELL: Okay. Thank you.

MR. NETTLER: Another -- one of the questions that you raise reminds me of another particularly distinctive aspect of this as well. This required subdivision approval from the Historic Preservation Review Board, which I think for the first time in what was worked out with the Advisory Neighborhood Commission was an agreement to put covenants on the property so that the buildings, both the interiors -- from both the interior and the exterior will be perceived as if they were separate

buildings even though the buildings are being combined and these covenants are being placed on the property for that purpose, to maintain the historic character. So it's quite a unique opportunity here that EastBanc has.

CHAIRPERSON REID: Okay. All right. Now, if we don't have any other testimony -- stay there, and government reports. We don't have an Office of Planning report, but we did have an ANC report. Is there an ANC representative here today?

All right. The ANC-2E sent in a letter that's dated November 11th, which a quorum was present, and a vote was taken, unanimous vote, that the ANC-2E it says, in pertinent part, they reviewed and approved the concept of the Design Center West's building at 3316-20 M Street and 3306-3340 M Street. So, therefore, they would be given the great weight which they're entitled.

We had no other government reports. I don't think we had anything from the Historic Preservation on this.

MR. NETTLER: I provided you with copies of the decisions of the Old Georgetown Board and the Commission on Fine Arts as Exhibit D and E, which approved these as well.

CHAIRPERSON REID: Wait a minute. Do you know what? I don't think I have it. Does anyone else have it?

MR. NETTLER: It's in this booklet.

CHAIRPERSON REID: I don't remember seeing it.

MR. NETTLER: It's in this booklet.

MR. GILREATH: There's more than one.

CHAIRPERSON REID: It's in?

PARTICIPANT: In the prehearing statement, not the application.

CHAIRPERSON REID: I don't think we -- we don't have that book.

MR. NETTLER: I gave -- I sent nine copies. I have an extra one if you'd like.

CHAIRPERSON REID: Where are the nine copies? Mr. Hart, do you know?

Well, see, what's happen in the Office of Zoning is that we're going through a massive renovation, and as you can see, things are torn all apart, not that that makes any excuse for the fact that we don't have it, but there has been -- there's some confusion, chaos, if you will, as a result of that. It just didn't get to us. I'm sorry. I apologize about that.

But I'm sure that now they'll find them, and we'll get copies of them, but can you --

MR. SOCKWELL: You'll have to start your presentation from the beginning.

(Laughter.)

CHAIRPERSON REID: Can you just for the record tell us what -- you said you have a letter from the --

MR. NETTLER: No, these are the decisions of the Commission on Fine Arts and the Old Georgetown Board.

CHAIRPERSON REID: And what did they say?

MR. NETTLER: Both of them approved the design and project on the historic preservation issues.

CHAIRPERSON REID: Thank you.

Oh, boy. Well, what do you know?

MR. SOCKWELL: Did they look anything like this?

(Laughter.)

CHAIRPERSON REID: It seems like they're well put together, too, considerable time spent in presenting the information. In the beginning I said that we've read your submission. Well, that was an understatement, to state the least. We read what we had in our packages, but we will look over --

MR. NETTLER: Well, luckily the application was pretty complete as well. So it's --

CHAIRPERSON REID: Yeah. Okay. So now persons or parties in support of the application?

I didn't see letters of support per se, and I heard was it -- someone mentioned that they had considerable support among the community. Did anyone submit letters for you?

MR. NETTLER: No, that was at the ANC hearing. There have been a number of ANC hearings on this and support has always --

CHAIRPERSON REID: Just ANC?

MR. NETTLER: Well, and there's usually been about 50 or 60 people present who would --

CHAIRPERSON REID: Oh, okay, and then we had one letter in opposition to your application, and that was from Mr. Goldberg. Is that what it says?

PARTICIPANTS: Goldsworthy.

CHAIRPERSON REID: Ms. Helen Goldsworthy, who basically contends that there would be additional congestion and that it would somehow destroy the ambiance of Georgetown, and she wants to protect the original character of Georgetown.

Would you like to speak to that?

MR. NETTLER: Maybe I can speak to it even though I'm not a witness technically.

I think perhaps the woman may not understand the context of the project. I don't think she had been to any of the ANC meetings, but with regard to congestion, it's probably one of the few projects that is going to provide parking in Georgetown, and it's not even required parking, but is going to provide substantially more parking so to alleviate congestion.

And in terms of the ambiance, this is going to be the opportunity to restore these historic buildings, which would not otherwise be able to do without the residential resources.

CHAIRPERSON REID: Sure.

MR. SOCKWELL: When you -- oh, I'd just like to say when you say not required, you really mean waivered.

MR. NETTLER: It could be waivered. That's right.

MR. SOCKWELL: That's a major difference in the

concept of a waiver and required because we all know that a waiver means that normally you'd have it, but because it's historic, it's been granted a relief by application automatically.

MR. NETTLER: Right. Thank you.

MS. MOLTERSHEAD: I can mention that we did have a special town meeting that the ANC had for us back in May of this year that discussed the redevelopment of all these properties, and we went through the whole concept, as well as all of the traffic issues. We had full traffic reports and really touched on all of the aspects that might affect the community.

So the ANC has blessed all of us with full knowledge, and those meetings have had a number of attendants.

CHAIRPERSON REID: I would agree. I think that your presentation here today has been very exhaustive, and the letter has reflected the fact that apparently Ms. -- what's her name?

PARTICIPANTS: Goldsworthy.

CHAIRPERSON REID: -- Goldsworthy has not seen your project. She probably got notice that there was going to be a hearing here today or saw the sign, but obviously from what you've presented here today, your question about the ambiance being consistent with Georgetown atmosphere, as well as the fact that the parking -- I understand from what you said that across the street you're providing 100 parking spaces. That would certainly do much to diffuse any congestion problems, I would think.

Closing remarks by the Applicant?

MR. NETTLER: We would only request that you issue a bench decision and expedite any order that you can do.

MR. SOCKWELL: One last question since we're on parking. The 100 spaces are allocated for whose use?

MS. MOLTERSHEAD: They'll be open for the general public, but we will also work with the retailers in our projects if they want to have a validated program available.

We also envision that we will be doing valet parking there, and when we close on the purchase of the building across the street, we would like ultimately to have valet parking there as well so that this can be a center for this end of Georgetown for cars coming across Key Bridge and in from Canal Road. In total we should have about 250 valet spaces here when we're done putting the program together.

In that you have extensively dealt with the issue of congestion and parking, from a general parking allocation point of view based on what might have been required as parking for this project had it not been granted the historic status, what would your parking provisions meeting, loading not incorporated into this discussion, but what would your parking considerations have had to be?

MS. MOLTERSHEAD: I don't remember the exact numbers off the top of my head, but we did have Grove, Slade run those numbers for the town meeting, and it was really pretty close

to a wash. As I recall we may have had eight or ten more spaces than would have been required if these had all been new properties.

MR. SOCKWELL: Of course, Lou Slade is nowhere to be seen.

(Laughter.)

MR. SOCKWELL: All right. Thank you.

I move that we approve this project as presented, having met the criteria for the requested variances. The project is a unique approach to the revitalization of the waterfront and alley area west of Wisconsin Avenue between -- what is it, 33rd and 34th? -- and incorporates existing historic features as part of the streetscape amenity, provides sufficient off-street parking for proposed residential development, as well as nearby off-street parking for access to the commercial uses to be proposed.

As well, the character of the project appears to maintain the general integrity of the Georgetown alley-scape as it would have existed previous to 1930 and very tastefully creates a walk-scape that will probably be a fundamental item in the redevelopment of that whole strip of M Street, and perhaps change the character to the more desirable uses that are preferred by the residents and the type of visitors that are being sought in the future.

MR. HOLMAN: Can I just second it?

(Laughter.)

MR. GILREATH: Madame Chair, like I said, I think it's an excellent project, and it's certainly going to enhance the character of Georgetown, and it keeps the historic qualities and so forth. To have these dilapidated buildings to persist there would certainly be a mistake.

So I support the project building.

CHAIRPERSON REID: I, too, concur with my colleagues. I think that the project is very impressive, and by virtue of the fact that it's now going to redevelop an area and buildings that are contributing to blight in that area, it's highly commendable.

And I don't feel that there would be any adverse impact. We have gotten no opposition aside from the letter that we spoke of earlier that was due to perhaps the person not having seen the project, but as far as parking, light, traffic, noise, trash, whatever, it does not appear to pose any adverse impact and does not also appear to impair the integrity or intent of the zoning regulations from that.

MR. SOCKWELL: Let me just ask one thing: security. Security would be -- because it's a public alley, there would be city security in police patrol, but will there be any private security provided for this or is this something that you've thought about?

Because late at night it will become more of a trail.

MS. MOLTERSHEAD: We have at this point done several things from a security standpoint. We have had approved from a design standpoint gates at appropriate points where we feel that people might try to gather or get through dark areas. We've also included in our streetscape plan a lot of lighting that goes along the buildings. So there will be good lighting there.

Beyond that, we have not had a specific program in mind at this point since the residents' garages and courtyard parking will be on an operative gate situation where they could drive in at night directly into a secure spot and then go directly into their units without having to walk back out on the streets.

MR. SOCKWELL: Okay. Thank you.

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Opposed?

(No response.)

MS. BAILEY: Staff will record the vote as four to zero. Mr. Sockwell made the motion. Mr. Kwasi Holman seconded, and issuance of a summary order.

MR. NETTLER: Thank you very much. Good evening.

CHAIRPERSON REID: All right. That concludes the morning session, seven o'clock in the afternoon.

Did you want to take a ten minute break?

We'll take a ten minute break, and then we have two more cases that we hope to wrap up by eight o'clock. Is that good

for everyone here? What about the recorder? Eight o'clock, can you hang with us until then?

Okay. Hopefully maybe even before.

(Whereupon, the foregoing matter went off the record at 6:55 p.m. and went back on the record at 7:06 p.m.)

CHAIRPERSON REID: I'm going to truncate the opening remarks. Let's see. Basically I think that the people who are here are all familiar with the proceedings and the order of the proceedings, as well as not speaking to the Board members and preliminary matters. I'm not going to go through the whole thing, but just simply to say that this is the opening of the afternoon session of the December 8th Board of Zoning Adjustment.

And joining me today are Robert Sockwell and Jerry Gilreath, representing the National Capitol Planning Commission, and Kwasi Holman representing the Zoning Commission.

With that having been said, are there any preliminary matters?

(No response.)

CHAIRPERSON REID: If there are no preliminary matters, does staff have any preliminary matters?

MR. HART: No, Madame Chair.

CHAIRPERSON REID: All right. Please call the first case.

MR. HART: The first case, application of John and

Nancy Krooth, number 16485, pursuant to 11 DCMR 3108.1, which is the new Section 3104.1, for a special exception for an addition to an existing structure under Subsection 400.7(b), from the setback requirements for penthouses in an R-3 district, at premises 1700 35th Street, N.W. That's Square 1297 (phonetic), Lot 16.

Please raise your right hand.

(Whereupon, the witness was duly sworn.)

MR. KROOTH: Good evening. My name is John Krooth. Together with my wife Nancy, we live at 1700 35th Street, N.W., which property is the subject of this special exception, where we have lived for over 18 years.

I am requesting a special exception to the setback requirements for penthouse structures in an R-3 zone to permit the enlargement of an existing penthouse to the edge of the roof as shown by the plan submitted in my application, pursuant to new Section 3104.1 under Section 400.7(b).

The enlargement of the existing penthouse is to provide for the expansion of the existing staircase from my third floor to my penthouse, to provide normal access thereto instead of the existing pull-down stairs, and to provide future space for a potential elevator.

The Board is empowered to grant the special exception pursuant to Sections 411.11 and 3104.1, provided that two things are met.

First, full compliance with the setback requirement

would be unduly restrictive, prohibitively costly or unreasonable to the homeowner, and second, that the intent and purpose of the regulations are not materially impaired by the structure, namely, that the propose addition permitted by the special exception is in harmony with the neighborhood and does not adversely affect the light and air of adjoining buildings.

Now, let me examine these two requirements. I have provided each of you with a copy of my application which discusses in detail and provides a great deal of additional information, including pictures, plans, and other items which I will refer to during this presentation.

Now, let's look at the first requirement. The first requirement permits the granting of the special exception if full compliance with the setback requirement would be, quote, unduly restrictive, prohibitively costly or unreasonable, end of quote, to the homeowner.

And this certainly is the case with my house. In 1997, I built a penthouse, but due to the eight foot setback requirements, the existing support beams and the layout of my house, I was unable to build normal stairs to my penthouse. Instead, I had to use pull-down stairs as the only means of access to the roof, and these pull-down stairs have created many problems.

First, the pull-down stairs are very difficult to use. They are very narrow in depth and only two feet wide. After

climbing ten stairs to the top, you have to take a 90 degree turn, grab a safety bar, and pull yourself up an additional two feet. This can be very difficult to do.

Many times my wife and I have missed the stairs or slipped or slightly injured ourselves. When carrying drinks or food to the roof, we've had accidents where we've dropped these items to the floor below, and you can imagine the difficulty in trying to get large pots and supplies to our roof garden.

About a month ago my wife, while carrying items to the roof, lost her step, fell a couple of stairs, but luckily was able to grab the railing to prevent a major accident.

Several of my close friends with whom we spent a lot of time with are unable to use these stairs due to their physical conditions.

My in-laws sit for us for about a month of the year in our house while we're out of town, and they are 73 and 79 years of age and have great difficulty in using the stairs.

I'm 60 years old, and I'm concerned about my future, too. We have a beautiful roof garden with a beautiful view, and my wife has taken up gardening as a hobby, and you can see from the pictures of the pull-down stairs and the view and our garden, as submitted in the application after the first red divider here.

These existing pull-down stairs have greatly restricted the use of our roof and its garden by creating

difficulty in using them and by preventing many of our friends and, to a great deal, my in-laws and perhaps me in the future from going to the roof garden.

Secondly, the pull-down stairs block the third floor hallway, creating additional problems. Due to the need to keep the air conditioning circulating between the penthouse and the third floor, which are on the same HVA system, and the difficulty of my wife who's five feet tall and under 100 pounds to pull down these stairs, and the noise created by pulling down of the stairs which disturbs someone sleeping in the adjoining bedroom, we have to leave the pull-down stairs down all of the time.

This restricts the passageway of the hall on our third floor. There is less than two feet from our stairs to the wall so that you either have to bend down or squeeze by the stairs to move from our bedroom which is on one of the hall to the laundry room or the linen closet or other bedroom which is on the other end of the hall.

On several occasions members of our family have been hurt by bumping into the pull-down stairs or scratched by an angle or a nail. My daughter standing in the adjacent room to the pull-down stairs bumped into the stairs while existing a room going to the bathroom in the middle of the night and had a mild concussion as a result of it.

Many times my wife scratches herself by squeezing

by the pull-down stairs on her way to the laundry room on the other side of the pull-down stairs. Last month, temporarily forgetting about the stairs, she bumped into them resulting in a large bump on her head that lasted for four days.

In summary, the existing setback requirements have unduly restricted the access to my penthouse and to the use of my third floor which is unreasonable, the cost of which to correct would require a complete gutting and rebuilding of my third floor, the roof support system, and the roof, which would be prohibitively costly.

I've discussed this issue in great detail on page 2, Paragraph 5 of my application immediately before the first red divider.

Now, let's examine the second requirements to granting the special exception. There are two parts to it. The first part states that the special exception may be granted provided the intended purpose of these regulations are not materially impaired by the granting of the special exception, namely, that the proposed addition permitted by the special exception is in harmony with the neighborhood.

In response, the use of a person's home, including recreational areas, is certainly within the intent and purpose of the regulation. The granting of this special exception enhances the use and enjoyment of my residential space by permitting the construction of normal stairs to my roof and allows us to use the

roof and my third floor without existing restrictions, which is within the intent and purposes of this regulation.

Granting this special exception does not affect traffic, occupancy, parking, or any of those similar elements that would adversely affect the neighborhood.

Appearance of the penthouse is also in harmony with the existing penthouse in the neighborhood. The exterior of the existing penthouse is white vinyl and blends very well with existing white brick. The addition is merely an extension of the existing situation.

They say a picture is word 1,000 words. I suggest you examine the before and after pictures immediately after the second divider. There are two sets of pictures there.

The first set of pictures shows no visible change after the expansion of the penthouse. These pictures show views looking north on 35th Street, east on R Street, and west from the southwest corner of 35th and R Street or west on 35th Street in front of my house standing on the West side of 35th Street.

The second set of pictures show the only visible change after the expansion of the penthouse. Looking east from 35th Street in front of my house or south from 35th Street, you can see the expansion area, but it blends in with the preexisting condition and is hardly noticeable.

The second part of this requirement states that the special exception may be granted provided the proposed addition

permitted by the special exception does not adversely affect the light and air of adjacent buildings.

My house is at the northwest corner of 35th and R Street. Accordingly, there are no houses on the east or south side. On the east side of my home is 35th Street, and then a two story elevator building which is approximately 100 feet from the proposed addition.

On the south side of my house, on the opposite side of R Street is the block long front yard of Duke Ellington School. On the west side of my house, the house is approximately 60 feet from the proposed addition.

In all three cases, there's absolutely no effect on the light and air affecting them by this proposed addition. The light and air for the house on the north side of my property will be slightly affected for a very limited time by the proposed addition. In fact, there's less than 1.5 percent effect on its light and shade. During the summertime and only for two hours on half of one window is there any additional shading. During the wintertime and only for four hours on 20 percent of one window and two hours on 20 percent of a second window is there any additional shading. At all other times there's no change to the light and shading of this adjoining house.

These conclusions are based on a light and shade study done on October 25th, 1999, done by the architectural firm of Hepling & Lipp (phonetic) of Vienna, Virginia, whose report

with accompanying drawings are located immediately before the second divider in my application.

Using the guidelines established in the architectural graphic editions, 8th edition, by Ramsley, Sleeper, Hepling & Lipp prepared the enclosed drawings to show the effect that the proposed addition on the sunlight and shading to the property adjoining to the north. These drawings show the southern face of the adjoining house with its eight windows and our home outlined thereon.

There are two sets of drawings, one showing wintertime, one showing summertime. Each set of these drawings compares the lighting and shading of the existing situation to the proposed new situation with the proposed addition. This comparison is shown at five different times of the day.

In examining these diagrams, it clearly shows that during the summer period, using this as one extreme of the -- one time of the year of the extreme position of the sun, there was no additional shading to any of the windows on the adjoining house except during two hours, noon to two, on only one window and only 50 percent of that window.

It also shows that during the winter period, the other extreme of the sun's position, there is no additional shading to any of the windows on the adjoining houses from sunrise to noon and from 4:00 p.m. to sunset. Only for a period from noon to 4:00 p.m. is there any additional shading, only on two of the

eight windows, and only for 20 percent of those two windows.

Thomas Hepling concludes in his November 25th, 1999 covering letter, which is part of my application, quote, the proposed penthouse addition on House B, my house, has a very minor shadow effect on House A, the neighbor's house, end of quote.

In his judgment, he concludes stating, quote, the proposed penthouse addition would not adversely affect the light and air of the adjoining neighbor's house, end of quote.

In conclusion, I feel I have demonstrated that special exception should be granted. First, the existing setback requirements have unduly restricted the access to my penthouse and the use of my third floor, which is unreasonable, the cost to which to correct would be prohibitively costly.

Secondly, the pictures of before and after appearance of the proposed addition clearly show the changes in harmony with the neighborhood and has no adverse effect thereon.

Furthermore, the Hepling report shows there's a minor effect on light and air to the north of my house. There was absolutely no effect on the light and air to any other house.

I have attached to my application a letter of support from the ANC-2E and from five immediate neighbors. To my knowledge, there has been no opposition to this application.

Accordingly, I would ask for a bench decision and a summary order granting the special exception.

CHAIRPERSON REID: Thank you.

In your submission and also in your testimony, I was looking for your demonstrating as how you are in compliance with 400.7. This is what you are coming to us, what you're asking relief under, that particular section, and I didn't see you -- it detailed in your presentation to us.

Would you like to take this time to speak on it?

MR. KROOTH: Four, oh, oh, point, seven requires that in building the penthouse, that it should be set back from all exterior walls a distance equal to the height of the roof whereupon it's located. The height of my roof is eight feet. Therefore, I had to set back eight feet from all exterior walls.

That eight foot setback, being only 27 feet wide from the side to side of my house, left me with 11 feet to deal with, it was just absolutely impossible, and I tried every way to get normal stairs up there in that 11 feet.

CHAIRPERSON REID: Four, oh, oh, point, seven (c).

MR. KROOTH: Four, oh, oh, seven (c) is not relevant here. It should not exceed 18 feet, six inches in height above the roof. It doesn't. It's eight feet.

CHAIRPERSON REID: Oh, okay. What about the requirements under 411? Did you discuss that?

MR. KROOTH: Yes, ma'am, I did. I pointed out in 411.11 is where I got the requirements which specifically state that -- provides the Board shall be empowered to approve the location, design, and number and all other aspects of such

structure, even though the structures do not meet the normal setback requirements, provided the intent and purpose of this chapter and its titles are not being materially impaired by the structure and the light and air of adjacent buildings will not be adversely affected.

And those are the issues that I addressed in this presentation.

CHAIRPERSON REID: Okay. I just wanted you to specifically note the cite, the section that you were discussing.

All right. Board members, any other questions?

MR. GILREATH: I don't have any other questions at this point.

MR. SOCKWELL: Mr. Krooth, in your descriptions of the penthouse you show two distinct areas as future elevator area.

MR. KROOTH: Yes, sir.

MR. SOCKWELL: When your original penthouse permit was issued, what was your request for?

MR. KROOTH: Request of the building?

MR. SOCKWELL: Specifically, there's not a copy of the original permit application or issued permit.

MR. KROOTH: It was to build the penthouse as shown by the diagram that's in the application, and unfortunately I did not go for the special exception. So I built it with the pull-down stairs, and after we got involved in the construction, we found that even the pull-down stairs didn't work because we

couldn't go straight up. We had to go up and then make a 90 degree change in the direction, and I think I've shown in here how treacherous that is by the pictures that are included in this application.

MR. SOCKWELL: See, I guess my question is really more revolved around the proposed use of the penthouse. Generally, for the size of the penthouse and the stair access to the penthouse, it appears to me that it was not requested as a habitable room because it does not have a standard stairwell even at a 36 inch width, which would be a residential stairway width. What you're showing is basically access to what would be a storage attic.

MR. KROOTH: I don't believe I made any restriction in my application for the building permit for this, and that issue was never raised, nor was there any restriction placed on it.

MR. SOCKWELL: All right, because I'm going to say that I'm very familiar with penthouses and the way access has to be handled because the stair that you have there would not have been allowed if the penthouse had been requested as a habitable room. There is no way that the District of Columbia, even with its own problems, would have issued a building permit for such a penthouse as a habitable space as a de facto fourth floor or upper floor with that kind of stairwell because that is the equivalent of a ship's ladder, and it is strictly for access to attics.

My parents have one. It opens up the same way

yours does and closes off the upper hallway the same yours does. You could bounce on it and fall down to the first floor and probably kill yourself.

MR. KROOTH: Sir, I --

MR. SOCKWELL: But I'm just telling you that it's not -- in order to have a habitable room, you have to have proper access and egress. This is not egress or access to a habitable room.

And so I mean, I'm just telling you what I think. Once I look at your file at the District I'll know exactly what you submitted, and if they gave it to you that way, then that's what they did.

MR. KROOTH: I submitted for a building permit. There was no discussion of this whatsoever. I was granted a building permit. I built according to building permit and now I'm coming in to request this normal stairs to go up, which if you're correct would enable me to have a habitable type of situation.

But I abided by what was required from me, and there was no restrict or notice or anything given to me to the contrary.

MR. SOCKWELL: One reason I question it is because you're showing elevator -- future elevator area, which makes absolutely no sense to me.

MR. KROOTH: Well, I hope I never have to use it for that, sir, but --

MR. SOCKWELL: But to ask for it puts you in general compliance with Section 400.7, and yet there is probably no intention to build an elevator because if we projected an elevator shaft down from either of those two areas, it would probably destroy something that you would never want to lose within the house.

MR. KROOTH: If unfortunately I became disabled, I'd have to lose something.

MR. SOCKWELL: Well, that's a --

MR. KROOTH: I've been here for 18 years.

MR. SOCKWELL: It's a good statement. It's a very good statement, but we don't have a floor plan of the house for me to project downward from those to areas to see just exactly what they would compromise.

MR. KROOTH: And I'm not requesting an elevator or asking for an elevator at this time.

MR. SOCKWELL: I know, but you're stating that the penthouse meets elevator requirements, and of course, I am a new member of the Board and quite naive, and so I'm just telling you that I have questions about that.

CHAIRPERSON REID: Thank you.

ANC reports. Is there anyone here from the ANC?

MR. KROOTH: I've included -- pardon me. I've included their letter approving it.

CHAIRPERSON REID: We have the letter. That's from

ANC-2E, dated November 16th, 1999, in which there was a quorum present and a unanimous vote taken in which the Krooth property was approved without objection, and so therefore, they would be afforded the great weight to which they're entitled.

Is there anyone here in support of the application?

(No response.)

CHAIRPERSON REID: Anyone here in opposition to the application?

(No response.)

CHAIRPERSON REID: All right. Closing remarks by the Applicant?

MS. BAILEY: Madame Chair, prior to closing remarks can I just ask a point of clarification? The application was advertised under Subsection 400.7(b). In discussing the application today, the Applicant has made reference to Subsection 411.11.

Now, which one is it? Is it both or which is the correct section of the regulations that you're seeking relief from, sir?

CHAIRPERSON REID: Let me answer that for you very quickly. Under 400.7, it kicks it up to 411. So you have to look at both. Under 400.7(a), it says it shall meet the requirements of 411. That's how you get to that 411. Okay?

MS. BAILEY: So it's advertised correctly then, Madame Chairman?

CHAIRPERSON REID: It is advertised correctly.

MS. BAILEY: Thanks.

CHAIRPERSON REID: All right. Thank you very much.

Closing remarks by the Applicant.

MR. KROOTH: I would certainly appreciate a favorable Board decision at this time.

CHAIRPERSON REID: Summary order, bench decision?

MR. KROOTH: Yes, I would.

CHAIRPERSON REID: Okay. Board members?

MR. GILREATH: Well, Madame Chair, having read the material and listened to the presentation, I feel that if we grant the special exception for the addition to the penthouse that it's not going to effect the impact of shadowing of that building or neighboring buildings. It's not going to impact the air and so forth.

And what he has is certainly a significant hardship, and therefore, I think it's not going to interfere with the intent of zoning, and I recommend that we approve the application.

CHAIRPERSON REID: Okay.

MR. HOLMAN: I would certainly say that the Applicant has more than met his required burden, and I would be pleased to second the recommendation.

MR. SOCKWELL: As a more than casual student of the ordinance, the permitting process in the District of Columbia

operations in this area, I am very concerned about the rationale for the application.

I do not agree that the Applicant has applied for this variance correctly. I disagree with extending the penthouse, which I believe is not being used for the purpose that it should have been approved for in the first place, and while the presentation speaks to the external effects of said penthouse, I disagree with the premise that this penthouse was originally approved for the use that it is being put to, and therefore, I do not approve or agree that it should be extended.

CHAIRPERSON REID: Okay. All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Opposed?

MR. SOCKWELL: Nay.

CHAIRPERSON REID: Thank you.

MS. BAILEY: Staff will record the vote as three to one, motion made by Mr. Gilreath, second by Mr. Holman, with Ms. Reid voting for and Mr. Sockwell voting against. Issuance of a summary order.

MR. KROOTH: Thank you very much.

CHAIRPERSON REID: Thank you.

MR. HART: Application No. 16517, Vestry, St. Patrick's Church, pursuant to 11 DCMR 3108.1, new Section 3104.1, for a special exception under Section 206 to allow the construction of a one story athletic building with gymnasium, and

an addition to and renovation of a classroom of an existing private school in the R-1-B district, at premises 4700 Whitehaven Parkway, N.W., Square 1372, Lot 187; Square 1374, Lot 5.

CHAIRPERSON REID: Okay. Let me just add: are there persons here in opposition to this case this evening?

(Show of hands.)

CHAIRPERSON REID: Go ahead.

(Whereupon, the witnesses were duly sworn.)

CHAIRPERSON REID: I don't know why I'm getting feedback.

Ms. Prince, given the lateness of the evening, we are aware of the fact that there are some letters of opposition in your file. Nonetheless we have read your submission. So you can expedite this as well this meeting and to just basically give us the fine nuances of your particular presentation and let's try to move forward through it rather quickly.

MS. PRINCE: I'd be pleased to. Good evening, members of the Board. Allison Prince with Wilkes, Artis, Hedrick & Lane. I'm here on behalf of St. Patrick's School.

We are here seeking permission to renovate and expand and existing private school in the R-1-B district at 4700 Whitehaven Parkway. The school site is split between two sides of Whitehaven. The school is located on the south side of Whitehaven. The existing playing field on the north side of Whitehaven will be the location for the proposed gymnasium.

The school was established on the site in 1976. It provides education for approximately 440 students in grade levels ranging from child development center through Grade 6.

The addition to the existing school church building -- it's a combined structure -- consists of 10,500 square feet. The new gymnasium proposed for the north side of Whitehaven consists of approximately 12,400 square feet.

We have a wide variety of community groups with whom we've met. Jurisdiction for the BZA application is split between two ANCs, 2E for the south side of Whitehaven, 3D for the north.

We received support or no opposition from both ANCs, subject to a list of conditions which I'm happy to submit for the record.

In addition, we have the support of the Palisades Citizens Association, and several affected neighbors have expressed no opposition.

The design of the project took into account numerous comments from the community which accounts, I think, for the lack of opposition or general support for the project.

I should note that the letters in the record from the Berkeley Terrace Neighbors predate the ANC-3D meeting. The Berkeley Terrace Neighbors' concerns were addressed through a series of changes that were made in response to their concerns. Therefore, at the time of the ANC-3D meeting, the spokesperson for

the Berkeley Terrace Neighbors was very pleased with the project and content that we had gone out of our way to address the concerns.

I have today here as witnesses Peter Barrett, who's the head of the school. I'd be pleased to submit his testimony for the record or he can hit on the main points very briefly.

CHAIRPERSON REID: Okay.

MS. PRINCE: We also have Matt Poe of Moore, Poe Architects, who can present the drawings briefly, and we have Lou Slade, from Grove, Slade, who can discuss traffic impacts if you need to hear from him or we can present his testimony for the record.

One thing I wanted to explain briefly was that currently there's an enrollment cap or 440. We are seeking no change in that. There is a maximum permitted staff number of 60, and because of the specifics of the earlier orders governing the property, there is no faculty cap. You're probably more used to seeing a faculty cap. We only have a staff cap.

If the Board has no questions, I'd like to proceed with Peter Barrett's brief testimony and then on to Matt and Lou only if you need to hear from him.

CHAIRPERSON REID: Okay. Sure, I'd like to hear your comments.

MR. BARRETT: My name is Peter Barrett. I'm in my sixth year as Head of School at St. Patrick's Episcopal Day

School.

We will submit my testimony, but if I can touch on just some of the sections of that, in the 25 years that St. Patrick's Episcopal Day School has been located at 4700 Whitehaven Parkway, our educational program has changed, as has the thinking about the kinds of instructional spaces the children need, how to group them most effectively for instruction within those spaces, and the kind of technology that are available to enhance that instruction.

The attractiveness of its program has also grown so that St. Patrick's is now the school home to more children than ever before and one of the premier independent elementary schools in the Washington area.

The constraints of our 25 year old physical plant increasingly assert themselves to the point now that we have had to rethink our configuration and use of space. In response our community has developed a new campus master plan centered around core facilities shared across grade levels, such as school libraries, additional art spaces, and a gymnasium that will enable us to meet the needs of our current student body more effectively.

Please remember as Allison said that the campus master plan seeks no increase in the number of students who attend St. Patrick's and no change in the grade levels we offer. There are no additional academic classrooms planned. Any new classrooms will replace existing instructional spaces that will be converted

to other uses.

No additional grade levels, no additional students, no additional teachers, no additional cars. Just a school that with a creative mix of new construction and renovation of existing space is better able to meet the needs of its current students, is architecturally more attractive and more consistent with the design of St. Patrick's Church, and can offer faculty, staff, and visitors more than double the parking spaces that have been available to lessen its impact on Whitehaven Parkway.

I'll skip over the section that discusses the first phase of our plan that was completed in the last summer and early fall that substantially increase the parking that was available along the south side of Whitehaven Parkway.

The second phase of our campus master plan for which we seek your approval tonight will have a similarly ameliorative impact on Whitehaven Parkway and its immediate environs. In the conception, sizing, and design of the proposed 12,000 square foot building expansion on the west end of the building and the proposed 12,000 square foot gymnasium across Whitehaven parkway adjacent to our playing field, we offer improvements that are fully consistent in scale with the existing building and its surroundings, and for those of you who find the existing school building all too boxy next to the beautiful church, even more attractive.

This second phase includes new nursery school and

elementary school libraries to replace woefully undersized spaces, two new science labs to replace current labs that will be displaced when we move administrative offices closer to the schools, redesign front entrance; a new early childhood physical development space for nursery and kindergarten children in part of the space vacated by our current gymnasium; and a dining area so that children need not eat their lunches at their desks.

A good example of the impact of the master plan are the redesign art facilities. The school schedule currently moves approximately 300 children through a single art room twice a week, creating a significant bottleneck that affects instructional time in all subject areas at virtually all grade levels.

The master plan calls for two separate art classrooms, a separate kiln room, and an adjacent gallery space to display our children's work. This is what I mean by meeting the needs of our current student body more effectively as new core shared facilities, such as the art rooms enable us to adjust the time, space and child relationship that currently exist.

We respectfully request that the Board of Zoning Adjustment grant our request for a special exception to our campus master plan.

Thank you for your patience.

CHAIRPERSON REID: Thank you.

MR. POE: Thank you.

My name is Matthew Poe. I'm a principal with the

firm of Moore, Poe Architects.

St. Patrick's owns three independent parcels of land. On the south side of Whitehaven Parkway, the existing church and school building occupy a portion of a 74,998 square foot parcel. On the north side of Whitehaven Parkway, St. Patrick's owns a 90,173 square foot parcel that is used for a 32 space surface parking area and a general purpose recreation field. And farther down Whitehaven Parkway, St. Patrick's owns a small residential property which is not part of this proposal.

The proposed master plan includes two main components: additions and renovations to the existing church and school building, and a gymnasium building that includes surface and structured parking to accommodate 68 parking spaces.

The site plan on the right also shows the location of the 48 diagonal parking spaces and public sidewalk that was completed this past summer.

The additions and renovations to the existing building are in three areas: the interior renovation of the existing church and school building, an enlarged main school entry and reconfigured part of the building that includes a roof over-build, and a three story, 10,500 square foot library and science academic addition.

As outlined in the BZA application, all parts of this proposal comply with all the appropriate zoning regulations and restrictions for the property.

The additions to the school building have been designed to be compatible with the design of the existing church building which was completed in 1985. This was achieved using similar size and massing and similar materials and detailing.

The addition to the west of the existing building will include classroom space, a new science center, and a main school library. The proposed front entry will include an enlarged main school stair and entry, together with the renovation of the school which relocates the administration immediately adjacent to the front door. This will provide the school with a manageable security strategy.

The roof over-build provides additional storage school space and also marries the addition architecturally to the preferable aesthetic of the church.

The north parcel will be developed to include a 12,400 square foot gymnasium building, a surface and structured parking area for 68 spaces, an elevator tower connecting the parking level, the main gym level, and the playing field level, which is almost 40 feet above the parking level.

As outlined in the BZA application, the site plan shows maintaining the current landscape screen along the western edge of the property and providing a new landscape screen along the southern edge of the playing field. These evergreen screens will effectively shield the surrounding residents from any view of the proposed gymnasium building.

The exterior design of the gymnasium building also echoes the aesthetic design of the existing church by using compatible massing materials and details. The main entry to the building is from Whitehaven Parkway, and the main gymnasium floor is up one level. The ground level is for the 68 parking spaces approximately half outside and half covered by the gymnasium building.

The main gym floor has a full size basketball court, boys and girls restrooms, and locker facilities, a teacher's office, storage, and a performing platform.

The elevator tower is to the rear on the northeast corner of the building.

From the field level, the main ridge of the gymnasium is approximately ten feet above the field, and the elevator tower is approximately 11 feet, eight inches above the field.

The proposed gymnasium reflects the input of several neighborhood associations, as well as individual neighbors, all seeking to minimize the impact of the proposal on their neighborhood. The building has undergone many design revisions to accommodate their concerns while still meeting St. Patrick's programmatic needs.

During the course of our meetings, the size of the building was reduced by almost a third. The height has been dramatically reduced, and the building repositioned on the site as

far to the east and south as possible.

As reflected by the letters of support included in Section H of the application, I am confident that the architectural proposal before you represents a responsible and responsive solution.

The conditions and restrictions for this proposal listed on pages 6 and 7 of the application are also testaments to this collaborative effort. Therefore, it is my professional opinion that this application will have no adverse impact on the neighbors, the neighborhood, and the greater community.

Thank you.

CHAIRPERSON REID: Questions, Board members?

MR. GILREATH: Could he clarify the addition, those two sides? What's there now and what are you adding to them? I'm not sure what's existing and what's the addition, which is which.

In the center, is that existing or is that also the addition, too? The center portion with those -- in the center is the addition?

MR. POE: If we look at the line drawing, this is actually the existing building. That's the church building, and this is the school building, which dates from the middle '70s. Again, the church was from about the mid-'80s.

MR. GILREATH: I see.

MR. POE: The proposal is for an addition in this area, which is shown in the lower drawing, an enlarged main school

entry where the entry is right now, just enlarged, and this roof over-build over top of the existing gymnasium in that area.

MR. GILREATH: I see. Very good. Thank you. That's very helpful.

CHAIRPERSON REID: On the other picture that's under that particular poster on the side, tell me again what that big building is, the structure.

MR. POE: This is the gymnasium building that's --

CHAIRPERSON REID: No, on the side of the gymnasium building.

MR. POE: Right there?

CHAIRPERSON REID: What's that, un-huh?

MR. POE: This is all surface parking here, which then stretches underneath the gymnasium here. If you look at the side elevation, you can see that Whitehaven is all the way down to the left of the drawing and the ball field is all the way up to the right. That difference in elevation is about 48 feet.

CHAIRPERSON REID: Well, what's that gray --

MR. POE: That's a large retaining wall to the back of the surface parking so that the ball field, the playing field is up behind that wall and behind the building.

CHAIRPERSON REID: Oh, okay.

MR. POE: Back here.

CHAIRPERSON REID: Okay.

MR. POE: That wall that you see right there is

right there in the distance behind this part of the elevation.

MR. POE: All right.

MR. SOCKWELL: And if you go back to the site plan for that, that wall is what's in shadow along this point right here.

MR. POE: Exactly.

MR. SOCKWELL: That's that huge wall.

CHAIRPERSON REID: Okay. All right. Did you have a question?

MR. SOCKWELL: Yes, I do.

You answered -- well, actually you answered one of my questions, which was in regard to the number of additional classrooms to be provided, and you said there would be no new classrooms even with the reconfiguring of the existing gymnasium into a classroom and resource area on the what would, I think, be the third floor or second floor? Is it the third floor? The third floor, yeah.

MR. BARRETT: There would, indeed, move from, say, one art room to two art rooms.

MR. SOCKWELL: Two art rooms. I saw that.

MR. BARRETT: That is true. There are no additional classrooms. My point there, that in order to house additional students; that's my point, that there will be what are, in effect, additional instructional spaces, but they're not home room classrooms. They are, instead, shared facilities across

grade levels.

MR. SOCKWELL: By design they would not be home room spaces.

MR. BARRETT: That's correct.

MR. SOCKWELL: But they could be adaptable as home room spaces in the future. I'm not saying that that is what you propose. I'm just saying that they are -- they are rooms that are not defined in such a way that they could not be altered of purpose.

MR. BARRETT: And Matt can help me with this. The only point I would make, that in designing them for particular purposes, such as the science rooms to be used as labs and science space, the art spaces being designed for that specific purpose, you're correct. It doesn't preclude their use as a home room classroom in the future, but they will be designed to a specific use that is not a classroom or a home room space.

MR. SOCKWELL: And in terms of staff offices, how many new staff offices are being provided in this?

MR. BARRETT: I'm not sure what our net is. We may pick up a couple. We have a number of shared office space situations now. We barely -- in fact, we don't provide sufficient office space for our -- for teachers who are not home room teachers now. So we will pick up maybe a couple, three at most.

MR. POE: Right now the plan includes a separate science office, which there is one right now; art; as well as

librarians.

MR. SOCKWELL: Okay. So you basically intend to provide a more adequate breakdown of office to functional --

MR. BARRETT: Yes.

MR. SOCKWELL: -- area relationship.

MR. BARRETT: Yes. Once again, the idea is not to provide for additional faculty members, but to provide better for those faculty members we already have in place.

Also, with regard to the buffer, buffers around the parking lot, Mr. Poe --

MR. POE: Yes.

MR. SOCKWELL: -- your tree plan shows large, mature trees along the Whitehaven frontage. I assume that those trees do not exist now.

MR. POE: There is a great deal of existing tree plantings between the roadway at Whitehaven and where construction will be. The attempt is to try to save as many of those as possible. The evergreen screens that I was speaking to are this existing screen there, which will be maintained as part of the original BZA order from 1985, I believe, and this is the screen that we're talking with right now. This grouping of trees right through here is all existing.

MR. SOCKWELL: All right. There were complaints in the opposition letters that included require or desire that the roof of the new gymnasium facility not exceed the elevation of the

ball field. I assume that those letters which were written on November 1st and 2nd are to some degree mooted by your ANC conditional approval dated November the 16th.

MR. BARRETT: Yeah, if I might respond to that, that petition immediately predated a meeting, a Sunday night meeting that Matt Poe and I had with the Berkeley Terrace residents on Berkeley Terrace, the home of a resident, and the conditions that emerged in the ANC were those that we offered in collaboration with the neighbors, and it was our understanding that at that time that they were fully consistent or met the wishes of the Berkeley Terrace residents.

MR. SOCKWELL: Okay. That's a huge retaining wall which in some way, shape or form is there anything that you can do to reduce the verticality of it as a monolithic mass?

MR. POE: During the design process we looked at a number of different solutions that actually had that wall in two parts, one there and one there, each about the 18 to 20 foot setback, and I think during some value engineering exercises, we felt it more affordable to do a single one which also provided the planting space from the edge of the ball field in between there to accommodate that --

MR. SOCKWELL: Yeah, I'm thinking of it mostly from the Whitehaven Parkway point of view. I mean nobody is going to see it from up above.

MR. POE: Right.

MR. SOCKWELL: But from below it is a big wall.

MR. POE: That wall as it's shown on the drawings right now is approximately 38 feet tall.

MR. SOCKWELL: Okay, and what's existing there now, just a gentle slope?

MR. POE: Yes.

MR. SOCKWELL: Okay.

MR. POE: Not gentle, but a slope.

MR. SOCKWELL: A slope, but a landscaped or --

MR. POE: It is -- it does have grass. The difference between the existing surface parking and the ball field it about 35 feet.

MR. SOCKWELL: What does that building face directly across Whitehaven? Does it -- because the site plan is segmented, it's difficult to understand exactly what the relationship is now.

MR. POE: Okay.

MR. SOCKWELL: So what's the next property to the west?

MR. POE: This area?

MR. SOCKWELL: Yes, sir.

MR. POE: This area is owned by the Lab School.

MR. SOCKWELL: Okay. That is the Lab School.

MR. POE: And the new construction for the gymnasium and pool building stretches from about this area up to

right in there.

MR. SOCKWELL: Okay.

MR. POE: And the art and academic building that they built is right in that area.

MR. SOCKWELL: So we don't face any residential properties at all directly across the street?

MR. POE: The residential properties, there are three on the south side of Whitehaven Parkway that are owned by the Lab School, which are down here, and there are three on the north side of Whitehaven which start about right there, there, and there, the middle one of which is owned by St. Patrick's.

MR. SOCKWELL: Okay. Let's see. Anything else? No, I think I'm --

CHAIRPERSON REID: Can we go forward?

MR. SOCKWELL: Yeah, I have serious problems with the lateness of the hour, but no problems with your design.

CHAIRPERSON REID: Thank you.

All right. Now, we're at the ANC report. First, let me address Mr. Slade, the traffic report. We don't really need to have this, Mr. Slade. Thank you very much for your indulgence, being here so late, but we do have your report in the submissions, and we have read it. I have no questions about it, and I have no problem with it.

MR. HOLMAN: Nor I.

CHAIRPERSON REID: Okay.

MR. GILREATH: Well, there's no increase in the personnel of the students, is there not?

CHAIRPERSON REID: No.

MR. GILREATH: So I have no problem.

CHAIRPERSON REID: And so there is no ANC representative here. Nonetheless, both ANCs did submit to us their letters. ANC-2E, with a quorum present, their letter is dated November the 11th. This states in pertinent part that there was a quorum present. They passed a motion that they would support St. Patrick's application. This motion is not intended to support any change, revision, or alteration to St. Patrick's current conditions or student enrollment levels, and the motion was passed unanimously. So, therefore, they will be afforded the great weight to which they're entitled.

Let's see. Was that the ANC that had the conditions?

MR. GILREATH: That's 3D, yes, that have the conditions.

CHAIRPERSON REID: Three D? Okay.

And then from 3D we have a letter; actually it's a resolution, and do we have a letter from them in which they take a position?

Well, within this resolution, it's not a letter, but it says that, "Whereas, ANC-3D conducted a duly announced" and duly monthly public meeting; five commissioners were present,

consisting of a quorum, and they did take a vote. So, therefore, they also will be afforded the great weight to which they're entitled.

They approved the application with conditions. Now, the conditions that we have here appear to be the same conditions that are contained within this application. So you all are amenable to those conditions.

I note that they did not include any conditions in regard to the number of students.

MS. PRINCE: No, because there's no change. Four, forty.

CHAIRPERSON REID: Okay, and also the hours of operation, they remain the same, no change.

And what about the parking spaces? Even though you only are required to provide 62, you're providing 68?

MS. PRINCE: Correct, but that will show on the plans.

CHAIRPERSON REID: Okay.

MR. GILREATH: Madame Chair, isn't there a campus plan that has all of these provision of the cap and so forth? Is there a campus --

CHAIRPERSON REID: Did you already have a campus plan?

MS. PRINCE: Campus plans are not required for schools.

MR. GILREATH: Well, is there any kind of original agreement whereby you establish a ceiling for the number of students and so forth?

MS. PRINCE: Not really. When we first established on the site, it was a smaller number of students, and as we come back, we need to seek a specific increase from the Board if one is deemed necessary, but we're not changing the enrollment. So the last order contained the cap on the number of students.

MR. GILREATH: Okay. So there's an order that existing that establishes that.

MS. PRINCE: Yeah. And you can simply reiterate that cap again if you so choose.

MR. GILREATH: I don't think it's necessary as long -- just so that there's something with --

MS. PRINCE: Right. There's an order with a cap.

MR. GILREATH: Okay, fine.

CHAIRPERSON REID: And the conditions as stipulated will be contained within the order.

All right. Persons or parties in support of the application. We received letters from the Palisades Citizens Association.

Oh, before we go to that, there is an Office of Planning report in which the Office of Planning has recommended that this application be approved. Basically in the analysis, they spoke to there be no increase in the number of employees;

that with respect to the zoning regulations it is not likely to become objectionable to neighborhood property because of noise, traffic, number of students, or other objectionable conditions.

There is no problem in regard to the noise and number of students, particularly after construction is completed. I suppose that while construction is going on that it would be done in such a manner as not to be a nuisance or to interfere with the quiet enjoyment of the persons who live there.

Traffic. It says as mentioned above, school officials have been working with DPW on solutions to the cumulative impact of increased building in the area, and they will continue to make every effort to limit the number of cars coming to the site each day in the patrol -- drop off and pick up, and that's basically it.

Now, as I said before, we do have a letter of support from the citizens association. That's the only letter of support?

MR. SOCKWELL: No.

CHAIRPERSON REID: That's up to the ANC.

MR. SOCKWELL: Oh, yeah.

CHAIRPERSON REID: Then persons and parties in opposition, there's no one here in opposition. However, we had four letters that were basically form letters, and I suppose you are familiar with them from a Ms. -- I can't make out. It looks like McCowie or McCluie (phonetic).

MR. BARRETT: As I said, that's -- we met.

CHAIRPERSON REID: We know that.

MR. BARRETT: That's November 1st, I think.

CHAIRPERSON REID: From Waterson, Mr. and Mrs. Waterson; McConey -- from it looks like Luzanne Beale and Barry Grout. I just can't make out the last one. Can you?

MR. BARRETT: The content is the same and --

CHAIRPERSON REID: It's a form letter that everyone just basically signed, but in your testimony today you did proffer to us that this problem, especially in regard to the -- the letters basically said that they were opposed to it only from the standpoint of it having any negative impact, if it does, and that basically while they're voicing their concerns, they basically wanted to make sure that it would be known that they were not opposed to the general concept; that they wanted us to make sure that they would not have to see it or listen to it or see the steam of smoke or plume coming from it, and that has been addressed. So --

MR. SOCKWELL: And may I say, Madame Chair, that there were no letters of opposition that came in subsequent to the ANC meeting that was held.

CHAIRPERSON REID: Exactly.

MR. SOCKWELL: Was that a public meeting?

MR. BARRETT: Yes.

MR. SOCKWELL: Thank you.

CHAIRPERSON REID: Okay. So then we move to closing remarks by the Applicant.

MS. PRINCE: In the interest of time, I would simply like to note, given the lack of change in enrollment and all the numerous conditions that have been agreed to by the Applicant, we would request a bench decision and a summary order.

CHAIRPERSON REID: Board members, I would move that we approve this application. I think that the applicant has demonstrated their compliance with the regulations required for special exception under 206.2, and that they have also demonstrated that there is minimum adverse impact, as well as the fact that they have met with ANC members to try to ameliorate or to diffuse any other issues that may have emerged with the conditions that will become a part of this particular order.

It does not appear to impair the intent or integrity of the zoning regulations or maps.

MR. HOLMAN: Yes, I'd be pleased to second the motion, Madame Chair.

CHAIRPERSON REID: All right.

MR. GILREATH: Madame Chair, I think the design of the addition and the gymnasium is, in fact, very compatible with the existing church and the surrounding area, and so it adds to and supports rather than in any way conflicts, and since there's no increase in personnel or students, I don't perceive -- there are certain minor adjustments for the District of Columbia so that

I feel they've met their burden of proof, and I certainly support approving the special exception.

CHAIRPERSON REID: Okay. Did you have a comment, Mr. Sockwell?

MR. SOCKWELL: Yeah, I just wanted to make sure of one thing. I assume that the term "addition," which is not defined in the ordinance, applies to new stand alone buildings as considered in addition to the use as a --

MS. PRINCE: Exactly, the private school use.

MR. SOCKWELL: Okay. So I am -- I believe that the project is very tastefully designed, unifying the forms from the existing church and improving the form of the existing classroom building with the east -- well, west end extension.

I believe that the gymnasium building meets the intended purpose of providing the proper facilities without increasing on the residential view side or, let's say, changing on the residential view side the most important aspects of view from the community to the north by not extending more than 12 feet above the level of the playing field and being landscaped in such a manner as not to intrude upon the generally natural character of the adjacent grades at the street line. As well, it does not face on the Whitehaven Parkway side anything that would be adversely affected.

And the classroom that are being generated apparently do not contribute to an increase in either faculty or

student population for the school. Therefore, it is in harmony with enrollment caps and would not necessarily create any adverse effects traffic-wise, the additional what is it? Forty-nine spaces, 48 spaces that were accomplished along Whitehaven Parkway side were a benefit to the community at large, as well.

CHAIRPERSON REID: Thank you.

MR. GILREATH: Madame Chair, do we need to include in the order these conditions or is simply the agreement of the ANC adequate?

CHAIRPERSON REID: I think that these conditions are consistent with the ones of the ANC, are they not?

MS. PRINCE: They're identical.

MR. GILREATH: But do we need to include those?

CHAIRPERSON REID: We are.

MR. GILREATH: They will be included?

CHAIRPERSON REID: They will be included.

MR. GILREATH: Okay. I just wanted to know. Okay. Thank you.

CHAIRPERSON REID: Yes. As submitted.

Okay. All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Opposed?

(No response.)

MR. BARRETT: Thank you.

MS. PRINCE: Thank you.

MS. BAILEY: Staff will record the vote four to zero, Reid motion, Kwasi Holman second, with the conditions as identified in the record.

CHAIRPERSON REID: All right. Now, it's now ten after eight. We have two more cases. Is everyone all right with the time to try to get through these last two cases?

MR. SOCKWELL: Ms. Samadani is here, yes. Mr. Chang is here. Fine.

CHAIRPERSON REID: Okay. The next case.

MR. HART: The next case --

CHAIRPERSON REID: Okay. Just a short moment, three minutes.

(Whereupon, the foregoing matter went off the record at 8:12 p.m. and went back on the record at 8:15 p.m.)

CHAIRPERSON REID: Okay. Again, we'll resume.

Again, I must apologize for the late hour. I think that we had a rather ambitious agenda today, and as such, we're sitting here now almost something after eight, going on 8:30. So let's try to do our best to try to get you out of here as soon as we can.

All right. Go ahead. First, call the case, please.

MR. HART: Application No. 16527 of Basil Gogos Living Trust, pursuant to 11 DCMR 3108.1, new Section 3104.1, for

a special exception under Subsection 2000.6, to establish a new, nonconforming retail beverage use to an existing nonconforming retail grocery store for the basement, the first, and second floors in an R-4 district at premises 2633 Sherman Avenue, N.W., Square 2884, Lot 77.

CHAIRPERSON REID: Okay.

(Whereupon, the witnesses were duly sworn.)

MR. CHANG: My name is Soon Chang, who is a business consultant and representing this matter for Applicant, Mr. Terry Foster, who is here with me.

Since September of 1996, Mr. Foster own and operate a small grocery store on Sherman Avenue, and he's working hard to supporting his family.

However, from the Florida Avenue to Georgia Avenue, on that block which is Sherman Avenue, has seven different stores who has a beer and wine license. He's struggled to supporting his family and survive himself, which is not quite he made out.

Therefore, I met him two years ago to discuss about these matters, but financially he has hard times, hardship to follow. So most recently we met with ANC commissioners and chairperson, and we attended several meetings of ANC, and we obtain unanimous supporting for this application.

This is the second time people are voting last nine years, and then everybody well prepared the statement. However, I just came here with my friend to respectfully requesting for the

grant of this application, and what I would like to indicate in this matter is, okay, it will not adversely affect on peace and quiet. He knows the area, and pedestrian traffic safety, and any of the parking problems or property value.

CHAIRPERSON REID: Thank you.

MR. GILREATH: Madame Chair, could I ask a question at this point?

CHAIRPERSON REID: Un-huh.

MR. GILREATH: Are you asking or is the Applicant asking that you replace the grocery store with the beverage store or you simply want to put this in as an additional service?

MR. CHANG: Yes, we're trying to adding for ABC license.

MR. GILREATH: So you will keep the grocery operation, but you want to add the beverage component part.

MR. FOSTER: Yes.

MR. GILREATH: Okay, fine. Thank you.

CHAIRPERSON REID: What is a beverage store? Is this a liquor store?

MR. CHANG: Yes.

MR. FOSTER: Yes.

CHAIRPERSON REID: Then why is it not -- why is it not being referred to as such?

MR. CHANG: Beer-wine store?

CHAIRPERSON REID: It's a beer and wine store?

MR. CHANG: No, I mean, he couldn't get a beer-wine license, but we can eliminate the size of the alcohol and maybe we waiver the liquor sale there because of regulation indicate that within 400 feet between the stores, same class, we cannot apply for that. So only chance he has is Class A, beer, wine, and liquor license.

CHAIRPERSON REID: But what's the difference between that and a liquor store?

MR. CHANG: Because of liquor store selling high alcohol content items, which is whiskey or, you know, high content wines, high content alcohol wines.

CHAIRPERSON REID: And this store will be selling what?

MR. CHANG: Pure wine and liquors, little size of the liquor, but we're going to continue working with ANC and we go by their meeting to, you know, follow the --

CHAIRPERSON REID: The ANC? I didn't get a letter from the ANC.

MR. CHANG: Yeah.

CHAIRPERSON REID: But --

MR. CHANG: Yeah, I attached the supporting letters and all.

MR. GILREATH: How close is this store to the next store that sells alcoholic beverages? You said it's a 400 foot requirement.

MR. CHANG: Right.

MR. GILREATH: So the other stores, how close are they to his establishment?

MR. CHANG: The other one is just about 380 or 300 -- both has a beer-wine license, and only one liquor store is listed on Sherman Avenue, which is about two blocks away. I mean about five, 6,000 feet away.

MR. GILREATH: That 400 foot -- so no problem with that.

MR. CHANG: No, no problem with the ABC license. I just trying to get a, you know, fair opportunity. He can compete with someone who has a license.

MR. GILREATH: Okay. Well, we're just trying to figure out what the facts are.

MR. CHANG: Yeah.

MR. GILREATH: Okay. Thank you.

MR. HOLMAN: Madame Chair, can -- oh, okay.

No, I just wanted to -- so you're basically saying that in order to be competitive with the other stores along the street, that you feel you need to add this product mix to make you be able to stay in business --

MR. CHANG: Yes.

MR. HOLMAN: -- is essentially what you're saying.

CHAIRPERSON REID: But did you -- with the petition that you have, these are what, these patrons, people who --

MR. FOSTER: Within the neighborhood, yes.

CHAIRPERSON REID: And how many liquor stores are there within --

MR. FOSTER: There is one on that street, on Sherman.

CHAIRPERSON REID: On Sherman and Columbia, is it?

MR. FOSTER: No, it's at --

MR. CHANG: Yes, I believe Sherman and Columbia corner -- oh, Harvard corner.

MR. FOSTER: Harvard, it's on Harvard, yeah.

CHAIRPERSON REID: Harvard.

MR. SOCKWELL: It's on the west corner.

CHAIRPERSON REID: Then on Columbia and Sherman there's a store, but I think that they sell beer and wine as well.

MR. FOSTER: Yeah, but not liquor, yeah.

CHAIRPERSON REID: And then there is -- because I know that neighborhood very well -- on the corner of Harvard and 11th, there's a store that sells beer, and I think wine as well.

MR. SOCKWELL: There's a store on the corner of Sherman and Euclid.

MR. CHANG: Yes.

CHAIRPERSON REID: That sells beer and wine?

MR. SOCKWELL: I think they sell beer and wine.

MR. FOSTER: Yeah.

CHAIRPERSON REID: And you said you do not have to

go before the ABC Board?

MR. CHANG: We have to go to ABC Board after the grant by the BZA.

MR. SOCKWELL: Now, the license that you're going to apply to this store is a license that you are transferring from another location?

MR. FOSTER: No, it's a new license.

MR. SOCKWELL: This would be a new license.

MR. FOSTER: Yeah.

MR. SOCKWELL: I assume -- you state in the application that you are proposing to have a retail beverage store. To what extent will you continue to sell any grocery items?

MR. FOSTER: Oh, that's part of the plan to keep the groceries. I don't want just liquor. If I have to just go liquor only, I don't want it. I want to be able to have the groceries and variety along with everybody else.

MR. SOCKWELL: Okay.

MR. FOSTER: That's all.

MR. SOCKWELL: Two other questions. One, I assume that in your store you do weekly or monthly accounts with your customers.

MR. FOSTER: Yes.

MR. SOCKWELL: And I will assume that in the liquor side of your business, you're really going to be more of a half

pint, pint store than a -- on the liquor side more than likely, based on the neighborhood.

CHAIRPERSON REID: No, but they said that they weren't selling liquor.

MR. FOSTER: I don't want to really carry that much liquor. I just really want beer.

MR. CHANG: It's been already discussed with the ANC. We attend several meetings, and we voluntarily agreed not to sell in small size of the liquor.

MR. SOCKWELL: Which ANC have you been meeting with?

MR. CHANG: One B.

MR. FOSTER: Mr. Skinner, Mr. Guyat (phonetic).

CHAIRPERSON REID: Guyat?

MR. FOSTER: Yeah.

CHAIRPERSON REID: And what was the ANC's response to this store, this application?

MR. FOSTER: They support it.

MR. SOCKWELL: We have not gotten a letter from the ANC.

MR. CHANG: That's what I just gave with my --

MR. SOCKWELL: Oh, I see.

CHAIRPERSON REID: All right. This store is a convenience store like some of the other stores that allows you to sell beer in addition to the groceries. Are you saying that it's

not a store where the cheap commodity that you are selling would be liquor and wine and beer, but rather groceries and other items, variety items, with your having the wherewithal to be able to provide beer --

MR. FOSTER: Yes.

CHAIRPERSON REID: -- as well?

MR. FOSTER: Yes.

CHAIRPERSON REID: Hum.

MR. CHANG: I indicate there on the application hoping we can get a grocery and retail beverage license.

CHAIRPERSON REID: Okay. Did you wish to state something, sir?

MR. CHANG: No, I indicate there on application hopefully we can get a grocery license --

CHAIRPERSON REID: All right.

MR. CHANG: -- and beverage license. However, that liquor license -- retail beverage license also can permit to selling vacuum packed food items, such as potato chips, like that.

MR. SOCKWELL: Sure.

MR. CHANG: Pack of gum.

CHAIRPERSON REID: You're the owner of the building, sir?

MR. FOSTER: No.

MR. SOCKWELL: Mr. Chang is the owner of the building.

MR. CHANG: No, I'm not the owner.

MR. SOCKWELL: You're not?

MR. CHANG: I'm just representing the owner. I have permission, which I attach the statement from the Gogos Living Trust, Ms. Patricia.

CHAIRPERSON REID: What -- all right. What is the Basil Gogos Living Trust? What's that?

MR. CHANG: Someone who owns the building is, I guess, Mr. Basil Gogos, who is -- who is represented by one of the Gogos family, Patricia A. Gogos, and I obtain a statement from the -- we can apply for the application.

CHAIRPERSON REID: Wait, wait, wait. Who owns the building?

MR. CHANG: Basil Gogos Living Trust.

MR. FOSTER: He owns the building.

MR. CHANG: He's alive but --

CHAIRPERSON REID: Okay. But what is your role?

MR. CHANG: Me?

CHAIRPERSON REID: Yes.

MR. CHANG: I am business consultant, and I supporting him to be before the Board.

CHAIRPERSON REID: So you're here to speak on his behalf, to represent him --

MR. CHANG: Yes.

CHAIRPERSON REID: -- as his business consultant.

MR. CHANG: Yeah, more like a personal friend, but he and I have known each other for a long time.

MR. SOCKWELL: Mr. Foster is --

MR. FOSTER: Yes.

MR. SOCKWELL: -- the tenant?

MR. FOSTER: Yes.

MR. CHANG: Yes.

MR. SOCKWELL: So you lease your space from the Gogos Living Trust.

MR. FOSTER: Yes.

MR. SOCKWELL: Mr. Chang is known to you and to Patricia Gogos?

MR. CHANG: I spoke with her on the phone, and I explained to her, and he's the one who been seeing with her.

MR. GILREATH: Did you say in the meeting with the ANC that there had been a voluntary agreement that you would limit the beverages to just beer or that there would be other things, too?

MR. CHANG: Trying to sell only beer and wine. Only reason we apply for the Class A beer, wine, and liquor license --

MR. FOSTER: That's the only one we can get at this time.

MR. CHANG: ABC Board regulation, we couldn't apply for the just beer and wine license. So we followed up ABC

regulations, which is he currently open on Sunday, but after we obtain ABC license, if we can obtain ABC license, he has to close on Sundays.

MR. FOSTER: Sundays, yeah.

MR. GILREATH: Well, Madame Chair, if we were to approve the application, can we restrict that by using the ANC agreement, saying that one of the conditions that they would sell only beer and wine? Do we have that authority?

CHAIRPERSON REID: Where is the ANC agreement? I thought I'd seen that.

Okay. Yes. Yes, we could.

MR. SOCKWELL: Doesn't the ABC Board determine what the licensee's restrictions are?

MR. FOSTER: Right, exactly.

MR. SOCKWELL: Not us.

MR. FOSTER: Right.

CHAIRPERSON REID: Oh, I thought that we could. Oh, you know, I'm sorry. That's right. We cannot condition --

MR. FOSTER: Right.

CHAIRPERSON REID: -- the business. We can't condition the business. We can only condition the use of the property itself. So we can't. Sorry.

Okay. Now, ANC, there's no ANC representative here, but we do have an ANC report, and I guess we'll have to waive the records to accept this into our -- waive our rules and

accept it into the record.

And it says this is a letter of support from ANC-1B, Nick Ames, Chairperson, but it's a single member district. This was not -- wait a minute. It says -- oh, okay. Now, what it says is, "On behalf of the ANC members, I am writing this letter in support. Please note that in our most recent ANC-1B joint meeting we unanimously voted in favor of the zoning change proposal. There was one vote of opposition" -- "there was not one vote of opposition to the proposal. Therefore, in conclusion, I urge you to initiate the proposed zoning change."

Now, this letter is not a letter that reflects the fact that there was a quorum present and a vote taken. This letter of support, from an ANC member. So, therefore, it is not afforded the great weight to which we normally afford ANCs.

(The Board conferred.)

CHAIRPERSON REID: And as such, it cannot be afforded the great weight that we usually would give the ANC, but we do make note of the fact that this particular ANC commissioner did write in support of the application.

We don't have an office of Planning report here. We don't have any other government reports, but we do have petitions of support with several names.

MR. GILREATH: Eighty.

CHAIRPERSON REID: Let's see, one, two, three -- 80. Eighty? Is that all? It looks like it -- I have more than

80. I have one, two, three, four, five, six.

MR. GILREATH: Oh, you have more than I have.

CHAIRPERSON REID: Unless they are duplicates.

MR. GILREATH: We have a very substantial number.

MR. FOSTER: Yes.

CHAIRPERSON REID: Well, I think we have a substantial number, in excess of 80 signatures on a petition in support of the application, maybe 80 to 100. Okay? Persons and parties in support of the application, and no one is here, persons and parties, in opposition to the application. I didn't see any opposition. Did anyone else?

Closing remarks by the Applicant.

MR. CHANG: Okay. Hopefully he can get a grant from the Board so he can adding his value to the business, so he can generate some employment opportunity for the immediate neighborhood, and he can continue hard work so he can support his family.

MR. GILREATH: Madame Chair, I have another question about the restrictions of the use of beverages. If we were to approve this application and this use and he goes to the ABC Board, can they take into account the ANC agreement, voluntary agreement, that they are limited to beer and wine?

CHAIRPERSON REID: Where is the agreement? We haven't seen the agreement. Have you?

MR. GILREATH: Well, at this point that's what he

said, but maybe the actual written statement from them -- but the point is assuming an agreement does exist, if he went to the ABC Board, do they make a -- do they take into account ANC input when they make a decision?

MR. CHANG: Yes, we've got a plan cutting it (phonetic) for 45 days, and approach probably final compliance by the ABC Board. They will suggesting us to enter into the voluntary agreement, which is before we came here we already discuss with the ANC.

MR. SOCKWELL: Now, you're applying for a retail Class A -- I mean -- yes.

MR. FOSTER: Yes.

MR. SOCKWELL: Now, the Class B license would allow you to do what?

MR. FOSTER: Just beer and wine.

MR. CHANG: Carrying beer and wine.

MR. SOCKWELL: Okay, and a Class A is everything?

MR. FOSTER: Yes.

MR. CHANG: Yes.

MR. SOCKWELL: And Class C is restaurant. So okay.

CHAIRPERSON REID: All right. Closing remarks.

MR. CHANG: I have already made it.

CHAIRPERSON REID: Oh, that's it?

MR. CHANG: Yes.

CHAIRPERSON REID: Oh. Would you like a bench

decision, summary order, have a decision today?

MR. CHANG: Yes, please.

MS. NAGELHOUT: Madame Chairman.

CHAIRPERSON REID: I'm sorry. I'm sorry. There was a question of staff. Just quickly. I'm tired.

MS. NAGELHOUT: Yes. In looking at this application it seemed like it might be more appropriate under Section 2003 which deals with changing uses, changing nonconforming uses within the structure rather than 2000.6, which was cited in the application, and 2000.6 had dealt with a nonconforming use of land or of land with structures incidental to the use of land.

CHAIRPERSON REID: Well, I'm not really sure how we can handle this. Now, the Nunley letter stipulates that it is to be considered under 2000.6, and that's what's before us. I don't think that we have the authority to change the section, and I don't know how best to proceed with that.

Mr. Hart, do you have suggestions in that regard?

MR. HART: At this point, no, Madame Chair. No, I don't. The practice, and we sort of have to go with this, if we have to make a decision, we'll go with what comes from the Zoning Administrator's office, which in this case is 2000.6.

CHAIRPERSON REID: Right, because --

MR. HART: I don't have any more --

(The Board conferred.)

MS. NAGELHOUT: Yes, that's correct. Two thousand, point, three.

CHAIRPERSON REID: Two thousand, point, three. This is coming under 2000.6.

MS. NAGELHOUT: Under the rule of procedure that allows for special exceptions, it does allow for changes in nonconforming use under Section 2003.

CHAIRPERSON REID: (Reading document.) What does that mean?

MR. SOCKWELL: I think 2000.6 to me is the proper citation in that it speaks to a nonconforming use of land or of land with structures incidental to the use of the land shall neither be extended in land area or changed to any use except a use permitted in the district in which the property is located.

So the entire structure in this case is relative to the use of land or incidental structures. I mean it seems that it fits because the structure is not a nonconforming structure, but the use is nonconforming within the zone. And so it's a use of land and structures, but it's --

CHAIRPERSON REID: Well, nonetheless --

MR. SOCKWELL: Yeah, I mean --

CHAIRPERSON REID: -- at this point we're not open to amending the Nunley letter because this is what -- this is all we have to go by, and we have to then follow the instructions contained therein, and that is 2000.6, and if there's any debate

or discussion about that, perhaps we --

MR. SOCKWELL: I think it's a nonconforming use more than --

CHAIRPERSON REID: -- about it because we have to move forward with this particular application that's on the table.

MR. GILREATH: Well, if -- as long as we are satisfied it's one or the other, if it turns out that he could better meet the burden of proof on the other, then we could continue this and he could go back to Mr. Nunley, because we're all in agreement this is a nonconforming use under 2000.6.

CHAIRPERSON REID: Yeah, I'll go with 2000.6.

MR. SOCKWELL: Okay. Well, I'll go along with that, too.

CHAIRPERSON REID: Okay. Board members, would anyone like to make a motion with regard to this case?

MR. GILREATH: Madame Chair, having heard the presentation and the argument for granting the application, I am of the opinion that this gentleman should be entitled to -- and the beverages are certainly beer and wine, will be left up to the ABC Board as to what they will grant him, and everything considered, I certainly do not feel the sense of these other types of stores carry some of the beverages in the area, that it's in no way contradictory to existing uses in the area and so forth.

So, therefore, I recommend that we approve the application.

CHAIRPERSON REID: Any conditions? Okay.

MR. GILREATH: Well, to the degree you feel we can do something to constraint it.

CHAIRPERSON REID: Did you want to second?

MR. SOCKWELL: No, I don't want to second.

CHAIRPERSON REID: Mr. Holman, did you?

MR. HOLMAN: I guess I wanted to second the application because I think it will -- based on what I understand about the nonconforming uses, based on that recent discussion, I certainly think the gentleman needs to be in a competitive business position in his area, and I have no objection to it. So I would second it.

CHAIRPERSON REID: Did you have something to say?

MR. SOCKWELL: Briefly. While I realize that this is a change, it would be most appropriate to me that we condition this application approval, should we grant it, to the extent that groceries be retained in the store at some level. Perhaps we cannot condition a percentage of business to be devoted to that, but I would want to condition that no less than 20 percent of display space within the store be devoted to regular packaged grocery items of a non-perishable nature.

MR. GILREATH: Do we have the authority? I --

MR. SOCKWELL: Maybe we do not.

MR. GILREATH: If we can place these conditions, to me I agree. I think there should be simply wine and beer there,

but the question is: do we have the authority to put these conditions in?

CHAIRPERSON REID: Not in regard to the business itself once we approve the application. However, we can put some conditions in regard to the hours of operations, the days of operation, number of employees, things of that nature.

MR. GILREATH: Absolutely. I think I concur with that fully, and I think he stated what he's willing, the hours and so forth, and if you want to make it more restrictive, fine, but I think that's fine.

CHAIRPERSON REID: In the submission that was put before us by the Applicant, I feel that I can understand -- I can understand the Applicant desiring to be more competitive, but at the same time, there are negative elements that emerge as a result of the selling of liquor, beer and wine in certain communities, especially when you have communities that are -- where you have a proliferation of that type of activity already.

And also it attracts lotterying (phonetic) around the facility and, you know, undesirable kind of persons hanging around, and I am very concerned about the hours of operation on Friday until ten o'clock and on Saturday until 12 o'clock midnight on those corners.

Right now on those corners of Fairmont up to about Monroe -- well, no, maybe not up that far -- but Gresham, you have a lot of young kids hanging out, and I don't want to see that be

contributed to. Therefore, I would recommend that if this is approved, that the hours be shortened, 9:00 a.m. to 9:00 p.m., Monday through Thursday is fine. I don't understand why Saturday, Friday and Saturday, there's a need to be open until ten, 12 o'clock midnight.

Maybe you can throw some light on that.

MR. SOCKWELL: Maybe I can throw some light on that Madame Chair. Traditionally, even clubs are open later on the weekends than they are during the week, and actually it's by law that they're restricted, but on a Friday evening the business will peak later in the evening because generally Saturday is not a work day, and Mr. Foster would want to have the advantage of being able to serve that business, although he doesn't want to be there all night on Friday.

On Saturdays, the business will peak even later because Saturday is generally a holiday or weekend day and Sunday is not a work day, and Mr. Foster would want access to that business as well.

He's also requesting the day before a major holiday to be open until midnight.

I would prefer to see an 11 o'clock closing time than a midnight closing time, but I would request that Mr. Foster tell me what his competition's hours are.

MR. FOSTER: The same hours that I have written down.

MR. SOCKWELL: Then Mr. Foster is being consistent with the neighborhood businesses.

CHAIRPERSON REID: I don't know of stores that stay open quite that late. What time -- based on D.C. law, what time must you stop selling alcoholic beverages?

MR. FOSTER: Midnight.

CHAIRPERSON REID: I thought it was nine o'clock.

MR. FOSTER: On a Class B.

CHAIRPERSON REID: Huh?

MS. BAILEY: Class B license, midnight. They can stay open to midnight.

CHAIRPERSON REID: And you can sell wine and beer up to midnight?

MR. FOSTER: To midnight.

MR. SOCKWELL: And Class A is what you're applying for?

MS. BAILEY: Yes, that's different.

MR. SOCKWELL: A Class A license allows you what hours?

MR. FOSTER: From what is it, nine to nine that I have written down?

MR. SOCKWELL: Okay.

MR. FOSTER: And Fridays and Saturdays.

MR. SOCKWELL: So these are the prescribed limits for your license?

MR. FOSTER: Yes.

MR. SOCKWELL: And I know that in other locations the beverage stores are open until 11 or 12 o'clock at night, not that I'm usually going in one at that time.

MR. CHANG: Eight a.m. to midnight is a Class B license.

MR. SOCKWELL: Okay, and a Class A license?

MR. CHANG: Nine to nine on Monday through Thursday, nine to ten on Friday or nine to 12 midnight.

As I indicated earlier, a piece of them inquired this (phonetic) on other issue without carrying over with ANC, and once we obtain a sheer vote (phonetic), we're going to indicate the hours of operation under ABC application and continue, I mean, talking with ANC to -- possibly we can reduce our time, but --

MR. SOCKWELL: Okay. Well, let me just say this. As far as I'm concerned, regardless of my personal feelings about it, I believe that the Alcoholic Beverage Control Board has the jurisdiction to regulate your hours, and because of that fact, because that is a factor of your license to operate in that sales mode, we should not make restrictions on you.

MR. CHANG: Right. Thank you.

CHAIRPERSON REID: Okay. What about trash removal?

MR. FOSTER: I have trash removal twice a week.

CHAIRPERSON REID: Should we condition that or --

MR. FOSTER: It should be on the paper.

(The Board conferred.)

CHAIRPERSON REID: And trash should be a provision. Trash, they're saying that they have a trash contractor to pick up the trash appropriately.

MR. SOCKWELL: As long as the trash is properly handled.

CHAIRPERSON REID: Well, the same thing. The trash would be --

MR. SOCKWELL: Yeah. I mean we would condition you that the trash would not be allowed to collect in the public areas outside of your store; that such trash would be maintained in closed and safe containers until such time as it is picked up on a regular basis.

CHAIRPERSON REID: Okay. Number of employees.

MR. SOCKWELL: He says it's going to be himself and one family member. No more than three employees in the store at any time.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: I would also condition that no more than three employees, including yourself or regardless, no more than three employees be working in the store at any time.

CHAIRPERSON REID: And there was no parking requirement?

MR. FOSTER: No.

CHAIRPERSON REID: Okay. All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Opposed?

(No response.)

CHAIRPERSON REID: And I would just -- I would abstain, abstain.

MS. BAILEY: Staff will record the vote as three with one abstention, motion made by Mr. Gilreath, second by Mr. Kwasi Holman, Mr. Sockwell to approve. Ms. Reid abstained. Summary order with conditions.

The conditions are groceries shall be in the store no less than 20 percent. Hours of operation, 9:00 a.m. to 9:00 p.m. Monday through Thursday, 9:00 a.m. to 10:00 p.m. on Friday, and 9:00 a.m. to 12 midnight Saturday and Sunday. Trash removal two times weekly. No more than three employees.

MR. GILREATH: Madame Chair, do we include this 20 percent ratio that --

CHAIRPERSON REID: Well, the thing about it, I don't -- with our conditions, we have -- we can condition the use of the property, but we don't -- we don't have the purview to condition the business itself as far as the operation of the business.

MR. GILREATH: Right. So that should be -- the provision of that 20 percent should be stricken that. She was including that as --

CHAIRPERSON REID: I'm sorry. I was talking.

No, that can't -- I don't think that can fly. Is that not correct? As to conditions, we're not allowed to condition the business; just the use of the property.

MS. NAGELHOUT: That would be correct, Madame Chairman.

CHAIRPERSON REID: Thank you. Thank you very much.

(The Board conferred.)

CHAIRPERSON REID: All right. Next case, final case.

MR. HART: Final Case No. 16479, application of Hamid Samadani, pursuant to 11 DCMR 3107.2, for a variance from the use provisions of Section 330.5, Subsection (c), for the conversion of a building, and from Section 401.3 of the 900 square foot per apartment unit requirement, to convert a two family flat into a three unit apartment building in an R-4 district at premises 923 Tenth Street, N.E., Square 957, Lot 810.

I think we swore you the last time.

(Whereupon, the witness was duly sworn.)

CHAIRPERSON REID: All right.

MS. SAMADANI: Good evening, Madame --

CHAIRPERSON REID: Now, Ms. Samadani, I know you must be awfully tired. We're going to try to get through this quickly. It's almost nine o'clock, and no one had any idea we'd be here quite this late, but thank you so much --

MS. SAMADANI: You're welcome.

CHAIRPERSON REID: -- for your patience, your patience and waiting for your turn to come.

MS. SAMADANI: To tell you the truth, just losing my hours, pay, the others were really interesting to sit here and hear all of this, and I don't know how you do it, how you know all of these rules and regulations, just switch from one to another one. It was very interesting. I enjoyed.

CHAIRPERSON REID: You got a whole lesson today, huh?

MS. SAMADANI: I don't mind to come again, but not for my case. Just sit down and enjoy and hear it.

MR. SOCKWELL: Right.

CHAIRPERSON REID: Okay. Here we go. All right. Were you called? Mr. Hart, did you swear?

MR. HART: Yes.

MS. SAMADANI: Yes, he did.

CHAIRPERSON REID: And did you call the case?

MR. HART: Sure did.

CHAIRPERSON REID: Okay. I'm sorry. I was talking.

MR. HART: I was talking fast.

CHAIRPERSON REID: Okay.

MS. SAMADANI: I'm Ms. Samadani. I'm here for my son, Sami Samadani (phonetic), for 923 Tenth Street, N.E.

We had discussion last time, and then you prorated me to do for here (phonetic), but because you didn't know the

answer for the test, and in the meantime you asked for some document. I brought it in and --

CHAIRPERSON REID: Excuse me one second, please.

MS. SAMADANI: Sure.

(The Board conferred.)

MR. SOCKWELL: Give us a moment, please.

MS. SAMADANI: Sure. No problem.

(The Board conferred.)

CHAIRPERSON REID: Sorry.

MS. SAMADANI: That's okay.

CHAIRPERSON REID: I think these are duplicates. Some of them are duplicates. Go ahead, Ms. Samadani.

MS. SAMADANI: Yes. I remember you mentioned if I answered you test, then you will approve everything, but I didn't even know the meaning of the word.

So I went home and opened my dictionary and translate word by word, and I think I'm ready. I'm not sure.

CHAIRPERSON REID: Okay. Let's try.

MS. SAMADANI: The situation of this house is it's 20 years situation. First, it's at the end of the -- it's on the corner. Two side has alley, and the hardship for me is that I am paying for the -- the area is low income area, and I'm paying for all the utility. To make it comfortable for my tenant, I have to have more than one unit, and that unit has been there, as you remember last, I told you, has been there since we had it.

I have good tenant, and then I'm going to bring to your attention this house was, as they told me, was a crack house. I work hard to clean it and get all items and gates all around so nobody come in and, you know, use for those things, and all the neighbors are happy about what we did in that corner because we cleaned it up.

And there is no bothering on neighbors for the parking or anything because it's two alleys, two public alleys on two sides, and then this big, huge church parking lot in back that most of the time there's only one or two cars, and they don't mind people parking there, and none of my tenants has car anyway.

And apartments are livable and just if you deny it, then what will happen to my tenant, that he's comfortable over there and living? We couldn't throw him on the street.

So from every point of view, if you look into it, I hope that you approve it. We go ahead and -- and I brought you all the documents you needed, and I paid everything they asked me to do. All the steps they asked, it has been taken, and this is the last step.

CHAIRPERSON REID: Okay. Let's see here. What is she -- just give me a second to get some papers together here.

MR. GILREATH: Madame Chair.

CHAIRPERSON REID: Yes.

MR. GILREATH: The last time didn't her application say somebody about -- it did not mention the three units or

something?

CHAIRPERSON REID: Un-huh.

MR. GILREATH: And so it's been corrected as the new application states it correctly now.

MS. SAMADANI: Yeah, all of them does. I brought it in.

CHAIRPERSON REID: To convert a two family flat into a three unit building in an R-4 district. Okay. Now, before the problem was that on your application you had that it was a two unit. You went to the ANC and --

MS. SAMADANI: And he corrected.

CHAIRPERSON REID: You didn't -- you didn't indicate to them -- you told them that you actually had a two unit building, when actually it was a three unit building, and now your application does ask for variance for a three unit building. So it has been corrected.

MS. SAMADANI: And then another one that you request, I asked from Mr. Douglas, and that's in, too, the letter.

CHAIRPERSON REID: All right. The ANC, in the letter that they sent to us initially, stated that they had approved your application for the two unit, and we now have an ANC letter saying that you went back?

MS. SAMADANI: Yeah, he corrected.

CHAIRPERSON REID: They corrected it?

MS. SAMADANI: Yeah, yeah.

MR. GILREATH: There's a letter in here.

CHAIRPERSON REID: Yeah. Okay.

MS. SAMADANI: They filed it in here.

CHAIRPERSON REID: Now, --

MS. SAMADANI: And he was here tonight, too. He said he couldn't come in, Mr. Purnell.

(The Board conferred.)

CHAIRPERSON REID: Why -- why do we have two letters from the ANC?

MS. SAMADANI: Because, see, he corrected previous one that was not mentioning the way you wanted.

(The Board conferred.)

CHAIRPERSON REID: I guess that's the best we can get for right now.

Now, the variance, your tests, that's what you had to do. You had to demonstrate to us that you were in compliance with the regulations and that you requested -- the relief that you're asking for is a variance. So you have to then show us how you meet the three pronged test.

And you know the test now, right?

MS. SAMADANI: Okay.

CHAIRPERSON REID: All right. The first one is what is it that is unique and unusual?

MS. SAMADANI: It's a very unique situation. First of all --

CHAIRPERSON REID: No, not situation. The property.

MS. SAMADANI: The property. The property is unique. It's on the alley. Two side of it is public alley.

CHAIRPERSON REID: That's what's unique about the property? It's on a public alley?

MS. SAMADANI: It has two -- at the end of --

CHAIRPERSON REID: It faces the alley?

MS. SAMADANI: Two sides. I have one public alley in the back and one public alley on the side, and then parking --

CHAIRPERSON REID: The front of the building, the front of the building is on an alley?

MS. SAMADANI: It's a street. It's a street, Tenth Street. On the side is alley, good, wide alley, and then in the back is alley that goes around to the church. It's the last house. It's a corner house.

CHAIRPERSON REID: This is the shape of your building, this shape here that's on the surveyor's plat right here? It looks like it's irregular. Let's say that it's -- not "say," but let's look at it and determine if it's in an irregularly shaped plat.

MS. SAMADANI: This is the one public alley. This is another public alley. That's another alley.

CHAIRPERSON REID: But is this --

MS. SAMADANI: And this --

CHAIRPERSON REID: -- configuration --

MS. SAMADANI: Yes.

CHAIRPERSON REID: Okay. What's this little -- it looks like a dog leg part.

MS. SAMADANI: This is the part that they took away from this land --

CHAIRPERSON REID: To make the alley?

MS. SAMADANI: -- to make the alley.

CHAIRPERSON REID: Okay. So you have an irregular shaped lot. Can we all agree with that?

MR. GILREATH: I agree with that.

(The Board conferred.)

CHAIRPERSON REID: Okay. Irregularly shaped lot. That makes it unique.

MS. SAMADANI: Thank you.

CHAIRPERSON REID: All right. Now, why is it that there would be a --

MS. SAMADANI: Hardship?

CHAIRPERSON REID: Oh, okay. A practical difficulty -- for the area variance, right? -- a practical difficulty for you to comply with the existing zoning regulations, and the existing zoning regulations would allow what is it, a two unit? What's the zone?

MR. SOCKWELL: It would allow a two, I guess.

CHAIRPERSON REID: Okay. What is it that prevents

you from using the property as --

MS. SAMADANI: Financial. As I mentioned, they are low income area, and they don't make much money, and then the utility in this is very expensive, and I picked up utility from them, and I have to be able to pay the utility and the other -- for the house payment and keep it up the way you all want it. So I need the extra money so another -- and it's very comfortable unit there.

And Ms. Crockett came and checked it out. They all have bathrooms and kitchens, and the living room and everything.

CHAIRPERSON REID: Well, wait a minute. This is a use variance.

MR. NYARKU: Use variance.

CHAIRPERSON REID: Okay. Now, that means then that you have to show that there's a --

MR. NYARKU: Undue hardship.

CHAIRPERSON REID: -- undue hardship for you to use the building as a two unit building.

MS. SAMADANI: Yeah, because --

CHAIRPERSON REID: Rather than a three unit building, and unfortunately it can't be economic.

MS. BAILEY: Madame Chair, when this application was before the Board previously, one of the things that you asked Ms. Samadani to do was to go back to DCRA, to look up the records to see how long the building has been used as a three unit

building and to go back and research those land records.

I think she has provided some information. Maybe she could help and go through that additional information to explain how long the building has been used this way, or that would be the basis, the major basis for meeting the test for undue hardship.

MS. SAMADANI: Well, the house was -- the previous owner, that she's dead, she was using the first floor for herself, and she had two apartments up top that she was collecting rent from.

CHAIRPERSON REID: Who?

MS. SAMADANI: The lady that we bought the building from her.

CHAIRPERSON REID: Okay. Now, here's what the question was before.

MS. SAMADANI: I mean she's dead. From her son we bought it.

CHAIRPERSON REID: Here's what the question was before. On the certificate of occupancy, and we've already been here, that's dated September 9th -- September 5th, 1991. It states that you have a certificate of occupancy for a two family flat.

MS. SAMADANI: Un-huh, but you remember --

CHAIRPERSON REID: But it's really a three family flat.

MS. SAMADANI: Yes.

CHAIRPERSON REID: So I thought you were going to get that corrected or is that why you're here?

MS. SAMADANI: This is the letter that I got it from --

CHAIRPERSON REID: All right. Well, then --

MS. SAMADANI: -- Mr. Douglas, yeah.

CHAIRPERSON REID: But you have been -- all right. Okay. You've been collecting rent on three units, right?

MS. SAMADANI: Yes.

CHAIRPERSON REID: So --

MS. SAMADANI: Of course you know --

CHAIRPERSON REID: -- but you have a certificate of occupancy for two units. So now you need to get a variance for the other unit, to have the other unit, and in order to comply with the existing regulations, then it would mean that you would have to convert that three unit building into a two unit building, and that would be an undue hardship?

MS. SAMADANI: Yes.

CHAIRPERSON REID: Just say yes.

MS. SAMADANI: Yes. Don't -- sorry. Just say yes. We're all tired. I have the language problems.

CHAIRPERSON REID: Just leave it right there. Okay?

MS. SAMADANI: Yes, ma'am.

CHAIRPERSON REID: Okay. Let's just keep moving forward. Okay. Now, there was another issue about some approval that had been made by mistake.

MS. SAMADANI: Yeah. The lease is --

CHAIRPERSON REID: Now, what is that?

MS. SAMADANI: -- but we -- I brought the correct leases. Leases was -- one was duplicate.

(The Board conferred.)

MR. NYARKU: Madame Chair.

CHAIRPERSON REID: Yes?

MR. NYARKU: This morning I noted on the letter from Mr. Lennox Douglas, Acting Chief, Permits Center, that the application was granted, approved on October 13, 1999, with written decision to be issued forthcoming. So I called Mr. Douglas to point to him that this case is to be continued today.

So he faxed back a response, which is at the top of the submission I just gave to you, dated today.

CHAIRPERSON REID: Okay. Mr. Nyarku, how did you determine that -- what alerted you to the fact that there had been a mistake made?

MR. NYARKU: Yes.

CHAIRPERSON REID: What alerted you to that?

MR. NYARKU: I read the letter, the second page, the letter dated October 20th by Mr. Lennox Douglas, Acting Chief.

CHAIRPERSON REID: Okay. What letter is that?

MR. NYARKU: Yeah. It's on the second page.

MS. SAMADANI: Plus when I went --

MR. NYARKU: The second page.

CHAIRPERSON REID: No, I don't see a letter from Mr. Douglas.

MS. SAMADANI: There's two of them.

CHAIRPERSON REID: Except for the letter that -- the letter in which he's correcting the first letter. I don't see the first letter.

MR. NYARKU: It's right here.

MS. SAMADANI: The next one.

MR. NYARKU: He says it's granted, approved. So when I read that, I said, no, it has not been --

CHAIRPERSON REID: Wait, wait. Well, wait a minute. Oh, okay. All right. Okay.

MR. GILREATH: Madame Chair.

CHAIRPERSON REID: Okay.

MR. GILREATH: If the error had not been corrected, he granted a certificate of occupancy and presumably she wouldn't come back. So he just corrected his error and said we cannot grant this certificate of occupancy, and so she's here still proceeding along the original track.

CHAIRPERSON REID: Okay.

MR. GILREATH: So this was just a technical error on the part of the Permits Office.

CHAIRPERSON REID: Okay. All right. So now, adverse impact. There's no one here in opposition. Are there any letters of opposition in the file? I did not see any. So we can then conclude that you don't have any adverse impact in regard to light, traffic, parking, noise or the like --

MS. SAMADANI: No.

CHAIRPERSON REID: -- as far as your neighbors or your adjoining property owners are concerned.

Okay. So now we go to government reports. We don't have any reports by any other government agencies. We had have a report by the ANC. There's no one here present. The ANC --

MS. SAMADANI: Approved it.

CHAIRPERSON REID: -- is stating, October 21st, 1999, that with a quorum present, that they voted to support Ms. Samadani's application 16479 to convert from a two to a three unit apartment building, and that there was -- okay. So therefore, they will -- the ANC will be afforded the great weight to which it's entitled.

Okay. No one here in support. No one here in opposition to this application. So we move now to closing remarks by the Applicant.

MS. SAMADANI: I appreciate if you approve it and help me -- help me, God -- I know we're all -- you are doing very good job, believe me. Being from other part of the world, this is

very interesting to sit here and see how much you all are caring for every little point in this country, yes.

Thank you very much, and I'd like you to approve it tonight and let me go.

(Laughter.)

CHAIRPERSON REID: All right. Board members?

MR. GILREATH: I'll take a crack at it. I think that Ms. Samadani has acted in good faith and responded to our request about additional information. The ANC had the proper information this time. They do know that this would be converted from a two unit to a three unit flat, and so forth.

I feel that even though in and of itself the fact that property is an end unit on an alley, but that helps constitute to some degree the use of it.

And secondly, it is, as I understand it, in a lower income area, and as I understand it, it would be very difficult to keep this use if she does not have some relief --

MS. SAMADANI: Yes.

MR. GILREATH: -- to have an additional unit, additional income.

So I don't think this is in any way contrary to the intent of the zoning regulations, and I feel that she's met the burden of proof, and therefore, I recommend that we approve the application.

CHAIRPERSON REID: Okay.

MS. SAMADANI: Thank you very much.

CHAIRPERSON REID: I'll second it.

All -- any other comments?

MR. SOCKWELL: I believe that we're looking at a nonconforming lot size and a nonconforming unit size, and that the relief is to allow three units of nonconforming size as opposed to two units of nonconforming size on a lot that is a nonconforming lot, that has characteristics that make it uniquely impossible to meet the strict requirements of the ordinance.

And apparently the hardship is one of being able to accommodate the desired use with a lot that would normally not allow such, and that we have shown that the -- that the desired use on this restricted lot would not be adverse in its impact on the surrounding neighborhood. In fact, for various reasons it would probably be beneficial to the neighborhood.

The desired tenancy is partially existing with the residents that are there now.

MS. SAMADANI: Yes. You mean the tenants?

MR. SOCKWELL: The tenants.

MS. SAMADANI: All of them are there.

MR. SOCKWELL: And the tenants have caused no problem and are satisfied with the accommodations --

MS. SAMADANI: yes.

MR. SOCKWELL: -- that they are getting.

I believe that the fact that the property had been

used as it is now for a long period of time makes it satisfactory that we may be able to continue the use with a legitimate occupancy for the increase in number of registered units.

MR. GILREATH: Madame Chair, I'd like to recognize Mr. Sockwell for the first part of his critique there of identifying further uniqueness of the property, which went beyond more elaborately delineating support to what the conditions were. So I think that's pretty helpful and further substantiates the legitimacy of her application.

CHAIRPERSON REID: Thank you, Mr. Gilreath.

All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Opposed?

(No response.)

MS. BAILEY: Staff will record the vote as three to zero. Motion made by Mr. Gilreath, second by Ms. Reid. Mr. Sockwell to approve. Mr. Kwasi present, not having heard the original application and not voting.

CHAIRPERSON REID: All right. Thank you. Good luck.

MS. SAMADANI: Thank you very much.

CHAIRPERSON REID: And, again, thank you for your indulgence. It's been a long day.

MR. GILREATH: You have learned that in America persistence pays off. You persisted.

CHAIRPERSON REID: That concludes the December 8th long hearing of the Board of Zoning Adjustment.

(Whereupon, at 9:15 p.m., the meeting was concluded.)