

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

MAY 21, 2002

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The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 11:46 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
DAVID LEVY	Board Member (NCPC)
CURTIS ETHERLY, JR.	Board Member
ANTHONY HOOD	Board Member
JAMES HANNAHAM	Board Member

COMMISSION STAFF PRESENT:

Sheri Pruitt, Secretary, BZA  
Beverly Bailey, Office of Zoning

D.C OFFICE OF CORPORATION COUNSEL PRESENT:

Marie Sansone, Esq.  
Patricia Young, Esq.

OTHER AGENCY STAFF PRESENT:

David Laden, Office of Public Works

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(11:46 a.m.)

CHAIRPERSON GRIFFIS: Good morning, Ladies and Gentlemen. Before I cannot say that any more today, and call this hearing to order. This is the May 21st, 2002 public hearing of the Board of Zoning Adjustment for the District of Columbia.

My name is Jeff Griffis, and I am Chairperson. Joining me today is the Vice Chair, Ms. Anne Renshaw, and also Board Member Mr. Curtis Etherly, who is on his way out. Mr. David Levy will be representing the National Capital Planning Commission today, and representing the Zoning Commission for this morning and this afternoon will be Mr. Anthony Hood.

Copies of today's hearing are available to you, and they are located at my left on the table next to the door that you did enter into the hearing room. Please be aware that the proceedings are being recorded.

So we must ask you to refrain from any disruptive noises or actions in the hearing room. When presenting before the Board, please speak into the microphone, and I will ask that everyone as they come forward to state their name and address for the record, and we will walk you through any other technical difficulties that we might run into.

All persons planning to testify either in favor or in opposition are also to fill out two witness cards. Witness cards are available at the table in front of us, also at the

1 table where you entered into.

2 You shall fill in those cards and upon coming  
3 forward to speak to the Board, you can give it to the recorder,  
4 who is sitting to my right with the headphones on. The order or  
5 procedure for special exceptions and variances will be, first,  
6 statement and witnesses of the applicant.

7 Second will be government reports, including the  
8 Office of Planning and Department of Public Works, et cetera, and  
9 then the other attendant reports that we have. Third, will be  
10 the report of the advisory neighborhood commission; and fourth,  
11 it would be parties or persons in support.

12 And, fifth, parties or persons in opposition, and  
13 sixth, finally, we will have closing remarks by the applicant.  
14 Cross-examination of witnesses is permitted by the applicant, or  
15 parties in the case, and the ANC within which the property is  
16 located is automatically a party in the case.

17 The record will be closed at the conclusion of each  
18 case, except for any material specifically requested by the  
19 Board, and we will be very specific of information that we  
20 require, and when it should be submitted. After the record is  
21 closed, no other information, of course, would be accepted by the  
22 Board.

23 The Sunshine Act requires that the public hearing  
24 in each case be held in the open before the public, and the Board  
25 may, however, consistent with the rules and procedures of the

1 Sunshine Act, enter into executive session during or after the  
2 public hearing on a case for purposes of reviewing the record, or  
3 deliberating on the case.

4 The decision of the Board in these contested cases  
5 must be based exclusively on the public record. Therefore, to  
6 avoid any appearance to the contrary, the Board requests that  
7 persons present not engage members of the Board in conversation.

8  
9 I would ask that everyone turn off all beepers and  
10 cell phones at this time so that we don't have any disruptions in  
11 the proceedings. Let us take up preliminary matters at this  
12 time.

13 Preliminary matters are of course those which  
14 relate to whether a case will or should be heard today, such as a  
15 request for a postponement, a continuance, withdrawals, or  
16 whether proper and adequate notice has been given.

17 If you are not prepared to go forward with any case  
18 this morning, now is the time of course to bring it to our  
19 attention. Let me first go to Staff to see if we have any  
20 preliminary matters at this time.

21 MS. BAILEY: We do have a preliminary matter. It  
22 concerns the first case, Application Number 16829, Rosa L. Smith,  
23 and that application was withdrawn, Mr. Chairman.

24 CHAIRPERSON GRIFFIS: Okay. Thank you very much,  
25 Ms. Bailey, and I would say good morning to you also. Well, let

1 me get the good mornings in before the next couple of minutes  
2 before we turn to afternoon.

3 And also for Staff today, present with us is Mr.  
4 Nyarku, who is sitting to my right, and Ms. Pruitt also, sitting  
5 to my right. Absent today as many of you are aware in the  
6 audience, and certainly the staff and Board members are very  
7 aware that absent today is Mr. Hart, who did pass away last week.

8 Are there other preliminary matters for us to take  
9 up at this time?

10 MEMBER LEVY: Mr. Chair.

11 CHAIRPERSON GRIFFIS: Yes.

12 MEMBER LEVY: I have a preliminary matter.

13 CHAIRPERSON GRIFFIS: Oh, yes, Mr. Levy.

14 MEMBER LEVY: And that I would like to say for this  
15 morning, and for the next of minutes, it is with regret that I  
16 must announce that this will be my last appearance as a Member of  
17 the Board of Zoning Adjustment.

18 My term representing the National Capital Planning  
19 Commission ends today, and so I would just like to say that it  
20 has been my privilege to serve the District of Columbia in this  
21 capacity, and that I am honored to have served along side such  
22 distinguished colleagues and such an excellent staff.

23 And I want to thank the staff of the Office of  
24 Zoning, as well as corporation counsel, particularly Ms. Sansone,  
25 for all of the incredible work that they have done to make my job

1 a lot easier.

2 It has been a sincere pleasure, and I move on with  
3 mixed feels. I certainly won't miss the workload, but I will  
4 definitely miss serving on the Board overall. Thanks.

5 CHAIRPERSON GRIFFIS: Thank you, Mr. Levy, and you  
6 will certainly be missed. It has been an honor having you here,  
7 and of course we know that we will have a very capable person to  
8 follow you. However, it is a disappointment from my perspective  
9 that we will be losing you specifically.

10 You have added greatly to this Board in its  
11 deliberations and discussions, and also in its investigation of  
12 all applications, and I certainly wish we could continue your  
13 service. But we, and I think the City, appreciates the civic  
14 duty you have performed for this Board.

15 COMMISSIONER HOOD: Mr. Chairman, if I could, let  
16 me just add to what you said. I echo your comments. I think  
17 that Mr. Levy has brought a very good perspective to the Board,  
18 and I think he has done an excellent job in preparing for the  
19 different cases.

20 And I know that a lot of times he has touched on  
21 issues that I know that I have missed, and I think he has  
22 represented the city very well, and NCPC, and I think in his  
23 future endeavorment, I think he would do an excellent job.

24 And while I have the mike, I want to say that I was  
25 very saddened to hear about Mr. Paul Hart. He was one of those

1 guys who was a big guy, and I would call him the gentle giant.  
2 He was soft-spoken, but when he spoke, it meant a lot.

3 And in my heart he will be definitely missed, and  
4 he will just be very definitely missed, and he has worked very  
5 hard, along with the staff, to make sure that we were prepared to  
6 do the best interests we could do for the city as a whole. Thank  
7 you.

8 CHAIRPERSON GRIFFIS: Thank you, Mr. Hood, and I  
9 appreciate those words, and I think the Board obviously agrees,  
10 and we have taken a moment this morning to remember Mr. Hart.

11 And if anyone who is in the audience who was not  
12 here this morning, and wants some specific information on Mr.  
13 Hart's memorial service, you can pick that up in the office.

14 VICE CHAIRPERSON RENSHAW: Mr. Chairman, if I may.

15 CHAIRPERSON GRIFFIS: Yes.

16 VICE CHAIRPERSON RENSHAW: I would like to speak to  
17 Mr. Levy and just let him know that it has been a privilege to  
18 have sat beside him lo these many weeks. I have been very  
19 impressed with his insights on cases, and his dedication to the  
20 Board of Zoning Adjustment.

21 He has been very clear spoken in his arguments for  
22 or against an application, and he has been dogged in many a case  
23 on his determination to bring his colleagues around to his point  
24 of view, and has succeeded I must say.

25 So we wish him well, and we don't want to let him

1 go, and we would like to deny his request for relief, but we  
2 cannot do so. So I think I will say for my colleagues, good  
3 speed and may success always be in front of you.

4 And we hope that you revisit us many times over and  
5 just a few remarks on dear Paul Hart. He has been for all of us  
6 an inspiration. His calmness and his gentleness that Mr. Hood  
7 spoke about, he is indeed or was indeed our gentle giant, and he  
8 always had that look about him, in his eye, and in his demeanor,  
9 that we can make these hard decisions, and they can be very  
10 taxing on all of us.

11 But tomorrow is another day, and we will, shall we  
12 say, have to get over it. But he was there to help us get over  
13 the difficult decisions, and the raised tempers in some cases.  
14 And the deliberations that never seem to come to an end.

15 And so we will miss him, and we will think about  
16 him often, and know that he is just in a -- in his final resting  
17 place, and we hope that it is going to be his reward for duty  
18 well done.

19 CHAIRPERSON GRIFFIS: Thank you, Ms. Renshaw.

20 MEMBER LEVY: Mr. Chair, just a brief follow-up on  
21 my preliminary matter. NCPC has appointed a replacement for the  
22 seat on the BZA. Unfortunately, or rather they have chosen a  
23 replacement, and unfortunately our replacement has not yet been  
24 officially appointed by the Mayor or sworn in.

25 So we will be -- there will be a little bit of a

1 lapse, and hopefully not too much of a lapse. I won't be sitting  
2 on some of the cases today, some of the more complex cases, that  
3 my replacement will actually decide.

4 CHAIRPERSON GRIFFIS: Okay. Thank you for that  
5 clarification. If there is nothing further, why don't we proceed  
6 with our morning schedule and call the first case.

7 MS. BAILEY: Application Number 16831, of Jose  
8 Sanchez, pursuant to 11 DCMR 3103.2, for a variance from the lot  
9 occupancy requirements under Section 403, a variance from the  
10 minimum width of an open court requirements under Section 406;  
11 and a variance from the rear yard depth requirements under  
12 Section 404, to allow a deck addition to a single family row  
13 dwelling in an R-3 District, at the premises 5022 - 7th Street,  
14 Northwest, Square 3148, Lot 131. Please stand to take the oath.

15 (All witnesses were sworn.)

16 MS. BAILEY: Thank you.

17 CHAIRPERSON GRIFFIS: Good morning.

18 MEMBER LEVY: Mr. Chair, before we get started, I  
19 wanted just to point out one item that was a preliminary matter  
20 the last time that this case was scheduled, and just get staff to  
21 verify for the record that the matter has been resolved.

22 And that is that the property was initially posted  
23 late, and I believe needed an additional 11 days or something of  
24 posting. So if the staff could just verify that that was done.

25 MS. BAILEY: Yes, Mr. Chairman, it was done, and

1 the applicant did provide a revised affidavit of posting with a  
2 photograph.

3 MEMBER LEVY: Okay. Thank you.

4 MS. BAILEY: I'm sorry. Mr. Levy.

5 CHAIRPERSON GRIFFIS: Good. Let me just have you  
6 turn your mike on, and if you would just push the button there.  
7 Perfect.

8 MR. BAYONET: First of all, I would like to say  
9 good afternoon to the Chairman and all the Members of the Board.  
10 Thank you for giving me the opportunity to come and represent  
11 this case.

12 First of all, I would like to present the Members  
13 with a copy of the --

14 CHAIRPERSON GRIFFIS: Actually, stay right where  
15 you are. I need for you to introduce yourself, and give your  
16 name and address, and then when you want to bring those up to the  
17 Board, you can just bring them down to the staff.

18 MR. BAYONET: Yes, my name is Fausto Bayonet, and I  
19 am an architect, and I am here to present the case for Mr. Jose  
20 Sanchez. My address is 57 Midline Court, Gaithersburg, Maryland.

21  
22 Here I have copies of some of the neighbors who  
23 approve of the application.

24 CHAIRPERSON GRIFFIS: Okay. You have indicated  
25 that you are submitting this in and this is actually neighbors

1 that have signed their approval of this application, and we have

2 --

3 MR. BAYONET: We could not get one because the  
4 person is deceased. That is the only person that we couldn't  
5 get.

6 CHAIRPERSON GRIFFIS: Well, I am seeing four that  
7 you have not produced, but I think the intention is there, and it  
8 is clear.

9 MR. BAYONET: Most of the neighbors think that this  
10 deck is not in detriment.

11 CHAIRPERSON GRIFFIS: Right.

12 MEMBER LEVY: Mr. Chair, could I ask a question at  
13 this point --

14 CHAIRPERSON GRIFFIS: Sure.

15 MEMBER LEVY: -- about the petition.

16 CHAIRPERSON GRIFFIS: Sure.

17 MEMBER LEVY: What I would like to know is did Mr.  
18 Bayonet -- is it Bayonet?

19 MR. BAYONET: Bayonet, that's correct.

20 MEMBER LEVY: Are the -- and I can probably figure  
21 this out if I take a moment, but the two immediately adjacent  
22 neighbors, did they sign the petition?

23 CHAIRPERSON GRIFFIS: We are looking at the  
24 applicant's property at 5022 7th Street, Northwest.

25 MEMBER LEVY: Okay. I just wanted to clarify.

1 Thank you.

2 VICE CHAIRPERSON RENSHAW: Would you indicate their  
3 addresses for us?

4 MR. BAYONET: Sure. Sure. It is --

5 CHAIRPERSON GRIFFIS: 5027 7th Street.

6 MR. BAYONET: Yes, 5027 7th Street, Mr. Victor  
7 Rreano; and Ms. Gloria Pass, and 5024 7th Street, Joyce Hooker.  
8 First of all, let me tell you that I took charge of this case  
9 after Mr. Sanchez had already started the application.

10 And I would like to say, to give you a brief  
11 comment about his case, first of all, when he moved into his  
12 property, and all he wanted to do was to put a new date. And  
13 actually he is not changing the size of the system that was there  
14 before.

15 CHAIRPERSON GRIFFIS: So he was making repairs and  
16 modifications to an existing deck?

17 MR. BAYONET: That is correct. Actually what he  
18 wanted to do was to replace the old one, because the most of the  
19 wood was rotting.

20 CHAIRPERSON GRIFFIS: To replace it?

21 MR. BAYONET: To replace it. And he didn't realize  
22 that he needed an application for that, that he needed a permit  
23 for that.

24 CHAIRPERSON GRIFFIS: Okay. The words that you use  
25 will be somewhat important in this realm, but okay, go ahead.

1 MR. BAYONET: You mean in terms of?

2 CHAIRPERSON GRIFFIS: Well, repairs and  
3 modifications are different than replacement. Okay.

4 MR. BAYONET: Well, I guess I should use the word  
5 replacement, but that was his main intention, was to replace with  
6 a new one.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. BAYONET: Anyway, let me continue saying that I  
9 can see some of the variances that he is trying to get approved.  
10 The first one is related to the lot occupancy, which is 60  
11 percent of the lot area.

12 And he only occupies 1,260 square feet. In other  
13 words, the requirement is 2,000 square feet, and what he has got  
14 is 1,260. In other words, he has only 30 percent that he is  
15 exceeding --

16 CHAIRPERSON GRIFFIS: He is exceeding the allowable  
17 FAR by 30 percent?

18 MR. BAYONET: By 30 percent.

19 CHAIRPERSON GRIFFIS: Let's make sure that we are  
20 clear with that. That would give him a 90 percent lot occupancy  
21 at this point; is that correct?

22 MR. BAYONET: Actually, it is 78.68 percent.

23 CHAIRPERSON GRIFFIS: Okay. Oh, I see. All right.  
24 Go ahead.

25 MR. BAYONET: Well, we understand the case that he

1 is exceeding by so much square footage allowed. But like I am  
2 saying, he was just trying to replace the system with a new one,  
3 and he didn't at that point know that he was required to have a  
4 permit for this, and so we have got some pictures showing that  
5 some of the neighbors occupy even larger than that, and I can  
6 show it to the Board.

7 CHAIRPERSON GRIFFIS: Well, frankly that doesn't  
8 really go to your test at all.

9 MR. BAYONET: I understand that. I just wanted to  
10 make a point here that when he came into the property, he saw so  
11 many neighbors that were by more than the 30 feet.

12 CHAIRPERSON GRIFFIS: Sure. Sure, that's  
13 understandable, but perhaps a common error. You don't happen to  
14 have documentation of the existing deck that the applicant had  
15 when he moved in?

16 MR. BAYONET: No, I don't, but he can testify that  
17 it was the same size.

18 CHAIRPERSON GRIFFIS: Okay. Let me take a brief  
19 pause here, and ask corporation counsel if testimony was given  
20 that there was in fact an existing deck and that repair  
21 modifications and structural modifications were made to that deck  
22 that were the same size, shape, and lot occupancy, which  
23 obviously we will have to get to, would that remove this  
24 application from us?

25 MS. SANSONE: It might, Mr. Chairman, particularly

1 if there is some indication that the previous deck had been  
2 permitted, or was a legitimate, and non-conforming structure.

3 CHAIRPERSON GRIFFIS: Do you have any sort of  
4 documentation that this was a permitted non-conforming structure?  
5 Was there a BZA order on the property that was attendant to the  
6 title documents of any sort?

7 MR. BAYONET: Let me ask Mr. Sanchez.

8 (Discussion off the record.)

9 MR. BAYONET: What he is saying is that when he  
10 bought the property, they did not give him any papers saying that  
11 they already got a permit for that existing deck. But that is  
12 the way he found the house. When he bought the house, he already  
13 had the existing deck.

14 CHAIRPERSON GRIFFIS: Right. Let me just state  
15 this out, that first of all, this Board doesn't have any problems  
16 with decks, and frankly that the pictures in this immediate  
17 application show very well that it was done by a capable  
18 carpenter, although we are not judges of it structurally or  
19 anything of that nature.

20 Our problem is -- and as you well know because you  
21 are proceeding in it, is that the test for the variance has to be  
22 made, and that is what makes it difficult with this when it is a  
23 variance test. And that is a fairly high threshold.

24 And so I just would like to investigate is there  
25 any avenues that changes this application at this point.

1 MR. BAYONET: Sure. Sure, I understand.

2 CHAIRPERSON GRIFFIS: Because otherwise this is a  
3 hard case to make. Was there any additional -- well, when did he  
4 purchase the property?

5 MR. SANCHEZ: It was April of 2000.

6 MR. BAYONET: April of 2000.

7 CHAIRPERSON GRIFFIS: So within a year or so.

8 MR. BAYONET: Actually, it is two years now.

9 VICE CHAIRPERSON RENSHAW: And when did you start  
10 to work on the deck? And I take it that the deck is finished?

11 MR. BAYONET: Yes, it is. It is finished.

12 MR. SANCHEZ: Actually, it is two years now.

13 VICE CHAIRPERSON RENSHAW: And when did you start  
14 to work on the deck? And I take it that the deck is finished?

15 MR. BAYONET: Yes, it is. It is finished.

16 MR. SANCHEZ: I think it was by June 2001.

17 VICE CHAIRPERSON RENSHAW: That you started work or  
18 that it was finished?

19 MR. BAYONET: When he started.

20 MR. SANCHEZ: When I finished, I don't remember  
21 when, but it was about one month later.

22 CHAIRPERSON GRIFFIS: Okay.

23 MEMBER LEVY: Mr. Chair.

24 CHAIRPERSON GRIFFIS: Yes.

25 MEMBER LEVY: Mr. Sanchez, did you reuse any part

1 of the existing deck, perhaps the foundation of the existing  
2 deck?

3 MR. SANCHEZ: No. We throw everything away. I  
4 mean, we just put on a new deck. We replaced everything.

5 VICE CHAIRPERSON RENSHAW: Mr. Sanchez, did you  
6 move the posts that hold up the deck? Did you move the posts in  
7 any way? Did you change the footprint of the deck in any way,  
8 the configuration of the deck?

9 MR. SANCHEZ: I don't know. I mean, I think it was  
10 a little bit different, but I don't know exactly, because I was  
11 not the one who built the deck. I mean, most of the things that  
12 we put on there was --

13 CHAIRPERSON GRIFFIS: Let me do this. Let me give  
14 you two minutes to talk to your client, and what we would like to  
15 have you talk about is establishing what is existing and what was  
16 modified as repairs and structural repairs.

17 For instance, are there footings, and is there a  
18 concrete pad underneath each of those posts that are there. Tell  
19 us what is similar to the existing deck, and why don't you take  
20 two minutes to do that, and we will give you that time, and then  
21 you can come back and explain, and illustrate to us is similar.

22 (Whereupon, the hearing was recessed at 12:15 p.m.,  
23 and resumed at 12:22 p.m.)

24 CHAIRPERSON GRIFFIS: Okay. Let us walk through  
25 what we have in front of us then. How prepared are you to do

1 that?

2 MR. BAYONET: I'm sorry?

3 CHAIRPERSON GRIFFIS: I will turn it over to you to  
4 present us with -- well, just give us the site description and  
5 the history of what has happened here.

6 MR. BAYONET: Okay. As far as I know, of course.

7 CHAIRPERSON GRIFFIS: Yes.

8 MR. BAYONET: Well, let me summarize this thing  
9 quickly. When Mr. Jose Sanchez bought the property at 5020 7th  
10 Street, Northwest, he found the property with a deck, an existing  
11 deck, and the wood that was used for this deck was really in bad  
12 condition.

13 In other words, it was rotten. So he decided to  
14 change or to replace the wood, most of the wood, with new wood.  
15 And according to what he told me, he used the same footings, and  
16 some of the neighbors might testify that the new deck that he  
17 built is almost exactly the same that he had before.

18 I understand that we are exceeding some of the  
19 requirements, but I don't think it is going to be in detriment  
20 with the neighborhood, or anybody else for that matter. So we  
21 are asking, Mr. Chairman, and the other members to approve the  
22 application. Since he actually didn't change -- well, I would  
23 say the deck that was there before.

24 CHAIRPERSON GRIFFIS: Okay. I think that does give  
25 a little history of what has happened here. It still is -- well,

1 it is not -- well, let me say it is not a slam dunk in what has  
2 happened, but it gives us an understanding of the fact that there  
3 was conceivably an existing, albeit perhaps, non-conforming deck  
4 when this property was purchased.

5 That it was then in fact repaired and modifications  
6 to it were made in order to bring it to some sort of structural  
7 soundness and safety for the new home purchaser and for the  
8 adjacent property owners.

9 Of issue again, I think it is for the Board to  
10 decide on whether then in fact we disagree with what should be in  
11 fact should be in front of us. And there is maybe two steps to  
12 that; one that is actually before us is a variance, or perhaps  
13 this is more appropriately a special exception. Mr. Levy, do you  
14 have any thoughts on that?

15 MEMBER LEVY: Actually, I have something that goes  
16 directly to that. I have just recalculated the lot occupancy,  
17 and it appears to me that the owner has made an error in the  
18 calculation of the lot occupancy, perhaps related to that covered  
19 by the stairs. I am not sure.

20 But by my calculations, the lot occupancy is 823.  
21 The lot itself is 1,260, but the lot occupancy appears to be 823.

22 CHAIRPERSON GRIFFIS: That is total lot occupancy  
23 with a deck.

24 MEMBER LEVY: Instead of 991.

25 MR. BAYONET: Okay.

1                   MEMBER LEVY:   And also by my calculations, a 70  
2 percent lot occupancy would allow 882 -- actually 883 square feet  
3 of coverage, and so perhaps the applicant is under the special  
4 exception threshold.

5                   CHAIRPERSON GRIFFIS:   So 883 actually establishes  
6 70 percent, and below that would then put this to a special  
7 exception.

8                   MEMBER LEVY:   Right.   It appears to be at 823  
9 square feet.

10                  CHAIRPERSON GRIFFIS:   And we are at 823, in which  
11 case I would agree that does change what this is.  I don't think  
12 it necessarily changes any sort of requirements for posting or  
13 advertising, and that we have advertised this as a higher  
14 threshold test for the variance.

15                  I think we ought to just endeavor to look at this  
16 as a special exception at this time, unless there is any  
17 objections, or there is an objection by the applicant.  In which  
18 case, are you familiar with the test for special exception?

19                  MR. BAYONET:   Well, somehow, yes.  What would be  
20 the requirement in this case?

21                  CHAIRPERSON GRIFFIS:   Basically what we need you to  
22 quickly speak to is that this proposed -- well, that this  
23 application is in harmony with the general purpose and intents of  
24 the zoning regulation, and the zoning map.

25                  And that it does not tend to affect adversely any

1 of the neighboring properties, and that adverse use goes to a lot  
2 of different things. But I think that is sufficiently clear. Is  
3 that clear to you?

4 MR. BAYONET: Yes, it is.

5 CHAIRPERSON GRIFFIS: Okay. Do you want to speak  
6 briefly to those two tests of the special exception at this  
7 point?

8 MR. BAYONET: Well, like I am saying, we believe  
9 the deck is built in a very sound way, and in a very professional  
10 way as you can see it in the picture. And I have pictures here  
11 that I can show you.

12 CHAIRPERSON GRIFFIS: If you would submit those,  
13 and they go into the permanent record, and you know that you  
14 won't get them back. So these pictures, what you are saying is  
15 the fact of the matter that the design of this is in your opinion  
16 and as represented by the applicant, and your testimony, that the  
17 design is appropriate to the architecture, and it certainly is  
18 not in any way creating an adverse situation in the area.

19 MR. BAYONET: Yes.

20 CHAIRPERSON GRIFFIS: And that the repairs and  
21 modifications to this is existing and nonconforming added to the  
22 structural integrity and safety?

23 MR. BAYONET: That is exactly what I mean, yes, Mr.  
24 Chairman.

25 CHAIRPERSON GRIFFIS: Okay. And you have submitted

1 the petition that was circulated on May 4th, 2002, which we will  
2 have an exhibit number on it. And it is signed by the majority  
3 of the surrounding neighbors, and more specifically by the two  
4 adjacent neighbors.

5 MR. BAYONET: That is correct, Mr. Chairman.

6 CHAIRPERSON GRIFFIS: Okay. Any other questions by  
7 the Board Members? I am going to make the application submitted  
8 or petition just for our records here now evidence number 22, or  
9 exhibit rather. Any other requirements or questions of the  
10 applicant? Anything else that you want to speak to?

11 MR. BAYONET: Well, what I am trying to say, Mr.  
12 Chairman, is that if the Board decided that they needed more  
13 information concerning the veracity of this, we can ask the  
14 neighbors to sign another letter saying that it is not different  
15 to what he basically had before, and we might be willing to do  
16 that, too.

17 CHAIRPERSON GRIFFIS: Okay. But it is your  
18 client's testimony that, one, it is an existing deck, and that it  
19 was repaired substantially in the same mass and area.

20 MR. BAYONET: That is exactly what he is saying,  
21 yes.

22 CHAIRPERSON GRIFFIS: And that your client's  
23 testimony is the fact that he could produce a petition signed  
24 that would substantiate that by existing neighbors that lived  
25 there when that deck was in its earlier form.

1 MR. BAYONET: That is correct, Mr. Chairman.

2 CHAIRPERSON GRIFFIS: Okay. Let's move on then to  
3 other requirements for the case. I am noting that there is no  
4 Office of Planning Report on this, and I am also noting that ANC-  
5 4D does not have a report or a memo in the file.

6 We do have a letter from a neighbor, which is  
7 Exhibit Number 20, submitted to the file, that stated two things.  
8 That, one, that they were or that they had no opposition to this  
9 deck; and, two, that they had opposition to this Board having a  
10 public hearing on this because there is a troubled property in  
11 the block that should have a public hearing, and why are we  
12 wasting our time with this.

13 On the record, I can easily say that issues brought  
14 up by that neighbor of the other property, and not under focus,  
15 has no zoning issues that were evidenced in my mind. They were  
16 more of crime than leasing, and obviously we don't pick our  
17 properties to have hearings presented to us in an application.

18 So we will note that that letter is on the record.  
19 Is there any other submissions that I am missing? Is there  
20 anyone here attending this case that is planning to testify  
21 either in support or opposition of this case? Not seeing any  
22 indication that there is, Board Members, further questions?

23 VICE CHAIRPERSON RENSHAW: Yes, a request to see  
24 those photographs. Here we go. Okay. Any other information  
25 that Board members want or do you have any other questions? Then

1 if not, let's move this along.

2 I would move that we approve Application 16831 for  
3 Mr. Sanchez as amended and changed by this Board for a special  
4 exception to allow this deck addition to the single family row  
5 dwelling at the premises of 5022 7th Street, Northwest, and I  
6 think the record shows, and it has been testified to the fact  
7 that this was somewhat a basis of a misunderstanding, but also  
8 the basis of a repair modification to an existing non-conforming  
9 deck that has now been requested to be brought up to conformity,  
10 and that is being done through a special exception application  
11 today. And I would ask for a second.

12 COMMISSIONER HOOD: Second.

13 CHAIRPERSON GRIFFIS: Thank you very much. Does  
14 anyone want to speak additionally to the motion?

15 COMMISSIONER HOOD: Mr. Chair, I don't see it as  
16 causing any adverse impact to the surrounding area. Obviously,  
17 he has the support of both neighbors adjoining his property, and  
18 again, I would second the motion.

19 CHAIRPERSON GRIFFIS: And I would also add that in  
20 terms of the harming of the zoning, that it is clearly part and  
21 attendant to the residential use, and that is the primary zoning  
22 in the area. Others? If not, then I would ask for all those in  
23 favor of the motion signify by saying aye?

24 (Ayes.)

25 CHAIRPERSON GRIFFIS: And opposed?

1 (No audible response.)

2 CHAIRPERSON GRIFFIS: Why don't we record the vote  
3 on that one.

4 MS. BAILEY: The vote is recorded as five-zero-zero  
5 to approve the application. Mr. Griffis made the motion, and Mr.  
6 Hood seconded the motion, and Mr. Levy, and Mrs. Renshaw, and Mr.  
7 Etherly in support, and that is for an amended application for a  
8 special exception, and not a variance. And is this a summary  
9 order, Mr. Chairman?

10 CHAIRPERSON GRIFFIS: Yes. Well, let me ask the  
11 applicant. Are you requesting a summary order for this bench  
12 decision?

13 MR. BAYONET: Excuse me, please?

14 CHAIRPERSON GRIFFIS: A summary order is that the  
15 order goes out quickly, and doesn't establish findings of fact  
16 and decisions of law.

17 MR. BAYONET: I would, yes.

18 CHAIRPERSON GRIFFIS: A summary order then. Very  
19 well. I thank you both for your patience this morning, and we  
20 can move on. I think that this was clearly evident that each  
21 case is unique and individual, and we actually don't set  
22 precedence on this Board.

23 So that being said, why don't we move on and call  
24 the next case.

25 MR. BAYONET: I would like to thank the Chairman

1 and the other members of the Board.

2 CHAIRPERSON GRIFFIS: Thank you very much.

3 MS. BAILEY: Mr. Chairman, I am going to call the  
4 next case with a caveat that there has been some revisions.  
5 However, I am going to call it the way that it was advertised.

6 CHAIRPERSON GRIFFIS: I think that's fine. That's  
7 absolutely appropriate.

8 MS. BAILEY: Application Number 16815 of Adams  
9 Alley, LLC, pursuant to 11 DCMR 3104.1, for a special exception  
10 from the Reed-Cooke Overlay building height provisions under  
11 Subsection 1403.1, and pursuant to 11 DCMR 3103.2 for a variance  
12 from the floor area ratio requirements under Section 402, a  
13 variance from the nonconforming structure provisions under  
14 Subsection 2001.3, for a building not meeting the lot occupancy  
15 requirements under Section 403; and a variance from the  
16 restrictions governing the use of alley lots under Section 2507  
17 to allow the construction of an addition to an existing structure  
18 for use as a mixed-use; that is, residential, office, and private  
19 club, and the property is located in the Reed-Cooke Overlay  
20 District R-5-B, at premises of the Rear 2412 17th Street,  
21 Northwest, Square 2566, Lot 95.

22 Please stand. All those wishing to testify this  
23 afternoon, please stand to take the oath.

24 (Witnesses sworn.)

25 MS. BAILEY: Mr. Chairman, just as a brief

1 reminder, there are two requests for party status.

2 CHAIRPERSON GRIFFIS: All right. Good. Thank you.

3 Why don't we take up the party status up first, and then go to  
4 the changes that have happened, in terms of the application on  
5 this. And then we will take a dinner break, and then we will get  
6 on with the case. That is a joke just for everyone.

7 MR. EPTING: I was hoping so.

8 CHAIRPERSON GRIFFIS: I have to always substantiate  
9 that for the record, because often times the laughter doesn't get  
10 recorded. Be that as it may, let us do party status. Board  
11 Members, why don't we pull out those letters for discussion.

12 Okay. And let me make just one quick  
13 clarification, and that Mr. Levy did bring up a preliminary  
14 matter today that this was his last day, and he will not be  
15 participating in this case at this time, although I was trying to  
16 encourage him to do so.

17 MEMBER LEVY: It was actually the dinner break that  
18 did it for me.

19 CHAIRPERSON GRIFFIS: All right. Let us proceed  
20 then with all seriousness and deliberation on this. We have two  
21 requests for party status, and I have Exhibit Number 29, which is  
22 from Mr. Batra. In fact, my copy got -- I was able to read it,  
23 but my copies seemed to have gotten a little smudged.

24 And we also have Ms. Ruth Eisenberg also present;  
25 is that correct?

1 MS. EISENBERG: Yes.

2 CHAIRPERSON GRIFFIS: Okay. Good. Board Members,  
3 let's take up Mr. Batra's request for party status at this time.

4  
5 COMMISSIONER HOOD: Mr. Chairman, I did see Mr.  
6 Batra's request for party status, but unfortunately I just refuse  
7 to hurt my eyes in reading what this is, and I am not trying to  
8 make light of the situation, but sometimes they hurt as it is.

9 And so far I have been fortunate enough not to wear  
10 glasses.

11 CHAIRPERSON GRIFFIS: Do you want me to read what  
12 we have here?

13 COMMISSIONER HOOD: I guess I would just want to  
14 know what the substance of why he was more aggrieved as opposed  
15 to anyone else? And maybe it is in there, but I just  
16 unfortunately could not read that. I am being very honest, and  
17 the type is very small to me.

18 CHAIRPERSON GRIFFIS: Okay. Well, we can obviously  
19 have Mr. Batra speak to this very briefly and quickly. But he  
20 lives at 1710 Euclid Street, Northwest, which he has indicated in  
21 his letter is 150 feet from the subject site. We have a site  
22 plan, and so we could probably establish exactly where that  
23 townhouse is.

24 The likelihood of -- well, there is a substantial  
25 written submission on the safety of the alley, in terms of what

1 would happen would increase traffic, and then pedestrian traffic  
2 in there, and the amount of vehicular traffic that would impede  
3 that.

4 And also he talks about a substantial increase in  
5 air pollution due to the backup of cars that has been stated as  
6 inevitable. Noise of the idling cars has also been brought up,  
7 and honking, and the point being made that the alley is so small  
8 that cars will be backed up and cars will be idling and honking,  
9 et cetera.

10 And that damage to his deck as the cars and  
11 residents, and guest visitors, or whoever, patrons, or private  
12 citizens, attempt to do a three point turn in their cars in a 10  
13 foot alley, which is blocked by -- and I am assuming that this is  
14 blocked by a condition that could be as indicated here, a  
15 contractor or utility vans, which are frequently parked back  
16 there.

17 And he states that in fact that his deck sits on  
18 stilts which are run right up to the 10 foot alley. And that  
19 actually brings up an interesting issue, but not one that we are  
20 going to take up.

21 And then there is the point of reduced economic  
22 value of the house, providing that there be constant traffic, and  
23 traffic jams, and nuisance, and total alley blockage -- and I am  
24 reading this from subparagraph (d) -- at completely unpredictable  
25 times.

1           And indeed, the last paragraph -- well, let me go  
2 to paragraph four, which is social impact on the property of  
3 having an alley blocked, and a building 150 feet away, with  
4 upwards of 200 residents, patrons, guests, using the property.

5           And density is the issue there, and of  
6 inappropriateness, in terms of its magnitude. And then lastly as  
7 stated in paragraph number five, it goes to emergency vehicles  
8 being able to navigate through the alley to Mr. Batra's property,  
9 or to the Colortone property.

10           And those are the issues, and if other Board  
11 Members have any, we can bring those up. Let me take the last  
12 issue first. I think we will get into that as we hear the case  
13 go to it.

14           I am not sure how that goes to the party status, or  
15 in terms of the adjacency, or why it would be established in  
16 that. This is an existing building, although it may be added on  
17 to.

18           The point of the alley size is not changing as far  
19 as I understand reading the case record, and so I am not sure how  
20 that would actually change that image. But that is the one  
21 piece. Do other Board members have questions or issues to this?

22           COMMISSIONER HOOD: Thank you, Mr. Chair. I still  
23 would go by what we have in 3106.3, and I would read that last  
24 part of the regulation, "distinctly or uniquely effective in  
25 character or kind by the proposed zoning relief, and those or

1 other persons, and the general public." And I guess that is what  
2 I am looking for.

3 CHAIRPERSON GRIFFIS: Okay.

4 COMMISSIONER HOOD: And maybe you need to read it  
5 again, and I apologize.

6 CHAIRPERSON GRIFFIS: But your point is that you  
7 don't -- that this letter doesn't -- that you don't think Mr.  
8 Batra is evidencing that he is above and beyond the general  
9 public impacted.

10 COMMISSIONER HOOD: According to 3106.3, I am not  
11 sure whether he meets that.

12 CHAIRPERSON GRIFFIS: Let me ask if the applicant  
13 and representatives have any objection to this party status?

14 MR. EPTING: No, we can address all the concerns.

15 CHAIRPERSON GRIFFIS: Okay. But you don't object  
16 to the request for party status? Any other comments on it?

17 VICE CHAIRPERSON RENSHAW: Well, I would just like  
18 to know on the map where Mr. Batra's residence is.

19 CHAIRPERSON GRIFFIS: Why don't we ask Mr. Batra to  
20 point that out if he is able to.

21 MR. BATRA: Approximately this lot right here. It  
22 is now labeled 1710.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. BATRA: Well, I can see the Colortone building  
25 clearly from my back yard. So I am probably miscounting.

1                   CHAIRPERSON GRIFFIS: I see. Okay. So from  
2 pointing it out on that site plan, which is part of the  
3 applicant's case before us today, which is S-1 label, if I am not  
4 mistaken, those row of townhouses that you have indicated are on  
5 the north side of that entire square?

6                   MR. BATRA: That's correct.

7                   CHAIRPERSON GRIFFIS: And you are pointing to what,  
8 the third or fourth from the east?

9                   MR. BATRA: It is the fifth house in.

10                  CHAIRPERSON GRIFFIS: The fifth house in? Okay.

11                  VICE CHAIRPERSON RENSHAW: And between your house  
12 and the applicant's property, is that all open space?

13                  MR. BATRA: It is a fenced in area right here, and  
14 this is parking. So, yes, nothing is built up between my house  
15 and the property. If I may say, there has been a change in the -  
16 - well, not a change in the application, but a new provision  
17 brought to light and that there has been a recommendation by I  
18 guess DDOT and the Office of Planning to make this an entirely  
19 one-way alley.

20                  And I did not address that in my party-status  
21 application, but I would have. That brings more importance to  
22 this.

23                  CHAIRPERSON GRIFFIS: Okay. And no matter what  
24 happens in terms of your party status, you are here, and you are  
25 able to testify, and give any sort of testimony that you want as

1 a person.

2 Let me just reiterate the fact of the matter with  
3 party status that if granted party status, with other things, the  
4 most important thing I think in terms of having party status is  
5 the ability to cross-examine witnesses.

6 MR. BATRA: Right.

7 CHAIRPERSON GRIFFIS: So what we do as Mr. Hood is  
8 getting to, is looking at 3106, which is the requirements for  
9 establishing party status. Do you want to quickly just tell us  
10 how the issues that you will raise or have raised are distinct,  
11 or unique from those that might be made by the -- the general  
12 public is a bit undefined, but by the surrounding neighbors.  
13 What makes you unique for party status?

14 MR. BATRA: Well, in terms of -- I was kind of  
15 reading in terms of the general public. This application is so  
16 unique in and of itself that it is hard to pass, and I did ask  
17 folks who had gone through this process before, and no one could  
18 come up with an intra-alley building, and how they did party  
19 status.

20 CHAIRPERSON GRIFFIS: I don't think that  
21 necessarily the application or the proposed building would change  
22 the nature of party status. I don't think that you would go to  
23 the precedent of an alley lot to find out how you would establish  
24 party status. But go ahead.

25 MR. BATRA: Well, I feel that I am aggrieved, and I

1 do have a permit for my deck as well, but my deck comes right up  
2 to the edge of the lot, and as it is right now, if this is made a  
3 one-way -- and this is kind of the crux of my argument.

4 If this is made a one-way, it will uniquely affect  
5 me and affect other folks on this side of the alley, and our  
6 alley --

7 CHAIRPERSON GRIFFIS: Well, let me help you here  
8 then, because you can't say it will uniquely affect you and other  
9 folks. Do other neighbors have their decks in the same position?

10 MR. BATRA: No, my deck is the furthest out, and it  
11 would uniquely affect me. Now, our alley is the narrowest in  
12 this entire place, and if we have to do a back up or a three  
13 point turn, we can't do it. It can't be done, and so this  
14 uniquely affects my property more so than any other.

15 CHAIRPERSON GRIFFIS: Okay.

16 COMMISSIONER HOOD: Mr. Chair, I am satisfied with  
17 what I have heard.

18 CHAIRPERSON GRIFFIS: Okay. Thank you. Let me  
19 just get quick clarification of 1720 Euclid. Before we move on  
20 to the first application of party status, Ms. Eisenberg, did you  
21 want to just point out -- are you in the same row then?

22 MS. EISENBERG: The saw row, but I am closer to the  
23 Colortone building.

24 CHAIRPERSON GRIFFIS: Okay. You are in the same  
25 row, but closer to the Colortone building.

1 MS. EISENBERG: So my property is directly north of  
2 the Colortone building and my site lines would be uniquely  
3 affected by this site.

4 CHAIRPERSON GRIFFIS: Okay. The font was a little  
5 bit bigger on yours, and so I think everyone was able to read.  
6 The transmission was more of the problem, and I think the fax  
7 coming through just got smudged.

8 Well, okay, Board Members. And Ms. Eisenberg, you  
9 are clear on the fact that party status, you are actually  
10 requesting party status in order to cross-examine witnesses and  
11 take on a larger responsibility in the proceeding of this public  
12 hearing, and of this case; is that correct?

13 MS. EISENBERG: I do understand that, Mr. Chairman.  
14 However, due to the delay in the start time of the hearing, I  
15 may not be able to stay through the entire hearing. I expected  
16 it to start --

17 CHAIRPERSON GRIFFIS: Well, do you think that your  
18 concern for this case can be done in just direct testimony?

19 MS. EISENBERG: I am not sure, because I am not  
20 sure what the other direct testimony would be, and I wanted to  
21 reserve the right to cross-examine while I was able to be  
22 present.

23 CHAIRPERSON GRIFFIS: I see. Okay. Board Members,  
24 any concerns? Any objections to Ms. Eisenberg's request for  
25 party status?

1 MEMBER ETHERLY: None.

2 CHAIRPERSON GRIFFIS: Okay. There is no objection  
3 to the party status. Does anyone on the Board have objections to  
4 granting party status?

5 COMMISSIONER HOOD: No, no objections.

6 CHAIRPERSON GRIFFIS: And to set out one basic  
7 ground rule on direction, and that is of course that although we  
8 may not be showing it, we do like to be a little efficient in our  
9 schedule and time. So obviously in our regulations, we won't  
10 have any sort of redundant questions of any sort in cross-  
11 examination.

12 And so if -- and you don't have to, but if it works  
13 that you both talk about different questions on cross-  
14 examination, and the fact, Ms. Eisenberg, that you may have to  
15 leave, it may well be served if you were to indicate questions  
16 that you might want to have asked, or any cross-examination that  
17 you would be investigated by Mr. Batra, who may be able to stay.

18 And without further adieu then, let's get into this  
19 case, unless here is other preliminary matters that we need to  
20 discuss on this. And let's talk to what we are actually here to  
21 do today.

22 MS. BAILEY: Mr. Chairman, very quickly, and excuse  
23 me. We do have some late filings on letters of support that came  
24 in, and which I am about to pass out, and we also do have an ANC  
25 report.

1 CHAIRPERSON GRIFFIS: Okay. Does the applicant  
2 have that, all of those letters?

3 MR. EPTING: Yes.

4 CHAIRPERSON GRIFFIS: Okay. Let us give copies to  
5 the parties, because I doubt that they have those, and they can  
6 take the time to read them while we get into this. Oh, is this  
7 stuff we haven't seen? Why don't you introduce yourself.

8 MR. EPTING: Good afternoon, John Epting, with  
9 Shaw-Pittman. With me today is Paul Thomas, and we are  
10 presenting the applicant, Adams Alley. I was going to go through  
11 my statement and I would at that point clarify the relief, and I  
12 think it flows from what we have done.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. EPTING: This is actually our third scheduled  
15 hearing before you, and we are glad to be here. We have spent  
16 the last five months working with the ANC, the Reed-Cooke  
17 Neighborhood Association, and actually Mr. Jackson is here.

18 We worked very hard with the community to reach  
19 support, and almost overall consensus on this project. There are  
20 letters from the ANC in the file, and there is a letter from the  
21 single-member district, Eleanor Johnson of the Quality of Life  
22 Committee.

23 We have actually been commended by the Quality of  
24 Life Community and the ANC by the process that we went through in  
25 working on this project. And I think that has actually brought a

1 better project, but it has taken us a long time to get here.

2 We have had site visits, and we have had  
3 breakfasts, and we have had night visits, and we have had  
4 meetings with the council member. So we have gone through a lot  
5 of process and meetings to get to where we are.

6 CHAIRPERSON GRIFFIS: Was it the breakfasts that  
7 clinched it?

8 MR. EPTING: The breakfasts were pretty important  
9 actually. They were early in the morning. But in the process,  
10 and this gets to the way the building has changed. The height of  
11 the building is lowered from 48 feet to 38 feet, and now it is  
12 31-1/2 feet. We have 12 market rate residential units.

13 And that mix has changed throughout this, but this  
14 is what we have settled on. We have offered numerous conditions  
15 of approval, and those are included in our statement as Exhibit  
16 L, and these are proposed conditions that we are offering for  
17 you.

18 Many of these, or all of these have been reviewed  
19 with the community, and many, and in fact actually suggested by  
20 the community, including a couple suggested by Mr. Jackson  
21 himself from the Reed-Cooke Neighborhood Association.

22 And in the Reed-Cooke's letter, they also I think  
23 pick up all of these conditions, too, as a basis of their  
24 support. We also have the Office of Planning support, and we  
25 will be talking about conditions 6, 7, and 8 of the Office of

1 Planning Report, because we have some issues with them.

2 And Simi has already pointed out one of our issues  
3 with the DPW in the Office of Planning Report; is that we would  
4 prefer not to have the one-way alley situation and prefer it to  
5 work as a two-way, and we will, explain that later, too, and we  
6 actually thinks it works better in terms of the way the building  
7 works.

8 We have created a turnaround and I think unique to  
9 this project, we have created a place within the building where  
10 the kids from the Sitar Center could actually go up into their  
11 level, and so that they are not walking along the Eastern alley,  
12 and we thought that was a real breakthrough for us.

13 Because of this, some of the relief has changed,  
14 and we have eliminated the special exception relief, because we  
15 are now under 40 feet. We still have the FAR variance, although  
16 the FAR has gone down, and we still have the alley lot variance,  
17 and we still have the lot occupancy variance, because the  
18 building has not changed in terms of the way that it sits on the  
19 lot.

20 Originally, we had two parking entrances. We had  
21 the one that we are showing on the south part of the building,  
22 and it has 24 spaces, and we had around the corner on the smaller  
23 western alley in the middle of the building that went down to  
24 another level of parking.

25 There was concern about congestion, and even

1 overparking traffic issues, and we eliminated that additional  
2 parking. We originally had 36 spaces, and we got rid of 12. And  
3 that creates a variance, a slight variance, and zoning would  
4 require us to have 28, and we are providing 24 spaces.

5 So we have lost the special exception for height,  
6 and we have gained a variance for parking. We have actually  
7 submitted a revised self-certification form to Ms. Bailey, and so  
8 that is just in the record to make clear what we have done.

9 So at this point in time -- and we are going to be  
10 brief. I mean, we are ready to go. So I have resumes on the  
11 architect, Jim Foster, and our traffic engineer, Osborne George,  
12 and our zoning and building code consultant, Armando Lourenco,  
13 which we are submitting to you right now. And we would ask that  
14 you approve those, and --

15 CHAIRPERSON GRIFFIS: Are those all as expert  
16 witnesses?

17 MR. EPTING: Yes. Yes, please.

18 CHAIRPERSON GRIFFIS: Okay. Before we move off,  
19 and we appreciate you resubmitting the self-certification, and I  
20 don't think there is any problem in terms of posting this  
21 property or in terms of notification and all of that. However, I  
22 do have several issues that I want to walk through.

23 Let's talk about parking first which you brought  
24 up. The application is to provide 24 spaces. Mr. Epting, am I  
25 correct in looking at the zoning that each of the parking

1 requirements will be attendant to the use?

2 MR. EPTING: That's correct.

3 CHAIRPERSON GRIFFIS: So would you not say that the  
4 residential requires six spaces?

5 MR. EPTING: That's correct.

6 CHAIRPERSON GRIFFIS: Okay. And what would your  
7 calculations be for the Sitar Center, which would I would  
8 understand did come in as a private club; is that correct?

9 MR. EPTING: Basically, it is other use. So it  
10 would be 20 spaces, and that is our biggest parking requirement.

11 CHAIRPERSON GRIFFIS: All right. So that would be  
12 26.

13 MR. EPTING: Right, and the office would be two.

14 CHAIRPERSON GRIFFIS: Right. And isn't part of the  
15 application or didn't I notice that each of the units would be  
16 offered a parking space?

17 MR. EPTING: That's correct.

18 CHAIRPERSON GRIFFIS: And so that would be 12?

19 MR. EPTING: Right, 12 use spaces, but our analysis  
20 also is that the Sitar space is only using 6 to 10 spaces.

21 CHAIRPERSON GRIFFIS: Well, yes, using, and then  
22 required by zoning are two different uses that we can get into.

23 MR. EPTING: Right.

24 CHAIRPERSON GRIFFIS: And I guess my bottom line  
25 point is that it seems to me in my calculations that perhaps you

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1 are looking at a variance of eight spaces.

2 MR. EPTING: Well, but strict zoning is still one  
3 for two. I mean --

4 CHAIRPERSON GRIFFIS: Well, add it up. Required, 6  
5 residential, and 24 other, and 2 for office, and you are looking  
6 at 28; is that correct?

7 MR. EPTING: That's correct.

8 CHAIRPERSON GRIFFIS: And tell me how you are  
9 providing them. You are providing 12 for residential.

10 MR. EPTING: That's right. All right. The first  
11 analysis is a strict zoning interpretation, and we agree with  
12 that. Now you are talking about the reality of the situation.  
13 The practical reality is that for each unit we would get one  
14 parking space.

15 CHAIRPERSON GRIFFIS: Right, but doesn't the strict  
16 zoning indicate what relief you need?

17 MR. EPTING: But the strict zoning is one for two  
18 for residential.

19 CHAIRPERSON GRIFFIS: Right, I understand that, and  
20 we are at six. You are okay on residential.

21 MR. EPTING: Right.

22 CHAIRPERSON GRIFFIS: And in fact you are six over  
23 on residential.

24 MR. EPTING: Right.

25 CHAIRPERSON GRIFFIS: But you can't count those six

1 over for the 20 that are required by the private club.

2 MR. EPTING: I guess I am not being clear. Strict  
3 zoning would require 28 spaces.

4 CHAIRPERSON GRIFFIS: Right.

5 MR. EPTING: Now, let's ignore that. Our project  
6 is to provide 24 spaces, of which 12 would be for residential,  
7 and 2 would be for office, and 6 to 10 would for Sitar. That is  
8 less than 24.

9 CHAIRPERSON GRIFFIS: Right, and my point is that  
10 you need to take each of the uses, the three, and calculate their  
11 parking individually.

12 MR. EPTING: Okay.

13 CHAIRPERSON GRIFFIS: So you have indicated that  
14 you will provide 6 to 10 for the Sitar?

15 MR. EPTING: That's right.

16 CHAIRPERSON GRIFFIS: We will give you 10, because  
17 that is the higher number.

18 MR. EPTING: That's right.

19 CHAIRPERSON GRIFFIS: Now you owe me 10.

20 MR. EPTING: That's right.

21 CHAIRPERSON GRIFFIS: The residential, you are  
22 okay, because you have got six over. And the office, you have  
23 two.

24 MR. EPTING: I have two. That is 24. I am not a  
25 math whiz.

1 CHAIRPERSON GRIFFIS: I understand that, but where  
2 are your 10 spaces for the 20 in the private club?

3 MR. EPTING: But the Sitar's demand is only for 10.  
4 They don't need any more than 10.

5 CHAIRPERSON GRIFFIS: I understand the demand, and  
6 that is my point. I understand the actual use, and we can get to  
7 that.

8 MR. EPTING: Right.

9 CHAIRPERSON GRIFFIS: I just want to establish the  
10 fact that if zoning is telling you that you have to provide 20, I  
11 need to show where those 20 are being provided. Otherwise, i  
12 need to at least up the number of spaces that you need relief  
13 from. This should not take us very long, because all I want to  
14 do is just establish what we are going for.

15 The test is the same, and the application is in,  
16 and I think the test is substantial enough that we can get there.

17 I just want to make sure that the numbers are right so that we  
18 are not arguing at the end about numbers.

19 MR. EPTING: Okay. I just have never done it this  
20 way. I have always -- the strict zoning would allow me to take  
21 the six for residential, which we have done.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. EPTING: And 26 for Sitar, and 2 for the  
24 office. I'm sorry, 20, 20 for Sitar. And we could provide them  
25 that way if we wanted to.

1 CHAIRPERSON GRIFFIS: Okay. So what you are saying  
2 is that you bundle the entire project, although it is mixed use.  
3 You look at the total number of spaces for each of the uses, but  
4 they are looked at as a whole because they are within a mixed use  
5 project, and you are saying that the entire piece is 24, but it  
6 is up to you how you actually use them.

7 MR. EPTING: That is the way that we look at it.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. EPTING: I mean, the specials aren't segregated  
10 in any way. They are -- I mean, I guess we could put their  
11 spaces, Sitar's spaces, in the back. We just think we have 24  
12 spaces there to use. I think it is pretty clear from the traffic  
13 analysis that --

14 CHAIRPERSON GRIFFIS: I don't want to go into the  
15 application. I just want to get the numbers, and I am sorry that  
16 this is taking so long.

17 MR. EPTING: That's fine.

18 CHAIRPERSON GRIFFIS: Let me just do this for my  
19 own piece of mind. Mr. Lourenco was one of your witnesses.

20 MR. EPTING: That's correct.

21 CHAIRPERSON GRIFFIS: Can you just have him concur  
22 with that, with your position on the parking space calculation?

23 MR. EPTING: He better, sure.

24 CHAIRPERSON GRIFFIS: Yes.

25 MR. LOURENCO: Good morning, Chairman Griffis, and

1 Members of the Board. My name is Armando Lourenco, and on the  
2 specific question, I agree with Mr. Epting's interpretation. The  
3 provision of the number of parking spaces to be provided is  
4 pretty much the total that you get by adding the required spaces  
5 for each of the uses, and of course this project is short four,  
6 and that is the relief that is being sought.

7 How the parking garage is managed afterwards is  
8 something that as long as it provides the minimum number of  
9 parking spaces that is required by the regulations, that is  
10 something that you can increase the number if you need by  
11 providing stacked parking, and all sorts of other things, but you  
12 must prove up front that you do have without using stacked  
13 parking enough spaces to cover the zoning regulations.

14 CHAIRPERSON GRIFFIS: And in your past experience,  
15 and actually, we will take up you as an expert witness right now,  
16 although what you say now is not bearing on that, but it was your  
17 past experience and you reviewed similar projects of this nature,  
18 and which were mixed use and this is how you calculated the  
19 parking requirements, and whether any sort of variance or relief  
20 was requested. Is that correct?

21 MR. LOURENCO: That's correct.

22 CHAIRPERSON GRIFFIS: Okay. All right. Thank you  
23 very much, Mr. Lourenco. We have three proffers, am I correct,  
24 from the expert witnesses?

25 MR. EPTING: That's correct.

1 CHAIRPERSON GRIFFIS: And at this time, Board  
2 Members, have you been able to review the documentation and is  
3 there any objection to accepting these as expert witnesses? Any  
4 concerns or questions?

5 (No audible response.)

6 CHAIRPERSON GRIFFIS: Do the parties have any  
7 objections to the expert witnesses?

8 MS. EISENBERG: No, sir.

9 CHAIRPERSON GRIFFIS: Okay. There has been an  
10 indication that there is no objection, and I think we can proceed  
11 and grant the expert witnesses, and move back to another issue  
12 that I have, I think. You indicated or you are holding that you  
13 are coming in for relief under Section 402, which is an area  
14 variance, which is moving the FAR from 1.8 to 2.9 something or  
15 other?

16 MR. EPTING: That's correct.

17 CHAIRPERSON GRIFFIS: And we will establish that,  
18 and I think you did mention that. Now, the issue with the alley  
19 lot. It seems to me that -- well, it seems to me that I am  
20 reading 2507 that this is actually a use variance. Is that your  
21 intention? It was a little unclear to me because it looked as  
22 though it was spoken to at the original submission as an area  
23 variance.

24 MR. EPTING: My view, and that of Mr. Lourenco is  
25 that it is an area variance. The R-5-B zone specifically allows

1 apartment house use in it, and the way I see it, and in fact  
2 there is a court case, the YMCA case, which basically was a  
3 private club there and which was a permitted use.

4 The other variances were area variances, and in my  
5 mind the street -- if this was a street, it would be a permitted  
6 use. The only reason it is arguably not a permitted use under  
7 2507 is because it is on an alley, which I believe to be an area-  
8 tied restriction, much like a rear yard.

9 If this was an R-1, R-2, R-3, it would be a use  
10 variance. And I think it is really important to note here that  
11 if you look at the history of this building, the order 523A, the  
12 Reed-Cooke supplement order, specifically rezoned -- and it is  
13 the only order that I have ever seen that actually rezoned a  
14 building. It says the Colortone building -- from CM use, which  
15 prohibited residential.

16 Residential was not allowed in CM, and rezoned the  
17 property to R-5-B. So now to come back later and basically say  
18 that residential is not a permitted use seems kind of ironic  
19 given what the zoning commission has done.

20 And all those factors lead me to think it is an  
21 area variance, because -- and we could prove undue hardship if we  
22 had to, and Armando is prepared to. But it just does not make  
23 sense to me, particularly given what the zoning commission did  
24 and what Reed-Cooke did, to rezone an industrial building that as  
25 a permitted industrial use in it so we can go back and do

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1 industrial office uses.

2 But we are trying to come along with a Reed-Cooke,  
3 and now to say that we have to prove undue hardship to do that,  
4 it doesn't make sense to me, particularly when the zone, the R-5-  
5 B zone, specifically permits the use.

6 And if we were on a street, we wouldn't be having  
7 this discussion.

8 CHAIRPERSON GRIFFIS: And that's very true, and if  
9 we were on a street, certainly we understand that in the R-Zone  
10 that residential is allowed, as it is a residential zone.

11 MR. EPTING: And the BZA has also -- and just one  
12 more point. In hotels, which is the only other situation that I  
13 can think of, there are a number of grandfathered hotels in the  
14 residential areas that became hotels before the zoning commission  
15 no longer allows hotels.

16 So a hotel is now a prohibited use in residential  
17 zones. When those come in for expansions, or swimming pools, or  
18 whatever, those are area variances and not use variances. And it  
19 is a relatively similar thing, I think, showing that the uses is  
20 permitted.

21 CHAIRPERSON GRIFFIS: I see where you are going  
22 with that, although I don't see the direct correlation here, but  
23 my point is that the 2507 -- granted in the R-5, or in  
24 residential is allowed, but the 2507 is more restrictive, in  
25 terms of buildings on alley lots.

1                   And I am not sure how we get beyond 2507.1, which  
2 reads, and I read here, "Except for use as a one family dwelling,  
3 a structure shall not be erected, constructed, altered,  
4 converted, remodeled, restored, or repaired for human habitation  
5 on an alley lot. That's where I am just having trouble getting  
6 over that.

7                   MR. EPTING: I understand that, and that's why we  
8 are asking for the area restriction from the alley provisions.  
9 And I could let Mr. Lourenco also discuss that.

10                  CHAIRPERSON GRIFFIS: All right. Let's clear this  
11 up then.

12                  MR. EPTING: Because we have talked about this in  
13 detail, because it bothered me coming into the case, and I  
14 satisfied myself, which doesn't mean anything to you.

15                  CHAIRPERSON GRIFFIS: Right.

16                  MR. EPTING: But I did go back and look at the  
17 court cases and stuff.

18                  CHAIRPERSON GRIFFIS: Okay. And quite sincerely,  
19 what I want to do is to establish the basis when you look at it  
20 so that this Board doesn't have to look at this again if this  
21 goes through, or however this continues. So did you want to  
22 address this, Mr. Lourenco?

23                  MR. LOURENCO: Again, my name for the record is  
24 Armando Lourenco. The situation with Section 2507 is interesting  
25 for a couple of reasons. 2507 imposes restrictions on what you

1 can do in family lots, and very strict restrictions, and it would  
2 probably be interesting to figure out why those restrictions come  
3 about the way they do.

4 But obviously we have to understand that normally  
5 an alley lot is something of a land lot situation, where you can  
6 really have buildings built all the way up to your back, and the  
7 only thing you have in front of you is one alley, which is  
8 clearly not the case with this property where you are surrounded  
9 by alleys on all sides.

10 And there is no way that you be landlocked. You  
11 have ventilation and air provided in a way that normal alley lots  
12 don't. But the most interesting point is whether -- and 2507 is  
13 obviously situated in a chapter that contains several  
14 miscellaneous provisions, and the question that the Board should  
15 ponder I guess is whether 2507 amounts to a rezoning of all alley  
16 lots in the city, and down to R-1, R-2, R-3, which is basically  
17 what would be the result if it was taken as a prohibition of  
18 anything other than a one family dwelling.

19 Despite the wording of 2507, alley lots in a CM or  
20 an M zone, when new residential uses are not permitted, in my  
21 opinion would require a use variance to establish a single family  
22 dwelling on an alley lot, in spite of what 2507 says.

23 If you take 2507 at face value and say that this is  
24 what regulates alley lots, and not the underlying zone. Then you  
25 could go into M zones, and CM zones, and establish one family

1 dwellings on alley lots, and that doesn't seem to make sense.

2 So I think that the underlying zone and the overlay  
3 district that primarily establish which uses are allowed in the  
4 lots. And then alley lot provisions add on conditions to the  
5 creation of those lots. But you can't really talk about non-  
6 authorized use, residential use, when the zoning is R-5-B.

7 And the overlay district is really one of the main  
8 goals, of which is to provide for additional residents for  
9 residential uses.

10 MR. EPTING: I will also submit the court case,  
11 which is in association with the preservation of the 1700 block  
12 of N Street, versus the BZA. And what the Court of Appeals says  
13 that the distinction between a use variance and an area variance,  
14 is that the former permit to use other than that prescribed by  
15 the zoning ordinance.

16 That would be the case if this property was like R-  
17 3, and apartment house not used. Whereas, an area variance has  
18 no relation to the change of use. An area variance is primarily  
19 to grant the permission to erect, alter, or use a structure for a  
20 permitted use in a manner other than that prescribed by the  
21 ordinance, and that is what I think we are doing here. The use  
22 is permitted.

23 CHAIRPERSON GRIFFIS: Okay. And I think  
24 -- I mean, I am clear on our point, and in terms of if this is a  
25 permitted use, and I think Mr. Lourenco -- should I pronounce it

1 that way?

2 MR. LOURENCO: Yes, Lourenco.

3 CHAIRPERSON GRIFFIS: Well, I have mispronounced it  
4 forever, but now I am corrected. Mr. Lourenco is also saying the  
5 same thing, and by contrast, making the point so that the Board  
6 Members understand this, and I am clear on it, that in non-  
7 residential use it would basically be a rezoning, because it  
8 would allow use that was not allowed in the base zoning.

9 MS. SANSONE: Mr. Chairman, that would be incorrect  
10 actually because under the zoning regulations the more  
11 restrictive provision controls. So actually in the industrial  
12 zone and CM zone, that tends to be more restrictive, and so it  
13 would not amount to a rezoning.

14 CHAIRPERSON GRIFFIS: So actually in an alley lot,  
15 you could not put a single family dwelling because it would not  
16 have been allowed by the more restrictive zoning on it. And that  
17 is all in the way of restating what has been said. Do the  
18 parties want to speak to this issue on whether this is a use  
19 variance of an area variance?

20 If you are going to, you need to come to the table  
21 and be on the record.

22 MS. EISENBERG: I don't wish to speak to whether it  
23 is one or the other. However, I would like the witnesses in  
24 their testimony to address the issue of a self-created hardship.

25 CHAIRPERSON GRIFFIS: Right. Okay. What I will

1 not allow is testimony or on any specific test, and if I ask you  
2 a specific question, I need you to direct it specifically to that  
3 question. One, for efficiency, and two, so you don't confuse the  
4 hell out of this Board, and get us in a whole different  
5 direction.

6 But what we have before us right now is trying to  
7 establish whether we are looking at 2507 in terms of the relief  
8 that you requested as a use, or an area variance, and the issue  
9 of course is I think apparent to the applicant of what that  
10 means.

11 How do you address the fact then, and I think that  
12 -- well, I hope that this is the last, and then we can figure out  
13 what we are doing with this, but how do you address then 2507.5,  
14 which then goes into even more detail of allowable uses for those  
15 structures.

16 MR. EPTING: But those are matter of right uses.

17 CHAIRPERSON GRIFFIS: I understand that, and so by  
18 definition it is -- well, a matter of right in this particular  
19 zone?

20 MR. EPTING: That's correct. And those uses could  
21 occur in R-1, R-2, R-3, R-4. An apartment house could not occur  
22 in R-1, R-2, or R-3. We have not done a comprehensive survey,  
23 but I think it is rare, and one of the things that we were going  
24 to discuss later under the uniqueness, is that there are very few  
25 alley systems like this in D.C. where you have four alleys.

1 CHAIRPERSON GRIFFIS: But that does not negate the  
2 issue that --

3 MR. EPTING: And fewer that are under  
4 R-5-B.

5 CHAIRPERSON GRIFFIS: -- it doesn't come under  
6 2507, and so that makes this unique, which may help the case  
7 altogether.

8 MR. EPTING: Right.

9 CHAIRPERSON GRIFFIS: But just because we can't  
10 find another specific independent parcel surrounded by alleys, I  
11 don't think that negates the fact that this is a building on an  
12 alley lot.

13 MR. EPTING: But at the same time, when you have  
14 rear yard requirements, and lot occupancy, and your lot is too  
15 small to build on, you have to get an area variance. You  
16 couldn't build a house on a lot that is 800 square feet without  
17 getting a variance.

18 CHAIRPERSON GRIFFIS: Right.

19 MR. EPTING: Even if the use is permitted. I see  
20 that situation the same as this, where you can't build on an  
21 alley because it is not a street. To me, I am having trouble  
22 understanding the difference there, because they are both area  
23 type issues. Not use issues, but area type issues. Frontage  
24 issues, let's call them that.

25 CHAIRPERSON GRIFFIS: Right, and just for clarities

1       sake, your point is to go back originally that this use is  
2       allowed, and therefore we should look to this as an area  
3       variance.

4                   MR. EPTING:   Otherwise, you are sort of throwing  
5       away what the zoning commission did, and specifically rezoning  
6       this specific property.

7                   CHAIRPERSON GRIFFIS:   Right.   Right.   I am just  
8       reiterating.  Do the Board Members have questions on that?

9                   COMMISSIONER HOOD:   Mr. Chairman, I want to go back  
10      to your first issue, and if you want me to, I can wait.  But the  
11      parking issue, I don't know if that has been resolved, because I  
12      was in agreement with -- and even though I heard that we have got  
13      a lot of experience over there, but what I was agreeing with your  
14      analysis of the use as far as the parking spaces.

15                   I have a problem with -- and, for example, I am  
16      just taking this hypothetically, but if the design is required to  
17      have 20 parking spaces, or 50 parking spaces, and you are going  
18      to tell me that you have three.

19                   You have a mixed-use development, and you are going  
20      to tell me that you only need three for one, and two for the  
21      other, and two for the other, I think it is use, to use, to use,  
22      if I am making myself clear.

23                   Basically, I was in agreement with what you were  
24      saying, as far as the parking spaces.  I don't know if that has  
25      been resolved.  I have a problem with saying that you have a

1 batch of 30, and it is use for all uses. I just think it needs  
2 to be pinpointed, and again, where are the other 10 spaces.

3 I am still on that, and I have not even gotten past that point.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. EPTING: I believe we can actually address when  
6 we get to our traffic engineer, we can show you how, because we  
7 have one use specifically that does not use even half of its  
8 requirement, because the Sitar Center basically needs 6 to 10  
9 spaces.

10 CHAIRPERSON GRIFFIS: I don't think that anyone is  
11 questioning that. I mean, I think we are all very well aware of  
12 what we are looking at is reality in use, and how you calculate  
13 what is required. So I think it is going to be more helpful to  
14 get into the case and decide that as we go.

15 MR. EPTING: Right.

16 CHAIRPERSON GRIFFIS: And if we want, we will pick  
17 it up there.

18 MR. EPTING: I think we could also meet the  
19 variance for 32 spaces, too, if you felt comfortable with that.

20 CHAIRPERSON GRIFFIS: I don't think it is an  
21 increase in burden, and I think we may on some of these issues  
22 err on the side of great caution.

23 MR. EPTING: That would be fine with us.

24 CHAIRPERSON GRIFFIS: Let's then go back to this  
25 use in area, and hopefully resolve this very quickly. But let me

1 ask Ms. Sansone if she wanted to speak to the issue of Section  
2 2507 and its pertinence to this case.

3 MS. SANSONE: Yes, Mr. Chairman. Yesterday, our  
4 office had an extensive discussion between myself and Alan  
5 Bergstein, and we looked at this very carefully. And we feel  
6 that it is very clearly a use variance for a number of reasons.

7 Beginning in 2507.1, the exact language of the  
8 regulation speaks to the use as a one family dwelling. It is  
9 going to use and not to area. In 2507.3, there is a provision  
10 that non-residential structures located on alley lots cannot be  
11 converted, restored, remodeled, repaired, for any human  
12 habitation, regardless of cost.

13 Again, that goes to use. If you look at 2507.5, it  
14 speaks to an artist's studio shall be a permitted use in a  
15 building on an alley lot, again use being the critical issue, and  
16 then 2507.6, which specifically speaks to the R-5 district  
17 special exception approval, is required for any use permitted  
18 under Section 333, that it would be any other use other than  
19 artist's studio or one family dwelling.

20 And that is simply storage of wears and goods,  
21 parking lot, parking garage, and public storage garage. So  
22 looking at those provisions, our office feels very strongly that  
23 this is a request for a use variance that the issue about the  
24 alley with really doesn't go to an area restriction on the  
25 building.

1           It is really talking about these lots that are lots  
2 in an alley system should be used for any purpose other than the  
3 one-family dwelling in a human habitation purpose. So we feel  
4 very comfortable that this is a use variance from this entire  
5 section, 2507, requiring the Board to look at the use, and also  
6 requiring them to look at whether the use is proper given the  
7 fact that the alleys are not of sufficient width.

8           Of course that does not go to whether or not they  
9 meet the test. That is a different issue, but as to what type of  
10 test that needs to be met.

11           MR. EPTING: Again, and I have talked to Ms.  
12 Sansone about this, and we disagree. You have a situation here,  
13 one, where you have an existing use for office and warehouse, and  
14 that was zoned CM, which prohibited residential.

15           The zoning commission then came along and rezoned  
16 it specifically to Reed-Cooke R-5-B, which allows apartment house  
17 use. The order specifically encouraged future developments,  
18 including this one, to become residential.

19           It is difficult for me under that situation to then  
20 come back and say I need a use variance to do what the property  
21 was rezoned to do. And maybe that is almost a policy standpoint,  
22 but it is ironic.

23           CHAIRPERSON GRIFFIS: How do we reconcile the fact  
24 that it was called out in terms of the rezoning for the use?

25           MS. SANSONE: Mr. Chairman, I believe that

1 everybody is in agreement that the Court of Appeals has never  
2 specifically insisted that there only be one test for what is a  
3 use variance.

4 The idea is what would the Board need to look at is  
5 whether this use would be fundamentally incompatible with the  
6 zoning.

7 CHAIRPERSON GRIFFIS: Right.

8 MS. SANSONE: And with the zoning, then it wouldn't  
9 be. So I would argue in favor of granting a use variance, and  
10 that is one of the arguments that the applicant can make for  
11 supporting a variance from this provision. I think the Board is  
12 going to have to look at the alley system and the width issue to  
13 see whether that use is compatible given the size of the alley,  
14 and the traffic situation.

15 But that doesn't mean that it shouldn't be  
16 characterized as a use variance. I think that would be the  
17 appropriate characterization, and then the question is do you  
18 need the test of undue hardship given the size of this lot, and  
19 given its configuration, and given its location, and other  
20 characteristics.

21 And those are the facts that the applicant should  
22 be addressing, and the fact that it is in harmony with the base  
23 zoning and the overlay zoning, that tends to support their  
24 application.

25 CHAIRPERSON GRIFFIS: Would you be prepared to go

1 forward today for a use variance?

2 MR. EPTING: Oh, I'm prepared, but like I said, I -  
3 -

4 CHAIRPERSON GRIFFIS: No, I appreciate your  
5 argument.

6 MR. EPTING: If it was R-1, R-2, R-3, we would have  
7 been prepared doubly for a use variance when the use is  
8 permitted. What you are almost asking me to show is that when I  
9 have a CFO already for warehouse and office, and I can do that  
10 right now, you are asking me to show that I can't really do that,  
11 and that I need to do residential.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. EPTING: That's what seems so odd to me, and  
14 specifically when the property was rezoned to get residential,  
15 and we are doing that.

16 CHAIRPERSON GRIFFIS: Well, okay. Well, I would  
17 suggest, and again under total caution with it, and other Board  
18 members can state a difference of opinion, but I feel that there  
19 is at least ambiguity, and we have -- well, at least a direct  
20 differing of opinions from corporation counsel and the applicant,  
21 and that I think we would proceed as a use variance, knowing full  
22 well that you are prepared to do that.

23 And I think that the Board has a good understanding  
24 of the specific circumstances that we are going to be looking at  
25 this. So unless other Board Members have other questions or

1 comments on that, I would suggest that we proceed in that  
2 fashion.

3 And just to let people know that are coming in, we  
4 are still within our morning public hearing, and we will be going  
5 through this application, which is the last of the morning, I  
6 believe, and taking a lunch break, and coming back for the  
7 afternoon.

8 So for people's understanding, we clearly won't be  
9 doing anything with the afternoon cases until three o'clock.  
10 Okay. And if people do have questions, I would suggest that you  
11 can go to the office next door and have staff answer those  
12 questions.

13 I can't interrupt this proceeding right now, but  
14 they can obviously send it up to me and we can address it if  
15 there is any quick clarifications that we need to have set. So  
16 that being what it is, let's jump into this one.

17 MR. EPTING: And the witnesses, the expert  
18 witnesses, were fine?

19 CHAIRPERSON GRIFFIS: Yes. We have no objection.

20 MR. EPTING: All right. And so unless there are  
21 questions, I will go ahead and turn it over to our first witness,  
22 John Holmes, of Adams Investment. And Mr. Holmes has been one of  
23 the ones who has been worked very hard with the ANC Reed-Cooke  
24 over the past five months to get their support for this project.

25 Thank you.

1                   MR. HOLMES:    Good afternoon.    My name is John  
2 Holmes from Adams Investment Group, and we are the applicant from  
3 Adams Alley, LLC.    Just a brief history on ourselves, and the  
4 Colortone building itself.    We are a D.C. firm, and have been in  
5 the real estate business in D.C. for about 12 years.

6                   The building itself was formally housed as a  
7 Colortone building, built approximately 60 years ago as a  
8 warehouse, heavy industrial grade materials if you will that  
9 built it, and which our architect will describe the dimensions of  
10 the building, and the size, and that type of thing.

11                  The building has had a long use of occupancy in the  
12 Adams Morgan neighborhood, particularly in this section defined  
13 as the Reed-Cooke neighborhood.    The recent uses in the building  
14 itself; current the Brass Knob, which operates in Adams Morgan,  
15 and in two separate retail locations, which houses a warehouse in  
16 one level of the building for storage of its facilities, and some  
17 offices.

18                  The building itself is a masonry building, two  
19 stories, partially submerged lower level.    It is our belief  
20 initially when we purchased the property, and knowing that the  
21 Reed-Cooke encouraged residential use, that we wanted to be  
22 consistent with the goals of that.

23                  And in doing that we have submitted letters to the  
24 Zoning Administrator just asking what release would be required  
25 to do that.    They essentially called me back after about two

1 months, and said go through the community first, and you need to  
2 identify what it is that you are going to do and what the  
3 community wants, and then come back to us.

4 We went first to -- at the time it was the Public  
5 Works Committee, and now known as the Quality of Life Committee,  
6 in early December. There were several concerns at the time, and  
7 information that we needed to address and to ascertain to get  
8 better information to the community.

9 We talked about a postponement, which we did  
10 initially, I believe, until March at some point at that point.  
11 That is outlined in Exhibit K, and there were nine formal  
12 meetings, as well as some individual meetings with just some  
13 various concerned neighbors either about the property, and  
14 residences, and commercial people as well, as to what the  
15 commercial component might be.

16 We have had formal presentations in front of the  
17 ANC, the Reed-Cooke Neighborhood Association, its task force, as  
18 well as meetings with Jim Graham and his office, and out in  
19 public with groups of the neighbors, or neighborhood groups.  
20 Excuse me.

21 There were several concerns that we heard and  
22 addressed specifically to some extent each and every one as best  
23 we could. John indicated a little earlier that the reduction in  
24 the sizes and the changes that were made, all specifically done  
25 to address light and sight views, and traffic concerns,

1 pedestrian concerns, as well as we could given the difficulty of  
2 the project.

3 The most significant changes to the project as a  
4 whole, or in response to its height, in which we went down 16  
5 plus or minus feet from the original conception, of a 48 foot  
6 building at that point.

7 We also took into account the creation of the  
8 safety concerns for the children for the Sitar Center that would  
9 occupy the space by adding an interior ramp to the building so  
10 that the southern most part of the building, the children can  
11 enter with a crossing guard and have safety throughout the  
12 building.

13 In addition to that, while we felt fairly  
14 comfortable with the turnaround and the access of the vehicles,  
15 we receded the building underneath to provide some interior  
16 turnaround space and not to impact the alley system by postman  
17 and that type of delivery service.

18 We spent the better part of those months in  
19 discussions with various members of the neighborhood ANC, Reed-  
20 Cooke groups, and basically arriving at the point where we went  
21 in front of the public committees, and got their unanimous  
22 support, and in front of the ANC also, and there again their  
23 support for the project.

24 And ultimately the Reed-Cooke Neighborhood  
25 Association gave us that as well. The project itself, and since

1 it is a unique building obviously, the significance to us was in  
2 working with the community to ascertain how this building in its  
3 current stage -- and I am sure the architect will show you  
4 pictures and all.

5 But it has been in disrepair for a long period of  
6 time. In fact, the alley system has been neglected for decades  
7 at the scene, I think. But the overall building itself was an  
8 eyesore to say the least. The community gave us input into what  
9 they would like to see in the building, and what are the benefits  
10 that would be for this.

11 Specifically, the building itself they felt had a  
12 history in the community. I believe Mr. Jackson will speak about  
13 that a little later when he speaks from Reed-Cooke. But the  
14 operation, and that type thing.

15 And at their suggestion, one of the positions is to  
16 rename it Reed-Cooke Plaza, and in that particular building there  
17 was a continuing function and operation in Adams-Morgan, and that  
18 was at least a non-detriment to the community for its history  
19 while operating.

20 The Sitar Center is a group of -- and we will  
21 discuss that later, that is a community-based organization. We  
22 have given them basically an extended long-term lease at a  
23 significantly reduced rental rate.

24 They provide community music and art services for  
25 the children of Adams-Morgan, the bulk of whom access the property

1 from the community, and walk to the property right after school.

2  
3 There are a number of conditions that we have  
4 proposed and submitted in our BZA application, and I believe it  
5 is Section -- Exhibit L, excuse me, of our pre-hearing statement,  
6 and that includes the conditions that we are proposing and that  
7 would benefit, and one of those is a permanent office location  
8 for the Reed-Cooke Neighborhood Association to meet.

9 And another thing the private club word, which is a  
10 little ambiguous, particularly for the neighborhood, and  
11 especially in the Adams-Morgan neighborhood, where there are  
12 plenty of clubs already. And no ABC application for a liquor  
13 license will be on the site. It is just a category that the  
14 Sitar falls under.

15 The other benefit that we have provided to the  
16 community is that all of the space that will be used for  
17 community based non-profit run all the office activities there.  
18 So it is not an open to the public scenario. The people that  
19 have contacted us -- and I would say the non-profits that have  
20 contacted us looking for space, all existing within Adams-Morgan  
21 now, and in fact the bulk of them within a three block area of  
22 the building.

23 The overall building itself, in terms of the way  
24 that it has evolved from our initial application, has been an  
25 experience certainly on our part, but it has actually -- we have

1 ended up with a building that is a much more viable building for  
2 a long term perspective for the neighborhood, as well as from our  
3 own perspective of the alley itself right now, which is darkly  
4 lit, and the alley surrounding -- there is an alley portion that  
5 surrounds this building.

6 And there are several issues with respect to safety  
7 concerns, and illegal activities, and the presence of the  
8 residents alone in the evening around this should by the very  
9 means of they being in position there, we have created a more  
10 safe environment just from a perspective of people paying  
11 attention to the exterior of their homes.

12 In addition to that, during the day there is the  
13 Sitar use. So there are opposite uses in terms of their  
14 activities. We have reviewed OP and DPW's reports. Mr. George,  
15 from O.R. George and Associates, will speak to the traffic  
16 report, and the specifics of that.

17 The only issue that we have with respect to the  
18 traffic in the alley is as it currently runs, it is a two way  
19 system, and it runs fairly freely that way. Our egress would be  
20 from the southern part of the building in and out, and so we  
21 would not -- that the personnel and the individuals that would  
22 occupy the space would not be traversing the bulk of the alley.  
23 In fact, it would probably be more difficult for them to try to  
24 do that than to ingress and egress through the southern part of  
25 the alley, which is the widest section of the alley.

**NEAL R. GROSS**

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1                   In regards to -- in DPW's report and OP's, one of  
2                   the conditions is the repaving of the alley system, and we are  
3                   working currently with Jim Graham and the Reed-Cooke Neighborhood  
4                   Association, and we plan to work very closely with DDOT to make  
5                   sure that the alley system is improved certainly, and we want to  
6                   participate in that.

7                   It is something that we think needs to be done, and  
8                   we don't necessarily think that we need to come along and take  
9                   care of it all by ourselves, however.

10                   CHAIRPERSON GRIFFIS: We were actually going to  
11                   condition the color of the concrete to make you do it, but we  
12                   will do that at some point. That was a joke and let me indicate  
13                   that. We will be walking through an awful lot of conditions, and  
14                   I think that some of these -- well, the Board has read all of the  
15                   information there, and if I am not mistaken, 3 or 4 sources that  
16                   are volleying conditions.

17                   And we will -- if needed with all the testimony,  
18                   put conditions on an order or not, and I have great concern, and  
19                   I think other board members share my concern that some of these  
20                   conditions are not appropriate for us to put on.

21                   Secondly, this board looks to put conditions on  
22                   that can actually be monitored and complied with, and so we will  
23                   be looking for that and if any conditions go on a sort of order.

24

25

                 And so clearly -- and you bring it up, and that's

1 why I am talking generally, but specifically, in terms of alley  
2 and paving alleys, I think that there will be some discussion on  
3 this Board that the responsibility of that is on the District  
4 Government, and how this applicant might be able to help  
5 facilitate that is one thing. But to put the burden on it.

6 So I just want to be clear so that we don't get too  
7 bogged down in other issues that are outside of that area. And  
8 there are specific examples that I think we can bring to other  
9 cases and other things like that.

10 And often times I think it is more appropriate in  
11 new construction that are impacting the other shapes or the size  
12 of road ways, or sidewalks, et cetera. But that being said,  
13 let's continue. Actually, while I have it, you have talked  
14 extensively about your community outreach, and I think that this  
15 board obviously applauds that.

16 I think that something as so unique as this and  
17 something as unique as this in the neighborhoods of Adams-Morgan  
18 and Reed-Cooke, is absolutely very important. I think it should  
19 be applauded for that.

20 I think clearly if it had not been done, we would  
21 have a packed hearing room today, which we do not. I do note  
22 that we still have concerns that we need to get to. But  
23 specifically I think that should be mentioned.

24 Also, you mentioned Council Member Graham several  
25 times. I don't show in my records that we have a letter from the

1 council member; is that correct?

2 MR. EPTING: My understanding is that the letter  
3 has been drafted and he was apparently in a hearing this morning,  
4 and so you do not have one unless it has come across in a fax in  
5 the last hour. I have been hourly talking to his staff, but it  
6 has not shown up yet.

7 CHAIRPERSON GRIFFIS: Not that I have seen, but it  
8 may come in.

9 MR. EPTING: But he was very instrumental in  
10 sitting us down and telling us we needed to lower the height, and  
11 we listened to him, and we heard it quite well.

12 CHAIRPERSON GRIFFIS: I see. Okay. All right.

13 MR. EPTING: Our next witness is Jim Foster, the  
14 architect, and he is going to run through the plans real quick.

15 CHAIRPERSON GRIFFIS: Yes. But let me establish  
16 the process here, and see what the Board wants to do, and I will  
17 take your opinion on whether we question or cross-examine  
18 witnesses as they go, or do we want -- what I am getting  
19 concerned with is how long we are going, and we conceivably may  
20 have to continue this, although I hope that we don't.

21 But shall we just proceed with all the witnesses  
22 and then go to cross-examination?

23 COMMISSIONER HOOD: Mr. Chair, I think that might  
24 be more efficient, to just proceed through, as opposed to  
25 interrupting and asking questions.

1 CHAIRPERSON GRIFFIS: I think we are going to have  
2 an objection from a party, I believe.

3 MR. EPTING: Well, I think what we can do is to  
4 limit it to five minutes each, and I will keep them in line.

5 CHAIRPERSON GRIFFIS: Okay. Our normal procedure  
6 would be to do that, and to hear the entire case through, and  
7 then we would recall the witnesses in order for cross-  
8 examination.

9 MS. EISENBERG: Do we have a sense of the length of  
10 the proceeding today and how long we will be going?

11 CHAIRPERSON GRIFFIS: Well, it has just been  
12 indicated, and the question is how long the length of the  
13 proceeding will be, and it has been indicated that we would  
14 probably have five minutes on each of the witnesses that are  
15 going to present the case. So this case should be done within 20  
16 minutes; is that correct?

17 MR. EPTING: Yes.

18 CHAIRPERSON GRIFFIS: Okay. So we have 20 minutes  
19 more to hear the entire case if I don't keep interrupting, and  
20 then we can get on to cross-examination and questions. So why  
21 don't we do that. I will have the parties come to cross-examine  
22 first and then we will go to Board questions, and that may help  
23 some of the schedules that we are balancing here.

24 Okay. So let's move ahead.

25 MR. FOSTER: My name is James Foster from the

1 Arcadia Design Services, and since 1989, I have done about 20  
2 multi-family housing projects, totaling about 300,000 square  
3 feet, almost every single one within historic districts.

4 And since 1984, I have lived in Adams-Morgan, and  
5 until about several months ago when I moved about two blocks, but  
6 I live in the neighborhood.

7 CHAIRPERSON GRIFFIS: Which direction?

8 MR. FOSTER: I live in Logan Circle now. I was in  
9 southern Adams-Morgan before. The first board here on my right  
10 is the site, and it is bounded on the south by Kalorama Road, and  
11 on the east by 17th Street, and on the north by Euclid, and on  
12 the west by Ontario.

13 The shaded figure in the middle is our building,  
14 and there is an alley system all the way around the building of  
15 various sizes. A 20 foot alley at the southern end, and a 15  
16 foot alley at the northern end, and a 15 foot alley running the  
17 length on that side.

18 It is about a 15 foot alley there and a little 10  
19 foot alley at the north end. And even though there is a 15 foot  
20 alley here, we have -- our building is about 12 feet off the  
21 alley, and so there is about a 22 foot area at the south end of  
22 the building as well.

23 CHAIRPERSON GRIFFIS: Okay. Can the parties see  
24 these boards? And if not, you need to move to where you can.

25 MR. FOSTER: The site slopes dramatically from

1 north to south. So even though the Colortone building is two  
2 stories, at the north end, it is only really one story above  
3 grade, and at the southern end, it is a full two stories above  
4 grade.

5 I think probably these photographs over here  
6 probably show that, and that door right there that is black is  
7 that corner of the building, and you can see the dramatic slope  
8 up the hill to the northern end of the building.

9 CHAIRPERSON GRIFFIS: So is the Board clear on  
10 that, the site slope? Okay. Let's take it slower, Mr. Foster.  
11 But just quickly on the north end, you are one story out of the  
12 ground?

13 MR. FOSTER: Right here.

14 CHAIRPERSON GRIFFIS: And then as you go to the  
15 south end, you are two stories out?

16 MR. FOSTER: Right.

17 CHAIRPERSON GRIFFIS: Meaning that the slope of  
18 this site is dropping upwards of 10 to 12 feet?

19 MR. FOSTER: It is about 12 to 14 feet.

20 CHAIRPERSON GRIFFIS: Fourteen feet? Wow.

21 MR. FOSTER: This elevation here shows it somewhat  
22 better. This elevation is the northern end of the building, and  
23 that is the southern end, and you can see the slope. The dark  
24 line is the slope.

25 CHAIRPERSON GRIFFIS: You are pointing to the

1 boards down on the floor?

2 MR. FOSTER: Yes.

3 CHAIRPERSON GRIFFIS: Why don't we move those up.  
4 If you could just use your pointer, that's fine, and I don't have  
5 a problem, and I don't think anyone has a problem with a pointer;  
6 is that correct?

7 MR. FOSTER: So where my red marker is now is half  
8 of the existing building right there, and that is the slope of  
9 the alley right here. And then the darker shaded area is the  
10 addition. So this is the north end up here, and that is the  
11 slope, and that is the south end.

12 And if I go back to the site plan, the south end is  
13 there, and that is the slope, and then that is the north end  
14 there. The alley comes in here. and then goes back out to 17th  
15 Street. All of these houses, or all of this is mostly single-  
16 family residential, and there is mostly small to medium-sized  
17 apartment buildings along the side, and a slightly larger one  
18 there.

19 And then large industrial buildings to the south  
20 off of Kalorama.

21 CHAIRPERSON GRIFFIS: And does the site level off  
22 as it goes past that building, or does it actually still  
23 increase?

24 MR. FOSTER: It still increases a little bit,  
25 although not quite as dramatically. It levels off slightly

1 there, but it still slopes a slight amount.

2 CHAIRPERSON GRIFFIS: So the houses, or the parties  
3 in question, or the parties in this application are in that row  
4 of townhouses, right, are on an increase as the site is going up,  
5 or slightly after it leaves the building. I see. Okay.

6 MR. EPTING: There is actually a couple of pictures  
7 in Exhibit D that show the slope as best we could show it, and  
8 you will hear from our testimony later in terms of parking and  
9 loading.

10 MR. FOSTER: And if it helps to appreciate the  
11 view, in this picture right here, I am standing -- in that  
12 picture right here, I am standing like right there, right in the  
13 exact rear property line of this house right there.

14 And you can see that I am almost a full story, or  
15 not a full story, but the top of the Colortone building is far  
16 below me in that shot right there. So if that help explains the  
17 relationship of the site.

18 I explained all the alley entrances, and so what we  
19 did was that since the public alley to the south was the widest,  
20 and also because of the slope going up, it made more sense to put  
21 the parking on the lower floor of the building, and we chose to  
22 enter our building from the southern end.

23 And to create a parking level on the south, and  
24 then put Sitar on the upper main level, and then added the two  
25 stories of residential on top of that, if that helps explain

1 that. I think that probably this shows again down there is where  
2 we enter our building at the parking end, and then that is the  
3 one door that we would go in --

4 CHAIRPERSON GRIFFIS: Actually, take your time and  
5 put the boards up, but if you refer to stuff on the ground, you  
6 are not going to have this Board's eyes on it.

7 MR. FOSTER: Okay. Sorry. And I am going to move  
8 this up.

9 CHAIRPERSON GRIFFIS: My back is killing me or  
10 otherwise I would not mind getting up and down to look at these  
11 things.

12 MR. FOSTER: This plan then shows the parking level  
13 of the building, and if I go back to the site plan, and you came  
14 up the alley, and that is the edge of the building right there,  
15 and there is the comprehensive entrance there.

16 We enter the parking in the middle, and turn the  
17 entire first floor of the existing building into parking, and  
18 created an entrance lobby to go up to the residential component.

19 And then created a door here that enters a ramp  
20 that runs the entire length of the alley, and that then goes up  
21 to the second level of the building to provide access for the  
22 Sitar center. So that they don't have to walk up the alley.  
23 They can walk up inside the building, and then because the lower  
24 level was so tall, we were able to insert a mezzanine within the  
25 first floor of the building.

1 Part of that mezzanine was originally parking, and  
2 which we had come around the alley over here, and entered from  
3 the side. When we eliminated that, we just made all of the  
4 mezzanine space for Sitar.

5 So when they come up the ramp from inside the  
6 building, they can come directly into the mezzanine level and  
7 then also continue up the ramp and around, and into the upper  
8 second level of the existing structure. And that is the use  
9 devoted to Sitar and the other commercial use.

10 Then if I move over to -- I think there was this,  
11 and this board down there shows the two level of residential --

12 CHAIRPERSON GRIFFIS: Well, actually, before you go  
13 to residential, let me just make sure that everyone is following,  
14 because -- and I appreciate your speed of viewing this, but let  
15 me just make sure that this Board is following everything.

16 And one of the changes actually that was brought up  
17 in your written submission was this inside the building  
18 circulation for the Sitar Institute, or facility, and that is  
19 what you have indicated has a separate little entrance off of the  
20 alley side.

21 MR. FOSTER: Right.

22 CHAIRPERSON GRIFFIS: And then you have the  
23 residential. So you are actually bringing the circulation off of  
24 the alley as quickly as possible coming in that small alley, and  
25 it gets into the building and then goes up.

1 MR. FOSTER: Right.

2 CHAIRPERSON GRIFFIS: So parking is on one level,  
3 and the parking was taken out for the mezzanine level that would  
4 have gone and entered into as the higher grade and that would  
5 have gone in directly from the building, and that has become  
6 useable space for the community non-profit; is that correct?

7 MR. FOSTER: That's correct.

8 MR. EPTING: That's correct.

9 CHAIRPERSON GRIFFIS: Does everyone follow? All  
10 right.

11 MR. FOSTER: Additionally, we chose to enter the  
12 parking component for the structure at the southern most end,  
13 because it is the furthest distance from the single family  
14 component around the perimeter of the site.

15 I would estimate that it is about 300 feet or more  
16 from the entrance of our building at the southern end, and up to  
17 the single family -- to their property line even, and not the  
18 structures, but to the property lines of the northern end.

19 What we also did -- and what I would like to add by  
20 the way, and going back to I guess that drawing, since the ramp  
21 was added later -- it wasn't originally there, as that was added  
22 partially in response to some comments, what we also had was the  
23 first floor of our building came out to the perimeter of the  
24 building, of course.

25 What we decided to do based on a comment about cars

1 that might park in the alley while waiting for residents to  
2 leave, or a pizza delivery, or mail man, or FedEx, nothing that  
3 zoning or building code requirements would require by a sort of  
4 general use guidelines, we responded to that and thought that was  
5 a good comment.

6 So we eroded the building away on the first floor,  
7 and created a turnaround space within the volume of the building.

8 What that caused us to do was to lose some lobby space, and lose  
9 some useable space inside the structure, but gave us a nice  
10 turnaround and pull-off area for any cars.

11 And even a fairly large area in front of the garage  
12 door that a UPS or FedEx truck could park in off the alley space,  
13 and not block the alley if they were parked there for 15 or 20  
14 minutes.

15 CHAIRPERSON GRIFFIS: And the columns that are  
16 showing are going to have to say, correct? So you pull or drive  
17 around those columns?

18 MR. FOSTER: Right. That is the perimeter of the  
19 building, and --

20 CHAIRPERSON GRIFFIS: But you have two if I am not  
21 mistaken that you --

22 MR. FOSTER: Yes, and basically those were existing  
23 columns that hold up the structure and show up in the  
24 photographs. But between the two on the end, there is about a 12  
25 foot space there and that is enough room for a car to pull

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1 through, and go through, and then back out and around.

2 And presumably not have to make a three point turn.

3 A really large vehicle might have to, but an average-sized car -  
4 - and actually in the parking report, that will get to that. But  
5 that shows the land.

6 And also by the way, part of that developed as --  
7 when we talked to the Reed-Cooke neighborhood about creating the  
8 idea of a plaza right here, because the southern end of the  
9 building opens up quite a bit because of all of these industrial  
10 buildings that step away from the alley pretty dramatically.

11 And there is actually a lot of paved area and a big  
12 ramp that goes up to this building, and since or even though the  
13 alley here is 15 feet, were technically to have a feeling of an  
14 additional 12 feet because of the setback of our building from  
15 the alley.

16 So someone had commented that that might have the  
17 feeling of a little sort of a public plaza in front of the  
18 building, and so the idea of creating that pullback area was to  
19 enhance that, and be able to landscape more of the front of the  
20 building since we are not using as much of it for parking, and  
21 access, and pull-in space, to enhance the idea of creating a  
22 little plaza here at the southern end of the building, if that  
23 helps explain that.

24 CHAIRPERSON GRIFFIS: So that is the area for the  
25 Reed-Cooke plaza?

1 MR. FOSTER: Right, correct. And there will be a  
2 plaque there, and I think it goes into detail in the report. Has  
3 everyone followed me so far?

4 CHAIRPERSON GRIFFIS: I'm with you. Are you guys  
5 with him? Okay.

6 MR. FOSTER: We then -- the two stories that we  
7 have added, I will say that we eroded the corners away and inset  
8 so that the two stories that are added are not as big as the  
9 footprint of the existing building, and so they are smaller,  
10 especially at the corners.

11 And in-sets for balconies for the housing to reduce  
12 the bulk of the building, and set it back from the perimeter of  
13 the existing building, and to give you a sense of what we started  
14 with, we originally had a 2-1/2 to 3 story building, or addition  
15 on top of the building, which is now of course reduced to two  
16 stories.

17 The original building addition was at about 46  
18 feet, and the second designer vision that we went through dropped  
19 it to about 38 feet. We currently have dropped our building now  
20 to a total of about 31 feet, 6 inches.

21 Basically, we have reduced the height of the units  
22 and we are adding dramatically the floor heights of each floor.  
23 And we also then, of course, as I mentioned before, removed the  
24 mezzanine parking.

25 CHAIRPERSON GRIFFIS: Is that A-5 any different

1 than the submitted A-5?

2 MR. FOSTER: I think we puce the walls in the  
3 section to make it stand out a little better.

4 CHAIRPERSON GRIFFIS: Okay. But the basic idea --

5 MR. FOSTER: I believe it is exactly the same.

6 CHAIRPERSON GRIFFIS: I mean, I am seeing a little  
7 bit more dimensions on that one than I see on this one.

8 MR. FOSTER: But I think after we submitted this to  
9 the ANC, OP had some questions about the height of the railings  
10 on the roof, and the height of the roof structure, and I think  
11 that those dimension lines may have been added in response to  
12 their request after the fact.

13 MR. EPTING: That's correct.

14 MR. FOSTER: But otherwise the drawing is identical  
15 and that drawing is identical, and that drawing is identical,  
16 except that I had an assistant puce the walls just thing morning  
17 to help it pop out a little bit for this presentation.

18 CHAIRPERSON GRIFFIS: Can you help me establish  
19 then that on A-5, I only have one dimension, which is 31 feet, 6  
20 inches.

21 MR. FOSTER: Which is that dimension right there,  
22 right.

23 CHAIRPERSON GRIFFIS: And that is the height of  
24 your building?

25 MR. FOSTER: Right, that's correct.

1 VICE CHAIRPERSON RENSHAW: What is the height of  
2 the other side?

3 MR. FOSTER: At this end?

4 VICE CHAIRPERSON RENSHAW: Yes.

5 MR. FOSTER: I don't have that on the drawing, but  
6 about 43 feet approximately.

7 CHAIRPERSON GRIFFIS: Can you describe what the  
8 structure is above that height?

9 MR. FOSTER: The roof structure?

10 CHAIRPERSON GRIFFIS: Yes.

11 VICE CHAIRPERSON RENSHAW: Yes.

12 MR. FOSTER: The roof structure on top is a stair  
13 structure to get up to the roof, and which is set back as you see  
14 here from all four sides of the building, and is about 7 feet, 6  
15 inches, I think.

16 CHAIRPERSON GRIFFIS: So a stair penthouse?

17 MR. FOSTER: Yes, that's correct. Well, whether it  
18 is a penthouse or a staired structure, or a roof structure.

19 VICE CHAIRPERSON RENSHAW: But are the residents  
20 going to be able to use the roof?

21 MR. FOSTER: That is the plan, yes.

22 VICE CHAIRPERSON RENSHAW: All right.

23 MR. FOSTER: Each unit has access to the roof.

24 MR. EPTING: And we actually reduced or made the  
25 access very narrow, only seven feet or so, to cut down on any

1 visual impact of it. And you could see how narrow it is.

2 CHAIRPERSON GRIFFIS: Right.

3 MR. FOSTER: This shows a little better. This is  
4 the roof structure right there.

5 CHAIRPERSON GRIFFIS: And I think the section in  
6 the front elevation of it shows it fairly well. It is a small  
7 piece, or it's long, but it is thin. And just for absolute  
8 clarity, your point is that that structure being a stair  
9 penthouse on top goes to roof structure, and not to the building  
10 height.

11 MR. EPTING: That's correct; yes, sir. And  
12 actually part of the reason that it is so long is that it  
13 wouldn't have to be, but we placed -- we intend to place the  
14 condensers to clear the stairs at either end, and screen them  
15 from view. So that is part of the reason why the length of it is  
16 right there.

17 CHAIRPERSON GRIFFIS: Okay. So it is a single  
18 penthouse that is actually also a mechanical penthouse, which is  
19 well within Section 411; is that correct?

20 MR. EPTING: That's correct.

21 MR. FOSTER: That's correct.

22 MR. EPTING: That is the review of our plan, and  
23 unless you have questions with that, we will go ahead and turn it  
24 over to Osborne George, who is going to talk about the traffic  
25 and parking issues, and the two-way alley system, and other

1 issues.

2 CHAIRPERSON GRIFFIS: Let me just make sure that  
3 the Board is totally clear on what has been presented and if  
4 there are any quick questions, and we can get into our cross just  
5 to make sure that we all are seeing the same thing. Is everyone  
6 okay with it?

7 VICE CHAIRPERSON RENSHAW: So far.

8 CHAIRPERSON GRIFFIS: Very well. Let's then move  
9 on.

10 MR. GEORGE: Good afternoon Chairman and Members of  
11 the Board. For the record, I am Osborne George. And at the  
12 request of the applicant, we conducted an assessment of the  
13 applicant's proposal that is before you, and primarily for the  
14 purpose of determining whether the proposed use is likely to  
15 cause adverse -- or to adversely affect the property as specified  
16 in the zoning regulations.

17 CHAIRPERSON GRIFFIS: Let me interrupt you quickly.  
18 The three boards that you have up here, these are part of the  
19 report that is actually part of the bound submission, correct?

20 MR. GEORGE: Yes.

21 CHAIRPERSON GRIFFIS: And it doesn't differ in any  
22 way? Well, they may differ a little bit?

23 MR. GEORGE: Very, very, very minor.

24 CHAIRPERSON GRIFFIS: And do the parties have a  
25 copy of the applicant's submission? Okay. But do you have one

1 copy over there? We will get you an additional copy. I just  
2 want to make sure that we all understand that this is part of the  
3 report that you will be provided. Okay.

4 MR. GEORGE: A secondary purpose of our analysis  
5 was to determine whether there were any measures that we could  
6 identify that could have been mitigating any potential issues of  
7 safety, of access, particularly considering the uses that are  
8 proposed for the building.

9 I would like to start off by referring to the  
10 exhibit to my immediate right, which is an extract from the May  
11 17th, 2002 prehearing statement, which is part of Exhibit I. So  
12 clearly tying that to the applicant's submittal.

13 Mr. Foster described in detail the immediate access  
14 around the building, and I would like to just go out a bit  
15 further and set the scene, and what we have is a single map which  
16 shows the property, which is approximately midway between 16th  
17 Street, Northwest, and 18th Street, Northwest, and of course as  
18 we heard before, between Euclid Street to the north, and Kolaroma  
19 Road to the south.

20 There is two other things that we would like to  
21 point out from this exhibit, and that is of course you have heard  
22 about the mixed uses, the residential uses, the commercial uses,  
23 that is typical of the Reed-Cooke overlay.

24 And I would like to also point out that there are  
25 three major institutional uses; the Marie Reed Elementary School

1 to the south, and the H.D. Cook Elementary School to the north,  
2 and also perhaps most importantly, I would point to the existing  
3 location of the Sitar Center one block to the north on Ontario  
4 Road, which is one of the uses that is proposed for the subject  
5 building.

6 It is actually located north of Euclid Street. We  
7 described in our report the fact that all of the area  
8 intersections are stop sign controlled, four way stop signs,  
9 which makes for safety. We have also pointed out that access to  
10 the subject property will be by five major portal points; off  
11 Kalaroma Road, off Ontario Road from the south, Kalaroma Road  
12 from the east; Euclid Street from the north or from the west.  
13 I'm sorry, from the east.

14 And as such we see that with the limited trip  
15 generation, the peak hour trip generation, it is estimated that  
16 approximately 20 peak hour trips would be generated. It is  
17 obvious that there would be no -- and it becomes immediately  
18 apparent that there would be no appreciable impact on the local  
19 roadways.

20 I should also mention that in connection with trip  
21 generation the fact that we have got two major commuter  
22 corridors; 18th Street to the west, and 16th Street to the east,  
23 and which is served by a number of transit routes.

24 As part of our assessment, Mr. Chair, we also  
25 looked at the issue of safety as is reflected by the accident

1 records available from the Department of Public Works. And we  
2 noted particularly the data provided and the basis of individual  
3 intersections.

4 We looked particularly at the intersection of 17th  
5 and Kalaroma Road, which covers the entire midblock section to  
6 the north, east, south, and west. And on record with the city  
7 for the past 3 years, there were only two accidents over the past  
8 3 years. And that includes the alley way system.

9 CHAIRPERSON GRIFFIS: And just for clarification,  
10 if I heard you correctly, there were only two accidents that  
11 happened at 17th and Kalaroma Roads?

12 MR. GEORGE: Yes, which the City defines as from  
13 the point of midblock of all the adjacent blocks.

14 CHAIRPERSON GRIFFIS: I see.

15 MR. GEORGE: In other words, midblock to the north,  
16 to the east.

17 CHAIRPERSON GRIFFIS: And you have -- and forgive  
18 me if I missed it, but you have a large coloration along Columbia  
19 Road, and down on 18th Street.

20 MR. GEORGE: Yes.

21 CHAIRPERSON GRIFFIS: Can you get into that?

22 MR. GEORGE: We thought that we may need to make  
23 reference to the commercial and entertainment uses of all those  
24 sections.

25 CHAIRPERSON GRIFFIS: I see. So that is just

1 indicating large commercial retail entertainment districts?

2 MR. GEORGE: Yes.

3 CHAIRPERSON GRIFFIS: So the other roads would be  
4 assumed are not that, but more residential and --

5 MR. GEORGE: They are local, and they serve both  
6 residential and commercial uses.

7 CHAIRPERSON GRIFFIS: I see.

8 MR. GEORGE: Since the area, the Reed-Cooke area,  
9 is characterized by that type of mixed use. Mr. Chair, I think I  
10 can be brief and move forward quickly to the projected situation.

11

12 Again, with the amount that has been said regarding  
13 the alley system and so on, I do not think it is important for me  
14 to into a lot of detail, and incidentally, in case any member has  
15 difficulty reading this, we have extra copies of the last two  
16 exhibits.

17 CHAIRPERSON GRIFFIS: Okay. Why don't we give a  
18 copy to the parties. Board Members, do you have problems? Mine  
19 is fine to read, and in fact, the enlargements work well as 8-  
20 1/2-by-11. So you can submit them in if you need to. But we can  
21 go ahead with this.

22 And just for clarification and simplicity of those  
23 of not traffic engineering background, you are looking at in  
24 Attachment 1 the projected use and traffic flow in and out of  
25 each of these alleys; is that correct?

1 MR. GEORGE: The existing, yes.

2 CHAIRPERSON GRIFFIS: Oh, this is existing. I'm  
3 sorry. Right.

4 MR. GEORGE: The existing turning movements. And  
5 again we present these in a blowout to show the detailed  
6 movements. These were actually the average of counts made on two  
7 weekdays, and it shows that we have three vehicles entering the  
8 southern entrance, which is at the point where the 20 foot alley  
9 intersects with 17th Street, and four vehicles entering and  
10 exiting.

11 That is the total level of usage at the northern  
12 end. So I think this clearly shows that currently, even though  
13 we have approximately 87 units within the square that have direct  
14 access to the alley way system, as well as that commercial  
15 property to the south, there is very little usage.

16 I think perhaps the reason for that is that there  
17 is abundant parking on the street. The on-street parking is  
18 under the control of the City's residential parking permit, which  
19 is referred to the RPP provisions.

20 And what we found is that of course most people  
21 park along the street, and walk into the units, and that seems to  
22 be the pattern. However, we do find that during the day time  
23 hours we actually conducted survey during the day time hours to  
24 reflect the commercial activity during the evening hours to  
25 reflect the uses adjacent to 18th Street and Columbia Road as we

1 mentioned, and also during the early morning hours two assess the  
2 peak residential demand.

3 And our surveys showed that parking is highly  
4 utilized. So I think that we can summarize it there.

5 CHAIRPERSON GRIFFIS: The street parking is highly  
6 utilized or all?

7 MR. GEORGE: All the parking. All the parking.  
8 Our survey was primarily for on-street parking. We did not do  
9 actual surveys of the off-street parking.

10 CHAIRPERSON GRIFFIS: Right.

11 MR. GEORGE: But again within what is termed the  
12 typical practical limits, which was between 80 and 85 percent of  
13 the parking spaces, were utilized. And I think, Mr. Chairman,  
14 that this can be expected where you have a situation with mixed  
15 land uses. You have that type of turnover between the commercial  
16 day time use and the residential night time use.

17 CHAIRPERSON GRIFFIS: I see. Okay.

18 MR. GEORGE: As far as the future situation, two  
19 things were brought to our attention as being critical. Number  
20 One was vehicular access, and number two had to do with the  
21 safety of pedestrians.

22 And what is identified as Exhibit 3, and which is  
23 part of the Exhibit I submission is again the alley way system  
24 and specifically what we did here was plot the template of a  
25 typical vehicle that would be accessing the proposed building.

1 I'm sorry, the proposed use, using that turnaround area, and  
2 exiting via the 20 foot width street back on to 20th Street.

3 And what we have shown is using the vehicle  
4 templates as prescribed by the Federal Highway Administration  
5 that a large, single-sized vehicle, a van, a delivery van, as was  
6 mentioned perhaps. and perhaps UPS, a FedEx type truck, could  
7 enter via the 20 foot alley, and get into that recessed area, and  
8 with one maneuver, or with two maneuvers, could easily return on  
9 to 17th Street.

10 And so I think that this works based on the  
11 geometry of the dimensions of the vehicle.

12 CHAIRPERSON GRIFFIS: And what was the size of that  
13 truck?

14 MR. GEORGE: Typically it would be a seven foot  
15 wide vehicle, with a length of 19 to 20 feet.

16 CHAIRPERSON GRIFFIS: All right.

17 MR. GEORGE: And again as was mentioned by Mr.  
18 Foster, the entrance to the garage would be at this point, and so  
19 vehicles entering the garage would simply come along here and not  
20 use it, utilizing the turnaround area, and simply enter into the  
21 garage and maneuver into the spaces.

22 So we think there is an efficient access  
23 arrangement both for regular residents, or other uses of the  
24 garage, and that is the actual layout of the spaces, as well as  
25 the periodic drop-offs and so on that would take place here.

1                   COMMISSIONER HOOD: Mr. Chairman, I may have missed  
2 this earlier, because I was trying to refrain from asking any  
3 questions, but with respect to the garage, is that below grade or  
4 is that going down? Could you show me how the garage is going to  
5 be entered, and also how to turn around?

6                   Because from the way that it was just described to  
7 me, it looks like it is going like this, and there is an  
8 opportunity for someone to run into someone using the turnaround  
9 going into the garage.

10                  VICE CHAIRPERSON RENSHAW: And also will the trucks  
11 back into the garage, or will they go forward into the garage?

12                  MR. FOSTER: James Foster speaking from Arcadia.  
13 Hopefully this elevation will help explain it. This is the  
14 southern end of the building here that we have been describing,  
15 and it is fully above grade, and so the entrance to the parking  
16 is right at grade.

17                  This garage door on the side is actually going to  
18 be relocated to that phase right there. You will drive directly  
19 into the garage from the alley. You won't go down until you get  
20 inside.

21                  COMMISSIONER HOOD: Show me the turnaround.

22                  MR. FOSTER: It is going to sit within the volume  
23 of that building, and so this wall right here will be removed,  
24 and pushed in about 15 feet. So you will put in right here, and  
25 you will actually pull into that turnaround area, and the whole

1 exterior wall of the building will now be 15 feet within the  
2 building, but within the envelope of the upper part of the  
3 building.

4 COMMISSIONER HOOD: So at any time will my entrance  
5 into the garage intersect with the turnaround?

6 MR. FOSTER: I don't believe so, no.

7 COMMISSIONER HOOD: Well, the way it is being  
8 explained, I believe it is. But, Mr. Chair, I don't want to  
9 prolong it. I can always get to that later.

10 MR. GEORGE: Let me give it one more shot. This is  
11 the alley way system 20 foot wide, coming in from the east. This  
12 is the second alley way along the eastern frontage of the  
13 building.

14 A vehicle coming along from 17th Street would turn  
15 in here and the template shows that that vehicle could turn and  
16 proceed north. Instead, they would turn in and this actually  
17 shows the position of the vehicle within that turnaround.

18 In other words, if you would imagine a FedEx truck  
19 actually sitting there for whatever duration of time to deliver a  
20 package. During that time, as you can see, the entrance to the  
21 garage remains clear.

22 So it is only at the point when this vehicle is  
23 exiting the turnaround area would it cross the path of the --

24 COMMISSIONER HOOD: And that is my point. You just  
25 answered my question. Thank you.

1 CHAIRPERSON GRIFFIS: And in a typical turnoff of a  
2 residential or hotel, and a garage entrance, it goes down --  
3 well, here it is. I think it is clear what has happened. They  
4 will cross.

5 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I just --

6 COMMISSIONER HOOD: You have one going this way,  
7 and -- well, we will get into that.

8 VICE CHAIRPERSON RENSHAW: I just wanted to check.  
9 Mr. George, are trucks going to be backing down into the garage,  
10 or are they going to drive straight into the garage?

11 MR. GEORGE: It is my understanding that first of  
12 all, there should not be many trucks going into the garage.

13 VICE CHAIRPERSON RENSHAW: Like a FedEx, where they  
14 would have to offload. They can't offload from the garage?

15 CHAIRPERSON GRIFFIS: I think what they are  
16 proposing, Ms. Renshaw, and correct me if I am wrong, is that  
17 pull-off is for that purpose.

18 VICE CHAIRPERSON RENSHAW: I thought so, but the  
19 way that your little design was configured, it looked as though -  
20 - in the pink you see where the truck I suppose is emerging from  
21 the garage, it looked also that it could be backing down into the  
22 garage, you see.

23 CHAIRPERSON GRIFFIS: She is wondering if you are  
24 using the same graphic, although a different color, you are using  
25 the graphic to show what you have in narrative form have said a

1 FedEx truck is dropping off packages, but you show that same  
2 graphic and sized vehicle entering into the garage. So she is  
3 looking for clarification on that.

4 MR. GEORGE: It could be and I apologize for that,  
5 Ms. Renshaw. We might have shown (off microphone) a little bit  
6 further than we needed to, but we were just showing the maneuver,  
7 as opposed to the exact footage.

8 MR. EPTING: Again, the whole intent was because we  
9 were concerned early on because we were going to have residents  
10 there, that trucks were just going to pull up and stop in the  
11 alley in front of the garage basically, and sort of blocking the  
12 alley like they do everywhere else.

13 And we thought that was a bad thing, and so instead  
14 we wanted to pull them on our property so that they would have a  
15 place to land while they run in and drop the packages off, and  
16 then turn around and get right out of the way.

17 MR. GEORGE: I think that the last item that I  
18 would like to address as far as the access is the needs of the  
19 school and the safety of the children, and gain this was brought  
20 to our attention by the proposed user of the Sitar Center.

21 The proposal is that the students would enter the  
22 building at approximately this point and continues along the  
23 walkway within the building, and up to the second floor, and  
24 turnaround. I think that Mr. Foster has described this, and I am  
25 not an architect, and so I will just go with what he has said.

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1                   Now, the question is how would they access the  
2 building from 17th Street. As we pointed out earlier, there are  
3 sidewalks adjacent to this square along all sides, and currently  
4 there are numerous children during the afternoon because of the  
5 elementary school.

6                   So these children who would be accessing this  
7 building are already on the road, and they are already on the  
8 sidewalks. And the proposal is that they would use exclusively  
9 the southern 20 foot alley way section into this building.

10                  This is approximately 150 feet from the sidewalk to  
11 the portal into the building. Now, let me just pause to say that  
12 there is no scientific or qualitative means to analyze traffic  
13 within an alley. Typically, you are talking about very low  
14 traffic, which by observation you can tell does not present a  
15 problem.

16                  However, just looking at perhaps 3 or 5 vehicles in  
17 an hour, one can see that the question of conflicts with vehicles  
18 is not one that is of significance. The number of vehicles are  
19 very small. However, in order to ensure safety, we have  
20 recommended to the applicant that they provide for an attendant  
21 as is provided for, I would say, in perhaps most private schools  
22 that cater to younger children, to be simply present as the  
23 children come so that they would be escorted between this point  
24 of the public sidewalk and the entrance to the building.

25                  In order to further delineate that path, we have

1 proposed and we have shown it as a contrasting pavement, but we  
2 have suggested that the applicant should work with DPW to  
3 delineate simply a landmarking, or I'm sorry, an edge line  
4 marking, that would simply provide greater emphasis for the fact  
5 that it is being used that way.

6 And you do see that along roadways throughout the  
7 city, that edgeline markings and so on are used to better  
8 delineate traffic flow. I am not saying that a vehicle would  
9 never cross that path, but it simply says beware or be cautious.

10  
11 And so we think that with this provision that the  
12 access by students would be quite safe considering the number and  
13 the time frames within which they would access the building.

14 The last thing that I have been asked to address is  
15 the three conditions within the Office of Planning report that  
16 deals with access, and these are Items number 6, 7, and 8.

17 Item 6 says that the applicant will provide a  
18 distinct 4 foot walkway for pedestrian use along the 20 foot  
19 alley off 17th Street, and this is precisely what we have shown  
20 here.

21 The only thing we would want to do on behalf of the  
22 applicant is to clarify that we are not talking about a sidewalk,  
23 a raised sidewalk, because the term walkway could be loosely  
24 interpreted in different ways.

25 But we are simply saying that work with DPW to

1 delineate that path. The second thing is that in number seven it  
2 says that the applicant would be responsible for the repair and  
3 repaving of the surrounding alleys in coordination with DDOT.  
4 The improvements should discourage speeding and illegal parking  
5 in the alley.

6 My only comment is that repairing the alley in and  
7 of itself should not have an impact on speeding. In fact, one  
8 could probably argue that it could have the reverse effect if it  
9 is improved. However, the applicant has agreed to work with the  
10 department to determine what improvements would better serve the  
11 area as a whole.

12 The last thing is the circulation. I do believe  
13 that there is a definite problem with the circulation pattern the  
14 Department of Public Works is proposing, and I would like to use  
15 the second exhibit here.

16 Mr. Chair, I would like to really take you through  
17 this carefully and make sure that I don't miss anything in  
18 presenting it to you. At present, these alleyways are all two-  
19 way, even though they are very narrow, and some of them have very  
20 narrow widths.

21 It works because there is very little traffic. I  
22 have driven through the alleys, even the 15 foot and 10 foot  
23 alleys. It is not a thing that you would like to do, but you can  
24 do it and it works, because it is probably an extremely rare  
25 occasion that you would have two vehicles wishing to pass one

1 another.

2 In fact, during our observations and during our  
3 data collection, we were advised by residents that perhaps the  
4 biggest problem we have is vehicles parking in the alley.

5 And we think that while that is an enforcement and  
6 law enforcement issue, perhaps the very fact that people park in  
7 the alley is a testament to the fact that it is not used. But  
8 anyway that it is not significantly used by traffic.

9 CHAIRPERSON GRIFFIS: And you might find cases  
10 otherwise in that area and across the city, but I get your point.

11 MR. GEORGE: All right. DPW's proposal is that the  
12 alley system remain one way. So in other words, you come in from  
13 17th Street via the 20 foot section, and this section,  
14 northbound, they said could remain two-way, and this section at  
15 the northern end would have to be one-way eastbound. So in other  
16 words, in and out.

17 CHAIRPERSON GRIFFIS: Are you aware of any examples  
18 that alleys have done that, that have become one way?

19 MR. GEORGE: I am aware of one-way alleys.

20 CHAIRPERSON GRIFFIS: In the District?

21 MR. GEORGE: Yes. I am aware of --

22 CHAIRPERSON GRIFFIS: I guess my question directly  
23 is that are they that prevalent, or are they not?

24 MR. GEORGE: No, I would say definitely no. There  
25 are particular circumstances, and it depends on the adjacent use,

1 yes.

2 CHAIRPERSON GRIFFIS: I see. I am just trying to  
3 get a handle on this just quickly, because I am wondering if you  
4 have evaluated any in your experience of one-way?

5 MR. GEORGE: No.

6 CHAIRPERSON GRIFFIS: I just wondered if we could  
7 have any documentation about whether there was or it was coming  
8 to people's attention to it or not. I wondered if alleys aren't  
9 more of a use for those that are around there, and normalcy, but  
10 anyway if you can establish that.

11 COMMISSIONER HOOD: Let me just ask Mr. George one  
12 quick question. Everyone is probably not as good as a driver as  
13 you are, but in going through that alley -- and I know that you  
14 probably have not done analysis on this, but what would you say  
15 the level of service would be once that project is up and going,  
16 if it is approved?

17 MR. GEORGE: I would say that the issue does not  
18 typically arise, you are correct, but the level of service is  
19 based on delay, and one generally accepts in a situation where  
20 you may have some violations that there would be no delay.

21 Typically, the speeds that are experienced are 5 to  
22 7 miles per mile. I would not say that there is never any  
23 violation, but unless there is a blockage, and someone violating,  
24 which you can have on K Street downtown.

25 So you can have that type of impact, but I would

1 say that the level of service would be quite good, and in the  
2 normal parlance of level of service, I would say the level of  
3 service would be A, assuming no violations.

4 COMMISSIONER HOOD: I figured that you would say A.

5

6 MR. EPTING: We have provided traffic counts for  
7 the peak hours in his exhibit. So it is there, and it a small  
8 number of cars, even when you add in this new development.

9 MR. GEORGE: Currently, Mr. Hood, it is less than  
10 10 vehicles in an entire hour. That is an average of one vehicle  
11 every six minutes.

12 VICE CHAIRPERSON RENSHAW: Is that at present?

13 MR. GEORGE: At present.

14 VICE CHAIRPERSON RENSHAW: All right. What kind of  
15 queuing is going to happen in the morning rush with cars trying  
16 to get out of the alley?

17 MR. GEORGE: Mrs. Renshaw, I don't think we are  
18 even talking about morning rush with respect to use. Just the  
19 characteristic of this neighborhood, the use here I believe based  
20 on looking at data, at demographic data, vehicle ownership.

21 The vehicle ownership, we obtained sensor tracking  
22 data from the Office of Planning, and it is less than .5, in the  
23 vicinity of .5 cars per household. And many of the people -- the  
24 traffic usage is extremely high in that area, and you could  
25 perhaps walk a half-a-block or one block to 16th Street, or a

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1 block-and-a-half to 18th Street, and easily be connected to  
2 downtown.

3 So I don't think you are talking about morning  
4 rush. In any case, you are talking about 12 units. So if  
5 everybody drove, you would have 12 vehicles.

6 VICE CHAIRPERSON RENSHAW: Possibly 24, two cars  
7 per unit.

8 MR. GEORGE: Yes. Well, I think that you heard  
9 that the 24 spaces would not be assigned to the residents. But  
10 again the central data shows half-a-car per dwelling unit, with  
11 the significant traffic usage. So we really are not talking  
12 about a morning rush.

13 There are presently 45 units accessing the lot, and  
14 there are four vehicles, a total of four during the morning peak  
15 hour, and that is based on two days of counts.

16 VICE CHAIRPERSON RENSHAW: When you did your site  
17 visits to the area did you find a substantial amount or some  
18 amount of double-parking along 17th Street, especially when you  
19 see commercial on your map?

20 MR. GEORGE: Double-parking along 17th Street?

21 VICE CHAIRPERSON RENSHAW: Right.

22 MR. GEORGE: No, Ma'am, not along 17th Street.

23 VICE CHAIRPERSON RENSHAW: I'm surprised since I  
24 use 17th Street, and there is a lot of double-parking.

25 MR. GEORGE: Well, which section of 17th Street?

1 VICE CHAIRPERSON RENSHAW: Well, coming down from  
2 northwest and where off of 16th Street, it cuts into 17th.

3 MR. GEORGE: Oh, yes. We are talking about an  
4 entirely different area.

5 MR. EPTING: This is north of that.

6 VICE CHAIRPERSON RENSHAW: This is north? Very  
7 good. Thank you for differentiating. Now I get the picture.

8 CHAIRPERSON GRIFFIS: This is not a commuter route  
9 obviously.

10 MR. EPTING: You would rapidly get lost commuting  
11 through here.

12 CHAIRPERSON GRIFFIS: Yes, I would say so.

13 VICE CHAIRPERSON RENSHAW: And 17th Street cuts off  
14 and does not connect to the portion that you would likely use.  
15 So within this neighborhood, it simply runs between Columbia  
16 Road, and gets lost into Belmont and --

17 VICE CHAIRPERSON RENSHAW: All right. Well, with  
18 your map, that is much better. Thank you.

19 MS. EISENBERG: Can I ask a question?

20 CHAIRPERSON GRIFFIS: Do you want to ask her a  
21 question generally or you want to ask her a question of the  
22 traffic? This is your last witness, correct?

23 MR. EPTING: We have Armando.

24 CHAIRPERSON GRIFFIS: Okay. Oh. I am going to do  
25 this. After Mr. George finishes his testimony, let's do cross-

1 examination of the traffic engineer, and this is going to be  
2 half-hazard in order to accommodate. But also, Mr. George has  
3 the most technical aspects and so while people have it in their  
4 mind, we will get to that.

5 MR. EPTING: Okay.

6 CHAIRPERSON GRIFFIS: So if you want to just  
7 conclude and then we will just have cross-examination.

8 MR. EPTING: Just a brief wrap-up.

9 CHAIRPERSON GRIFFIS: Okay. Great.

10 MR. GEORGE: Just briefly, I would point out that  
11 DPW's proposal would require all traffic to go through the entire  
12 square, even for the commercial section.

13 CHAIRPERSON GRIFFIS: Oh, that's an interesting  
14 point. You are saying that if it went one way, you would  
15 actually increase because the traffic levels that you are showing  
16 are different on each of the accesses in the alley?

17 MR. GEORGE: That's correct.

18 CHAIRPERSON GRIFFIS: You would actually increase  
19 the use up towards the residential, and you could as they came  
20 out.

21 MR. GEORGE: Right.

22 MR. EPTING: And that is one of the things that we  
23 were trying to avoid by having it all at the southern part of the  
24 alley.

25 CHAIRPERSON GRIFFIS: I see.

1 MR. EPTING: And the trucks are going to want to go  
2 straight back out I think.

3 CHAIRPERSON GRIFFIS: Right, if they can make it.  
4 If they can pull into the commercial building that is on that  
5 corner, which is showing a vehicular ramp into that property,  
6 correct?

7 MR. GEORGE: Yes.

8 CHAIRPERSON GRIFFIS: It could go in there and exit  
9 out and exit out the same way, rather than going all the way  
10 north up to the other piece of the alley.

11 MR. GEORGE: Yes.

12 VICE CHAIRPERSON RENSHAW: On the other side of the  
13 alley, on the other side of commercial, is that residential,  
14 right above what would be the walkway?

15 MR. GEORGE: The walkway?

16 CHAIRPERSON GRIFFIS: Go to north and south.

17 VICE CHAIRPERSON RENSHAW: Right there.

18 MR. GEORGE: Okay.

19 VICE CHAIRPERSON RENSHAW: Now is that a  
20 residential unit?

21 MR. EPTING: That is residential.

22 VICE CHAIRPERSON RENSHAW: All right. And does  
23 that residential unit have any kind of balconies that overlook  
24 that portion of the alley?

25 MR. GEORGE: Mr. Foster.

1 MR. FOSTER: No.

2 VICE CHAIRPERSON RENSHAW: Balconies or porches, or  
3 anything?

4 MR. EPTING: It is all fire escapes, and actually  
5 there is a picture in the paperwork that was provided, and it  
6 shows a very good shot of that.

7 VICE CHAIRPERSON RENSHAW: Okay.

8 MS. BAILEY: Sir, please speak on the microphone.

9 MR. FOSTER: It is in Exhibit D. I think it is the  
10 second picture.

11 MR. EPTING: In Exhibit D is the first shot and  
12 that's it right there. It is mostly a blank wall all the way  
13 along the length of the building. At two intervals, there is an  
14 inset for a fire escape, and that's it.

15 VICE CHAIRPERSON RENSHAW: All right. And the  
16 walkway that you are proposing in from the street would hug that  
17 side?

18 MR. EPTING: That side, that's correct.

19 MR. HOLMES: It is internal to the building itself.

20

21 MR. EPTING: No, no.

22 VICE CHAIRPERSON RENSHAW: No, it is a public  
23 walkway.

24 MR. EPTING: Yes. And this may show it a little  
25 better, because this is a little further away. These are the

1 insteps that you can see along the perimeter of the building, and  
2 that is just a fire escape for required egress. There are no  
3 balconies, or even -- I don't think there are even very few  
4 windows even to look into.

5 VICE CHAIRPERSON RENSHAW: Thank you.

6 CHAIRPERSON GRIFFIS: It goes without saying, of  
7 course, that anything presented today, like those photographs,  
8 will need to be submitted into the record if we don't already  
9 have them.

10 MR. EPTING: All the ones marked with red are in  
11 the presentation.

12 CHAIRPERSON GRIFFIS: Okay. Any other board  
13 questions of Mr. George at this time?

14 MR. EPTING: We are done.

15 CHAIRPERSON GRIFFIS: Okay. Anything else? If  
16 not, then let us entertain cross-examination of the traffic  
17 engineer at this time, and then we will return to finalize the  
18 applicant's witnesses. And then frankly I am going to have to  
19 take a little time so you don't lose my entire board.

20 So let us look to that and we will revisit that  
21 once we get through this. So I may not have to tell you at all,  
22 but cross-examination is what you are about to undergo. Cross-  
23 examination happens of questions of the witness based solely on  
24 the testimony given by the witness.

25 Now, that can with some latitude -- well, that can

1 go to the written submission questions, or the oral testimony  
2 that he gave today. Is that clear?

3 MS. EISENBERG: Can I ask a time check question?

4 CHAIRPERSON GRIFFIS: You have to come to the mike,  
5 and in fact you have to be on the mike, and so you need to turn  
6 it on actually. There.

7 MS. EISENBERG: Do you plan to finish the hearing  
8 today?

9 CHAIRPERSON GRIFFIS: I think we need to assess  
10 that. I have a huge case that is going to take the entire  
11 afternoon, or what is left of it. So I need to assess that with  
12 my board and also with the rest of the parties concerned.

13 MS. EISENBERG: Because I would like to present  
14 testimony, but I am not able to stay any longer.

15 CHAIRPERSON GRIFFIS: Okay. Let's get through this  
16 piece and then we will access here.

17 MS. EISENBERG: I have just a couple of questions  
18 for you, sir. Did you do a traffic observation on a Friday or  
19 Saturday night when the garage at the south end of the alley, the  
20 public garage, operated by Jamal, was open?

21 MR. GEORGE: We did do an assessment on Friday  
22 afternoon, and at that time --

23 CHAIRPERSON GRIFFIS: Could you pull the mike  
24 closer to you? He stated that he did do an assessment on a  
25 Friday or Saturday night.

1 MR. GEORGE: Yes.

2 MS. EISENBERG: No, he said on a Friday afternoon  
3 when the garage was not open, I believe; is that correct?

4 MR. GEORGE: We did an assessment between 6:00 p.m.  
5 and 9:00 p.m. on a Friday evening. At that time, based on our  
6 observations, the garage was not open.

7 MS. EISENBERG: So you have not done an assessment  
8 at a time when the garage is open and you are not able to say  
9 what effect of the fact that there is a public garage on the  
10 alley would have on the amount of traffic in the alley?

11 MR. GEORGE: Well, I would perhaps leave it to the  
12 applicant or the attorney to state whether that is a garage. We  
13 identified it as being a commercial warehouse space that was used  
14 temporarily for parking during one period. But we have not  
15 identified this as a garage.

16 MR. EPTING: My understanding is that it is used  
17 under an agreement with the neighborhood, that while the project  
18 at 18th and Columbia Road was being built, the Lofts project,  
19 they took away a parking lot to build that.

20 And so sort of as a trade-off in the community, is  
21 that during that time, because it was a great parking lot for  
22 going to the restaurants, there would be some off-site parking  
23 until that building with a new parking garage was built.

24 So it is in a sense a temporary parking until this  
25 new building is built, and then there will be parking again on

1 18th Street.

2 CHAIRPERSON GRIFFIS: Is that your understanding?

3 MS. EISENBERG: My understanding is that it is open  
4 now as a commercial garage. I don't know what the time frame is,  
5 but it is also my understanding that Mr. Jamal is planning to  
6 build a mixed-use development on that space, and that there will  
7 be a 50 car parking garage there.

8 CHAIRPERSON GRIFFIS: Could you point out on  
9 attachment number one where on the site plan we are actually  
10 talking? So it is that piece and there is a structure there now;  
11 is that correct?

12 MR. EPTING: It is an existing warehouse building.

13 CHAIRPERSON GRIFFIS: An existing warehouse, and we  
14 have a difference of opinion of what the future use of that is;  
15 is that correct?

16 MS. EISENBERG: I think we don't know what the  
17 future use of it is. I know that it is currently used as a  
18 garage and that on Friday and Saturday night the traffic is  
19 significantly higher than what has been described.

20 CHAIRPERSON GRIFFIS: So that is rented out for  
21 conceivably folks coming into the neighborhood for public  
22 parking.

23 MR. HOLMES: If I could actually address that  
24 question a little bit. John Holmes.

25 CHAIRPERSON GRIFFIS: Okay.

1 MR. HOLMES: We own another couple of lots in the  
2 area, one of which has an existing tenant, and they gave a  
3 temporary certificate of occupancies for parking both at Douglas  
4 Jamal's building at the corner of 17th and Kalaroma, and on the  
5 lot that we own on Champlain Street.

6 The parking garage opened a hundred percent April  
7 1st. We received a letter from the District saying that those  
8 temporary CFOs are now being pulled.

9 CHAIRPERSON GRIFFIS: And that is the temporary  
10 approval for parking on that commercial --

11 MR. HOLMES: According to Mr. Jamal's as well,  
12 correct. He is still operating there, but the certificates are  
13 being pulled.

14 CHAIRPERSON GRIFFIS: Okay. All right. I think  
15 that brings up a good point in your cross-examination, and I  
16 don't want to digress too far because I want to let you have  
17 that.

18 MS. EISENBERG: Did you observe the traffic, sir,  
19 when there was a trash truck in the alley?

20 MR. GEORGE: Yes.

21 MS. EISENBERG: And was it your observation that a  
22 car was able to pass around a trash truck?

23 MR. GEORGE: No.

24 MS. EISENBERG: Thank you.

25 MR. EPTING: How long did the trash truck take to

1 get out of the way?

2 MR. GEORGE: In fact, I observed one this morning,  
3 and I was surprised with the efficiency with which they moved  
4 through the alley.

5 MS. EISENBERG: I wish they would pick up the trash  
6 with the same efficiency. Excuse me.

7 CHAIRPERSON GRIFFIS: Hold on, please. We  
8 absolutely cannot have any interruptions. That was a redirect of  
9 a witness, and he has a direct question that he needs to answer.

10 MS. EISENBERG: I'm sorry.

11 MR. GEORGE: So talking from direct personal  
12 experience, of course I had to back up into an available area for  
13 the trash truck to pass, but that was done. And we have seen it  
14 done on other occasions.

15 MS. EISENBERG: So it is fair to say that there was  
16 an available area for you to back up in this morning?

17 MR. GEORGE: Yes.

18 MS. EISENBERG: Is it your opinion that there is  
19 always an available area in which to back up?

20 MR. GEORGE: I don't have an opinion on that.

21 MS. EISENBERG: Thank you.

22 CHAIRPERSON GRIFFIS: Further redirect, Mr. Epting?

23 MR. EPTING: No.

24 MR. BATRA: With regard to Jamal's warehouse, the  
25 building says commercial on the south side of the Colortone

1 project. You stated that you did not do a count at night, later  
2 at night, from 9:00 p.m. until 2:00 a.m., let's say, on a Friday  
3 or Saturday night.

4 That building has always been used for parking,  
5 whether it is for vendors, or temporary, or presumably now it  
6 will be permanent as they are applying for permanent type of  
7 parking there.

8 What will be the impacts be if I throw out a number  
9 to you now, a hundred more cars accessing that alley from that  
10 building? That building will never be vacant, and as well will  
11 be used for parking. So let's say a hundred more cars. Would  
12 that at all impact on any of your earlier statements?

13 MR. GEORGE: Yes. If there is a permitted use that  
14 calls for a hundred cars within that alley, it will have an  
15 impact. I assume that would be taken into consideration by the  
16 city in granting or not granting the permitted use.

17 MR. BATRA: So you are saying essentially it is  
18 first come, first served; and we can't look to future uses,  
19 potential uses, because this is only a temporary permit that they  
20 have now.

21 What I am saying in effect is that this temporary  
22 permit from the neighborhood standpoint, we would have to assume  
23 that would become permanent. There could be permanent parking  
24 there. They are still operating.

25 If that parking lot, that commercial building

1 becomes permanent parking, and continues the current use, today's  
2 use, how does that impact your projections? This is not a future  
3 potential, but today that is a commercial parking lot.

4 MR. EPTING: It is hard for Mr. George to speculate  
5 on what may happen there. I mean, he could say that the southern  
6 alley is the shortest distance to 17th Street.

7 CHAIRPERSON GRIFFIS: Do you want to object to the  
8 question?

9 MR. EPTING: Yes. We just don't know.

10 CHAIRPERSON GRIFFIS: Well, let me try and bring  
11 some clarification to it. Ms. Sansone, do you know off the top  
12 of your head, do you know if in an  
13 R-5-B is a parking garage allowable use in the zoning? I don't  
14 mean to put you on the spot, but I thought you might know as an  
15 expert that you are.

16 But let's look at that and see if I can bring -- do  
17 you know?

18 MR. EPTING: It would be a use variance. They  
19 would have to go through a process similar to what we have gone  
20 through, showing what impacts if any it would have on the alley  
21 system, and I don't think it is a first come, first served sort  
22 of issue. We are showing that because of the nature of the use  
23 that we have here, we have very limited use of the alley.

24 MS. SANSONE: Mr. Chairman, at 355.1, it is a  
25 special exception.

1 CHAIRPERSON GRIFFIS: Okay. Thank you very much.  
2 Okay. Just for clarification, because I understand your total  
3 point, and that is how do you -- shouldn't we be able to take  
4 into total consideration everything that has happened, but I  
5 don't want to speculate too much on it.

6 And the fact of the matter is that is labeled as a  
7 commercial use, because it was an existing piece, the zoning  
8 overlay has changed. So it does go back to the fact that as Ms.  
9 Sansone has easily found for us in parking garages, if that was  
10 to become a permanent parking garage, of which I would be  
11 surprised if -- well, I don't know. Maybe you can park a hundred  
12 cars. I don't know. I am not going to say anything.

13 But let's say 200 cars, and they are going to have  
14 to come in, and that will have to be obviously factored into  
15 whether you could bring that amount of cars in. Now, if this for  
16 instance was to go forward, that would have to be added into the  
17 impact on the alley. So hopefully that helps you a little bit.

18 MR. BATRA: We are in agreement with the applicant,  
19 in that we don't like the idea of a one-way road, and we commend  
20 the applicant for keeping that promise that he made to the  
21 neighborhood early on.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. BATRA: You did a scenario where a truck is  
24 pulling in while a child is walking on a four-way walkway, a four  
25 foot walkway. That kind of assumes one car there at a time.

1 What if two cars are coming in opposite directions and there is a  
2 child walking? What is supposed to happen there?

3 MR. GEORGE: I think the alley is 20 foot wide, and  
4 a typical vehicle is in the range of 5-to-5-1/2 feet wide. We  
5 assume 7 feet as a maximum. So even if you figure two 7 foot,  
6 which is pretty much the maximum size that you can expect for a  
7 vehicle, that takes up 14 feet.

8 What we are saying is that in order to protect and  
9 in order to ensure safety, we would recommend that the walkway be  
10 attended. So we think that with that provision that safety would  
11 certainly be ensured.

12 MR. BATRA: Would you support not just a  
13 -- I think the term used was a delineated walk way, like painted  
14 on the ground, which I think support -- I think they are called -  
15 - well, where there are metal poles that just set off a walkway  
16 where a car could not impede where a child was walking to support  
17 that.

18 CHAIRPERSON GRIFFIS: I don't know if that is for  
19 him to answer. He is just the traffic engineer of the applicant,  
20 and that is a question that you can raise with the applicant.

21 MS. EISENBERG: Perhaps he could answer whether it  
22 would be safer. Would it be safer for children if there were  
23 some kind of metal poles along the walkway to at least slow down  
24 a car that might hit a child.

25 MR. GEORGE: Any physical separation enhances

1 safety, and so yes, a physical separation would enhance that,  
2 further enhance safety. Whether or not it is necessary would be  
3 a determination for the Department of Public Works.

4 MR. EPTING: Again, as shown in our traffic report,  
5 the Sitar children arrive, but only --

6 CHAIRPERSON GRIFFIS: The same rules apply for you,  
7 and you can take that up in redirect. Is there further cross-  
8 examination?

9 MS. EISENBERG: Were you able to assess traffic  
10 during the winter at a time -- well, let me rephrase that. Are  
11 you aware that during the winter the alley is frequently  
12 completely covered in ice?

13 MR. GEORGE: No, I am not aware of that.

14 MS. EISENBERG: And assuming that was true would  
15 that change anything that you have said about the safety of a car  
16 passing while a child is in the alley, because that is frankly  
17 one of the concerns of some of the residents.

18 CHAIRPERSON GRIFFIS: Ask a question and not  
19 testimony.

20 MR. GEORGE: My answer to your question was that I  
21 was not aware that it was covered with ice, and that I did not do  
22 a history examination, and examine the history of the maintenance  
23 of the alley.

24 During my discussions with the applicant, they have  
25 advised that since this is a commercial enterprise, they would be

1 ensuring that a good quality of service would be provided to the  
2 residents through -- there would be some sort of homeowners  
3 association that would have control over that type of thing.

4 So based on those representations made to me by the  
5 applicant, I would assume that there would be few situations  
6 where the alley would be covered with ice, even though I could  
7 not as a traffic engineer say that that couldn't happen. I am  
8 not qualified that far off.

9 MS. EISENBERG: I don't think that answered my  
10 question, which was if the alley were covered in ice, which in my  
11 observation it frequently is in the winter, would that affect  
12 your conclusions about the safety of children walking in the  
13 alley at the same time that cars were traveling in the alley?

14 MR. GEORGE: Yes. Mrs. Eisenberg, I think that all  
15 roads, major roadways, are at some time covered with ice, and it  
16 has been my experience, again talking generally and antidotally  
17 in such situations schools are closed.

18 MR. BATRA: You are aware that one side of this  
19 building, and I believe the west side of the building is unpaved  
20 at this point, and part of the proposal is somebody is probably  
21 going to have to repave that, which will decrease the amount of  
22 permeable surfaces, which will probably increase the pooling of  
23 water; is that right?

24 MR. GEORGE: I think as a traffic engineer, I think  
25 that is a question for a civil engineer, who would be

1 knowledgeable of drainage and things like that.

2 MR. BATRA: Let me ask this one question. With  
3 regard to the northwest corner of this building, what if one of  
4 the larger fire trucks needed to get back there, how could they  
5 possibly do it without getting stuck in that alley?

6 MR. GEORGE: I believe Mr. Lourenco is prepared to  
7 answer questions regarding emergency access. I am not prepared  
8 to.

9 MR. BATRA: Okay. And the last question I have for  
10 you is that in terms of that you did an overall traffic study of  
11 the neighborhood, and you said this would have negligible impact,  
12 and it is only 12 cars. What would or how many cars would be too  
13 much? It is a relative amount obviously.

14 A certain amount is too little, and with a very  
15 dense neighborhood, a very few number of roads, bounded by 16th  
16 and 18th, and you said major arteries, and there is only a  
17 certain number of cars that can be on the roads at once.

18 So how would that impact, and how many cars is too  
19 much, and where there is just too many cars at the stop sign, in  
20 terms of the traffic study?

21 CHAIRPERSON GRIFFIS: Can I bring some  
22 clarification to that, because that is one huge speculation, and  
23 frankly I am not sure what you are expecting to get from him.  
24 But maybe I am misunderstanding the question, but the method by  
25 which one can establish the level of use on a street is the

1 grading they often get. Are you familiar with that?

2 MR. BATRA: Right.

3 CHAIRPERSON GRIFFIS: And so are you asking him to  
4 actually grade the alley for use on that?

5 MR. BATRA: Well, a point was made that there could  
6 be upwards of 24 cars being used in this situation, and how would  
7 that impact the stop sign in the morning? How many cars would be  
8 backed up? Would it be backed up all the way into the alley?

9 I am trying to figure out the traffic study and  
10 took that into account. We are assuming the best case, and maybe  
11 only six cars in this whole development, and maybe not more than  
12 24, because the prices are high around here, and two people have  
13 to live there.

14 And so how would 24 cars impact the backup around  
15 there, and the stop sign at Euclid and Kalaroma?

16 MR. GEORGE: Typically, neighborhood streets  
17 control or intersections controlled by 4-way stop signs, do not  
18 even go through a formal analysis. And typically by observation,  
19 you can determine whether there are significant backups.

20 We did not observe that to be the case.  
21 Furthermore, we are saying that even though the trips generated  
22 by this proposed development are few, with the alley system  
23 remaining the way it is, some vehicles would probably exit to the  
24 north, and some vehicles to the south.

25 That would disburse the traffic, and some would go

1 north towards Euclid, and some south towards Kalaroma, and  
2 distribute itself as we started with showing this plan by  
3 approximately six entry points into the neighborhood.

4 So I think even if you take 20 or 30 vehicles, and  
5 you divide it by six portal points entering an area, and you can  
6 over a period of one hour, I think it becomes obvious that we are  
7 not talking about a significant impact.

8 And what we typically see is that on a daily basis  
9 traffic fluctuates to that level of degree and more.

10 MR. BATRA: No further questions.

11 CHAIRPERSON GRIFFIS: Thank you. Any redirect?

12 MR. EPTING: None.

13 CHAIRPERSON GRIFFIS: Okay. I am going to take a  
14 10 minute break just to get the schedule --

15 MR. EPTING: Could we ask just one thing?

16 CHAIRPERSON GRIFFIS: Yes.

17 MR. EPTING: Sort of a special request also. Mr.  
18 Jackson has been here for a while. Would it be possible to get  
19 him in today, and I will even stop Armando for a while to get him  
20 here, because he has made a special trip, too.

21 CHAIRPERSON GRIFFIS: Okay. I appreciate that, and  
22 what I was going to ask, and maybe you can answer it right now,  
23 but what would be a good breaking point for your case today, and  
24 let us look at it continuing this and scheduling it as quickly as  
25 possible. And I am wondering as you answer that whether we can

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1 look to the afternoon of the 29th.

2 SECRETARY PRUITT: We have two cases on the agenda  
3 for next week. Also, we have Memorial Day, and there has been  
4 some information on it, but there is no big controversy as of  
5 yet. And the other one is a roof deck. So I guess potentially  
6 you could say -- well, although remember that you have now had a  
7 special decision meeting in reference to the Sunrise appeal  
8 already that afternoon.

9 MR. EPTING: I guess we would just as soon avoid  
10 that again. I know that I have said this before, and we didn't  
11 move as fast as we wanted, but we just have one more witness and  
12 then I don't know how much cross-examination we have. We are  
13 trying to move it along.

14 CHAIRPERSON GRIFFIS: Well, what I don't want to do  
15 is just having to rush through the entire piece. We probably  
16 have a half-an-hour to 40 minutes more of this, depending on  
17 cross-examination and other questions. But that still puts us to  
18 four o'clock before we get into the next case.

19 MR. EPTING: At the same time, and my client may  
20 kill me, we have waited 5 months, and I guess we could wait  
21 another week or so also, but if that helps your scheduling.

22 CHAIRPERSON GRIFFIS: Well, let me just also say  
23 that from my point of view it actually helps the case, and no  
24 matter where it is going, it is going to help it in the direction  
25 that it would mostly go, because, one, we are going to have more

1 time to get into the substance and the issues at hand that we  
2 need to.

3 There is going to be more of a comfort level from  
4 the Board to deliberate on, but let me just see if we have the  
5 afternoon of the 29th available. And then what we will do is we  
6 will take the ANC member.

7 MR. EPTING: He is actually the Reed Cooke  
8 representative.

9 CHAIRPERSON GRIFFIS: Okay. And then I would  
10 request that be the stopping point for today, and then we would  
11 pick up with the last witness. There is no way that we will go  
12 through cross-examination. The parties will actually have to be  
13 here anyway to give testimony So everyone is coming back in that  
14 respect.

15 We have cross-examined the traffic engineer, and so  
16 we may not have to recall him, and I think we can establish that  
17 at this point. And that is all the time I can fill, and so I was  
18 hoping that a date would be in front of me. So, the 29th?

19 (Brief Pause.)

20 CHAIRPERSON GRIFFIS: We are going to set this and  
21 we are going to call up the Reed-Cooke representative today, and  
22 we will finish today's case and continue it to the first case in  
23 the afternoon of May 29th, 2002.

24 This will serve, and I say this mostly for the  
25 parties in the case, that this will serve as notification of the

1 new date. This will serve as notification for the continuing of  
2 the case. And I am not sure if the other party in the case is  
3 here. Oh, okay, you can let her know, and then of course anybody  
4 else that was planning to testify that was not here today, and  
5 you can let them know. So, with that --

6 COMMISSIONER HOOD: Mr. Chairman, just for the  
7 record, I will be reading the record and I will not be able to  
8 make it next week, but I will read the record.

9 CHAIRPERSON GRIFFIS: I was going to surprise them  
10 with that, but Mr. Hood has indicated that he will not be  
11 available and so he will read the record, and deliberate on the  
12 case. Okay. So we are ready for you, sir.

13 MR. JACKSON: Good afternoon. It is my unique  
14 pleasure to appear before you and I appreciate this opportunity.

15 I am Edward G. Jackson, Senior, and my address is 2460 Ontario  
16 Road, Northwest. I have lived in the Reed-Cooke neighborhood for  
17 the past 43 years, along with my wife and we are property owners.

18 I had the pleasure of serving on the ANC for a  
19 period of 20 years, and I was on the Reed-Cooke Neighborhood  
20 Association, and was Chairman of the Adams-Morgan Community  
21 Development Corporation.

22 And that brings me to the point in today's  
23 testimony in saying that I am seeing a dream fulfilled because  
24 during the day's of Walter Washington, I did a tour of the  
25 neighborhood, and in those years I saw the potential of what

1 could happen in the Reed-Cooke neighborhood.

2 And of course we looked for those in those days of  
3 the economic development to try to develop some of these  
4 projects, and we had looked at the Colortone Press building in  
5 those years, and we didn't have the capacity to do it.

6 I wish these gentleman had come along at that time.

7 However, I had an opportunity to know the owner of the Colortone  
8 Press, and this building has a very special significance to me  
9 and to our community. The Hackle family owned the Colortone  
10 Press and they operated a very profitable business there.

11 It was recognized by the White House and they did  
12 beautiful community service there. In fact, they preceded the  
13 Adams-Morgan organization, the ANC, and all these things in doing  
14 good. So we want to keep that presence in the neighborhood.

15 And for all the good that they have done and that  
16 is the reason that we have mentioned about he memorial plaque and  
17 so forth to the Hackle Family for all the good work they have  
18 done. And also for the Sitar Center.

19 This is an organization and the former owner has  
20 now expired, but her dream was to provide a good facility for  
21 children, and for the Adams-Morgan and Reed-Cooke neighborhoods  
22 to get art, and I wish I could share with you the beautiful work  
23 they have been able to do in the very cramped basement unit.

24 So this would give them an opportunity to explore  
25 and to expand. It also would provide one of the main things that

1 Ann Hargrove and I worked on, on the Reed-Cooke overlay. We  
2 drafted that plan, and in that plan, we said to provide  
3 residential. I mean, they come to Adams-Morgan and Reed-Cooke,  
4 and it has to be that word "R" there, residential, and when they  
5 come into that, we listen to them.

6 These gentlemen came in with a plan and when they  
7 say residential, then that took the red flag down. Then the good  
8 part about it was the fact that they were able to meet conditions  
9 and we went through items by items of the thing about the plaza  
10 and all that. That was a dream of ours, Josephine Butler and I.

11

12 The late Josephine Butler and I sat down, and she  
13 was the executive of the ANC and I was the chair at the time, and  
14 how can we improve Reed-Cooke and make it a viable area.

15 And it has been my intention from the very day that  
16 I moved in that neighborhood almost 44 years ago that this  
17 neighborhood can do better. And I didn't want to look at it in  
18 the terms of being a warehouse area. It was looked upon by other  
19 parts of Adams-Morgan of being that area back there where you put  
20 cars in garages.

21 I look forward to seeing art centers, and housing,  
22 the quality housing that these gentlemen are bringing to us. And  
23 this is a unique opportunity. My children and my wife is not  
24 here today, and she is retired from the school system after 35  
25 years. But we have worked arduously on block clean ups and on

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1 every aspect that you can think of in improving the quality of  
2 life.

3 I am connected with the International Meridian  
4 House Director, and I told him that I wanted to make this a trail  
5 coming through this area to indicate how beautiful it can be  
6 there, where there would be plazas, and flowers on the streets  
7 and so forth.

8 So this is a dream to me after all of these years  
9 that is coming to reality, and when these gentlemen -- and  
10 believe it or not, I was at that breakfast that morning when we  
11 got this thing together, and I am looking forward to another one  
12 now.

13 So it is just the spirit in which they have come  
14 with us. Now, Councilman Graham, we met in his office for a long  
15 evening session. I mean, all of this goes back months and months  
16 ago, and we discussed this in detail.

17 And as they came in, and they were willing to  
18 compromise with us. And I speaking of behalf of the association,  
19 Darnell Bradwell, who grew up in that neighborhood and he lost a  
20 brother in that alley. So we are going to etch his name, his  
21 brother's name, on that memorial plaque for the Colortone Press.

22 We want to maintain the history and so forth, and  
23 we want it to be a viable, worthwhile thing. And in fact I made  
24 the motion to approve this because I told Darnell that we are not  
25 going to lose any more time and not momentum here, and we want to

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1 make this work.

2 And I believe in results all along the way, and not  
3 to fool around and lose this time. These men are very busy men,  
4 and there is money involved, and the good will of the community  
5 is at stake.

6 And in that reference to ice and the problem there,  
7 a responsible landlord will take care of it, just like in front  
8 of my house. When it freezes over, I get out, and bad knees and  
9 all, and I will shovel in front of my house or I will pay  
10 somebody to do it.

11 And I am sure that these gentlemen, if that alley  
12 is frozen over, I don't think we will have a problem, as it will  
13 be these gentlemen's responsibility, and for those landlords who  
14 are responsible, they take care of their own there.

15 We did it with McDonalds. They said they would do  
16 certain things, and or whether it is with Safeway. I mean, we  
17 have worked on all these projects. Anne Hargrove and I worked on  
18 these. And all the business people gave commitments, and they  
19 have kept those commitments, and whatever that has been, they  
20 have been consistent.

21 CHAIRPERSON GRIFFIS: And I think that is an  
22 excellent point. That it may take responsible landowners, but it  
23 also takes a very active community to make sure that those  
24 responsible landlords are in fact living up to their expectation.

25 And if there are no questions, I am happy to see

1 your support in this now, and it is clear that you have been  
2 through numerous political times, ups and downs I might say. And  
3 it is interesting, and it is good that you are able to work with  
4 the current council member, who I can only imagine is being very  
5 supportive of the communities, and specifically that area. Ms.  
6 Renshaw.

7 VICE CHAIRPERSON RENSHAW: Yes. I just wanted to  
8 observe that if we could only bottle Mr. Jackson's energy that it  
9 would be a wonderful tonic for this city.

10 CHAIRPERSON GRIFFIS: Well, we could use it this  
11 afternoon as we continue.

12 VICE CHAIRPERSON RENSHAW: And right now we could  
13 use it.

14 CHAIRPERSON GRIFFIS: Okay. Any other questions? I  
15 believe the parties have left or otherwise we would have  
16 questions, cross-examination.

17 (Discussion off the record.)

18 CHAIRPERSON GRIFFIS: Okay. It is indicated that  
19 the parties had no cross-examination. In which case, I thank you  
20 very much, and I thank everyone for being here and being patient.

21 And also being patient in terms of rescheduling and continuing  
22 this case. And I would then adjourn the morning session of the  
23 21st of May, 2002.

24 (Whereupon, at 3:10 p.m., the hearing was  
25 recessed.)

1

2

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

(3:44 p.m.)

CHAIRPERSON GRIFFIS: Okay. Good afternoon. We do appreciate your patience and I must say that it is not for a lack of hanging around with nothing to do. We have had an incredibly difficult schedule this morning as usual, and so here we are.

However, I will ask that the hearing please come to order. This is the 21st of May, 2002 public hearing of the Board of Zoning Adjustments for the District of Columbia. My name is Jeff Griffis, and I will be the Chairperson today.

Joining me today is the Vice Chair, Ms. Anne Renshaw, and also Member Curtis Etherly on my right, and Mr. Levy, representing the National Capital Planning Commission, and representing the zoning commission is Mr. Anthony Hood.

Copies of today's hearing are available for you. They are located at the table close to the doorway that you did come into the hearing room today. Please be aware that these proceedings are being recorded.

So I do ask that everyone refrain from any disruptive noises or actions in the hearing room. Also, let me just ask that everyone turn off all cell phones and beepers at this time so that we don't have further disruptions, and I will walk everyone through it.

But obviously when presenting to the Board being on the record, you will have to speak into the microphone, and the

1 microphone will need to be on. All persons planning to testify  
2 either in favor or in opposition are to fill out two witness  
3 cards. These cards are located at the table where you will give  
4 testimony, and they are also located at the table where you came  
5 into the hearing room.

6 When coming forward to speak to the Board, I would  
7 ask that you give both copies of those cards to the reporter, who  
8 is sitting to my right. The order of procedure for the special  
9 exceptions and variances this afternoon will be, first,  
10 statements and witnesses of the applicant.

11 Second will be government reports, including the  
12 Office of Planning and Department of Public Works; and third is  
13 the report of the advisory neighborhood commission. Fourth, is  
14 parties or persons in support.

15 Fifth, parties or persons in opposition, and  
16 finally we will go to closing remarks by the applicant, and  
17 cross-examination of the witnesses is permitted by the applicant  
18 or parties. The ANC within which the property is located is  
19 automatically a party in this case.

20 The record will be closed at the conclusion of each  
21 case, except for any materials specifically requested by the  
22 Board. The Board and Staff, of course, will make very clear at  
23 the end of the hearing what is expected and when it is expected  
24 to be submitted to the Office of Zoning.

25 After the record is closed, no other information

1 will be accepted by the Board. The Sunshine Act requires that  
2 the public hearing on each case be held in the open before the  
3 public. The Board may, consistent with its rules and procedures  
4 under the Sunshine Act enter into executive session during or  
5 after the public hearing on a case for purposes of reviewing the  
6 record, or deliberating on the case.

7 The decisions of the Board in these contested cases  
8 must be based exclusively on the record. So in order to avoid  
9 appearances to the contrary, the Board requests that people  
10 present not engage members in any conversation.

11 The Board will make every effort to conclude the  
12 public hearing at a rational time some time today. I will  
13 actually assess that as we go through. And we do have, and I  
14 know that the majority of you are here for a specific case.

15 We have several cases that we need to deal with  
16 first. I think we can deal with a lot of them in preliminary  
17 matters, and we will go to the larger case that is before us this  
18 afternoon. I would anticipate that we would run until 7:00 or  
19 7:30.

20 But I will update people as we get into cases and  
21 that becomes more formidable and realistic to assess. At this  
22 time then, I would ask that we consider any preliminary matters.

23 Preliminary matters are those that relate to whether a case will  
24 or should be heard today, such as a request for a postponements,  
25 continuances, or withdrawals, or whether proper and adequate

1 notice of the hearing has been given.

2 If you are not prepared to go forward with the case  
3 today, or if you believe the Board should not proceed and hear  
4 your case, now is the time to raise such a matter. Let me first  
5 go to staff to see if they have any preliminary matters for us to  
6 take up.

7 MS. BAILEY: Mr. Chairman, we do. Good afternoon.

8 CHAIRPERSON GRIFFIS: Good afternoon.

9 MS. BAILEY: The first one has to do with  
10 Application 16815 (sic) of S&P Properties. The applicant in that  
11 case is requesting that the hearing be continued to a later date.  
12 Is someone here from S&P Properties?

13 MEMBER LEVY: Mr. Chair, if I could just state that  
14 Ms. Bailey perhaps gave the incorrect case number for that.

15 CHAIRPERSON GRIFFIS: 16815?

16 MEMBER LEVY: Isn't that Adams Alley?

17 COMMISSIONER HOOD: 16863.

18 MEMBER LEVY: Just for the record.

19 MS. BAILEY: Thank you, Mr. Levy.

20 CHAIRPERSON GRIFFIS: Thank you, Mr. Levy. We have  
21 a request for a postponement.

22 MS. GIORDANO: Yes. Good afternoon, Mr. Chairman  
23 and Members of the Board. My name is Cynthia Giordano from the  
24 Arnold & Porter law firm. With me is Jim Smith. This applicant  
25 has recently retained me to assist them with the case, and there

1 are a number of interpretative issues of the zoning regulations  
2 that they felt required some legal assistance, which they hadn't  
3 had when they filed the application.

4 So we are requesting a postponement so that I might  
5 take a look at this case and make sure that we are asking for the  
6 right relief.

7 CHAIRPERSON GRIFFIS: And when were you retained?

8 MS. GIORDANO: Yesterday.

9 CHAIRPERSON GRIFFIS: Indeed, that is all of a  
10 sudden. Okay. Mr. Smith, did you have something to speak on  
11 that matter? Why don't you just introduce yourself at least.

12 MR. SMITH: Mr. Chairman, for the record, my name  
13 is Jim Smith, and I live at 6 Logan Circle Northwest, Washington,  
14 D.C. We felt that there were some global issues that we needed  
15 to look at with respect to some legal stuff, and I am not a  
16 lawyer, and so the applicant has retained Ms. Giordano to assist  
17 me. I am not being replaced. She is assisting me.

18 CHAIRPERSON GRIFFIS: Indeed, for the legal stuff  
19 as you have said technically.

20 MR. SMITH: For the legal stuff.

21 CHAIRPERSON GRIFFIS: Board Members, any problem or  
22 difficulty with granting a postponement on this?

23 COMMISSIONER HOOD: No, Mr. Chairman, no objection.

24 CHAIRPERSON GRIFFIS: Is the ANC representative for  
25 this application here? That is ANC-2C? Hearing none, we don't

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1 have any request for party status in this case. I do understand  
2 by my notes that the Office of Planning was recommending a denial  
3 of this application, which may in fact be some of the reasoning  
4 behind getting some additional counsel.

5 So if there are no problems by the Board, I suggest  
6 that we move ahead on that, and set this for a new date. Do we  
7 have one available at this point to discuss?

8 SECRETARY PRUITT: The first reasonable -- and you  
9 have a very packed summer schedule, and so I would suggest  
10 September 17th is really the first reasonable time.

11 CHAIRPERSON GRIFFIS: Are you going to be in town?

12 MS. GIORDANO: I am going to be in town. I think  
13 Mr. Permit was hoping for something earlier than that.

14 SECRETARY PRUITT: We don't meet in August, and  
15 that is the first meeting in September.

16 MR. SMITH: Mr. Chairman, is it possible that we  
17 could -- what we were trying to do was save time and not hash out  
18 the case with a lot of time wasted, and I think by having just a  
19 little bit of time to sit down with some of the folks involved  
20 that we can make a very comprehensive case. It will not take up  
21 a great deal of time.

22 We do have support from the ANC and the community  
23 on this. So I don't think it is going to be a really long, drawn  
24 out case.

25 SECRETARY PRUITT: The unfortunate thing is that

1 the Board has a lot of cases, large cases, that have already  
2 started that have been continued. And therefore have really  
3 filled up their June and July agenda.

4 CHAIRPERSON GRIFFIS: I have the entire case in  
5 front of me, and in fact today and last week, and I may get hit  
6 next week, and the problem I have done is squeeze in too many  
7 cases that have had to either continue or were postponed.

8 So I am very reluctant to do that on this, and  
9 especially as we go towards the summer, which was stated that we  
10 don't meet in August. So we have a lot of things that we have to  
11 finish before we are able to take a couple of weeks off.

12 So I would say that September 17th would probably  
13 be the best or closest date.

14 MS. BAILEY: Morning or afternoon? Mr. Chairman,  
15 no additional notice will be sent out on this. We will just  
16 schedule it for September 17th.

17 SECRETARY PRUITT: It appears to be the second case  
18 on the morning agenda. We already have one scheduled.

19 CHAIRPERSON GRIFFIS: Okay. Hold on just a second.

20 (Brief Pause.)

21 CHAIRPERSON GRIFFIS: Okay. So September 17th.

22 Thank you very much. Okay. Next.

23 MS. BAILEY: There is another request for a  
24 continuance, Mr. Chairman, and this is the Howard University and  
25 the Metropolitan Day School, Application Number 16866. That is

1 ANC-5A.

2 MS. DOBBINS: God afternoon, Mr. Chairman, and  
3 Members of the Board. Madeline Dobbins, representative for the  
4 applicant in this case.

5 CHAIRPERSON GRIFFIS: Yes, Ms. Dobbins.

6 MS. DOBBINS: We requested a postponement because  
7 the day school has now control over a lot that is adjacent to it,  
8 and based on wanting to try to bring those cases today, and not  
9 as one case, but we wanted to postpone the primary case on the  
10 day school so that the space adjacent to it could be -- so we  
11 could get a plan for the adjacent property.

12 The issues associated with the day schools have  
13 always been around parking, traffic, and play area. But those  
14 properties are separate properties.

15 CHAIRPERSON GRIFFIS: I see. Do you want to  
16 introduce yourself, please?

17 MS. CURRY: Yes. Good afternoon, Mr. Chair, and  
18 Board, I am Mary Baird Curry, the advisory neighborhood  
19 commission for 5A-06, in which the Howard University Day School  
20 is located.

21 CHAIRPERSON GRIFFIS: Good. Thank you. Okay. You  
22 have indicated that they have acquired the adjacent lot or they  
23 have control over the adjacent lot.

24 MS. CURRY: They have control over it. Neither lot  
25 is owned by the day school. Howard University owns one lot.

1 CHAIRPERSON GRIFFIS: But somehow having control of  
2 the adjacent lot is going to affect the application that is  
3 before us, and that's why a continuance is required?

4 MS. CURRY: The application that you would hear for  
5 the day school would be the very same application that is before  
6 you, which would be a request for an increase of 50 additional  
7 students, but we would have to file a separate application for  
8 the adjacent property to be used as parking and play area. The  
9 adjacent property is two lots.

10 CHAIRPERSON GRIFFIS: No, I understand that. So  
11 the control of the adjacent property goes to the parking  
12 requirements on the subject.

13 MS. DOBBINS: No, the parking requirements we can  
14 meet, but the impact on the neighborhood, they have complained  
15 about the parking and the traffic in the area, and we wanted to be  
16 able to develop that site so that it would take some of the  
17 impact away.

18 But there would be no change in the application for  
19 the school, and we would be able to meet all of the parking  
20 requirements on site.

21 But the community has requested -- several members  
22 of the community have requested that there be some additional  
23 parking and some additional ways to get the children dropped off  
24 in the morning, and that lot would allow if we did that to go  
25 through the alley, and to do a one-way exit and entry to maneuver

1 the traffic to take away some of the impact.

2 But as it stands, the site itself can maintain. It  
3 has enough parking that is required, and it can sustain the  
4 increased enrollment, in terms of the space. The initial  
5 application before this board was for 240 students. The board  
6 approved the 150, and after having had the program at the school  
7 for several years, the programs have determined that 240 was too  
8 much, and so we were coming back for an additional 50 only.

9 CHAIRPERSON GRIFFIS: I see. Okay. So the control  
10 of the adjacent lot is related to this application only as it  
11 might diminish some of the opposition from the community?

12 MS. DOBBINS: That's correct.

13 CHAIRPERSON GRIFFIS: It would not change the  
14 application and face. Okay.

15 MS. CURRY: May I also say, Mr. Chair, that the  
16 community has not decided that they are interested in parking.  
17 So we don't want that left on the record.

18 CHAIRPERSON GRIFFIS: Well, frankly, I imagine that  
19 I am going to have the pleasure of hearing what the community  
20 wants or doesn't want. However, I would like to know that as the  
21 ANC member representative today if you had any objection to the  
22 motion for a continuance?

23 MS. CURRY: Absolutely none.

24 CHAIRPERSON GRIFFIS: You have no objection?

25 MS. CURRY: No objection.

1 CHAIRPERSON GRIFFIS: Board Members.

2 COMMISSIONER HOOD: Mr. Chairman, I have no  
3 objection, but I would let Ms. Dobbins know that I am still kind  
4 of confused exactly what she just presented to us, because it  
5 sounded like it didn't have anything to do with it, but then it  
6 sounded like it did have something to do with it.

7 CHAIRPERSON GRIFFIS: Indeed.

8 COMMISSIONER HOOD: So I have no objection.

9 MS. DOBBINS: And we can make it very clear, Mr.  
10 Hood.

11 CHAIRPERSON GRIFFIS: Right. And I appreciate you  
12 saying that, Mr. Hood. I share that concern; however, not  
13 wanting to spend the time to get total clarity on it, if there is  
14 no objection to the continuance, I think we can also look to set  
15 this for a new date. I think there is a consensus of the board,  
16 in which case, why don't we do that now if there is anything  
17 available.

18 MS. DOBBINS: And, Mr. Chairman, I did ask for  
19 October, for a date in October.

20 SECRETARY PRUITT: For which we are very careful.  
21 I would suggest October 8th or 15th.

22 MS. DOBBINS: The 15th.

23 SECRETARY PRUITT: So that would be October 15th in  
24 the afternoon.

25 CHAIRPERSON GRIFFIS: So October 15th, 2002 and the

1 only case in the afternoon. Does the ANC has any objection to  
2 that date?

3 MS CURRY: I have no objections with that date, but  
4 I, too, am a bit confused. What i hear here are two  
5 applications.

6 CHAIRPERSON GRIFFIS: Right.

7 MS. CURRY: One to upgrade the numbers, and one for  
8 the additional properties; is that correct?

9 MS. DOBBINS: That's correct.

10 MS. CURRY: Okay. Then I am straight.

11 CHAIRPERSON GRIFFIS: Fabulous. Good. We will see  
12 you all in October, if not before.

13 MS. CURRY: Thank you.

14 MS. DOBBINS: Thank you.

15 CHAIRPERSON GRIFFIS: Next.

16 COMMISSIONER HOOD: Mr. Chairman, for the record,  
17 the Zoning Commission Member that will be sitting on this next  
18 case that you will be calling will be reading the record, and I  
19 will be not participating. Thank you.

20 MEMBER LEVY: Mr. Chair.

21 CHAIRPERSON GRIFFIS: Yes, Mr. Levy.

22 MEMBER LEVY: As I have already announced, this is  
23 my last day on the Board.

24 CHAIRPERSON GRIFFIS: Indeed.

25 MEMBER LEVY: And then this case will be in

1 progress and will be continuing, and I also won't be sitting on  
2 this case.

3 CHAIRPERSON GRIFFIS: This is where most people get  
4 nervous, but we will be continuing this afternoon, although  
5 short-staffed. We will have a quorum of three, and we do have  
6 the zoning commission member that will be reading the case, and  
7 we anticipate having a new member, although we hate to see Mr.  
8 Levy go.

9 We know that our new and able member from the  
10 National Capital Planning Commission will be appointed shortly as  
11 soon as the signature is on, and depending on the schedule of  
12 this case, we will have the new member reading the record, and  
13 then deliberating on this case.

14 So, Mr. Levy, we thank you for your service as  
15 indicated this morning, and we will see you at the bar in a  
16 couple of hours, and Mr. Hood, we will catch up with you later.

17 MEMBER LEVY: Thank you.

18 CHAIRPERSON GRIFFIS: Okay. I think we are ready  
19 to call the next and last case in the afternoon.

20 MS. BAILEY: Application Number 16852, of St.  
21 Patrick's Episcopal Day School, pursuant to 11 DCMR 3104.1, for a  
22 special exception to allow a private school having 60 students,  
23 grades 7 through 9, under section 206, in an R-1-B District at  
24 premises 4925 MacArthur Boulevard, N.W., Square 1393, Lot 823.

25 All those persons who were not sworn previously and

1 who will be testifying today, please stand.

2 (The witnesses were sworn.)

3 MR. FINNEY: Mr. Chair, I am going to be  
4 accompanied by Eleanor Roberts Lewis, who is ANC Commissioner of  
5 3-D.

6 CHAIRPERSON GRIFFIS: All right. Did you have  
7 something that you wanted to bring up as a preliminary matter,  
8 and if so, can you just speak into the microphone?

9 MR. FINNEY: Yes.

10 CHAIRPERSON GRIFFIS: And I am going to have you  
11 introduce yourself for the record and for today's hearing.

12 MR. FINNEY: John Finney, ANC-3D, Chair, and I only  
13 stood up to introduce Ms. Lewis, and for you to realize that she  
14 was going to assist me in representing ANC-3D in this case.

15 CHAIRPERSON GRIFFIS: Very good. Thank you.

16 SECRETARY PRUITT: Mr. Chair, just for a refresher,  
17 it has been a while since we had the last hearing, which was  
18 April 16th. At the end of the hearing, we ended with cross  
19 examination of the applicant by parties. We can either pick up  
20 with the Board's cross-examination or you could also go into the  
21 OP report, and ANC, and then cross-examination.

22 It is still to be determined, and I do have a  
23 question. Parties in opposition have an hour and 15 minutes to  
24 make their case, and I know that there are three people  
25 representing various parties. Have you determined how you are

1 going to break up your hour and 15 minutes, and who will be  
2 speaking for you? Could you please come forward?

3 UNIDENTIFIED PARTY: I believe that is not correct,  
4 Ms. Pruitt. The only person that we cross-examined was Mrs.  
5 Bradley and she had to leave, and we didn't cross-examine any of  
6 the other applicant's witnesses.

7 SECRETARY PRUITT: That's right. Excuse me, you're  
8 right. I stand corrected on that.

9 MS. FELDMAN: : And you do have an order, and we  
10 are not sure if we don't get to it today and other things come  
11 up, we might need to change the order.

12 SECRETARY PRUITT: But you have to work within our  
13 hour and 15 minute time frame.

14 MS. FELDMAN: Yes, we know that. Thank you very  
15 much.

16 CHAIRPERSON GRIFFIS: Okay. So for clarification,  
17 what we are looking at, we are actually looking at cross-  
18 examination at this point of the head of the school, the project  
19 architect, the traffic engineer, the sound consultant, and --  
20 yes, sir?

21 MR. LOVENDUSKY: Michael Lovendusky, a party  
22 opponent. You may recall that we were cross-examining Ms.  
23 Katherine Bradley at the end of our first meeting on April 16th.  
24 Mrs. Bradley did not think she was going to be available to be  
25 here today, but in fact she is here today, and the parties in

1 opposition were officially notified by counsel for the applicant  
2 of that fact yesterday.

3 Last week, Mrs. Bradley communicated by telephone  
4 to me an important answer to questions that had been put to her  
5 in my cross-examination on April 16th. I would like to establish  
6 the information that she provided to me by telephone for the  
7 record, and would ask that I be allowed to establish that with an  
8 examination of her continuing at this time.

9 And then I suppose I would have a secondary  
10 question also communicated by counsel for the applicant, since  
11 April 16th, was a revised list of the conditions. You will  
12 recall that I was working through the conditions with Mrs.  
13 Bradley to ascertain if there were particular information about  
14 the conditions that she was especially suited to answer.

15 In fact, I did not --

16 CHAIRPERSON GRIFFIS: Let me just interrupt you,  
17 because you are talking about the conditions, and that was from  
18 the agreement of the school by the neighbors, and I believe last  
19 that we left off there was certain neighbors that had signed it,  
20 and others were --

21 MR. LOVENDUSKY: No, I am referring to the proposed  
22 conditions for occupancy of 4925 MacArthur Boulevard by St.  
23 Patrick's School, Grades 7, 8 and 9. It is now an amended list  
24 of 18 proposed conditions and you recall that I had inquired of  
25 about 10 of those conditions, and did not have the complete list,

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1 and did not have the amended list on April 16th, and so with the  
2 Board's indulgence, I do have some questions about some of the  
3 new improved conditions being proffered by the applicant.

4 SECRETARY PRUITT: Mr. Chair, just for  
5 clarification, at the end of the hearing, the Board requested  
6 that the applicant serve on all parties revised traffic plan and  
7 information on the car pool, along with the revised conditions,  
8 and a new noise report.

9 And all of those to my understanding have been  
10 filed, and they are in our file and have been served on the  
11 parties. So that may be part of the information that you are  
12 talking about.

13 MR. LOVENDUSKY: Yes.

14 CHAIRPERSON GRIFFIS: All right. And so what you  
15 are asking is whether you can cross-examine then those proposed  
16 conditions?

17 MR. LOVENDUSKY: Secondly. The preliminary  
18 thing that I would hope to do is to elicit the information that  
19 Mrs. Bradley offered to me telephonically last week.

20 CHAIRPERSON GRIFFIS: And you want to elicit that  
21 with cross-examination?

22 MR. LOVENDUSKY: Yes.

23 CHAIRPERSON GRIFFIS: Is that possibly the best way  
24 to do that?

25 MS. SANSONE: Mr. Chairman, with the applicant's

1 permission, it may be the most efficient way to do that if the  
2 applicant agrees.

3 CHAIRPERSON GRIFFIS: Is there an objection by the  
4 applicant? Well, signifying no objection, why don't we pick up  
5 at that point then. What I am going to do is have everyone  
6 introduce themselves again who is sitting at the table so that  
7 the Board might be familiar and the record will be full. Why  
8 don't we start on this end.

9 MR. HARVEY: I am Scott Harvey from PolySonics,  
10 addressing issues of noise.

11 MR. WELLS: Marty Wells, Wells and Associates,  
12 Traffic Engineer.

13 MR. BARRETT: Peter Barrett, Head of School, St.  
14 Patrick's Episcopal Day School.

15 MS. BRADLEY: Katherine Bradley, Chair of the Board  
16 of Trustees, St. Patrick's Episcopal Day School.

17 MS. PRINCE: Allison Prince, with Shaw-Pittman,  
18 Counsel for the applicant.

19 MR. KONAPELSKY: David Konapelsky, architect.

20 CHAIRPERSON GRIFFIS: Mr. Lovendusky, you indicated  
21 that you wanted to cross, in terms of a telephone conversation?

22 MR. LOVENDUSKY: Yes, thank you, Mr. Chairman.  
23 Good afternoon, Mrs. Bradley.

24 MS. BRADLEY: Hello, Michael.

25 MR. LOVENDUSKY: In our discussion on April 16th, I

1 had asked questions -- in our discussion of April 16th, we had  
2 begun reviewing the complexity of the proposed conditions offered  
3 by the school, and the complicated plan by which the special  
4 exception might be granted, and the plan, and including, for  
5 example, active participation and use, and relation of the White  
6 Haven campus to the activities of the 4925 MacArthur Boulevard  
7 campus.

8 And in the course of those examinations, it became  
9 obvious that the record of compliance by the school with the  
10 numerous existing BZA orders was relevant to the ability of the  
11 nearby and adjoining neighbors to have any competence in the  
12 conditions that are being produced on a going forward basis.

13 At the time of April 16th, you could not recall any  
14 incidents where the school was not in compliance with the  
15 conditions or the BZA orders. But last week you communicated to  
16 me a finding that was relevant to that question. Could you share  
17 with the Board your findings, please?

18 MS. BRADLEY: Yes, of course. And again I  
19 apologize for any disruption that I caused last month. I was  
20 able to return to the city today for this hearing.

21 Mr. Lovendusky, I called you because I had wanted  
22 to research an event that took place in 1999 to see if in fact it  
23 was relevant information that should have been part of my answer  
24 to you on April 16th, and I am not sure whether it is relevant,  
25 but I wanted you to have the information in any case.

1           In 1999, head of school Peter Barrett, director of  
2 the church, Betty McQuarter, and I, went to visit the Cohen  
3 family who lived directly behind the school. We were about to  
4 start summer construction of the parking places, and the new  
5 nursery play ground, and we wanted them to know what we were  
6 doing.

7           And we had a very cordial meeting with them, during  
8 which they said sometime in the past you all were supposed to put  
9 in trees for us and it never happened, to which we said tell us  
10 exactly what you want, and we will do it. In our knowledge,  
11 there had never been any complaint or any request while Peter had  
12 been the head of the school, or while I had been on the board of  
13 trustees, and I was not board chair at that time when we  
14 conducted that visit.

15           So within I believe 24 hours, we had a tree expert  
16 there asking them what kind of trees they wanted along the shared  
17 property line, and I believe within a matter of weeks we had new  
18 trees installed, which they were very happy with.

19           Allison subsequently went and did some research for  
20 me and in fact there was something in the 1990 order, or '83,  
21 excuse me, 1983 order, which said that we would need to submit a  
22 landscape plan that the Cohens would approve.

23           And I don't know why it wasn't done, but as soon as  
24 it was called to our attention, we complied and complied very  
25 quickly.

1 MR. LOVENDUSKY: So if I can get that right then.  
2 With regard to BZA order 14009, and which was entered by the  
3 Board in 1983, there had been a condition that there would be a  
4 provision by the school of a landscaping plan that would include  
5 plantings that would buffer the neighboring properties to the  
6 school, and that that condition was not fulfilled until what  
7 year?

8 MS. BRADLEY: 1999.

9 MR. LOVENDUSKY: 1999. Thank you. Now, as I  
10 understand from our telephone call, that is the only condition or  
11 order that your research indicated that the school had not  
12 complied with?

13 MS. BRADLEY: That was the only thing that I have  
14 been involved with that came to my mind that needed more  
15 research. If there is something else that you know of, I would  
16 be happy to address that.

17 MR. LOVENDUSKY: Very good. I will. And in the  
18 same order, BZA order 14009, condition three of that particular  
19 order addressed the faculty and staff of St. Patrick's, and it  
20 limited the faculty and staff to 48. Do you recall that being  
21 correct?

22 MS. BRADLEY: I actually have never seen the 1983  
23 order.

24 MR. LOVENDUSKY: Well, I will represent to the  
25 Board that that is in fact provided for by BZA Order 14009,

1 Condition Number 3, issued in 1983. What is the current faculty  
2 and staff of St. Patrick's?

3 MS. BRADLEY: Shouldn't Mr. Barrett answer that?

4 MR. LOVENDUSKY: If so, then I will defer that  
5 question until later. Very good. So then you are not familiar  
6 with the various orders and conditions over the decades relating  
7 to the faculty and staff sides of St. Patrick's?

8 MS. BRADLEY: I am not intimately involved with  
9 that. I know where we are now, and I know where we have been  
10 since I have been on the Board of Trustees.

11 MR. LOVENDUSKY: Very good. Are you familiar with  
12 the St. Patrick's campus master plan that was represented to the  
13 Board of Zoning Adjustments in 1999?

14 MS. BRADLEY: Yes, I am.

15 MR. LOVENDUSKY: Are you aware of how many  
16 conditions applied to that particular BZA order 15372?

17 MS. BRADLEY: I think I would like to look at it.  
18 I believe we have it here. Do you have in front of you how many  
19 conditions?

20 MR. LOVENDUSKY: No, I do not. Well, unless it was  
21 handed to me, but I am not prepared to. I would rather rely upon  
22 your understanding of it.

23 MS. BRADLEY: There were conditions.

24 MR. LOVENDUSKY: And do you have that order in your  
25 records before you?

1 MS. BRADLEY: Michael, can we look at your copy?

2 MR. LOVENDUSKY: I do not have a copy of that  
3 order.

4 CHAIRPERSON GRIFFIS: Has a copy been submitted  
5 into the record yet?

6 MR. LOVENDUSKY: Not by party opponent Lovendusky.  
7 I am not sure of my colleague party opponents insertion in the  
8 record, but we have not put on our direct case yet either.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. LOVENDUSKY: I take it then that the orders and  
11 conditions that have ostensibly governed the school's activities  
12 for the past decades, and which would be relevant to the current  
13 application because of the involvement of the White Haven campus,  
14 have not been submitted by the applicant as part of its record?

15 MS. BRADLEY: All of the previous orders governing,  
16 I don't believe we submitted all of the previous orders in our  
17 prehearing statement. They are part of the Board's records.

18 MR. LOVENDUSKY: And so, Mr. Chairman, is it  
19 appropriate then for the parties to this current application to  
20 rely upon the records of the Board as being recognized as a  
21 matter of law being applicable, or do we have to actually --

22 CHAIRPERSON GRIFFIS: Well, I think it is  
23 applicability that would come more into play perhaps when you are  
24 putting on your case. I am not sure how far and deep you want to  
25 go with cross-examination on previous orders that actually I

1 don't recall, and I was just checking my notes, weren't testified  
2 to.

3 So if we get into the orders and you want to draw  
4 us to a direct note to those, I think it would be appropriate  
5 perhaps in your own case.

6 MR. LOVENDUSKY: Okay. Thank you. Plus, we will  
7 have copies by then, too.

8 MS. SANSONE: Mr. Chairman, the Board's rules do  
9 not provide for the taking of official notice of other -- even  
10 related Board orders, and so if the parties want them to be  
11 included in the record, they will need to provide us with copies  
12 for the record.

13 MR. LOVENDUSKY: Thank you very much for that  
14 clarification. Now, Mrs. Bradley, in the application for the  
15 special exception, on page 2, you do have reference to the 1961  
16 BZA approval of the school for the children of the German  
17 Embassy. I do have some questions of the research conducted on  
18 that, and I don't know whether I should address them to you or  
19 Mr. Barrett.

20 MS. BRADLEY: If they are technical questions, I  
21 might ask our attorney, Allison Prince, if they are technical  
22 questions about the BZA's prior order on the German School.

23 MR. LOVENDUSKY: Well, obviously someone had to  
24 research the information of that particular order to include it  
25 in your application. So I don't know who would be best situated

1 to answer the circumstances of that particular application.

2 MS. PRINCE: I am familiar with the application.

3 MR. LOVENDUSKY: Thank you. Ms. Prince, you  
4 indicated in your application that in 1961 that the BZA approved  
5 the use of the 4925 MacArthur site as an elementary school. Do  
6 you recall for how many students it was approved for in 1961?

7 MS. PRINCE: I believe 25, but I am going by  
8 memory.

9 MR. LOVENDUSKY: That's correct. I believe it is  
10 25 as well. And was that a temporary or permanent application,  
11 an application for a permanent or a temporary special exception?

12 MS. PRINCE: I don't recall. I do recall that the  
13 school immediately exceeded the enrollment and it crept up to 48,  
14 and was forced therefore to go back to the Board and sought an  
15 increase in 75, and simultaneously sought permission to construct  
16 a large structure on the property.

17 MR. LOVENDUSKY: And was that approved?

18 MS. PRINCE: That was not approved.

19 MR. LOVENDUSKY: And do you recall what year that  
20 was disapproved?

21 MS. PRINCE: I believe it was '62 or '63.

22 MR. LOVENDUSKY: That is my recollection as well.  
23 Do you recall whether the neighbors objected to the expansion of  
24 the school about 25 students at that time?

25 MS. PRINCE: They objected strenuously,

1 particularly because a large structure was being constructed on  
2 the open space and within 11 feet of the Scripps and Wright  
3 property line.

4 MR. LOVENDUSKY: A structure that changed the  
5 footprint of the building?

6 MS. PRINCE: Totally.

7 MR. LOVENDUSKY: Thank you. If I might then, Mr.  
8 Chairman, I would like to turn to the amended conditions that  
9 have been offered, the amended proposed conditions that have been  
10 offered since the April 16th hearing.

11 And you will recall at that time that I was asking  
12 Mrs. Bradley questions about those particular -- about the  
13 elements of those proposed conditions, and I do have questions  
14 about the new proposed conditions.

15 If I could bring your attention to the proposed  
16 conditions at Item number 9. They have been amended to indicate  
17 that there shall be no summer school program at the subject  
18 property. Does the school or its leadership distinguish between  
19 summer school programs and summer camps?

20 MS. BRADLEY: Are you asking therefore would we  
21 plan to have a summer camp?

22 MR. LOVENDUSKY: Implicit in your answer is that  
23 there is a difference between the camp and a school program?

24 MS. BRADLEY: I think we are saying any summer  
25 school program, any summer camp, or any summer school program,

1 will not occur at 4925 MacArthur.

2 MR. LOVENDUSKY: So you would be willing to amend  
3 the proposed condition to reflect that that does address camps  
4 and other programs, in addition to summer school?

5 MS. BRADLEY: I think we would be happy; no summer  
6 school or camp program.

7 MR. LOVENDUSKY: Thank you. With regard to the  
8 proposed condition number 10, you indicate that the site contains  
9 15 parking spaces, but tandem parking shall be permitted. What  
10 exactly -- is tandem parking part of the 15 spaces, or is that in  
11 addition to the 15 spaces?

12 MS. BRADLEY: There has been real concern from some  
13 neighbors that, for instance, the D.C. Government wanted a fire  
14 lane that that might make it less than 15 spaces? There are ways  
15 that you can reconfigure that parking space, even with a fire  
16 lane there, to have certainly 15 spaces.

17 But tandem parking allows you to have additional  
18 cars in the lot should you need it for some overflow purpose.

19 MR. LOVENDUSKY: So tandem parking is in addition  
20 to the 15 parking spaces. And do I understand then that the  
21 additional parking spaces that would be tandem spaces would  
22 actually block in the cars in the parking spaces?

23 MS. BRADLEY: If you needed it for some kind of  
24 overflow, yes. So in other words, some of the concerns about  
25 what if the lawnmower guy arrives right when all the part-time

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1 teachers are there, which won't happen. But some of those  
2 concerns are really completely adequately handled by the fact  
3 that you can for a brief period of time park other cars in there  
4 in an tandem way.

5 MR. LOVENDUSKY: What is the emergency vehicles  
6 arrive when the car lot is parked full with tandem parking?

7 MS. BRADLEY: The tandem parking is at the back.  
8 So if emergency vehicles needed to come into that driveway, that  
9 driveway would still be clear.

10 MR. LOVENDUSKY: Was the representation of the use  
11 of tandem parking and its implications for safety communicated to  
12 the Department of Transportation and Department of Planning?

13 MS. BRADLEY: I believe that they have reviewed  
14 this.

15 MR. LOVENDUSKY: Thank you. With regard to  
16 proposed condition number 15, a new condition, you indicate that  
17 expansion of the building will be limited to the area necessary  
18 for access as shown in the plans designated in the record as  
19 exhibit yet to be numbered.

20 MS. BRADLEY: I don't know why it is not numbered.  
21 It is just a mistake. But it is the plans that you have seen.  
22 It is the plans here put up on the bulletin board.

23 MR. LOVENDUSKY: Do I understand this proposed  
24 condition to be a change from the proposal to respect the current  
25 footprint of the building?

1 MR. LOVENDUSKY: No. Our proposed expansion, which  
2 is building a fire safety and handicap access wing on to the  
3 building, does change the footprint of the building, and we are  
4 saying that we will not expand the area of the building beyond  
5 that.

6 MR. LOVENDUSKY: Beyond the footprint of the  
7 building beyond that.

8 MS. BRADLEY: I guess I am not quite following  
9 where you are going with this. I think we have circulated plans  
10 fully as to how the building changes with our elevator and fire  
11 stair addition.

12 MR. LOVENDUSKY: Yes, the life safety addition.

13 MS. BRADLEY: And that is what we are referring to  
14 here, to the area necessary for access.

15 MR. LOVENDUSKY: What about the enclosure of the  
16 porch on the south side of the building?

17 MS. BRADLEY: That is included in all of the plans  
18 that we have shown everybody.

19 MR. LOVENDUSKY: That's right, but that is not  
20 considered by the applicant as a change in the footprint of the  
21 building?

22 MS. BRADLEY: No, it is not. It is an extension of  
23 an existing porch, rebuilding the porch underneath it, and it is  
24 not very attractive in extending it.

25 MR. LOVENDUSKY: And so by the school's logic, the

1 construction of a 5th and 6th story to the building would not  
2 change the footprint of the building?

3 MS. BRADLEY: I think that would not be legal.

4 MR. LOVENDUSKY: With regard to proposed condition  
5 number 18, the suggestion is that the initial enrollment will be  
6 only up for 40 students, rather than the 60 that has been  
7 otherwise requested. And the proposed condition goes on and I  
8 will propose not to read it into the record.

9 But in other words, you are proposing a trial  
10 period of one year at a reduced number of students. Is that  
11 correct?

12 MS. BRADLEY: Yes.

13 MR. LOVENDUSKY: In fact, do you have 60 students  
14 that would be matriculating at that particular campus this year  
15 should you be granted the exception?

16 MS. BRADLEY: No, we do not.

17 MR. LOVENDUSKY: Do you have 40?

18 MS. BRADLEY: No, not even that.

19 MR. LOVENDUSKY: So this would not necessarily be  
20 considered a concession. Under the circumstances, would you then  
21 be also amending your application and requesting a temporary  
22 exception pending the trial period?

23 MS. BRADLEY: I am not following you. I don't  
24 believe so.

25 MR. LOVENDUSKY: Well, you are suggesting that

1 because of the complexity of your plans, and the involvement of  
2 the Whitehaven Campus, and the opposition of the adjoining and  
3 nearby neighbors that you would be willing to try a trial period  
4 of a one year test of up to only 40 students.

5 But if that is in fact the trial test, why not  
6 apply for simply a temporary exception to the zoning rules?

7 CHAIRPERSON GRIFFIS: Is there such a thing?

8 MR. LOVENDUSKY: I believe that is what was granted  
9 in 1961 to the German Embassy.

10 CHAIRPERSON GRIFFIS: I have never known of getting  
11 a temporary. We have special exceptions that have time limits to  
12 them, but that doesn't necessarily make it temporary. Am I  
13 mistaken in what the past --

14 MS. PRINCE: It is possible for the Board to grant  
15 a special exception for a term of years, and that is often done  
16 in parking lots. It is something that is rarely done in a  
17 circumstance such as ours, where there are extensive upgrades to  
18 the building that are required in order to establish the use.

19 MR. LOVENDUSKY: Yes.

20 MR. WELLS: Well, in my mind, I have never thought  
21 of that as necessarily temporary, but I could see your point. So  
22 now your question is whether they would entertain making it a  
23 year conditioned on 40 students?

24 MR. LOVENDUSKY: Yes.

25 MS. BRADLEY: Well, let me first say that I believe

1 that is a pretty serious concession, because we cannot move above  
2 40 students. The way the order would be written is that unless  
3 we fully showed that our plan was working.

4 So the fact that we would only have been at that  
5 enrollment anyway, I think that is a little bit irrelevant. The  
6 teeth in this condition is that we cannot move above it unless we  
7 show that our plan is working.

8 MR. LOVENDUSKY: Well, I mean, just looking at  
9 history, a part of the submission since April 16th is a detailed  
10 car pool initiative, and yet on the record of April 16th, you  
11 have already established the failure of St. Patrick's car pool.

12 MS. BRADLEY: No, as we have always stated before,  
13 there has been no obligation on St. Patrick's to car pool to  
14 date. We are creating that car pool initiative now really in  
15 response to community concerns that not enough people were car  
16 pooling.

17 MR. LOVENDUSKY: But since the complexity of the  
18 application and the involvement of the Whitehaven campus, and a  
19 fancy new car pooling plant, is all part of the success of the  
20 application, would it not be appropriate to simply ask for a  
21 temporary application.

22 MS. BRADLEY: No, I think that putting \$750,000  
23 into that building to create the handicap access and the fire  
24 safety upgrades is not fair that it is tantamount to not  
25 approving the application at all.

1 MR. LOVENDUSKY: Do you believe that the investment  
2 of the \$750,000 for the life safety access unit on the east side  
3 of the property will change the nature of the building, such that  
4 it will not be a residential building?

5 MS. BRADLEY: As I have stated before, it is not a  
6 residential building the way that it is now. It would need  
7 substantial work to become a private home right now. It has been  
8 a school for 42 years.

9 MR. LOVENDUSKY: If you were adding a commercial  
10 sized life safety unit, will that not forever make the building a  
11 commercial building?

12 MS. BRADLEY: No, if someone wanted to change it  
13 back, they could take it down.

14 MR. LOVENDUSKY: I have no further questions for  
15 Mrs. Bradley.

16 CHAIRPERSON GRIFFIS: Thank you. Did the ANC or  
17 the other parties have cross-examination on the new testimony  
18 that was just presented? If we want to take that as testimony,  
19 and I guess we probably should, although it was elicited in  
20 cross-examination?

21 MS. FELDMAN: I am Nancy Feldman for Neighbors  
22 United, and I don't know if this would be within the scope of  
23 what you would permit. I did have questions on the staff cap  
24 that was initially looked at, and I do have copies for everybody  
25 for previous BZA orders if that would be sufficient to bring this

1 question to the table right now.

2 CHAIRPERSON GRIFFIS: Why don't we focus on whether  
3 you have any direct or cross-examination of any of the  
4 information of any of the information that was just brought up.

5 MS. FELDMAN: Well, Mrs. Bradley testified that the  
6 only BZA order that she is aware of that was violated was the  
7 1983 landscaping.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. FELDMAN: And we believe that another order was  
10 -- another provision in an order was violated.

11 CHAIRPERSON GRIFFIS: Frankly, I think as I said, I  
12 think that is going to be much more -- well, it will probably  
13 have more clarity and impact if you present it within your case  
14 rather than trying to slip it in and having her trying to guess  
15 what the date is.

16 If you are going to try and elicit other BZA orders  
17 that they are in non-compliance through this cross-examination, I  
18 think it may be more efficient if you do it in your own  
19 testimony.

20 MS. FELDMAN: I respect that, sir, but actually if  
21 we do it in direct testimony, what it will show is here is an  
22 order, and here is an order, here is testimony, here is this map,  
23 and they won't get a chance to say we didn't mean that, or that  
24 is out of context, or whatever.

25 CHAIRPERSON GRIFFIS: But you are assuming that

1 they wouldn't want to address it, yes.

2 MS. FELDMAN: In this way, we can ask them the  
3 question and they could respond to it either way, she or counsel.

4 So that is the only reason I thought that this would be more --  
5 perhaps more educational and do it this way. But we can just  
6 present it flatly in direct testimony if you would prefer that.

7 CHAIRPERSON GRIFFIS: All right. Let's move ahead  
8 if there is no objection.

9 MS. PRINCE: There is no objection.

10 CHAIRPERSON GRIFFIS: Any of the parties object?  
11 No seeing any objection.

12 MS. FELDMAN: I would like to present several  
13 documents dealing with the 1990 BZA order permitting St.  
14 Patrick's to expand.

15 CHAIRPERSON GRIFFIS: Why don't you just set it in  
16 the correct context. This is cross-examination and so set it  
17 into a question and then we can kind of row with it here.

18 MS. FELDMAN: Okay.

19 CHAIRPERSON GRIFFIS: And how you get that in is  
20 yet to be seen.

21 MS. FELDMAN: Yes. Could you please -- this is  
22 kind of hard to see, Mrs. Bradley, across the table here. Could  
23 you please look at this document -- and here is a counsel copy,  
24 and here are copies for the Board Members. This is a statement  
25 of the applicant in regard to the 1990 BZA order. This is

1 testimony and this is the order.

2 You will see in the statement of the applicant on  
3 page 5, and actually the sentence begins on the bottom of page 4,  
4 and where the school is requesting increases, and they ask for an  
5 increase in the enrollment of students, and then it says the  
6 number of faculty and staff will not exceed 60. That is the  
7 request for enlargement of faculty and staff.

8 And then in the testimony, which is the next  
9 document, on the second page, we put on the first page to  
10 identify the document, and on the second page, it is page 441 of  
11 the testimony, it says permitted staff number of 60.

12 So you can see the staff, and faculty and staff are  
13 used interchangeably. So then in the summary order it said the  
14 maximum number of students of 440 and 60 staff. So throughout  
15 the applicant has been asking for faculty and staff and it is  
16 just summarized as staff, and it is our understanding that Mrs.  
17 Bradley and maybe Mr. Barrett needs to address this, that in fact  
18 instead of 60 that you have approximately 180 full-time and 20  
19 part-time.

20 MR. BARRETT: We have full-time equivalency of 80  
21 for faculty and staff at this time.

22 MS. FELDMAN: Well, we had in Mr. Wells' report, it  
23 said 80 full-time, and 20 part-time, and we assume they got that  
24 from you?

25 MR. BARRETT: I would be pleased to break that down

1 further. That because the traffic analysis includes the church  
2 as well, the numbers are slightly higher.

3 We currently have 50 full-time faculty members, 15  
4 part-time faculty members, 21 members of the administration, and  
5 administrative staff. Some are part-time and some are full-time.  
6 And four members of the maintenance staff.

7 So that is desegregating it, but all together, the  
8 school has full-time equivalencies of 84 faculty and staff  
9 members currently.

10 MS. FELDMAN: So that is materially in excess of 60  
11 is it not?

12 MR. BARRETT: That's correct.

13 MS. PRINCE: Thank you. Material in excess of 60  
14 faculty and staff, but as I said in 1999 before this Board, the  
15 Whitehaven Parkway order includes a staff cap and not a faculty  
16 cap. I brought that to the Board's attention in 1999 at the time  
17 of the gym case, which was not opposed by ANC-3D, or ANC-2E.

18 I handled the 1990 case, which includes the staff  
19 cap of 60. The school is not now and never has been in violation  
20 of any cap on faculty or staff.

21 MS. FELDMAN: Excuse me, you are the testifier in  
22 this --

23 CHAIRPERSON GRIFFIS: I think I can get to the  
24 bottom of that. Did you just want to focus that as a redirect of  
25 the witnesses in that question and ask them?

1 MS. PRINCE: I can ask it as a redirect, or I can  
2 present it as information that clarifies the order itself since I  
3 handled the case, and the order seems to require clarification.

4 MS. FELDMAN: Mr. Prince, you were the testifier in  
5 that case and specifically said faculty and staff, as we hand it  
6 into you right now.

7 MS. PRINCE: I said faculty and staff in 1990. The  
8 written order that was produced by the Board of Zoning Adjustment  
9 in 1990 contains a staff cap only. I brought that to the Board's  
10 attention in 1999. At that time, the Board again did not impose  
11 a faculty cap.

12 Regardless, there has in effect been a faculty cap  
13 all these years because there is a cap on faculty in the zoning  
14 regulations in the parking requirements. There must be two  
15 parking spaces for every three faculty and staff.

16 So regardless of whether the 1990 order caps  
17 faculty, the zoning regulations do, and the school at all times  
18 has been in compliance with the order and the zoning regulations.

19 MS. FELDMAN: You are seriously maintaining here  
20 that you asked for 60 faculty and staff, and because they  
21 summarized that in the word staff of 60 that suddenly faculty  
22 weren't covered?

23 MS. PRINCE: Faculty absolutely were covered.  
24 Faculty were covered in the two parking spaces for every three  
25 faculty and staff portion of the zoning regulations.

1                   We didn't get a free ride on parking as a result of  
2 the order's failure to include faculty. We did not get a free  
3 ride. We still have to provide two parking spaces for every  
4 three faculty and staff.

5                   MS. FELDMAN: That was in 1999, but in 1990, you  
6 specifically asked for a cap of 60 on faculty and staff and that  
7 is what you got, and you can't possibly say that just because  
8 they called it staff and they didn't say faculty again that they  
9 somehow gave you a free ride on faculty in 1990, and that was  
10 only literally for the non-faculty staff.

11 Your words are right there, and how can you possibly say that?

12                   MS. PRINCE: There is no free ride. There are no  
13 free rides in the parking requirements in the zoning regulations.  
14 They could not be more clearer.

15                   MS. FELDMAN: 1990 is not the parking regulations.  
16 1990 is when you asked for expansion of persons; students, and  
17 faculty, and staff; 1990, not 1999.

18                   MS. PRINCE: The bottom line is that the 1990 order  
19 has a staff cap and the zoning regulations capped faculty and  
20 staff by virtue of the parking requirements. We have always  
21 complied with the order, and we have always complied with the  
22 zoning regulations.

23                   There has been no zoning enforcement actions. This  
24 matter is 12 years old. If it was of such concern to the  
25 community, they could have raised it in '99. Instead, they did

1 not oppose the application in 1999.

2 CHAIRPERSON GRIFFIS: But the 1999 order is what is  
3 relevant currently, correct?

4 MS. FELDMAN: No, excuse me, Mr. Chairman. It  
5 isn't. The 1999 order didn't address increase in persons at all.  
6 It was only expansion of facilities. So the 1990 order of  
7 staff, which clearly includes faculty and other persons who are  
8 on staff, is still the relevant cap, and we submit to you that it  
9 has been very substantially violated.

10 MS. PRINCE: The 1999 order governs the gym, and at  
11 the time of the gym approval, we indicated that we were not  
12 seeking any changes to conditions governing the school on the  
13 Whitehaven Campus, but merely adding a number of conditions that  
14 would control the use of the gym.

15 At that time I brought it to the Board's attention  
16 that the school had a staff cap only and not a faculty cap. The  
17 parking, as I have said numerous times, the regulations  
18 themselves in essence create a cap on faculty.

19 We weren't looking for a free ride, but I brought  
20 it to the Board's attention that we only had a staff cap. What  
21 did the Board do? They maintained the old condition. They  
22 didn't take that opportunity to change it to a faculty and staff  
23 cap.

24 Had they done so, we would have had ample parking  
25 to address the number of faculty and staff that we had at that

1 time, and that we currently have.

2 CHAIRPERSON GRIFFIS: Okay.

3 MS. FELDMAN: I think we will just stand on the  
4 record at this point.

5 CHAIRPERSON GRIFFIS: Right. Well, I think you  
6 have one specific point that you were trying to make with that.

7 MS. FELDMAN: That's right.

8 CHAIRPERSON GRIFFIS: But I think it has been made.  
9 And clearly the previous orders were the 4700 Whitehaven  
10 Parkway, Northwest property, and an entirely different Board, and  
11 so I can't take credit or concern of what happened in the past.

12 However, let's move on and continue our focus on  
13 4925 MacArthur Boulevard, indeed. Yes, Mr. Finney, ANC  
14 representative.

15 MR. FINNEY: I have on question for Mrs. Bradley.

16 CHAIRPERSON GRIFFIS: We would love to hear it,  
17 sir.

18 MR. FINNEY: Thank you, sir. John Finney, Chair of  
19 ANC-3D. Mrs. Bradley, you may remember at the last meeting came  
20 to an end that Mr. Etherly suggested that the parties to try to  
21 reach some solution rather than having the Board impose an order.

22 And in light of that recommendation, I would like  
23 to ask you have you explored alternative sites to the building at  
24 4925 MacArthur Boulevard, and sites that might be less intrusive  
25 on a residential neighborhood, and more contiguous to your

1 Whitehaven Campus?

2 MS. BRADLEY: The answer is a partial yes. We  
3 explored starting about a year ago a site that is more  
4 contiguous, although I don't want to accept your definition here  
5 that 4925 MacArthur being intrusive into a residential  
6 neighborhood. We explored starting a good year ago by buying the  
7 additional two properties on Whitehaven Parkway.

8 That we look at as a long term issue only. We own  
9 one and there are three properties across the street from the  
10 school and closer to our Lady of Victory Church and School. We  
11 own the middle one, and have for several years.

12 We maintain it as a rental property and it carries  
13 itself, and we explored starting about a year ago the purchase of  
14 the other two. We view that as something that is going to take a  
15 long time to work out on terms and conditions, and timing that  
16 would work for those owners and for us.

17 And I think I have kept you as fully apprised as I  
18 can of our intentions on those two properties.

19 MR. FINNEY: Have you made a specific money offer  
20 on those two residences?

21 MS. BRADLEY: I have not. I believe our Treasurer  
22 has, and I believe you have maybe even more complete information  
23 than I have.

24 MR. FINNEY: Would you be surprised if you were  
25 offered \$650,000 for each residence?

1 MS. BRADLEY: That sounds about right. Those are  
2 longstanding offers now of several months, one of them at least  
3 six months ago.

4 MR. FINNEY: The letter that I have is dated April  
5 8th from your Treasurer.

6 MS. BRADLEY: I believe that is the property that  
7 is closest to Our Lady of Victory School. On the other property,  
8 when we first approached them, there was first something in  
9 writing quite a bit of time ahead of that.

10 MR. FINNEY: Would you explore the possibility of  
11 substituting that property, if you can work out a suitable  
12 agreeable price, as an alternative to the 4925 MacArthur site?

13 MS. BRADLEY: We have absolutely no assurance that  
14 that could work out, either with timing or at a price, that would  
15 make sense for our 7th and 8th grade. We absolutely are going to  
16 look at it as a long term option.

17 And if 4925 MacArthur does not workout we of course  
18 hope that that might. But that will be years in the making  
19 before those properties could be usable, and those properties, I  
20 would call the Board's attention, are right now three rental  
21 homes. One of them is owner occupied, and two are rental homes.

22  
23 We view that as being a much more serious change in  
24 zoning status, and using an existing building that is being used  
25 for educational purposes on MacArthur Boulevard, and that does

1 not need to be torn down.

2 So I think it is a much more involved thing to look  
3 at, the Whitehaven properties, and to assume that we could do a  
4 7th and 8th grade building there.

5 MR. FINNEY: Well, I realize that it is probably  
6 very complicated, but at least can you give me assurances that  
7 you will pursue that alternative?

8 MS. BRADLEY: We are going to look at every  
9 possible alternative if 4925 MacArthur does not work out.

10 MR. FINNEY: Thank you. That's all I have at this  
11 time for Mrs. Bradley. Do we now proceed to Mr. Barrett?

12 CHAIRPERSON GRIFFIS: Yes, let's figure out what we  
13 are doing here.

14 MS. BRADLEY: Mr. Finney, just one more thing, and  
15 Mr. Konapelsky is reminding me. We also have looked at the  
16 current Field School properties. So we are looking at lots of  
17 different things, and the Field School property as I understand  
18 need a huge amount of renovation to be fire code safe. And then  
19 that would call into question its zoning for a school all over  
20 again.

21 CHAIRPERSON GRIFFIS: Okay. So that would then  
22 conclude the cross-examination by all the parties of Mrs.  
23 Bradley, in which case --

24 MR. LOVENDUSKY: My wife would like to ask a few  
25 questions.

1 CHAIRPERSON GRIFFIS: Is she a party in the case?

2 MR. LOVENDUSKY: She is my wife and I am a party.

3 CHAIRPERSON GRIFFIS: I see.

4 MR. LOVENDUSKY: It is the household that is the  
5 party; is that correct?

6 CHAIRPERSON GRIFFIS: Okay. I just see a lot of  
7 faces.

8 MS. WRIGHT: I am Kathy Wright, and am a neighbor.

9 I have just two follow questions on two of the revised  
10 conditions. The first one is in regard to Point Number 10, where  
11 you say the site shall contain 15 parking places. I guess  
12 question number one there is how many or less is that than the  
13 existing number of parking places?

14 MS. BRADLEY: The way that they use it right now,  
15 they park cars all the way up the driveway along the Hoyes'  
16 fence, and I believe that is a similar number.

17 MS. WRIGHT: And with the tandem parking, if all of  
18 those tandem places were used, what would be the total number of  
19 cars parked?

20 MS. BRADLEY: Well, 15 parking spaces more than  
21 handles our needs. So that tandem requirement is only should  
22 there need to be changes due to fencing requirements or fire  
23 lanes. And I think it is really only for an overflow situation  
24 such as another truck arriving.

25 MS. WRIGHT: But in that overflow circumstance what

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1 would the total number of cars be in that tandem parking?

2 MS. BRADLEY: Our architect is saying that you  
3 could get 19.

4 MS. WRIGHT: And the second question is in regards  
5 to point number 15, where you talk about the expansion of the  
6 limited to essentially the current footprint, does that also mean  
7 that there would be no additional buildings placed anywhere else  
8 on the site?

9 MS. BRADLEY: Part of what we tried to do between  
10 the last hearing and today was to contact you, and Allison spoke  
11 to both you and your husband, and then I spoke to Sharon Hoye  
12 about the act that we were willing to include in this order, in  
13 our covenant, a covenant on the open land, which I believe in  
14 looking at this site adds a lot of value to the two contiguous  
15 properties.

16 I think you heard me stumble at one of the ANC  
17 meetings about future changes to the building, because I don't  
18 ever want to tell a school that you can't touch an existing  
19 building once it is done. But we would be willing to covenant  
20 that open land to really show both of those two contiguous  
21 neighbors that it is our intention to keep that land open.

22 MS. WRIGHT: I don't understand. How is the  
23 covenant different than the conditions that are here? Why would  
24 that not be part of the condition in point number 15?

25 MS. BRADLEY: The covenant basically that we have

1 proposed to the neighbors as it stands, gives up our right to  
2 come back to ask for more students, and it gives the neighbors a  
3 covenant.

4 We would also be willing to do that same covenant  
5 for you and for the Hoyes for the open land there.

6 MS. WRIGHT: And would that extend to the next  
7 purchaser of the property as well?

8 MS. BRADLEY: We said we would explore anything.  
9 So if that was important to you, we would do it.

10 MS. WRIGHT: Thank you.

11 CHAIRPERSON GRIFFIS: Just a quick clarification on  
12 the parking that it would establish that it was 19, and that is  
13 an additional four on the 15 that is listed, correct?

14 MS. BRADLEY: Yes.

15 CHAIRPERSON GRIFFIS: And is that a nod of the  
16 head?

17 MS. BRADLEY: Yes. In which case, I think we have  
18 that.

19 CHAIRPERSON GRIFFIS: Have I made it through all  
20 the parties then? I think my list is complete. Okay. In which  
21 case that does conclude Ms. Bradley's cross-examination, in which  
22 case we can call back the ANC, and our order was the ANC would be  
23 first, and then the Neighbors United, and then we can start with  
24 Mr. Barrett. Is there a concern?

25 MS. PRINCE: I suggest in the interest of

1 efficiency and perhaps getting the questions answered best by the  
2 best person, that that person --

3 CHAIRPERSON GRIFFIS: You can keep our panel here.

4 MS. PRINCE: Then the best person for the question  
5 can answer?

6 CHAIRPERSON GRIFFIS: That's fine. What I am going  
7 to do is have each party come up at one time to do cross-  
8 examination of the parties.

9 MS. FELDMAN: Mr. Chairman, Nancy Feldman for  
10 Neighbors United. As you recall or may recall a thousand  
11 hearings ago, in April --

12 CHAIRPERSON GRIFFIS: Don't assume.

13 MS. FELDMAN: Okay. We negotiated a manner of  
14 cross-examining here to provide for the most efficiency, and what  
15 we worked out with your permission and the board members'  
16 permission was that three of us would from Neighbors United, plus  
17 the Scripps' household, and also Michael Lovendusky would be able  
18 to cross-examine anybody.

19 But we would -- the three of us, only one of us  
20 would be able to cross-examine a particular witness. And if we  
21 just have the best person answering, then the three of us can't  
22 really do that unless you let us sit up together and when it is  
23 our particular witness, we ask a question, and then somebody else  
24 asks a question.

25 CHAIRPERSON GRIFFIS: Let me just clarify here,

1 because I think what we are doing is saying the same thing. But  
2 what I am doing is keeping this entire panel here and the parties  
3 can come up if there is expertise in your cross-examination, they  
4 can sit and ask the questions that they need to, and all of the  
5 witnesses are here to answer it.

6 MS. FELDMAN: Well, what we did based on your  
7 acceptance of our proposal here, was that each of us had selected  
8 particular witnesses to cross-examine. So, for example, I am on  
9 Mr. Barrett, but somebody else is on Marty Wells.

10 CHAIRPERSON GRIFFIS: I am not calling back the  
11 witnesses in any particular order. I am calling back the parties  
12 for cross-examination. Does that make sense?

13 MS. FELDMAN: Well, I am not sure. I mean, I  
14 thought I would just ask Peter Barrett my questions, and somebody  
15 else would ask Marty Wells their questions.

16 CHAIRPERSON GRIFFIS: I am going to ask if my court  
17 counsel is following me, because that is what is of utmost  
18 importance to me. Because I am calling back the parties to do  
19 cross-examination at this point. The ANC would be first, and  
20 then we would follow on that.

21 And then the parties can address their cross-  
22 examination of any of the witnesses that are in the panel.

23 MS. SANSONE: Mr. Chairman, I believe that  
24 procedure would work and address both the applicant's issue about  
25 trying to have it done by panel, as well as Ms. Feldman's point

1 of trying for them to divide according to which person has  
2 prepared for cross-examination.

3 You may need to make some accommodation if that  
4 doesn't work. I mean, the alternative is simply to do it witness  
5 by witness, which is the traditional method of cross-examination  
6 and not panel.

7 I mean, I know the BZA uses panel cross-  
8 examination, but in the courtroom, it is witness by witness.

9 MS. PRINCE: Can I just make this easier and  
10 withdraw my original -- if we go witness by witness and a  
11 question is asked of a witness, and it is not the right question  
12 for that witness, if we could just defer to another witness.

13 MS. FELDMAN: Sure. That's fine. If she is more  
14 comfortable witness by witness, we can do witness by witness.

15 CHAIRPERSON GRIFFIS: All right. Let's do it. It  
16 will bear itself out not to be the most efficient way though I  
17 must say, but let's go ahead with it. Then let's go to Mr.  
18 Barrett first. We are calling all the parties up right now and  
19 they will fill the table, and the -- well, I don't want to waste  
20 a lot of time with people getting up and sitting down. That is  
21 the whole point of keeping this large panel here and calling each  
22 of the parties up at the same time.

23 So if we are going to do this, if it is the  
24 understanding of the parties that they want to do witness by  
25 witness, I am going to have the entire panel sit down. I am

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1 going to have Mr. Barrett sit here and he will be cross-examined  
2 by all the parties.

3 Mr. Finney, you will conduct your questions first,  
4 and we will then move on to Neighbors United, and then we will  
5 draw the next witness up. So in order to do that, I am going to  
6 ask that we reconfigure the table at this time.

7 And while we are reconfiguring, I am going to take  
8 a three minute break.

9 (Whereupon, the hearing was recessed at 4:48 p.m.,  
10 and resumed at 5:04 p.m.)

11 CHAIRPERSON GRIFFIS: All right. Let's resume  
12 order and continue on, as we have now established what we are  
13 doing here, which is to cross-examine Mr. Barrett by the parties,  
14 and Mr. Barrett is here with us and sitting at the table.

15 And so we will start with the ANC as the  
16 established order, and will then go to Neighbors United, and we  
17 will go to Lovendusky, and Scripps and Wright will be last.

18 And we will do it in that order, and you will have  
19 one shot at cross-examination of Mr. Barrett, and we will move  
20 on, and then we will call the next witness. So, Mr. Finney,  
21 you're on.

22 MR. FINNEY: Thank you, Mr. Chair. Good afternoon,  
23 Mr. Barrett.

24 MR. BARRETT: Good afternoon, Mr. Finney.

25 MR. FINNEY: In 1999, Mr. Barrett, you told this

1 Board in seeking approval for the new buildings and gym on your  
2 Whitehaven campus that there would be no additional students, and  
3 no additional teachers, no additional cars. Can you tell me how  
4 many teachers you had in 1999 and how many you have now?

5 MR. BARRETT: I would like to provide that  
6 information for you. In the 1998/1999 school year, we had an FTE  
7 equivalence of 77.5 --

8 MR. FINNEY: It is an acronym that I don't  
9 understand. Full time equivalent; is that it?

10 MR. BARRETT: That's correct.

11 MR. FINNEY: Full time equivalent of what? Of 75?

12 MR. BARRETT: 77.5.

13 MR. FINNEY: That is faculty?

14 MR. BARRETT: That is faculty, administration, and  
15 administrative staff, and maintenance. It is all faculty and  
16 staff.

17 MR. FINNEY: That is faculty and staff?

18 MR. BARRETT: Correct.

19 MR. FINNEY: Can you tell me what it is this year?

20 MR. BARRETT: It is 82.5.

21 MR. FINNEY: 82.5. So let me ask you this. So it  
22 has grown since you made that statement?

23 MR. BARRETT: I might point out that the statement  
24 that was made to the Board was clearly stating that as a result  
25 of the improvements that we were seeking approval for in 1999,

1 there would be no additional instructional areas, and there would  
2 be no additions to staff as a result of the improvements that we  
3 were making in '99.

4 We could have made additions across that time to  
5 our business office, for example, which we did, that would have  
6 been unrelated to our application in 1999.

7 MR. FINNEY: Well, you are better at parsing the  
8 English language than I, but the point is that the number of  
9 teachers and staff grew in that period of time despite your  
10 assertion?

11 MR. BARRETT: That's right.

12 MR. FINNEY: Despite your assertion?

13 MR. BARRETT: Not despite my assertion. It did  
14 grow.

15 MR. FINNEY: Yes. Now, how many cars of staff and  
16 parents do you now estimate use Whitehaven every day?

17 MR. BARRETT: I would suggest that our traffic  
18 engineer, traffic consultant, who studied precisely that question  
19 would be better situated to answer it.

20 MR. FINNEY: You don't have any general idea?

21 MR. BARRETT: I think he would be better situated  
22 to answer it.

23 MR. FINNEY: Well, I appreciate that, but have the  
24 number of cars increased since 1999?

25 CHAIRPERSON GRIFFIS: I think he has addressed what

1 he can, Mr. Finney. Do you want to move on?

2 MR. FINNEY: All right. Ms. Prince raised an  
3 interesting concept that I had not heard of before, Mr. Barrett.

4 That although you do not have a cap on the faculty by BZA order,  
5 you have a cap by available parking places, where you have to  
6 have three parking places for every two faculty as I recall.

7 MR. BARRETT: I think it is two for every three.

8 MR. FINNEY: Two for every three, right. Is the  
9 increase in the faculty the reason that you created the east  
10 parking zone or parking lot?

11 MR. BARRETT: No, the parking lot located to the  
12 east of the church and school building, sometimes called the  
13 church lot, was there as a temporary lot that was suggested to us  
14 by our general contractor for the duration of the construction  
15 period.

16 The gym, as you may remember, Mr. Finney, was being  
17 built on our existing faculty parking lot. We would lose that  
18 with the onset of construction, and the general contractor was  
19 concerned about that, and then suggested to us that they could  
20 provide that temporary lot.

21 MR. FINNEY: All right. Before that was it a  
22 nursery playground?

23 MR. BARRETT: No. It was a grassy area.

24 MR. FINNEY: When was it a nursery playground?

25 MR. BARRETT: That particular location was never a

1 nursery playground. Just to the east of that, first along  
2 Whitehaven Parkway, was a nursery playground, and perhaps through  
3 1998 or 1999.

4 MR. FINNEY: Did you not then move that nursery  
5 playground behind the church?

6 MR. BARRETT: That's correct, we did.

7 MR. FINNEY: And then did you not say that space or  
8 tell this Board that space would remain green space?

9 MR. BARRETT: We said that -- you will recall, Mr.  
10 Finney, that we moved the nursery playground from the south side  
11 of upper Whitehead to behind the church and school building in  
12 order to build angled parking spaces in public space.

13 And what we said was that the area that was then  
14 the nursery playground would remain green space. The area of the  
15 church lot was not where the nursery playground was located. It  
16 was just adjacent to it.

17 MR. FINNEY: Adjacent to it?

18 MR. BARRETT: That's correct.

19 MR. FINNEY: When did you pave over that area of  
20 what you call the east church parking lot.

21 MR. BARRETT: I would assume that the construction  
22 began in November of 2000. I would imagine that it was in  
23 October or November of 2000 that we paved that.

24 MR. FINNEY: That was Army land?

25 MR. BARRETT: U.S. Army Corps of Engineers land.

1 MR. FINNEY: Did you get permission from the Army  
2 Engineers to pave over that land?

3 MR. BARRETT: No, it was a temporary measure and we  
4 did not, no.

5 MR. FINNEY: What do you mean it was a temporary  
6 measure?

7 MR. BARRETT: As I have explained to you, that lot  
8 was projected as a temporary construction lot for the duration of  
9 that --

10 MR. FINNEY: And you converted it into a permanent  
11 parking lot with 30 spaces did you not?

12 MR. BARRETT: It hasn't left yet if that is what  
13 you mean.

14 MR. FINNEY: No, I don't follow that. What do you  
15 mean continues?

16 MR. BARRETT: It continues the lot --

17 MR. FINNEY: You then made that into a permanent  
18 parking lot with 30 spaces did you not?

19 MR. BARRETT: No, we had never -- when the general  
20 contractor was completing his work roughly November to December  
21 of 2001, and we have discussion about whether we would ask the  
22 general contractor to remove the pavement at that time, and we  
23 decided not to have him remove it at that time.

24 And to figure out what the best course of action  
25 would be with respect to the east lot going forward.

1 MR. FINNEY: But you did it unilaterally didn't  
2 you?

3 MR. BARRETT: That's correct.

4 MR. FINNEY: Did your lawyer then call up Mr.  
5 Jacobus and say, oops, we have made a mistake. We did this  
6 without getting your permission?

7 MR. BARRETT: I was not a party to that  
8 conversation, and I know that Ms. Prince has had conversations  
9 with the Army Corps of Engineers.

10 MR. FINNEY: And are you now getting the permit for  
11 that --

12 MR. BARRETT: We are seeking Army Corps of  
13 Engineers approval for a continued use of that location as a  
14 parking lot, yes.

15 MR. FINNEY: Are you going to pay rent?

16 MR. BARRETT: I am not sure what the arrangements  
17 are. As you do know, Mr. Finney, we pay rent on the public space  
18 where angle parking spaces are located.

19 MR. FINNEY: All right. When you decided to add  
20 the 7th and 8th grades, did you consult first with the BZA and  
21 the ANC-3D on whether the additional students and staff would  
22 conform with the original BZA order in the caps on student and  
23 staff laid down by the BZA, and with the many conditions that  
24 were imposed by the BZA?

25 MR. BARRETT: As I understand those BZA conditions,

1 they relate to 4700 Whitehaven Parkway, because grades 7 and 8  
2 would not be located at 4700 Whitehaven Parkway. We did not  
3 consult with ANC-3D or with the BZA concerning the applicability  
4 of those conditions.

5 MR. FINNEY: So you have said that since they are  
6 not going to be on Whitehaven campus, therefore we don't have to  
7 consult with the BZA or the agency --

8 MR. BARRETT: Well, our occupation or occupying of  
9 that space at 4880-A MacArthur was done as a matter of right. We  
10 didn't have to consult the BZA for that reason.

11 MR. FINNEY: Then let me ask you it this way. You  
12 gave a pledge to this Commission, to this Board, and to our ANC-  
13 3D, that there were going to be no additional grades did you not  
14 in 1999?

15 MR. BARRETT: Yes.

16 MR. FINNEY: You as an honorable man made a pledge  
17 didn't you?

18 MR. BARRETT: Yes.

19 MR. FINNEY: And then when you broke that pledge  
20 doesn't an honorable man come back and tell those who are relying  
21 on that pledge we decided to change our mind?

22 MR. BARRETT: We did. I broke no pledge. We did  
23 reverse our position, and it was a reversal. It was an honest  
24 reversal based on changing conditions and those students and  
25 those grade levels were not located at 4700 Whitehaven Parkway.

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1 MR. FINNEY: So you are saying that you don't think  
2 you are honor bound to tell the ANC and the BZA what you were  
3 going to do?

4 MR. BARRETT: No. It was a matter of right use.

5 MR. FINNEY: It isn't a matter of right. You have  
6 to come before this Board.

7 MR. BARRETT: No, I'm sorry, Mr. Finney, the use of  
8 4880A for grades 7 and 8 is a matter of right use.

9 MR. FINNEY: I see what you mean, and since --  
10 well, I won't pursue it any more. Let me talk about car pooling  
11 with you. In 1990 when it came to car pooling, you had 3.2  
12 children per car, and you now have 1.3 children per car. What  
13 does that tell us about St. Patrick's past and future commitment  
14 to car pooling?

15 MR. BARRETT: Well, I think one thing it says about  
16 our past commitment is that it has not been particularly  
17 vigorous. It might also, Mr. Finney, say something about changes  
18 that have occurred culturally, and across that same decade.

19 We have talked about this at ANC-3D, and you seem  
20 unimpressed by that, but there have been significant changes that  
21 are made, significant changes that have occurred culturally as we  
22 might take into consideration, for example, in 1990 I believe  
23 there were no warnings against children of certain ages of  
24 weights occupying the front passenger seat of a car.

25 Those warnings are very much in force today, and

1 they actually I think extend up through age 12, which is the age  
2 of children who are -- well, the maximum age of children on the  
3 Whitehaven campus.

4 So right away you lose one seat that could be  
5 occupied by a child, or otherwise occupied by a child in a car.  
6 Also, I would guess that seatbelt regulations were less enforced  
7 or observed in 1990 than they are today, and I think that parents  
8 make a greater effort to make sure that they carry only as many  
9 children as they have seat belts.

10 Also, the use of car seats have been much more in  
11 force across that time period. So there are a variety of reasons  
12 that the number of children per vehicle may have dropped across  
13 that time.

14 Now, all of those reasons notwithstanding, I would  
15 say that it is true that our commitment to car pool in the past  
16 has not been as vigorous as it might be.

17 MR. FINNEY: Well, then if you have these car seat  
18 restrictions and that undercuts car pooling, how are you going to  
19 increase the number of children per car under your proposed car  
20 pooling?

21 MR. BARRETT: Well, I don't think that those  
22 changes in the use of car seats and seat belts, and not riding in  
23 the front passenger seat prevent parents and families from car  
24 pooling to some degree, and even moving to two to three students  
25 or children per car would be an improvement over what we have in

1 place now, and we would seek to achieve that.

2 MR. FINNEY: Now, let me ask you. You are trying  
3 to set a goal of 1.59 children per car?

4 MR. BARRETT: I believe that is correct, yes.

5 MR. FINNEY: Now, with the additional cars that you  
6 are going to get if you open your junior high school over in  
7 MacArthur Boulevard, of 1.59, won't that just about maintain the  
8 status quo in the number of cars down at Whitehaven?

9 MR. BARRETT: That is actually where the 1.59  
10 number came from, yes.

11 MR. FINNEY: Why didn't you be more ambitious?  
12 Rather than trying to maintain the status quo, which is an awful  
13 mess, why don't you try to improve it by increasing the number?

14 MR. BARRETT: I would disagree with your  
15 characterization of the current situation as an awful mess. In  
16 fact, one thing that I think that St. Patrick's does an excellent  
17 job of is managing the traffic.

18 I think there is too much of that traffic now,  
19 which is why we are pleased to be more aggressive with our car  
20 pool initiative. But I disagree with your characterization of  
21 the circumstances on Whitehaven as a terrible mess.

22 MR. FINNEY: Well, maybe it is not a mess because  
23 the headmaster is out there directing traffic.

24 MR. BARRETT: Thank you, and he does an excellent  
25 job as well.

1 MR. FINNEY: I think he does an excellent job. You  
2 are the only headmaster I know who directs traffic, sir.

3 MR. BARRETT: Thank you. I'm glad you find that  
4 true.

5 MR. FINNEY: On this car pooling program that you  
6 submitted I believe to the Board, is there a mention of this  
7 contract that you are going to have with the individual parents?

8 MR. BARRETT: No, it is built into the enrollment  
9 contract. So it is not a separate contract.

10 MR. FINNEY: So it won't be hard if the terms are  
11 watching and observing your enforcement of the various  
12 conditions, including the car pool arrangement, and that contract  
13 will not be in there will it?

14 MR. BARRETT: No, there is a statement in the new  
15 enrollment contracts for grades 7 and 8 that commit the family  
16 signing that, the parents signing that contract, to following all  
17 rules, regulations, procedures, regarding transportation to and  
18 from 4925 MacArthur Boulevard.

19 MR. FINNEY: Would you make available, sir, a copy  
20 of whatever you call that?

21 MR. BARRETT: I would be pleased to do it. I don't  
22 have it in hand, yes.

23 CHAIRPERSON GRIFFIS: How do you refer to that, Mr.  
24 Barrett?

25 MR. BARRETT: It is the enrollment contract for

1 grades 7 and 8.

2 MR. FINNEY: Now, when it comes to enforcement of  
3 this shuttle bus arrangement, where all of them are supposed to  
4 congregate up there in Whitehaven, and get on the bus, Mrs.  
5 Bradley stated in her earlier testimony that, quote, a child can  
6 be removed from the school if the parents don't have a good  
7 working relationship with Peter Barrett.

8 Now, Mr. Barrett, how many children have you  
9 expelled from the school because you didn't get along with their  
10 parents?

11 MR. BARRETT: The closest we came was with a family  
12 for whom we wrote that very provision. Since that time, perhaps  
13 because of my jovial nature, Mr. Finney, I have not had to invoke  
14 that particular --

15 MR. FINNEY: You have never imposed it?

16 MR. BARRETT: I have reminded parents of that  
17 provision in conversation with them.

18 MR. FINNEY: Oh, it exists already?

19 MR. BARRETT: Oh, it is longstanding, yes.

20 MR. FINNEY: I see.

21 CHAIRPERSON GRIFFIS: He seems to be doing his job  
22 then.

23 MR. FINNEY: Wow, thank you, Mr. Chairman, for that  
24 contribution.

25 CHAIRPERSON GRIFFIS: Sure.

1 MR. FINNEY: Is it your plan that the car pooling  
2 parents with three or more students in a car, will be permitted  
3 to unload the students at the MacArthur site, and if so, where?

4 MR. BARRETT: On the bus pad. Yes, it is our plan  
5 and in it would be on the bus pad on MacArthur Boulevard.

6 MR. FINNEY: How many students do you expect to be  
7 enrolled in the middle school in the coming academic year?

8 MR. BARRETT: I believe the maximum would be about  
9 35 students.

10 MR. FINNEY: So, tell me, explain to me, how this  
11 41 year experiment works? When does that begin?

12 MR. BARRETT: Well, I might ask Ms. Prince's help  
13 on that. As I read the condition, it would begin in the 2003-  
14 2004 school year, and that we could not increase our enrollment  
15 beyond 40 until the 2003-2004 school year based on the car pool  
16 performance and other conditions.

17 MR. FINNEY: So on the presumption that it will not  
18 be until then that you will be occupying if you ever do the  
19 building on MacArthur?

20 MR. BARRETT: No I think it is meant to be to  
21 provide a year's worth of -- a trial period for a year, to see  
22 how our transportation plan works.

23 MR. FINNEY: Then I still don't understand. During  
24 that interim the students will be over on the MacArthur Boulevard  
25 --

1 MR. BARRETT: At 4880A. Of course, this condition  
2 was written with a notion that we would be occupying 4925 in  
3 September of 2002, and while we don't expect to occupy in  
4 September of 2002, we hope to soon thereafter in the 2002-2003  
5 school year, and it would be across that period of time that we  
6 would establish some kind of record if you will with respect to  
7 the functioning of our transportation plan.

8 MR. FINNEY: Are you going to bus the 7th and 8th  
9 graders over to the other location, the existing location?

10 MR. BARRETT: Well, that would be off the circuit,  
11 the bus route that DDOT is recommending and so I am not sure just  
12 how those who are going directly to 4880A, they may simply walk  
13 from that location.

14 MR. FINNEY: How do they get there now, sir?

15 MR. BARRETT: They currently get there either by  
16 car or by walking.

17 MR. FINNEY: Their parents drop them off?

18 MR. BARRETT: At 4880A, correct.

19 MR. FINNEY: I see. All right. Let me talk about  
20 the parking lot and traffic on Ashby. As a long-time educator  
21 and headmaster, has it been your experience that parents  
22 frequently come to school to take their children out for special  
23 reasons, such as orthodontic work, which is common among the 8th  
24 group that is going to be attending your junior high, or to  
25 consult with teachers?

1 MR. BARRETT: I believe that Mrs. Bradley testified  
2 to orthodontia, and so we are already on the record with that,  
3 and in addition, there would be -- they may be collecting a sick  
4 child to go home, and they may be coming for a teacher  
5 conference. There are reasons that parents would come to school  
6 during the school day, yes.

7 MR. FINNEY: If they come with some frequency, how  
8 are you going to accommodate them on this parking lot?

9 MR. BARRETT: I think that the number of parking  
10 spaces as we have already demonstrated exceeds not simply the  
11 required number of spaces, but the required faculty and staff, or  
12 excuse me, the requested faculty and staff we would have at that  
13 location and then even additionally if there is tandem or stacked  
14 parking in that location, we fully expect that we would be able  
15 to accommodate them in that lot.

16 And I believe the traffic counts use a three parent  
17 visitor per day figure, which with a population of 60 students  
18 seems reasonable.

19 MR. FINNEY: But they are still going to have to  
20 come up Ashby and if the can't find spaces, they are going to  
21 park on Ashby.

22 MR. BARRETT: I expect that they will be parking or  
23 parents will be asked to park in our lot. Many of those visits  
24 that you are referring to are very brief in nature, and they will  
25 not even have to go deep into the parking lot, or even tandem

1 park.

2 They can pull up in front of the door on the east  
3 side of the building, and pick up the child, and be gone.

4 MR. FINNEY: Aren't you going to have to constrict  
5 that parking lot in terms of space if you are going to put up  
6 these buffers?

7 MR. BARRETT: No, I think not, no.

8 MR. FINNEY: You think you can do that without  
9 having the buffer just right on the boundary?

10 MR. BARRETT: We do have a buffer plan that was  
11 filed yesterday and I think that shows no diminution in the size  
12 of that lot.

13 MR. FINNEY: I guess I had not seen it yet.

14 CHAIRPERSON GRIFFIS: But the count has not changed  
15 with the new submission?

16 MR. BARRETT: That's correct. We are still at 15,  
17 that's correct.

18 MR. FINNEY: Talk to us about these recesses that  
19 you are going to have out there in that play area. Is it  
20 designated a play area?

21 MR. BARRETT: The green space?

22 MR. FINNEY: The green space; let's call it the  
23 green space.

24 MR. BARRETT: Students in grades 7 and 8, unlike  
25 students in younger grades, tend not to have a specified recess

1 period during the day. There will be breaks across the day at  
2 different times, and then of course a lunch break.

3 We would expect to stagger the lunch break so that  
4 the 7th and 8th grades would at our full enrollment would not be  
5 eating lunch at the same time. It is possible with lower  
6 enrollment to do that, and they would be welcome during nicer  
7 weather to congregate outside, and to eat outside.

8 There are terraces on the building as well that  
9 would not be included under the green space category, but  
10 students could eat on the terrace and play chess, and study, and  
11 we did agree earlier, Mr. Finney, that it is a contemplative  
12 group that we are talking about here.

13 And it would also be likely that the students would  
14 run up and down the green space. They might toss a ball as they  
15 did during the time that Mr. Harvey was making the sound study  
16 that he did.

17 MR. FINNEY: You sometimes make me think it is a  
18 Buddhist and not an Episcopalian school. But let's say you have  
19 full enrollment.

20 MR. BARRETT: Yes.

21 MR. FINNEY: How many at one time, how many kids --

22 MR. BARRETT: Outside?

23 MR. FINNEY: All the hormones are going to be  
24 outside in that green space at one time.

25 MR. BARRETT: We have to determine how many of that

1 full enrollment of 60 fit your description there.

2 MR. FINNEY: No, I asked for a number. Put aside  
3 their estrogen and hormones.

4 MR. BARRETT: May I do that?

5 MR. FINNEY: Yes.

6 MR. BARRETT: Thank you. I would expect that  
7 generally speaking there would be half, of half, half a group  
8 that is half of a grade level. So if we are at 30 students in  
9 grade seven, 30 students in grade eight, it would likely be 15  
10 students, perhaps 15 to 20 students outside at any given time.

11 MR. FINNEY: So you are going to have to have four  
12 different groups?

13 MR. BARRETT: No, if half the group is inside --  
14 oh, yes. I mean, that is very possible, yes.

15 MR. FINNEY: Well, how long will they be able to  
16 stay out?

17 MR. BARRETT: I am not sure whether our current  
18 lunch -- it is now 45 minutes or perhaps an hour now, and so they  
19 might have a 20 minute or half-an-hour period, and perhaps even  
20 longer than that. But generally 20 minutes to a half-an-hour.

21 I also want to make clear that there would be other  
22 study breaks or just breaks during the day. It wouldn't only be  
23 at the lunch hour. That might happen once in the morning and  
24 once in the afternoon.

25 MR. FINNEY: Your students actually play chess?

1 MR. BARRETT: Absolutely, yes.

2 MR. FINNEY: I will have to come over sometime.

3 MR. BARRETT: Yes, we would love to have you visit,  
4 and we would love to have you learn more about what we do there,  
5 Mr. Finney.

6 MR. FINNEY: Thank you. Well, I think that is  
7 enough for now. Thank you, Mr. Barrett.

8 MR. BARRETT: You are quite welcome, Mr. Finney.

9 CHAIRPERSON GRIFFIS: Thank you, Mr. Finney.  
10 Neighbors United.

11 MS. FELDMAN: Nancy Feldman for Neighbors United.  
12 Good afternoon, Mr. Barrett.

13 MR. BARRETT: Good afternoon, Ms. Feldman.

14 MS. FELDMAN: What would be the beginning and  
15 ending hours of the academic day for the 7th and 8th graders?

16 MR. BARRETT: The students could begin arriving at  
17 7:30 a.m. and the academic day would begin at 8:00, and 4 days  
18 out of 5, it would run until 3:00 p.m., after which they would  
19 leave that site for off-site athletics.

20 One day of the week, currently Thursdays, we have  
21 an after school music elective, and they do not have sports on  
22 that day, and it takes them through until 4:00 p.m. We haven't  
23 made a decision as to whether we are going to continue that arts  
24 elective, but I believe it is in our materials to set out the  
25 parameters of the day and week.

1 MS. FELDMAN: So that elective, the art-music,  
2 might be on site at Ashby, or it might be at Whitehaven, or  
3 someplace else?

4 MR. BARRETT: It is currently on site at 4880A, and  
5 presumably it would continue at 4925.

6 MS. FELDMAN: What activities would not be  
7 conducted as Ashby Street?

8 MR. BARRETT: There would be no athletics of any  
9 sort. I could asterisk that perhaps to say that those members of  
10 the cross-country team might stretch at that location before they  
11 leave the site.

12 But there would be no organized athletics.

13 I suppose there is any number of other activities  
14 that won't occur there. Do you want to limit that question to  
15 the school day, or do you want to talk about what might happen at  
16 night there?

17 MS. FELDMAN: Actually, I was interested in during  
18 the day, and I had a list of possible things that I thought --

19 MR. BARRETT: If you would like to, I would be  
20 delighted to respond to those individually.

21 MS. FELDMAN: Okay. How about chapel? You had  
22 mentioned that. Is that at Whitehaven or --

23 MR. BARRETT: Currently -- and I think our  
24 experience at 4880A is instructive here, and so I will often  
25 refer to that. Currently, chapel may either be held at 4880A in

1 the common room there, or students may walk to 4700 to attend  
2 chapel in the nave of St. Patrick's Church.

3 MS. FELDMAN: And they would walk through the  
4 neighborhood for that?

5 MR. BARRETT: That's correct. They do now.

6 MS. FELDMAN: How about gym class, as opposed to --  
7 well, that is different from athletics?

8 MR. BARRETT: If I can clarify that for you. There  
9 is not a separate P.E. class or gym class. The athletics, P.E.,  
10 physical activity, that the students engage in occurs during that  
11 required sports time that begins off-site after three o'clock.

12 MS. FELDMAN: How about use of public libraries or  
13 libraries that aren't on site at Ashby?

14 MR. BARRETT: They have on-line access to the  
15 library at 4700 and we will also develop a library at 4925.  
16 Fortunately, that building also has a room, and I believe they  
17 have also used the Palisades Library at times.

18 MS. FELDMAN: You mean the V Street library?

19 MR. BARRETT: Correct.

20 MS. FELDMAN: That would be walking probably?

21 MR. BARRETT: Correct. Would the 7th and 8th  
22 grades -- I know that you are planning this and it is still in  
23 gestation, but would they need more sophisticated library use  
24 than the smaller children to go downtown, or do you specialize  
25 libraries?

1                   MR. BARRETT: I believe that the collection at 4700  
2 is -- you used the word specialized, and it is just that kind of  
3 collection, and they do have on-line access to it. I believe  
4 that they have also used that from time to time on Friday  
5 afternoons after elementary school dismissal.

6                   But anything that would be particularly specialized  
7 for that grade level, we will seek to develop the collection at  
8 that location.

9                   MS. FELDMAN: So they wouldn't be going to AU or to  
10 Georgetown?

11                   MR. BARRETT: Generally not, no. I am not even  
12 sure that the universities would admit middle school students for  
13 that purpose.

14                   MS. FELDMAN: How about clubs; a chess club, for  
15 instance?

16                   MR. BARRETT: I understand you have an interest in  
17 our chess club, as Mr. Finney no doubt does, and the elective,  
18 the arts elective that occurs on Thursday afternoon during that  
19 3-to-4 p.m. time, there is a way in which that kind of functions  
20 as a club period right now for those that have chosen to do some  
21 dramatic work.

22                   It may be that we want that time period to become  
23 the club period from 3:00-to-4:00 p.m. on Thursday. There is no  
24 other time during the day or week when that could occur.

25                   MS. FELDMAN: How about science and computer lab

1 classes?

2 MR. BARRETT: We have fitted out a wonderful lab,  
3 science lab, at 4880A, and while 4880A is available to us, and  
4 while we can continue to rent it from the River School, we will  
5 use that science lab, and walk back and forth between the  
6 buildings, and when 4880A is no longer available to us, we will  
7 simply pick up that sign slab and move it to 4925.

8 The students use laptops for their technology, and  
9 there is no need to go elsewhere for those.

10 MS. FELDMAN: You are not contemplating a computer  
11 lab like many schools have at that age level?

12 MR. BARRETT: We have -- no, in fact the movement  
13 in schools is away from those centralized computer labs and more  
14 towards laptop models. And so we are using laptops.

15 We do have a small area that is kind of a  
16 peripheral area, where there are one or two printers and a couple  
17 of heavier duty machines that are available for use by students,  
18 and a scanner as well I am told, and everything but the scanner  
19 gets very limited use. So we found that the laptops are  
20 sufficient.

21 MS. FELDMAN: So would this sort of small area,  
22 would that come over from 4880A?

23 MR. BARRETT: If need be, yes. And it really  
24 occupies just a little niche if you will at 4880A.

25 MS. FELDMAN: So it wouldn't take up the whole

1 classroom or anything?

2 MR. BARRETT: Absolutely not, no.

3 MS. FELDMAN: How about field trips?

4 MR. BARRETT: We will go on field trips.

5 MS. FELDMAN: What is the frequency now or for the  
6 7th graders?

7 MR. BARRETT: I am not sure that reliance on that  
8 figure, or my understanding of it, would be particularly helpful  
9 in that I think it is probably a lot less now than we would  
10 anticipate in the future, but I would imagine still what we would  
11 be talking about would be maybe once a month, or perhaps twice a  
12 month.

13 MS. FELDMAN: Okay.

14 MR. BARRETT: And I do want to caution you that  
15 that is really speculation.

16 MS. FELDMAN: I mean, I was meaning all the  
17 wonderful museums and art galleries we have.

18 MR. BARRETT: Yes.

19 MS. FELDMAN: How about language lab? Are you  
20 planning to have that?

21 MR. BARRETT: The language classroom will not be in  
22 the nature of a lab. It will be a teaching classroom, much like  
23 any other, although I do believe that the relative spaciousness  
24 at 4925 will allow us to dedicate a room to language instruction  
25 so that the necessary posters and instructional aids, and so

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1       forth, can be posted.

2                   MS. FELDMAN:    Last time, you mentioned community  
3       service activities.

4                   MR. BARRETT:    Yes.

5                   MS. FELDMAN:    Would any of those be off-site?

6                   MR. BARRETT:    Oh, yes, absolutely, and in fact they  
7       should be, yes.

8                   MS. FELDMAN:    Are any of those during the week or  
9       are they weekends?

10                  MR. BARRETT:    I would imagine that most of them  
11       would be during the week, and that is the model that we are  
12       striving for, is that of service learning which really embeds the  
13       community service work in the academic program.

14                  We don't want it to be an add-on or something that  
15       is just tacked on at the end of the day or the end of the week.  
16       So it very like that would occur during the school day.

17                  MS. FELDMAN:    Would the students go, for example,  
18       to the soup kitchen that your sponsor sponsors?

19                  MR. BARRETT:    That is very possible, yes.

20                  MS. FELDMAN:    On these various excursions that we  
21       are talking about, and you have clarified that well, and I  
22       appreciate that.  Would they normally go on the shuttle but, or  
23       how would they get some of these?

24                  MR. BARRETT:    Currently, we rent buses for sports  
25       activities, and for field trips, and what we would do with our

1 new shuttle buses would be to have those transport children or  
2 students to any field trips or service learning opportunities.

3 MS. FELDMAN: And you were planning at this point  
4 of having two shuttle buses?

5 MR. BARRETT: Two or three, yes.

6 MS. FELDMAN: And these are the 22 foot, 30  
7 passenger buses?

8 MR. BARRETT: Yes.

9 MS. FELDMAN: If they weren't available, it is hard  
10 for me to remember when my daughter was in 7th and 8th grade. but  
11 of people were going in different directions, what would be the  
12 backup?

13 MR. BARRETT: We would have two options. One, is  
14 that we schedule the opportunity for -- the conflict actually  
15 would be with activity at the elementary school location,  
16 presumably, although there could be conflict between the 7th and  
17 8th grade.

18 The options would be two; one that you get a  
19 different day, and number two, we actually rent buses as we  
20 currently do.

21 MS. FELDMAN: So it wouldn't be teachers would be  
22 driving, or volunteer parents wouldn't necessarily be driving  
23 students or people?

24 MR. BARRETT: No.

25 MS. FELDMAN: Okay. If any of these were morning

1 outside activities, might students go directly from Whitehaven or  
2 from home, or would they always start off at Ashby Street?

3 MR. BARRETT: They would never go directly to a  
4 field trip opportunity or a service learning opportunity. They  
5 would always come to school first.

6 MS. FELDMAN: Will you be retaining the science lab  
7 and the rest of the lease hold at 4880A for some overlap period?

8 MR. BARRETT: It is very likely that in the 2002-  
9 2003 school year that we will continue to occupy 4880A. At the  
10 same time, we hope to occupy 4925.

11 MS. FELDMAN: And we noticed that you still had ads  
12 in local newspapers looking for 7th and 8th grade applicants?

13 MR. BARRETT: Yes.

14 MS. FELDMAN: And isn't that a rather inexact  
15 science about giving acceptances and seeing who actually accepts  
16 and who goes someplace else?

17 MR. BARRETT: I'm sorry, but can you repeat that  
18 question?

19 MS. FELDMAN: Yes. Isn't it something of an  
20 inexact science? You make people offers and you don't know who  
21 is going to accept what?

22 MR. BARRETT: Yes.

23 MS. FELDMAN: If you did have an overflow would you  
24 continue to locate those junior high students at 4880A, assuming  
25 you still had the lease hold so you wouldn't violate the student

1 --

2 MR. BARRETT: No. Our grades 7 and 8 program,  
3 whether or not we are occupying just 4925 or both 4925 and 4880A,  
4 it will never exceed 60 students in grades 7 and 8.

5 MS. FELDMAN: Okay. Would students going back and  
6 forth to 4880A go in shifts, or would they all go together, or  
7 how would you work that?

8 MR. BARRETT: Between 4880A and 4925?

9 MS. FELDMAN: Yes.

10 MR. BARRETT: Presumably that would represent a  
11 class change; that is, a movement from one period to the next.  
12 For example, they might be in humanities at 4925 and moving to  
13 science at 4880A, and not everybody would be making that same  
14 shift.

15 So it would be unlikely that you would see 60 or  
16 even 30 students in motion at any one time. They would be in  
17 smaller class instructional groupings.

18 MS. FELDMAN: So you mean not the whole grade  
19 seven, but --

20 MR. BARRETT: Under most circumstances, it would  
21 not be. Now, there are other circumstances under which you might  
22 see the entire grade seven in motion, yes. But I think those  
23 would be much fewer in number.

24 MS. FELDMAN: One reason we asked that is because  
25 you talked last time about seminar type classrooms.

1 MR. BARRETT: Yes.

2 MS. FELDMAN: And 8 or 10 students?

3 MR. BARRETT: 10 or 12, yes.

4 MS. FELDMAN: So we were wondering if groupings of  
5 that size would be continually going back and forth --

6 MR. BARRETT: Not continually, but that would be  
7 the size that we are talking about, yes.

8 MS. FELDMAN: Would they be accompanied by a  
9 teacher or a staff person?

10 MR. BARRETT: Yes.

11 MS. FELDMAN: Would students going back and forth  
12 to Whitehaven for activities -- and I recognize that there aren't  
13 that many, but there are some, would they go in shifts?

14 MR. BARRETT: Currently they do not. When it is  
15 time for chapel, for example, they go as an entire group. It  
16 would likely be in a larger group than a smaller group.

17 MS. FELDMAN: Are you going to have advanced  
18 placement or gifted classes in the 7th and 8th grades?

19 MR. BARRETT: Mercifully, advanced placement does  
20 not begin until the high school years, and we don't have gifted  
21 classes as such. We seek to create a differentiated curriculum  
22 where the lingo is that it picks up the child where he or she is  
23 at any one moment and move them forward.

24 MS. FELDMAN: Okay. So the answer is no? The  
25 answer is that you are not going to have them?

1 MR. BARRETT: The answer is no.

2 CHAIRPERSON GRIFFIS: I would interject that there  
3 is a lot of latitude that I am allowing here obviously, and this  
4 is your cross-examination, but I am assuming that all these  
5 questions are going to some pertinent point in your case, and  
6 your last one kind of tipped it for me.

7 But I am not sure how the advanced placement  
8 classes goes to any sort of adverse impact on this. But just for  
9 direction, obviously you are trying to elicit what would be  
10 relevant to the case.

11 MS. FELDMAN: Yes. I'm sorry to try your patience.  
12 What we are looking at here is we are trying to ascertain  
13 reasonably how much movement there is going to be between the  
14 facility in our neighborhood and Whitehaven, and other places,  
15 and 4880A.

16 And I know that advanced placement type classes,  
17 people often get the opportunity to do some special activity  
18 without that whole class. So that would have been another little  
19 group going some place. That's why I asked that question.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. BARRETT: You have not asked the question, but  
22 remember that at a certain point there will be no movement  
23 between 4880A and 4925 because we will no longer occupy 4880A.

24 MS. FELDMAN: Yes. Well, we will have Whitehaven,  
25 and we will have other sites.

1 MR. BARRETT: Whitehaven, yes. I was restricting  
2 my comments.

3 MS. FELDMAN: And places for athletics, and field  
4 trips, and whatever. We are just trying to ascertain how often  
5 you will be off-campus, and how often you will be outside going  
6 places and so on. In using the Yates Field House, what route or  
7 routes would the buses be taking?

8 MR. BARRETT: My best guess -- well, you know what?  
9 I don't know how to get to Yates Field House. My apologies to  
10 all Georgetown University alums.

11 MS. FELDMAN: On page 12 of the application, you  
12 stated that students will remain on the premises all day, and  
13 given the litany that we just went through, that is not quite  
14 accurate is it? They will be in and out to some extent?

15 MR. BARRETT: Yes. My expectation is that  
16 statement meant that there would be no -- that it would not be an  
17 open campus, and that they would move only in supervised fashion  
18 from location to location.

19 MS. FELDMAN: Are you aware that the DDOT report on  
20 page 10 cites as a recommended condition that the students remain  
21 on campus? Wouldn't that be somewhat difficult given the  
22 movement you described?

23 MR. BARRETT: If that would eliminate the  
24 possibility for field trips, and our use of the chapel at 4700  
25 Whitehaven, I am not sure why DDOT would weigh in on that, but

1 I'm sorry that I can't be more responsive than that.

2 MS. FELDMAN: In terms of staffing would the 9th  
3 grade that you would be allowed to have for only the one year,  
4 would that require additional instructors?

5 MR. BARRETT: No.

6 MS. FELDMAN: Are you going to have somebody at  
7 Ashby who is qualified to give first aid?

8 MR. BARRETT: At 4925?

9 MS. FELDMAN: Yes.

10 MR. BARRETT: We currently share nurses across the  
11 two campuses, and we would continue to do the same.

12 MS. FELDMAN: Some teacher or teachers would be  
13 licensed to do this?

14 MR. BARRETT: Yes.

15 MS. FELDMAN: So that would be within the cap?

16 MR. BARRETT: Yes.

17 MS. FELDMAN: In terms of how you would comply with  
18 promises to improve the Whitehaven traffic situation, don't you  
19 already deploy a large number of teachers and administrators to  
20 direct traffic?

21 MR. BARRETT: Yes, we do.

22 MS. FELDMAN: And we have seen or aren't they out  
23 there with walkie-talkies?

24 MR. BARRETT: Yes.

25 MS. FELDMAN: And cell phones, and you yourself are

1 supervising?

2 MR. BARRETT: Yes. My expertise has already been  
3 established.

4 MS. FELDMAN: And did you previously employ off-  
5 duty policemen to help with the traffic?

6 MR. BARRETT: For a brief period of time.

7 MS. FELDMAN: Why did you stop that?

8 MR. BARRETT: We recognized that there was a  
9 different procedure for engaging those individuals, and we were  
10 going to observe that particular procedure for engaging off-duty  
11 D.C. Police to help us with our dismissal traffic.

12 MS. FELDMAN: Well, your current plan envisions two  
13 policemen?

14 MR. BARRETT: Correct.

15 MS. FELDMAN: And how would that be different?

16 MR. BARRETT: There is a procedure for engaging  
17 off-duty D.C. Police Officers for that kind of duty. I am not  
18 familiar with it. And that was proceeding through our business  
19 office. I don't have any particular knowledge of it that I can  
20 help you with.

21 MS. FELDMAN: Could you get us some information on  
22 that, because if you are now going to be using a technique that  
23 didn't work before, and so we would like to know.

24 MR. BARRETT: I wouldn't say the technique didn't  
25 work before, but there are more effective ways to obtain those

1 individuals, and that is what we are going to seek to do.

2 MS. FELDMAN: Okay. In the past have you  
3 staggered, or even currently have you staggered starting times  
4 and dismissal times for different grades?

5 MR. BARRETT: Yes.

6 MS. FELDMAN: And have you encouraged car pooling?

7 MR. BARRETT: We have encouraged car pooling, and  
8 as I said earlier, I couldn't claim that we have done that  
9 vigorously.

10 MS. FELDMAN: Well, as we have investigated it  
11 really, it looks like you have already taken a lot of measures to  
12 try to improve traffic, but it still is pretty bad. So why do  
13 you think this is going to be --

14 MR. BARRETT: Well, first, I disagree that it is  
15 still pretty bad, and, number two, controlling traffic and car  
16 pooling are two different things. I think most of the measures  
17 that you thumbnailed there were traffic control measures, as  
18 opposed to car pooling measures.

19 And we will continue with our traffic control or  
20 traffic management measures, which have been quite effective and  
21 result in there not being a mess on Whitehaven Parkway.

22 And in addition to those traffic management  
23 measures, we will also more vigorously seek to have our parents  
24 car pool.

25 MS. FELDMAN: Well, okay. I thought you were -- I

1 thought car pooling was an important part of your traffic  
2 management; is to get fewer cars --

3 MR. BARRETT: Well, sure, they certainly intersect,  
4 that's correct.

5 MS. FELDMAN: Are you aware that in 1990 that your  
6 expert rated the level of service on Whitehaven as an A, and your  
7 current expert, Mr. Wells, rates Whitehaven westbound as an F in  
8 terms of level of service?

9 MR. BARRETT: I have seen those figures, yes.

10 MS. FELDMAN: Doesn't that suggest that it really  
11 is pretty congested?

12 MR. BARRETT: No, I think that we -- and let me  
13 make it clear to the Commissioners that I spend a tremendous  
14 amount of my time standing either at the middle or the side of  
15 Whitehaven Parkway.

16 I think I know the street better than any  
17 individual alive, and I am out there every afternoon from 2:40  
18 until approximately 3:15, every morning since we returned from  
19 spring break, and I have been out there in the morning because of  
20 the GW entrance that has opened on Whitehaven Parkway, and I  
21 wanted to monitor that situation.

22 And I have found myself shortening and shortening  
23 my time in the mornings out there because the traffic moves as  
24 well as it does. And it is true that in moving 440 students to a  
25 school, and then away from a school, there will be some impact.

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1 That is true.

2 Our impacts are intense and very brief. I think  
3 the F reflects the intensity of that impact, and 23 hours out of  
4 24 hours a day, Whitehaven is almost free and clear, and traffic  
5 can move very easily and freely east and westbound on Whitehaven  
6 Parkway.

7 MS. FELDMAN: Is that another way of saying that a  
8 stop watch is right twice a day?

9 MR. BARRETT: I'm sorry, but I am missing your  
10 point.

11 MS. FELDMAN: Well, if we have an hour, or more  
12 than an hour actually because we have the morning rush hour hour,  
13 and --

14 MR. BARRETT: No, no, 23 hours out of the 24. It  
15 is between approximately 7:45 and 8:15 in the morning; and  
16 between 2:50 and 3:20 in the afternoon that we have the most  
17 significant impact on Whitehaven Parkway. Outside of that hour,  
18 and that is 30 minutes plus 30 minutes, there is pretty easy and  
19 free movement up and down Whitehaven.

20 The constriction there is not traffic but it is  
21 parking on either side of Whitehaven Parkway.

22 MS. FELDMAN: So you feel that would be alleviated  
23 by this new parking lane?

24 MR. BARRETT: Yes.

25 MS. FELDMAN: Which lets me go right into the --

1 could we use your picture of the Whitehaven. I don't see it up  
2 there.

3 MR. BARRETT: Do we have a photograph of  
4 Whitehaven?

5 MS. FELDMAN: The diagram, I'm sorry.

6 (Brief Pause.)

7 MS. FELDMAN: We can't tell exactly from the  
8 written material where the -- can the Board see that picture  
9 reasonably decently?

10 MR. BARRETT: Am I the best person to answer this  
11 series of questions, or would they be better placed to our  
12 traffic engineer?

13 MS. FELDMAN: Well, we are going to ask a lot of  
14 technical questions of the traffic engineer, but this is really  
15 from your perspective as a person who knows the families, and  
16 knows the kids, and is out there, God help you, every day seeing  
17 what actually goes on.

18 We are trying to do the human face of it with you,  
19 and the numbers and so on with Mr. Wells and anybody else.

20 MR. BARRETT: The pretty face with me and the  
21 numbers with Marty Wells.

22 MS. FELDMAN: Something like that, yes.

23 MS. FELDMAN: So we are looking at that map, and  
24 Tina, could you indicate where is MacArthur and where is Foxall?

25 (Brief Pause.)

1 MS. FELDMAN: So MacArthur is over there on the  
2 left of the map, and Foxall is up here. Now, the queuing lane --  
3 well, first of all, we understand that cars are allowed to enter  
4 Whitehaven -- the parent cars from either direction, is that  
5 right?

6 MR. BARRETT: Under current conditions?

7 MS. FELDMAN: No, the new plan.

8 MR. BARRETT: We would like that to be the case, if  
9 they could enter either from MacArthur or from Foxall.

10 MS. FELDMAN: And the darkened line over there is  
11 where there is now parking, but you would -- but DDOT would lift  
12 that for use and there would be a third or what we would call a  
13 through lane for the Foxall people who come on to Whitehaven and  
14 don't particularly want to come in the cue?  
15

E-V-E-N-I-N-G S-E-S-S-I-O-N

(6:00 p.m.)

1  
2  
3 MR. BARRETT: Well, actually DDOT is not lifting  
4 that for us. That was a recommendation made in the Palisades  
5 traffic study.

6 MS. FELDMAN: They would just be lifting it,  
7 period.

8 MR. BARRETT: Yes. Whether they would be  
9 restricting it, I understand now between the hours of 7:00 a.m.  
10 and 4:00 p.m.

11 MS. FELDMAN: Thank you. Now, would cars also be  
12 able to depart in either direction after they have dropped the  
13 children off?

14 MR. BARRETT: That is what we would like to occur,  
15 yes. And that by the way reduces the impact on neighborhood  
16 streets if they don't have to go back through neighborhood  
17 streets to get into their desired direction.

18 MS. FELDMAN: Well, Mr. Barrett, right now you have  
19 a rule that they are supposed to come in through Foxall and exit  
20 MacArthur, but your own traffic engineer says that half of them  
21 just turn around and go back Foxhall?

22 MR. BARRETT: Yes, and actually I told our traffic  
23 engineer that they did that. They do that in the morning and  
24 they don't do that in the afternoon.

25 MS. FELDMAN: We did see a couple of people making

1 U-turns at pick-up times.

2 MR. BARRETT: A U-turn meaning going back up  
3 Foxhall?

4 MS. FELDMAN: Yes.

5 MR. BARRETT: That is routinely done in the  
6 morning, and it is rarely done -- it is done, but it is rarely  
7 done in the afternoon.

8 MS. FELDMAN: It was done last week, but I think  
9 your back was turned.

10 MR. BARRETT: That's possible.

11 MS. FELDMAN: Okay. So could you just show us?  
12 Somebody is coming from Foxhall, and they want to drop their  
13 younger child off or other children, and so they come in the  
14 center lane; is that right?

15 MR. BARRETT: Well, there are only two lanes on  
16 upper Whitehaven, and at a certain point, they would go into the  
17 center lane, would be striped in that fashion. They would go to  
18 the far west curb cut as demonstrated and turn left into the  
19 driveway at that point, and go back eastward.

20 MS. FELDMAN: But wait. Where would they drop off  
21 the children? Is that the middle or the end?

22 MR. BARRETT: They would continue up. Currently  
23 they stop right in front of the main entrance, or actually  
24 currently they discharge children at any location on the  
25 sidewalk.

1 MS. FELDMAN: Just a moment. I would like to give  
2 the Board Members little maps, cut-off maps like this, if they  
3 want to just follow along, it might make it easier.

4 So now they are going to drop them off in the  
5 middle or they are going to go all the way down?

6 MR. BARRETT: Well, first of all, I think it is  
7 important for the Commissioners to realize that what we are  
8 looking at is a change in existing operations, and there is a  
9 series of improvements that we would make to the drop off and  
10 pick up lane.

11 There would also be improvements that would be made  
12 on Whitehaven Parkway itself. And if I may just quickly do now  
13 for drop-off, that might be helpful to create a context.

14 Currently, we approach from Foxhall Road's west  
15 road, and turn left at the eastern most curb cut and proceed down  
16 to the front entrance there, the front entrance of the school  
17 building. The children are discharged on to a sidewalk that is  
18 located on the Whitehaven Parkway side, and it is not located on  
19 the building side.

20 And then they walk down to a cross-walk that leads  
21 directly to the main entrance of the building, where they are  
22 crossed by a faculty member who is supervising that process.

23 A fundamental change that would be made under our  
24 new proposal would be to move the sidewalk from the Whitehaven  
25 Parkway side of the driveway to the building side of the

1 driveway, so that children would no longer have to cross traffic  
2 to get into the building.

3 And recognize then that the new plan that that has  
4 parents entering at the western most curb cut where we were  
5 before, and then heading eastward within the driveway is a change  
6 in existing procedure.

7 The children could then go all the way up to the  
8 end and then they could discharge the children at any point on  
9 the sidewalk that would be directly adjacent to the building.

10 MS. FELDMAN: So it is not necessarily going to be  
11 the middle or the end of the internal cue?

12 MR. BARRETT: No. They do not get out at a single  
13 point. They do cross at a single point now, and that crossing  
14 will no longer be necessary in the new plan. They simply track  
15 back on the sidewalk to the main entrance to the school.

16 MS. FELDMAN: And also another improvement that you  
17 have suggested is that there will be another longer stack up or  
18 queuing lane available; is that right?

19 MR. BARRETT: That's correct, because instead of  
20 entering our driveway at the eastern most curb cut, we would be  
21 entering the driveway at the western most curb cut, and that has  
22 the beauty of effectively lengthening Whitehaven Parkway and  
23 drawing our que further away from Foxhall Road. I believe that  
24 is about 250 feet, the increased parkway there.

25 MS. FELDMAN: And meanwhile the cars not entering

1 the que would just go down that darkened area because that would  
2 not be a through lane?

3 MR. BARRETT: That's correct.

4 MS. FELDMAN: Now, what happens after they have  
5 dropped off the children and they want to turn -- let's see.  
6 They want to go to either MacArthur or to Foxhall. Would traffic  
7 have to stop for a couple of lanes to get them through? How does  
8 that work?

9 MR. BARRETT: That is one reason, and only one  
10 reason that the off-duty policemen would be located at the upper  
11 and lower curb cuts on the eastern and most western curb cuts in  
12 order to maintain a break in traffic for cars to turn left out of  
13 that eastern most curb cut, and go into the passing lane and down  
14 toward MacArthur Boulevard.

15 MS. FELDMAN: And you or your staff would be  
16 somewhere central over there, sort of overseeing the process?

17 MR. BARRETT: Yes. We would continue to staff this  
18 much in the same way that we do now.

19 MS. FELDMAN: What is there is a stalled car or an  
20 illegally parked are or something? How long does it take you to  
21 get rid of that?

22 MR. BARRETT: Probably forever. We have not faced  
23 that.

24 MS. FELDMAN: So people can enter either way, and  
25 they can leave either way?

1 MR. BARRETT: That is our hope. Now it is possible  
2 that in practice we may find that continuing our current approach  
3 only from Foxhall Road would be most effective. But it doesn't  
4 change the fundamentals of the procedure.

5 MS. FELDMAN: Have you factored in the new extra  
6 traffic that is going to be generated in upper Foxhall, the 145  
7 buses a day, the extra vehicular traffic from GW, and also what  
8 might become a complication at Field School that is right nearby?

9 MR. BARRETT: Those buses are operating now and  
10 that's why I am out there every morning, and we have also  
11 restaffed our afternoon, and reprocedured it so that the first  
12 person with a walkie-talkie is located at the GW entrance to  
13 maintain a gap in our traffic. So it is already happening now,  
14 and it is working quite successfully.

15 MS. FELDMAN: You are working around them or how  
16 are you doing it?

17 MR. BARRETT: We have absorbed the existing  
18 traffic, the current traffic, into our arrival and dismissal  
19 traffic. And the other 23 hours a day, it is of no consequence.

20 MS. FELDMAN: We couldn't tell from the materials,  
21 but where do you contemplate the 7th and 8th graders being  
22 dropped off?

23 MR. BARRETT: They will be dropped off -- actually  
24 we have been in different places on this, but there is no reason  
25 why they can't be dropped off in the driveway, along with the

1 other students on to that sidewalk.

2 One of our improvements will be therefore to have a  
3 continuous sidewalk all the way from Foxhall Road all the way  
4 down to our gym, and they would move on that sidewalk westward to  
5 our crosswalk and cross over to the gym, which is where they  
6 would board the shuttle bus to go to 4925.

7 MS. FELDMAN: Right after that crosswalk on the map  
8 at least, it looks like there is a driveway to the gym where the  
9 teachers are coming in at that time?

10 MR. BARRETT: Yes.

11 MS. FELDMAN: So they would need to cross over and  
12 kind of wait for a break in the gym-garage traffic to scoot over  
13 to where the shuttle bus is?

14 MR. BARRETT: Correct. I would not say that  
15 traffic is constant. I would argue that a 7th or 8th grader is  
16 capable of crossing that safe way there.

17 MS. FELDMAN: So you are not contemplating having  
18 them dropped off at the gym or near the gym?

19 MR. BARRETT: No.

20 MS. FELDMAN: That is also -- where the crossing is  
21 -- that is also where the two lanes merge into one lane isn't it?

22 MR. BARRETT: That's correct.

23 MS. FELDMAN: And so they would also have to be  
24 alert for that purpose?

25 MR. BARRETT: Right. We are also hopeful that at

1 that location there, the crosswalk, that there will clearly be  
2 marked there -- that there will be a raised crosswalk, and that  
3 has been recommended in the Palisades traffic study that DDOT  
4 conducted.

5 And we are hopeful that will be a significant  
6 traffic calming measure that will make that crossing easier and  
7 safer.

8 MS. FELDMAN: Are you as a hands-on person and the  
9 board being advised by you, are you fairly confident that this  
10 new plan will be useful and successful?

11 MR. BARRETT: Yes.

12 MS. FELDMAN: Then are you willing to participate  
13 in even if this application is not approved?

14 MR. BARRETT: We are going to continue with all of  
15 the improvements that I have mentioned, essentially the  
16 reconstruction of the driveway if approved by the District. It  
17 is located in public space; the relocation of the sidewalk to the  
18 building side of the driveway; the car pool initiative, and all  
19 of those elements.

20 And I left out having the cars continue past the  
21 eastern most curb cut to the western most curb cut. We want all  
22 of those changes to occur regardless. We think it will make for  
23 an even better arrival and dismissal procedure better.

24 MS. FELDMAN: So the only piece that would not be  
25 put into effect if the 4925 application didn't work would be that

1 perhaps you would not need to get the shuttle buses?

2 MR. BARRETT: Correct.

3 MS. FELDMAN: Where would the shuttle buses be  
4 parked?

5 MR. BARRETT: Well, if you look at the far left,  
6 there is a crossing sign down and -- well, to the west and there  
7 is a driveway located at the far west end of our building, and  
8 that would be where one of the buses would be stored and the  
9 other would be in the east lot.

10 MS. FELDMAN: And the east lot is all the way on  
11 the other side there?

12 MR. BARRETT: Yes.

13 MS. FELDMAN: And would they be equipped with cell  
14 phones or something so that if they were needed at Ashby that  
15 they could come right out or how would that work during the day?  
16 What about the bus drivers?

17 MR. BARRETT: We won't be working on an on demand  
18 situation. We would have to schedule the use of those buses. We  
19 have not been in the transportation business. Many schools  
20 engage members of their maintenance crew, who also drive buses,  
21 and some have teachers get the necessary CDL, commercial drivers  
22 license, for that purpose, and we have not settled on how we are  
23 going to handle that.

24 MS. FELDMAN: And the two places that you  
25 indicated, they wouldn't be blocking anybody else if the buses

1 were there and the drivers weren't around?

2 MR. BARRETT: No.

3 MS. FELDMAN: That is open space?

4 MR. BARRETT: Yes. There is no access that is  
5 necessary at that western most point and if we are granted  
6 continue use of that, we would configure it in a way that would  
7 make room for the bus and not inhibit the movement of cars  
8 parking in that area.

9 MS. FELDMAN: Does the bus have to back out or back  
10 in?

11 MR. BARRETT: Normally they would back in to both  
12 of those locations.

13 MS. FELDMAN: So they would always be facing front?

14 MR. BARRETT: Yes.

15 MS. FELDMAN: Finally, let's go to Ashby Street.

16 MR. BARRETT: And 4925 MacArthur?

17 MS. FELDMAN: Yes. We tend to call it Ashby even  
18 though it has a MacArthur address, and the entrance is on Ashby.  
19 We are looking at how you might monitor drop offs that perhaps  
20 were a bit more subtle than right in front of the school.

21 MR. BARRETT: Yes.

22 MS. FELDMAN: So people could be dropped off at a  
23 street around the corner. What if a bunch of kids, for example,  
24 debarked at Mary Ann Reid's house on W Street, and they had a  
25 bagel and then they walked to school? Would that be considered

1 walking to school instead of being driven to school, illegally  
2 driven to school?

3 MR. BARRETT: Walking to school would be leaving  
4 from his or her place of residence and walking directly to  
5 school.

6 MS. FELDMAN: So they could not evade it by doing  
7 that?

8 MR. BARRETT: No.

9 MS. FELDMAN: Doesn't your school currently have a  
10 culture of teachers parking on the street even though you do have  
11 ample off-street parking for them?

12 MR. BARRETT: Yes.

13 MS. FELDMAN: How will you address that at Ashby,  
14 MacArthur, and other nearby streets?

15 MR. BARRETT: We might also return to the sketch to  
16 remember that that on-street parking on Whitehaven itself would  
17 be disappearing, and they park generally in the area extending  
18 from our cross-walk eastward to generally to the GW pool, and  
19 generally not as far as the GW entrance, although that can  
20 happen.

21 What all of our faculty members will be directed to  
22 do, whether they are at the 4925 location or at other locations,  
23 will be to park in specified locations. And those specified  
24 locations would not include residential streets.

25 MS. FELDMAN: You mean you will have numbers

1 painted on them?

2 MR. BARRETT: There are already numbers on the gym  
3 spaces below the gym at 4700. We will likely number the diagonal  
4 spaces as well, and in fact faculty members will be assigned  
5 spaces.

6 MS. FELDMAN: Actually, we were focusing on  
7 Ashy/MacArthur.

8 MR. BARRETT: Right. And the same procedure  
9 prevails. We are talking about a maximum when we are fully  
10 staffed of 12 faculty and staff, and those 12 will be directed to  
11 park in the parking lot behind 4925.

12 MS. FELDMAN: And we won't go into what might  
13 happen to displaced cars on Whitehaven, because we don't think  
14 that is within the scope of this proceeding and we don't want to  
15 try the board's patience, but we do note that is an issue, but it  
16 is not really really related to this case.

17 MR. BARRETT: I think that is why DDOT is planning  
18 on a trial period between July and October.

19 MS. FELDMAN: We have some car pooling questions  
20 because that seems to be a important component of your new plan,  
21 and because there have been problems with it.

22 MR. BARRETT: It has not been in existence and so  
23 there could not have been problems with it.

24 MS. FELDMAN: Well, it did look like in your  
25 material or what you gave us that you did already do some

1 marketing and you do encourage people in the written materials  
2 that come in the summer don't you?

3 MR. BARRETT: We do.

4 MS. FELDMAN: That is, to car pool, and you have  
5 not compelled them, but you certainly have encouraged them?

6 MR. BARRETT: That's correct.

7 MS. FELDMAN: And you make it easy for them to?

8 MR. BARRETT: We have made some limited overtures  
9 in that way. We will be much more systematic and deliberate  
10 about it now.

11 MS. FELDMAN: Your new plan focuses on dismissal  
12 times with staggered pickup?

13 MR. BARRETT: Correct.

14 MS. FELDMAN: Aren't dismissal times much more  
15 scattered than arrivals? Don't you have different grades out at  
16 different times and for after school activities?

17 MR. BARRETT: Yes. For example, some of our  
18 nursery students leave at noon time, and quite widely separated  
19 from what is roughly our 3:00 p.m. dismissal. Furthermore, there  
20 is another group that leaves at about 4:00 or 4:15 p.m. That is  
21 a much smaller group based on after-school activities.

22 Then there is an even smaller group that might  
23 leave around five o'clock after sports.

24 MS. FELDMAN: So the school day might stretch from  
25 noon to five?

1                   MR. BARRETT: We have children leaving at different  
2 times, the earliest beginning at noon and the latest at the end  
3 of our extended day program at 6:00 p.m., but by that time we  
4 have funneled down to a pretty small number of children leaving  
5 at 6:00.

6                   MS. FELDMAN: But it is much less concentrated in  
7 the morning drop-off?

8                   MR. BARRETT: No, I would say the morning and the  
9 afternoon are similar in terms of concentration. The morning  
10 moves along more rapidly for procedural reasons. But I would say  
11 the morning and the afternoon look largely the same, in terms of  
12 the intensity and the impact on Whitehaven Parkway.

13                   MS. FELDMAN: Well, your plan suggests that you  
14 will start with the dismissal times to try to work out something  
15 and then you will move to the morning rush hour?

16                   MR. BARRETT: Right. We have made and I believe  
17 the commissioners have received a copy of our May 1 draft of the  
18 car pool plan. We include components there that deal with both  
19 the morning arrival and the afternoon dismissal, although it is  
20 true that the most significant procedural changes are targeted at  
21 the afternoon dismissal.

22                   MS. FELDMAN: For clarification, we are referring  
23 to the May 1st car pool initiative that was part of the 3-part  
24 supplemental submission that the board asked for?

25                   MR. BARRETT: Yes.

1 CHAIRPERSON GRIFFIS: It is the one labeled as  
2 draft, correct?

3 MR. BARRETT: The May 1, 2002 draft, yes.

4 MS. FELDMAN: Well, excuse me, but maybe I have  
5 misread this, but it looked to me as though you were only going  
6 to do dismissal time car pooling efforts, and see how it went,  
7 and then in December, if it was not producing enough, you would  
8 go to a morning arrival procedure?

9 MR. BARRETT: Yes, but the focus of this initiative  
10 is indeed on the afternoon dismissal time. However, there is  
11 actually a financial incentive built in to increase car pooling  
12 in the morning, and that is listed under -- it is on page three,  
13 I believe, under financial incentives and disincentives.

14 But let's be clear about this. We are focusing on  
15 the afternoon and the italic notes in the middle of page one  
16 explain that. We are focusing on dismissal measures for three  
17 particular reasons.

18 MS. FELDMAN: Excuse me, but I am giving you  
19 leeway, but I just asked the question weren't you focusing on  
20 them and really what you are saying is yes?

21 MR. BARRETT: Yes.

22 MS. FELDMAN: The thing that you just noted about  
23 the financial incentive for the littlest kids to come early and  
24 not have to pay the early arrival fee, in parentheses it notes  
25 that some families don't like to do that because they think that

1 is too early?

2 MR. BARRETT: You're right, and I don't represent  
3 that it is something that they will have to do.

4 MS. FELDMAN: We were troubled by that because it  
5 sounds as though by waiving the fee that you would encourage them  
6 to do something that maybe is not in the health interests of  
7 their children just to improve your traffic numbers?

8 MR. BARRETT: No, the parents can continue to make  
9 the choice not to bring their children at that earlier hour.  
10 They can come back at nine o'clock.

11 MS. FELDMAN: But your plan says if this worked and  
12 a lot more people did it that you would make 25 percent of your  
13 goal right there?

14 MR. BARRETT: I thought it would be useful to have  
15 some guide posts, yes. The families can choose now to bring  
16 their children at that time. It is a choice to be made by the  
17 families, and not by the school.

18 MS. FELDMAN: I understand that. Also, under this  
19 plan, it looks like you would have preferential dismissal times  
20 and students in single occupancy cars would be picked up to a  
21 half-an-hour later than those in triple occupancy cars?

22 MR. BARRETT: Yes.

23 MS. FELDMAN: Did it ever occur to you that this  
24 might actually be a disincentive because parents, nannies, and  
25 babysitters might be thrilled that teachers have an extra half-

1 hour free time?

2 MR. BARRETT: That has occurred to me, but I think  
3 we are going to find that out. Based on the flow of our traffic  
4 now, the clear intent seems to be to pick up children sooner  
5 rather than later.

6 Furthermore, I think by definition the earlier  
7 preferential times, at 2:50 and at 3:00 p.m., will be less  
8 congested, and I think parents who want to pick up their kids and  
9 be on their way can count on doing that more effectively, more  
10 smoothly, during those preferential times. And I believe that is  
11 an incentive.

12 MS. FELDMAN: Mr. Barrett, didn't it occur to you  
13 also that the extra time that the driver would have to put in for  
14 picking up and dropping off car pool members, plus having to get  
15 to the school early, might be considered a penalty by potential  
16 car poolers?

17 MR. BARRETT: I think we can encourage our parents  
18 with these positive and affirmative steps. We may find out that  
19 everybody wants to come after 3:15. I doubt it.

20 MS. FELDMAN: And am I correct in inferring that  
21 non-car pooling people who come too early are going to be sent  
22 off and told to come back?

23 MR. BARRETT: That's our intention.

24 MS. FELDMAN: And so they are going to basically go  
25 around the block and reenter the cue?

1 MR. BARRETT: Once, and then presumably the next  
2 day not come before their time.

3 MS. FELDMAN: Wouldn't those extra trips actually  
4 add to the congestion?

5 MR. BARRETT: Not to the congestion necessarily,  
6 but one thing we are trying to do is cut down on the overall  
7 number of vehicle trips through Whitehaven Parkway. These  
8 traffic procedures are real world procedures and it is working  
9 now and it could work under this initiative.

10 MS. FELDMAN: With the proposed possible financial  
11 disincentives, you say if things are not working out that you  
12 would consider a fine of about \$750 for not car pooling? In  
13 other words, a penalty for people who did not car pool; is that  
14 right?

15 MR. BARRETT: Yes.

16 MS. FELDMAN: And this would apply to families who  
17 now pay the base annual tuition charge of about \$17,000 with  
18 extras?

19 MR. BARRETT: We are not even above \$16,000 now.  
20 So it is not \$17,000.

21 MS. FELDMAN: I stand corrected.

22 MR. BARRETT: And ny car pool fee, any  
23 disincentive, would be on top of that amount, yes.

24 MS. FELDMAN: Do you think of a charge of \$750 a  
25 year, which comes out to about \$4 per school day, or the cost of

1 a small latte, is likely to be significant enough to change  
2 behaviors?

3 MR. BARRETT: A lot of our parents are making  
4 significant sacrifices to pay the tuitions that they do at St.  
5 Patrick's and at other independent schools in the Washington  
6 area. And an additional \$750 is something that I would not like  
7 to assess them, and that many of them would not like to pay. So  
8 I do believe it is significant, yes.

9 MS. FELDMAN: Aren't you going to exempt the  
10 families who aren't financially --

11 MR. BARRETT: I would reserve the right to waive  
12 that fee for families who are on financial aid or face other  
13 particular situations, and might be unable to pay that, yes.

14 MS. FELDMAN: So don't you think that some families  
15 might consider this to be a very moderate car pool opt out fee?

16 MR. BARRETT: Again, if too many believe that it  
17 is, then we would increase that fee.

18 MS. FELDMAN: Now, don't you think really that  
19 parents or other drivers of junior high school students,  
20 especially drivers who are downtown commuters, would simply avoid  
21 all of the car pool Whitehaven hassle and drive their kids off  
22 directly on Ashby-MacArthur, or nearby streets?

23 MR. BARRETT: No.

24 MS. FELDMAN: How many of your current 7th grade  
25 students come from the Palisades?

1 MR. BARRETT: I believe there are 2 of our 16  
2 students who live within walking distance are in the Palisades.

3 MS. FELDMAN: How many students have you accepted  
4 so far for the 7th and 8th grades for this September?

5 MR. BARRETT: I'm sorry, but I don't have that  
6 number.

7 MS. FELDMAN: How many offers have you made to  
8 children who live in the Palisades?

9 MR. BARRETT: I can't answer that question.

10 MS. FELDMAN: From D.C. generally?

11 MR. BARRETT: I am unable to answer that question.

12 MS. FELDMAN: Thank you. Those are my questions,  
13 and I would like to reserve the opportunity to ask further  
14 questions only if Mr. Barrett turns out to be the only person who  
15 can answer those questions. Thank you.

16 CHAIRPERSON GRIFFIS: That's fine. We are going to  
17 have a five minute recess period, and we will then come back and  
18 finish cross-examination this evening of Mr. Barrett, and that  
19 will conclude our day. So we have two more of the parties that  
20 will do the cross-examination. It is 6:30 now and so let's take  
21 five, and then resume.

22 MS. FELDMAN:

23 (Whereupon, at 6:30 p.m., the hearing was recessed  
24 and resumed 6:42 p.m.)

25 CHAIRPERSON GRIFFIS: All right. You can begin

1 when ready.

2 MR. LOVENDUSKY: Thank you, Mr. Chairman. Michael  
3 Lovendusky, party opponent to the application. Good afternoon,  
4 Mr. Barrett.

5 MR. BARRETT: Good evening, Mr. Lovendusky.

6 MR. LOVENDUSKY: Could you please show me on the  
7 map where the green space that St. Patrick's paved over to make  
8 30 parking lot spaces exist?

9 MR. BARRETT: I would be pleased to do that. This  
10 is designated the east lot, and I guess Ms. Prince will show us  
11 where that is.

12 MR. LOVENDUSKY: But that is not at the instant  
13 site, correct? Give us the address of that?

14 MR. BARRETT: That is 4700 Whitehaven Parkway.

15 MR. LOVENDUSKY: And so as listed in that exhibit,  
16 which does not have an exhibit number.

17 VICE CHAIRPERSON RENSHAW: Is that the Corps of  
18 Engineers property?

19 MR. BARRETT: Correct.

20 MR. LOVENDUSKY: Mr. Barrett, when did your tenure  
21 at St. Patrick's begin?

22 MR. BARRETT: July 1st, 1994.

23 MR. LOVENDUSKY: And have you participated in every  
24 appearance before the Board of Zoning Adjustments since your  
25 tenure began?

1 MR. BARRETT: Yes.

2 MR. LOVENDUSKY: What year was the Army Corps of  
3 Engineers landpaved over?

4 MR. BARRETT: Construction began November of 2000  
5 and it was then paved in either October or November of 2000.

6 MR. LOVENDUSKY: Were you aware that that land  
7 belonged to the Army Corps of Engineers at the time that it was  
8 paved over?

9 MR. BARRETT: Yes.

10 MR. LOVENDUSKY: You intentionally paved over the  
11 Army Corps of Engineers land?

12 MR. BARRETT: I think we have established this  
13 already. Perhaps in the interests of time we can proceed with  
14 something else.

15 MR. LOVENDUSKY: I didn't understand whether it was  
16 by mistake or by intent.

17 MR. BARRETT: It was not in error.

18 MR. LOVENDUSKY: With regard to the 30 spaces that  
19 are on that parking lot, will those be the spaces designated for  
20 the faculty?

21 MR. BARRETT: No, that would become a visitors  
22 slot.

23 MR. LOVENDUSKY: Who are the operators of the  
24 rental shuttle buses that the school currently uses?

25 MR. BARRETT: We have none.

1 MR. LOVENDUSKY: Who will be the operators of the  
2 rental shuttle buses?

3 MR. BARRETT: We will either lease them from  
4 someone to be determined or we will purchase our own.

5 MR. LOVENDUSKY: You have identified the size of  
6 the buses.

7 MR. BARRETT: We have shopped for the buses, and we  
8 have not purchased them or we have not engaged in any leasing  
9 situation.

10 MR. LOVENDUSKY: Have you been a party to those  
11 discussions or planning?

12 MR. BARRETT: No, that has proceeded through our  
13 business office.

14 MR. LOVENDUSKY: So you would not know anything  
15 about the nature of the buses?

16 MR. BARRETT: I can't give any specific responses  
17 to that, no.

18 MR. LOVENDUSKY: Could you please -- let's see.  
19 When did St. Patrick's close on the property at 49215 MacArthur?

20 MR. BARRETT: It was in mid-March. I am not sure  
21 of the exact date.

22 MR. LOVENDUSKY: Who is the custodian or supervisor  
23 of activities at 4925 MacArthur since you acquired the property  
24 in March?

25 MR. BARRETT: We have not designated a particular

1 individual. Our business manager is handling matters dealing  
2 with 4925.

3 MR. LOVENDUSKY: Now, the witnesses that the  
4 applicant has brought forward to the BZA, who would best be  
5 familiar with the nature of the activities ongoing at 4925  
6 MacArthur since you closed on the property in March?

7 MR. BARRETT: Perhaps none. As I said, our  
8 business manager is most aware and is engaged in conversations  
9 with the ongoing occupants of that building.

10 MR. LOVENDUSKY: Was there any provision to allow  
11 the psychoanalyst to continue to use the building?

12 MR. BARRETT: Yes.

13 MR. LOVENDUSKY: How often has the psychoanalyst  
14 used the building?

15 MR. BARRETT: I can't answer that question. I  
16 would assume they continued under much the same arrangement that  
17 they had.

18 MR. LOVENDUSKY: Would you be surprised to know  
19 that they used it on April 17th?

20 MR. BARRETT: Perhaps surprised isn't the best  
21 word. I don't have any knowledge as to whether they used it on  
22 that date.

23 MR. LOVENDUSKY: Has there been any other groups of  
24 individuals using the property at 4925 MacArthur since you closed  
25 on it other than the psychoanalytic society?

1                   MR. BARRETT: It is my understanding that the use  
2 of the property after our setting on it continued in much the  
3 same fashion as it did before we settled on it. Our current 7th  
4 grade students used it for an afternoon for the purposes of the  
5 sound study, and any other uses of the property would have  
6 occurred through or with the knowledge of the psychoanalytic  
7 society I would expect.

8                   MR. LOVENDUSKY: But what authority are you  
9 allowing such non-residential use?

10                  MR. BARRETT: They continue to lease back the  
11 building.

12                  MR. LOVENDUSKY: Is it your testimony that the  
13 special exception grant of the psychoanalyst continues in force  
14 to the benefit of St. Patrick's, despite the fact that St.  
15 Patrick's acquired and closed on the property in March?

16                  MS. PRINCE: That is a legal question and I would  
17 like to answer it. The law is well established on that issue.  
18 Special exceptions travel with the property and not the user.  
19 Not the owner. I'm sorry.

20                  MR. LOVENDUSKY: So is it your testimony that the  
21 psychoanalytic use of the property under its special exception  
22 will continue forever?

23                  MS. PRINCE: Absolutely. That special exception  
24 approval is inherent in that land. The change in ownership does  
25 not affect the status of that special exception approval. There

1 has been several Court of Appeals decisions on it, and the most  
2 notable decision is Black Child.

3 MR. LOVENDUSKY: So should the Board deny the  
4 special exception that is the current application, and the  
5 psychoanalytic society continue to use the property as they have  
6 for all the preceding years?

7 MS. PRINCE: They could assuming they were not to  
8 make other arrangements. I am not at all familiar with what the  
9 arrangements are with the psychoanalytic society, but as you  
10 know, there is a 42 year history of non-residential use at that  
11 building pursuant to board approval.

12 And the status of that order does not change in any  
13 way by virtue of the change in ownership of the property.

14 MR. LOVENDUSKY: Ms. Prince, is it your  
15 representation of the law that the non-residential use could  
16 continue to the benefit of groups other than the psychoanalytic  
17 society so long as they observe the numerical limits and other  
18 qualifications of the special exception?

19 MS. PRINCE: Absolutely. The law is also very  
20 clear on that issue. The special exception does not flow  
21 specifically to the psychoanalytic society. The special  
22 exception grants permission to have that use on that property,  
23 regardless of who the owner is.

24 Having said that, any user other than the  
25 psychoanalytic society would have to comply with the certificate

1 of occupancy that governs that property.

2 MR. LOVENDUSKY: Is St. Patrick's receiving rent  
3 from the psychoanalytic society?

4 MR. BARRETT: The terms of our agreement include a  
5 monthly rental fee. We might help everybody out here. The  
6 Washington Psychoanalytic Society I believe has plans to leave at  
7 the end of May. So questions about their use of the property  
8 aren't particularly useful at this time.

9 MS. FELDMAN: Ms. Prince has indicated that another  
10 group could in fact use it in the same parameters of use as the  
11 Washington Analytical Society?

12 MR. BARRETT: Yes, but St. Patrick's is the owner  
13 of that property. Whatever agreements other groups may have  
14 arranged with the Washington Psychoanalytic Society, they would  
15 now have to make with us, and we won't be making it available for  
16 other use for other groups' uses.

17 MR. LOVENDUSKY: Unless you need to make an honest  
18 reversal.

19 MR. BARRETT: Do you have a question?

20 MR. LOVENDUSKY: Yes, what is the amount of the  
21 rent?

22 MR. BARRETT: I don't know.

23 MR. LOVENDUSKY: I certainly do not want to belabor  
24 the car pooling arrangement again, but Mr. Barrett, could you  
25 please take me through a day in the life of the typical St.

1 Patrick's student who will be attending Grade 7th or 8th at 4925  
2 MacArthur Boulevard, and I will help everyone by walking us  
3 through it.

4 They will wake up in the morning and be transported  
5 to the Whitehaven campus facility first; is that correct?

6 MR. BARRETT: Yes.

7 MR. LOVENDUSKY: They will then be transported from  
8 the Whitehaven facility to 4925 MacArthur Boulevard?

9 MR. BARRETT: Yes.

10 MR. LOVENDUSKY: At some point in the 2002-2003, or  
11 2003-2004 years, they will then be transported from the 4925  
12 MacArthur Boulevard to 4880A MacArthur for science, or --

13 MR. BARRETT: Or they would walk that distance.  
14 And I believe we are talking about a rather brief period of time  
15 where that would be the case.

16 MR. LOVENDUSKY: At the end of the transportation  
17 to 4880A, they would then return to 4925 MacArthur?

18 MR. BARRETT: Depending on what their class  
19 schedule called for, yes. Only as long as we have 48880A, and  
20 again we certainly have an agreement to use that space through  
21 June of 2003, and they would like to have it back for their use  
22 in January of 2003. So I think we are talking about a fairly  
23 short period of time.

24 MR. LOVENDUSKY: After they are back at 4925  
25 MacArthur, they will then be transported back to Whitehaven the

1 end of their day.

2 MR. BARRETT: At the end of the academic day,  
3 that's correct, at three o'clock.

4 MR. LOVENDUSKY: And at that time, they will be  
5 transported to athletic facilities at Yates?

6 MR. BARRETT: Not necessarily. We have used Yates  
7 Field House, and we have used the gym at 4700 Whitehaven, and we  
8 have used the field at 4700 Whitehaven. Our cross-country team  
9 has used a variety of locations as country-country teams  
10 throughout the City do. And we are also investigating uses of  
11 other field and athletic spaces.

12 MR. LOVENDUSKY: The use of other athletic spaces  
13 or Yates, or the cross-country facilities require vehicular  
14 transportation?

15 MR. BARRETT: For cross-country, no. Whitehaven,  
16 no. Yates and any others at some distance would require shuttle  
17 bus transportation.

18 MR. LOVENDUSKY: And those students who would be  
19 transported to Yates for athletic activities, would they then be  
20 returned to Whitehaven?

21 MR. BARRETT: They would come back to Whitehaven,  
22 yes.

23 MR. LOVENDUSKY: And which at some point they would  
24 be picked up by their parents to return home?

25 MR. BARRETT: Correct.

1 MR. LOVENDUSKY: So what you have described then is  
2 in the typical life of a St. Patrick's student who will be  
3 occupying grade 7th, 8th, or possibly 9th, at 4925 MacArthur,  
4 they will at least be engaged in six daily transportations or  
5 walks, either vehicular or walking, with an additional possible  
6 three depending if they are going off-site for athletic or other  
7 activities?

8 MR. BARRETT: Well, I think we should remove 4880A  
9 from your calculations. I think it is simply -- that it simply  
10 jacks the number up unnecessarily. So we are talking about a  
11 very brief period of time where that would be the case.

12 You asked about what the typical life for a -- the  
13 transportation life for a student in our grades 7 and 8, we would  
14 be looking at being dropped off at Whitehaven Parkway, shuttled  
15 to 4925, remaining at 4925 for the balance of the academic day,  
16 and then leaving 4925 for sports at 3:00 p.m.

17 And that is many fewer trips or transports than I  
18 think your figures show there.

19 MR. LOVENDUSKY: So, Mr. Barrett, you think that it  
20 is fair to disregard the concerns of the adjoining or nearby  
21 neighbors who would actually experience the pedestrian walks  
22 between 4925 MacArthur Boulevard and --

23 MR. BARRETT: I think that our approach to this  
24 entire proposal indicates that we have paid very close attention  
25 to every concern voiced by every neighbor, and I wouldn't

1 discount any of those concerns, and I won't at this time.

2 MR. LOVENDUSKY: Mr. Barrett, are you the senior  
3 executive officer for faculty and staff at the school?

4 MR. BARRETT: I am the chief executive officer,  
5 yes.

6 MR. LOVENDUSKY: And so are you responsible for  
7 hiring and firing faculty?

8 MR. BARRETT: Yes.

9 MR. LOVENDUSKY: Are you responsible for salaries  
10 and bonuses?

11 MR. BARRETT: There are no bonuses, and I am  
12 responsible for salaries, yes.

13 MR. LOVENDUSKY: Did you write the master letter --  
14 let me step back.

15 MS. PRINCE: I object. I don't recall any direct  
16 testimony on this, and when we start getting into salary  
17 information for faculty, I consider that to be completely beyond  
18 the scope of this hearing and this board's jurisdiction.

19 MR. LOVENDUSKY: Mr. Barrett, are you aware that  
20 your faculty has written numerous letters to the file for this  
21 application?

22 MR. BARRETT: I believe some members have written  
23 letters, yes.

24 MR. LOVENDUSKY: Did you write the form letter from  
25 which they model their letters?

1 MR. BARRETT: No.

2 MR. LOVENDUSKY: Do you know who did write the form  
3 letter by which they modeled their letters?

4 MR. BARRETT: No. And I am not sure that all of  
5 them wrote from a form letter. We have a very bright and  
6 talented faculty.

7 MR. LOVENDUSKY: I have no further questions of Mr.  
8 Barrett.

9 CHAIRPERSON GRIFFIS: Thank you.

10 (Brief Pause.)

11 CHAIRPERSON GRIFFIS: You have one final question?

12 MR. LOVENDUSKY: Mr. Barrett, Ms. Prince has  
13 indicated that it is her interpretation of the law that the  
14 special exception granted to the psychoanalytics (sic) for the  
15 use of the property goes with the property, and is now to the  
16 benefit of St. Patrick's.

17 Are we to understand that St. Patrick's would not  
18 be satisfied with the level of use permitted by the  
19 psychoanalysts (sic) special exception?

20 MR. BARRETT: I am not sure I understand your  
21 question.

22 MR. LOVENDUSKY: Could you operate the school under  
23 an existing special exception?

24 MS. PRINCE: I don't believe that question is  
25 something that Peter would be capable of addressing. We looked

1 closely at that issue, and I really have to admit that I believe  
2 that there is a strong argument to be made that the school could  
3 operate under the existing approval.

4           However, having said that, with the number of  
5 appeals that confront this board on a monthly basis, we took the  
6 high road, and we took the most conservative interpretation of  
7 that existing certificate of occupancy which is for school use,  
8 and does not have as a condition.

9           We took the high road and we filed this application  
10 and put ourselves through this entire process and this entire  
11 community dialogue, but I believe an argument could be made that  
12 we could operate as a matter of right under the order, yes.

13           CHAIRPERSON GRIFFIS:     Does that answer your  
14 question, Mr. Lovendusky?

15           MR. LOVENDUSKY:   Ye. Thank you, Mr. Chairman.

16           MS. WRIGHT:   Kathy Wright, and I am representing  
17 the immediate neighbors, the Scripps, and the Hoyes. Despite  
18 what you just said, it is quite clear that the level and degree,  
19 and intensity of usage of this property is going to be  
20 considerably different than the use that has been made of the  
21 psychoanalytical society.

22           In fact, in the document at Tab B, there is a  
23 comparison, a rough comparison of that degree of intensity.

24           MS. PRINCE:   Is this a question?

25           MS. WRIGHT:   Yes. There are two questions that I

1 would like to make. Would you not agree that the level of noise  
2 that would be generated by 60 students coming and going, and by  
3 15 to 20 students, 3 to 4 times a day, with recesses, would be  
4 considerably greater than that of a small number of  
5 psychoanalysts (sic) coming and going?

6 MR. BARRETT: I don't believe the coming and going  
7 will generate significantly more noise. As you know, Ms. Hoye  
8 has testified many times that the noise when the psychoanalytic  
9 society meetings break up, and they leave the parking lot and  
10 their parking along Ashby rather late at night.

11 As you know our students will be arriving at the  
12 bus pad and going directly up the steps into the front door of  
13 the building. So I don't think the coming and going -- that in  
14 fact I would argue would be an improvement.

15 The breaks and the lunchtime use of the green space  
16 is absolutely a different use, and therefore will generate  
17 different sounds. I would agree with that, yes.

18 MS. WRIGHT: And I would say the coming and going  
19 of the faculty, as well as the visitors and the maintenance  
20 people on a more regular or daily basis would constitute a  
21 greater use as well than the psychoanalytic society.

22 MR. BARRETT: Well, remember that our traffic  
23 counts show that for full-time faculty the use exactly matches  
24 the use observed on the particular day of our counts, and I  
25 believe it was in December.

1                   And I would expect that things like maintenance  
2                   vehicles, and grass cutting, and so forth would be identical.  
3                   There may be more individuals present during the day, and there  
4                   may be the need for perhaps more frequent plumbing visits or  
5                   whatever.

6                   But generally speaking I think that traffic exists  
7                   now, and would exist with any use at that time, including  
8                   residential use.

9                   MS. WRIGHT: My second question is that in the  
10                  revised conditions found in the document that was received  
11                  yesterday, there is discussion of the buffers that St. Patrick's  
12                  would be willing to put in place.

13                  The latest information we have is that there will  
14                  be what looks to be a 10 foot buffer of landscaping along the  
15                  property line with 4925. My question is this.

16                  That buffering only goes through a portion of the  
17                  property and not the entire property, nor does it look like there  
18                  is a similar buffering along the property line for the Hoyes.  
19                  Can you address why this is only a partial buffering?

20                  MR. BARRETT: I don't believe that I can answer  
21                  that question. Perhaps Allison can help us.

22                  MS. PRINCE: At the risk of testifying, I think I  
23                  would like to ask Katherine Bradley to come back and explain why  
24                  this document was prepared. It was simply to initiate a dialogue  
25                  because we had been able to meet.

1 MS. BRADLEY: I can do this very quickly.  
2 Katherine Bradley. We have always maintained that we would  
3 provide any kind of buffers that the Hoyes and the Wright-Scripps  
4 wanted, and there are different ways to look at this. It is  
5 possible that they will want a buffer which protects from hearing  
6 any sound at all.

7 Our sound engineer has testified and will be  
8 available for questions and that he doesn't think that is  
9 necessary. What we drew up was really what we would call a  
10 visual buffer, which would give about a 10 foot space on your  
11 side of the property.

12 Sharon Hoyer said that she really doesn't want any  
13 change in the fencing that she has right now and that she might  
14 want to keep that dialogue open. But that she was not requesting  
15 any kind of change.

16 MS. WRIGHT: That may be true, but the buffering  
17 that you are currently proposing does not run the entire length  
18 of the property, and should there be an adequate buffering that  
19 would eliminate a number of your parking places.

20 MS. BRADLEY: Well, the existing condition from  
21 your kitchen to the parking lot, that your kitchen window really  
22 does look into the fronts of the first two cars there that are  
23 parked in the parking lot, and that is an existing condition.

24 We could put a fence there, but there is no noise  
25 that is going to be coming from there. And what we tried to do

1 was show just a potential buffer that would actually inclose the  
2 yard.

3 And that could be just a visual buffer so that you  
4 would never have to see a child playing there, or it could be a  
5 sound buffer, depending on what kind of fence was made.

6 And we really put this forward just as an example  
7 of what we would be willing to do, and there are many other ways  
8 to look at this. And you could put a fence in the dirt space  
9 that is between the property line and the end of the parking lot.

10 MS. WRIGHT: Well, again, coming back to the point  
11 that under the Psychoanalytical Institute, there were cars there  
12 on Saturday morning. one evening a week, and very infrequently.

13 Here we are talking about 12 cars every single day,  
14 pulling in during the morning and out in the evening, and where  
15 we see not only multiple cars, but there is the exhaust, and  
16 there is the noise, and at present there is really in addition to  
17 a 12 foot drop-off, there is no adequate proposal for any  
18 vegetation or any adequate fencing.

19 CHAIRPERSON GRIFFIS: I think a lot of that you are  
20 going to cover when you give testimony.

21 MS. WRIGHT: Exactly. But I am just making the  
22 point that or my question is why is --

23 MS. BRADLEY: Well, you could easily an ivy-  
24 covered fence there that would be a visual buffer right at the  
25 end of that parking lot. There is room to do that. We can't

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1 give you 10 feet right here the way we can along the lawn part of  
2 the driveway.

3 And in fairness, there are cars -- that the  
4 Psychoanalytic Society rents out office space, and there are cars  
5 in that parking lot, a smaller number than during their big  
6 meetings. But there are cars there every day, and even your  
7 photographs do show there were cars there during the day when  
8 they weren't fully using the building.

9 MS. WRIGHT: That's true, but not to the level of  
10 intensity that it will be used, and I would argue that any 10  
11 foot buffer should run the entire length of the property.

12 CHAIRPERSON GRIFFIS: Let's save your argument for  
13 the appropriate time for arguments. And I think the question was  
14 clearly is this still a work in progress for this buffer plan.  
15 And if I am not incorrect, the answer was yes.

16 MR. BARRETT: The answer is yes.

17 CHAIRPERSON GRIFFIS: Is that it?

18 MS. WRIGHT: Yes, thank you.

19 CHAIRPERSON GRIFFIS: Very well. Well we have an  
20 option of cross-examining one more witness or calling it a night,  
21 and I imagine that if I poll my board members we would call it a  
22 night. So let us set dates for the next hearings and maybe some  
23 direction on this.

24 But I understand that the parties have been  
25 suggesting a few dates, and July 2nd and July 23rd are available

1 to all of the parties; is that correct? And did we set times on  
2 that?

3 SECRETARY PRUITT: They would be in the afternoon.

4 We have two cases in the afternoon and then that would be the  
5 last case in the afternoon on both days.

6 The parties are requesting that their  
7 transportation specialist --

8 CHAIRPERSON GRIFFIS: Oh, your transportation  
9 specialist is only available on the 2nd and the 11th. We have  
10 thrown out the 11th.

11 MS. FELDMAN: We were wondering if you could  
12 possibly be creative and fashion an all traffic, all day session  
13 on the July 2nd date. That is to say cross-examination of Mr.  
14 Wells, Ken Laden, and our guy.

15 CHAIRPERSON GRIFFIS: I think that makes a lot of  
16 sense, and we could do it that way and have Mr. Laden's report  
17 while he is here.

18 SECRETARY PRUITT: I would also note for the record  
19 that on both of these days, unfortunately because of their  
20 schedule, on July 2nd, we have the Washington International  
21 School and a modification to a condition, an existing condition  
22 and a case that is already scheduled.

23 And the National Children's Center, which is a  
24 request for an increase in staff, and the Students for Disabled  
25 Development, and so you already have two cases and this would be

1 the third one.

2 CHAIRPERSON GRIFFIS: What are we doing in the  
3 morning?

4 SECRETARY PRUITT: The morning is a meeting, July  
5 2nd is a meeting day. So right now it is hard to determine  
6 because meetings don't usually start and we don't set the agenda  
7 for that until about a week or so before, depending upon how many  
8 bench decisions and summary orders.

9 MS. PRINCE: May I offer one suggestion?

10 CHAIRPERSON GRIFFIS: Sure.

11 MS. PRINCE: In the event that any hearing dates  
12 become available prior to July 2nd, would you be willing to  
13 contact the parties and let them know about the availability of  
14 the hearing date to possibly take advantage of any opening that  
15 may be created?

16 My worry when I hear about two cases on an  
17 afternoon agenda preceding ours is that we will be looking at  
18 five hearings before this case will be done. I think if we could  
19 be limited to maybe 3 or 4 hearings maximum, that would be  
20 appreciated I think by all parties.

21 CHAIRPERSON GRIFFIS: I agree.

22 SECRETARY PRUITT: The other alternative is to move  
23 it to September, where you could make it a full day.

24 CHAIRPERSON GRIFFIS: Okay. I don't think the  
25 Board would have a problem with it. That is obviously a bit of a

1 shuffle, in terms of if a major case drops off in the afternoon,  
2 we would be calling to make sure that people were available and  
3 could come down and do it.

4 I would not anticipate looking at this schedule  
5 that it is anything close to -- well, it is probably closer to  
6 the end of June when anything of that nature might happen.

7 Another date though is June 25th in the afternoon.

8 What is the availability there?

9 (Discussion off microphone.)

10 CHAIRPERSON GRIFFIS: All right. Well, let's go  
11 back to the original dates and we are looking at the 2nd, and we  
12 are looking at the 23rd, correct?

13 SECRETARY PRUITT: Correct.

14 MS. WRIGHT: Ken Laden of DDOT can't make it on the  
15 23rd of July.

16 MR. FINNEY: And our traffic expert can't either.

17 CHAIRPERSON GRIFFIS: I understand that. We are  
18 not going to have everybody for every day, it doesn't look like.

19 MS. FELDMAN: Those are the two key people on the  
20 traffic though.

21 CHAIRPERSON GRIFFIS: But they can make it on the  
22 2nd?

23 MS. BAILEY: Yes.

24 SECRETARY PRUITT: So what is left is cross-  
25 examination of the architect and sound person, and I was

1 separating traffic out. So you may want to finish cross-  
2 examination of the applicant and then lump both transportation  
3 together and then have Mr. Laden and then their specialist  
4 testify, or some sequence of that nature.

5 CHAIRPERSON GRIFFIS: Yes, the 2nd looks like it  
6 has to focus on engineering. Is there an objection or difficulty  
7 with Mr. Laden giving his report on the 2nd?

8 MR. FINNEY: With the understanding, Mr. Chairman,  
9 that we would turn to cross-examination of the other applicants.

10 CHAIRPERSON GRIFFIS: Right.

11 MS. PRINCE: One more idea, and I am full of ideas  
12 tonight.

13 CHAIRPERSON GRIFFIS: Well, first tell me if you  
14 have an objection to Mr. Laden giving a report on the 2nd.

15 MS. PRINCE: No objection. However, since some  
16 people are not available the 23rd, and I believe Mr. Laden was  
17 not available the 23rd, how about recognizing reality and that we  
18 are probably not going to finish with a partial day on the 23rd  
19 anyway, and giving us the 2nd, and then a full guaranteed day all  
20 to ourselves in September, so that we finish this case for once  
21 and for all in September, and have some certainty for the school  
22 as to what they are going to do with these kids.

23 CHAIRPERSON GRIFFIS: That's fine by me

24 SECRETARY PRUITT: The first available all day  
25 would be September 10th. I do need to double-check that with

1 Jerry just to see if she may have scheduled something, but based  
2 on what I have as of this moment, there is nothing scheduled.

3 CHAIRPERSON GRIFFIS: Okay. I would take that  
4 date, but you are saying even doing the 2nd and the 23rd,  
5 correct?

6 MS. PRINCE: My point was we will do the 2nd, and  
7 accommodate your traffic expert and make it a traffic day, and we  
8 will recognize that we are not going to finish that day  
9 realistically, although we will all make every effort.

10 But then we will have a September 10th all day date  
11 so we can complete the case, and I assume that is a Tuesday?

12 SECRETARY PRUITT: Yes, it is.

13 CHAIRPERSON GRIFFIS: And you are convinced that an  
14 all day and a half-day will take us to the finish on this?

15 MS. PRINCE: One more tiny thing. What is the next  
16 available September date just in case that happens to be the  
17 first day of school?

18 SECRETARY PRUITT: Right now we only have one  
19 scheduled for the 17th.

20 MS. PRINCE: So it would be the 10th or the 17th.  
21 Apparently the 10th is not the first day of school, and so we  
22 will work around it.

23 CHAIRPERSON GRIFFIS: Okay. Let's reiterate then  
24 that we will go to the afternoon of the 2nd of July, and we will  
25 hear from -- we will continue cross-examination of the

1 applicant's witnesses, and then schedule Mr. Laden and anybody  
2 else in September if we need them.

3 (Discussion off microphone.)

4 MS. PRINCE: It was my understanding that the  
5 opponent's traffic expert was available July 2nd?

6 (Discussion off microphone.)

7 CHAIRPERSON GRIFFIS: Will you need your traffic  
8 expert to cross their witness? So let's bring them on then on  
9 the 2nd.

10 MS. PRINCE: We will make him available.

11 MS. BAILEY: Well, if for whatever reason they are  
12 not, let's just get the communication now and we will set it for  
13 September 10th.

14 (Discussion off microphone.)

15 CHAIRPERSON GRIFFIS: I mean, as long as we get  
16 everyone together at some point, I don't think it matters in  
17 terms of the case presentation whether it happens on the 2nd or  
18 in September. So obviously you will let us know if that date is  
19 not working out, in which case we will have a traffic-engineering  
20 test on the 2nd and continue up with anything else that we can  
21 for that date. What else?

22 MS. BAILEY: Mr. Chairman, there was a submission  
23 that was discussed. It is the enrollment contract for grades 7  
24 and 8, and the headmaster had indicated that he would provide  
25 that.

1 CHAIRPERSON GRIFFIS: Right.

2 MS. BAILEY: And the last thing is our files are  
3 about 20 pounds or 30 pounds. So if at all possible, if it is  
4 not crucial, can we ask that the file -- well we just keep  
5 getting more and more paper.

6 CHAIRPERSON GRIFFIS: Is it best to have a  
7 milestone submission?

8 MS. BAILEY: Well, if it is important, of course,  
9 yes. But we have a lot of letters of support. And we have a lot  
10 of letters of opposition.

11 CHAIRPERSON GRIFFIS: I see. So you are requesting  
12 that people be prudent in their filings.

13 MS. BAILEY: Thank you, please.

14 CHAIRPERSON GRIFFIS: Objections?

15 MS. FELDMAN: We don't have control over people  
16 sending in letters. We would not want the file to be closed  
17 until the end of the case because things do keep coming up.

18 CHAIRPERSON GRIFFIS: Well, I think the suggestion  
19 is, of course, just to be prudent in terms of filings, and if  
20 things are of great import, we know that we are going into  
21 September, and if conceivably things can come to that date or for  
22 our deliberations in our part of the general hearing, or the  
23 hearing process, it would be more prudent.

24 And I am sure that the Board would look favorably  
25 upon it that we do carry this back and forth to our homes. So

1 that being said, what else do we need? Let's address and hear  
2 from the parties if it is important that the enrollment contracts  
3 for 7th and 8th be submitted immediately for the record and  
4 cannot be submitted to the September date?

5 MR. BARRETT: There is no reason for any particular  
6 delay on that. I mean, we can provide that in fairly short  
7 order, and I believe it is under one pound.

8 CHAIRPERSON GRIFFIS: Well, we will put it on the  
9 scale when it gets in then. So there it is We will get that in  
10 as soon as it is available. What else?

11 (Discussion off microphone.)

12 CHAIRPERSON GRIFFIS: Well, what we would request,  
13 however, as we proceed, and we do have the four parties going, if  
14 there is a way to bundle your information that can elicit the  
15 response that you require, I think that would be most prudent,  
16 one for the Board's concentration and understanding, and also for  
17 our time in terms of how much we actually have to get through it  
18 all.

19 SECRETARY PRUITT: I just wanted to reiterate so  
20 that the record is clear.

21 CHAIRPERSON GRIFFIS: Good. That is the last that  
22 I will say.

23 SECRETARY PRUITT: We will be continuing this  
24 hearing to July 2nd, the third case in the afternoon, at which  
25 time we will either finish cross-examination and do

1 transportation of both parties and applicant.

2 I guess you will let us know whether or not your  
3 transportation person is also available in September. Otherwise,  
4 we will follow our normal sequence.

5 Then we also scheduled a day in September,  
6 September 10th, for the whole day, starting at 9:30, for just the  
7 hearing. It is my understanding the applicant will submit before  
8 July 2nd the enrollment contract and you will be able to serve  
9 that on all the parties before July 2nd.

10 CHAIRPERSON GRIFFIS: And we had decided that we  
11 would bring all the traffic people on the 2nd. Is that correct?

12 MS. PRINCE: I believe that is what we agreed to.

13 CHAIRPERSON GRIFFIS: Okay. So check people's  
14 schedules for September also.

15 SECRETARY PRUITT: And transportation on the 2nd.

16 CHAIRPERSON GRIFFIS: Right.

17 SECRETARY PRUITT: And whatever else we can fit in.

18 CHAIRPERSON GRIFFIS: Other issues? Clarifications  
19 needed? In which case, I wish you all a pleasant evening, and we  
20 will adjourn this 21st of May 2002 hearing.

21 (Whereupon, the hearing was concluded at 7:25 p.m.)

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