

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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PUBLIC HEARING

+ + + + +

TUESDAY
JUNE 4, 2002

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The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 2001, pursuant to notice at 2:45 p.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
DAVID ZAIDAIN	Board Member, NCPC
CURTIS ETHERLY, JR.	Board Member
ANTHONY HOOD	Board Member

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN	Commissioner
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C-O-N-T-E-N-T-S

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AGENDA ITEM

PAGE

PRELIMINARY MATTERS 7

APPLICATION OF HUMBERTO GONZALEZ

16823 ANC-2B

CYNTHIA GIORDANO, ESQUIRE
555 12th Street, N.W.
Washington, D.C.
(202) 943-5840

WITNESS

Crista Hendricks 90

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

2:45 p.m.

CHAIRPERSON GRIFFIS: This is, of course, the June 4, 2002 public hearing of the Board of Zoning Adjustment for the District of Columbia. My name is Geoff Griffis. I am the Chairperson. Joining me today will be Ms. Anne Renshaw, who is the Vice Chair and she'll be sitting in this seat right to my left, and we will get her back out here.

Mr. Curtis Etherly is on my right and Mr. David Zaidain representing the National Capitol Planning Commission on my left, and the representative from the Zoning Commission today is Ms. Mitten.

Copies of today's hearing are available for you. I imagine you've had enough time to figure out where everything is, but let me just point it out.

It's the table with the door where you do enter into, you can get those agendas.

Let me lay out a few quick things. When presenting to the Board, you're going to come forward.

You're going to be at the table and you're going to need to speak in to the mike. The entire proceeding and everything that happens in this room is recorded.

So we want to absolutely hear everything that you

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have to say, so speak in to the microphone.

We do not want to have any other disruptive noises or actions that detract from what we are listening to or any testimony that might be given. So, any persons planning to testify, of course either in favor or opposition to an application, can come forward. I need to get through this and then I will address you. Thank you very much.

You are to fill out two witness cards. Witness cards are at the table you came into and there are additional ones at the table in front of us. When you come forward to speak to the Board, you need to give both of those cards to the reporter, who is sitting to my right.

The order of procedure for special exception and variances this afternoon will be first statements and witnesses of the applicant. Second, would be government reports, including Office of Planning and any other government reports to which we have.

Third, will be the report of the Advisory Neighborhood Commission. Fourth, would be parties or persons in support. Fifth, would be persons or parties in opposition; and sixth, would be closing

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remarks by the applicant.

Cross-examination of witnesses is permitted by the applicant or parties. The agency within which the property is located is automatically a party in the case. The record will be closed at the conclusion of each case, except for any materials specifically requested by the Board, and the Board and/or staff will specify at the end of the hearing exactly what is expected and the date when the persons must submit the evidence to the Office of Zoning.

After the record is closed, of course, no other information will be expected or accepted by the Board. The Sunshine Act requires the public hearing on each case be held in the open before the public. The Board may, consistent with its rules of procedure and the Sunshine Act, enter executive session during or after the public hearing on a case for purposes of reviewing the record or deliberating on the case.

The decision of the Board in these contested cases must be based exclusively on the record and, therefore, we ask that in order not to have the appearance to the contrary, persons not engage Board members in conversation.

At this time, you can please turn off all

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your beepers and cell phones so as not to further disrupt the proceedings. We will make every effort to conclude this afternoon by six o'clock. If we look as though we need additional time, I will update everybody in the room and ascertain what schedule, and if we will proceed beyond that.

At this time, the Board will consider preliminary matters. Preliminary matters are those that relate to whether a case should or will be heard today, such as request for postponement, continuance or withdrawal with proper and adequate notice of the hearing has given.

If you are not prepared to go forward today in the case, or if you believe the Board should not, now is almost the time to raise such a matter. First, I will got to staff to see whether they have any preliminary matters for the Board.

MS. BAILEY: Mr. Chairman, good afternoon, members of the Board.

CHAIRPERSON GRIFFIS: Good afternoon.

MS. BAILEY: We do not. Staff does not.

CHAIRPERSON GRIFFIS: Very good, thank you very much. Okay, and thank you so much for your patience, but I am required to go through all of that

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before I hear anybody and I do believe it's Miss Hubbard indeed. If you wouldn't mind turning on your microphone, I believe that you have a preliminary matters, perhaps for the Board.

MS. HUBBARD: Yes, I do.

CHAIRPERSON GRIFFIS: Could you introduce yourself please?

MS. HUBBARD: My name is Harriet Hubbard. I represent the Residential Action Coalition in Case 16823. I'm asking that this case be dismissed with prejudice.

CHAIRPERSON GRIFFIS: Indeed.

MS. HUBBARD: And should not be heard and should be dismissed with prejudice for the following reasons. You were a member at the last hearing of this Board on this case. It was pointed out by me, and I believe not questioned by anyone here, that this particular building, Totorsie Mansion, was not an existing bed and breakfast.

CHAIRPERSON GRIFFIS: Okay.

MS. HUBBARD: All right, however it was re-advertised as an existing bed and breakfast in the official advertisement.

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CHAIRPERSON GRIFFIS: I see.

MS. HUBBARD: All right.

CHAIRPERSON GRIFFIS: Okay.

MS. HUBBARD: That's number one.

CHAIRPERSON GRIFFIS: Good.

MS. HUBBARD: There is no occupancy permit of any kind and I challenge anybody in this room to produce one. All right. In that respect -

CHAIRPERSON GRIFFIS: Let me interrupt you just briefly for a second in terms of procedural matters, and I think it will be more expeditious if we went this way. First of all, I can't hear motions from anybody who is not a party.

MS. HUBBARD: I am a party.

CHAIRPERSON GRIFFIS: Therefore - well, if I'm not mistaken -

MS. HUBBARD: I believe the preliminary motion is not restricted to parties. I never heard of that before. Anybody that can get up and make a preliminary motion.

CHAIRPERSON GRIFFIS: That may be agreed.

MS. HUBBARD: We requested to be a party.

CHAIRPERSON GRIFFIS: Exactly, and this is where I'm going with this.

MS. HUBBARD: And the thing is, I've dealt

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with this Board for some 40 years and never heard anything of the kind.

CHAIRPERSON GRIFFIS: Ms. Hubbard, why don't you and I have a little bit of an agreement here? My biggest concern is just getting an efficient process together.

MS. HUBBARD: So am I. That's what I'm in favor of.

CHAIRPERSON GRIFFIS: Good, so what I'm going to ask is your indulgence to listen to me as I will endeavor to listen to you. And my point is, I think it may be prudent for us to establish party status at this point, and then after parties are established, we can hear motions that may affect the entire case.

If I have a motion from even an individual, I'm going to need parties to speak to that motion in order to inform the Board.

MS. HUBBARD: They can do that. Mr. Griffis -

CHAIRPERSON GRIFFIS: But they can't if they're not already parties.

MS. HUBBARD: See that is something we never had before, because I have been -

CHAIRPERSON GRIFFIS: You've never been in

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a case where parties were chosen?

MS. HUBBARD: Not when a preliminary matter was involved. For example, a person who is just a neighbor who has never received notification, who has never even written to the Board, who might have heard the day beforehand can come in here and protest that the case not be heard because of lack of proper notification.

They don't have to have party status to have a preliminary matter. Let me tell you, Mr. Griffis, I have years of experience with the Board, and with the -

CHAIRPERSON GRIFFIS: I understand that, and we have great respect for you.

MS. HUBBARD: All right, and the Administrative Procedures Act, the Sunshine Act -

CHAIRPERSON GRIFFIS: I'll tell you what. Let's cut to the chase and give it to the corporation counsel right now.

MS. HUBBARD: All right, let me state just briefly what I have in mind.

CHAIRPERSON GRIFFIS: Actually not, if you don't mind. I'm going to just get a quick opinion from corporation counsel on preliminary matters, and then I'm going to actually, I think it's more

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advantageous in my respect to establish status at this point.

MS. HUBBARD: I'm not recognized then.

CHAIRPERSON GRIFFIS: But did you have any comment on that?

MS. SANSONE: Mr. Chairman, as you know in 1999, the Board's rules were strengthened to provide greater structure to the procedures regarding requesting party status and kind of give that some more status than it had in the past. Accordingly, the Board's practice since those amendments has been to address party status first and then take up any motions, such as motions to dismiss second.

I think probably Ms. Hubbard is correct in saying if there was a notice problem and she didn't know to request party status and wanted to bring that to the Board's attention, that could take precedence. But in this case, we had a request for party status previously, so we don't have that problem.

I would suggest the Board keep with its normal practices and address all the requests for party status first and then we can get on with any motions second.

CHAIRPERSON GRIFFIS: I would agree.

MS. HUBBARD: The other reason why a case

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should not be heard -

CHAIRPERSON GRIFFIS: I'm not in any indication saying that we're not going to hear those. We're going to get to all of them. It's going to be more informative for our Board in order to make decisions on each and every motion that anyone brings up is if we have responses from the parties as they're established.

So with that in mind I think we should, Board members, pursue that and let's get it all out in front of us. We've got quite a bit. Yes, sir. You're going to need to be at the table on the mike.

MR. SALAS: Yes, my name is Max Salas.

CHAIRPERSON GRIFFIS: Could you turn on the mike before you speak?

MR. SALAS: Sure, and I just wanted, I thought this was scheduled for one o'clock today. I have another commitment, and I wondered if you could take some of the witnesses out of order, or that if you can give me a better time line, I can go meet my commitment and come back. I'm going to speak against it, against the amendment.

CHAIRPERSON GRIFFIS: Give me your name again, sir.

MR. SALAS: Max Salas.

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CHAIRPERSON GRIFFIS: Indeed.

MR. SALAS: See, we were scheduled at one o'clock, I mean I thought we were scheduled at one o'clock.

CHAIRPERSON GRIFFIS: The afternoon session starts at one.

MR. SALAS: And I just, I've got a previous commitment I've got to take care of. I would very much appreciate it if you'd tell me what the procedure or the time line is going to be.

CHAIRPERSON GRIFFIS: Are you requesting party status or are you just coming to testify in opposition to the application?

MR. SALAS: Just simply testify in opposition, yes sir.

CHAIRPERSON GRIFFIS: Okay, well here's my quick down and dirty time line. I would say first of all, we would hear the applicant's case. We will hear then all the government reports and everything else. We will go to all the parties' cases in support and testimony in support. We will then go to all the parties' cases in opposition. Then we will go to persons in opposition. Then we'll have closing.

I probably missed something along there, but that's the general gist of it. You would be

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fourth or fifth down the line. I would not think we got to that anywhere before five o'clock. Yes, or today frankly.

MR. SALAS: Okay. Well okay, that answers my question. That's all, and are you going to keep them in order?

CHAIRPERSON GRIFFIS: Yes.

MR. SALAS: Okay.

CHAIRPERSON GRIFFIS: Yes, it doesn't make sense if I start.

MR. SALAS: Are you going to limit the time that people have on each one of them?

CHAIRPERSON GRIFFIS: Yes.

MR. SALAS: And that's going to be how long?

CHAIRPERSON GRIFFIS: We will establish persons have three minutes to give testimony before the Board, either in support or in opposition. I can tell you that this Board is very often flexible with that.

MR. SALAS: Thanks.

CHAIRPERSON GRIFFIS: And accommodating but in that the fact of the matter that we have, I think, 54 requests for party status, that's a bit of an overstatement on my part.

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MR. SALAS: Okay.

CHAIRPERSON GRIFFIS: I think the record should note some laughter in the crowd when I said that and my point being, depending on how many parties if they consolidate, how many parties they all put on cases, we'll have to establish the time based on the applicant's case that's set and they will have the majority of the time. We will need to limit.

We also will not allow, as we get into these things, redundant testimony. We won't be rude with it but we will move you along if we've heard something that's of redundancy, so.

MR. SALAS: Great, thank you very much. That's all I needed. I just wanted to make sure I wore my bright tie today and wanted to make sure that everybody noticed and knew that I was here. And so, I will leave and come back and I'm sure you'll still be here.

CHAIRPERSON GRIFFIS: Good.

MR. SALAS: So thank you very much.

CHAIRPERSON GRIFFIS: Thank you.

MS. BAILEY: Mr. Chairman, are you ready for the case to be called now?

CHAIRPERSON GRIFFIS: Wow, have we not even done that yet? I think we better, otherwise we can't

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do anything else, right? Thank you, Ms. Bailey.

MS. BAILEY: Application No. 16823 of Humberto Gonzalez, pursuant to 11 DCMR § 3103.2 for a variance from the use provisions to allow the expansion of a bed and breakfast from six sleeping rooms to 11 or more sleeping rooms, with group or social events under Section 350, in the Dupont Circle overlay district. The site is zoned also R-5-D, and it's located at 1720 16th Street, N.W. (Square 178, Lot 800). All those persons wishing to testify today, please stand to take the oath.

(WITNESSES SWORN.)

MS. BAILEY: Thank you. Please be seated.

MS. HUBBARD: Mr. Griffis, may I now make my statement.

CHAIRPERSON GRIFFIS: Okay, I need the physical but thanks. Okay, Board members let's take up Exhibit 32, the Residential Action Coalition request for party status, which was timely filed, Exhibit 32.

(PAUSE)

CHAIRPERSON GRIFFIS: Okay, I thought there was additional sheets on this, but I'm showing one page that says Residential Action Coalition voted unanimously to oppose. Further, the Residential Action

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Coalition has members living in close proximity to 1720 16th Street, N.W. whose interest in their living and quality of life will be adversely affected.

COMMISSIONER MITTEN: Mr. Chairman, I think that perhaps it would be worthwhile for the Board, given that there are two community groups that have requested party status and they may have overlapping constituencies and it's I think typically the view of the Board is that there should not be redundancy among the interests that parties represent.

So, I think it would be appropriate to consider the request of the Dupont Circle Citizen's Association, at least for purposes of, you know, discussion to think about them and the Residential Action Coalition together so that we can sort out whether or not there's overlapping constituencies.

CHAIRPERSON GRIFFIS: If I'm not mistaken, last we were here we had that discussion and actually asked people that they might talk. But please, sir, why don't you introduce yourself.

MR. HILL: My name is Gill Hill. I'm the chair of the Zoning Committee of the Dupont Circle Citizens Association and also the second vice president.

CHAIRPERSON GRIFFIS: Okay.

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MR. HILL: I would like to suggest that the testimony that I will give may not be the same as the testimony that the Residential Action Coalition will give and I would suggest that we be separate from the Residential Action Coalition.

CHAIRPERSON GRIFFIS: Right. Okay. And Ms. Hubbard, you would agree with that?

MS. HUBBARD: Yes, Mr. Griffis. The only thing is I do know that our positions are somewhat different.

CHAIRPERSON GRIFFIS: Okay.

MS. HUBBARD: And on the other hand, is this the proper time for me to ask that the case not be heard because it was falsely advertised? I mean I do not want this point to escape, and I believe myself that many reactions from the community are based on the false impression of what the case is all about because it was falsely advertised.

CHAIRPERSON GRIFFIS: This is what I'd like to do.

MS. HUBBARD: I'd like to make that point now.

CHAIRPERSON GRIFFIS: Well, what I'd like to do is just proceed with what we have started to do.

MS. HUBBARD: All right.

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CHAIRPERSON GRIFFIS: And there is no way that I will stop anyone from giving testimony or making motions and certainly ones of great magnitude like that. But time and procedure are of utmost importance.

MS. HUBBARD: All right, I'd like to be a separate party.

CHAIRPERSON GRIFFIS: Indeed, thank you for that. All right, let's take these two first, the Residential Action Coalition and Dupont Circle Association. Ms. Hubbard, did you have any additional submission than the letter that I just read, the two paragraph letter?

MS. HUBBARD: Oh, I have lots of stuff.

CHAIRPERSON GRIFFIS: No. No. In regards to the request for party status specifically and only?

MS. HUBBARD: Oh, my position in asking for the case be dismissed with prejudice is not the same as opposition.

CHAIRPERSON GRIFFIS: Perhaps they should be.

MS. HUBBARD: The request for opposition.

CHAIRPERSON GRIFFIS: You're going to have to allow me to be clear.

MS. HUBBARD: All I'm saying is -

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CHAIRPERSON GRIFFIS: No. No. I understand what you're saying. What you need to do is answer my question and that will help us move on much quicker.

MS. HUBBARD: What is it?

CHAIRPERSON GRIFFIS: I want to know whether you submitted anything in addition to the letter requesting party status?

MS. HUBBARD: Well Mrs. Echols wrote another letter in on my behalf, which is in the file.

CHAIRPERSON GRIFFIS: She wrote one letter dated March 1 -

MS. HUBBARD: No, there's another one later on in general opposition, parking and so forth. It's somewhere in the file.

CHAIRPERSON GRIFFIS: Are you aware the regulations that set forth the requirements that need to be submitted for us to deliberate and bestow party status, Ms. Hubbard?

MS. HUBBARD: I read it down here to your staff as to whether the letter was sufficient before it was sent and they said it was just fine. I went into that. I've written many letters before, Mr. Griffis. There are two letters in the file from the Residential Action Coalition. It was not unusual for

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citizens associations that have the same constituency to appear at hearings. One of the biggest zoning hearings we ever had -

CHAIRPERSON GRIFFIS: That's not an issue that we're -

MS. HUBBARD: Well, I mean to say, you brought it up yourself.

CHAIRPERSON GRIFFIS: No, actually I didn't. What I was hoping to do is if they were going to be similar that we would have you join, but you have established that they're not. The issue is now complete.

COMMISSIONER MITTEN: Well, Mr. Chairman, if I could just perhaps bring us back to the point that I had raised which is, I understand that DCCA and RAC want to be separate parties, but we haven't heard anything about the constituencies of each group.

DCCA did submit that they have, I think, approximately 1,000 members. We don't know anything about the membership of the Residential Action Coalition. So maybe Ms. Hubbard could tell us what's the size of the organization and -

MS. HUBBARD: Oh, it's about 100, 150.

COMMISSIONER MITTEN: And what's the geographic area?

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MS. HUBBARD: The same area as the Dupont Circle Citizens Association exactly.

COMMISSIONER MITTEN: And for what purpose does the Residential Action Coalition exist?

MS. HUBBARD: It's because we took a different position in zoning from the Dupont Circle Citizens. I used to be chairman of Dupont Circle Citizens Association's Zoning Committee for 15 years.

CHAIRPERSON GRIFFIS: No one is attacking your position or the relevancy of your being here.

MS. HUBBARD: What I'm saying is we -

CHAIRPERSON GRIFFIS: We're trying to get an establishment, and if you look to and I'll refer you to 3106, which is in our zoning regulations that clearly outlines exactly what we need to entertain party status. What Ms. Mitten has just asked you -

MS. HUBBARD: There's our president.

CHAIRPERSON GRIFFIS: Excellent, and I think she may be able to answer the broad questions of the membership and what, in fact, the Residential Action Coalition exists to do.

MS. ECHOLS: Catherine Echols, the President of Resident Action Coalition. I'm the owner/dweller at 1524 T Street since November 1, 1973.

If you listened carefully, here are the boundaries of

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the Residential Action Coalition.

CHAIRPERSON GRIFFIS: No one stated it for me to listen to it carefully yet, but I would gladly listen carefully now.

MS. ECHOLS: Well, it's a detail, forgive me. Starting at 14th Street, the property lines on the west side of 14th Street at Florida Avenue proceed southward to Pennsylvania. In that area, we are a little bit further south than the Dupont Circle.

Proceed along to the west to the park, northward where S and Massachusetts kind of converge, and then northeasterly on both sides of S Street and turning along Florida Avenue back to 14th and there you are. We are a little larger on the southward portion.

CHAIRPERSON GRIFFIS: Okay, and we're not - this isn't, and I don't think Ms. Mitten is doing a comparison.

MS. ECHOLS: Well, of course not.

CHAIRPERSON GRIFFIS: We're just trying to get an understanding. Let me lay it out here correctly. We can deny your motion for party status on face immediately because the submission that we have does not meet our regulations, and quite frankly, the Board is giving great latitude for you to make your case right now.

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So, a little patience for our questions but directness in the answers would be great, and that does the first one, which is superb. So let us move on. Also, Ms. Mitten was interested in just how many member, how the membership is established. That goes to whether there are dues to pay, do you have to be a resident? You can tell me what it is.

MS. ECHOLS: When you reside in the area, the boundaries which I've outlined, the dues are \$10. We have associate members, which means that we have a good network to other organizations. They are non voting honorary associate members. They're non-voting, but because they like to receive our newsletter, they participate in our activities. Our four issues are: strict enforcement, historic preservation, zoning, licensing and planning. We've established in the summer of 1983. We incorporated in 1987 within those boundaries.

CHAIRPERSON GRIFFIS: Good and current standing membership right now do you know?

MS. ECHOLS: Ninety-nine.

CHAIRPERSON GRIFFIS: Roughly 100. Okay, and you are - and I'm going to now go through all the points of 3106.2 and we can knock these out very quickly, but you are going to appear as an opponent or

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proponent of the application?

MS. ECHOLS: An opponent. And, Mr. Griffis, I personally delivered the letter seeking party status and it was -

CHAIRPERSON GRIFFIS: Is it different than what I read?

MS. ECHOLS: No, but the point is there was no issue raised at whether it was insufficient in context.

CHAIRPERSON GRIFFIS: Well one clarity for process, it wouldn't be, when submitted to the Zoning Office, necessarily the staff's responsibility to tell you whether it was sufficient or not. I don't really want to get into that because we're beyond that point.

What I will do is make sure a copy of 3106.2 is given to you and you can put it on file with the membership and we won't ever have this issue again.

MS. ECHOLS: Well, Mr. Griffis, then I will retire and Ms. Hubbard will continue.

CHAIRPERSON GRIFFIS: Well actually, no. Why don't you stay and see if we can't facilitate answering the rest of these questions, which are very straightforward and should go very quickly. But are you going to appear with legal counsel? Are you going

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to be represented?

MS. ECHOLS: No.

CHAIRPERSON GRIFFIS: Who's going to speak for your group?

MS. HUBBARD: Me.

CHAIRPERSON GRIFFIS: Ms. Hubbard will and she'll be the only person speaking for the Residential Action Coalition, is that correct?

MS. ECHOLS: Yes.

CHAIRPERSON GRIFFIS: Very well. What are the other pertinent ones folks? Do you want to just speak briefly on - what we need to do is just establish how the representation of your membership would be affected if the relief in the zoning was granted in this case.

So, I don't want you to make your case. Just tell me the facts what your organization's interest in this application is, I guess what I'm trying to say.

MS. HUBBARD: Well, I will say what it is.

I wouldn't put it in this application should be granted. The area would be overburdened with noise, parking, extra parking and deprived of a very fine house, which is suitable for residential use. And, we would very, very much object to their ever getting a

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liquor license of any kind, even these one-night ones, which we have heard they intend to do.

CHAIRPERSON GRIFFIS: All right, without getting too far into the testimony on that subject, I will take on faith the fact that the organization itself, the coalition I should say, is formed for, as you have stated in its mission, to further the compliance with historic and zoning regulations and I think we can leave it at that as complete in terms of the submission for party status, and I would ask you both to sit and we can deliberate quickly on that.

I want to get any comments from the Board members, but I also want to ask the applicant whether they object to the party status at this time. You can sit and I'll call you back up when it's time to speak again.

MS. HUBBARD: How does this happen that they have something to say about it?

CHAIRPERSON GRIFFIS: Because -

MS. HUBBARD: I never heard of this before.

CHAIRPERSON GRIFFIS: It's their -

MS. HUBBARD: I never heard of this before.

Where is the Administrative Procedures Act?

CHAIRPERSON GRIFFIS: You and I may walk through several things of newness today, but hopefully

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they'll be enjoyable.

MS. HUBBARD: You're inventing things as you go along.

CHAIRPERSON GRIFFIS: Ms. Sansone, do you want to tell me if I'm out of order in letting the applicant speak to the party status.

MS. SANSONE: Mr. Chairman, the applicant and the ANC are automatically parties in the application and, therefore, can respond to any motions or requests that are made.

CHAIRPERSON GRIFFIS: Thank you. Does the applicant want to make a statement on this party status request?

MS. GIORDANO: We have no objection.

CHAIRPERSON GRIFFIS: Thanks. The ANC, is the ANC represented? Oh, there we are.

MR. MICONE: No objection.

CHAIRPERSON GRIFFIS: Could you just give me your name for the record?

MR. MICONE: Vince Micone, Chairman of ANC 2B.

CHAIRPERSON GRIFFIS: I do appreciate that.

MR. MICONE: Thank you, Mr. Chair.

CHAIRPERSON GRIFFIS: Okay, what I'm going to ask and then we have a lot and hopefully we'll get

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through just the party status today and a lot more. What I'm going to do is I'm going to go through this hopefully faster, but the ANC and the parties, and then as party status is granted, they become parties, if there's objections to any of the granting of the party status, I'm going to ask you to be forthright and come up to the table.

So, I may not stop at each time and ask if there are any or not. So, that being said, let's move on. Let's go to the Dupont Circle Citizens Association, and Board members, if you would not mind pulling out that letter for review, and you can see that they have outlined in there Monday, May 27, 2002 the complete, if I'm not mistaken, requirements for establishing party status or requesting party status. They are looking to be present in opposition.

Any questions on this? Any pertinent information one might bring up? Clearly, the civic association has over 1,000 members. I think we know essentially the boundaries. Is there any objections to this at this time? Are there any questions of the Dupont Circle Citizens Association representative here today?

COMMISSIONER MITTEN: No objection from me.

CHAIRPERSON GRIFFIS: Okay, then let us -

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what I was - we have not moved on the Residential Action Coalition because I wanted to look at the Dupont Circle Citizens Association, and I think we can move, if there's not any objection to accept the DCCA as a party status in this case. But, however, let me just look up once in a while so if there's anyone at the table.

Is there any objection to that? Not seeing anyone's joined the table, I will take it that there's no objection from the parties in the case and would ask a second then.

VICE CHAIRPERSON RENSHAW: Second.

CHAIRPERSON GRIFFIS: Very well and all in favor, signify by saying aye.

BOARD MEMBERS: Aye.

CHAIRPERSON GRIFFIS: Any opposed? Okay, we have established the Dupont Circle Citizens Association. Let's go back to the Residential Action Coalition and I will leave it open to the Board for their direction.

COMMISSIONER MITTEN: Mr. Chairman, I would move that the Residential Action Coalition be granted party status in this case, and I'd like to just explain my motion.

Normally, and as it is the practice of the

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Zoning Commission, we do not favor granting party status for groups that have overlapping constituencies, particularly to this extent. But, as Ms. Echols testified, I believe there's a philosophical difference between the two groups, and so while their geographic boundaries may overlap, their constituencies I think perhaps don't to a large extent because there's a different, tends to be different positions taken by the two groups.

And so, in that sense their constituencies I think overlap to a lesser degree than one might think because of the geographic boundaries. So I would support it in this case.

CHAIRPERSON GRIFFIS: I thank you for that clarification. Does she have a second?

VICE CHAIRPERSON RENSHAW: Second.

CHAIRPERSON GRIFFIS: Very well, all in favor.

BOARD MEMBERS: Aye.

CHAIRPERSON GRIFFIS: All opposed?

(No response)

CHAIRPERSON GRIFFIS: Okay, let's go to Exhibit 31, the request for party status by Patrick and Leslie Jadin. Let's also look quickly at request for party status for Alvarez, Exhibit 30, and also

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take - let me ask if there's anyone here that's requested party status. How am I going to get this answer?

MEMBER ZAIDAIN: Mr. Chair, I actually have a suggestion that may be going along the lines.

CHAIRPERSON GRIFFIS: I'm glad someone is making good use of their time.

MEMBER ZAIDAIN: Well, I'm watching everyone struggle in the mounds of paper that we have here from all these requests for party status, and I do appreciate all the concerns of all the citizens that have submitted this.

And I just wanted to suggest that maybe we explain to them the degree of responsibility we have as parties, and maybe that their concerns could be addressed just by testifying, as opposed to just being a party and just throw that out there to them to see if any of them would change their position, just as a courtesy, not that that would affect how I would vote on anybody's party status, but just to let them know that they would be responsible for cross-examinations, et cetera, et cetera.

CHAIRPERSON GRIFFIS: Right. I think that's an excellent point and I will outline that. Let me just first ask for an indication. Have any of

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these individual parties joined in a larger request for party status, and if you have, you can come up and tell us that?

Okay, as Mr. Zaidain has begun to outline, clearly party status is a higher responsibility in any case. It does come with the responsibility and the honor, let us say, of cross-examination of all the witnesses. It also comes with the burden of providing findings of facts and conclusions of law. You are an integral part of all cases that go forward.

As the party status, you will be notified of all continuing information if there were any. So there are advantages and there are large responsibilities to that.

Part and parcel of granting a party status in any case is the showing of how one might be individually or uniquely affected, as opposed to others, meaning we could not accept on face ten individual party status that may all have the same issue, because you would not be able to elevate yourself to that level of individuality.

That may not be all the legal terms appropriate but however I hope the point is well made. So with that, I think we should continue down, unless there are those that feel that they can get across

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what they need to in this case by testifying and will not, in fact, need to have cross-examination rights or will not be, in fact, participating as a full party in the case.

And, as I say, that will mean we will request from the parties filings and I think the largest and most difficult is at the end, findings and facts. So, I'll give a moment if anyone has changed their mind. We can move.

COMMISSIONER MITTEN: Mr. Chairman.

CHAIRPERSON GRIFFIS: Yes, ma'am.

COMMISSIONER MITTEN: If I could maybe just to make a stronger point, which is I think where you were going is to say for instance, we have at least four folks from the 1600 block of S Street that have asked for party status, and given that they all have the same issues and they all are in the same block, there is, what is lacking in that collection of requests is a uniqueness.

They share the same issues, so it's unlikely, at least from my perspective that those individuals would be granted party status, whereas if they were to form a group that represented the 1600 block of S Street, that group might have a unique perspective with relationship to the property but not

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those individuals. So, they might want to, rather than be denied party status, join together as a single party in order to strengthen their request with a higher likelihood of it being granted.

AUDIENCE MEMBER: Could you give us a couple of minutes?

COMMISSIONER MITTEN: Yes.

CHAIRPERSON GRIFFIS: I think that would be an excellent idea to take a couple of minutes to look at that. Let me read down, in fact, to show and if there are questions, we can take that now. And believe me, this may make most people impatient, but I think in the long run of this, it will save us an awful lot of time.

But we do have, as I indicated, well frankly I think you all know who submitted party status. Yes, sir.

MR. JADIN: I'm Ken Jadin, one of the members of this group. If we do receive group party status, can each individual testify and question, cross-examine the other witnesses or other speakers?

MEMBER ZAIDAIN: Did you mean individually cross-examine?

MR. JADIN: Yes.

CHAIRPERSON GRIFFIS: Well, we would ask

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that one primary person would represent. However, what we have done in the past, if certain people have expertise, what we will not have - well, we want to be efficient and not redundant and that is our clear and only reason for doing this and trying to get to the facts.

MR. JADIN: Well, the fact that we have adjacent properties and live on the same block does give us some similarities, but we are different individuals, have different attitudes, and given the fact that the information by the applicant is not the most clear, we would hope that we would reserve the right, if we do become a joint party, that each individual would be able to question others and get information as appropriate.

CHAIRPERSON GRIFFIS: I think what we will do is establish a system that is effective and clear to us. I would encourage that if you do join, that you would have one main person, and certainly that person can be fed the information and direct questions that can go to it.

Let me just address one quick thing before we go much further. You mention that you may all have different attitudes, and I can personally understand that. We all have different levels of emotions with

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this too. I really don't want to have that as a major piece of what we're evidencing here today, because when we go back and deliberate on this, we need to pull out the direct information and the facts and that's really what we're all about.

So, I will run this hopefully as a very even keel and very straightforward process that everyone can understand. With that though, why don't we take ten minutes. I ask everybody that has submitted for party status, if you are unclear whether you have or not, please come ask staff and ask that people get together and get organized. Ms. Mitten, last word before a break.

COMMISSIONER MITTEN: I would also just encourage the folks from the 1600 block of Riggs Place to see if they can get together.

CHAIRPERSON GRIFFIS: Indeed. I appreciate that.

MS. POLIVY: My name is Margot Polivy. I'm from the 1600 block of Riggs Place. We would like to discuss this with our neighbors, but I think in doing so, we need some guidance from you as well as to how these agglomerations, if there are agglomerations, will be treated as to time and the opportunity to both speak and present their case.

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Under the rules of the BZA, the people who you are now trying to clot into one group or two groups are the most significant people in this question and the most effective ones.

And if by taking ten people and putting them into one party we have thereby had a situation where we're going to wind up with ten minutes instead of 30 minutes, the attractiveness of that option diminishes obviously. So I think that before we do speak with our neighbors, some clarification from you folks would be helpful.

CHAIRPERSON GRIFFIS: And that's an excellent point and I'm glad you brought it up. You will not be prejudiced by time by joining. In fact, you will probably be assisted, one in its clarity and direction. What will happen is to all the parties, the ANC not included in this, all the parties will split the time that is equivalent to that of the applicant's case.

So let me use an example. If the applicant put on a case that took an hour, the parties would also get an hour in total. If there are ten - let me make my math easy. No, if there are ten parties, they would split an hour between them.

So by joining into one party, you are not,

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in fact, losing time in this case. In fact, I think you would be probably more focused and direct and utilize the time better.

MS. POLIVY: If I could impose upon you, there is one other area that you have not addressed but would be helpful to us also. We have no idea of how many requests, other than those that you've already mentioned and the neighbors of whom we're aware, how many others have sought party status and what the basis for their request is.

CHAIRPERSON GRIFFIS: Excellent. Why don't I read you the names of everyone that I have, and if I'm not mistaken I have Adrian Robinson and Janessa (phonetic) Robinson as one; Russell Stephenson (phonetic); Ralston Cox from the Advisory Council of Historic Preservation; Lucinda Ann Garcia; Laurie Emerich; yourself; and we have already on the S Street, Alvarez, Santucci, Jadin, Hilder (phonetic; Robinson.

And we have the Dupont Circle Citizens Association, which we've heard from. We have Anne Alvarez. We have Patrick and Leslie Haydin, which is occurring twice; and the Residential Action Coalition.

MS. POLIVY: Can I ask you the basis for party status from Lucinda Garcia and from the Advisory

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Council on Historic Preservation? The others, I believe, are all neighbors on either S Street or Riggs Place. We're not familiar with them.

COMMISSIONER MITTEN: In each of those cases that you mentioned, their requests do not meet the technical requirements for a request for party status, so we can't even tell you that. One thing I did want to -

CHAIRPERSON GRIFFIS: Let me just reiterate we're not hiding anything. They sent in a letter that was one sentence, saying "we request party status."

MS. POLIVY: I just want to know before we talk among ourselves what it is we're dealing with.

CHAIRPERSON GRIFFIS: Exactly. We're unclear what their status is.

SECRETARY PRUITT: Mr. Chairman, actually the Advisory Council, Ralston Cox called and he was actually mistaken. He's not seeking party status. He thought he had to sign on, so he got misguided, so he's really just going to testify.

MS. POLIVY: So other than the neighbors and the organizations that you've already considered, those are the only people and if the people from S Street and Riggs Place made one party, you would then have, if my recollection is correct, the Dupont Circle

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Citizens Association, the Action Coalition, the ANC, and the neighbors, so you would have four parties.

CHAIRPERSON GRIFFIS: Right.

COMMISSIONER MITTEN: If the S Street and Riggs Place were one. One point I did want to make, which is there may be individuals in the group of all the people that Mr. Griffis whose names he mentioned, that can qualify as individuals for party status.

It is unlikely that they will all qualify, so what we're seeking to do is really, while it does help with some degree of efficiency, it's really trying to make sure that all the people, or as many of the people who've requested party status are represented by a party in some way.

So, we're trying to increase people's chances of achieving party status, whether it's as an individual or part of a group, given that it's unlikely that everyone will qualify as an individual.

MS. POLIVY: I recognize the impetus. I would say that as far as the people who are directed bounded by this property, it's kind of hard to say that they don't have a direct interest.

COMMISSIONER MITTEN: But if you have too many -

MS. POLIVY: It may be that they are more

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effectively represented by being a single group.

COMMISSIONER MITTEN: Right.

MS. POLIVY: And that's, I think, what we'll discuss. Now that we have the information, that will be helpful.

MS. SALAS: Yes, Mr. Chair, my name is Viokie Bruff Salas and I had mailed a letter on May 8th and Ms. Alvarez had noticed in the file that it wasn't on file, so I had re-faxed it to you on May 21st and she says it's still not in the file and you didn't mention my name. I brought a copy of the letter and fax, where I had done it and I was hoping you would -

CHAIRPERSON GRIFFIS: What's your address?

MS. SALAS: 1610 Riggs Place.

CHAIRPERSON GRIFFIS: Okay, why don't you join the conversations and, have you given staff a copy of that letter?

MS. SALAS: No, I have not.

CHAIRPERSON GRIFFIS: Okay, why don't you do that. They'll make copies. It will be in front of the Board when we get back in ten minutes.

(Whereupon, the above-entitled matter went off the record.)

CHAIRPERSON GRIFFIS: Okay, why don't we get back into this. This member will join us any

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second. Why don't I have the representative of the group that has now been formed come up, tell us who it is and also, may I have others in the wings that perhaps did not join the group, and then briefly before I get to you folks, Ms. Salas. Oh, there you are. Can you give me an indication of yes or no. Were you requesting party status?

MS. SALAS: Yes.

CHAIRPERSON GRIFFIS: Yes, I see. And you are related to Max Salas? Okay, he indicated he wasn't having party status.

MS. SALAS: I don't think he understood.

CHAIRPERSON GRIFFIS: Indeed, did not understand. Okay. Yes, sir.

MEMBER ZAIDAIN: You do have Riggs Place, correct? Are you consolidating with that group? So she's going to be in with that.

CHAIRPERSON GRIFFIS: Indeed. I think that jumps to it. I just want absolute clarity, because there are too many messages there.

MS. POLIVY: The people on Riggs Place and S Street have discussed this, and we would ask the Board to indulge us by giving party status, separate party status to S Street representatives and to Riggs Place representatives.

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The reason that we request that you accept the two groups is our interests and perspectives are somewhat different and I don't think that it will overburden the Board with repetitions. I'm sure you'll feel free to cut us off.

CHAIRPERSON GRIFFIS: We may feel so and do so, and you sir, are representing Riggs?

MR. JARDIN: I'm representing S Street.

CHAIRPERSON GRIFFIS: S Street, okay.

MS. POLIVY: I'm representing Riggs.

CHAIRPERSON GRIFFIS: Very good. Okay, and are there others that are not going in any of these groups that are here today?

MS. POLIVY: All of the Riggs Place people have joined the group, and as far as I know all the S Street people have joined in the group.

CHAIRPERSON GRIFFIS: Okay, so that absolutely incorporates everybody else. Okay, and why don't for clarity sake we run through the households that are joined in S Street at this time. Do you have that?

MR. JARDIN: Well, I have 1612 S Street, Anne Alvarez, Lou Santucci; 1614 S Street, P. Kenneth and Leslie Jadin; 1616 is Barbara and Mike Hilder; and 1620 Adrian and Janessa Robinson.

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CHAIRPERSON GRIFFIS: Okay. Good, let us go to Riggs.

MS. POLIVY: As far as I know and you may have to help me out on this, it's 1609, 1611.

CHAIRPERSON GRIFFIS: I'm going to need names.

MS. POLIVY: Oh.

CHAIRPERSON GRIFFIS: I'm sorry, that's the way I have it, not like that.

MS. POLIVY: Well, if you give me the names, I can tell you.

COMMISSIONER MITTEN: I can do it. If you name the address, I'll name the person; 1609 is Laurie Emerich and Gail Murphy; 1611 is -

MS. POLIVY: That's me.

COMMISSIONER MITTEN: Oh, that's you.

MS. POLIVY: 1610.

COMMISSIONER MITTEN: 1610 is Bruff-Salas.

MS. POLIVY: Yes, that's Salas. At 1609, by the way, Mark Siminoff and Lisa Kaplan had also asked for party status.

COMMISSIONER MITTEN: They also live at 1609?

MS. POLIVY: Yes, they do.

COMMISSIONER MITTEN: We didn't get a

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request from them for party status.

MS. POLIVY: That letter must be knocking around someplace. We'll supply it, but they will join the group in any case.

COMMISSIONER MITTEN: All right.

MS. POLIVY: 1612, Rus Stephenson, and Margie Extel (phonetic) and do you have any others that I haven't accounted for yet?

COMMISSIONER MITTEN: No.

MS. POLIVY: Okay.

CHAIRPERSON GRIFFIS: We got Garcia.

COMMISSIONER MITTEN: Anne Garcia doesn't even list an address, so I mean, I don't know if -

MS. POLIVY: She's not one of ours.

COMMISSIONER MITTEN: I think we'll have to take a separate vote on that. It doesn't meet the technical requirements.

MS. POLIVY: We don't know anything about it.

COMMISSIONER MITTEN: Okay.

CHAIRPERSON GRIFFIS: Did we get Adrian Robinson and Janessa Robinson?

MR. JARDIN: Yes.

MS. POLIVY: He's part of S Street.

CHAIRPERSON GRIFFIS: Oh, I'm sorry. I

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have them two places. Good, okay, and Anne Alvarez was also on S Street, in which case I'm just showing that we need to, with those two we have left out Anne Garcia and Ralston Cox from the list.

COMMISSIONER MITTEN: Oh, I think Miss -

CHAIRPERSON GRIFFIS: No, I know we have information.

MEMBER ZAIDAIN: Has staff heard from Anne Garcia, and do we have any indication where this person lives?

CHAIRPERSON GRIFFIS: Have not. I think we'll just take it on face what's submitted at this point.

VICE CHAIRPERSON RENSHAW: And just for the record, Mr. Chairman, the fax cover sheet from Ms. Vickie Bruff Salas dated May 8th is Exhibit 56.

CHAIRPERSON GRIFFIS: Thank you.

SECRETARY PRUITT: Excuse me, Mr. Chairman, could you just run quickly through the S Street group name wise and Riggs, just so we can be clear.

CHAIRPERSON GRIFFIS: Alvarez, Santucci, Jadin, Hilder, Robinson. Oh, did you ask for Riggs?

SECRETARY PRUITT: Yes, Riggs too.

CHAIRPERSON GRIFFIS: Okay. Emerich, Salas, Stephenson and Polivy, correct?

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MS. POLIVY: Correct. There's also Siminoff and Lisa Kaplan at 1609.

CHAIRPERSON GRIFFIS: Oh, right. Okay. Any parties granted and established, applicant want to speak in opposition to this request for party status?

MS. GIORDANO: I would just ask if these two groups are members of DCCA or the Residential Action Coalition.

CHAIRPERSON GRIFFIS: Are you prepared to speak?

MS. POLIVY: I'm prepared to speak. As an individual, I'm not a member of either.

CHAIRPERSON GRIFFIS: Okay. Why don't we do this, from the S Street request for party status, can I have hands showing membership in the DCCA?

MR. JARDIN: Anne Alvarez, 1612.

CHAIRPERSON GRIFFIS: And who else?

MR. JARDIN: I think that's it.

CHAIRPERSON GRIFFIS: Okay, the Residential Action Coalition, again Ms. Alvarez.

MS. GIORDANO: She's not on S Street.

CHAIRPERSON GRIFFIS: Right. We'll note my confusion.

MS. GIORDANO: I have a feeling before this is over, you'll know us all.

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CHAIRPERSON GRIFFIS: I see a lot of people. Okay, let's do the same then for Riggs. We'll have a hand showing for the Dupont Circle Citizens Association membership. I'm not seeing any hands. And how about for the Residential Action Coalition?

MS. POLIVY: For Riggs Place (off mike).

CHAIRPERSON GRIFFIS: Okay.

MS. POLIVY: She didn't ask for party status.

CHAIRPERSON GRIFFIS: So.

MS. GIORDANO: I have o objection.

CHAIRPERSON GRIFFIS: Having no objections Board members, we have two requests for party status. I can take them together or individually.

COMMISSIONER MITTEN: Mr. Chairman, I would move that we accept the grouping of the folks whose names have been read into the record from the 1600 block of S Street as one party and the folks whose names have been read into the record from the 1600 block of Riggs Place as a second party.

VICE CHAIRPERSON RENSHAW: Second.

CHAIRPERSON GRIFFIS: Thank you. Any discussions? All in favor.

BOARD MEMBERS: Aye.

CHAIRPERSON GRIFFIS: And opposed?

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SECRETARY PRUITT: Mr. Chairman, are you going to identify now who would be the main spokesperson for these groups?

CHAIRPERSON GRIFFIS: Yes, I think that is a good point and let me just lay out some groundwork. There was a question that came up and I didn't answer it fully and directly but now that we've basically established party status, what we will look for is one representative from the organization, and I'll put it succinctly, at the table at any one time. That means only one person from each party will be at the table.

So if there is an expertise in cross-examination, make it transportation or make it whatever other kind of expertise you might have, you can have different people cross-examining a witness, but we will not have two faces, two individuals cross-examining the same witness. Is that pretty clear to everybody? Okay.

So what I'd ask now is what we can have is just the main representative of the parties who will be presenting the case, and clearly, when you present the case, you can also call witnesses and specifically for cross-examination.

MS. POLIVY: All right, for Riggs Place will be Margot Polivy.

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CHAIRPERSON GRIFFIS: Good. Yes.

MR. JARDIN: And for S Street, Ken Jadin.

CHAIRPERSON GRIFFIS: Very good, thank you very much. And I think we've established for DCCA and Residential Action. Good, let's take up very quickly Ralston Cox who had a submission that was in the file but it did not meet the requirements.

I think we've heard that he was just submitting to give testimony, and so we will take it at that and not grant party status and we have not heard additional information. We'll ask again whether Lucinda Garcia is present today or is there anyone representing her?

MR. GONZALEZ: My name is Humberto Gonzalez. I live at 1720 16th Street, N.W. Lucinda Garcia is my designer and architect and she was not able to be here today. She has two kids that are very young and one of them was sick, so she was not able to make it.

CHAIRPERSON GRIFFIS: Was it her intention to request party status in this case?

MR. GONZALEZ: It was her intention to request party status in order to just speak on my behalf.

CHAIRPERSON GRIFFIS: I see, well clearly

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as you will know, you can call her as a witness to testify. I mean I understand she's not here today but perhaps there is an ability for you to have her testimony, or if this is continued, perhaps this is a better and convenient time for her schedule.

At this point, in that what was submitted was not as other technically meeting the requirements, I think the Board is limited in being able to grant party status at this time.

MR. GONZALEZ: Okay.

CHAIRPERSON GRIFFIS: Unless anyone sees differently. Yes.

COMMISSIONER MITTEN: I would move that we deny the request for party status from Lucinda Garcia on the basis that the request does not meet the technical requirements.

VICE CHAIRPERSON RENSHAW: Second.

CHAIRPERSON GRIFFIS: Okay. And I would ask for all in favor of motion to deny, everybody say aye.

BOARD MEMBERS: Aye.

CHAIRPERSON GRIFFIS: Okay. If you think that finishes this case, let me inform you that we have a lot now to accomplish, and I think we can proceed indeed with additional preliminary matters by

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parties or motions at this time. Ms. Hubbard.

MS. HUBBARD: My name is Harriet B. Hubbard and I represent the Residential Action Coalition and I would like to make a motion that this case be denied with prejudice right now before we hear any more, because it was not advertised correctly, and for one other reason.

At the last hearing on this case, it was pointed out by me that this was not an existing bed and breakfast. That was not denied by anybody and I believe accepted by you, and yet in the subsequent advertisement which led to this day's hearing, you still stated this as an existing bed and breakfast.

There is no occupancy permit for a bed and breakfast. The place has never been operated as a bed and breakfast. It is not a bed and breakfast. It has no occupancy permit, except as I understand and I have not seen it, one for a rooming house of years ago.

Many people here today, who have spent hours discussing this thing, hours and hours of their valuable time, think that they have actually a bed and breakfast.

Mr. Gonzalez when he originally made this application falsely testified and wrote in the file that he had a bed and breakfast license application,

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you know a license to operate a bed and breakfast. That is not true. This was pointed out by me before. This is point one, why this thing should not go forward and should be dismissed with prejudice. After all, this is the third hearing on this case.

Number two, with regard to the notice, I understand that nobody in the Chasleton Hotel was ever notified, Chasleton Apartments across the street, only the owner who lives in Waldorf, Maryland.

When I went to the staff here and asked them why didn't they notify every single occupant of the Chasleton Apartments which is certainly within 200 feet. The owner was notified.

CHAIRPERSON GRIFFIS: Right.

MS. HUBBARD: They told me they didn't have to do that, only if it was a condominium.

CHAIRPERSON GRIFFIS: Okay.

MS. HUBBARD: Now I can tell you when I was with the Dupont Circle Citizens Association, we took the case to the Court of Appeals, which requires you to give an individual notice to tenants.

CHAIRPERSON GRIFFIS: Okay, I have that, Point 2.

MS. HUBBARD: So there was no notice.

CHAIRPERSON GRIFFIS: Right.

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MS. HUBBARD: All right. I do not represent those tenants, but I'm telling you they probably don't even know about it.

CHAIRPERSON GRIFFIS: I understand.

MS. HUBBARD: Because the signs on the building, you can not read them from the street. It's just a big orange sign.

CHAIRPERSON GRIFFIS: Okay, but part of your motion to dismiss is that it was not properly signed.

MS. HUBBARD: Not properly noticed.

CHAIRPERSON GRIFFIS: Noticed, right.

MS. HUBBARD: Number 3 is that, as you know, the zoning regulations require you in interpreting the regulations to stick with the most restrictive regulation. That is a matter of law and it's in the regulations.

CHAIRPERSON GRIFFIS: Okay.

MS. HUBBARD: Written down, has been for years.

CHAIRPERSON GRIFFIS: Okay.

MS. HUBBARD: In this case, they changed from where the regulation that they were applying for when this case was originally advertised to another regulation, which is less restrictive.

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In other words, the planning department, a document which you have in front of you says they couldn't meet the use variance of the regulation that they first applied for, so now they're going to change to another section of the regulations, this Section 350 and ask for a variance from that; whereas, you are required to stick with less restrictive and so are we and so is everybody and so is our friend from the planning department over here. So this whole thing has been misrepresented to the neighborhood.

CHAIRPERSON GRIFFIS: So if I understand your point correctly, you're saying -

MS. HUBBARD: I'm saying this is illegal to deceive people to the extent that you have.

CHAIRPERSON GRIFFIS: Okay and it may be important for me to understand your point, so let me reiterate that to you. I see your Point 3, your statement is that there may be something that is more restrictive than a use variance, is that correct?

MS. HUBBARD: I'm saying that the original variance that they applied for.

CHAIRPERSON GRIFFIS: Yes.

MS. HUBBARD: When we first had the hearing before was more restrictive.

CHAIRPERSON GRIFFIS: It was.

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MS. HUBBARD: Why, of course. Look at the planning document. You read the documents, no doubt, that were supplied to you by the planning office. He said over there, there he is sitting there, Mr. Madigan, that they could never meet the requirements of the first regulation to what the variance was requested.

CHAIRPERSON GRIFFIS: But you're aware today that it is before us the application for a use variance, right?

MS. HUBBARD: Of course.

CHAIRPERSON GRIFFIS: Okay.

MS. HUBBARD: But the other point is more restrictive.

CHAIRPERSON GRIFFIS: And do you know - okay.

MS. HUBBARD: And so, I mean if you want to go ahead and do that and then in interpreting the regulations, you are not sticking to the requirement that the most restrictive regulations apply. That's all I have to say, Mr. Griffis.

CHAIRPERSON GRIFFIS: Very well.

MS. HUBBARD: Mr. Griffis, I'd just like to ask you one more question. When did it happen that there's a regulation that says in the procedures that

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the time limit for the application and the time limit for the opposition have to be the same? Did that just occur, just drop from the moon? I mean how can you mislead us so that we can have only 30 minutes or 40 minutes or however long it takes the application.

CHAIRPERSON GRIFFIS: And I appreciate that question.

MS. HUBBARD: And you've got all these parties.

CHAIRPERSON GRIFFIS: And as a procedural question -

MS. HUBBARD: And now it's going to be one hour. I mean this is not the Court of Appeals, you know. This is a zoning hearing. All right, I just want to tell you, I never heard of it.

CHAIRPERSON GRIFFIS: And I appreciate your opinion on that and what I will do in order to answer that is have our corporation counsel put together a quick piece and when it's appropriate, she will give that to you and to all of us at that point.

MS. SANSONE: Mr. Chairman, I can address that right now.

MS. HUBBARD: It should be dismissed with prejudice right now.

CHAIRPERSON GRIFFIS: We have a motion and

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we have it with three points to it. Actually, why don't we because corporation counsel is so adept in addressing my policies.

MS. SANSONE: Well, I just happen to have that regulation in hand. Before I lose the citation, it's Section 3117.4 and that particular provision added and became effective on October 1 of 1999 as part of regulatory reform, and what it provides is that an applicant and all persons in support of an application collectively have one hour to present their case, exclusive of cross-examination.

All persons in opposition collectively have one hour to present their opposition case again, exclusive of cross-examination or any Board member questions. And the ANC's time is not limited.

CHAIRPERSON GRIFFIS: What was the cite on that again?

MS. SANSONE: The citation is Section 3117.4.

CHAIRPERSON GRIFFIS: Indeed, and we could obviously have that available if anyone wanted to review it. Okay, let us have the applicant's representatives at the table speak to the Motion to Dismiss with prejudice on the three issues.

MS. POLIVY: I would like to be heard in

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support of the motion.

CHAIRPERSON GRIFFIS: I understand this. Believe me, we're all going to get familiar with my process, and my process will be this, and now that we've established parties, I know exactly who to call and I will absolutely send, as we go through this, actually an order for the parties also.

But my order will always be having the applicant speak to any motions that come up first. I will have the ANC speak second, and then I will establish the order for the parties and, believe me, everyone will get a chance to speak.

If by some crazy reason, I lose part of my mind and don't give an opportunity for a party to speak, it is absolutely appropriate to call it to my attention. But until I make that error, I would ask if you refrain. But it's good to set that procedure and I don't often do that. So that being said, let us hear from the applicant's representative at this point.

MS. GIORDANO: Good afternoon. For the record, my name is Cynthia Giordano with Arnold & Porter law firm representing the applicant. I'm going to address the points one at a time.

The first point, I guess, is that there was a misrepresentation about the existing use of the

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property, that a certification of occupancy is required for a bed and breakfast and that's not the case. There is no C of O requirement for a bed and breakfast.

There is what they call a home occupation permit and Mr. Gonzalez does have one of those and I believe there is a copy in the record. I'll just hand this to Ms. Hubbard.

CHAIRPERSON GRIFFIS: Ms. Hubbard and let me also say we've established the numerous parties in this case and there are a lot of people very interested in this, so anything that is relevant to you is also relevant to everyone else.

People will not be able to understand or hear what you say if you speak out of turn in the audience, so I'd ask you to refrain from those sort of outbursts. It also detracts from the Board and its job and, believe me, we want to try to stay focused on the issues at hand.

So, if I'm not mistaken, you handed her a copy of the Home Occupation Permit, which is as you're stating, a matter of right use for a bed and breakfast of a certain size.

MS. GIORDANO: Right, for six rooms.

MS. HUBBARD: (Off mike).

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CHAIRPERSON GRIFFIS: Ms. Hubbard.

MS. GIORDANO: For six rooms. That's as a result of the fact that the property is a historic landmark in a historic district. So that was issued by the Zoning Office and it derives from the fact that there's no C of O requirement for single family residences and that they've created this additional type of authorization which is, in effect, a type of license and a type of C of O combines for home occupations. It's called a Home Occupation Permit.

So that has established that that is a legal matter of right use for that property, and the applicant was not intending to represent that he's operating that right now.

In fact, the property is being renovated inside, so he doesn't have - he's not engaged in that occupation right now, but he established that right and we're just simply trying to provide notice that that is a matter of right use and that what we're asking for is an expansion of what would be permitted. That's the six rooms.

CHAIRPERSON GRIFFIS: Absolutely. So for total clarity, this goes to a current, existing condition which may or may not have impact on the application. The application needs to be met and the

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test clearly has to be met for the application that's in and that is for a use variance, which goes beyond the scope of any sort of matter of right use for home occupation permits.

Okay, second issue. Ms. Hubbard, it's not appropriate for you to be at the table at this point.

I will call the parties in order and I will have, as I stated, the ANC at the table at this point and the applicant's representative.

MS. GIORDANO: The second issue was the notice for a rental apartment. I think your staff can probably address it.

CHAIRPERSON GRIFFIS: Yes.

MS. GIORDANO: I don't know exactly what notice was provided.

CHAIRPERSON GRIFFIS: We'll get that.

MS. GIORDANO: But what's required is a notice to the owner of the property, and even for condominiums, the law has been changed so that individual notice to all of the property owners is no longer required.

CHAIRPERSON GRIFFIS: Okay. I'll direct the questions. Yes.

SECRETARY PRUITT: I was just going to say for clarification, it's Section 3113, which indicates

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that you only have to notice those who are leasing the property as the subject property. If it is not subject property, you do not have to notify any lessors.

CHAIRPERSON GRIFFIS: So you notify the owners of the properties within 200 feet?

SECRETARY PRUITT: Correct.

CHAIRPERSON GRIFFIS: And that is in the regulations, Section 3113.

SECRETARY PRUITT: .13.

CHAIRPERSON GRIFFIS: Do you want to state that again?

SECRETARY PRUITT: 3113.13.

CHAIRPERSON GRIFFIS: .13, there's a whole lot of ones and threes. Actually, it's three ones and three threes which is kind of symmetrical when you get down to the sections, but that's taking us in a totally different direction than we need to go. The third issue was for?

MS. GIORDANO: The third issue, I think there is some confusion there. The practice of the Board and the Zoning Commission has been that to give the most difficult test, a use variance is the most difficult test, has the most difficult test to meet.

If the use variance is the advertised form

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of relief, it's appropriate for the applicant to even change it to scale it back to something like a special exception. So it's the other way around. I think maybe Ms. Hubbard got it reversed.

CHAIRPERSON GRIFFIS: Okay, I would agree. Anything further? Very well. Thank you. Yes, sir.

MR. MICONE: On behalf of the ANC, I would comment that we have no position on the motion.

CHAIRPERSON GRIFFIS: Okay.

MR. MICONE: But I beg the indulgence of the Board to let you know I'm a Mayoral appointee to another commission of which I will be needed as an officer of the commission and I need to leave at 4:30. So, I'm not sure where we're going to be at in the process and certainly have the written current position of the commission in the file.

But I just wanted to let the Board know that I will need to leave at 4:30 so I can make that five o'clock Mayor's Commission Meeting.

CHAIRPERSON GRIFFIS: We also want to show great empathy for Mayoral appointees. Okay, I think that's fine.

MR. MICONE: Thank you.

CHAIRPERSON GRIFFIS: Yes. Indeed. In terms of us proceeding, we will get through a large

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chunk of the case today. Do you have anyone that you're designating to stay or represent the ANC at this time?

MR. MICONE: There are no other commissioners present. The commissioner for whose single member district this is located is out of town.

CHAIRPERSON GRIFFIS: I see. Okay.

MR. MICONE: But again, the record reflects our position.

CHAIRPERSON GRIFFIS: Good and we appreciate you bringing that to light and we will - obviously you as a party will be notified if this does continue, and the new dates, any sort of filings. So, we appreciate your time.

MR. MICONE: Thanks, Mr. Chair.

CHAIRPERSON GRIFFIS: Okay, let's establish the order for parties and I'd like to start with the Dupont Circle Citizens Association, just based on the magnitude of the membership.

We will then go to the Residential Action Coalition and then we go to, well on my sheet it's appearing S Street, and then Riggs, and if that's not objectionable to people, we can do it in that order. Is that everybody? Okay, good.

MR. HILL: Dupont Circle Citizens

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Association has no position on this motion.

CHAIRPERSON GRIFFIS: Thank you. Then, let us hear from S Street and Riggs. Can you imagine this with 12 parties, how long it would take? It would be wonderful. Okay.

MR. JARDIN: I just have a question. The use of the term the advertising the existing bed and breakfast on the documents imply that the property is being used that way currently, which I hope the Board is aware that it is not.

CHAIRPERSON GRIFFIS: Is not being used as a bed and breakfast.

MR. HILL: That is correct, but I believe what you implied from what you said, just the fact that this home occupancy permit establishes the right of it to be used that way for up to six rooms, is that correct?

CHAIRPERSON GRIFFIS: Yes.

MR. HILL: Now how is that right established? Did the Board act on that?

CHAIRPERSON GRIFFIS: Let me bring some clarity to that. In the regulations, as a matter of right, there's a certain number of rooms in this, along with the historic preservation. I don't want to go into all the details, but it's establishing a

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current condition and I have not seen evidence that it has great pertinence to the application that's in front of us.

Actually, let me go there. Because there was an establishment of a current bed and breakfast would not necessarily make a case for the expansion of that use. So, in the regulations there is a matter of right use which means it needs no variance. It does not come before the BZA for a bed and breakfast in that structure.

MR. HILL: Maybe I'm misreading the regulations, but my reading of the regulations, as a matter of right there is a right to two sleeping rooms in the bed and breakfast.

Because it's in a historic district and a designated building contributing to the character of the historic district, it may be allowed to be expanded to six rooms, subject to the regulations, § 203.10 and 203.8, which lists the type of activities that go on, and I believe they are regulations to protect the neighborhood against adverse conditions.

And, my reading of it was that even for the six required some action of either the Board or a Zoning Administrator. How did this particular action take place?

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COMMISSIONER MITTEN: Can I help you out there, Mr. Chair?

CHAIRPERSON GRIFFIS: Oh, yes.

COMMISSIONER MITTEN: You're correct. It did require action on the part of the Zoning Administrator who scrutinized the application and determined, at least as far as, you know until the use is actually implemented, that based on the application that was made that the permission for the six rooms is a matter of right, but it doesn't require relief. It just requires compliance with the sections that you made not of.

MR. HILL: Okay, so it will require for him to actually implement the use, he will have to comply with all of those sections?

COMMISSIONER MITTEN: That's correct.

MR. HILL: Okay.

CHAIRPERSON GRIFFIS: Okay. Ms. Hubbard, this is one of not many directions to you. Let me just state it out.

MS. HUBBARD: (Off mike).

CHAIRPERSON GRIFFIS: And I appreciate that. But let me be clear on why I'm so concerned with this. One, it disrupts the person that's actually presenting information to the Board, and people I

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don't expect are professional presenters, as we are not judge and lawyers, and so focus is of utmost importance and I don't like interrupting the cadence of people that are giving testimony, and I do not like having my Board disrupted by things that we are looking at.

When people are testifying, they don't know what's happening behind them, and if all of us are looking at something else, they will be - it will not help them, and frankly it won't help the case and it won't help us in our deliberations.

So, I again underscore the fact that I will not make many more warnings in that respect, and I would also ask you just to refer to § 3108 of the Zoning Regulations, because I think it may be very helpful. So, that being said, let us now figure out where we were. Have we heard from all the parties? No, Riggs yes indeed. Do you see how thrown I got, especially in the afternoon?

MS. POLIVY: I would like to speak to Ms. Hubbard's first point. I agree as to the second and third. There is no violation and there is conformance with the rules.

As to the first point, when Mr. Gill was representing Mr. Gonzalez at our last hearing, he

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submitted a pretrial statement that said under the Zoning Regulations in a historic district, a six guest room bed and breakfast is allowed as a home occupation with BZA approval.

The question is to whether or not the Zoning Administrator properly gave that approval. I guess it's academic. The only thing that I would be concerned about is that to the extent that an applicant comes before you to expand an existing use, it implies that there has been a use.

In this case, there has been no use and that structure has never been a bed and breakfast. It has never been operated as a bed and breakfast.

CHAIRPERSON GRIFFIS: Okay.

MS. POLIVY: And so I would simply ask that, while it may not be cause for dismissal of the case at this point, that it is important in considering this matter that the Board recognize it's not an expansion of existing use. This is a wholly new use.

CHAIRPERSON GRIFFIS: Indeed, and again I would go to - I'm not sure that would not make the test for an expansion of an existing use. It may but we've just had testimony from or we've had presentation of fact from the applicant's

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representative that it is being renovated at this time. Is that correct?

MS. POLIVY: It is being renovated.

CHAIRPERSON GRIFFIS: Right.

MS. POLIVY: I mean everyone who has seen it knows that.

MS. GIORDANO: Right, it's being renovated. I don't think there was any intention to deceive anybody here that this is existing use. I don't think Mr. Gonzalez has ever told anybody that he has guests living there, and I think if you looked at the building, you could see it's not habitable right now.

But this is an area, I think, that is very confusing. I have the headache to testify to these home occupation regulations, and I think it's important for me to take a stab at it.

If you look at the regulation, it says that pursuant to, and they do quote a special exception provision, the maximum number of rooms can be increased four. Then it says, "or in the case of a historic property, they can be increased to six."

CHAIRPERSON GRIFFIS: What section are you in?

MS. GIORDANO: It's right here, 203.8. So and I think with all due respect and it's very

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confusing, I think Mr. Gill just got it wrong. I think it's clearly a matter of right use. The Zoning Administrator ruled that it was.

If you look at, there have been a couple of cases on this and I think it's probably important to just take a minute and just kind of establish what the benchmark is here. There was a case that was decided by the Board previously involving the Swan House, which I know is not far away from this property.

I have the BZA case here and I have extra copies for the parties. In that case, it's a very similar application and I'm sure some of you are probably familiar with it already.

It was an expansion from a six-room bed and breakfast that was historic to a nine-room bed and breakfast, and that case actually went to - the BZA ruled that the six rooms were a matter of right and an expansion required a special exception. That case was actually appealed to the Court of Appeals by the BZA and the court concurred with that.

So I think it's pretty well established, unless the regulations are changed or there's some rule making to change them at this time, that the regulations should be read that six rooms in the

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historic district is a matter of right. But if you read that section, I agree it's difficult to decipher which is the special exception and which is the matter of right.

CHAIRPERSON GRIFFIS: And how did you say that Mr. Gill had erred?

MS. POLIVY: Okay, well Mr. Gill thought the BZA had to approve that expansion.

CHAIRPERSON GRIFFIS: Oh, I see.

MS. POLIVY: You know, this is at this point an academic argument.

CHAIRPERSON GRIFFIS: Right.

PARTICIPANT: (Off mike).

MS. POLIVY: Well it is academic in the sense that what is before you is not the six, and clearly even if the six were a matter that the Zoning Administrator could grant on his own authority, the fact of the matter is that before this could operate as a six room, it would have to have exceptions to 203 and come before the BZA to request this.

MS. GIORDANO: No, that's what I'm saying.

It doesn't have to come before the Board. It's a matter of right use.

MS. POLIVY: He couldn't operate within the home occupancy listing in 203 as the City Planning

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officer noted, with six rooms or not.

MS. GIORDANO: No, he can operate. He can operate a six-room bed and breakfast as a matter of right without any BZA approval.

MS. POLIVY: He couldn't come within the - he would have to request exceptions. He would have to come to the BZA.

CHAIRPERSON GRIFFIS: I think we're not being clear but 203.8 does outline how, as a matter of right, six rooms could be used as a bed and breakfast. As Ms. Mitten has said, it was in compliance with all the other issues from A to H.

MS. POLIVY: Yes, but he couldn't ask that you modify more than two of the listings, 208 does require that. Frankly, you know, that's the reason I think at this point it becomes an academic argument because he is now before you asking for 11, and he can't conform to the exceptions anyway.

CHAIRPERSON GRIFFIS: People may have difficulty with the semantics of your word "academic," but yes I would concur to the fact that I think the six bedrooms is not what's before us in terms of granting relief. It is for a larger use and a use variance. I think that was established. I mean just for absolute clarity for the record, as you've

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indicated.

MS. GIORDANO: I have the court case too. I can hand that out.

CHAIRPERSON GRIFFIS: I have a quick question on 203.8 C(1) and it is indicated that it has to be certified by the state as to historic preservation as a historic building and this is a contributing building, is that correct?

MS. GIORDANO: Absolutely and there's no question about that and it has been certified. That's why the Zoning Administrator issued that.

CHAIRPERSON GRIFFIS: I just want that on the record, it is a certified structure.

MS. POLIVY: May I ask counsel if you distributed something to the Board other than the court case? You gave us only the court case.

MS. GIORDANO: I thought I gave you the court case. Here's the BZA case.

MS. POLIVY: And I take it this underlining is yours to bring our attention to parts?

MS. GIORDANO: It's just to try and help you get to the meat of it quickly. I have copies of the court case as well and was going to hand those out in a moment. I can do it now.

CHAIRPERSON GRIFFIS: Okay, while that's

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happening, we have the Motion to Dismiss. I thank you all very much. I'm going to have you sit down and we're going to deliberate on the Motion to Dismiss at this time and it has been asked that this motion be deliberated on to dismiss with prejudice.

MS. POLIVY: Mr. Chairman, may I ask that the home occupancy permit, which we've never seen and hasn't been exhibited - it wasn't when we looked in there.

MS. GIORDANO: It's attached to Mr. Gill's submission.

CHAIRPERSON GRIFFIS: Yes, I thought I'd seen it but if not what are you requesting it be submitted into the record?

MS. POLICY: I'm requesting that copies be provided.

MS. HUBBARD: This is not an occupancy permit, Mr. Griffis.

CHAIRPERSON GRIFFIS: No, indeed it isn't.

MS. HUBBARD: You must have an occupancy permit.

CHAIRPERSON GRIFFIS: Okay.

MS. HUBBARD: And you have to have a license.

CHAIRPERSON GRIFFIS: Okay.

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MS. HUBBARD: And so this is not valid.

CHAIRPERSON GRIFFIS: That's been noted for the record, Ms. Hubbard.

MS. HUBBARD: And a false impression.

CHAIRPERSON GRIFFIS: Do you want us to take up your motion? That's what we're trying to engage in.

MS. HUBBARD: Well, what I want to say is.

CHAIRPERSON GRIFFIS: Can we table the motion?

MS. HUBBARD: Table the motion?

CHAIRPERSON GRIFFIS: Do you want to dispense with the motion or do you want?

MS. HUBBARD: Well, I suppose you're going to vote against me anyway. I don't want to give up, but I'll tell you, I think you're wrong. I know you're going to vote against me. I know you, although we're right.

CHAIRPERSON GRIFFIS: Indeed. Ms. Hubbard, I do hope at some point you take some time to get to know this Board.

MS. HUBBARD: I have.

CHAIRPERSON GRIFFIS: However, in the meantime, let's take up the Motion to Dismiss. We have a Motion to Dismiss with prejudice, based on proper

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notification, based on notification not being served on the adjacent large apartment building, and third on the issue that it is coming in under less restrictive zoning regulations and it is required to come under a more restrictive test. Quick discussion, comment?

I think we addressed clearly in 3113.13 the fact of notification and who that goes to and I think that renders Issue 2 moot in terms of serving the entire residence of an apartment building, and if others want to touch on the other two issues, one and three.

COMMISSIONER MITTEN: Mr. Chairman, I'd just like to add a few things and just maybe to piggyback on the point that you made about Issue 2. One of the reasons why we have multiple forms of notice is that people who don't automatically get notified through the mail, because they are property owners within 200 feet, have the opportunity when they see the big, orange sign to walk over to where they can actually read it and see what's at issue. That's why the signs are big and orange.

CHAIRPERSON GRIFFIS: That is a very important point. In fact, we found on numerous cases that more people throw out the letters that they actually get because they think it's junk mail. When

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there's not a ticket involved in it, they just throw it out if it's from the D.C. Government.

But most people actually do walk by the properties. Those are the adjacent people in the community, and see those large signs, and that's where notification comes from.

COMMISSIONER MITTEN: Thank you. And then to the point, maybe I'll take Point 3 up, which is somehow what's being requested is less restrictive. A test for a use variance is, as Ms. Giordano had mentioned, it is the highest burden of proof for a variance and also I mean I think I would have trouble identifying in what way one type of use variance is somehow easier to obtain than another type of use variance.

I mean a use variance has, you know, a very difficult burden of proof and I don't see that there's been any advantage gained by the applicant from changing the characterization of what they're seeking relief from. I think there's a very difficult test for them to make, so you know we'll look forward to them making their case. So I don't think there's any relevance to Issue 3.

And then as it relates to Issue 1, which is the characterization of the property as an existing

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bed and breakfast, I think we've had presentations made, as you mentioned, that everyone is clear that the property is not now a bed and breakfast, that it has a home occupation permit for a bed and breakfast, and that to the extent that - fail to see because it doesn't in any way to my mind help them achieve their burden of proof, help them meet their burden of proof.

To the extent they think it's relevant, they should make that showing in their case, and I don't think it's at this point a basis for dismissal of the application.

CHAIRPERSON GRIFFIS: Others?

MEMBER ZAIDAIN: Yes. I'd pretty much agree with everything Ms. Mitten said, and furthermore, somewhat candidly, I'd just say the argument that it is advertised incorrectly, I think, is a bad one because look at all the people here and look at all the paper we've received. Obviously, it got notified correctly somehow, because certainly a lot of people know about it.

And also, in terms of not notifying people who are not property owners, that is extremely common practice in the administration of zoning laws throughout the country. It would be impractical to require zoning offices to notify renters, and I can

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say this because I'm a renter, because renters are incredibly hard to track and it's common practice to notify property owners. So I would agree with Ms. Mitten on that.

CHAIRPERSON GRIFFIS: Good, thank you. Any others? Very well. Proposed action?

COMMISSIONER MITTEN: Mr. Chairman, based on the discussion that we just had, I would move that we deny the Motion to Dismiss this application with prejudice as Ms. Hubbard had moved on behalf of the Residential Action Coalition.

MEMBER ZAIDAIN: Second.

CHAIRPERSON GRIFFIS: Thank you. Motion has been seconded. Any further discussion. Then all those in favor, signify by saying aye.

BOARD MEMBERS: Aye.

CHAIRPERSON GRIFFIS: And opposed? Okay, are there other motions by parties in this case? Not seeing any indication there would be, I think we are ready to proceed with the first step of this application and that would be statement and witnesses of the applicant.

SECRETARY PRUITT: Mr. Chairman, are you going to hold applicant to an hour or establish time so that we can actually start the clock?

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CHAIRPERSON GRIFFIS: Are you ready to proceed? I would just ask you for an indication of how long you think you require to put on your case?

MS. GIORDANO: I would say approximately 40 minutes, but I would ask that, we have one witness who has to leave and I would ask if she could be taken out of turn to provide her testimony.

CHAIRPERSON GRIFFIS: I don't have any problem with that.

MS. GIORDANO: I'm going to let her speak for herself.

CHAIRPERSON GRIFFIS: Okay.

MS. GIORDANO: But I'm going to ask her to come up to the table now.

CHAIRPERSON GRIFFIS: Do you want to just give us some background on whether this is just a witness in support of the application?

MS. GIORDANO: She's a witness in support of the application. She lives on Riggs Place, but she also has expertise in historic preservation.

CHAIRPERSON GRIFFIS: Okay, good. You're not offering an expert witness though, is that correct? Okay. While we have this moment, if I would just have you turn off the other mike so we will get feedback shortly.

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SECRETARY PRUITT: Just for clarification, Mr. Chairman, 40 minutes is the time frame?

MS. GIORDANO: Well I said approximately.

SECRETARY PRUITT: Well, that's what I want to know.

CHAIRPERSON GRIFFIS: Yes, I'm trying to get an idea. I think we are offering an hour, and what we will do is the equal time will be given and that's the reason why we will run the time on the applicant. Does that include everybody? Okay. The parties will have exactly the same amount of time the applicant has.

MS. POLIVY: That doesn't seem quite as we understood it, because that way the applicant is dictating how much opportunity the parties have to oppose it. The regulations speak in terms of one hour for each party. It's simply fortuitous that the applicant says she'll take 40 minutes.

MS. GIORDANO: I just said approximately. Really, there's no desire here -

CHAIRPERSON GRIFFIS: I asked for time because I wanted to get an idea what we're talking about for the rest of the day. Ms. Sansone, am I out of order in indicating that we will give the parties the equal time the applicant take?

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We're in the matter of ten minutes here and there. We will offer the parties 60 minutes. We will time the applicant, just to keep us all honest and we will subtract any questions of the Board, which we often do in interrupting and all of that. But with that, let us turn this over to the applicant to put on their case and we will be calling out of turn -

MR. SALAS: (Off mike).

CHAIRPERSON GRIFFIS: You've got to come up.

MR. SALAS: My first question was -

CHAIRPERSON GRIFFIS: Do you want me to clarify why I've done this?

MR. SALAS: No, I just wondered if you were going to do that.

CHAIRPERSON GRIFFIS: Do you want to turn on the mike so you can speak?

MS. GIORDANO: I mean personally, if he wants to go, it's fine with me.

CHAIRPERSON GRIFFIS: Let me be clear because I don't have any problems with my decision. There is a big difference between taking people that are going to testify before we've even called the case and established party status and taking an applicant's witness out of order.

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MS. GIORDANO: She's not my witness. She's a supporting witness, and I'm happy to give equal time if it's, you know, if he wants to do his testimony.

MR. SALAS: No, I've adjusted my time because I wasn't going to be put out of - I mean, I thought everything was going to be in order and there's not going to be any agreement.

CHAIRPERSON GRIFFIS: It actually would have been inappropriate for you to give testimony.

MR. SALAS: Right, I understand that, but.

MS. GIORDANO: To simplify things, I would offer if it makes it easier -

CHAIRPERSON GRIFFIS: We're past making it easier.

MS. GIORDANO: Supply testimony in writing if I can get it to you within the next few days. Would that simplify the process?

CHAIRPERSON GRIFFIS: Do you still have time, Mr. Salas?

MR. SALAS: No, I've got all the time in the world now because I changed my schedule, but I didn't think there was any latitude and my point, Mr. Chair -

CHAIRPERSON GRIFFIS: If it hadn't been at that point where you requested it, I would agree.

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Okay, we will note and apologize if we've had to interrupt and disrupt your schedule today and let us proceed at this point with the applicant's case and have them call the witness that they have, or I'm sorry to call the person to testify in support.

After that, I will assess whether other people to give testimony, persons not parties, have scheduling problems in which case we can have this somewhat upside down cake presented to us and have all the testimony of people with scheduling problems in support or in opposition first, and then we might have a case presented to us. With that, we welcome you this evening and ask you to introduce yourself, your name and your address.

MS. HENDRICKS: My name is Crista Hendricks. I currently rent at 1614 Riggs Place. I'm here to testify in support of Mr. Gonzalez; however, I'd like to make it clear that I recognize that I'm not a homeowner and I am more here as a preservationist as opposed to a resident.

So I would just like to speak on some of the historic preservation issues at hand. Also note that I am a volunteer with Washington Parks and People and I've spoken to Steve Coleman who is the president of that organization and he would like to - he was

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unable to submit anything for the record, but he would like to offer to submit a letter to this committee if you will accept that. So, please consider that.

CHAIRPERSON GRIFFIS: Do you have the letter with you?

MS. HENDRICKS: No, he couldn't write one this morning so I apologize, I wasn't he wasn't able to provide one. He would like to offer his two cents and I'll be sure he makes it brief.

CHAIRPERSON GRIFFIS: Okay, we'll see if the record's open.

MS. POLIVY: Mr. Chairman, I'd like to object to this.

CHAIRPERSON GRIFFIS: To what?

MS. POLIVY: To what? To this witness coming before you and asking to give testimony as an expert in -

CHAIRPERSON GRIFFIS: She hasn't been ruled an expert.

MS. HENDRICKS: I'm not an expert.

CHAIRPERSON GRIFFIS: We established that she's not being proffered as an expert witness.

MS. POLIVY: Well she identified herself as a preservationist.

CHAIRPERSON GRIFFIS: And I don't have a

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problem with that.

MS. POLIVY: And is that personal?

MS. HENDRICKS: It's personal as a community member and a concerned historic preservationist, not as an expert and not representing any organization.

MS. POLIVY: Well that's like saying I'm an environmentalist. Is she suggesting -

CHAIRPERSON GRIFFIS: Would you not be?

MS. POLIVY: I don't know of anybody that isn't, but I don't know of anybody who isn't a historic preservationist who lives in this city.

CHAIRPERSON GRIFFIS: I know quite a few.

MS. POLIVY: But the fact of the matter is, if she - I have no objection to her testifying as someone who lives on Riggs Place and be subject to cross-examination, but I do have an objection to her coming before the Board and offering her opinions as a preservationist.

PARTICIPANT: I would second that, Mr. Chair.

PARTICIPANT: Third it.

CHAIRPERSON GRIFFIS: I think we can certainly use the anecdote but we don't need any more of that.

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MEMBER ZAIDAIN: For the sake of time, could she just correct her testimony to say she's a concerned citizen and preservationist and not an expert?

CHAIRPERSON GRIFFIS: Wow, yes.

COMMISSIONER MITTEN: Mr. Chairman, I think any lay witness is free to characterize themselves any way they want.

CHAIRPERSON GRIFFIS: And that's the way I was calling it. If she's not being proffered as an expert witness in architectural history, design preservation or historic preservation, we would not take her at face for that and we'd look to her for her personal and person testimony and frankly to this Board's designation and, oh boy, deliberation in how we filter what her testimony is. So with that, let us move on.

MS. POLIVY: Thank you.

CHAIRPERSON GRIFFIS: And oh well, it's in the record.

MS. HENDRICKS: So my name is Crista Hendricks. I am not an expert. I am a concerned citizen and a resident of Riggs Place and I volunteer for Washington Parks and People and therefore just have an interest in the 16th Street corridor and that's

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all, so I just want to make that clear.

I am not here to speak to any of the issues that are going to be presented by the residents or contradict them or address any of their concerns. I think that the applicant will be more suited for that.

I just wanted to speak to the preservation issues that I just think need to be raised, and that is that there are very few of the mansions that used to line 16th street left.

I think many of us are familiar with Henderson's Castle, which is no longer there and if you drive up 16th Street, you're not going to see any of these mansions because they've all be in the 50s and 60s, most of them have been razed because it is unlikely that you will find a single family to occupy the home and be able to keep it.

I mean I don't have any evidence to support that or any statistics, but I think that's very obvious. The structure is historically significant in that a Supreme Court Justice lived there. It was home to the Toutorsky Academy of Music for 40 years and is identified as a historic landmark.

I think we all know that it does contribute to the historic significance of the neighborhood.

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My point in coming here is that if you deny the application to operate as a bed and breakfast, and you want it to be used for some other purpose or try to attract another person to buy it or if that's the intent, the other alternatives are not good for preservation because they don't protect the interior.

If you turn it into office space, you can destroy a lot of the interior and change the structure of it, while I know the exterior is protected. An embassy would be exempt from all preservation laws and if a developer were to come in and do condominiums, you would also lose a lot of the fabric of the interior.

So I just wanted to express that and make that known. I'm thankful that Mr. Gonzalez is sensitive to the preservation of the interior. I know that he wants to work with the community, which is why Parks and People is interested because we're looking to use the space for fund-raising events and compared to the other alternatives, the impact seems to be minimal, though I do understand the neighbors' concerns. So that's all. Thank you for your time.

CHAIRPERSON GRIFFIS: Good. Thank you very much and I understand you to say that with an

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alternate use, which isn't being proposed right now, the potential of the interior being perhaps destroyed as you said, but perhaps reorganized, is a great concern of yours.

And so, your testimony is, in fact, that this proposed use would enable the preservation of the interior and also the exterior.

MS. HENDRICKS: It would be the best alternative, I think.

CHAIRPERSON GRIFFIS: I see. Are there questions from the Board?

COMMISSIONER MITTEN: Mr. Chairman, I have a question.

CHAIRPERSON GRIFFIS: Yes.

COMMISSIONER MITTEN: Is it your understanding that there's been any proffer that if this use variance is granted that, in fact, the interior will be protected? Is there any legal requirement to protect the interior?

MS. HENDRICKS: There's no legal requirement. It was just an idea. I took a tour of the house. I've seen the work that he's doing to do the renovations right now and I think that he is very sensitive to the interior and protecting what is there in the existing fabric. So, I just think that it's his

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intentions to maintain that.

CHAIRPERSON GRIFFIS: And if I'm not mistaken, the alternative uses you indicated were not -

MS. HENDRICKS: I'm just pulling them out of the air. It's not -

CHAIRPERSON GRIFFIS: - non residential and may, in fact, it's your speculation -

MS. HENDRICKS: Right and I think it's highly unlikely that it would be a single family dwelling and that's why we've seen all these other mansions disappear.

CHAIRPERSON GRIFFIS: Okay.

COMMISSIONER MITTEN: But you understand that the use variance would survive Mr. Gonzalez' ownership of the property and another owner could depart, keep the use variance and depart from his intentions regarding interior preservation.

MS. HENDRICKS: I do understand that but I mean any other commercial space could do the same, so.

COMMISSIONER MITTEN: Thank you.

CHAIRPERSON GRIFFIS: Any other questions of the Board? Cross-examination of the witness. We shall begin with -

MS. HENDRICKS: Am I a witness or am I just

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presenting testimony. I don't know if I am -

CHAIRPERSON GRIFFIS: It is somewhat the same thing.

MS. HENDRICKS: Okay.

CHAIRPERSON GRIFFIS: And believe me, this won't be very painful.

MS. HENDRICKS: Okay.

CHAIRPERSON GRIFFIS: But -

MS. HENDRICKS: Again, I'm not an expert. It's just my opinion.

CHAIRPERSON GRIFFIS: Indeed, and what I'm going to do is stick to the procedure that we've established or the chronology of people giving cross-examination. First of all, let me just state for your benefit, for mine and for the parties that are going to conduct the cross-examination, clearly cross-examination is for illiciting, asking questions.

So everything is going to be asked in a question and it's going to be based solely on your testimony that happened all within three minutes, so there can't be that many questions and it will hopefully illicit information for us in our deliberations.

So with that, let us call the DCCA to the table if there's any cross-examination. If there's

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none, you can - there's no cross-examination. Any parties interested in cross-examining the witness at this time can come to the table, Riggs, S Street, the Residential Action Coalition.

MS. POLIVY: Hello, Ms. Hendricks. How long have you lived on Riggs Place?

MS. HENDRICKS: Probably since September, but -

MS. POLIVY: September of?

MS. HENDRICKS: 2001, but on U Street a year before that. I've lived in Washington three years.

MS. POLIVY: And what is your - do you have an official position with Parks and People?

MS. HENDRICKS: No, I volunteer. I'm strictly a volunteer for public relations and fund-raising.

MS. POLIVY: I have no other questions.

CHAIRPERSON GRIFFIS: Good. Thank you very much. See that.

MR. JARDIN: Are you fully in favor of preservation of historic districts and community as well as individual buildings?

CHAIRPERSON GRIFFIS: That's beyond the scope of her testimony, is it not? Is there a

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relevancy to that?

MS. JARDIN: Yes, she is supporting a variance for a change in use which has - to commercial use which has potential detrimental effect to the historic district. So there is a tradeoff here of attempting to trade preservation of an individual building to the detriment of the other buildings in the district. Is she aware of that?

CHAIRPERSON GRIFFIS: Okay. I think that's a difficult question and goes beyond the scope to talk about the preservation of the entire historic district as opposed to the instant structure that we have in front of us. If you have a very specific -

MS. HENDRICKS: Again, I'm not an expert and I can't speak to that, but it is my opinion that historically 16th Street was the gateway from the north to our city and there was a lot going on. There was a lot of activity.

It might not have been operating as a bed and breakfast, but there was certainly a lot of entertaining and galas and activity on that street, so the minor impact that it would have, I don't think would alter the integrity of the community. That's strictly my opinion.

CHAIRPERSON GRIFFIS: Okay, anything else?

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MR. JARDIN: You speak there of the 16th Street corridor, do you think it will have any impact on Riggs Place?

MS. HENDRICKS: Well, I use the term 16th Street corridor loosely to mean that.

MR. JARDIN: There's a significant difference between 16th Street and Riggs Place.

CHAIRPERSON GRIFFIS: Is that a question?

MR. JARDIN: Do you find that there's a significant difference between 16th Street and Riggs Place?

CHAIRPERSON GRIFFIS: That's probably a yes or no.

MS. HENDRICKS: From what I understand of the issues at hand, I don't think that the impact difference would be that great, no.

CHAIRPERSON GRIFFIS: Okay. It looks like we've exhausted the parties' cross-examination and - oh, yes.

MS. HUBBARD: I just have one question.

CHAIRPERSON GRIFFIS: Indeed, representing the Residential Action Coalition.

MS. HUBBARD: Ms. Hendricks, are you familiar with other large mansions of about between 8,000 and 9,000 feet in Dupont Circle's historic area

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where you've been inside?

MS. HENDRICKS: I can't understand you.

SECRETARY PRUITT: Excuse me, Ms. Hubbard you have to speak more clearly.

MS. HUBBARD: I just want to ask Ms. Hendricks, have you ever been inside any of the large mansions inside of the Dupont Circle area that are privately operated by private homeowners? I mean I know you've been here a short time, undoubtedly you have strong feelings about how this house could not be operating there.

CHAIRPERSON GRIFFIS: What question is there?

MS. HENDRICKS: Yes, I have been inside but none as large as this. I have been inside some private residence in Dupont Circle.

CHAIRPERSON GRIFFIS: We're going to keep it real succinct to a question that can be answered with - Ms. Hubbard.

MS. HUBBARD: Not only private residences.

CHAIRPERSON GRIFFIS: Ms. Hubbard, if there's a question that can be answered with a yes or no, that's the most expeditious way to continue this.

MS. HUBBARD: All right.

CHAIRPERSON GRIFFIS: Also actually I was

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talking to her. Now I will talk to you, Ms. Hubbard.

Your questions need to be direct and succinct. No testimony at this time.

MS. HUBBARD: All right.

CHAIRPERSON GRIFFIS: Your next question please.

MS. HUBBARD: All right. Where are these houses that you've been in? Could you name the houses?

CHAIRPERSON GRIFFIS: I fail to see the relevancy of that.

MS. HUBBARD: Well she said -

CHAIRPERSON GRIFFIS: She said that she's been in others in Dupont Circle.

MS. HUBBARD: Oh well, she thinks that this is the only some kind of a use like a bed and breakfast or an office building or an embassy is the only possible use for this building, because there are many that are used by private owners and private people living there.

CHAIRPERSON GRIFFIS: Indeed. I don't think that was the testimony.

MS. HUBBARD: Well, she did say.

CHAIRPERSON GRIFFIS: She said that the alternative uses, which were a speculation of what

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alternative uses may be.

MS. HUBBARD: Well, you can use this certainly as a private home.

CHAIRPERSON GRIFFIS: Indeed.

MS. HENDRICKS: And I mentioned that as well and I didn't think it was a likely alternative.

MS. HUBBARD: And she said it wasn't likely, why isn't -

MS. HENDRICKS: Because I think the square footage is so large. It's been on the market for a year and no one has purchased it. No one has been interested. Are you interested?

MS. HUBBARD: I certainly have been. I rode -

CHAIRPERSON GRIFFIS: Questions in one direction and answers in the other. Ms. Hubbard, next question.

MS. HUBBARD: Let me ask you another thing, would you be here testifying about this if you just lived on Riggs Place and didn't work for Steve Coleman?

MS. HENDRICKS: I don't work for Steve Coleman.

MS. HUBBARD: I belong to that to, you know.

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MS. HENDRICKS: Okay. Steve Coleman did not urge me to come testify. I brought the issue to Steve Coleman and spoke to him about it because I live on Riggs Street. I found out about the issue from the applicant; however, I'm not representing him in any way or testifying on his behalf. I'm just offering my opinion after speaking to him and doing what little research I was able to do in the past few days to learn about this.

MS. HUBBARD: And you have a family and raising a family right on Riggs Place?

CHAIRPERSON GRIFFIS: No relevancy to that. Next question.

MS. HUBBARD: Well you don't think so.

CHAIRPERSON GRIFFIS: No, I absolutely do not.

MS. HUBBARD: Now Mr. Griffis.

CHAIRPERSON GRIFFIS: The relevancy for her giving testimony before this Board has nothing to do with whether she has a family or is raising a family in a specific location and it goes nothing to her testimony. Next question.

MS. HUBBARD: All right, I'll just stop right there.

CHAIRPERSON GRIFFIS: Indeed. Any other?

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We've exhausted the cross-examination. We do thank you very much. Have a pleasant evening.

MS. HENDRICKS: Thank you.

CHAIRPERSON GRIFFIS: And we can call the applicant back now to begin their case. Oh, I'm sorry, we were going to go to scheduling of people that were going to testify as persons, and if there was scheduling problems.

I can assure you we will be ending this at six o'clock tonight, so we have an hour left to get through what we can get through. We will be setting a new date for this, as I can not imagine that we set to lightning speed and finish the entire case today.

Others that have scheduling problems that would like to give testimony on this point, persons in opposition or in support. Not seeing anyone rush to table, I call the applicant to begin their case.

MS. GIORDANO: Good afternoon again. I just wanted to go through to be clear about what it is we're requesting and also to explain that we're varying, modifying our application somewhat at this time.

CHAIRPERSON GRIFFIS: And all parties have this, it has just been submitted.

PARTICIPANT: (Off mike).

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MS. GIORDANO: Yes. I'm going to go through that and I tried to do a little outline here because I know how confusing this is. First of all, advertised relief. What was advertised was a use variance for 11 or more rooms, six employees, full-time equivalent and 24 events, and I underlined the "more" because I just wanted to note that we did not put more in the application.

That was something that somehow got added in when it went to the D.C. Register and it caused a lot of consternation actually at the ANC meeting because they thought that we were trying to kind of leave an open-ended range of room numbers here.

But what we requested was 11. What was advertised was 11 rooms, six employees and 24 events, and those were unrelated to B&B guests. Those were fund-raisers I think they were identified, and they've widely been discussed, fund-raisers and conferences and things of that nature.

What we're asking for today and part of this is there's been some confusion because there has been a change of counsel on this case and I apologize for the confusion, but what we are asking for today is an increase in the guest rooms from six, which we believe is a matter of right requirement, to ten, and

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an increase in non resident employees from one to two full-time equivalent.

I say full-time equivalent because there would be a receptionist, a front desk person, but a bed and breakfast is open seven days a week. It's not going to be that same person every day. It might be that they're sharing that job with somebody else. So it's a full-time equivalent position, only one person performing that function at a time. And this relief -

CHAIRPERSON GRIFFIS: Hold on a second. Someone has the cordless.

MEMBER ZAIDAIN: It's a good thing she wasn't talking bad about you.

MS. GIORDANO: Anyway, we believe that these changes the case in a posture of a special exception. It's very similar to the case that I handed out previously. That was the Swan House case where there was an increase in rooms from six to nine and an increase in number of non resident employees from one to two.

So there's two changes to the regulations, which is a special exception instead of a use variance. However, we are prepared to argue that we meet the test for use variance as well. We believe that we do.

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We're trying to modify this proposal to make it more acceptable to the community. We've tried very hard to reach an agreement. Unfortunately, we don't have an agreement today.

The last time the case was about to proceed, there was a postponement on the basis from what I understand from the transcript that there was a draft agreement, which was actually submitted into the record and it was a very detailed agreement that was apparently just about to be signed but the parties felt they needed more time to negotiate it and get it signed.

And, I don't know quite exactly what happened, but Mr. Gonzalez was willing to sign that agreement. The other parties to the agreement were not willing to sign it, so we don't have an agreement today.

MS. POLIVY: Excuse me. I object. The representations that are being made as to what happened are number one -

MS. GIORDANO: And I apologize, I wasn't there but that's what I understand.

MS. POLIVY: The fact of the matter is that since the time that Mr. Gonzalez left this hearing in March until today, he has never attempted, never

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requested to meet with any of the neighbors.

CHAIRPERSON GRIFFIS: You're going to have an opportunity. The applicant's representative is just outlining the case. What we need to do is hear the case through and then there will be ample time.

MS. POLIVY: Well I'm sorry, Mr. Chairman. We did not submit that into the record and there's an unsigned agreement that is now being proffered to you as having some relevance. It has no relevance.

CHAIRPERSON GRIFFIS: In fact that -

MS. GIORDANO: It's in the record of the case.

MS. HUBBARD: A lawyer can only testify as to facts.

CHAIRPERSON GRIFFIS: Ms. Hubbard, sit down. If I have another interruption, it is 5:15 in the afternoon. This Board, which is spending its own time out of its own work week to be here. If we have another interruption, I will continue - I'll close the hearings today and we can all have a restful evening. I will not have the patience and we will not get through the minimal amount that we need to.

I think it's appropriate that as the applicant's attorney outlines the case at this point that we hear this all out. If there is an objection, I

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have no problem with that, but I believe that in the record, everything that's being stated right now is in the record and they can't - and it will, in fact, I would imagine as the case progresses come into the testimony and be available for cross-examination.

If I do not allow issues or proper procedures, I am certain that my corporation counsel that is sitting on the dais with us will correct me and we will proceed appropriately.

At this point, we will take note that there is an objection to the statement that there is this agreement between the community and the applicant that has some significance. So with that, I will ask that the applicant's representative continue with their outline of the case.

MS. GIORDANO: Okay. I was just trying to outline sort of where we came from and where we are today. The change in the relief requested from the previous submission and the advertised relief are these, just so everybody's clear. The request to allow events, which are unrelated to guests of the B&B is withdrawn.

We are not proposing to hold fund-raisers, conferences, meetings. We're only requesting permission to do the kind of small social events which

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were outlined in the Swan House court case./

And those were described in the court case as events which are hosted by guests, registered guests of the B&B and they are uses of types of events, which are customary for B&Bs to hold and they include things like weddings, small family parties, birthdays, which again are hosted by guests of the B&B and nothing unrelated to those guests.

And, the Court of Appeals held that those are customary and incidental events to a B&B use and are basically assumed as part of a B&B use, do not require a separate variance as would the events that we had been requesting before, the fund-raising events and the business conferences, et cetera.

So that is a change in our application at this time. But we are also proposing to limit those events to 24 maximum a year. And I know this is complicated. It may require some time to digest that case, which is the reason I submitted it previously.

We have also reduced the number of employees because we've reduced the scope of the events that we're planning and also the number of restrooms. We've reduced the number of guest rooms by one.

The regulations say that you can have up

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to two employees who are non residents of the home be employed in the home occupation. That's what we're requesting. You can also have people who are residents of the home that are employed in the home occupation.

In our case, there will be two of those people, Mr. Gonzalez plus one other person that will reside on the premises, will probably be an assistant manager or a caretaker of the property of some sort, who will also be an employee. So just to be clear, there will be two non resident full-time equivalency employees and two resident employees.

CHAIRPERSON GRIFFIS: And how does that factor into the full-time employees?

MS. GIORDANO: They're full-time equivalency. There might be actually two receptionists that work part-time and share that job.

CHAIRPERSON GRIFFIS: For my understanding, two resident employees and two non resident employees would equal the equivalent of two full-time employees, is that your statement?

MS. GIORDANO: No.

CHAIRPERSON GRIFFIS: Okay.

MS. GIORDANO: What I'm saying is there will be two resident employees and that has nothing to do with full-time equivalency or anything else.

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They're people that live at the property, including Mr. Gonzalez.

CHAIRPERSON GRIFFIS: Right.

MS. GIORDANO: And one other person and they will be involved in the B&B business, and then there will be two non resident employees -

CHAIRPERSON GRIFFIS: Which goes to making the full-time employee.

MS. GIORDANO: - that are on the property at any one time is what I'm trying to say.

CHAIRPERSON GRIFFIS: Right.

MS. GIORDANO: There might actually be two receptionists, but only one will be working at a time.

CHAIRPERSON GRIFFIS: Okay.

MS. GIORDANO: And what's complicated, there are just so many conditions to these home occupation regulations, you really have to go through all of them, which I have endeavored to do over the past couple of weeks.

But the relevancy of that besides the overall impact issue and just understanding what's being proposed, is that we are not requesting, we are not asking for a variance from the provision that says there's a flat out prohibition on any more than two employees, non resident employees being engaged in the

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home occupation.

So, that is why I believe that we are eligible for a special exception here. It's very much on all fours with the Swan House case, where there were two employees, nine rooms. The BZA ruled that it was a special exception, because there were only two variations from the conditions in the home occupation provision and the court affirmed that.

VICE CHAIRPERSON RENSHAW: Mr. Chairman, a question for the applicant just to be clear. On Page Two, C-2, unlimited social functions will be held with a maximum of 24 per year. Are those 24 single nights or afternoons or are they 24 events? In other words, whereby one B&B guest would have a weekend social event with a birthday party on one day and another birthday party the next day and that would be counted as one, or is that counted as two?

MS. GIORDANO: You're way ahead of me, Ms. Renshaw. I think it's one. I mean I think the event, if there's a family, like say taking the whole B&B for a weekend and maybe they would have a birthday party and a breakfast together the next morning, it would be one event.

VICE CHAIRPERSON RENSHAW: All right, thank you.

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MS. GIORDANO: But I can't say I really thought that through before this hearing. And then my final point here is D, and I think we covered this actually. Ms. Hubbard got us to this point pretty quickly, that the change in the relief that we're requesting doesn't pose a notice deficiency because we're actually scaling back what was advertised.

CHAIRPERSON GRIFFIS: Okay, Board members.

Let me first see if Board members have other questions on the case summary in its generality and then what I'd like to do is establish how we're proceeding with this in terms of the case that we should hear. Any other questions?

MEMBER ZAIDAIN: Mr. Chairman.

CHAIRPERSON GRIFFIS: Yes.

MEMBER ZAIDAIN: I don't know who to pose this question to. I mean I agree with Ms. Giordano that special exception does allow for two modifications.

However, the Zoning Code and I've been scrambling to find the reference to this and it does not deal with full-time equivalents, and I think that's important because when you talk about home occupations.

The intent there is to restrict or

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regulate how many people are coming to the property, you know, in varying ways because that's what the real impact is measured by, and just the fact that we're measuring full-time equivalents is a little concerning to me because four working ten hours a week for one full-time equivalent, so you've got four people making trips.

You know it's a little bit different, I mean from an economic standpoint I can see the point, but from a planning standpoint, we're looking at impacts. I don't know if you want to speak to that.

MS. GIORDANO: I think that the impact is the same because what we're saying by full-time equivalent is that those four people would not be on the premises at any one time.

MEMBER ZAIDAIN: Increasing trips per week.

I mean that's four trips to the house as opposed to just one. I mean is there a way you can give us more substantial information on that.

MS. GIORDANO: But again, let's just take the front desk person, it's impossible that person could work the number of hours that an inn would require. So I mean I think and there have been many, many cases where full-time equivalency is interpreted by the Board with regard to employees in school

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situations.

MEMBER ZAIDAIN: For home occupations though? I don't you to expect some case off the top of your head.

MS. GIORDANO: No, there haven't been any cases, but I think it's consistent with other instances where the Board is looking at number of employees or students and certainly trips are an issue there as well.

COMMISSIONER MITTEN: Mr. Zaidain, one of the ways that we can approach this is to the extent we approve the application and we establish conditions, we can define that full-time equivalent shall mean that there will be no more than, you know, three individuals who cumulatively could be considered for full-time equivalent. We can define it or control that through a condition if we get to that point and the applicant is free to proffer something.

MEMBER ZAIDAIN: Yes, I mean I don't think it's a point to hold up the application. I mean I think the relief she's pursuing is pretty clear. I just think that's going to be an issue.

CHAIRPERSON GRIFFIS: Is it part of the issue for you whether this becomes a use variance or it goes to a modification for a special exception?

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MEMBER ZAIDAIN: No, I mean it's pretty clear in the regulations to modify to the list of requirements from, you know, from - I can't think of the code off the top of my head, but I mean they're clearly asking to modify two of them and so that throws them into the special exception process.

CHAIRPERSON GRIFFIS: Okay.

MEMBER ZAIDAIN: Now are you saying if we do use full-time equivalents, is that going to throw us into a variance?

CHAIRPERSON GRIFFIS: That's what I'm asking you. What I'm just trying to establish is the direction that we will proceed at this point, whether we are going to a special exception or a use variance. So I thought that that was giving you some problem in terms of throwing out these FTEs.

MEMBER ZAIDAIN: Well, FTEs give me a problem in terms of measuring impact.

CHAIRPERSON GRIFFIS: Okay, and I think we can get past that.

MEMBER ZAIDAIN: I mean the modification - I mean it seems to me we're saying modify two of the standards that are listed. I mean we're already, I mean modifying give us, everybody some leeway to evaluate the application. I'm concerned about using

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the term full-time equivalents to evaluate the project, not the application. I guess does that make sense?

CHAIRPERSON GRIFFIS: I think so.

COMMISSIONER MITTEN: Mr. Chairman, can I just piggyback on that. It's actually an interesting point because the language of the ordinance is very specific to this issue. It says in 203.4 (d), no more than one person who is not a resident of the dwelling unit shall be engaged or employed in the home occupation.

So we're talking about multiple persons and so to the extent that we're talking about multiple persons, Ms. Giordano has said that, you know, they're requesting a modification to go from one to two in terms of full-time equivalents.

Well, we're going to have to sort out and they said they're prepared to meet a use variance test, and I think we should take everything into the record and then decide what the burden is and whether they met it. I think that's a relevant point is we're talking about multiple persons. How many persons? We need to sort out what the potential impact is.

MEMBER ZAIDAIN: We're comparing apples to oranges instead of apples to apples.

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COMMISSIONER MITTEN: When we talk about full-time equivalents maybe we should be talking about persons because that's the way the zoning ordinance is written.

MEMBER ZAIDAIN: Right and maybe what I'm suggesting to the applicant is maybe, I don't know today or you know when it's appropriate, to provide, you know, additional information so we can make that comparison persons to persons as opposed to full-time equivalents to persons because to me it's clearly two different things. But aside from that concern, I do think the special exception process is accurate. It's pretty clear in the regulations.

MS. POLIVY: Mr. Chairman, I would like to object to going forward at this point on this basis. We've now come to the third hearing and have been presented with no notice whatsoever of another amended application. According to the Board's rules, that should have been presented no less than 14 days before the date of this hearing.

CHAIRPERSON GRIFFIS: Would you cite the section?

MS. POLIVY: Yes, Section 3113.8, specifically says no later than 14 days before the date of the hearing for the application, the applicant

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shall file with the Board any additional statement, information, briefs, reports, including reports or statements of expert witnesses, plans, or other material the applicant may wish to offer in evidence in the hearing.

We have now been here for five hours, four and a half to be precise. We have been available to the applicant for weeks, months. Not until the applicant stood up to present her case did we get any notice whatsoever that we were again changing the basis on which this application is going forward.

CHAIRPERSON GRIFFIS: I understand your concern and I think the Board needs to address that and how we proceed with this. First of all, to bring everyone in and we've done an awful lot that we would have had to do no matter what the case was.

But to bring everyone in with notification of a use variance, I think we discussed fairly well today that that is the highest test and the most difficult to prove so that people would be prepared to address that, and the applicant says that they are prepared to address it, to bring it to a lesser, I don't think prejudices anybody in this case in terms of presenting their case whatever it may be and also in cross-examination.

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But let me turn to corporate counsel and ask for their brief opinion about how we might want to continue this. Do we need to make a motion to amend this application or modify the relief requested, and I'd also like your opinion on the notion that we would modify for special exception pursuant to 203.10 (b), because I love to put her on the spot with all of that.

But just to note that Exhibit 38 is the Neighborhood Cooperation Agreement. In the record, on file, it was received on May 19th.

MR. JARDIN: By who?

MS. POLIVY: By who? The neighbors never even had a chance to look at that before.

CHAIRPERSON GRIFFIS: Before I get anecdotal testimony on what I have in my hand, I first of all didn't say it was signed by anybody. Secondly, it is unclear to the Board who's it is, and it was not submitted in terms of my record it wasn't submitted with an attachment of anything.

But be that as it may, I wanted to indicate that Exhibit 38 for everyone's review is in the record and it is labeled Neighborhood Cooperation Agreement. So.

MS. GIORDANO: And if I could just briefly

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speaking to the rule too that basically the rule has been interpreted to say that all paperwork needs to come in 14 days before the hearing but it's never precluded your ability to make a change when you come to the hearing itself and particularly where you're making a change which is in the direction that the neighborhood has been saying they want.

MS. POLIVY: The rest of us being mortals are unaware of what has been in practice. We rely on the rules. The rules firmly say that we are entitled to have notice of what we are going to address. We have three times had a change of what they are proposing.

CHAIRPERSON GRIFFIS: Actually we don't need to argue it. I'm well aware of what the regulations state and I would also state that yes, this Board actually in its own accord has changed the relief sought as we've gone through applications. So we do have -

MS. POLIVY: Which is within your right. I mean that's your power, but it is not the applicant's power to keep changing.

CHAIRPERSON GRIFFIS: They're asking us to modify. We have to agree or disagree, which is where we are with this.

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MS. HUBBARD: But they didn't submit it in advance.

CHAIRPERSON GRIFFIS: That's been established, but of course that's not on the record.

MS. SANSONE: Mr. Chairman, the application was advertised as a use variance, which afforded the applicant maximum latitude to come in and describe how he intended to operate the bed and breakfast and the nature of the social events that would be held there.

One of the reasons why that was significant is that under the Swan House case, the social events that are permissible for a special - a bed and breakfast approved by a special exception, those social events had to be relatively small and in Swan House, they were hosted by the actual guests of the bed and breakfast.

That was not the proposal that was before the Board originally. The proposal was the events might be hosted by outside persons.

CHAIRPERSON GRIFFIS: So if you had a wedding, you'd have to have a room at Swan House to have a reception there?

MS. SANSONE: Exactly, so that was a fairly significant - I mean that was one of the reasons that supporting noticing it the way in which it was

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noticed, and that was up until, I guess, today or until this moment how, you know, if you just read through the file and you were trying to understand what was the use that was being proposed, that's what the public and the board would have had some knowledge of.

The public notice would be adequate to give the people notice of the type of use or the maximum flexibility that might be allowed, the greater impacts that might be contemplated and give people a chance to address that. However, and that would encompass a lesser use that might be approved by special exception.

So it's probably not a defect in the public notice. I think the issue comes in terms of people that were interested in or people that had party status, such as ANC or people that wanted to request party status. If this is the first time they're hearing of the proposed operation and intensity of the use, they may not have had the 14 days prior to the hearing to prepare their case or see if they even had objections anymore.

So to some extent by not having a 14 day pre-hearing filing, the public and the people requesting party status have been somewhat

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disadvantaged in this proceeding. I don't think it means that the case would need to be dismissed because obviously we're not going to complete it tonight.

And perhaps a use of the time would be for the applicant to continue explaining how it is they intend to operate and under what conditions and then the people that do have party status in this case can address that in their cross-examination and their presentations when we next take this matter up.

CHAIRPERSON GRIFFIS: So you're saying that we could conceivably hold off on judgment of whether the modification of the relief would be appropriate?

MS. SANSONE: I think that if you just glance through Section 203, the home occupation provisions are very long. There's many detailed requirements. They're very specific.

The Board can only approve modification of two of those requirements as special exception, otherwise we're back into considering a use variance from those specific provisions or just a more generic use variance under Section 350.

So I think it would be safer to probably proceed in a way that allows maximum flexibility to everyone to see how this application develops and whether there's only two conditions that require

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modification or whether there's more conditions of the regulation that require modification.

CHAIRPERSON GRIFFIS: I see.

MS. GIORDANO: Can I just make one comment to that part of the reason that we're here today as opposed to last time, if I understand correctly was a number of the people surrounding objected to the notice that it wasn't all encompassing enough. They wanted a broader notice because of the events, in particular was one issue.

So, I went ahead and did a broader notice.

If anything, that kind of works to our disadvantage, because it brings more people who might be concerned about more events and then people might be pleasantly surprised to learn that we've actually cut out that aspect that they objected to and that was our understanding was the major problem with negotiating an agreement. That's what we understood from our ANC representative.

So it really doesn't make any sense that you don't want to discourage applicants from scaling back provisions in an application that people object to.

CHAIRPERSON GRIFFIS: No, and I don't think that's a problem. My concern is whether it's

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appropriate in this case to do it and I think what Ms. Sansone is stating is that perhaps we can evidence that in your case and we would be able to judge that at some appropriate time in the case or during our own deliberations.

MS. POLIVY: Mr. Chairman, my objection was not to notice. I am not asking - what my objection is, is that we continually prepare and come here and get jerked around because things get changed.

CHAIRPERSON GRIFFIS: I did understand your objection the first time.

MS. POLIVY: If the applicant has any other changes, I think it's imperative that they tell the rest of us.

CHAIRPERSON GRIFFIS: Would you take your seat and let us figure out what we're doing next. Ms. Hubbard, it's not appropriate for you to be at the table at this time. Thank you very much.

MS. HUBBARD: I would like to object.

CHAIRPERSON GRIFFIS: I understand you would and it's not appropriate at this time. We are at 5:40 right now, and what I would like to do is update the schedule and that we need to be out of here by six o'clock with due respect to everybody involved in this.

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MS. HUBBARD: May I remind you of just one thing, Mr. Griffis, on my bended knee that if legal processes before the BZA, lawyers are not allowed to testify to the facts.

CHAIRPERSON GRIFFIS: That's very true.

MS. HUBBARD: Ms. Giordano has been testifying as to facts of which she has no personal knowledge.

CHAIRPERSON GRIFFIS: I see.

MS. HUBBARD: Hearsay and you are acting on her representation and have been listening to her.

CHAIRPERSON GRIFFIS: I see.

MS. HUBBARD: And I would say that Mr. Gonzalez or people who are actually present at the BZA, there is no sworn testimony, as you know. You're not under oath the way you are here today. All kinds of things are said by applicants.

CHAIRPERSON GRIFFIS: What would you like me to do with that?

MS. HUBBARD: I would like you to dismiss the case with prejudice as I asked you because of failure of notice, nothing about the hardship they had.

CHAIRPERSON GRIFFIS: Good and we don't know all that information until the entire case is

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done. I would, in fact, deny that motion at this point unless we want to go through cross-examination of all parties. Mr. Zaidain.

MEMBER ZAIDAIN: Yes.

CHAIRPERSON GRIFFIS: We have limited time.

MEMBER ZAIDAIN: I know, but this may be important.

CHAIRPERSON GRIFFIS: I'm not saying you're limited to time.

MEMBER ZAIDAIN: That's all right. The reason I have this full-time equipment thing on the brain is I happened to look at this and 203.10(c) establishes that in no case shall any more than two persons who are not residents of the subject home be permitted as employees of the home occupation.

And, I just wanted to put that to the applicant, because if they really can not meet that requirement, then that will be a variance issue that we'll need to take up the way I read the regulations.

So, this goes back to the whole thing about the changing of the application so there was some relevancy to that, which I hope I can always continue to have.

CHAIRPERSON GRIFFIS: And I didn't mean that I was limiting your time. I was saying that.

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MEMBER ZAIDAIN: You may want to limit my time some time.

CHAIRPERSON GRIFFIS: Right. Could you repeat the section again you cited?

MEMBER ZAIDAIN: 203.10(c). So we need to get clarification on that.

CHAIRPERSON GRIFFIS: Exactly. I think we'll probably need to get some case history on how persons and full-time employees are interpreted. Okay.

MR. JARDIN: Could you ask the applicant to complete their presentation today and we can get done before we adjourn. I think that was what the legal counsel suggested and I think it certainly would benefit us better. Every time we meet, we are confronted with changing, and I would appreciate it if you would have them complete their presentation today.

CHAIRPERSON GRIFFIS: And I appreciate that. I too don't like the changing tides with any application, so we do want to try and get it to a strict direction and then go to the cases in it.

However, I do not see the reality of finishing the entire case today and I think, in fact, it will become more confusing if we start it and don't finish it today. I believe we will lose a quorum on

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this Board soon after six o'clock, so we wouldn't have the time required.

So what I would propose at this point is we pick a new day to continue this. I would also request that the applicant submit, depending on that date, in ample time and let's see what the date is and we'll back this down.

But I would have a submission of some sort of outline of the operations and details of the operations proposed in this application, and I think that will give everyone an idea of a starting point and where we are and I think it might be helpful in terms of framing of the parties and also the Board's thinking on this. So let us pick a date.

MS. GIORDANO: Also I wanted to mention to, we would be happy to meet with the neighbors and go over this directly.

CHAIRPERSON GRIFFIS: Uh huh. It will be my great shortcoming if I don't speak to that before we leave the room, but while we're looking for a date, I'll take the opportunity and I think it would only help everyone involved and I think we said this before in this application, certainly in others, if there is some communication and some substance that can be resolved with the parties and the applicant. Yes,

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sir.

Let me just state for the record because we have a few more minutes, I'm losing all of my process that I've tried to drive into everybody today, but we will hear you right now.

MR. HILL: This will be very brief. I talked to Vince Micone before he left.

CHAIRPERSON GRIFFIS: Yes.

MR. HILL: And the ANC and DCCA would be quite willing to continue a dialog with Mr. Gonzalez and his counsel in terms of drafting a new voluntary agreement that covered this new situation which quite frankly was a complete surprise to me today. I wasn't aware of it and I agree with some of the other testimony that's been given that we really do need to know what the final proffer is.

CHAIRPERSON GRIFFIS: Right.

MR. HILL: And then work toward a voluntary agreement that will ensure appropriate operation of the bed and breakfast and care and concern for the community.

CHAIRPERSON GRIFFIS: Well, and I appreciate you bringing that up. I think DCCA is the absolutely appropriate forum, if I'm not mistaken, but certainly to bring in all the parties in question, the

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residents, and if it's not objectionable with the applicant, I would think that you would take that offer up, at least create the forum for communication.

MR. GONZALEZ: Mr. Chair, I would be more than happy to meet with the neighbors again. I have met with them several times, approximately eight meetings, four hours each, and we did come to an agreement as my attorney said last time. And I would like to meet with them again to see if we can come to finalize this agreement.

The only thing is that the last time I got notice from the ANC, when Vince met with them last time, they couldn't come up with an agreement themselves. So I would like to ask that maybe they meet first, come to an agreement, then maybe we can meet together.

CHAIRPERSON GRIFFIS: Well, this is my position on that. Our long arm of jurisdiction will not go to dictating the semantics of how these things go.

MR. GONZALEZ: Sure.

CHAIRPERSON GRIFFIS: I think it's an excellent point that all parties, however will facilitate the most appropriate and productive communication should do so, knowing the fact that we

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will all be back together shortly and there will be a decision on this case one way or the other. It would only help everyone involved if we had productive communication outside of these hearings.

So, I would hope that the ANC and DCCA would be proactive in pulling that together and organizing for that and I take your testimony right now that you are fully availing yourself to that.

Do we have a date yet?

MS. BAILEY: Mr. Chairman, there are some options, and I saw that with a caveat because, as you know, August is a recess month for the Board. The first day that we have is June 18th and that would be the afternoon session.

This morning you scheduled the appeal of the Nebraska Avenue Sunrise case for the afternoon of June 18th; however if the issues of that case are limited as the Board indicated, this case could go on the June 18th afternoon agenda.

Other dates are we're moving into September. There's a couple of hours on July 16th, but other than that, you're moving into September and October. Well, there is an August date but again you're into your recess, the month for recess. That's August the 6th, if you would like to take that in the

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afternoon.

CHAIRPERSON GRIFFIS: Did you say August 6th?

MS. BAILEY: August 6th, yes in the afternoon.

CHAIRPERSON GRIFFIS: I think we're looking at the second half of the afternoon on the 18th.

MS. BAILEY: The second half of the afternoon on the 18th?

CHAIRPERSON GRIFFIS: Right. Okay. So.

MS. GIORDANO: The sooner the better for us. It has been a real problem for Mr. Gonzalez in terms of his lender and I understand we're not trying to press anyone else. But I mean you can see the detail in that agreement. It shouldn't be that hard.

CHAIRPERSON GRIFFIS: I understand that and by matter of course, the Board tries to schedule as quickly as possible cases that are already begun. So let me have the parties up to verify June 18 and we'll go through the other semantics as needed. I need you up at the table on the record in the mike. Does DCCA have any problem with June 18th?

MR. HILL: No.

CHAIRPERSON GRIFFIS: Good, thank you.

MS. POLIVY: Mr. Chairman, if it's June

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18th, then any submissions they have that they're going to make.

CHAIRPERSON GRIFFIS: Has to happen right away.

MS. POLIVY: We should have them today, first thing. Second thing, if there's going to be an agreement with the neighbors, one of the problems with the last one, the reason it never came to fruition was that nobody even saw the agreement.

CHAIRPERSON GRIFFIS: We're not getting into testimony of the previous. What you're saying is there's not enough time to pull it together.

MS. POLIVY: I think that if you're looking for a decent outcome here, June 18th is going to be kind of tight.

MS. GIORDANO: The agreement that's in the record, we stand by.

MS. POLIVY: (Cross Talk) as far as the neighbors are concerned.

MS. GIORDANO: Well, it's a starting point.

CHAIRPERSON GRIFFIS: Right it is. There's something that's been done with it. It's thrown out. That's the first decision that it will be. It will be thrown out but it's none of my business frankly. I do want to get this done.

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So I need everyone to speak to the schedule, whether there's problems with any of the parties showing up on the 18th. If I could have your attention, I'm just going to establish the date. Ms. Hubbard, do you have any problem being here on the afternoon of the 18th representing the coalition?

MS. HUBBARD: It might be happy for you to hear but I might just drop out of this thing completely if we go through another afternoon like this. I am against, I am opposed to every kind of neighborhood agreement. It is your job to ascertain the facts and make a decision according to the law, not the neighbors.

CHAIRPERSON GRIFFIS: How are you on the 18th of June, can you be here in the afternoon?

MS. HUBBARD: Providing there is a paper in the thing outlining their hardship as a base for a use variance.

CHAIRPERSON GRIFFIS: So you're conditioning your appearance?

MS. HUBBARD: You're conditioning yours aren't you?

MS. GIORDANO: I will provide Ms. Hubbard with that paper.

MS. HUBBARD: I mean to say I would like to

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- the next one will be the fourth hearing. If there ever was a defective case from the very beginning, and I must say Mr. Griffis, my opinion of your relying on the community to do your work for you, study the law, and for example you keep asking as if you had already decided the case in their favor.

CHAIRPERSON GRIFFIS: Interesting.

MS. HUBBARD: What about the number of nights and what about this agreement that they're going to get as if they were going to get it.

CHAIRPERSON GRIFFIS: I don't think you advocate that we wouldn't have community representation, do you? Do you want me to limit the parties?

MS. HUBBARD: I have been in zoning for 44 years and have never met with an applicant, never. My first experience was with a Hilton Hotel where they greased me up with tea and cakes and coffee and this and that and the other thing to try to get me to drop my opposition. I thought I had it in with them and oh.

CHAIRPERSON GRIFFIS: I'll going to do one thing. I'm going to hear from the parties to see if they can be here on June 18th and I'll turn the mike back over to you and we can continue this. But I can

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excuse everyone else that doesn't need to be here. So is there any objection to the 18th of June? It would be the second case in the afternoon.

MS. HUBBARD: If the papers are going to be in here, I mean written material about what they need to present.

CHAIRPERSON GRIFFIS: I'll note your objection to continuing the case.

MS. HUBBARD: I don't want to come down here and waste the whole afternoon.

MS. POLIVY: I would request, Mr. Chairman, that you direct the applicant to provide us with any copies of any material they intend to present.

CHAIRPERSON GRIFFIS: Well, indeed. In fact, as a party in the case, you ought to be served.

MS. POLIVY: But that we should be served within the 14 days provided, and if it's not in the 14 days that you set it another time, but it has to be that we can't keep walking in here and getting surprised. We now have Swan House and Cinderella Swan House.

MR. GONZALEZ: We will provide the information that we stated here today. We haven't provided them the other application or the other paperwork that you have in your file before as well.

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CHAIRPERSON GRIFFIS: Okay and you have the capability of hand-delivering these or making it -

MR. GONZALEZ: We will make sure that it's hand-delivered. I will actually send it certified mail.

SECRETARY PRUITT: Would you be able to do so by Friday?

MR. GONZALEZ: By this Friday?

SECRETARY PRUITT: Yes.

MR. GONZALEZ: Yes.

MR. JARDIN: A clarification of what the applicant is going to send? It's not just what's in the file but how he's going to operate, how he intends to use the property, a definitive statement of what he wants to do.

CHAIRPERSON GRIFFIS: Okay, I have asked that they submit detailed outlines of the operation. But let me be absolutely clear, the written submission that's going to be served on you is not the entire case. We have public hearings so that we might engage in this public hearing scenario and their case will be presented before this Board when next we meet. So do not look for an entire case to be made.

MS. POLIVY: Mr. Chairman, we're looking for what we're provided for under 3113.8.

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CHAIRPERSON GRIFFIS: Okay.

MS. POLIVY: And we've got nothing so far.

MR. SALAS: Mr. Chairman, I've been very patient.

CHAIRPERSON GRIFFIS: I know you've been very patient and actually you are in a party situation but you are represented and have one person.

MR. SALAS: But if you are going to open the door, I'd like to be added.

CHAIRPERSON GRIFFIS: Actually, I have not opened any door sir. I am asking the parties to come up to the table.

MR. SALAS: Mr. Chairman, all due respect here, I had to leave and while I was gone, I mean they decided who was going to be a party and I'd like to be added.

CHAIRPERSON GRIFFIS: Was your wife in the audience sir? Did she serve a letter to the Board?

MR. SALAS: Yes, she is but -

CHAIRPERSON GRIFFIS: So you're different, but you left and indicated that you didn't want to be a party. You indicated you didn't want to be a party. Now you want to change that.

MR. SALAS: Well I mean I missed the whole - no, I didn't indicate - I didn't get a chance to

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make a case.

CHAIRPERSON GRIFFIS: You aren't being prejudiced in any point in this case.

MR. SALAS: Okay, can I be added as a party then?

CHAIRPERSON GRIFFIS: No, you can not.

MR. JARDIN: So, Mr. Chairman, I'd like to request that information of the applicant be made available to the neighbors in the shortest amount of time possible. I must say that the June 18th, I can make that date but I am concerned about the ability to reach an agreement between the parties by that time, and after June 18th, I'll be available in September.

CHAIRPERSON GRIFFIS: Good, and I appreciate that and I'm not unrealistic that we will have some monumental agreement noting the amount of passion that's evidenced today by June 18th.

I do think there are small steps that lead us in a direction, and I would think that the time can be well served, and I also think that putting a deadline and having the ability - I know, I'll clarify that. Having the ability to have a date where we're all coming back may put a little pressure on.

Believe me, I am not holding out faith that we're coming in with great accomplishments

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outside but I do take it very seriously that as neighbors, for goodness sakes, it would be advantageous for you to talk.

So we will look to June 18th, and Mr. Salas, let me make one very clear clarification on my statement. You are part of a party in this case and it was established that that party would be represented by a certain person. So in the future as we proceed, I would ask that if you have things to address the Board that that is addressed through the representative of the party.

In the meantime, if we're all okay with June 18th, why don't you have a seat and give me your name and your address. Let me be very clear. Have a seat right here and we'll take your quick concern before we leave so that frankly we can all leave on good feelings and we can enjoy the evening.

MR. SALAS: Well, I want to thank you for your time and your patience. You really are taking a lot of patience, but a couple of comments were made here that met with the neighbors. I live across the street from this gentleman.

I never sat and talked with him and I'm opposed completely to all of it and the fact that we're already talking about a voluntary agreement and

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we're talking about other issues that may come, I sat on the ABC Board and I know what can happen with O Street Mansion, with some of these events that can happen.

So, Mr. Chair, I mean I appreciate your time and I don't mean to - I know you have a difficult job and I appreciate everybody's time here but some of the statements that were already made, I mean lead me to believe that it's just really difficult and I really couldn't agree with some of the things that are being done. So I had to leave and I'm sorry.

CHAIRPERSON GRIFFIS: It's all right and I appreciate that and believe me, when things are said, there's a time first of all for your testimony that will be presented.

MR. SALAS: Right.

CHAIRPERSON GRIFFIS: There's some time for cross-examination. The Board gives the opportunity for everyone present to make statements and put on cases. Do not assume because we hear it that we follow it, but we need all the information, just as we need statements from you. We need statements from the applicant.

All of that information goes into our deliberation. There will be ample time for you to

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cross-examine or present testimony that refutes what you heard today. We are not finished by a long shot.

MR. SALAS: Thank you very much and, you know, this gentleman is a good gentleman. He's done a good job in the community I think as well. This is in my backyard or it's in my front yard. It really is and he's a great guy but I really have some concerns about what's going to happen with the parking now.

CHAIRPERSON GRIFFIS: And we will get to those and we appreciate your patience also and we will hopefully see you on the 18th, and if not, we will expect that your concerns would be given to the representative of the party that might be presented in some form or fashion. Other issues?

MS. HUBBARD: One more thing.

CHAIRPERSON GRIFFIS: Oh, indeed.

MS. POLIVY: I have an issue after Ms. Hubbard, Mr. Chairman.

MS. HUBBARD: Let me ask you something. Is there anything in the zoning regulations that says anything about consulting with a community group or having an agreement with the community? I mean to say, a lot of this case has gone on for four months. I know people - you talk about the time you wasted. I know people here that have spent 50 hours with these

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groups.

CHAIRPERSON GRIFFIS: Indeed.

MS. HUBBARD: Fifty hours.

CHAIRPERSON GRIFFIS: Okay.

MS. HUBBARD: Imagine why -

CHAIRPERSON GRIFFIS: Let me just go to Ms. Mitten.

MS. HUBBARD: I would like to say where in the zoning regulations you are authorized to have anything to do with a community group. You're here to get the facts and rule according to the regulations.

CHAIRPERSON GRIFFIS: Indeed.

MEMBER ZAIDAIN: Then the advertisement shouldn't have made a bit of difference, shouldn't it?

MS. HUBBARD: What do you mean the advertisement?

COMMISSIONER MITTEN: Mr. Chairman, I would like to address myself to Ms. Hubbard's issue if she would just allow me to speak for a moment.

CHAIRPERSON GRIFFIS: Yes.

COMMISSIONER MITTEN: Which is while this Board encourages the applicant to work cooperatively with the community in an effort to find ways to ameliorate any adverse conditions that might arise from an application, agreements with the community,

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voluntary agreements with the community do not meet the applicant's burden of proof.

MS. HUBBARD: Then why do -

COMMISSIONER MITTEN: Madam, please let me finish. We have had cases where we've had nothing but support from the community, including voluntary agreements and we have denied the applications because the applicant did not meet the burden of proof.

So this Board is well aware of the regulations, but we don't want to discourage productive dialog among and between applicants and community groups and we would encourage you to participate in that. Now if you choose not to, that's your prerogative. Mr. Chairman, I did have one additional request.

CHAIRPERSON GRIFFIS: Continue please.

COMMISSIONER MITTEN: What we have from the applicant in the case summary is a proposed modification to the relief requested and basically to downgrade it to a special exception relief as opposed to a variance. For myself, I'm not prepared to address that.

I think it would be important if, at the outset of the hearing, we could establish through the Board's consideration of the material submitted today

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as well as any submissions and positions that the parties want to take as to what the appropriate relief is so we don't take superfluous testimony.

On the one hand we don't take superfluous testimony and on the other hand that we don't overlook something that is necessary to the applicant meeting the burden of proof. I think we need to establish at the outset what is the requested relief? Do we concur with the applicant or not so everyone knows how to focus themselves to the burden of proof?

CHAIRPERSON GRIFFIS: But are you suggesting that we have written submissions by the 18th addressing that?

COMMISSIONER MITTEN: Well, I don't know that we need written submissions, but to the extent that the Board is going to attempt to establish whether or not they agree with the modification to the relief, I think we need to allow the parties to address that issue and we need to decide that.

CHAIRPERSON GRIFFIS: Right and I fully intend to do that on the 18th. I thought what we would do is address that as the first issue as we go into it.

COMMISSIONER MITTEN: That would be great.

CHAIRPERSON GRIFFIS: And I think the

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outline, what we've asked for in the submission in terms of outlining the program, will help in terms of directing that discussion.

COMMISSIONER MITTEN: Okay.

CHAIRPERSON GRIFFIS: And clearly the parties will be part of that.

COMMISSIONER MITTEN: I just wanted to establish that at the outset so that we're not flopping around between some folks thinking that it's use variance and some folks thinking that it's a special exception. I want everybody on the same page as quickly as possible.

CHAIRPERSON GRIFFIS: Good.

COMMISSIONER MITTEN: Thank you.

CHAIRPERSON GRIFFIS: Uh huh.

MR. JARDIN: Could you clarify what the difference between a use variance is and a variance that is granted under Section 210, a variance that is granted because the home occupancy needs more than two modifications? They then are required to go for a variance. Is that also a use variance? The zoning regulations do not say use variance. They just say a variance. Is there a distinction?

CHAIRPERSON GRIFFIS: So you're saying if there are more than two modifications and we go to a

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variance and you're wondering if it's a use variance.

COMMISSIONER MITTEN: I think that's a good question.

MR. JARDIN: So I can't argue, if I understood her point, I'm not prepared to argue that opening. I want to get their full presentation and know the total argument that I got to place against them. They keep shifting on us and I began to read - I read the regulations. I have some understanding of them but there are some things I would like some clarification on.

CHAIRPERSON GRIFFIS: Corp counsel has it in terms of your initial question.

MS. POLIVY: Mr. Chairman, it gets a little bit more complicated than that.

CHAIRPERSON GRIFFIS: Let's get the answer to the question that's at hand and then we can move on.

MS. POLIVY: Well, I don't think she can answer that.

MS. SANSONE: I think I can answer the question. The answer is they become use variances. They may not be - it's a use variance. The regulation is authorizing, it's a very long, detailed regulation. It's authorizing a certain use as a special exception

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and then if you don't meet two of those, more than two of those conditions, it puts you into a variance, which is a use variance.

The problem in trying to decide how to proceed, we just proceed directly as a use variance or should the board and all the parties spend their time carefully going through each subsection and paragraph of Section 203 to decide what the case is and the burden of proof.

The problem is the Board and the people that are participating in this case need to understand fully the nature and scope of use and operation and then at that point, you can make a decision as to whether it can be processed through a special exception or whether it's a special exception plus variances or it's just an overall use variance.

It's a chicken and egg problem. It's really impossible to decide, is it a use variance or a special exception until you know exactly what is the operation being proposed.

SECRETARY PRUITT: Mr. Chairman, maybe something that could be helpful as we've done before is ask the applicant why they believe it is a special exception. It is their burden and then that way you would have something to argue against or something to

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understand.

CHAIRPERSON GRIFFIS: I understand that. My concern with doing that is -

SECRETARY PRUITT: Is timing?

CHAIRPERSON GRIFFIS: Yes. We don't have the time.

MS. GIORDANO: Yes, that's what I - if I could just interrupt one second. That's what I tried to do. That's why I tried to start the way I did. I wanted to try and put out there sort of what the modifications meant in terms of overall burden of proof and to try and outline that at the outset.

It is not our intention to try to confuse people. It's our intention to try and bring some clarity, and I think we're all struggling because these regulations are very complicated. They are.

MS. POLIVY: Mr. Chairman, may I inquire of corporation counsel whether the showing necessary for a 210 variance or the standard is the same as the standard for a 350 variance?

MS. SANSONE: Mr. Chairman, the standard for a use variance is the - well first of all, there needs to be a showing on any variance, a showing of an exceptional, unusual or unique condition of the property. It could be the land or the building or

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something about the history of the building.

So that's a threshold requirement for all variances. Then the next aspect of that test, is that as a result of those exceptional conditions that the applicant would confront an undue burden and undue hardship in complying, strictly complying with the zoning regulations.

The Court of Appeals has never definitively defined what is an undue hardship. Clearly, if you have a greater magnitude of relief, it's going to be a stricter test than if you have a lesser magnitude.

MS. POLIVY: You're saying then it's the same standard for both?

MS. SANSONE: It would be the same, general conditions for both.

MEMBER ZAIDAIN: Yes, and just so maybe this will make it clear. Just the basic question that's before us at this point is, you've got 203.10(b) which has the two modifications that are allowed through a special exception process. We know that's what they're applying for. Anything above and beyond that is going to be a variance.

MS. POLIVY: Yes, but the question is are these the same variances or different?

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MEMBER ZAIDAIN: The potential, there could be two different tests or just a special exception.

MR. SALAS: The application on hardship - just one second the application is about hardship and practical difficulty?

CHAIRPERSON GRIFFIS: Let me say you have to be on the mike if you're going to say anything.

MR. SALAS: Oh, what I'd like to do is just if corporation counsel could give me just a definition of what causes a hardship or a practical difficulty.

CHAIRPERSON GRIFFIS: And I'm going to interrupt you there and we're going to get an answer to that but that now goes on to, in fact by regulations I can't take that question in this application. It is more of a larger picture of process. So if there aren't any specific things to this, we've set for 18th.

I'm going to ask you not to leave. We're going to get the answer to that, but I want to adjourn this case and this afternoon and we are going on the afternoon of the 18th. It is the second case and it is following an appeal.

SECRETARY PRUITT: And for clarification, Mr. Chair -

CHAIRPERSON GRIFFIS: That's all I can give

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you. I can't give you times.

SECRETARY PRUITT: Is the applicant to provide any information to the parties and if so, when?

CHAIRPERSON GRIFFIS: Yes, the applicant was to provide as stated, the outline of the program.

I think let's set a date. Actually, let me ask the applicant's representative how long it will take them to put that together.

MS. GIORDANO: Friday.

MS. HUBBARD: Will you hand-deliver them or put them through the doors?

MS. GIORDANO: Yes.

SECRETARY PRUITT: So just for clarification, written submissions will be served on all parties an outlining by the applicant Friday and the hearing will be continued to June 18th afternoon, second case.

CHAIRPERSON GRIFFIS: Good and knowing full well, we're very smart and intelligent people, I'm certain we can answer this question with great expectation on the 18th and move on to the entire case and application. With that, I would adjourn the June 4th, 2002 afternoon public hearing of the Board of Zoning Adjustment. Thank you all very much.

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(Whereupon, the above-entitled matter was
concluded at 6:05 p.m.)