

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

IN THE MATTER OF :
E.L. Haynes Public Charter School :
 :
1366 Irving Street, N.W. :
Washington, D.C. :
District C-3-A :
 :
Application No. :
17376 :

Tuesday
October 4, 2005

Formal Council Chamber
441 4th Street, N.W.
Washington, DC

The Public Hearing convened in the Formal Council Chamber, 441 4th Street, N.W., Washington, D.C., pursuant to Notice at 1:00 p.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
CURTIS ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member (NCPC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLY BAILEY	Zoning Specialist
JOHN NYARKU	Zoning Specialist

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TRACEY W. ROSE

Senior Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS

This transcript constitutes the minutes
from the public hearing held on October 4, 2005.

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

(11:02 A.M.)

MR. GRIFFIS: A very good afternoon to everybody. Let me call to order the public meeting of the 4th of October, 2005. This is, of course, our afternoon public hearing of the Board of Zoning Adjustments of the District of Columbia. My name is Geoff Griffis, Chairperson. Joining me today is Mr. Etherly and representing the National Capital Planning Commission is Mr. Mann. Our Vice-Chair, Ms. Miller, will not be with us this afternoon for these proceedings and the Zoning Commissioner is also unavailable. Copies of today's hearing Agenda are available for you. They are located on the table where you entered into the hearing room.

We acknowledge that we are not in our normal hearing room, and we appreciate everyone's patience in finding us and also in getting through any technical aspects that we may have to be flexible with today.

We are, of course, being recorded as all public proceedings are before the Board of Zoning Adjustments. We are being recorded by the Court Reporter sitting on the floor attending to that. I would ask that, of course, you fill out two witness cards and provide it to the Reporter. We are not

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1 being broadcast live on the Office of Zoning's website
2 as we do not have those capabilities in this hearing
3 room, but we'll resume that broadcast when we move
4 back upstairs.

5 There is a procedure for Special Exception
6 and Variances is, first we will hear from the
7 Applicant, second, we will hear from any agencies that
8 have put in analysis and memos on each of the
9 Applications. We will then hear from the Advisory
10 Neighborhood Commission. Fourth, we will hear from
11 persons or parties in support of the Application.
12 Fifth would be persons or parties in opposition to an
13 Application. Then finally we will return to the
14 Applicant for any rebuttal witnesses or closing
15 remarks that they might have. Cross-examination is
16 permitted by the Applicant and parties in a case. The
17 ANC within which the property is located is
18 automatically a party in the case and will be able to,
19 therefore, conduct cross-examination. Other parties
20 will be established by the Board as preliminary
21 matters when a case is heard.

22 The record will be closed at the conclusion
23 of the hearings today, except if we continue any
24 cases, which we don't anticipate with our schedule
25 this afternoon, or if the Board keeps the record open

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1 in order to receive additional information. If the
2 Board does so, we will be very specific as to what
3 information is to be provided to the Board and when it
4 is to be provided into the Office of Zoning.

5 The Sunshine Act requires that we hold all
6 our proceedings in the open and before the public.
7 This Board does enter into Executive Session during
8 and/or after a hearing on cases and our Executive
9 Session is utilized for the purposes of reviewing
10 records or deliberating on cases, and it is in
11 accordance with our Rules, Regulations, Procedure, and
12 most importantly, it is also in accordance with the
13 Sunshine Act.

14 The Decision of the Board in contested cases
15 must be based exclusively on the record. That is,
16 that public record that the Sunshine Act requires us
17 to produce, but our deliberations must be based on the
18 record that's created before us. So, importantly, we
19 ask that people make sure that they have put in the
20 record all the evidence that you would like us to look
21 at and decide upon, whether it be in written testimony
22 and/or in oral testimony today.

23 Let me say a very good afternoon to all
24 those who are with us today. The Office of Zoning is
25 represented by Ms. Bailey, who is on my right, and Mr.

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1 Moy on my left. Ms. Monroe from OAG and Ms. Rose from
2 the Office of Zoning is also with us.

3 A very good afternoon to you all.

4 I'm going to ask if those people present
5 today who are planning to give testimony would please
6 stand and give your attention to Ms. Bailey, she's
7 going to swear you in.

8 (Whereupon, the witnesses were sworn in.)

9 MS. BAILEY: Do you solemnly swear or affirm
10 that the testimony that you will be giving today will
11 be the truth, the whole truth, and nothing but the
12 truth?

13 (WITNESSES ANSWER AFFIRMATIVELY.)

14 MR. GRIFFIS: Good, thank you all very much.

15

16 With that, we can move to preliminary
17 matters. Preliminary matters are those which relate
18 to whether a case will or should be heard today.
19 Elements of preliminary matters include whether you
20 are postponing, continuing or withdrawing an
21 Application, whether proper and adequate notice of an
22 Application has been provided. These are elements.
23 If you have a preliminary matter for the Board's
24 attention today, if you're unprepared to move ahead
25 with a case, or you believe a case should not be heard

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1 this afternoon, I would ask that you come forward and
2 have a seat at the Witness Table as an indication of
3 a preliminary matter.

4 First, I will go to Ms. Bailey to ask if
5 she's aware of any preliminary matters for the Board's
6 attention at this time?

7 MS. BAILEY: Mr. Chairman, and to everyone,
8 good afternoon. There is, and it has to do with one
9 of the cases on the Docket, Appeal Number 17356 of
10 Bannum, Inc. There is a Request for Postponement and
11 there's also a Request for An Interveno Status of this
12 case.

13 MR. GRIFFIS: I'm sorry, what was the last
14 thing that you said?

15 MS. BAILEY: There's a Request for Interveno
16 Status, Interveno.

17 MR. GRIFFIS: Oh, indeed. Is anyone here
18 attendant to that Application? If anyone is present
19 today in Case Number 17356, would come forward and
20 have a seat at the table?

21 Not noting anybody here. We had given
22 Notice. Of course, with today, holidays, if you were
23 unable or even tentative with being able to proceed
24 with a case, that we would entertain a postponement
25 and grant it. I don't want to take up the Interveno

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1 test at this test, as we don't have participants that
2 will obviously take some discussion, if not just some
3 brief questions, and deliberation by the Board. I
4 would suggest that we just postpone this to a new date
5 and take up all those elements. We also have
6 attendant to it, which came in, I believe, today, if
7 not yesterday, represented to the Board, another
8 Motion in that, which would be a preliminary matter,
9 again, which we would take under consideration today.

10 Mr. Moy, why don't we look at the calendar
11 and, Ms. Bailey, what you all suggest as setting a
12 date for this.

13 MR. MOY: Yes, sir, Mr. Chair. The staff
14 has been in contact with the Appellants and the three
15 potential dates shared with staff are November 15th,
16 in the afternoon, or December 13th, in the afternoon,
17 or December 20th, in the afternoon.

18 MR. GRIFFIS: Very well, Mr. Moy. I think
19 the 15th in the afternoon looks to be the most free,
20 in a very packed afternoon schedule, of all those
21 dates, and I would suggest that we set it there.
22 Unless you're aware of any other difficulties in doing
23 it at that time?

24 MR. MOY: No, sir, that's manageable.

25 MR. GRIFFIS: Excellent. Then we'll take

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1 this as a public notice that we have continued this to
2 the 15th of November. Of course, we will make all
3 efforts in terms of contacting those that are
4 participating in this case, and that which we do have
5 an Intervening Request, we would obviously, hopefully,
6 make phone calls to those folks.

7 Very well. Are there any other preliminary
8 matters for the Board's attention at this time, Ms.
9 Bailey?

10 MS. BAILEY: No, Mr. Chairman, not at this
11 time.

12 MR. GRIFFIS: Excellent. Then why don't we
13 call our first case for the afternoon?

14 MS. BAILEY: Application Number 17376 of E.
15 L. Haynes Public Charter School, pursuant to 11.d St.
16 Mark 31.3.2 for a variance from the requirement for an
17 accessory use to be located on the same lot as the
18 principal use that's provided in Definition of
19 Accessory Use, Section 199, to allow the lot to be
20 approved for use as a play area for E. L. Haynes
21 Public Charter School located on an abutting lot. The
22 property is located in the C-3-A District at 1366
23 Irving Street, N.W., Square 2849, Lot 98.

24 MR. GROSS: Good afternoon, Mr. Chairman and
25 members of the Board. I'm Nathan W. Gross of the law

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1 firm of Arnold and Porter, a city planner there,
2 representing the applicant in this case, the E. L.
3 Haynes Charter School.

4 First, let me just identify the property
5 briefly. On the photograph on the Board, you can see
6 the brick building on the right. That's the CVS
7 Building at the corner of 14th and Irving Street, N.W.

8 MR. GRIFFIS: Mr. Gross, let me interrupt
9 you just briefly and just make a quick disclosure. Of
10 course, I live in this neighborhood, not a block and
11 a half away and frequently walk by this, as it's my
12 route to the Metro. So I would ask you and your
13 clients whether they would have any difficulty in
14 having me sit on this case. I do believe that I can
15 hear this impartially, and render a judgment
16 judiciously. But I avail myself to any questions that
17 you might have or any objections.

18 MR. GROSS: We would have no objections
19 whatsoever, Mr. Chairman.

20 MR. GRIFFIS: I see. Okay.

21 MR. GROSS: We're very comfortable with
22 that.

23 MR. GRIFFIS: Board members, are there any
24 clarifications or questions that you might have of me?
25 Noting if I don't hear this, we don't hear the case

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1 today, but that should not, in any way, sway you.

2 (NO RESPONSE.)

3 MR. GRIFFIS: Very well. Let's proceed.

4 MR. GROSS: Okay. The brick building, the
5 CVS Building, built in 2002 at the corner of 14th and
6 Irving Street, N.W. You can see the second story
7 windows there. That's where the E. L. Haynes Charter
8 School is located, on about 12,000 square feet. It
9 has a separate entrance off of 14th Street. To the
10 left or east of the building is the concrete driveway.
11 That is on the same lot as the CVS. Immediately to
12 the left, or the east of that, is the vacant lot
13 covered with stone and with informal parking on it, 20
14 feet wide and a 100 feet deep. That is the subject
15 lot in the Application where we would propose the
16 accessory use to be located.

17 MR. GRIFFIS: A hundred feet?

18 MR. GROSS: Yes.

19 MR. GRIFFIS: Continue.

20 MR. GROSS: And with that introduction, let
21 me then introduce the presenters. First is, to my
22 right, Humber Villareal, the Director of Operations
23 and Finance at the school. To his right is Natalie
24 Addison, the Project Manager and Designer of the play
25 area from Brailsford and Dunlavey Facility Planners.

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1 Following Ms. Addison, I will address the zoning
2 issues, and then we have three parents who would like
3 to testify briefly, Tawana Waugh, Nina Spatlana
4 (phonetic 1:21:06) and Mr. Wilson, I believe it is.

5 With that, I will turn to Mr. Villareal.

6 MR. VILLAREAL: Good afternoon, members of
7 the Board. My name is Himber Villareal. I'm the
8 Director of Operations and Finance at E. L. Haynes.
9 Let me just tell you a little bit about E. L. Haynes.
10 E. L. Haynes is a public charter school that is in its
11 second year of operation. We have a year-round
12 calendar and we have an extended day program,
13 providing basically 1,000 additional hours of
14 educational programs. We currently have 162 students.

15 The purpose of the playground is to
16 basically have outdoor activities, including recess,
17 to be used for the extended day program, health and
18 fitness, and sometimes for science. Right now,
19 implementation of this means that the students don't
20 have to walk to nearby playgrounds. That usually
21 takes about 20 to 30 minutes. If you think about the
22 numbers, if we have our students not only walk to
23 these nearby playgrounds, it takes about 20 minutes.
24 If you add those times, it takes us basically 80 hours
25 from educational programs inside the classroom. We

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1 have 162 students times 80 a year, that's over 12,000
2 hours that the students are walking to these parks.

3 I was a teacher last year, second grade
4 teacher, and I can tell you that we need our students
5 in the classrooms. So having this playground nearby
6 makes a lot of sense in terms of achieving -- having
7 the students reach the academic achievement that we
8 want. Also this has been a joint project with our
9 parent community. They have provided tremendous
10 leadership to get this project completed. So it is a
11 great project for us and for our students.

12 E. L. Haynes plans to -- we are going to be
13 pre-K to 12th Grade. So right now, we will probably
14 only stay in this location for three more years. In
15 three years, we will basically take the playground
16 apart and move it to whatever location we find.

17 MS. ADDISON: Good afternoon, Mr. Chairman
18 and members of the Board. My name is Natalie Addison.
19 I'm the Project Manager working with the school to
20 develop the play area. I'm with Brailsford and
21 Dunlavey, an educational facility-planning firm based
22 out of Washington, D.C. I did work with the school to
23 develop this preliminary plan. I will take you
24 through the basic elements of the landscape plan.

25 As Mr. Gross mentioned earlier, the

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1 dimensions of the playground are 20 feet fronting on
2 Irving Street, by 100 feet deep. The play area
3 consists of two gardens at either end. On the Irving
4 Street side, that will be a dedicated space for the
5 community. That space will just be covered in light
6 gardening. It will not be enclosed or fenced in.
7 There will be a fence at the perimeter of the play
8 area, starting -- set back 15 feet from the existing
9 sidewalk. That fence will be 7 feet high. It will
10 wrap around the entire play area. The second garden
11 is at the back of the site. It involves an existing
12 mature tree, which the school plans to keep. It will
13 retain it. It will plant a bed, use mulch, and not
14 disturb the existing tree. That will be more of a
15 hands-on participatory space for children to be
16 involved in gardening activities.

17 The predominant surface of the play area
18 will be a rubber safety tile. That will occupy about
19 20 feet by 70 feet of the space, or approximately 1400
20 square feet. It's a very resilient surface that is
21 safe for children. It meets industry standards and
22 meets the critical fall height requirements for
23 children.

24 The fence will also have post-mounted solar
25 lamps to provide night lighting and bring an element

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1 of safety to the area after school hours. There will
2 also be a retaining wall at the back and rear of the
3 site and wrap around on the predominant rubber safety
4 tile area. The retaining wall will be approximately
5 three feet high.

6 The project will be built predominantly by
7 the parents and friends of the school. It will be a
8 hands-on community oriented project and we are hoping
9 that should this happen, it will be before the cold
10 weather really sets in, which would make it a more
11 difficult endeavor for the school community to
12 undertake.

13 Also, one thing, with the existing row house
14 directly adjacent to the area, there is a bit of a
15 gap. There are plans to provide some landscaping in
16 the form of hedgerows to provide a screen to separate
17 the play area from the activity at the adjacent row
18 house.

19 MR. GROSS: I'm going to put the photo up
20 again.

21 As to the zoning relief, Test Number 1 for
22 the variance, the exceptional condition and practical
23 difficulty resulting from the exceptional condition is
24 simply that the CVS Building and then the driveway
25 occupy 100 percent of the lot. The driveway is

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1 concrete. It's required for access to the dumpster
2 that you can see at the rear of the driveway, and then
3 also for evening deliveries to the CVS. So it's off
4 the picture in terms of being able to be converted to
5 the play area. So the existing CVS use occupies 100
6 percent of the property. We do have this vacant 20
7 foot by 100 foot lot available, so that's -- the
8 practical difficulty is that simply, physically the
9 play area can't be on the lot with the principal use
10 as required normally for an accessory use under the
11 definition in Section 199.

12 As to no substantial detriment to the public
13 good, typically there would only be 24 kids using the
14 space at one time. The environment, as you can see
15 there is very intensely commercial and mixed usage
16 right across the street from the subway station. You
17 can see a high-rise apartment building immediately to
18 the south of the school. It's a high intensity mixed
19 use area in which the minor level of noise and
20 activity in the daytime on this play area will not
21 really be noticeable or have an adverse effect on
22 anyone.

23 The only abutting property is actually the
24 row house or townhouse that you see on the left there
25 to the immediate east. The property owner there has

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1 submitted a letter to the record of the case in
2 support of the Application.

3 As Mr. Villareal pointed out, this will be
4 much safer than having the kids walk to the park,
5 which is actually quite a substantial distance away,
6 and on the other side of 14th Street. So it's very
7 beneficial to the school activities and saving the
8 parents' and children's time for educational values.

9 In our statement in the record, there are
10 some numbers as to the growth trends of the school in
11 terms of numbers of students and adding one grade per
12 year, so it's a certainty that they have to leave in
13 three years to find a larger facility. Then there's
14 the License Agreement with the property owner, which
15 is included with the Application, which specifies that
16 at the conclusion of the play area use, the property
17 will be put back to crushed stone and then it will be
18 available for normal development under C-3-A at that
19 time.

20 Finally, as to the intent of the zone plan,
21 I would just note that the school and accessory uses
22 thereto are a matter of right use in the C-3-A zone,
23 so we don't see any inconsistency there.

24 That concludes the presentation from the
25 three of us. We have the three parents. If you would

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1 like to ask questions of us first, or hear from them,
2 we're happy to proceed however you would like, Mr.
3 Chairman.

4 MR. GRIFFIS: Did you want to call them as
5 witnesses, Mr. Gross, or are they here to testify as
6 persons?

7 MR. GROSS: Part of our presentation.

8 MR. GRIFFIS: Okay. Well, why don't we do
9 that? Let's take some quick questions and then we can
10 bring them up.

11 Mr. Mann, did you want to start the
12 questions?

13 MR. MANN: Yes. First of all, towards the
14 end of your presentation, Mr. Gross, what did you say
15 is a matter of right use in the C-3-A zone?

16 MR. GROSS: The charter school itself and
17 then any accessory uses to the charter school, which
18 would include the play area, would be as a matter of
19 right if it was on the same lot as the principal use.

20 MR. MANN: Okay. I have a couple of
21 questions though. I'm a little bit confused about
22 something and maybe you can help me understand this
23 Application. The property is owned by the Shenandoah
24 Corporation, correct?

25 MR. GROSS: Right.

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1 MR. MANN: So the applicant is the
2 Shenandoah Corporation? The Shenandoah Corporation is
3 seeking relief from the zoning regulations? They're
4 asking for the variance?

5 MR. GROSS: Right.

6 MR. MANN: Okay. Is a garden and play area
7 a matter of right use in the C-3-A zone?

8 MR. GROSS: I would imagine it is. But
9 we're not raising the question of garden or play area
10 as a principal use. We're treating this as a play
11 area, as a normal accessory use to a school use. And
12 we're just -- the variance is just simply to locate it
13 on an adjacent lot instead of the same lot that the
14 school is on.

15 MR. MANN: But wouldn't the path of least
16 resistance then be to use the property as a matter of
17 right use and then for the Shenandoah Corporation and
18 the school to enter into their own private agreement
19 on how that property is shared?

20 MR. GROSS: Well, the applicants approached
21 the DCRA about getting use as a matter of right and
22 were really told that they needed to go to the Board
23 of Zoning Adjustment. They were told that they could
24 erect a fence, but not --

25 MR. MANN: The Shenandoah Corporation went

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1 to DCRA?

2 MR. GROSS: Well, as happens in many
3 Applications, under -- by agreement, the applicant is
4 the school on behalf of the property owner. Of
5 course, we have the letter of authorization from the
6 property owner in the record. So, in effect, the
7 contract user is prosecuting the case on behalf of the
8 property owner.

9 MR. MANN: Okay. I guess I still don't
10 understand then, if a play area and garden is a matter
11 of right use, why a variance is being sought.

12 MR. GROSS: Maybe I should retract a little
13 bit. I wasn't at the meetings. I wasn't involved at
14 the time of the meetings with DCRA. But they were
15 told that all that they could get approved as a matter
16 of right was to build a fence and -- Natalie, do you
17 have any more that you would want to add?

18 MS. ADDISON: Yes. I met with Faye Ogunneye
19 with the Department of Zoning at DCRA and she informed
20 me that the lot, Lot 98, is actually a separate lot
21 than the principal lot which the school is located on
22 and that the school would have to actually apply for
23 a subdivision plat. That would be the only way the
24 school could build the play area, if it were
25 considered that both uses were on one lot. There is

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1 no way for the school to do that because the school
2 sits on a lot that has a different owner than the lot
3 of the play area. The school does have a Lease
4 Agreement with Shenandoah Corporation and in the
5 Agreement, Shenandoah Corporation states that the
6 school may use the area as a play area.

7 MR. GRIFFIS: That's all understood. I
8 think to answer the question is what's the regulation?
9 What's the cite that tells you that they have to be on
10 the same lot? That's where you're going, is that not
11 correct?

12 MR. MANN: Well, I --

13 MR. GRIFFIS: You don't even call it an
14 accessory use. You've got separate lots. You build
15 it as an independent use and you lease it back to the
16 school.

17 MR. MANN: That's right.

18 MR. GRIFFIS: Why are they even tied for
19 zoning purposes?

20 MR. MANN: Yes.

21 MR. GRIFFIS: I don't agree, but that's his
22 question.

23 MS. ADDISON: Yeah, we were told -- this is
24 from Mr. Bellow who was the lead administrator at the
25 time, and Faye Ogunneye, that we would have to apply

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1 for an accessory use, a variance to locate an
2 accessory use on a separate lot than the lot that the
3 school is located on.

4 MR. GROSS: This is going back to the
5 original question, Mr. Mann. I guess, in effect, they
6 were saying this cannot really be just a garden and a
7 play area sort of independently on its own. It is
8 inherently part of the school use and, therefore, it
9 is an accessory use. And then so they told them, you
10 know, we can give you a permit to build a fence, but
11 not a playground.

12 I think the other thing that Ms. Addison is
13 saying between the lines is in a more commercial
14 venture, you might have the two owners cooperate to
15 create a single lot of record and then, too,
16 assessment and taxation laws, and then they would both
17 be on the same lot of record and you could do it. But
18 for a 3-year period and I guess, basically, zero rent
19 involved, it's too much legal work in all that.

20 MR. GRIFFIS: And that's in your written
21 submission. This doesn't make any sense to me because
22 you don't own the property, do you? That would just
23 add another layer of --

24 MR. GROSS: Right. It was too complex for
25 this situation.

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1 MR. GRIFFIS: Okay. Do you have any follow-
2 up?

3 MR. MANN: Well, I guess just to summarize
4 then, the reason you're here is because DCRA
5 instructed you to proceed in a certain way then. Is
6 that right?

7 MR. GROSS: Yes.

8 MS. ADDISON: Yes.

9 MR. MANN: Okay. And -- well, I guess I
10 didn't ask your opinion on whether or not you think
11 that's correct, but you're here because you received
12 guidance from DCRA to proceed in this way?

13 MR. GROSS: Yes. I couldn't see it that
14 way, that the play area is inherently related to the
15 school rather than being a freestanding use. I had an
16 exchange with Faye Ogunneye on that about whether she
17 could just see it as a separate school use, but they
18 just see it as an accessory to the principal use of
19 the school.

20 MR. MANN: Do the zoning regulations require
21 a play lot for this charter school?

22 MR. GROSS: They don't require it. I guess
23 the normal definition of accessory use is a use
24 customarily incidental and subordinate to the
25 principal use, just like weddings at a church and many

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1 other uses you're all familiar with. So, I mean, I
2 just tend to see that as logical in this case, also.
3 If you had a public school and larger property, it
4 would have its playground on the same property and so
5 on. This just happens to be a more tight urban
6 situation.

7 MR. GRIFFIS: Well, I don't think anyone's
8 questioning the fact that schools need play areas.

9 MR. GROSS: Yes.

10 MR. GRIFFIS: But the question is directly,
11 is a play area, an outside play area like a
12 residential rec or parking? Is it required in the
13 zoning regulations? Which would then lead you to the
14 idea that in order to not -- when you're not able to
15 provide it on your site, you would have to get some
16 relief from the regulations and then this accessory
17 use has to go on a site that isn't located on the same
18 lot. Then we would be where we are. I'm just not
19 sure how we get to where we are. If you can't provide
20 the parking, you could get a variance for parking or
21 you could get a special exception or a variance for
22 accessory parking on a separate lot or however you
23 might do it, but it would be because the parking was
24 required in the zoning regulations.

25 MR. GROSS: Yeah. All I can say is -- I

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1 think I may have the e-mail from Faye here. But I did
2 ask DCRA after Ms. Addison told me about the result,
3 I got in touch with them and asked whether we couldn't
4 just simply apply for a playground as a charter school
5 use. She said no.

6 MR. GRIFFIS: That's okay. Well, I don't
7 think we need to take up your time in doing this. I
8 think it should be clear why we are --

9 MR. GROSS: I do have it, Mr. Chairman, for
10 what -- we're putting it in the record, if you would
11 like. This is from Faye Ogunneye to me, an e-mail
12 dated May 3, 2005. "Point Number 1, Public School and
13 Public Charter School are allowed as a matter of right
14 in a C-3-A." "Point 2, the playground cannot have a
15 Certificate of Occupancy as a public school without it
16 building on the lot. If the work to be done is simply
17 the erection of a fence, we can approve such an
18 Application. However, to get a Certificate of
19 Occupancy will be complicated, as the proposed use
20 will be difficult to qualify. Going to the BZA will
21 result in seeking relief to provide an accessory use
22 on a lot other than that of the principal use. Mr.
23 Bell and I discussed this issue late yesterday..." and
24 so on. So that's basically what the Zoning
25 Administrator told us.

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1 MR. GRIFFIS: Mr. Gross, why don't you put
2 that in. If you could leave a hard copy for the
3 record of that, that would be appropriate. But as I
4 understand what you just read into the record, it's
5 going to being able to provide a Certificate of
6 Occupancy for this lot and this use that has to tie
7 towards something else. And that's what the Zoning
8 Administrator is looking at. They could not issue
9 their approval for permitting that would then go to a
10 Certificate of Occupancy without tying it back to the
11 school, which is why perhaps we are where we are.

12 MR. GROSS: Right. That's exactly right,
13 Mr. Chairman.

14 MR. GRIFFIS: Okay. Very well. Let's
15 proceed then and we'll just take a couple more, a
16 couple of quick questions. A couple of questions,
17 first of all, you indicated that there is this
18 driveway there, as your drawings have indicated --
19 they're not numbered -- however, there's a trash
20 enclosure wall. Is that a new wall that's being
21 proposed?

22 MS. ADDISON: That's an existing wall. It's
23 just a concrete block wall.

24 MR. GRIFFIS: I see, okay. And then you
25 said the front portion was the community garden?

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1 MS. ADDISON: Yeah, that's the concept that
2 the school has, not to fence off that area, but to
3 leave it open perhaps, say a bench and a path and some
4 gardening, that it would become a community asset
5 because it would kind of beautify that location and
6 keep it accessible and keep it open without closing it
7 off by erecting a fence around it.

8 MR. GRIFFIS: Interesting thought. Are
9 there any gardens like that in the neighborhood that
10 you're familiar with or anywhere else in an urban area
11 that work well?

12 MS. ADDISON: I can't say in that specific
13 neighborhood that I'm familiar with.

14 MR. GRIFFIS: Have you designed any others
15 like that?

16 MS. ADDISON: I have not. But again, this
17 is coming from --

18 MR. GRIFFIS: That's okay.

19 MS. ADDISON: -- part of the mission of the
20 school. Himber can speak more about this than I can,
21 but about serving the community in the best way they
22 can.

23 MR. GRIFFIS: Good, okay. You indicated
24 that there were going to be post-mounted solar lamps
25 and fixtures?

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1 MS. ADDISON: Yeah. They would be motion
2 sensory so they would just be mounted to the posts of
3 the fence.

4 MR. GRIFFIS: How many and do you know the
5 locations of them?

6 MS. ADDISON: Yes. Locations would be at
7 the perimeter, the side that aligns with the service
8 alley. They would be located 14 feet on center. So
9 just down that long side, starting from 15 feet back,
10 all the way down.

11 MR. GRIFFIS: So there's one on the first
12 post, is that correct?

13 MS. ADDISON: Yes.

14 MR. GRIFFIS: And then --

15 MS. ADDISON: Fourteen feet on center. They
16 continue down.

17 MR. GRIFFIS: On center of the posts?

18 MS. ADDISON: Of the fence. So the posts
19 would have to be located --

20 MR. GRIFFIS: I see. And what you're
21 showing -- just for clarification, you're showing the
22 posts on this drawing, how far apart?

23 MS. ADDISON: They should be located 14 feet
24 on center.

25 MR. GRIFFIS: Each post is?

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1 MS. ADDISON: Each post. That has the
2 fence-mounted solar lamp on it. I imagine it would be
3 --

4 MR. GRIFFIS: Right, so each post is how far
5 apart?

6 MS. ADDISON: Let me see.

7 MR. GRIFFIS: You have eleven posts.

8 MS. ADDISON: There are probably more --
9 there's probably more than 14 right now. There is,
10 one, two, three, four, five, six, seven, eight --
11 yeah, there's eleven posts. There's a small symbol
12 that's hard to read. It's a circle with four little
13 lines that come off the circle. Those posts would
14 have the solar lamps. So not every single post that's
15 shown in the plan. It would be every other post that
16 would have the lamp.

17 MR. GRIFFIS: Every other one, okay.

18 MS. ADDISON: Yes.

19 MR. GRIFFIS: So they're about a seven-foot
20 separation. And then what is the fencing made of?

21 MS. ADDISON: It'll be made of a chain link.

22

23 MR. GRIFFIS: A 7-foot high chain link?
24 Where are the gates then?

25 MS. ADDISON: The gate -- that's one thing

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1 I did forget to mention when I first spoke. It would
2 be located on the front when you go 15 feet back from
3 Irving Street, it would be located directly across
4 from an adjacent path, stone path that's currently on
5 the site.

6 MR. GRIFFIS: Okay.

7 MS. ADDISON: And it's dotted in. It shows
8 as Number 1. I'm not sure if you have the plan that
9 has the legends to the side. Number 1 would be the 7-
10 foot entry gate. You might have --

11 MR. GRIFFIS: Good.

12 MS. ADDISON: I think these plans have been
13 re-worked a little bit since the initial submission,
14 but the one that's shown on the board. It's Number 1
15 on the Landscape Plan. That's the location of the
16 entry gate.

17 MR. GRIFFIS: Good. Because I'm looking at
18 17S.1, which has the legend on it. What type of
19 activities -- I know there were some listed, but what
20 type of specific activities does this space work for?
21 Obviously, not playing baseball on it, but as a
22 designer --

23 MS. ADDISON: Right, right.

24 MR. GRIFFIS: -- what other types of
25 activities?

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1 MS. ADDISON: Right. There definitely are
2 no plans to have playground equipment. There
3 obviously isn't buffer space to allow that. But the
4 school will have dance, some dance activities --
5 Himber can probably speak more to that.

6 MR. VILLAREAL: Basically we have -- right
7 now, we are only pre-K to 3rd Grade so our kids cannot
8 play basketball. But we definitely have different
9 activities where we have different games that we
10 basically help our students interact with each other
11 and learn how to work together. Right now we have
12 dance that we can't actually have in there because our
13 space right now is very limited. So we can use that
14 for health and fitness. That's basically it and also
15 to have some -- we are a project-based school so we
16 actually get our students out and we are thinking that
17 we can actually use the play area for some science
18 classes if necessary.

19 MR. GRIFFIS: Are you going to need to go to
20 other playgrounds with the grades that you have
21 currently, even with this?

22 MR. VILLAREAL: We're hoping not to, but if
23 that's the case, yes. It will be very convenient for
24 us because we can just open the door and it will be
25 right there. It is the back door to our school and

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1 there is a lot of different safety issues. There area
2 also -- we have some of the parents here who are
3 actually going to speak about how we -- right now, we
4 send two teachers with each class. Each class is
5 about 22 students. Even with two teachers right now,
6 there are other students in the local parks and
7 playgrounds which happen to bully our kids. We cannot
8 actually, you know, try to teach these other kids and
9 we can't really stop them from just bothering our
10 kids. So this playground means a lot to us, and for
11 all the different activities that we're going to have.

12

13 MR. GRIFFIS: Do you have anything else?

14 MR. MANN: If we could go back for a minute
15 again to your argument for the exceptional
16 circumstance, could you restate that again for me?

17 MR. GROSS: Simply that the accessories
18 can't be on the same lot as the principal use because
19 the CVS Building occupies virtually all of the lot and
20 then the concrete driveway occupies the remainder of
21 it, and the concrete driveway can't be re-used for it
22 because it's needed for evening delivery to CVS and
23 then also collection of the trash from the receptacle
24 that's at the back of the photograph.

25 MR. MANN: I guess the problem that I'm

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1 having then is I don't understand -- does an
2 exceptional situation go to the property that's the
3 subject of the Application or the property that's not
4 the subject of the Application?

5 MR. GROSS: Well, it's a tricky case in that
6 regard, for use. I guess it goes back to kind of what
7 we encountered at DCRA. It's kind of a Catch-22. You
8 can't have a separate C of O for it, so it's an
9 accessory to the school, so go to the Board. I mean,
10 that's the long and short of it from our standpoint.
11 I guess it is -- I would say it speaks well of the
12 school that they didn't follow the possible route of
13 getting a permit to build the fence and then just
14 informally putting in the coating on the ground, you
15 know, and proceed that way. They said we'll play by
16 the rules and come to the Board.

17 MR. MANN: Okay, thank you.

18 MR. ETHERLY: Mr. Gross, just a very quick
19 question to follow-up on the issue of the driveway and
20 also trash collection. You noted that deliveries to
21 the CVS store take place typically during evening
22 hours, so you would not anticipate that interfering in
23 any way with potential use, movement of your young
24 charges to the playground area, is that correct?

25 MR. GROSS: That's correct, Mr. Etherly. My

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1 understanding is that deliveries are only after 6:00
2 p.m.

3 MR. ETHERLY: Okay. With respect to trash
4 pick-up, what's your sense or understanding of that
5 schedule as well? Is it a similar understanding that
6 you also would not encounter any conflict with trash
7 collection in the alley while moving students to and
8 from the proposed site?

9 MR. GROSS: Let me make the general
10 observation that it's a lot safer than the kids
11 crossing 14th Street and walking six or eight blocks
12 every day. But let me ask Mr. Villareal if he knows
13 more about the timing of trash collection.

14 MR. VILLAREAL: The trash collection usually
15 happens right in the morning. It normally happens --
16 and we actually know a related time. I can't remember
17 if -- it's around nine, so we know exactly when it's
18 coming so we can -- you know, it's very safe for us to
19 hold our kids while the trash comes in.

20 MR. ETHERLY: Okay. And just -- this is
21 perhaps not necessarily on a specific question, but
22 just out of curiosity and because it's something that
23 many of us deal with not only in the District, but
24 elsewhere, and that is the issue of rodents and things
25 like that. Is there any concern in the alley because

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1 of the proximity of the proposed play area to the
2 trash receptacles, any concern along those lines?

3 MR. VILLAREAL: I'm sorry, can you --

4 MR. ETHERLY: What I'm inquiring about is
5 just any concern regarding rodents or other pests that
6 may be active in that particular alley area. It's not
7 so much a zoning related inquiry, but it's perhaps
8 just a natural question, given that there will be a
9 close proximity to a trash receptacle. What type of
10 trash receptacle is at the rear? Is it your typical
11 commercial type of dumpster at the rear of the alley?

12 MR. VILLAREAL: It is.

13 MR. ETHERLY: Okay. But you haven't had any
14 indication that there's any kind of problem that would
15 be a cause for concern?

16 MR. VILLAREAL: Right now, we don't. And we
17 do have a contractor that normally takes care of that.
18 If there was a problem, I'm sure, we can find a
19 solution, but right now, we are now aware of any type
20 of problems.

21 MR. ETHERLY: Okay, thank you.

22 Thank you, Mr. Chair.

23 MR. GRIFFIS: Anything else?

24 MR. GROSS: I'd like to have the parents
25 come forward for a couple of minutes, Mr. Chairman.

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1 MR. GRIFFIS: Good afternoon to you all.
2 I'm just going to have you state your name and your
3 address for the record and then you can proceed. Why
4 don't we start at my right?

5 MS. WAUGH: My name is Tawana Waugh. My
6 address is 919 Hamilton Street, N.W., Washington, D.C.

7 MR. GRIFFIS: Go ahead.

8 MS. WAUGH: I can proceed?

9 MR. GRIFFIS: Yes.

10 MS. WAUGH: I'm sorry. Okay. I am a parent
11 of twin girls at the E. L. Haynes School. We were
12 there last year and it is very important to me that
13 they do have a place that's close to the school for
14 the play area. As was mentioned, the currently now
15 walk down 14th Street o Girard Street and back towards
16 15th Street and it is very dangerous to me, taking the
17 kids down to that area, especially for the smaller
18 kids because we do have kids there ages 4 through 8.
19 So I'm somewhat concerned about the safety with what
20 they currently do.

21 I'm also concerned, and that was one of the
22 issues for my daughters when they first started the
23 school -- they used to attend Stevens Elementary and
24 they were used to having a playground at their
25 facility. So that was kind of one of the major

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1 drawbacks for them at the school, as they mentioned as
2 well, for their other friends; that it is a problem
3 sometimes walking down and how much they missed
4 playground time because they get a lot cut, spending
5 the time walking down to the other location.

6 My other concern is the safety and security
7 of having it nearby. As Mr. Villareal mentioned, just
8 last night at the parents' meeting, there was an issue
9 at the current playground that they attend. There are
10 other students who also use this play area and there
11 was a problem of bullying taking place at this
12 playground from a kid who was not a member of the E.
13 L. Haynes School. Our teachers were not able to
14 discipline that kid. That's just a recent issue, but
15 it is a major issue of concern that currently where
16 they attend this play area, our teachers and teachers'
17 aids don't have jurisdiction over other kids at that
18 play area. This would be one thing that would be
19 avoided if they did enter that space that's right
20 beside the school.

21 So I guess for me, it is a better place to
22 be able -- even though there will not actually be
23 playground equipment, they do a lot of activities with
24 the children inside now with games and that sort of
25 thing, which could be better done outside, as well as

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1 that garden space is very important because the kids
2 -- the school does a lot of activities teaching
3 science and et cetera using gardening and that sort of
4 thing. So it would definitely be a better situation
5 having that space directly beside the school as
6 opposed to what they have currently.

7 MR. GRIFFIS: Thank you very much.

8 MS. SMITH: Hi, my name is Nina Smith. My
9 address is 244 Walnut Street, N.W., Washington, D.C.
10 I'm also a parent of a child at E. L. Haynes Public
11 Charter School and I completely agree with everything
12 Ms. Waugh just said.

13 I just wanted to say a couple of things
14 about the lot that we're trying to develop this play
15 area on. The school is really surrounded by a lot of
16 construction, a lot of chain link fence, a lot of
17 dust, a lot of traffic and right next to our school,
18 there is also that -- what exists in that lot right
19 now. It's ugly. If there's rodents there, there's --
20 I just wanted to say I think there's just as many at
21 the public playgrounds as there are in the lot next
22 door to the building. So I don't think we're pinning
23 them up in an area that's less hygienic than where
24 they're playing now. And it's almost -- it's so close
25 to the back of the school, and we have to almost keep

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1 our kids out of there because there's loose gravel.
2 If they walk there now, they're picking it up and
3 throwing it sometimes. I mean, just playfully, but
4 it's just -- it's an empty lot that's sitting there
5 and not being used well. People dump trash there.

6 I think that if we enclosed it, it would
7 benefit the community because we would maintain it.
8 We would sort of be the chaperones of the space to
9 collect the trash out of there and make sure people
10 don't come in there and just dump their trash.

11 Also, I just wanted to say one thing about
12 the design that we came up with. Since that block of
13 Irving Street has nice front yards -- it's a
14 residential street. We did want to set our chain link
15 fence back from the street front so that it wouldn't
16 appear as just another chain link fence in your face
17 in Columbia Heights.

18 That's all I have to say. Thank you.

19 MR. GRIFFIS: Thank you very much.

20 MR. WILSON: Good afternoon. My name is
21 James Wilson. My address is 1610 Tuckerman Street,
22 N.W., Washington, D.C.

23 Mr. Chairman and the Board, I'm just here to
24 say that I've been involved in the meetings to plan
25 this playground ever since it was first suggested that

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1 this lot could be used for that. And I have noticed
2 that throughout the entire process, the needs of the
3 community and the safety of the children have been the
4 paramount considerations by everyone involved. We
5 want to do something that's a benefit to the community
6 and also to help our children to get the exercise that
7 they need without spending time out of the classroom
8 walking to and from playgrounds that are rather
9 distant. Also, there would be a place to have
10 experiments. Already one of the -- one of the classes
11 last year that was studying native flora and invasive
12 species used the area, such as it is, to put some
13 seeds and some invasive species to see if they would
14 survive there. Well, they did because, you know,
15 they're invasive species. But that was a good lesson
16 for them.

17 We have had a temporary garden there in
18 containers for the past four months and we do know
19 from that that a garden area would be beneficial and
20 also there was no -- we have some trees there and no
21 one disturbed the trees. So we feel secure that
22 whatever we put there will be beautifying and also
23 will be able to be removed and the lot returned to its
24 original condition as per the agreement with the lot's
25 owners.

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1 Thank you.

2 MR. GRIFFIS: Thank you very much. Are
3 there any questions?

4 MR. ETHERLY: I just have a quick question.
5 You said early on something about how you've been
6 involved in this ever since it was first suggested.
7 I was just wondering how that suggestion came about,
8 to use this area as a play area?

9 MR. WILSON: When the -- my understanding,
10 and I'm sure Mr. Villareal can possibly correct me if
11 I say anything wrong, but it's my understanding that
12 the lease arrangement for use of the lot came at about
13 the same time as the lease arrangement for use of the
14 space in the CVS Building. It's just been a matter of
15 trying to come up with a design and to move it through
16 the process and it's been just a little over a year.
17 So I think we're doing pretty well.

18 MR. ETHERLY: Okay, thank you.

19 MR. PARTICIPANT (2:01:14): It's not a
20 question, Mr. Chair, but more so a comment. A number
21 of us here are -- and I'll say it as impartially as I
22 can, as a number of us are familiar with charter
23 schools here are on the Board, so we definitely
24 appreciate your time as parents and your support for
25 the institution because that's what truly makes a

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1 difference.

2 I will just float the question that I
3 engaged Mr. Gross and Mr. Villareal in very briefly,
4 and that is the issue of any concern that you might
5 have. Obviously this could conceivably be an
6 improvement over having to walk the distance that your
7 young people are currently walking. Are there any
8 concerns that you may have regarding any of the
9 driveway traffic that they may encounter if this were,
10 if this Application were to be approved, or any
11 concerns that you might have regarding proximity to
12 the trash dumpster or receptacle at the alley?
13 Anyone? Feel free to respond.

14 MS. WAUGH: Well, initially when we started
15 at this school, we were a little concerned about the
16 congestion and traffic in that area. But I have
17 noticed basically it appears that really only E. L.
18 Haynes parents kind of park up there in dropping off
19 and picking up their kids. So I don't see a regular
20 use of it. I do see that the majority of the
21 deliveries that come during the day, they actually
22 park on Irving Street. So I've only seen trucks park
23 there kind of after hours in the actual alley.

24 The thing about the rodents, I didn't think
25 about that, but I do note that the dumpster is very

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1 far back from where the actual spot of the playground
2 space is. So although you see it, I've never smelled
3 it or anything like that in pulling my car into that
4 space to pick up children. So while I know there is
5 an issue with rodents in this area, I, myself have not
6 seen anything specifically there and I know the
7 dumpster are back far enough that the smell or the
8 trash or anything related to it has not been an issue
9 for me in pulling in to pick up and drop off my kids
10 there. So I don't anticipate a problem, but I do
11 think that the school is very community focused in the
12 sense that we do want to provide service and we do
13 want to be good stewards in this community. So if
14 there was a problem, I'm sure that not only the Board
15 and school people, but the parents as well, would get
16 active to do whatever we have to do to work on those
17 issues.

18 MS. SMITH: All right. I just want to add
19 to what she said. There's, I think, at the
20 playgrounds that they're going to now, we can't really
21 be custodians of those areas. We don't know what's
22 going to be on the playgrounds when they arrive and --
23 also in terms of other people, but also trash and so
24 forth and what they're going to encounter along the
25 way.

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1 I think it's as much -- the difference
2 between crossing the driveway to get into the space as
3 opposed to crossing 14th Street and several other side
4 streets, is, you know, I think much safer. As far as
5 the trash goes, I think that if we do -- when we can
6 enclose the area, and it's very definite that the area
7 that our play space is in, is -- the space that we
8 take care of, we will pick up the trash there. But
9 right now, there's sort of -- the trash sometimes
10 overflows from the dumpster that's there now. It just
11 overflows into the space, and I don't think CVS feels
12 like they need to deal with that because it's not
13 their space. They're just dealing with it on that
14 driveway. Nobody's really inclined to clean up all
15 the debris that does build up towards the back of that
16 lot. I think that if we have our children in that
17 space, we're going to be inclined as a school
18 community to clean up that space. I think that will
19 improve the conditions of the area.

20 MR. WILSON: One quick note about the way
21 the gate will be and the children will go from the
22 building to the playground. It will be -- there is a
23 back door which is now used for pick up of children at
24 the end of the day. I pick up my children there every
25 day and I have never seen children being let out of

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1 the door without at least one, and often two, staff
2 people there with the children. In the meetings, it's
3 my understanding that when the children are released
4 for the playground, they will go down with two people,
5 one who will open the door and make sure everything is
6 clear and then stand to essentially block the alley so
7 if anyone were to turn in there, and another person to
8 open the gate and let the children in to the
9 playground area. So I'm perfectly satisfied with the
10 way they have the plan now.

11 MR. ETHERLY: Thank you, Mr. Chair.

12 MR. GRIFFIS: Is there anything else?

13 I'm not sure if I heard you correctly. Do
14 you drive in to that driveway area and on that site to
15 drop your children off?

16 MS. WAUGH: I have on pick-up, not on drop-
17 off because, as he mentioned --

18 MR. GRIFFIS: On pick-up?

19 MS. WAUGH: Right, because the door is
20 secure.

21 MR. GRIFFIS: Is that the program for the
22 school for drop-off and pick-up?

23 MS. WAUGH: Well, no. The problem is they
24 --

25 MR. GRIFFIS: When you drive in, do you

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1 drive in and you have to back out onto Irving or can
2 you turn around in there?

3 MS. WAUGH: No, you cannot turn around. You
4 have to back out.

5 MR. GRIFFIS: So you're driving in, and
6 you're driving in onto the adjacent property and not
7 the CVS or school property?

8 MS. WAUGH: No, I'm driving in to the
9 service alleyway of CVS, not on --

10 MR. GRIFFIS: So you drive just straight into
11 the service?

12 MS. WAUGH: Right.

13 MR. GRIFFIS: And you're surely not alone in
14 doing that?

15 MS. WAUGH: Right. And then, in essence,
16 kind of parents sort of watch for other parents to
17 back out. Like, there will be a parent to tell me
18 when to --

19 MR. GRIFFIS: Mr. Wilson, when you pick up
20 your child, do you drive into that area also?

21 MR. WILSON: No, I park on 13th Street.

22 MR. GRIFFIS: There's been testimony now
23 that there's an overflow of trash into the adjacent
24 property, but you're thinking with a 7-foot chain link
25 fence there, that that will be remedied? Or are you

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1 anticipating that parents who have to drop-off and
2 pick-up will go pick up the trash also?

3 MS. SMITH: Our intention is to keep the
4 playground clean and safe for our children. So we
5 will have a program to make sure that the trash is
6 collected.

7 MR. GRIFFIS: Is that the school's trash
8 receptacle?

9 MS. SMITH: No, it's not. It's the CVS' and
10 I'm not saying that, you know -- what I'm saying is
11 trash will sometimes float out of the dumpster and go
12 over into the lot, and right now there's -- CVS has no
13 reason to go pick it up from there, I don't think.

14 MR. WILSON: I don't -- it's not actually
15 trash. It's a huge roll-off dumpster. So trash --
16 and it has lids on top of it, so trash isn't
17 literally, you know, piled so high that it falls over
18 sideways; it's just that sometimes that they choose
19 not to put things in it or set things beside it. And
20 they're also people who are going back and picking
21 through the dumpster and who will take things out of
22 the dumpster and who will leave it on the vacant lot.

23 MR. GRIFFIS: All right. I guess I don't
24 understand, not that I need to push this very much
25 further. I just want to get clarification, but I'm

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1 not sure that having your playground there is
2 persuading me that that will change the mind of CVS to
3 make sure that that's kept clean.

4 MS. SMITH: No, I just think that the fence
5 barrier is actually going to help with papers flowing
6 off into space. Number One, if it should go over the
7 fence, we'll pick it up. I don't think -- I don't
8 expect CVS to do anything differently, but I'm just
9 saying that the way that the lot is being used
10 currently, which is for basically nothing, nobody has
11 any inclination to go clean it up.

12 MR. GRIFFIS: And I think that's an
13 important point that you've brought up several times
14 now, that it will now be controlled space, is your
15 terminology, and I would tend to understand that.

16 Let me ask, Mr. Wilson, in terms of --
17 you've indicated in your testimony that you were a
18 participant in the design of this from its onset. Was
19 there -- in my reading of this drawing on S-1, north
20 is up. The garden that is going to be the school's
21 garden and utilized for projects and such, which is an
22 excellent idea, is obviously on the south side of
23 that. The pictures and the testimony in the record
24 show a large apartment building on the direct side.
25 I'm assuming that that's close to, if not on that

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1 property line. How much sun actually gets in there
2 with the existing tree?

3 MR. WILSON: There's a -- the tree is a
4 Mulberry tree and is somewhat -- it doesn't have a
5 full leaf canopy. The apartment building is, I
6 believe, six stories, and so I've been out there a lot
7 generally between the months of May and July and into
8 August, it does get -- that area does get sun. I was
9 able to grow Marigolds back there.

10 MR. GRIFFIS: Excellent.

11 MS. SMITH: And I just want to say that
12 there are a number of outdoor activities, nature
13 based, that can be conducted in the shade and there
14 are also shade plants.

15 MR. GRIFFIS: Yeah, not all science projects
16 require sun.

17 MS. SMITH: Worm bins and things like that.

18 MR. GRIFFIS: Okay. And last, just for
19 clarification, I think you've all, if not several of
20 you, have mentioned the playground that was walked to
21 on 14th and Girard, is that correct?

22 MS. WAUGH: It's actually 15th and Girard.
23 I think it's closer to 15th Street.

24 MR. GRIFFIS: 15th and Girard.

25 MS. WAUGH: It's between 14th and 15th on

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1 Girard.

2 MR. GRIFFIS: Okay. Which, I believe is the
3 subject of an Application next week, if I'm not
4 mistaken. Maybe not. Maybe not that one.

5 Okay. Excellent. And then security, I
6 think we've hit that because you've all indicated that
7 security in terms of crossing streets, if I understand
8 your testimony correctly, and also in terms of who
9 else is utilizing the playgrounds that are public that
10 the children are going to. Are there other aspects of
11 that element of security that I'm not understanding?

12 MS. WAUGH: No.

13 MR. GRIFFIS: Okay. Are there any other
14 follow-up questions?

15 (NO RESPONSE.)

16 MR. GRIFFIS: Excellent. Thank you all very
17 much. We appreciate you taking the effort and time to
18 be down here today.

19 MS. WAUGH: Thank you.

20 MR. WILSON: Thank you.

21 MS. SMITH: Thank you.

22 MR. GRIFFIS: Mr. Gross, is there anything
23 else for your presentation at this time?

24 MR. GROSS: That concludes our presentation,
25 Mr. Chairman.

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1 MR. GRIFFIS: Excellent. Thank you very
2 much.

3 If there is nothing further for the Board
4 for clarification, let's move ahead to -- Yes, Mr.
5 Etherly, did you have something?

6 MR. ETHERLY: Just very quickly. In the
7 submittal, Mr. Gross, there is a letter from Mr.
8 Escobar of 1364 Irving Street. I just wanted to
9 confirm Mr. Escobar is the owner of the adjacent
10 property immediately to the side of the proposed play
11 area, correct?

12 MR. GROSS: That is correct, Mr. Etherly.
13 Yes, that row house that showed in the photograph when
14 it was up.

15 MR. ETHERLY: Okay. And Mr. Escobar
16 indicates that he has no objection to the proposed
17 playground being cited at that location?

18 MR. GROSS: Right.

19 MR. ETHERLY: Excellent. Thank you.

20 Thank you, Mr. Chair.

21 MR. GRIFFIS: Very well. Let's move ahead
22 then to the Office of Planning Support Exhibit Number
23 27.

24 MS. THOMAS: Good afternoon, Mr. Chairman,
25 members of the Board. I'm Karen Thomas with the

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1 Office of Planning. OP is recommending approval of
2 this Applicant's Variance Request to permit the
3 establishment of the play area as an accessory use on
4 the neighboring lot for a period of no more than three
5 years from the date of approval by the Board.

6 This school entered into a 3-year agreement
7 for the use of the vacant property as a play area.
8 The school's lot does not have additional land area to
9 support a play area and students now use an off-site
10 area located further away than the lot in question.
11 This creates a practical difficulty for the Applicant
12 in coordination of its play and curriculum activities.
13 We do not believe that the proposed accessory use
14 would cause substantial detriment to the public good.
15 Temporary use as a play area represents a visual
16 improvement as well as a public good, since most of
17 the attendees of the charter school live in the
18 Columbia Heights neighborhood.

19 Therefore, we would recommend approval of
20 this Request for the establishment of the play area
21 for a period of no more than three years from the date
22 of the Board's approval.

23 Thank you.

24 MR. GRIFFIS: Thank you very much.

25 Are there any questions from the Board? Mr.

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1 Mann?

2 MR. MANN: Do you believe that this should
3 be a variance from Section 199 or should it be a
4 variance from Section 2500?

5 MS. THOMAS: We did not look at 2500. We
6 missed that, if that was the case. We looked at it as
7 it appeared before us. We did request advice from
8 Corp. Counsel on it and he did not lead us any other
9 way but to say that -- but we would have to look at
10 it. We didn't -- we looked at it as an area variance.
11 We didn't want to look at it as a variance from the
12 definition, as such. We just looked at it as an area
13 variance because the lot could not support that
14 accessory use, but not specifically from the
15 definition requirement.

16 MR. MANN: I guess I understand the problem
17 there was that you were trying to analyze the
18 Application that was put before you, right. But the
19 -- what I don't -- what I'm not fully understanding
20 necessarily is how you analyze an area variance when
21 you're actually talking about the definition rather
22 than the accessory use itself under 2500?

23 MS. THOMAS: I can't remember the exact
24 argument, but we just looked at it as -- it ended up
25 with just focusing on the fact that, as an accessory

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1 use, it wasn't accommodated on its principal lot.

2 MR. MANN: Were you able to --

3 MS. THOMAS: Because the Zoning Regs does
4 not have a specific thing for play area.

5 MR. MANN: Right.

6 MR. GRIFFIS: Yeah, that's the confounding
7 aspect of this, is that "playground" or "play area"
8 isn't a defined use.

9 MS. THOMAS: Yeah, playground area.

10 MR. GRIFFIS: I guess the direction -- maybe
11 a more general question I hear Mr. Mann asking is are
12 you aware of any variances from 199 that you maybe in
13 your profession, may have been involved with, or have
14 known about? The only way I see as conclusive, is
15 whether one can bring a variance on 199.

16 MS. THOMAS: Yeah. I was concerned about
17 that, too. We never really encountered that per se
18 from a definition sense.

19 MR. GRIFFIS: Okay.

20 MS. MONROE: Mr. Chairman, can I interject
21 on that?

22 MR. GRIFFIS: Yes.

23 MS. MONROE: I don't know who you talked to
24 in Corp. Counsel, but I think that because the
25 language is essentially substantively the same in 199

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1 and 2500.1 --

2 MR. GRIFFIS: Actually, it's identical to
3 2500.1.

4 MS. MONROE: If you feel uncomfortable --
5 almost. I mean, if you feel uncomfortable going under
6 the definition, go under 2500.1. I don't know how the
7 Applicant feels about that, but it's the same test;
8 it's the same variance; it's the same facts.

9 MR. GRIFFIS: That's right.

10 MS. MONROE: It's the same language. I
11 don't see that it would matter.

12 MR. GRIFFIS: No.

13 MS. MONROE: Again, if you don't feel
14 comfortable with the definition, go under 2500, the
15 first test, the first phrase of 2500.1, where it has
16 to be on the same lot, because the second phrase has
17 nothing to do with the student parking.

18 MR. GRIFFIS: Right.

19 MS. MONROE: That way, it works out as an
20 area variance because you're under a regulation. You
21 might feel more comfortable with that.

22 MR. GRIFFIS: I think that is actually the
23 appropriate way, and actually Ms. Thomas from the
24 Office of Zoning also looked at that in terms of the
25 regulations in 2500.1, and I tend to agree with that

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1 analysis of where or what the relief should be coming
2 from. I'm not aware of how we would get into granting
3 some sort of relief from a definition, as it doesn't
4 play into a requirement within a zoned district.

5 Okay. Are there any other questions to the
6 Office of Planning?

7 (NO RESPONSE.)

8 MR. GRIFFIS: Very well. Does the Applicant
9 have any cross-examination of the Office of Planning,
10 Mr. Gross?

11 MR. GROSS: No, Mr. Chair.

12 MR. GRIFFIS: No cross.

13 Moving right ahead then. I don't have any
14 record of any other Government reports attendant to
15 this Application. This is not located in a historic
16 district. We can move ahead to the Exhibit Number 26,
17 which is from the ANC-1A. I would ask if any ANC
18 representatives are here today? I think we have
19 exhausted all those who are here and have already been
20 at the table.

21 (NO RESPONSE.)

22 MR. GRIFFIS: Not noting any ANC member
23 present, we can take note of their submission in
24 support of the Application.

25 Let me open up and ask for anyone here

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1 present to provide testimony either in support or in
2 opposition to Application 17376. Now would be the
3 time to come forward to provide testimony as persons.

4 (NO RESPONSE.)

5 MR. GRIFFIS: Not noting any others present
6 to provide testimony as persons, Mr. Gross, we'll turn
7 it over to you for any rebuttal testimony or closing
8 remarks that you have. I think it might be
9 appropriate if you just want to address this quickly,
10 199 and 2500.

11 MR. GROSS: Yes. Thank you, Mr. Chairman.

12 Actually Ms. Bailey had called me a few days
13 ago about the alternative Section 2500.1 and we have
14 no objection with that. I suppose it does fit better
15 to make it an area variance from a substantive
16 provision.

17 I had heard many years ago from the
18 legendary Whayne Quin, he told a group of us at the
19 Office of Planning that he can apply for a variance
20 from absolutely anything. Be that as it may, 2500.1
21 makes a lot of sense, I believe, and so we have no
22 problem going in that direction if the Board so
23 chooses.

24 MR. GRIFFIS: Excellent.

25 MR. GROSS: The last thing I would say is I

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1 realize there is some complexity here with the nature
2 of the variance and so on. We were hoping to ask for
3 a Bench Decision in view of all support and no
4 opposition, particularly in view of the growing season
5 concerns. So I'll just leave it at that. If you can
6 see your way clear to do a Bench Decision, that would
7 be great.

8 That would conclude my remarks. Thank you.

9 MR. GRIFFIS: Excellent. Thank you very
10 much, Mr. Gross, and certainly far be it for me to
11 take on Mr. Quin, especially when he's not here.
12 However, I don't disagree with that. I guess looking
13 at the 199 and just finding the substance of what the
14 relief would be more than what the vehicle would be,
15 and especially when the clarify of 2500.1 is there for
16 us, I think it's appropriate to move it into Chapter
17 25.

18 That being said, we are going to recess for
19 ten minutes and we'll resume.

20 (Whereupon, the above-entitled matter went
21 off the record at 2:21 p.m. and resumed at 2:51 p.m.)

22 MR. GRIFFIS: Okay, let's resume. I think at
23 this time, let me open it up for a brief discussion on
24 where we are and whether we would proceed today with
25 a deliberation.

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1 MR. MANN: Mr. Chairman?

2 MR. GRIFFIS: Yes, Mr. Mann?

3 MR. MANN: I actually think that there are
4 several confusing aspects to this case that, despite
5 the fact that it might have seemed fairly
6 straightforward in certain respects. There are
7 certain things that I am confused about and maybe I
8 can try to articulate what some of those are and
9 perhaps you can jump in if you have some
10 clarification.

11 The first thing that I'm a little bit
12 confused on is how and why it's the school that's
13 applying for this Application when the property is
14 actually owned by another entity and it's not even the
15 same entity that owns the property that the school is
16 located on. Now, I know that there is a letter of
17 authorization, but I don't think that it fully
18 explains how it is that the school is able to apply on
19 a property owner's behalf for the relief that's being
20 sought. That's the first thing that I have a little
21 bit of trouble with.

22 MR. GRIFFIS: Okay, so you're saying that
23 you would like to leave the record open for
24 clarification of authorization for the school to bring
25 the Application based on the fact that the principal

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1 use should be the lot, that the lot owner should be
2 the Applicant where the principal use occurs?

3 MR. MANN: That's right.

4 MR. GRIFFIS: Okay.

5 MR. ETHERLY: Well, just to clarify that.
6 I believe I agree with Mr. Mann, and I just want to be
7 sure as we move through Mr. Mann's recitation of some
8 of the concerns that we're clear about what we're
9 looking for. Is the complication the fact that we
10 have the school, which is in a location that's owned
11 by one owner, separate and distinct from the ownership
12 of the subject property, i.e., Shenandoah? And so
13 what you would be looking for is an authorization from
14 Shenandoah that speaks specifically to the school's
15 ability to request this variance or CVS? Or both?

16 MR. MANN: Well, I think that raises an
17 interesting issue right there, although I hadn't
18 specifically thought of bringing CVS into it.

19 MR. ETHERLY: And once again, I think I
20 understand the concern or the issue, and without
21 getting ahead of ourselves, I view it perhaps as an
22 important piece that needs to be clarified, not
23 necessarily as a hindrance to the overall Application
24 that's in front of us. But I think just the issue of
25 how the Application gets handled and how it gets --

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1 shall we say, referenced in the record, so just to be
2 clear, what you're looking for is perhaps something
3 that speaks from Shenandoah directly to the school, or
4 perhaps, if I could, Mr. Chairman, let me invite OAG's
5 --

6 MR. GRIFFIS: Let me see if I can address it
7 first before we do embark on that. Shenandoah is the
8 lot owner that the play area is proposed at where the
9 accessory use is to be provided in this Application?

10 MR. ETHERLY: Correct.

11 MR. GRIFFIS: What I understand Mr. Mann's
12 concern is, is doesn't the Application arise from the
13 property where the principal use takes place? That's
14 Lot 108 on Square 2849. Irregardless of CVS or the E.
15 L. Haynes Charter School, that's the lot of which
16 authorization to bring an Application should come.

17 MR. ETHERLY: Okay.

18 MR. GRIFFIS: In previous times, we've often
19 had the agreement of the adjacent lot that the
20 accessory use would take place, agreement in order to
21 secure the fact, or even in some of the regulations,
22 it's required to have a lease or some sort of
23 document. That's in there, but authorization to bring
24 the Application or tying it wouldn't necessarily need
25 to be provided outside of what the Board thought. So

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1 it's the Lot 108, Mr. Mann, that you're looking at,
2 having authorization from?

3 MR. MANN: I hadn't specifically thought of
4 it in those terms, but yes, I can understand. I mean,
5 anything -- I think it achieves the same end.

6 MR. GRIFFIS: Okay. Ms. Monroe?

7 MS. MONROE: I basically was just going to
8 agree. I think Mr. Gross said before, and I think
9 it's right, that the variance goes to Lot 108 because
10 that's the lot with the principal use on it. So the
11 owner of Lot 108 is the one that has to authorize the
12 school to go for the variance in its stead. And
13 that's, I think, what you said, right?

14 MR. GRIFFIS: Right.

15 MR. MANN: And I think that actually goes
16 directly and summarizes the second point, which I'm
17 not certain that I want to restate here.

18 MR. GRIFFIS: Well, I think it is important
19 to restate it. If I understand what you're saying, is
20 what we've done is advertised this for relief of 1366
21 Irving Street, which is, my understanding, is the lot
22 of which the playground is going to -- is proposed.

23 MR. MANN: Yes, it's the target lot.

24 MR. GRIFFIS: And so it's actually been
25 advertised incorrectly. The point is I don't know.

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1 I'll open it up for you. I don't think we need to re-
2 advertise. It's the proximity and the relief is
3 fairly clear. But the importance would come in
4 issuing any sort of order, where does that order go
5 to? And it does, as Mr. Mann, you said, it ties it
6 right back to what we were trying to clarify in the
7 first part, but it then goes to the legal aspect of
8 what land this variance would run with.

9 MR. MANN: Exactly. And then I think the
10 third point that that would tie into is then the test.
11 Are the -- do the tests -- which land does the test
12 apply to and where are those, especially with the
13 exceptional circumstances and the other problems of
14 the test? I mean does that go to Lot 108 or Lot 98?

15 MR. GRIFFIS: Okay. So you're proposing and
16 requesting that the Board keep the record open for
17 written submission on the reiteration of the test?

18 MR. MANN: Yes.

19 MR. GRIFFIS: Okay. And if there's evidence
20 in the record, they could point to it or they can
21 provide new?

22 MR. MANN: Absolutely.

23 MR. GRIFFIS: Okay.

24 MR. MANN: Yes.

25 MR. GRIFFIS: Is there anything else then?

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1 MR. ETHERLY: I'm in agreement with the
2 direction, Mr. Chair. I think it's -- just from this
3 Board member's perspective, I think these are
4 important questions to help just clarify the nature of
5 the relief that's being sought and perhaps, more so,
6 how that relief gets colored or gets defined in terms
7 of what this Board is looking at. I just think those
8 are important issues to clarify. I think, once again,
9 from one Board member's perspective, I feel fairly
10 comfortable about the substance of what we've talked
11 about, where the need is and what the school is
12 endeavoring to do. I think the important issue is
13 just making sure that we go about doing it in the
14 right way.

15 MR. GRIFFIS: Thank you, Mr. Etherly. Good.

16
17 Is there anything further then?

18 (NO RESPONSE.)

19 MR. GRIFFIS: Very well. I think it benefits
20 us all if we do this as expeditiously as possible, as
21 next week we have a very difficult schedule, and we
22 also are keeping the record open for additional
23 information. I would like to set this for October
24 18th, which is fast becoming our public meeting, with
25 all the decisions that we have on it, but we can put

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1 it in that morning.

2 Mr. Gross, let me ask you if that's ample
3 time to provide the information that the Board has
4 requested and then they also allow you to ask any
5 questions for clarification, if we have not been
6 clear, on what should be submitted.

7 MR. GROSS: Would you want our submission,
8 what, a week ahead of the October 18th meeting or
9 when?

10 MR. GRIFFIS: I think we could do it --
11 well, is it possible to get it in in a week?

12 MR. GROSS: Yes, yes, it is.

13 MR. GRIFFIS: Okay. I think we can keep it,
14 you know, as expeditiously as possible. I would
15 certainly suggest that we could have it in by, you
16 know, 3:00 p.m. on that Wednesday next. That would
17 obviously ensure that it actually gets to the Board
18 for deliberation before the 18th.

19 MS. THOMAS: Mr. Chairman, just for
20 clarification, that's the 12th of October.

21 MR. GRIFFIS: The 12th, thank you.

22 MR. GROSS: Okay. The only other comment I
23 would have, having heard the discussion, would be
24 whether somehow the License Agreement helps address
25 one of Mr. Mann's concerns about relating to the

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1 letter of authorization and why not the property owner
2 as the Applicant and so on. I guess one comment I
3 would have -- well, and the License Agreement, which
4 specifically specifies that the school can do this
5 play area, I wonder if that isn't a step beyond the
6 letter of authorization that might help address that
7 to a degree. But I'll kind of leave it there and
8 we'll just do our best in the written submission to
9 address these issues.

10 MR. GRIFFIS: Okay.

11 MR. GROSS: Okay, thank you.

12 MR. GRIFFIS: Excellent. Thank you.

13 MS. MONROE: Mr. Chairman?

14 MR. GRIFFIS: Yes?

15 MS. MONROE: Can I ask a question?

16 MR. GRIFFIS: Of course.

17 MS. MONROE: I have a question about the
18 License Agreement. I'm trying to maybe solve this
19 problem. Is the License Agreement between Shenandoah
20 and the school?

21 MR. GROSS: Yes.

22 MS. MONROE: And does Shenandoah own the lot
23 that CVS is on?

24 MR. GROSS: They do not.

25 MS. MONROE: That's, I think, the crux of

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1 the question here. We need something from the owner
2 -- I mean, I hate to say this, but -- from the owner
3 of the lot that the principal use is on.

4 MR. GROSS: I see.

5 MS. MONROE: And if they're not involved
6 with this License Agreement, then it wouldn't solve
7 that issue.

8 MR. GROSS: Okay. I think we can probably get
9 that. I mean, one obvious fact is that the school is
10 in the CVS Building, so they're already on a leasing
11 basis. Then maybe we can get a letter from the owner
12 of that property in addition. I don't know if we can
13 do that in a week. We can try.

14 Thank you.

15 MR. GRIFFIS: Thank you.

16 Okay, is there anything else then? Are
17 there any other clarifications?

18 (NO RESPONSE.)

19 MR. GRIFFIS: Very well. Then we'll set
20 this for decision on the 18th. We'll keep the record
21 open until the 12th for that information that was now
22 enumerated.

23 Ms. Bailey and Mr. Moy, are you aware of
24 anything else for the Board's attention in this
25 afternoon's session?

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1 MS. BAILEY: No, sir.

2 MR. GRIFFIS: Excellent. If there's nothing
3 further, then let's adjourn this afternoon.

4 Thank you all.

5 (Whereupon, the above-entitled matter was
6 concluded at 3:03 p.m.)

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