

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

JANUARY 16, 2001

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The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:59 a.m., Robert N. Sockwell, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

ROBERT N. SOCKWELL	Chairperson
SHEILA CROSS REID	Vice Chairperson
ANN RENSHAW	Board Member
RODNEY L. MOULDEN	Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

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

OTHER AGENCY STAFF PRESENT:

John Moore, Office of Planning
 Jennifer Steingasser, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL PRESENT:

Marie Sansone, Esq.

C-O-N-T-E-N-T-S

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(9:59 a.m.)

CHAIRPERSON SOCKWELL: Good morning, ladies and gentlemen. First of all, let me first apologize for the delay, but there were some preliminary issues that came in this morning that we had to address. The hearing will please come to order.

Ladies and Gentlemen, this is the January 16th, year 2001 public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Robert N. Sockwell, Chairperson.

Joining me today is Sheila Cross Reid, Vice Chair, Ann Renshaw, and representing the Zoning Commission is its Chairperson, Anthony Hood.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us.

Upon coming forward to speak to the board, please give both cards to the reporter, who is sitting to my right. The order of procedure for special exceptions and variances is, one, statement of the witnesses of the applicant; two, government reports, including the Office of Planning and the Department of Public Works, et al.

Three, the report of the Advisory Neighborhood Commission, the ANC. Four, parties or persons in support. Five,

1 parties or persons in opposition, all of which would be cross-
2 examined; and six, closing remarks by the applicant.

3 Cross-examination of witnesses is permitted by the
4 applicant or parties. The ANC within which the property is
5 located is automatically a party in the case.

6 The record will be closed at the conclusion of each
7 case, except for any material specifically requested by the Board,
8 and the staff will specify at the end of the hearing exactly what
9 is expected.

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

14 Please turn off all beepers and cell phones, or set
15 them to vibrate at this time, so as not to disrupt these
16 proceedings.

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

22 If you are not prepared to go forward with the case
23 today, or if you believe that the Board should not proceed, now is
24 the time to raise such a matter. Does the staff have any
25 preliminary matters?

1 MS. PRUITT: Yes, we do, Mr. Chairman. There is
2 quite a few this morning, and so I will start with the easiest
3 one. Application 16658, the Application of Nancy L. Pell, has
4 been withdrawn, and so if there is anybody here wanting to testify
5 on that, you get to go home.

6 The first case of the morning, 16654, the
7 Application of Sibley Hospital, we have a request for party status
8 from Linda Graves Shaughness. This was filed timely. I believe
9 Ms. Shaughness is here. Please come forward. Would you please
10 push the button and state your name and address for the record?

11 MS. SHAUGHNESS: Linda Graves Shaughness, 5226
12 Loughboro Road, Northwest. I live directly opposite the Sibley
13 Hospital campus.

14 CHAIRPERSON SOCKWELL: And please state your
15 request.

16 MS. SHAUGHNESS: Yes, Mr. Chairman. My request is
17 that the board defer for 90 days a decision on this application
18 for the reasons --

19 MS. PRUITT: Excuse me, Ms. Shaughness, but just
20 for procedural reasons. First, we need to deal with your party
21 status.

22 CHAIRPERSON SOCKWELL: Yes, party status.

23 MS. PRUITT: And then we will deal with your
24 request for a continuance.

25 MS. SHAUGHNESS: Okay. To justify party status, I

1 have included in your packages the petition of 25 residents who
2 are most directly impacted by the Sibley Hospital campus.

3 I also have included in your package a summary of
4 the negative impact to your property values that has occurred in
5 the period of 1998 to 2000. This was the period during which
6 Sibley has been constructing the prior two variances approved by
7 this board.

8 I have also enumerated in my letter requesting the
9 continuance the impacts that we are currently experiencing, in
10 addition to the economic harm to property values, and I also have
11 included -- there is one set of color photographs, and the other
12 sets, I'm sorry, are in black and white photographs, documenting
13 the negative impact that we have already experienced.

14 And also our great concern to have the opportunity
15 to go forward with negotiations to try to reduce these impacts
16 before further variances are granted, and that is the basis for my
17 request to be a party today.

18 CHAIRPERSON SOCKWELL: Excuse me. Staff, I did not
19 --

20 MS. PRUITT: We are getting it for you right now.
21 It came in this morning.

22 CHAIRPERSON SOCKWELL: All right. So it is your
23 belief that some narrowing of the issues can take place with
24 additional time?

25 MS. SHAUGHNESS: That's right, Mr. Chair. We have

1 been negotiating in good faith with Sibley Hospital since October,
2 and we have identified the issues that would most -- that if
3 addressed would probably give us the best relief to restore the
4 value of our property, and prevent further demise of property
5 values.

6 We have gotten pretty far with this, but we have
7 not gotten far enough that those people directly impacted could
8 say that they feel on solid ground, and that the mitigations being
9 tossed around will actually occur.

10 There are a number of other agencies that are --
11 and government bodies, that are interested in the related issues,
12 and we think it would be helpful if we could complete the process
13 with some of those other organizations which I have enumerated.

14 COMMISSIONER HOOD: Mr. Chairman, excuse me, I just
15 have a question that may cut some of the chase. Ms. Shaughness,
16 have you expressed your concerns to the Advisory Neighborhood
17 Commission?

18 MS. SHAUGHNESS: Yes.

19 COMMISSIONER HOOD: Was that brought up in their
20 meetings?

21 MS. SHAUGHNESS: Yes, it was, and our position, or
22 my position, diverges from the position of the Advisory
23 Neighborhood Commission and the Palisades Citizens Association, is
24 that our petition asks that the issues be taken further.

25 So if you look at what we achieved to date in terms

1 of negotiations with Sibley Hospital, some of these, they are not
2 resolved fully. But Sibley will -- there was a sense that they
3 will work with us on trying to resolve it.

4 They are willing to support relocation of the bus
5 route provided that the road tests are acceptable.

6 COMMISSIONER HOOD: Ms. Shaughness, unfortunately
7 right now, I don't have that in front of me. But once I get it, I
8 will look at it.

9 MS. PRUITT: Excuse me, Mr. Chair, but we are only
10 dealing with party status. We are really getting into a request
11 for continuance, and we need to stay on track.

12 CHAIRPERSON SOCKWELL: All right.

13 MS. PRUITT: So the question is that the Board
14 going to -- needs to make a motion and vote on whether or not
15 party status is granted.

16 CHAIRPERSON SOCKWELL: Ms. Shaughness, you are
17 directly opposite the hospital?

18 MS. SHAUGHNESS: Yes.

19 CHAIRPERSON SOCKWELL: And the persons whose
20 signatures you obtained on a petition have elected you or
21 appointed you to represent them as a group?

22 MS. SHAUGHNESS: No. What I have collected from
23 them -- if you look at the language on the petition itself, I have
24 collected their signatures to this particular set of statements,
25 which are the conditions that everyone who signed agreed are the

1 minimum conditions that should be required to allow the variance
2 to go forward.

3 Those individuals are located on the 5200 block of
4 Loughboro, and Watson -- the back yard properties immediately
5 behind us, and I think there is a couple on the houses that wrap
6 around the corner.

7 CHAIRPERSON SOCKWELL: All right. I think that
8 here is where this should go. Those petition signatures would
9 stand on their own as they have signed a document which I have not
10 seen, because it was not included in our package.

11 But that document states their agreement to
12 whatever was written on the petition, and --

13 MS. SHAUGHNESS: And for it to be used as a public
14 document.

15 CHAIRPERSON SOCKWELL: And I understand that.

16 MS. SHAUGHNESS: And you do have a set, one set you
17 do have.

18 CHAIRPERSON SOCKWELL: But for your status as a
19 party --

20 MS. SHAUGHNESS: Yes.

21 CHAIRPERSON SOCKWELL: -- an individual party,
22 regardless of the petitions that you have solicited, you are more
23 aggrieved than others who might live in the general vicinity of
24 this hospital facility based upon your position along the 5200
25 block of Loughboro directly across from the subject property; am I

1 correct?

2 MS. SHAUGHNESS: Correct.

3 CHAIRPERSON SOCKWELL: And you believe -- now, you
4 are on the -- let's see. Loughboro is running --

5 MS. SHAUGHNESS: We are on the south side.

6 CHAIRPERSON SOCKWELL: I beg your pardon?

7 MS. SHAUGHNESS: We are on the south side on
8 Loughboro, which is the entirely residential side. Our block has
9 18 homes facing the hospital block, and there are 18 homes on our
10 back yard immediately behind us on Watson Street.

11 CHAIRPERSON SOCKWELL: So you are at 5200, and that
12 puts you at the intersection of Loughboro --

13 MS. SHAUGHNESS: Excuse me, but I am in the middle
14 of the block. I am very close to the stop light on Loughboro, and
15 very close to the main entrance to the hospital.

16 CHAIRPERSON SOCKWELL: Okay. So you are somewhere
17 right in here.

18 VICE CHAIRPERSON REID: Excuse me. Ms. Shaughness,
19 your house is in about the same place as some of the other houses
20 that are on the petition, and that are similarly affected by the
21 application?

22 MS. SHAUGHNESS: Yes.

23 VICE CHAIRPERSON REID: Now, what we have to
24 establish is that -- or what you have to determine for us is to
25 demonstrate how you are more aggrieved, or you are more affected

1 than the rest of the people who are on that same block, or on the
2 same strip.

3 Are you uniquely, or is your situation something
4 that is unusual to everyone else, or are you saying that everyone
5 on the petition has a similar type of concern?

6 MS. SHAUGHNESS: Okay. We have a lot of common
7 concerns. It also varies somewhat based where you are located on
8 the block.

9 VICE CHAIRPERSON REID: Well, your role in
10 requesting party status, your role today is to demonstrate to us
11 how you are more uniquely aggrieved than anyone else.

12 MS. SHAUGHNESS: Well --

13 CHAIRPERSON SOCKWELL: The question I think -- here
14 is the question. There are two things. One, the proposed
15 construction is on the north side of the hospital, which means
16 that the immediate effect of construction will neither be seen nor
17 directly felt by you either from construction traffic or any of
18 the associated activities that may take place, as long as those
19 activities don't generate some extremely high level of traffic or
20 changes on Loughboro Road.

21 Now, on that basis, I am trying to understand from
22 you the particular problem that you will face from this
23 construction, either during the construction or after such
24 construction, should it be approved.

25 MS. SHAUGHNESS: Well, first of all, by going

1 forward with the variance, and giving the hospital carte blanche,
2 without requiring them to mitigate the --

3 CHAIRPERSON SOCKWELL: Now, the carte blanche part,
4 I will take that as a personal feeling of what that means, in
5 terms of the variance request. But the issues that are being
6 raised, regardless of the number of other people who have raised
7 similar issues, your issues as a party have to be specifically
8 related to the issuance of this variance, and what that element of
9 relief will do to you to hurt you.

10 For example, in other projects where perhaps there
11 is something being built directly adjacent to, next to, across
12 the street from you, there would be some major impact on your
13 lifestyle, and I am trying to find out what that impact might be.

14 MS. SHAUGHNESS: Okay. For example --

15 CHAIRPERSON SOCKWELL: Because your position is
16 clear as being adjacent to the hospital, but the effects of the
17 construction on you directly, I am having some difficulty
18 understanding. That's why I am trying to get you to explain how
19 this construction, this specific variance, will affect you and
20 make your life less pleasant directly, and not peripherally, but
21 directly.

22 MS. SHAUGHNESS: Okay. Yes.

23 VICE CHAIRPERSON REID: More than anyone else.

24 MS. SHAUGHNESS: Directly, because the turnaround
25 of property values, one of the key factors is that Sibley has

1 offered

2 CHAIRPERSON SOCKWELL: Ms. Shaughness --

3 MS. SHAUGHNESS: If you will let me just finish. I
4 will get right to it.

5 CHAIRPERSON SOCKWELL: Please.

6 MS. SHAUGHNESS: One direct impact that will be
7 mitigated will be if in the coming weeks if Sibley Hospital, which
8 has specifically offered to relocate the bus stop, a factor in
9 that relocation of the bus stop is that this oncology center is
10 sited to be built over what is currently a separate ambulance
11 access lane.

12 By doing that without addressing the associated
13 issues, issues associated with whether or not Sibley will be able
14 to go forward with the sufficient road bed for relocating the
15 buses back there, that issue can be impacted by the change in
16 configuration of how the ambulances travel to the emergency
17 entrance.

18 It would suggest, or common sense would suggest
19 that if you then mix ambulance traffic with the traffic on Little
20 Falls Road back behind the expanded oncology center, that you
21 could have issues with safety, with precluding going forward with
22 the relocation of the bus.

23 CHAIRPERSON SOCKWELL: I think --

24 MS. SHAUGHNESS: The hospital itself --

25 CHAIRPERSON SOCKWELL: But here is --

1 MS. SHAUGHNESS: -- has offered this as

2 a --

3 CHAIRPERSON SOCKWELL: Ms. Shaughness, the question
4 is not the mixing of traffic on Little Falls. The question would
5 be the traffic impacts on Loughboro, because that is where you
6 live. It is nice that you want to protect your neighbors. It is
7 nice that you want to assist in mitigating potential traffic
8 issues.

9 But we are asking for your party status request
10 based upon where you are and what this is going to do to you.
11 Will you not be able to sleep at night. Will the ambulances be
12 coming down your alley. Will they be parked directly in front of
13 your home.

14 Will there be major construction traffic coming in
15 front of your house. Will there be any kind of specific issues
16 related to your lifestyle that will make it difficult for you to
17 live.

18 Now, we are not talking about property values.
19 Property values can fluctuate in any different direction, and
20 there are too many factors, and to use the hospital specifically
21 is one. I assume that you have lived in your home for a number of
22 years?

23 MS. SHAUGHNESS: I have lived in my home since '94.

24 CHAIRPERSON SOCKWELL: Okay.

25 MS. SHAUGHNESS: And it is clear from the data when

1 the trend and drop in property value occurred, and the growth of
2 the hospital, which this oncology center contributes to, that
3 growth and that increase -- we just got another 10 buses.

4 We now have 180 buses on our street every day,
5 disturbing us from 5:00 a.m. to midnight, and we feel --

6 CHAIRPERSON SOCKWELL: That 10 buses --

7 MS. SHAUGHNESS: The additional traffic coming to
8 the Oncology Center, because of its increased capacity, I assume
9 will continue the trend of downward valuation of my property,
10 increased noise and congestion, increased additional 10 bus
11 routes, like the 10 additional bus routes that just got added
12 yesterday, because it is serving 1,400 employees at Sibley
13 Hospital.

14 CHAIRPERSON SOCKWELL: Now, the 1,400 employees at
15 Sibley Hospital are brand new employees. They just arrived,
16 correct?

17 MS. SHAUGHNESS: No, but there is a base level of
18 employees and Sibley Hospital --

19 CHAIRPERSON SOCKWELL: How many employees? You
20 see, here is where you are and here is where I am not. You are
21 trying to bind together existing and new conditions, which I can
22 understand you are attempting to do.

23 You are looking at an overall situation, but 10 bus
24 routes in themselves didn't come into that hospital because of
25 some oncology center being built. The point is that Metro, if

1 that is Metro's bus routes, Metro makes its decisions based upon
2 need.

3 They are also running various sizes of buses, as
4 opposed to those big things that they always ran up the streets
5 now, and so there are all sorts of different things coming down
6 your different streets for different reasons.

7 And all of that is not sufficient to say that you
8 are aggrieved because of what they are going to build today. You
9 may be aggrieved by what they built yesterday, but you are not
10 telling me why you are aggrieved based on what they are trying to
11 build today.

12 And on that basis, I don't see a reason for
13 granting party status, and my fellow board members will have to
14 make their own decisions, but I have given you an opportunity to
15 try to bring into focus your place in this.

16 And certainly we appreciate the fact that you have
17 worked with your neighbors to try to come to some common issues to
18 be resolved. And your neighbors are quite welcome to participate
19 in these hearings, as are you.

20 But as far as party status is concerned, I don't
21 see it yet, and board members, do you?

22 VICE CHAIRPERSON REID: Just one second. Ms.
23 Shaughness, what we are saying is that the whole idea of party
24 status is something that is unique about your situation that is
25 different from everyone else.

1 But so far what we have heard only is how it
2 impacts the neighborhood. Everyone is going to be dealing with or
3 everyone would have to continue with traffic, or noise, or what
4 have you, and also property values is not something that is unique
5 to one property.

6 So you can't grant party status based upon that,
7 and I concur with the Chair, but what you can do is during the
8 appointed time, you will have an opportunity to testify in
9 opposition, and if you like, you can give us all your reasons why.

10 But as far as party status is concerned, it is not
11 something that you have demonstrated here today as you being
12 specifically and uniquely affected by this property more so than
13 anyone else. And that is the criterion by which we have to grant
14 party status.

15 MS. SHAUGHNESS: I guess, first of all, because
16 this complex takes up an entire city block, it is so massive that
17 you would not find every property owner from this house to that
18 house having a completely different and distinct reaction, because
19 we are faced with the same thing. So, the --

20 CHAIRPERSON SOCKWELL: Ms. Shaughness, I understand
21 that. The hospital is not new. The hospital has been there --

22 MS. SHAUGHNESS: But it is growing, sir.

23 CHAIRPERSON SOCKWELL: It may be growing. I think
24 we have all the information that we can possibly get from you that
25 would help to determine your status, or your capability for

1 achieving party status. So I am going to --

2 MS. SHAUGHNESS: What about the buses that are
3 currently disrupting --

4 COMMISSIONER HOOD: Mr. Chair, I would call for a
5 vote.

6 CHAIRPERSON SOCKWELL: Anything about that will be
7 discussed during -- you will have a chance to speak and express
8 your views as an opposition witness during the course of the
9 hearing. But I do not see party status, and I think that the
10 panel should move one way or the other with regard to your party
11 status.

12 MS. SHAUGHNESS: Do you have a mechanism whereby I
13 could create a de facto group of all the petitioners who have a
14 common impact interest?

15 CHAIRPERSON SOCKWELL: Even if you represent the
16 entire group, what you can do is that you can have that, but it
17 would not grant you party status just because you we representing
18 20 people, because those 20 people are also perhaps all along the
19 Loughboro side, when again the construction is on the north side
20 of the building.

21 It will be invisible to you, along with everything
22 else, but it will be invisible to you. It is a one-story
23 structure, and it does not project above the rooftops of any other
24 part of the facility. You may not even see the cranes for that
25 matter, because the principal portion of the hospital is facing

1 Loughboro, and is the tallest structure.

2 And therefore I am going to require a vote. I move
3 that we not grant party status to this witness for the reasons
4 that she is not in any way more significantly aggrieved than
5 others along her block, and because the project itself is not in
6 the portion of property visible to her home.

7 COMMISSIONER HOOD: I will second the most.

8 BOARD MEMBER RENSHAW: Discussion, please.

9 CHAIRPERSON SOCKWELL: Yes.

10 BOARD MEMBER RENSHAW: Mr. Chairman, I would like
11 to read Ms. Shaughness' petition. It is not in our packets. I
12 think it is unfair to her and her representation of the 25 people
13 whom she has --

14 CHAIRPERSON SOCKWELL: Ms. Renshaw, the petition
15 would get into the merits of the case, and this is --

16 BOARD MEMBER RENSHAW: But I would like to review
17 her material before voting on party status, Mr. Chairman.

18 CHAIRPERSON SOCKWELL: But it is not her material,
19 Ms. Renshaw. It just happens to be a common statement, but it is
20 signed by other individuals whose particular interests have been
21 expressed there.

22 MS. PRUITT: Excuse me, Mr. Chair, this might help.

23 CHAIRPERSON SOCKWELL: Yes?

24 MS. PRUITT: You have a letter in your file dated
25 January 2nd. It does not have an exhibit number on it. It is

1 actually a fax, and it is Ms. Shaughness' request for party
2 status, and it is for an individual. Her initial request was for
3 an individual party status.

4 CHAIRPERSON SOCKWELL: Right.

5 MS. PRUITT: The petition information that she
6 brought in this morning is to be added to the record.

7 CHAIRPERSON SOCKWELL: Yes. It says I request to
8 be heard as a party opponent. Okay. And that is the way that it
9 should be.

10 COMMISSIONER HOOD: Mr. Chairman, let me just add
11 with that second that she always has the opportunity to work with
12 the ANCs, who are an automatic party.

13 And they will be able to relay some of the
14 questions in which she may not have the opportunity to do in her
15 time, and that goes along with my second.,

16 CHAIRPERSON SOCKWELL: And she does bring a lot of
17 people to the table with the petition. So, the petition does
18 bring together the views of a number of people, and that makes her
19 voice stronger with regard to what she is requesting and what her
20 concerns are. So I call for the vote. All in favor?

21 (A chorus of ayes.)

22 CHAIRPERSON SOCKWELL: Opposed?

23 BOARD MEMBER RENSHAW: Opposed.

24 MS. PRUITT: The staff will record the vote as 4 to
25 1 on a motion not to grant party status to Ms. Shaughness. The

1 motion was made by Mr. Sockwell, and seconded by Mr. Hood.

2 CHAIRPERSON SOCKWELL: All right. Thank you very
3 much. Are there any other preliminary matters?

4 MS. PRUITT: Well, the only other preliminary
5 matter was a request for a continuance, but it was from Ms.
6 Shaughness, and she no longer has party status.

7 CHAIRPERSON SOCKWELL: All right. So then I
8 suppose we should proceed with the case, with the first case.
9 Please call the first case.

10 MS. PRUITT: There is just for the record, Mr.
11 Chairman, you do have an OP report. However, there needs to be a
12 waiver for the filing time because it is late. And you do have a
13 report from ANC-3D in support.

14 CHAIRPERSON SOCKWELL: Then if the Board does not
15 object, I would request that we waive the rules to allow the
16 Office of Planning report to be entered into the record. I would
17 so move.

18 COMMISSIONER HOOD: I second the motion.

19 CHAIRPERSON SOCKWELL: All in favor?

20 (A chorus of ayes.)

21 CHAIRPERSON SOCKWELL: Opposed?

22 (No audible response.)

23 MS. PRUITT: The staff will record the vote as five
24 to zero to waive the filing time for the OP report. Thank you.

25 CHAIRPERSON SOCKWELL: All right. Will the

1 applicants come forward.

2 MS. PRUITT: All those planning to testify, could
3 you please stand and raise your right hands.

4 (All witnesses were sworn.)

5 CHAIRPERSON SOCKWELL: Please begin.

6 MR. ELLIS: Good morning. I am Craig Ellis, and I
7 am here representing Sibley Hospital in this application. It is a
8 pleasure to be before the Board once again.

9 This matter comes forward where Sibley Hospital is
10 seeking a variance, two variances to be exact; a variance from
11 Section 404.1, the minimum rear yard setback requirements in an R-
12 5-A zoned district; and, two, a variance from Section 402.4, to
13 allow the transfer of excess floor area ratio granted under BZA
14 Order Number 16312, for the construction of a CBRF on the subject
15 site to propose the addition of a radiation oncology unit to an
16 existing hospital use in a R-5-A zoned district.

17 As has been previously stated, Sibley is seeking
18 today to build its radiation oncology unit. The present unit that
19 they have does not meet the needs of the patients, nor is it
20 sufficient for the new equipment that is required for cancer
21 diagnosis and treatment.

22 Today, I have with me several witnesses. My first
23 witness will be Jerry Price to give an overall view of the
24 hospital, and why it is embarking on building the radiation
25 oncology unit, and what --

1 CHAIRPERSON SOCKWELL: Please, just complete your
2 sentence. I have to --

3 MR. ELLIS: And the hospital's workings in dealing
4 with the community with respect to the radiation oncology unit.

5 CHAIRPERSON SOCKWELL: Mr. Ellis, before we begin
6 with your first witness, there is an issue that needs to be
7 discussed with regard to your application, and that is the zoning
8 ordinance specifically prohibits construction that crosses lot
9 lines that would be built on two lots, not in single ownership,
10 where there is no encumbrance by a District of Columbia highway
11 plan, which would under that circumstance prevent the issuance of
12 a record lot.

13 In this case the project proposed is being proposed
14 on property that is currently in the ownership of the Federal
15 Government, and yet although there has been a stated approval for
16 the transfer of that property to private ownership, neither the
17 price has been set, nor a deal actually struck, for that.

18 In addition, there is the potential that once that
19 property is acquired, and a permit could be issued, there would be
20 no rear yard issue at all, because we don't know what the size or
21 shape of that property is.

22 And it seems that this board does not have the
23 authority to issue a variance where the final property use is
24 inclusive of the lot in Sibley Hospital's possession, and a lot
25 that is currently in the U.S. Army or Army Corps' possession, and

1 I wanted you to respond to that.

2 MR. ELLIS: The piece of property that is presently
3 under the control of the Army Corps of Engineers has been through
4 the years permitted by the Army Corps of Engineers and the
5 government to be used by Sibley Memorial Hospital. Indeed, they
6 have approved the construction on that site by Sibley.

7 CHAIRPERSON SOCKWELL: That I understand. However,
8 under D.C. law, you cannot get a building permit to build on two
9 lots that are not in single ownership, regardless of the lease.

10 If I leased the land adjacent to mine, and wanted
11 to build my house on both pieces of land, I would be denied. I
12 would be denied because Section 3103.2 does not allow.

13 MR. ELLIS: Without me speaking on that issue,
14 because that was not brought up as an issue, and especially when
15 we went downtown for the permit.

16 CHAIRPERSON SOCKWELL: Downtown is downtown.

17 MR. ELLIS: I understand.

18 CHAIRPERSON SOCKWELL: You are really downtown now.

19 MR. ELLIS: I understand. If we could have a few
20 moments so I could go out and double-check that.

21 CHAIRPERSON SOCKWELL: Please.

22 MR. ELLIS: We would appreciate that.

23 CHAIRPERSON SOCKWELL: I would request that you
24 look at Section 3103.0, variances, and in particular Section
25 3103.2.

1 And while you are doing that, we can recess this
2 case for -- let's say -- well, would a half-an-hour be sufficient
3 for you?

4 MR. ELLIS: That's fine.

5 CHAIRPERSON SOCKWELL: And then we will continue
6 with the next case.

7 MR. ELLIS: All right. Thank you.

8 MR. HART: The next case is Application 16656, the
9 Application of Jemal's Gateway, D.C., LLC/Douglas Development
10 Corporation, pursuant to DCMR 3104, for a special exception under
11 Section 214 for the continuation of an existing accessory surface
12 parking lot to serve adjacent retail establishments in an R-1-B
13 District at premises 7820 Georgia Avenue, Northwest, 7830 to 7842
14 Eastern Avenue, Northwest, and 7800 Alaska Avenue, Northwest, at
15 Square 2960, Lot 17.

16 Those persons intending to participate in this
17 application, please stand and please your right hands.

18 (All witnesses were sworn.)

19 CHAIRPERSON SOCKWELL: Please begin.

20 MS. SHAW: Good morning, Members of the Board, and
21 Chairman Sockwell. My name is Sarah Shaw, with Shaw Pittman. I
22 represent the applicant, Douglas Development. Also with me this
23 morning from Shaw Pittman is John Epting.

24 Testifying in this case this morning will be Paul
25 Millstein, of Douglas Development, as well as Cullen Elias of O.R.

1 George and Associates.

2 As a preliminary matter, we would like to qualify
3 Mr. Elias as an expert in traffic. I have a copy of his resume.
4 He has been qualified as an expert before this board before, as
5 well as in several suburban jurisdictions.

6 CHAIRPERSON SOCKWELL: His resume has been
7 submitted?

8 MS. SHAW: Not yet. I have copies.

9 CHAIRPERSON SOCKWELL: All right. And just to find
10 out, are there any opponents in the room today? Okay. Two. Have
11 they been sworn in?

12 MR. HART: Yes.

13 MS. PRUITT: Excuse me, but just so that everyone
14 remembers, please remember to fill out two little white cards and
15 give them to the reporter either before or after your testimony.
16 Actually, preferably before.

17 (Brief Pause.)

18 CHAIRPERSON SOCKWELL: As far as I am concerned,
19 Mr. Elias' resume is sufficient, more than sufficient, that he can
20 be accepted as an expert witness. Board Members, comments?

21 VICE CHAIRPERSON REID: No objection.

22 CHAIRPERSON SOCKWELL: All right.

23 MS. SHAW: Good morning again, Members of the
24 Board. We come before you today to ask for the continued approval
25 to operate an accessory parking lot on Lot 17 of Square 2960.

1 This is the address of 7820 Georgia Avenue.

2 The parking lot is located where Kalmia Road,
3 Alaska Avenue, Georgia Avenue, and Eastern Avenue all converge,
4 just to the southwest of the District's border with Montgomery
5 County.

6 This property has been operated as an accessory
7 parking lot since 1949. It served the adjacent retail
8 establishments that front those streets. It exists solely for the
9 patrons of those retail establishments to park, and we believe
10 that we meet all the standards necessary for the continued
11 operation of an accessory parking lot.

12 We would ask you once you have heard the testimony
13 of our witnesses to approve this parking lot for a period of 10
14 years. And with that, I will move forward with my first witness.

15
16 CHAIRPERSON SOCKWELL: Before you do that, just one
17 question, and that is that it has been raised whether or not this
18 should be characterized as an accessory parking lot, or whether it
19 should be characterized as the parking lot that it has been called
20 in previous zoning approvals by this board.

21 MS. SHAW: We feel that it is properly filed under
22 Section 214 as an accessory parking lot. It exists as I said to
23 serve as a parking lot for the retail establishments. It is
24 accessory to the retail establishments.

25 The most recent CFO refers to it as an accessory

1 parking lot, as does the conclusions of law section in the most
2 recent BZA order. We feel that it does not exist independent. It
3 wouldn't exist but for the retail accessory to the retail.

4 CHAIRPERSON SOCKWELL: Okay. Continue.

5 MS. SHAW: Okay. I would like to introduce my
6 first witness, Mr. Paul Millstein. He is with the applicant,
7 Douglas Development. Mr. Millstein, please introduce yourself,
8 and state your name and address for the record.

9 MR. MILLSTEIN: Good morning. My name is Paul
10 Millstein, and I am with the Douglas Development Corporation, and
11 we are at 702 H Street, Northwest, Washington, D.C. I am the vice
12 president of the company, and actually a part-owner of this
13 particular property.

14 I will be very brief in my testimony. We feel that
15 we do meet all the requirements of the special exception for
16 accessory parking. We have owned this property for 4 or 5 years
17 approximately.

18 It was bought as a strip center, and it had grand
19 plans before us to be a major gateway development into the city by
20 a prior developer. That didn't work out. We kept the scale very
21 low, a very low density, which is what we typically do in our
22 neighborhood strip centers.

23 We are very accustomed to co-existing in
24 neighborhoods with commercial property abutting residential. We
25 try very hard to do a good job of that. We are not perfect.

1 We have to the best of my knowledge never had any
2 complaints with this parking lot other than recently, where a
3 letter did come into my office last week approximately, and that
4 I just had an opportunity to read yesterday.

5 And so I will address that, and I have already made
6 an attempt to reach the writer of the letter, but I will get that
7 resolved. It had something to do with the location of dumpsters,
8 and I am sure that we can remedy that.

9 We think it is a center that helps the community,
10 and services the community. It is not a large center. The
11 parking is imperative to the center so that people can park and do
12 their thing.

13 We have the Social Security Administration there,
14 and people come to pick up their checks and get counseling. They
15 need to be able to park and come in, and we try to keep the cars
16 off the neighborhood streets, which we think we do a good job of.

17 We don't have a barricade there, and we don't
18 charge for parking, and we don't do monthlies for parking. It's
19 where people can come in and park, and do their shopping, leave or
20 pick up whatever they need to pick up.

21 And on the weekends, if the church across the
22 street or any other neighborhood person needs to use it, it is
23 available for them. We don't shut it down. By leaving it open,
24 we constantly are cleaning up mattresses and broken refrigerators,
25 and abandoned cars, because people do dump on it occasionally

1 during the nighttime hours.

2 We send our trucks through there and we clean it up
3 and try to do a good job. Again, we are not perfect, and we have
4 had some lapses here and there, but we try and stay on it pretty
5 well.

6 So, again, I think we meet all the zoning
7 requirements. We try to be a good neighbor, and we can always be
8 better. If there is any concerns by any particular neighbor,
9 which I understand there is, we will address them immediately.

10 And I am here as an owner to tell you that we take
11 it seriously, and we take our role in co-existing with the
12 community very seriously, and we want to move forward, and that's
13 really all I have to say, unless there is any questions.

14 CHAIRPERSON SOCKWELL: Do you want to continue with
15 your next witness, and we can ask questions after?

16 MS. SHAW: Sure. I would like to introduce Cullen
17 Elias, our traffic expert, with O.R. George and Associates.

18 MR. ELIAS: Thank you. For the record, my name is
19 Cullen Elias, and I am vice president of the firm of O.R. George
20 and Associates. We are located at 1738 Elton Road, Suite 321,
21 Silver Spring, Maryland 20903.

22 Our forum was given the task of preparing a traffic
23 and parking assessment in support of the subject application. And
24 we fulfilled the requirement of Section 214.7 of the District of
25 Columbia special exception regulations, Title 11, zoning.

1 And it is our conclusion, which is also mine, that
2 based on our study that the subject application for the continued
3 use of the parking lot will not become objectionable to adjoining
4 or nearby properties from its traffic access population and
5 parking usage perspectives.

6 As a matter of fact, we have demonstrated that the
7 elimination or discontinuance of this parking lot would create a
8 significant shortage of parking available to the retail center,
9 and could result in significant neighborhood intrusion. If I
10 could have the benefit of a portable mike, please.

11 CHAIRPERSON SOCKWELL: We don't have that portable
12 mike available. What I can give you is a light pen, and if you
13 would put your material up on the easel, and you can point to it
14 from a distance. Will that be helpful to you?

15 MR. ELIAS: Yes. Thank you.

16 (Brief Pause.)

17 MR. ELIAS: Just to provide the right setting from
18 a transportation perspective, the subject parking lot is located
19 west of Georgia Avenue, and it falls between Eastern Avenue to the
20 north, and Kalmia Road to the south.

21 The adjacent intersections are Eastern Blair and
22 Georgia, and you have Alaska and Kalmia, and Georgia to the
23 southeast of the site. As indicated earlier, the subject parking
24 lot serves the adjacent retail center.

25 The center consists of a mix of planned uses,

1 commercial land uses, and there is a five-story office building
2 here which has its own parking to the rear of the building. And
3 then this retail is also part of the center.

4 The site is accessed from two alley ways. There is
5 an alley way off Kalmia Road to the south, and there is another
6 alley way to the west here which runs between Kalmia and Eastern
7 Avenue.

8 We conducted in order to access the existing uses
9 of the site, we conducted surveys for parking usage, and surveys
10 for user surveys on two consecutive days, the 15th and the 16th of
11 December, between 12:00 o'clock and 5:00 o'clock in the evening.

12 And we also conducted a survey around the midday
13 period on a Sunday, and why we did the Sunday observations was
14 because this church here, which is called the North Minister
15 Presbyterian Church, it is our understanding that this church uses
16 the parking lot on Sundays.

17 Now, based on our observations, we found that 80
18 percent of the vehicles accessing the parking lot do so by the
19 Kalmia entrance way. The other 20 percent obviously would be from
20 the Eastern Avenue entrance way.

21 Looking at the traffic flow patterns, we formed
22 that the demand is quite moderate, less than one vehicle per
23 minute. In terms of visibility for people for vehicles entering
24 and exiting both entrance ways, we formed that no operational or
25 seasonal deficiencies, in terms of driving along Kalmia Road, and

1 to the Kalmia Road approach, and in terms of type of distances in
2 both ways along Kalmia, and particularly along the alley way to
3 the west.

4 In terms of parking usage, we finally decided that
5 the peak parking demand for the site ranges between 41 percent and
6 65 percent of its total supply of 98 parking spaces. And that
7 ranges between the Friday and Saturday of the survey.

8 On Sunday, or the Sunday survey, we were able to
9 identify that the church generated some 20 to 30 vehicles which
10 used the parking lot. I should have pointed out that our survey
11 not only included the subject parking lot, but also incorporated
12 the parking areas that are adjacent.

13 As you can see here, to the north along Eastern
14 Avenue, there is a mixture of metered, as well as -- and it is not
15 shown there by the symbol, but there is some unmetered parking
16 spaces there, and the rest of them are metered.

17 There is no parking along Georgia or along that
18 section there of Alaska. But then there is residential parking on
19 the south side, and on the north side of Kalmia there is also
20 parking at the parking lot.

21 This is restricted to Zone 4 permit holders, and
22 then there are three metered parking spaces along Kalmia just
23 between the alley way and Alaska Avenue.

24 Observations indicated that these parking spaces
25 were usually to capacity during the peak parking demand periods on

1 Fridays and Saturdays. There was virtually no parking along this
2 area where it is zoned for residential permit parking.

3 This also was used to capacity. As a matter of
4 fact, in the area here there were some illegal parked vehicles,
5 which indicates in terms of the adjacent on-street parking supply
6 that the demand is greater than the supply.

7 And with that this parking, the adjacent parking
8 area is definitely not agreed to serve the uses of the retail
9 center. In conclusion, I just want to reiterate the fact that the
10 on-street parking is insufficient to serve the subject parking
11 lot.

12 The adjacent parking lot, if you are to eliminate
13 the use of this lot, or to discontinue its use, obviously the
14 impact would be negative in terms of the adjacent residential
15 community.

16 There will be a significant shortage of spaces
17 available for the retail center, and then there is the likelihood
18 of neighborhood intrusion on your residential parking spaces along
19 Kalmia, and 12th Street to the west, and so on.

20 We feel that based on those conclusions that the
21 subject site should -- that the continued use of the subject site
22 should be approved because it will not create objectionable
23 conditions to the adjacent roads or the adjacent neighborhoods.

24 We feel, however, and this is mentioned in our
25 study which I forgot to mention, which is Exhibit E of the

1 applicant's statement, we still feel, however, in the interest of
2 improving the use or enhancing the use of the parking lot that a
3 few improvements should be undertaken.

4 And one of these relates to signage. We feel that
5 along here there are one or two signs which indicates parking in
6 the rear of the shopping center. We feel that that signage should
7 be enhanced, perhaps with brighter signs.

8 And also include signage which prohibits parking
9 altogether along Georgia Avenue, and along this part here on
10 Alaska. This will increase the usage of the parking lot serving
11 the center.

12 Our observations from the entrance way here is not
13 properly defined. It is pretty wide, and leaving the subject lot
14 and traveling this corner here, and we feel that we proper
15 markings that it will properly delineate the access to the side,
16 and access into the site.

17 We feel that with those improvements that it will
18 enhance the use of the subject lot, and with that, I would like to
19 end and wait for questions. thank you.

20 CHAIRPERSON SOCKWELL: All right. Board Members.

21 MS. SHAW: Mr. Chairman, if I might just ask a
22 couple of clarifying questions of Millstein.

23 CHAIRPERSON SOCKWELL: Go right away.

24 MS. SHAW: Mr. Millstein, have you read and
25 reviewed Section 214, and the standards therein, as well as the

1 Office of Planning's report, and do you agree that this parking
2 lot meets all those standards?

3 MR. MILLSTEIN: Yes, I have.

4 MS. SHAW: That's all. Thank you.

5 CHAIRPERSON SOCKWELL: Okay. Then on that basis, I
6 will ask a question. A drawing has been submitted in on 1 inch to
7 20th scale depicting the parking lot in what I assume to be its
8 current configuration.

9 And that is in Exhibit Number -- well, exhibit
10 number something. Anyway, it was in your package.

11 COMMISSIONER HOOD: Exhibit D.

12 CHAIRPERSON SOCKWELL: Exhibit D. I evaluated the
13 drawing to the extent that, yes, the base plan is drawn at 1 inch
14 equals 20 feet. However, the parking spaces are delineated in a
15 scale relationship that does not meet the city's zoning
16 requirements for parking.

17 Most of the parking spaces are shown as
18 4-1/2 feet wide and 10 feet long. That way, they do not extend
19 over the alley line in any configuration way.

20 And I am concerned that the document being
21 inaccurate would give us an unfair or improper impression of the
22 extent of parking capable on the site, and whether or not any
23 violations of the 214 requirements do in fact exist.

24 MS. SHAW: Well, these parking spaces are not
25 required, and so it is my understanding that they don't have to

1 meet the measurements of the zoning regulations for parking
2 spaces.

3 CHAIRPERSON SOCKWELL: Well, the term, required
4 parking, and parking, are two different things, and this is
5 parking that is being accepted by the Board of Zoning Adjustment.

6
7 We cannot review and approve parking spaces that
8 are the arbitrary design of an applicant. If I wanted to put 3
9 foot wide, and 6 foot deep, parking spaces and they are not
10 required, and I think I can get the Board of Zoning Adjustment to
11 approve that, then sure, I will bring them down. Is that what you
12 are suggesting?

13 MS. SHAW: I understand your point.

14 CHAIRPERSON SOCKWELL: But do you understand what
15 the requirements are for parking spaces, except when it is
16 attended parking during a designated time period of 12 hours
17 during the day, and when then a square footage arrangement is
18 provided for the parking, and the attendants place the cars
19 according to the requirements of the ordinance?

20 MS. SHAW: Yes. Our survey shows existing
21 conditions. If the board feels that those conditions are
22 unacceptable, we can restripe the parking lot.

23 CHAIRPERSON SOCKWELL: Well, there are two issues.
24 One, the original order, dated July 24th, I think it is, of 1985,
25 and which expired in 1990, which is 10 years out of date for its

1 renewal, was for 80 parking spaces.

2 And you have presented to us a 98 car capacity,
3 which would concern me significantly because I couldn't even find
4 the stripings to meet the requirements of zoning. I mean, a
5 parking lot can have as many as 40 percent compact cars in groups
6 of five, and all sorts of nice things like that.

7 But this is just -- there are two documents that
8 were submitted as part of the information that I received. One is
9 this one, which is similar to this one, but was incomplete. So I
10 was not able to count the spaces up here anyway.

11 But the question is which one of these is correct,
12 because one of them tends to show spaces right up to, and in this
13 area going over the property line that truly separates a public
14 alley from the private property.

15 And without knowing which document is correct, and
16 having the other document completely unrealistic, it makes it
17 difficult for the board to act in a manner that we would know what
18 we were acting upon, and that's my question.

19 MS. SHAW: I'm sorry for the confusion. The survey
20 submitted as Exhibit D to the prehearing materials, the larger
21 survey, is reflective of the existing conditions.

22 And as I said, we can work to change the size of
23 those parking spaces, and it will obviously reduce the number of
24 spaces.

25 CHAIRPERSON SOCKWELL: Yes. I think that

1 regardless how it has been striped, at this point we are 10 years
2 down the road, and many people have painted it. But let's get an
3 accurate document and an accurate parking count, because from what
4 Mr. Elias said, 64 percent or 65 percent of the spaces are used at
5 the maximum utilization.

6 MR. ELIAS: That's correct.

7 CHAIRPERSON SOCKWELL: Which would be 64 spaces
8 based on 98. It would be 80 percent if you had only 80 spaces in
9 the lot, and that still gives you 20 percent over capacity based
10 on the traffic consultant's report. But this is going to be
11 corrected, right?

12 MS. SHAW: Yes. You can make that a condition of
13 any approval.

14 CHAIRPERSON SOCKWELL: Okay. You can continue.
15 Any more questions, Board Members?

16 COMMISSIONER HOOD: Mr. Chairman, I just had -- and
17 not necessarily a question, but a statement to Mr. Millstein.

18 MR. MILLSTEIN: Yes, sir?

19 COMMISSIONER HOOD: I am just kind of appalled to
20 look and see where I have heard in your statement that you are
21 trying to be a good neighbor now all of a sudden, and I have said
22 this in the past about other applicants.

23 It seems like a good neighbor policy starts when
24 you have to come down for approval of something. I have a problem
25 also with the letter that you just received yesterday.

1 But I find that hard to believe that the issues
2 that affect the surrounding area were just available to you
3 yesterday, because if you go from 2 to 7 dumpsters, I'm sorry, but
4 I don't buy that. From what I am reading now, you now have seven
5 dumpsters?

6 MR. MILLSTEIN: Yes, sir.

7 COMMISSIONER HOOD: Okay. You were just aware of
8 the issues yesterday?

9 MR. MILLSTEIN: I just received the letter
10 yesterday that there was a problem from a neighbor. The center
11 had two dumpsters before because there were two tenants. It was
12 vacant for many years.

13 As we have leased, each tenant puts on their own
14 dumpster, and I have got to tell you, Mr. Hood, or Commissioner
15 Hood, that I wasn't aware of a problem until yesterday.

16 And I know the Shepherds Park Citizen's Association
17 very well, and I have a letter from them saying what a good job we
18 do. As well, the ANC had no issue. This just came up, and I take
19 care of things when I have a problem.

20 And I will meet the gentleman who wrote the letter
21 and fix this, but I am telling you under oath that this is a
22 situation that is new to me. And I would love for you to read
23 this letter from the Shepherds Park Citizen's Association.

24 COMMISSIONER HOOD: It would be good if you could
25 provide that to the staff.

1 MR. MILLSTEIN: Yes, sir.

2 COMMISSIONER HOOD: Do we have it? Yes, I have it
3 now.

4 MR. MILLSTEIN: Okay.

5 COMMISSIONER HOOD: Also, my other concern is that
6 I believe -- and I can't find it right now --

7 MR. MILLSTEIN: And there was a construction
8 dumpster, Commissioner Hood, that has been removed as a result of
9 that, and that is gone and cleaned.

10 COMMISSIONER HOOD: I did notice in the ANC report
11 that it did reference us to deal with the dumpsters as one of the
12 conditions, and so I just wanted you to be aware that they also
13 apparently saw that there was a problem.

14 This is in the ANC report from James H. Jones, the
15 chairman.

16 MR. MILLSTEIN: I was not aware of that.

17 MS. SHAW: Which ANC is that, Commissioner Hood?

18 COMMISSIONER HOOD: This is 4A. So I want you to
19 be aware that this is -- that the good neighbor policy always
20 seems to start when you are going to be in front of the BZA.

21 MR. MILLSTEIN: Honestly, Commissioner, I
22 understand that, but also we found out that we were in non-
23 compliance on our own. That was not something where the District
24 came to us and said that you are not in compliance.

25 We realized that through refinancing and had a

1 zoning opinion done, and we immediately hired counsel to get this
2 cleaned up. And so it is not that we had violations and we were
3 brought here to come into compliance.

4 We realized that we had a violation and we were
5 bringing ourselves into compliance, and we want to make it right.

6 And with regard to the dumpsters, since now we are full, and it
7 has taken us 5 or 6 years to get full, what we are going to do --
8 and I am going to tell the gentleman who wrote the letter as soon
9 as I get an opportunity to -- is that we are going to buy one 30
10 yard compactor that will service all the tenants, instead of seven
11 individual dumpsters.

12 And we are going to screen it properly in the
13 parking lot, and make all the tenants use that, which would help
14 remedy this trash situation.

15 COMMISSIONER HOOD: I just want you to understand,
16 because in 90 degree weather, that is not a pleasant smell.

17 MR. MILLSTEIN: Oh, I know that, sir.

18 COMMISSIONER HOOD: Okay. No further questions.

19 MS. SHAW: Mr. Hood, can I just make a point about
20 the ANC? We did -- I approached the ANC and asked if they needed
21 us to come before them, and when I spoke to then Commissioner,
22 then Chairperson Joseph Hairston, he said they had no problems
23 with the lot.

24 They felt that it did serve the members of the
25 community and that they would not be writing a letter because they

1 don't write letters of non-opposition. But they would write a
2 letter of opposition if there were any opposition.

3 COMMISSIONER HOOD: Well, I know Mr. Hairston, and
4 he is well respected, but I am looking at what was written by
5 James H. Jones, the Chairman of ANC-4A.

6 MS. SHAW: Okay. That's fine. We did make an
7 attempt to communicate with them.

8 VICE CHAIRPERSON REID: Mr. Millstein, am I
9 understanding you to say that in lieu of the dumpsters that you
10 are going to be using a compactor?

11 MR. MILLSTEIN: Yes, Ma'am.

12 VICE CHAIRPERSON REID: And that it will be much
13 more efficient and more sanitary as well, in particular with the
14 aspect of the smell.

15 MR. MILLSTEIN: Plus it is sealed.

16 CHAIRPERSON SOCKWELL: The odors and what have you.

17 MR. MILLSTEIN: Right. It is not like an open top.
18 It is sealed. It is called a dog house, and it is closed and has
19 compaction.

20 VICE CHAIRPERSON REID: Well, it sounds like a good
21 solution, and it seems to be what the neighbors were asking for,
22 which is great. And we could also put that in as a condition.

23 MR. MILLSTEIN: Yes, Ma'am. That's no problem.

24 VICE CHAIRPERSON REID: The other thing is that Ms.
25 White, and apparently there is someone --

1 MR. MILLSTEIN: And that is unfortunate. The phone
2 call was made to a Ms. Jean White, who is in property management,
3 but she only worked for us for three weeks, and that's why she was
4 released, because things were falling through the cracks.

5 VICE CHAIRPERSON REID: Okay.

6 MR. MILLSTEIN: This never reached my attention,
7 and the only reason we found out was because there was a letter
8 written to Douglas Jemal, the owner of the company personally.

9 And he got it and said what is this, and I said I
10 don't know what is this, and Jean White is gone, and we didn't
11 have any maintenance records. So it fell through the cracks.

12 VICE CHAIRPERSON REID: Do you have a responsible
13 person who has replaced her?

14 MR. MILLSTEIN: Yes. His name is Tim Roberts, and
15 he has been with us for a long time. We actually brought her on
16 to help out, because we have been growing.

17 VICE CHAIRPERSON REID: Okay. That may be someone
18 that you may want to make that name available to the ANC.

19 MR. MILLSTEIN: Sure.

20 VICE CHAIRPERSON REID: So that in the event there
21 is any other problems that you can eliminate these right away
22 since you are obviously amenable to trying to work with the
23 neighbors.

24 MR. MILLSTEIN: Oh, we don't want any problem with
25 the neighborhood. That's really not what we want to spend our

1 days doing.

2 VICE CHAIRPERSON REID: Thank you.

3 CHAIRPERSON SOCKWELL: Mr. Millstein -- I'm sorry,
4 Ms. Renshaw.

5 BOARD MEMBER RENSHAW: I just wanted to point out
6 to Mr. Millstein that the ANC-4A had some additional complaints,
7 and they are listed as conditions for the ANC's approval of your
8 request, and it talks about unpleasant odors, debris around the
9 dumpster, which your compactor may erase.

10 And recent sightings of rodents, and potential
11 health hazards was another, and the unkept appearance of the
12 immediate area. So you have to address these rodents. And also I
13 wanted to ask you, do you have an attendant for this parking lot?

14 MR. MILLSTEIN: No, Ma'am.

15 BOARD MEMBER RENSHAW: Are you planning to have an
16 attendant?

17 MR. MILLSTEIN: No, Ma'am.

18 BOARD MEMBER RENSHAW: So it is just self-park?

19 MR. MILLSTEIN: Yes, Ma'am.

20 CHAIRPERSON SOCKWELL: The previous zoning order
21 stated in its conditions that an attendant would be on site to
22 ensure that the parking lot was properly managed and maintained.
23 So that is a requirement of the previous order.

24 MR. MILLSTEIN: Okay.

25 CHAIRPERSON SOCKWELL: Which is one of the things

1 that I would believe that the community would have a vested
2 interest in knowing was being adhered to.

3 MR. MILLSTEIN: Okay. So you are not really saying
4 then parking attendants.

5 CHAIRPERSON SOCKWELL: No, not a parking attendant.
6 It's really a lot management person, and sort of your roving on-
7 site person. You could assign the duties to an individual,
8 perhaps in one of your --

9 MR. MILLSTEIN: Well, it is cleaned by two
10 individuals on a daily basis that have been with us for eight
11 years. In addition to those two gentlemen who clean it every day,
12 except I think on Sundays, we certainly check it.

13 From a management perspective, I drive by the
14 property every morning on my way to work, and check at least every
15 other day, as well as this morning. But it never had a full-time
16 person standing there.

17 CHAIRPERSON SOCKWELL: Right. Because it doesn't
18 take tickets or anything like that.

19 MR. MILLSTEIN: Right. No, tickets and no money.
20 That's right.

21 BOARD MEMBER RENSHAW: Do you have a contract with
22 a rodent control company?

23 MR. MILLSTEIN: I don't know. I will find out. I
24 will get one now though if there has been a problem with rodents.

25 BOARD MEMBER RENSHAW: It sounds like it is needed.

1 MR. MILLSTEIN: And what happened, Ms. Renshaw, is
2 that we had food a long time ago with Papa Johns, and then they
3 went out of business. They were only there a very short time.
4 And then we have Gifts Father Catering, and the caterers have
5 produced a lot more food debris or rubble.

6 And so the sealed compactor will help with that,
7 and we can certainly get a rat management contract. We have a
8 master contract with Western Services, and we will put Western on
9 it.

10 CHAIRPERSON SOCKWELL: I had another question.

11 MR. MILLSTEIN: And also just on the odor
12 situation. When we get the compactor, we will put an oxidation
13 system on it, or an ionization system which actually eats the
14 odors. It doesn't mask them. It eats them.

15 And if you wanted to put that as part of any
16 condition of approval, then that's fine, too, because that helps
17 those go away as well.

18 VICE CHAIRPERSON REID: What is an oxidation
19 system?

20 MR. MILLSTEIN: An ionization system.

21 VICE CHAIRPERSON REID: Oh, ionization system.

22 MR. MILLSTEIN: Yes, it eats the smell instead of
23 dealing with deodorants. It is much better.

24 BOARD MEMBER RENSHAW: Is this compactor going to
25 be something that is noisy? Is this a noisy piece of equipment?

1 MR. MILLSTEIN: When you push the button, it makes
2 some noise. It does. I mean, it is an annnnnnn (phonetic) sound,
3 and it is pushing, and you hear a hydraulic noise.

4 BOARD MEMBER RENSHAW: And this hydraulic noise
5 would be once a day?

6 MR. MILLSTEIN: Oh, no. I would assume it would
7 probably be 10 times a day.

8 BOARD MEMBER RENSHAW: So 10 times a day?

9 MR. MILLSTEIN: Every time you fill up the dog
10 house, you push the button and it compacts.

11 VICE CHAIRPERSON REID: How long?

12 MR. MILLSTEIN: But it is no noisier than a car
13 driving in the parking lot.

14 CHAIRPERSON SOCKWELL: They don't sound like
15 garbage disposals.

16 VICE CHAIRPERSON REID: It's not excessive?

17 MR. MILLSTEIN: No, I don't think it is excessive
18 at all, but it makes a noise.

19 CHAIRPERSON SOCKWELL: It is a piston action?

20 MR. MILLSTEIN: It is a piston action. It is a
21 hydraulic machine. That's right.

22 BOARD MEMBER RENSHAW: But the neighbors, if they
23 are bothered by this, they can get in touch with you? And do they
24 have your telephone number?

25 VICE CHAIRPERSON REID: The person who has been

1 hired by the company, and whose name it mentioned previously --

2 MR. MILLSTEIN: We will make it accessible.

3 VICE CHAIRPERSON REID: -- would be that person who
4 would be available, and he said earlier that he would make that
5 name available.

6 MR. MILLSTEIN: I will make it available this
7 morning. There is also an 8 foot tall, one foot thick, concrete
8 wall as a screening wall that masks a lot of the sounds as well.

9 CHAIRPERSON SOCKWELL: Mr. Millstein --

10 MR. MILLSTEIN: Yes, sir.

11 CHAIRPERSON SOCKWELL: The question that I would
12 raise is --

13 MR. MILLSTEIN: Go ahead.

14 CHAIRPERSON SOCKWELL: -- the cycle of compacting
15 usually takes what, 20 to 30 seconds?

16 MR. MILLSTEIN: That's it.

17 CHAIRPERSON SOCKWELL: So we are talking about 300
18 seconds divided by 60, which is in a minute. So that is less than
19 6 minutes a days that it would actually be operating.

20 By the time most people would know that it is
21 operating, it would be pretty much ready to stop I would think.

22 MR. MILLSTEIN: It has never been an issue in any
23 other centers of ours.

24 CHAIRPERSON SOCKWELL: It doesn't sound like a
25 problem.

1 MR. MILLSTEIN: It works well actually. It is a
2 pretty good machine.

3 CHAIRPERSON SOCKWELL: But let's ask another
4 question. On page two of the statement of the applicant, it
5 states that the board most recently approved the use of the
6 parking lot, and lists the order. The order has lapsed.

7 Subsequently, the applicant purchased the subject
8 property and began renovating the retail space and bringing in new
9 tenants. I assume that Jemal purchased or Douglas Development
10 purchased the property when?

11 MR. MILLSTEIN: I don't know the exact date.
12 Approximately 4 or 5 years ago, or maybe 6.

13 CHAIRPERSON SOCKWELL: So in reality the major
14 construction of the new building, which is part of your property -
15 -

16 MR. MILLSTEIN: Yes, sir.

17 CHAIRPERSON SOCKWELL: -- took place before Mr.
18 Jemal took ownership of the property.

19 MR. MILLSTEIN: No, sir.

20 CHAIRPERSON SOCKWELL: It did not?

21 MR. MILLSTEIN: No, sir.

22 CHAIRPERSON SOCKWELL: That was then started 5
23 years ago?

24 MR. MILLSTEIN: Approximately. I am not sure of
25 the exact date. Maybe 6 years. I am not sure.

1 CHAIRPERSON SOCKWELL: So the term renovation or
2 renovating is really incorrect for the statement, because it was a
3 renovation and construction of a new building.

4 MR. MILLSTEIN: That's correct.

5 CHAIRPERSON SOCKWELL: In fact, probably the
6 largest single retail space in that project is that new building?

7 MR. MILLSTEIN: Well, it is actually -- we in-
8 filled what used to be a gas station.

9 CHAIRPERSON SOCKWELL: I know what was there.

10 MR. MILLSTEIN: Okay. But Morris-Miller and that
11 whole site, it is almost a third, a third, and a third. You have
12 the Morris-Miller stretch of buildings.

13 CHAIRPERSON SOCKWELL: Yes, but yours is a little
14 deep.

15 MR. MILLSTEIN: And then the building in the
16 center, and the building up Eastern Avenue. But, yes, certainly a
17 new building connected the two.

18 CHAIRPERSON SOCKWELL: Okay. I think that probably
19 reconstructing and renovating would be appropriate.

20 MR. MILLSTEIN: Yes.

21 CHAIRPERSON SOCKWELL: Because it isn't just a
22 renovation.

23 MR. MILLSTEIN: No, no, it's not.

24 CHAIRPERSON SOCKWELL: Renovations generally are
25 considered by me to be activities that take place primarily within

1 the envelope of the existing structure.

2 MR. MILLSTEIN: I would agree with you.

3 CHAIRPERSON SOCKWELL: Okay. So just to clear that
4 up. Any more questions?

5 (No audible response.)

6 CHAIRPERSON SOCKWELL: All right. Then we go to
7 government reports, and we have the Office of Planning
8 representative. Would you identify yourself and say good
9 morning.

10 MR. MOORE: Good morning. My name is John Moore,
11 of the development review section at the Office of Planning, and
12 Mr. Chairman, I have made a note about the renovation and
13 reconstruction in my report also.

14 CHAIRPERSON SOCKWELL: Thank you.

15 MR. MOORE: I would like to refer the board to page
16 two under the zoning requirements and analysis section of the OP
17 report.

18 OP believes that the applicant has satisfactorily
19 provided support for relief from the requirements of Section 3104.

20 Do I need to read the section or just our response?

21 CHAIRPERSON SOCKWELL: Just your basic response
22 would be fine.

23 MR. MOORE: In response to 214.2, we believe
24 especially when Mr. Millstein provided modification to -- I think
25 it was Exhibit D, where the parking spaces are referred to, that

1 all the parking spaces will be at the same level.

2 And I think there was a question raised by the
3 chair regarding the possibility that vehicles may extend beyond
4 the parking. And I think the modified revision of Exhibit D will
5 do that.

6 CHAIRPERSON SOCKWELL: Yes.

7 MR. MOORE: Under 214.4, the parking spaces must be
8 contiguous. The parking lot will be entirely on Lot 17, which is
9 contiguous to the lots contained in the uses which are accessory
10 to the function.

11 And 214.5, the proposed parking lot will satisfy
12 the requirements of Section -- of Chapter 23, and we note those
13 sections under 23, and the response from the Office of
14 Management's perspective, that the subject parking lot will meet
15 the above requirements.

16 The prior history of the site has been approved as
17 a parking lot by the Board for over 50 years, and the prior
18 issuance of a certificate of occupancy for parking purposes is
19 evidence of that.

20 And 214.6, the subject property has been zoned,
21 with the strip of approximately a hundred feet deep along Georgia
22 and Eastern Avenues, which is in the C-2-A district, and the
23 remainder of the proper is an R-1-B.

24 The retail establishment occupied by all the
25 commercial zoned areas and the retail establishments, and the

1 parking, are all on the same lot, but it is improbable to locate
2 parking spaces in the principal building, because there is no
3 excess space when you take into consideration the retail uses.

4 Under 214.2, according to the applicant, the
5 subject lot has created no objectionable conditions to the
6 neighborhood. We were unaware this morning, too, of the letter
7 that we just got. And we are comfortable that the applicant is
8 agreeing to work with the community with respect to conditions to
9 make sure the lot is suitable.

10 We did not get a report from DPW. It is my
11 understanding that it was just assigned, and that they were going
12 to give me a report later. Regarding our recommendation, it is
13 OP's conclusion that the applicant has met the burden of proof
14 pursuant to 11 DCMR 3104, Section 214, a special exception to
15 admit a previously approved parking lot to serve the same purpose.

16 There does exist exceptional situations and
17 conditions related to the referenced property which create a
18 particular difficulty for the owner to apply. We believe that the
19 application should be approved, and we would recommend a period of
20 5 years. If there are any questions for the OP, I would be glad
21 to respond to them.

22 BOARD MEMBER RENSHAW: Mr. Chairman.

23 CHAIRPERSON SOCKWELL: Yes.

24 BOARD MEMBER RENSHAW: I would like to point out on
25 page 4 of the OP's report under community comments, where you talk

1 about Advisory Neighborhood Commission 4A, do not have any
2 objections to this application.

3 Well, they actually do have an objection and is so
4 stated in their letter. In other words, there are various
5 conditions that have to be met in order for 4A to be in support.

6 MR. MOORE: I would agree, and I should have
7 pointed that out. We just got this letter from the ANC this
8 morning, too. Our previous condition was that they didn't submit
9 letters unless it was in total opposition, but I do agree with
10 you.

11 BOARD MEMBER RENSHAW: All right. I would ask that
12 the Office of Planning amend its report to be filed with this
13 application to so indicate.

14 MR. MOORE: Done.

15 CHAIRPERSON SOCKWELL: All right. I just want to
16 amend the record that those -- Mr. Renshaw, they weren't
17 objections, per se. They were just conditions.

18 BOARD MEMBER RENSHAW: Yes, conditions.

19 CHAIRPERSON SOCKWELL: Thank you.

20 BOARD MEMBER RENSHAW: However, if the conditions
21 are meant, then the ANC is not going to support.

22 CHAIRPERSON SOCKWELL: Are there any additional
23 questions of the Office of Planning representative by the Board?

24 (No audible response.)

25 CHAIRPERSON SOCKWELL: Does the applicant have

1 questions for the OP?

2 MS. SHAW: I would just point out that Mr. Elias
3 did speak with a staff person at the Department of Public Works,
4 and was told verbally that DPW was in support.

5 CHAIRPERSON SOCKWELL: All right. But without that
6 -- it is irrelevant without anything in writing. All right. We
7 now come to the -- we don't have an ANC report. Well, we do have
8 the ANC person. I'm sorry. Would you come forward, please.
9 Identify yourself and your address, and --

10 MS. PRUITT: Excuse me, Mr. Chair, before you go
11 forward. You need to waive the record for filing time on this.

12 CHAIRPERSON SOCKWELL: Oh. Board Members, as we
13 are always appreciative of information coming from the Advisory
14 Neighborhood Commission, is there anyone who would object to us
15 waiving?

16 (No audible response.)

17 CHAIRPERSON SOCKWELL: All right. Good. Thank
18 you. I move that we accept the Advisory Neighborhood Commission
19 report having coming in late.

20 COMMISSIONER HOOD: I second.

21 CHAIRPERSON SOCKWELL: All in favor?

22 (A chorus of ayes.)

23 CHAIRPERSON SOCKWELL: Opposed?

24 (No audible response.)

25 CHAIRPERSON SOCKWELL: All right. Thank you.

1 MS. BROWN: Good morning. I am Jourdinia S. Brown,
2 ANC for 4A-02, but I am here this morning representing the entire
3 ANC-4A. My address is 7820 - 14th Street, Northwest, Washington,
4 D.C.

5 CHAIRPERSON SOCKWELL: Ms. Brown, have you been
6 authorized by the Advisory Neighborhood Commission to represent
7 them?

8 MS. BROWN: Yes, at the meeting on January 2nd.

9 CHAIRPERSON SOCKWELL: And is that included in any
10 ANC letter? If not, it is --

11 MS. BROWN: Yes.

12 CHAIRPERSON SOCKWELL: It is?

13 MS. BROWN: Yes, the first paragraph of the letter.
14 The meeting was held on January 2nd.

15 CHAIRPERSON SOCKWELL: Give us just a second.

16 COMMISSIONER HOOD: You know, can I just make a
17 statement?

18 CHAIRPERSON SOCKWELL: It is a formality that we
19 like to have a letter stating that someone other than the ANC
20 Chair may speak for the Advisory Neighborhood Commission. And you
21 can submit that later.

22 You don't have to do it now, but I am just
23 requesting that for the record. You have a letter prepared saying
24 that Ms. Brown was authorized to represent the Advisory
25 Neighborhood Commission at the Board of Zoning Adjustment hearing.

1 MS. BROWN: Is it sufficient that I send you a copy
2 of the minutes which authorizes me to represent the ANC?

3 CHAIRPERSON SOCKWELL: That would be fine. It
4 should be on ANC stationary.

5 MS. BROWN: Yes.

6 CHAIRPERSON SOCKWELL: Thank you. Please continue.

7
8 MS. BROWN: I will make my comments very brief,
9 because I think part of the problem has been solved by what has
10 been previously said. I would like to read two things from my
11 testimony, and the first one is that we are requesting approval
12 contingent upon the BZA securing an agreement from the applicant
13 to meet each of the following conditions.

14 One, that the dumpsters are emptied on a regular
15 basis, or as needed, to prevent them from constantly overflowing
16 and possibly causing a health problem.

17 And, number two, that the dumpsters be cleaned
18 periodically to prevent odors from spoiled or spoiling food.
19 These odors can become very obnoxious to the adjoining residents.

20 And, number three, that the tops or lids on the
21 dumpsters remain closed at all times to curtail rodents or either
22 animal usage. And may I just add that it has only been recently
23 that we have received complaints about rodents. That was after
24 the caterer moved in, and another restaurant that serves food in
25 that particular development.

1 And, number four, that the area surrounding the
2 dumpsters be cleaned and/or swept daily, or as needed to prevent
3 debris from being scattered in the parking lot, or to adjacent
4 properties.

5 And the last statement is that if the applicant
6 agrees to meet these conditions, then ANC-4A approves the
7 application. However, if the applicant refuses to meet these
8 conditions, then ANC-4A withholds its approval and recommends that
9 the BZA provide a similar ruling. Thank you.

10 CHAIRPERSON SOCKWELL: Thank you. Ms. Brown, since
11 Mr. Millstein, representing Douglas Development, has offered a 30
12 foot closed trash compactor or refuse compactor, to represent the
13 seven dumpsters that have been in question, what I would want to
14 get from you -- and perhaps in your representation of the ANC, you
15 would have to determine whether in going back to the body is
16 required.

17 But I would represent that, number one, that we
18 would change the word from dumpster to compactor.

19 MS. BROWN: Yes, I will agree.

20 CHAIRPERSON SOCKWELL: And that, number two, we
21 would again change the name dumpster to compactor, which is
22 cleaned periodically. That would be required, even though there
23 is an ionizer, and that is about odors, and the draining refuse or
24 draining residue from garbage and things like that is something
25 that in a long term build-up, of course, causes problems.

1 So that would there again accrue over to the
2 compactor solution, and if you have to go back to the ANC, since
3 you have to get -- since you are going to fax something, if that
4 requires another meeting -- and it may not.

5 We are just changing -- we are changing something
6 that is really not material, per se. But we are changing
7 physically what is being provided. So you may have to talk with
8 your ANC to determine whether or not a revote or another meeting
9 would be necessary, because this is an improvement over what -- a
10 grand improvement over what has been requested.

11 VICE CHAIRPERSON REID: Mr. Chair, I would
12 recognize --

13 CHAIRPERSON SOCKWELL: Well, let me finish.

14 VICE CHAIRPERSON REID: But the thing that I am
15 going to suggest and will maybe help with that --

16 CHAIRPERSON SOCKWELL: Go right ahead.

17 VICE CHAIRPERSON REID: It has been mentioned that
18 to change a document like that, that they have to have an official
19 vote, and go back to the ANC. And rather than have to go through
20 all those gyrations, then if in fact in our conditions we could
21 then stipulate just what you said.

22 CHAIRPERSON SOCKWELL: Then we can do it that way.

23
24 VICE CHAIRPERSON REID: And it would therefore be
25 done more expeditiously, and they would not have to go through a

1 meeting and all of that.

2 CHAIRPERSON SOCKWELL: All right. So the BZA's
3 conditions will just exceed the conditions of the ANC, and then --

4 BOARD MEMBER RENSHAW: Mr. Chairman.

5 CHAIRPERSON SOCKWELL: Let me finish. That there
6 is top or lid to remain closed because it is a closed system, and
7 so number three would go away. But number four, we would change
8 it to compactor so that the area surrounding it would be kept
9 clean.

10 And in addition, I believe that we would probably
11 require that the developer issue a warning to the tenants, the
12 food service tenants, that their manner of placing garbage and
13 trash within the dumpster be done cleanly and neatly, because that
14 contributes to the problem when they are dumping the stuff all
15 around the compactor, as opposed to in it.

16 BOARD MEMBER RENSHAW: Mr. Chairman, I would
17 recommend that our language be dumpster/compactor, because there
18 may be --

19 CHAIRPERSON SOCKWELL: No, no, there will not be
20 any dumpsters on this site.

21 BOARD MEMBER RENSHAW: Mr. Chairman, please.

22 CHAIRPERSON SOCKWELL: There will not be any
23 dumpsters.

24 BOARD MEMBER RENSHAW: Mr. Chairman, I have the
25 floor. I am suggesting it because I did not get an idea here how

1 fast this compactor is going to be moved into place.

2 Moreover, if there is one refuge unit and it fails,
3 then the owners or the managers of the lot may have to move into
4 place temporary dumpsters while their big compactor is fixed.

5 So that to cover all bases, it seems to me to be
6 prudent to just have the language of dumpster/compactor.

7 CHAIRPERSON SOCKWELL: Ms. Renshaw, if we place the
8 language, dumpster/compactor, then this owner has the option of
9 using a dumpster or compactor. I do not give -- we would not want
10 to give the applicant the option, because if it is in the
11 language, who is going to interpret the language, and who is going
12 to enforce the rule.

13 MS. SANSONE: Mr. Chairman, maybe I could help out
14 here. Perhaps the board can ascertain when the compactor will be
15 in place.

16 CHAIRPERSON SOCKWELL: That was suggested by the
17 Vice Chair to me and I had not asked that question.

18 MS. SANSONE: And also there could be a requirement
19 relating to dumpsters until such time that a compactor is
20 installed and in place, and it would also kick in then in the
21 event a temporary dumpster would be required.

22 CHAIRPERSON SOCKWELL: What is the lead time for a
23 dumpster, Mr. Millstein, or rather for a compactor?

24 MR. MILLSTEIN: For a compactor? It can be up to
25 30 days, and it can be as quickly as two days, depending on

1 whether waste management has one available.

2 CHAIRPERSON SOCKWELL: Okay. So it is a leased
3 product, just like everything else?

4 MR. MILLSTEIN: Yes, sir.

5 VICE CHAIRPERSON REID: So within 30 days.

6 CHAIRPERSON SOCKWELL: Yes, within 30 days. So
7 within a couple of weeks of any BZA order, it would be up and
8 running?

9 MR. MILLSTEIN: Yes, sir.

10 VICE CHAIRPERSON REID: So in actuality, and the
11 way you bring it, Mr. Chair, is that it is a given that until such
12 time as the compactor is put in place that the dumpsters would be
13 there. So it is a moot point.

14 MR. MILLSTEIN: And if the dumpster fails, then we
15 will get it repaired immediately.

16 CHAIRPERSON SOCKWELL: And we will say temporary
17 dumpsters, and permanent compactor.

18 MR. MILLSTEIN: Right. It is being ordered today,
19 regardless of whatever the BZA does. We would order it anyway.

20 CHAIRPERSON SOCKWELL: Okay. Thank you.

21 MS. BROWN: Will those conditions be in effect as
22 long as the dumpsters are there?

23 CHAIRPERSON SOCKWELL: Those conditions would be in
24 effect as long as the BZA order remains in force, although it
25 appears that the 5 year cycle can run 15, depending upon how

1 quickly the applicant responds once the order is about to expire.

2 And in this case, we would request the vigilance of
3 the community once you know when the order has been ordered and
4 that you ride herd on that as well. Any questions?

5 MR. MOORE: Mr. Chair, if it is appropriate, could
6 you state the conditions so that I could modify my report?

7 CHAIRPERSON SOCKWELL: We will state it at the end.

8 MS. PRUITT: Actually, Mr. Chair, that is a
9 deliberation, and we still have the rest of the hearing to go
10 through.

11 CHAIRPERSON SOCKWELL: All right. Okay. Any
12 questions of the ANC by the applicant?

13 MR. MILLSTEIN: No, sir.

14 CHAIRPERSON SOCKWELL: Okay. Then that completes
15 the -- oh, that's right. Do we have any parties in support? I'm
16 sorry. Any persons in support other than --

17 MR. MILLSTEIN: Other than the letters that we have
18 provided from Shepherd Park Citizen's Association.

19 CHAIRPERSON SOCKWELL: All right. Then we note for
20 the record that the Shepherd Park Citizen's Association did write
21 a strong support letter for this special exception.

22 MS. SANSONE: Before we leave this portion of the
23 hearing and go on to the closing statement, I feel that it is
24 important to point out that I had raised previously this question
25 of whether this application is properly before the Board under

1 Section 214 or 213.

2 And I still feel that this is an important question
3 for the board to resolve. The previous order was issued under
4 Section 213 for parking lots, albeit for an accessory parking lot.
5

6 The Board's analysis in that order tracks the
7 requirements of Section 213 for parking lots, and not for
8 accessory parking spaces. In addition, the Court of Appeals has
9 previously upheld the Board's decision that the accessory parking
10 space provision applies when the parking spaces are accessory to a
11 residential use on a lot, and not when they are accessory to
12 commercial uses on another portion of the lot.

13 That Court of Appeals' opinion is consistent with
14 the uses of the term of accessory parking spaces in other parts of
15 the zoning regulations. For example, the SP district and the
16 commercial districts, all of their accessory parking space
17 language requires the parking spaces to be accessory to the SP or
18 commercial uses.

19 And so to interpret Section 214, we can look at
20 these other sections, and the parking spaces would have to be
21 accessory to a residential use. There is no residential use here.

22 CHAIRPERSON SOCKWELL: Ms. Sansone, how would you
23 interpret the fact that the parking lot has been in existence
24 since 1949, and therefore predates the zoning ordinance, and would
25 be grandfathered in under that historical designation of sorts,

1 that history?

2 MS. SANSONE: Mr. Chairman, the historical -- the
3 board's previous order in this case treats this as a parking lot
4 under Section 3101.48 of the zoning regulations. That section has
5 been since renumbered as 213, parking lots.

6 And the use of the lot is described as a parking
7 lot, and one that is accessory. It is not described as parking
8 spaces. So consistent with the previous history of this parking
9 lot for zoning purposes, I believe that the previous -- that the
10 board's previous decision was to approve it as a parking lot.

11 There does not seem to be any change in the law or
12 in the circumstances here that would require treating it any
13 differently. And that would be the recommendation from the Office
14 of Corporation Counsel.

15 CHAIRPERSON SOCKWELL: All right. Under that
16 recommendation then, how would the staff suggest that we go
17 forward if that recommendation is accepted?

18 MS. PRUITT: I would defer to Corporation Counsel
19 on this.

20 MS. SANSONE: Yes, I should have added that the
21 analysis for parking lots and parking spaces and the conditions
22 required in the regulations is not substantially different.

23 The Board has already heard about the traffic
24 impacts, and the adverse conditions. So there would really be no
25 different issues before the Board. The notice describes it as the

1 continuation of a longstanding parking lot and public notice is
2 adequate.

3 So therefore I wouldn't see any requirement or any
4 need for additional notice or procedural requirements.

5 CHAIRPERSON SOCKWELL: So do you believe that we
6 could suffice to amend the application and change the word
7 accessory parking to parking lot?

8 MS. SANSONE: Mr. Chairman, I believe that you can
9 change the wording to parking lot, or even say accessory parking
10 lot under Section 213, as 214 talks about accessory parking
11 spaces.

12 CHAIRPERSON SOCKWELL: Right. So we can leave the
13 wording the same as long as we change the section reference to
14 213; is that what you are saying?

15 MS. SANSONE: That's what I am saying, yes.

16 VICE CHAIRPERSON REID: Mr. Chair, you may want to
17 just check with counsel for the applicant and make sure that they
18 concur with that.

19 CHAIRPERSON SOCKWELL: Ms. Shaw, do you have any
20 problem with that?

21 MS. SHAW: No, no problem.

22 CHAIRPERSON SOCKWELL: Then I would move that we
23 amend -- well, let me get around to it. Well, the application
24 falls under 213. All right. We will deal with that issue
25 specifically at the end of the case.

1 I believe that we have had any questions necessary
2 to be asked of the Advisory Neighborhood Commission
3 representative, Ms. Brown. So we would have no one other than the
4 letter from the support of the Shepherd Park Citizen's Association
5 as support.

6 So it would be time to begin the opposition case or
7 opposition part, the second section. And the opponents who wish
8 to speak, raise your hands again.

9 (A show of hands.)

10 CHAIRPERSON SOCKWELL: There is just one person who
11 wishes to speak before the body? Then we need to make way for
12 that individual.

13 MS. BROWN: Excuse me, but may I make one request,
14 please.

15 CHAIRPERSON SOCKWELL: Yes, you may.

16 MS. BROWN: That the owner of the property put in
17 writing to the ANC the name of the person and telephone number
18 that is responsible for the parking lot maintenance.

19 CHAIRPERSON SOCKWELL: Okay. You may identify
20 yourself and your address.

21 MR. REVIS: My name is Lamar Dwayne Revis, and I
22 live at 1129 Kalmia Road, Northwest, Washington, D.C. 20012.

23 CHAIRPERSON SOCKWELL: Go ahead.

24 MR. REVIS: As I said, I live at 1129 Kalmia Road,
25 and my back yard is adjacent to this parking lot. And I am sorry,

1 as I have never done this before, and so I don't know your
2 procedures, but I have photographs here that I would like to
3 submit.

4 CHAIRPERSON SOCKWELL: You may submit them to staff
5 at the end of the table, and they will make copies of them for us,
6 or pass them down to us since we are not going to have time to get
7 them copied.

8 BOARD MEMBER RENSHAW: Mr. Chairman, while Mr.
9 Revis is doing that, could I ask that he also point out his home
10 on the map?

11 CHAIRPERSON SOCKWELL: It is probably -- his home
12 is not going to show on that map exactly.

13 BOARD MEMBER RENSHAW: Mr. Revis, does your house
14 show on the map?

15 MR. REVIS: My home would be right in here.

16 CHAIRPERSON SOCKWELL: But you are on the other
17 side of the street from that?

18 MR. REVIS: No.

19 BOARD MEMBER RENSHAW: Are you on the side of the
20 parking lot?

21 CHAIRPERSON SOCKWELL: Oh, I'm sorry, you are the
22 same side as the parking lot?

23 MR. REVIS: Yes.

24 BOARD MEMBER RENSHAW: Yes.

25 MR. REVIS: This is the entrance to the parking

1 lot.

2 CHAIRPERSON SOCKWELL: Then you have to be --
3 that's not where your house is then. Your house is at the top
4 left. Go up, go up. You have got to be right there, somewhere in
5 there. Do you see where the alley is?

6 Do you see where the entrance is to the parking
7 lot? Orient yourself, and if you are coming off of Georgia
8 Avenue, and going west --

9 MR. REVIS: This is the entrance to the park.

10 CHAIRPERSON SOCKWELL: Right.

11 MR. REVIS: And this is my house here.

12 CHAIRPERSON SOCKWELL: Right. It has got to be
13 beyond that. So you have to be in that upper left-hand corner.

14 MR. REVIS: Probably Lot 11.

15 CHAIRPERSON SOCKWELL: Okay. How many houses
16 between you and the wall?

17 MR. REVIS: There is nothing. It is just my house
18 and my back yard, and then the brick wall.

19 CHAIRPERSON SOCKWELL: Okay. So then you are right
20 there, and that's where you are.

21 MR. REVIS: Yes.

22 CHAIRPERSON SOCKWELL: You are right at that brick
23 wall. So I assume this is your house or part of it?

24 MR. REVIS: No, sir.

25 CHAIRPERSON SOCKWELL: That's not your house?

1 MR. REVIS: The house immediately adjacent to that
2 wall is my neighbor, and my house is four houses down.

3 CHAIRPERSON SOCKWELL: Oh, okay. So you are not
4 next to the wall?

5 MR. REVIS: Not next to it, but the back yard is.

6 CHAIRPERSON SOCKWELL: But your back yard is not
7 next to that wall. Your back yard is next to that other wall.

8 MR. REVIS: Right.

9 CHAIRPERSON SOCKWELL: How far are you from the
10 intersection or from the public alley that is between your house
11 and 12th Street?

12 MR. REVIS: One house separates mine from the
13 public alley.

14 CHAIRPERSON SOCKWELL: And you are on the east side
15 of the public alley?

16 MR. REVIS: I am on the side of the public alley
17 nearest Georgia Avenue.

18 CHAIRPERSON SOCKWELL: Exactly. Okay. I see your
19 house. Okay. You are four in, next to the trapezoid. Okay. Go
20 right ahead, please.

21 MR. REVIS: I would like to say that this is not --
22 my letter is not the first time that I contacted the Douglas
23 Properties. I mean, I have contacted them -- I can't tell you how
24 many times, innumerable times, and I spoke specifically to Tim
25 Roberts at least half-a-dozen times.

1 And I know also that my neighbor, Johnnie Jordan,
2 whose house is directly adjacent to that brick wall, has caused
3 more times than I have. We are constantly, constantly, constantly
4 picking up trash. You know, beer bottles from Morris Miller, and
5 trash that is blown off the parking lot on to Kalmia Road, and
6 down Kalmia Road and into our yards.

7 It is a constant nuisance. The pictures that I
8 took last August I think clearly show what we lived with for quite
9 a long time, and what inspired my calls to Douglas Properties that
10 went unanswered.

11 As I said, the number of dumpsters grew from 2 to
12 7. They were constantly overflowing, and food all around.
13 Meatballs from the catering business, and old rolls, and salad,
14 all around the dumpsters.

15 And for the first time in the 7-1/2 or almost 8
16 years that I have lived in that house, there are rodents running
17 around in the parking lot. And I understand what preceded my
18 testimony here has perhaps answered some of those problems.

19 But still there are problems, and my point is that
20 they have been totally unresponsive, totally. And Ms. White, as a
21 matter of fact, was the only one who did respond, and she is the
22 reason that the dumpsters were moved from where they were
23 initially on the side of the wall.

24 And that is the first thing that you see as you
25 enter Kalmia Road, the very first thing that you see as you enter

1 Kalmia Road, and that is to the rear of the parking lot, but now
2 behind my house. But at least, you know, she did something, and
3 no one else did.

4 CHAIRPERSON SOCKWELL: So you are saying that Ms.
5 White, who is no longer with the company, was the bright light?

6 MR. REVIS: Was the responsive one.

7 CHAIRPERSON SOCKWELL: That's interesting.

8 MR. REVIS: So of course there are obvious
9 ramifications for this. One is mine and my neighbor's diminished
10 quality of life. You can't use the back yard because there is
11 constant odors.

12 Again, it was the first time that I saw rodents
13 running around the place, and I had never seen that before. It
14 affects obviously my property value. If this doesn't change, you
15 know, who would want to buy my house with seven dumpsters, and
16 lids always open, and trash always around.

17 And we won't even speak about the constant traffic,
18 and the delivery trucks, and the constant noise when they empty
19 the dumpsters. It is not a pleasant place to be, and it has been
20 this way for the last two years since they fully leased -- I guess
21 it is fully leased -- you know, this property.

22 CHAIRPERSON SOCKWELL: Anything more?

23 MR. REVIS: No, sir.

24 CHAIRPERSON SOCKWELL: Okay. Any questions from
25 the Board? I will withhold my questions. Ms. Renshaw, I am sure

1 that you would like to start.

2 BOARD MEMBER RENSCHAW: I would like to see Mr.
3 Revis' pictures.

4 CHAIRPERSON SOCKWELL: Oh, well, while she is
5 looking at those, let me state one thing. From the pictures, it
6 appears that there is a recycling of paper products, and those are
7 bundled separately as boxes from the -- I guess it is Morris
8 Miller?

9 MR. REVIS: Yes, sir.

10 CHAIRPERSON SOCKWELL: And the --

11 MR. REVIS: Oh, I forgot the grease recycling. I
12 guess they are recycling it. But there are grease containers, and
13 half-a-dozen of them. And initially they were sitting out as I
14 said, and the first thing that you would see when you turned on to
15 Kalmia was grease all around them.

16 It is as if the people who run these businesses
17 don't just care. They obviously don't care about the
18 neighborhood.

19 CHAIRPERSON SOCKWELL: Would you -- there are two
20 things that I wanted to look at separately. And, number one, food
21 products which were apparently not present previous to the caterer
22 and restaurant are now the principal reason for the rodent
23 traffic. They are following the food.

24 MR. REVIS: Right.

25 CHAIRPERSON SOCKWELL: Before -- and how long have

1 you lived in the neighborhood, sir, in that house?

2 MR. REVIS: For 7-1/2 years.

3 CHAIRPERSON SOCKWELL: And for 5-1/2 years it
4 wasn't nearly the problem that it has been for the last two; is
5 that correct?

6 MR. REVIS: It really wasn't a problem. Trash has
7 always been a problem.

8 CHAIRPERSON SOCKWELL: Yes, with the blowing of
9 trash and things like that.

10 MR. REVIS: But the rodents and the food, no, that
11 has been the last two years.

12 CHAIRPERSON SOCKWELL: So it seems that the
13 significant deterioration of neighborhood quality has come from
14 the food service establishments that have been brought in, and
15 that is just from what you are saying and from what your pictures
16 appear to describe.

17 And so I just wanted to get that time period clear
18 and the issue sort of clarified. Ms. Renshaw.

19 BOARD MEMBER RENSHAW: Yes. Thank you, Mr.
20 Chairman. I would like to ask Mr. Revis when does the truck noise
21 start in the morning? In other words, do the trucks start
22 arriving at 7:00 or 8:00, or do they start coming into your
23 neighborhood at 6:00 in the morning?

24 MR. REVIS: Well, the delivery trucks I see around
25 8:00 in the morning. Probably a little earlier, but I know 8:00

1 because I am walking to work by that time.

2 BOARD MEMBER RENSHAW: All right.

3 MR. REVIS: And the emptying of the dumpsters
4 occurs I think earlier than that according to my next door
5 neighbor, because she said it always wakes her up.

6 BOARD MEMBER RENSHAW: So 6:00 in the morning do
7 you think?

8 MR. REVIS: Yes, Ma'am.

9 BOARD MEMBER RENSHAW: Have you had in your many
10 correspondences with the management company asked for the dumpster
11 company to come at a later time?

12 MR. REVIS: No, Ma'am, I haven't. And the only
13 written correspondence is the letter that you have. But as I
14 said, I made many phone calls.

15 BOARD MEMBER RENSHAW: But the phone calls have not
16 elicited any response?

17 MR. REVIS: No, Ma'am.

18 BOARD MEMBER RENSHAW: All right. And you have
19 heard about this compactor that is being proffered. Do you think
20 that is going to be any better? There is going to be some noise
21 attached to this compactor about 10 times a day. Does that sound
22 like something that you can live with?

23 MR. REVIS: Well, I think -- well, I really don't
24 know what this thing is. I can't really envision it. But
25 hopefully it is better than the seven dumpsters with the lids open

1 that we have.

2 BOARD MEMBER RENSHAW: Would you suggest another
3 location for these dumpsters/compactor?

4 MR. REVIS: Yes, Ma'am. As I stated in my letter,
5 there is a public alley that is between my neighbor's house and
6 12th Street, and it seems to me that if you are going to place the
7 dumpsters in that area that they should be adjacent to the area
8 alongside the public alley, as opposed to areas adjacent to my
9 back yard and adjacent to my neighbor's back yard.

10 BOARD MEMBER RENSHAW: Mr. Chairman, we have seen
11 the photographs that Mr. Revis has supplied. I would just like
12 for him to point out on the map where these dumpsters are now
13 located, and the location where he would suggest the compactor be
14 positioned?

15 MR. REVIS: My house is here, Lot 11, and so the
16 dumpsters presently are on the other side of this wall here,
17 behind my house and behind my neighbor's house. These two houses
18 here.

19 BOARD MEMBER RENSHAW: And they take up how many
20 parking spaces?

21 MR. REVIS: Oh, Ma'am, I really don't know. I
22 don't know.

23 BOARD MEMBER RENSHAW: And where would you like to
24 see the compactor at?

25 MR. REVIS: And I am suggesting that they be placed

1 in this area over here. That is the furthest area away from these
2 houses, and this is a public alley here. So there is nothing on
3 the other side but the alley.

4 BOARD MEMBER RENSHAW: Thank you.

5 CHAIRPERSON SOCKWELL: Mr. Millstein.

6 MR. MILLSTEIN: Yes, sir.

7 CHAIRPERSON SOCKWELL: In that the entire parking
8 lot is under the control of Douglas Development, are there any
9 overriding reasons that would prevent you from having the
10 compactor located elsewhere than directly opposite the residential
11 property separation wall?

12 MR. MILLSTEIN: I don't think it should be a
13 problem. It is just a convenience issue for the retailers on the
14 far side of the center, but they can get over it.

15 CHAIRPERSON SOCKWELL: As long as it can be that
16 way, I think it would be helpful to all the residents to move the
17 dumpsters at least a distance away.

18 MR. MILLSTEIN: That's fine.

19 CHAIRPERSON SOCKWELL: That would to some degree
20 might affect any noises that occur during pickups, and just as
21 with the dumpsters themselves, it may force some delivery traffic
22 to the opposite side.

23 MR. MILLSTEIN: That's fine.

24 CHAIRPERSON SOCKWELL: But I think the neighbors,
25 and in particular perhaps Mr. Revis, could live with a little more

1 noise and a little less odor more effectively I would hope.

2 But there again it is up to you as representing
3 management to try to assure that the delivery vehicles are placed
4 advantageously, of course to the retailers and commercial
5 businesses that they support.

6 But at the same time so as to cause as minimal
7 disruption as possible to the residential owners who happen to
8 share that parking lot border with the commercial establishments.

9 MR. MILLSTEIN: And I agree with that, but the only
10 thing I want to be clear about is that we are talking about the
11 dumpsters themselves and not the deliveries. Like Morris Miller
12 would still want to be able to receive their deliveries in the
13 rear of their store.

14 CHAIRPERSON SOCKWELL: Oh, sure.

15 MR. MILLSTEIN: Okay. That's not a problem at all.
16 We can push it to the far side.

17 CHAIRPERSON SOCKWELL: I mean, the businesses have
18 been there for a long time.

19 MR. MILLSTEIN: Yes, sir.

20 CHAIRPERSON SOCKWELL: And anyone who purchased a
21 house since 1949 knew that those businesses existed there. This
22 is not something that grew up in the community, and separate from
23 the community. It grew up as part of the community.

24 So are there any questions by other Board Members
25 of Mr. Revis? Does the applicant have any questions of Mr. Revis?

1 MS. SHAW: No, sir.

2 BOARD MEMBER RENSHAW: I have an additional
3 question, Mr. Chairman. Mr. Revis makes the point in his letter
4 in the second paragraph that it has been within the last two years
5 that most of the spaces in your gateway development have been
6 leased.

7 Is that a problem with these spaces being leased,
8 or all of the spaces leased; or is it just for day traffic?

9 MR. MILLSTEIN: Ms. Renshaw, I don't want to speak
10 for Mr. Revis.

11 CHAIRPERSON SOCKWELL: No, she doesn't means
12 parking spaces. She means the buildings.

13 BOARD MEMBER RENSHAW: Yes, the buildings. Thank
14 you for clarifying.

15 MR. MILLSTEIN: Yes.

16 CHAIRPERSON SOCKWELL: Are there any more
17 questions?

18 MR. REVIS: May I add one more thing?

19 CHAIRPERSON SOCKWELL: Yes. Please go ahead.

20 MR. REVIS: Just one more thing. I know that this
21 parking lot is important to these businesses, and I am a
22 reasonable person, and I am not trying to deny anyone a
23 livelihood. And I am not trying to deny Douglas Properties their
24 money.

25 But all I am saying is that they have to coexist in

1 this neighborhood, and they can be more sensitive to it.

2 CHAIRPERSON SOCKWELL: Proactive perhaps?

3 MR. REVIS: Yes, sir. And I think it is a small
4 thing to ask, that at the end of the day that they do all that
5 they can to ensure that this lot is clean, and that it's -- well,
6 clean.

7 CHAIRPERSON SOCKWELL: And, Mr. Revis, since you
8 brought this up. Is there any benefit in your estimation to
9 locking the lot at night? Is there a benefit or is there a
10 liability to the community having the lot locked at night?

11 Is there any traffic that you have seen in the lot
12 late at night that is particularly detrimental to your feelings of
13 safety or comfort?

14 MR. REVIS: No, and I don't know how they could do
15 that without it being -- I don't know how appealing they could
16 make that, you know. It is okay that it is open.

17 CHAIRPERSON SOCKWELL: I just thought that I would
18 ask.

19 BOARD MEMBER RENSHAW: Just a further question.
20 Now I take it that the dumpster trucks come in from Kalmia Road
21 into the public alley, and then swing around; is that the way that
22 they do it?

23 MR. REVIS: Yes.

24 BOARD MEMBER RENSHAW: Would it be better for them
25 to access off of Eastern Avenue and come into the alley? Is there

1 an opening at the top?

2 MR. REVIS: Yes, Ma'am. There is an opening into
3 the parking lot from Eastern Avenue.

4 BOARD MEMBER RENSHAW: And would that be better for
5 the residents to have the trash trucks come in that way?

6 MR. REVIS: It would be better. I really don't
7 know why they don't.

8 BOARD MEMBER RENSHAW: Can they do that?

9 MR. MILLSTEIN: Let me say that the width of the
10 entrance is much narrower off of Eastern Avenue, and trucks would
11 have a hard time making the swing of the radius.

12 And also, Ms. Renshaw, I think it is important for
13 you to also know that on the other side of that 10 foot or 12 foot
14 public alley is back yards to homes all along there as well. So
15 there is a 12 foot buffer, but those are residences as well.

16 So we don't want to push one problem on to another
17 problem, but we want to make it better for everybody.

18 BOARD MEMBER RENSHAW: But these folks are closer
19 to the problem right now.

20 MR. MILLSTEIN: Yes, by 12 feet.

21 BOARD MEMBER RENSHAW: By 12 feet?

22 MR. MILLSTEIN: That's right.

23 BOARD MEMBER RENSHAW: But that is significant?

24 MR. MILLSTEIN: That's right. But it would be very
25 difficult for our trash truck to make the swing into that alley

1 off of Eastern Avenue, as opposed to Kalmia. It is not the same
2 width of the radius.

3 BOARD MEMBER RENSHAW: I take your word for it.

4 MR. MILLSTEIN: I appreciate that.

5 MS. PRUITT: I would just like to bring to the
6 Board's attention that it is 12 o'clock and you still have another
7 case this morning.

8 CHAIRPERSON SOCKWELL: Yes, I understand that. It
9 has been brought to our attention. Thank you. From this drawing
10 the mouth of the Kalmia access point, if we are talking about the
11 same access point to the parking lot, which alley entrance are we
12 talking about? I want to make sure that I understand.

13 MR. MILLSTEIN: This is the Kalmia Road entrance
14 here.

15 CHAIRPERSON SOCKWELL: So they both are 20 foot
16 wide alleys.

17 MR. MILLSTEIN: When you swing in here, it is
18 tighter here to make this turn.

19 CHAIRPERSON SOCKWELL: Oh, I see what you are
20 saying. Coming out of the parking lot into the alley.

21 MR. MILLSTEIN: Yes.

22 CHAIRPERSON SOCKWELL: So your loader comes in and
23 exits the same way?

24 MR. MILLSTEIN: Yes, sir. And also a 30 yard
25 compactor would need to have a bigger truck, a roll-off truck,

1 which is considerably longer.

2 CHAIRPERSON SOCKWELL: Yes, a roll-off truck is a
3 significant vehicle. There is a overhang over the rear wheels,
4 and it could present trouble.

5 MR. MILLSTEIN: Yes.

6 CHAIRPERSON SOCKWELL: Because the vehicle does not
7 have -- it is not an articulating body truck. It is actually a
8 flat bed truck.

9 MR. MILLSTEIN: Yes.

10 CHAIRPERSON SOCKWELL: So I know what the issues
11 might be. So I think that I can be somewhat sensitive to the
12 situation. Well, Eastern Avenue is quite wide. It is wide
13 enough, more than wide enough.

14 MR. MILLSTEIN: The street itself, but what happens
15 is you come down a narrow strip of alley before you actually enter
16 into the parking lot.

17 CHAIRPERSON SOCKWELL: Okay. Well, at least what
18 might be requested is that you have your truck drivers or whomever
19 you are using consider which way they can enter and/or exit.

20 If they can enter one way and exit the other way,
21 but not enter the other way, then that might take some of the
22 pressure off as well. If they can do a straight through motion --
23 because your angle going back towards Eastern Avenue doesn't seem
24 to be that bad from what I am looking at with these drawings.

25 And I have seen a lot of truck backing diagrams and

1 what not, and things like that.

2 MR. MILLSTEIN: Yes, we will pose it to them.

3 CHAIRPERSON SOCKWELL: Yes, pose it to them and see
4 what you can get out of them. But anyway that is just something
5 to think about at this point. Having exhausted all of our
6 questions, we would like to get closing remarks by the applicant.

7 Ms. Shaw, would you want to make those closing remarks.

8 MS. SHAW: Yes, sir. In conclusion, based on the
9 testimony of our witnesses, as well as the Office of Planning, the
10 Shepherd's Park Community Association letter, and the discussion
11 that has taken place here, and the conditions that the applicant
12 has agreed to, which I can go over right now, we would ask that
13 the Board grant a 10 year approval of this continued operation of
14 this accessory parking lot.

15 And we would submit a revised survey regarding the
16 compactor, and we would install the compactor as described by Mr.
17 Millstein in his testimony. Temporary dumpsters will be in place
18 until the time that that compactor is in place.

19 The compactor will be moved as described in
20 testimony. Rodent control will be contacted and contracted with.

21 The name of a community liaison, who works for Douglas
22 Development, will be given to the ANC for disbursement to the
23 neighbors for anyone who has a problem, and that person will also
24 respond.

25 There will also be an on-site roving parking

1 attendant making sure that the parking lot is well maintained, and
2 cleaned on a more regular basis. And food providers who have
3 retail spaces in the development will be alerted that there have
4 been issues with the community as to how they are disposing of
5 their trash, and they will be warned.

6 So, with that, I would just ask that the Board
7 approve the parking lot operation for a period of 10 years.

8 CHAIRPERSON SOCKWELL: All right. Board Members,
9 do you feel that we need to spend more time deliberating this
10 case?

11 VICE CHAIRPERSON REID: I think we should call for
12 a vote.

13 COMMISSIONER HOOD: No, Mr. Chair. I think we have
14 exhausted the subject. What I would like to do if it is
15 appropriate is to make a motion to approve Application 16656, and
16 also to add the conditions, the previous conditions, along with
17 the new conditions that we went over.

18 But we just need to make it plain exactly what the
19 conditions are, and with that, I would move for approval.

20 VICE CHAIRPERSON REID: I second it.

21 CHAIRPERSON SOCKWELL: Okay. Discussion?

22 BOARD MEMBER RENSHAW: Yes. I would like to amend
23 the motion that the term be for a period of five years as
24 recommended by the Office of Planning.

25 COMMISSIONER HOOD: I accept that, because I left

1 that out. Thank you.

2 MS. SANSONE: Mr. Chairman, did you wish to
3 consider the conditions recommended by the traffic experts
4 relating to signage?

5 CHAIRPERSON SOCKWELL: The traffic reports and
6 conditions, can you repeat those?

7 MS. SANSONE: Mr. Chair, they are stated in the
8 report at page 11; one or more signs along Eastern Avenue and
9 Georgia Avenue, faces of the retail center, indicating customer
10 parking in rear or a similar message.

11 The Kalmia Road access should be better defined
12 through the use of pavement marking and curving as necessary to
13 delineate the pass of vehicles and minimize inappropriate vehicle
14 and pedestrian conflicts.

15 And then he also recommends signage along Georgia
16 Avenue and Alaska Avenue adjacent to the retail center to be
17 enhanced to prohibit stopping and standing at all times. And he
18 has a note that this could compliment the informational signage
19 that he is recommending along Eastern Avenue and Georgia Avenue.

20 CHAIRPERSON SOCKWELL: Board Members, do you have
21 any problems with that?

22 BOARD MEMBER RENSHAW: Does the -- well, the ANC
23 did not make a statement about those conditions. Is there an
24 opportunity for the ANC to say anything at this point or are we
25 beyond that?

1 CHAIRPERSON SOCKWELL: I think the Advisory
2 Neighborhood Commission voiced its specific issues very clearly,
3 and that any additional conditions will just be enhancements, and
4 that the Advisory Neighborhood Commission should appreciate, as
5 they will in fact --

6 BOARD MEMBER RENSHAW: Well, the ANC, Mr. Chairman,
7 did not speak to signage, and I just wondered had that report been
8 sent to the ANC for review.

9 CHAIRPERSON SOCKWELL: I don't think we got a copy.
10 Oh, you are talking about --

11 MS. PRUITT: Mr. Sockwell, maybe I can help. This
12 report was filed timely, and so it has been in our office files
13 for at least two weeks.

14 CHAIRPERSON SOCKWELL: Okay.

15 MS. SHAW: I would like to make one point as far as
16 signage. The applicant is happy to instruct the retail tenants to
17 put signs saying parking in rear, et cetera. But it can't control
18 what signage would be put --

19 CHAIRPERSON SOCKWELL: Well, that's true. You
20 would have to approach the Department of Public Works regarding
21 any signage changes, and those are certainly up to DPW to approve.
22

23 And without a report from DPW assessing the traffic
24 impacts around the site, we can only assume that if such a report
25 did come in outside of our time period here that it would just

1 have to be incorporated in separately into anything that might be
2 desired by the applicant at that point.

3 And that it would not be then our responsibility to
4 condition. Let's see. I was looking to see if there were any
5 other --

6 MS. PRUITT: Mr. Chair, this is also where you have
7 to amend the application.

8 CHAIRPERSON SOCKWELL: Right.

9 MS. PRUITT: To change it from Section 214 to
10 Section 213.

11 CHAIRPERSON SOCKWELL: The first thing I would want
12 to do is to amend the application, and move that we amend the
13 application to reference Section 213 as the applicable provision.

14 MS. SANSONE: You can roll that into the one
15 motion.

16 VICE CHAIRPERSON REID: Yes.

17 CHAIRPERSON SOCKWELL: Well, then a friendly
18 amendment --

19 BOARD MEMBER RENSHAW: Another friendly amendment.

20 COMMISSIONER HOOD: I will accept a friendly
21 amendment, and let's move this along.

22 CHAIRPERSON SOCKWELL: Do we have any other
23 conditions that we haven't dealt with?

24 (No audible response.)

25 CHAIRPERSON SOCKWELL: And the record would remain

1 open for the submission of the redrawn parking lot plan, and what
2 else? Under the circumstances, I am going to go along with a five
3 year approval, because first of all this vote will be taken 10
4 years out of cycle, because the original order expired in 1990.
5 It has been 10 years, and so they have had 10 years of freedom
6 from us, and anything.

7 VICE CHAIRPERSON REID: Who has?

8 CHAIRPERSON SOCKWELL: The applicant.

9 VICE CHAIRPERSON REID: I don't think they have had
10 the property for 10 years. They have only had it for 5 years.

11 CHAIRPERSON SOCKWELL: Well --

12 MS. SANSONE: They only became aware of the parking
13 issue when they refinanced the property, and immediately moved for
14 a variance.

15 CHAIRPERSON SOCKWELL: But they have owned it since

16 --

17 BOARD MEMBER RENSHAW: Mr. Chairman, I would call
18 for the question, please.

19 COMMISSIONER HOOD: I would second it if that is a
20 motion, Ms. Renshaw.

21 CHAIRPERSON SOCKWELL: Well, that's fine. All
22 right. Then all in favor?

23 (A chorus of ayes.)

24 CHAIRPERSON SOCKWELL: Any opposition?

25 (No audible response.)

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MS. PRUITT: The staff will record the vote as five to zero to approve; motion made by Mr. Hood, and seconded by Ms. Reid, including traffic conditions as stated on page 11, and the conditions as stated by the applicant.

CHAIRPERSON SOCKWELL: And OP will amend its report as required and as necessary.

MS. SHAW: Thank you.

CHAIRPERSON SOCKWELL: The Board will recess at this point and return at 12:30.

(Whereupon, a luncheon recess was taken at 12:10 p.m)

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

4 (12:33 p.m.)

5 CHAIRPERSON SOCKWELL: We are back on the record.

6 Mr. Ellis, have you had an opportunity to at this point come to
7 some conclusions of your own, because I have some ideas of my own.

8 MR. ELLIS: Yes. If you want to go with your ideas
9 or do you want me to begin first?

10 CHAIRPERSON SOCKWELL: You go first.

11 MR. ELLIS: Thank you. Mr. Chair, in looking at
12 the regulations, and I understand from where the Chair is coming
13 from in the position that you have taken, but what we propose, Mr.
14 Chair, is that we are only asking the board to permit us the
15 building of the 20 feet in the rear yard that we have requested in
16 the application.

17 To the extent that it extends over the 20 feet,
18 that is a whole another -- we would have to get a building permit
19 somewhere else, and we would have to get it approved somewhere
20 else. That is not something that is actually going to be before
21 the board.

22 Indeed, since it is on Federal property, we would
23 first have to get the Federal Government to approve it, and then
24 we would have to get a building permit.

25 So therefore it is not something that we were -- we

1 were in showing the Board what the overall look of our project is,
2 and not so much as asking the Board to permit us to go beyond that
3 limit, because the board really cannot, nor does it have any
4 authority over the property outside of the limits of ours.

5 We are only asking the Board today to approve the
6 20 feet that we are asking in the rear yard of the hospital to
7 build the radiation oncology unit. We are not asking the board to
8 go beyond its authority by permitting something that the board
9 truly does not have authority to do.

10 CHAIRPERSON SOCKWELL: One of the questions that I
11 had, Mr. Ellis, is that if Sibley Hospital is in fact going to
12 request to purchase, or is requesting a purchase of land that will
13 be from this Army site, then if that purchase is to go through,
14 and a subdivided lot is created from the component of existing
15 land and acquired land, then under those circumstances there may
16 not be a request needed for a variance from 20 feet of rear yard,
17 because your new site -- unless you are only going to buy 10 or 15
18 feet of depth -- will have or will far surpass the minimum
19 requirements for rear yard.

20 And therefore I don't see how we can or whether we
21 should deal with the issue, not knowing what we are really
22 approving, because to approve -- let's say we approve a variance
23 from the 20 foot rear yard.

24 You acquire the new property, and now you are going
25 to create a new lot. That lot now has an 80 foot rear yard in it.

1 Where will we have dealt with the issues regarding rear yard for
2 your true property? I mean, we will be more or less saying, okay,
3 you can go back 20 more feet here, and then you buy a piece of
4 property that is a hundred feet deep, and you are only building 15
5 or 20 feet into it. So then you have an 80 foot yard.

6 So in knowing what is being requested and that
7 there is a large piece of property involved than the one that we
8 are presented with in terms of effective boundaries, it troubles
9 me that we are in this 20 yard issue at all.

10 MR. ELLIS: I understand. First, we are here
11 because, one, that purchase, although there is certain legislation
12 that has gone through, it has not been finalized. We don't know
13 what is going to happen with that.

14 There is a whole process that this must go through,
15 and it would be remiss for us to sit back and wait. We are
16 dealing with some very serious issues, and with people in need of
17 treatment. We are trying to move ahead to deal with the problems
18 that the hospital has.

19 We could be down the road well over a year before
20 we find out the finality of it, and then at that point we would be
21 starting this process. We have -- and as I stated, and I laid it
22 all out for the Board in my brief, that yes, we did start to apply
23 and to start to try to purchase this land.

24 I mean, I didn't want to come in here and not tell
25 the Board the honest facts here, but the reality of the situation

1 is that we have no idea to know what is going to ultimately
2 happen.

3 So we are now at the point where we need this
4 variance now to move ahead with the project, and that we need to
5 move ahead with now. And so to move ahead with it now, we need
6 the variance.

7 And it is in reality this -- it would be very
8 costly, because one, as you well know, the machinery that we are
9 talking about putting into these vaults, you go out and you
10 purchase this machinery, and you get contracts on this machinery.

11 And then you start talking about, well, we don't
12 know when we are going to be able to do it, the price of these
13 things as you negotiate goes up, and it makes certain things
14 prohibitive for the hospital to do.

15 And so what we are doing is that we are saying to
16 you in so many words is that we are looking at this project, and
17 we are trying to move forward with the project now.

18 Now, if we knew that we had this land, and as you
19 can see, you have read everything, and it would be a matter of
20 record, if we knew that we were going to have this land -- we
21 would not have paid the thousands of dollars, the \$1,600 for an
22 application, and we would not be coming here, and we would not be
23 doing this if we knew that we had the land, because we would be
24 doing it as a matter of right.

25 CHAIRPERSON SOCKWELL: Okay. Well, let me ask you

1 this question. With regard to the FAR, which is .9 versus 1.8, we
2 grant you the additional FAR, and you buy the bigger site, and now
3 you have 1.8 on this site, and you now have more land, and you are
4 going to build that to the maximum FAR allowed possibly. So we
5 have all these issues that we have to face.

6 MS. PRUITT: Excuse me, Mr. Sockwell, but I believe
7 this is Mr. Ellis' submission on -- under Exhibit 1, there is a
8 letter from the Army Corps of Engineers, which states that they
9 are not going to purchase it, but they are leasing the land. Is
10 that correct, sir?

11 CHAIRPERSON SOCKWELL: Currently.

12 MR. ELLIS: We are currently leasing the land --

13 MS. PRUITT: And that you have approval on the
14 land.

15 MR. ELLIS: -- from the Army Corps of Engineers.

16 MS. PRUITT: Subject to NCPC approval.

17 MR. ELLIS: Subject to NCPC approval, yes.
18 Although there is a push to purchase it, because if they surplus
19 it, and it has been surplused, then we would push and move for
20 legislation that has been signed. But there are still other steps
21 that you have to go through.

22 MS. PRUITT: I am just trying to understand. So in
23 reference, if we were to take this as this is how it is going to
24 go, and it is going to be leased, you are asking for a variance
25 from your property on the rear yard?

1 MR. ELLIS: That's correct, not from the
2 government's property.

3 MS. PRUITT: Right. It doesn't matter what you do
4 on the government's property if they give you approval.

5 MR. ELLIS: That's correct.

6 MS. PRUITT: And so the FAR would stay on your
7 property?

8 MR. ELLIS: The FAR would stay on our property.

9 MS. PRUITT: So the increase in FAR would all be
10 on your property, and whatever happened on the government's?

11 MR. ELLIS: That's correct.

12 CHAIRPERSON SOCKWELL: Well, remember this. If the
13 government sells the property to Sibley Hospital, the property
14 becomes zoned. The property would more likely acquire the zoning
15 of the rest of the lot.

16 MR. ELLIS: That's a safe assumption.

17 CHAIRPERSON SOCKWELL: You think that it is
18 reasonable to say that?

19 MR. ELLIS: Yes.

20 CHAIRPERSON SOCKWELL: And then that would allow
21 you .9 FAR on that property?

22 MR. ELLIS: Correct, with the additional land, and
23 yes indeed it would.

24 CHAIRPERSON SOCKWELL: And so we would have granted
25 twice the FAR allowed on the one site, and then the FAR fully

1 built out on the adjacent site to whatever its capabilities are.

2 I mean, the question is --

3 MR. ELLIS: Mr. Sockwell, if I may for a second.

4 You are saying twice the FAR.

5 CHAIRPERSON SOCKWELL: We are allowing you or you
6 are requesting 1.8 rather than .9; is that correct?

7 MR. ELLIS: No, that's not quite right. We have --

8 CHAIRPERSON SOCKWELL: Well, a maximum of 1.8, I'm
9 sorry. You are asking --

10 MR. ELLIS: No, 1.08.

11 CHAIRPERSON SOCKWELL: Is that 1.08?

12 MR. ELLIS: Yes, 1.08 is the FAR that we are
13 looking for. We are going from .9 to 1.08, which is -- you know,
14 technically, if you --

15 CHAIRPERSON SOCKWELL: Well, I looked at it from
16 the square footage standpoint.

17 MR. ELLIS: Well, the square footage is 460
18 something thousand square feet.

19 CHAIRPERSON SOCKWELL: The full build-out as I saw
20 it in your brief was that there was 566,819 total. Your new
21 proposal, inclusive of everything that has been built and what you
22 are requesting, would only be for 541,508.

23 MR. ELLIS: That's correct.

24 CHAIRPERSON SOCKWELL: And that included the
25 previously approved construction and the requested FAR transfer.

1 MR. ELLIS: No, no. We would have had -- if I
2 understood you correctly, the --

3 MS. PRUITT: Mr. Chair, based on the calculations,
4 wouldn't that be less than one FAR increase, from .8 to .18?

5 CHAIRPERSON SOCKWELL: Well, we will forget the
6 points, because I looked at it more in the square footage. What I
7 wrote down was the R-5-A,
8 R-5-B differences.

9 MR. ELLIS: Actually, Mr. Chair, if you look on the
10 computation sheet, and I will have our architect, Mr. Oudens,
11 speak to that. But if you look on the computation sheet, 541,508
12 square feet is what we are asking for now.

13 CHAIRPERSON SOCKWELL: Correct. That's what I
14 said.

15 MR. ELLIS: And that is 1.04, which is actually
16 even less than what we just originally stated.

17 CHAIRPERSON SOCKWELL: Okay.

18 MR. ELLIS: So we are not asking for that much in
19 terms of overall FAR, all right? So if you were -- you said a
20 moment ago that we would be doubling it, and --

21 CHAIRPERSON SOCKWELL: I'm sorry, that was in
22 error. I retract that. It was just that the actual square
23 footage numbers I had absolutely on point. I just mis-wrote down
24 what I was looking at as your maximum allowed FAR and I apologize
25 for that.

1 MR. ELLIS: Okay. And even if we bought the --

2 CHAIRPERSON SOCKWELL: But that doesn't change
3 anything.

4 MR. ELLIS: Okay. Even if we bought the new site,
5 it doesn't mean that you have doubled or even substantially
6 increased on one site, because if we combine the two sites, the
7 FARs for the two sites combined together, and not one as opposed
8 to the other.

9 So the FAR would still be utilized throughout the
10 whole site. So you would not have bunched it up on one site.

11 CHAIRPERSON SOCKWELL: Yes, that's true. You would
12 wind up back here again.

13 MR. ELLIS: I'm sorry, I don't follow that.

14 CHAIRPERSON SOCKWELL: I'm just kidding that you
15 might find yourselves back up here again, but the point is that it
16 is the rear yard issue that I am most concerned about, because if
17 we are granting a rear yard variance, and usually when we grant a
18 rear yard variance, we know exactly what is being proposed to be
19 built.

20 In other words, we know the dimensions of the
21 building, or construction, or structure. In this case the
22 dimensions that have been provided to us extend on to property
23 that we have no control over because it crosses the property line.

24 And yet rather than what I think personally is a
25 variance of the rear yard requirement, to me is an abandonment of

1 the rear yard requirement because the construction goes beyond the
2 normal lot control issues and crosses on to the adjacent site.

3 MR. ELLIS: Can I address that issue for a second,
4 please?

5 CHAIRPERSON SOCKWELL: Yes, please.

6 BOARD MEMBER MOULDEN: Mr. Chair, I have a pretty
7 important question to ask the applicant. The National Capital
8 Planning Commission received a submission from the Army Corps in
9 lieu of zoning to build an addition for Sibley Hospital?

10 MR. ELLIS: Yes.

11 BOARD MEMBER MOULDEN: But a few minutes ago, you
12 said that you are not requesting any zoning relief for the portion
13 to be built on the Federal Government property?

14 MR. ELLIS: Not here. We are requesting it, but
15 not here, because here is not the appropriate forum to request
16 zoning relief to be on Federal property.

17 BOARD MEMBER MOULDEN: I know that, because I work
18 with the Commission.

19 MR. ELLIS: I know you do. I know you do, and so
20 that's why I was making that distinction.

21 BOARD MEMBER MOULDEN: And in this application, you
22 are asking for a transfer of excess floor area ratio, and this is
23 for the entire site. Am I correct?

24 MR. ELLIS: You are correct. Technically, if we
25 had known that this was going to be really an issue, we would have

1 reduced the -- to the extent of being 541,000 square feet, it
2 would be even reduced from that.

3 MR. OUDENS: No.

4 MR. ELLIS: Yes, it would, because it would not all
5 be on that same site.

6 CHAIRPERSON SOCKWELL: The appearances that --

7 MR. ELLIS: Well, my architect disagrees with me,
8 and so let me just --

9 BOARD MEMBER MOULDEN: Well, I am talking about the
10 process point. It may appear to me that you are putting the card
11 before the horse. There are a number of processes that you have
12 to go through at the Federal and local government levels.

13 If we approve the zoning today before the Federal
14 Government's approval in lieu of zoning, and not counting the
15 transfer or sale of the property, because as I understand it this
16 is just a lease agreement on the land.

17 MR. ELLIS: Correct.

18 BOARD MEMBER MOULDEN: So I am a little confused as
19 to --

20 MS. PRUITT: Mr. Moulden, what would happen is that
21 if the Board approved this and NCPC did not, it couldn't go
22 forward and so it would be moot.

23 BOARD MEMBER MOULDEN: Well --

24 MS. PRUITT: So you are not taking away the
25 Federal's rights or any of its power to rule over its particular

1 portion of the land.

2 CHAIRPERSON SOCKWELL: The 521,880 square feet
3 shown in the computations as a lot area includes what?

4 MR. OUDENS: I am Gerald Oudens, the architect for
5 the hospital; of Oudens and Knoop Architects, 2 Wisconsin Circle,
6 Chevy Chase, Maryland 20815.

7 The 521,880 square feet is the area and square
8 footage of the 11.98 acres that the hospital currently owns and
9 upon which most of this addition for radiation oncology will be
10 built.

11 Back in 1998, March of 1998, the Board of Zoning
12 Adjustment authorized an increase in the FAR to 1.08 in order that
13 the hospital might build assisted living and skilled nursing
14 facilities on their property.

15 In fact, that increased the permitted gross floor
16 area on the property to over 569,000 square feet. That project,
17 as constructed, totals about 530,000 square feet. So in effect
18 the FAR required to build this radiation oncology has been
19 granted, but it was not granted for this project.

20 So what this application is for is for the transfer
21 of previously permitted construction to a different use. Now,
22 this different use, the radiation oncology addition is about
23 14,000 square feet, and 11,000 square feet of that resides on
24 hospital owned property.

25 And 3,000 square feet is on Federal property. The

1 11,000 square feet is what we are asking for to be transferred
2 from the original FAR use to this new use, and when you add 11,000
3 square feet to the 530,000 square feet that currently exists on
4 the property, we are at 541,508 square feet. That is what the
5 application is for.

6 The Army Corps of Engineers, because they own the
7 Federal property upon which we propose construction, the Corps of
8 Engineers has submitted and requested from the National Capital
9 Planning Commission authorization to permit Sibley to build this
10 3,000 square feet on Federal property.

11 But the application before the Board is to build
12 11,000 of that within the existing situation, which is hospital
13 owned property. Eventually there is the matter of the acquisition
14 of this property, and if and when that happens, we would have as
15 you point out a very different case.

16 But the case as it exists right now, in order for
17 the hospital to proceed with this project, they do need several
18 things. One is a transfer of FAR to a new project. The second is
19 relief from the 20 foot rear yard, since in the existing
20 circumstance we are building into that rear yard.

21 And third is permission from the Government to
22 build on Federal property for which a zoning permit and so forth
23 authorization is not required.

24 We are speaking of the situation as it exists
25 today, because the hospital has a project that they simply have to

1 get on with.

2 CHAIRPERSON SOCKWELL: And, Mr. Oudens, that was
3 very clearly stated. I think that it is probably more clearer in
4 your statement than it was in the brief. But one of the issues
5 that has been placed consistently throughout the brief is the fact
6 that the property would be sold, or is intended to be sold, to the
7 hospital by the Army Corps.

8 And that Congressional legislation has been
9 approved -- and I think it said signed by the President or
10 whatever -- for that purpose. So the ultimate is that this will
11 become a part of the property holdings of Sibley Hospital.

12 As far as we know, we have no idea how much
13 property is involved, and what issues are involved, and what you
14 are saying is that -- or what I believe you are implying is that
15 the rear yard relief requested is a stop gap measure in the best
16 of worlds where the property is assessed.

17 And that the hospital can afford to purchase it,
18 and in the worst of worlds, that long lease and covenant will be
19 provided running with the Federal portion of the land if such
20 covenants are even legal with Federal land, which I don't know,
21 because you are getting into an area where Government liability is
22 sort of a gray area to me in the detailed area of such covenants.

23 So we are looking at something that doesn't conform
24 to the normal zoning review and approval process, and that there
25 are elements that are somewhat different.

1 MR. OUDENS: Let me respond if I may, Mr. Chair.

2 MR. ELLIS: And I would like to respond, too. We
3 both would.

4 MR. OUDENS: Hopefully the hospital will own the
5 Federal property, but it doesn't at the moment. If and when the
6 hospital does own the Federal property, then two things will
7 happen, vis-a-vis variances that have been already accorded.

8 If you were to approve the rear yard variance and
9 the hospital gained that property, then that variance would no
10 longer exist, and it would not be required.

11 Similarly, the Board has approved an increase in
12 FAR for the hospital property. Should the additional property be
13 purchased, acquired, and consolidated, that original and earlier
14 variance of 1.08 times the hospital property area, would be
15 subsumed into the new area.

16 In other words, the credit that the hospital has
17 been given in terms of additional space would now --- that the
18 hospital would own the property necessary to create that space by
19 right, and in fact they would no longer have a variance for FAR,
20 and they would no longer have a variance for the rear yard.

21 CHAIRPERSON SOCKWELL: Right. They would be
22 working strictly on a matter of right for those things.

23 MR. OUDENS: Right. But the issue is one of time.
24 As I said, hopefully the hospital will eventually own that
25 property, and we are talking about the present, which necessarily

1 at the present, since the hospital doesn't own that property, is
2 that the hospital comply with the zoning regulation.

3 And if we look to build in the rear yard as it
4 currently exists, then we need to seek a variance for that
5 construction, and that really is what this application is about.

6 If we were to wait until the property is acquired,
7 consolidated, a map amendment issued to convert it from a
8 Federally owned zoned property to a District of Columbia zoned
9 property, the time involved in each of those steps is extensive.

10 We could be talking about starting a project a
11 year-and-a-half or two years from now, as opposed to hopefully six
12 months or so from now.

13 CHAIRPERSON SOCKWELL: All right.

14 MR. ELLIS: And if I may add to the mix one other
15 thing, and that is that the assumption is that because the
16 President signed that this is a done deal.

17 CHAIRPERSON SOCKWELL: No, that's not our
18 assumption here.

19 MR. ELLIS: Okay. It is not, and so we have to
20 move ahead. If we knew -- and to be clear, if we knew that this
21 land was in our bank, and we knew that we were going to have it
22 very shortly, we would not be sitting here. We would not be
23 wasting the board's time. And so we are moving ahead because this
24 is something that we need to move ahead with.

25 CHAIRPERSON SOCKWELL: Well, I think based on the

1 discussion that we have had here, I think we can move forward with
2 the case on the basis of a rear yard variance, knowing and
3 realizing that there will be reviews and approvals at other agency
4 levels which may restrict or may guarantee your ability to build
5 prior to purchasing and creating a single subdivided lot of record
6 for this construction.

7 BOARD MEMBER MOULDEN: But I guess the anchor is
8 that there is a lease agreement, and the lease agreement makes it
9 more official, because when this goes to NCPC next month, they may
10 ask has the zoning board, has the BZA made all the approvals, and
11 vice versa, and we are asking that now.

12 To me it may have looked better if the NCPC had
13 made all its approvals, and then it came to the BZA.

14 CHAIRPERSON SOCKWELL: The covenants won't be in
15 place for any construction. I believe that under DCRA's rules
16 that it would be interesting to see how they approach the permit
17 process.

18 But from the standpoint of granting or considering
19 a rear yard relief variance, while I do think it is a very
20 complicated set of circumstances, I think we probably can go
21 forward with that and see how the case is presented. Board
22 Members.

23 MS. SANSONE: Mr. Chairman, if I may ask one
24 question of the applicant, of Mr. Ellis. Since the Board, if they
25 grant these variances, the order is considered to also approve the

1 plans for the facility.

2 Is there any likelihood that as a result of your
3 NCPC or other reviews that you would be needing to come back to
4 the Board for modification of those plans?

5 MR. ELLIS: If NCPC were to tell us that we could
6 not build on the Federal land, then essentially we would have to
7 scale back to be totally within the boundaries of what we have
8 now, and we would have to do some scaling back.

9 MS. SANSONE: So your intent would be to come back
10 to the Board and request a modification of the plans in response?

11 MR. ELLIS: If NCPC were to reject it, we would
12 have to have some modification of the plans, yes, we would. But I
13 think what we are talking about is something that would be fairly
14 minor.

15 CHAIRPERSON SOCKWELL: Ms. Sansone, based on your
16 question, do you believe that it would be more appropriate that we
17 hear the case and withhold an issuance of an order until it is
18 clear what will be built?

19 The issue is again whether or not we are approving
20 plans that are accurate to what can be built, or whether they are
21 plans that are contingent upon other than the normal review and
22 approvals that would -- because normally we would come as a
23 building permit application referred often.

24 It comes as a building application referred. In
25 this case this is going to have to go through other agencies

1 before it can become a building permit, because it is a straight
2 referral is it not?

3 MR. ELLIS: No, we filed for a building permit, and
4 they have sent us over from the zoning administrator's office. So
5 it came as a regular course.

6 CHAIRPERSON SOCKWELL: So it did come in regularly.

7 MR. ELLIS: And let me just say this. This is not
8 the first case that has been before this Board that needed NCPC
9 approval or some approval of some other board.

10 CHAIRPERSON SOCKWELL: Oh, I would not hesitate to
11 believe that at all, but my issue is more that we are dealing with
12 a boundary line between properties, one of which in particular is
13 Federal, the issues of which are particularly different from those
14 of typical private property.

15 And the issue of granting relief for construction
16 outside of the property line that is not on public space, and
17 without first having something to really hang our hats on that
18 says that this can be built one way or the other.

19 And that again relates in part to the issue of the
20 fact that it is Federal property, and in part to the fact that it
21 is not in single ownership to the sites that are involved, and in
22 part because there are no covenants in place that would grant this
23 approval. The only thing that is in place is a lease.

24 MR. ELLIS: It is a lease and a letter saying that
25 they approve us doing this. And let me be clear about something.

1 CHAIRPERSON SOCKWELL: Right. But the letter
2 approving does protect the government, and the covenant protects
3 Sibley Hospital.

4 MR. ELLIS: Right. But let me just say that in may
5 of these cases where we have come before the Board, and parking
6 has been an issue in some of the cases, we park a considerable
7 amount of our cars off-site on this Federal land.

8 Approvals have been forthcoming and what we are
9 saying here now is that this is the beginning of a process that we
10 are trying to do, as most applicants that have to go to multiple
11 jurisdictions for approval.

12 If the Board gives us the approval here that we are
13 seeking, NCPC does have to pick up the ball, but so does SHPDA,
14 and there are others that are out there that have to. I mean,
15 when you deal with a hospital, you have lots of approvals that
16 have to be gotten.

17 And in our case now we have NCPC, but I think if
18 the Board were to give us a decision, NCPC has before it that at
19 least this Board has given its approval, and it takes a look at it
20 from the Federal interests, which is what they are supposed to do,
21 and they will say if there is a problem with it.

22 And they are going to look at what the Army Corps
23 of Engineers' position is on it, and then they will deal with it
24 using their regulations, and they will come to a decision.

25 And as I stated earlier, if they for whatever

1 reason decide no, we have to come back. But if any group decides
2 no in the process, there has got to be a change.

3 So that happens and any time that you have multiple
4 jurisdiction cases, along the line one person or one organization
5 says no, or you must change this, it means that somewhere you have
6 to go back to somebody and say I need to change this. It just so
7 happens that it is this board here.

8 CHAIRPERSON SOCKWELL: All right. I understand
9 that you have to step sell this. The question is not what step
10 you use first. It is how we build the step if we buy what you are
11 selling.

12 MR. ELLIS: And I fully understand that.

13 VICE CHAIRPERSON REID: Mr. Chair, if I may.

14 CHAIRPERSON SOCKWELL: Yes.

15 VICE CHAIRPERSON REID: I think the fact that this
16 particular application appears to be one of those that is not
17 unsimilar to the ones that we have had with George Washington
18 Hospital, we had an applicant who is basically a multiple tracking
19 type of thing, wherein there are various and sundry permits and
20 licenses, and the like to obtain prior to anything being
21 operative.

22 And I think that this is just one step in a series
23 of steps, and whether or not we grant approval here or not is
24 really irrelevant to the whole process, in the sense that if we
25 did grant approval -- let's say that we were inclined to do so,

1 that does not automatically mean that we will go forward.

2 This is just one of the steps within the process,
3 and whether you get approval here, that would not negate them the
4 necessity of them having to go to these other various stages.

5 And at any point in time when that is assessed or
6 analyzed, regardless of what track they are in, it could be turned
7 down on its own merits based upon whatever those requirements are.

8 CHAIRPERSON SOCKWELL: Yes, it could. The
9 relevance of our approval is in that it builds the momentum for
10 approval, and you said that it may not be irrelevant.

11 VICE CHAIRPERSON REID: I don't agree with that.

12 CHAIRPERSON SOCKWELL: Well, let's say if we did
13 not --

14 VICE CHAIRPERSON REID: May I?

15 CHAIRPERSON SOCKWELL: Yes. I was responding when
16 you had stopped.

17 VICE CHAIRPERSON REID: But I wasn't finished. No,
18 I didn't stop.

19 CHAIRPERSON SOCKWELL: Well, then continue, and I
20 will wait.

21 VICE CHAIRPERSON REID: Because if in fact an
22 application receives BZA approval, then it has to go further, and
23 we have seen applications approved here and not be able to get
24 approved --

25 COMMISSIONER HOOD: Let me just echo Vice Chairman

1 Reid's issue, and with that I would make a motion, colleagues, if
2 it is in order, that we proceed with this case.

3 VICE CHAIRPERSON REID: Okay. Right.

4 CHAIRPERSON SOCKWELL: And I will second the
5 motion. Any discussion?

6 COMMISSIONER HOOD: I did that because the dialogue
7 seems to be going back and forth, and I think that everybody is in
8 agreement to move forward. If we are in agreement, then I would
9 take the motion off the table.

10 CHAIRPERSON SOCKWELL: Okay. Let's move forward.
11 Go ahead.

12 VICE CHAIRPERSON REID: But I think the question
13 that we are trying to ascertain and the question to Counsel
14 Sansone is can we proceed.

15 MS. SANSONE: Yes, Ma'am Chair. I was just trying
16 to follow a little bit on Mr. Moulden's concerns.

17 VICE CHAIRPERSON REID: Okay.

18 MS. SANSONE: And ascertain that the plans, if
19 there are any changes that come down the pipe, that the applicant
20 would come back.

21 VICE CHAIRPERSON REID: If they have to.

22 MS. SANSONE: If they have to.

23 VICE CHAIRPERSON REID: Okay.

24 CHAIRPERSON SOCKWELL: Please present your case.

25 MR. ELLIS: For the record, Mr. Chair, again I am

1 Craig Ellis, and I am counsel for Sibley Memorial Hospital. As I
2 stated earlier, we have several witnesses here. With me to my
3 right is Jerry Price, who is the chief operating officer for the
4 hospital, who will give us an overview of the program, and what is
5 intended to be achieved here.

6 Next to Mr. Price, we have Dr. Irene Gage, and next
7 to Dr. Gage, we have Mr. Gerald Oudens, who you have already meet.

8 As I stated earlier, we are here for two variances; a variance
9 from Section 404, the minimum rear yard, which we have talked so
10 much about.

11 And lastly a variance to allow the transfer of
12 excess floor area ratio under BZA Order 16312 for the construction
13 of a CBRF on the subject site to a proposed addition of the
14 radiation oncology unit.

15 I would just proceed with Mr. Price. Mr. Price,
16 can you state your full name for the record, please?

17 MR. PRICE: I am Jerry L. Price.

18 MR. ELLIS: And can you tell us what your position
19 is, please?

20 MR. PRICE: Chief Operating Officer at Sibley
21 Hospital.

22 MR. ELLIS: And can you tell us about the radiation
23 oncology program that you are proposing?

24 MR. PRICE: Sure. Let me just first of all thank
25 everyone for allowing us to go forward to present our case. We

1 think we will be able to do so quickly and succinctly.

2 And you will agree with us that it wouldn't be wise
3 for us to wait. Let me also say that we have our first hearing
4 with the State Health Planning Development Agency this week.

5 The project review committee will hear our request
6 for a certificate of need. The staff of the State Health Planning
7 Development Agency has already produced their report, where they
8 recommend approval of our project.

9 So that is one of the regulatory hurdles that we
10 anticipate clearing. We are building this radiation oncology
11 project to better serve the community where the hospital is
12 located.

13 We were approached probably 3 or 4 years ago by a
14 number of our physicians who said that your radiology oncology
15 services are not good enough, and they need to be upgraded.

16 This related to technology and it also related to
17 the physicians that we had. I might say at that point that we
18 terminated the contract with the physicians that we had in the
19 department and hired a new physician by the name of Irene Gage.

20 We hired Dr. Gage from Hopkins, and she is with us
21 here today, and she will speak specifically concerning the need
22 for this project. But as a result of hiring top quality
23 physicians, the workload in this area has more than doubled.

24 We are left with some untenable situations, in
25 terms of where people wait, and the way that people are mixed with

1 our in-patients, some things that don't enable us to procure the
2 kind of technology that we now need to have.

3 Our technology in this area is about 14 years old.

4 These learning accelerators, the new ones, do not work in the
5 vaults that we currently have, and you will hear more about that
6 from Dr. Gage.

7 What I would like to just address for a couple of
8 minutes is our working relationship with the community. We have
9 several residents who live in the 5200 block of Loughboro Road who
10 are supportive of this project, and who have gone on record to say
11 so.

12 There is one of those residents who is here today.

13 As a matter of fact, the individual who lives directly across the
14 driveway from the hospital is here today to indicate his support.

15 We also have the support of the Palisades Community
16 Association and the President of the Palisades Community
17 Association, Penny Pagano, is here with us today, and I think her
18 statement is a part of the record.

19 Ms. Pagano, about two months ago, appointed a task
20 force of representatives from the community to deal with the
21 hospital on issues of concern to the community, and residents of
22 the 5200 block were included.

23 In fact, Ms. Shaughness was included in that, and
24 we have agreed -- and as you can see from the documentation that
25 came from the ANC-3D that we have agreed to work with the

1 community to discuss the idea of providing bus, boarding and
2 layover bays for metro buses and ride-on buses on the Little Falls
3 Road behind the hospital if the road bed is suitable.

4 And we are checking that out right now. We have
5 agreed to a number of other things, in terms of relocating bus
6 stops in the community, and I might also say that the 1400
7 employees that do work at Sibley Hospital, far greater than
8 probably 95 percent of them drive their automobiles, as opposed to
9 ride the metro buses.

10 So the metro buses exist for the community as a
11 whole, and not just for our hospital. We also have agreed to
12 install landscaping to ameliorate some of the issues that you will
13 probably hear about a little bit later on from the neighbors.

14 And we have just received some information back
15 from our landscape architect, and we will be setting up a meeting
16 with this community group that Ms. Pagano has appointed to present
17 our landscaping, our comprehensive landscaping plan for that.

18 We have also agreed to try to find ways to
19 ameliorate some of the concerns that they have with the parking
20 lights at our skilled nursing facility. We have agreed that the
21 construction traffic for this project will enter and exit off of
22 DeCarlo Parkway so that there will be no -- and we can control
23 this, but that there will be no dump truck and construction
24 traffic on Loughboro Road.

25 We have also agreed that all of their workers will

1 park on our site, as opposed to parking on neighborhood streets,
2 which is something that we always do for our projects.

3 So I might also point out that Mr. Patrick
4 Shaughness is here with us today. I don't know if he is going to
5 be giving any testimony, but he was the ANC Commissioner that
6 actually sponsored the resolution which led to the five to nothing
7 approval by the ANC-3D of this project.

8 We had a total of seven meetings with the
9 community, and with the combination of ANC and Palisades Community
10 Association, and this was discussed with the community at length.

11 And as you see from the documentation that you
12 have, it was eventually approved unanimously by the ANC. We have
13 always acknowledged our neighbors, and we have always done the
14 very best that we could to work with them, and we will continue to
15 do that.

16 You can find testimonies from neighbors who live
17 directly across from the hospital of what a good neighbor the
18 hospital has been, and hopefully you will hear some of that today.

19
20 So that is really the end of my statement, and I
21 would be available to answer any questions that you may have.

22 MR. ELLIS: Mr. Chair, can I move on to my next
23 witness?

24 CHAIRPERSON SOCKWELL: Yes, go right ahead.

25 MR. ELLIS: My next witness is Dr. Gage, and Dr.

1 Gage, would you state your name for the record?

2 DR. GAGE: Irene Gage.

3 MR. ELLIS: And where do you live?

4 DR. GAGE: I live in Chevy Chase, 7905 Glendale
5 Road.

6 MR. ELLIS: And where do you work?

7 DR. GAGE: Sibley Memorial Hospital, Department of
8 Radiation Oncology.

9 MR. ELLIS: All right. Can you tell us
10 specifically about the radiation oncology unit that is proposed to
11 be added to the hospital?

12 DR. GAGE: Sure. Thank you for the opportunity to
13 speak on behalf of -- I really represent my patients. The impetus
14 for this project really stems from our inability to provide the
15 best care for our patients in the present physical plan on a
16 couple of levels.

17 One is that there is not the physical space for
18 patients to have any measure of privacy, and to have independent
19 changing areas. Mr. Shaughness actually came to tour the
20 department and said that he felt that we might be able to apply
21 for a variance because of really significant problems that he
22 found in our department.

23 The other issue is the lack of our ability to get
24 new technology in the existing space. We have space that was
25 designed 20 years ago for technology that was 20 years old, and we

1 need to update this equipment.

2 And those are really the issues, in terms of
3 providing for a new space for the department. The existing space
4 can't be modified. There is shielding requirements and space
5 requirements, and some of the newer technology as well. So I am
6 really here to appeal for my patients.

7 MR. ELLIS: If there are no questions, I would move
8 on to our next witness, Gerald Oudens.

9 MR. OUDENS: Good afternoon. My name is Gerald
10 Oudens, and I am here to testify about the physical facts of the
11 application as they relate to the zoning regulation on the site
12 plan, and the hospital property, bounded by Loughboro Road and
13 residential neighbors to the south; McArthur Boulevard, and the
14 Delcarlia Treatment Plant to the west, and the Delcarlia Parkway
15 to the east; and Federal property of the Delcarlia Reserve owned
16 by the U.S. Army Corps of Engineers to the north.

17 The comments that Mr. Price made about landscaping
18 and so forth have to do with the project that is currently under
19 construction and nearing completion, and have no direct bearing on
20 our proposed project here behind this Hays Hall facility.

21 The current radiation oncology department as Dr.
22 Gage has noted was designed in 1987, really as an adjunct to the
23 Department of Radiology, which occupies this part of the building.

24 It is in basement space.

25 It has vaults that will not accommodate current

1 equipment requirements, and it is impractical to try to expand
2 that department in place to accommodate the service. The space
3 needs simply cannot be met in that location.

4 I would further note that as basement space, it is
5 relatively inaccessible to 95 percent of the people who use the
6 service; that is, outpatients. Five percent of the people using
7 the service are in-patients.

8 A better answer -- and we had explored renovation
9 opportunities in this location, but a better answer is a one-story
10 addition behind Hays Hall, which offers the relationships, the
11 space, subject to the required variance and the required approvals
12 by NCPC behind the Hays Hall building over here at the north side
13 of the site.

14 The project includes approximately 14,000 square
15 feet of new construction, of which 11,000 is on hospital property,
16 and about 3,000 is on Federal property. Here is the boundary line
17 between the hospital owned property and the lease property.

18 The hospital property is about 12 acres, and the
19 lease property is about 8-1/2 acres, and as I mentioned earlier,
20 an FAR variance was approved in the amount of 1.08 for the
21 hospital owned property, permitting us to build approximately
22 570,000 square feet, permitting the expansion, the major expansion
23 of the hospital for these assisted living and skilled nursing
24 facilities to the west.

25 During the development of the project that FAR was

1 not required, and we were able to complete that project for
2 530,000 square feet of the 569,000 feet plus that had been or
3 would have been permitted.

4 We are now seeking to use that authorized FAR to
5 construct a different project than the one for which the FAR
6 variance was originally proposed, and that is this radiation
7 oncology addition.

8 As I mentioned earlier, this portion of the project
9 has to be approved by the National Capital Planning Commission and
10 the Army Corps of Engineers has submitted the necessary
11 application and back up for that review process.

12 In all likelihood in our estimation that will be
13 approved because the Army recommended and the National Capital
14 Planning Commission recommended construction of tiered parking
15 over here on this leased property here at the west side of the
16 property, and over here to the east.

17 This addition, I believe, will be considered
18 dominus and I would hope that we would achieve approval for it.
19 As noted earlier, we have a service drive now that is on our
20 property and comes into the property, and swings through here and
21 back out to Loughboro Road.

22 Our project will span that service drive, closing
23 it. The proposal is that we shift that -- and that service drive
24 accommodates both service vehicles and ambulances, all of which
25 either enter from Delcarlia for traffic coming from the east, or

1 from Loughboro Road for traffic coming from the west and south.

2 Our proposal is that in closing this road that we
3 shift that traffic, such that the route is back here on Little
4 Falls, and we provide a cut through drive directly to the
5 emergency department here, and then beyond the dietary service
6 dock, and the medical supply service dock.

7 There actually would be no change in traffic,
8 except to the extent that ambulance approach would be improved.
9 Ambulances arriving from the north on McArthur Boulevard now have
10 to come down and manipulate this intersection, and come into the
11 site here, and up through the service drive, and around behind to
12 get to the emergency department.

13 By providing this cut through, ambulances will be
14 able to enter the site here from McArthur Boulevard, move along
15 Little Falls Road, and then into the emergency department at this
16 point. Beyond that there is no significant difference in the way
17 service or ambulance traffic will enter the site and move through
18 it.

19 I would like to tell you briefly about the plan to
20 help you understand why the shape, the configuration, the need for
21 the variances are required. Literally, the plan is organized in
22 four zones.

23 We have outpatient reception here from the current
24 Hays Hall entrance door to a reception area here, or from parking
25 to the north through this aisle to this reception area.

1 This portion of the plan is patient reception and
2 staging. The core of the plan is a nurses station, and
3 examination and consultation rooms. Over here on this side of the
4 project, we have the backup support space of offices and so forth,
5 and here along the north the treatment facility, et cetera.

6 Now, each of these interrelates. It is important
7 that the patient reception area relate to the diagnostic and
8 consultation area, and to the treatment area. It is important
9 that the backup support relate to these two areas. It is
10 important that patients be able to access office and consultation
11 facilities in an easy manner.

12 So you can see that that set of relationships --
13 the patient, and nursing corps, and support corps, and treatment
14 corps -- sets up a geometry for the project that results in this
15 configuration, and that is a product of the function and its
16 relationship to the site.

17 Hopefully the National Capital Planning Commission
18 will approve these vaults in these locations because any
19 replanning to reorganize this complex would inevitably result in a
20 facility that is less effective.

21 I noted that this is a one-story addition, and with
22 a maximum height that these vaults would have is 18 feet, and that
23 concludes my testimony. Thank you.

24 MR. ELLIS: Mr. Oudens, just to be clear, is there
25 any other place within the property or on the site plan that you

1 have there that you could have placed this property and still have
2 it useable for the hospital?

3 MR. OUDENS: Well, I think that this is the ideal
4 location, in terms of access to 95 percent of the patients who use
5 it are here from the visitor parking side or from this parking
6 that would be dedicated to radiation oncology use.

7 It is very easy access for outpatients, but at the
8 same time the vicinity has plans that we get easy internal access
9 for the five percent of the patients who come from the hospital
10 and need access to the facility.

11 I can conceive of no other location on campus that
12 gives you that good set of circumstances. Furthermore, I think
13 that the location from the standpoint of not only the hospital and
14 its internal relationships, but the community and the impact, I
15 can't imagine that this would have an adverse impact on the
16 community visually.

17 But nevertheless it is here over here on the north
18 section of the site, and the construction will be contained, and
19 the building will be contained, and in fact away from the
20 community and for the residents who would have a concern for the
21 project.

22 MR. ELLIS: No further questions. Thank you.

23 CHAIRPERSON SOCKWELL: Board Members.

24 VICE CHAIRPERSON REID: I have one question very
25 quickly. In regard to some of the issues that have been raised

1 with regard to obvious impact by persons and community, how do you
2 perceive that actually being mitigated if necessary as to the
3 issues in regard to noise, or traffic, or congestion, and things
4 of that nature?

5 MR. OUDENS: Well, this facility, the current
6 facility, was planned in 1987 for 30 patients a day. That
7 caseload. as Dr. Gage has testified, has now increased to
8 approximately 70. This proposed facility does not intend or does
9 not look to expand that caseload, but simply to handle it in a
10 more responsive facility.

11 It is estimated -- and I think that Dr. Gage and
12 Dr. Sibley now could address this, and that it is estimated that
13 the caseload in this facility will stay on the order of 70 or 80
14 patients a day.

15 The additional traffic -- in other words, what I am
16 saying is that the patients who are here now, we don't see this
17 project adding to traffic, or noise, and we don't see that the
18 project use would have an adverse impact on the community.

19 VICE CHAIRPERSON REID: So in other words, even
20 though the space is expanding, the intended use remains the same?

21 MR. OUDENS: Yes.

22 VICE CHAIRPERSON REID: Thank you.

23 BOARD MEMBER MOULDEN: I would like to know --
24 well, I guess this is maybe taking a question away from the ANC
25 rep, but what was your community outreach process, or what is your

1 community outreach process when the hospital plans to expand?

2 MR. PRICE: I can address that. What we usually do
3 is that we go to the Palisades Community Association first,
4 because we like them to be in a position to provide a
5 recommendation to the ANC.

6 And usually we meet with the Board first, and so
7 back in September, we met with the Board of the Palisades
8 Community Association, and laid out our plans.

9 And we usually always go to them actually without a
10 plan, saying here is what we want to do, and do you have any input
11 before we put our plan together, and they usually come up with
12 some concerns.

13 And then the next step is to go back to the full
14 Palisades community in one of their meetings at the community
15 center there in Palisades, and we did that twice. Dr. Gage and I,
16 the architect, we were all there and answered questions.

17 We went back a third time, and then we hoped that
18 they will then give us a letter of recommendation so that we can
19 go to the ANC. Actually, in this process, in the meantime we had
20 gone to the ANC for their first meeting, saying, hey, we are not
21 asking for anything tonight.

22 Here is what we are planning though, and we want to
23 give you a heads up. We are still working with Palisades. As
24 soon as Palisades was finished, and had provided their letter,
25 then we went to the ANC for our final time, and had a lot of the

1 same players that you see here today, and listened to their
2 concerns.

3 And I might say that most of the concerns that we
4 heard at the ANC were not about this project.

5 They were about what they don't like about previous projects, and
6 what they don't like about the metro buses, and all of those other
7 things, just as they probably will be today.

8 But we listened with patience, and we are doing
9 what we can to work with them on those things. But that is pretty
10 much typically our process, and we are committed to that, and I
11 think that has served the hospital and the community well.

12 And as I said, Ms. Pagano has set up this community
13 group now that we will continue to meet with on some of these
14 issues that you heard Ms. Shaughness talk about earlier and no
15 doubt will hear her talk about in a few minutes.

16 CHAIRPERSON SOCKWELL: A couple of questions. One,
17 the existing -- you stated that the existing level of patients is
18 at about 70 per day; is that correct?

19 MR. PRICE: Yes.

20 CHAIRPERSON SOCKWELL: And that will probably
21 remain somewhat stable, and under what circumstance is one to
22 believe that that stability will ensue?

23 MR. ELLIS: For the record, we have now with us Dr.
24 Gregory Sibley. Dr. Sibley, would you please introduce yourself.

25 MR. SIBLEY: My name is Gregory Sibley, and my

1 address is 326 Senagard Place, Great Falls, Virginia, and I work
2 at Sibley Hospital. Your question about the patient numbers.
3 When I was first recruited to come here, about 20 patients were
4 being treated a day, and soon after Dr. Gage and I arrived, the
5 numbers were up to 40, and have gone up to 60.

6 And the highest that we have been is about 80. We
7 have now kind of settled back down at around 60 to 70 as our
8 typical number. I think that there is a chance that our business
9 could grow over time, but that wouldn't be anything that we would
10 have control over.

11 That would be how the community views our services
12 and desires to come here. But we don't expect it to keep going
13 up. As I said, it hit a high of 80, and it is now down to about
14 the 60 to 70 range, and I think that's probably where it is going
15 to stay.

16 CHAIRPERSON SOCKWELL: Okay. I'm glad that you are
17 not the man after whom the hospital was named, because I thought
18 that maybe those radiation treatments were really working.

19 (Laughter.)

20 CHAIRPERSON SOCKWELL: But one other question. It
21 is apparent that the vaults are actually all on the government
22 property, and --

23 MR. SIBLEY: Not totally, but yes.

24 CHAIRPERSON SOCKWELL: -- I thought that was a very
25 interesting situation. But the under utilized and authorized FAR

1 that is being requested for reallocation here, it states in your
2 brief that this was the result of value engineering.

3 And my question is, first, what is the square
4 footage of the project that is being completed now, and Mr.
5 Oudens, is that one of your projects as well?

6 MR. OUDENS: Yes, it is.

7 CHAIRPERSON SOCKWELL: And you are qualified to
8 answer that question?

9 MR. OUDENS: Yes, I think I am. Well, let me state
10 that value engineering I think was a part of it, but back when we
11 applied for the necessary variances for that project, we were in
12 preliminary design.

13 And the design at that point included a parking
14 structure, that as the project proceeded that we and the hospital
15 determined that there was a more cost effective way of doing that
16 parking on grade after the gross square footage of that facility
17 came out of the project.

18 And then with respect to each of the buildings,
19 there was about a 10 percent reduction in area, and a part of that
20 was simply design refinement, and we started with a fairly
21 conservative request for area.

22 But understandably the area came down, and a part
23 of it was looking to contain the costs of the project by
24 minimizing the amount of square footage constructed.

25 But to answer your question the building gross

1 square footage for the assisted living facility -- and let me give
2 you these in round numbers. The assisted living facility is about
3 129,000 square feet, building gross square feet.

4 The zoning gross square feet I think is about
5 118,000. The skilled nursing facility, the number is about a
6 hundred-thousand square feet. Now, I say about because as one
7 determines an area for floor area ratio purposes, the skilled
8 nursing facility is an addition to the hospital.

9 And, of course, when we recompute the hospital
10 area, we have to view this as an addition, particularly with
11 respect to proration of cellar space, versus space that counts
12 against the FAR.

13 CHAIRPERSON SOCKWELL: Very often when original
14 construction was done those economies weren't recognized or
15 utilized effectively, and you go in and recalculate.

16 MR. OUDENS: Right. Well, I think one has to
17 recalculate every time one adds area to a building, particularly
18 at the lower levels obviously, because if you are prorating cellar
19 based on permanent wall, which is what we do, you could add a
20 hundred percent cellar space and have some of that count against
21 FAR, based on the fact that it is an addition to an existing
22 building.

23 CHAIRPERSON SOCKWELL: All right. That was really
24 the answer that I was looking for, because I felt that value
25 engineering 14,000 square feet out of that facility just seemed a

1 little steep.

2 So I assumed that it was a reprogramming, and
3 perhaps even some consideration that perhaps some of that FAR
4 might have a future use other than where it is not necessarily
5 needed in the projected requirements for that.

6 MR. OUDENS: I would add to that my own view of FAR
7 is that it is accorded for the project for which it is -- I mean,
8 we applied for FAR to do a project, and if we don't need it, it
9 seems to me that we have to give it back.

10 CHAIRPERSON SOCKWELL: With a schematic design or a
11 preliminary design, you don't know the exact number. You can't
12 know.

13 MR. OUDENS: That's correct.

14 CHAIRPERSON SOCKWELL: All right. The service
15 drive that has been closed by the addition of this new oncology
16 center pushes the traffic that would have been internal to the
17 site coming from the east. It pushes that traffic back out on to
18 Little Falls, and what is the adjacent property on the north side
19 of Little Falls?

20 MR. OUDENS: This is the Delcarlia Reservation.
21 That is all watershed for the reservoir.

22 CHAIRPERSON SOCKWELL: Okay. So there is actually
23 no negative impact pushing ambulances, which would have probably
24 turned off their sirens unless there is traffic that they have to
25 deal with anyway going back out on that street.

1 And as well coming in from the other side, and you
2 are saying that the ambulances will follow or traffic will follow
3 a more typical pattern inside the site again, but along that north
4 end, as opposed to coming down to the south, and turning up into
5 the site on Loughboro; is that correct?

6 MR. OUDENS: That is correct.

7 CHAIRPERSON SOCKWELL: Okay. That's all I wanted
8 to ask.

9 MR. PRICE: Just another little comment about that.

10 Sibley Hospital is not a trauma center. We do not have a lot of
11 serious ambulance traffic. Like you said, they usually turn their
12 sirens off well before they get there.

13 And we have on average about 18 to 20 ambulances a
14 day. So it is very light compared to what you might see at a
15 trauma center, or a busier type of emergency room.

16 Most of the people that come to our emergency
17 department are driving in their automobiles, and dropping their
18 loved ones off at our ambulatory entrance. So I just wanted to
19 let you know that.

20 CHAIRPERSON SOCKWELL: Thank you. Any other
21 questions, Board Members?

22 BOARD MEMBER RENSHAW: Yes. If I could bring this
23 up at this time, although perhaps when Ms. Pagano testifies -- and
24 I am assuming that she is going to say a few words.

25 But I would like to just discuss Sibley's responses

1 regarding the residential quality impact issues that is on the
2 letterhead of the Chief Executive Officer. And perhaps I could
3 wait until that time, or I could do it right at this time.

4 CHAIRPERSON SOCKWELL: All right.

5 BOARD MEMBER RENSCHAW: Well, number one, where it
6 states that Sibley will continue to discuss the concept of
7 providing bus boarding and layover bays with Metro.

8 VICE CHAIRPERSON REID: Where are you reading from?

9 BOARD MEMBER RENSCHAW: I am reading off of an
10 undated sheet marked Sibley Responses Regarding Residential
11 Quality Impact Issues. I would just like to ask if --

12 MR. ELLIS: Do I need to provide the board with
13 another copy?

14 BOARD MEMBER RENSCHAW: If Sibley and the
15 neighborhood would consider shortening that to the fact that
16 Sibley will provide bus boarding, and not Sibley will continue to
17 discuss the concept of, but Sibley will provide bus boarding and
18 layover bays with Metro.

19 MR. PRICE: Okay. That came up at the ANC meeting,
20 and here is my response. It is the same as it was then. Metro
21 has given us a specification for what that road bed needs to be.
22 We have done geotechnical borings of the existing road from a
23 heliport, which is just an integral part of the roadway, and all
24 the way down to McArthur Boulevard.

25 It is our understanding that perhaps, because we

1 don't have the report back, that it may cost a great deal of money
2 to upgrade that road in order to make it available for metro
3 buses.

4 The hospital is a non-profit community hospital,
5 and our operating margins now -- and you probably see this same
6 thing in the news, but a very good hospital like Sibley now has an
7 operating margin on the order of two percent.

8 We could not commit to upgrading a road that would
9 maintain or that would accommodate metro buses if indeed the road
10 bed already won't do that. A further concern is that this road
11 actually belongs to the Federal Government now.

12 And if we do purchase the property, then the road
13 conveys to us, and we have to maintain it, and we also have
14 questions about what does the metro bus do to that road.

15 There is a very, very steep incline coming from
16 McArthur Boulevard up to the top of Little Falls. And I don't
17 know if you have ever seen what Loughboro Road looks like going
18 down to McArthur Boulevard, but the metro buses peel the asphalt
19 off of that road on a regular basis and it has to be replaced.

20 And so we are leaving this open, and I will be
21 honest with you. We are not going to commit to it. We are going
22 to continue discussions with the community, and we will continue
23 to get more information about what this road bed is like.

24 But we did not discount it outright. We think it
25 is something that would be good for the community, and if we can

1 do it, and we can do it without spending a lot of money, then we
2 are amenable to it.

3 BOARD MEMBER RENSHAW: And it states here that it
4 would be constructed -- if you do it, if you can afford it, it
5 would be constructed as part of the oncology project?

6 MR. PRICE: That's right.

7 BOARD MEMBER RENSHAW: But yet you are now
8 experiencing more buses to the hospital?

9 MR. PRICE: No, that was Ms. Shaughness' statement.

10 I do not know the reason why there are more metro buses. I do
11 not personally know if there are more metro buses. But very few
12 of our employees arrive, and even fewer still of our patients
13 arrive via a metro bus.

14 And so I know that the metro buses are certainly
15 used by others in the community. I certainly would not deny that
16 our employees enjoy the use of metro, but most of our employees
17 drive to work.

18 BOARD MEMBER RENSHAW: Have you discussed with
19 metro the possibility of sharing the costs of that roadway?

20 MR. PRICE: There have been no discussions with
21 metro and the hospital other than an initial meeting that was held
22 -- it would probably be about 3 months ago -- with Ms. Shaughness,
23 representatives from metro, representatives from Ride-On, and the
24 hospital, where everybody was sort of like saying, okay, let's see
25 where this goes.

1 And let's explore this, and let's see if this could
2 be done. So there are many, many hurdles to be overcome, and we
3 are committed to proceeding with this.

4 BOARD MEMBER RENSHAW: Could you give us some
5 feeling of a time line here? In other words, do you expect your
6 reports back?

7 MR. PRICE: I expect those reports back any day.

8 BOARD MEMBER RENSHAW: Any day?

9 MR. PRICE: Yes.

10 BOARD MEMBER RENSHAW: And then you will meet again
11 with Ms. Shaughness?

12 MR. PRICE: Well, I will look at those reports, and
13 depending on what they say, our chief executive officer certainly
14 has to have some input. And Sibley is governed by a board of
15 trustees from the community that has a building and grounds
16 committee, and that has a lot of say over these things.

17 And so I would say that the results of these
18 reports would be given to the board of trustees, and the building
19 and grounds committee before the committee, and then, yes, I have
20 already committed to Ms. Shaughness that she could have a copy.

21 BOARD MEMBER RENSHAW: Very good. All right.

22 MR. ELLIS: And by the way, Ms. Renshaw, my
23 experience is that metro does not typically even offer monies to
24 help.

25 BOARD MEMBER RENSHAW: I would agree with you, but

1 it doesn't hurt to suggest and to ask. Some other questions
2 regarding having to do with the construction of this facility, I
3 would like to hear from you about -- and perhaps it is a little
4 premature, but I would not say that it would be premature from the
5 standpoint of the community.

6 And that is the kind of hours of operation, and how
7 long is it going to take you to construct this facility, and
8 whether or not any blasting is going to take place.

9 What kind of restrictions are you going to put on
10 truck traffic in the area, and truck covers, and checking the
11 licenses of drivers, and that kind of thing.

12 MR. PRICE: Well, hopefully I can get them all.
13 First of all, there is no blasting. Secondly, we will do as we
14 have always have done, that work will not begin on the site until
15 7:00 a.m., and no weekend work, so that it disturbs the neighbors
16 who are trying to sleep in.

17 We intend to implement the same kind of control
18 measures that we did when we were doing these other projects. We
19 have already agreed that all construction traffic will come and go
20 off of Little Falls Road, either Delcarlia Parkway, and maybe
21 those workers that come in off of McArthur Boulevard, and would
22 come up Little Falls.

23 We will provide the parking for them on the site.
24 Now, this does not mean that we can guarantee that all the
25 construction workers will park on our site. What it means that we

1 will provide parking and they kind of do as they please.

2 We went to great lengths to keep people out of the
3 neighborhood with this last project. We actually hired an
4 individual to go over on Sherier Place in the morning and dissuade
5 people, and mostly ironworkers who had it in their mind that they
6 wanted to park over there as a matter of right.

7 And they can also park as a matter of right on
8 McArthur Boulevard, but we can provide the parking on-site and we
9 will do so. One of the other things that we always did with our
10 dump trucks is that we stationed an individual with a broom so
11 that each truck is sweep off before it leaves the site so that
12 dirt does not get on to the neighborhood streets.

13 So we will do all of those things to ameliorate
14 those things. And one of the other things that we do is that
15 individual with the broom, he is sort of the last person to make
16 sure that the dump truck driver has covered his load.

17 And Mr. Oudens has testified that this is on the
18 north side of the Hayes Hall building. Honest to goodness, this
19 project ought to be as invisible to the neighbors on the 5200
20 block as it could possibly be.

21 I mean, they will literally have to walk around the
22 hospital building and the Hays Hall building to see it going on.
23 And this is small in comparison to the project that we have just
24 completed.

25 And while I won't say there weren't issues and

1 problems with that, but I think that may in the neighborhood would
2 say that we worked hard to do the best that we could to minimize
3 those. So you have our commitment that we will continue that.

4 VICE CHAIRPERSON REID: Thank you.

5 CHAIRPERSON SOCKWELL: Any more questions, Ms.
6 Renshaw?

7 BOARD MEMBER RENSHAW: Not at this time.

8 CHAIRPERSON SOCKWELL: All right. Mr. Price, thank
9 you.

10 MR. PRICE: Thank you.

11 MR. ELLIS: That concludes our presentation.

12 CHAIRPERSON SOCKWELL: If that concludes your
13 presentation, then we will move to government reports. The Office
14 of Planning report.

15 MS. STEINGASSER: Yes. My name is Jennifer
16 Steingasser, and I am with the D.C. Office of Planning, and I will
17 be giving the report this afternoon.

18 I would like to just point out for the record that
19 the Office of Planning report was timely filed, and it was filed
20 on the 9th, and I just wanted to state that for the record.

21 CHAIRPERSON SOCKWELL: Jennifer, how do you spell
22 your last name?

23 MS. STEINGASSER: S-T-E-I-N-G-A-S-S-E-R.

24 CHAIRPERSON SOCKWELL: Thank you.

25 MS. STEINGASSER: The Office of Planning reviewed

1 the application for two area variances, and we agreed that the
2 property was faced with peculiar practical difficulties due to the
3 existing arrangement of the building on the lot.

4 We considered the written statements that the new
5 equipment is larger than the old equipment. That to shut down the
6 old and existing equipment would impose a peculiar difficulty on
7 the hospital's ability to provide, and the patient's ability to
8 receive the necessary medical care.

9 We felt that the location of the unit at the rear
10 of the building may have been dictated by the existing function of
11 the hospital, but also resulted in an addition with a variance
12 that had a minimal impact on the residential neighborhood.

13 And we felt that both of the requests could be
14 granted without substantial detriment to the public good, and that
15 neither request impaired the intent, purpose, or integrity of the
16 zoning district.

17 We felt that the applicant had done a good job at
18 mitigating those impacts, and we recommend approval of both
19 variances.

20 CHAIRPERSON SOCKWELL: Thank you. Questions of the
21 Office of Planning? Board Members?

22 (No audible response.)

23 CHAIRPERSON SOCKWELL: And, Ms. Steingasser, I
24 believe this is the first time that you have appeared before the
25 Board since I have been here, and so we welcome you. Applicant,

1 questions for the Office of Planning?

2 MR. ELLIS: None.

3 CHAIRPERSON SOCKWELL: Then the ANC report. Is
4 there a representative from the Advisory Neighborhood Commission
5 who is authorized to speak for it?

6 MR. FINNEY: Yes, newly elected.

7 CHAIRPERSON SOCKWELL: Please just step forward.

8 MR. FINNEY: Thank you. Good afternoon. My name
9 is John Finney, and I live at 5275 Watson Street, Northwest 20016,
10 and that is at the corner of McArthur and Watson, and it one block
11 from Sibley.

12 CHAIRPERSON SOCKWELL: And you represent ANC-3D?

13 MR. FINNEY: Yes, ANC-3D04.

14 CHAIRPERSON SOCKWELL: Thank you.

15 MR. FINNEY: I am here in my own individual
16 capacity as an ANC Commissioner. I was not a member when the
17 resolution was adopted supporting Sibley's application. I endorse
18 the prior Board's action.

19 I might have attached some other conditions along
20 the line that Ms. Renshaw was raising, but I accept it. There is
21 no question that this oncology center is going to be a net asset,
22 in terms of health care, and improve the capabilities of our fine
23 Sibley Hospital.

24 The question that confronts you is whether this is
25 going to have an adverse impact upon a residential neighborhood,

1 which starts right across the street from the hospital.

2 And that is a very difficult judgment to reach in
3 this case. I think the Chairman is quite correct when he says it
4 is unobtrusive, and it is in behind, and it will not really be
5 seen, and I can attest, as Mr. Price said, that Sibley is really
6 quite cooperative when it comes to making sure that neighborhood
7 concerns are met.

8 We had our problems and they cooperated in meeting
9 them, and I think that will surely be the case here on a much
10 smaller project. The difficulty of judging whether it is going to
11 have an adverse impact is the difficulty of putting this project
12 in the context of the whole of what is happening at Sibley
13 Hospital in its expansion.

14 We have had, with your approval of course, a
15 considerable expansion of Sibley in the past few years, and it has
16 become a large institutional presence looming over Loughboro.

17 And I think that one of my neighbors will say that
18 one of the results has been a decline in house values, at least on
19 Loughboro, but not on my street a block away. They are still
20 going up I can tell you.

21 We have done this expansion incrementally. It is
22 sort of the house that Jack built. We approve the assisted living
23 and we don't really realize then how tall it is going to be, how
24 big, and it is quite large.

25 And then we didn't quite know that connected with

1 this was a skilled nursing unit, and that really fronts upon
2 Loughboro much more than the hospital itself. Then we come with
3 this, which is going to provide a very good service.

4 But there are all kinds of questions coming up now.

5 For example, there is the third bay on here. Are they going to
6 use the third bay? They probably will over time as they build up
7 patient load.

8 So the traffic which is now said to be 80 patients, that will
9 probably increase by one-third.

10 And along with the people who come, we may have an
11 increase in traffic. Not significant, but part and parcel of this
12 whole expansion of traffic we have gotten as Sibley has expanded.

13 Another question about this facility. I believe,
14 and it is worth checking with the Sibley officials, that while it
15 is now a one-story structure, it is being designed and built so
16 that another story can be added.

17 What is going to be done with that second story?
18 Similarly, we have now discovered with the skilled nursing unit,
19 it is a four-story building now, but we are told now, and we learn
20 now, that it was built in a way that another four-stories could be
21 added to it. What is that and what is involved there.

22 And also the parking terraces of Babylon as I call
23 them over there, I understand that they were built so that other
24 stories could be added. What does that all mean?

25 I think what I am coming to, Board Members, is

1 this. That the time has come to stop this piecemeal approach.
2 And I suspect that my comments are directed more to Mr. Hood than
3 to you, Mr. Chairman.

4 That we really need for this kind of campus
5 institution -- and it isn't just Sibley alone, but campus
6 institutions which have -- and a new expression which I picked up
7 today, FAR, and I am still trying to learn what it means, where we
8 should have at least some idea of where they are going so that we
9 can judge the impact upon the quality of life in our residential
10 area.

11 And so I know that you deal in the specifics, but I
12 do wish I could plant this idea with you, Mr. Hood, and maybe with
13 the other board members, that we begin to think of it in the long
14 term. Let me just give you another example if I understand floor
15 area ratio.

16 When Sibley acquires the additional 8 acres, and I
17 have lost the exact figures, from the Army Engineers, does it then
18 have enough FAR under the ratio that you have approved to put in a
19 medical office building over there in the northeast corner.

20 And if you put in a medical office building, what
21 does that mean in terms of traffic, and what are the social
22 implications of a non-profit organization putting in a medical
23 office building that competes with private real estate operators
24 of medical office buildings? You are getting into a very tangled
25 kind of situation.

1 CHAIRPERSON SOCKWELL: Mr. Finney, the one thing
2 that we are forced to do in these cases is respond at this time
3 primarily to the immediate and not to the potential future.

4 MR. FINNEY: I understand.

5 CHAIRPERSON SOCKWELL: However, I am well aware
6 that the stairs in the new building all go up. So there is a
7 different meaning to us architects as to what may or may not occur
8 in the future. But it is not presented to us today.

9 So what I do want to say is that we are aware of
10 the potential impacts, but we can't discuss those today, and while
11 I understand your concerns, your principal reason for speaking to
12 us today was in support of the Advisory Neighborhood Commission's
13 decision as it was presented to us.

14 MR. FINNEY: As well as just in the process to try
15 to plant the seed of thought about the need of long term plans.

16 COMMISSIONER HOOD: Let me just say, Mr. Finney, if
17 I can just respond. If you look at the avenue in which the zoning
18 commission is proceeding now, you will see that we are looking at
19 changing the name of the things in this city.

20 For examples, campus plans to master plans, and I
21 think that is exactly going down the lines in which you responded.

22 MR. FINNEY: Yes.

23 COMMISSIONER HOOD: I heard you loud and clear. I
24 think that is a direction that the zoning commission is going, and
25 you had better believe that I will take it back.

1 MR. FINNEY: Thank you. It makes my whole day
2 worthwhile.

3 CHAIRPERSON SOCKWELL: And we appreciate you coming
4 before us, and as a newly elected member of the Advisory
5 Neighborhood Commission, we feel that this is your forum.

6 MR. FINNEY: Thank you. Thank you. I appreciate
7 the opportunity.

8 CHAIRPERSON SOCKWELL: And just to enumerate the
9 issues the way the Advisory Neighborhood Commission wrote its
10 support letter, dated December 18th, at their regularly scheduled
11 meeting on Wednesday, December 13th, 2000 at the hospital's Ernst
12 Auditorium.

13 A quorum of three was present, and by a vote of
14 five to zero, with no abstentions, the Commission voted to support
15 granting the application.

16 MR. FINNEY: That's correct. That's correct, Mr.
17 Chairman. I was there.

18 CHAIRPERSON SOCKWELL: And Items 7, 8, and 9 on the
19 Sibley responses regarding residential quality impact issues were
20 intended and recommended to become conditions for the order. In
21 this case, it says building permit, but for the order that might
22 be written should this be approved, and recommended that great
23 weight be given to the advisory neighborhood commission.

24 And that is signed, "Sincerely, Eleanor Roberts
25 Lewis," who is the Chair.

1 MR. FINNEY: I was the author of those conditions,
2 the original author, and I endorse them.

3 CHAIRPERSON SOCKWELL: All right. And thank you
4 very much then, sir.

5 MR. FINNEY: Thank you.

6 CHAIRPERSON SOCKWELL: All right. Now, parties and
7 persons in support. Who do we have that would like to speak
8 before us? Please come forward.

9 Please identify yourself and your address, please.

10 MS. PAGANO: Yes. My name is Penny Pagano, and I
11 am President of the Palisades Citizens Association, which is a
12 group in Northwest Washington which represents about a thousand
13 homes in the Palisades community.

14 I have sent you a letter which includes the
15 resolution that our task force drew up, and it was sent back to
16 our board for approval. It includes -- it gives our approval and
17 includes five conditions. Two of them essentially deal with
18 construction traffic and parking. The other deals with on-site
19 parking for patients.

20 There are two other provisions that deal with
21 landscaping, lighting, and D.C. buses, which are there to address
22 neighbor's concerns about previous situations as well.

23 I would ask that these be included as conditions in
24 the BZA order, and what might be easier is to go back and mesh
25 them with what the ANC has suggested for conditions, and also the

1 conditions that Sibley, or the responses that Sibley have of
2 things that they would agree to do.

3 I think that in some cases that they may overlap,
4 and so I would just sort of go back and pull them all together,
5 and ask that they be included as conditions in the order, and pull
6 them all together.

7 And then I just have a couple of other quick comments.

8 COMMISSIONER HOOD: Mr. Chair, or Ms. Pagano, if I
9 could just cut you off for just a second.

10 MS. PAGANO: Sure.

11 COMMISSIONER HOOD: Mr. Chair, I don't believe we
12 have that letter, or at least I don't.

13 MS. PAGANO: Did it not arrive?

14 COMMISSIONER HOOD: If you could just give us a
15 copy.

16 MS. PAGANO: I will give you my copy right now.
17 Absolutely. I will give it to you right now. I'm sorry, but it
18 should have been there.

19 (Brief Pause.)

20 MS. PAGANO: Sorry about that. I thought it was
21 here, and it should have been. But what I wanted to just
22 basically say is that, one, the community does have a very good
23 working relationship with Sibley. We have had it for many years,
24 and we have also been able to work together on issues that have
25 come up.

1 I think that one of the things that we are all
2 experiencing in the city, and I have lived in my neighborhood for
3 20 years, and in the city for longer than that, is that for many
4 years the city was very quiet. No one really wanted to come here
5 except for those of us who lived here.

6 And we are seeing an extraordinary amount of
7 growth. You can see it by the number of times you have seen me
8 here, whether it was on Mount Vernon College, the Field School,
9 St. Patrick's. Every institution in our neighborhood that can
10 expand is expanding.

11 And at one point it will be done over with, and
12 maybe there won't be any more land. But it has been very
13 difficult for communities to learn to live with this, because for
14 many years we have not had any of this. So it becomes very
15 troubling.

16 So it become even more important for communities
17 and these institutions who live here to have good relationships,
18 and we are trying really hard to do that.

19 It takes a lot of time and effort on everybody's
20 part. We don't always get what we want on both sides, and we know
21 it, and we know it from going through mediation with Mount Vernon
22 and G.W. But we are trying to work together.

23 But what happens though in cases that we see now is
24 that we are much better five years -- today than we were five
25 years ago when a lot of things were coming before the BZA. We are

1 all kind of much better educated.

2 So I think what we have here is that we have some
3 concern on the part of some neighbors for things that happened
4 before. These are neighbors that actually lived on the street
5 when these issues were before the BZA and didn't participate.

6 But none of us were very good at that, and so we
7 now have some things after the fact that we are concerned about.
8 And I really hope that the Board will stay focused on the
9 radiation oncology center for which there has been very little
10 opposition as a center in the community. In fact, there is great
11 community support for it.

12 But we also need to address some of these things,
13 but I think we are trying that through a neighborhood task force,
14 and we can deal with some of these issues of landscaping and all.

15 May people would like to have a street without
16 public buses on it. Many people moved into streets and they were
17 there when they were there, and they are still there.

18 We have now to deal with a situation of whether it
19 is fair to ask an institution to move public buses off a public
20 street on to their private land at their expense. Sibley is
21 willing to discuss it and move forward.

22 And I think Commissioner Renshaw's suggestion that
23 we work with the parties on that, and that it may be an unfair
24 burden to ask a private institution to do that. But they are
25 continuing to talk about it, and we will continue to work with

1 them on that.

2 So that's all I really had to say. I rally speak
3 for the community and the association in urging you to approve it
4 with these conditions, and with the understanding that Sibley will
5 continue to work with us on those issues.

6 And that if you wanted to write that in the
7 recommendations in some way for a quarterly meeting or something
8 like that, I would be happy to agree to that.

9 CHAIRPERSON SOCKWELL: Thank you, Ms. Pagano. Are
10 there any questions by the Board Members?

11 (No audible response.)

12 CHAIRPERSON SOCKWELL: Any questions by the
13 applicant?

14 (No audible response.)

15 CHAIRPERSON SOCKWELL: Ms. Pagano, we certainly
16 appreciate you coming before us and we appreciate your comments.
17 They are very well taken, and I believe that by your statement it
18 seems to be apparent the intent of Sibley Hospital to communicate
19 with the community in every aspect of their development program,
20 which is different from some applicants, and certainly is probably
21 much more appreciated by those who don't get it at all from
22 applicants because they don't have the experience that you have
23 had.

24 MS. PAGANO: I would just thank you very much. I
25 would say one other thing, which is that Sibley does have to go on

1 its good will because any future growth, or anything that it did
2 want to do if it didn't act in good faith or in good will now
3 would certainly be remembered by the community.

4 CHAIRPERSON SOCKWELL: And the specific condition
5 again that you suggested was?

6 BOARD MEMBER RENSHAW: A quarterly meeting.

7 MS. PAGANO: Yes, a quarterly meeting. We could do
8 a regular quarterly meeting, which we do with Mount Vernon and
9 some of the other schools.

10 CHAIRPERSON SOCKWELL: Thank you.

11 BOARD MEMBER RENSHAW: Ms. Pagano, just for the
12 record, would you give us a little thumbnail sketch of the
13 Citizens Association, and how many members are in your
14 association?

15 MS. PAGANO: Right now currently between a thousand
16 and eleven hundred.

17 BOARD MEMBER RENSHAW: Thank you.

18 CHAIRPERSON SOCKWELL: Okay. Thank you very much.

19
20 MS. PAGANO: Thank you very much.

21 CHAIRPERSON SOCKWELL: All right. Are there any
22 other parties or persons in support?

23 MR. DIEM: Yes. Thank you. My name is Andrew
24 Diem, and I live at 5230 Loughboro Road, directly across from the
25 main entrance to Sibley Hospital. I have lived there since 1986.

1 And I have been a member of, and still am, the
2 neighborhood task force that was dealing with the issue of
3 expansion with regard to the Palisades Citizen's Association, one
4 of about 7 or 8 members.

5 I am a proponent of the oncology facility. I feel
6 that it is something that is very, very necessary. Probably all
7 of us in one way or another have had our lives touched by either
8 personal or dear friends that have suffered from cancer, and I
9 think we need everything that we can have done to provide quality
10 medical service available.

11 Sibley has done a wonderful job in all of the other
12 aspects of medical care that they have provided. I have had a
13 personal opportunity to use the hospital, and I have known a
14 number of friends that have also, both in the community and
15 outside of the community.

16 I think it is something that is going to be
17 extremely beneficial to us. There may be some inconvenience
18 during the course of construction, but in the long term I think
19 the benefits will far outweigh any small inconveniences that we
20 may see. Thank you very much for the opportunity to listen to my
21 statement.

22 CHAIRPERSON SOCKWELL: Thank you very much. And
23 are there any questions, Board Members?

24 BOARD MEMBER RENSHAW: No, thank you.

25 CHAIRPERSON SOCKWELL: Applicant, any questions?

1 MR. ELLIS: No.

2 CHAIRPERSON SOCKWELL: Thank you very much, Mr.
3 Diem.

4 MR. ELLIS: Mr. Chair, we have one last person in
5 support, but she was not here at the time when they were swearing
6 people in.

7 CHAIRPERSON SOCKWELL: She needs to be sworn in.

8 (Whereupon, the witness was sworn.)

9 MS. ABATE: My name is Mary Abate, and I have lived
10 in the District for over 20 years. I live on Reno Road, a highly
11 traffic street, and so I know what traffic concerns are all about,
12 and I have learned to live with them.

13 I am here today as a patient of Dr. Gage. I hadn't
14 planned any remarks because I just found out about the hearing a
15 short time ago. But I am strongly in support of this projected
16 facility because of the experience that I had at Sibley as a
17 patient.

18 The doctors, the nurses, and the technicians at
19 Sibley are fantastic. And so even if this facility does not get
20 built, if I ever have to have radiation again, I will return to
21 Sibley. But I really would hope that it would be a more pleasant
22 experience than the experience than I had because of the physical
23 conditions.

24 I am a trial attorney. I work at the Department of
25 Justice, and I speak advocating positions all the time, but my

1 voice is shaking now because this was such a traumatic experience
2 for me, and I just finished my treatment November 14th. So it is
3 still quite recent.

4 I just would like to tell you what it is like now.

5 First of all, you just don't go and get a couple of treatments.
6 You have to go and get your body all marked up so that they know
7 where to aim the radiation.

8 Then when that is done, and the radiation is
9 planned, you have to go every single day, five days a week, for
10 six weeks. I was lucky. I only had to go for six weeks, and this
11 is of course after the surgery. For some other people, it is
12 after the chemo. I didn't have to have chemo thank goodness.

13 All right. So you go every day. I didn't tell the
14 people that I work with. They thought I was on vacation time when
15 I had my surgery, because I didn't want them to start feeling
16 sorry for me.

17 So the staff arranged it so that I could have my
18 treatments every day early in the mornings so I could get to work
19 on time, which is what happened. But then I was confronted with
20 the physical facility. I had to find a parking space in the
21 parking lot, and usually that was way in the back of the lot.

22 And so I had to walk all the way across the lot and
23 all the way through the hospital to the elevator, and down to the
24 basement, and then retrace my steps back to the far corner of the
25 basement where the radiation oncology facility is.

1 And basically all it is really is a little rabbit
2 worn, a corridor with a few little rooms in the corner, and to get
3 there, every day I had to walk past the in-patients who were lined
4 upon gurneys in the hall waiting for their radiation treatments,
5 some of them looking as though they were near death, and some of
6 them moaning.

7 And I am sure that a lot of them were wondering who
8 all these other people are in their nice street clothes walking by
9 them and looking at them. So then I get back to the little rabbit
10 worn, and there are two teeny dressing rooms the size of coat
11 closets that I can't immediately go in to take my clothes off.

12 I have to wait because patients are lined up to get
13 into the dressing rooms. I get into the dressing room, and I am
14 lucky again because I had breast cancer, and so I only had to take
15 my clothes off from the waist up and put on that dinky little
16 hospital gown.

17 Well, then I had to go sit in a teeny tiny waiting
18 room with other patients, friends and relatives of other patients.

19 Some of the other patients were men with prostrate cancer who had
20 to sit there in their little short gowns with their bare legs
21 sticking out.

22 And then I got called for my treatment. Then I
23 would have to repeat the whole process again, and come back out,
24 and wait for a dressing room, and wait for the one that my clothes
25 are in by the way, because you leave your clothes in a little

1 locker in the dressing room.

2 And then make the long trip back through the
3 hospital, and past the in-patients on the gurneys waiting for
4 their treatments, and back out to the parking lot every single day
5 for six weeks.

6 It is not fun, and as I am sure you are aware, one
7 of the elements that makes treatment for cancer successful, and if
8 it can be determined if it is or not, is the attitude of the
9 patient. And I have to say that I felt that my dignity was taken
10 away from me having to have treatment under these conditions.

11 I am still a pretty optimistic person, and so I
12 didn't let it get me down, but you can hear in my voice that just
13 having to talk about it is very stressful.

14 But I feel so strongly that other patients should
15 be able to have better physical conditions available to them that
16 I made myself do this today. Thank you very much.

17 CHAIRPERSON SOCKWELL: Thank you very much for
18 coming before us. I certainly believe that we can understand the
19 effect of conditions and privacy, and the treatment facilities
20 themselves on the way you may feel towards that treatment.

21 And that under the circumstances that you support
22 the hospital and their attempts at doing a good job in adverse
23 situations. Thank you. Are there any questions, Board Members?

24 (No audible response.)

25 CHAIRPERSON SOCKWELL: Any questions from the

1 applicant?

2 MR. ELLIS: No questions.

3 CHAIRPERSON SOCKWELL: Thank you very much. And
4 you spell your last name?

5 MS. ABATE: A-B-A-T-E.

6 CHAIRPERSON SOCKWELL: Thank you. All right. That
7 completes the applicant's case, and we now need persons or parties
8 in opposition, and that's what I was getting to. Will you all
9 come up together, please. I assume that you are each representing
10 yourselves individually.

11 MR. MAHAN: That's correct.

12 MS. SHAUGHNESS: That's correct.

13 MR. SHAUGHNESS: That's correct.

14 CHAIRPERSON SOCKWELL: Thank you. Who would like
15 to start. The man in the middle.

16 MR. MAHAN: I'm always in the middle. Good
17 morning. My name is Val Mahan, and I live at 5266 Loughboro
18 Road, and that is directly across from the industrial entrance to
19 Sibley Hospital on Loughboro Road.

20 CHAIRPERSON SOCKWELL: You said 5266?

21 MR. MAHAN: That's correct, sir.

22 CHAIRPERSON SOCKWELL: Continue, please.

23 MR. MAHAN: I feel a little reluctant to be up here
24 in opposition to this oncology center, but I think that is the
25 only way that I can be in front of you and have my case heard.

1 I think that Sibley's characterization that there
2 will be no increase of traffic as a result of the oncology center
3 is a little bit over- optimistic.

4 The actual construction as planned is built to
5 house an increase in physicians, offices, and treatment
6 facilities, that would take it at least 50 percent above what
7 there is now.

8 Beyond that, when that oncology center is built,
9 there will be vacant space in Hays Hall, and I have no doubt that
10 that will be applied towards patient services, and to some degree
11 that will have to increase the traffic of both patients and
12 medical and service personnel into the hospital.

13 It is not entirely clear to me whether I have a
14 right to sit before you and talk about remediation of deleterious
15 effects on the neighborhood resulting from the previous two
16 variances that went forward.

17 However, if you will bear with me a little bit, I
18 would argue that remediation of potential problems with regard to
19 Sibley's traffic would also work to serve to rectify damage to the
20 neighborhood under the previous two variances.

21 I would like to show you -- and this photograph has
22 been provided to you in the package that Linda Graves Shaughness
23 has provided. This is a view from my front yard into Sibley
24 Hospital.

25 When I bought that house in 1980, there was a

1 parking lot over there with a little gate to it, and a double row
2 of relatively sparse pine trees covering up the parking lot. In
3 retrospect, it was bucolic, a bucolic view.

4 And in fact I cannot tell you, because I cannot
5 remember, what was slightly to the east of that parking lot. It
6 was not the hospital proper, and I can't tell you what it was. It
7 was not at all intrusive.

8 Right now we have an entirely intrusive building
9 sitting there, and I have an industrial aspect in front of me.
10 Not only are the lights a problem, but there is a stretch of
11 highway that I suspect a good pilot could get an STLO airplane
12 down on.

13 That is meant to be, I am told, egress for service
14 vehicles and I have seen on the weekends at various times tractor
15 trailers parked up there, and that is just really tearing up my
16 enjoyment of my property, and certainly damaging my property
17 values.

18 Now, I would say that none of this has to happen,
19 and that the recommendations that have been put forward and spoken
20 to by Ms. Pagano, and rectified at, particularly the
21 recommendations that will be presented to you in the package that
22 Linda Graves Shaughness has presented, will and can rectify that.

23 But that includes the rerouting of buses, and that
24 includes amelioration of lighting, covering up the parking areas,
25 and other things that I would like to address. I would like to

1 talk also about amelioration of this aspect, which seems to me to
2 be not at all necessary in its present form.

3 And the problem -- and I should say that I am on
4 the task force that has been appointed by the Palisades Citizens
5 organization to deal with this, but my concerns have not been in
6 one instance not incorporated into those recommendations.

7 And furthermore the recommendations seem to me to
8 be so vague in execution, and dependent entirely on whether Sibley
9 decides that they will accept what not only the community in
10 general, but the adjacent neighborhood wants, that it worries me
11 that there is no power to enforce anything.

12 Sibley can say that they are going to landscape,
13 and if they put a couple of bushes in, that doesn't cut it. It
14 might cut it for them. And that's because the truth of the matter
15 is that whatever they do is going to cost money, and I can tell
16 you that what I had in mind for ameliorating this situation will
17 cost a lot of money.

18 Now, what has not come out -- and maybe Ms.
19 Shaughness will speak to that in more detail -- is that a plan was
20 developed whereby the costs of upgrading Little Falls Road to the
21 extent that it could handle those buses would represent a economic
22 wash for Sibley.

23 And Sibley as I understand it has just turned that
24 off, turned that option off. I think that needs to be explored.
25 I think Sibley needs to know that it has to ameliorate the damage

1 that it is costing the neighborhood.

2 I for one would like hard language in there that it
3 will through additional creative landscaping do away with this
4 broad avenue of industrial aspect that faces my house.

5 I would like to see regulations put in that
6 preclude them as a regular fact lighting the various patios on the
7 corners of the skilled nursing facility which serve no practical
8 purpose, but only seem to --

9 MR. ELLIS: I'm sorry, but I would like to make an
10 objection because this has nothing to do with the site that we are
11 dealing with now. This is for something on a previous
12 application, and we have been meeting with them, and we are more
13 than welcome to meet with them, and we are more than welcome to
14 deal with them.

15 But it has nothing to do with the radiation
16 oncology unit, and even if the board were to take it, it would be
17 sitting here putting in this order to tell us to do something that
18 the Board had previously approved.

19 CHAIRPERSON SOCKWELL: I think your objection can
20 be sustained in this case because I was expecting and waiting for
21 Mr. Mahan to discuss the radiation oncology addition and its
22 impacts upon him.

23 And because what he is discussing and what you are
24 discussing, as it should be first person to you, is other issues,
25 and in particular the principal thing that you have been

1 discussing is this particularly unpleasant view that you have.

2 And I believe that the hospital has
3 responsibilities in that area, but those responsibilities are not
4 before us today because the construction that is before us today
5 is not on that part of the property.

6 MR. MAHAN: I understand, and I will close
7 succinctly if I may.

8 CHAIRPERSON SOCKWELL: All right.

9 MR. MAHAN: I understand that you are considering
10 some conditionality as part of your approval, and if that is
11 correct, I would like to offer that it is useful to have a
12 continuance for the people working on that conditionality to
13 arrive at some concrete aspect. Otherwise, we have conditionality
14 that is vague and in the extreme.

15 MS. PRUITT: Excuse me, Mr. Chairman, but I believe
16 the conditions that he is referring to don't actually relate to
17 this particular aspect, but to the previous, and so the Board
18 would have no jurisdiction.

19 CHAIRPERSON SOCKWELL: Well, I understand that, and
20 if you will let me do this, then you won't have to do bring that
21 up.

22 MS. PRUITT: Okay.

23 CHAIRPERSON SOCKWELL: The issue that I am bringing
24 forth is that the conditions that the board will impose are
25 specific to the project that is before us. Those conditions can

1 include landscaping, but they wouldn't necessarily include
2 landscaping in the area that is not near the project.

3 Those conditions may have to do with traffic, and
4 they may have to do with other elements of this particular
5 application. I can only suggest to you that for the things that
6 concern you, that at this time the neighborhood and the hospital
7 are working together to solve and complete this latest initiative,
8 and that you work through your recognized neighborhood
9 representatives and make sure that these things come before the
10 hospital people in power.

11 Because this is really an excellent time to talk
12 those issues out, but unfortunately we just can't spend a lot of
13 time here at the Board.

14 COMMISSIONER HOOD: Mr. Chairman, let me just
15 interject.

16 CHAIRPERSON SOCKWELL: All right.

17 COMMISSIONER HOOD: Being that the zoning cases
18 were scheduled for the morning cases, I do have a previous
19 appointment, and actually I was just supposed to be here for the
20 morning session, but I want to be considerate and make sure I hear
21 from the other two witnesses before I leave so that I can leave my
22 proxy.

23 But I would ask that we kind of move a little
24 expeditiously so I can hear from the other two witnesses so I can
25 make a contentious and a good effort in my proxy.

1 CHAIRPERSON SOCKWELL: Yes, and because I think you
2 have heard much of Ms. Shaughness' initial discussion, I would go
3 with the gentleman to my right first, and that way if you have to
4 leave, you will have first-hand information.

5 COMMISSIONER HOOD: Thank you, Mr. Chairman.

6 CHAIRPERSON SOCKWELL: And your name, sir?

7 MR. SHAUGHNESS: Thank you, Mr. Chair. My name is
8 Patrick Shaughness, and I served as the ANC Commissioner up until
9 the beginning of this year for the area surrounding the hospital.
10 My wife is Linda Graves Shaughness.

11 I would like to address several specific references
12 to some positions that I have taken with regard to this matter.
13 Technically, I am on the agenda as an opponent to this
14 application, and I, however, take second place to no one in terms
15 of my support for the hospital and its mission.

16 Every one of my family has been a patient at the
17 hospital, and we live right across the street from the hospital.
18 When I had a CAT scan done on my head four years ago, I was a
19 patient in the basement also, and the conditions there four years
20 ago are much as Ms. Abate reported to you.

21 It is unfortunate that the hospital has not yet
22 corrected these conditions within the property that it already
23 has, and now must come before you in order to upgrade and
24 modernize its facilities.

25 Two specific points. Back on December 13th, I

1 believe, I on my motion, the Advisory Neighborhood Commission
2 passed the resolution and sent the letter that you have before
3 you. I not only moved the resolution, but I authored it.

4 Since then, particularly worked on by my wife, I
5 believe that she has brought to the force some new issues,
6 especially as far as property values are concerned.

7 And if I had access to that information back on
8 December 13th, I am not so sure that I would have made that
9 motion, or asked for that resolution to be approved.

10 Furthermore, I would point that if you look at the
11 entire language of that letter, it refers not only to the hardship
12 that would be suffered by the hospital by the denial of this
13 variance, but it also goes to the second legal standard which has
14 to do with the public good, and has to do with the integrity of
15 the intent of the zoning regulations.

16 And that's why we have language in there and attach
17 that letter from Sibley Hospital that went to the representations
18 about upgrading the road, and about the landscaping and that sort
19 of thing.

20 I never thought that a month later that I would
21 still be before you, and we would still be talking about what the
22 hospital intends to do. I didn't think that we would still be
23 talking about what they would be willing to discuss.

24 I thought that we would have more closure on these
25 issues. So I think that the statements that I have made, I think

1 the letter from the ANC should be viewed in that context.

2 I think it is proper for the board to consider some
3 of these issues, because what we are looking at here is the third
4 phase of development for Sibley Hospital, and it is proper under
5 the law for you to consider whether it would be in the public good
6 to grant yet another variance when there are very serious
7 questions about the conduct of the hospital, and the combatability
8 of the institution which under the zoning regulations the hospital
9 is required under R-5-A regulations, that it is required to
10 operate in a manner that is compatible with the adjoining
11 residential neighborhood.

12 I think that some very serious questions have been
13 raised about that, and that it is proper for the Board to consider
14 if it is in the public good to grant yet another variance when
15 these questions are still outstanding.

16 The bottom line is that I favor having an oncology
17 center, a modernized oncology center, and I favor having it today.

18 But I believe the board's actions should be delayed until the
19 hospital has addressed these other issues which are referred to in
20 the attachment to the letter from the Advisory Neighborhood
21 Commission.

22 As far as I am concerned, if the hospital resolved
23 those issues today, then the Board could act, and we could move
24 forward. If the hospital took the PCA resolution, a very good
25 resolution incidentally, and if it took that resolution and in

1 some binding and enforceable way committed itself to meeting the
2 conditions of that resolution, then I would say approve this
3 today.

4 But we have seen that the hospital is not yet ready
5 to do that. Incidentally, when you go to that PCA resolution
6 passed by the Board of the Palisades Citizens Association, the
7 language in there is very finely turned. No one has -- or at
8 least I have never insisted that the hospital put all the buses on
9 Little Falls Road.

10 The PCA resolution says -- and I think that this is
11 the proper way to approach it -- that if that is not practical,
12 and if that is not doable, and if that is not a reasonable cost of
13 doing business, then the hospital should propose other measures
14 that would mitigate the impact of the traffic that it is
15 generating.

16 If the hospital would agree to that in some
17 enforceable way, if it was incorporated in the zoning order as Ms.
18 Pagano has suggested, I see no problem.

19 But we should move forward only when we have hard,
20 enforceable language to remediate some of the conditions that
21 caused the hospital in my view to be incompatible with the
22 residential neighborhood and remedy some of the conditions that
23 have been created by the construction that was improved in the
24 first two phases of development by this Board. Thank you.

25 CHAIRPERSON SOCKWELL: Thank you. Any questions,

1 Board Members?

2 MR. ELLIS: I just have a quick statement, and that
3 is that --

4 CHAIRPERSON SOCKWELL: No, you have --

5 MR. ELLIS: Well, I have an objection to some of
6 what was just said, and the objection is that it seems to be that
7 everybody is pushing towards this conditioning a variance.

8 CHAIRPERSON SOCKWELL: Well, let's not talk about
9 everybody.

10 MR. ELLIS: Okay. Mr. Shaughness' conditioning
11 wants the board to condition if it grants the variance to
12 condition a variance. Special exceptions can be conditioned.
13 Variances --

14 CHAIRPERSON SOCKWELL: We can condition variances.
15 We don't often, but we can.

16 MR. ELLIS: All right. There has been -- all
17 right. Fine. If that is the Board's policy, then that's fine.

18 CHAIRPERSON SOCKWELL: Actually, it is Corporation
19 Counsel's judgment that variances may be conditioned in some
20 instances.

21 MR. ELLIS: In some instances. All right. I will
22 defer to the board on that.

23 CHAIRPERSON SOCKWELL: Thank you. Now, if there
24 are no other questions of you, Mr. Shaughness, we will move to
25 Mrs. Shaughness. Mrs. Shaughness, you cannot cover the same

1 issues that your husband covered, and he took one of your issues
2 from you, and so you have to pick the other ones now.

3 VICE CHAIRPERSON REID:

4 VICE CHAIRPERSON REID: Let me say, Mr. Chair, that
5 we ask that they not be redundant or repetitive in their
6 testimony.

7 CHAIRPERSON SOCKWELL: Proceed, please.

8 MS. SHAUGHNESS: This is kind of a tough spot to be
9 in. My husband and I are on very fine terms, and my husband
10 worked like a dog as an ANC Commissioner, and I have worked very
11 hard on this project trying to get relief for the community.

12 A couple of things become real clear. It is clear
13 that it is within the discretion of this board to not act today.
14 It is clear that they could come back later.

15 What would be the benefit of doing that? First of
16 all, a little history on how we got to that list of things of
17 wishing well agreements from Sibley Hospital. I met with Sibley
18 Hospital -- and I have a planning background -- and the bus
19 people, and we walked the site.

20 We looked at what in fact -- we jointly identified
21 the problem areas on this site. You have got a situation where
22 there is really an admission of serious impact resulting from
23 phase one and phase two, and now before we can even finish
24 discussing it, and getting negotiations to the point of concrete
25 -- okay, we can do this, and we can't do that.

1 But before we even get to that point, we are going
2 to pick up that excess, which would have been an even greater
3 disaster FAR, and we are going to give it away on the hope that
4 they will do better on phase three than what they have done on
5 phase one and phase two? It doesn't make sense.

6 Now, there are solutions that have been put out
7 there, and I want you to have the sense that there real and
8 pragmatic solutions available, which given time we could arrive
9 at, and I don't think we need a lot of time.

10 But sometimes you need a key piece of information
11 to go forward, and in our case one of the key pieces of
12 information is what is it going to cost to upgrade that route, or
13 does that road have to be upgraded.

14 But you know what? I have got a win-win solution
15 for that, too, if we can negotiate it that far. However, I
16 disagree with the point of view that they don't gain momentum with
17 every approval they pick up as they go.

18 Every approval they pick up as they go before all
19 of the outstanding issues are resolved makes it harder for the
20 citizens, for the 18 homes on our block, and the ones who signed
21 petitions behind, including by the way Bruce Babbitt and his wife,
22 Patti. They are the first signatures on your package of signed
23 petitions.

24 Here is a man and his wife who know a great deal
25 about intelligent land use planning and development. They were

1 wholeheartedly behind this petition. And the difference is that
2 this petition has concrete language.

3 It is not we will work with you for how long.
4 There is a solution that we would like the opportunity to try to
5 reach, which is that if we get data back that that road cannot
6 carry buses, we will then --

7 CHAIRPERSON SOCKWELL: Ms. Shaughness --

8 MS. SHAUGHNESS: Would you like to know what we
9 would be able to do if you don't pull the rug out from under us
10 now?

11 CHAIRPERSON SOCKWELL: Ms. Shaughness, was your
12 petition ever submitted to this board?

13 MS. PRUITT: It was submitted this morning.

14 COMMISSIONER HOOD: Mr. Chair, I believe it is in
15 the back of yours. The one with the red tabs. And let me just
16 say that my concern of someone who has looked through that, I only
17 saw 7 or 8 homes that signed. I didn't see a petition.

18 MS. PRUITT: Mr. Sockwell, you have one right in
19 front of you.

20 BOARD MEMBER RENSHAW: Ms. Pruitt, I don't have a
21 packet.

22 MS. PRUITT: Okay.

23 COMMISSIONER HOOD: I don't have one either, Ms.
24 Renshaw, but Mr. Sockwell does.

25 MS. SHAUGHNESS: I only provided one copy with the

1 signatures, but each packet has a blank one so that you can see
2 the language signed. on its own.

3 (Brief Pause.)

4 COMMISSIONER HOOD: Mr. Chairman, if somebody could
5 inform me on the amount of signatures, because when I looked
6 through it earlier, I only saw 7 or 8 signatures.

7 CHAIRPERSON SOCKWELL: I think reference was made
8 to 25 wasn't there?

9 COMMISSIONER HOOD: And that is what I was looking
10 for, the 25 signatures.

11 MS. SHAUGHNESS: Well, some pages have more than
12 one signature, husband and wife, and it adds up to 25 if it is
13 complete.

14 CHAIRPERSON SOCKWELL: But the 25 signatures
15 represent a number of households, as opposed to one signature per
16 household?

17 MS. SHAUGHNESS: In some cases it was a single
18 person in the household.

19 VICE CHAIRPERSON REID: Are you saying that these
20 four conditions be incorporated within any order that may be
21 forthcoming?

22 MS. SHAUGHNESS: That's correct, but you know,
23 another way of looking at this -- because I understand that there
24 are certain conditions that are normally beyond your perview. So
25 in a way what would be more practical would be to let us have time

1 to go forward.

2 What is interesting is that these are conditions
3 that Sibley agreed to do in linkage to oncology.

4 VICE CHAIRPERSON REID: Ms. Shaughness, the fact of
5 the matter is that the only people who can request a continuance
6 are parties in the case. So that is a moot point, and so carry
7 on.

8 MS. SHAUGHNESS: Okay. That part is moot, but that
9 does not abrogate the fact that you have discretion based on the
10 discussion that I heard to choose maybe this isn't the best time
11 to vote this one.

12 And to show you kind of the opportunities that are
13 available here, let's say that they can't do the road --

14 CHAIRPERSON SOCKWELL: All right. Here is the
15 issue. Let's look at this.

16 COMMISSIONER HOOD: Mr. Chair, if I could just put
17 this on the record. Ms. Shaughness, I am not trying to slight you
18 in any way. I heard you earlier, and I hear you again. I will
19 have to leave because of a previous engagement.

20 MS. SHAUGHNESS: I understand.

21 COMMISSIONER HOOD: And, Mr. Chair, I just wanted
22 to put that on the record, and no disrespect, but I do have
23 another appointment.

24 MS. SHAUGHNESS: Thank you.

25 CHAIRPERSON SOCKWELL: Here is the thing. There

1 are five elements that --

2 VICE CHAIRPERSON REID: Four.

3 CHAIRPERSON SOCKWELL: Well, there are five on this
4 petition.

5 VICE CHAIRPERSON REID: Right.

6 CHAIRPERSON SOCKWELL: And one of them says support
7 change in D.C. law to require long term site plans for all
8 significant institutional landowners and request the hospital to
9 voluntarily comply in the meantime.

10 That is not a condition that we can deal with.
11 That does not have anything to do with this board. On top of
12 that, how can a hospital comply with something that hasn't been
13 set down at least for them to know about specific language
14 requirements, et cetera, et cetera.

15 So we can't deal with that. Exterior lighting,
16 erect a sign, screen parking lots, facilitate, and where
17 necessary, meet the costs for rerouting buses to Little Falls
18 Road, some of that you can't do and some of you can do it, and
19 some of it you certainly wouldn't be able to -- well, I don't
20 really have too much problem with the other four, and maybe
21 neither would the hospital.

22 But the point is that the fifth one takes us out of
23 the realm of doable, and therefore it reduces the validity of the
24 petition for the purpose for which it was intended.

25 And what I do want you to do specifically is stay

1 succinctly on the subject of what you are supporting. The
2 petition in this case, because you were not elected to represent
3 these individuals, and it is nowhere stated on this that you are
4 the person who represents their viewpoints.

5 And in fact some of these -- one or two of them --
6 have been slightly hand annotated. Let's just hear what your
7 concern is as different, or concerns are as different from those
8 of your husband, who has at one point supported the proposal, and
9 now is in opposition to the proposal.

10 So I want to know what you have to say
11 specifically, and things that you either didn't say earlier or can
12 say clearly now. But different from what your husband said,
13 please. We have these petitions in the record.

14 MS. SHAUGHNESS: Obviously if Sibley had
15 volunteered to do a campus plan approach with us, that condition
16 would have been met voluntarily, and that's all I will say on that
17 one.

18 It is my understanding that there have been
19 precedents by this board to intentionally delay decision making to
20 allow other related information to be obtained, and to be
21 deliberated in other appropriate bodies.

22 CHAIRPERSON SOCKWELL: And the board makes that
23 decision on its own.

24 MS. SHAUGHNESS: I could request it perhaps?

25 MS. SHAUGHNESS: No, not really. I mean, we

1 haven't -- first of all, you can ask for -- any time you ask for a
2 continuance, there is a time for it. Any time you ask for a
3 postponement, there is a time for it.

4 That is usually at the beginning of the process and
5 not at the time of the opposition's statements with regard to the
6 hearing. So preliminary matters include requests for continuance,
7 party status, and issues like that.

8 VICE CHAIRPERSON REID: At this point in time, I
9 think we have exhausted quite a bit of patience with Ms.
10 Shaughness and this request for a delay or continuance.

11 And it has been said to her on many, many times as
12 lightly as we know how that we cannot do that, and will not do
13 that. So I would suggest that if in fact she has no further
14 statements that we move on.

15 MS. SHAUGHNESS: The last point which I think goes
16 to the credibility of Sibley Hospital to deliver all the
17 conditions they claim they will deliver on is that credibility is
18 important and their future credibility is important.

19 They don't have a lot of credibility based on what
20 happened in phase one and phase two. For phase three, it has a
21 very different sound to it. If Sibley Hospital were to say,
22 Linda, that is a great win-win solution to get around the problem
23 of what it might cost to fix that road.

24 In fact, I publicly proposed this, and Jerry Price
25 was present, at the last ANC meeting in December. And it goes

1 like this. The city does not have money to buy that road and fix
2 it.

3 But what if the community when the contract -- if
4 the contract is not worked out at all, and you have heard that
5 today, for the conditions and the boiler plate that will go in
6 that real estate transfer from the Corps of Engineers to Sibley
7 Hospital, and if the community were to support an offset, a dollar
8 for dollar offset against the fair market value price that Sibley
9 Hospital must pay for that land, a dollar-for-dollar offset on
10 what it will cost them to upgrade that route, and given that they
11 have already said that we are willing to move that massive bus
12 transit activity to the back of our hospital -- and believe me
13 that nobody on my block is using those buses at 5:00 a.m.

14 It is their people, and we want their people to use
15 buses, and we believe in mass transit. So what does that say;
16 that they are not willing to say? They didn't even want you to
17 hear about that, that there is a way to solve that, and they don't
18 want it made a condition.

19 And we are saying that good will towards the
20 community is proven every day. You know how you got this list of
21 the conditions? It is because in one of your packages, the one
22 dated November 6th, those are my proposals based on my
23 understanding of the site to Sibley Hospital, and please respond
24 to each of these, and what is your answer.

25 The answer is that short list. No one else in the

1 community was willing to do the leg work to get to that point. I
2 would just like the chance to finish the job for the community to
3 do its then normal --

4 CHAIRPERSON SOCKWELL: Ms. Shaughness, the problem
5 is that you don't represent the Advisory Neighborhood Commission.
6 You don't represent the Palisades group. You represent yourself
7 as a homeowner.

8 You have collected signatures from other
9 individuals whose willingness to attest to five conditions, one of
10 which is sort of out of our realm completely, was supported
11 perhaps in part by your strong feelings about this, and your
12 ability to get them to agree.

13 The point is that we just can't stop the process on
14 the particulars that you are using. You are asking for a great
15 deal from this board without being able to provide us,
16 unfortunately, with significant meat for us to take this truly
17 under advisement in the most critical manner that you would wish
18 us to.

19 I do appreciate the fact that you have gone out of
20 your way to present your views, and certainly your views have been
21 received by this board, and we understand where you are on this.

22 We also understand from the others who have
23 represented themselves as being opponents to the process or to the
24 particular application. We understand what has prompted that
25 opposition.

1 If anything, when you present your views publicly
2 and openly in a forum such as this, if anything, first it goes on
3 the record. Second, the persons who need to hear this hear it.

4 They know that there are people out there who are
5 not only strongly proponents of quality neighborhood environments,
6 and property value retention, and increases, and all the other
7 good things, but they also know that you are willing to go out and
8 organize to get something accomplished.

9 If that does not do anything, then nothing will
10 change their minds. The point is that there is much more process,
11 and there is that process, and there is this process. We don't
12 even know at this point whether or not the land will be purchased
13 by the hospital, or whether or not some complex legal arrangement
14 will complete the deal.

15 So some of the things that you are suggesting are
16 not based on fact that we even have. So let's move forward with
17 this. Again, I think you have presented all the possible views
18 that you can have on this, and I appreciate it.

19 I appreciate Mr. Shaughness, and I appreciate Mr.
20 Mahan, and I appreciate all of you having come before us, but we
21 have to move forward.

22 MS. SHAUGHNESS: Can I say just one last thing?
23 You know, I realize that there were problems with the scope, and
24 power, and discretion. But, you know, maybe there is one thing
25 that you could say that would make us all feel better.

1 I don't know how many of you were on the board at
2 the time of phase one and phase two got approved. But you know
3 what? If you just look at my color photos with the captions, and
4 if some day any one of you would give me a call and say you are
5 very sorry this got approved.

6 You are very sorry that this impact had to happen
7 on my street, because people couldn't quite comprehend the scope,
8 and magnitude, and impact of what was being proposed on a
9 preliminary site. I would feel better after all of my zillion
10 hours of effort I got a "I'm sorry."

11 CHAIRPERSON SOCKWELL: Thank you very much.

12 VICE CHAIRPERSON REID: I have a question. Ms.
13 Shaughness, in regard to one of the conditions that you had
14 proposed, possible conditions, landscaping, the screening of the
15 parking lots, and nursing facilities. Do you see that on the
16 architectural rendering there?

17 MS. SHAUGHNESS: This is the parking lot that runs
18 from Loughboro all the way back to Little Falls Road, a completely
19 unobstructed view. Solid asphalt. The width of this asphalt
20 extends from this access road across here is 90 feet.

21 That is the view of these three properties. That
22 is a very much asphalt in your face view.

23 VICE CHAIRPERSON REID: No, what I am asking is do
24 you see that particular condition being addressed within the
25 architectural renderings I'm asking.

1 CHAIRPERSON SOCKWELL: We are talking specifically
2 about the oncology center now, and not phase one or phase two.
3 You see, the problem that we have here is that from where you are
4 located on Loughboro, you are looking at those conditions.

5 Those conditions are not before the Board. The
6 conditions that are before the Board are actually from a side
7 where nobody will view anything because there is reservoir across
8 the street, and the only people who will see that are the people
9 driving by and the people driving in, because there are no houses.

10 Unfortunately what you are asking us to look at,
11 and what you are asking us to consider perhaps should have been
12 considered in phase one by this board, and perhaps should have
13 been considered in phase two by this board.

14 I wasn't here then, and unfortunately for you and
15 your point of view, what we are looking at is from the other side
16 of the property, and doesn't relate to where you are coming from.

17 And I apologize for the fact that any mistakes made
18 or any issues that may not have been mistakes weren't even
19 enforced. That is not where we are today.

20 And because we are not making any changes on the
21 side that most concerns you, I have to put my concern where it
22 belongs, which is on the Little Falls side, which is what we are
23 looking at.

24 It is hidden, and it is one-story now, and that's
25 what we are looking at. That is all that I need to deal with.

1 That is all that this board is empowered to deal with. And I
2 appreciate the fact that you are here, and I appreciate the fact
3 that you have got problems.

4 I appreciate the fact that you have been able to
5 voice them so that the hospital understands what your problems are
6 if they didn't already know. But I can't do anything about them,
7 and this board can't do anything about them in this particular
8 application hearing. That is what I am saying.

9 MS. SHAUGHNESS: Are there other forms of relief
10 for parties to come before this board to request you to actually
11 cause amelioration --

12 CHAIRPERSON SOCKWELL: Ma'am, may I make this
13 suggestion to you? That you read the BZA orders that established
14 any other developments on this site, and look to see whether
15 things have been addressed.

16 If they have not been addressed, you can bring
17 those things back up. You can appeal decisions saying where they
18 promised landscaping they didn't provide it. Where they said they
19 were going to do the is, they didn't do it. But not here. Not
20 today and not now. So we have got to go forward.

21 MS. SHAUGHNESS: Thank you, Board Members.

22 CHAIRPERSON SOCKWELL: Thank you. All right.
23 Barring any other opposition individuals that were not heard, I
24 will ask for closing remarks by the applicant.

25 MR. ELLIS: Very briefly, the radiology oncology

1 unit as we stated was located in the rear of the property simply
2 because the property as it is presently built out, we could not
3 locate it anywhere else to functionally have it work in the
4 hospital.

5 Secondly, there is an absolute need for this
6 facility because the new equipment that we have would not fit in
7 the vaults that we have at the hospital, and therefore we have to
8 place the new equipment in new vaults.

9 And therefore the need to build them and put them
10 somewhere else, because if we were to build it within the
11 hospital, we would literally have to close down the facility where
12 people are being treated, and then have them go someplace else, or
13 in some cases even delay treatment until we got the vaults built
14 out, which is an untenable situation.

15 And it is also untenable to keep it in the same
16 area that it is in when you deal with comments like Ms. Abate has
17 made to the Board, whereby a lot of dignity is lost because of
18 where the facility is today.

19 In terms of community impact in this situation, the
20 oncology unit is completely in the rear. There is no one who is
21 going to see it. We are going to bring truck traffic in off of
22 the rear of the property. We are going to keep everything off the
23 street. We are going to scrub the trucks down, and we are going
24 to keep the tarps over them.

25 We plan to keep a very clean facility, and impact

1 the community as little as possible. In terms of potential
2 conditions, I know you have before you the petition that was
3 submitted, and the rerouting of buses, and we cannot reroute
4 buses.

5 I mean, there is an assumption that we can reroute
6 the buses. We cannot. I mean, that is based on what Metro wants
7 to do, and it also is based on what the condition of the road is.

8
9 Landscaping and screening. We are meeting with the
10 community, but the landscaping and screening that they are talking
11 about is for the second project. We have today even given a
12 computer generated form of how our landscape architect is coming
13 back to deal with that.

14 But that is not part of this project, and I only
15 bring it to you in terms of just information for you. The
16 Loughboro Road nursing facility entrance, that has nothing to do
17 with the present facility that we are dealing with.

18 Exterior lighting. The exterior lighting for the
19 oncology unit is on the rear of the building. I mean, even
20 assuming that we put the most maximum mercury vapor or anything
21 else, you still would not see it on the other side of a building.

22 So again the exterior lighting has nothing to do
23 with this facility. And the campus plan requirement, as you
24 stated before, that is not something that is before this board,
25 and that is something that this board could take up at the time.

1 Sibley's responses, In re: residential quality
2 impact issues, as those are set forth, those were written as you
3 can see on Sibley Memorial Hospital, and those are in response to
4 the ANC, and the ANC then sent them into you.

5 So those were actually as I said drafted in
6 response to ANC conditions that they had. We have no problem and
7 we have -- and as those responses have set forth, we have no
8 problem with complying with those conditions that are there as we
9 have stated them. And we would just ask in closing for a bench
10 decision and a summary order.

11 VICE CHAIRPERSON REID: I have a couple of
12 questions, Mr. Chairman.

13 CHAIRPERSON SOCKWELL: Yes, please.

14 VICE CHAIRPERSON REID: In regard to the conditions
15 that were proffered from the Palisades Civic Association, what did
16 you say about those?

17 MS. PRUITT: I believe, Ma'am Chairman, while Mr.
18 Ellis is looking for it, that the last two, which are on the ANC,
19 would also fall off.

20 VICE CHAIRPERSON REID: The last two?

21 MS. PRUITT: The last two are ones that were part
22 of this Sibley Memorial project that are not part of this
23 particular project.

24 VICE CHAIRPERSON REID: Okay. But the other three
25 would relate?

1 MS. PRUITT: Would relate to this project, yes.

2 VICE CHAIRPERSON REID: Do you have a copy of it,
3 Mr. Ellis?

4 MR. ELLIS: You mean the Sibley responses?

5 VICE CHAIRPERSON REID: No, no. The one proffered
6 through the Palisades Civic Association.

7 MS. PRUITT: And I believe they are similar
8 conditions to what you requested, or which were put forward, which
9 are like adequate parking on site for oncology, and that all
10 construction traffic et cetera be routed through Little Falls, et
11 cetera, and that all construction workers be required to park on
12 site.

13 MR. ELLIS: Actually, I was not given a copy of
14 this. So I am seeing this for the first time.

15 VICE CHAIRPERSON REID: Okay. Do you want to take
16 a moment and just glance over the first three?

17 MR. ELLIS: That adequate parking be provided for
18 patients at the radiation oncology center. Mr. Oudens pointed out
19 in his presentation -- well, it is on there already, but we are
20 okay with that.

21 MR. OUDENS: We will agree to that.

22 CHAIRPERSON SOCKWELL: You are talking about that
23 parking right there?

24 MR. ELLIS: Yes.

25 CHAIRPERSON SOCKWELL: And that parking right

1 there, I guess.

2 VICE CHAIRPERSON REID: In regards to conditions on
3 the Sibley Memorial Hospital stationary, the ANC, if I am not
4 mistaken, only asked for 7, 8, and 9.

5 CHAIRPERSON SOCKWELL: Right.

6 MR. ELLIS: Right.

7 VICE CHAIRPERSON REID: But you are willing to
8 include the entire list?

9 MR. PRICE: We would agree to do all these things
10 that are included in Penny Pagano's letter.

11 VICE CHAIRPERSON REID: No, no, I am going now to -
12 - I thought these things came from the applicant that is on Sibley
13 Memorial Hospital stationary.

14 MR. PRICE: Right.

15 VICE CHAIRPERSON REID: The point that I was
16 making, sir, that the ANC stipulated that Issues 7, 8, and 9 be
17 incorporated. But I was asking you were these other ones, 1
18 through 6, the ones that you yourself had proffered to us as being
19 amenable to you?

20 MR. PRICE: Yes.

21 VICE CHAIRPERSON REID: Now, the other thing that I
22 want to discuss is or ask is given the opposition, and the rather
23 contentious nature of the opposition that pertains to -- and even
24 though -- and please understand that I understand that this may
25 not have been something that was germane to this particular

1 application.

2 Nonetheless, it appeared that these are issues that
3 have arisen over time, predicated upon the other orders having
4 been approved, and is there any effort or any kind of discussion
5 or dialogue that is ongoing to try to ameliorate some of those
6 problems as well as a means to defusing some of that negative or
7 adverse impact so as to bring about the aspect of a good
8 neighborliness or some type of conciliation within the community?

9 MR. ELLIS: Be assured that Sibley Hospital is not
10 sitting in front of you saying we are not willing. We have met
11 with the ANC, and we have had Palisades come in and say they would
12 set up a committee to meet with us.

13 What happens is -- and you have got to understand,
14 that when you have a group of people, and you are dealing with a
15 group of people, sometimes there are others who want something
16 different. There are others who have a different agenda, and what
17 happens is Sibley is dealing with the Palisades committee, and
18 Sibley is dealing with whatever the ANC has.

19 Sibley has dealt with the Shaughnesses, both of
20 them, Mr. and Mrs. Now, sometimes Sibley doesn't do what one or
21 more of them may want. But the reality is that -- and if you
22 remember the testimony, Ms. Pagano came up and said we have met
23 with them, and we have been more than willing to meet with them.

24 The ANC actually meets in our facility, and we have
25 it there and we discuss it there, and we put it before them. We

1 are willing to meet and there is continuing dialogue.

2 But you can't always get a yes from everybody, and
3 this is a situation where others may be more accepting of what we
4 have proposed and what we are doing than what others are doing.

5 VICE CHAIRPERSON REID: I understand that, Mr.
6 Ellis, and this board member did acknowledge that there had been
7 considerable meetings and communication with various aspects of
8 the community.

9 But I am referring specifically to the opposition,
10 and as such, is there a liaison -- do you all have a liaison?

11 MR. ELLIS: Yes, the liaison is here with me, Mr.
12 Price.

13 VICE CHAIRPERSON REID: And you have been in
14 dialogue with -- and understandably there are certainly in the
15 best of worlds situations where you cannot make everyone happy.

16 MR. ELLIS: Right.

17 VICE CHAIRPERSON REID: And there are some things
18 that go beyond the pale as far as requests are concerned, but what
19 I am referring to are specifically those things that may be within
20 the power of the hospital and requests, and coming to some type of
21 meeting grounds and the meeting of the minds type of thing, and
22 particularly if you know that there is as a result of these
23 previous orders having been promulgated that there has been some
24 type of adverse impact.

25 MR. ELLIS: Let me give you an example. The

1 hospital is aware that certain community members are not satisfied
2 with the landscaping. Our landscape architect is in North
3 Carolina. When he came to town to deal with one other aspect, we
4 sent him out and said, okay, give us an idea of what to do here.

5 He gave us something, and did it on a computer, and
6 we provided it to the opposition. Now, the opposition said that
7 it is not substantial enough. We will take it back and within
8 humanly possible, but there was a comment that was made today that
9 what they proposed is going to cost us a whole lot more money.

10 Everything has economies of scale, and we will do
11 what we can within our budget to ameliorate your problem, but you
12 can't expect us at any cost to ameliorate your problem simply
13 because you have a problem with it.

14 I mean, when we came in, we presented it to the
15 board, and we told the board exactly what we were going to do, and
16 it was accepted on that basis. And we have tried to meet with
17 everybody and said, okay, we have now got this here, and you are
18 now saying you have problems with it.

19 We are sitting here and we will meet with you, but
20 you can't say that it is carte blanche to do that.

21 CHAIRPERSON SOCKWELL: Okay. You have not
22 presented to this board a landscaping plan have you?

23 MR. PRICE: No.

24 MR. ELLIS: No, not for --

25 MR. PRICE: And let me just say something about

1 that.

2 CHAIRPERSON SOCKWELL: And that is something that
3 you have stated that you would agree to, because you in a way on
4 the landscaping bound in the skilled nursing facility, because --

5 MR. PRICE: Sure. We agreed to that, but let me
6 just explain. Our landscape architect was on the site last week.

7 He came up to do his punch list on the new building, and at the
8 same time took some digital photos of the two areas that the
9 neighborhood is concerned about.

10 He has e-mailed those to me, and I have provided a
11 copy of those today just as a courtesy to one of the neighbors.
12 Our intention is to meet with Penny Pagano's task force, and which
13 represents the community at-large, right away.

14 We will be scheduling that meeting probably within
15 the next 2 or 3 weeks to present to them a comprehensive landscape
16 plan. Our intention is to have that all done as soon as we can
17 start planting that stuff.

18 And virtually anything the neighbors want, we will
19 do with regard to that. So I think the mechanism is set up by Ms.
20 Pagano for the community to meet with us on a regular basis, to
21 include representatives of the 5200 block, and we are perfectly
22 willing to do that.

23 CHAIRPERSON SOCKWELL: All right. Now here is the
24 other issue. Because you have in fact accepted as a
25 responsibility for this approval the landscaping of portions of

1 the site other than the ones that is in question for the new
2 development, I am going to ask if you would have a problem
3 accepting one other element of the petition that Ms. Shaughness
4 circulated, which had five items on it.

5 And one which would be the rerouting, which is
6 really covered in other things generally speaking --

7 VICE CHAIRPERSON REID: If it got approved.

8 CHAIRPERSON SOCKWELL: Yes, it if got approved, and
9 the landscaping, which is almost word for word what was stated in
10 another area of the -- it was the bottom one at page 2 of the ANC
11 letter.

12 The one that I want to add to that, or would
13 consider adding to that as a condition would be work with the
14 neighbors and community to reduce night time impact on exterior
15 institutional lighting, because along with landscaping, lighting
16 becomes an important issue because the two go hand-in-hand.

17 You can either landscape to block the lighting, or
18 you can do things to the lighting to reduce the need for
19 landscaping. We are talking about bleed out.

20 MR. ELLIS: Let me point out something ot you.

21 CHAIRPERSON SOCKWELL: Please.

22 MR. ELLIS: The lighting that we are talking about,
23 right now we are --

24 CHAIRPERSON SOCKWELL: We are not specifying what
25 to do. We are specifying to communicate with the community and to

1 have an open mind, and to accept opportunities where they present
2 themselves to improve the night time appearance of your property
3 by reducing off-site bleeding of the illumination used for your
4 parking lots and your facilities. I am not saying what to do.

5 MR. ELLIS: I know, and Mr. Sockwell, as you may
6 well know, around the hospital they have those fog lights. You
7 know, the city lights are fog lights around.

8 CHAIRPERSON SOCKWELL: You are talking about sodium
9 vapors, as opposed to --

10 MR. ELLIS: Yes, vapor lights that are sitting
11 there. Those are the brightest lights. It is not the hospital's
12 lights. But we are going to meet with them, and we don't have a
13 problem with that.

14 But we want you to understand that the brightest
15 lights are the sodium vapor lights of the city. We can't do
16 anything about that.

17 CHAIRPERSON SOCKWELL: If those lights are city
18 lights, then they are not your responsibility. If they are on the
19 street, on public space, they are not your responsibility.

20 MR. ELLIS: And those are the brightest lights,
21 because once our facility is inhabited, all the windows --

22 CHAIRPERSON SOCKWELL: Well, let me just say we are
23 going far a field here.

24 MR. PRICE: We have a little bit of a disagreement
25 with the neighborhood in terms of what are the bright lights, and

1 what is the impact on the neighborhood, but we can agree to what
2 you say.

3 We will continue to have dialogue with the
4 neighbors, and if we can do something that doesn't compromise
5 safety for our employees, and in going out to those parking lots
6 at night for our nurses that get off at midnight, we will do the
7 best that we can, and we will commit to that.

8 VICE CHAIRPERSON REID: And that is a major issue,
9 Mr. Chairman, and I saw that, too. And I also have it in my notes
10 on security, because you have people coming and going 24 hours a
11 day.

12 CHAIRPERSON SOCKWELL: Certainly.

13 BOARD MEMBER RENSHAW:

14 MR. MILLSTEIN: And I'm sure that Sibley Hospital
15 has security people on staff to work with that.

16 CHAIRPERSON SOCKWELL: We have conditioned other
17 projects with regard to lighting and when they can have it on, and
18 when they turn it off at night, et cetera, especially when there
19 is a residential adjacency.

20 VICE CHAIRPERSON REID: I think your point is well
21 taken and I would ask that they try to work together to come to a
22 resolution, which would perhaps also include talking to DPW as
23 well. If everyone is open-minded about that, and about security,
24 and trying to work together --

25 MR. PRICE: That is what we want to do.

1 CHAIRPERSON SOCKWELL: That is what you are going
2 to need to do. All right. Do we feel comfortable in voting on
3 this today?

4 VICE CHAIRPERSON REID: Yes, I think so. Mr.
5 Chairman, given the fact that this is a circumstantial type of
6 variance that is being requested here that pertains to health
7 issues, quality of life issues in regard to cancer patients, that
8 the most expeditious manner in which we can take care of this
9 particular application would be appropriate.

10 And I would therefore vote approval of this
11 application with conditions, and with that, I do move that we
12 approve the application with the conditions that have been put
13 before us, and decide on what conditions would be the most
14 appropriate ones to add to the order.

15 CHAIRPERSON SOCKWELL: I will second the motion,
16 with the statement that we really have a situation of a hospital
17 that does a great deal of good within the community, and that like
18 many institutions has an independence that sometimes makes it very
19 difficult for the community to feel totally comfortable with
20 development that is proposed, and with the results of orders that
21 may have been issued by this board with regard to compliance with
22 all of the positive aspects of making changes to the status quo in
23 a local neighborhood.

24 At the same time, the services provided by this
25 hospital and in the oncology section cannot be disrupted without

1 causing the kind of pain that may actually lead to loss of life
2 because their facility is overburdened.

3 And I am sure that the other facilities around the
4 city are not as available to the people who would normally use
5 Sibley, and may not be as high quality. Sibley Hospital enjoys a
6 fine reputation in this town as a hospital, and that is from the
7 provision of a medical services standpoint.

8 Yet, they have to become more aware of the
9 community and more responsive, and more proactive, and not to a
10 fault, because you are not for profit. But at the same time, not
11 being for profit means that you have to use more creative means of
12 accomplishing your goals, and that is not just the provision of
13 new radiology equipment, or doing a value engineering study on a
14 building.

15 Everybody does value engineering studies, and the
16 architects hate them. But the point is that we are there at a
17 situation where to shut that service down for redesign would not
18 be a good thing. Once the new facility is up, should we vote to
19 approve it, then the hospital has to be cautious about how it re-
20 utilizes the existing spaces, because everything that you add
21 means that you vacate something, and then you have to refill it.

22 The glass is either half-empty, or half-full, or it
23 is spilling over, and you never know which it is. So on that
24 basis are there any other comments?

25 BOARD MEMBER RENSHAW: Yes, Mr. Chairman, just a

1 comment. I want to take this moment to thank Sibley Hospital for
2 making its presentation. It is one of the finest hospitals in the
3 city, and we do recognize that.

4 But on the other hand, I do want to applaud the
5 community in this regard for stepping forward to express their
6 opinions. We feel the frustrations that many of the community
7 members have had with Sibley.

8 And we understand their need to grab at this
9 opportunity to remind us, the BZA, that what looks and sounds
10 acceptable at the time of a vote sometimes does not play out. So
11 we hope that Sibley Hospital will renew its efforts to make a
12 match with this community, because you are living together, and
13 make sure that what the community has brought to your attention
14 today is rectified and ameliorated in some very fast manner, and
15 with that, I think we are ready to vote. I know I am.

16 VICE CHAIRPERSON REID: Just one other thing in
17 regard to the regulations, the zoning regulations. I feel that
18 the applicant has -- and I forgot to say this in my motion, but
19 that they have met the burden of proof, and approval has been
20 recommended by the Office of Planning and the ANC, which we do
21 give great weight.

22 And they have demonstrated that there would
23 certainly be a practical difficulty in not granting the
24 application, and that it would not result in any unnecessary and
25 adverse impact given the fact that the intensity of use is not

1 going to be increased.

2 And that whatever adverse impact there is, or that
3 there is perceived to be, is being addressed within the conditions
4 as best we can, and that it would not impair the intent and
5 integrity of the zoning regulations. Now, the conditions, do you
6 want to do that now or after?

7 CHAIRPERSON SOCKWELL: We can do the conditions
8 now. We have advisory neighborhood commission conditions.

9 VICE CHAIRPERSON REID: And that is included in the
10 Sibley Hospital residential quality impact issues all included.

11 CHAIRPERSON SOCKWELL: And 7, 8, and 9 were the
12 ANC's stated ones.

13 VICE CHAIRPERSON REID: And that takes care of the
14 ANC, yes.

15 CHAIRPERSON SOCKWELL: And the Palisades Citizen's
16 Association had five conditions, and we have taken the first three
17 from there; and we add one specific condition on exterior lighting
18 from the petition circulated by Linda Graves Shaughness.

19 MS. PRUITT: And I believe also the board was going
20 to condition that there be no work on construction work on
21 Saturday, and that construction would not begin before 7:00 a.m.

22 BOARD MEMBER RENSHAW: And also to include that
23 there will not be any blasting. Mr. Price said that.

24 CHAIRPERSON SOCKWELL: Right. Fortunately, they
25 are not going deep enough.

1 BOARD MEMBER RENSCHAW: I just wanted to make sure
2 that it is in there.

3 MR. PRICE: That's absolutely right. We wouldn't
4 want that either.

5 BOARD MEMBER RENSCHAW: Good.

6 CHAIRPERSON SOCKWELL: Okay. And that the truck
7 controls, the on-site parking, and the construction site attendant
8 cleaning vehicles be implemented as in previous phases of the
9 construction. I believe if there is a list of those elements
10 somewhere that we could get them provided to us, because you
11 stated that you had a person who would knock the dirt off the
12 trucks, and made sure that loads were covered.

13 You have on-site parking provided for all of the
14 construction workers, and those things, and the truck movements
15 that you discussed, would be bound into the order.

16 MR. PRICE: I think that was everything and we
17 agree to that.

18 CHAIRPERSON SOCKWELL: Okay.

19 VICE CHAIRPERSON REID: Then let's take a vote.

20 CHAIRPERSON SOCKWELL: Then all in favor?

21 (A chorus of ayes.)

22 CHAIRPERSON SOCKWELL: Opposed?

23 (No audible response.)

24 MS. PRUITT: The staff will record the vote as five
25 to zero to approve. The motion made by Ms. Reid, and seconded by

1 Mr. Sockwell, and a proxy to approve from Mr. Hood.

2 CHAIRPERSON SOCKWELL: Thank you very much. We
3 appreciate the time that you have spent. That concludes today's
4 hearing of the Board of Zoning Adjustment. Thank you.

5 MS. PRUITT: And also I know that we don't have
6 anybody here, but just for the record, the afternoon case that was
7 scheduled, the Potter appeal, we did receive a letter requesting
8 withdrawal today.

9 CHAIRPERSON SOCKWELL: Thank you.

10 MS. PRUITT: So I just wanted to put that on the
11 record.

12 CHAIRPERSON SOCKWELL: I appreciate it. The
13 hearing is adjourned.

14 (Whereupon, the hearing was concluded at 3:22 p.m.)
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