

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY

JUNE 28, 2005

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:38 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE MILLER	Vice-Chairperson
CURTIS ETHERLY, JR.	Board Member
JOHN MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

CAROL MITTEN	Chairperson (ZC)
--------------	------------------

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLY BAILEY	Zoning Specialist
JOHN NYARKU	Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

JOHN MOORE

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

STEPHEN MORDFIN
KAREN THOMAS

This transcript constitutes the minutes
from the special public meeting and the public hearing
held on June 28, 2005.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

<u>AGENDA ITEM</u>	<u>PAGE</u>
<u>CALL TO ORDER:</u>	
Geoffrey Griffis	4
<u>1812 35TH STREET ASSOCIATES LLC</u>	
<u>APPLICATION NO. 17327</u>	5
<u>VOTE TO DENY APPLICATION</u>	14
<u>PRELIMINARY MATTERS</u>	18
<u>JASON AND SANDRA NELSON</u>	
<u>APPLICATION NO. 17340 ANC-6B</u>	19
<u>VOTE TO APPROVE APPLICATION</u>	28
<u>SIMON BELL AND JOHN ROEGNER</u>	
<u>APPLICATION NO. 17341 ANC-1B</u>	29
<u>VOTE TO DISMISS APPLICATION</u>	55
<u>LITTLE SAMARITAN CHILD DEVELOPMENT CENTER</u>	
<u>APPEAL NO. 17338 ANC-7E</u>	55
<u>VOTE TO APPROVE APPLICATION</u>	173
<u>WAGTIME LLC</u>	
<u>APPLICATION NO. 17325 ANC-2F</u>	176
<u>APPEAL WITHDRAWN</u>	176
<u>ADJOURN</u>	
Geoffrey Griffis	176

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

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

9:38 a.m.

CHAIRPERSON GRIFFIS: Special public meeting of the Board of Zoning Adjustment for the District of Columbia, the 28th of June 2005.

My name is Geoff Griffis, Chairperson.

Joining me today is Ms. Miller, Vice Chair and Mr. Etherly. Representing the National Capital Planning Commission is Mr. Mann.

We do have one case for deliberation in our meeting this morning and we're going to get right to it and then I will open up our public hearing of which we will then go through all of the cases that are on the agenda. I will expedite that and move ahead just very quickly and indicate that which I repeat in a moment or so.

If I could have everyone turn off cell phones and beepers at this time so that we don't disrupt the transmission of which we are going to be having throughout the entire day.

With that, let me say good morning to Mr. Moy with the Office of Zoning and also Ms. Bailey on my very far right and why don't we move ahead, Mr. Moy, with the first case for a decision this morning.

MR. MOY: Yes, sir. Good morning, Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Chairman, Members of the Board.

2 The first case for decision making is
3 application number 17327 of 1812 35th Street
4 Associates, LLC pursuant to 11 DCMR 3104.1 for a
5 special exception to allow an addition to an existing
6 single-family dwelling under Section 223 not meeting
7 the lot occupancy under Section 403 and side yard
8 requirements Section 405 in the R-3 District at
9 premises 1812 35th Street, N.W. That's in Square S-
10 1296, Lot 27.

11 The Board completed public testimony on
12 the application on June 7th, 2005 and scheduled its
13 decision on June 28, 2005. The Board requested
14 proposed findings of fact and conclusions of law. The
15 filings were submitted from both the Applicant and the
16 party opponent in this case, Exhibits 38 and 39
17 respectively and I think well, the staff will conclude
18 its briefing here and the Board is to act on the
19 merits of the application.

20 CHAIRPERSON GRIFFIS: Excellent. Thank
21 you very much, Mr. Moy and I would note in Exhibit
22 Number 38 we had requested and kept the record open
23 for findings and conclusions from all participants.
24 Exhibit 38 is from the Applicant.

25 I would suggest, however, to the Board for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a quick deliberation on whether we accept the
2 photographs that were attached to that as they are new
3 photographs not presented in the case. I would
4 support not accepting that into the record as all the
5 participants in the case did not have an opportunity
6 to address those or the issues and elements in that.

7 In addition to that, there are adequate,
8 I think, photographs documentation of the site and the
9 adjacent properties that were, in fact, part of the
10 hearing and were open for cross and testimony, but let
11 me hear from others.

12 MEMBER MANN: I agree with you. In
13 addition there was very little explanatory information
14 attached to those photographs and as you said, no
15 opportunity for anybody to really discuss them and
16 there was a photograph of the back yard in previously
17 submitted information.

18 CHAIRPERSON GRIFFIS: Very well. Does any
19 Board Member then object to not accepting those
20 photographs? Good.

21 Ms. Miller, if there's not objection --

22 VICE CHAIRPERSON MILLER: No objection.

23 CHAIRPERSON GRIFFIS: -- then we would, of
24 course, remove that then from the record and include
25 all those other aspects that were submitted.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Let's move ahead then quickly into this
2 and I think setting up for my own deliberation I think
3 it was important to look at this case under 223 which
4 we do numerous times over and over again. This is a
5 -- a unique aspect that we have seen before and that
6 is that there is some substantial completion of a
7 project, but the point that I bring up in my own
8 thought process and deliberation is I think with this
9 specific case I need to look at it as if it is just a
10 pure application that -- that the -- the -- the
11 drawings and the studies are -- are viewed and
12 presented and testified and then they're deliberated
13 for what they are as any other application is
14 anticipated to be.

15 There -- there is some complication with
16 how it got to where it is. However, I think for the
17 presentation for us and as it was presented, this is
18 a straight 223 which, therefore, has to go and meet
19 the criterium of that section.

20 I think the Office of Planning's report is
21 -- is a -- is a good one. They have some concern of
22 the massing in terms of the light, more appropriately
23 shadows. The shadow studies that were done that were
24 submitted I think were an excellent representation of
25 the case that was being made by the applicant.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 My point is they were making a case of
2 look at what a matter of right massing is and the
3 impact of matter of right and having us set a
4 threshold of this is what matter of right is and,
5 therefore, you have to look at how that threshold is
6 increased or decreased. What's the impact from that
7 level?

8 I don't necessarily disagree with that
9 analysis. However, therefore, then need to go to
10 well, this is not matter of right.

11 There is obviously some additional relief
12 that is sought and although I don't find it
13 conclusively persuasive in terms of the -- the -- the
14 severity or the impact of the shadows, I think in
15 combination with the other elements or requirements of
16 223 that -- that it has not been a persuasive case
17 made for approval of the special exception.

18 Two twenty-three sets off, and I think
19 appropriately so, very specific ideas and it is -- it
20 is the -- the direct impact with the adjacent
21 neighbors for light, air, shadows. Use. Use. You
22 know, it's a kind of a large open-ended idea of which
23 we -- we have -- are well versed in and -- and the
24 elements.

25 But, 223.2C I think is the critical aspect

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of this and I -- I know that I particularly and I know
2 the Board as a whole is very cautious of stepping into
3 the role of some sort of design review board as even
4 the last submission of the applicant I believe it was
5 said, you know, of five people, we may have five
6 different opinions of design.

7 But, 223.2 states, C, the addition
8 together with the original building as viewed from the
9 street, alley or other public way shall not
10 substantially visually intrude upon a character scale
11 and pattern of houses along the subject street
12 frontage.

13 I think that -- that -- that this
14 application actually fails in that regard and I think
15 that the -- the expert testimony of the architects
16 involved to speak to that of how this was a unique
17 character house, as I would interpret it as kind of a
18 bungalow with a pitched roof, that the addition set on
19 it had absolutely no connection with the existing
20 structure. The fenestration was totally different and
21 from -- from the professional -- the -- the expert
22 witnesses and I think from the -- the lay people, it
23 was agreed that it -- something was amiss with it.
24 Whether you could characterize exactly what it is or
25 not, it certainly was not in keeping.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And I found it very interesting and
2 important to look at establishing the character of --
3 of the neighborhood and it is as was testified and I
4 think I -- I definitely agree with the photographs
5 that it is in a -- an eclectic neighborhood.

6 It is an eclectic style, massing,
7 topologies, all of which. So, to say that how could
8 this not fit, I -- I can see that that is a strong
9 point, but here's how I see it not fitting.

10 Each of those individual buildings that we
11 looked at and the other homes were on their own
12 holistic let's say. There -- there were modern
13 houses. There were historic houses. There were, you
14 know, one story. There were three story.

15 This, however, in looking at the
16 particular site and the application, didn't work on
17 its own. Didn't connect itself and, therefore, became
18 I found visually intrusive to the character and
19 pattern on the street frontage.

20 Let me leave it at that for the time being
21 and open it up for others in terms of their own
22 deliberation.

23 Yes, Mr. Mann.

24 MEMBER MANN: I'd just like to support
25 your position on that. I think that this has been one

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of the clearest cases for me where 222. -- 223.2C --
2 where -- where the application did not comply with the
3 requirements of that section and I'm in total
4 agreement with what you said.

5 CHAIRPERSON GRIFFIS: Good. Ms. Miller.

6 VICE CHAIRPERSON MILLER: I would concur
7 with both you and Mr. Mann with respect to 223.C and
8 note that we do give great weight to the Office of
9 Planning which found that this property visually
10 intrudes upon the character, scale, and pattern of the
11 houses along the street frontage.

12 But, I'd also like to address 223.1A
13 because I -- I thought that there is a strong case
14 here that the light and air are unduly affected in
15 this case. Office of Planning found that based on the
16 shadow studies and -- and I think also a site visit
17 and then we heard testimony from Mrs. Stancioff.

18 It's a -- I mean to the extent that her
19 yard was described as being at times in darkness, I --
20 I just found that quite compelling and I didn't find
21 it persuasive that the applicant seemed to indicate
22 that it -- it didn't seem to matter whether -- that --
23 that it was more shadowed in fall and winter. I mean
24 I think that abutting properties are entitled enjoy
25 their yards in the fall and winter as well as the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 spring and summer.

2 Also, I -- I wasn't convinced by the
3 argument that just because a property as a matter of
4 right might cast a shadow that a -- a building being
5 allowed under 223 has to be compared to what could be
6 there as a matter of right. I think that we look at
7 it and see if -- if the light and air are unduly
8 affected and I think in this case that case was
9 strongly made.

10 CHAIRPERSON GRIFFIS: Good. Thank you
11 very much and just to correct, it was 223.2A is what
12 you were talking about not .1 which I know you know.

13 Okay. Mr. Etherly.

14 VICE CHAIRPERSON MILLER: That is correct.
15 Thank you.

16 MEMBER ETHERLY: Thank you very much, Mr.
17 Chair. I'd just like to associate myself with the
18 remarks of my colleagues and am prepared to move
19 forward. Thank you.

20 CHAIRPERSON GRIFFIS: Excellent. In which
21 case then if there's no further deliberations at this
22 time, I think it's appropriate to continue our
23 discussion/deliberation under a motion and then I
24 would move that we deny application 17327 for the 223
25 which would -- for the -- the properties at 1812 35th

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Street, N.W. and ask for a second.

2 MEMBER MANN: Second.

3 CHAIRPERSON GRIFFIS: Thank you, Mr. Mann.
4 I think it is amply put and all the comments that have
5 already been stated. I think again I would also
6 reference the Office of Planning's report which I
7 think articulated very well that which actually the
8 Board has come to see also in the -- in the hearing on
9 the case and I think that the -- the case presented by
10 the opposition in terms of their witnesses and their
11 observations were very persuasive and I'll open up for
12 any other further discussion, deliberation.

13 If there's -- yes, Ms. Miller.

14 VICE CHAIRPERSON MILLER: I -- I just
15 thought of -- I want to note that we have on the
16 record a letter from ANC-2E also expressing opposition
17 to the requested special exception relief.

18 CHAIRPERSON GRIFFIS: Good. I appreciate
19 you bringing that up. Okay. Anything else then? If
20 there's nothing further, then we do have a motion
21 before us. It's been seconded. I'd ask for all those
22 in favor the motion signify by saying aye.

23 (Ayes.)

24 CHAIRPERSON GRIFFIS: An opposed? Very
25 well.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MOY: Yes, sir, staff would record the
2 vote as 4-0-1. This is on the motion of the Chairman
3 to deny the application. Seconded by Mr. Mann. Also
4 in support of the motion Ms. Miller and Mr. Etherly
5 and we have a Zoning Commission member not
6 participating on this application.

7 CHAIRPERSON GRIFFIS: Excellent. Is there
8 any other business for the Board in the morning
9 meeting?

10 MR. MOY: No, sir, that completes the
11 special public meeting.

12 CHAIRPERSON GRIFFIS: Excellent. Very
13 well then. I will adjourn the special public meeting
14 and simultaneously call to order our public hearing
15 and also invite our Zoning Commissioner to come out
16 and join us.

17 Again, let me introduce myself. Of
18 course, I am Geoff Griffis, Chairperson. Ms. Miller,
19 the Vice Chair, is with us and Mr. Etherly.

20 Representing the National Capital Planning
21 Commission is Mr. Mann and representing the Zoning
22 Commission with us this morning is Ms. Mitten.

23 Copies of today's hearing agenda are
24 available for you. They are located on the wall where
25 you entered into the hearing room. Please pick one

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 up. You could see what we will be getting to this
2 morning.

3 As I indicated earlier, I will reiterate
4 now. It would ask that people please turn off cell
5 phones and beepers or any noise making devices so that
6 we don't disrupt our transmission.

7 We are transmitting all of our proceedings
8 in two fashions. Most important, of course, is the
9 court reporter sitting to my right who is creating the
10 official transcript.

11 We are also being broadcast live on the
12 Office of Zoning's website.

13 So, attendant to that, there are
14 additional things that we would request.

15 Prior to coming forward to speak to the
16 Board if you are going to provide testimony, we ask
17 that you fill out two witness cards. Witness cards
18 are available at the table you entered into the
19 hearing room and they're also right in front where you
20 will provide testimony. Those two witness cards go to
21 the recorder prior to coming forward.

22 When you are ready to provide testimony,
23 have a seat. You will just need to state your name
24 and address for the record once and then proceed with
25 your testimony.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The order of procedure for special
2 exceptions and variances is first we hear from the
3 applicant and their case presentation.

4 Second, we will hear any Government
5 reports attendant to the application.

6 Third, we would hear from the Advisory
7 Neighborhood Commission presentation of their report.

8 Fourth, would be persons or parties in
9 support of the application.

10 And fifth, would be persons or parties in
11 opposition to an application.

12 And, sixth, finally, we give the
13 opportunity to the applicant to give any rebuttal
14 testimony or conclusions or summations for the Board's
15 understand.

16 I'm going to try to skip through some of
17 these things that aren't absolutely required, but let
18 me just state that, of course, cross examination is
19 allowed in all proceedings of contested cases by the
20 parties in a case. The applicant and the ANC are
21 automatically parties in a case and then any other
22 parties that are established by the Board would be
23 able to conduct cross examination.

24 The record will be closed at the
25 conclusion of each case except for any material that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the Board specifically requests and we will be very
2 specific on what is to be submitted and when it is to
3 be submitted into the Office of Zoning.

4 It is important to understand that because
5 as you've seen this morning briefly, our deliberation
6 is based solely on the case that's presented in front
7 of us. Solely on a case that's created today.

8 So, anything that you would like the Board
9 to deliberate on that is, in fact, germane to the
10 case, that should be submitted either in writing or
11 testimony today or we will ask it to be submitted

12 The Sunshine Act requires that the public
13 hearing on each case be held in the open and before
14 the public and consistent with the Sunshine Act and
15 also with our rules, regulations, and procedures, this
16 Board at times enters into executive sessions.
17 Executive sessions are utilized for the purposes of
18 reviewing records and/or deliberating on a case, but
19 again, all that is based on just the record that's
20 created before us.

21 I think that -- let me say a very good
22 morning again to Mr. Moy and also Ms. Bailey on my far
23 right with the Office of Zoning.

24 Ms. Monroe is with the Office of Attorney
25 General also with us.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Let me ask Ms. Bailey if you are aware of
2 any preliminary matters before the Board?

3 MS. BAILEY: Mr. Chairman and to everyone,
4 good morning.

5 Swearing in of the witnesses is the only
6 preliminary matter that the staff has at this time.
7 So.

8 CHAIRPERSON GRIFFIS: Excellent. Thank
9 you very much. Preliminary matters, of course, are
10 those which relate to whether a case will or should be
11 heard today. Requests for postponement, continuances
12 or withdrawals are elements of preliminary matters.

13 I would ask that everyone present today if
14 they have any preliminary matters for the Board's
15 attention and if they do, they can come forward at
16 this time and have a seat at the table as an
17 indication of having a preliminary matter.

18 Not noting anybody coming forward at this
19 time with a preliminary matter, let's move ahead then
20 and Ms. Bailey is going to swear all those folks in
21 that are going to be addressing the Board today. So,
22 I would ask you to please stand and give your
23 attention to Ms. Bailey.

24 MS. BAILEY: Please raise your right hand.
25 Do you solemnly swear or affirm that the testimony

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that you will be giving today will be the truth, the
2 whole truth, and nothing but the truth?

3 CHAIRPERSON GRIFFIS: Good. Thank you
4 very much.

5 In that case, Ms. Bailey, I think we're
6 ready to proceed.

7 MS. BAILEY: Thank you, Mr. Chairman.
8 The first case is Application Number 17340 of Jason
9 and Sandra Nelson and it's pursuant to 11 DCMR 3104.1
10 for a special exception to allow a rear two-story
11 addition to a single-family row dwelling under section
12 223 not meeting the lot occupancy requirements, that's
13 section 403, and open court requirements, that's
14 section 406. The property is zoned R-4 and it's
15 located at 1515 A Street, S.E., Square 1072, Lot 45.

16 CHAIRPERSON GRIFFIS: Excellent. Good
17 morning. How are you?

18 MS. FOWLER: Good morning.

19 CHAIRPERSON GRIFFIS: Ready?

20 MS. FOWLER: Yes, I'm Jennifer Fowler of
21 1742 D Street. I'm the architect on the project.

22 CHAIRPERSON GRIFFIS: Excellent. Let me
23 just ask quickly before you introduce actually the
24 applicant that's sitting next to, is anyone else here
25 to give testimony -- provide testimony to 17340?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Anyone present? Not noting any indication of others
2 present at this time. Let's move ahead.

3 MS. FOWLER: Okay.

4 MS. NELSON: I'm Sandra Nelson of 1515 A
5 Street, S.E.

6 MR. NELSON: And I'm Jason Nelson, 1515 A
7 Street, S.E.

8 CHAIRPERSON GRIFFIS: Excellent. Okay.
9 And, of course, this is a 223. Let me ask if you
10 would like to give brief presentation of testimony.
11 I think the record is substantially complete if not
12 fully complete and so, you can rest on what's been
13 submitted, but I'll give you the opportunity to
14 highlight any of the elements.

15 MS. FOWLER: Okay. I just wanted to -- to
16 note that, you know, there's an existing one-story
17 addition we're proposing on moving increasing the lot
18 occupancy from 58 to 65 percent and proposing to
19 maintain the five foot open court.

20 We feel like it's going to be a -- a vast
21 improvement to the alley and we have support of many
22 of the neighbors. In particular, the neighbors on
23 either side have written letters of support and we
24 also have support from the Office of Planning, Capitol
25 Hill Restoration Society, and the ANC-6B.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Excellent. Okay.
2 And -- and you -- you've indicated you have letters of
3 support. We do have letters of support, of course,
4 Exhibit 21, 7, and 7A. Huh. Well, 21 and 7 maybe
5 from 1535 A Street and 1517 and then the Capitol Hill
6 Restoration Society.

7 In -- in speaking with other neighbors,
8 were there any other issues that were brought up in
9 terms of light and air, use, privacy of the adjacent
10 properties?

11 MR. NELSON: No, none.

12 CHAIRPERSON GRIFFIS: Okay. And I noted,
13 of course, in the drawings, they showed very well and
14 adequately, the fact of how it's -- it's extending out
15 just a little bit further than the existing adjacent
16 properties. Of course, it looks much larger addition,
17 but when you look at it, it actually has -- it's
18 lining up.

19 You has fenestration on the -- I'm going
20 to go just -- if you're looking at the drawings on the
21 right side which --

22 MS. FOWLER: The east side.

23 CHAIRPERSON GRIFFIS: -- east side.

24 MS. FOWLER: Yes.

25 CHAIRPERSON GRIFFIS: And do those -- are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 those -- is there -- is there any windows on 1517 at
2 all on that elevation? On the west elevation?

3 MS. FOWLER: They have windows -- they do
4 have a window facing --

5 MR. NELSON: I believe that they do. Yes.

6 CHAIRPERSON GRIFFIS: Okay.

7 MS. FOWLER: Yes.

8 CHAIRPERSON GRIFFIS: And I would note
9 that 1517, of course, is one of the letters of support
10 of the neighbors. Mr. or Mrs. Richards. Is that
11 correct?

12 MS. FOWLER: Um-hum.

13 MR. NELSON: Correct.

14 MS. FOWLER: Yes.

15 CHAIRPERSON GRIFFIS: Okay. So, she's
16 aware. She's seen, of course, the --

17 MS. FOWLER: Yes.

18 CHAIRPERSON GRIFFIS: -- the elevation.

19 MR. NELSON: Yes.

20 CHAIRPERSON GRIFFIS: Okay.

21 MS. FOWLER: And on the second level, the
22 windows are going to be high so that --

23 CHAIRPERSON GRIFFIS: Right.

24 MS. FOWLER: -- they're just really
25 providing light rather than anything else.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Indeed.

2 MS. FOWLER: Yes.

3 CHAIRPERSON GRIFFIS: Okay.

4 MS. FOWLER: Another thing to point out if
5 you look at the rear photograph, the -- there's a --
6 an addition that's begun construction I guess three
7 houses to the -- the east that's coming out about the
8 distance that this proposed addition would come out
9 and I'm not sure if -- it looks like it's been halted.
10 It's cinder block at this point and it's been sitting
11 that way for awhile. But, just to -- and I'm not sure
12 if they had approval. So, they're not, but just as a
13 reference, there is another addition that comes out
14 about that far three -- three stories -- three --
15 three houses down.

16 CHAIRPERSON GRIFFIS: Okay. Anything else
17 then?

18 MS. FOWLER: No.

19 CHAIRPERSON GRIFFIS: Questions?

20 MEMBER MANN: I have a question.

21 CHAIRPERSON GRIFFIS: Yes, Mr. Mann.

22 MEMBER MANN: It doesn't necessarily go
23 towards the merits of the case, but I was a little
24 curious. The OP report notes that the property is not
25 within the Capitol Hill Historic District.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. FOWLER: Right.

2 MEMBER MANN: Right. And yet, you had the
3 approval from the Restoration Society. How did that
4 come about?

5 MS. NELSON: We received a letter and we
6 were told -- Jennifer contacted the president and we
7 were we're -- we were an area of interest.

8 MS. FOWLER: Yes, they have an area of
9 interest. It's just outside of the historic district.
10 They could impact the historic district being so
11 close.

12 MEMBER MANN: I see. So, at their
13 request, then you presented them the information?

14 MS. NELSON: Yes.

15 MS. FOWLER: Yes. Yes.

16 MS. NELSON: Correct.

17 MEMBER MANN: Okay.

18 MS. FOWLER: Which we were surprised, but
19 we were happy to do it.

20 MEMBER MANN: Okay. Thank you.

21 MS. FOWLER: Sure.

22 CHAIRPERSON GRIFFIS: Excellent question.
23 Anything else from the Board at this time?

24 Very well. Let's move ahead then to
25 Government reports and get the -- let's address the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Office of Planning's report.

2 MS. THOMAS: Yes, good morning, Mr.
3 Chairman, Members of the Board.

4 I'm Karen Thomas with the Office of the
5 Planning.

6 It seems that this application is fairly
7 straightforward. It meets the special exception test
8 of Section 223 for light, air, and privacy and,
9 therefore, we would stand on our recommendation of
10 approval as stated in our report.

11 Thank you.

12 CHAIRPERSON GRIFFIS: Excellent. Thank
13 you very much.

14 Questions from the Board of the Office of
15 Planning?

16 Does the applicant have any cross
17 examination of the Office of the Planning?

18 MS. FOWLER: No. Thank you.

19 CHAIRPERSON GRIFFIS: You have the report
20 I take it.

21 MS. FOWLER: Yes, we do.

22 CHAIRPERSON GRIFFIS: Excellent. Okay.
23 In which case, let's move ahead. I don't have other
24 attendant government agency reports except that which
25 we've mentioned from the Capitol Hill Historic

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 District of which you are in their sphere of
2 influence.

3 Let's move ahead to the ANC-6B. Is ANC-6B
4 represented today? Not noting anybody personally
5 here, we will take note of Exhibit 22 which indicates
6 that it was unanimously 10-0-0 voted to support the
7 application at its regular scheduled and properly
8 noticed meeting.

9 Any comments from the Board on that? Very
10 well.

11 Does the applicant have any additional
12 information based on that?

13 MS. FOWLER: No.

14 MS. NELSON: No.

15 CHAIRPERSON GRIFFIS: Excellent. In which
16 case, let's move then further along.

17 Let me ask if there are any people,
18 persons present to provide testimony either in support
19 or opposition to 17340 at this time to come forward.

20 Not noting anybody present to give
21 testimony either in support or in opposition, the case
22 I think we can turn over to you for an closing remarks
23 that you might have.

24 MS. FOWLER: I would just like to thank
25 the -- the Board for your time and for the Office of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Planning's thorough report.

2

3 MR. NELSON: Yes, thank you.

4 MS. NELSON: Yes, I second that or third
5 it.

6 CHAIRPERSON GRIFFIS: Indeed. Any last
7 questions from the Board? Clarifications?

8 Very well, I think we ought to move ahead
9 then and I would move approval of Application 17340
10 for 1515 A Street, S.E. under 223 which would allow
11 the two-story rear addition for the existing single-
12 family row dwelling and ask for a second.

13 MS. MITTEN: Second.

14 CHAIRPERSON GRIFFIS: Thank you very much,
15 Ms. Mitten. I think it is very clear and I think
16 great reliance on the excellent analysis in the report
17 of the Office of Planning and also the submission of
18 the applicants and their representatives in terms of
19 the graphic drawing representation and also the
20 narrative explanation of how it meets the test of the
21 special exception.

22 It is very clear that no evidence has been
23 raised in terms of this unduly impacting the light,
24 air, privacy, use, enjoyment and it certainly has not
25 been evident that it would move away or intrusive --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 visually intrude on the character from the front or
2 the alley and I think it is properly supported.

3 I'd open it up for any further
4 deliberation by anybody. Very well.

5 Not seeing any indication of it, I -- we
6 do have a motion before us, been seconded, and I ask
7 for all those in favor signify by saying aye.

8 (Ayes.)

9 CHAIRPERSON GRIFFIS: And opposed?
10 Abstaining? Very well. Why don't we record the vote?

11 MS. BAILEY: The Board has voted 5-0-0 to
12 approve the application. Mr. Griffis made the motion.
13 Ms. Mitten seconded. Mr. Mann, Ms. Miller, and Mr.
14 Etherly are in agreement and we're doing a summary
15 order, Mr. Chairman?

16 CHAIRPERSON GRIFFIS: Excellent. I don't
17 see any reason why we wouldn't waive our rules
18 regulations unless Board Members or the applicant have
19 any protest to that and we could issue a summary
20 order.

21 MS. NELSON: Thank you.

22 CHAIRPERSON GRIFFIS: Very well. Thank
23 you very much.

24 MS. NELSON: Thank you.

25 MS. FOWLER: Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Good luck and enjoy
2 the addition.

3 MS. NELSON: Thank you.

4 MR. NELSON: Thank you very much.

5 CHAIRPERSON GRIFFIS: Okay. Let's move
6 ahead then to the next case, Ms. Bailey, when you are
7 ready.

8 MS. BAILEY: That is Application 17341 of
9 Simon Bell and John Roegner pursuant to 11 DCMR 3103.2
10 for a variance from the lot occupancy requirements
11 under section 403, a variance from the rear yard
12 requirements under section 404, a variance from the
13 court requirements under section 406, and a variance
14 from the nonconforming structure provisions under
15 subsection 2001.3 to allow a rear addition to a
16 single-family row dwelling. The property is -- the
17 property is zoned R-4 and it's located at 919
18 Westminster Street, N.W., Square 362, Lot 199.

19 CHAIRPERSON GRIFFIS: Excellent. We're
20 just delaying a moment while Mr. Gell comes up to the
21 table because I knew he was around somewhere. There
22 we are. Good and the Office of Planning is with us
23 also which is important.

24 Okay. When you're ready, Mr. Gell.

25 MR. GELL: Thank you, Mr. Chairman.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Sorry. I -- I anticipated that you would take a few
2 more minutes than you did.

3 First, I want to thank you for granting
4 Mr. Davis his special exception two weeks ago. He --
5 he handled it apparently very well and the Board was
6 kind to him and I just wanted to say thanks because I
7 was -- I had helped him.

8 This is -- this is a variance case. Do
9 you remember Mr. Davis? Yes.

10 This is a variance case at 919 Westminster
11 Street, N.W. With me is Simon Bell one of the owners
12 of the house and he has a statement.

13 CHAIRPERSON GRIFFIS: Well, actually, let
14 me -- let me interrupt you before you go to that
15 because, Mr. Gell, I think was want to entertain a
16 couple of minutes, brief minutes, discussion on the
17 appropriateness of this application whether it should
18 be here or not and what's actually covered.

19 I know that you had brought up some of
20 those and I think it's worthwhile for the Board at
21 least to hear if not address them in terms of whether
22 this should be a variance or not and whether 2001.2 is
23 actually controlling and that is, of course, the
24 nonconforming structure conforming use section which
25 reads "Ordinary repairs, alterations, and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 modernizations to structures including structural
2 alterations shall be permitted." Now, of course, it
3 says "except as provided in 2001.11 and 2001.12" of
4 which I don't think I have any pertinence to this case
5 as this is not an antenna.

6 MR. GELL: It occurred to me that -- that
7 the Board could treat this differently. Could treat
8 this rather as a -- rather than a variance case as
9 simply a matter of right alteration.

10 In point of fact, Mr. Bell and Dr. Roegner
11 are reducing the nonconformity and -- and while the
12 regulations don't precisely address that point, the
13 only expansion that one could even imagine is the
14 addition of a deck which doesn't expand the FAR or the
15 lot occupancy or -- or any of the -- any of the -- the
16 factors that normally are considered in a variance
17 case and it seemed to me that the Board could
18 interpret the regulations to permit them in fact to --
19 to treat this as a matter of right and simply not --
20 and simply as an alteration or modernization.

21 And I just wanted to give the Board that
22 alternative which -- you know, which I would -- I
23 would advance. However, if -- if the Board felt that
24 it really does come within 2001, then certainly, I
25 think we've made a very strong case for the -- for the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 variance --

2 CHAIRPERSON GRIFFIS: Right.

3 MR. GELL: -- under uniqueness and
4 exceptional physical conditions.

5 CHAIRPERSON GRIFFIS: Indeed. So, if I
6 understand you correctly, what you -- what you're
7 stating is in order to move into 2001.3 which says
8 enlargements or additions may be made to the structure
9 provided that the lot occupancy is met of which this
10 application does not meet the required lot occupancy.
11 In order to do that, this is not an enlargement from
12 -- from your testimony because it's actually reducing.
13 It's not adding on to. It's actually reducing what
14 was there.

15 MR. GELL: And that's right.

16 CHAIRPERSON GRIFFIS: Except for this --
17 this deck on top of a roof and what you're saying is
18 that that's not an enlargement or an addition as it's
19 looked at through the zoning regulations because it
20 doesn't impact anything that's actually regulated
21 within the regulations. That is, it doesn't impact
22 the height of the building.

23 MR. GELL: Um-hum. Right.

24 CHAIRPERSON GRIFFIS: It doesn't impact
25 the lot occupancy. It -- it doesn't impact the FAR.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So, how could it be categorized under 2001 as some
2 sort of enlargement or addition for -- for zoning
3 purposes?

4 MR. GELL: And Mr. Bell had told me on a
5 number of occasions that he -- he thought that that
6 was a reasonable interpretation, but apparently, it
7 was not one that had traditionally been accepted by
8 the Board. Perhaps, they hadn't had it presented to
9 them squarely. So, he felt that he was duty bound to
10 simply say no, you've got to go get a variance. But,
11 it would -- it would have been his -- his preference
12 to be able to grant these simply as modernizations.
13 It seemed an appropriate time to raise the issue.

14 CHAIRPERSON GRIFFIS: Right. Indeed, so.
15 Let me have any other Board Members if they have
16 questions at this time. Ms. Miller.

17 VICE CHAIRPERSON MILLER: Mr. Gell, I'm
18 wondering if you can expand upon how this case falls
19 into one of the categories of either ordinary repair,
20 alteration or modernization.

21 MR. GELL: We were expecting Mr. Zapatka
22 to be here, the architect and I -- I think we were
23 thrown off by the fact that there was a case before
24 us. He may, in fact, even arrive in a few minutes.

25 The -- the difference between an expansion

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and modernization it seems to me is -- is -- is a
2 subtle one in some cases, but I see an expansion as
3 actually increasing those elements that are regarded
4 as nonconforming rather than just making alterations
5 to the -- to the structure that's there already.

6 Changing the surface of the second floor
7 roof it seems to me was not an expansion in any -- by
8 any stretch of the imagination and adding a very, very
9 low fence or -- or parapet or -- or something would
10 not as well be an expansion.

11 It's -- it's really a change in the use of
12 the roof which is not, you know, not prohibited
13 certainly in -- in that district. It is -- it is a
14 modernization certainly and it makes the house much
15 more livable. Other people in the neighborhood have
16 done similar things. They -- they do have decks.

17 And in this case, getting back -- back to
18 the -- to the aspect of practical difficulty, he
19 wouldn't have a backyard given the fact that he's
20 going to have the parking there which also helps the
21 neighborhood because that's two cars that aren't going
22 to be fighting for space on the street, but he
23 wouldn't have anyplace outside to recreate if he
24 couldn't use the roof in that respect.

25 I'm not sure if that's responsive, but

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that's how I would -- I would view modernization.
2 Perhaps, there's a more technical explanation of it
3 that I haven't seen.

4 CHAIRPERSON GRIFFIS: So, really in you --
5 your point this -- this whole application is here for
6 this deck. Is that correct?

7 MR. GELL: It is a nonconforming
8 structure.

9 CHAIRPERSON GRIFFIS: Sure.

10 MR. GELL: There's no question about it
11 and -- and if -- as far as I -- as far as I can tell,
12 there's nothing in our application that -- that could
13 possibly be considered an expansion except the deck if
14 the Board chooses to make it so.

15 He's -- he's taking off a porch and -- and
16 that's -- that's an aspect of modernization because
17 it's -- it's unsafe structure to begin with.

18 But, he -- he could remodel that porch
19 certainly within the -- the rules of 2001 as a matter
20 of right and maintain -- maintain the lot occupancy
21 and -- and -- and nonconformity as it is.

22 VICE CHAIRPERSON MILLER: Are you saying
23 you could do that because that would fall ordinary
24 repair?

25 MR. GELL: That's correct.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIRPERSON MILLER: Okay.

2 CHAIRPERSON GRIFFIS: Yes, it's an
3 interesting piece. I mean as I read 2001.2 and
4 actually I think as the Board has -- has looked at it
5 before as ordinary repairs, alterations,
6 modernizations of structure, structural alterations,
7 it means as long as you're not changing the massing,
8 the -- the envelope that's there you pretty much can
9 do whatever you need to do in terms of zoning. Right?

10 And certainly it -- we wouldn't preclude
11 one from modernizing things especially for life safety
12 aspects and that may not step into this. So, it does
13 go to as you've stated as I understand you correctly
14 is well, you -- you could have just enclosed the --
15 the porch that's there and -- and done with what you
16 wanted, but you're actually reducing it.

17 So, does that kick it into something
18 different than 2001.2 and then as you have added this
19 deck onto the top of that structure, does that move
20 you out of 2001.2?

21 MR. GELL: Can I -- may I just add that I
22 think the word modernization adds -- adds something to
23 the notion of rehabilitation or -- or, in fact,
24 repair. With repair or rehabilitation, you're
25 essentially doing exactly what has been done before,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 but simply newer materials.

2 Modernization permits you to use the
3 property perhaps to -- to restructure the interior
4 speaking of other kinds of modernization so that you
5 can use it in different ways. Maybe moving an
6 interior wall. Perhaps changing, you know, turning a
7 room into a kitchen that had -- had previously been a
8 dining room. It's -- it's these kind of changes and
9 I think changing a roof into a deck falls within that
10 category of permitting you to use it in a -- in a much
11 more modern way that -- that corresponds with -- with
12 the way we live our lives today perhaps differently
13 from the way they did 20/30/50 years ago.

14 CHAIRPERSON GRIFFIS: Yes, I don't see
15 much that you could not do in 2001.2 even under our
16 own definition of alterations in 199. Of course,
17 additions aren't defined which is the problem.

18 MR. GELL: That's right.

19 CHAIRPERSON GRIFFIS: And then what puts
20 that into it. Okay. Yes, Ms. Miller.

21 VICE CHAIRPERSON MILLER: I'm just curious
22 by something you just said. Is there a trend now away
23 from porches to rooftop -- roof terraces?

24 CHAIRPERSON GRIFFIS: Is that the modern
25 movement?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIRPERSON MILLER: Is that the
2 modern -- right? The modern way we're living.

3 CHAIRPERSON GRIFFIS: Mr. Gell, do you
4 have authority to answer that question?

5 MR. GELL: I -- I -- I would need some
6 expert advice on that. I --

7 CHAIRPERSON GRIFFIS: Right. Right.

8 MR. GELL: -- I am -- I'm not the right
9 person to ask.

10 CHAIRPERSON GRIFFIS: These old sleepy
11 porches. Of course, your porch is three feet 11
12 inches. Not much use.

13 MR. BELL: IT's essentially an old mud
14 room and it was for the addition of the privy in 1905.

15 CHAIRPERSON GRIFFIS: Correct.

16 MR. BELL: That's the reason it's there
17 and the original 1905 privy is still inside the porch.
18 Kind of interesting.

19 CHAIRPERSON GRIFFIS: Fascinating and then
20 you don't -- you don't anticipate them coming back.
21 Huh?

22 MR. BELL: I hope not.

23 CHAIRPERSON GRIFFIS: That would be
24 something. Okay. Any other questions then?
25 Clarifications?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I think it would be appropriate to hear
2 from Office of Planning if they wanted to weigh in on
3 this issue as they did address it in their plan or
4 their analysis. If they want to just take on comment
5 of whether the -- this is required relief or whether
6 it falls under 2001.2. Not that you're required to,
7 but give you the opportunity.

8 MR. MORDFIN: Okay. Thank you, Chairman.
9 Stephen Mordfin with the Office of Planning.

10 And our interpretation had been that we
11 thought that it needed the variance rather than
12 falling under 2001.2 because we viewed it as an
13 expansion rather than an ordinary repair or -- or a
14 modernization.

15 So, under that assumption, we had prepared
16 the -- the staff report as you see before you
17 recommending approval of variances in order to --

18 CHAIRPERSON GRIFFIS: Right.

19 MR. MORDFIN: -- provide the -- the roof
20 deck.

21 CHAIRPERSON GRIFFIS: Okay. And is there
22 -- is there information you could provide us on how
23 you established that it was an expansion or were you
24 looking at it as the -- the application is coming
25 forward. So, that's the way you're -- you're --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you're viewing it and analyzing it.

2 MR. MORDFIN: We just viewed it as an
3 expansion because it is an additional area that's then
4 expanding the size of the living area of the unit.

5 CHAIRPERSON GRIFFIS: And that's talking
6 about the roof deck itself.

7 MR. MORDFIN: And that's talking about the
8 roof deck itself.

9 CHAIRPERSON GRIFFIS: I see. I see.

10 MR. MORDFIN: The -- the removal of the
11 rear porch we saw as viewed -- that's something they
12 could do as matter of right. That doesn't affect
13 anything even though it does bring the lot closer to
14 conformance with the existing regulations of the R-4
15 district, but because they needed the permit in order
16 to construct the roof deck, we viewed this as
17 variances.

18 CHAIRPERSON GRIFFIS: Okay. Okay. That's
19 helpful. I appreciate that. Okay.

20 Any questions from the Board?

21 MR. GELL: I -- I might just -- just add
22 one -- one thing. This notion of saying that -- that
23 it could be considered a matter of right is not
24 something that had been in our previous justification.
25 This came about as I was revising it for the pre-

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 hearing statement and I realized that the discussion
2 I had put in there on section 223 really was not
3 applicable.

4 So, the Office of Planning had not had a
5 chance really to consider the argument in any kind of
6 meaningful way prior to their doing their report. I
7 believe that's correct.

8 CHAIRPERSON GRIFFIS: Okay. Ms. Miller,
9 did you have something?

10 VICE CHAIRPERSON MILLER: Could -- could
11 you -- Mr. Mordfin, could you explain what you meant
12 by expanding their living space with the roof deck?

13 MR. MORDFIN: I believe the roof deck
14 provides additional living area for the unit.
15 Currently, the area above the kitchen is -- is a roof
16 in which you would not -- would not provide any
17 additional space for them to -- for the occupants of
18 the dwelling to do anything.

19 He converted it into a roof deck and then
20 it does provide some living area, some space that you
21 would want to go to as opposed to a roof which is
22 there functionally to shelter the kitchen.

23 VICE CHAIRPERSON MILLER: I might be
24 missing something, but what about the roof -- what
25 about that porch that's being taken down.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MORDFIN: Well, the porch does provide
2 living area. I guess you -- but, this is a different
3 -- it's a separate area. The roof of the kitchen is
4 separate from the porch which is at the rear of the
5 kitchen.

6 So, even though maybe you're trading one
7 for the other, it's an interesting concept. I haven't
8 thought of it that way before. That maybe you're
9 exchanging one for the other.

10 CHAIRPERSON GRIFFIS: Very well. Anything
11 else? Follow-up from the Board to the Office of
12 Planning? Mr. Gell, do you have anything else from
13 the Office of Planning or anything else you'd like to
14 provide?

15 MR. GELL: I have no questions.

16 CHAIRPERSON GRIFFIS: Okay. There it is
17 then. Let's quickly figure out which direction we
18 want to go on this. Let me take comments on that.

19 One, we could look at this as a -- a --
20 falling under 2001.2 and, therefore, find that relief
21 is not required in this application or we would move
22 ahead to hear the variance cases on this and that
23 would be for -- as I think is a fairly consensus
24 opinion for the -- the roof deck on top of the kitchen
25 area.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Comments on that.

2 MEMBER MANN: I think they should be
3 allowed as a matter of right and I haven't heard
4 anything this morning that makes me feel any
5 differently.

6 CHAIRPERSON GRIFFIS: Okay.

7 MEMBER ETHERLY: Mr. Chair, I would -- I'm
8 somewhat on the fence no pun intended here, but would
9 there perhaps be a point at which a deck of this
10 nature would not be acceptable under the scenario that
11 we're contemplating? What I'm inviting is perhaps
12 some -- some rely from my -- from a -- my colleagues
13 as to what would take this deck out of the area of
14 being --

15 CHAIRPERSON GRIFFIS: I think that's an
16 excellent question. Let me address that and open it
17 up for others to address.

18 I think the minute this deck impacted
19 something that was regulated within the regulations.
20 So, that would be if it impacted the height of the
21 building or how high -- it would impact the lot
22 occupancy. If there was a portion of this exterior
23 that was actually covered that may have then fallen to
24 an FAR calculations although that wouldn't be
25 pertinent to this zone district or whether it impacted

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the side yard, for instance, or anything of that
2 nature.

3 As it's coming in, it's sitting on top of
4 the existing massing or the -- the massing as it's
5 proposed. I -- I don't see where it actually steps
6 into being controlled or rises to the level of relief
7 required.

8 But, let me open it up to others. Ms.
9 Mitten.

10 MS. MITTEN: I -- I think the Chairman has
11 articulated it really well and I think just remember
12 -- you know, just -- it -- it -- without focusing on
13 the specific words of the ordinance, think about what
14 the BZA exists to do and it's to grant relief and if
15 no relief is required, then somebody doesn't need to
16 be here. So, I agree completely with the position of
17 the Chair.

18 MEMBER ETHERLY: With an explanation, Mr.
19 Chair, I'm prepared to move forward.

20 CHAIRPERSON GRIFFIS: Good. In which
21 case, then I just need to figure out the technical
22 process of how we do this and what it actually would
23 evidence itself and we have actually removed relief in
24 applications before. We've actually -- I don't
25 recall. I somewhat recall.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Anyway, let me ask Ms. Monroe then if
2 we've found, would we issue some sort of order?

3 MS. MONROE: I think you can dismiss the
4 application. I think you can do it orally. If you
5 prefer to do a summary order dismissing the
6 application because no relief is required, that would
7 be fine, too.

8 CHAIRPERSON GRIFFIS: Good. Yes, I think
9 that would be appropriate.

10 Ms. Mitten indicated that the applicant
11 could withdraw and I -- I absolutely agree with that.
12 My difficulty would be if they went then to the Zoning
13 Administrator.

14 MS. MONROE: Um-hum.

15 CHAIRPERSON GRIFFIS: The Zoning
16 Administrator could just look at it and say well, you
17 withdrew. I need to send you back again.

18 So, let me hear from comments unless it's
19 -- or let me hear if it's a consensus from the Board
20 then that we would dismiss this application and issue
21 a summary order that indicates that the Board has
22 found that this falls fully within 2001.2 and does not
23 require relief.

24 Is there any opposition to that position?
25 Ms. Miller, comment?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIRPERSON MILLER: No opposition.
2 I -- I -- I would suggest that that's exactly what we
3 should do and I think that it falls under
4 modernization under 2001.2.

5 CHAIRPERSON GRIFFIS: Okay. Then before
6 we have a motion, I note that the ANC is present. If
7 they have comment on this specific issue, we could
8 take that now. Mr. Spalding, if you have any.

9 MR. SPALDING: Not at this time. So --

10 CHAIRPERSON GRIFFIS: Okay. No -- no need
11 to provide comment then. Okay.

12 In which case, we've heard from everybody
13 then that needs to speak in terms of the Board and
14 very well. Then we'll take that as a consensus.

15 Yes, Ms. Mitten.

16 MS. MITTEN: I just wanted to say since
17 Mr. Gell shared with us that in the past he's had
18 conversations with the Zoning Administrator and that
19 this has been formalized as -- as a position that it
20 would be perhaps appropriate for the -- the BZA
21 without focusing on this case per se or using this
22 case as an example, whatever you want, but to give
23 some direction, you know, that -- so that this doesn't
24 happen to, you know, future applicants. But, you
25 know, to -- to make it clear that in the event that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 relief is requested even though there might be some
2 reduction, but there might be an impact on another
3 element.

4 Like here, we had three different areas
5 that were being impacted. Those would be cases that
6 we would want to see, but sort of to -- to give the
7 Zoning Administrator some comfort that cases such as
8 this, you know, he or she should feel free to exercise
9 their discretion and -- and, you know, approve as a
10 matter of right.

11 CHAIRPERSON GRIFFIS: Excellent and -- and
12 in your mind, are you thinking that the -- the -- the
13 Board would actually write a letter of clarification
14 to the Zoning Administrator or see that was, in fact,
15 my thought of when we issue some sort of order in this
16 case. That it would start to clarify that even in
17 summary manner.

18 MS. MITTEN: If -- if it -- if it could be
19 articulated in the order as long as that got back to
20 the Zoning Administrator.

21 CHAIRPERSON GRIFFIS: Okay. Okay. Good.
22 What other vehicles do you see that we could actually
23 communicate that?

24 MS. MITTEN: A letter.

25 CHAIRPERSON GRIFFIS: Okay. Okay. Other

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 comments? I think that's an excellent point.
2 Question?

3 VICE CHAIRPERSON MILLER: I was just -- I
4 was just thinking. No, I think an -- an order is
5 appropriate and perhaps it can be, I hate to say this,
6 but, you know, a hybrid summary order in which we, you
7 know, dismiss the case on the basis that relief is not
8 granted because it falls under 2001.2 and just so that
9 the order identifies the relief that was requested and
10 -- and why it -- we found that it didn't meet --
11 didn't need to have a variance because we found it to
12 be a modernization. So.

13 CHAIRPERSON GRIFFIS: Excellent and I
14 think you're absolutely right. I think we need to
15 address this specific case and then Ms. Mitten
16 comments I think are -- are good ones also that let's
17 clarify generally.

18 And I don't think there's any difficulty
19 in the Board writing a letter to the Zoning
20 Administrator for clarification of this. It may
21 actually raise a couple of other issues that we can
22 ascertain that aren't pertinent directly to this case
23 that they could deal with and I think we would copy
24 that to the Zoning Commission also as I anticipate it
25 may bring up some additional aspects that would be of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 -- of interest to the Commission.

2 Okay. Mr. Mann.

3 MEMBER MANN: Ms. Miller wants that kind
4 of longer than summary order for -- like for its
5 precedential value. Is that the idea?

6 VICE CHAIRPERSON MILLER: Just so it's
7 clear to the Zoning Administrator. Yes, I don't think
8 we need a really long full order --

9 MEMBER MANN: Um-hum.

10 VICE CHAIRPERSON MILLER: -- with all the
11 facts in the case, but just so that it's clear what
12 relief was being sought and -- and --

13 MEMBER MANN: Um-hum.

14 VICE CHAIRPERSON MILLER: -- why it was
15 found not to be necessary.

16 CHAIRPERSON GRIFFIS: Right. I think it's
17 going to be very clear. We're going to find out we
18 dismissed a case for -- for lack of required relief as
19 it -- the deck did not impact any of those -- did not
20 fall under an enlargement or addition, but rather in
21 2001.2 as ordinary alterations, modernizations, and
22 structural alterations.

23 Okay. Anything else then?

24 MS. MITTEN: I did.

25 CHAIRPERSON GRIFFIS: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. MITTEN: I have one more thing.

2 CHAIRPERSON GRIFFIS: Good.

3 MS. MITTEN: I don't know what the Board's
4 authority is on -- on this. I -- I know you don't --
5 I don't believe you have the authority to waive fees,
6 but it might be -- it might be within the Board's
7 purview to recommend to the Director of the Office of
8 Zoning to refund the fee in this case since, you know,
9 they came here in good faith and thinking that they
10 needed relief that we've decided that they don't.

11 CHAIRPERSON GRIFFIS: Okay.

12 MS. MITTEN: So, it just seems like --
13 especially since they've gone to the expense of hiring
14 Mr. Gell, that we could do a little bit to soften the
15 blow there.

16 CHAIRPERSON GRIFFIS: Excellent.
17 Excellent. Of course, we like to stay away from the
18 fees and all that, but that being said, I think it's
19 on the record and I think it's appropriately put and
20 so, that certainly can be a discussion.

21 I think you are absolutely correct that we
22 don't have the authority to waive our fees except in
23 very specific cases, but that cannot -- that -- that
24 doesn't necessarily prohibit.

25 Oh, dear. Of course, the -- the attorneys

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 will tell me differently. Oh, my goodness and this
2 was sent here by the ZA. Is that correct? Was this
3 -- this is not self-certified. Is that correct, Mr.
4 Gell?

5 MR. GELL: It was.

6 CHAIRPERSON GRIFFIS: Oh, it was. 3181.4
7 indicates the Board may authorize the refund of all or
8 a portion of the filing fee if it finds that the
9 application was incorrectly filed at the direction of
10 the Zoning Administrator.

11 Okay. Well, that's something to go on,
12 Mr. Gell.

13 MR. GELL: You -- you do have my testimony
14 that the Zoning Administrator did advise me in this
15 case --

16 CHAIRPERSON GRIFFIS: Indeed.

17 MR. GELL: -- it had to -- it had to go to
18 the Board even though you don't have a letter from the
19 Zoning Administrator.

20 CHAIRPERSON GRIFFIS: Right.

21 MR. GELL: I just add that for --

22 CHAIRPERSON GRIFFIS: Good. Well, I think
23 you have the comments from the Board and I think
24 discussion with the Director is perfectly appropriate.

25 Yes, Ms. Mitten.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. MITTEN: Well, I was going -- I was
2 going to say based on -- on that and based on Mr.
3 Gell's representation, I think we could push the
4 envelope here and refund the man his money, \$250.
5 That's what we're talking about.

6 CHAIRPERSON GRIFFIS: Yes, indeed. Okay.
7 Let me hear from others. I don't have any major
8 difficulty in doing that. I -- I just -- what my
9 difficulty is is stepping into doing that. That
10 process. Not the specific, but the process.

11 MEMBER MANN: No, I would also support
12 that.

13 CHAIRPERSON GRIFFIS: Mr. Mann has no
14 difficulty with doing that. Others? Does anyone have
15 difficulty in doing that? What was that? 3184.

16 MS. MONROE: It's 3181.4.

17 CHAIRPERSON GRIFFIS: 3181.4. Ms.
18 Miller's going to look at that very briefly.

19 MEMBER MANN: Well, I mean Mr. Gell was
20 trying to be proactive and was simply looking out for
21 the best interest of his client rather than waiting
22 for some sort of action on the Zoning Administrator's
23 part. I mean it would have been the alternative.

24 CHAIRPERSON GRIFFIS: Right. Yes. No, I
25 understand. Understand.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIRPERSON MILLER: I just want to
2 know -- I mean I think -- you know, as Ms. Mitten
3 would say, we might want to push the envelope here,
4 but I don't -- I don't think it falls under 3181.4
5 that the ZA actually directed the parties here, but,
6 you know, I think we have some discretion.

7 MEMBER ETHERLY: I'll -- I'll note, Mr.
8 Chair, I'm not necessarily opposed here because I
9 appreciate the spirit of the dialogue. I do agree
10 with your position that it's a somewhat slippery
11 slope.

12 I know our conversations regarding waiver
13 of fees has -- has been somewhat -- I've maybe
14 encountered two or three instances where we've had
15 that discussion and our -- our policy has always been
16 to kind of steer clear of it. So, I'll -- I'll just
17 kind of note that -- that concern.

18 CHAIRPERSON GRIFFIS: Good. Okay. In
19 order to be expeditious and not have the applicant to
20 have more of Mr. Gell's time billed to him and saving
21 the money as we're talking about \$250, let's do this
22 take with great support of the Board that the -- the
23 fee be refunded and that can become -- obviously go
24 into the Director and with that discussion, you can
25 bring it up with the Office of Zoning and they can

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 take care of it that way.

2 There may be some time delay in all that,
3 but we'll leave the particulars to you folks to -- to
4 get into.

5 Anything else then? I'm sorry. It's --
6 that's fine. If you are -- you on? Very well. We're
7 going to do this as a motion just to make it
8 absolutely clear and let's move ahead.

9 Ms. Miller, did you have a motion?

10 VICE CHAIRPERSON MILLER: Yes, I would
11 move to dismiss the Application Number 17341 of Simon
12 Bell and John Roegner on grounds that relief is not
13 required because this case falls under 2001.2 as a
14 modernization.

15 CHAIRPERSON GRIFFIS: Modernization
16 alteration. Excellent. I would second the motion.

17 Any further deliberation? Very well.

18 We have a motion before us. It's been
19 seconded. Let me ask for all those in favor signify
20 by saying aye.

21 (Ayes.)

22 CHAIRPERSON GRIFFIS: And opposed?
23 Abstaining? Very well.

24 Ms. Bailey will record the vote and as
25 indicated, we're issue a summary order on this with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 some detail paragraph of that specific -- essentially
2 just enumerating or articulating the motion itself.

3 Ms. Bailey.

4 MS. BAILEY: Mr. Chairman, the Board has
5 voted 5-0-0 to dismiss the application on the grounds
6 that it is -- that no relief is required and that the
7 project falls under modernization and alteration.
8 Mrs. Miller made the motion. Mr. Griffis second. Mr.
9 Mann, Mr. Etherly, and Mrs. Mitten are in agreement
10 and it's a modified summary order with the other
11 instructions as stated by the Board.

12 CHAIRPERSON GRIFFIS: Excellent. Thank
13 you very much, Ms. Bailey.

14 There it is. Mr. Gell, anything else?

15 MR. GELL: No. Thank you very much.

16 CHAIRPERSON GRIFFIS: Okay. Indeed.
17 Enjoy and good luck to you. We will -- well, let's
18 move ahead.

19 Very well, Ms. Bailey, when you're ready.

20 MS. BAILEY: The last case of the morning,
21 Mr. Chairman, is Application Number 17338 of Little
22 Samaritan Child Development Center and it's pursuant
23 to 111 DCMR 3104.1 for a special exception to allow an
24 expansion of an existing child development center from
25 15 children and four staff to 50 children and 16

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 staff. The application is being processed under
2 section 205 of the regulations. The site is zoned R-
3 5-A and it's located at 5100 E Street, S.E., Square
4 5315, Lot 36.

5 Mr. Chairman, there are two preliminary
6 matters that staff is aware of with this application.

7 The first of which is there is -- the file
8 does contain information indicated that parking relief
9 is needed for this project and secondly, the Office of
10 Zoning spoke with the applicant yesterday and
11 requested a letter of authorization from the Child
12 Development Center for the property owner -- am I
13 saying that correctly? Let me revise that. I'm
14 sorry, Mr. Chairman.

15 A letter of authorization from the owner
16 of the property to allow the Child Development Center
17 to operate from the site and I just wanted to bring
18 those things to your attention.

19 CHAIRPERSON GRIFFIS: Excellent. Thank
20 you very much. Those are two very critical
21 preliminary matters which we'll bring up and has --
22 has actually just been handed to you by the recorder,
23 you can fill out those witness cards and then you're
24 going to provide it to him so that we do give you all
25 the correct spelling of your names on the testimony

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you are going to provide.

2 I'll give you a moment to do that and then
3 we'll move ahead into the other issues.

4 Okay. As Ms. Bailey's indicated, first of
5 all, do you have any -- a letter of authorization from
6 the property owner?

7 MS. MASHACK: Yes, I do.

8 CHAIRPERSON GRIFFIS: Actually, I'm just
9 going to need you to turn your microphone on. Good.

10 MS. MASHACK: Yes, I do. I had it
11 notarized.

12 CHAIRPERSON GRIFFIS: Excellent. Not yet.
13 Good. Now, we have that put into the record. I'm
14 just going to have you both introduce yourselves with
15 your name and address so that the record adequately
16 reflects who is speaking.

17 MS. MASHACK: Yes, my name is Remeca
18 Mashack R-E-M-E-C-A Mashack M-A-S-H-A-C-K and I am
19 Director of Little Samaritan Child Development Center.
20 My address is 2212 16th Street, S.E., Washington, D.C.
21 20020.

22 MS. BING: My name is Mildred Bing M-I-L-
23 D-R-E-D Bing B-I-N-G, Executive Director for the
24 Little Samaritan Child Development Center. Address
25 1709 Holbrook H-O-L-B-R-O-O-K Street, N.E.,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Washington, D.C.

2 CHAIRPERSON GRIFFIS: Excellent. Now, the
3 second issue that was brought up I believe Ms. Bailey
4 stated was the fact of the parking spaces and the
5 requirement for relief from that.

6 Are you aware of Office of Planning's
7 recommendation that additional relief is required?

8 MS. MASHACK: What I had received was what
9 the code was. For the additional, I did not find out
10 about until just now. I was going to ask for a
11 variance from this because the building is unique.
12 The building does take up all the space and if the
13 building was built before 1934, before the regulations
14 were in place, the building needs no room for off
15 street parking.

16 To reduce the site of the building would
17 put an undo hardship on us. Also, at the south and
18 the west areas of the property are other buildings
19 leaving no public access to rear parking making it
20 impossible since we can't cross over private property.

21 CHAIRPERSON GRIFFIS: Okay. So, before we
22 go too far into it, then you're in agreement that a
23 variance actually is required.

24 MS. MASHACK: Yes.

25 CHAIRPERSON GRIFFIS: Okay. And there

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 seems to have been a statement at some point that
2 there was actually parking provided currently. There
3 are and will be at least 15 parking spaces provided
4 for the child -- children's drop-off and pick-up,
5 Exhibit 5, which is your submission.

6 Is that correct?

7 MS. MASHACK: That was off -- on-street
8 parking.

9 CHAIRPERSON GRIFFIS: I see.

10 MS. MASHACK: Public parking.

11 CHAIRPERSON GRIFFIS: I see. Okay. And
12 do you have any -- do you -- do you have indication or
13 plan or anything that shows us where and how that is
14 provided? Specifically, the drop-off and pick-up.

15 MS. MASHACK: Within the pictures of the
16 package, you can see the -- on the -- I want to say
17 this side is -- on the side of the building, there is
18 public parking. In front of the building, public
19 parking. Across the street is public parking.

20 On the other side of the building, there
21 is the open -- it's a closed off lot which also -- it
22 has off-street also which the building behind us does
23 not use.

24 During the drop-off and pick-up of the
25 children, you know, they are met by staff to, you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 know, stop down any unused or unsafe conditions for
2 the traffic. So, we have made provisions for that.

3 CHAIRPERSON GRIFFIS: Okay. Okay. Let's
4 -- good. Let's -- let's start at the -- let's start
5 at the top then. A couple of quick questions.

6 Are you operating under a previous order
7 as special exception?

8 MS. MASHACK: No.

9 CHAIRPERSON GRIFFIS: How long have you
10 been in operation there?

11 MS. MASHACK: We've been in operation --
12 the church has been there since 1934. The day-care
13 center just opened in January of last year.

14 CHAIRPERSON GRIFFIS: Okay. So, January
15 '05.

16 MS. MASHACK: '04.

17 CHAIRPERSON GRIFFIS: '04.

18 MS. MONROE: Geoff, can I clarify?

19 CHAIRPERSON GRIFFIS: Yes.

20 MS. MONROE: Are you talking about Good
21 Samaritan One or Good Samaritan Two?

22 MS. MASHACK: We're talking about Little
23 Samaritan Two.

24 MS. MONROE: Okay.

25 CHAIRPERSON GRIFFIS: Okay. That brings

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 up an interesting question. Good Samaritan One is
2 across the street. Is that correct?

3 MS. MASHACK: Yes, located at 5111 E
4 Street.

5 CHAIRPERSON GRIFFIS: Okay. Now, just for
6 quick clarification, is there any -- what is the --
7 what is the reciprocal relationship? Are there any
8 sharing facilities or is it different age of children
9 or why are there two?

10 MS. MASHACK: The only sharing we have is
11 within the playground area. The play group area is
12 located across the street from Little Samaritan Two at
13 Little Samaritan One, 5111 E Street.

14 CHAIRPERSON GRIFFIS: Okay.

15 MS. MASHACK: And we use that as a common
16 play area for both centers. But, we work under the
17 same umbrella.

18 CHAIRPERSON GRIFFIS: Yes, Ms. Mitten.

19 MS. MITTEN: I'm -- I'm just not clear
20 about the relationship here. You work under the same
21 umbrella. Are they -- are they two different
22 operations or one operation?

23 MS. MASHACK: It's incorporated. So,
24 we're under the same operation.

25 MS. MITTEN: Same -- same ownership?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. MASHACK: Yes.

2 MS. MITTEN: Why are they separate? Why
3 are there two different ones then?

4 MS. MASHACK: We opened the first one
5 about four years ago and then since it was -- instead
6 of building on it, they decided to open another one
7 across the street within the fellowship hall of the
8 church.

9 MS. MITTEN: So, there are separate
10 employees?

11 MS. MASHACK: Yes.

12 MS. MITTEN: Right. Anything else that's
13 separate about them? Separate financing? Management?

14 MS. MASHACK: No.

15 MS. MITTEN: Same management?

16 MS. MASHACK: Yes.

17 CHAIRPERSON GRIFFIS: Ms. Bing, you're the
18 Executive Director of both. Is that correct?

19 MS. BING: Yes.

20 CHAIRPERSON GRIFFIS: Okay. So, it's --
21 it's -- this can -- Samaritan Two actually is an
22 expansion of one.

23 MS. MASHACK: Yes.

24 MS. BING: Yes.

25 CHAIRPERSON GRIFFIS: It was a space

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 issue?

2 MS. BING: Yes.

3 CHAIRPERSON GRIFFIS: Okay. And so, the
4 -- the age of -- age of children, program, all that
5 may be very similar.

6 MS. BING: Are the same. Um-hum.

7 MS. MASHACK: Yes.

8 CHAIRPERSON GRIFFIS: Okay. And is there
9 an order for Little Samaritan One? Are you operating
10 under a special exception?

11 MS. MASHACK: No, because we have not --
12 because the size of the building of Little Samaritan
13 One, we cannot increase the load size as we can in
14 Little Samaritan Two.

15 CHAIRPERSON GRIFFIS: Okay. That's an
16 interesting point.

17 Ms. Monroe, what's your understanding of
18 -- I don't think we need to get too far into this, but
19 wouldn't Little Samaritan One be required in an R-5-A
20 district for a special exception to open a child
21 development center?

22 MS. MONROE: Yes, that's what I was trying
23 to figure out.

24 In order to open the child development
25 center, you need to come here and get a special

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 exception. So, in other words, four years ago, when
2 Little Samaritan One opened, it should have come
3 before the Board for a special exception. Obviously,
4 it didn't.

5 But, we can't really hear this because --

6 CHAIRPERSON GRIFFIS: Exactly.

7 MS. MONROE: -- we can't hear anything.

8 We have to -- we would have to advertise for a special
9 exception for Good -- Little Samaritan One and Two as
10 an expansion thereof I guess unless you want to treat
11 them separately and for the parking variance.

12 CHAIRPERSON GRIFFIS: Right.

13 MS. MONROE: We can't really hear anything
14 today because we don't really have any basic special
15 exception. You're looking for an expansion of
16 something that doesn't exist in other words in the
17 records not in reality.

18 CHAIRPERSON GRIFFIS: Well, in -- in some
19 -- I understand what you're saying, but I think we
20 could also look at -- I -- I tend to agree with you
21 that we're looking at -- the -- the relief that's
22 required is above and beyond the special exception as
23 a variance which -- well, it does seem to -- it -- I
24 do believe that we will need to re-advertise this for
25 the variance, but this is being brought in as an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 independent application for Little Samaritan on this
2 facility. They could conceivably just have that
3 special exception.

4 But, in terms of re-advertising, they may
5 want to, in fact, look at the entire One and Two
6 together.

7 MS. MONROE: I think it's up to the
8 applicant.

9 CHAIRPERSON GRIFFIS: Right.

10 MS. MONROE: Because they're treating
11 Little Samaritan Two, and this is up to you guys, as
12 an expansion of One and it's almost an enrollment
13 increase to One even though it happens to be located
14 across the street and I don't know how that plays in.

15 If you -- they want to be treated
16 differently, you need two special exceptions. One for
17 each and I don't know. I mean they --

18 CHAIRPERSON GRIFFIS: Okay.

19 MS. MONROE: -- really need guidance. I
20 mean either OP --

21 CHAIRPERSON GRIFFIS: Sure.

22 MS. MONROE: -- somebody can guide them
23 how to go through this process.

24 CHAIRPERSON GRIFFIS: Good. Well, let's
25 here from the Office of Planning at this point. Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Moore, a very good morning to you.

2 MR. MOORE: Good morning, Mr. Chair and
3 Members of the Board. I will attempt to try to
4 clarify this.

5 It's my understanding that these are
6 separately operated facilities. I didn't know until
7 now that Ms. Bing was their -- Executive Director of
8 both facilities.

9 Little Samaritan One when it open, that
10 may have what? Thirteen students in it?

11 MS. MASHACK: Little Samaritan One, 11.

12 MS. BING: Eleven.

13 MR. MOORE: Opened as a matter of right
14 facility in R-5-A because they had less than 15
15 students in there.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. MOORE: When they got ready to expand,
18 they could have taken one or two options. Either get
19 a special exception to expand One.

20 CHAIRPERSON GRIFFIS: Um-hum.

21 MR. MOORE: Or do a separate application
22 because they had additional space on the other side of
23 the block for Two.

24 They chose to do a separate facility and
25 there -- I think there's only 15 students in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 second one.

2 MS. MASHACK: Exactly.

3 MR. MOORE: So, they're operating as both
4 matter of right facilities.

5 CHAIRPERSON GRIFFIS: Gotcha. However,
6 adding on the variance for today's application would
7 be required?

8 MR. MOORE: It is my understanding when I
9 met with Mrs. Bing that she wasn't thoroughly aware
10 that those spaces had to be on private property not
11 public space.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. MOORE: Because I explained it to her
14 and I told her that I would be putting in the OP
15 report a variance because I think they could make the
16 test for -- for parking spaces.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. MOORE: Don't need the four spaces.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. MOORE: And as you look at the
21 photographs in the OP report, the spaces are very
22 rarely used on the public space and I've been there at
23 least three different times frames.

24 MS. MONROE: Can I interject for a second?

25 CHAIRPERSON GRIFFIS: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. MONROE: I think, too, if it's a
2 matter of right now under 15 or 25 or whatever the
3 cutoff is, if you're going to 50, I think that would
4 throw you into a special exception because the
5 enrollment increase then takes you out of the matter
6 of right limit. I think 50 was the total, right,
7 enrollment you were looking for.

8 MS. MASHACK: Yes, exactly.

9 MS. MONROE: Because it's no longer matter
10 of right once you get beyond 25 I think from what I
11 see. So you would have to advertise for the special
12 exception for that number of children as well as the
13 variance.

14 MR. MOORE: But, they're here for a
15 special exception for Two. The variance is only
16 recorded after OP starts doing the report.

17 CHAIRPERSON GRIFFIS: Right. Ms. Monroe.

18 MS. MONROE: I'm sorry. I didn't hear
19 what you said.

20 CHAIRPERSON GRIFFIS: He said that they're
21 here -- I mean it was advertised for a special
22 exception for 50 children and 16 staff. That's what
23 they're here for.

24 MS. MONROE: Right.

25 MR. MOORE: It think --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. MONROE: Yes, I -- I mean I agree. I
2 think that's what they need is a special exception for
3 the 50 children. Just for Little Samaritan Two.

4 CHAIRPERSON GRIFFIS: Right.

5 MR. MOORE: Correct.

6 MS. MONROE: And is Little Samaritan One
7 under 25 children?

8 MS. MASHACK: Yes.

9 MS. MONROE: So, that would be a matter of
10 right. Okay? So, that one would be -- as long as it
11 stays that way, that one's okay.

12 MS. MASHACK: Um-hum.

13 MS. MONROE: So, basically, okay, what
14 we're down to now is the variance and any questions
15 arising under the special exception for Two.

16 CHAIRPERSON GRIFFIS: Right. And whether
17 it's required actually for re-advertising for the
18 variance is what we're up against at this point and
19 you would --

20 MS. MONROE: I mean it's discretionary I
21 suppose, but usually if you go from lesser relief to
22 more relief --

23 CHAIRPERSON GRIFFIS: Right. I -- I don't
24 think the Board has ever not done it that way.

25 MS. MONROE: The traditional --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Sure.

2 MS. MONROE: -- you know --

3 CHAIRPERSON GRIFFIS: Sure.

4 MS. MONROE: -- interpretation.

5 CHAIRPERSON GRIFFIS: Comments? Mr.

6 Etherly.

7 MEMBER ETHERLY: I mean with respect to
8 the -- to the variance issue, I would be comfortable
9 moving forward. I -- I -- I view it somewhat as -- as
10 a de minimis measure of relief in a fairly
11 straightforward analysis based on -- based on the lot
12 and based on the -- the work that's already been put
13 in with regard to the Office of Planning. So, I would
14 be comfortable perhaps moving forward, but I'm open to
15 hearing comment from -- from my colleagues on that
16 point.

17 CHAIRPERSON GRIFFIS: Good. Comments?

18 VICE CHAIRPERSON MILLER: Yes, I have some
19 comments. I have a question whether or not they need
20 variance relief based on 2100.6.

21 Since this building was built before 1958,
22 2100.6 provides that when the intensity of use of a
23 building or structure existing before May 12th, 1958
24 is increased by an addition of employees, dwelling
25 units, gross floor area, seating capacity or other

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 unit of measurement specified in 2101, parking spaces
2 shall be provided for the addition subject to 2100.7
3 through 2100.9 and 2100.7 says that they're not
4 required if the intensity of use of building or
5 structure is not increased by more than 25 percent of
6 the aggregate.

7 And so, we don't have the facts yet, but
8 I'm wondering if, in fact, the addition of employees
9 is less than 25 percent of the aggregate and I'm
10 wondering if the aggregate might be the number of
11 congregants that come to the church.

12 MS. MASHACK: Well, the increase is going
13 from four staff to 15. So, we're just like right on
14 the borderline of the percentage level, but I'm not
15 sure if it goes on from the congregation of the church
16 or the child care --

17 VICE CHAIRPERSON MILLER: Right.

18 CHAIRPERSON GRIFFIS: That's essentially
19 what it would be. It would --

20 VICE CHAIRPERSON MILLER: It's the use of
21 -- I'm sorry.

22 CHAIRPERSON GRIFFIS: -- it's comparison
23 of the -- of the church, of the existing structure.
24 How much -- how many staff do they have and -- and
25 actually, if you look at intensity of use in terms of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 how many participants or seating capacity, it's an
2 interesting -- interesting -- interesting way to look
3 at this.

4 MS. MASHACK: Well, the seating capacity
5 at the church is 175.

6 CHAIRPERSON GRIFFIS: Uh-huh.

7 VICE CHAIRPERSON MILLER: Do you -- do you
8 have any idea as to the number of congregants of the
9 church?

10 MS. MASHACK: As far as the staff?

11 VICE CHAIRPERSON MILLER: No, congregants.
12 I mean I'm thinking about use of the --

13 MS. MASHACK: A hundred and seventy-five.

14 VICE CHAIRPERSON MILLER: There are 175
15 congregants.

16 MS. MASHACK: A hundred and seventy-five.
17 Um-hum.

18 VICE CHAIRPERSON MILLER: Plus staff.

19 MS. MASHACK: Plus staff, but the staff
20 are not there. The staff is only there on Sundays.

21 VICE CHAIRPERSON MILLER: Okay.

22 MS. MASHACK: So, they're not there during
23 the weekday.

24 CHAIRPERSON GRIFFIS: Right.

25 MS. MONROE: Mr. Chairman, can I join this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 colloquy for a minute. I think we're better off
2 looking at 205 than 2100. 2100.1 says, you know, only
3 buildings after 1958 need parking and -- and with the
4 increased intensity of use, they may need parking even
5 if they're before 1958.

6 But, the more specific reg, I mean the
7 special exception reg, is 205 and it would go to the
8 more specific and it says essentially shall provide
9 sufficient off-street parking spaces. Whatever
10 sufficient is, I leave up to you to determine. But,
11 I think that is the -- the governing regulation here.
12 So, I think some parking would be necessary or a
13 variance.

14 CHAIRPERSON GRIFFIS: Yes, I -- I think --
15 I think it's an excellent point and it's an
16 interesting grab to go to 2100, but I think when
17 looking at the intensity of use, it -- it seems to me
18 in my reading of that as we have numerous times for
19 numerous reasons these sections of when additional
20 parking is required, the intensity of use seems to go
21 to the increase of use of the existing use. Right.
22 This is an additional tenant, an additional use. It
23 mean it's totally diversifying what's there.

24 Now, I hear and I kind of understand
25 actually if -- so, if this is used and built for one-

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 day use, well, how do the five or six other days fit
2 into that. But, I'm not sure it's as -- as -- as
3 clear as we might want it to be for this particular
4 application.

5 For instance, then would that preclude the
6 church from having any sort of activities during the
7 week that were incidental or accessory to them or
8 primary in terms of their use on Wednesday or -- you
9 know, Saturdays or how would you -- how do you start
10 to calculate what the total intensity of use is?

11 VICE CHAIRPERSON MILLER: I mean the way
12 I was looking at it was fairly straightforward. If --
13 if the church needed parking or didn't need parking or
14 the number of parking that -- that it might need would
15 be 175 would be the number of congregants and that the
16 additional use that's coming in is I think 35 and that
17 35 is I believe less than 25 percent of 175.
18 Therefore, they wouldn't need to add additional
19 parking.

20 CHAIRPERSON GRIFFIS: I see.

21 VICE CHAIRPERSON MILLER: I think it --

22 CHAIRPERSON GRIFFIS: You said 35?

23 VICE CHAIRPERSON MILLER: I think 35 is
24 the -- I could be wrong here. I think -- I thought 35
25 was the difference in staff because 15 --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. MASHACK: No, that's the children.

2 VICE CHAIRPERSON MILLER: Oh, children.

3 MS. MASHACK: Thirty-five children.

4 VICE CHAIRPERSON MILLER: Okay. So, that
5 -- okay. I'm not sure now whether we're looking at
6 staff or children. Let's -- the staff maybe.

7 MS. MASHACK: The staff is 16.

8 MS. BING: Yes, it's been increasing --

9 VICE CHAIRPERSON MILLER: The increase in
10 staff is --

11 MS. MASHACK: We increased the staff to
12 16.

13 VICE CHAIRPERSON MILLER: Sixteen from
14 what?

15 MS. MASHACK: From four.

16 VICE CHAIRPERSON MILLER: From four. So,
17 that's 12. Okay. So, then I would be -- I would
18 think you would be looking at staff.

19 CHAIRPERSON GRIFFIS: But, you're not
20 looking at the increased intensity of their staff.
21 You're looking at the increased intensity from the
22 base of the church and compared to right now we have
23 a totally new. It's 16 staff. So, it's -- it's that
24 intensity of use. So, if you want to go direct
25 utilization of 2100, you need to know how many staff

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the church has. Do you know off hand?

2 MS. BING: The staff -- one, two, three,
3 four, about six.

4 CHAIRPERSON GRIFFIS: Six. There are six
5 current staff in the church.

6 I think what I was looking at is like who
7 was parking provided for and --

8 CHAIRPERSON GRIFFIS: Right.

9 VICE CHAIRPERSON MILLER: -- and that's
10 why I was looking at congregants.

11 CHAIRPERSON GRIFFIS: And that's the other
12 difficulty -- exactly. Because the church is
13 calculate its parking based on the seating.

14 VICE CHAIRPERSON MILLER: Um-hum.

15 MEMBER ETHERLY: And -- and just as we
16 were pondering some of these questions, Mr. Chair,
17 I'll -- I'll associate myself with the remarks of --
18 of the Office of Attorney General. I -- I'm inclined
19 to perhaps go with the more specific statute on point
20 here which is 205 as opposed to the section that --
21 that we're currently kind of debating.

22 CHAIRPERSON GRIFFIS: Okay.

23 MEMBER ETHERLY: Because I think that
24 section just invites a -- a somewhat more protracted
25 analysis that 205 really avoids. I -- I see the --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the logic to some extent of -- of looking there, but
2 I -- I think it just kind of complicates the -- the
3 analysis in an unnecessary way. Whereas, 205 as was
4 noted by the Office of Attorney General is much more
5 directly to the point of the child development center.

6 CHAIRPERSON GRIFFIS: Okay. If -- and I
7 think you're absolutely right. We need to return to
8 205, but to -- to finalize what I think Ms. Miller was
9 taking us to in 2100.6 is she was saying look, this
10 building that was built prior to the zoning regulation
11 requirements of parking, how many actual spaces are
12 grandfathered in as we adopted in 1958 our zoning
13 regulations and if you did that calculation, it is one
14 per ten seating in -- in a church for this zone
15 district.

16 That would mean that it was actually
17 required if built today to provide 18 spaces -- 17.5
18 at 175 for the seating. So, essentially, you're
19 looking at something that may well have grandfathered
20 in 18 spaces and that's where you're going. Is that
21 correct, Ms. Miller? Because then you're saying well,
22 is the intensity of use -- that's where I kind of fall
23 away, but is the intensity of use going so that there
24 are more parking spaces provided for that increase in
25 use?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIRPERSON MILLER: Right. Where I
2 was going was one that there -- there wasn't more than
3 a 25 percent intensity of -- of use and, therefore,
4 they wouldn't need to require -- need to have
5 additional parking if -- if we found the 2101.1
6 applied, but I -- I agree with my colleagues that
7 205.4 also allows us to examine whether or not there
8 is sufficient off-street parking.

9 So, I -- I -- I think in both instances
10 then a variance would not be required.

11 MS. BING: Can I say something?

12 CHAIRPERSON GRIFFIS: Sure.

13 MS. BING: Although the church seats 175,
14 we don't have 175 coming every Sunday.

15 CHAIRPERSON GRIFFIS: Oh, no. No, and we
16 understand that.

17 MS. BING: Oh, okay.

18 CHAIRPERSON GRIFFIS: And for our -- for
19 our regulations, it's a very dry --

20 MS. BING: Oh.

21 CHAIRPERSON GRIFFIS: -- table that you
22 have to go to and it's -- and, in fact, if you move --
23 move all those seatings --

24 MS. BING: Um-hum.

25 CHAIRPERSON GRIFFIS: -- you know, if it's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 not pews which this is not --

2 MS. BING: No, it's not.

3 CHAIRPERSON GRIFFIS: -- then we'd go on
4 a -- a base square foot --

5 MS. BING: Oh.

6 CHAIRPERSON GRIFFIS: -- calculation. So,
7 does -- yes, it doesn't -- it anticipates how much
8 could actually be there, worse case scenario. Okay.
9 But, if I understand the Board correctly, we're
10 looking at 205 and -- and, therefore, we need the --
11 a decisive decision on whether actually a variance is,
12 in fact, required for the parking.

13 Let's hear quickly then. Ms. Monroe, are
14 you indicating that under 205 that a variance would
15 not be required?

16 MS. MONROE: No, I'm saying that under
17 205, they have -- the center has to provide sufficient
18 off-street parking spaces --

19 CHAIRPERSON GRIFFIS: Right.

20 MS. MONROE: -- and whatever sufficient is
21 is up to you. I have a feeling, however, that zero is
22 not sufficient and that the variance would be the way
23 to go.

24 CHAIRPERSON GRIFFIS: Okay. I understand
25 that and so, obviously, the first step for the Board

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 is it is always in this -- maybe not always
2 articulated, but we would have to establish what is
3 sufficient and then whether they met it or not and if
4 they don't, then they could either be denied or, in
5 fact, come up to a variance and I think Mr. Moore was
6 about to say appropriately so that sufficient might
7 well be that of a table that's outlined in our -- our
8 parking calculations to give us a threshold of
9 sufficiency as has been defined by the Zoning
10 Commission. In which case, in my understanding, four
11 spaces would then be required for 16 staff. No?

12 VICE CHAIRPERSON MILLER: I don't see it
13 that way. I think if we're going to go to decide
14 what's sufficient, then we -- we need to hear the
15 evidence and then decide whether four is sufficient or
16 not. That's where I'm on the -- on the 205.4.

17 MEMBER MANN: I guess I don't understand
18 that position when there's -- if -- when the -- the
19 schedule in Section 2101 specifically says child
20 elderly development center. It -- it says what the
21 minimum number of necessary spaces would be.

22 VICE CHAIRPERSON MILLER: I think that's
23 kind of the problem with the regulations. Because
24 205. -- what is it?

25 CHAIRPERSON GRIFFIS: 205.4.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIRPERSON MILLER: 205.4 gives us
2 ability by special exception to -- to determine what's
3 sufficient. 2101.1, you know, sets a certain number.
4 That's why I was looking at 2100.6 to determine
5 whether or not this case need not fall under that
6 because the building was built before 1958.

7 CHAIRPERSON GRIFFIS: It's actually a
8 point of how you read 205.4. Is -- is sufficient that
9 which is the -- the base required and then the Board
10 has the ability to require more or is it that they
11 have, as Ms. Miller I think is saying, we have total
12 jurisdiction to decide what the actual parking
13 requirement is.

14 But, Mr. Mann's point would -- I think
15 that is the problem with this regulation in 205.4.
16 Why require a certain number and then give us that
17 sentence. Okay. Fascinating.

18 MEMBER ETHERLY: While we deal with that
19 -- that tongue twister, Mr. Chair, let -- let me come
20 back to -- to a threshold question because I just want
21 to be sure that I'm kind of clear on the -- on the
22 analytical starting point here. Hopefully, all this
23 gets us to what I'm -- what I'm hopeful is a fairly
24 straightforward and easy way of resolving this case
25 and moving forward, but it's a kind of important, but

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 complicated starting point.

2 Because of the fact that we have an
3 existing matter of right component here, i.e., it's
4 under 25 kids and, therefore, we did not need to have
5 a special exception for the first component, what is
6 the appropriate starting point for looking at 205?
7 Because what -- the way the application or the way the
8 -- the notice is -- is worded is for an expansion in
9 the number of children and staff from 15 children and
10 four staff to 50 children and 16 staff.

11 But, should that number for the purposes
12 of Little Samaritan Two be different because you
13 already have -- does -- does that number already
14 include a matter of right starting point?

15 CHAIRPERSON GRIFFIS: I think once you go
16 above 25 that -- that it is all a special exception if
17 I understand what --

18 MEMBER ETHERLY: For -- for the total
19 aggregate and not necessarily for the new location.

20 CHAIRPERSON GRIFFIS: That's an
21 interesting point. Let me get clarification. Because
22 my understanding is the 16 staff and the 50 children
23 are --

24 MEMBER ETHERLY: That's --

25 CHAIRPERSON GRIFFIS: -- in Little

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Samaritan Two.

2 MS. MASHACK: Yes.

3 MEMBER ETHERLY: That's all Two.

4 CHAIRPERSON GRIFFIS: That's all Two.

5 MEMBER ETHERLY: Okay. Okay. So, it's
6 just a wording piece. Okay. I think that answers my
7 question now.

8 CHAIRPERSON GRIFFIS: All right. And I
9 think -- or the difficulty is the expansion is
10 probably because the existing condition is such and
11 now, it's moving up.

12 MEMBER ETHERLY: Right. Well, for
13 purposes of the analysis of 205, it's all simply
14 looking at the component that's related to Little
15 Samaritan Two. Nothing to do with any of the staff or
16 children that are housed at Little Samaritan One.

17 MS. MASHACK: No.

18 MEMBER ETHERLY: Excellent. Thank you.

19 CHAIRPERSON GRIFFIS: Okay. Well, where
20 are we then with the parking? We need to decide that.

21 MEMBER ETHERLY: Well, with -- with that
22 as kind of my starting point, so is -- is the question
23 on the table now the issue of whether or not our
24 starting point is sufficient parking or whether
25 there's a specific number that we start with as was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 identified in the Office of Planning report, i.e.,
2 four required parking spaces.

3 CHAIRPERSON GRIFFIS: Right. And yes,
4 exactly the point and -- and -- and I think the Office
5 of Planning has come in and with the position that, in
6 fact, a parking variance is required if they cannot
7 meet the four spaces under 2100.

8 VICE CHAIRPERSON MILLER: I guess if we go
9 to 2100 then I think we should see whether or not
10 they're exempt from the parking under 2100.6.

11 MEMBER ETHERLY: And -- and perhaps with
12 a -- with a nod to the Office of Attorney General and
13 -- and a little refresher course in first year
14 statutory interpretation.

15 Would -- would OAG's position perhaps be
16 that because they're somewhat more specific provision
17 set forth in 2100 which provides some guidance as to
18 determining the parking court that that probably would
19 be the appropriate place to look as opposed to the
20 general language that's set forth in 205.4?

21 MS. MONROE: The way I would interpret
22 this, I mean, if -- is to go to 205.4 which says
23 sufficient and to use the specific schedule that's set
24 out in 2100 as a minimally sufficient number because
25 that's what the Zoning Commission determined at some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 point was "sufficient for that use."

2 I also think it's a lot wiser to look at
3 -- start with 205 than 2100 because 2100 tends to go
4 to the structure and 205 is specific to this use and
5 to parking for this use as opposed to when the
6 structure was built or not built or anything like that
7 and 205 is specifically for child development centers
8 and that's what I would go with it. I would use the
9 schedule as a guide as to what is sufficient.

10 VICE CHAIRPERSON MILLER: I just want to
11 note though that 2100.6 starts out with when the
12 intensity of use of a building is increased by an
13 addition of an employees and we do have that here.

14 MS. BAILEY: Mrs. Miller, just to add,
15 probably not worth it, but the Board has traditionally
16 processed hundreds of these applications and that's
17 the route that the Board has been using to go --

18 CHAIRPERSON GRIFFIS: Looking at 205?

19 MS. BAILEY: Exactly.

20 CHAIRPERSON GRIFFIS: Yes.

21 MS. BAILEY: And that traditionally has --
22 has been the interpretation of the Zoning
23 Administrator on case -- similar cases.

24 MEMBER MANN: Well, that actually brings
25 up, Ms. Miller, an interesting question to perhaps

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 ponder. We've looked at child development centers
2 before in buildings that have had multiple uses and
3 with a -- an intensity of uses that vary depending on
4 the day and we haven't previously taken that into
5 consideration. We've seen, for example, child
6 development centers that have gone into existing
7 apartment buildings and we didn't take into
8 consideration then the intensity of use.

9 VICE CHAIRPERSON MILLER: Uh-huh.

10 MEMBER MANN: I'm just throwing that out
11 right there.

12 VICE CHAIRPERSON MILLER: And were those
13 built before 1958?

14 MEMBER MANN: I don't know.

15 VICE CHAIRPERSON MILLER: Yes, I mean I --
16 I don't have any problem going under 205.4. I'm just
17 saying if we're finding that they're going to need a
18 variance from 2101 which sets forth the number of four
19 spaces. Then I think we need to then look to 2100.6
20 to see if -- if, in fact, they're exempt.

21 If we're just going to go under 205.4 and
22 use our own judgment based on the evidence of what's
23 sufficient, then we wouldn't need to go into that
24 analysis.

25 That's not what I hear my Board Members

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 saying. I hear them saying we're going to go into
2 205.4, but then we're going to use four as required by
3 2101.1 and then a variance is required.

4 MS. MONROE: Let me say one last thing in
5 statutory interpretation. If -- if you're looking
6 only at 2100, essentially there's no need for 205.4.
7 I mean why have it in there at all? It renders it
8 meaningless because it says it's suppose to have
9 sufficient parking and 2100 I would use as a guide as
10 to what's sufficient. That doesn't mean you can
11 determine otherwise.

12 But, four sounds like a reasonable number
13 for this number of staff and that would be reasonably
14 sufficient and I don't see any reason to read 204. --
15 205.4 out of the regulations just because 2100 allows
16 intensity of use changes and all these other things.

17 VICE CHAIRPERSON MILLER: I'm not reading
18 it out at all. I mean I'm looking at 205.4 and saying
19 we need to make that judgment. All I'm saying is if
20 we look to 2101.1 as a guide, then there's no problem,
21 but if we look at it as well, that's what the Zoning
22 Commission said was sufficient is four and we're
23 looking to provide less than four possibly and then a
24 variance is required. All I'm saying is if you get to
25 that point where you're looking to see whether a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 variance is required, then I think we're obligated to
2 look to see whether or not they're exempt.

3 CHAIRPERSON GRIFFIS: Very well. Let's
4 make a decision.

5 MEMBER MANN: Well, before we do that, can
6 I ask another question?

7 CHAIRPERSON GRIFFIS: Sure.

8 MEMBER MANN: Now, what are the -- are
9 there any ramifications that may result from however
10 we interpret this? If we -- if we decide that, in
11 fact, relief is necessary for the packing spaces, then
12 does that call into question -- are there going to be
13 any -- is there going to be any question about the
14 advertised relief that -- the advertisement of relief
15 that occurred?

16 CHAIRPERSON GRIFFIS: Yes, if -- if we --
17 if we find that a variance is required, then yes, it
18 would indicate potentially that we would need to re-
19 advertise this.

20 MEMBER MANN: All right and I suppose --

21 CHAIRPERSON GRIFFIS: Leave the record
22 open.

23 MEMBER MANN: All right. I'm -- I'm -- in
24 -- I'm not suggesting that we make our -- our -- our
25 decision based on --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Right.

2 MEMBER MANN: -- the potential
3 ramifications, but I was just curious as to what those
4 potential ramifications might be.

5 CHAIRPERSON GRIFFIS: Right.

6 MEMBER ETHERLY: I'm in -- I'm in -- I'm
7 inclined perhaps just to -- to -- to follow OAG's lead
8 as they laid out with respect to starting at 205.4 and
9 using Section 21011 kind of as -- as a guidepost for
10 what is reasonable. I'm -- I'm perhaps tempted to ask
11 and I -- and -- and I'm hesitant to put yet another
12 question on the table, but just from the standpoint of
13 zoning, what is it that grandfathers in the church
14 itself? Because if I'm not mistaken, the church
15 itself has no parking presently that it provides for
16 its own uses. What is it that allows -- that allows
17 that or grandfathers that church in? Is that already
18 under 2100 as well?

19 CHAIRPERSON GRIFFIS: Yes, it's an
20 existing --

21 MS. MONROE: That's under 2100.1.

22 MEMBER ETHERLY: Okay.

23 MS. MONROE: Because you only have to have
24 parking if you're built after May 12th, 1958.

25 MEMBER ETHERLY: Exactly.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. MONROE: The church was built in 1934
2 or whatever.

3 MEMBER ETHERLY: Right.

4 MS. MONROE: They don't -- the church
5 itself doesn't need parking.

6 MEMBER ETHERLY: Okay. Because I do
7 appreciate the direction in which Mrs. Miller is going
8 with regard to just figuring out whether or not we
9 even need to -- to go there on the question of
10 parking. Because does the -- does the child -- does
11 the child development center get the benefit of some
12 of that grandfathering. I think that's the direction
13 in which Mrs. Miller's inquiry is kind of going.
14 Maybe not reaching that outcome, but if you kind of
15 play it out, that's perhaps where she's heading.

16 MS. MONROE: Well, let -- let me add
17 something to that comment. We're also looking at the
18 special exception under 3104 and the whole question of
19 adverse impacts.

20 MEMBER ETHERLY: Um-hum.

21 MS. MONROE: And I think you need to
22 consider that whole idea of whether there will --
23 would -- may be adverse impacts with fewer spaces than
24 four, more spaces than four, no spaces. Other than
25 just merely the parking variance itself, but taking

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 into account the question of whether there would be
2 adverse impacts or not onto the special exemption
3 particularly because there's two here within a
4 thousand feet of each other or whatever the cutoff is
5 in the reg and you're suppose to be looking at
6 cumulative impacts. Even though it's really one, it's
7 expansion of one, but there's two -- you know, two
8 actual locations and I would look at that too when
9 considering what kind of parking is necessary and what
10 kind of relief you want to give for parking.

11 CHAIRPERSON GRIFFIS: Ms. Miller.

12 VICE CHAIRPERSON MILLER: Mr. Chairman, I
13 -- I think the threshold question is in this case
14 whether -- whether or not this case is bound by 2101.1
15 parking requirements for a child development center
16 which is four.

17 If -- if -- if this Board finds that we're
18 not bound by that and that, in fact, the special
19 exception requirement just to provide sufficient
20 parking is what's controlling, then we don't need to
21 get into the issue of the variance. But, if we find
22 that we are obligated to follow the parking schedule
23 in 2101.1, then we need to determine whether or not a
24 variance is required and -- and I don't want to sound
25 like a broken record, but in doing that, we then need

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to backup and determine whether or not they fall under
2 an exemption.

3 CHAIRPERSON GRIFFIS: All very good
4 points. To address them all, if we did look at just
5 205, I think it's just based on the submission that we
6 have now and essentially from Office of Planning and
7 some of the comments that I'm hearing, conceivably we
8 look at special exemption under 205. We get to 205.4.
9 We say okay, how many off-street parking spaces are
10 you providing? They say zero. We say is that
11 sufficient. We find it's insufficient. Then we deny
12 the special exception based on not being able to meet
13 the 205.4 or in this case, we look at anticipating
14 that it is not a sufficient amount of parking and look
15 at a variance from that requirement.

16 Now, saying the threshold does come under
17 the -- the -- I think the -- the -- the parking 2101
18 requirements for child developments centers, it does
19 give us an idea of what is the -- the basis for what
20 is sufficient or reasonable.

21 Then if we would get any sort of exemption
22 because of the 18 or however many it is that are
23 grandfathered in, see I have difficulty and I -- I
24 want to use that section so badly, the 2100.6, for
25 this and perhaps other issues in terms of intensive

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 used. But, then how do we actually -- how do you
2 really quantify that intensive use?

3 I can see an office building where you add
4 on 200 square feet and it's a 300,000 square foot
5 building. It's fairly clear that the intensity of use
6 is below 25 percent of the total intensity, but here
7 we have a church and just -- if we -- if anyone can
8 actually describe a typical church, but let's look at
9 the big day is -- is Sunday or worship day where
10 everyone comes in. Off time of that through six other
11 days, it is minimal impact. Maybe some evening things
12 or that. Adding 50 kids, five days a week, and 16
13 staff is that an intensity of use increase above 25
14 percent of the current?

15 VICE CHAIRPERSON MILLER: Okay. What I
16 would say to that is this provision is in the parking
17 section of the regulations. So, I think it -- it goes
18 only to how parking would be affected by the use.

19 CHAIRPERSON GRIFFIS: Okay.

20 VICE CHAIRPERSON MILLER: Okay. So, that
21 I think where you were awhile back, where you said
22 well, okay, what would the church be required to have
23 had as far as number of parking spaces? You get that
24 and then perhaps you look at okay, with this addition,
25 what number of spaces would -- would that require just

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 by looking at the parking scheduled say and is that
2 less than 25 percent?

3 CHAIRPERSON GRIFFIS: Huh? So, you could
4 keep adding the addition and intensity of uses into
5 this building until you broke the threshold of 18
6 parking space required?

7 VICE CHAIRPERSON MILLER: Only if 18 is --
8 is -- you have to -- it's related to the 25 percent.
9 Is that what -- is that 18 related to the 25 percent
10 number?

11 CHAIRPERSON GRIFFIS: No.

12 VICE CHAIRPERSON MILLER: Okay. When it
13 -- when it crosses the threshold of increasing by more
14 than 25 percent.

15 CHAIRPERSON GRIFFIS: I see.

16 VICE CHAIRPERSON MILLER: I think. I mean
17 that's just my -- the way I would interpret this.
18 We're talking about parking spaces. We're not talking
19 about adverse impact under a special exception,
20 intensity of use in that context.

21 CHAIRPERSON GRIFFIS: So, if intensity of
22 use increased the requirement for five spaces, that
23 would be approximately 25 percent of 18, then you're
24 saying that it would not come under -- then it would,
25 in fact, be required for a variance. Interesting.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Interesting argument.

2 Comments? Ms. Monroe, do you have an
3 opinion on that?

4 MS. MONROE: I don't know what else to
5 say. Maybe the last thing to say here is because it's
6 facts specific to this case. Okay. Not getting into
7 larger discussion of which way to go in the future.

8 CHAIRPERSON GRIFFIS: Sure.

9 MS. MONROE: In this case, no parking is
10 being provided. I don't know how that can be consider
11 sufficient. That's all. I mean just -- just for this
12 particular case and therefore --

13 CHAIRPERSON GRIFFIS: Okay.

14 MS. MONROE: -- as you said before, I
15 think if nothing else, a variance from 205.4 would be
16 necessary in this fact specific situation without
17 getting into, you know, what do we do in the future
18 and every other time.

19 VICE CHAIRPERSON MILLER: I just -- I just
20 want to respectfully disagree because we haven't heard
21 any evidence yet, There -- there -- it may be
22 sufficient. There may be no need for parking. We
23 don't really know yet.

24 MS. MONROE: That's true. I mean there's
25 not that much in the file and you haven't heard. But,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in that case, I think re-advertising really is
2 necessary because we don't have any evidence one way
3 or the other. We don't know how much parking is
4 sufficient or insufficient and I think it should be
5 re-advertised. I think that would be the safe way to
6 go with that.

7 VICE CHAIRPERSON MILLER: Now, I -- I
8 think we need to re-advertise if we decide whether or
9 not a variance is going to be required. So, I -- I
10 think that's what we have to decide. Do -- do we need
11 a variance? A variance doesn't turn on sufficiency of
12 parking. Sufficiency of parking falls under the
13 special exception case and it's been advertised as a
14 special exception. So, the variance is only if -- if
15 -- if they don't comply with 2101.1 and are required
16 to.

17 MS. MONROE: Well, but I -- I -- see I
18 think I disagree with that because I think that they
19 have to have sufficient parking, whatever you
20 determine that is, and if they don't have it, the only
21 way the special exception can be granted is if a
22 variance is given for 205.4 and in the past, the Board
23 has done that. The Board has said here's a special
24 exception with eight, you know, requirements. You can
25 only meet seven. We can grant you a variance for that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 eighth requirement and I think if zero is insufficient
2 or whatever number's being provide since we don't know
3 yet, would be considered insufficient by the Board and
4 a variance from 205.4 would be necessary. So, I think
5 a variance may be necessary either way and we don't
6 know until we get the evidence.

7 CHAIRPERSON GRIFFIS: My gosh.

8 MEMBER ETHERLY: I -- I'm -- I'm inclined
9 -- I -- I continue to agree with the Office of
10 Attorney General in that it's -- it's -- I think it's
11 just a kind of cleaner process and -- and I think it's
12 fairly consistent with where the Office of Planning is
13 and -- and I would be amenable to nevertheless moving
14 forward because I'm still not convinced that there's
15 a need to re-advertise and just follow the analysis as
16 it's been laid out by the Office of Planning which
17 would be to go to the 205 discussion under 205.4, rely
18 on 2101.1 to offer guidance as to what a sufficient
19 number would be I think as is indicated by the -- by
20 the Office of Attorney General, and once we were to
21 get into the evidence as it's presented, I think we
22 would find that -- that the number that's being
23 offered here, i.e., zero parking spaces would, indeed,
24 not be sufficient and we'd probably have to go into a
25 variance discussion.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 But, the reason why I'm inclined to move
2 forward nevertheless with a variance on the table is
3 -- is because we're already talking about an existing
4 structure that itself does not provide any parking and
5 we have clear indication that there's ample on-street
6 parking inventory to support this need as well as the
7 other needs that are -- that are put forward by the
8 church.

9 CHAIRPERSON GRIFFIS: Excellent. So, if
10 I understand you correctly what you're saying is that
11 yes, we are proceeding with this as a variance as has
12 been discussed here and also as has been laid out by
13 Office of Planning, but that we could waive our notice
14 requirements of -- of the additional relief.

15 MEMBER ETHERLY: I would be in agreement
16 with that direction, Mr. Chair.

17 CHAIRPERSON GRIFFIS: And that's where you
18 depart from your agreement with OAG?

19 MEMBER ETHERLY: Yes.

20 CHAIRPERSON GRIFFIS: Okay.

21 VICE CHAIRPERSON MILLER: And -- and on
22 what basis would we waive our -- our notice
23 requirements? Why do you think so, Mr. Etherly?

24 MEMBER ETHERLY: I think because we've had
25 discussion around -- where is my -- apologize for not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 having my ANC piece handy. Yes, I have it. I -- I --
2 I was -- I was hopeful that the ANC might have
3 discussed in their written report the issue of
4 transportation, but there's not an indication at
5 Exhibit Number 24 that there was a -- that was a --
6 such a discussion. I -- I have --

7 MS. MONROE: Mr. Chairman, I just want to
8 say one -- I -- it doesn't specifically say that you
9 cannot waive notice, but waiving notice is a dangerous
10 thing to do. I would just -- I would advise against
11 it. That's all I can tell you.

12 Although there are certain regulations
13 says you must not waive and it's not one of them, you
14 know, it's a -- it's a due process issue and it's the
15 kind of thing that goes -- often gets appealed. I
16 mean whether or not notice was given, whether or not
17 it was sufficient, whether or not people got it and I
18 would just be wary particularly we see a lot of
19 parking issues, you know. Parking is an -- potential
20 adverse impact on the neighborhood. It's something
21 that just might come back to haunt them. That's all.

22 MEMBER ETHERLY: And -- and I -- I -- I
23 agree wholeheartedly with that caution. I think
24 there's -- there clearly is at least two places in
25 this application where parking is clearly part of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 discussion. One being 205 -- 205.4 as we discussed
2 and then as the Office of Attorney General noted, we
3 do indeed come back to the issue of parking in a
4 somewhat indirect, but -- but fairly clear way under
5 the -- under the overall special exception analysis as
6 it relates to the issue of adverse affects on
7 neighboring property.

8 So, I am somewhat comforted by the fact
9 that there still would be ample opportunity under the
10 advertised relief as it's currently laid out in the
11 application 205.4 and the special exception analysis
12 that parking and traffic would still be addressed and
13 that notice regarding those two particular issues have
14 already been sufficiently provided.

15 A novel and somewhat --

16 MS. MONROE: I mean I --

17 MEMBER ETHERLY: -- broad reading, but --

18 MS. MONROE: -- I agree in the sense
19 parking is an issue, but a parking variance is not an
20 issue and that's -- that's the difference. I mean
21 generally speaking if you're going to go from a lesser
22 relief to more relief, you re-advertise.

23 I don't -- I don't how -- how burdensome
24 that would be for the applicant. It's I think 40 days
25 for re-advertising.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I'm not sure we could -- I don't think
2 this will get finished today anyway. I know there's
3 a lot more information that needs to come in and maybe
4 that will be helpful to give them more time to get
5 more information in and we could re-advertise and do
6 the whole thing at once. I don't know.

7 I mean that's up to you guys, but I don't
8 think putting it off a short, you know, 40 days. I
9 don't -- you can speak to that, but how much, you know
10 -- how detrimental that would be to you. It might be
11 helpful.

12 VICE CHAIRPERSON MILLER: Mr. Chairman, I
13 -- I would strongly concur with OAG on the notice
14 requirement.

15 In this case, it was -- the -- the notice
16 says it's for an application to expand a child
17 development center. It doesn't say anything about
18 getting a variance from parking and parking is very
19 important to neighborhoods and we have a copy of the
20 ANC letter and that doesn't mention anything about
21 parking. So, that -- that is not a road that I want
22 to go down.

23 But, I -- I -- I'm going to say this one
24 more time and then I'm going to stop. That if this
25 Board is anticipating that there is a question of a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 variance, I don't understand why we don't just at
2 least look and see whether or not they might be exempt
3 and if they're exempt, then we can move forward.

4 MS. MONROE: And that --

5 CHAIRPERSON GRIFFIS: Okay.

6 MS. MONROE: -- actually might be a way to
7 advertise it. You may advertising the alternative.
8 You know, whether the variance is needed or not. I
9 mean that might be one way to and then leave it up to,
10 you know, the applicant to determine or to, you know,
11 request one or the other or present or other and then
12 we can determine which way you want to go.

13 CHAIRPERSON GRIFFIS: Indeed. Interesting
14 point.

15 Ms. Miller, I think your question is an
16 appropriate one to restate and that is whether the
17 Board finds that a variance is required and if so, is
18 the requirement then covered under an exemption in
19 some other section of the regulations.

20 Does anyone else want to address that
21 further?

22 MEMBER ETHERLY: Well, it's -- it's
23 interesting because I think Mrs. Miller and I are
24 trying to do two similar things perhaps in different
25 ways and I think it's important that we're discussing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that difference. One -- one is, you know, I'm just
2 trying to get the thing done today because I think
3 it's a fairly straightforward case once we get past
4 these important questions.

5 Mrs. Miller is offering a way of resolving
6 the issue of the important question which is kind of
7 how do we go about analyzing this thing.

8 If I were to accept Mrs. Miller's
9 analytical framework just for the sake of discussion,
10 I would perhaps then under that analysis not be
11 inclined to find that there is an exception. If we
12 were to look further into -- into section 2100, reason
13 being I -- I would be concerned that the anticipation
14 of the use here is somewhat different from the use
15 that's contemplated under the zoning regs by virtue of
16 the building being a church. This is where we start
17 to get into the difficulty of understanding what
18 churches do today which in a lot of instances are very
19 different from the traditional role and activity of
20 churches that might have been contemplated at the time
21 of the drafting of the zoning regulations.

22 Churches today are more than simply places
23 of worship. They are oftentimes economic development
24 arms. They are very oftentimes now child development,
25 child care providers and that's a good thing. That's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 not a bad thing.

2 But, from the standpoint of talking about
3 the use that's contemplated under Section 2100 for the
4 purposes of intensification of, I might be concerned
5 that by virtue of all of the new things that churches
6 are doing now, you might create an opportunity for --
7 for some unchurch like activities and once again, I
8 don't mean that negatively. I just mean that from the
9 standpoint of the zoning inquiry keep in mind now that
10 churches are also housing providers.

11 So, I'd be a little worried of extending
12 the exception by virtue of the -- of the -- of the --
13 the section that we earlier quoted that would give the
14 grandfather or the exception to the original church
15 views. I would be somewhat concerned in extending it
16 further.

17 CHAIRPERSON GRIFFIS: 2100.6.

18 VICE CHAIRPERSON MILLER: Your know, we're
19 dancing around this. I mean I -- I feel like why
20 don't we just discuss those provisions, get the
21 evidence we need on it, and -- and decide it. I don't
22 know that we have to advertise to the community in
23 order to decide whether or not the exemption applies.

24 Because once we -- once we -- if it does
25 apply and we're out of 2101.1, then we got to 205.4

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and we determine whether the -- whether it's
2 sufficient and that's just a special exception
3 determination. If it's not sufficient, we -- we would
4 deny the application. If it is sufficient, we would
5 grant it given all the other elements from that.

6 MEMBER ETHERLY: And once again just for
7 the sake of discussion, if -- if -- it would be my
8 position that if we were to follow Mrs. Miller
9 analytical suggestion and -- and go to the discussion
10 of the exemption, I would argue that the exemption
11 would not apply because we are talking about a
12 different use which would not be the use that's
13 contemplated under the existing section because this
14 is not an expansion of the church use. It's -- it's
15 rather an expansion of -- of another type of use.

16 I'd love to argue perhaps in the
17 alterative --

18 CHAIRPERSON GRIFFIS: Right.

19 MEMBER ETHERLY: -- that they're one and
20 same.

21 CHAIRPERSON GRIFFIS: Yes, I do, too.

22 MEMBER ETHERLY: But, it's -- it's the
23 awkwardness now because of just all the different
24 things that churches now do.

25 CHAIRPERSON GRIFFIS: Right. And I think

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that's absolutely well said and -- and I tend to agree
2 in that -- with trying to be my analysis of looking at
3 a one-use commercial office building and expanding of
4 square footage. Then the -- it's pretty clear of how
5 the intensity of use changes, but now that you're
6 adding in an addition use, it -- you know, perhaps
7 it's somewhat accessory. Perhaps it isn't. But, it's
8 independent of the church, but the facility is being
9 used. It's -- it's more difficult to look at the
10 comparison of -- of expansion or intensity of use.

11 VICE CHAIRPERSON MILLER: You know, I --
12 yes, I think maybe we are treading waters here.
13 Because churches provide a variety of services --

14 CHAIRPERSON GRIFFIS: Right.

15 VICE CHAIRPERSON MILLER: -- and they feed
16 the homeless sometimes. They, you know, provide
17 locations for events. They -- we see a lot of child
18 development centers in them and I look at the
19 regulations and it doesn't tie use to the use that has
20 been there since 1958 or whatever. It just says the
21 -- the use of a building.

22 So, that's the way I see it. We may
23 choose to disagree, but I think there's anything in
24 the regulations that means that it has to be one
25 specific use.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Right. It's not the
2 specific use. It's -- it's how you're comparing
3 contrast the intensity of the uses and what your --
4 your point previously was look, this is in the parking
5 section. It's just based on the parking.

6 VICE CHAIRPERSON MILLER: Right.

7 CHAIRPERSON GRIFFIS: Okay. Boy or boy.
8 There it is then.

9 VICE CHAIRPERSON MILLER: Can I just say
10 one other -- I mean one other thought is -- I mean it
11 sounds like you're saying that it's okay to look at
12 this if the church decided to hold services every day
13 of the week instead of one day of the week, but it's
14 not okay if they decide to make other use of -- of its
15 facilities such as in this case by a child development
16 center.

17 CHAIRPERSON GRIFFIS: That's correct.
18 Because the parking requirement is based on the
19 seating capacity of the church and not just the
20 seating capacity one on day, but all seven days.

21 VICE CHAIRPERSON MILLER: Okay. But, then
22 you look at the seating capacity that would be
23 required -- I mean not the seating capacity. The
24 parking capacity that would be required here which
25 would be four in my view.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Okay. I understand
2 that and -- and I don't necessarily disagree, but then
3 it goes into the next step of 205.4. Is zero parking
4 sufficient? Is it sufficient?

5 VICE CHAIRPERSON MILLER: That's right and
6 that's when we get into our special exception analysis
7 in my opinion.

8 CHAIRPERSON GRIFFIS: And -- and what I'm
9 trying to insure is that there is availability of --
10 of -- of recourse. Because if we go directly into
11 this is a special exception and find as just from the
12 -- on the application that's here, Office of Planning
13 indicates that it is not sufficient.

14 VICE CHAIRPERSON MILLER: That's right.

15 CHAIRPERSON GRIFFIS: Then it would fail
16 the special exception.

17 VICE CHAIRPERSON MILLER: Then it would
18 fail the special exception. Right. We would just be
19 in a special exception analysis. We just wouldn't be
20 dealing with variance analysis with respect to 2101.1.

21 We might find that they need ten parking
22 spaces.

23 CHAIRPERSON GRIFFIS: Right.

24 VICE CHAIRPERSON MILLER: I mean it just
25 would be within a special exception analysis.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: And then what
2 happens? Are we opening up the availability of
3 bringing a variance to that and not to cite a special
4 exception? Could you get a variance from 205.4?

5 VICE CHAIRPERSON MILLER: I don't think
6 so. I think that -- that -- I think that we have to
7 make a judgment that parking is -- is sufficient. I
8 don't think we can say it doesn't matter that
9 parking's not sufficient.

10 That's not the way I read that reg. I
11 could be wrong. I don't think so though.

12 CHAIRPERSON GRIFFIS: No, I'm not -- no,
13 that's not what I'm saying. That's interesting. You
14 -- what you're saying is you can't bring a variance
15 for an element of a special exception requirement.
16 Can you be granted a variance from 205.4?

17 VICE CHAIRPERSON MILLER: I don't think
18 so. I think that in -- in that case what we would
19 find is if they made other arrangements, therefore,
20 parking was sufficient. I mean you know that's what
21 we usually do in mitigating arrangements.

22 CHAIRPERSON GRIFFIS: I see. So, you're
23 saying full steam ahead. We're not required any
24 specific number, but we need to create that number out
25 of this special exemption, out of the specific

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 evidence as presented in this application.

2 VICE CHAIRPERSON MILLER: I am provided
3 that they're bound by 2101.1.

4 CHAIRPERSON GRIFFIS: Right. But, you're
5 saying they're not.

6 VICE CHAIRPERSON MILLER: I -- I don't
7 think they are based on the numbers that are floating
8 around, but I guess I just want to -- if they followed
9 in that 25 percent, I -- I don't think they are.

10 CHAIRPERSON GRIFFIS: Okay. Well, act
11 again in decisiveness. I think we need to proceed
12 with the limited time that we have this morning and
13 start the special exception application. I think as
14 this may not complete today or there may be additional
15 information required, that we may actually set up some
16 form of re-posting or re-advertising at least for this
17 parking issue as it becomes evident.

18 MEMBER ETHERLY: I -- I would agree, Mr.
19 Chair. I think that's the appropriate way to go.
20 Just move forward. Gather the information that we
21 can. I am hopeful that in -- in the course of what
22 will be fairly direct and straightforward testimony
23 that, you know, we may very well get all the
24 information that we need as -- as far as it relates to
25 the issue of -- of parking.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I think it's -- it's -- it's been clearly
2 -- it's been already asked and answered that the
3 church itself does not provide any additional parking.
4 So, outside of really talking about other arrangements
5 that might be made, once again it -- it perhaps just
6 begs a question of us getting into the facts of the
7 case to determine what is indeed sufficient.

8 I think we'll probably hear that a large
9 amount of the clientele involved in the day car
10 services at the church indeed come from the
11 surrounding community. So, you don't necessarily --
12 I think what we may hear -- not have a huge incidence
13 of -- of vehicles coming to the site, but -- but I am
14 inclined to at least go forward and get some of that
15 testimony.

16 I -- I perhaps also feel compelled to --
17 to apologize in sorts to the applicant because I agree
18 that this was a very important discussion and a lot of
19 it had to necessarily take place here at the Board
20 between my colleagues and I as opposed to getting
21 testimony from you.

22 So, perhaps you felt like my God, I'm
23 sitting here listening to some pretty arcane and
24 nuanced debates about zoning, but I -- I think it was
25 an important discussion to have and I definitely would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 thank my colleague, Mrs. Miller, for offering some of
2 the interpretations that she's offered as -- as it
3 relates to resolving the -- the applicability of
4 Section 2100 to the case.

5 But, I'm inclined to at least move
6 forward, get some testimony on the record, and -- and
7 -- and see where we are.

8 CHAIRPERSON GRIFFIS: Indeed. Two last
9 things then perhaps. Did -- were both of you present
10 for your ANC presentation?

11 MS. MASHACK: I was present.

12 MS. BING: She was. I wasn't.

13 CHAIRPERSON GRIFFIS: You were and the --
14 the -- as Mr. Etherly had brought up, the -- the --
15 there are elements in the ANC that talk about traffic
16 and security and policy protection. Were there other
17 issues discussed at the ANC?

18 MS. MASHACK: Not -- not the parking
19 issue. Did not come up.

20 CHAIRPERSON GRIFFIS: Okay.

21 MS. MASHACK: But, like I told in the
22 application, there was off-street parking and since
23 they're so familiar with the area, they -- the lost
24 that's across the street that is working on being
25 renovated, they -- it was the understanding okay, yes,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that street is not used for any kind of parking and
2 the building that's behind us has their own personal
3 off-street parking also with the residents on the
4 street.

5 I think over -- I think -- I think all --
6 all of them have off-street personal parking on their
7 property with their houses.

8 CHAIRPERSON GRIFFIS: Okay. A quick thing
9 to follow up on your comment. You said across the
10 street the parking is being renovated? The site.

11 MS. MASHACK: They're working on
12 renovating East Capitol. I think it's -- is it
13 dwellings.

14 MR. MOORE: Eastgate.

15 MS. MASHACK: Eastgate. Thank you.

16 CHAIRPERSON GRIFFIS: What is that?

17 MR. MOORE: Eastgate is a form of public
18 housing site that's now Hope VI Project to be
19 accompanied --

20 CHAIRPERSON GRIFFIS: Okay. So, they're
21 renovating the building that's there. I understand.

22 MR. MOORE: No, they tore the buildings
23 down.

24 MS. MASHACK: No, they -- they -- they
25 tore the buildings down.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Yes. Okay.

2 MS. MASHACK: And they're in the process
3 of --

4 MEMBER ETHERLY: So, as -- as indicated in
5 the Office of Planning's report, Exhibit Number 23,
6 the -- the -- my apologies. As indicated in the
7 Office of Planning's report at Exhibit 23, the -- the
8 last page which shows the aerial oblique photo, there
9 is a property across the street labeled Eastgate.

10 CHAIRPERSON GRIFFIS: Correct.

11 MEMBER ETHERLY: So, it's currently a --
12 a vacant lot, but I think we can dispose of that
13 fairly quickly in that, of course, the church has no
14 ownership interest in that lot and you haven't had any
15 discussion with the housing authority about access to
16 that lot or that property for --

17 MS. MASHACK: No. No.

18 MEMBER ETHERLY: -- for any type of use,
19 but it is there and then as you indicated at the rear
20 of your property, there is currently an occupied
21 multi-unit apartment building.

22 MS. MASHACK: Yes.

23 MEMBER ETHERLY: And that unit -- that
24 building has a parking lot for it's own uses, but
25 you've not entered into any agreement with as well.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And just to resolve one nagging question
2 that I had, at Exhibit Number 4 which shows a series
3 of four photographs of the -- of the church property,
4 there is one photograph which appears in the lower
5 corner.

6 MS. MASHACK: Yes.

7 MEMBER ETHERLY: And there appears to be
8 perhaps a -- a -- an access ramp for disabled visitors
9 to the church. There's a vehicle parked just -- it's
10 just barely within that picture.

11 MS. MASHACK: Yes.

12 MEMBER ETHERLY: Where is that space? If
13 you could perhaps indicate on the overhead photo,
14 where is that space at?

15 MS. MASHACK: If you look on the second
16 picture on the --

17 MEMBER ETHERLY: Yes.

18 MS. MASHACK: -- top, right past the
19 building. That is the -- the ramp. Right on the next
20 side. That's where that --

21 MEMBER ETHERLY: I see. Okay and is --
22 and is that -- so, that's parking on the church
23 property?

24 MS. MASHACK: No, that is the private
25 owner. The next-door neighbor.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MEMBER ETHERLY: I see. I see. So, that
2 vehicle that we see in that picture at Exhibit Number
3 4, that's -- that's the neighboring property's
4 vehicle.

5 MS. MASHACK: Exactly.

6 MEMBER ETHERLY: And you don't have any
7 access to that space at all.

8 MS. MASHACK: Exactly.

9 MEMBER ETHERLY: And once again as -- as
10 -- as you've testified to, in the rear yard of the
11 church, there is no way in the -- in the area that's
12 labeled green on the Office of Planning's report --

13 MS. MASHACK: Um-hum.

14 MEMBER ETHERLY: -- where it says rear
15 yard, there's no way for you to access that space for
16 purposes of parking.

17 MS. MASHACK: Exactly. Exactly.

18 MEMBER ETHERLY: There's no alley.
19 There's no dirt path or --

20 MS. MASHACK: No.

21 MEMBER ETHERLY: -- anything along those
22 lines.

23 MS. MASHACK: No.

24 MEMBER ETHERLY: Okay. Thank you, Mr.
25 Chair.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Good. Let's go --
2 if I could just we may get some clarification here to
3 Ms. Monroe.

4 MS. MONROE: Yes, let me just say that I
5 thought that I should go talk to somebody more
6 knowledgeable than myself and I was informed that the
7 place to begin is 2100 and the way usually I guess
8 traditionally it was done by the ZA is he would give
9 a credit for the number of spaces that would have been
10 needed for the church if it needed spaces which would
11 have been I think 18 is what Geoff said and then you
12 would figure out how many -- under 2100.4 not 2100.6,
13 but 2100.4 is when the use of the building structure
14 is changed to another use that requires more parking
15 spaces. You would look at that and if the child
16 development center required more, the difference
17 between the two is what they would require.

18 In this case, the child development center
19 only requires four we think, potentially four and the
20 church would need 18. So, basically, the child
21 development center would need zero.

22 That is the initial and then I was told
23 then you would go to 205 and look at the word
24 sufficient and use as a Board would have to determine
25 that that zero was sufficient and if you could get

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 enough evidence and make findings to that affect, it
2 could be considered sufficient.

3 If not, and you'd have to take the
4 evidence on that, then the sufficient number would be
5 whatever you determined it is. One, two, ten,
6 whatever.

7 So, that's the way I was told it works.

8 MEMBER ETHERLY: I'll buy that for a
9 dollar, Mr. Chair.

10 CHAIRPERSON GRIFFIS: Okay. In which
11 case, it does -- I think that is excellent advice
12 looking at both 2100.4 when use of the building has
13 changed to another use. It seems to satisfy some of
14 the concerns that didn't fall under 2100.6.

15 There it is. Anyone else have opinions on
16 that? Ms. Miller?

17 VICE CHAIRPERSON MILLER: No, that's fine.
18 If the Board thinks it falls under 2100.4 rather than
19 2100.6, it's really the same -- same concept.

20 So, I -- I -- I think if we could make a
21 decision on whether or not they're except from 2101.1
22 based on either one, then we could proceed today.

23 CHAIRPERSON GRIFFIS: Indeed. I think
24 that's the way we should proceed with the
25 understanding that we are looking at the original

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 structure as being required of 18 spaces and,
2 therefore, that is the level which we'd be looking at.

3 Okay. Let's -- let's move ahead then.
4 That would then not require any sort of re-advertising
5 for the variance of the parking, but rather
6 maintaining it under the special exception. Okay.

7 Let's go then to 205 and begin. We'll --
8 let's turn it over to you as we -- I think it's going
9 to be most appropriate as you lay out your
10 presentation or however you want to do it, my advice
11 would be to -- to look at 205 and to walk down each of
12 those sections and see how you meet those requirements
13 and then what elements come out of that.

14 But, let me turn it over to you for your
15 presentation.

16 MS. MASHACK: Okay. According to 205,
17 205.1, we are asking for special exception to expand
18 our center from 15 to 50 children with 16 employees.

19 205.2, we will be capable of meeting all
20 the applicable codes and licensing. We are now in
21 compliance with all the capable license and I do feel
22 confident that we will maintain the same as we do as
23 we do -- so, we will be in compliance with all
24 applicable codes and licensing requirements.

25 2053 -- 205.3, we're located in a low

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 traffic area with no major traffic lights or
2 intersections. Over 90 percent of our population,
3 parents, teachers are taking transportation or walking
4 from the neighborhood housing. There is and will be
5 adequate staff available to receive and return
6 children from driving parents as to not create the
7 traffic conditions or unsafe conditions that might be
8 perceived.

9 We are -- 205.4, we are located like I
10 said in the corner of 51st and E Street. We asked --
11 we -- I don't know if we need it, but we were asking
12 for a variance from this because the property is
13 unique. The building was built in 1934 and the
14 regulations were not in place at that time. The
15 building actually needs no space for off-street
16 parking and to reduce the size of the building would
17 be quite an undue hardship.

18 Like I said also on the south and the west
19 side of the property is other buildings leaving us no
20 public access to the rear for making the necessary if
21 needed off-street parking since we cannot cross over
22 the private property.

23 205.5, outdoor play is provided across the
24 street in a fenced area as indicated, as located in a
25 low-traffic area. Children will cross at the corner.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Each corner has four all way stop signs. Will be
2 adequate staff to control the children and to monitor
3 as they cross across the street. The children also
4 will be supervised to not to create adverse situations
5 such as noise and activities during playground area.

6 On the north side of the playground is a
7 vacant lot which is actually owned by the church. The
8 area houses behind -- the area houses are about 100
9 feet from the playground. So, the noise won't be an
10 adverse affect on that.

11 Behind the playground is an apartment, but
12 only the two back units will be subject to noise.
13 Like I said, we will have people supervise, you know,
14 so it be adverse affect for noise and things and that
15 is also 50 to 60 feet away and again, I wanted to
16 state we will have adequate staff to supervise the
17 noise and activity levels of the children.

18 205.6, the church has been in existence
19 since 1934 and the children have been in existence
20 since 2004. There is landscaping already in place.

21 205 -- 205.7, we will provide off-site
22 play areas -- where am I at. We have -- like I said,
23 we have adequate staff to assist the children as they
24 cross the street at the corner with the all stop signs
25 at each corner.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 205.8, there is a center located across
2 the street with the capacity of -- of 11 which
3 operates under I want to say the same umbrella as we
4 do, but we're not connected as in, you know, the
5 teachers working at the same center. There is no
6 adverse affect because the demand of child care is
7 very much needed in our -- our ward.

8 I had two other responses for the special
9 exceptions I believe. Yes, like I said, we will meet
10 all applicable codes and I believe this will be in
11 harmonious tone with the community. Therefore, not
12 having a adverse affect on the community area.

13 CHAIRPERSON GRIFFIS: Good. Thank you
14 very much. Let's go to questions now on each of those
15 sections.

16 You've indicated, of course, that you
17 currently meet code and licensing requirements and you
18 don't anticipate that changing based on the expansion.

19 MS. MASHACK: Yes.

20 CHAIRPERSON GRIFFIS: Is that correct?

21 MS. MASHACK: Yes, exactly.

22 CHAIRPERSON GRIFFIS: And -- and -- and in
23 this -- in the -- the structure itself, it was
24 indicated that you were going to use the sanctuary
25 space.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. MASHACK: Yes.

2 CHAIRPERSON GRIFFIS: And those are
3 obviously then movable chairs and that opens up to a
4 large room.

5 MS. MASHACK: Yes.

6 CHAIRPERSON GRIFFIS: And you don't see
7 any difficulty in terms of the occupancy, the
8 children's age for the -- any sort of co-licensing --

9 MS. MASHACK: No, actually I had spoke
10 with my licensing specialist already, you know, to let
11 her know the plans that I was doing and she was like,
12 you know, we're -- we'll be in compliance even with
13 the fire codes such as sprinklers and things like
14 that. We're in compliance because of the amount of
15 children we have and we do have two applicable ramps
16 for the children, you know, in case of emergency and
17 things like that. So, I had already spoke with her,
18 you know, on the requirements and codes and things
19 like --

20 CHAIRPERSON GRIFFIS: Okay. Going to the
21 traffic conditions and not creating any unsafe
22 conditions of picking up and dropping off, can -- I'm
23 not really understand how it happens. It -- it's
24 drop-off and pick-up on the E Street side and -- and
25 what kind of timing is it and how many cars do you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 normally have?

2 MS. MASHACK: On the E Street side, they
3 come through the fellowship hall which is, if you see
4 the car, right there in front. That door right there.
5 That is the drop-off point for the children.

6 The times of drop-off is between 7:00 and
7 8:00 -- 9:00 a.m. and pick-up begins as early as maybe
8 3:00.

9 The most you might see is maybe two or
10 three cars at any given time and that is like a -- one
11 of those un-ordinary situations, but other than that,
12 like I said, most of my parents do take public
13 transportation or walk from the neighborhood buildings
14 and that also includes staff, too.

15 CHAIRPERSON GRIFFIS: Okay. You indicated
16 under 205.6 that it is currently landscaped, but what
17 -- what areas were you speaking of and -- and what
18 type of landscaping were you indicating was there?

19 MS. MASHACK: The front of the area you
20 can see the different landscapes and things like that.
21 That has been in place and been going on since the
22 church has been --

23 CHAIRPERSON GRIFFIS: Okay.

24 MS. MASHACK: -- built.

25 CHAIRPERSON GRIFFIS: And is there any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 sort of screening in the back in the rear yard from
2 the apartment building?

3 MS. MASHACK: Is it any what? Screening?

4 CHAIRPERSON GRIFFIS: Yes, any landscaping
5 or fencing or anything?

6 MS. MASHACK: There is fencing.

7 CHAIRPERSON GRIFFIS: Okay. Any other
8 questions from the Board? Ms. Miller?

9 VICE CHAIRPERSON MILLER: I -- I just want
10 to declare on your relationship with the other child
11 development center. I know we discussed this earlier
12 and I just want to nail this down a little bit.

13 There's one executive director for both.
14 Correct?

15 MS. MASHACK: Yes.

16 VICE CHAIRPERSON MILLER: And it's under
17 the umbrella of one corporation, but do they have --
18 what's separate about them? Do they have separate
19 application processes for the kids? Separate
20 bookkeeping? What makes them separate?

21 MS. MASHACK: They -- what makes them
22 separate is they have different license requires. We
23 have -- each of them have their own CFO. Each of them
24 has their own licensing from DOH. The staff are
25 different at each center.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Only thing is the same is the director and
2 the executive director.

3 VICE CHAIRPERSON MILLER: Thank you.
4 Okay. Okay. And you have -- you already have the
5 children at the school. Correct or no?

6 MS. MASHACK: Not the 50. To the 15.

7 VICE CHAIRPERSON MILLER: Oh. Okay.

8 MS. MASHACK: And to the 11.

9 VICE CHAIRPERSON MILLER: But, you know --
10 and how do you know that they're going to be within
11 the neighborhood and this goes to our assessment of,
12 you know, traffic and parking?

13 MS. MASHACK: I have a waiting list that
14 is just too long. I have people -- one in the back of
15 the building who come and, you know, ask everyday, you
16 know, are you expanding. Things like that and most of
17 these people are in the neighborhood areas. They
18 might see us from getting off the bus or from children
19 that get on the bus, you know, and seeing where
20 they're coming from. Because from my area, we don't
21 have a lot of day care centers that take children
22 under two and so, the need of that was greatly needed
23 and that's why we get a -- do get a lot of response
24 from neighborhood areas and we're also in between two
25 elementary public schools.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIRPERSON MILLER: And is there a
2 demand for parking now?

3 MS. MASHACK: No.

4 VICE CHAIRPERSON MILLER: No. Okay. So,
5 and you don't anticipate one. Is that right?

6 MS. MASHACK: I do not anticipate any.

7 VICE CHAIRPERSON MILLER: Okay. Thank
8 you.

9 MEMBER ETHERLY: If I could, Mr. Chair,
10 just a follow up on -- on the parking question.

11 Do you know how the parking is currently
12 signed along some of those streets that -- that
13 boundary the property, i.e., is it restricted in -- in
14 anyway to residential parking?

15 MS. MASHACK: No, it's not.

16 MEMBER ETHERLY: Okay. As -- as far as
17 you know, is there any type of alternate side of the
18 street parking for street cleaning or anything along
19 those lines?

20 MS. MASHACK: No, they don't even have
21 that. They don't even do street cleaning over there.

22 MEMBER ETHERLY: Okay. So, parking is
23 essentially just open -- open to whomever would like
24 to park there.

25 MS. MASHACK: Exactly. Only place they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 will not be able to park is -- you can't even see it,
2 but it is across the street, they have a -- a bus
3 stop.

4 MEMBER ETHERLY: Um-hum.

5 MS. MASHACK: And that's the only place,
6 but they don't even have a sign for no parking where
7 most people would have it, you know, in bus zone.

8 MEMBER ETHERLY: Okay. But, there is a --
9 there is a bus stop?

10 MS. MASHACK: There is a bus stop.

11 MEMBER ETHERLY: And is -- would that be
12 on 51st Street?

13 MS. MASHACK: It is on 51st Street.

14 MEMBER ETHERLY: Okay. Okay. And as you
15 indicated, over 90 percent of your -- your -- your
16 parents currently as well as your staff us public
17 transportation or walk and you would anticipate that
18 being the same as you responded to Mrs. Miller's
19 question. You would expect that to be the same with
20 the -- with the expansion.

21 MS. MASHACK: Yes, I do.

22 MEMBER ETHERLY: With respect to the play
23 area, could you indicate where the play area is? I'm
24 -- I'm hopeful that it's visible. There -- there's a
25 very lovely picture of it in the Office of Planning

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 report at -- at page number four. It almost makes me
2 want to relive some of my glory days and -- and get on
3 the jungle gym. But, if you could, is it indicated on
4 the overhead map? Your play -- on the overhead
5 picture?

6 MS. MASHACK: Yes, I don't have that
7 particular copy.

8 MEMBER ETHERLY: Okay. I'm going to --
9 I'm going to -- if I could Office of Attorney General
10 is making their copy available. I greatly appreciate
11 that. Thank you, Mrs. Miller.

12 And as the applicant is being handed a
13 copy, if you could indicate and feel free to sit down,
14 make yourself comfortable.

15 MS. MASHACK: As you look on the picture,
16 you cross the street and you see the vacant lot.

17 MEMBER ETHERLY: Yes.

18 MS. MASHACK: You see the housetop.

19 MEMBER ETHERLY: Yes.

20 MS. MASHACK: The playground is located in
21 this area right here.

22 MEMBER ETHERLY: Okay. So, as I
23 suspected, there's a little area just towards the
24 bottom, almost in the middle lower portion of the
25 picture. That's where the play area is located.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. MASHACK: Yes.

2 MEMBER ETHERLY: Is that -- is that --
3 that -- that property adjacent to the vacant lot, is
4 that the site of Samaritan One?

5 MS. MASHACK: Exactly.

6 MEMBER ETHERLY: Okay. I see. So, what
7 you anticipate is moving -- during playtimes, moving
8 your young people from -- from that lot back up to the
9 E Street, S.E. sidewalk.

10 MS. MASHACK: Yes.

11 MEMBER ETHERLY: Then walking towards 51st
12 Street and crossing at that intersection to go to --
13 I'm sorry. For Samaritan Two --

14 MS. MASHACK: Two.

15 MEMBER ETHERLY: -- they're coming from
16 the church, crossing E Street, and then walking along
17 the sidewalk in front of Samaritan One to that play
18 area.

19 MS. MASHACK: Yes.

20 MEMBER ETHERLY: Correct?

21 MS. MASHACK: Yes.

22 MEMBER ETHERLY: Okay. Do you have a
23 sense of -- as you -- I think as you indicated in what
24 I believe is Exhibit Number 11, you're anticipating
25 your playtimes being 10:00 to 11:30 a.m. daily and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 3:00 to 5:00.

2 MS. MASHACK: Yes.

3 MEMBER ETHERLY: Okay. Okay. Thank you.
4 Thank you, Mr. Chair. That concludes all of my
5 questions.

6 CHAIRPERSON GRIFFIS: Indeed. Mr. Mann.

7 MEMBER MANN: I just -- I want to -- I
8 want to make sure that I understand correctly the
9 operation of the facility and that is between the
10 hours of 7:00 a.m. and 9:15 a.m. 50 children will be
11 dropped off at this facility. Correct?

12 MS. MASHACK: Yes.

13 MEMBER MANN: And then those 50 children
14 will remain there throughout the day.

15 MS. MASHACK: Yes.

16 MEMBER MANN: And then those same 50
17 children will depart starting at the hours of 3:00
18 p.m.

19 MS. MASHACK: Yes.

20 MEMBER MANN: So, that number of children
21 then by 6:00 p.m. is going to drop off to zero.

22 MS. MASHACK: Yes.

23 MEMBER MANN: But, 50 arrive. Those same
24 50 children stay there during the day and those 50
25 children depart at the end of the day.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. MASHACK: Yes.

2 MEMBER MANN: Okay. Thank you.

3 CHAIRPERSON GRIFFIS: Ms. Miller.

4 VICE CHAIRPERSON MILLER: I just wanted to
5 ask you how many adult chaperons do you have
6 accompanying how many -- what number of children when
7 they're crossing the intersections to the playground?

8 MS. MASHACK: We have a four-to-one ratio
9 and then we also me personally will help like children
10 that are not walking such as, you know, walkers or
11 strollers. So, it would be a two-to-one ratio for
12 children that are not walking.

13 VICE CHAIRPERSON MILLER: Thank you.

14 CHAIRPERSON GRIFFIS: And you have quite
15 an age range from six weeks to 12 years. How -- how
16 do those work together and is the ratio the same with
17 the 12 year olds?

18 MS. MASHACK: No, those are like
19 provisions for like before and after care. If we have
20 before and after care, instead of, you know, going
21 back and being relicensed and things like that, we
22 will go to the maximum age. So, we have just maybe,
23 you know, 45 all-day day care children and we might
24 have five before and after care.

25 The before and after care changes from

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 ratios as they start at five years old and it's a one-
2 to-15 ratio and it goes up to maybe one-to-25 as the
3 children get older.

4 The ratios for children starting at six
5 weeks to one is a four-to-one ratio. Two and a half
6 to three is a one-to-six ratio and the three-year-olds
7 are one-to-eight ratio and the four-year-olds are one-
8 to-ten ratio.

9 Now, and usually all given times, we are
10 at a one-to-four ratio.

11 VICE CHAIRPERSON MILLER: How does it
12 break down how many of each age group that you have?

13 MS. MASHACK: For the infants, one to two-
14 year-olds, the class can be no bigger than eight. So,
15 it's two staff there at all given times and from three
16 and up, they can go up to a class size of 16 and the
17 ratio would be for three and up is one-to-eight.

18 VICE CHAIRPERSON MILLER: Okay. These
19 ratios are for class sizes, but they're different
20 ratios when you're walking the kids to the playground.
21 Right?

22 MS. MASHACK: Yes.

23 VICE CHAIRPERSON MILLER: Okay.

24 MS. MASHACK: And that's not a license
25 requirement, but it's just a safety requirement we do

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 just for the street crossing or field trips.

2 CHAIRPERSON GRIFFIS: Yes.

3 MEMBER MANN: I don't know if I missed
4 this earlier while I was looking through something
5 else, but on Exhibit -- actually I don't actually know
6 which -- I guess it's Exhibit 11 of ours is your
7 statement of the existing intended uses and it says
8 that there are and will be at least 15 parking space
9 provided for the children's drop-off and pick-up. Did
10 we address that specifically?

11 MS. MASHACK: That -- that was off-street
12 parking. It -- it was not indicated correctly.

13 CHAIRPERSON GRIFFIS: No, you mean on-
14 street.

15 MS. MASHACK: Oh.

16 CHAIRPERSON GRIFFIS: You were indicating
17 the public parking. What's out in terms of the --
18 around the church itself.

19 MS. MASHACK: I mean on-street parking.

20 MEMBER MANN: Oh, so, there's -- there's
21 15 spaces. It doesn't necessarily mean that 15 spaces
22 would be open any particular --

23 MS. MASHACK: Right. Right.

24 MEMBER MANN: Fifteen spaces exist.

25 MS. MASHACK: It's -- yes, just public

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 parking.

2 MEMBER MANN: I see.

3 MS. MASHACK: Exactly.

4 MEMBER MANN: Okay.

5 VICE CHAIRPERSON MILLER: I just want to
6 follow up on that. How many -- how -- how much
7 parking is normally available during your drop-off and
8 pick-up times?

9 MS. MASHACK: Like I said, it's about 15
10 spaces.

11 VICE CHAIRPERSON MILLER: It is about 15?

12 MS. MASHACK: Right.

13 VICE CHAIRPERSON MILLER: What -- what
14 kind of parking is it there? Is it un-zoned? Is
15 it --

16 MS. MASHACK: Yes, it's un-zoned and
17 right. They don't even specify even at the bus stop
18 like I said about the bus zone. So, it's no
19 indication of no parking, no residential parking or
20 anything.

21 VICE CHAIRPERSON MILLER: Okay. Thank
22 you.

23 CHAIRPERSON GRIFFIS: Anything else from
24 the Board? Very well. Anything else you'd like to
25 provide on the case presentation at this time?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. MASHACK: No, that's it. That's it.

2 CHAIRPERSON GRIFFIS: Okay.

3 MS. MASHACK: Thank you for the
4 opportunity.

5 CHAIRPERSON GRIFFIS: We still have a ways
6 to go, but let's -- let's go through Office of
7 Planning's report at this -- at this juncture. Mr.
8 Moore.

9 MR. MOORE: Good afternoon, Mr. Chair and
10 Members of the Board. Again, I'm John Moore.

11 The Office of Planning would stand on the
12 record with this application.

13 I don't know how to deal with the -- the
14 variance. We sort of put it in there on the right
15 side in case there was an error.

16 CHAIRPERSON GRIFFIS: Indeed. No, and I
17 think it was appropriate to do so. But, going to that
18 then, looking at it, you indicated in your plan that
19 the drop-off and pick-up plan insured the safety of
20 the children arriving and departing the center.

21 What was your understanding of what that
22 plan was?

23 MR. MOORE: It was essentially what the
24 applicant said.

25 CHAIRPERSON GRIFFIS: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MOORE: At the -- at the intersection,
2 there's an entrance into the church sanctuary and
3 since it's not going to be part of the day care
4 center, you can enter from 51st. The main entrance
5 will be from E.

6 In the applicant's, the question that was
7 just raised to the applicant regarding the number 15,
8 after clarifying that the 15 spaces are on public
9 space, the applicant is indicating that there was a 15
10 space in the proximity to the church. Actually, when
11 you look at spots on the block in terms of parking,
12 actually the square block around the site, there's
13 upward to 50 spaces available basically all day long.

14 As I said, I've been there three different
15 time frames and the spaces are usually there.

16 But, there is a ramp right at the -- by
17 the way there -- there is the church and then there's
18 an annex building --

19 CHAIRPERSON GRIFFIS: Right.

20 MR. MOORE: -- that the existing facility
21 is in. There's a immaterial hallway to connect the
22 two facilities. There is a ramp that go up to the
23 child care center and right in front of it if you look
24 at my photographs or their's, you'll see there's no
25 cars there. So, they can -- a parent can, especially

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 when she is saying that there are only about 10
2 percent of the parents drive, can pull right up in
3 front of the center. Let a child off.

4 I did caution the applicant that we'd much
5 prefer that someone from staff be there to pick them
6 up. Because her previous plan was parents actually
7 drove to the center, went inside with the child, and
8 registered the child. But, I told her that would take
9 up some time and space from the public space. So, it
10 would be much better if they -- if they would sort of
11 pick them up and take them inside.

12 No negative impact at all. It was -- this
13 -- the date that I was there, the gentleman who lived
14 in the house next door to the ramp that Mr. Etherly
15 mentioned was moving in and out the -- his house and
16 Mrs. Bing, ask her does he support your application
17 and she wouldn't talk to him and he indicated -- he's
18 the most impacted by this. His house is right up --
19 up to the -- I don't see it will be any negative
20 impact as a result of parking in this case which would
21 be actually be the only issue.

22 CHAIRPERSON GRIFFIS: Okay. In terms of
23 parking, you said there wouldn't be any negative
24 impact.

25 MR. MOORE: I don't think there would be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 any negative impact.

2 CHAIRPERSON GRIFFIS: Okay. But, is --

3 MR. MOORE: By the way, I did contact DDOT
4 on this.

5 CHAIRPERSON GRIFFIS: Right.

6 MR. MOORE: And although they didn't send
7 in a report, they did call me back. They have no
8 problem with the application.

9 CHAIRPERSON GRIFFIS: Okay. And -- and
10 that's -- that's understood. However, if you put it
11 in a 205.4, what is your opinion of whether it would
12 provide sufficient off-street parking spaces to meet
13 the reasonable needs of teachers, employees, and
14 visitors?

15 MR. MOORE: The site -- there's no way the
16 site can provide the adequate parking spaces. If you
17 look at the green space in the back, we sort of
18 measured it.

19 CHAIRPERSON GRIFFIS: Right.

20 MR. MOORE: At best, you could get two
21 spaces on it, but you can't access it.

22 CHAIRPERSON GRIFFIS: Right.

23 MR. MOORE: There's no alley and you got
24 to come across private property to get to it which
25 isn't legal.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Okay. Understood.
2 Good. Any other questions from the Board? Ms.
3 Miller.

4 VICE CHAIRPERSON MILLER: Would you --
5 would you be able to say that no spaces are sufficient
6 in this case because there's adequate parking around
7 the church on the street?

8 MR. MOORE: I would say there's no spaces
9 available because of the percentage of building on the
10 property itself. In the alternative, this happened to
11 be a situation where there is adequate parking spaces
12 on the public space to accommodate that.

13 VICE CHAIRPERSON MILLER: Did -- did you
14 say there were 50 or 15 spaces available?

15 MR. MOORE: I'm -- I'm saying the
16 applicant in the application though mistakenly the
17 applicant put that there was 15 spaces. You would
18 read it on private property. Once we clarified that
19 that's on public space, I said those 15 spaces that
20 she's referring to is right in proximity to the
21 building.

22 I'm saying that when you go around the
23 square block, that on a average, at least 50 parking
24 spaces are available all day long except Sundays of
25 course.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIRPERSON MILLER: Okay. That --
2 that sounds like a lot to me.

3 MR. MOORE: There's at least that many.

4 VICE CHAIRPERSON MILLER: Okay. And I was
5 wondering if you could also just address how safe the
6 route is that -- that they take to go to the play area
7 in which they're crossing some intersection?

8 MR. MOORE: Again, the intersection
9 they're crossing is very, very mild in terms of
10 traffic flow. It would even be milder once Eastgate
11 is developed because they have no parking requirements
12 on site.

13 So, the -- if you came out of the main
14 church building, you're right at the intersection
15 already. If you came out of the day care, you're
16 about 25 yards from the front of it and to cross from
17 one side to the other side with the appropriate number
18 of chaperons, I don't see that there's going to be an
19 issue of safety for the children at all in that
20 regard.

21 By the way, also when I talked to Ms.
22 Bing, there was indication that -- and I don't think
23 all the children go to play at the same time. Sort of
24 group them in terms of when they go. So, someone
25 might manage the number of children going from time to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 time.

2 VICE CHAIRPERSON MILLER: So, there's no
3 much traffic on that street?

4 MR. MOORE: No, not -- not much traffic at
5 all.

6 VICE CHAIRPERSON MILLER: Okay. And
7 there's a four-way stop sign. Is that at -- at the
8 intersection?

9 MR. MOORE: Well, it's four ways, but
10 since the Eastgate property is being closed in, it's
11 actually three ways.

12 VICE CHAIRPERSON MILLER: Okay. Okay.
13 Thank you.

14 CHAIRPERSON GRIFFIS: Any other questions
15 from the Board?

16 MEMBER ETHERLY: Just a follow up very,
17 very briefly, Mr. Chair. I -- I appreciated the
18 Office of Planning's report. I thought it was a -- a
19 very solid report that laid out kind of the
20 surrounding area and some of the attendant conditions.

21 With an eye towards any -- any potential
22 conditions, would it -- would it the Office of --
23 would the Office of Planning have any position on
24 whether or not a specific limitation on the number of
25 children utilizing the playground space at any one

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 time would be necessary? You did indicate in your
2 report that there is a -- a multi-unit apartment
3 building adjacent to the playground area. Does the
4 Office of Planning -- would you have any concern about
5 the number of children utilizing the space at one time
6 or you wouldn't -- you wouldn't view that as being
7 necessary?

8 MR. MOORE: I wouldn't view it as being
9 necessary in regard that the applicant as I mentioned
10 earlier take the children over in small units as
11 opposed to the whole 50 children at one time.

12 I would imagine that with the additional
13 35 children, they also would be grouped when they go
14 to the playground as opposed to having the 50 at one
15 time on the playground. I would think that would be
16 more than capacity.

17 MEMBER ETHERLY: Okay.

18 MR. MOORE: So, I would -- if there's
19 going to be a condition at all, it would be that
20 children go over in groups as opposed to the unit of
21 50.

22 MEMBER ETHERLY: Okay. And you heard as
23 was testified to by the applicant that the vast
24 majority of their staff and parents utilize public
25 transportation or walk to the facility. It is -- it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 is probably the case that the Office of Planning did
2 not do it in this instance, but I do recall an earlier
3 case, I believe it was in Ward 4, where the Office of
4 Planning had occasion to actually go so far as to take
5 a look at census data.

6 Just based on your -- your three visits to
7 the site which were very helpful, based on those
8 visits and just based on your familiarity with the
9 surrounding location, would it also be your sense that
10 in terms of the increase, we would probably also see
11 the vast majority of new parents and children walking
12 or using public transportation to access the site?

13 In a way, that's a roundabout way of just
14 kind of asking based on your familiarity with the
15 surrounding neighborhood and community, it -- it's --
16 it's not -- it's very much within the realm of
17 possibility that you're going to have young people
18 coming from that community and continuing to come from
19 that community to populate the center?

20 MR. MOORE: By the way, although I didn't
21 do the census data on this one, I rarely do census
22 data. Has -- has to do with youth in Ward 7 and 8
23 because they have the highest youth population of
24 wards.

25 In this immediate area, the Marshal

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Heights community, before this Board in the last six
2 months, there's been at least four or five different
3 cases where houses have either been torn down and
4 renovated or new construction coming on board and we
5 anticipate there to be young families coming into
6 those, of course, and I think I put in our report that
7 there would be possible market at the child care -- a
8 demand that will be met because being new children
9 coming into the neighborhood.

10 But, I do expect that most of those will
11 still be within walking distance of the center.

12 MEMBER ETHERLY: Okay. Excellent.

13 MR. MOORE: Keep in mind the applicant did
14 indicate that there are two elementary schools and
15 they're right between the two schools.

16 MEMBER ETHERLY: Yes, sir. Excellent.
17 Thank you. Thank you, Mr. Chair.

18 CHAIRPERSON GRIFFIS: Indeed. Ms. Miller.

19 VICE CHAIRPERSON MILLER: Mr. Moore, you
20 mentioned in your report that DDOT was going to be
21 providing a report. I don't think it's come in. Do
22 -- are you aware of any report by DDOT?

23 MR. MOORE: DDOT sent me a fax this
24 morning saying that they stood by the recommendation
25 with the exception of providing the report.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 If you want them to provide one, they can,
2 but they simply transferred the information to me that
3 they have no problem with the application.

4 VICE CHAIRPERSON MILLER: Okay. Thank
5 you.

6 CHAIRPERSON GRIFFIS: Anything else for
7 the Office of Planning? No other questions from the
8 Board.

9 Does the applicant have any cross
10 examination, any questions of the Office of Planning?

11 MS. MASHACK: No. Thank you.

12 CHAIRPERSON GRIFFIS: Very well. Let's --
13 let's move ahead then and go to -- we will take note
14 of Exhibit Number 21 which is the Department of Health
15 supportive letter. Also, actually I think that's all
16 I have, but -- although we do have as is now indicated
17 the -- the communication with Department of
18 Transportation through the Office of Planning.

19 What is it?

20 VICE CHAIRPERSON MILLER: ANC.

21 CHAIRPERSON GRIFFIS: Right. Moving on
22 then to the ANC-7E. We look at Exhibit Number 24.
23 Not seeing any representative from the ANC here, we
24 can review that letter that is now in the record which
25 is supportive of the application. We have identified

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 it several times, but I'll open it up to any Board for
2 additional comment on this if need be.

3 Not noting any additional comments, let's
4 move ahead and I can ask for anyone present of which
5 there is no other people, but if there were, if they
6 were in objection or in support of the application,
7 now would be the time to provide testimony. As I say,
8 there is no other people in the room to provide
9 testimony.

10 We can move ahead at this point I believe
11 to any sort of closing or conclusion remarks that you
12 might have for the application.

13 MS. MASHACK: No.

14 CHAIRPERSON GRIFFIS: Well, actually,
15 let's -- let's go back quickly to a couple of
16 questions I think before we turn it over to you.

17 First of all, Mr. Moore's indicated the
18 outdoor play area and the -- the different sections of
19 children that might go. What is -- what is the
20 program for utilization of the outside?

21 MS. MASHACK: Well, it goes by the square
22 footage of the playground area. For every child, it
23 must be 60 feet -- 60 square feet per child.

24 What are we currently doing now? I don't
25 have the total square footage of it in my head, but we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 go out no more than 16 children and since we only have
2 15 children, we only have 15 children on the
3 playground at any given time and then if they, you
4 know, like I say, we have both centers using one
5 playground.

6 CHAIRPERSON GRIFFIS: Right.

7 MS. MASHACK: So, one center will go out.
8 Since the children are different ages, we break them
9 up also again for age groups where the younger
10 children may go out first which is a group of eight
11 and maybe another group of eight and then the older
12 children that are actually located in Center One will
13 go out and that's a group of 11. So, it's no more
14 than 15 children at any given time.

15 CHAIRPERSON GRIFFIS: Okay. And that's
16 currently?

17 MS. MASHACK: Yes, currently.

18 CHAIRPERSON GRIFFIS: And how are you
19 going to anticipate now you'll have 65 children or 60,
20 a little bit more, utilizing the playground?

21 MS. MASHACK: Like I said, it will still
22 go by the age limits.

23 CHAIRPERSON GRIFFIS: Okay.

24 MS. MASHACK: And also the licensing
25 requirements which is 60 square feet per child.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: And -- and how much
2 time do you do outdoor exercise?

3 MS. MASHACK: They have at least two hours
4 today -- in -- in one given day. So, it may be half
5 an hour in the morning or an hour in the morning and
6 an hour in the afternoon or vice versa. Sometimes
7 they change due to, you know, weather -- inclement
8 weather --

9 CHAIRPERSON GRIFFIS: Sure.

10 MS. MASHACK: -- and things like that.

11 CHAIRPERSON GRIFFIS: Sure. So, if you
12 did -- say you did three groups at two hours each,
13 that means conceivably the playground is full six
14 hours out of the day.

15 MS. MASHACK: Depends on the age limit of
16 the children. If it's -- let's say we have the one
17 center at 11:00 or whatever instead of the two hours
18 -- I mean it's -- it's -- like if I go out at 10:00,
19 it might have two groups which is 15. We have only 15
20 in the center. So, that's an hour and two hours in
21 the morning, two hours in the afternoon. So, it might
22 be four or it might be five. It depends on how many
23 children are there and what the weather is for that
24 day.

25 CHAIRPERSON GRIFFIS: Right. Okay. Now,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the Office of Planning's report indicates that the
2 Samaritan One is fenced in. I -- I didn't see that
3 from the aerial photograph, but is the entire property
4 fenced in or just the playground?

5 MS. MASHACK: It's -- the entire property
6 is fenced in.

7 CHAIRPERSON GRIFFIS: And what kind of
8 fence is it? Is it a chain-link fence four feet high
9 or is it a wood fence?

10 MS. MASHACK: We have a chain-link around
11 it. It's a wood fence that cuts off where the bus is.

12 CHAIRPERSON GRIFFIS: I see.

13 MS. MASHACK: But, that's -- the wood
14 fence is a higher fence. But, the chain-link is all
15 around the unit.

16 CHAIRPERSON GRIFFIS: Okay. Yes, Ms.
17 Miller.

18 VICE CHAIRPERSON MILLER: Mr. Moore from
19 Office of Planning stated that he thought it would be
20 a good idea to have a staff person greet the children
21 that are being dropped off in the morning. Do you
22 have a comment on that?

23 MS. MASHACK: Yes, I told him that would
24 -- I thanked him for that advice and that would be
25 something we would do to cut down on the traffic and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 adverse, you know, conditions for that and that'll cut
2 off on people staying in the parking space and things
3 like that.

4 VICE CHAIRPERSON MILLER: How many staff
5 would you anticipate doing that? One or two or --

6 MS. MASHACK: I believe one would be a
7 sufficient. Because from where the street is to the
8 door, it's not more than a walk and signature on a
9 piece of paper and to walk the child in.

10 VICE CHAIRPERSON MILLER: So, but what
11 happens with -- I guess with those that are six weeks
12 or something? Would their parents carry them in then
13 or something?

14 MS. MASHACK: Usually they have carriers
15 or it's no problem with us carrying them because if we
16 greet them at the door, we still pick them up and take
17 them in.

18 VICE CHAIRPERSON MILLER: Okay. I guess
19 -- and I'm just trying to figure this -- logistically
20 how it will work. If -- if you were to take one of
21 the children, then you would leave that spot and
22 somebody else might come. You wouldn't be there to
23 greet the next person. But, is it such a short
24 distance that you go back and forth fairly -- or
25 whatever --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. MASHACK: It's a very short distance.
2 If you can sit there and look at the car through the
3 door, it's no problem going, you know, in, taking that
4 child in and coming to the next one and like I said,
5 we have such a low number of parents that actually
6 drive.

7 VICE CHAIRPERSON MILLER: Right.

8 MS. MASHACK: It's -- it's very rare that,
9 you know, we have to do that.

10 MS. BING: Or either she could have that
11 where a parent is out there to greet the parent -- the
12 staff is out there to greet the parent. Then there is
13 a staff at the door because we have a big window right
14 there at the front that you can see. So, you would
15 have a staff at the front door and then a staff out at
16 the curb to greet the parent. Then that way that
17 staff can bring the child to the parent -- to the
18 staff that's standing at the door and then she can go
19 back to the curb and --

20 VICE CHAIRPERSON MILLER: Right. Okay.

21 MS. BING: -- if there another parent
22 pulling up.

23 VICE CHAIRPERSON MILLER: And -- and what
24 number drive now out of the -- the number that are
25 there?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. MASHACK: It -- like I said, it's more
2 than -- it's -- it's -- over 90 percent of our parents
3 are -- and staff do take public transportation. So,
4 maybe out of the 15, I might have maybe one or two
5 parents that drive.

6 VICE CHAIRPERSON MILLER: Okay. And --
7 and with the playground, you have a certain amount
8 that use the playground. Was it eight? What did you
9 say eight or 15 at that time?

10 MS. MASHACK: It depends on the age of the
11 children. Let's say I wouldn't put my infants with my
12 three and four-year-olds.

13 VICE CHAIRPERSON MILLER: Right.

14 MS. MASHACK: So, right now, the Center
15 Two might go at the same time because most of them are
16 under two years of age and they'll use the playground
17 and it'll go by the square footage of the playground.

18 I do not have the exact square footage,
19 but I go by the license and --

20 VICE CHAIRPERSON MILLER: Um-hum.

21 MS. MASHACK: -- and there's no -- it's 60
22 square feet to -- per -- per child. So, I don't go
23 over that ratio.

24 VICE CHAIRPERSON MILLER: So, basically,
25 the playground's going to be used for more hours with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 more children being in.

2 MS. MASHACK: Yes.

3 VICE CHAIRPERSON MILLER: And have you had
4 any complaints at all with respect to noise?

5 MS. MASHACK: I've never had one.

6 VICE CHAIRPERSON MILLER: Okay. And your
7 hours of operation they're 7:00 to 6:00?

8 MS. MASHACK: Yes, 7:00 a.m. to 6:00 p.m.

9 VICE CHAIRPERSON MILLER: And that's what
10 you anticipate them remaining -- that remaining?

11 MS. MASHACK: Oh, yes.

12 VICE CHAIRPERSON MILLER: That works?
13 Okay. Thank you.

14 MEMBER ETHERLY: One very brief question,
15 Mr. Chair. How -- how many of your staff currently
16 drive?

17 MS. MASHACK: One.

18 MEMBER ETHERLY: And where does that one
19 person park? Just on the street?

20 MS. MASHACK: There I go.

21 MEMBER ETHERLY: Adjacent to the --

22 MS. MASHACK: Right there. Use the -- if
23 I'm not right here, I'm --

24 MEMBER ETHERLY: Okay.

25 MS. MASHACK: -- parked across the street

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in front of where they have --

2 MEMBER ETHERLY: Gotcha.

3 MS. MASHACK: -- the cutoff.

4 MEMBER ETHERLY: Okay. And -- and how do
5 you -- where do you normally pull your staff from?

6 MS. MASHACK: What do you mean?

7 MEMBER ETHERLY: Let's say as -- as you --
8 you know, if your application is successful and you
9 begin to staff up, how do you normally -- how do you
10 normally recruit staff members or how would you go
11 about doing it? Just very briefly.

12 MS. MASHACK: I do newspaper
13 advertisements.

14 MEMBER ETHERLY: Okay.

15 MS. MASHACK: And I do get a lot of people
16 from word of mouth. I have a few of my parents that
17 are in child development that are --

18 MEMBER ETHERLY: Okay.

19 MS. MASHACK: -- you know, showing concern
20 of, you know, wanting to participate.

21 MEMBER ETHERLY: Gotcha. Okay.
22 Excellent. Thank you.

23 CHAIRPERSON GRIFFIS: And just for
24 clarification, you indicated 50 children. You talked
25 about some of the older ones are for after school and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 if you enroll 45, then you might have five after
2 school. But, clarification, is there a difference or
3 what is the difference between the number of children
4 on site at one time and the number of children that
5 are actually enrolled? Are they two different
6 numbers?

7 MS. MASHACK: They can be, but at any
8 given time, they cannot be over your license capacity.
9 Let's say I might have a group come in from like
10 before and after care. Like I said I might have five
11 children come in for before and after care. They're
12 not there during the whole day. So, they're gone by
13 8:00 because they're going to school.

14 CHAIRPERSON GRIFFIS: If I understand what
15 you're saying, your license capacity actually is then
16 the on-site number.

17 MS. MASHACK: Exactly.

18 CHAIRPERSON GRIFFIS: And so, you're
19 saying that you have a license capacity of 50 and
20 that's your on-site number.

21 MS. MASHACK: Exactly.

22 CHAIRPERSON GRIFFIS: That doesn't -- and
23 you said that there could possibly be a difference
24 meaning you could conceivably have a hundred enrolled
25 then, but have 50 that were on site if one came in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 morning and one came in the afternoon.

2 MS. MASHACK: Things like -- no. No. No.
3 No. That's just like a provision. Like if I have a
4 children that does not come all day.

5 CHAIRPERSON GRIFFIS: Right.

6 MS. MASHACK: That's only a spot, but a
7 hundred would be -- I don't even know what to say
8 about that, but no, that's at any given time because
9 what if school is closed or something like that.
10 That's why I say I always have like a few extra spots
11 before -- before and after care. Because something
12 might happen where the school is closed that day or
13 whatever. So, it wouldn't go over my license capacity
14 if they were there. But, it just might go over the
15 regular age group where I will have -- my license will
16 say I can have 12 years old. So, I won't, you know,
17 mess with that.

18 CHAIRPERSON GRIFFIS: Okay. But, for
19 total clarity in the application that we -- you have
20 forwarded for us, it's 50 children on site at one
21 time?

22 MS. MASHACK: Right.

23 CHAIRPERSON GRIFFIS: Okay. And how about
24 trash removal and issues of that nature? Where -- is
25 that -- where does that take place and how is that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 done?

2 MS. MASHACK: We have a trash removal
3 service that comes to pick up the trash.

4 CHAIRPERSON GRIFFIS: And it's once a
5 week, twice a week?

6 MS. MASHACK: Twice a week I think.

7 MS. BING: About three times a week.

8 CHAIRPERSON GRIFFIS: Is it?

9 MS. BING: About three to four times a
10 week.

11 CHAIRPERSON GRIFFIS: And you do -- do you
12 do food preparation on site at all?

13 MS. MASHACK: We have food catered in.

14 CHAIRPERSON GRIFFIS: Okay. Yes.

15 VICE CHAIRPERSON MILLER: I just want to
16 follow up on the Chairman's question about on site at
17 one time and number of children.

18 If you're limited to having 50 on site at
19 one time, but if -- if we were to give you an
20 enrollment number, how many -- how many would that be?
21 It sounds like it would be -- you might be seeking
22 more than 50.

23 MS. MASHACK: What I was saying about like
24 the age requirement, the age restrictions on the
25 children, we -- I get a license if I am approved for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a license of 50 children saying I can have children
2 from the age ranges of six weeks to 12 years of age.
3 I'm not saying I will have 50 children that are two
4 years old or 50 children that are, you know, three
5 years old or whatever. That's just saying at any
6 given time I can have 50 children and they can be
7 anywhere from age six weeks to 12 years of age.

8 VICE CHAIRPERSON MILLER: Yes, I hear
9 that. I'm wondering if you can -- can tell though
10 when he said well, then you could have a -- you might
11 have a hundred children enrolled and you said oh, no
12 way would you have a hundred children.

13 You know, with -- with respect to how many
14 children you would accept for your program given the
15 capacity of 50 at one time, how many would you accept
16 in your program or would you seek to accept?

17 MS. MASHACK: Fifty children.

18 VICE CHAIRPERSON MILLER: Fifty.

19 MS. MASHACK: Fifty children.

20 VICE CHAIRPERSON MILLER: Period?

21 MS. MASHACK: Yes.

22 VICE CHAIRPERSON MILLER: Okay. Thank
23 you.

24 CHAIRPERSON GRIFFIS: Okay.

25 VICE CHAIRPERSON MILLER: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: There it is. I
2 don't have any other further questions. Does anyone
3 else have any other questions? Clarifications? No
4 required information.

5 Let's turn it over to you. Any closing
6 remarks that you might have?

7 MS. MASHACK: No, that's it. Thank you
8 for the opportunity.

9 CHAIRPERSON GRIFFIS: Indeed. Thank you
10 very much. One last question Mr. Etherly was --

11 MEMBER ETHERLY: No. No.

12 CHAIRPERSON GRIFFIS: No, go ahead.

13 MEMBER ETHERLY: No, your question.

14 CHAIRPERSON GRIFFIS: Indeed. Indeed.
15 Oftentimes child development center and especially
16 ones that are being established -- whether expanding
17 or -- or being established, there is a time
18 requirement places on the special exception. For
19 instance, it would be approved for five years or seven
20 years.

21 Do you have any comment on that if we were
22 to look at doing this as a proposed approval of five
23 years?

24 MS. MASHACK: I would ask would that be
25 the minimum or the maximum because it is a little

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 hardship to go through all of these different steps
2 for the exception. Especially if it's not going to
3 change. The arrangements are not going to change.

4 CHAIRPERSON GRIFFIS: Right. And that's
5 an interesting point about what would conceivably be
6 changing and what wouldn't need to be looked at.

7 Let me open it up to comments or questions
8 from the Board. There's a couple of things that I
9 look at in terms of this specific site, but there's an
10 awful lot of potential development happening around
11 the area. That would start to impact street parking
12 as -- as we've looked at the parking issue and also
13 the -- the traffic.

14 It seems to be as you've characterize it
15 fairly calm, a tranquil place at this point, but will
16 that be the same in five or seven years?

17 These kind of aspects might be changing in
18 -- in -- in that kind of time frame.

19 Ms. Miller, you had comments.

20 VICE CHAIRPERSON MILLER: No, that's what
21 I was going to say. That might be changing and then
22 I -- I'm wondering if Office of Planning has an
23 opinion.

24 MR. MOORE: In the opinion of the Office
25 of Planning, the application should be considered for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 five years.

2 As we've mentioned, the -- the area is
3 emerging. It is changing and I would want to have
4 another opportunity to look at this after five years
5 to see if any conditions changed.

6 Example, the applicant indicated the
7 church owned the property on the corner. Could that
8 property be developed for some reason? Could it be
9 even parking given what the demand may be in addition
10 to the demand at the center? Could it be more than 50
11 in five years?

12 So, I would want to look -- go to the --
13 to the minimum period as opposed to the maximum period
14 in that regard.

15 CHAIRPERSON GRIFFIS: Comment or reaction
16 to Office of Planning's --

17 MS. MASHACK: I do understand that and I
18 can -- can I -- I can agree to that. I can accept
19 that.

20 CHAIRPERSON GRIFFIS: Okay. Very well.
21 Anything else? Any other additional needs? I think
22 we've sufficiently walked through the -- the tests and
23 have had testimony addressing each of those, but let
24 me open up to any Board Members that would like to
25 indicate information that we should keep the record

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 open for.

2 If there is no indication of that, I'm
3 willing to proceed today if -- if the rest of the
4 Board is inclined to do so.

5 MEMBER ETHERLY: Mr. Chair, it would be my
6 motion to move approval of Application Number 17338 of
7 Little Samaritan Child Development Center pursuant to
8 11 DCMR 3104.1 for an special exception to allow
9 expansion of an existing child development center from
10 15 children and four staff to 50 children and 16 staff
11 under section 205 at premises 5100 E Street, S.E. and
12 would invite a second.

13 CHAIRPERSON GRIFFIS: I second the motion
14 with discussion of conditions.

15 MEMBER ETHERLY: I would be entirely in
16 agreement with that and thank you, Mr. Chair.

17 With respect to what we've walked through
18 under the Section 205 analysis, I think everything --
19 I think the record has been satisfactorily,
20 sufficiently, and adequately filled out with regard to
21 some of the key factors.

22 I'll speak specifically to the issue of
23 205.3 and 205.4 and 205.5 as it relates to the play
24 space.

25 First, with regard to 205.3, as -- as I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 might anticipate a particular condition being brought
2 forward, I think it would be useful. I'm not wedded
3 to it, but to the extent that it might be a desire to
4 include as a condition that a staff member be
5 available, at minimum one staff member, to assist with
6 pick-up and drop-off coordination at the front of the
7 center.

8 I would be amendable to that, but I did
9 not necessarily feel that there were any otherwise
10 objectionable traffic conditions or unsafe conditions
11 that were identified in the record or in oral
12 testimony that we received today regarding pick-up or
13 drop-off.

14 With regard to Section 205.4 and the very
15 critical issue of sufficient off-street parking spaces
16 to meet the reasonable needs of teachers, other
17 employees, and visitors, I think we had very, very
18 strong and compelling testimony and in this particular
19 instance, the sufficient number of parking spaces to
20 meet the reasonable need in my opinion would very --
21 would very well be zero based on the testimony of the
22 applicant that the vast majority, 90 percent at
23 minimum of the existing parents and staff of the
24 facility use public transportation or walk to the
25 facility and that that trend would be expected to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 continue with a -- with any -- with the introduction
2 of increased numbers of staff and -- and clients to
3 the -- to the center.

4 There is -- there's been testimony to the
5 affect that there is existing public transportation
6 which is relied on heavily and due to the proximity of
7 two existing elementary schools in the vicinity and
8 the Office of Planning's highlight of the fact that
9 Ward 7 continues to be the ward that leads our city in
10 terms of its incidence of -- of young members of the
11 population. I think clearly we're talking about a
12 need in the Marshal Heights community that is -- that
13 is being satisfied and addressed by this particular
14 facility such that it's a facility where people are
15 walking or using public transportation and not
16 necessarily driving to on a pretty high basis.

17 So, I think the record is very clear and
18 -- and -- and speaks for itself as it relates to the
19 issue what is sufficient here.

20 That might not necessarily be the case for
21 all of the facilities of this nature that come before
22 us and perhaps this -- you might even go so far as to
23 say that this is a rare incidence, but I think the
24 record clearly -- clearly supports a finding that this
25 -- the reasonable needs here are indeed zero at this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 particular juncture.

2 As we will perhaps speak to I think that
3 a five-year time frame would be an appropriate
4 condition to add here because as was indicated by the
5 Office of Planning, this community is continuing to
6 grow and that is a very good thing and that's going to
7 be a good thing for your operation, but it will
8 indeed, I think, perhaps merit a look down the line at
9 where we are.

10 Not because we're worried about what
11 you're going to do, but we're -- we're -- we're
12 worried about the direction in which the community
13 will be heading with additional development such that
14 the -- the issue of parking and traffic may indeed
15 change over the next five years.

16 With respect to 205.5 and the issue of
17 play space, I think it has been adequately laid out
18 that the plan which is -- which has been offered by
19 the applicant would address any and all concerns that
20 might be raised with regard to the issue of play
21 space. I did not hear anything to suggest that there
22 would be any unsafe condition or concern raised by the
23 -- the -- the -- the plan for moving your young people
24 from the subject property to the -- the -- the
25 playground space at the -- at the other location. So,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I don't feel any need to offer any additional
2 conditions or otherwise to address concerns there.

3 As the Office of Planning noted in its
4 report, there were no major concerns about any noise
5 impacts that would be created because you are keeping
6 those play groups to a small and concentrated number
7 and will have adequately chaperon resources for those
8 young people who are making use of the out ground --
9 of the outside playground space.

10 As related to 205.7, I'll just speak to
11 that briefly. Once again, I don't think there's
12 anything that needs to be done to address any concerns
13 regarding endangerment of your -- of your -- of your
14 young people. You're not crossing any major arterial
15 streets or intersections.

16 The proximity between your location and
17 the other location, Samaritan One, with respect to
18 205.8, I have not heard anything on the record which
19 would suggest that there is any -- when you look at
20 the totality of those two locations, there's any
21 adverse impact that needs to be spoken to or addressed
22 there.

23 And then just with regard to the overall
24 special exception test as it relates to the -- to the
25 issue of being in harmony with the general purpose and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 intent of the zoning regulations and map, I think this
2 use clearly is considered to be compatible with the
3 underlying uses in this particular zone district and
4 as was discussed to an intent by Mr. Moore in his
5 presentation, there is clearly a need for this type of
6 service in the subject -- subject community and so, I
7 think that there is a strong sense of -- of -- of
8 cohesion there between what you're trying to do and
9 the overall residential character of -- of the
10 community.

11 I'll leave it there, Mr. -- Mr. Chair. I
12 just once again appreciate the applicant's time and
13 patience as the Board walked through some very
14 important questions that perhaps were a little
15 cumbersome to -- to sit and listen through, but I
16 think they were indeed important questions as we move
17 through this application.

18 Thank you, Mr. Chair.

19 CHAIRPERSON GRIFFIS: Thank you. Very
20 well said. Others? Ms. Miller.

21 VICE CHAIRPERSON MILLER: That was very
22 thorough by Mr. Etherly. I just want to add a couple
23 of things.

24 With respect to 205.4, we spent a lot of
25 time dealing with this parking issue. So, I want to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 make sure that we state that, in fact, parking is
2 sufficient not only because hardly any of the
3 children's parents drive to the center, but also that
4 there is so much parking available in the area. The
5 applicant has stated in Exhibit 5 that there are
6 usually 15 spaces available for drop-off and pick-up
7 and Office of Planning stated that there are -- are 50
8 spaces usually available within the -- the vicinity.
9 So, that's a -- a great amount of parking and that's
10 why I think that we can easily find that 205.4 is met.
11 That this -- there's sufficient off-street parking
12 spaces even though that number is zero.

13 Also, I -- I want to add that also DDOT
14 found that parking and traffic posed no problems with
15 respect to this facility.

16 CHAIRPERSON GRIFFIS: Excellent. Any --
17 any others? Very well. Very well put and
18 deliberated.

19 We do have a motion before us. It's been
20 seconded. Let me ask for all those in favor signify
21 by saying aye.

22 VICE CHAIRPERSON MILLER: Wait. Wait.

23 CHAIRPERSON GRIFFIS: Ooh. I'm sorry.

24 VICE CHAIRPERSON MILLER: I'm sorry. What
25 are the conditions?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Yes, he did walk
2 through the conditions, but --

3 VICE CHAIRPERSON MILLER: Oh.

4 CHAIRPERSON GRIFFIS: -- you want to
5 reiterate them?

6 MEMBER ETHERLY: Just to summarize.

7 VICE CHAIRPERSON MILLER: Good. Yes, I
8 didn't realize that's what he was doing.

9 CHAIRPERSON GRIFFIS: Okay.

10 VICE CHAIRPERSON MILLER: Can -- can I --
11 can we try to?

12 MEMBER ETHERLY: So, just to summarize,
13 that would be with a -- with -- the special exception
14 approval would be for time of five years at the
15 conclusion of which the applicant, of course, would --
16 would -- would come back for additional special
17 exception review. So, the -- the time would be five
18 years.

19 VICE CHAIRPERSON MILLER: Um-hum.

20 MEMBER ETHERLY: And that there would be
21 -- condition number two would be that a -- at least
22 one staff member would be available to direct pick-up
23 and drop-off operations at the facility to aid with
24 the movement of students to and from the facility.

25 Those would be the two conditions that I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 had in mind.

2 VICE CHAIRPERSON MILLER: Okay. I just
3 want --

4 CHAIRPERSON GRIFFIS: Right and you -- you
5 didn't choose to go to, but you enumerated, of course,
6 in your motion itself the 50 children on site at one
7 time, the operation time of 7:00 to 6:00 Monday
8 through Friday, and then that ages from six weeks to
9 12 years of age.

10 MEMBER ETHERLY: Correct.

11 VICE CHAIRPERSON MILLER: Do we want to
12 say 50 at one time or we just want to say an
13 enrollment of 50? That number was the same.

14 CHAIRPERSON GRIFFIS: It was now.

15 VICE CHAIRPERSON MILLER: I would --
16 that's --

17 CHAIRPERSON GRIFFIS: The direct testimony
18 that I heard was --

19 VICE CHAIRPERSON MILLER: -- that's what
20 I would prefer.

21 CHAIRPERSON GRIFFIS: -- that -- that the
22 -- the -- the testimony was that the -- they were
23 licensed for 50 and that that's what that would be.
24 It could conceivably be a different number even if
25 it's 55 enrollment.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MEMBER ETHERLY: Well, then -- they've
2 then offered up that it would -- that it never would
3 exceed 50.

4 CHAIRPERSON GRIFFIS: Okay. It's okay by
5 me.

6 VICE CHAIRPERSON MILLER: I think that's
7 easier to monitor. I mean an enrollment number.

8 CHAIRPERSON GRIFFIS: Fifty enrolled.

9 VICE CHAIRPERSON MILLER: Yes.

10 CHAIRPERSON GRIFFIS: Okay.

11 VICE CHAIRPERSON MILLER: Okay.

12 CHAIRPERSON GRIFFIS: Mr. Etherly.

13 MEMBER ETHERLY: No objection, Mr. Chair.

14 CHAIRPERSON GRIFFIS: Excellent. Good.
15 Any other conditions then? Everyone clear on the
16 conditions?

17 Yes, Mr. Moy.

18 MR. MOY: Does -- did the Board mention
19 staff? You mentioned children.

20 CHAIRPERSON GRIFFIS: Oh, I'm sorry. No,
21 we breezed over that very quick, but it was in there.
22 In Mr. Etherly's deliberation, it was 16 staff.
23 Excellent point.

24 VICE CHAIRPERSON MILLER: Right.

25 CHAIRPERSON GRIFFIS: Okay. Anything else

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that we were missing? Anything else? Very well.
2 Then back to it. We have the same motion which has
3 been seconded. Let me ask for all those in favor of
4 the motion signify by saying aye.

5 (Ayes.)

6 CHAIRPERSON GRIFFIS: And opposed?
7 Abstaining? Very well. Why don't we record the vote?

8 MS. BAILEY: Mr. Chairman, the vote is
9 recorded as 4-0-1 to approve that application. Mr.
10 Etherly made the motion. Mr. Griffis second. Mrs.
11 Miller and Mr. Mann are in agreement with the
12 conditions as stipulated and are we doing a full
13 order, Mr. Chairman, or a summary order?

14 CHAIRPERSON GRIFFIS: Do you have any
15 opinion on whether you would like a full order or a
16 summary order or clarification of what the -- the
17 difference is?

18 MS. MASHACK: I guess a summary order.
19 Because I -- I understand what you're saying.

20 CHAIRPERSON GRIFFIS: Yes. Okay. And I
21 don't see any reason -- we obviously don't have any
22 opposition in this case. I think it's very clear in
23 terms of the -- the record that's been set. I think
24 it would be appropriate to waive our rules and
25 regulations and issue a summary order. Of course, it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 does outline all the conditions and the specificities
2 of the operating agreement under which you will look
3 to the special exception for.

4 So, we're -- let's -- let's move ahead
5 with that.

6 MS. BAILEY: Summary order, Mr. Chairman?

7 CHAIRPERSON GRIFFIS: Indeed.

8 MS. BAILEY: And I'm sorry, sir. The --
9 the last condition that you indicated is no more than
10 50 children on the site at any one time. Was that --

11 CHAIRPERSON GRIFFIS: Actually, it was an
12 enrollment number that was a condition.

13 MS. BAILEY: Okay. Okay. Thank you.

14 CHAIRPERSON GRIFFIS: Good clarification.
15 Excellent. Very well. Anything else on this case?
16 I don't think so.

17 Again, thank you very much. Mr. Etherly
18 was right in saying we appreciate your patience and
19 understanding as we got through the legal questions,
20 but obviously we've gotten to a point that was well
21 served by everyone.

22 So, enjoy. Good luck in your increase in
23 enrollment.

24 And, Ms. Bailey, is there any other
25 business for the Board in the morning session?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. BAILEY: No, Mr. Chairman, not for the
2 morning.

3 CHAIRPERSON GRIFFIS: Excellent. Very
4 well. Then let's adjourn the morning session.

5 (Whereupon, the hearing was recessed at
6 12:47 p.m. to reconvene at 1:28 p.m. this same day.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

2 1:28 p.m.

3 CHAIRPERSON GRIFFIS: Very well. Let's
4 call to order the afternoon session on the 28th of
5 June 2005. The -- excellent. Thank you, Mr. Nyarku.

6 I am Geoff Griffis, Chairperson.

7 With me today is Ms. Miller, the Vice
8 Chair, Mr. Etherly, and representing the National
9 Capital Planning Commission is Mr. Mann.

10 I understand we have one brief item of
11 business for the Board this afternoon. So, I'm going
12 to dispense with reading my entire opening, Ms.
13 Bailey, and say a good afternoon to you and turn it
14 over to you.

15 MS. BAILEY: Mr. Chairman, thank you and
16 good afternoon to you as well.

17 And the matter before the Board at this
18 time is Appeal Number 17325, Wagtime LLC. The appeal
19 has been withdrawn by the appellant. So, that
20 particular case is no longer before the Board at this
21 time, sir.

22 CHAIRPERSON GRIFFIS: Excellent and is
23 there any other business for the Board in this
24 afternoon's session?

25 MS. BAILEY: The only business this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 afternoon, Mr. Chairman.

2 Okay. Very well, then I say we adjourn to
3 lunch.

4 If there's nothing further, let's adjourn.

5 (Whereupon, the hearing was concluded at
6 1:29 p.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25