

GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

MARCH 6, 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 1:53 P.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

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN	Commissioner
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NATIONAL CAPITAL PLANNING COMMISSION:

SUSAN MORGAN-HINTON	Commissioner
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COMMISSION STAFF PRESENT:

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

D.C. OFFICE OF CORPORATION COUNSEL PRESENT:

Marie Sansone, Esq.

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

(1:53 p.m.)

CHAIRPERSON SOCKWELL: The hearing will please come to order. Good afternoon, Ladies and Gentlemen. This is the March 6th, 2001 public hearing of the Board of Zoning Adjustment for the District of Columbia.

My name is Robert Sockwell, Chairperson. Joining me today on my left is Ann Renshaw and Susan Hinton representing the National Capital Planning Commission.

On my right is Sheila Cross Reid, Vice Chairman, and to her right is Carol Mitten, representing the Zoning Commission.

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 and witnesses of the applicant.

Two, government reports, including the Office of Planning, 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, and, six, closing remarks by
2 the applicant.

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

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

10 The Sunshine Act requires the public hearing on
11 each case be held in the open before the public. The Board
12 may, consistent with its rules of procedures and the Sunshine
13 Act enter executive session during or after the public hearing
14 on a case for purposes of reviewing the record, or deliberating
15 on the case.

16 The decision of the board in these contested
17 cases must be based exclusively on the public record. To avoid
18 any appearance to the contrary, the Board requests that persons
19 present not engage the members of the board in conversation.

20 Please turn off all beepers and cell phones, or
21 set them to vibrate at this time, so as not to disrupt these
22 proceedings. The Board will make every effort to conclude the
23 public hearing as near as possible to 6:00 p.m.

24 If the afternoon cases are not completed at 6:00
25 p.m., the Board will assess whether it can complete the pending

1 case or cases remaining on the agenda.

2 At this time the Board will consider any
3 preliminary matters. Preliminary matters are those which
4 relate to whether a case will or should be heard today, such as
5 a request for a postponement, continuance, or withdrawal, or
6 whether proper and adequate notice of the hearing has been
7 given.

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

12 MS. BAILEY: Mr. Chairman, the first case of the
13 afternoon is Application Number 16626, Columbia Realty Venture.

14 That application was withdrawn. That is the only preliminary
15 matter that the staff has.

16 CHAIRPERSON SOCKWELL: All right. Number 16626
17 has been withdrawn. Thank you. Then we shall proceed with the
18 case of the afternoon.

19 MS. BAILEY: The second case is Application
20 Number 16631 of Alliance Francaise, pursuant to 11 DCMR 3103.2,
21 for a variance from Subsection 2500.5 to allow other than
22 living quarters of a domestic in an existing non-conforming
23 two-story accessory structure of a private school in an R-3
24 District at premises 2142 Wyoming Avenue, N.W., at Square 2528,
25 Lot 203.

1 All those wishing to testify, please stand and to
2 be sworn.

3 (All witnesses were sworn.)

4 MS. BAILEY: Mr. Chairman, while the applicants
5 are coming forward, this case was continued from the November
6 28th, 2000 public hearing session. At that time the Board had
7 requested various items from the applicant and also that the
8 property be re-posted.

9 You have a notes sheet that identifies all of the
10 things that the Board had discussed previously. The Office of
11 Planning is recommending approval of the application, as well
12 as the ANC, and that is ANC-1D.

13 The posting requirements have been met and the
14 case is not ready to go forward.

15 CHAIRPERSON SOCKWELL: Thank you. Is there
16 anyone here in opposition to this case?

17 (No audible response.)

18 CHAIRPERSON SOCKWELL: Any others in support?

19 (No audible response.)

20 CHAIRPERSON SOCKWELL: Then in that case, I would
21 -- I believe that I can recommend that we expedite this case
22 and that you hit the salient points, and we will move forward
23 quickly. You may begin by identifying yourself, and turning on
24 your microphone.

25 MR. MOFFAT: I am J.P. Moffat,

1 M-O-F-F-A-T, and I am president of the Alliance Francaise to
2 Washington. I believe you have the story in the record that
3 you have before you. I would be happy to expound further, but
4 I have nothing particular to say at this time. My colleague,
5 Mark, here will present the more technical aspects

6 CHAIRPERSON SOCKWELL: That's fine. Please
7 identify yourself.

8 MR. ZEYDLER: My name is Mark Zeydler, and I
9 represent Alliance Francaise from the technical point. The
10 project consists of the rehabilitation of the second story,
11 second floor, of the existing garage/carriage house.

12 Right now on the second floor we have previous
13 signs of the old residence and living quarters there. But as
14 the pictures show, it is in very bad condition now. This are
15 the actual pictures of the second story there.

16 What we want to do is to -- well, from the court
17 of the property, we want to open a second doorway that would
18 lead directly to the second story, which will be transformed
19 into one big living and sleeping area, with a bathroom and a
20 small kitchen.

21 VICE CHAIRPERSON REID: Excuse me, sir, but did
22 you submit those drawings for the record?

23 MR. ZEYDLER: Yes.

24 VICE CHAIRPERSON REID: Does anyone else have
25 them?

1 CHAIRPERSON SOCKWELL: I have only the plats. I
2 have multiple plats and photos.

3 MS. PRUITT: They may be in the file, and they
4 may only be in the office file, Ms. Reid.

5 CHAIRPERSON SOCKWELL: I beg your pardon? But
6 the Board Members have not had a chance to review the plans.

7 MS. PRUITT: Because we only get one set of those
8 types of pictures, and we can't reproduce them.

9 VICE CHAIRPERSON REID: Why?

10 MS. PRUITT: The smaller ones, yes.

11 VICE CHAIRPERSON REID: Those plans are not too
12 large that they can't be reproduced.

13 MS. PRUITT: Oh, I thought you met the photos.

14 CHAIRPERSON SOCKWELL: The plans.

15 VICE CHAIRPERSON REID: No, we have the photos.

16 MR. ZEYDLER: The plans were part of your
17 original application for a building permit, and to my knowledge
18 they became part of this whole application to zoning.

19 CHAIRPERSON SOCKWELL: I am not finding them in
20 the master file. I am finding the plats, the photographs, and
21 --

22 COMMISSIONER MITTEN: If you submitted the plans
23 with your building permit application, it won't necessarily
24 come over here. Did you have another set?

25 MR. ZEYDLER: I have some.

1 (Brief Pause.)

2 VICE CHAIRPERSON REID: Ms. Pruitt, isn't it a
3 part of the application process that they submit the drawings?

4 MS. PRUITT: It depends on what they are asking
5 for. I mean, it doesn't say drawings. It says as needed, and
6 so I think it is a judgment call.

7 VICE CHAIRPERSON REID: By who?

8 MS. PRUITT: By both the applicant and the person
9 who takes them in at the front desk.

10 CHAIRPERSON SOCKWELL: Yes, I think we have been
11 falling short of getting the proper number of plans too often.

12 MS. PRUITT: Correct.

13 VICE CHAIRPERSON REID: And as Ms. Reid suggests,
14 I think we should have plans for these projects, because they
15 determine what we know. I mean, it is not the applicants fault
16 if he is not told to bring or give us the plans.

17 (Discussion off the record between Staff and
18 Board Members.)

19 CHAIRPERSON SOCKWELL: But virtually everything
20 that we review seems to require that a set of plans be
21 submitted either if it is a parking lot, or whatever, but this
22 just complicates things a little bit. You may continue with
23 your description while we wait for our copies.

24 MR. ZEYDLER: I have one more.

25 CHAIRPERSON SOCKWELL: Oh, that's okay. We will

1 be getting copies from the office. That's okay. I appreciate.

2 But one copy is only to give one us the opportunity to review
3 it. And I believe you can adequate describe this. It is a
4 fairly simple, one-story dissolution. Please.

5 MR. ZEYDLER: Okay. So, right now the first
6 floor is a one open area, and the current garage, and so the
7 planning on adding a door that would create a separate entrance
8 to the upstairs, and this partition would separate the garage,
9 and we would still be able to park two cars, and separate this
10 from the apartment upstairs.

11 And we go up, and we have here a little
12 kitchenette, the kitchen area, and an entrance to the living
13 and sleeping quarters, and the bathroom here.

14 BOARD MEMBER RENSHAW: Could I ask, Mr. Chairman,
15 in relation to -- well, in the second row of pictures where we
16 see a garage door, is the entrance going to be around the side
17 where you show two doors here? Where are those two doors?

18 MR. ZEYDLER: These?

19 BOARD MEMBER RENSHAW: Yes.

20 MR. ZEYDLER: They are in the back of this.

21 BOARD MEMBER RENSHAW: The back of that?

22 CHAIRPERSON SOCKWELL: Point out for Ms. Renshaw
23 where the garage door is on your first floor plan.

24 MR. ZEYDLER: Here.

25 BOARD MEMBER RENSHAW: Oh, okay.

1 CHAIRPERSON SOCKWELL: It is difficult to see.

2 MR. ZEYDLER: This is the alley, and this is the
3 garage door, and this is inside the property.

4 CHAIRPERSON SOCKWELL: Thank you.

5 MR. ZEYDLER: So we can see these two windows
6 that are shown here, and they are half-broken right now and
7 require some work, but they will stay the same as they are
8 right now. They will just be repaired.

9 They are wooden, double-hung windows, and they
10 will just be repaired. And so this picture shows the garage,
11 and we have a little window that will be repaired as well, and
12 give light to the staircase.

13 Then we have -- we are also showing -- this is
14 like a common procedure there, and everybody is trying to fix
15 up the old garage and houses, and we have some pictures to show
16 that the neighbors have done the same things in trying to
17 repair this free-standing original buildings.

18 CHAIRPERSON SOCKWELL: So is there more of a
19 description or is that sufficient for you?

20 MR. ZEYDLER: No, they also may --- just to tell
21 the intent of this is to give or to house here a staff member
22 of the Alliance, to include the security of the home, and the
23 building.

24 And we have had some problems with breakage into
25 the main buildings, and this is also the same type of thing

1 that makes bringing this back to its original conditions will
2 improve the security of the whole area.

3 CHAIRPERSON SOCKWELL: So the character of the
4 building, with the exception of the fact that a new door will
5 be added which will be designed to match the existing opening,
6 the character of the building will remain the same. The doors
7 will stay the same. The windows will be repaired.

8 And from the exterior, the only noticeable
9 difference would be the addition of the door in the rear of the
10 garage, which is actually to the interior of the property.

11 MR. ZEYDLER: That's right.

12 CHAIRPERSON SOCKWELL: Okay.

13 MR. ZEYDLER: And right now we have -- there is a
14 window there, and so this window would just be extended down to
15 the ground to create the doorway.

16 CHAIRPERSON SOCKWELL: So the balance and
17 symmetry are pretty much the same. And the use of this as you
18 stated is strictly for staff and not for any intended external
19 rental to nonemployees?

20 MR. ZEYDLER: No, I'm sorry, there's not. It is
21 all for the staff member, and at the same time it is for some
22 responsibility for the security of the house.

23 It means probably controlling a security system
24 that we are going to install for the main building, and it will
25 be operated from the garage.

1 BOARD MEMBER RENSHAW: Mr. Chairman, I just
2 wanted to inquire whether there would be only one person in
3 this apartment, or whether this would be married quarters, or
4 what is the arrangement going to be? It is a relatively small
5 space.

6 MR. ZEYDLER: At this point, I think it is
7 difficult to answer.

8 MR. MOFFAT: I don't know what we are in a
9 position yet to answer that question. It will be a staff
10 member, and it could be a married couple, or it could be an
11 individual.

12 BOARD MEMBER RENSHAW: Or a married couple with
13 children, or a child?

14 MR. MOFFAT: Conceivably.

15 BOARD MEMBER RENSHAW: Did this question come up
16 before the ANC?

17 MR. MOFFAT: The ANC's interest, as best as I can
18 understand it, is that it not be a self-perpetuating apartment
19 that would be open to rental to outsiders or anything like
20 that. And that it would a self-contained part of the Alliance.

21 CHAIRPERSON SOCKWELL: Yes, I think the
22 application called it a single-family resident, and by all
23 rights it is really an accessory apartment to the principal use
24 of the structure, as opposed to what was specifically stated in
25 the application or on the application form.

1 So I think that we understand that is the
2 direction it is going in. Ms. Renshaw's request would be
3 consistent with the idea that the unit, as a studio unit, is
4 suitable primarily for no more than a married couple, because
5 it doesn't have separation spaces for anyone beyond a toddler,
6 or an infant sized, in regard to the way that it is laid out.

7 But generally speaking I think you have explained
8 what you are looking for, and this is a use variance. And if
9 you can describe the practical difficulty that the Alliance
10 would have if they couldn't get that.

11 COMMISSIONER HINTON: Mr. Chairman, it is undue
12 hardship.

13 CHAIRPERSON SOCKWELL: Undue hardship, yes.
14 Excuse me. Well, the hardship if you were not allowed to have
15 this.

16 MR. ZEYDLER: Over the past few years, we
17 realized that we needed somebody for internal security, and
18 because the classes for teaching French are scheduled
19 throughout the whole day, and sometimes as late as eight
20 o'clock at night.

21 And it is difficult to have somebody who works
22 there, and it leaves somebody like a teacher to turn on and off
23 the alarm systems. It is just impossible.

24 And we have had on several occasions computers
25 stolen, and recently we spent some money improving our office

1 furniture, et cetera, et cetera, and we really realized that we
2 needed some sort of security.

3 And the way -- it is a small townhouse, and it is
4 impossible to have somebody inside the building, because you
5 would just interfere too much with staff and students.

6 There is not enough space and you would interfere
7 too much with the normal activity of the Alliance Francaise.

8 BOARD MEMBER RENSHAW: Would this eliminate the
9 apartment of the third floor of the school, a caretaker's
10 apartment that was referenced by the Office of Planing?

11 MR. MOFFAT: No, this would be the only living
12 quarters on the property.

13 COMMISSIONER MITTEN: What use do you currently
14 make of the third floor of the main building?

15 MR. ZEYDLER: We don't have an apartment. There
16 is nobody living there.

17 COMMISSIONER MITTEN: What do you do there?

18 MR. ZEYDLER: Classes.

19 COMMISSIONER MITTEN: You have classes?

20 MR. ZEYDLER: Three classrooms up there.

21 COMMISSIONER MITTEN: And do you know if your
22 certificate of occupancy permits school use on the third floor
23 of the main building?

24 MR. MOFFAT: I don't know.

25 COMMISSIONER MITTEN: Because we have a document

1 that was attached to the Office of Planning report that
2 indicates that at least the last time you came to this body
3 that it was represented that it was the intention of the school
4 to use the third floor as a caretaker's residence.

5 And at that time the parking variance that was
6 granted was granted based on a school of a certain size. And
7 it seems that the school has increased in size, and so
8 questions arise for me as to, (a) where or not you have a
9 certificate of occupancy for school use on the third floor.

10 And then given that the school has expanded in
11 size, your variance is no longer valid because your parking
12 requirement is actually higher than it was in the past.

13 CHAIRPERSON SOCKWELL: The question might -- you
14 are using it as a classroom?

15 MR. ZEYDLER: The third floor? I don't know
16 exactly it says on the permit that we had back in the '70s, I
17 believe it was. But in any case, I think it is the third
18 floor, and it gets too big to be the residence for the
19 caretaker. I don't think there was or that we meant to do
20 that.

21 MR. MOFFAT: Well, the third floor is currently
22 used on a need basis for classrooms.

23 CHAIRPERSON SOCKWELL: I think the question that
24 is being raised has an impact on the occupant load that you are
25 dealing with in particular. The third floor was classroom

1 space for how long and has it replaced any other classroom
2 space that may have been converted to non-classroom space?

3 MR. MOFFAT: I don't believe so, and certainly
4 not in the last number of years, other than office space and so
5 forth, and the rest of the facilities are classroom.

6 CHAIRPERSON SOCKWELL: I guess we don't have a
7 plan of the existing building, and while the existing building
8 is not being modified, I think the question of the certificate
9 of occupancy and use is somewhat peripheral to what you are
10 asking for.

11 But the issue is that you may need to go back to
12 the District with regard to other aspects of your occupancy.

13 COMMISSIONER HINTON: If I may, Mr. Chairman. I
14 am not sure that it is peripheral, because the original order
15 from the Board, and the original applicant's request made
16 provisions for a caretaker and his family to be on the site.

17 Now we are being asked for a variance so that
18 they can provide that same use that was already approved in
19 this building.

20 CHAIRPERSON SOCKWELL: So it is pushing out into
21 another space to use the other space?

22 COMMISSIONER HINTON: Right. And so it is all
23 part of what we are considering. And if you look at the number
24 of students that was original contemplated in what the Board
25 approved as a special exception, it was 2 to 4 classes a day,

1 with a maximum of two classes being held at one time, and the
2 class size is limited to 12.

3 So no more than 24 students there at any one
4 time, and now we are told that there are up to 70 there at one
5 time, and originally there were only three teaching and
6 administrative staff, and now there is 20, of which eight could
7 be there at any one time.

8 So the use has tripled or nearly tripled, and I
9 think that is part of what we have to take into consideration
10 as we consider the variance to move one of the things that used
11 to fit within this building into another building.

12 COMMISSIONER MITTEN: And just to follow up on
13 that. I think we also have to be sensitive to if you have
14 grown into space that was intended for a use and now by your
15 action have created your hardship, you cannot be given relief
16 from a hardship that you have created on your own. Do you
17 understand that?

18 MR. ZEYDLER: Yes. Yes, I do.

19 CHAIRPERSON SOCKWELL: And there is a parking
20 impact as well.

21 COMMISSIONER HINTON: Yes.

22 MR. ZEYDLER: Right now it is only part of the
23 second floor and a portion of the third floor that is used for
24 classrooms. And the reason that we are opting for having this
25 apartment above the garage is because -- is not because of the

1 lack of space.

2 But rather because having an apartment in the
3 main house would interfere too much, and would require us
4 building partitions, et cetera, et cetera.

5 And also it would interfere too much with the activity of the
6 Alliance.

7 CHAIRPERSON SOCKWELL: I think that the issue
8 that you may not quite see clearly is that the Board has
9 determined from your current use that you are exceeding the
10 approved level of occupancy for the school purpose, and in
11 moving the caretakers residence to the garage, you would make
12 even more intense the level of use within the main building,
13 because that would then no longer have a purpose for a
14 residence at all.

15 And it seems that if you virtually tripled the
16 number of people that you are providing for in the main
17 building there are, first of all, implications with regard to
18 the order, which established maximums; and, two, there would
19 be other implications that affect your conformance with other
20 codes of the District of Columbia.

21 Now, the one that we are dealing with is in fact
22 the zoning ordinance, but if in fact you have to go back to
23 revise your certificate of occupancy, the inspections required
24 may push you to more rigid adherence to codes for fire safety
25 and other things.

1 And our problem is that what we are presented
2 with is an order that allows you to do "X" and a facility in
3 which you are now doing "Y" and you are asking us to accept Y,
4 when it is not allowed; and also allow you to do Z, which is
5 this additional piece.

6 And I believe that the Board Members have
7 correctly determined that there is a problem with the
8 circumstance under which your application is being processed
9 here. And we are asking for some answers if you have any.

10 MR. ZEYDLER: One thing that I would like to say
11 is that like you mentioned, we are moving the caretaker
12 residence to another structure in theory, because we don't have
13 a caretaker, and we don't have an apartment there.

14 So whatever the use is right now will stay the
15 way it is, and we use this teacher's lounge there, and it is
16 not all take up by classrooms. But right now, per se, we don't
17 have an apartment there on the third floor.

18 COMMISSIONER HINTON: Do you know if there was an
19 apartment there back in 1970 or '71 originally? You don't
20 know?

21 MR. ZEYDLER: No. Well, the whole house was --

22 MR. MOFFAT: I don't know. We weren't around in
23 time. I presume there was, but I just don't know.

24 MR. ZEYDLER: To my knowledge, no staff member
25 ever lived in the main house. We never had anybody there.

1 CHAIRPERSON SOCKWELL: You see, your previous
2 zoning approval is for the third floor to be residential and
3 not educational use. And the fact that it has been converted
4 from a residence at the time that it was originally approved in
5 1971 to a classroom use today, without any further appearance
6 before the Office of Zoning, or the Zoning Administrator of the
7 District of Columbia, we are concerned that there is an overuse
8 of the rest of the building, regardless of the request for the
9 caretaker's residence.

10 It was provided for on the third floor of the
11 building originally, the main building, and regardless of what
12 might have been a housekeeper's residence above the garage, you
13 are moving one use from the main building to the other
14 building.

15 But there is no justification in your approvals
16 for removing that use, which in fact would more at rightly be
17 on the third floor of the main building.

18 VICE CHAIRPERSON REID: I have a question in
19 regards to this previous order. In the first place, this was
20 an order that was effective in March of 1971. So it has been a
21 considerable amount of time.

22 I am not accustomed to looking at orders written
23 like this, and so you have to bear with me. But my question is
24 that typically we have the orders written in a certain format
25 that we are familiar with, and we have findings of fact, and

1 issues of law.

2 And then you have your conditions, and then in
3 this instance, these are findings of fact, but I don't see it
4 conditioned. So basically that being the case, usually with
5 schools we have conditions as far as the number of people in
6 parking, and teachers, and all of that.

7 But be that as it may, and that is a good point
8 that you made that this is a variance and not a special
9 exception. But still is this saying that this is the existing
10 situation in 1971, and does it also provide that there not be
11 any additional students added to this, or that there be any
12 variation?

13 In other words, is this order silent as to
14 whether or not they can increase?

15 BOARD MEMBER RENSHAW: Mr. Chairman, I would like
16 to add to that, and I am trying to find the occupancy permit
17 for the 1971 order.

18 COMMISSIONER MITTEN: It's not in the file.

19 BOARD MEMBER RENSHAW: It's not in the file?

20 CHAIRPERSON SOCKWELL: What's that?

21 BOARD MEMBER RENSHAW: The occupancy permit.

22 VICE CHAIRPERSON REID: Mr. Chairman, I would
23 like to have Ms. Sansone respond to my question, because I am
24 not sure --

25 MS. PRUITT: Well, variances run with the land,

1 and so therefore in this case the variances you need to --
2 well, the order is limited to 12 students, or a maximum of 24
3 students on-site.

4 VICE CHAIRPERSON REID: Well, the way that I read
5 it is that this is the existing situation, and I do not see it
6 saying that there could not be any additional students added.

7 MS. PRUITT: Class size is limited to 12, and
8 classes are offered with a maximum of two classes being held at
9 one time. Class sizes are limited to 12 students.

10 VICE CHAIRPERSON REID: At that time.

11 COMMISSIONER MITTEN: I think it would be good to
12 hear from Ms. Sansone, because the way it starts is that it
13 says at present. It is almost as if it is reciting an existing
14 condition, and not that that is being mandated.

15 CHAIRPERSON SOCKWELL: That is the impression
16 that I was speaking to just now.

17 COMMISSIONER MITTEN: So maybe we could hear from
18 Ms. Sansone.

19 MS. SANSONE: Yes. I think this is a very
20 problematic order, the 1971 order. It using the terminology
21 appeal, which derives from the 1938 Zoning Act to cover not
22 just appeal cases, but variances and special exceptions.

23 And as you read through the findings of fact and
24 the way the opinion is structured, it looks as though there is
25 a special exception for the school use, and a variance probably

1 for the parking use, although it doesn't really say that, you
2 know.

3 But I think you can infer that from the order.
4 Now, there are no conditions to the Board's order. So there is
5 nothing in the sense of an enforceable order that the zoning
6 administrator could revoke a building permit or certificate of
7 occupancy, because there is not conditions to the order.

8 Nonetheless, the findings of fact describe
9 particular perimeters to the use. So you also have to be
10 mindful that that was what the use that was approved, and not
11 an expansion of that use.

12 So I am not sure exactly where this leaves us.
13 It seems to be very much out of date, and not really matching
14 up with the current situation.

15 COMMISSIONER MITTEN: I think there is two things
16 that might be helpful. One, it would be helpful to know what
17 the certificate of occupancy says about the use that is
18 permitted on the third floor.

19 And then the other thing is that even though this
20 1971 order is vague about the size of the school itself and the
21 number of students. It is not vague about what the parking
22 requirement is, and what the variance is.

23 CHAIRPERSON SOCKWELL: Right, which binds in the
24 size of the school.

25 COMMISSIONER MITTEN: Yes, it sort of implied.

1 So I think what we can say with certainty is that based on the
2 size of the school now that this variance is inadequate because
3 the requirement, the baseline requirement is much higher than
4 it was.

5 So even though we might not have a specific size
6 of the school that was dictated, the parking basically allows
7 us to back into it.

8 CHAIRPERSON SOCKWELL: Exactly.

9 COMMISSIONER MITTEN: But I would be very
10 interested, and I am sympathetic to these gentlemen who are
11 here, because I think we have surprised them with these issues
12 that had not been called out before.

13 And I think maybe the best thing to do is to
14 gather some additional information and have you perhaps talk to
15 the zoning administrator and perhaps with the Office of
16 Planning, so that we can look at this in its totality and make
17 sure that whatever kind of relief that they need to seek, you
18 know, that they are asking for the whole package, and then we
19 can view it that way.

20 VICE CHAIRPERSON REID: And that they also seek
21 counsel, because this is rather complicated, and it is
22 something that we are not accustomed to looking at an order
23 like this unfortunately. So I don't want to do you a
24 disservice because of the -- and not only what we are dealing
25 with today.

1 CHAIRPERSON SOCKWELL: I think the problem --
2 there are two problems that you have to accept will come from
3 this. The first one is that the requirements that you are
4 going to come back to us for relief of are going to be
5 different.

6 The second thing is that when you return to the
7 zoning administrator with a new set of existing conditions, and
8 that set of existing conditions may trigger additional
9 requirements by DCRA, the permit office, and its inspectors and
10 what not, because you have not been before this Board for 30
11 years.

12 And 30 years is a long time, and although perhaps
13 neither of you gentlemen has been around the Alliance for that
14 30 year period, as it trickled up its enrollment and its
15 faculty, and made minor adjustments to its use of facilities,
16 they didn't come under scrutiny until you had to come here.

17 And you weren't looking at those things as
18 immediate changes because they gradual changes, and we
19 understand that. But we are unfortunately not able to just act
20 as if those things have not occurred.

21 And because we enforce the ordinance, we must
22 look at today's conditions in concert with the request for
23 modification, which is really based upon the 1971 conditions
24 still being in place for us as a board, because that is what we
25 have to go on.

1 That is the order that we have, and you have been
2 very open to tell us what your occupant load is, and what you
3 are doing with the various portions of the building, and we
4 certainly appreciate that.

5 But at the same time, it doesn't leave us any
6 less constrained. We are restricted to interpreting the
7 ordinance, and enforcing the ordinance, and we, I believe, are
8 going to have to send you back to DCRA for a more complete set
9 of criteria for relief, which would be the parking that would
10 be normally required under today's faculty and enrollment.

11 The issue of the change of use of the third floor
12 in the main house is now apparent, and that it had already
13 changed, and so there are differences to the way that you are
14 using the building that don't fit the original order, and we
15 are sympathetic, but we can't do anything about this.

16 VICE CHAIRPERSON REID: May I ask how long have
17 you been affiliated with the school?

18 MR. MOFFAT: Personally?

19 VICE CHAIRPERSON REID: Yes.

20 MR. MOFFAT: I would imagine 7 years or 8 years
21 in my case.

22 VICE CHAIRPERSON REID: So were you familiar with
23 this previous order before?

24 MR. MOFFAT: No.

25 VICE CHAIRPERSON REID: Now, what is interesting

1 is that the order is something that was promulgated in 1971,
2 and anyone who is a subsequent user of the property, are they
3 not made aware of the regulations in which they are supposed to
4 be operating under?

5 COMMISSIONER MITTEN: I believe it has always
6 been since 1971 Alliance Francaise.

7 MR. MOFFAT: Yes, and I thought --

8 VICE CHAIRPERSON REID: No, no, not -- no, I'm
9 speaking of the fact that the school has expanded, and they
10 have gone way beyond what was -- again, I still question if --

11 BOARD MEMBER RENSHAW: I would like to know if
12 you had sought permission to expand?

13 VICE CHAIRPERSON REID: Or did you know that you
14 had to have permission to expand?

15 BOARD MEMBER RENSHAW: Did you go to any District
16 agency and ask for a revised certificate of occupancy based on
17 your desire to expand?

18 MR. MOFFAT: My understanding is that the
19 expansion has taken place over a great many years. Since 1971,
20 there was no one point at which there was a decision to expand
21 or contract, or anything else.

22 VICE CHAIRPERSON REID: And still, Ms. Sansone,
23 going back to that order, I still raise the question about the
24 way that it is written at present, and then it goes on to the
25 findings of fact. I don't see anything that would preclude

1 them from over the years expanding.

2 I mean, if there was something that we could cite
3 to them as being not being in compliance with their existing
4 order.

5 MS. SANSONE: I believe that is correct, Ma'am
6 Vice Chair. Because there are no conditions to this order of
7 approval --

8 CHAIRPERSON SOCKWELL: Except number six, which
9 is a specific variance for parking, which would establish
10 certain criteria for use, for occupancy.

11 MS. SANSONE: Actually though, in the -- well,
12 the way the Court of Appeals has looked at these, because I
13 have been looking at the issue of conditions recently, they
14 only would expect or require -- you can only require the DCRA
15 to enforce conditions that are structured in the Board's
16 decision as a condition of the approach, and if the -- you
17 know, what we are calling here a condition is up in the text of
18 the order as a finding of fact, or even a conclusion of law, a
19 description of the project, that is not really enforceable by
20 the zoning administrator as a condition.

21 VICE CHAIRPERSON REID: Okay.

22 MS. SANSONE: So these were the circumstances, or
23 this was the project and the use that was approved, but because
24 this order didn't condition it, I don't believe we could
25 conclude that they are operating illegally or that there

1 shouldn't have been a certificate of occupancies.

2 It's just that now in the context of this new
3 request, it is apparent that the circumstances have greatly
4 changed, such that this order probably just should be updated
5 to actually reflect the circumstances.

6 COMMISSIONER MITTEN: Mr. Chairman, I think we
7 also need to satisfy ourselves that there isn't another order,
8 because the school was in existence at the time that this
9 application was filed in 1970, and then the order written in
10 1971.

11 And so this may be -- and I don't know, but this
12 may be basically confined because if you read the -- if you
13 read the opinion, it is very much oriented to a variance for
14 parking exclusively.

15 And there may be a previous order that grants the
16 special exception for the school itself that we just have not
17 been provided.

18 So I think that some research needs to be done to
19 determine exactly how many orders apply to this property, and
20 again what use is currently permitted on the third floor so
21 that we have all the available information.

22 CHAIRPERSON SOCKWELL: I would refer you to
23 findings of fact number two. "The subject property is improved
24 with a three-story building, which was formerly used as a
25 private residence. The subject property is now vacant."

1 COMMISSIONER MITTEN: I see that.

2 CHAIRPERSON SOCKWELL: Which means that at the
3 time that the order was written was not being used as anything,
4 and that, number three, the appellant proposes to establish a
5 language school, library, club, and accessory offices."

6 COMMISSIONER MITTEN: Okay.

7 CHAIRPERSON SOCKWELL: And so I think it was
8 bound into the order.

9 COMMISSIONER MITTEN: And now that you say that,
10 I was preoccupied with the fact that they operating, I guess,
11 at another location.

12 BOARD MEMBER RENSHAW: But also, Mr. Chairman, in
13 the first paragraph of the opinion, where it talks about it is
14 not likely to become objectionable -- the school, that is -- to
15 the neighboring property because of noise, traffic, number of
16 students.

17 Well, the number of students, all we have to go
18 on is the number quoted on page one of this order in the
19 findings of fact. So is that what we based our decision on? I
20 mean, base an opinion on?

21 CHAIRPERSON SOCKWELL: I think there would be --

22 VICE CHAIRPERSON REID: Excuse me, but let me
23 jump in here. You have to go back at present. It seems as if
24 those two words are the operative words as it pertains to this
25 particular order, because everything is germane to what was

1 existing at the time that the order was written.

2 So based on that, there was no adverse impact,
3 but again the issue here again is that the order itself here is
4 silent as to whether or not they can expand as they have over
5 the years.

6 CHAIRPERSON SOCKWELL: The way that the order was
7 written is that it spoke to the establishment -- it says in the
8 opinion in the first paragraph that we are of the opinion that
9 the use of the subject premises as a school is not likely to
10 become objectionable to the neighboring property because of
11 noise, traffic, number of students, or other objectionable
12 conditions.

13 It didn't say is not likely to be objectionable.

14 It says it is not likely to become objectionable, which again
15 seems to give some flexibility to the number of occupants and
16 the use.

17 And another thing is that again in number six, it
18 is established that there are two parking spaces remaining.
19 Those two parking spaces will remain in the garage with the
20 request for the second floor conversion.

21 So there is no change to the fact that there are
22 only two spaces. Nothing is compromising those two spaces. It
23 appears that we might have to deal with a higher number of
24 spaces in the waiver.

25 MS. PRUITT: I have one question, and maybe to

1 Ms. Sansone, but based on the argument that the Court of
2 Appeals doesn't recognize conditions that aren't in --
3 enforceable conditions that aren't called out as conditions,
4 but are part of the body, if you take that argument, they
5 appear to have a valid CFO for a school, notwithstanding any
6 number of students that could be fluid, because there are no
7 specific numbers called out as conditions in this particular
8 order.

9 MR. JACKSON: Excuse me --

10 MS. PRUITT: Now, is that a correct assumption or
11 argument so we can get to step one there?

12 MR. JACKSON: -- but I just wanted to make a point
13 of clarification there. I do have a copy of the CFO, but
14 unfortunately it is not in this file that I brought. This CFO
15 does reference all three activities on all three floors.

16 It did not include a number of students, and did
17 not reflect -- actually, I am not sure if it reflected the
18 parking spaces. However, I can fax that back for your
19 information.

20 CHAIRPERSON SOCKWELL: You want to go now?

21 VICE CHAIRPERSON REID: Well, it is kind of open-
22 ended.

23 MR. JACKSON: Well, in the 1970s, when I found
24 this in other applications, the CFOs for churches, and schools,
25 and such often did not nail down the number of seats. They

1 were fairly open-ended, and they just indicated where uses were
2 permitted.

3 I don't remember whether it specifically said
4 that a residence was allowed on the third floor. I believe it
5 talked about -- it may have, but it also indicated any other
6 listed uses -- the library, the club, and accessory offices, as
7 well as the school, would be located on all three floors.

8 MS. PRUITT: Then my second question is would be
9 -- that if you accept that argument, would be the Board be able
10 to go forward with the current case?

11 CHAIRPERSON SOCKWELL: My feeling is that there
12 is one reason for saying yes, and that is that the order is --
13 we have not been asked for anything but one basic change, and
14 that is the conversion of the garage for the purpose different
15 from the required -- well, what is it -- servant/domestic.

16 And caretaker is in fact a very similar person,
17 in that the term domestic generally means someone who cooks and
18 cleans, and what not. But caretaker is not far from that
19 definition, and I really think that the order -- I don't know
20 that we really are being fair to them to drag such a vague
21 order out into the public to have the facility recalculate it
22 when there is no request with regard to the main house at all.

23 VICE CHAIRPERSON REID: And another thing, too,
24 Mr. Chair, is that this particular site has history, and as
25 such we have seen the expansion, and we have not seen any

1 opposition here within the record that this expansion has
2 caused any adverse impact, because obviously we would know
3 about that, because people would come to complain about cars,
4 or parking, or traffic, or noise, or the like.

5 And so it has been demonstrated to even though
6 they have expanded, apparently it has not been with any
7 problems.

8 CHAIRPERSON SOCKWELL: And I would agree with you
9 to the fact that the community, if they were against this
10 project, they would certainly be against it if there were
11 proposed an unacceptable level of use, and if there existed an
12 unacceptable level of use, because in a community like this
13 one, the people always come out in opposition to things that
14 they don't want.

15 Apparently the facility has operated in the
16 context of its surroundings adequately to the extent that
17 neither the ANC nor the adjacent neighbors are in opposition.

18 What we are dealing with is a question of whether
19 we read into an order that is 30 years old, and done at a time
20 when orders were written differently, a set of criteria that
21 weren't established as conditions, but almost as present
22 situation. It is a very soft order as orders go. It is very
23 soft and very difficult to tie down.

24 COMMISSIONER MITTEN: Mr. Chairman, one of the
25 things or one of the reasons why, or perhaps there is two

1 reasons why I think -- and you had mentioned earlier that we
2 really don't need to focus on the main building since the
3 variance request bears on the garage.

4 But we need to know about the main building,
5 because in order to establish undue hardship, we have to
6 understand the property in its totality, because the undue
7 hardship is as it affects the property owner.

8 And I think the issue of parking is related,
9 because to the extent that we would consider granting the
10 variance for a caretaker's apartment in the garage, that
11 basically says -- and we don't know what the status of the
12 third floor is legally yet.

13 But that would in essence be saying so that you
14 don't have to have it on the third floor of the school, which
15 then raises the question of whether the school may expand and
16 whether the school has adequate parking.

17 So I really do see it as all part of this
18 question, and something that we need to fully understand before
19 we can address the undue hardship issue.

20 COMMISSIONER HINTON: Mr. Chairman, I also think
21 with the parking variance that was granted that it was a
22 variance of 2 out of 4 spaces, and clearly now through the
23 expansion of the school there would be a requirement of
24 additional spaces that would not be accounted for by a two
25 parking space variance. So it would seem that the parking

1 needs to be upgraded to the current situation and addressed.

2 CHAIRPERSON SOCKWELL: Let me ask a question.

3 When was this house built? Do you know?

4 MR. MOFFAT: I don't know, but I would imagine
5 early in this century.

6 CHAIRPERSON SOCKWELL: Is the house on the
7 National Registry of Historic Places?

8 BOARD MEMBER RENSHAW: It said a 1911 residence.

9 MR. MOFFAT: 1911? Yes.

10 CHAIRPERSON SOCKWELL: And to the best of your
11 knowledge is the house on the National Registry?

12 MR. MOFFAT: I have never heard any reference to
13 that.

14 CHAIRPERSON SOCKWELL: Okay. Because then it
15 would qualify for a complete waiver of parking, but the issue
16 is that apparently the board members, while torn between -- I'm
17 certainly torn between what this will mean to you in context
18 with being sent back to DCRA for a relook and rethinking of the
19 requirements.

20 Now, if we get a copy of the certificate of
21 occupancy and it contains no reference to numbers of
22 individuals, it still doesn't automatically take away the issue
23 of parking.

24 COMMISSIONER MITTEN: I think that's correct.

25 CHAIRPERSON SOCKWELL: And that is wherein lies

1 my problem.

2 MS. PRUITT: Excuse me, Mr. Sockwell, just for
3 information. In the OP report, it says that HPRB indicated
4 that the construction plans for this proposal would be referred
5 to them upon submission of building permits. So it must be at
6 least in a historic district.

7 CHAIRPERSON SOCKWELL: Right. It is a historic
8 district, and it may be or certainly would be a contributing
9 building.

10 MS. PRUITT: Could be a contributing building,
11 exactly.

12 CHAIRPERSON SOCKWELL: Right. So there is a
13 possibility that the parking issue could go away.

14 VICE CHAIRPERSON REID: Now, I need to get
15 something clarified, because it just seems that we are in so
16 many different areas. Before us is the request to establish a
17 single-family dwelling on the second floor of an accessory
18 garage, pursuant to Section 2500.5. So that is what we are
19 dealing with.

20 So now all the other things in regard to the
21 school and the expansion, and all of that, are we doing all of
22 this all at the same time, or are we just dealing with the
23 aspect of the second floor of the accessory garage?

24 CHAIRPERSON SOCKWELL: Well, you see, that is
25 part of what I raised, and I appreciate you bringing it back

1 up. We are not asking to replace. We are asking to establish.
2 Now, there is the possibility that such a facility could have
3 two caretakers; one living in the building, and one living
4 outside the building.

5 If we as a board choose not to deal with
6 something that hasn't been presented to us as a request, then I
7 would think that we might be able to go forward with
8 establishing the caretaker's unit.

9 But if the caretaker's single-family unit in
10 this zone does not impact the parking requirements strictly
11 because of the fact that we are changing the use. We are not
12 adding an apartment remember, but we are just changing the use
13 of it to that of a caretaker, which is not in conformance with
14 the requirement for housekeeper.

15 So I don't think that we are increasing or
16 decreasing, or in fact affecting at all the parking
17 requirements. So that would be the direction that I could
18 think we could take in order to make this adjustment, and then
19 suggest to the applicant that they may wish to return to DCRA
20 for uses in the main building that may have changed,
21 intensified, et cetera.

22 But we are strictly dealing with a use variance,
23 and not establishing an additional unit or any other
24 relationship that impacts parking. And that is where I think
25 we could go forward if Ms. Sansone sees that as reasonable.

1 And if my other board members seek that as reasonable.

2 CHAIRPERSON SOCKWELL: Mr. Chairman, I think that
3 this is a very complex question, and maybe we can't really
4 answer it today. Maybe the applicant needs to do some more
5 research and the zoning administrator, and OP, and the Office
6 of Corporation Counsel.

7 I mean, it does seem to me that it is a very
8 difficult issue. There is a very old order here, and it would
9 be nice to maybe look at the file if it is still available, or
10 even see if there is still an old transcript around.

11 I noticed that the zoning administrator
12 originally certified this as needing relief as a private school
13 under 206, and then changed his mind and decided that it really
14 should be pursued as a use variance.

15 It might be good to speak with or have the zoning
16 administrator advise us of his reasons for that. He obviously
17 changed his mind for some reason.

18 VICE CHAIRPERSON REID: I wondered about that,
19 and also he didn't specify any relief for the parking, which
20 often happens, and then we have to then determine whether or
21 not we feel -- well, I don't think we should be about that.

22 I think that we should look at what is being
23 presented before us and act on that, rather than trying to
24 second-guess what in fact the zoning relief is, or what zoning
25 relief is necessary. It just makes it more confusing than it

1 needs to be.

2 BOARD MEMBER RENSHAW: Mr. Chairman, I would like
3 to move that we postpone this case to a date certain, and
4 collect the information as outlined by various board members
5 and our counsel, and then proceed with the case.

6 COMMISSIONER MITTEN: I second.

7 MS. PRUITT: Excuse me, Mr. Chairman, the staff
8 has a question. How do you foresee this going forward? Would
9 we all come back with the information that we have and then
10 determine what type of case?

11 This has to be readvertised one way or the other,
12 but at this point, we don't know what it should be readvertised
13 as. So do you want to have everyone go back and do their
14 individual research, and then come back for sort of a meeting,
15 and then make some determinations from there?

16 CHAIRPERSON SOCKWELL: Well, I think that we know
17 that in the original order, regardless of how it was written,
18 it had established that the third floor of the main building
19 was used residentially. On that basis, the --

20 MS. PRUITT: Excuse me? Can you say that again?

21
22 CHAIRPERSON SOCKWELL: The third floor of the
23 main building was established as a residence for residual use.
24

25 MS. PRUITT: In the order or in the CFO?

1 CHAIRPERSON SOCKWELL: In the order. In the
2 original order, it was stated that the third floor is used as a
3 caretaker's residence. Now, that is stating what the purpose
4 was.

5 And without taking out of context anything else
6 in the order -- there were at present, this or that -- it
7 didn't say at present, it said specifically that is what is
8 being done on the third floor of the main building. That much
9 we know.

10 We also know that the parking was established as
11 a particular condition that was a variance allowing the two
12 spaces to be sufficient for the intensity of use at that time.

13 Those two things seem to establish some fact. And that is
14 looking at number four and number six.

15 MS. PRUITT: How do you reconcile the CFO with
16 that?

17 CHAIRPERSON SOCKWELL: The CFO, which does not
18 speak to the residential use at all, would have to be tied to a
19 set of plans that no longer exists, I'm sure. I don't know
20 what to say about that. I think -- my problem is that I don't
21 want to -- I really am concerned that we are --

22 MS. PRUITT: Giving them the runaround?

23 CHAIRPERSON SOCKWELL: Well, I think we are
24 forcing them into a situation that is going to be very
25 difficult.

1 VICE CHAIRPERSON REID: I think what we should do
2 at this point is, number one, apologize to these applicants,
3 because I can imagine that they must be as confused as they
4 possibly can because we are all over the place, and we come up
5 with this, and we come up with that.

6 Basically, they came to try to make a case based
7 upon what they were told they had to come here for, and then
8 all of a sudden all these other extraneous things are coming
9 out, and so it is just so unfair to do that to them.

10 I don't know what the answer is, but the fact of
11 the matter is that I think that it is appropriate that we at
12 least present our heart felt apologies, because it is not your
13 fault. It really isn't.

14 And I think that you did come here forthrightly
15 to do what was expected of you, and it's just that as we get
16 into it, it just got to be more and more complex, and
17 convoluted, and what we want to try and do is to make sure that
18 we can serve you as best as we possibly can, and not to give
19 you disservice. And unfortunately it is just convoluted.

20 COMMISSIONER MITTEN: May I make a suggestion?
21 On the 27th of March, the Phillips Collection has been
22 continued to a new date. You only have one case on that day.
23 That is certainly not enough time for us to readvertise.

24 But that may be enough time for everybody to go
25 do research and come back to the Board so that the Board can

1 then give the applicant maybe some clear directions as to where
2 they need to go.

3 VICE CHAIRPERSON REID: Why do you have to
4 readvertise?

5 MS. PRUITT: Because we don't know what we are
6 looking for. I mean, the relief may be totally different based
7 on what we are seeing.

8 BOARD MEMBER RENSHAW: Is that date good for the
9 applicant to do some research and come back with some answers
10 to our questions?

11 MS. PRUITT: And I think it is more up to
12 corporation counsel and --

13 MR. MOFFAT: Well, I am a little vague as to what
14 our research would focus on, and I hate to say it, but we don't
15 have records that are very good going back to the 1970s.

16 MS. PRUITT: It has to be readvertised or else
17 you could make your case today.

18 CHAIRPERSON SOCKWELL: I think it has to be
19 readvertised.

20 MS. PRUITT: And for what it is, we don't know
21 yet.

22 CHAIRPERSON SOCKWELL: Even though it is sort of
23 being done as a retroactive advertisement, because at the time
24 that the original order was issued, a variance of two spaces
25 was required. At the time of the original order, a residence

1 floor had been established as the third floor.

2 Under the current advertisement, we would as well
3 have to look at the intensity of use, and when it is
4 readvertised, there is no way that the readvertisement of this
5 will appear as what it really is, and that is that you have a
6 building that is currently being used without causing
7 apparently any inconvenience to your adjacent neighbors, and
8 that they are happy with it.

9 They haven't objected, but when it is
10 readvertised, it could be readvertised and seem like you are
11 tripling the use of the facility, and you are taking away this,
12 and moving that around.

13 And those things will raise the eyebrows of the
14 community, and it will be upon you to explain to them that 30
15 years of gradual change has had to be shown to them as if it
16 were catastrophic change occurring right now.

17 On top of that, there may be some requirements
18 from the City with regard to need for inspections, fire safety
19 issues, and things like that. Those are things that we cannot
20 help with, and we do apologize for the fact that we cannot deal
21 with this effectively as you can see the way it has turned out.

22 MR. MOFFAT: May I ask a question with no
23 implication accepted on it? If we were to withdraw the
24 application, what would the end result be?

25 CHAIRPERSON SOCKWELL: Were you to withdraw the

1 application, it would be as if we have never seen you.

2 MR. MOFFAT: I pose this hypothetical question
3 merely because this is already our second time to appear. We
4 had some problems between variance and exception, which I don't
5 understand.

6 But if the process were to be protracted and
7 painful -- we are merely a nonprofit, and we have lots of
8 problems, and we have considerations of whether we should move
9 and things like this.

10 So we might have to recalculate where we are. We
11 also do not have benefit of counsel, and things of this sort.

12 CHAIRPERSON SOCKWELL: I understand that, and
13 that's why I was trying to be as open with you about the
14 potentials of this as I could be so that you would understand
15 fully what might transpire after going forward with the request
16 for clarification on the various use issues and what not.

17 VICE CHAIRPERSON REID: And then you told him
18 that he may not need a parking variance because of being in a
19 historic district.

20 CHAIRPERSON SOCKWELL: If they are a landmark,
21 they can request a variance from all parking and loading
22 requirements. The issue is whether or not they are a
23 contributing building or landmark.

24 MS. PRUITT: Excuse me, sir, but I guess I am
25 trying to figure out a way to help. Would a March 27th date

1 give you enough time to go back and kind of reevaluate what you
2 need to do, and talk to counsel, and decide whether or not you
3 want to continue with this case based on what you have heard
4 today?

5 And to make your decision based on today, and
6 then get back to the board, and then we can let you know under
7 what section what type of zoning relief you would need if you
8 were to go forward?

9 CHAIRPERSON SOCKWELL: It is giving you a few
10 weeks to -- rather than us sending it back officially for any
11 relief clarifications, giving you an opportunity to make a
12 decision based on consulting briefly or at length with the
13 consultants of your choice to determine whether or not this is
14 a battle worth fighting, and whether or not it would be to your
15 advantage to leave well enough alone under the circumstances.

16 MS. PRUITT: Well, the other thing is that I
17 believe we could continue the case until the 27th, and not have
18 to readvertise, and let them do that, and then maybe
19 Corporation Counsel and OP on that end or this end, could do
20 some research and maybe if we don't have to readvertise, then
21 we can go forward with the case at that time.

22 If not, then we would hopefully have more
23 information to let you know what your burden of proof would be,
24 and what we would need to readvertise for.

25 CHAIRPERSON SOCKWELL: Mr. Jackson and Ms.

1 Sansone, would you be available to help with that?

2 MS. SANSONE: Yes.

3 MR. JACKSON: Yes.

4 CHAIRPERSON SOCKWELL: We certainly would
5 appreciate it, and Mr. Jackson, thank you very much for
6 providing the certificate of occupancy.

7 MR. JACKSON: You're welcome.

8 COMMISSIONER HINTON: Could I ask a question on
9 the information that is in front of us now?

10 CHAIRPERSON SOCKWELL: Sure.

11 COMMISSIONER HINTON: I am looking at the second
12 floor plan for the garage, and I see the dash lines, which
13 indicate to me I think where the dormers come out?

14 CHAIRPERSON SOCKWELL: Yes, that's a roof.

15 COMMISSIONER HINTON: In the proposed condition,
16 how will that be?

17 MR. ZEYDLER: The same way it is.

18 CHAIRPERSON SOCKWELL: It is a tiny unit.

19 COMMISSIONER HINTON: So the majority of the
20 living room has a very low ceiling?

21 MR. ZEYDLER: Well, you see, the dotted line goes
22 all the way up to here, but right here you have 8 feet from the
23 floor. So the closer you get to the outside wall -- I mean,
24 you could probably stand already right here and --

25 CHAIRPERSON SOCKWELL: So the sloping of the

1 rafters, of the trusses, is really only going to impact you as
2 you get a third of the way towards the outside wall from the
3 intersection of the dotted line of this interspace?

4 MR. ZEYDLER: Yes.

5 CHAIRPERSON SOCKWELL: I understand.

6 MR. ZEYDLER: You see, for instance, this window
7 here. You can easily stand at the end of the window, and so
8 probably you could stand here.

9 COMMISSIONER HINTON: Okay. So you are not
10 proposing any change to the roof?

11 MR. ZEYDLER: No, nothing.

12 COMMISSIONER HINTON: Okay. That's what I wanted
13 to make clear. Okay. Thank you.

14 BOARD MEMBER RENSHAW: Is there a requirement for
15 an outside fire escape --

16 CHAIRPERSON SOCKWELL: Single-family residential
17 units --

18 BOARD MEMBER RENSHAW: -- for an apartment over
19 an accessory garage?

20 CHAIRPERSON SOCKWELL: They have to have fire
21 separation and a separate entrance, but for this, only one
22 means of egress would be required in this particular case.

23 BOARD MEMBER RENSHAW: Okay.

24 CHAIRPERSON SOCKWELL: Of course, a rope ladder
25 would be appropriate.

1 COMMISSIONER MITTEN: Mr. Chairman, I think in
2 fairness that we need to just clarify something for these
3 gentlemen, which I think you are leaving the impression that
4 they need to go out and engage counsel to assist them in
5 evaluating their case.

6 And I think that can be done in consultation with
7 Ms. Sansone and Mr. Jackson to determine exactly what you would
8 need and how heavy the burden is of proof.

9 And I don't want to leave you with the impression
10 that you need to go out and spend money to get additional
11 advice. I think they can assist you in evaluating your case.
12 So if that makes you any more comfortable about waiting those
13 few weeks to at least have the case better evaluated.

14 CHAIRPERSON SOCKWELL: And while I didn't say
15 that they had to go out and engage counsel, there are going to
16 potentially be major cost implications on this nonprofit --
17 with regard to this nonprofit organization, depending upon the
18 direction that they may take.

19 And I don't want them to put themselves in a
20 position of incurring those major costs, which would be
21 construction oriented costs, until they are aware of what they
22 might be.

23 And that is where, if possible, that outside
24 counsel with experience in dealing with these things could tell
25 you certain things, and where of course the Office of Planning

1 and inside Corporation Counsel may as well be able to help you
2 towards understanding what those cost implications might be.

3 But you might want to talk to an architect, and
4 you might want to talk to -- I mean, another architect, and I
5 assume you, sir, the architect here.

6 But you may want to talk to someone else to get a
7 feeling for what those broader perimeters that would be
8 established by taking your higher occupant loads and your
9 changes of use to the City officially.

10 COMMISSIONER MITTEN: Mr. Sockwell, I just also
11 wanted to follow up on a point that you raised that was a very
12 good point about parking and the ability to get relief because
13 you are in a historic district.

14 I don't believe you have to be in an individual
15 landmark. I think you just have to be a contributing structure
16 in the historic district. And you can get a letter from the
17 historic preservation division saying that you are exempt from
18 a parking requirement, and it may be just that simple.

19 So that is something that the staff can help you
20 with and maybe all of this stuff about parking will just go
21 away. And then you will be here with the issue that you
22 thought that you were coming here with.

23 VICE CHAIRPERSON REID: Maybe that is why the
24 zoning administrator didn't require a variance for parking, and
25 I guess I am second-guessing.

1 COMMISSIONER MITTEN: You have to overtly get the
2 exemption. It is not just granted.

3 CHAIRPERSON SOCKWELL: Well, with my experience
4 with landmark buildings, and we have done numerous landmark
5 designations, and additions to landmark buildings, and some of
6 them -- or whatever, and it required the building to be
7 designated as a landmark in order to be eligible for the
8 waiver. But they may have changed that.

9 COMMISSIONER MITTEN: Well, the regulations allow
10 in 2100.5, that if they are a contributing building in a
11 historic district, and they are certified as contributing, then
12 the regulations provide for that waiver. So they would just
13 have to get the form that Mr. Sockwell was referring to.

14 BOARD MEMBER RENSHAW: Mr. Chairman, I would like
15 to call the question, please. We have a motion and we have a
16 second.

17 CHAIRPERSON SOCKWELL: All right. The motion is
18 to postpone to allow you the opportunity to seek expert advice
19 to assist you with your decision. So I don't think there is
20 any more discussion necessary. All in favor say aye?

21 (A chorus of ayes.)

22 CHAIRPERSON SOCKWELL: Opposed?

23 (No audible response.)

24 CHAIRPERSON SOCKWELL: Will the staff record the
25 decision, and gentlemen, we do apologize as Ms. Reid and all of

1 us feel that this is something that you were not aware of and
2 could have significant implications.

3 But hopefully between the staff and their
4 interpretations, and assistance, and the time that we have
5 given you, you will be able to make a determination on which
6 way to go with this, and it will be painless.

7 MR. MOFFAT: As a practical matter, at what point
8 do we have to indicate our desire to continue or to withdraw?
9 When would we have to do that?

10 CHAIRPERSON SOCKWELL: By the 27th when you
11 return to us.

12 COMMISSIONER MITTEN: Actually, you can make the
13 decision to withdraw at any time. I mean, that is completely
14 at your discretion.

15 MR. MOFFAT: May I show my ignorance in a
16 question without any implication? Were we to just rehabilitate
17 the upstairs so that we could store books or something like
18 that, that would not require zoning?

19 CHAIRPERSON SOCKWELL: Well, it would be a change
20 of use again. It would still be a change of use because it is
21 an accessory unit for a servant, for a domestic housekeeper.
22 The unit already exists on the upper floor.

23 MR. MOFFAT: I don't think so. It is just a floor
24 with holes in it.

25 CHAIRPERSON SOCKWELL: Oh, it is just a floor

1 with holes in it.

2 MS. PRUITT: So it would just be a additional
3 storage space is what you are saying?

4 MR. MOFFAT: Yes.

5 CHAIRPERSON SOCKWELL: Then all you need is a
6 building permit for that.

7 MR. MOFFAT: I see.

8 VICE CHAIRPERSON REID: I see that you are
9 groping at a way not to have to come back here, right?
10 Anything but that. I don't blame you.

11 MR. ZEYDLER: And also something really needs to
12 be done with this building, because the windows are broken, and
13 there was some -- we found traces of somebody going there and
14 sleeping. And it is dangerous for us, and it is dangerous for
15 the whole neighborhood. Something needs to be done.

16 CHAIRPERSON SOCKWELL: So there is no plumbing up
17 in that space at all?

18 MR. ZEYDLER: No.

19 MR. MOFFAT: No, not now. It is a very
20 unfortunate place.

21 CHAIRPERSON SOCKWELL: I think there would be a
22 good reason for you to do a cost comparison between seeing us
23 and doing that. So we will see you on the 27th or hear from
24 you between now and then.

25 MR. MOFFAT: Okay. Thank you.

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CHAIRPERSON SOCKWELL: Thank you. Are there any more items on the agenda for this afternoon?

MR. ZEYDLER: No, Mr. Chairman.

CHAIRPERSON SOCKWELL: Then that concludes the public hearing for the afternoon session for March 6th, 2001.

(Whereupon, the hearing was concluded at 3:20 p.m.)