

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

OCTOBER 8, 2002

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice, at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

CAROL M. MITTEN	Commissioner
-----------------	--------------

COMMISSION STAFF PRESENT:

Clifford Moy  
Beverley Bailey, Office of Zoning

OTHER AGENCY STAFF PRESENT:

John Moore, Office of Planning  
Maxine Brown-Roberts, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Mary Nagelhout, Esq.

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

<u>AGENDA ITEM</u>	<u>PAGE</u>
PRELIMINARY MATTERS . . . . .	6
<u>APPLICATION OF JEMAL'S WHEEL, LLC:</u>	
<u>16924 ANC-1C</u> . . . . .	9
CHRISTY SHIKER, ESQ. . . . .	9
Holland and Knight, LLP	
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(202) 955-3000	
<u>APPLICATION OF CELIA BERG AND JACK BENSON:</u>	
<u>16921 ANC-3E</u> . . . . .	20
<u>WITNESSES</u>	
JACK BENSON . . . . .	26
JOHN MOORE . . . . .	47
KATHLEEN BECKWITH . . . . .	58
ALAN DENNISTON	

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C-O-N-T-E-N-T-S (Cont.)

<u>AGENDA ITEM</u>	<u>PAGE</u>
<u>APPLICATION OF ST. PATRICK'S EPISCOPAL DAY SCHOOL:</u>	
<u>16852 ANC-3D</u> . . . . .	80

ALLISON PRINCE, ESQ. . . . . 82  
 Shaw, Pittman, Potts & Trowbridge  
 2300 N Street, N.W.  
 Washington, D.C. 20037

WITNESSES

DAVID KONAPELSKY . . . . .	82
MARTIN J. WELLS . . . . .	106
MAXINE BROWN-ROBERTS . . . . .	107
CASEY JASON, JR. . . . .	230
WILLIAM G. SMITH . . . . .	233
PAUL BREWSTER . . . . .	235
MARK MAVES . . . . .	239
JOSEPH METCALF . . . . .	254
KATE MCCLINTIC . . . . .	256
STEVEN RUPP . . . . .	258
ALAN AICHES . . . . .	260
MARY ANN REED . . . . .	271
CAMERON CASTILLE . . . . .	273
JEFF KEFFOR . . . . .	276
WILLIAM SPENCER . . . . .	279
ROBERT MURPHY . . . . .	280
WOODY BOLTON . . . . .	290
NANCY FELDMAN . . . . .	296
TINA VANSICKLE . . . . .	305
JOE MEHRA . . . . .	305
ALMA GATES . . . . .	314
CATHY WRIGHT . . . . .	333
MICHAEL LOVENDUSKY . . . . .	343
ANN GIBBONS . . . . .	406
KATHERINE BRADLEY . . . . .	409
PETER BARRETT . . . . .	410
DAVID KONAPELSKY . . . . .	417
SCOTT HARVEY . . . . .	418
MARTIN J. WELLS . . . . .	423

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

9:35 a.m.

CHAIRPERSON GRIFFIS: On the record. Good morning ladies and gentlemen. I will call this morning session to order. This is the 8th of October 2002. This is the Public Hearing of the Board of Zoning Adjustments of the District of Columbia.

My name is Geoff Griffis. I am Chairperson. With me today is Vice Chairperson Anne Renshaw and also Mr. Curtis Etherly. Representing the National Capital Planning Commission is Mr. Zaidain. With us today representing the Zoning Commission is Ms. Mitten.

Copies of today's hearing agenda are available to you. They are at the table close to the door where you entered into the hearing room. I am going to run through a few important processes for us today. Of course, these proceedings are all being recorded, so there are several things that you need to pay attention to.

First of all, we will not have any disruptive noises or actions in the hearing room, but most importantly you must speak into a microphone when presenting to the Board. We will walk you through

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1 that, how to turn them on and off, et cetera. I would  
2 also ask that you give us your name and your address  
3 when first addressing the Board.

4 Additionally, anyone giving testimony in  
5 front of the Board either in support or favor in any  
6 case needs to fill out two witness cards. Witness  
7 cards are available on the table in front of us. They  
8 are also at the table where you entered into. Two  
9 cards should be filled out. Both of those cards go to  
10 the recorder who is sitting to my right.

11 The order of procedure today, four special  
12 exceptions and variances will be first. We'll have  
13 statements and witnesses of the Applicant. Second, we  
14 will have Government reports that would include of  
15 course Office of Planning and any other submitted  
16 Government Agency reports. Third, we will hear from  
17 the ANC. Fourth, we would have persons or parties in  
18 support of an application. Fifth would be persons or  
19 parties in opposition to that case. Six, we'll have  
20 closing remarks by the Applicant.

21 Cross examination of witnesses is  
22 permitted by the Applicant or parties. The ANC within  
23 which the property is located is automatically a party  
24 in the case. The record will be closed at the

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1 conclusion of each case except for any material that  
2 is specifically requested by the Board. The Board  
3 will make it very clear what is to be submitted and  
4 when it is to be submitted to the Office of Zoning.  
5 After that material has been received of course the  
6 record will be closed. No other information will be  
7 accepted by the Board.

8 The Sunshine Act requires that the public  
9 hearing on each case be held in the open and before  
10 the public. The Board may, however, consistent with  
11 the Rules of Procedure and the Sunshine Act enter  
12 Executive Session during or after the public hearing  
13 on a case for purposes of reviewing the record and/or  
14 deliberating on the case. The decision of the Board  
15 in contested cases and uncontested cases must be based  
16 exclusively on the record, so to avoid any appearance  
17 to the contrary, we ask the people present today not  
18 engage Board Members in conversation. Perhaps time  
19 now is to ask everyone to turn off their cell phones  
20 and beepers so that we don't have any disruptions of  
21 people giving testimony or questions by the Board.

22 Let us go to preliminary matters for this  
23 day. Preliminary matters are those which relate to  
24 whether a case should or will be heard today such as

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1 request for postponement, continuance, withdrawals, or  
2 whether proper and adequate notice has been given  
3 regarding the hearing. If you are not prepared to go  
4 forward with the case today or if you believe that the  
5 Board should not proceed, now would almost be the time  
6 to bring that up. I want to go first to Staff to see  
7 if they have any initial preliminary matters and also  
8 say good morning to the Office of Zoning Staff.

9 MS. BAILEY: Mr. Chairman?

10 CHAIRPERSON GRIFFIS: Yes.

11 MS. BAILEY: On behalf of the Office of  
12 Zoning Staff, good morning.

13 CHAIRPERSON GRIFFIS: Good morning.

14 MS. BAILEY: Good morning to all of the  
15 members of the Board. Mr. Chairman, there is a  
16 preliminary matter. It has to do with the first case,  
17 Application Number 16924. There is a request for  
18 postponement of that case, Mr. Chairman.

19 CHAIRPERSON GRIFFIS: Good. Is a  
20 representative of Jemal's Wheel, LLC 16924 here?  
21 Excellent. If you would.

22 MS. SHIKER: Good morning. My name is  
23 Christy Shiker with the law firm of Holland and  
24 Knight. I am here on behalf of Jemal's Wheel. I'm

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1 requesting a postponement. As you will see in your  
2 materials, the Applicant has been working with the  
3 community and was requested to make this request for a  
4 postponement by the community in order to work through  
5 some additional issues. The Office of Planning by  
6 memorandum submitted into the record supports to this  
7 request as does the ANC-1C Quality of Life  
8 Subcommittee and the Reed-Cook Neighborhood  
9 Association.

10 CHAIRPERSON GRIFFIS: So all you need is  
11 our support and you can get out of here.

12 MS. SHIKER: That's correct.

13 CHAIRPERSON GRIFFIS: I see. Well, that's  
14 probably possible. A couple of things to clear up in  
15 all seriousness. First of all, the relief sought.  
16 The Board has reviewed it. Clearly there is a  
17 consensus in the community to have a postponement.  
18 However, we want to make sure that when we see you  
19 again that everyone is fully aware of what we're going  
20 to be looking at.

21 Now it's my understanding that there's  
22 relief from height requirements. Right now, is it  
23 your opinion that it's coming in as a special  
24 exception?

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1 MS. SHIKER: The height request is coming  
2 in as a special exception.

3 CHAIRPERSON GRIFFIS: Okay. Can you give  
4 us a brief opinion about why this would not be a  
5 variance?

6 MS. SHIKER: It is coming under Section  
7 1403 of the Zoning Regulations which permits special  
8 exception from any provision within the Reed-Cook  
9 Overlay. I don't have the regulations in front of me,  
10 but that section states that you can request special  
11 exception relief from any provision of the Reed-Cook  
12 Overlay assuming that certain criteria are met. The  
13 requested height under the original application is in  
14 fact what is permitted in the underlying zone, so  
15 therefore the Reed-Cook Overlay is what limits the  
16 height. Then the Applicant is following the  
17 procedures set forth in the Zoning Regulations for a  
18 modification of that height.

19 CHAIRPERSON GRIFFIS: Okay. However, 1402  
20 in the Reed-Cook Overlay allows the Board to approve a  
21 maximum height of 50 feet. If you went to 1403 then,  
22 clearly I agree with you that we have the jurisdiction  
23 to grant relief. Let me read this for the Board.

24 I know we've all reviewed this, but 1403.1

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1 states under its exceptions "An exception from the  
2 requirements of this chapter shall be permitted only  
3 if granted by the Board of Zoning Adjustments as a  
4 special exception after the public hearing and subject  
5 to the following criteria." Clearly it's looking at  
6 the building itself; features, size, and location, et  
7 cetera. That would in fact agree with the Applicant  
8 in coming in as a special exception.

9 COMMISSIONER MITTEN: I'd just refer you  
10 back to 1402.1 which says that "The maximum height  
11 permitted in the Reed-Cook Overlay shall not exceed 40  
12 feet provided that in the RC/C-2-B District, the Board  
13 of Zoning Adjustment may approve a maximum height of  
14 50 feet with appropriate setbacks from the street, et  
15 cetera subject to the determination by the Board that  
16 the project will provide for the on-site construction"  
17 and it has to do with affordable housing.

18 CHAIRPERSON GRIFFIS: So your point, Ms.  
19 Mitten, would be that the Reed-Cook outlines the  
20 special exception up to 50 feet and then beyond that  
21 50 feet would actually be a variance to the overlay.

22 COMMISSIONER MITTEN: Yes.

23 CHAIRPERSON GRIFFIS: I see.

24 COMMISSIONER MITTEN: And I believe that's

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1 the position that the Board took in the King's Creek  
2 case.

3 CHAIRPERSON GRIFFIS: Others?

4 VICE CHAIRPERSON RENSHAW: I concur with  
5 that, Mr. Chairman.

6 CHAIRPERSON GRIFFIS: Did you want to  
7 address that? There's no requirement to, of course.

8 MS. SHIKER: What I think I should do is  
9 go back and look at this and discuss it with the  
10 Office of Planning noting your statements and  
11 determine how to proceed, whether the application  
12 should be modified. If in fact the Board believes the  
13 application should be modified, it will be modified.  
14 We will go forward proceeding with a variance from  
15 1402.1.

16 CHAIRPERSON GRIFFIS: Okay. Good. Now  
17 there was a piece that was a variance from the loading  
18 berth requirement 2001 that was also in. Was that  
19 advertised?

20 MS. SHIKER: Yes it was advertised. A  
21 notice was sent out to property owners within 200 feet  
22 as well as notice being posted on the property faced  
23 on the revised public hearing notice including the  
24 loading variance.

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1 CHAIRPERSON GRIFFIS: Okay. Very good. I  
2 would suggest this then, that we give you a week to  
3 just brief the Board on that variance from the Reed-  
4 Cook and talk to Office of Planning. We'll get that  
5 in. That will give ample time if it does become a  
6 variance that we can repost if required. Let's look  
7 at dates.

8 MS. BAILEY: Mr. Chairman, Staff is  
9 recommending November 26 as the new hearing date for  
10 this case and that's in the morning.

11 COMMISSIONER MITTEN: Mr. Chairman?

12 CHAIRPERSON GRIFFIS: Yes.

13 COMMISSIONER MITTEN: I would recommend,  
14 based on the fact that the Zoning Commission has sua  
15 sponted your decision in the King's Creek case and  
16 there are some similar issues in this case, and I  
17 think it would be instructive to the Board if they had  
18 the benefit of the Zoning Commission's decision in the  
19 King's Creek case. The current schedule will put that  
20 on our agenda for December 9. I would suggest that  
21 you select a date after December 9 to reschedule this  
22 case.

23 CHAIRPERSON GRIFFIS: Okay. Comments on  
24 that.

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1 VICE CHAIRPERSON RENSHAW: Is any time  
2 available on December 10?

3 MS. BAILEY: It appears as if it is Ms.  
4 Renshaw, but can I tentatively set it for that date  
5 and if we need to reschedule do so?

6 CHAIRPERSON GRIFFIS: It's possible. I'd  
7 like to hear just a couple more comments. There are  
8 two things in my mind. First of all, the 26th I guess  
9 or the 10th it seems like it's in the same timeframe.

10 If the Board feels that it would be instructive for  
11 us to wait on the Commission to see how they view our  
12 previous decision and order, I would be inclined to do  
13 that, or I would be just as able to be convinced of  
14 holding it on the 26th as clearly we're not looking at  
15 previous cases for precedent. However, it is  
16 important to understand that perhaps there are issues  
17 that would be similar in terms of reviewing each  
18 application as it is interpreted out of the  
19 regulations.

20 VICE CHAIRPERSON RENSHAW: Mr. Chairman,  
21 for me, it would be very useful, very helpful if I  
22 were to receive a briefing on the sua sponte case from  
23 the Zoning Commission, so I would urge the Board to  
24 consider and set it down for December 10.

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1 CHAIRPERSON GRIFFIS: Very well. Any  
2 other comments?

3 MEMBER ETHERLY: Mr. Chairman, my only  
4 concern with setting it for December 10 is  
5 establishing the precedent that in anticipation of any  
6 potential action from the Zoning Commission we may, as  
7 we move down the line, look at holding cases in  
8 advance. I understand Ms. Mitten's caution. I  
9 believe it can most certainly be qualified as that.

10 Should this body decide to move forward  
11 perhaps in advance of the Zoning Commission sua sponte  
12 of the King's Creek case, there may be indeed  
13 something that happens in that sua sponte that impacts  
14 this case. But I'm somewhat more inclined perhaps  
15 more just on principle to move forward and let the  
16 proverbial chips fall where they may. As anyone in  
17 the legal profession probably is aware, you oftentimes  
18 don't like to deal with appeals much less have your  
19 decisions questioned or overruled in any way, but once  
20 again I'm more or less inclined to move forward.

21 I don't want to necessarily disadvantage  
22 the Applicant. Of course, there's been no indication  
23 that the Applicant would be disadvantaged in any way.  
24 As you noted, it's only a two or three week

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1 difference, but perhaps just on the principle of the  
2 matter I'm inclined to move forward despite Ms.  
3 Mitten's counsel in this regard. Thank you, Mr.  
4 Chair.

5 CHAIRPERSON GRIFFIS: Thank you.

6 COMMISSIONER MITTEN: Mr. Chairman?

7 CHAIRPERSON GRIFFIS: Yes.

8 COMMISSIONER MITTEN: If I could just say  
9 one final thought. I know that it's uncomfortable  
10 when the Zoning Commission does conduct a sua sponte  
11 review of a B.A. decision because no one likes to have  
12 their decisions questioned. I think since there is a  
13 relatively small timeframe involved here it will not  
14 significantly disadvantage the Applicant. It has the  
15 potential to be a much more efficient process if the  
16 sua sponte has been decided that in the interest of  
17 administrative efficiency it would be better to  
18 postpone for a couple of weeks. That's the nature of  
19 my recommendation.

20 MEMBER ETHERLY: Perhaps, Mr. Chair, just  
21 as a matter of clarification being that this is  
22 nearing the conclusion somewhat of year one of my  
23 tenure, it might be helpful to get some guidance from  
24 my colleague Ms. Mitten as to what the Board would

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1 conceivably have in its possession were we to deal  
2 with this case on the 10th.

3 COMMISSIONER MITTEN: There wouldn't be  
4 anything written. Someone would have to brief the  
5 Board on the decision that had taken place the  
6 previous day. I should emphasize the fact that the  
7 sua sponte decision does not bind the Board as it  
8 relates to the Jemal's Wheel case. It's only going to  
9 have an impact on the King's Creek case. My natural  
10 inclination would be, being the open-minded folks that  
11 you are, that you would be interested in what the  
12 Zoning Commission had to say about the case.

13 MEMBER ZAIDAIN: I guess my question would  
14 relate to process. We can get all that information  
15 and everything by the 10th even though the Zoning  
16 Commission activity would be on the 9th.

17 CHAIRPERSON GRIFFIS: We'll subpoena the  
18 Commission here.

19 (Laughter.)

20 COMMISSIONER MITTEN: I will commit to you  
21 that you will have a briefing on our decision prior to  
22 taking up this case if you decide to wait. You will  
23 have that briefing.

24 MEMBER ZAIDAIN: The briefing is purely

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1 informational purposes. We are not bound by any type  
2 of decision made by the Zoning Commission.

3 COMMISSIONER MITTEN: That's correct.

4 MEMBER ZAIDAIN: I just want to reiterate  
5 that.

6 CHAIRPERSON GRIFFIS: Okay. Any other  
7 comments? I think that's all well said. I think I  
8 would like to proceed and announce on the 10th of  
9 December noting Mr. Etherly's concern of not delaying  
10 Applicants for undo reason. However, the time is so  
11 close together I think we can make ourselves available  
12 for additional information which may inform us for our  
13 productive deliberations on all applications and this  
14 one in particular unless there is any objection from  
15 the Applicant.

16 MS. SHIKER: That's fine.

17 CHAIRPERSON GRIFFIS: Okay. Then I think  
18 what we'll need to do is make an official  
19 announcement. We'll reschedule this for the 10th of  
20 December. Was that in the morning, afternoon?

21 MS. BAILEY: The morning session, Mr.  
22 Chairman.

23 CHAIRPERSON GRIFFIS: Excellent.

24 MS. BAILEY: And the Applicant will get

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1 back with us shortly as to how it intends to proceed  
2 as far as the height is required.

3 MS. SHIKER: Yes. That is correct.

4 MS. BAILEY: Okay.

5 CHAIRPERSON GRIFFIS: Good.

6 MEMBER ETHERLY: And Mr. Chair, just for  
7 clarification sake with respect to will there be any  
8 questions should there be a need to move from the  
9 special exception relief to the variance relief, would  
10 that necessitate the need to readvertise?

11 CHAIRPERSON GRIFFIS: I think we're going  
12 to need to assess that. When we get the information  
13 from the Applicant, it will be distributed to the  
14 Board. We will deliberate on which direction we go,  
15 and we will do that here in public and then make our  
16 directions known.

17 MEMBER ETHERLY: Okay. But if we're  
18 moving forward on the 10th, I haven't done a rough  
19 count in terms of calendar.

20 CHAIRPERSON GRIFFIS: We will have enough  
21 time if we get something within a week.

22 MEMBER ETHERLY: Okay. Thank you.

23 CHAIRPERSON GRIFFIS: And I'm not overly  
24 concerned because there is an advertising for a

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1 variance in this application as it is. The Board has  
2 previously, although we don't like to, change the  
3 requested relief in hearings and prior to. So as long  
4 as the base substance of what they're coming in for is  
5 advertised, I think that's important. We can also  
6 make it available to the ANC and to the Applicant  
7 clearly. Okay. I'll take that as consensus then, 10  
8 December. Very well. Thank you very much.

9 MS. SHIKER: Thank you.

10 CHAIRPERSON GRIFFIS: We'll see you when  
11 it's cold. All right. Let us move on then and call  
12 the next case in the morning.

13 MS. BAILEY: Application Number 16921 of  
14 Celia Berg and Jack Benson, pursuant to 11 DCMR  
15 3104.1, for a special exception to allow a rear  
16 addition to a single-family dwelling under section  
17 223, not meeting the lot occupancy (section 403), rear  
18 yard (section 404), and nonconforming structure  
19 (subsection 2001.3) requirements in the R-2 District  
20 at premises 4432 Faraday Place, N.W. (Square 1582, lot  
21 190). Please stand to take the oath.

22 WHEREUPON,

23 JACK BENSON, ALAN DENNISTON, KATHLEEN BECKWITH  
24 were called as a witnesses and, having been first duly

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1 sworn, were examined and testified as follows:

2 CHAIRPERSON GRIFFIS: Thank you, Ms.  
3 Bailey.

4 MS. BAILEY: Mr. Chairman, there is a  
5 request for party status in this case.

6 CHAIRPERSON GRIFFIS: Indeed. I think we  
7 should bring that up first. Board Members, you have  
8 it. It is Exhibit 23. I know we've reviewed it. Let  
9 us have a brief discussion on the request.

10 COMMISSIONER MITTEN: Mr. Chairman, I  
11 think Ms. Beckwith meets the criteria for party  
12 status, and I would support the request.

13 CHAIRPERSON GRIFFIS: Very well. I would  
14 take in your comments of meeting the task and that is  
15 as I have reviewed it I would tend to agree. That is  
16 clearly the abutting neighbor and the description of  
17 the person's interest as significantly or distinctly,  
18 uniquely affected. Others, comments?

19 MEMBER ETHERLY: Mr. Chair, I would agree  
20 with my colleague, Ms. Mitten's observation and  
21 support the request for party status precisely because  
22 of the proximity issue. There are also some very  
23 particular interests as it relates to the issue of  
24 privacy for the adjacent backyard in light of the

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1 proposed addition, so I would support the request for  
2 party status, Mr. Chair.

3 CHAIRPERSON GRIFFIS: Good. Others?

4 VICE CHAIRPERSON RENSHAW: I agree.

5 MEMBER ZAIDAIN: I agree as well, Mr.  
6 Chair.

7 CHAIRPERSON GRIFFIS: Very well. It is a  
8 concensus then to grant party status to Ms. Kathleen  
9 Beckwith. Is that correct?

10 MS. BECKWITH: Yes.

11 CHAIRPERSON GRIFFIS: Okay. Second, we do  
12 have a preliminary matter and that is that the  
13 property site posting was one day late. Does the  
14 Applicant want to talk about that very quickly about  
15 why that happened? If you would, introduce yourself  
16 and you can answer that.

17 MR. BENSON: Yes, thank you. My name is  
18 Jack Benson. My address is 4432 Faraday Place in  
19 Washington. The site was posted one day late. The  
20 circumstances surrounding that are the birth of our  
21 first child which arrived three weeks early, so the  
22 best laid plans tended to create a little excitement  
23 for us over the last three weeks as we've been  
24 integrating her into our house.

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1           What we have done subsequent to that in  
2 addition to the mailing that came from the Zoning and  
3 Planning Department is we individually distributed a  
4 notice to each of the residents on Faraday Place as  
5 well as the north side of Fessenden which is back to  
6 the shared alley. This notice advised them of the  
7 petition of our application that we had placed and  
8 giving them our home number to contact us if they had  
9 any questions and offering to review plans or anything  
10 that they had.

11           CHAIRPERSON GRIFFIS:       Okay.       So in  
12 addition to the mailing which was the requirement, you  
13 actually passed out an additional letter that  
14 announced it.

15           MR. BENSON:   That's correct.

16           CHAIRPERSON GRIFFIS:   Did you submit that  
17 into the record?

18           MR. BENSON:   I have not. I have one here.

19           CHAIRPERSON GRIFFIS:   That would probably  
20 be good to do just to go on the record.

21           MR. BENSON:   I also have if it's of  
22 interest signatures of --

23           CHAIRPERSON GRIFFIS:   You can bring that  
24 up in a minute.

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1 MR. BENSON: Okay.

2 CHAIRPERSON GRIFFIS: Ms. Beckwith, do you  
3 have any objection to continue this case based on the  
4 one day late of advertising? If you wouldn't mind  
5 introducing yourself.

6 MS. BECKWITH: I'm Kathleen Beckwith. I  
7 live at 4428 Faraday Place. I don't object to  
8 continuing a case. I would point out that I did not  
9 receive the letter that he just referred to.

10 CHAIRPERSON GRIFFIS: His hand delivered  
11 letter?

12 MS. BECKWITH: Right.

13 CHAIRPERSON GRIFFIS: I see.

14 MS. BECKWITH: And also I don't know if  
15 this is the appropriate time to discuss it, but the  
16 posting was not up for the full time after it was  
17 initially posted.

18 CHAIRPERSON GRIFFIS: This would be the  
19 appropriate time. What do you mean by that?

20 MS. BECKWITH: I believe it was posted on  
21 Tuesday the 24th. It was down on Thursday or Friday  
22 of that week perhaps because of having rain, and it  
23 was not reposted until the following Thursday. So it  
24 was down for about a week.

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1 CHAIRPERSON GRIFFIS: Mr. Benson.

2 MR. BENSON: Yes. I can't speak to the  
3 fact that she did not receive the individual letter.  
4 I know that if people weren't home we left it in the  
5 door and in the box.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. BENSON: The sign was down due to  
8 heavy rain. We did repost it. We were probably a day  
9 or two late after that period of rain of getting it  
10 back up. I apologize, but I would once again point to  
11 the fact that I was not at home or was occupied with a  
12 number of other projects. We did repost and did  
13 canvas the neighborhood again to ensure that everyone  
14 was aware of the permit.

15 CHAIRPERSON GRIFFIS: Okay. I appreciate,  
16 Ms. Beckwith, you bringing that to our attention.  
17 Clearly there are two points of notification for good  
18 reason. The posting we find that it is the most  
19 effective in getting the information out and letting  
20 people know that things are going to happen. Based on  
21 the fact that you are here today also and your  
22 noticing when it was there and when it wasn't I think  
23 reinforces the fact that those placards are very  
24 important.

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1 I would be inclined as we are ready to go  
2 on this to proceed unless there are strong objections  
3 noting the two unique circumstances, the second being  
4 the weather. I would hear objections from the Board  
5 if there are any.

6 COMMISSIONER MITTEN: No objection.

7 CHAIRPERSON GRIFFIS: Very well. Then I  
8 would take that as a concensus of the Board that we  
9 would waive our rigid rules of posting and note the  
10 circumstances and let us proceed then with this case.

11 With that, Ms. Beckwith, I will ask you to have a  
12 seat. Then we'll have them present their case. Thank  
13 you very much. Mr. Benson.

14 MR. BENSON: Thank you. I'd like to thank  
15 the Board for hearing our case this morning. As I  
16 have mentioned over the last few weeks with the  
17 arrival of our first child, it's made for an  
18 interesting couple of weeks, exciting couple of weeks,  
19 but it's also reinforced in our mind the original  
20 purpose of this addition for us which is creating more  
21 living space for a growing family.

22 We love the neighborhood we're in, the  
23 neighbors that we have, the location. We like living  
24 in the city and all the benefits that it affords and

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1 conveniences that it affords us. What we have tried  
2 to do with this addition is strike a balance between  
3 our home, our living space, the needs of our growing  
4 family, and our desire to stay in the neighborhood  
5 we're in and in the home we're in.

6 The intended use of the space is a family  
7 area, a living area off of the kitchen. If the Board  
8 desires in a moment, I'll give you a better  
9 description of where it sits on the property as well  
10 as use. The purpose is to provide an area for our  
11 children to play, for our family to gather, a work  
12 area for me to be able to spend more time at home near  
13 my family and less late nights at the office. We did  
14 very much with this addition try to balance the need  
15 for what we believe to be functional space, meaningful  
16 space, a meaningful addition to our home with the  
17 scale and the spirit and concerns of neighbors and our  
18 community.

19 As I mentioned earlier, we did canvas the  
20 neighborhood. We recognize Ms. Beckwith's presence  
21 here and her concerns and are eager to hear her views  
22 on the subject as well. We have talked with the other  
23 neighbors immediately surrounding the property to the  
24 west of us as well as to the south of us sharing the

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1 common alley and have actually received signatures  
2 from them in support of our petition in addition to  
3 neighbors further removed from our lot but who have an  
4 interest in the broader sense of neighborhood and how  
5 this addition would impact the broader neighborhood.  
6 While we don't immediately abut their property, it  
7 does have some impact on the street and the shared  
8 sense of neighborhood.

9 If I might just take a moment and walk  
10 through very briefly what the addition would look like  
11 using the drawings that have been prepared over here,  
12 we anticipate a family room off of the kitchen area at  
13 the rear of our house approximately 16-by-16.  
14 (Indicating.)

15 CHAIRPERSON GRIFFIS: Okay. Two things.  
16 Let me just interrupt you. Do you want to introduce  
17 the gentleman that's with you?

18 MR. BENSON: I'm sorry.

19 MR. DENNISTON: My name is Alan Denniston.  
20 I'm the architect on the project and also a friend of  
21 Jack.

22 CHAIRPERSON GRIFFIS: Good. And secondly,  
23 what I'm going to do is focus. Everything that you  
24 should be showing us should go to the special

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1 exception. That is you briefly talked about it a  
2 little bit, how this is actually maintaining or  
3 continuing harmony with the general purpose and intent  
4 of the zoning map and regulations.

5 Secondly, I think you do need to address  
6 how this in your opinion will not have any adverse  
7 effect of the surrounding neighborhood or neighboring  
8 properties. Then if we look at 223 which I'm sure  
9 you're well aware of, it outlines specifically what  
10 those issues are. Of course, it's light and air and  
11 use of neighboring properties. So with that, it would  
12 be helpful for you to walk us through pointing out the  
13 new portion and then also how you address those other  
14 issues.

15 MR. BENSON: Okay. Perhaps I could --

16 MS. BECKWITH: Excuse me. Could I  
17 approach the witness table?

18 CHAIRPERSON GRIFFIS: Oh, absolutely. I'm  
19 sorry, Ms. Beckwith. In fact, why don't you move  
20 those out a little bit. You can just turn them  
21 because we can see fairly well. Good.

22 MR. BENSON: Perhaps with your suggestion,  
23 I could find a hybrid here where I'll address the  
24 specific elements in 223 and use the drawing as a

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1 graphical representation of that as well. The first  
2 area and what I believe to be Ms. Beckwith's primary  
3 concern is how this addition will impact air and light  
4 on neighboring properties.

5 Describing briefly the back of our yard  
6 and the neighboring yards as the alley goes down many  
7 of the homes have a significant amount of evergreen  
8 shrubbery, trees, privacy fences that extend the full  
9 length of the common alleyway. Furthermore, the  
10 addition to our home is on the east side of our house.

11 As it would impact Ms. Beckwith's property, hers is  
12 further east of us, so the addition would not impact  
13 the morning to afternoon light in any way. There is a  
14 large evergreen shrub on our property line between our  
15 two homes and a tree on her side of the property  
16 closer to the alley that do provide privacy as well as  
17 a screen for light and air between the properties.

18 We have also in the design of the home  
19 tried to limit the elevation. We've made a conscious  
20 decision not to go two stories. We've stayed at a one  
21 story addition. You actually step down three steps  
22 into the landing of the family room area to try to  
23 maintain as low a profile of the addition as possible.

24 Furthermore, as the sun sets and as light is

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1 reflected in our backyards, homes further down the  
2 street and trees and other obstructions that are  
3 present obscure that light in many instances before  
4 our addition would have any impact on that.

5 CHAIRPERSON GRIFFIS: For the trees and  
6 shrubs, is that a fairly accurate scale?

7 MR. BENSON: Yes it is.

8 CHAIRPERSON GRIFFIS: It is. Okay.

9 MR. BENSON: Secondly, with respect to  
10 air, there are really two ways in which air can pass  
11 through our properties. One is between our homes  
12 basically crossing the alley from the homes on the  
13 south side that are on Fessenden coming across the  
14 alley in between our two homes. Our addition is along  
15 the same building line as the existing home, so  
16 there's no further intrusion into the space between  
17 our two homes. So we don't believe that we're  
18 impeding the passage of air in that direction.

19 The second way of course is down the alley  
20 across our yards. Once again I would point to the  
21 presence of a considerable amount of shrubbery, trees,  
22 privacy fences that are present all the way down the  
23 alley where at least in our yard specifically we get  
24 very little cross breeze coming because of those

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1 natural or artificial barriers to the wind flow. We  
2 don't get a lot of wind coming down the alley and then  
3 turning into our lot. So a combination between the  
4 presence of already existing trees and fences outside  
5 of our property on either side of the alley as well as  
6 existing foliage between our two properties we believe  
7 there's little additional impact to the adjoining  
8 property.

9 The second area that is spelled out in 223  
10 is the privacy of use and how that impacts the  
11 adjoining properties. Two considerations. Once again  
12 the fact that there already is considerable foliage  
13 between the two properties that serves as a screen  
14 between our house and hers we believe this addition  
15 will largely be screened by existing foliage from  
16 that.

17 With respect to homes that are to the  
18 south of us on the shared alley, there's a privacy  
19 fence at the back of our property which this addition  
20 would be obscured by that as well as other trees and  
21 bushes that are at the back of our property line.  
22 We've also spoken with the homeowners immediately  
23 behind our house who are on that common alley. Their  
24 statement was quite frankly they would prefer the

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1 addition to the current window unit that's off the  
2 back.

3 CHAIRPERSON GRIFFIS: What's noted on the  
4 drawings that were submitted as right side elevation,  
5 you're showing six windows on that side. How high are  
6 those?

7 MR. BENSON: Those would be I believe  
8 about, Alan, 14 feet off the ground.

9 CHAIRPERSON GRIFFIS: Okay. So the point  
10 would be if you're standing in that room, you're not  
11 able to look out that window. Is that correct?

12 MR. BENSON: Yes.

13 CHAIRPERSON GRIFFIS: It's more of a clear  
14 story to get some light.

15 MR. BENSON: Correct.

16 MR. DENNISTON: This is the approximate  
17 existing first floor level. This is the approximate  
18 addition. (Indicating.)

19 CHAIRPERSON GRIFFIS: I don't think he's  
20 picking you up.

21 MR. BENSON: As you see at the bottom of  
22 the shingled reveal there is the approximate ground  
23 level or floor level of the addition.

24 CHAIRPERSON GRIFFIS: I see.

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1 MR. BENSON: So the purpose of those were  
2 to bring light in but not to create a situation where  
3 we would be looking into Ms. Beckwith's home or she  
4 would be looking into ours.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. BENSON: The third consideration  
7 that's spelled out in 223 is whether the addition  
8 would intrude upon the character and scale or pattern  
9 of homes either from the alley or the street. The  
10 addition as proposed would not be visible from the  
11 street because we are maintaining the current existing  
12 building line as well as once again existing trees and  
13 foliage between the front of the house and the rear of  
14 the house.

15 From the alley what we've done with this  
16 addition is tried to design it in a way that it would  
17 appear as if it was part of the original construction.

18 The same roof-line is maintained. Alan, if you would  
19 just show that in terms of the gable, it would be  
20 similar to the existing roof-line. The exterior of  
21 the building will be the same painted shingle exterior  
22 that currently makes up the outside of our house.

23 Once again, we've tried to strike a  
24 balance of what we thought was a functional living

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1 space for us but is not intrusive as possible. That  
2 led to trying to maintain a lower profile, not  
3 focusing on a two story addition. Those were the  
4 considerations that we took into advisement as we were  
5 designing the layout of the addition.

6 CHAIRPERSON GRIFFIS: Okay. Is there any  
7 stone material on the house?

8 MR. BENSON: I believe the stone that is  
9 shown on that is a flagstone patio just at the back  
10 rear and then a driveway.

11 CHAIRPERSON GRIFFIS: I see. So there's a  
12 foundation. There's nothing on the exterior that's  
13 actually stone.

14 MR. BENSON: There's a brick foundation,  
15 but that's only at the baseline.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. BENSON: Or a few feet above the land  
18 or the ground level.

19 CHAIRPERSON GRIFFIS: Okay. It is a wood  
20 shingle that's on the house now.

21 MR. BENSON: That's correct.

22 CHAIRPERSON GRIFFIS: You're proposing  
23 that the addition would be the same.

24 MR. BENSON: Yes. It's a painted wood

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1 shingle.

2 CHAIRPERSON GRIFFIS: Very well. This was  
3 built in 1930.

4 MR. BENSON: 1930. That's correct.

5 CHAIRPERSON GRIFFIS: Okay. There was one  
6 note by a Board Member that there was some concern in  
7 terms of the side yard. Although you have the  
8 existing structure that you're maintaining in line  
9 with clearly it's not a conforming side yard unless we  
10 go to the regulations under side yards. It was  
11 clearly built before 1958 which would allow a minimum  
12 of five foot side yard. You're indicating that you're  
13 actually at five feet nine inches. Is that correct?

14 MR. DENNISTON: Yes, sir. That's right.

15 MR. BENSON: The final consideration  
16 recognizing that we've tried to use graphical  
17 representation as we've presented the case is the  
18 consideration for total occupancy and having that not  
19 exceed 50 percent. In our situation, the proposed  
20 addition would set us at 43 percent lot occupancy  
21 which is significantly below the limit set forth in  
22 the regulations.

23 CHAIRPERSON GRIFFIS: Good. What's the  
24 roofing material on the existing house?

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1 MR. BENSON: It's an asphalt shingle that  
2 was recently replaced.

3 CHAIRPERSON GRIFFIS: Okay. That's being  
4 proposed as the same color, texture for the addition.

5 MR. BENSON: Yes.

6 CHAIRPERSON GRIFFIS: I see. Okay.  
7 Questions from the Board?

8 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I  
9 would just like to ask the architect a question. On  
10 the drawings that we have, it looks like there is a  
11 deck off of this proposed family room with stairs on  
12 the right hand side. Is that correct?

13 MR. DENNISTON: Yes, ma'am. There is a  
14 three foot landing outside the door and then steps  
15 going down to the ground.

16 VICE CHAIRPERSON RENSHAW: That leaves how  
17 many feet back to the property line taking into  
18 account the deck off of the new addition?

19 MR. DENNISTON: We have eight feet six  
20 inches from the back of the addition to the property  
21 minus the three feet required by the code so five feet  
22 six inches.

23 VICE CHAIRPERSON RENSHAW: Okay. You have  
24 one of these properties where a driveway divides two

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1 lawn areas or two outside areas. Is it your intent to  
2 use the five feet six inches as the play yard for your  
3 children or your child as it is now?

4 MR. BENSON: We may pull up our flagstone  
5 patio and just replant grass there. We do use our  
6 driveway. We anticipate continuing to use the  
7 driveway and the garage, so it would be either the  
8 limited area we have in the front or there are a  
9 number of parks nearby as well that we would use.

10 VICE CHAIRPERSON RENSHAW: Well, I'm just  
11 curious as to why you're pointing your stairs to the  
12 right and not to the left. If you do use your  
13 driveway and you want to get into the back of your  
14 house, isn't it more efficient to have the stairs off  
15 of the driveway or close to the driveway rather than  
16 walking across the lawn and then up?

17 MR. BENSON: That's a very good point. As  
18 we look at it, yes, that's something that we should  
19 have I think considering the use and the intended use  
20 of it so that reversing the location of the stairs  
21 would have been more a convenient configuration.

22 VICE CHAIRPERSON RENSHAW: Do you have  
23 plans to use the deck as a deck, or is it just a  
24 landing so that you can get into your new addition?

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1 MR. BENSON: No. It's just a landing to  
2 cover the elevation from the floor of the addition to  
3 the current ground level.

4 VICE CHAIRPERSON RENSHAW: So you would  
5 not be sitting outside or barbequing.

6 MR. BENSON: It would not be barbequing or  
7 sitting out there, no.

8 VICE CHAIRPERSON RENSHAW: You would not.

9 MR. BENSON: No. We would not.

10 CHAIRPERSON GRIFFIS: Not in three feet.  
11 I'll tell you that.

12 VICE CHAIRPERSON RENSHAW: Well, I have  
13 seen families who do it in three feet.

14 CHAIRPERSON GRIFFIS: Right. It's an  
15 excellent point.

16 VICE CHAIRPERSON RENSHAW: What about the  
17 door underneath your greenhouse windows?

18 MR. DENNISTON: In this area?  
19 (Indicating.)

20 VICE CHAIRPERSON RENSHAW: It's to the  
21 right side of the garage doors.

22 MR. BENSON: The current basement exit  
23 out.

24 VICE CHAIRPERSON RENSHAW: The current

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1 basement exit.

2 MR. BENSON: Right there where the steps  
3 are that you're showing. It would be right below the  
4 steps basically.

5 MR. DENNISTON: Yes.

6 MR. BENSON: That door will remain. It's  
7 an exit from the basement and because basically the  
8 floor elevation of the addition will be slightly above  
9 the door height of the current exit. Basically as you  
10 look at the rear of our house there's a dug out exit,  
11 so the ground level is not flat with the door if that  
12 makes sense.

13 VICE CHAIRPERSON RENSHAW: It does, but do  
14 you enter the basement entrance and from the driveway  
15 are there steps going down?

16 MR. DENNISTON: Yes, ma'am. Perhaps I can  
17 explain it a little better. You currently enter the  
18 basement through a door right here. (Indicating.)  
19 Though this represents the set back line, there  
20 currently is a probably 18 inch retaining wall that  
21 holds the backyard grade up. You would walk along  
22 this way and in the basement door. You will still be  
23 able to do that because of the landing that is in the  
24 addition before you step down. Perhaps on the side

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1 view that's a little more clear in that you have this  
2 cut out area underneath that you walk.

3 VICE CHAIRPERSON RENSHAW: I see what  
4 you're doing. Thank you for that description because  
5 I couldn't figure it out from your plans.

6 CHAIRPERSON GRIFFIS: Very good. Any  
7 other questions?

8 VICE CHAIRPERSON RENSHAW: Not for now.

9 COMMISSIONER MITTEN: Mr. Chairman, I have  
10 a couple.

11 CHAIRPERSON GRIFFIS: Ms. Mitten.

12 COMMISSIONER MITTEN: The deck off the  
13 back of the proposed addition, how high off the ground  
14 is that?

15 MR. DENNISTON: I'd have to scale it.  
16 It's going to be probably three feet plus or minus.

17 COMMISSIONER MITTEN: All right. On the  
18 plans that we have on the west side, it shows where  
19 the eight foot side yard requirement is. Then just  
20 based on what it looks like, it looks like the portion  
21 of the glass enclosed porch and the existing deck  
22 extend into that eight foot side yard area more than  
23 halfway. But when I look on the surveyor's plat, it's  
24 shown as five feet. Can you tell me which is

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1 accurate?

2 MR. DENNISTON: On the west side of the  
3 house.

4 COMMISSIONER MITTEN: Right. What is the  
5 width of the side yard there.

6 MR. DENNISTON: I would probably rely on  
7 the surveyor's plat for that.

8 COMMISSIONER MITTEN: So you're saying  
9 that the drawing is not to scale.

10 MR. DENNISTON: Yes. My inclination is  
11 that, yes, this is probably not correct.

12 COMMISSIONER MITTEN: All right. The  
13 reason I raise it is because when you do your lot  
14 occupancy calculation if the side yard is less than  
15 five feet it needs to be included. If you could check  
16 that and check the accuracy of your lot occupancy  
17 calculation. That's all I have, Mr. Chairman.

18 CHAIRPERSON GRIFFIS: Thank you. Others?  
19 Why don't we move on to the Office of Planning then?

20 COMMISSIONER MITTEN: I believe Ms.  
21 Beckwith gets cross examination.

22 CHAIRPERSON GRIFFIS: Oh, I'm sorry.  
23 Indeed.

24 MEMBER ETHERLY: Mr. Chair, before we move

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1 to Ms. Beckwith just to be sure I'm clear with regard  
2 to the landscaping in the rear of the property. Mr.  
3 Benson, you have a number of trees that are indicated  
4 on the drawing there. They are also illustrated in  
5 Exhibit Number 4 which is a series of photographs of  
6 the rear and front of the house. Just to be sure I'm  
7 clear, there's no impact on those existing trees as  
8 far as the construction for the proposed addition.  
9 Correct?

10 MR. BENSON: That's correct.

11 MEMBER ETHERLY: And the trees that are  
12 represented on the backyard depiction of your  
13 property, those trees are in the direction of Ms.  
14 Beckwith's property. Correct?

15 MR. BENSON: That's correct, to the east  
16 side which would be to the right side as you view the  
17 plan.

18 MEMBER ETHERLY: Okay. Do you have a  
19 sense of what type of trees those are?

20 MR. BENSON: Unfortunately, I couldn't  
21 tell you. I could tell you that tree as well as the  
22 one there are thick, dense evergreen type shrubs.  
23 (Indicating.)

24 MEMBER ETHERLY: Okay.

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1 MR. BENSON: Probably 15 to 20 feet high.  
2 And the other in the corner is a tree.

3 MEMBER ETHERLY: Okay. Thank you. Thank  
4 you, Mr. Chair.

5 CHAIRPERSON GRIFFIS: Small T tree. Okay.  
6 Anything else? Questions from the Board? Ms.  
7 Beckwith.

8 MS. BECKWITH: I would also like to  
9 clarify on the foliage that's showing. What it  
10 appears in the sketch is a large tree at the alley of  
11 the property and then a smaller tree --

12 MR. BENSON: These two? (Indicating.)

13 MS. BECKWITH: No. The one that goes  
14 north.

15 MR. BENSON: This one? (Indicating.)

16 MS. BECKWITH: Yes. You're saying those  
17 are both trees on your property.

18 MR. BENSON: No. The one that he's  
19 currently indicating, the furthest north is the shrub.  
20 I don't know if I would call it a tree.

21 MS. BECKWITH: Is it the giant weed?

22 MR. BENSON: I don't know that I would  
23 call it a weed. It's a large evergreen shrub. That's  
24 on our side of the property. The tree is in the

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1 corner on your side of the property.

2 MS. BECKWITH: So that's the dogwood tree  
3 on my property that you're referring to.

4 MR. BENSON: Yes. That's correct.

5 MS. BECKWITH: And you don't believe that  
6 your addition will have an impact on the dogwood tree.

7 MR. BENSON: I don't believe so, no.

8 MS. BECKWITH: The deck is three feet from  
9 the alley.

10 MR. BENSON: I believe the deck would be  
11 five feet eight inches or six inches from the alley.  
12 It would only be three feet off of the ground, so it  
13 would be below the height of the current fence between  
14 the two properties.

15 MS. BECKWITH: You indicated that you had  
16 spoken with neighbors in terms of trying to address  
17 concerns. Did you ever initiate a conversation with  
18 me?

19 MR. BENSON: I did, once we had applied  
20 for the permit, let you know that we had applied and  
21 invited you to come over and review the drawings which  
22 I believe that you did and met with my wife in the  
23 evening and reviewed those with her.

24 MS. BECKWITH: You're referring to the

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1 chance encounter we had when I said hey I got a  
2 notice, I understand you're doing an addition. Is  
3 that what you're referring to?

4 MR. BENSON: If you would like to  
5 characterize it as a chance encounter, I think it was  
6 a few days after the notice had been mailed. With  
7 different schedules that we both have, it was --

8 CHAIRPERSON GRIFFIS: And I think what  
9 would be most important to the Board is the substance  
10 of any conversations that happened, not perhaps how  
11 they happened.

12 MS. BECKWITH: That was the only  
13 conversation that you and I had.

14 MR. BENSON: That's correct.

15 MS. BECKWITH: I don't think I have  
16 anything else. Nothing else, sir.

17 CHAIRPERSON GRIFFIS: Good. Thank you. A  
18 follow-up question about this dogwood that is off the  
19 property, what sort of measures are you taking to  
20 ensure the preservation of it if this is approved and  
21 it is built?

22 MR. DENNISTON: Yes. Let me address that.  
23 The addition will be built on piers at the back  
24 corners here, here, here and here. (Indicating.) So

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1 the only disturbance into the earth is actually, and I  
2 haven't sized it yet, probably a 30 inch square pier,  
3 24 inches below grade.

4 CHAIRPERSON GRIFFIS: Indeed. Have you  
5 entertained the thought of having an arborist come and  
6 look at the root structure and map it out so that  
7 those piers may in fact not hit any of the root  
8 systems.

9 MR. BENSON: We had not done that to date,  
10 but we certainly would be willing to entertain it as  
11 part of the final placement of the piers.

12 CHAIRPERSON GRIFFIS: Okay. And the  
13 important thing about the piers is clearly you're not  
14 doing a full foundation which would actually trench,  
15 if I can describe it like that, the entire parameter  
16 which obviously would increase the impact of it. But  
17 even a single pier going down could hit a main root.  
18 I think that would probably be a wise decision.

19 MR. DENNISTON: In addition, I think with  
20 the arborist's approval if we need to locate that pier  
21 farther back and can lever the end of this thing, I'm  
22 sure we can do that.

23 CHAIRPERSON GRIFFIS: Right. Okay. Any  
24 other questions from the Board? Ms. Beckwith, did you

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1 have questions with that new information?

2 MS. BECKWITH: No.

3 CHAIRPERSON GRIFFIS: Good. Then let's  
4 move on to Office of Planning and their report.

5 MR. MOORE: Good morning, Mr. Chair and  
6 Members of the Board. I'm John Moore with the Office  
7 of Planning. I'd first like to direct your attention  
8 to page 7 where we have an error. In stating that the  
9 neighbors on both sides support the application, that  
10 is an error. I've already submitted a new page 7.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. MOORE: With that said, the Office of  
13 Planning finds that the Applicant has met the task in  
14 3104 and 223 and believes that the project can be done  
15 in harmony with the general purpose of the Zoning  
16 Regulation and Map and will not tend to adversely  
17 affect the neighboring properties in accordance with  
18 the Zoning Regulation Map. With that, I will  
19 entertain any questions.

20 CHAIRPERSON GRIFFIS: Thank you, Mr.  
21 Moore. You went out on a site visit with this.

22 MR. MOORE: Yes I did. Two days after the  
23 baby was born.

24 CHAIRPERSON GRIFFIS: Indeed. In standing

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1 in the rear of the structure, what time of day was it?

2 Do you recall?

3 MR. MOORE: Roughly 11:30 in the morning.

4 CHAIRPERSON GRIFFIS: And you had drawings  
5 that would represent what was going to be done in this  
6 addition. Did you look at those in terms of the  
7 impact of light and air on the adjacent properties?

8 MR. MOORE: Yes I did, Mr. Chairman. As a  
9 matter of fact on pages 5 and 6 of the report, we  
10 tried to graphically illustrate the amount of space  
11 between the properties on both sides. Ms. Mitten,  
12 there is five feet of space between the property on  
13 the west and the subject house. I think it's a little  
14 bit better than six on the east side. When we looked  
15 at the property from the rear, we thought that the  
16 tree conversation this morning would serve as a buffer  
17 between the two properties and would provide some  
18 privacy for both Applicant and the neighbor.

19 CHAIRPERSON GRIFFIS: Okay. Also Mr.  
20 Benson, while I think of it, you indicated that you  
21 had signed petitions from adjoining neighbors. Is  
22 that correct? Do you have copies of it?

23 MR. BENSON: I have an original here.

24 CHAIRPERSON GRIFFIS: Okay. I think it

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1 would be appropriate if you would give it to Staff we  
2 can make copies. Perhaps we can return the original.

3 Board Members, questions of the Office of Planning  
4 report?

5 MEMBER ETHERLY: Just very briefly, Mr.  
6 Chairman. For Mr. Moore, thank you very much for a  
7 solid report with some excellent illustrations of the  
8 property from a lot of different angles. Did you have  
9 an opportunity to take a look, and we'll probably get  
10 into a little bit of this with Ms. Beckwith, but with  
11 regard to the impact of light on the existing backyard  
12 of the neighboring property to the east? Can you  
13 comment on the impact of the proposed addition as it  
14 relates to light on that adjacent backyard?

15 MR. MOORE: Yes. Since the houses are  
16 already in the north-south fashion and light comes  
17 east-west as I indicated I was there at about 11:30 in  
18 the morning. If you look again at the picture at the  
19 top of page 5, you see where the shadow is on the west  
20 side of the house coming in which would indicate that  
21 the back of the property is getting sufficient light.

22 I think the house has a good wash of light going  
23 across the property.

24 The only problem, and of course this is

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1 not ours it's Gods situation, is as the sun sets in  
2 the west of course and goes down below the property  
3 line I would imagine around 4:00 in the afternoon  
4 there could be some issue with light coming in. But I  
5 think from what I saw, the light in all the properties  
6 on the rear is quite adequate.

7 MEMBER ETHERLY: Okay. Thank you. Thank  
8 you, Mr. Chair.

9 CHAIRPERSON GRIFFIS: Others? Does the  
10 Applicant have questions of the Office of Planning?

11 MR. BENSON: Excuse me.

12 CHAIRPERSON GRIFFIS: Cross examination of  
13 the Office of Planning. Did you receive the report?

14 MR. BENSON: Yes I did.

15 CHAIRPERSON GRIFFIS: Okay. Do you have  
16 any questions of the Office of Planning?

17 MR. BENSON: No I don't at this time.

18 CHAIRPERSON GRIFFIS: Ms. Beckwith, do you  
19 have the Planning report?

20 MS. BECKWITH: Yes I do.

21 CHAIRPERSON GRIFFIS: Very well.

22 MS. BECKWITH: You indicated in the report  
23 that the dwelling was originally built of stone  
24 material. Could you clarify that?

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1 MR. MOORE: We rely on The Experian which  
2 is an assessment directory that the city uses for  
3 these matters. In that book, it said that the  
4 original house was built of stone material. I'll be  
5 glad to provide that to you if you would like to have  
6 it.

7 MS. BECKWITH: Would you agree that the  
8 house has a brick foundation and is mostly shingle?  
9 This is what I find confusing.

10 MR. MOORE: I think I indicated in the  
11 report that the original house was a stone material.  
12 I think I also further said that the current house is  
13 shingle, so at some point there must have been a  
14 different fabrication put on the house.

15 MS. BECKWITH: You said you were at the  
16 property around 11:30 in the morning.

17 MR. MOORE: Approximately 11:30.

18 MS. BECKWITH: And you referred us to page  
19 5 of the report during the discussion of adequate  
20 light. That picture is the west side of the property.

21 MR. MOORE: That is correct.

22 MS. BECKWITH: No further questions.

23 CHAIRPERSON GRIFFIS: Okay. In fact, I  
24 found that rather confusing too. Ms. Beckwith was

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1 citing page 3. I was interested to see that the  
2 original building was stone which is why I actually  
3 asked if there were stone materials on it, but clearly  
4 we know what the existing is and that the addition  
5 will match the existing. Very well. Yes, Ms.  
6 Renshaw.

7 VICE CHAIRPERSON RENSHAW: Mr. Chairman,  
8 I'd like to ask our Office of Planning representative  
9 Mr. Moore a question. When you visited the site were  
10 you able to have a tour of the interior of the house  
11 on the first floor specifically?

12 MR. MOORE: The Applicant offered. I  
13 refused because he and his father were quite busy in  
14 preparation of the house for the arrival of the child.

15 As a matter of fact, his father was there because he  
16 had an armful of things to take out to the car to care  
17 for the baby. So no I didn't, but it was offered.

18 VICE CHAIRPERSON RENSHAW: I am just  
19 curious. We have a floorplan of the house, but the  
20 arrangement of rooms is not identified. I would like  
21 to inquire about the size of this existing glass  
22 enclosed porch and how that is used and whether that  
23 space, how shall I say, has been fashioned so that it  
24 is acting as and can continue to be if it's acting as

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1 a family room at this time.

2 MR. MOORE: Are you referring to the glass  
3 enclosure on the west side front of the house?

4 VICE CHAIRPERSON RENSHAW: That's correct.

5 MR. MOORE: By the way, it's a gorgeous  
6 space with a fireplace coming down. I imagine it  
7 would be used as a rec room. The Applicant can best  
8 answer that for you.

9 MR. BENSON: It's what was previously a  
10 screened-in porch that has a single pane glass in it.  
11 It's not insulated on the floors or the outside nor  
12 does it have radiator heat or air to it. The size I  
13 would approximate at about five feet to six feet wide.

14 MR. DENNISTON: I would probably say eight  
15 feet based on how the screen porches used to be built  
16 back then.

17 MR. BENSON: Okay. And then the length  
18 would be probably, what, 14 feet.

19 MR. DENNISTON: Probably 14 to 16 feet.

20 MR. BENSON: There's a notch or an  
21 indentation out of the space for the chimney that  
22 basically goes up the center part of the room, so it's  
23 not a true square. The chimney probably protrudes a  
24 foot-and-a-half, two feet into the space, something

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1 like that.

2 CHAIRPERSON GRIFFIS: The point is even  
3 though it's glass enclosed it's a seasonal room.

4 MR. BENSON: Right.

5 VICE CHAIRPERSON RENSHAW: However, have  
6 you looked into making this a 12 month room?

7 MR. BENSON: The nature of the space, what  
8 we were trying to create was space that let's say the  
9 entire family could share and use; where I could work,  
10 the children could play, as well as convenient to the  
11 kitchen, just a living space. In terms of making this  
12 a year round room, we didn't feel that either the size  
13 of it was sufficient as well as to extend the walls to  
14 create an insulated wall all the way around would  
15 consume more of the workable space that's in the room  
16 today.

17 If you were to stand in that room,  
18 unfortunately I can't take you there and put you in  
19 it, but for instance we have one of those papasan-type  
20 of chairs that you would see at a Pier One or  
21 something. To sit that in there, it takes up  
22 basically the whole width and the end of that room,  
23 just that one chair. If you were to try to put any  
24 type of storage or even furniture in there, you would

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1 have literally no walking or useable space after that.

2 CHAIRPERSON GRIFFIS: Okay. Anything  
3 else, Ms. Renshaw?

4 VICE CHAIRPERSON RENSHAW: Not at this  
5 moment.

6 CHAIRPERSON GRIFFIS: Board Members?

7 (No response.)

8 CHAIRPERSON GRIFFIS: Let's move on then  
9 to the ANC report. Do you have that in front of you,  
10 Ms. Renshaw?

11 VICE CHAIRPERSON RENSHAW: Yes. Mr.  
12 Chairman, we have a letter that is dated October 7  
13 from Tad Dibiase who is the Commissioner for Single  
14 Member District 3-E-03. He is writing he says "to  
15 clarify the position of the ANC on this application."

16 It has not taken a vote, and it's not been on the  
17 agenda. It is not on the agenda for the October 10  
18 meeting. It was not on the agenda for the September  
19 meeting also.

20 He says that "The ANC was contacted by the  
21 Applicants last month but because they already had a  
22 date before the BZA and the ANC could not get them on  
23 the next meeting agenda," for September I take it, he  
24 advised the Applicants that it was their choice to

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1 delay this hearing for an ANC vote or go forward  
2 without a vote. He further states that "ANC-3E does  
3 not vote on most of these applications, but this last  
4 fall it did approve a zoning variance for a house on  
5 the same block" but no address is given.

6 CHAIRPERSON GRIFFIS: Very well.  
7 Clarification from the Applicant on the ANC? Did you  
8 receive that letter?

9 MR. BENSON: Yes I did.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. BENSON: I spoke with Tad about the  
12 application and our situation. He was very familiar  
13 with our street and with the application of Robert  
14 Bouchard who had a permit approved I believe maybe six  
15 months ago or so from this Board. His counsel to me  
16 was consistent with his letter that this is not  
17 something that they typically vote on, that they  
18 typically bring before the Board.

19 At the time that I had spoken with him  
20 first, there was no objections or opposition present.

21 Based upon that, his advice or his comments were that  
22 in the absence of that he did not feel this was  
23 something that typically comes before their committee  
24 because of the crammed schedules or agendas that they

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1 already have.

2 I did speak with him a second time after I  
3 believe he had an opportunity to speak with Ms.  
4 Beckwith. Once again, his position was if necessary  
5 this could be placed on the agenda. It would probably  
6 be November before it would get on the ANC agenda and  
7 stated once again that he was familiar with the block,  
8 that he was familiar with the area and did not feel  
9 that at this point it necessarily warranted a delay  
10 for an ANC hearing unless we personally felt that was  
11 critical, so based upon the information that I  
12 received from him, we made a decision to proceed with  
13 the application.

14 CHAIRPERSON GRIFFIS: Okay.

15 VICE CHAIRPERSON RENSHAW: Mr. Chairman,  
16 I'd like to hear from Ms. Beckwith whether or not she  
17 requested a hearing before the ANC.

18 MS. BECKWITH: I started about a few weeks  
19 ago trying to find out whether this matter had come  
20 before the ANC because I had not received any notice  
21 or seen any notice that it had been scheduled to the  
22 ANC. I tried to reach Mr. Dibiase who's our single  
23 member district person and was not successful until  
24 fairly recently.

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1 I was specifically interested in the  
2 status because the Planning Office report indicated  
3 that it was scheduled to come before the ANC two days  
4 from now. Mr. Dibiase indicated that was not the  
5 case, so I asked him if he would write something so  
6 that the record would be correct on that. He also  
7 indicated that he planned to call Mr. Benson.

8 CHAIRPERSON GRIFFIS: Very well. Anything  
9 else?

10 VICE CHAIRPERSON RENSHAW: Yes. I would  
11 like to ask Ms. Beckwith a question. Are you going to  
12 request that this application go before the ANC? Do  
13 you want it to be reviewed by the ANC?

14 MS. BECKWITH: I would have preferred that  
15 it would have gone to the ANC before it came to the  
16 BZA. At this point, I'm not sure.

17 VICE CHAIRPERSON RENSHAW: Thank you.

18 CHAIRPERSON GRIFFIS: Anything else?

19 (No response.)

20 CHAIRPERSON GRIFFIS: Very well. Is there  
21 anyone here to give testimony today in support of this  
22 Application 16921 of Berg/Benson?

23 (No response.)

24 CHAIRPERSON GRIFFIS: Very well. We can

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1 go to Ms. Beckwith, your testimony and case.

2 MS. BECKWITH: Thank you. Mr. Chairman,  
3 I'm strongly opposed to this addition. I believe that  
4 it does violate the provisions of Section 223 in that  
5 it substantially infringes upon my enjoyment and use  
6 of my property. I believe the scale of the addition  
7 is inappropriate particularly with respect to the  
8 amount of encroachment on the rear lot. It encroaches  
9 over 11 feet into the rear lot set aside.

10 The height of the addition, although it's  
11 described as a one story addition given the efforts to  
12 blend in architecturally with the pitched roof, is 20  
13 feet high. You can see from the rendering that the  
14 roof comes up to the second story of the windows of  
15 the house. It would block light to my property and  
16 had the Planning Office been there in the afternoon  
17 they would have seen that I get afternoon sunlight  
18 through a side kitchen window as late as around 5:00  
19 in the afternoon. This addition is going to block  
20 that.

21 It's going to be a structure that  
22 overwhelms my backyard seeing as the structure itself  
23 goes up to eight feet from the alley and then there's  
24 the deck going further. I am not opposed to additions

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1 in concept. I'm not opposed in principle to items  
2 that may need a zoning variance, but I believe that  
3 there are other options that could accommodate the  
4 Benson's needs which would not require such a massive  
5 structure to abut my property.

6 Also I am working with an architect on  
7 some proposed renovations to my house. One of the  
8 things that we are attempting to do is get more light,  
9 and to have a 16.6 foot addition on the west side of  
10 my property will severely impact my ability to do  
11 these renovations and get additional light staying  
12 within existing zoning requirements which is what I  
13 have been attempting to do.

14 Since I work during the day, most of the  
15 opportunity that I have to enjoy light in my house is  
16 in the evening. That light tends to be from the  
17 south-west. It does come as I said in a window on the  
18 west side of my kitchen which is about two feet from  
19 the back wall as well.

20 CHAIRPERSON GRIFFIS: Two feet from which  
21 back wall?

22 MS. BECKWITH: From the back wall of my  
23 property. It's on the west side of my house about two  
24 feet from the back of my property.

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1                   CHAIRPERSON GRIFFIS: I see. Where does  
2 the rear of your property aligned with Mr. Benson?

3                   MS. BECKWITH: It's pretty much aligned  
4 with the existing rear of his house, not including the  
5 about two foot bump out that they presently have.

6                   CHAIRPERSON GRIFFIS: I see. So two feet  
7 back from that is your kitchen window which is fairly  
8 close to where it seems to be representing they also  
9 have a window. Is that correct?

10                  MS. BECKWITH: Right. The windows are  
11 sort of opposite each other, but from my window I also  
12 look out on the yard and open space. That's where the  
13 sunlight comes in.

14                  CHAIRPERSON GRIFFIS: You look out on the  
15 adjacent rear yard.

16                  MS. BECKWITH: Yes.

17                  CHAIRPERSON GRIFFIS: Okay.

18                  MS. BECKWITH: If I might add when I  
19 purchased my home 18 years ago, one of the things that  
20 I particularly liked about it was the fact that I had  
21 light coming from two sides in all of the rooms except  
22 the upstairs bathroom. Because of the height of the  
23 addition, it's going to also impact light there. I  
24 just believe that my enjoyment of my property should

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1 not be so substantially infringed. The need for  
2 additional space is perhaps something that the  
3 Benson's could have anticipated since they've only  
4 been there 18 months.

5 CHAIRPERSON GRIFFIS: Okay.

6 MS. BECKWITH: Also, there are other  
7 options. They could do the addition across the width  
8 of the house, and it would not have to be so deep.

9 CHAIRPERSON GRIFFIS: Anything else?

10 MS. BECKWITH: I don't believe so.

11 CHAIRPERSON GRIFFIS: Okay. Let me step  
12 back for two seconds in terms of the testimony. Mr.  
13 Benson, you did submit 22 or 23 signatures that are in  
14 support of this just for the record. Questions of Ms.  
15 Beckwith from the Board?

16 VICE CHAIRPERSON RENSHAW: Ms. Beckwith,  
17 you mentioned that you are going to be --

18 COMMISSIONER MITTEN: Your mic went off  
19 Ms. Renshaw.

20 VICE CHAIRPERSON RENSHAW: All right. I  
21 was asking Ms. Beckwith about her addition or her  
22 renovation. Are you planning an addition on the back-  
23 end of your property?

24 MS. BECKWITH: It's one of the things that

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1 we're looking at. My architect has prepared several  
2 proposals for me. We are presently looking at perhaps  
3 a bump out that would be within existing zoning  
4 requirements.

5 VICE CHAIRPERSON RENSHAW: So that would  
6 be a bump out of how many feet?

7 MS. BECKWITH: Five feet.

8 VICE CHAIRPERSON RENSHAW: All right.  
9 Anything else that might further bring your new  
10 addition back into your backyard?

11 MS. BECKWITH: No. I don't have the  
12 desire or the financial interest in a large addition.

13 VICE CHAIRPERSON RENSHAW: All right.  
14 Thank you. Is this a one story addition that you're  
15 talking about?

16 MS. BECKWITH: It would be probably a bump  
17 out just on the kitchen area which the way our lots  
18 slope is actually the second story. My basement walks  
19 out at ground level.

20 VICE CHAIRPERSON RENSHAW: All right.  
21 Thank you.

22 MEMBER ETHERLY: Ms. Beckwith, just to get  
23 some additional flavor for what the backyard portion  
24 of your property looks like. I'm taking a look at a

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1 series of photographs that I believe are part of  
2 Exhibit 4 that was submitted by the Applicant, a  
3 portion of which represents the backyard area.

4 First of all, I am hopeful that I am  
5 looking at a picture that is of your property. It  
6 appears that you have a side door that exits off.  
7 I'll give you a moment to put your hands on once again  
8 Exhibit 4. It should be a series of three photographs  
9 that look like that there. (Indicating.)

10 What I'm trying to get a sense of is there  
11 appears to be a side door that exits from your  
12 property towards the west, so it would be facing the  
13 Benson's property. Is that correct?

14 MS. BECKWITH: That's correct.

15 MEMBER ETHERLY: Okay. Is that a kitchen  
16 door or a side exit door?

17 MS. BECKWITH: It's a side exit door.  
18 There was originally a small landing there. It  
19 deteriorated and I had it removed. As part of my  
20 renovations, I will be either replacing it or putting  
21 a small deck on.

22 MEMBER ETHERLY: Then you have a number of  
23 windows that are highlighted in that photograph. The  
24 window next to that door going towards the back of

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1 your property, is that a kitchen window?

2 MS. BECKWITH: That's the kitchen window I  
3 was referring to before through which I get afternoon  
4 sunshine.

5 MEMBER ETHERLY: Then the two windows  
6 upstairs.

7 MS. BECKWITH: The window to the rear of  
8 the house is the upstairs bathroom window and the  
9 window to the front, the one that's slightly below  
10 that is a hall landing.

11 MEMBER ETHERLY: Then in terms of the rear  
12 of your property, do you have a rear deck?

13 MS. BECKWITH: No.

14 MEMBER ETHERLY: So you just have an exit  
15 from the rear of the property into a backyard.

16 MS. BECKWITH: That's correct.

17 MEMBER ETHERLY: Is it a sunken exit  
18 similar to the one that's denoted on the Benson  
19 property or it's at ground level?

20 MS. BECKWITH: No. My basement is at  
21 ground level, so you walk straight out the back door  
22 into the backyard.

23 MEMBER ETHERLY: Do you also have a  
24 driveway on your property as well?

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1 MS. BECKWITH: There is a drive there.  
2 The garage was bricked in, so it's just a brick and  
3 concrete area.

4 MEMBER ETHERLY: Is that a parking path  
5 that you make use of?

6 MS. BECKWITH: It's a parking path. I use  
7 it occasionally.

8 MEMBER ETHERLY: Okay. Thank you. Thank  
9 you, Mr. Chair.

10 CHAIRPERSON GRIFFIS: Other questions by  
11 the Board?

12 VICE CHAIRPERSON RENSHAW: Mr. Chairman,  
13 Ms. Beckwith had brought up the suggestion of an  
14 addition across the width of the Applicant's house.  
15 I'd like to hear from the Applicant whether or not  
16 that could be done, and perhaps at the same time if  
17 you could tell us the layout of the rooms on your  
18 first floor as they're not marked on your plan.

19 MR. BENSON: Certainly. With respect to  
20 an addition off the rear across the full width of the  
21 house, there are a couple of considerations. One is  
22 what that room would become. It would become just a  
23 very long relatively thin room. From a functional  
24 standpoint, it was not something that we felt met our

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1 needs or was optimal.

2 As you have viewed in the Exhibit there is  
3 a picture where the current kitchen area in the back  
4 is where those little glass windows are. That would  
5 be the kitchen area and where the addition would come  
6 off of the kitchen. The room next to that is the  
7 dining room. The room to the north of that would be  
8 the living room. Then there's the stairs leading up  
9 to the second floor.

10 To go across that, we would have to open  
11 up the dining room and have that somehow flow into  
12 this room. In addition, we would probably have to dig  
13 out a considerable amount of our driveway to clear  
14 that area to be able to use that and keep that as a  
15 functional location for us. Right now coming out over  
16 because of the grade of our backyard, we couldn't  
17 extend out over the driveway and still be able to use  
18 the garage.

19 VICE CHAIRPERSON RENSHAW: But it would  
20 connect with your existing deck. Had you looked at  
21 enclosing part of your deck and also joining that in  
22 with your glass enclosed porch? You would have a flow  
23 to this area across the driveway as it is now to your  
24 flagstone patio.

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1           MR. BENSON: Once again, we did not look  
2 at connecting the closed in porch to this because of  
3 the type of space it would be. If you just think  
4 about it from a square footage standpoint, you  
5 definitely are adding space, but in terms of  
6 functional space, useable space, we didn't believe  
7 that it offered a viable solution to us. There's a  
8 bathroom as you see jutting out. You basically only  
9 have a three foot gap which is the door off of the  
10 porch onto the deck.

11           We would effectively be creating long,  
12 narrow space which we felt functionally didn't lend  
13 itself to a family room environment. It's not where  
14 you can gather and spend time. It would be more of  
15 almost like a hallway wrapping around the house.

16           CHAIRPERSON GRIFFIS: Indeed. So your  
17 point is that it's just not based on the total amount  
18 of additional square foot, but it's actually the shape  
19 of the room that will lend itself to the function and  
20 also the adjacencies of the other rooms. If you  
21 extended off the back, you'd be breaking through two  
22 different rooms which have two different functions.  
23 It would attach to a more narrow single space.

24           MR. BENSON: Yes. That's correct.

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1 CHAIRPERSON GRIFFIS: Anything else?

2 COMMISSIONER MITTEN: Mr. Chairman, I'd  
3 like to ask a question of Mr. Moore that I neglected  
4 to ask him earlier. He makes reference on page 7 that  
5 there are at least three other houses in the 4400  
6 block of Faraday Place with new additions on the rear.  
7 Have any of those been accomplished by encroaching  
8 into the required rear yard?

9 MR. MOORE: I believe that the Burkhardt's  
10 encroached somewhat in the rear yard. I'd have to  
11 look at the application again, but I believe it does.  
12 That's on the north side of the block. I think it  
13 was before this Board maybe four or five months ago.

14 COMMISSIONER MITTEN: What's the name?  
15 I'm sorry.

16 MR. MOORE: The Applicant's name was  
17 Burkhardt I believe.

18 COMMISSIONER MITTEN: Oh, Burkhardt.  
19 Thank you.

20 CHAIRPERSON GRIFFIS: Is that it?

21 COMMISSIONER MITTEN: Yes, sir.

22 CHAIRPERSON GRIFFIS: Okay. Then why  
23 don't we go, Mr. Benson, to cross examination of Ms.  
24 Beckwith?

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1 MR. BENSON: Yes. Actually I would like  
2 to address the question of light in her kitchen.

3 CHAIRPERSON GRIFFIS: Actually now would  
4 be an appropriate time for you to ask questions of Ms.  
5 Beckwith's testimony. I will afford you the time very  
6 soon now for closing or rebuttal testimony.

7 MR. BENSON: All right. Can I phrase my  
8 point in the form of a question?

9 CHAIRPERSON GRIFFIS: Absolutely.

10 MR. BENSON: My question is when your  
11 kitchen window --

12 MR. DENNISTON: Let me. If your kitchen  
13 window is approximately opposite the Benson's window  
14 which puts it right here, that's actually at this  
15 level which is the first floor level. (Indicating.)  
16 You're actually looking out onto their gutter line.  
17 My question would be if the sun angle could still get  
18 in that kitchen window at this point that's quite late  
19 in the day. Do you really believe that it actually is  
20 going to block the light coming in from this angle?

21 MS. BECKWITH: I don't quite understand  
22 your reference to the gutter line. The sun comes in  
23 the window late in the afternoon. When I stood in the  
24 window yesterday, it was coming in and coming through

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1 the kitchen into the dining room. The angle is more a  
2 south-westerly angle than a direct westerly angle. It  
3 would be blocked by the addition.

4 MR. DENNISTON: Well, I guess my point is  
5 that I think in the plan you're talking about a south-  
6 westerly angle because due north is this way.  
7 (Indicating.) So the sun at that angle of the day by  
8 the plan is coming in like this from the rear. Your  
9 window, let's say for the argument it actually aligns  
10 with the Berg-Benson's window, is right here. You  
11 actually will continue to get sun. It's our intent  
12 that because of the height --

13 CHAIRPERSON GRIFFIS: The question is?

14 MR. DENNISTON: I'm sorry. No question.

15 CHAIRPERSON GRIFFIS: Okay. Anything else  
16 for Ms. Beckworth?

17 MR. BENSON: Just one last question. You  
18 had mentioned you thought the second floor would be  
19 obscured as well. Do you still believe that given the  
20 height of the addition will be below those window  
21 lines?

22 MS. BECKWITH: I believe the view from the  
23 second floor will be obscured and the light will be  
24 impacted because the pitch of the roof takes it up to

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1 the middle of your second story windows, so it's  
2 pretty high.

3 CHAIRPERSON GRIFFIS: Anything else?

4 MR. BENSON: No further questions.

5 CHAIRPERSON GRIFFIS: Ms. Beckwith, you  
6 said your basement level is a direct walk out to a  
7 grade.

8 MS. BECKWITH: That's correct.

9 CHAIRPERSON GRIFFIS: Do you know off hand  
10 how your first floor aligns with the existing,  
11 adjacent building's first floor? Is it higher, lower  
12 or equal?

13 MS. BECKWITH: I think it's pretty close.

14 CHAIRPERSON GRIFFIS: So there's not a  
15 dramatic difference.

16 MS. BECKWITH: I don't believe so.

17 CHAIRPERSON GRIFFIS: Although they're  
18 walking out of their basement and upstairs. That may  
19 not mean anything. And you're clear on what is being  
20 proposed in terms of the addition and the floor level  
21 that's actually dropping below the existing first  
22 floor. Meaning the structure itself is, I mean, as  
23 represented you can see in the elevation, but the mass  
24 of the proposed addition is actually below the first

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1 floor level of the existing structure.

2 MS. BECKWITH: Yes. With a total height  
3 of 20-some feet I believe.

4 CHAIRPERSON GRIFFIS: Right. To the peak  
5 of the roof.

6 MS. BECKWITH: Yes.

7 CHAIRPERSON GRIFFIS: Okay. Very well.  
8 Any other last questions from the Board? If not, I  
9 will -- Oh, Ms. Renshaw.

10 VICE CHAIRPERSON RENSHAW: A question for  
11 the architect. Over the dining room windows, what is  
12 the angle? Is that shading a roof line over the  
13 dining room windows?

14 MR. DENNISTON: Yes, ma'am. It is in a  
15 shed roof for the small existing bump out.

16 VICE CHAIRPERSON RENSHAW: And the shed  
17 roof slopes?

18 MR. DENNISTON: Back.

19 VICE CHAIRPERSON RENSHAW: Why didn't you  
20 consider that type of a roof line over the addition  
21 instead of a peaked roof?

22 MR. DENNISTON: I think it's a stylistic  
23 question because I think if you look at the shape of  
24 this and continue that on we felt it was not

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1 aesthetically pleasing. (Indicating.) So we thought it  
2 was much more important to mimic the steeper pitch of  
3 the existing rear and then bring these shapes into it  
4 just like it happens out on additional details in the  
5 house.

6 VICE CHAIRPERSON RENSHAW: But what is the  
7 advantage other than the architectural mimicking of  
8 the main roof from the rear? What's the advantage of  
9 having a peaked roof in that family room? Is it going  
10 to be a chandelier type of arrangement?

11 MR. DENNISTON: For increased ceiling  
12 height and a greater room space if you drop the floor  
13 level two feet eight inches, whatever we have, then as  
14 most family rooms that you see on additions we have a  
15 higher ceiling, an opportunity for a cathedral  
16 ceiling, something open, high clear story windows. I  
17 think it's more of an aesthetic question in terms of  
18 how you want the room to feel.

19 VICE CHAIRPERSON RENSHAW: But the height  
20 of the ceiling could be reduced without impacting the  
21 family room environment, in other words, to sacrifice  
22 the cathedral ceiling. That could be done.

23 MR. DENNISTON: Well, if you understand  
24 that you're actually stepping out into this landing,

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1 so you have to have this height at that space.

2 VICE CHAIRPERSON RENSHAW: I understand.

3 CHAIRPERSON GRIFFIS: You have to imagine  
4 the existing ceiling height at the minimum.

5 MR. DENNISTON: Yes, for the four feet out  
6 for the landing. You're stuck with that, so okay,  
7 yes, you could then pull this peak down two feet or 18  
8 inches. Aesthetically that's where we thought it  
9 probably did not make sense and in fact looked much  
10 more boxy and less elegant on the back of the house.

11 VICE CHAIRPERSON RENSHAW: It's an  
12 architectural debate we have going.

13 CHAIRPERSON GRIFFIS: Very well. Anything  
14 else?

15 (No response.)

16 CHAIRPERSON GRIFFIS: Let us allow the  
17 Applicant to give us closing remarks now.

18 MR. BENSON: I'd just like to thank the  
19 Board once again for taking the time to hear our  
20 application today. As we've discussed today, this is  
21 a neighborhood that we're very fond of, a house that  
22 we're very fond of. We've begun to grow our family  
23 and are very excited for that and have attempted to  
24 strike a balance between the needs of a growing family

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1 and the environment we're in today. We've tried to  
2 take into consideration the concerns of the  
3 neighborhood, the scale and spirit of the neighborhood  
4 and of our current home and are hopeful that the Board  
5 will look upon our application favorably.

6 CHAIRPERSON GRIFFIS: Thank you. Okay.  
7 We have one submission that is required by the Board.  
8 Let me see if the Board Members have any others.  
9 That as I noted was the recalculation or verification  
10 of the lot occupancy based on the side yard, whether  
11 that was included or not. Yes.

12 MR. DENNISTON: Yes. Could I clarify to  
13 make sure we get that calculation correct? The amount  
14 of property that's over the property line -- I'm not  
15 sure what your question of how we might have gotten it  
16 wrong was.

17 CHAIRPERSON GRIFFIS: If it goes in below  
18 five feet, it would have to go towards the lot  
19 occupancy, the entire portion. Meaning if you don't  
20 have a side yard that is conforming based on 400  
21 whether it's occupied or not goes to lot occupancy.

22 MR. DENNISTON: Okay. That's for the  
23 enclosed porch as well as the deck.

24 CHAIRPERSON GRIFFIS: How high was the

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1 deck?

2 COMMISSIONER MITTEN: I guess I already  
3 assumed that you had included the enclosed porch. If  
4 the deck is more than four feet off the ground, it  
5 needs to be included and then the side yard on the  
6 west to the extent that it's more narrow than five  
7 feet which it really looks to me like it is. I  
8 calculated based on the width of the house overall and  
9 also the width of the side yard on the east that it  
10 has to be less than five feet.

11 Then you have to include the entire area  
12 of the side yard as if it were occupied in your lot  
13 occupancy calculation. What you want to look in the  
14 Zoning Ordinance is the definition of lot occupancy  
15 and the definition of building area. Section 199.

16 CHAIRPERSON GRIFFIS: Okay. Thank you.  
17 Other information that we'd be requesting?

18 MEMBER ETHERLY: We had some conversation,  
19 Mr. Chairman, about as we look towards setting this  
20 for decision making the ANC report. Clearly the  
21 Applicant is not necessarily compelled to seek an ANC  
22 vote on this matter, but to the extent it might be  
23 useful to revisit the issue with the ANC to see if  
24 there's any kind of statement they might want to make

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1 regarding the application, that might be helpful.  
2 Thank you, Mr. Chair.

3 CHAIRPERSON GRIFFIS: So we would give  
4 that as a recommendation.

5 MEMBER ETHERLY: Yes, sir.

6 CHAIRPERSON GRIFFIS: Okay. Ms. Renshaw?

7 VICE CHAIRPERSON RENSHAW: Just to point  
8 out that ANC meets this Thursday I believe, and there  
9 is an open forum section in the agenda. At that time,  
10 you could request time on the next ANC agenda if you  
11 would like that, or if you want to make any comments,  
12 you can do so at that time.

13 CHAIRPERSON GRIFFIS: Excellent. I'd like  
14 to set this for the public meeting in November, so we  
15 set this for decision making. Our able Staff is going  
16 to give us a breakdown of when we need your  
17 information which is just that one piece of  
18 calculation.

19 MS. BAILEY: Mr. Chairman, based on your  
20 schedule if you have it close at hand, the November  
21 meeting is scheduled to start at 11:00 a.m. because  
22 that is an Election Day. There are several things on  
23 the morning agenda, so we would suggest, Mr. Chairman,  
24 either the December public meeting or a special public

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1 meeting another day. The November 5 hearing, that  
2 calendar appears to be full.

3 CHAIRPERSON GRIFFIS: With a starting time  
4 of 11:00.

5 MS. BAILEY: Yes, sir.

6 MEMBER ETHERLY: Mr. Chair, if I may  
7 really quick while we're discussing dates. I don't  
8 know if it might be helpful for my colleagues. But  
9 Ms. Beckwith, it might be useful if you would be able  
10 to provide and it doesn't have to be an extensive set  
11 of pictures, but it might be very helpful to get some  
12 sense of the layout of your backyard, perhaps even one  
13 or two shots from some of your side or rear windows  
14 just to get a sense for what the sight-lines look like  
15 to the backyard of the Benson property.

16 MS. BECKWITH: Certainly.

17 MEMBER ETHERLY: Thank you. Thank you,  
18 Mr. Chair.

19 CHAIRPERSON GRIFFIS: All right. Let's  
20 set this for a special public meeting. Did we have  
21 time that was freed up at the end of October?

22 MS. BAILEY: Next week, Mr. Chairman, you  
23 have a public meeting at 9:00 and there's a motion.  
24 Would you like to do it at that time? Or the

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1 following week would be October 22. There isn't a  
2 special meeting planned at that time, so perhaps  
3 that's an opportunity there.

4 CHAIRPERSON GRIFFIS: What does October  
5 29th look like first in the morning at 9:00?

6 MS. BAILEY: There as well.

7 CHAIRPERSON GRIFFIS: Does that look good?

8 MS. BAILEY: Yes, Mr. Chairman.

9 CHAIRPERSON GRIFFIS: Excellent. Let's  
10 set that then, 9:00, 29 October, Room 2. Let us re-  
11 evaluate quickly what is being submitted and when it's  
12 going to be submitted.

13 MS. BAILEY: Submissions would be due  
14 October 15. That's next Tuesday. Is that appropriate  
15 for the Applicant and Ms. Beckwith?

16 MS. BECKWITH: That's fine.

17 MR. BENSON: That's fine.

18 MS. BAILEY: And then the responses would  
19 be due the following Tuesday which would be the 22nd.

20 CHAIRPERSON GRIFFIS: Is that it?

21 MS. BAILEY: Yes, Mr. Chairman, that's it.

22 CHAIRPERSON GRIFFIS: Seems simple enough.  
23 Everyone clear? Dates? Submissions? Very well.  
24 Clearly the 29th will be a public meeting. We won't

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1 have any additional testimony. You are absolutely  
2 welcome to be here on any time that we meet. That  
3 will be our deliberation on the entire case. We will  
4 hopefully render a decision at that point. So we may  
5 see you on the 29th, but we look forward to your  
6 submissions. With that, enjoy the day.

7 MS. BECKWITH: Thank you.

8 MR. BENSON: Thank you.

9 CHAIRPERSON GRIFFIS: Thank you very much.

10 We are quickly moving on to the next application.  
11 However, I do just want to take a three minute break  
12 and let people set up and transition on this. We will  
13 be back within five minutes. Off the record.

14 (Whereupon, the foregoing matter went off  
15 the record at 11:15 a.m. and went back on  
16 the record at 11:25 a.m.)

17 CHAIRPERSON GRIFFIS: On the record.  
18 Firstly, as we're calling this now at 11:30, what I  
19 would like to do is progress and look to a lunch break  
20 at about 1:00. However, if we have a natural break in  
21 what we're going through, I think we can obviously  
22 take a break earlier. I know I'm hungry, so I imagine  
23 some of you might be also. So we'll be a little  
24 flexible to that, but that's what I'm predicting.

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1                   Secondly, it is my and this Board's full  
2 anticipation that this is the last hearing date on  
3 this case. This Board has discussed and is committed  
4 to staying today to finish this entire case. With  
5 that somewhat attendant to it clearly which we go  
6 through as per our regulations and as per an effective  
7 presentation and hearing, I will try and direct people  
8 not to be redundant with any information that we might  
9 have already heard or are well aware of.

10                   I will give an opportunity if I in fact  
11 limit someone in what their testimony or their case  
12 is. I will clearly allow for written submissions if  
13 the person or party feels that we may have missed  
14 something. The Board will take that under  
15 consideration clearly as part of the record. We can  
16 re-evaluate that when the specifics come up.

17                   With that, I think that's all I need to  
18 say in terms of opening unless other Board Members  
19 have other things that we need to address. If not, it  
20 seems to me that we left off at a point where we were  
21 going to have Mr. Skrivseth come and cross examine the  
22 architect. Is that correct? Very well. Why don't we  
23 begin with that.

24                   Let me just outline and make sure everyone

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1 is with me on this, so we can start to predict things.

2 After that, we will have the Office of Planning. We  
3 will go to a report of Council Members that are in the  
4 record. Then go to the ANC. Then I'll address as we  
5 move on.

6 MS. PRINCE: One minor matter that I have  
7 in my notes from the last hearing. Allison Prince  
8 from Shaw, Pittman for the record, Counsel for St.  
9 Patrick's. There was to be an opportunity for cross  
10 examination of Marty Wells, our traffic expert only on  
11 supplemental data that was submitted. That was noted  
12 at the end of the last hearing. I just wanted to make  
13 sure that opportunity for cross examination was  
14 provided. That was limited information on traffic  
15 counts.

16 CHAIRPERSON GRIFFIS: Okay. And that was  
17 from all the parties? That information was not cross  
18 examined yet. Is that correct?

19 MS. PRINCE: Correct.

20 CHAIRPERSON GRIFFIS: Why don't we pick  
21 that up as our second point then if that's amenable to  
22 everybody. Very well. All you.

23 MR. SKRIVSETH: Good morning. Good  
24 morning, Mr. Konapelsky.

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1 MR. KONAPELSKY: Good morning.

2 MR. SKRIVSETH: Do I need to state who I  
3 am?

4 CHAIRPERSON GRIFFIS: Yes.

5 MR. SKRIVSETH: I'm Lawrence Skrivseth,  
6 the party residing adjacent to the Applicant's site at  
7 4925 Mac Arthur Boulevard. Mr. Konapelsky, I have a  
8 number of questions for you which represent the  
9 special concerns of the immediately abutting  
10 neighbors. That is the Hoy's on the Ashby Street  
11 side to the east and the Wright-Skrivseth residence on  
12 Mac Arthur Boulevard to the south.

13 I'm sure the Board will be pleased to note  
14 that when I was initially preparing these questions  
15 there were three drawings before us. I wish to make  
16 it clear that in an informal discussion after the last  
17 session it was agreed that what we are discussing is  
18 the July 5th drawing which is called the site plan  
19 which is the same drawing as the one that you have up  
20 there right now. That will shorten my questions  
21 somewhat.

22 The questions are from the standpoint of  
23 the immediately abutting neighbors. We have a number  
24 of areas of concern. This is the first one. It's

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1 dealing with the size of the parking lot. The  
2 Applicant's original statement on page 18 states that  
3 "the existing parking area will be used but not  
4 expanded."

5 MR. SKRIVSETH: Can you show on a copy of  
6 your latest drawing the size of the existing parking  
7 lot?

8 MR. KONAPELSKY: I believe I brought a  
9 copy of the existing site. It's in back of this  
10 parking lot site drawing. (Indicating.) I'll switch  
11 it.

12 MR. SKRIVSETH: You may wish to stay over  
13 there from the standpoint of ease of testimony. How  
14 many spaces are there in the existing parking lot?

15 MR. KONAPELSKY: Eleven spaces.

16 MR. SKRIVSETH: How many are there in your  
17 drawing dated July 5th?

18 MR. KONAPELSKY: There's 17 spaces.

19 MR. SKRIVSETH: Given your replies, Mr.  
20 Konapelsky, would you agree that there is between the  
21 present and plan configuration of the parking lot an  
22 expansion in the number of vehicles that can park in  
23 that space?

24 MR. KONAPELSKY: Yes there is.

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1 MR. SKRIVSETH: Can you tell me on the  
2 basis of the existing parking lot drawing the existing  
3 width of the parking lot?

4 MR. KONAPELSKY: I believe the existing  
5 width of the parking lot is two feet shorter than the  
6 proposed parking lot which would be 56 feet.

7 MR. SKRIVSETH: I believe it's 55. You  
8 are referring to an expansion to the west of the paved  
9 surface.

10 MR. KONAPELSKY: Yes. Correct. On this  
11 side, the west. (Indicating.)

12 MR. SKRIVSETH: All right. As to the  
13 length of the parking lot, the existing parking lot  
14 drawing happens to be incorrect. The drawing shows  
15 the paved surface going right up to the property line.  
16 Is that correct?

17 MR. KONAPELSKY: No. It's just short of  
18 the property line.

19 MR. SKRIVSETH: All right. Do you know  
20 the actual point at which the pavement stops at  
21 present?

22 MR. KONAPELSKY: This drawing was taken  
23 from a VICA engineering drawing which was submitted to  
24 us. It is I would say approximately two feet off the

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1 property line.

2 MR. SKRIVSETH: In point of fact, it is  
3 nine or ten feet at that corner.

4 CHAIRPERSON GRIFFIS: Question to that.

5 MR. SKRIVSETH: All right. Do you know  
6 the distance from the south-west corner of the parking  
7 lot to the property line?

8 MR. KONAPELSKY: From this corner?  
9 (Indicating.)

10 MR. SKRIVSETH: The south-west corner of  
11 the paved surface to the property line.

12 MR. KONAPELSKY: From here to here?  
13 (Indicating.)

14 MR. SKRIVSETH: Yes.

15 MR. KONAPELSKY: I don't know off hand,  
16 but I would guess about nine feet.

17 MR. SKRIVSETH: Are you aware that is not  
18 a correct number?

19 MR. KONAPELSKY: No.

20 MR. SKRIVSETH: The new drawing regardless  
21 of how you slice the data does constitute an expansion  
22 in the area of the parking lot. Is that correct?

23 MR. KONAPELSKY: That is correct.

24 MR. SKRIVSETH: How great is the

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1 expansion? That is to say the expansion from the  
2 current paved area to the proposed paved area at the  
3 south-east corner where the dumpster pad is currently  
4 located.

5 MR. KONAPELSKY: From the configuration of  
6 the drawing, it is laid out in such a way that there  
7 is actually less paved area at the corner.

8 MR. SKRIVSETH: Mr. Chair, how do I  
9 correct an error with a question?

10 CHAIRPERSON GRIFFIS: Ask him the question  
11 --

12 MR. SKRIVSETH: Is it not true that the  
13 pavement in that corner would actually be six to seven  
14 feet closer to the property line than it currently is?

15 MR. KONAPELSKY: If this is incorrect, it  
16 could be.

17 MR. SKRIVSETH: According to your  
18 information, how great is the expansion at the south-  
19 west corner?

20 MR. KONAPELSKY: Two feet.

21 MR. SKRIVSETH: I wish I remembered how I  
22 phrased that last one. Is it not true that your  
23 information is incorrect and that the expansion is 13  
24 or 14 feet in that direction?

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1           MR. KONAPELSKY: I don't believe so. I  
2 don't believe the actual site is that different from  
3 what is represented here which is the VICA engineering  
4 drawing. One of the issues to keep in mind is that we  
5 are laying the parking lot out with new striping.  
6 There's ample width given the fact that we're  
7 expanding the parking lot by two feet, but we are  
8 getting rid of a dumpster pad in the corner over in  
9 here which is concrete. (Indicating.) We are  
10 restriping the parking lot more efficiently. We're  
11 introducing an island to separate --

12           MR. SKRIVSETH: Thank you. I believe you  
13 answered my question. Incorrectly I might add, but  
14 you did answer it already. Given that the Office of  
15 Planning indicated perhaps somewhat erroneously that  
16 the existing parking lot should cause no problems, why  
17 have you chosen to expand it in terms of the number of  
18 spaces and expand it in terms of its physical area in  
19 your current plan and all of its previous iterations?

20           MR. KONAPELSKY: The point to the  
21 expansion is to get an efficient parking layout in  
22 this area of the site. The expansion was on the lawn  
23 side, so more than anything it affected the St.  
24 Patrick's proposed lawn more so than the adjacent

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1 property owners.

2 One of the things we tried to do was  
3 introduce a fence and pull it back off the property  
4 line approximately seven feet at the shortest  
5 dimension and ten feet at the long dimension. We  
6 jogged the fence to give more of a spatial feeling on  
7 your side of the property. So the attempt of the  
8 parking lot in its current drawing is to (a) do a more  
9 efficient layout which we needed to take on some  
10 space, (b) get some handicapped parking which is  
11 required, (c) get an efficient layout given the space  
12 that we have to accommodate as much parking as  
13 possible, and (d) to get a buffer created by a solid  
14 wood fence and also planting on the neighbor side of  
15 the property.

16 MR. SKRIVSETH: All right. Thank you.  
17 Referring to your photographs on the other panel, at  
18 the top board at the center is a photograph that shows  
19 a portion of the parking lot. The center, bottom  
20 photograph. That shows a portion of the parking lot.

21 Is that correct?

22 MR. KONAPELSKY: That is correct.

23 MR. SKRIVSETH: How much grass can you see  
24 approximately between the end of the parking lot and

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1 the bottom left corner of the photograph?

2 CHAIRPERSON GRIFFIS: How much grass?

3 MR. SKRIVSETH: If you were to proceed  
4 straight from the end of that concrete maker in the  
5 downhill direction toward the neighboring property,  
6 how much distance approximately can you see in that  
7 photograph?

8 CHAIRPERSON GRIFFIS: What's the  
9 pertinence of seeing it in the photograph?

10 MR. SKRIVSETH: I wish to demonstrate that  
11 his contention that the VICA drawings are correct is  
12 incorrect using his own evidence for that matter.

13 CHAIRPERSON GRIFFIS: So you're trying to  
14 assess that the edge of the parking lot as it relates  
15 to the photograph of the tree --

16 MR. SKRIVSETH: Mr. Chairman, for that  
17 photograph to have been taken except by standing in  
18 the air in my yard, there has to be considerably more  
19 than two feet between the edge of that pavement and  
20 the wall.

21 CHAIRPERSON GRIFFIS: I'm not sure that  
22 photograph is at the edge of the parking lot though.  
23 Is it?

24 MR. KONAPELSKY: This is taken about right

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1 here. (Indicating.)

2 CHAIRPERSON GRIFFIS: I understand what  
3 you're trying to say.

4 MR. KONAPELSKY: This is down the existing  
5 tree. It's right here. (Indicating.)

6 CHAIRPERSON GRIFFIS: Mr. Skrivseth, I  
7 just don't think it's going to be made with this  
8 photograph.

9 MR. SKRIVSETH: I believe you're correct,  
10 sir, that my sense of the perspective was wrong.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. SKRIVSETH: Please disregard those.  
13 Is there a parking industry standard for the figure  
14 used in calculating the weight of the average  
15 automobile?

16 MR. KONAPELSKY: The weight?

17 MR. SKRIVSETH: The weight.

18 MR. KONAPELSKY: I don't believe that  
19 comes into a planning of this type.

20 MS. PRINCE: That question would have been  
21 better asked of our traffic expert who has already  
22 been cross examined.

23 MR. SKRIVSETH: All right. In preparing  
24 these drawings with parking spaces as close to the

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1 wall as they are, did you consult with a structural or  
2 civil engineer or have one visit the current parking  
3 lot?

4 MR. KONAPELSKY: We did have a structural  
5 engineer visit the site. He did walk around. This  
6 particular end of the property wasn't in question at  
7 that point in time. We were doing a walk through to  
8 assess the existing building. But I do believe given  
9 the scope, again it has to go back to a civil engineer  
10 to do design drawings and get current topography and a  
11 survey. Given the slope of the existing parking lot  
12 plus the buffer on the back side, I believe it's at  
13 least workable.

14 MR. SKRIVSETH: But you are saying that an  
15 engineer has not provided you with information as to  
16 whether the existing wall could support the weight  
17 load associated with construction and parking.

18 MR. KONAPELSKY: I guess my question also  
19 is when you say "existing wall" what are you referring  
20 to.

21 MR. SKRIVSETH: I'm referring to the  
22 retaining wall between the two properties.

23 MR. KONAPELSKY: That hasn't been looked  
24 at.

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1                   MR. SKRIVSETH:     Thank you.     Have you  
2 indicated on your drawings the proximity of the  
3 parking lot to the wall of the Skrivseth-Wright house  
4 at 4913 Mac Arthur Boulevard?

5                   MR. KONAPELSKY:    Yes.    There's a dimension  
6 on here.    It's seven foot six inches from the turn  
7 around piece.

8                   MR. SKRIVSETH:     I'm talking about the  
9 difference between the property line and the  
10 Skrivseth-Wright residence itself, in other words, the  
11 drawing of the adjacent property.

12                  MR. KONAPELSKY:    Yes.    The dimension --  
13 I'm sorry.

14                  MR. SKRIVSETH:     No.    You do not indicate  
15 on your drawing the location of the wall of the  
16 Skrivseth-Wright house.    Is that correct?

17                  MR. KONAPELSKY:    That is correct.

18                  MR. SKRIVSETH:     What is that proximity?

19                  MR. KONAPELSKY:    When you say "wall"  
20 you're talking about the structural wall here or the  
21 face of your building.    (Indicating.)

22                  MR. SKRIVSETH:     That's correct.     The  
23 retaining wall.

24                  MR. KONAPELSKY:    I do not know.

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1           MR. SKRIVSETH: If the parking lot were to  
2 be expanded in the manner your drawing suggests, would  
3 it be safe to assume that it would have to be  
4 reasonably level?

5           MR. KONAPELSKY: Yes. There is a minimum  
6 slope, but again we're trying to work within the  
7 existing parking lot. The first point of the exercise  
8 is not to rip up the existing parking lot and regrade  
9 it. The first attempt would be to work with the  
10 existing grade and parking lot, resurface it and  
11 probably restripe it and add what we needed to.

12           MR. SKRIVSETH: Are you aware of the slope  
13 of the land between the current parking lot and the  
14 retaining wall at the property line?

15           MR. KONAPELSKY: Yes. I would assume that  
16 the retaining wall, even if it is on the property  
17 line, has ample grade to work the parking lot out  
18 efficiently and have enough buffer to transition with  
19 soil and grading to make the transition from parking  
20 lot to the retaining wall.

21           MR. SKRIVSETH: Is it not true that the  
22 first space in the south-west corner of that proposed  
23 lot would have to be constructed on land which  
24 currently slopes, drops off approximately two feet in

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1 the width of one automobile and that it would have to  
2 be raised and there would have to be a support wall of  
3 some kind?

4 MR. KONAPELSKY: That would have to be  
5 investigated. From the just matching the two site  
6 plans, we're talking about a parking lot condition  
7 that exists already which is actually being approved  
8 given the fact that we're adding some green space,  
9 plantable space on the corner of the site.

10 MR. SKRIVSETH: What would be the impact  
11 of a six foot fence at the position you indicate on  
12 light in the property adjacent to the Applicant  
13 property?

14 MR. KONAPELSKY: Well, I would say it  
15 would cut down somewhat on the light. One of the  
16 points of doing the fence as it's drawn is not to put  
17 it right on the property line. It's to pull it back.

18 My understanding is that the Skrivseth house is three  
19 feet off the property line, but the set back is  
20 actually eight feet. So if in the future there were a  
21 building put there, the building face could be eight  
22 feet off the property line.

23 So I think given the fact that it's a  
24 fence and not a building and that it allows almost ten

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1 feet of planting on the neighbor's side, it's a good  
2 attempt at creating a buffer between what's going on  
3 between the proposed St. Patrick's property and the  
4 neighboring properties. Also our sound engineer had  
5 commented that we had talked about doing a more open  
6 fence or a configuration of open and solid fencing.  
7 He had said at least initially a solid fence retains  
8 more sound. That was the point also as a sound buffer  
9 as well as a visual buffer for the lawn area.

10 MR. SKRIVSETH: In earlier questions on  
11 the sound issue, it was noted that the air  
12 conditioning system would have to be expanded  
13 considerably. The sound technician did not know where  
14 the units would be placed. Do you as an architect  
15 have any idea of where they would be placed?

16 MR. KONAPELSKY: Yes. I believe in this  
17 general area is where we would put it. (Indicating.)  
18 There would have to be one exterior unit or perhaps a  
19 series of exterior units. Our initial suggestion is  
20 to place them more on the Mac Arthur side of the site  
21 towards the front of the building which would probably  
22 be the best position from a neighborhood standpoint.

23 MR. SKRIVSETH: Thank you. Bearing in  
24 mind that the contiguous neighbors I represent oppose

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1 approval of the special exception, if it were  
2 unfortunately to be approved, it would surely require  
3 visual and noise buffering of some kind. Is there any  
4 such buffering from the existing parking lot?

5 MR. KONAPELSKY: I'm sorry. The buffering  
6 of the mechanical system?

7 MR. SKRIVSETH: Is there a plant or noise  
8 buffer of some kind between the existing property and  
9 the adjacent properties on either side?

10 MR. KONAPELSKY: On here? (Indicating.)

11 MR. SKRIVSETH: Yes. Toward the Hoy's  
12 house on Ashby Street or toward the Skrivseth-Wright  
13 house on Mac Arthur Boulevard.

14 MR. KONAPELSKY: We're proposing  
15 plantings.

16 MR. SKRIVSETH: I'm not asking you yet  
17 what you're proposing. I'm asking what is there now.

18 MR. KONAPELSKY: What is there now. There  
19 is a limited number of plantings. You can see there's  
20 actually nothing on the Hoy's side of the property,  
21 and I don't believe there is anything on this side  
22 right now. (Indicating.)

23 MR. SKRIVSETH: Were the buffering along  
24 the property line at the Hoy's side where there is

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1 actually a very thin layer of trees, some kind of an  
2 evergreen, not regarded as adequate for five day a  
3 week usage contemplated under the application and were  
4 the BZA to consider mandating an 18 foot buffer, what  
5 would happen to the availability of parking spaces in  
6 your design?

7 MR. KONAPELSKY: If we were required to  
8 have an 18 foot buffer, I'm sure we would lose a great  
9 portion of these parking spaces. Two comments also.  
10 One is that there is opportunity. Again, the design  
11 at this point in time is trying to address questions  
12 of the neighbors as well as trying to work within the  
13 existing parking lot. There is existing paving as you  
14 can see along this side of the building. (Indicating.)

15 We do have an opportunity given the  
16 dimensions of what's required to have a four foot  
17 sidewalk, 20 foot drive lane, nine foot parking area,  
18 and then be left with a four foot planting strip on  
19 the Hoy's side of the property which would allow  
20 cypress or that type of a plant. So there is  
21 opportunity and space to plant this side of the  
22 property also. (Indicating.) The building is an  
23 existing school use, so I don't know how much of the  
24 existing parking lot since it's there if that's an

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1 issue that we would have to deal with the 18 foot  
2 buffer.

3 MR. SKRIVSETH: Would not the increased  
4 frequency of larger numbers of vehicles being parked  
5 in that space justify a sound buffer?

6 MR. KONAPELSKY: I believe it would help.

7 I think there are two things to keep in mind. One is  
8 that we did create a new opening on the Mac Arthur  
9 side, so the largest portion of the population of  
10 people coming to the building are coming from the  
11 front portion of the building. Secondly, the parking  
12 spaces are for teachers and visitors who tend to come  
13 twice a day, so it's early in the morning and probably  
14 around 4:00 that people are coming and going.

15 Also, one other thing to keep in mind is  
16 that my understanding is that the school will not have  
17 activities here and will not conduct school in the  
18 summer. So we have the whole summer season where it's  
19 going to be very quiet. I think given those factors  
20 the intensity is not as great as one might expect.

21 MR. SKRIVSETH: How many doors currently  
22 open in the direction of the Hoy's residence?

23 CHAIRPERSON GRIFFIS: Actually Mr.  
24 Skrivseth, I'd ask as you have been awarded party

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1 status based on your proximity and your property and  
2 the other issues that were brought up, you are not  
3 representing the other parties, so you might want to  
4 cross examine to make your case based on how that's  
5 going to impact you and your case unless you feel that  
6 is not going to be taken up by the other parties.

7 MR. SKRIVSETH: My understanding was that  
8 when I was given party status that I was also to be  
9 representing the interests of the other abutting  
10 property owners. Now, I may be incorrect on that  
11 understanding, but that's certainly what I've been  
12 endeavoring to do.

13 MS. PRINCE: May I make a comment? Mrs.  
14 Hoy filed a letter in the record dated October 1. I  
15 believe her interests are adequately represented in  
16 the letter. I do not recall anything in writing from  
17 Mrs. Hoy any participation at any hearing indicating  
18 that Mr. Skrivseth was to speak on her behalf. I  
19 think her concerns are adequately addressed in the  
20 letter.

21 CHAIRPERSON GRIFFIS: Okay.

22 COMMISSIONER MITTEN: Mr. Chairman, I  
23 might also just add that I think we had encouraged  
24 everyone to join together as best they could under the

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1 umbrella of the Neighbors United Trust. Then Mr.  
2 Skrivseth and Mr. Lovendusky made compelling arguments  
3 about why they were uniquely affected. We awarded  
4 them party status because of their very specific  
5 orientation, not because they were representing other  
6 folks.

7 CHAIRPERSON GRIFFIS: That's what my notes  
8 also indicate.

9 MR. SKRIVSETH: All right. That will  
10 shorten my questions somewhat. What would be the  
11 impact on the number of parking spaces available if a  
12 16 to 18 foot buffer were provided on the side of the  
13 property toward the Skrivseth-Wright house?

14 MS. PRINCE: I'd like to object. This  
15 speculative buffer, this 16 to 18 foot buffer has  
16 never been testified about. I've never heard any  
17 suggestion of a buffer of that dimension. We have a  
18 whole line of questioning based on a buffer that's  
19 never even been suggested.

20 CHAIRPERSON GRIFFIS: I would tend to  
21 agree.

22 MR. SKRIVSETH: The B.A. granted a 16 or  
23 18 foot buffer between the Hornblower property and the  
24 White Haven School property in 1993 I believe it was.

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1 It seems to me that buffers are a relevant question.

2 CHAIRPERSON GRIFFIS: Yes. I don't  
3 disagree that buffers are relevant to this clearly if  
4 there has been a buffer proposed. I think what the  
5 objection is and what my agreement with the objection  
6 is you're making a speculative dimension and a  
7 speculative buffer zone that you're asking to have the  
8 reaction from the architect.

9 I think if you want to go to the more  
10 substantive pieces of what the buffer is perhaps. Let  
11 me hypothetical perhaps, but what is the difference  
12 between a two foot buffer and a 20 foot buffer is  
13 where you want us to be. I think it's fairly common  
14 sense if we add a 16 to 18 foot buffer we're going to  
15 lose parking.

16 MR. SKRIVSETH: Very well. I think  
17 perhaps that the direct later will handle this issue  
18 adequately.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. SKRIVSETH: I have just a few more  
21 questions. This relates to trees. Does your drawing  
22 represent the location of the trees as they currently  
23 exist?

24 MR. KONAPELSKY: Yes it does.

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1 MR. SKRIVSETH: Is this true also on the  
2 property line next to the Skrivseth house?

3 MR. KONAPELSKY: This is the existing site  
4 plan with the existing trees. (Indicating.) You can  
5 see which trees have been maintained.

6 MR. SKRIVSETH: What would be the impact  
7 of parking lot construction and the elevator shaft  
8 construction on the existing magnolia tree and  
9 existing beech tree, the two largest trees shown on  
10 the south side of the property?

11 MR. KONAPELSKY: This question was asked  
12 prior to your question.

13 CHAIRPERSON GRIFFIS: Indeed.

14 MR. KONAPELSKY: We did check into the  
15 distance from the tree. I believe this is the  
16 magnolia tree. The paving you can see is very minorly  
17 altered around the existing tree here. Again, our  
18 point and it was made very clear to me from St.  
19 Patrick's from the start that is it was very important  
20 to keep the trees. There is an opportunity in the  
21 construction to first of all bring an arborist out as  
22 we're doing the construction.

23 Secondly is to alter the position by a  
24 foot or two which might make a difference. There is

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1 an opportunity in the floor plan based on where the  
2 root system is to do the addition. One thing to keep  
3 in mind also is there was a question last time about  
4 distance from this tree to the addition. There is a  
5 bay which is sticking out beyond the foundation, so  
6 there's even two more feet that we more or less pick  
7 up with distance and foundations which might affect  
8 the root systems.

9 So to the best of our ability at this  
10 point in the design process, our understanding is that  
11 the trees will remain. Our goal is for the trees to  
12 remain.

13 MR. SKRIVSETH: Do you know whether the  
14 water protection thing mandated by the park service  
15 will have an impact on any of the other trees on the  
16 property?

17 MR. KONAPELSKY: I do not know that.

18 MR. SKRIVSETH: I have no further  
19 questions.

20 CHAIRPERSON GRIFFIS: Wait. What's the  
21 water protection thing?

22 MR. KONAPELSKY: There were draining  
23 studies that the water runs over the site in sheets.  
24 There's going to be an attempt to upgrade the storm

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1 system on the site so it won't run in a sheet type  
2 condition over the site.

3 CHAIRPERSON GRIFFIS: I see. So you're  
4 engaged in some sort of storm water management plan  
5 for this site. Is that correct?

6 MR. KONAPELSKY: Correct.

7 CHAIRPERSON GRIFFIS: Are you aware of  
8 that?

9 MR. SKRIVSETH: Yes I am. I'm also aware  
10 of how much water comes into my basement from that  
11 property.

12 CHAIRPERSON GRIFFIS: Indeed. Okay.

13 MR. SKRIVSETH: I have no further  
14 questions of Mr. Konapelsky. Thank you, sir.

15 MR. KONAPELSKY: Thank you.

16 MR. SKRIVSETH: I would like to ask one  
17 question of the Board.

18 CHAIRPERSON GRIFFIS: You can't cross  
19 examine the Board.

20 MR. SKRIVSETH: I believe that the  
21 drawings do not accurately reflect actual distances.  
22 I would like that to be corrected on the record. How  
23 might I go about doing that?

24 CHAIRPERSON GRIFFIS: Well, I think

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1 there's two ways. Actually perhaps one. You can  
2 bring that up in your case and then be open to cross  
3 examination on that. If the Board feels that there is  
4 a discrepancy and that there are corrections needed  
5 based on that testimony, we can certainly take it up  
6 and ask for that to be corrected. Unless others have  
7 an opinion as to how that might be done, I think that  
8 would be the most expeditious way.

9 MR. SKRIVSETH: I don't know whether we  
10 have with us any of the photographs that would  
11 indicate that. I'll check that and get back to you  
12 later.

13 CHAIRPERSON GRIFFIS: Okay. Clearly if  
14 it's important to your case presentation, I would hope  
15 that we would have documentation that would make your  
16 point.

17 MR. SKRIVSETH: It's important to indicate  
18 the degree of expansion of the paved area, yes.

19 CHAIRPERSON GRIFFIS: Okay. Good.

20 MR. SKRIVSETH: Thank you.

21 CHAIRPERSON GRIFFIS: Thank you. I  
22 believe we ran across one other thing that we were  
23 going to do before we go to the Office of Planning  
24 based on the transcripts that we had previously. Am I

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1 correct?

2 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I  
3 should state at this time also that I was not here  
4 when the Board heard this case on July 9th. I want to  
5 assure the Board and the participants that I have read  
6 the record and am fully up to date on proceedings.  
7 But just to draw your attention to page 442 of the  
8 July 9th transcript, Ms. Prince states "Mr. Barrett is  
9 available to be recalled on September 10th," we did  
10 not meet on that date, "by any of the opposition  
11 parties should they so choose to hear from him or  
12 should clarification of the two hour time limit on  
13 outdoor play be desired." So I bring that to the  
14 Board's attention.

15 CHAIRPERSON GRIFFIS: Indeed. Very well.

16 I think if I recall correctly that was to bring back  
17 Mr. Barrett on the limited information in terms of the  
18 time outside in the play of the kids. Okay. So we  
19 can follow that up. If parties have questions on  
20 that, we can do that right after Mr. Wells. Good  
21 afternoon, sir.

22 MR. WELLS: Good afternoon.

23 CHAIRPERSON GRIFFIS: Could you just give  
24 me your name and address for the record?

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1 MR. WELLS: Martin Wells with offices at  
2 1420 Springhill Road, McLean, Virginia.

3 CHAIRPERSON GRIFFIS: Okay. Questions by  
4 the party? We're looking at the July 5 submission.  
5 Is that correct? Do parties have any questions? How  
6 about that? We have it all set up and all ready.  
7 Very well. Let's move on. Good. That means there  
8 must be some sort of clarification there. Let's go to  
9 the Office of Planning then.

10 MS. BROWN-ROBERTS: Good morning, Mr.  
11 Chairman and Members of the Board. My name is Maxine  
12 Brown-Roberts with the Office of Planning. The  
13 subject site is in the R-1-B District, and private  
14 schools are permitted as special exception uses in the  
15 R-1 District if they meet the requirements outlined in  
16 Section 206.2 and 206.3 of the Zoning Regulations.

17 Section 206.2 requires that private  
18 schools should not be objective because of noise,  
19 traffic, number of students or otherwise objective  
20 conditions. Regarding the noise impacts, the  
21 Applicant has taken a number of steps such as  
22 prohibiting most active recreational activities,  
23 limiting the time students spend outside, removing  
24 trash dumpsters, and having trash taken away daily by

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1 small vehicle pick-up. The impact on the neighbor to  
2 the south of the subject site can be relieved by some  
3 type of agreement between the Applicant and the  
4 neighbor on a buffer that will not block light and air  
5 to that property.

6 DDOT has addressed and made  
7 recommendations to alleviate the impact of traffic,  
8 and OP supports their recommendations. Regarding the  
9 number of students, the Applicant requested permission  
10 for grades 7, 8, and 9. OP does not support having  
11 grade 9 as this is introducing a high school program  
12 on the site. It is our opinion with the traffic and  
13 noise mitigation measures the maximum of 60 students  
14 will not be objectable.

15 The adjacent neighbor has requested that  
16 the drainage problem from the property be addressed.  
17 The Applicant will coordinate with the National Park  
18 Service in developing and implementing storm water  
19 management controls on the site. These will be  
20 addressed as part of the permitting process.

21 The second requirement, Section 206.3,  
22 requires ample parking space be provided to  
23 accommodate the students, teachers, and visitors that  
24 are likely to come to the site by automobile. Section

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1 2101.1 of the Zoning Regulation requires two parking  
2 spaces per three teachers or other employees. Based  
3 on ten persons, seven parking spaces are required.  
4 The parking lot proposed can accommodate more than  
5 seven parking spaces and therefore will be able to  
6 accommodate faculty and staff parking in addition to  
7 visitors. No parking spaces should be assigned to  
8 students.

9 The application is also required to meet  
10 requirements of Section 3104.1 for special exceptions.

11 The private school is permitted use of the R-1 which  
12 is subject to approval by the B.A.. The school  
13 fulfills the intention of the Zoning Ordinance and the  
14 Zoning Map that allow uses that are compatible to one  
15 family residential area to create a suitable  
16 environment for family life. The building will retain  
17 its residential character and facade, and the small  
18 addition to make the building handicapped accessible  
19 will be compatible to the existing building.

20 The proposal meets the requirements of  
21 Section 206, and therefore the Office of Planning  
22 recommends that the Board approve this special  
23 exception request with the following conditions. The  
24 school will be limited to grades 7 and 8 only. The

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1 initial enrollment will be for up to 40 students.  
2 After the first year, the enrollment may be increased  
3 to not more than 60 students. The maximum number of  
4 faculty and staff will be 8 full-time and 4 part-time  
5 for a total of 12 persons.

6 The building will be open for school use  
7 from 7:30 a.m. to 4:00 p.m. Staff and faculty may  
8 arrive earlier or state later, but in no event will  
9 they be permitted on the premises after 6:00 p.m. No  
10 more than two evening school events such as back to  
11 school night shall be held after 4:00 p.m. during the  
12 school year. There shall be no summer school or  
13 summer camp programs on the subject property. The  
14 school may not allow any outside persons or program to  
15 rent any portion of the building at any time.

16 In -- are the deed of recommendations for  
17 drop off and pick up policy. The Applicant shall  
18 install and operating any lighting of the parking  
19 facilities so that it is directionally downlit with a  
20 minimum light power. There will be no organized  
21 sports conducted on the property. Outdoor activity on  
22 the property shall be limited to casual recreational  
23 use.

24 All deliveries shall be scheduled between

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1 9:30 a.m. and 4:00 p.m. Monday through Friday. The  
2 car pool program will be established, instituted, and  
3 monitored by the school and should be approved by  
4 DDOT. The Applicant has indicated that a car pooling  
5 program has been initiated. However, it has not been  
6 reviewed by DDOT.

7 If requested by the owners of 4913 Mac  
8 Arthur Boulevard, buffering along the southern  
9 property boundary will be provided at the Applicant's  
10 expense. Expansion of the building will be limited to  
11 the area necessary for access as shown on the site  
12 plan. Large commercial trash dumpsters are  
13 prohibited. The Applicant shall coordinate with the  
14 National Park Service in developing and managing some  
15 water management controls.

16 The Applicant shall establish and maintain  
17 a committee liaison program consisting of a  
18 representative of the ANC and at least two members of  
19 the Palisades Citizens Association, two residents of  
20 Ashby Road and two adjacent residents and any other  
21 representatives of the community. The Applicant shall  
22 conduct meetings of the committee liaison members at  
23 least quarterly. Notice of the meeting shall be given  
24 to the liaison committee members and owners of all

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1 properties within 200 feet of the site.

2 Prior to any increase of enrollment over  
3 40 students, the Applicant shall submit a report to  
4 the Compliance specialist in the Office of Zoning and  
5 the representatives of the committee liaison program  
6 demonstrating compliance with all conditions of the  
7 provo. After consultation with the Office of  
8 Planning, DDOT and the ANC, and the representatives of  
9 the committee liaison program, the Compliance  
10 specialist then recommends an increase in enrollment  
11 if he concludes that the Applicant has complied with  
12 the conditions of the B.A. order. Thank you, Mr.  
13 Chairman.

14 CHAIRPERSON GRIFFIS: Thank you very much.  
15 Let's go to the Applicant questions of the Office of  
16 Planning.

17 (No response.)

18 CHAIRPERSON GRIFFIS: No questions. Do  
19 the parties have questions for the Office of Planning?

20 (No response.)

21 CHAIRPERSON GRIFFIS: Very well. We do  
22 have our order. Am I correct in my notes Mr.  
23 Skrivseth would be first, Mr. Lovendusky would be  
24 second?

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1 PARTICIPANT: The ANC.

2 CHAIRPERSON GRIFFIS: You would rather  
3 have the ANC first. Mr. Finney.

4 MR. FINNEY: Good afternoon, Mr. Chairman.  
5 It's good to meet with you again and all the other  
6 commissioners and Ms. Maxine Brown-Roberts.

7 MS. BROWN-ROBERTS: Good afternoon.

8 MR. FINNEY: I am going to question you  
9 not on the basis so much of the oral statement that  
10 you just gave but rather on the basis of the report  
11 dated April 9 submitted to the Board of Zoning  
12 Adjustment from Mr. Andrew Altman. I think the  
13 initial N is somebody else, but I don't know who. At  
14 any rate, do you have that report in front of you?

15 MS. BROWN-ROBERTS: Yes.

16 MR. FINNEY: Thank you. Let me just start  
17 off with a basic question here, ma'am. What is the  
18 function of the Planning Office in a case like this?

19 CHAIRPERSON GRIFFIS: We're going to  
20 narrow it down quickly. Correct?

21 MR. FINNEY: Yes.

22 CHAIRPERSON GRIFFIS: Very good.

23 MS. BROWN-ROBERTS: The function of the  
24 Office of Planning is to review the application based

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1 on the Zoning Regulations and to make a recommendation  
2 to the Board of Zoning Adjustments.

3 MR. FINNEY: Does not your mandate go  
4 beyond the Zoning Regulations into a broader context,  
5 namely the comprehensive plan, land use,  
6 transportation, balance between private and public  
7 schools, and so on? In other words, the Planning  
8 Office has a broad perspective in this. Shouldn't  
9 they?

10 MS. BROWN-ROBERTS: Yes. But we do not  
11 have all the expertise that you just outlined.  
12 Therefore, we depend on recommendations from other  
13 agencies, our own observations, and make a  
14 recommendation based on that.

15 MR. FINNEY: So you just considered this  
16 case within the narrow confines of the Zoning  
17 Regulations. Is that correct?

18 MS. BROWN-ROBERTS: And the comprehensive  
19 plan. The Zoning Regulations outlines the bases on  
20 which the Board can approve a special exception. We  
21 reviewed it based on those, as I stated, our outline  
22 in Section 206.3 and 206.2.

23 MR. FINNEY: Thank you. Now, what  
24 procedures do you follow in reaching the conclusions

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1 contained in your report?

2 MS. BROWN-ROBERTS: Basically we look to  
3 see how the application meets, how the Applicant  
4 addresses the things that are outlined in 206.3 and  
5 206.2 and see if they meet those criteria. Based on  
6 that, we make a recommendation.

7 MR. FINNEY: Do you consult with the  
8 school, the Applicant?

9 MS. BROWN-ROBERTS: As part of our review,  
10 we have to consult with the Applicant. If we have  
11 questions, we ask the Applicant to clarify something  
12 that was said. Yes. We do.

13 MR. FINNEY: Didn't you several times  
14 confer with the Applicant?

15 MS. BROWN-ROBERTS: Yes.

16 MR. FINNEY: Did you confer with the  
17 neighbors?

18 MS. BROWN-ROBERTS: Yes.

19 MR. FINNEY: With whom?

20 MS. BROWN-ROBERTS: I met once with the  
21 neighbors. There were I think three persons from the  
22 neighborhood who came to our office. We spoke to  
23 them. I also spoke with Robert Collins who is in our  
24 office from our Neighborhood Division.

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1 MR. FINNEY: Robert Collins.

2 MS. BROWN-ROBERTS: I spoke to him.

3 MR. FINNEY: Did Mr. Collins confer with  
4 the neighbors?

5 MS. BROWN-ROBERTS: What do you mean by  
6 "conferring with the neighbors?"

7 MR. FINNEY: I'm trying to find out to  
8 what extent you tried to get neighborhood views into  
9 your report.

10 MS. BROWN-ROBERTS: Yes. He did tell me  
11 what the neighborhood views were.

12 MR. FINNEY: Did you consult with the  
13 elected body or any members of the elected body that  
14 represents the neighborhood?

15 MS. BROWN-ROBERTS: I think I --

16 MR. FINNEY: I'm referring to ANC-3D.

17 MS. BROWN-ROBERTS: I think I spoke to  
18 you.

19 MR. FINNEY: When did you speak to me,  
20 ma'am?

21 MS. BROWN-ROBERTS: I don't remember the  
22 exact date.

23 MR. FINNEY: Wasn't it the same day you  
24 submitted your report?

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1 MS. BROWN-ROBERTS: Possibly, but I don't  
2 remember the date.

3 MR. FINNEY: So you really didn't consult  
4 with me in advance of this report. Did you?

5 MS. BROWN-ROBERTS: No. Not with you  
6 directly.

7 MR. FINNEY: Did you consult with the  
8 Single Member District Eleanor Lewis about it?

9 MS. BROWN-ROBERTS: Yes I did. I think  
10 she sent me an E-mail or something like that.

11 MR. FINNEY: How soon before you submitted  
12 your report?

13 MS. BROWN-ROBERTS: I don't remember the  
14 exact date.

15 MR. FINNEY: So were her views  
16 incorporated into your report?

17 MS. BROWN-ROBERTS: I don't remember the  
18 conversation. I know we spoke about the application,  
19 but I don't remember every point that we discussed or  
20 spoke about.

21 MR. FINNEY: After speaking with Ms. Lewis  
22 or me, did you amend your report?

23 MS. BROWN-ROBERTS: No.

24 MR. FINNEY: So would you say that you

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1 have presented a well-rounded report reflecting  
2 neighborhood views?

3 MS. BROWN-ROBERTS: When I look at an  
4 application, I try as much as possible to incorporate  
5 some of the views of the neighborhood, but our basic  
6 thing is to address what the -- I don't think that  
7 because the neighborhood is saying no that we have to  
8 say no also. I don't think that is our mandate.

9 MR. FINNEY: I'm not even suggesting that,  
10 ma'am.

11 MS. BROWN-ROBERTS: Thank you.

12 MR. FINNEY: I'm just asking you where in  
13 your report is reflected views of some of the  
14 neighbors or the Advisory Neighborhood Commission?

15 MS. BROWN-ROBERTS: I think in some of the  
16 recommendations for the conditions. Some of those  
17 were as a result of some of the issues that were  
18 brought up by the neighbors.

19 MR. FINNEY: Fine. Let me come back to  
20 the conditions later on. Now, in drafting this  
21 report, what factors did you take into consideration?  
22 Did you take into consideration the number of private  
23 schools already in the Palisades?

24 MS. BROWN-ROBERTS: Yes. We looked at

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1 that.

2 MR. FINNEY: How many are there in the  
3 neighborhood?

4 MS. BROWN-ROBERTS: I don't remember the  
5 exact amount. I didn't go to each one. I think I  
6 narrowed my concerns down to those that were in close  
7 proximity to the site.

8 MR. FINNEY: Such as?

9 MS. BROWN-ROBERTS: The existing school --

10 MR. FINNEY: Mr. Chair, maybe it would  
11 help, I have given copies of a map drawn from the  
12 Palisades Traffic Impact Study showing the locations  
13 of the schools in our neighborhood as well as the  
14 college campus. Maybe that would help refresh Ms.  
15 Brown-Roberts' memory.

16 CHAIRPERSON GRIFFIS: Would you like to --

17 MR. FINNEY: I'd like to have that  
18 distributed.

19 MS. BROWN-ROBERTS: Yes. I have that.

20 CHAIRPERSON GRIFFIS: And you want her to  
21 answer whether that accurately reflects the private  
22 schools in the neighborhood.

23 MR. FINNEY: No. She said that she  
24 considered a few schools close.

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1 CHAIRPERSON GRIFFIS: Indeed.

2 MR. FINNEY: I'm trying to determine which  
3 those schools are, sir.

4 MS. BROWN-ROBERTS: Yes. When I visited  
5 the site and I drove around the community, I did see  
6 the existing St. Patrick's School, the Lab School, the  
7 Our Lady of Victory School, and the GW Mount Vernon  
8 campus and also the Field School I think.

9 MR. FINNEY: Did you consider whether the  
10 number of schools and their proximity were adding to  
11 the traffic congestion within the Palisades?

12 MS. BROWN-ROBERTS: That was addressed by  
13 DDOT.

14 MR. FINNEY: Does it enter into your  
15 considerations?

16 MS. BROWN-ROBERTS: I left that up to be  
17 addressed by DDOT.

18 MR. FINNEY: Did you consider the proper  
19 balance between public and private schools in the  
20 District or the Palisades in particular?

21 MS. BROWN-ROBERTS: No, sir.

22 MR. FINNEY: Well then ma'am, let me refer  
23 you to page 8 in your report of April 9. You state  
24 that the proposed school would provide a service to

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1 residents of the Palisades community and the larger  
2 District of Columbia. Do you see that reference?

3 MS. BROWN-ROBERTS: Can you refer me to  
4 the paragraph?

5 CHAIRPERSON GRIFFIS: It's the last full  
6 paragraph on page 8.

7 MS. BROWN-ROBERTS: Of the summary and  
8 recommendation, yes.

9 CHAIRPERSON GRIFFIS: Yes.

10 MR. FINNEY: So in a way you did reach  
11 some judgement about the public service aspect of the  
12 school. Didn't you?

13 MS. BROWN-ROBERTS: Well, I think all  
14 schools provide a service.

15 MR. FINNEY: Private schools the same as  
16 public.

17 MS. BROWN-ROBERTS: Pardon me?

18 MR. FINNEY: Private schools as well as  
19 public provide the same service.

20 MS. BROWN-ROBERTS: I think all schools  
21 provide a service.

22 MR. FINNEY: I agree. But do private  
23 schools --

24 CHAIRPERSON GRIFFIS: Good. We can move

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1 on.

2 MR. FINNEY: But I would like to ask you  
3 how does a sectarian school that draws students from  
4 the region, not just the District, that draws from the  
5 upper socio-economic classes provide a service to  
6 middle class residents of the Palisades or the  
7 impoverished residents of Anacostia?

8 MS. BROWN-ROBERTS: I didn't address that  
9 in my report.

10 MR. FINNEY: Yes you did. You said it  
11 provides a service. Let me get the quote. "It  
12 provides a service to residents of the Palisades and  
13 the larger District of Columbia."

14 CHAIRPERSON GRIFFIS: I think she's  
15 answered it in terms of how educational facilities  
16 provide a service to the city. Is that correct?

17 MS. BROWN-ROBERTS: That's correct, Mr.  
18 Chairman.

19 CHAIRPERSON GRIFFIS: Okay. If there's  
20 something further you want to explore with that, we  
21 can do that.

22 MR. FINNEY: May I just get some water.

23 CHAIRPERSON GRIFFIS: Of course.

24 MR. FINNEY: Thank you, Mr. Chairman. Did

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1 you reach the conclusion in your report that there was  
2 a need for more private school opportunities for  
3 middle school students?

4 MS. BROWN-ROBERTS: No, sir.

5 MR. FINNEY: Well, I refer you to page 3,  
6 the third sentence from the top. I'll read it to you.

7 "Due to a need for independent school opportunities  
8 for middle school students." Isn't that a statement  
9 of finding on your part that there is a need for more  
10 private middle school students?

11 MS. BROWN-ROBERTS: If you continue, it  
12 says "Due to the need for independent opportunities,  
13 St. Patrick's saw the need." I think that statement  
14 was based on what the Applicant has submitted to us.

15 MR. FINNEY: So you accepted the  
16 ascertain, the claim by the Applicant that there was a  
17 need.

18 MS. BROWN-ROBERTS: Yes.

19 MR. FINNEY: Did you examine it further?  
20 How did you determine a need?

21 MS. BROWN-ROBERTS: I didn't do any  
22 further examination on that.

23 MR. FINNEY: Are you aware that there are  
24 openings in the public middle schools in the District

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1 in that neighborhood?

2 MS. BROWN-ROBERTS: No, sir.

3 CHAIRPERSON GRIFFIS: That statement  
4 doesn't go to the public schools. Does it?

5 MR. FINNEY: It says there's a need, sir.

6 CHAIRPERSON GRIFFIS: For independent  
7 schools.

8 MR. FINNEY: For private schools.

9 CHAIRPERSON GRIFFIS: If I'm not mistaken,  
10 there was testimony that was stated by the Applicant  
11 which let me get clarification on this sentence and  
12 you're indicating that the demand that the school is  
13 seeing for this particular grade and rank.

14 MS. BROWN-ROBERTS: Right. That's exactly  
15 it.

16 CHAIRPERSON GRIFFIS: So there wasn't a  
17 comparative of demand for students or increased  
18 population of public-private, any of the other schools  
19 in the entire city or even in this area. Is that  
20 correct?

21 MS. BROWN-ROBERTS: That's correct.

22 MR. FINNEY: The point I'm trying to make,  
23 Mr. Chairman, is that grammatically this parenthetical  
24 phrase represents the view of the writer of this

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1 report.

2 CHAIRPERSON GRIFFIS: Indeed. I think  
3 that's well understood. Your point, and I'll see if I  
4 rephrase it correctly, is that the Office of Planning  
5 has indicated that there is a need for independent  
6 school opportunities for middle school students.

7 MR. FINNEY: That's right.

8 CHAIRPERSON GRIFFIS: Good.

9 MR. FINNEY: And I'm not sure how they  
10 reach that conclusion.

11 CHAIRPERSON GRIFFIS: Very well. Have you  
12 found clarification now?

13 MR. FINNEY: No, because she said she  
14 didn't study it any further.

15 CHAIRPERSON GRIFFIS: Indeed.

16 MR. FINNEY: She just took the Applicant's  
17 view.

18 CHAIRPERSON GRIFFIS: Right.

19 MR. FINNEY: So I can come to that in my  
20 concluding statement, sir. Are you aware that our  
21 Chief Financial Officer, Mr. Ghandi, has stated that  
22 there is a structural imbalance in our property tax  
23 spaces that is going to doom us to everlasting  
24 deficits unless it is corrected?

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1 CHAIRPERSON GRIFFIS: You're going to have  
2 to give me the relevancy to this one.

3 MR. FINNEY: I will come to it very  
4 quickly.

5 CHAIRPERSON GRIFFIS: How about coming to  
6 it within the same question? Where are you going with  
7 this?

8 MR. FINNEY: Did you take into  
9 consideration that the approval of a private school, a  
10 non-tax paying school on this property would continue  
11 to eliminate this property from tax paying residential  
12 status?

13 MS. PRINCE: I really need to object. The  
14 law is well established that the tax exempt status of  
15 the institution has no relevance in a Zoning  
16 proceeding.

17 CHAIRPERSON GRIFFIS: I would agree. Mr.  
18 Finney, I think your point may well be made more  
19 effectively in testimony, not trying to bring the  
20 Office of Planning to talk about Mr. Ghandi's  
21 balancing our books on one school.

22 MR. FINNEY: It's an important social  
23 issue which I assumed the Planning Office considered.

24 CHAIRPERSON GRIFFIS: Indeed. That's a

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1 very relevant question to ask whether it was  
2 considered, how it was considered.

3 MR. FINNEY: That's all I was trying to  
4 do, sir.

5 CHAIRPERSON GRIFFIS: Okay. Was the --

6 MS. BROWN-ROBERTS: No.

7 MR. FINNEY: You did not consider that.

8 MS. BROWN-ROBERTS: No.

9 MR. FINNEY: Thank you. Did you take into  
10 consideration the recommendations contained in the  
11 Strategic Neighborhood Action Plan of cluster 13 which  
12 embraces the Palisades which set forth as one of its  
13 priority objectives steps for controlling the  
14 proliferation of new schools and expansion of existing  
15 schools and institutions within SNAP-13's  
16 jurisdiction?

17 MS. BROWN-ROBERTS: No. The SNAP plans  
18 that are being done by our office are part of a  
19 budgetary process. It is not a part of the  
20 comprehensive plan or the Zoning Regulations, so that  
21 was not a consideration of this. I am aware of the  
22 SNAP plan and what the recommendation is.

23 MR. FINNEY: Well, having served on a  
24 SNAP, I ask you, does not the SNAP also try to track

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1 fraud policies for the Mayor to incorporate into the  
2 budget.

3 MS. BROWN-ROBERTS: Yes. But as I said,  
4 it is not a part of the comprehensive plan or the  
5 Zoning Regulations.

6 MR. FINNEY: As they now exist.

7 CHAIRPERSON GRIFFIS: Correct.

8 MS. BROWN-ROBERTS: Correct.

9 MR. FINNEY: Correct. But the SNAP is  
10 coming up with ideas that could be used in revising  
11 that comprehensive plan. Isn't that correct?

12 MS. BROWN-ROBERTS: As you say it "could,"  
13 but it is not.

14 MR. FINNEY: It could.

15 MS. BROWN-ROBERTS: That is not the basis  
16 on which SNAPS were developed either.

17 MR. FINNEY: Were you aware that the Mayor  
18 himself is complaining, that's perhaps a loaded verb,  
19 has stated that there's been a tremendous expansion of  
20 schools in the Palisades area?

21 MS. BROWN-ROBERTS: No.

22 CHAIRPERSON GRIFFIS: Let me make one  
23 comment, Mr. Finney. Clearly I understand where  
24 you're trying to go with this in looking at the larger

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1 picture and the larger community impact.

2 MR. FINNEY: Yes.

3 CHAIRPERSON GRIFFIS: I have no difficulty  
4 with the questions for the Office of Planning.  
5 However, my difficulty comes in how much relevancy it  
6 goes to the Board's jurisdiction. In terms of the  
7 SNAP, any sort of proposed directions of the community  
8 or even the comprehensive plan has a more limited role  
9 in terms of what we can actually deliberate and decide  
10 on.

11 MR. FINNEY: I appreciate those  
12 strictures, and the ANC appreciated those strictures  
13 in drafting its letter. I just thought that the  
14 Planning Office which has a broader view than us  
15 narrow minded zoning people could help us place the  
16 justification for such a private school in a  
17 residential neighborhood into a larger context.

18 CHAIRPERSON GRIFFIS: Indeed. And I  
19 absolutely understand.

20 MR. FINNEY: That's what I'm so much  
21 trying to do.

22 CHAIRPERSON GRIFFIS: Right. I do believe  
23 that it has a larger and broader context and timeframe  
24 that you may want to continue those discussions,

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1           however, not necessarily here.

2                           COMMISSIONER MITTEN:   Mr. Chairman, can I  
3           just say one thing.   I don't know if this will help  
4           you sort of get your thinking aligned with where we  
5           need to be.   As the Ordinance is written now, the  
6           school doesn't have to justify why it goes there.   It  
7           just has to show that it can protect the community  
8           from adverse impacts.   Whether or not it is desirable  
9           that the regulations be rewritten to address issues  
10          about over concentration and so forth, that's to be  
11          debated sometime in the future.   But as it exists  
12          right now, we need to focus on the adverse impacts  
13          that could result.

14                          MR. FINNEY:   Well, I did have a purpose,  
15          ma'am, in my questions to you as the Chair of the  
16          Zoning Commission to alert you to a problem that we  
17          have here and the need for perhaps a broader view on  
18          location of schools.

19                          COMMISSIONER MITTEN:   Consider the message  
20          delivered.

21                          MR. FINNEY:   All right.   Thank you.   Did  
22          you take into consideration the likelihood that  
23          location of a school in the midst of a residential  
24          neighborhood would lower the value of the homes in the

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1 neighborhood?

2 MS. BROWN-ROBERTS: No, Mr. Finney.

3 MR. FINNEY: Look at the map for a moment.  
4 You traveled I assume around the area and looked at  
5 it. Are any of the private schools in the Palisades  
6 directly located in a residential area as would be the  
7 Junior High at 4925 Mac Arthur?

8 MS. BROWN-ROBERTS: Could you state that  
9 again for me please?

10 MR. FINNEY: Yes. Are any of the private  
11 schools in this broad neighborhood known as the  
12 Palisades directly located in a residential  
13 neighborhood as would be the St. Patrick's Junior High  
14 School at 4925 Mac Arthur?

15 MS. BROWN-ROBERTS: I think the Field  
16 School is located in a residential area.

17 MR. FINNEY: No.

18 MS. BROWN-ROBERTS: The Mount Vernon  
19 Campus is within a R-1-A zone also.

20 MR. FINNEY: I'm saying a residential  
21 neighborhood.

22 CHAIRPERSON GRIFFIS: How do you define a  
23 residential area?

24 MR. FINNEY: I'm thinking of number of

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1 houses in a fairly densely place.

2 CHAIRPERSON GRIFFIS: I see. Okay.  
3 Clearly I would anticipate the Office of Planning  
4 would take it as a residential zone. Is that clear on  
5 what he has defined?

6 MS. BROWN-ROBERTS: Yes. I think that all  
7 the schools are. The Key Elementary School.

8 MR. FINNEY: Well, yes, but that's a  
9 public school. Key is a public school.

10 MS. BROWN-ROBERTS: Yes. But it is a  
11 school.

12 MR. FINNEY: The question was private  
13 schools.

14 CHAIRPERSON GRIFFIS: If you don't know  
15 off-hand, you don't know.

16 MS. BROWN-ROBERTS: I don't know off-hand.

17 MR. FINNEY: So you didn't examine that  
18 question of whether this was something new and  
19 different in terms of location.

20 MS. BROWN-ROBERTS: Is that a question?

21 MR. FINNEY: Yes.

22 MS. BROWN-ROBERTS: Can you repeat it?

23 MR. FINNEY: So you didn't examine whether  
24 this was something new in terms of location of a

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1 private school.

2 MS. BROWN-ROBERTS: I wouldn't say I  
3 examined in those terms, no.

4 MR. FINNEY: All right. Thank you. May I  
5 refer you back to your statement? At the bottom of  
6 page 6, you state "It should be noted that both the  
7 comprehensive plan and the SNAP plan," so you did take  
8 that into consideration, "recommends that permitted  
9 institutional uses should mitigate negative impacts  
10 they may have on the residential uses and neither  
11 prohibit schools in this area." Would you parse that  
12 statement for me? Would you explain what it's trying  
13 to say?

14 MS. BROWN-ROBERTS: I think what I was  
15 trying to address is that both the comprehensive plan  
16 and the SNAP plan did not recommend that schools  
17 should not be permitted in residential areas.

18 MR. FINNEY: No. But they did recommend  
19 some long-term limitations. Did they not?

20 MS. BROWN-ROBERTS: Yes. They did have  
21 some recommendations to go along with them.

22 MR. FINNEY: Yes. Thank you. Excuse me a  
23 moment.

24 MEMBER ETHERLY: Mr. Chair, while Mr.

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1 Finney is orientating himself, it might be useful  
2 point to take just a little bit of a snapshot as to  
3 where we are with timing. Once again, you're looking  
4 at 1:00 as a breaking point. It might be useful to  
5 get some guidance from Mr. Finney as to where he's at  
6 in his cross examination.

7 CHAIRPERSON GRIFFIS: How many more  
8 questions do you have, sir?

9 MR. FINNEY: I think with brevity on both  
10 sides we can finish by 1:00.

11 CHAIRPERSON GRIFFIS: Are all the other  
12 parties going to conduct cross examination of the  
13 Office of Planning?

14 PARTICIPANT: I have a few questions.

15 CHAIRPERSON GRIFFIS: Indeed.

16 MS. PRINCE: May I just take this  
17 opportunity to remind the Board that you have great  
18 discretion in limiting cross examination when it does  
19 not relate to the direct testimony, when it's  
20 duplicative, when it does not relate to the burden of  
21 proof.

22 CHAIRPERSON GRIFFIS: Yes. I understand.

23 MS. PRINCE: Without exercising that  
24 discretion, I'm concerned about how long this hearing

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1 will take.

2 CHAIRPERSON GRIFFIS: Okay. Thank you.

3 MR. FINNEY: I don't know how to respond  
4 to that gratuitous advice.

5 CHAIRPERSON GRIFFIS: No need to respond.  
6 I'll take it under consideration.

7 MR. FINNEY: Thank you. Now, Ms. Brown-  
8 Roberts, on page 1 of your report you state that the  
9 proposed school in this neighborhood would be more  
10 intense than prior uses. How would it be more  
11 intense?

12 MS. BROWN-ROBERTS: I think that the  
13 original school -- Just a second. The first school  
14 that was located on the subject property was for 25  
15 students. That was granted I think in 1961.  
16 Following that, the post-graduate program which was  
17 approved in 1963, classes were limited to Saturdays  
18 only. This school is something that's going to be in  
19 operation Monday to Friday, so I think it's a more  
20 intense use.

21 MR. FINNEY: Haven't you skipped a case in  
22 this historical sequence of the BZA refusing to move  
23 to enlarge the school to some 40 students?

24 MS. BROWN-ROBERTS: Yes. In 1962, it was

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1 the same original school. That one was denied for  
2 different reasons.

3 MR. FINNEY: Because of the intensity of  
4 use. Wasn't it?

5 MS. BROWN-ROBERTS: Yes. It was denied  
6 based on the increased number of students.

7 MR. FINNEY: Thank you. Now again on page  
8 6, you talk about the objectives contained in 1104.1  
9 paren. K and paren. of the comprehensive plan in  
10 protecting low density residential area with single  
11 family detached houses. Among the recommendations in  
12 that section are, and I quote from the section as do  
13 you in your report, "Control the external negative  
14 impact of new no residential uses that are permitted  
15 in residential areas to provide sufficient parking,  
16 loading, area pick up and drop off consistent with the  
17 activity level of the non-residential uses."

18 With respect to the permitted non-  
19 residential uses including schools, hospitals,  
20 churches and clinics, this policy is designed to  
21 reduce the possible adverse impacts of the non-  
22 residential uses on the residential area. That is a  
23 background. With that in mind, let us turn to  
24 different questions here. Noise. Let's talk about

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1 noise. Do you think it highly probable that the  
2 schools at this new Junior High School who are at the  
3 age when testosterone and estrogen is beginning to  
4 flow through their veins --

5 CHAIRPERSON GRIFFIS: Nice. Point in  
6 question, Mr. Finney.

7 MR. FINNEY: What?

8 CHAIRPERSON GRIFFIS: We know the age. I  
9 think we've all been there.

10 MR. FINNEY: All right. May I then ask do  
11 you think that they're going to come out at recess and  
12 be quiet and sit there and contemplate their navels  
13 and wonder what's going on in their groins?

14 CHAIRPERSON GRIFFIS: The point in  
15 question, Mr. Finney, if you wouldn't mind.

16 MR. FINNEY: All right.

17 CHAIRPERSON GRIFFIS: Navels, no navels.

18 MR. FINNEY: All right. Do you think  
19 children at that age are going to be quiet when they  
20 go out for recess?

21 CHAIRPERSON GRIFFIS: Good question.

22 MS. BROWN-ROBERTS: I don't think they're  
23 going to be silent.

24 MR. FINNEY: Thank you.

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1 MS. BROWN-ROBERTS: I think that they're  
2 going to talk, but I don't think that it's going to be  
3 excessive.

4 MR. FINNEY: Well, I don't know how.

5 CHAIRPERSON GRIFFIS: Okay. Next  
6 question.

7 MR. FINNEY: Next question, sir. On page  
8 5, you state in the first paragraph "The students of  
9 this age range are likely to be involved in some  
10 active recreation such as frisbee." There seems to be  
11 a high probability that they could get loud at times  
12 and toys may need to be retrieved from the neighbor's  
13 yards. Do you still stand by that statement?

14 MS. BROWN-ROBERTS: I think that knowing  
15 what a frisbee is that there is a possibility for  
16 that. I think that was one of the reasons why we  
17 recommended that maybe some type of buffer may be  
18 appropriate.

19 MR. FINNEY: We'll come back to that in a  
20 moment, ma'am. On the middle of page 7 in your  
21 report, you say "The number of students is larger than  
22 that of private use in the factor and is the factor  
23 that potentially gives rise to negative impacts from  
24 noise and traffic." So you agree that there is a

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1 noise problem here. Is that correct?

2 MS. BROWN-ROBERTS: I agree that the noise  
3 is going to be more than what is from the current  
4 situation.

5 MR. FINNEY: On page 7, you go on to state  
6 that "The only area of concern regarding noise is the  
7 neighboring house to the south of the school at 4913  
8 Mac Arthur." You state that noise impact might be  
9 resolved with some type of buffer that will not block  
10 light and air to the house and still block the noise.

11 Would you describe to me and to the Board the nature  
12 of a buffer that blocks noise but does not block light  
13 and air?

14 MS. BROWN-ROBERTS: I think as I stated  
15 somewhere else that was something that would be worked  
16 out between the Applicant and that neighbor as to what  
17 is appropriate.

18 MR. FINNEY: I want your concept of how  
19 you can build such a buffer against noise but not  
20 block air and light.

21 MS. BROWN-ROBERTS: I don't think that the  
22 noise is going to be excessive so that having some  
23 type of fence with some sort of landscaping or some  
24 other type of fence --

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1 MR. FINNEY: It would have to be a solid  
2 fence to block noise. Wouldn't it?

3 CHAIRPERSON GRIFFIS: Mr. Finney, if you  
4 want to direct the questions to what we're actually  
5 looking at. I understand what you're trying to do,  
6 but it's so general. Let's talk specifics.

7 MR. FINNEY: All right. Thank you, Mr.  
8 Chairman. Let us look at the top of that drawing  
9 there. (Indicating.) If you put a fence along that  
10 southern border, do you see it at the top there?

11 MS. BROWN-ROBERTS: Yes.

12 MR. FINNEY: Are you not going to block  
13 the light and air going into the residence which  
14 happens to sit at a grade below that parking lot?

15 MS. BROWN-ROBERTS: I think as the  
16 architect or someone had addressed that the fence is  
17 going to be set back somewhat from the property line,  
18 so that may help to mitigate the light and the air.

19 MR. FINNEY: But if you bring back that  
20 fence line, are you not cutting into the parking  
21 availability?

22 MS. BROWN-ROBERTS: Well, I wouldn't  
23 expect that the kids will be playing on the parking  
24 area. I was more thinking of the grassy area.

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1 MR. FINNEY: Who knows where a frisbee  
2 goes? Shoot an arrow or a frisbee into the air.

3 CHAIRPERSON GRIFFIS: Indeed. Next  
4 question.

5 MR. FINNEY: So you have said that the  
6 parking is adequate, but then how do you reconcile  
7 your contention the parking is adequate with your  
8 contention that a buffer fence would probably have to  
9 cut into that area? Would the parking still be  
10 adequate?

11 MS. BROWN-ROBERTS: I didn't say that. In  
12 addition to that we were talking about where the kids  
13 would be playing. That would be on the grassy area,  
14 not on the parking lot.

15 MR. FINNEY: Let us assume that it would  
16 be impossible to build such a buffer such as you were  
17 talking about.

18 CHAIRPERSON GRIFFIS: To what purpose  
19 would we assume that?

20 MR. FINNEY: It's a predicate to my next  
21 question.

22 CHAIRPERSON GRIFFIS: Going to noise?

23 MR. FINNEY: Yes.

24 CHAIRPERSON GRIFFIS: I don't see where

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1 it's leading the Board. If we have --

2 MR. FINNEY: I'm referring, sir, to  
3 Section 3104.1 which states that the special exception  
4 will not tend to adversely affect the use of  
5 neighboring property.

6 CHAIRPERSON GRIFFIS: I have no question  
7 of that, Mr. Finney. What I'm wondering is how does  
8 it inform and help the Board deliberate on this case  
9 if you're asking a speculative question of OP to  
10 remove something that we actually are looking at as  
11 part of the application?

12 MR. FINNEY: Well, thank you for your  
13 question, sir. What I'm trying to get at is that I  
14 think that you have two conflicting goals here. One  
15 is to try to find a buffer to protect a house, one  
16 property under Section 3104.1, and two is to provide  
17 adequate parking space. That's what I'm trying to get  
18 at.

19 CHAIRPERSON GRIFFIS: Okay. Perhaps it  
20 would facilitate the answers and the information the  
21 Board gets if you ask very directly rather than being  
22 somewhat --

23 MR. FINNEY: Argumentative, I guess,  
24 that's my nature. Let me go on then, sir.

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1 CHAIRPERSON GRIFFIS: You don't need to  
2 move off the topic. What I'm saying the Office of  
3 Planning is perfectly capable of fielding very direct  
4 questions, and we're frankly more able to hear the  
5 answers to those. Secondly, it may be more  
6 appropriate to bring up an awful lot that you're  
7 trying to accomplish in cross examination in your own  
8 testimony.

9 MR. FINNEY: Thank you. Let me just move  
10 on here.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. FINNEY: If noise is not a problem as  
13 you contend then why did you recommend on page 9 of  
14 your report that there be no summer school program at  
15 this proposed school?

16 MS. BROWN-ROBERTS: I think as I stated I  
17 don't think that the noise is going to be excessive.  
18 The noise is going to be more than what is there  
19 currently. There is going to be some increase in  
20 noise from kids playing outside. So I think as I said  
21 in the recommendation as one of the conditions that if  
22 the neighbor to the south thinks that the noise is  
23 going to be so excessive then the Applicant should  
24 provide some sort of buffer to ease that concern.

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1 MR. FINNEY: Even if that cuts into the  
2 parking spaces.

3 MS. BROWN-ROBERTS: The buffer that I was  
4 referring to was from the grassy area and not from the  
5 parking spaces. But the noise that you're talking  
6 about maybe from cars in regards to the parking  
7 spaces. Is that what you're --

8 MR. FINNEY: Let me go back to my original  
9 question which I don't think you answered with all due  
10 respect, ma'am. If the noise is not a problem, there  
11 will be more noise but you say not a problem, then why  
12 did you recommend that there be no summer school  
13 program at this proposed new school?

14 MS. BROWN-ROBERTS: As I said because the  
15 noise is going to be more excessive than what is there  
16 now. It was one of the contentions of the  
17 neighborhood. In the Zoning Regulations, it says that  
18 it's permitted but we have to mitigate against some of  
19 these things. I think that prohibiting the summer  
20 school so that there's this period of time when  
21 there's no kids, so there is no noise there, also  
22 prohibiting it on weekends, so it lessens. The noise  
23 is going to be more than what is there now, but we  
24 tried to mitigate against that by prohibiting it for

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1 some periods of time.

2 MR. FINNEY: So it was this proposal of no  
3 summer school that did grow out of a concern for more  
4 noise. Didn't it?

5 MS. BROWN-ROBERTS: Yes. Definitely.

6 CHAIRPERSON GRIFFIS: I think that's well  
7 established even in the written reports.

8 MR. FINNEY: All right. On page 1, you  
9 state "So many actions have to take place to improve  
10 the traffic and parking situation." Put aside traffic  
11 for the moment. What is it about the parking  
12 situation that needs to be improved?

13 MS. BROWN-ROBERTS: I think that parking  
14 we were talking about at that stage was before we had  
15 said there was going to be the car pooling.  
16 Originally the students were going to be dropped off  
17 at the site. I think that is where that was  
18 addressing.

19 MR. FINNEY: I think I read it, and I'll  
20 have to reread it, that you were talking about the  
21 efficiency of the parking lot and whether additional  
22 steps were going to have to be taken. No?

23 MS. BROWN-ROBERTS: No. That was not a  
24 concern of mine.

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1                   MR. FINNEY:       All right.       On the  
2 enforcement as you know elaborate plans have been  
3 compounded here for the parents and nannies depositing  
4 their students at a gathering place in White Haven and  
5 shove them over to the new Junior High. There are no  
6 plans for no parking for new -- on White Haven for car  
7 pooling.

8                   You yourself on page 5 expressed concern  
9 that after a while that parents will disregard the  
10 traffic control plan and will drop the children  
11 directly off at the Junior High or maybe nearby so  
12 they can walk to school. Tell me how all these plans  
13 are going to be enforced.

14                   MS. BROWN-ROBERTS: I think DDOT has come  
15 up with and has made some recommendations on the  
16 enforcement of the whole car pooling plan.

17                   MR. FINNEY: How are we going to make sure  
18 that parents comply with all this?

19                   MS. BROWN-ROBERTS: Again, I think that  
20 was addressed in, and I don't quite remember all the  
21 details that DDOT had recommended of how to address  
22 that.

23                   MR. FINNEY:       One final line of  
24 questioning. Your report recommends 17 conditions.

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1 Correct?

2 CHAIRPERSON GRIFFIS: Eighteen as far as I  
3 counted.

4 MR. FINNEY: Eighteen maybe. One slipped  
5 in. Yes. The supplemental one. And I'm sure more  
6 conditions are going to be added. Are we not trying  
7 to drive a square peg into a round hole here with all  
8 these conditions?

9 MS. BROWN-ROBERTS: No.

10 MR. FINNEY: Thank you. That's it, Mr.  
11 Chairman.

12 CHAIRPERSON GRIFFIS: Thank you very much.

13 I would think it might be wise if we took a lunch  
14 break at this point if that's not totally  
15 objectionable to everybody. Then we can come back and  
16 continue with cross examination of Office of Planning.

17 Is that satisfactory? I think we should take 40  
18 minutes which puts us back depending on which clock  
19 you're looking at around 1:30. Is everyone okay with  
20 that?

21 (No response.)

22 CHAIRPERSON GRIFFIS: Very well. We'll  
23 see you then. Off the record.

24 (Whereupon, at 12:50 p.m., the above-

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entitled matter recessed to reconvene at  
1:41 p.m. the same day.)

1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 1:41 p.m.

3 CHAIRPERSON GRIFFIS: On the record. Let  
4 us reconvene and begin. Yes, sir.

5 MR. LOVENDUSKY: Chairman Griffis, Michael  
6 Lovendusky, opponent to the application. In the break  
7 at 1:16 p.m., I had a telephone conversation with Mrs.  
8 Sharon Hoy who confirmed her understanding that in  
9 fact Cathy Wright and Larry Skrivseth are authorized  
10 to represent them.

11 It is her recollection as it is ours that  
12 this was discussed on our first day of hearing and  
13 memorialized in the transcript. Ms. Hoy is ill at  
14 home and was regrettably unable to attend this  
15 afternoon though it was her intention to attend this  
16 afternoon. The letter that she submitted for the  
17 record was in no way to circumscribe or constrain Mr.  
18 Skrivseth or Mrs. Wright in their representation of  
19 the Hoys .

20 CHAIRPERSON GRIFFIS: Okay. We'll take  
21 that under advisement. I think the Board's  
22 recollection was a little different than that.  
23 However, I don't think that we will lose any of the  
24 substance or the issues by any means. We'll take it

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1 under advisement and continue. With that, we are  
2 still in cross examination of the Office of Planning.

3 MEMBER ETHERLY: Mr. Chair, as we proceed  
4 I just wanted to note we will recall that we did have  
5 an objection near the close of our morning session  
6 from Counsel for the Applicant. I just wanted to  
7 comment a little bit about that. I think it was  
8 appropriate for us to provide a little bit of latitude  
9 with respect to the questions that came from the ANC  
10 member.

11 I thought they were very good and very  
12 incisive questions, but I also want to note that I do  
13 agree with you that as we move forward in our effort  
14 to resolve what is now our sixth day of hearings on  
15 this matter that to the extent that we can be very  
16 focused and very tight with our questioning I think is  
17 going to do us all very well. Once again, I thought  
18 it was appropriate for us to perhaps probe some of the  
19 things that were highlighted in the Office of Planning  
20 report. I thank the ANC representative for that, but  
21 I definitely think the more we can focus and fine tune  
22 our remarks to move forward, the better served we're  
23 all going to be. Thank you, Mr. Chair.

24 CHAIRPERSON GRIFFIS: Thank you very much.

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1 Previously we had set an order for the parties. It's  
2 my recollection we'll do the ANC first and then Mr.  
3 Lovendusky. Is that correct? Then do you want to do  
4 the Neighbors United?

5 PARTICIPANT: Neighbors United.

6 CHAIRPERSON GRIFFIS: Okay. We'll do the  
7 ANC, Neighbors United, Mr. Lovendusky, and then Mr.  
8 Skrivseth. That will be the order we'll proceed with.  
9 Then Board questions of course. Yes, Ms. Prince.

10 MS. PRINCE: Just to interject, following  
11 the presentation of the Advisory Neighborhood  
12 Commission, the order of procedure provides for  
13 parties and persons in support of the application  
14 prior to the initiation of the case of the opposition.

15 CHAIRPERSON GRIFFIS: Yes.

16 MS. PRINCE: Oh, okay. I thought you were  
17 jumping over that.

18 CHAIRPERSON GRIFFIS: No. I'm just going  
19 through the cross examination portion, so they can be  
20 prepared as they come through.

21 MS. PRINCE: I'm sorry.

22 CHAIRPERSON GRIFFIS: So let us continue  
23 then with Neighbors United.

24 MS. VANSICKLE: Good afternoon, Mr.

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1 Chairman and Members of the Board and Ms. Brown-  
2 Roberts. My name is Tina Vansickle in opposition  
3 continuing cross examination. Ms. Brown-Roberts, when  
4 you did your analysis, did you do any original data  
5 collection?

6 MS. BROWN-ROBERTS: No.

7 MS. VANSICKLE: You did not.

8 MS. BROWN-ROBERTS: I'm not sure. What  
9 type of data are you talking about?

10 MS. VANSICKLE: I mean data collection to  
11 look at the site, to analyze the measurements of the  
12 site, or did you rely on the Applicant's submission  
13 for the facts that would be used in making a  
14 determination on the proposed site as to the  
15 configuration, layout, so forth?

16 MS. BROWN-ROBERTS: I relied on their site  
17 plan. I did a site visit to look at the site and the  
18 surrounding area. I relied on their submissions for  
19 some information, yes.

20 MS. VANSICKLE: When you visited the site,  
21 I would clarify I was at that visit, do you recall  
22 commenting on the smallness of the site?

23 MS. BROWN-ROBERTS: I did comment on the  
24 size of the site, yes.

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1 MS. VANSICKLE: In looking at these  
2 proposals, did you do any independent review of the  
3 architect's plan or the engineering upgrades that  
4 could negatively impact the neighbors such as the  
5 noise from additional heating and cooling  
6 requirements?

7 MS. BROWN-ROBERTS: No. I did not look at  
8 the heating and cooling, no.

9 MS. VANSICKLE: We've already addressed  
10 frisbees, so I only want to take a moment to ask an  
11 additional aspect of that. That's really a safety  
12 aspect about frisbees going not just to the neighbors  
13 but onto Mac Arthur Boulevard which is only ten to 12  
14 feet away from the low hedge bordering the western  
15 parameter of the proposed site. Did you take that  
16 into consideration?

17 MS. BROWN-ROBERTS: I wouldn't put too  
18 much emphasis on that frisbee. It was just an example  
19 of something that may happen. I mean, the kids may  
20 not play frisbee, so I don't want to make a judgement  
21 statement based on one frisbee. But I suppose it's  
22 realistic to say if the kids are playing there  
23 something may fly on Mac Arthur Boulevard, yes.

24 MS. VANSICKLE: At the time when you

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1 reported and concluded on page 6 that outdoor  
2 activities will be limited, what amount of time did  
3 you believe the students would be outside?

4 MS. BROWN-ROBERTS: More likely a morning  
5 break maybe for say 15 minutes, a lunch break, and  
6 then maybe an afternoon break. I didn't expect that  
7 say for a 15 minute break all 60 kids would be outside  
8 at one time.

9 MS. VANSICKLE: You did or did not expect  
10 that?

11 MS. BROWN-ROBERTS: I did not.

12 MS. VANSICKLE: So there would be a  
13 rotational character of the breaks outside on the  
14 lawn. Is that correct?

15 MS. BROWN-ROBERTS: Possibly. But at the  
16 same time, I wasn't expecting that there would be a  
17 break although there's a rotational break that there  
18 would be kids outside every 15 minutes, or let's say  
19 every 20 minutes throughout the day.

20 MS. VANSICKLE: No. Would it be possible  
21 however that there could be intermittent durations  
22 that would continue throughout the day?

23 MS. BROWN-ROBERTS: I don't know. I  
24 wouldn't like to make that judgement.

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1 MS. VANSICKLE: Given that you have 60  
2 students, what was your expectation about how many  
3 students might be outside on the lawn, and if there  
4 are 60, how many breaks would you actually need from  
5 say 8:00 to 12:00?

6 MS. BROWN-ROBERTS: I was thinking about  
7 one break knowing the middle school schedule. I  
8 expected that some of the kids would be inside. One  
9 of the things they stated is that the classes weren't  
10 going to be very big. I think they were limited to  
11 around 10 or 15 kids. I really wasn't expecting that  
12 there would be long periods of time where the kids  
13 were outside.

14 MS. VANSICKLE: But you did not anticipate  
15 this rotational character with the groups and so  
16 forth.

17 MS. BROWN-ROBERTS: Even with the  
18 rotational character, I still don't believe that there  
19 would be long periods of time where the kids are  
20 outside, say longer than their lunch hour.

21 MS. VANSICKLE: When you reviewed the site  
22 plan and the statement of the Applicant, did you  
23 notice that the door to the life safety addition  
24 opened to the east?

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1 MS. BROWN-ROBERTS: No.

2 MS. VANSICKLE: So you did not ascertain  
3 from the architect whether or not that would be an  
4 often used door and it would lead to an egress to the  
5 backyard which is close to the Hoy's residence.

6 MS. BROWN-ROBERTS: I think even looking  
7 at it now, it's not a concern.

8 MS. VANSICKLE: Are you aware that the  
9 Applicant makes a statement on page 12 that they have  
10 closed the existing rear door because it had noise  
11 impacts and that its use will be limited to emergency  
12 and that this life safety addition door is on the same  
13 side of the building and not too far distant from that  
14 particular rear door to the existing building?

15 MS. BROWN-ROBERTS: No.

16 MS. VANSICKLE: I just want to turn to  
17 some conditions here. Please let me know if I'm  
18 correct. Your April 9th report to the B.A. notes 17  
19 conditions you recommend for an operation of the  
20 school. Your April 15th supplemental contained a one  
21 time enforcement mechanism numbered 18. Have I  
22 characterized this correctly?

23 MS. BROWN-ROBERTS: Yes.

24 MS. VANSICKLE: I heard the ones that you

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1 did in your oral testimony just a moment ago, but just  
2 for the record, are these 17 still the ones that  
3 you're working with now?

4 MS. BROWN-ROBERTS: Basically --

5 MS. VANSICKLE: Seventeen and eighteen,  
6 excuse me.

7 MS. BROWN-ROBERTS: Yes. Basically, yes.

8 MS. VANSICKLE: And then I think you also  
9 mentioned that you were adopting or endorsing the DDOT  
10 recommendations.

11 MS. BROWN-ROBERTS: Yes.

12 MS. VANSICKLE: Can you tell me which  
13 version of the DDOT conditions you are actually  
14 endorsing? Are they in the May 9th report plus the  
15 two supplementals?

16 MS. BROWN-ROBERTS: I think in my report  
17 under number 7 I tried to address some of the drop off  
18 and some of the transportation things. I think those  
19 were expanded on by DDOT. That's why instead of  
20 limited to this I said incorporate the DDOT  
21 recommendations.

22 MS. VANSICKLE: So is it true that the  
23 conditions in the May 10th ken laden report are ones  
24 that you endorse?

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1 MS. BROWN-ROBERTS: I think there were two  
2 sets. I think I maybe want to say that when the Board  
3 reviews these, I mean, they have to take into  
4 consideration what was recommended by DDOT, so those  
5 would be the ones that I support.

6 MS. VANSICKLE: Okay. When you developed  
7 the 17 proposed conditions, did you consider how each  
8 of the 17 conditions could be objectively monitored  
9 and enforced?

10 CHAIRPERSON GRIFFIS: I think we had that  
11 question. Did we not?

12 MS. VANSICKLE: On the conditions? On the  
13 monitoring of the 17 conditions in the OP report?

14 CHAIRPERSON GRIFFIS: Mr. Finney if I'm  
15 not mistaken asked the same question of enforcement.

16 MS. VANSICKLE: Well, I'm thinking also of  
17 monitoring.

18 CHAIRPERSON GRIFFIS: That would go  
19 towards enforcement. Wouldn't it? And compliance.  
20 Do you have a brief answer?

21 MS. BROWN-ROBERTS: I think DDOT also came  
22 up with a timetable of stuff that had to be done and  
23 some sort of monitoring. Also in this, I incorporated  
24 some information that had to be submitted to the

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1 compliance specialist, so I think that would take care  
2 of that.

3 MS. VANSICKLE: Well, I'm just asking here  
4 because it's possible to objectively verify  
5 installation and lighting, but how would you know if  
6 the number of students is only 40 during the first  
7 year and 60 thereafter? Are you relying on self  
8 certification?

9 MS. BROWN-ROBERTS: Well, I think that  
10 when they go for their occupancy permit it will state  
11 how many students they are allowed to have.

12 MS. VANSICKLE: Did you anticipate any  
13 government monitoring of this?

14 MS. BROWN-ROBERTS: As I said, I included  
15 the compliance specialist, yes.

16 MS. VANSICKLE: How do you treat loud  
17 noise associated with casual recreational use in terms  
18 of some objective standard to know if they are  
19 actually complying?

20 MS. BROWN-ROBERTS: I don't know.

21 MS. VANSICKLE: I mean, the question is  
22 what would be the evidentiary requirement to monitor  
23 your condition.

24 MS. BROWN-ROBERTS: I think that would be

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1 something that if there was a complaint the compliance  
2 officer would go out to monitor.

3 MS. VANSICKLE: So you didn't anticipate  
4 in the developing of these conditions to monitor that  
5 District agencies might be involved in monitoring,  
6 spot checks, video, et cetera, decibel counts.

7 MS. BROWN-ROBERTS: If I did, I'm not sure  
8 if I got that. I'm sorry.

9 MS. VANSICKLE: If the school is  
10 frequently violating the conditions but offers excuses  
11 such as this was a one time event, special occasion or  
12 that some situation like visitors are out of their  
13 control, how bad does it have to get before your  
14 office would consider them out of compliance?

15 MS. BROWN-ROBERTS: It's not my office who  
16 would be monitoring. It's the compliance officer and  
17 DCRA.

18 CHAIRPERSON GRIFFIS: Right.

19 MS. VANSICKLE: But as you established the  
20 conditions, you did not anticipate building in any  
21 measurement of how frequently they would be out of  
22 compliance before it would be considered a problem.

23 MS. BROWN-ROBERTS: I think that no, I  
24 don't think that would be appropriate.

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1 CHAIRPERSON GRIFFIS: Meaning the  
2 conditions you were anticipating would be complied  
3 with.

4 MS. BROWN-ROBERTS: Right. I expect that  
5 the conditions would be complied with.

6 CHAIRPERSON GRIFFIS: If they're not in  
7 compliance --

8 MS. BROWN-ROBERTS: If they're not, then  
9 the compliance officer and DCRA would be the ones who  
10 are monitoring that. I don't think it should be set  
11 up to say if they break the law or break the condition  
12 three times that is when we would go and monitor them.

13 CHAIRPERSON GRIFFIS: Right.

14 MS. BROWN-ROBERTS: No. That is not  
15 necessary.

16 CHAIRPERSON GRIFFIS: So you're not  
17 offering steps to levels of compliance.

18 MS. BROWN-ROBERTS: No.

19 CHAIRPERSON GRIFFIS: Okay.

20 MS. VANSICKLE: No. I was just looking to  
21 see if she built in measurements for these in  
22 anticipation of trying to do monitored enforcement.  
23 When you were preparing your conditions, did you look  
24 at DDOT's matrix? I think you mentioned that you were

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1 adopting that matrix.

2 MS. BROWN-ROBERTS: Our recommendation  
3 came in before DDOT did the matrix.

4 MS. VANSICKLE: Well, getting to the prior  
5 discussion if it was three times that you might not  
6 consider that a problem, how would you treat a  
7 situation where the Applicant was in compliance half  
8 of the time? That matrix seems to be sort of a pass-  
9 fail.

10 CHAIRPERSON GRIFFIS: You're getting out  
11 of the field. I don't see the role of Office of  
12 Planning in terms of the continuing operation or  
13 compliance.

14 MS. VANSICKLE: I thought she said she  
15 endorsed and adopted the DDOT.

16 CHAIRPERSON GRIFFIS: She did, but you're  
17 asking her then to speculate on a non-compliance  
18 situation and what would they do. They won't have any  
19 role. She's already stated in her mind that it would  
20 be DCRA and the compliance officer out of the Office  
21 of Zoning.

22 MS. VANSICKLE: But when she endorsed the  
23 matrix that apparently looks like a pass-fail matrix,  
24 we're trying to determine what was in her mind as to

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1 whether or not this was something OP could adopt.

2 CHAIRPERSON GRIFFIS: And she stated it.  
3 She did adopt it. Are you trying to get her to answer  
4 whether she thinks it can actually be complied with?

5 MS. VANSICKLE: I'm trying to get her to  
6 answer that when she reviewed this in her ongoing  
7 activities whether or not the nature of the matrix  
8 which is a pass-fail matrix brought to mind what would  
9 constitute compliance with that matrix.

10 CHAIRPERSON GRIFFIS: It seems like you  
11 answered the question yourself. It's a pass-fail  
12 matrix. Do you have an answer to that?

13 MS. VANSICKLE: Yes. But the pass-fail is  
14 if they're out of compliance half of the time during  
15 the year is that considered pass-fail.

16 CHAIRPERSON GRIFFIS: Is that your  
17 understanding of that?

18 MS. BROWN-ROBERTS: That was my  
19 understanding.

20 CHAIRPERSON GRIFFIS: Okay.

21 MS. VANSICKLE: Turning to the community  
22 liaison group since the Applicant is establishing,  
23 maintaining and conducting the meetings of the  
24 community liaison group anticipated under condition

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1 17, who is really in control of the meetings and what  
2 did you expect as output from these meetings?

3 MS. BROWN-ROBERTS: I'm expecting that if  
4 there are problems that the community is having they  
5 will bring them to the attention of the Applicant.  
6 Hopefully they can be resolved then. I mean, I  
7 wouldn't expect that it would be any of the conditions  
8 that they would be looking at, but in case other  
9 things came up or there were other issues I would  
10 expect that those would be things that would be  
11 addressed there.

12 MS. VANSICKLE: I'm not quite certain.  
13 Are you saying that the community liaison group would  
14 not address the conditions or would address the  
15 conditions plus other things?

16 MS. BROWN-ROBERTS: What I'm saying is  
17 that I'm anticipating that the condition would be  
18 adhered to. If there are other things that would come  
19 up, those are the things that would be addressed. At  
20 the same time, I don't say that there may be some  
21 things in the conditions that need to be refined or  
22 something like that. Those would definitely be  
23 appropriate to be taken up.

24 MS. VANSICKLE: So you were anticipating

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1 that the focus of the community liaison group is not  
2 specifically to look at the conditions.

3 MS. BROWN-ROBERTS: Hopefully not, because  
4 if it's granted they should be living up to the  
5 conditions.

6 MS. VANSICKLE: So the community liaison  
7 group is not going to be looking at the 17 conditions  
8 or whatever number of orders under the B.A. order.

9 MS. BROWN-ROBERTS: I am not ruling that  
10 out, but at the same time if there are conditions, we  
11 would hope that they would be adhered to.

12 MS. VANSICKLE: I see. Okay. Thank you.  
13 Turning to condition 18, the so-called enforcement  
14 mechanism. This addresses when the school can go from  
15 40 to 60 students. Can you confirm that this is a one  
16 time decision?

17 MS. BROWN-ROBERTS: I'm not sure. What do  
18 you mean by a "one time decision?"

19 MS. VANSICKLE: That this condition  
20 basically exists to evaluate a moment of time prior to  
21 the acknowledgment or the decision by the compliance  
22 specialist to let this school go forward from 40 to  
23 60.

24 MS. BROWN-ROBERTS: Yes.

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1 MS. VANSICKLE: I mean, it's not an  
2 ongoing group. It's not an ongoing process.

3 MS. BROWN-ROBERTS: Of say increasing it  
4 beyond 60?

5 MS. VANSICKLE: No. Looking at  
6 conditions.

7 MS. BROWN-ROBERTS: Number.

8 MS. VANSICKLE: Condition 18.

9 MS. BROWN-ROBERTS: Okay.

10 MS. VANSICKLE: Let's read it.

11 MS. BROWN-ROBERTS: Oh, I think I  
12 understand what you're saying. You're asking if this  
13 group would be a group that is say meeting over a  
14 period of time and not just address going over 40  
15 students.

16 MS. VANSICKLE: Right. The enforcement  
17 mechanism is essentially a one time effort to  
18 ascertain facts before a report is sent to the  
19 compliance specialist upon which a decision will be  
20 made for the school to go from 40 to 60.

21 MS. BROWN-ROBERTS: Right.

22 MS. VANSICKLE: Are you anticipating that  
23 in that mechanism, which I believe calls for the  
24 Applicant to submit a report to the compliance

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1 specialist, that the compliance report will be a self  
2 certification?

3 MS. BROWN-ROBERTS: What do you mean?

4 MS. VANSICKLE: That the Applicant will be  
5 submitting a report to the compliance specialist.  
6 That's in the language.

7 MS. BROWN-ROBERTS: Yes.

8 MS. VANSICKLE: My question is, is the  
9 Applicant's compliant report essentially a self  
10 certification in your mind.

11 MS. BROWN-ROBERTS: No. Basically I think  
12 they're going to address or show how they have met the  
13 conditions to increase beyond the 40 students. Then  
14 that would be verified by DDOT, ANC, and the  
15 compliance specialist will take a look at that report.

16 MS. VANSICKLE: You note a consultation  
17 mechanism between the compliance specialist and OP,  
18 DDOT, ANC-3D, and reps of the community liaison  
19 program in this condition 18. What reports and data  
20 does OP anticipate providing to the compliance  
21 specialist during this consultation?

22 MS. BROWN-ROBERTS: I think after the  
23 Applicant has submitted something we would take a look  
24 at it, try and verify the information, work with DDOT

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1 and the ANC and representatives to come up with a  
2 recommendation to the compliance specialist.

3 MS. VANSICKLE: Looking at again this  
4 enforcement mechanism, are you anticipating that the  
5 establishment of this provision essentially precludes  
6 any separate action by any of the relevant parties to  
7 file formal complaints regarding the non-performance  
8 conditions until the Applicant files its report  
9 identified in condition 18?

10 MS. BROWN-ROBERTS: No.

11 MS. VANSICKLE: What if the Applicant  
12 decided it does not need to expand the school beyond  
13 the 40 students? Does it need to submit a report?

14 MS. BROWN-ROBERTS: No.

15 MS. VANSICKLE: Is that what you intended?

16 MS. BROWN-ROBERTS: I hadn't looked at  
17 that.

18 MS. VANSICKLE: The language appears to be  
19 somewhat unclear in condition 18. Was it your  
20 intention that the Applicant could submit the report  
21 any time it feels it can demonstrate compliance, i.e.  
22 perhaps within three months of the B.A. order?

23 MS. BROWN-ROBERTS: It says "After the  
24 first year enrollment may be increased to not more

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1 than 60 students."

2 MS. VANSICKLE: But it doesn't speak to  
3 when the report would be issued, so that's the nature  
4 of my question.

5 MS. BROWN-ROBERTS: I would think it would  
6 be after the first year and then the report. If they  
7 intend to increase the number of students, then they  
8 would do the report.

9 MS. VANSICKLE: Let me ask this as a  
10 clarification then. Would the school be evaluated on  
11 the compliance at one point in time such as the time  
12 of their report or at the end of the first year, or is  
13 the school supposed to be in compliance on all B.A.  
14 conditions throughout the period up to the end of the  
15 first year irregardless of when they file the report?

16 MS. BROWN-ROBERTS: I would think that  
17 they would have to be in compliance at all times. The  
18 report would be needed if they need to go up to 60.

19 MS. VANSICKLE: Turning to car pooling.  
20 In your list of proposed conditions, you have a car  
21 pool. We recognize that you may refer to DDOT on  
22 traffic issues, but does your office think it is  
23 adequate to have a car pool which only addresses the  
24 afternoon and not morning rush hour?

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1 MS. BROWN-ROBERTS: I think the car pool  
2 was supposed to be for both in the morning and in the  
3 evening. That was my understanding.

4 MS. VANSICKLE: Does your office think it  
5 is adequate to have delayed implementation of  
6 financial incentives given the importance of car  
7 pooling that you have stated in your report?

8 MS. BROWN-ROBERTS: I wouldn't want to  
9 tell the school what sort of incentives they should  
10 use. I think it should be up to them as to what sort  
11 of incentives they want to use with the parents so  
12 long as they have the program.

13 MS. VANSICKLE: We've discussed whether or  
14 not there would be government monitoring, but we have  
15 not discussed how the school will monitor itself. Did  
16 you anticipate that they would have any videos to  
17 determine the shuttle bus activity or the impact on  
18 the adjacent neighbors?

19 MS. BROWN-ROBERTS: No. I did not come up  
20 with any concept of how they would monitor themselves.

21 MS. VANSICKLE: I have no further  
22 questions.

23 CHAIRPERSON GRIFFIS: Thank you very much.

24 MR. LOVENDUSKY: Good afternoon. Michael

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1 Lovendusky, party opponent to the application. Good  
2 afternoon, Ms. Brown-Roberts.

3 MS. BROWN-ROBERTS: Good afternoon.

4 MR. LOVENDUSKY: Ms. Brown-Roberts, was  
5 your office aware of the parties to this application  
6 at the time that you submitted your report?

7 CHAIRPERSON GRIFFIS: There weren't  
8 parties when you submitted your report.

9 MS. BROWN-ROBERTS: Right. No.

10 MR. LOVENDUSKY: Well, the recommendation  
11 of the office was filed after this application was  
12 made necessarily, so my question is whether your  
13 office was aware of the parties in opposition to this  
14 application.

15 MS. BROWN-ROBERTS: Yes. I reviewed the  
16 file and saw persons who were in opposition, yes.

17 MR. LOVENDUSKY: Okay. Did you  
18 communicate with me at all? Did you consult with the  
19 Lovendusky family or anyone in the Lovendusky family  
20 about the contents of your report before it was filed?

21 MS. BROWN-ROBERTS: No.

22 MR. LOVENDUSKY: Would you be surprised to  
23 learn that no one in your office consulted with anyone  
24 in the Lovendusky family prior to the filing of your

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1 report?

2 MS. BROWN-ROBERTS: I think we received a  
3 letter. I know I sent you a letter. You wrote a  
4 letter to our director, or it came from the -- office  
5 to our director. I did reply to that.

6 MR. LOVENDUSKY: That is correct. Did  
7 anyone then make an effort to communicate further with  
8 the Lovendusky family with regard to their concerns?

9 MS. BROWN-ROBERTS: No I did not.

10 MR. LOVENDUSKY: One of the conditions  
11 that the office recommended is the creation of the  
12 community liaison group.

13 MS. BROWN-ROBERTS: Yes.

14 MR. LOVENDUSKY: In that proposal, it is  
15 imagined that there would be two representatives from  
16 the ANC participating. Did you ask the ANC whether it  
17 would be interested in participating in the quarterly  
18 meetings of the community liaison group?

19 MS. BROWN-ROBERTS: No I did not, but  
20 usually on cases that I have worked on that have come  
21 before the B.A., it was left up to the Applicant to do  
22 that coordination.

23 MR. LOVENDUSKY: It was imagined also with  
24 regard to the community liaison group that two

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1 representatives of the Palisades Citizens Association  
2 would participate in the group. Did you ask the  
3 Palisades Citizens Association if it was interested in  
4 participating in this group?

5 MS. BROWN-ROBERTS: No.

6 MR. LOVENDUSKY: In the proposal in the  
7 condition, it was imagined that four residents, two on  
8 Ashby Street and two elsewhere in the community would  
9 participate in the group. Did you identify anyone  
10 among the neighborhood who would participate in this  
11 group?

12 MS. BROWN-ROBERTS: No.

13 MR. LOVENDUSKY: The maintenance and  
14 operation of this group, would it be organized by the  
15 Applicant? Is that correct?

16 MS. BROWN-ROBERTS: Yes.

17 MR. LOVENDUSKY: Did you consider prior to  
18 the filing of the report any safety considerations  
19 with regard to the students and faculty and staff  
20 operating at 4925 Mac Arthur?

21 MS. BROWN-ROBERTS: Yes.

22 MR. LOVENDUSKY: What safety  
23 considerations did you consider?

24 MS. BROWN-ROBERTS: The dropping off of

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1 the kids, access into the building which they  
2 addressed would be handicapped accessible. I think  
3 those are the two main things.

4 MR. LOVENDUSKY: Did you take into  
5 consideration the number of traffic violations on Mac  
6 Arthur Boulevard?

7 MS. BROWN-ROBERTS: No. That would be  
8 DDOT.

9 MR. LOVENDUSKY: To the best of your  
10 knowledge, did DDOT take into consideration the number  
11 of traffic violations?

12 MS. BROWN-ROBERTS: I don't know.

13 MR. LOVENDUSKY: At the time that your  
14 office filed its report, was there a compliance  
15 program in existence at the Board of Zoning  
16 Adjustments?

17 MS. BROWN-ROBERTS: You mean the  
18 compliance officer?

19 MR. LOVENDUSKY: Yes.

20 MS. BROWN-ROBERTS: No.

21 MR. LOVENDUSKY: So what was imagined to  
22 be the compliance mechanism at the time you filed your  
23 report?

24 MS. BROWN-ROBERTS: We were informed that

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1 this was a position that the Office of Zoning was  
2 creating.

3 MR. LOVENDUSKY: So your office relied on  
4 speculation that there might be a compliance officer  
5 created at the time of the report.

6 MS. BROWN-ROBERTS: I think the position  
7 was funded and advertised at the time.

8 MR. LOVENDUSKY: No further questions.

9 CHAIRPERSON GRIFFIS: Thank you.

10 MR. SKRIVSETH: Good afternoon, Ms. Brown-  
11 Roberts.

12 MS. BROWN-ROBERTS: Good afternoon.

13 MR. SKRIVSETH: I'm Lawrence Skrivseth,  
14 party opponent. Did the Office of Planning ever speak  
15 to me or to my wife?

16 MS. BROWN-ROBERTS: No.

17 MR. SKRIVSETH: Did the Office of Planning  
18 ever communicate with my family by mail?

19 MS. BROWN-ROBERTS: No.

20 MR. SKRIVSETH: Did your office speak to  
21 Mr. or Mrs. Hoy?

22 MS. BROWN-ROBERTS: No.

23 MR. SKRIVSETH: Did your office speak to  
24 the Rochashans or contiguous at the corner?

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1 MS. BROWN-ROBERTS: No.

2 MR. SKRIVSETH: In other words, did your  
3 office speak to any of the abutting neighbors?

4 MS. BROWN-ROBERTS: No, not on the two  
5 sides, no.

6 MR. SKRIVSETH: When you were on the site,  
7 did you make any effort to see whether anyone was home  
8 nearby?

9 MS. BROWN-ROBERTS: No.

10 MR. SKRIVSETH: What weight did you give  
11 to the ANC-3D recommendation that the current request  
12 be denied and why?

13 MS. BROWN-ROBERTS: It is not my place to  
14 give weight. It is not the Office of Planning's.

15 MR. SKRIVSETH: Do you read these  
16 recommendations?

17 MS. BROWN-ROBERTS: Yes, sir.

18 MR. SKRIVSETH: Then you must evaluate  
19 them in one way or another.

20 MS. BROWN-ROBERTS: I do evaluate them or  
21 I did.

22 MR. SKRIVSETH: On page 4 of the report,  
23 you describe the character, scale, number of students,  
24 and traffic impacts as "compatible to the residences"

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1 and "less intrusive than the proposed use." Have  
2 these uses really been compatible at all times?

3 MS. BROWN-ROBERTS: I don't know for all  
4 times, but both prior uses were there for a number of  
5 years. I didn't see anything to say that they were  
6 not abiding by the B.A. order.

7 MR. SKRIVSETH: Is not the proposed use  
8 considerably more intrusive than the existing use?

9 MS. BROWN-ROBERTS: Yes.

10 MR. SKRIVSETH: On page 4 of your report,  
11 you state that the grade difference between 4925 Mac  
12 Arthur Boulevard and 4913 Mac Arthur Boulevard is  
13 approximately five feet. How did you determine that  
14 figure?

15 MS. BROWN-ROBERTS: I think that was done  
16 from some information that was provided by the  
17 Applicant. I did go on the property and look at it.

18 MR. SKRIVSETH: Isn't the grade difference  
19 actually considerably greater than that?

20 CHAIRPERSON GRIFFIS: That's not what she  
21 just stated. Is it? Did you change your mind about  
22 that dimension?

23 MS. BROWN-ROBERTS: As I said, it was  
24 approximately. I didn't measure it.

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1 MR. SKRIVSETH: During your site visit,  
2 did you happen to notice that there is a 12 foot drop  
3 at the wall at the south-east corner of the property?

4 MS. BROWN-ROBERTS: I know that there is a  
5 drop. I don't know the dimension.

6 MR. SKRIVSETH: Also on page 4 of the  
7 report, the text indicates that "The parking lot has  
8 existed for a long time and should not cause  
9 problems." Is it really the Office of Planning's view  
10 that the existing parking lot does not cause problems?

11 MS. BROWN-ROBERTS: I wasn't presented  
12 with any evidence that the parking lot was creating a  
13 problem as it exists today.

14 MR. SKRIVSETH: What about water run off?

15 MS. BROWN-ROBERTS: I think I did address  
16 that in the recommendation.

17 MR. SKRIVSETH: What about air pollution?

18 MS. BROWN-ROBERTS: I don't know what the  
19 quantity of that is.

20 MR. SKRIVSETH: What about objectionable  
21 noise from slamming car doors?

22 MS. BROWN-ROBERTS: I really don't  
23 consider that a problem.

24 MR. SKRIVSETH: On page 5 of your report,

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1 it is noted that "Toys may need to be retrieved from  
2 the neighbor's yard." I realize that this issue has  
3 been handled by others. I will not duplicate their  
4 areas of concern. I assume that this refers to 4913  
5 Mac Arthur Boulevard. Is this correct?

6 MS. BROWN-ROBERTS: The property to the  
7 south, yes.

8 MR. SKRIVSETH: All right. Thank you.  
9 Does this not pose a privacy problem that is unlike  
10 any that existed before?

11 MS. BROWN-ROBERTS: It is a difference  
12 because it is a different age group.

13 MR. SKRIVSETH: Does it not also pose a  
14 safety and liability problem given that access to the  
15 backyard or side yard of 4913 Mac Arthur Boulevard --

16 MS. BROWN-ROBERTS: I think that's one of  
17 the recommendations that could be addressed by the  
18 fencing and the buffering.

19 MR. SKRIVSETH: Thank you. In condition  
20 9, you indicate that outdoor activity on the property  
21 shall be limited to casual recreational use. Is this  
22 the same as the passive recreational activities phrase  
23 on page 5?

24 MS. BROWN-ROBERTS: Yes.

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1 MR. SKRIVSETH: Isn't that an unnatural  
2 restraint or constraint on 12 and 13 year olds?

3 MS. BROWN-ROBERTS: No.

4 MR. SKRIVSETH: Condition 16 refers to  
5 coordination with the National Park Service in  
6 developing and implementing storm water management  
7 controls. As much of the parking lot run off water  
8 ends up in my yard and sometimes the basement, would  
9 it not also be a good idea to include the residence at  
10 4913 Mac Arthur Boulevard in this coordination  
11 process?

12 MS. BROWN-ROBERTS: Possibly, yes.

13 MR. SKRIVSETH: Thank you very much.

14 MS. BROWN-ROBERTS: You're welcome.

15 CHAIRPERSON GRIFFIS: Thank you, Mr.  
16 Skrivseth. Mr. Finney, we are ready if I am correct  
17 because you're from the ANC. I'm sorry. Did I skip  
18 over my own Board for questions? Why don't we do  
19 that? If you would give us a moment, sir, I'll allow  
20 the Board to ask questions of the Office of Planning.  
21 Ms. Mitten.

22 COMMISSIONER MITTEN: Ms. Brown-Roberts,  
23 is it the Office of Planning's recommendation that the  
24 approval for the school have a time limit or that it

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1 be unlimited?

2 MS. BROWN-ROBERTS: We did not recommend a  
3 time limit on this. No. We were not recommending a  
4 time limit.

5 COMMISSIONER MITTEN: If condition number  
6 18 is implemented and it's a one year experience that  
7 will be examined before the decision would be made to  
8 possibly increase the enrollment from 40 students and  
9 then after that time the enrollment would effectively  
10 be 60 students if they were in compliance for the  
11 first year, would you anticipate or entertain the  
12 possibility that if they went out of compliance in the  
13 future and it could be established that was related to  
14 the increased number of students that the student  
15 population would have to be revisited at some point in  
16 the future if after that year and after they were  
17 given permission to have 60 students could not remain  
18 in compliance?

19 MS. BROWN-ROBERTS: I think that would be  
20 something that we could review and take a position on.

21 COMMISSIONER MITTEN: So if you believe  
22 that, the big concern of the community and frankly I  
23 share it which is a lot of these conditions require  
24 behavior modification and that's a concern that the

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1 Office of Planning expressed to some extent in your  
2 report, DDOT expressed their concern as well. It's a  
3 question of whether or not if in fact you can do that  
4 at all, that extensive behavior modification, and then  
5 can you sustain it over a period of time.

6 If we allow someone permission to have a  
7 school or something just for an unlimited time period,  
8 we never really re-examine whether the core issues  
9 have been addressed if we don't bring them back before  
10 the Board. So is there some mechanism where the  
11 appropriateness of the approval whether it's at 40  
12 students or 60 students would be re-examined because  
13 the prejudice that we see in the enforcement process  
14 is that DCRA is very reluctant to just revoke  
15 someone's certificate of occupancy so that they  
16 constantly strive for compliance regardless of how  
17 long it takes or the other impacts that might result?

18 What would the mechanism be if this was really just a  
19 fundamentally flawed proposition because we couldn't  
20 get the school into compliance or keep them into  
21 compliance? How would we revisit our decision?

22 MS. BROWN-ROBERTS: I think that we could  
23 support having them limited to a number of years.

24 COMMISSIONER MITTEN: Would you have a

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1 recommendation?

2 MS. BROWN-ROBERTS: I don't have a  
3 recommendation today on what that would be.

4 COMMISSIONER MITTEN: Okay. I'll ask you  
5 to give that some thought.

6 MS. BROWN-ROBERTS: Okay.

7 COMMISSIONER MITTEN: Thank you, Mr.  
8 Chairman.

9 CHAIRPERSON GRIFFIS: Any other questions?

10 VICE CHAIRPERSON RENSHAW: I have a  
11 question. I just wanted to be clear, Ms. Brown-  
12 Roberts, on the drop off business. Perhaps DDOT will  
13 interject here. I wanted to be clear. Where is the  
14 drop off? Is it in the driveway, or is it in front of  
15 the school on Mac Arthur Boulevard?

16 MS. BROWN-ROBERTS: My understanding is  
17 that it is on Mac Arthur Boulevard. I think there's a  
18 Metro bus stop there that they're going to do the drop  
19 off on Mac Arthur Boulevard.

20 VICE CHAIRPERSON RENSHAW: So it's your  
21 understanding that the bus will not be turning onto  
22 the side street and into the driveway.

23 MS. BROWN-ROBERTS: Right. That is my  
24 understanding.

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1                   VICE CHAIRPERSON RENSHAW:     Okay.     Now,  
2     these community liaison committees such as what you  
3     have recommended are very popular recommendations to  
4     Applicants proposing to expand into residential areas  
5     because they are considered as almost a safety valve  
6     for the community.     Would you not agree?

7                   MS. BROWN-ROBERTS:     Yes.

8                   VICE CHAIRPERSON RENSHAW:     All right.     But  
9     here the suggestion is that the committee will meet  
10    two times a year unless the community wants to have  
11    more frequent meetings or a situation arises.

12                  MS. BROWN-ROBERTS:     Right.

13                  VICE CHAIRPERSON RENSHAW:     Did you take a  
14    look at how successful these community programs or  
15    these liaison programs are with other Applicants where  
16    this has been tried?     Have they worked?

17                  MS. BROWN-ROBERTS:     I know of two that I  
18    worked on.     The community has met.     They have been  
19    working with the schools.     I haven't heard anything.  
20    I mean, we haven't gotten anything formal to say this  
21    is how it's working, but just from experience I  
22    haven't heard that no it's not working.     I know of two  
23    cases specifically.

24                  VICE CHAIRPERSON RENSHAW:     Just in

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1 general, Mr. Chairman, I'd be interested to find out  
2 whether or not these committees are in existence and  
3 if they do work because you also make a recommendation  
4 here that the minutes are going to be taken by the  
5 Applicant. Is that an understanding that the  
6 Applicant will have the job of making sure that the  
7 minutes of these meetings are circulated and to whom?

8 MS. BROWN-ROBERTS: I think that would be  
9 something that would be best left to the group to do.

10 VICE CHAIRPERSON RENSHAW: If the  
11 Applicant does not call a meeting, then does it go  
12 back to the community to shake the rattle and to get  
13 somebody's attention? Is that what you are proposing,  
14 or are you proposing definite meeting times?

15 MS. BROWN-ROBERTS: I would say maybe two  
16 meetings per year and if an issue comes up where  
17 either party wants to have a meeting it's okay. It's  
18 at their discretion. But maybe say at least two  
19 meetings per year with no limit on how many they can  
20 have.

21 VICE CHAIRPERSON RENSHAW: And a report  
22 with the minutes would be attached to the report due  
23 at the end of the year.

24 MS. BROWN-ROBERTS: Right. That's

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1 correct.

2 VICE CHAIRPERSON RENSHAW: I would be  
3 interested in your review of some of these liaison  
4 committee functions.

5 MS. BROWN-ROBERTS: Okay.

6 VICE CHAIRPERSON RENSHAW: I think that  
7 would be valuable as to whether or not these really do  
8 work.

9 CHAIRPERSON GRIFFIS: I think that would  
10 be excellent for us to deliberate on whether we'd  
11 entertain a condition of that nature. Okay. Others?  
12 I'll give another couple of seconds because I don't  
13 want to rush through anything. Then let's go to  
14 additional government reports. I think we can just  
15 note these for the record. I believe everyone should  
16 have copies of these.

17 Let's review the Council Member's  
18 submissions and letters. Mr. Etherly, if you don't  
19 mind running through that. Also we have a submission  
20 letter Exhibit Number 74 from the Department of Army  
21 that we will make note of. It has already been  
22 discussed.

23 MEMBER ETHERLY: Thank you very much, Mr.  
24 Chairman. Just running very briefly through the

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1 submissions, we are in receipt of a letter from  
2 Council Member for Ward Three, Cathy Patterson,  
3 denoted as Exhibit Number 285 encouraging the Board to  
4 take a look at a number of issues as it contains to  
5 deliberate this matter. We are also in receipt of a  
6 letter from at-large Council Member Phil Mendelson,  
7 denoted as Exhibit 281 in support encouraging the  
8 Board to oppose the application.

9 Finally, Exhibit 74 is a letter from the  
10 Chief of the Washington Aqueduct Division of the  
11 Department of the Army in regard to work that is in  
12 process concerning an easement agreement between the  
13 Washington Aqueduct and St. Patrick's Episcopal Church  
14 and School for the continued use of a portion of the  
15 Washington Aqueduct property for parking space use.  
16 Thank you, Mr. Chair.

17 CHAIRPERSON GRIFFIS: Good. Thank you  
18 very much. Is the Applicant, parties, and the ANC in  
19 possession of these documents?

20 MR. FINNEY: Mr. Chairman, I'm not in  
21 possession of the Aqueduct letter.

22 CHAIRPERSON GRIFFIS: Okay. In fact, you  
23 can make your way up to the table where you can say  
24 that on the record. The ANC has indicated they don't

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1 have a copy of that. We can certainly try and make  
2 one available to you. It is in the official record.  
3 It is Exhibit Number 74. Everyone else, I didn't see  
4 any indication that parties and Applicant had not seen  
5 that.

6 MEMBER ETHERLY: And Staff has just  
7 distributed a copy of Exhibit Number 74 to the ANC  
8 representative, Mr. Finney.

9 CHAIRPERSON GRIFFIS: Excellent.

10 MR. FINNEY: I do have this. I thought  
11 there was a more current letter.

12 CHAIRPERSON GRIFFIS: No. We're just  
13 running through again on the basis of submission for  
14 the record. In which case, I believe we are ready for  
15 you, sir, and the ANC report.

16 MR. FINNEY: Good afternoon, Mr. Chairman  
17 and Members of the Board. My name is John Finney. I  
18 am Chair of ANC-3D. I welcome this opportunity to  
19 present the position of ANC-3D on this case. I hope  
20 you have had a chance to read the letter from ANC-3D.

21 As you will note, ANC-3D voted unanimously, five to  
22 nothing, against granting a special exception to St.  
23 Patrick's School. The reasons are spelled out in the  
24 letter.

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1           Rather than reading the letter, I will  
2 summarize ANC-3D's case. Let me emphasize at the  
3 outset it was an extremely difficult case for our ANC  
4 because by its very nature St. Patrick's request  
5 raised some complex socio-economic questions about  
6 private versus public education, about the fiscal  
7 desirability of letting residential property be exempt  
8 from District taxes, and about the sanctity of a  
9 residential neighborhood versus private school  
10 education for some of our young.

11           Rather than try to resolve such issues  
12 which were really beyond the commission's ken, the  
13 commission chose to focus its deliberations on whether  
14 St. Patrick's new school would meet the requirements  
15 of Zoning Regulations in proposing to establish a  
16 school in a residentially zoned area. Thus, just as I  
17 presume you will do, we sought to judge St. Patrick's  
18 request against the standards and requirements set  
19 forth in Zoning Regulations 200, 206, and 301.8 in  
20 Title 11 of the DC Code.

21           After long and careful deliberation, the  
22 commission came to the conclusion that the location of  
23 a private junior high school in a residential  
24 neighborhood would not be in harmony with the purpose

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1 of Section 200 which states that the purpose of R-1  
2 Zoning is "to protect quiet residential areas now  
3 developed with one family detached dwellings" and " to  
4 stabilize the residential areas and to promote a  
5 suitable environment for family life." Let me say at  
6 the outset that I agree with Mr. Barrett that St.  
7 Patrick's is a good school. He has reason to be proud  
8 of what he has accomplished as Head Master.

9 But whether St. Patrick's is a good school  
10 is not the question before us. The question is  
11 whether St. Patrick's should be permitted to expand  
12 into an established closely knit, middle class  
13 residential neighborhood and by its very presence  
14 change the character of that neighborhood. ANC-3D  
15 answered that question with an emphatic no for this  
16 location. I want to emphasize that ANC-3D is not  
17 opposed to expansion of St. Patrick's at another  
18 location or contiguous to its existing campus. We  
19 believe that such an option exists for the school.

20 To appreciate the adverse impact the  
21 proposed school would have upon the neighborhood one  
22 has to look at the homes in the residential square  
23 where the school would be located. There are 33 homes  
24 within 200 feet of the proposed school site. The two

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1 closest homes are less than four feet and 11 feet from  
2 the proposed school site. It is a quiet, residential  
3 neighborhood where most residents have lived for more  
4 than 20 years, raised their children, and now settled  
5 into the rewards of retirement.

6 Into this residential haven would be  
7 imposed a private school with at least 60 students and  
8 a dozen or more faculty. In effect, the daytime  
9 population of the residential square would be doubled  
10 and the noise and bustle of teenage children in their  
11 most vocal phase of pubescence would erode the calm  
12 and tranquility of the neighborhood. Gone would be  
13 the privacy of the adjoining homes. Seriously eroded  
14 would be the residential quality of life that  
15 attracted residents to the area in the first place.  
16 With a school in their midst, many residents fear the  
17 value of their property would diminish.

18 Contrary to the impression left by Ms.  
19 Prince and Mr. Barrett, this would not be a school  
20 designed to serve the Palisades neighborhood. Only a  
21 few of the current students come from the Palisades  
22 neighborhood along Mac Arthur Boulevard. Rather, the  
23 stated objective is not a community school but a  
24 school that would be part of a grander plan to

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1 establish a co-ed Episcopal school located in the  
2 District and serving the city of Washington.

3 The goals of the Washington Dioceses of  
4 the Episcopal Church as such it is misleading to  
5 describe this new junior high for the privilege as a  
6 community school that help preserve the urban village  
7 of the Palisades. It is intended to serve an affluent  
8 class that lives in north-west Washington, Montgomery  
9 County, and nearby Virginia.

10 The current enrollment is indicative.  
11 Sixty-two percent of the students come from the  
12 District of Columbia, 28 percent from Maryland, and 10  
13 percent from Virginia. It should be noted that the  
14 St. Patrick proposal represents the first time in the  
15 Palisades neighborhood that a private school of such  
16 size and intensity of use has attempted to locate in  
17 the middle of a residential neighborhood.

18 In the past such schools, and we have many  
19 of them, have been located on the fringes of  
20 residential areas or in commercial zones. The case,  
21 therefore, assumes precedent sitting proportions in  
22 weighing the desire of a private school to expand  
23 against the desires of nearby and adjoining residents  
24 to preserve the residential nature, character of their

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1 neighborhood.

2 The commission also concluded that St.  
3 Patrick's proposal would not meet the individual  
4 conditions set forth in 206.2. As the Board Members  
5 know, Section 206.2 specifies that "A private school  
6 shall be so located that it is not likely to become  
7 objectionable to adjoining and nearby property because  
8 of noise, traffic, number of students, or otherwise  
9 objectionable conditions." You have and are going to  
10 hear a lot of noise about noise.

11 To listen to the proctors of St.  
12 Patrick's, our children are so well trained that they  
13 will talk in soft, dulcet tones when released from  
14 class to playing on the meager playground. Of course  
15 these children will be noisy. That is the very nature  
16 of children entering teenhood. Their shouts and  
17 shrieks and croaks of changing voices will undoubtedly  
18 carry to nearby houses disturbing the tranquility of  
19 the neighborhood.

20 Even the Planning Office in its somewhat  
21 contradictory narrow report to you seems to concede  
22 that noise will be bothersome. Why else did it  
23 recommend against summer school but to give the nearby  
24 residents a respite from noise during summertime? As

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1 we all know and can appreciate on this wonderful day  
2 today, our wonderful fall and spring seasons are also  
3 times to enjoy our backyards, to gather with  
4 neighbors, to tend our gardens. So if summer school  
5 is precluded because of objectionable noise to  
6 residents trying to enjoy the privacy of their  
7 backyards, then the same logic it would seem to me  
8 applies to opening the school during the spring and  
9 fall.

10 Now I appreciate that St. Patrick's hired  
11 Polysonics to do an acoustical study measuring the  
12 sound of seventh graders at play at the proposed  
13 school site. It's logarithmic conclusion was that the  
14 sound of the students would be masked by the  
15 background noise of traffic on Mac Arthur Boulevard  
16 and airplanes overhead. Oh, it did concede that the  
17 occupants of the two contiguous houses would be aware  
18 of the student noise as if only two was an acceptable  
19 number. But given underlying principle of the fourth  
20 amendment that every man's home is his castle, even  
21 two is too many.

22 Now it has been a long time since I  
23 studied logarithms, so I was bewildered and  
24 incredulous when Mr. Harvey explained to us that 70

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1       decibels on Mac Arthur Boulevard of airplane noise  
2       when added to 70 decibels of noise from the students  
3       only adds up to a three decibel increase in the noise  
4       level in the neighborhood. So I did some of my own  
5       experiments into whether the ambient noise of Mac  
6       Arthur Boulevard masked out human voices in adjoining  
7       yards.

8                       I sat right in the middle of Mac Arthur  
9       Boulevard in the median strip that I take care of. I  
10      could clearly hear my wife's voice when from the front  
11      porch some perhaps 200 feet away she called me to  
12      lunch. I thought maybe hunger had added to my oral  
13      acuity, so I did another experiment. I sat on the  
14      front porch of my house which is next to Mac Arthur  
15      Boulevard. I could clearly hear the voices of  
16      children at play some 300 feet across Watson Street.  
17      Some of these children I might add are headed for St.  
18      Patrick's School. I don't remember logarithms, but I  
19      do remember QED from geometry.

20                      Let me turn to the impact of school  
21      generated traffic upon the neighborhood. To its  
22      credit, St. Patrick's has proposed a shuttle bus  
23      system to take students to their proposed Mac Arthur  
24      campus and finally is talking about car pooling.

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1 That's quite a change in attitude on the part of the  
2 St. Patrick's School.

3 For years, Anne Heuer a veteran member of  
4 our ANC who has St. Patrick in her district told me in  
5 a conversation on July 5th that she kept pressing Mr.  
6 Barrett to do something about the traffic that was  
7 clogging up White Haven and spilling over onto Fox  
8 Hall. She said Mr. Barrett kept replying "We have  
9 done all we can." When she suggested more car  
10 pooling, she said Mr. Barrett responded "Car pooling  
11 doesn't seem to work." It was like talking to dead  
12 wall Mrs. Heuer related.

13 But the school's attitude about traffic  
14 and car pooling changed abruptly when it decided to  
15 establish a junior high school and had to go to the  
16 B.A. for permission. It was as if the school had an  
17 epiphanies experience. Do you wonder that our ANC is  
18 skeptical about the long-term of commitment of St.  
19 Patrick to car pooling and clearing up the traffic  
20 mess on White Haven that has become virtually a  
21 private road of the school two times a day?

22 On the car pooling, it's about time the  
23 school acted for there is a terrible traffic mess  
24 every morning and afternoon on White Haven spilling

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1 over onto Fox Hall as parents or nannies come to pick  
2 up their students on a one-on-one basis. It says  
3 something about the school's attitude towards parents  
4 and neighborhood that it has let this situation  
5 persist until it was forced to a car pooling decision  
6 by a desire to get B.A. approval for its expansion  
7 plans. On the shuttle bus arrangement, the commission  
8 is skeptical whether it will work as presented.  
9 Interestingly, the same skepticism is reflected in the  
10 report to you from the Planning Office and in the  
11 comments from Commissioner Mitten.

12 Human nature being what it is we believe  
13 that over time some parents will try to avoid the  
14 inconvenience and added time of getting their children  
15 to the Q at the top of White Haven and will drop their  
16 children at or near Mac Arthur campus. How is St.  
17 Patrick's going to know? It sounds as if it plans a  
18 military role call every morning on students taking  
19 the bus. How is it going to enforce use of the  
20 shuttle buses? It says it's going to force parents to  
21 sign a contract to use the shuttle bus and will expel  
22 the student who's parents are found to be sneaking  
23 their children directly to the Mac Arthur campus.

24 It all sounds so authoritarian as to be

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1 unworkable and unacceptable to parents. It is hard to  
2 believe that the school is going to expel the student  
3 of a tuition paying, potentially gift making parent.  
4 My own experience with the Head Master of an Episcopal  
5 School is that he was very reluctant to expel a  
6 student if the parents were wealthy and likely to  
7 contribute generously to the school's endowment if the  
8 student was permitted to remain in school.

9           If St. Patrick's does expel students  
10 because parents did not conform to the contract, the  
11 word is going out to the parents thinking about  
12 enrolling their children in the new middle school that  
13 St. Patrick's may preach but not practice the concept  
14 of forgiveness. Even if the shuttle system works, how  
15 about the additional traffic generated by parents  
16 driving to drop off or pick up their children? To  
17 reach the top of White Haven, some of these parents  
18 are going to have to drive through the residential  
19 streets of the Palisades including Ashby.

20           Traffic generated by private schools has  
21 become a major problem for Palisades residents seeking  
22 to drive downtown during the morning drop off period  
23 or return from downtown or Virginia during the  
24 afternoon pick up time. Mac Arthur Boulevard has

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1 become so clogged that some residents now take the  
2 back way scooting over to Garfield, using such streets  
3 as Ashby to bypass Mac Arthur.

4 We in the Palisades have been subjected to  
5 what Mayor Williams in a recent letter to ANCs in Ward  
6 Three described as a tremendous expansion of academic  
7 institutions. We now have seven private schools; St.  
8 Patrick's on White Haven, Lab School, Georgetown Day,  
9 Field School, River School, Rock Creek International,  
10 Our Lady of Victory, plus a college campus at Mount  
11 Vernon all located within about a half mile of the  
12 proposed Mac Arthur site.

13 Permit me to point to a map which I hope  
14 has been distributed to you which is part of the  
15 record showing the locations of these schools. You  
16 will see that just as we established the diplomatic  
17 enclave on Connecticut Avenue on the grounds of the  
18 former Bureau of Standards the Palisades is being  
19 inundated by private schools and is well on its way to  
20 becoming an academic enclave for a separate school  
21 system for the affluent. To this expanding and  
22 enclave, St. Patrick's wants to add an eighth school,  
23 a middle school located right in the midst of the  
24 residential Palisades.

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1 I sometimes feel our urban village is  
2 being turned into an academic camping ground occupied  
3 daily by hundreds of students from around the region  
4 so numerous they begin to rival the number of  
5 residents in their vicinity. Every academic day about  
6 5,000 students, faculty, and staff enter and leave the  
7 Palisades precincts of ANC-3D. To that daily  
8 onslaught, St. Patrick's would like to add another 72  
9 in students and staff.

10 Let me turn now to another criteria in  
11 Section 206, namely the number of students in the  
12 proposed junior high. By its very number, the  
13 commission believes that the student body of 60 is  
14 likely to create objectionable conditions for the  
15 neighborhood. In reaching that conclusion, the  
16 commission drew heavily upon the precedence set by the  
17 B.A. in a 1962 case involving the proposed expansion  
18 of a student body from 25 to 75 in the same building  
19 that St. Patrick's would occupy.

20 In denying that German school society  
21 permission to expand the student body to 75, the Board  
22 said the expansion "would result in conditions  
23 objectionable to the adjoining and nearby property  
24 because of noise, traffic, and number of students."

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1 Further, the Board said "It was of the opinion that  
2 the granting of the exception would not be in harmony  
3 with the general purpose and intent of Zoning  
4 Regulations. It would tend to adversely affect the  
5 use of neighboring property."

6 The Board also noted in that case that  
7 considerable opposition to the granting of the request  
8 was registered at the public hearing. Again in this  
9 case, there is considerable opposition from nearby  
10 residents as you have heard. In its deliberations,  
11 ANC was greatly impressed by the fact that 31 of the  
12 33 homes within 200 feet of the proposed school signed  
13 a petition opposing the school. If in the Board's  
14 opinion in 1962 that 75 students would result in  
15 objectionable conditions, then it would follow that  
16 nearly the same number of 60 proposed by St. Patrick's  
17 is likely to create objectionable conditions in 2002  
18 and the future.

19 St. Patrick's would have you believe that  
20 it's just picking up the lease of the Washington  
21 Psychoanalytical Institute and Society and continuing  
22 the tax exempt educational use of the property.  
23 Indeed, Ms. Prince was so bold to argue that St.  
24 Patrick's really did not have to come to the B.A. for

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1 permission. It was just doing the B.A. and the  
2 community a favor by asking for a special exception.  
3 Such a self serving argument collapses of its own  
4 arrogance if you read the B.A.'s 1963 decision  
5 permitting the Washington Psychoanalytical Institute  
6 and Society to use the same building for post-Graduate  
7 school for psychiatrists in the Washington area.

8 The Board said then it was of the opinion  
9 that in view of the limited use of the property by  
10 responsible adults it was not likely to become  
11 objectionable to adjoining and nearby property because  
12 of noise, traffic, number of students, or otherwise  
13 objectionable conditions. The Board also noted there  
14 was no objection to the granting of appeal by persons  
15 residing in the neighborhood. There is a great  
16 difference between the psychoanalytic institute use of  
17 the building and that proposed by St. Patrick's.

18 At the institute, there were four or five  
19 cars parked daily in the parking lot behind the  
20 building and a couple of time a week, maybe 15.  
21 Doctors attended classes there. St. Patrick's will  
22 make a much more intensive, invasive use of the  
23 building; five days a week with 60 students and a  
24 staff of 12 or more. We fear that use may spill over

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1 into the parking and traffic on narrow Ashby Street.

2 The school claims the 15 space parking  
3 area will be sufficient. We question that assertion  
4 when you consider the number of parents likely to come  
5 to the building during the day for consultations or  
6 take their child off for personal or orthodontic work.

7 Remember, the students will be just at the stage when  
8 they start to have their teeth straightened.

9 You may have noticed a note of skepticism  
10 about St. Patrick's. If so, you're perceptive for  
11 there is reason for the skepticism born of experience.

12 Over the years that private schools have moved into  
13 the Palisades or expanded, they have offered promises  
14 that were not always kept. I must say that last  
15 Saturday your fine head of the Office of Zoning gave  
16 us a great briefing. One of the points that she made  
17 was that promises from schools don't matter unless  
18 they're part of the conditions. You can't enforce  
19 promises.

20 For example, the Lab School told us that  
21 it would have parking for all its staff on campus.  
22 Now their staff cars are parked all over the  
23 neighborhood including White Haven. The Field School  
24 said it would preserve a buffer of trees protecting

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1 adjoining residences. Down came most of the trees. I  
2 call it institutional creep born of righteous  
3 dedication. It is not because the schools have evil  
4 intent to use an adjective that has entered weekday  
5 use. To the contrary, it is because they think they  
6 are doing good. In their resulting self  
7 righteousness, the end justifies the means.

8 Let me take a couple of specific cases or  
9 institutional creep on the part of St. Patrick's. In  
10 1999, Mr. Barrett in seeking approval for expansion of  
11 the White Haven campus told this Board and ANC-3D that  
12 there would be no additional students, no additional  
13 teachers, no additional cars, no additional grades.  
14 Now it has gone back on that pledge and proposes to  
15 establish two additional grades.

16 We all have the right to change our minds,  
17 but in doing so it seems to me we have an obligation  
18 to consult with those who relied on our pledge. That  
19 St. Patrick's did not do. It established a seventh  
20 and now an eighth grade in a leased space and a  
21 commercially zoned building without consulting with  
22 either the ANC or the B.A. whether the additional  
23 students would conform with the caps and conditions in  
24 the 1999 B.A. order.

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1 I believe that in the interim the staff at  
2 White Haven campus has expanded from 60 to around 100  
3 which would raise a serious question as to whether St.  
4 Patrick's is complying with the B.A. cap on staff and  
5 faculty of 60. There certainly have been additional  
6 cars as demonstrated by the school's creation of a new  
7 parking lot on the east side of the church. That  
8 parking lot is almost a humorous example of  
9 institutional creep. That parking lot is on land  
10 owned by the Army Engineers.

11 Originally I believe it was used as a  
12 nursery school playground, but then in 1999 Mr.  
13 Barrett told this Board that the playground had been  
14 moved to behind the church and the land would remain  
15 green space. It didn't remain green for long. To  
16 accommodate all the additional cars, the expanded  
17 staff, as well as visitors, the school paved over the  
18 green space, but it failed to inform or get the  
19 permission of the owners of the land. That's what  
20 this letter is all about from the Washington Aqueduct  
21 Authority.

22 For another example of it's impetuous ways  
23 born I would say of self righteousness, it constructed  
24 a driveway into its new gym without the issuance of a

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1 permit it knew was required from the Office of Public  
2 Space. It's a small matter, sure, but it reflects an  
3 attitude. This brings us to the question of the  
4 enforcement of many provisions of any B.A. order  
5 permitting St. Patrick's to establish a middle school  
6 at the Mac Arthur site.

7 Permit me to say there has been a serious  
8 disconnect between your orders, your conditions and  
9 their enforcement. After many frustrating cases and  
10 many frustrating hours, I have concluded that as  
11 constituted, and this is what I wrote when I first did  
12 this statement months ago, the enforcement of B.A.  
13 orders and the Zoning Code and the conditions was a  
14 charade, a facade in front of a bottomless pit into  
15 which complaints are thrown never to be seen again.  
16 Again, I do not think it is evil intent. I think it  
17 is a case of an under staffed, lethargic bureaucracy  
18 which would rather not hear or find violations.

19 In a way, the Zoning Office has recognized  
20 the lack of enforcement by establishing the position  
21 of a compliance specialist in the Office of Zoning.  
22 The attempt is commendable and I applause it, but how  
23 do you expect one compliance specialist to monitor  
24 observance of all your orders with all their

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1 conditions? Why in this case alone, I'll bet you end  
2 up with 25 or more conditions as you try to fit a  
3 square school into a residential circle.

4 I very much appreciate and applaud the  
5 efforts of the Zoning Office to find ways to ensure  
6 observance of the conditions laid down by the Board.  
7 This is a new attitude in the Zoning Office signaled  
8 by the whistle blown by Jerilee Cress when the Field  
9 School attempted to do an end run around this Board in  
10 obtaining a certificate of occupancy. But we out  
11 there in the neighborhoods are still faced with the  
12 problems that enforcement of the conditions still  
13 rests with the Zoning Office and the Department of  
14 Consumer and Regulatory Affairs with but two  
15 inspectors for the whole city. Need I say any more.

16 Let me say parenthetically at this point  
17 that I caution you against accepting without questions  
18 the reports you received from the Planning Office and  
19 the Department of Transportation. They were drafted  
20 after extensive consultation with the school but with  
21 little or no consultation in the case of the Office of  
22 Planning with the ANC. I would suggest, therefore,  
23 they are basically one-sided reports tilted towards  
24 the school.

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1           The Planning Office and the Department of  
2 Transportation have proposed the school will submit an  
3 annual compliance report to the newly created office  
4 of the compliance specialist in the Office of Zoning.

5       They also proposed the creation of a community  
6 liaison group that will meet twice a year with the  
7 school. This brings me to the questions that were  
8 being asked by Board Member Renshaw.

9           Contrary to the impression created in the  
10 hearing on July 2nd, the idea of a community liaison  
11 group is not some new inspiration that's going to  
12 bring harmony between the schools and residents in  
13 sure observance of all your conditions. You in the  
14 past have in effect created community liaison groups  
15 by ordering the school or university to meet  
16 periodically with neighborhood groups to explain the  
17 status of the expansion plans.

18           I suppose that such a group might help  
19 restore a modicum of trust and cooperation that is now  
20 sadly missing in our mutual relationship with St.  
21 Patrick's. But on the basis of past experience, our  
22 ANC is skeptical that such a group will work as an  
23 enforcement mechanism or that it will survive over  
24 time.

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1           Our experience with liaison groups of  
2 periodic meetings has been that the responsibility is  
3 so diffused among community groups that they do not  
4 provide an effective check on compliance by a school.

5           The schools set the agenda. Over time, the  
6 individual interests whither away so that few attend  
7 the meetings. In effect, the schools become monitors  
8 of themselves, an obvious conflict of interest.

9           Let me give you a couple of examples of  
10 the unresponsiveness and ineffectiveness of the  
11 government enforcement system. In late May with the  
12 approval of the ANC and at the suggestion of the  
13 Office of Zoning, I sent a letter to the General  
14 Council of Department of Consumer and Regulatory  
15 Affairs questioning whether St. Patrick's was in  
16 compliance with the ceiling or cap set by the B.A. on  
17 the school's faculty. Four months later, I have not  
18 received a response to my letter.

19           St. Patrick's is not alone in its  
20 institutional freewheeling ways because of lack of  
21 enforcement of B.A. auditors. Take the Lab School.  
22 It gave assurances that it provides sufficient off  
23 street parking when expanded. Now its cars are parked  
24 all over the adjacent neighborhood.

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1           Board Members, you can find if you want,  
2           although I would disagree, that the school will not  
3           create objectionable noise, that it will not create  
4           objectionable traffic, that adequate parking will be  
5           provided, but you still have to contend with the  
6           phrase of otherwise objectionable conditions in  
7           Section 206 and the goals set forth in Section 200. I  
8           would contend that the introduction of a school with  
9           60 students and 12 faculty into an established,  
10          tightly packed, middle class residential neighborhood  
11          would create otherwise objectionable conditions when  
12          particularly interpreted in conjunction with the goals  
13          set forth in Section 200.

14                 That Section as you well know defines the  
15          purpose of R-1 Zoning to protect quiet residential  
16          areas now developed with one family detached dwellings  
17          and to stabilize the residential areas and to promote  
18          a suitable environment for family life. That is a  
19          perfect description of the tightly knit community of  
20          modest homes that encompasses the proposed school.

21                 Under Section 200 and indeed under the  
22          common law concept embodied in the fourth amendment  
23          that a man's house is his castle protected against  
24          government intrusion, those nearby citizens have a

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1 right to protect the residential nature of its  
2 community. St. Patrick's does not have a right to  
3 establish a school there just because it bought a  
4 building or because upon graduation of its sixth grade  
5 students, it's sixth grade students are having  
6 difficulty finding a place in a private school.

7 It has the burden of proving that locating  
8 a junior high school there would not create  
9 objectionable conditions for the residential  
10 neighborhood. I don't think that St. Patrick's has or  
11 can meet that burden of proof. That was the  
12 considered conclusion reached by ANC-3D.

13 I urge you to give that conclusion that  
14 great weight called for by law and reject St.  
15 Patrick's application to establish a private junior  
16 high school in the midst of a residential  
17 neighborhood. There are other places where it could  
18 locate the school without objection including property  
19 down White Haven from its existing school. If there's  
20 any room for a mediated solution of this difficult  
21 case, it would be within the confines of White Haven.

22 I appreciate that some parents of St.  
23 Patrick's are having difficulty placing their children  
24 in other private schools as they enter eighth grade.

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1 I appreciate that St. Patrick's and the Episcopal  
2 Diocese of Washington have a goal of establishing a  
3 co-ed Episcopal School from Kindergarten through  
4 twelfth grade in the city of Washington. I will  
5 concede that under our concept of freedom of choice  
6 and separation of church and state the Episcopal  
7 Church has a right to establish such a school.

8 But I will not concede that to meet the  
9 desires of parents and the goals of the Episcopal  
10 Diocese St. Patrick's has the right to plunk a junior  
11 high school right in the midst of a residential  
12 neighborhood disturbing indeed, upsetting the lives or  
13 residents more elderly than young who thought their  
14 home was a castle protected by the Zoning Codes of the  
15 District of Columbia. I know the parents of St.  
16 Patrick's feel their children will face hardships if  
17 they cannot be placed in another private school, but  
18 think of the long-term hardships, the discomfort, the  
19 loss in value of homes faced by nearby residents if a  
20 school, not a friend becomes their next door neighbor.

21 I would suggest that under the provisions  
22 of the Zoning Code it is your duty to protect them  
23 against those hardships, to protect and sustain the  
24 residential nature of their neighborhood. I thank

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1 you.

2 CHAIRPERSON GRIFFIS: Thank you very much.

3 Will stir things up a little bit and have Board  
4 questions first of the ANC. Then we can go to cross  
5 examination. Mr. Finney, you seemed to indicate in  
6 your statements and am I correct that the ANC position  
7 is that the community liaison commission that's being  
8 proffered as a condition won't work because the  
9 community will stop participating.

10 MR. FINNEY: What happens that is of  
11 interest, and I've seen this at Field School and I've  
12 seen it at Georgetown, is these liaison groups are  
13 called. At first blush, many appear. Then the  
14 interest dwindles. Often you end up with one or two  
15 people representing presumably the neighborhood at  
16 these meetings.

17 I've often wondered why this is. Maybe  
18 it's because the schools are just accepted as a fait  
19 accompli. Maybe it's because they feel the conditions  
20 are being met, although I question that after all the  
21 furor over Field School. I think it's because the  
22 meetings are really not a great give and take. The  
23 agenda is set by the school. They dictate what  
24 happens.

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1           You finally throw up your hands and say  
2 I'm just going through the motions here. I'm not  
3 really having an impact. I'm sure I'm not alone in  
4 this. I don't find that the liaison groups are a very  
5 effective check upon schools.

6           CHAIRPERSON GRIFFIS: Do you think the  
7 discussion and the nature of this current Board might  
8 be able to strengthen community liaison and its  
9 participation and continued communication with an  
10 Applicant and the community?

11          MR. FINNEY: I don't know how you would do  
12 that. I think the system is inherently, it's not  
13 bankrupt, but deteriorating.

14          CHAIRPERSON GRIFFIS: Okay. You indicated  
15 that the government reports that this Board received  
16 were one-sided because there was no community input or  
17 interviewing. Is it your experience as an ANC Member  
18 that the government reports, the Office of Planning  
19 and DDOT interview the ANC to do their memos to the  
20 Boards and Commissions?

21          MR. FINNEY: That is my most recent  
22 experience on the first Montessori school. Mr. Moore,  
23 I believe that's his name of the Planning Office --

24          CHAIRPERSON GRIFFIS: Yes.

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1 MR. FINNEY: Talked to me on at least two  
2 or three occasions about this.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. FINNEY: I think he also talked to Ms.  
5 Lewis in who's district the nursery school lies. I  
6 want to clarify something here because it may not be  
7 clear to you. I never received a call from the Office  
8 of Planning on the St. Patrick's case.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. FINNEY: They never advised me as to  
11 what their recommendations were going to be. It was  
12 only at my foolish initiative that I said you ought to  
13 see the ANC report. I think that was given after the  
14 report had already been drafted.

15 CHAIRPERSON GRIFFIS: After it was drafted  
16 but not submitted. Is that correct?

17 MR. FINNEY: It was practically the same  
18 day.

19 CHAIRPERSON GRIFFIS: Okay. Any others?  
20 Ms. Mitten.

21 COMMISSIONER MITTEN: Mr. Finney, in cases  
22 like this we often hear testimony about the  
23 detrimental impact on property values that facilities  
24 like this may cause. Do you have any empirical

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1 evidence regarding the change in property values?

2 MR. FINNEY: No. It's all a gut feeling  
3 right now about real estate prices I think. I think  
4 it just stands to reason that if you have a house  
5 that's going on the market for \$400,000 to \$500,000  
6 and you sit in the front yard that you're thinking of  
7 buying and you look across the street and you see a  
8 school.

9 You're going to say wait a minute, I'm not  
10 sure this is what I'm bargaining for. I was  
11 bargaining for a quiet neighborhood, so it's just my  
12 intuitive gut feeling that a school lowers the value  
13 of houses just as I think is happening on Loughboro  
14 Road with the expansion of Sibley.

15 COMMISSIONER MITTEN: But you don't have  
16 any evidence?

17 MR. FINNEY: Yes. There is empirical  
18 evidence in the case at Loughboro that the prices have  
19 not gone up as much as corresponding houses on streets  
20 that do not face on Sibley.

21 COMMISSIONER MITTEN: If you could submit  
22 that for the record, it would be helpful. We hear a  
23 lot of anecdotal evidence. If it was as pervasive as  
24 people suggest, it ought to be able to be proven with

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1 information.

2 MR. FINNEY: I will certainly try to get  
3 that for you. I think I know where I can find it.

4 COMMISSIONER MITTEN: Thank you.

5 CHAIRPERSON GRIFFIS: Ms. Renshaw.

6 VICE CHAIRPERSON RENSHAW: Mr. Chairman, a  
7 question for Mr. Finney. On the community liaison  
8 group in your experience, does the activation of a  
9 community liaison group meeting rely more on outside  
10 council than on the Applicant?

11 MR. FINNEY: It relies --

12 VICE CHAIRPERSON RENSHAW: In other words,  
13 it relies on --

14 MR. FINNEY: With the Applicant, yes.  
15 They have been given an obligation to call meetings.

16 VICE CHAIRPERSON RENSHAW: They're given  
17 the obligation to call meetings, but are the meetings  
18 called by the Applicant or by another party such as an  
19 outside council?

20 MR. FINNEY: I've never had the experience  
21 of an outside council convening such a meeting.

22 VICE CHAIRPERSON RENSHAW: All right.  
23 Would you describe for the Board the number of  
24 sessions the ANC had discussing the St. Patrick's

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1 case? Your testimony is very extensive, and it  
2 sounded like there was very much a neighborhood and  
3 community participation in the ANC sessions. So in  
4 brief, could you describe your meetings?

5 MR. FINNEY: My recollection is we had two  
6 separate meetings in two separate months on this  
7 school application. It was, how shall I describe it,  
8 robust discussion, even some brick pads were thrown  
9 from one side in particular. I think this issue was  
10 as thoroughly aired as I've seen in my short term in  
11 the ANC or attending ANC meetings. I think there was  
12 ample time.

13 VICE CHAIRPERSON RENSHAW: When your ANC  
14 has brought to the attention of the Office of Zoning  
15 or DCRA problems with say a school in your 3D area,  
16 what has been the response? In other words, here is  
17 another school proposed for this particular location.

18 Are you saying that you do not have any confidence  
19 should you bring up a problem that the problem would  
20 be attended to in short order?

21 MR. FINNEY: Based on my experience, I  
22 have little confidence. I just cited the example of  
23 the letter I sent I think it was the end of May to the  
24 general consul of DCRA asking them to inquire whether

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1 the St. Patrick's School was complying with the cap on  
2 size of faculty and staff.

3 VICE CHAIRPERSON RENSHAW: Have you heard  
4 anything?

5 MR. FINNEY: Four months later, no  
6 response.

7 VICE CHAIRPERSON RENSHAW: Thank you.

8 MEMBER ZAIDAIN: Mr. Finney, just to  
9 piggyback on that question. Do you think the hiring  
10 of the compliance officer by the Office of Zoning will  
11 improve those kinds of situations and open -- orders?

12 MR. FINNEY: I think it reflects the  
13 spirit that's to be encouraged. I think that you are  
14 placing a great burden on that one man to monitor all  
15 the conditions or to field all the complaints about  
16 conditions not being observed. Furthermore,  
17 ultimately as you know, that compliance officer has no  
18 power to ensure that a condition is being enforced or  
19 observed. He then has to go to the DCRA with a  
20 complaint. That as I suggested is still a bottomless  
21 pit.

22 CHAIRPERSON GRIFFIS: Indeed. Anything  
23 else, Mr. Zaidain? Ms. Mitten.

24 COMMISSIONER MITTEN: I had another

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1 question for you, Mr. Finney. Given that a lot of the  
2 concerns can be traced back to number of students,  
3 like the volume of noise that is anticipated is a  
4 function of the number of students on site and that  
5 certain aspects of the traffic could be traced to the  
6 number of students and so forth, is there a size of  
7 the school population that the ANC would find  
8 acceptable?

9 MR. FINNEY: I'm reluctant to shoot from  
10 the hip for my commission on that one. Admittedly as  
11 you go down, presumably the noise would decrease, but  
12 it does raise an interesting question here of these  
13 supposed enforcement mechanisms. They have chosen 40  
14 for the first year and saying let's see how that works  
15 and then if it works all right we're going to go to  
16 60. Well, maybe at 40 the noise level is lower and  
17 acceptable, but that doesn't tell you it's going to be  
18 acceptable at 60. Does it? So it's a trap of a  
19 condition that they're setting here.

20 COMMISSIONER MITTEN: Rather than asking  
21 you for a number, do you feel that there is a number  
22 that would make the population at this location given  
23 that this is not going to be a stand alone school,  
24 this is going to have the continued relationship with

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1 St. Patrick's main campus, that this could be made to  
2 work at some number?

3 MR. FINNEY: I don't think you can make it  
4 work. As you see, I'm reluctant to give you a number.

5 COMMISSIONER MITTEN: I'm not asking for a  
6 number. I'm asking you do you think there is a  
7 number. I'm asking you in concept.

8 MR. FINNEY: I think if you thought of  
9 reducing the number you are going to reach the point  
10 where the whole concept of the school becomes  
11 unworkable for St. Patrick's.

12 COMMISSIONER MITTEN: All right. Do you  
13 believe that the level at which they would be  
14 acceptable to the community in terms of the number  
15 being low enough and the number that would be  
16 acceptable to St. Patrick's in terms of being high  
17 enough that there's a disconnect there?

18 MR. FINNEY: Yes.

19 COMMISSIONER MITTEN: All right. Thank  
20 you.

21 CHAIRPERSON GRIFFIS: Any others?

22 VICE CHAIRPERSON RENSHAW: Mr. Finney, did  
23 that question come before the ANC?

24 MR. FINNEY: Over a smaller school body?

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1 VICE CHAIRPERSON RENSHAW: A smaller  
2 school.

3 MR. FINNEY: No it did not.

4 VICE CHAIRPERSON RENSHAW: With the  
5 previous school, were there any objections to the  
6 community?

7 MR. FINNEY: The previous school, the  
8 German school?

9 VICE CHAIRPERSON RENSHAW: Yes.

10 MR. FINNEY: There were 25 students.

11 VICE CHAIRPERSON RENSHAW: Twenty-five  
12 students. Were there any objections?

13 MR. FINNEY: No. As I say, there were no  
14 objections to that. It was only when they proposed to  
15 go to 75 that the community objected and your B.A.  
16 objected. That may give you some guideline.

17 VICE CHAIRPERSON RENSHAW: Okay.

18 CHAIRPERSON GRIFFIS: Anything else? Last  
19 question then, Mr. Finney. In this map that you  
20 handed out, it is labeled "Figure 1: Study Area  
21 Policy Traffic Impact Study." The testimony that I've  
22 heard today am I correct that none of these schools  
23 are located in a residential neighborhood.

24 MR. FINNEY: They're on the fringes of

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1 residential neighborhoods. For example, St. Patrick's  
2 School is on a road where there are only two or three  
3 houses left down at the bottom that might be for sale.

4 CHAIRPERSON GRIFFIS: So when you say  
5 "fringe" you're saying that there isn't an adjacent  
6 single family home.

7 MR. FINNEY: I'm thinking more in the  
8 context that they are not within clustered houses of a  
9 residential neighborhood.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. FINNEY: The Field School is up there  
12 on Fox Hall. There are no houses. They're only  
13 embassies now around there.

14 CHAIRPERSON GRIFFIS: I see.

15 MR. FINNEY: Georgetown Day is tucked in  
16 back. This is really a precedence setting case in  
17 terms of putting a school right in the middle of a  
18 residential neighborhood.

19 CHAIRPERSON GRIFFIS: I see. Okay. But  
20 you had mentioned also that perhaps they were located  
21 in commercial zones or commercial areas.

22 MR. FINNEY: Yes. They're currently  
23 renting school space from the River School which is on  
24 commercially zoned property on Mac Arthur.

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1 CHAIRPERSON GRIFFIS: I see. So I  
2 misunderstood that you were putting the location of  
3 some of these schools in commercial zoned areas.

4 MR. FINNEY: I was -- I'm sorry.

5 CHAIRPERSON GRIFFIS: It wasn't your  
6 statement then that some of the schools indicated on  
7 this map were actually located in commercial areas.

8 MR. FINNEY: Yes. River School is.

9 CHAIRPERSON GRIFFIS: Okay. So then the  
10 others are located in residential areas but not as you  
11 defined adjacent to a residential neighborhood.

12 MR. FINNEY: Yes.

13 CHAIRPERSON GRIFFIS: I see. Okay. Very  
14 well. Let us go to the Applicant. Does the Applicant  
15 have any questions of the ANC?

16 MS. PRINCE: Good afternoon, Mr. Finney.  
17 Allison Prince on behalf of the Applicant. I note  
18 that on the third page of the ANC report you state  
19 heavy reliance on the petition. There's a lot of  
20 reference to the petition. Are you familiar with the  
21 exact language of the petition including the  
22 statements about the reduction in property value and  
23 threats are "subsequent purchase of neighboring  
24 properties at a cheaper price due to the presence of

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1 the school?" Wouldn't almost anyone sign such a  
2 petition?

3 MR. FINNEY: It's been a long time since I  
4 read that petition.

5 MS. PRINCE: Well, I'm refreshing your  
6 memory here. I'm quoting directly from the petition.

7 MR. FINNEY: I guess we all cherish the  
8 value of our homes. You're quite right. If someone  
9 came to me and said if that school comes in you're  
10 going to lose value in your house, you would --

11 MS. PRINCE: Sign the petition.

12 MR. FINNEY: You would think I presume.  
13 We have a very thoughtful group in our neighborhood.  
14 They'd think a moment and say yes I think that may be  
15 the case.

16 MS. PRINCE: And I note that you believe  
17 that the shuttle bus plan is not likely to be  
18 enforceable. If the school takes attendance at the  
19 gym as proposed and attendance at 4925 as proposed, do  
20 you believe that the parents who violate the procedure  
21 can be detected?

22 MR. FINNEY: I suppose so. It just  
23 reminds me of my days in the military.

24 MS. PRINCE: Well, do you think a school

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1 can function practically and legally without taking  
2 attendance?

3 MR. FINNEY: I usually thought that was  
4 done in the classroom. Now we're going to do it when  
5 you take a bus. You know, I get back to the comments  
6 made by Board Member Mitten about --

7 MS. PRINCE: That answered my question.  
8 Are you a sound expert, Mr. Finney?

9 MR. FINNEY: No. I made it clear I'm not  
10 a sound expert.

11 MS. PRINCE: When you tend your garden in  
12 the median, do trucks and cars ever pass by?

13 MR. FINNEY: Yes.

14 MS. PRINCE: Is your wife's voice louder  
15 than truck and car traffic?

16 MR. FINNEY: She's Irish.

17 (Laughter.)

18 MS. PRINCE: Mr. Finney, I noted that you  
19 questioned whether there was adequate room for the 15  
20 proposed parking spaces, and you referenced the need  
21 to make space in the parking area for a play area.  
22 Isn't it true that the school never mentioned the need  
23 to use the existing parking area for a play area?

24 MR. FINNEY: Well, that may be true. I

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1 don't know. I just feel that it's pretty hard to  
2 restrict whether it's a frisbee or a ball to just the  
3 grass area.

4 MS. PRINCE: On page 3 of the ANC report,  
5 you reference the effort of the school to encourage  
6 supporters to attend the PCA meeting. Did not the  
7 opponents make an effort to encourage other opponents  
8 to attend? What do you conclude from the failure of  
9 the opponents' efforts to encourage others to attend  
10 and the final vote of 121 to 42 in favor of the  
11 school?

12 MR. FINNEY: That was the second vote. As  
13 I recall, there was another vote that wasn't as close.  
14 I don't know of such a concerted effort on the part  
15 of the opponents of the school to round up opposition  
16 to attend. I think they were a little bit blind-  
17 sighted. Forty-two people came to sign up as members  
18 that day, all of them in favor of the school.

19 MS. PRINCE: No 121 in favor.

20 MR. FINNEY: But I'm saying 42 new members  
21 signed up. I think some of us were quite surprised by  
22 this. I don't know. It all reminded me of Mayor Daly  
23 quite frankly.

24 MS. PRINCE: Mr. Finney, in the report,

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1 the ANC expresses concern about the school's likely  
2 intention to expand beyond 60 students over time. In  
3 fact, you've just mentioned today that there would be  
4 a minimum of 60 students. Given that concern about  
5 expansion, why did the ANC in its report decline to  
6 mention the school's offer for a binding covenant  
7 restricting enrollment to 60 students for as long as  
8 St. Patrick's operates a school on the premises?  
9 Wasn't that relevant?

10 MR. FINNEY: I think it was the opinion of  
11 the lawyer, particularly Ms. Lewis as an eminent  
12 lawyer, that these covenants are sort of unenforceable  
13 mediums and that --

14 MS. PRINCE: So you thought it bore no  
15 mention. It was simply not relevant that the school  
16 was willing to enter into a binding covenant recorded  
17 on the property.

18 MR. FINNEY: Apparently how binding it is  
19 is a matter of legal question. So I don't know  
20 whether it was relevant or not. I thought I was going  
21 on long enough.

22 MS. PRINCE: You cited the 40 year old  
23 German School Kindergarten case as precedent for your  
24 position regarding this application. I'm sure you're

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1 aware that the German School proposed the construction  
2 of a new building in the open space just eight feet  
3 from the Skrivseth-Wright property line. In addition,  
4 that record established that school involved 25  
5 children. That was the approval when in fact there  
6 were 47 children at the school when they sought  
7 expansion to 75, so clearly there was bad faith there.

8 Do you think in light of those factors that case is  
9 an accurate precedent, a relevant precedent for this  
10 case?

11 MR. FINNEY: Yes. I still think so.

12 MS. PRINCE: A building eight feet from  
13 the property line when we're preserving that space.

14 MR. FINNEY: Now you may get a solid fence  
15 eight feet from their property.

16 MS. PRINCE: So a building is the  
17 equivalent of a fence.

18 MR. FINNEY: Yes.

19 MS. PRINCE: Which body sets the policy of  
20 the PCA; the Board or the general membership? The  
21 Palisades Citizens Association that is.

22 MR. FINNEY: Well, this is a matter of  
23 some dispute. The Board presumably recommends policy  
24 which is then adopted by the general membership.

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1 MS. PRINCE: The general membership.

2 MR. FINNEY: That is correct.

3 MS. PRINCE: How did the narrow interests  
4 of a few individuals on the Board influence the Board  
5 vote?

6 MR. FINNEY: That's a presumptive kind of  
7 question. Narrow interests of the Board Members did  
8 you say?

9 MS. PRINCE: Some of the Board Members are  
10 in fact residents of Ashby Street. Are they not? Did  
11 that influence the Board vote?

12 MR. FINNEY: Well, it influenced their  
13 individual vote.

14 MS. PRINCE: But did it affect the general  
15 membership vote?

16 MR. FINNEY: I'm getting lost here. You  
17 started off with the narrow interests of the Board  
18 Members influenced the Board's vote.

19 MS. PRINCE: Did the general membership  
20 with its awareness of the Board's position vote  
21 against the position of the Board?

22 MR. FINNEY: You see, I think what  
23 happened was the Board's vote aside from the members  
24 that may come from the affected area reflected their

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1 long experience with not only St. Patrick's school but  
2 others in trying to get them to abide by promises.

3 MS. PRINCE: And 121 members did not agree  
4 with them. Is that correct?

5 MR. FINNEY: Is that the vote? I've  
6 forgotten.

7 MS. PRINCE: That was the vote.

8 MR. FINNEY: Sure.

9 CHAIRPERSON GRIFFIS: Let me interrupt you  
10 just briefly, Ms. Prince, because I'm not sure why  
11 we're continuing on so much about the PCA.

12 MS. PRINCE: That's my question about the  
13 PCA.

14 CHAIRPERSON GRIFFIS: Okay.

15 MS. PRINCE: Mr. Finney, on July 9th --

16 MR. FINNEY: Can I just say one other  
17 thing? The PCA is a citizen's association.

18 MS. PRINCE: That's true.

19 MR. FINNEY: The ANC is an elected body of  
20 the government. Therefore, its voice carries great  
21 weight and greater weight than that of the Palisades  
22 Citizens Association.

23 MS. PRINCE: No argument from me.

24 MR. FINNEY: Thank you.

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1 MS. PRINCE: Mr. Finney, on July 9th at  
2 the hearing, you indicated that you've grown  
3 accustomed to the noise of planes yet could you not  
4 acclimate to the sound of children's voices?

5 MR. FINNEY: When I was younger I think I  
6 could.

7 MS. PRINCE: But not now.

8 MR. FINNEY: Right.

9 MS. PRINCE: You made some references to  
10 the White Haven parkway approval for St. Patrick's  
11 School. Are you aware that your ANC did not oppose  
12 the school's construction of a gym just three years  
13 ago, did not recommend the inclusion of any conditions  
14 in the order affecting traffic or car pooling when it  
15 had a clear opportunity to do so at that time had they  
16 thought it relevant or necessary?

17 MR. FINNEY: I trust your recollection. I  
18 suspect that is correct.

19 MS. PRINCE: Mr. Finney, in the event that  
20 the school-use is approved, do you think that the  
21 school and the community including the ANC can work  
22 together to address at least some of the ANC's  
23 concerns?

24 MR. FINNEY: I certainly hope so. I won't

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1 say anymore.

2 MS. PRINCE: Thank you. I have no further  
3 questions.

4 CHAIRPERSON GRIFFIS: Thank you. Other  
5 parties that have questions, cross examination of the  
6 ANC? No questions. Very well, Mr. Finney, I thank  
7 you very much.

8 MR. FINNEY: Thank you, Mr. Chairman.

9 CHAIRPERSON GRIFFIS: Very eloquently done  
10 as usual. We are going to move on to persons in  
11 support of the application and go to testimony. Can I  
12 have a show of hands of who will be testifying today?

13 We have about eight or so. We're going to take five  
14 minutes to stretch.

15 Immediately when we come back if we can  
16 have those folks ready. What I want to do is have  
17 four at a time come up. We'll go straight down the  
18 table, and then we'll have cross examination of those  
19 then we'll move onto the other four. We'll be back  
20 in five minutes. I will stress the time when we come  
21 back. Each will have three minutes to give testimony.

22 Off the record.

23 (Whereupon, the foregoing matter went off  
24 the record at 3:29 p.m. and went back on

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1 the record at 3:42 p.m.)

2 CHAIRPERSON GRIFFIS: Okay. If we can  
3 take seats and continue. We have one point of  
4 importance before we go to the testimony. It's come  
5 to my attention that perhaps some folks that are here  
6 today that will be giving testimony have not been  
7 sworn in. So, with that, if you would give your  
8 attention to Ms. Bailey.

9 MS. BAILEY: Please stand all those  
10 persons who wish to be sworn in today. Please raise  
11 your right hands.

12 WHEREUPON,

13 CASEY JASON, JR., WILLIAM G. SMITH, PAUL BREWSTER,  
14 MARK MAVES, JOSEPH METCALF, KATE MCCLINTIC,  
15 STEVEN RUPP, ALAN AICHES, GWEN GEBHARD,  
16 MARY ANN REED, CAMERON CASTILLE, JEFF KEFFOR, WILLIAM  
17 SPENCER, ROBERT MURPHY, and WOODY BOLTON  
18 were called as witnesses and, having been first duly  
19 sworn, were examined and testified as follows:

20 MS. BAILEY: Thank you.

21 CHAIRPERSON GRIFFIS: Okay. Good. We  
22 have our first four panelists in front of us. Let me  
23 give instructions to everyone that will be giving  
24 testimony today. First of all, you will see there's a

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1 clock on each side. Each person is allowed three  
2 minutes. I will be very strict with that. I usually  
3 give an indication and try not to disrupt you when you  
4 have a few seconds left if you haven't noticed the  
5 clock, so you will need to wind down at that point.

6 Secondly, I'm going to ask each to  
7 introduce themselves, give the name, address, and  
8 additionally if you have submitted a written letter  
9 into the record I would like an indication of that so  
10 that we may make note of it. With that thought, if  
11 there is a written submission, clearly the Board has  
12 read all of them and will re-read most of if not all  
13 of the record, so you do not necessarily need to go  
14 through your entire letter or submission of substance  
15 but can summarize for the Board.

16 We take good notes. Again, we will cross  
17 it with the written submission in. So with that, let  
18 me start on my right.

19 MR. JASON: My name is Casey Jason, Jr. I  
20 live at 4884 Mac Arthur Boulevard, N.W., Apartment  
21 204, Washington, D.C. 20007. Currently I live next  
22 door to the St. Patrick's School seventh and eighth  
23 grade that is currently in operation. I've been  
24 living next door to them since they have opened. I

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1 can say from my own personal experience that I hardly  
2 notice that they're even open. The kids are very well  
3 behaved.

4 CHAIRPERSON GRIFFIS: Do you have a  
5 written submission in the record?

6 MR. JASON: No, sir, but I would be happy  
7 to send you one.

8 CHAIRPERSON GRIFFIS: Okay. And that  
9 would be fine.

10 MR. JASON: I can also say I've never seen  
11 one frisbee. I'm not aware of their dental work, but  
12 I can also say that these are kids that are dedicated  
13 to being a part of the community. Every day that I've  
14 been coming to and from school, I'm a law student  
15 which means two things. I have to be at school on  
16 time, and when I get home, I need it to be quiet so  
17 that I can study.

18 Granted I'm not a property owner, but I do  
19 have a possessory interest. I have an interest in  
20 quiet enjoyment in my possessory interest which I take  
21 very seriously. If it were noisy or if I were having  
22 trouble with traffic or anything else or if the kids  
23 were obnoxious, I would not be here today testifying  
24 on behalf of St. Patrick's saying that this is a great

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1 school and these are good children.

2 Now, I do agree there are a number of  
3 retirees in the community. However, they are not the  
4 entire community. There are a lot of people. We have  
5 a more diverse tapestry than that. I think one of the  
6 best indications is during our Fourth of July day  
7 parade. You see a great diversity in our community.  
8 I think that's evident also at St. Patrick's.

9 We see that at the school. It represents  
10 what's important about the community, the interest of  
11 family, the interest of being part of the community,  
12 being well behaved, respecting your elders. When I  
13 try to cross the street with my girlfriend, the  
14 teacher keeps them quiet. They are always under  
15 supervision. They I believe restrain themselves.  
16 They let us go ahead of them so that we can cross the  
17 street first.

18 Granted with all deference to Mr. Finney,  
19 I have not done similar experiments sitting in the  
20 median and whatnot, but I can say that just being  
21 there every day in the morning and in the evening and  
22 then having to take the bus Monday, Wednesday, and  
23 Friday so I can go to the DOJ to work, I haven't had  
24 any trouble with traffic. I haven't had any trouble

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1 with noise. It is very quiet.

2 I hope that this does pass. I hope the  
3 exception is granted because I would love one day if  
4 these children are any indicia of the kind of kids  
5 that they produce at St. Patrick's I'd like my  
6 children to attend. I think it's a character building  
7 institution that wants to be a part of the community  
8 rather than apart from. Thank you.

9 CHAIRPERSON GRIFFIS: Thank you very much.

10 Also what I'll do is have cross examination of the  
11 testimony of the entire panel by the parties and  
12 Applicant, so once the table is finished we can move  
13 on. Good.

14 PARTICIPANT: I'd like to suggest if we  
15 could to go to that end because I'm in support of  
16 their testimony. (Indicating.)

17 CHAIRPERSON GRIFFIS: Certainly.

18 PARTICIPANT: Thank you.

19 MR. SMITH: Hi. I'm Bill Smith. Fifty  
20 years ago I chose the Palisades and built my home.  
21 Immediately I got involved in Palisades Citizens  
22 Association, PCA. My PCA activities included being  
23 president and supporting Walter Washington during the  
24 1968 riots.

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1                   While I'm not a member of this church, I  
2 sponsored its move into the Palisades and subsequent  
3 expansions. Time is my most valuable asset having  
4 retired from the Government 28 years ago after serving  
5 34 years. I don't know how much time I have left. I  
6 don't like it wasted, and you shouldn't either.

7                   For more than six months, I have been  
8 trying to tell you that we PCA got this Mac Arthur  
9 property zoned as a school house 40 years ago. Why do  
10 you permit discussion about its use as a school?  
11 Whether students ages and hours are your business is  
12 debatable. St. Patrick's School owns it and wants to  
13 improve the school house use by installing an elevator  
14 for the handicapped and to modernize its air  
15 conditioning and other utilities. Isn't it reaching  
16 to make such improvements your business?

17                   Neighbors. My comments apply to the  
18 neighbors to St. Patrick's School and the B.A.. Our  
19 community PCA voted overwhelmingly to support St.  
20 Patrick's expansion. We've always encouraged  
21 education as the best non-residential use of our area.

22 I urged my friends Philleo Nash, aide to President  
23 Truman, and his wife Edith Nash, to bring Georgetown  
24 Day School to the Palisades.

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1                   Recently after it relocated on lower  
2 MacArthur Boulevard, more than 25 houses were built  
3 next door and sell in excess of \$500,000. So schools  
4 may improve our housing values. For months, abutting  
5 neighbors have used your hearing to learn about bus  
6 size and operation, street parking, and similar issues  
7 of questionable relationship to this case. Can you  
8 believe three buses in an hour on Mac Arthur Boulevard  
9 would be disruptive?

10                   CHAIRPERSON GRIFFIS: Twenty seconds.

11                   MR. SMITH: Unlike others in our community  
12 bordering on schools these few seem to object to  
13 student ages and their hours of attendance. Would the  
14 neighbors prefer night time and weekends for classes  
15 on these kids? If so, would you get involved?

16                   St. Patrick's. What business of this  
17 hearing is the layout and operation of their church  
18 property on another street? If Ashby neighbors object  
19 to St. Patrick's compliance of district rules  
20 elsewhere, is it properly before this hearing?

21                   CHAIRPERSON GRIFFIS: Mr. Smith, I'm going  
22 to have to interrupt you. That's three minutes. You  
23 have a written submission, and we will certainly  
24 continue reading this and then read it in full during

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1 our deliberation. I do think you bring up some  
2 excellent points, and we may get more comments on  
3 actually the Board's jurisdiction on some of the  
4 things that you're bringing up.

5 MR. SMITH: I'd like to object to that  
6 time limitation, sir, because I've spent six months  
7 waiting for a one page statement to be given.

8 CHAIRPERSON GRIFFIS: Indeed. I fully  
9 understand that and appreciate it. I thank you for  
10 your patience.

11 MR. SMITH: Unfortunately, the other  
12 people who might disagree with me and with whom I may  
13 express disagreement farther into the statement will  
14 not hear what I'm saying.

15 CHAIRPERSON GRIFFIS: I think it would be  
16 appropriate if you distributed the written statement.

17 As I say, we do have it as part of the record. Thank  
18 you very much.

19 MR. BREWSTER: My name is Paul Brewster.  
20 My wife and I have lived at 5501 Hawthorne Place,  
21 N.W., in the Palisades for over 16 years. I've lived  
22 in Washington for over 30 years.

23 Our two children attend St. Patrick's.  
24 Actually only one of them does now. This statement

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1 was prepared clearly a long time earlier in the  
2 process. She now is going to school in Maryland by  
3 the way, another objective proof of the lack of places  
4 in the District of Columbia. My other is a third  
5 grader.

6 My wife and I actively participated in the  
7 project to refurbish the Palisades playground. We  
8 have a brick with our kids' names on the sidewalk  
9 there, so we've been long time representatives.

10 For those unfamiliar with the  
11 neighborhood, we live directly across Cathedral Avenue  
12 from the Community Preschool in the Palisades. I  
13 bring this up because the situation is quite analogous  
14 to the situation faced with the future neighbors of  
15 St. Patrick's. The school did not exist when we moved  
16 in. The facility was a church school used only on  
17 Sundays.

18 We were just married and children were  
19 still in the future. Has our experience with the  
20 school been a positive one? Yes it has. In fact, the  
21 fact that there are a tremendous number of schools and  
22 over 5,000 students in our neighborhood we believe is  
23 a strong adjunct to our participation as a  
24 neighborhood.

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1                   Is it occasionally inconvenient?    Yes.  
2                   Every once in a while.  It doesn't operate under any  
3                   covenant that I know of such as that proposed by St.  
4                   Patrick's regarding parking and the street can get  
5                   crowded at pick up and drop off.  But the minor  
6                   inconveniences don't affect our joy and happiness.  I  
7                   hear the kids out there.  They sound good.

8                   Our community's response to St. Patrick's  
9                   has made me feel very proud.  The local newspaper and  
10                  PCA newsletter gave everyone an opportunity to weigh  
11                  in on one side or the other.  The PCA meeting provided  
12                  a well advertised forum where people who felt strongly  
13                  about the issue could come and discuss the issue in an  
14                  open and respectful manner.

15                 At that meeting, the residents of the  
16                 Palisades listened with great care and respect to each  
17                 other's opinions.  They appeared to have read the  
18                 copious material both for and against.  In the end,  
19                 they voted overwhelmingly to support it.  It should  
20                 also be noted they overwhelmingly voted against the  
21                 position taken by the PCA Board, not only once but  
22                 twice.

23                 What conclusions can we learn from the  
24                 process?  It should be apparent that the community

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1 leadership is out of step with the majority of the  
2 people they represent. Mr. Finney's statement was  
3 perfectly appropriate as long as you said the word  
4 "community." He said the word "community" over and  
5 over again. But the truth of the matter is that the  
6 only time this was voted on by members of the  
7 community it was overwhelmingly supported.

8 So the question of the ANC's role in this  
9 is really something. I'm sure the intent of the laws  
10 giving great weight to the ANC assumed that the ANC  
11 would be representative of the citizen's concerns, but  
12 it doesn't seem to be. If they're not allowed to use  
13 this site for a school, I fear for the future of the  
14 property. Will it become yet another cluster of high  
15 prices, up scale homes on tiny plots of land raising  
16 the property values of its neighbors while providing  
17 no benefit to the community at large? That to me is  
18 an objectionable use.

19 CHAIRPERSON GRIFFIS: Thank you very much.

20 Did you have a written submission?

21 MR. BREWSTER: I believe I've done it, but  
22 it had different text than this. I've sent a letter  
23 previously.

24 CHAIRPERSON GRIFFIS: Very good.

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1 MR. BREWSTER: I'd be glad to give this  
2 over.

3 CHAIRPERSON GRIFFIS: That would be fine  
4 if you want to submit that in. Good afternoon, sir.

5 MR. DUSAULT: My name is Philip Dusault.  
6 I'm here in support of Mr. Brewster's testimony. I  
7 live at 3811 Jocelyn Street, N.W. in the District. I  
8 have a child at St. Patrick's. I also submitted at  
9 the outset of this process a letter on the issue.

10 CHAIRPERSON GRIFFIS: Excellent. Thank  
11 you very much.

12 MR. MAVES: Hi. I'm Mark Maves at 5101  
13 Manning Place, N.W. I have two children at St.  
14 Patrick's. I simply want to save time and say I'm in  
15 support of what Mr. Smith brought to the testimony.

16 CHAIRPERSON GRIFFIS: Excellent. How do  
17 you spell your last name?

18 MR. MAVES: M-A-V-E-S.

19 CHAIRPERSON GRIFFIS: Very good. That's  
20 everybody. Nobody move. Parties cross examination.  
21 Actually does the Applicant and its representatives  
22 have any cross examination of the testimony we just  
23 heard?

24 MS. PRINCE: I have no questions.

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1 CHAIRPERSON GRIFFIS: Indeed. The ANC.

2 MR. FINNEY: No.

3 CHAIRPERSON GRIFFIS: Very good. Mr.  
4 Lovendusky.

5 MR. LOVENDUSKY: I just have a few  
6 questions.

7 CHAIRPERSON GRIFFIS: Very well. Is there  
8 a chair that we could provide for you? What I'd like  
9 to do is have it in some order if that works with your  
10 notes. You can go down the table.

11 MR. LOVENDUSKY: Yes.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. LOVENDUSKY: Good afternoon. I'm  
14 Michael Lovendusky, party opponent to the application.  
15 I'm sorry. The first gentleman, I missed your name.

16 MR. JASON: My name is Casey Jason, Jr.  
17 and hi neighbor.

18 MR. LOVENDUSKY: Thank you, Mr. Jason.  
19 Mr. Jason, in your remarks, you commented about the  
20 role of St. Patrick's in the community and the good  
21 feeling you get at the Fourth of July and the  
22 activities that go on in the community. Do you  
23 consider the parents, the 38 percent of the population  
24 of St. Patrick's that come from Maryland and Virginia

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1 part of your concept of the community?

2 MR. JASON: Well first of all, when the  
3 school is actually started I think that over time --  
4 Well, this is all speculation. I'm not an expert on  
5 sociology, anthropology, or any other ology for that  
6 matter. But I will tell you that if I were to send my  
7 child to St. Patrick's and I were house hunting I'd  
8 probably look closer to the school. I might look more  
9 towards the Palisades. In that case, maybe it might  
10 actually increase property value.

11 I think one of the reasons why I like the  
12 Palisades and why I'd like to eventually buy a house  
13 when I finish law school is the fact that there are so  
14 many schools that might be in the area but there  
15 really aren't enough options as far as middle schools.  
16 That's one of the things I'm interested in.  
17 Hopefully maybe one day they might even have a high  
18 school so you could keep your kids there throughout.

19 MR. LOVENDUSKY: Mr. Jason, do you think  
20 you answered my question?

21 MR. JASON: Do I think --

22 CHAIRPERSON GRIFFIS: The question is do  
23 you --

24 MR. JASON: Do I believe that the 38

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1 percent that are out of the District is indicative of  
2 a participation of the city? Yes I do because first  
3 of all a lot of people commute in and out of this  
4 city. Even besides that, those numbers might change  
5 over time. They might even become more based within  
6 the city. But that isn't even the issue.

7 The issue is not whether or not these  
8 people are D.C. residents and sending their kids to  
9 this school. That has absolutely nothing to do with  
10 the negative impact in the community. What is  
11 relevant is whether or not anybody's quiet enjoyment  
12 of their property will not be improved by any of the  
13 mitigating covenants that have been put in place by  
14 St. Patrick's. So I don't think it's necessary for us  
15 to go and check everybody's licenses before we agree  
16 to let them have an exemption.

17 MR. LOVENDUSKY: Mr. Brewster, in your  
18 remarks, you commented about the shame that would  
19 occur if in fact the three residential lots were  
20 developed as residences. Is that correct?

21 MR. BREWSTER: I'd have to go back and  
22 refer to my notes. I said it would be objectionable.  
23 I'll quote exactly. "Will it become yet another  
24 cluster of high priced, up scale homes on tiny plots

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1 of land?" That to me is objectionable. Yes, I have  
2 some strong feelings in here about those properties  
3 because of my objective experience elsewhere in the  
4 neighborhood where very up scale houses, the question  
5 of a six foot fence versus a three story house at some  
6 distance apart, my objective experience is I see a lot  
7 of them around.

8 MR. LOVENDUSKY: Mr. Brewster, in your  
9 objective opinion, would the construction and  
10 occupancy of three high priced, up scale homes  
11 contribute beneficially to the tax-base of the  
12 District of Columbia?

13 MR. BREWSTER: I'm not concerned about the  
14 narrow tax-base issue. I'm more concerned about the  
15 availability of schooling for kids. The narrow tax-  
16 base improvement that would be caused by having three  
17 houses would be more than compounded by the raise in  
18 price values for everybody else by the presence of  
19 additional schools.

20 MR. LOVENDUSKY: Mr. Brewster, do you  
21 think you answered my question?

22 MR. BREWSTER: Yes I did.

23 MR. LOVENDUSKY: Let me repeat the  
24 question. Do you believe that the construction and

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1 occupancy of three high priced, up scale homes in the  
2 three residential lots occupied by 4925 Mac Arthur  
3 Boulevard would contribute beneficially to the tax-  
4 base of the District of Columbia?

5 MR. BREWSTER: I'm not an expert on  
6 taxation, but I would say if you had 30 houses going  
7 up in value by ten percent it would certainly be an  
8 awful lot different from three houses providing  
9 additional tax-base. We can weigh the equation and  
10 figure that out, but I'm not an expert in that. My  
11 subjective opinion is that additional houses provide  
12 only a limited, short-term, very narrowly focused  
13 growth and improvement while the more general  
14 provision of a school provides benefit to everyone  
15 around, not just the three people and not just the  
16 neighbors living next door.

17 MR. LOVENDUSKY: Very well. Mr. Dusault,  
18 can you --

19 MR. DUSAULT: I'm not here to testify. I  
20 don't believe I can. I was here in support of Mr.  
21 Brewster's testimony.

22 CHAIRPERSON GRIFFIS: That's an  
23 interesting point.

24 MR. DUSAULT: I thought that there were

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1 people to testify and there were people to support.

2 CHAIRPERSON GRIFFIS: Were you going to  
3 cross examine something of his statement?

4 MR. LOVENDUSKY: I have a question about  
5 his statement.

6 MR. DUSAULT: I didn't say anything other  
7 than I supported Mr. Brewster's testimony.

8 CHAIRPERSON GRIFFIS: His statement of  
9 support of the other testimony.

10 MR. LOVENDUSKY: Well, he identified that  
11 he lives on Jocelyn Street. Where is Jocelyn Street?

12 MR. DUSAULT: It's off of Connecticut  
13 Avenue.

14 MR. LOVENDUSKY: Is it located in the  
15 Palisades?

16 MR. DUSAULT: No it's not.

17 MR. LOVENDUSKY: Thank you. Mr. Maves,  
18 I'm sorry, I missed the address of your residence.

19 MR. MAVES: 5101 Manning Place.

20 MR. LOVENDUSKY: Where is Manning Place?

21 MR. MAVES: It's in the Palisades area.  
22 We're members of the PCA.

23 MR. LOVENDUSKY: Thank you. No further  
24 questions.

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1 CHAIRPERSON GRIFFIS: Okay. Did any of  
2 the other parties have any cross examination at this  
3 time?

4 (No response.)

5 CHAIRPERSON GRIFFIS: Very well. Thank  
6 you all very much. I appreciate your patience. Oh,  
7 I'm sorry.

8 MEMBER ETHERLY: Just a quick question for  
9 Mr. Jason. I was interested in your testimony because  
10 it sounds like your personal context is something very  
11 similar to what we've heard a lot about. Could you  
12 just talk a little bit about the type of building that  
13 you live in and the proximity of your residence or  
14 apartment to --

15 MR. JASON: We share the same building  
16 practically. I'm actually not sure whether or not Mr.  
17 Finney was saying was true is that they were renting  
18 from the River School. I can't testify to that. I  
19 can testify to the location. I might even be able to  
20 draw you a diagram here.

21 I share the apartment lot essentially. So  
22 I pass by the school literally every day. They are  
23 for all intensive purposes my neighbors. As a matter  
24 of fact, to get here today, I hadn't met him before

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1 but Dan Spector one of the teachers, actually when I  
2 was trying to get the bus, stopped it for me and made  
3 sure I was able to get on. I said I'm really glad I'm  
4 going to be testifying today. He said good, thanks so  
5 much. I'm glad he stopped the bus.

6 I think that's pretty indicative of my  
7 interaction with the school. When they take the  
8 children out for different outside things when they  
9 are leaving the school, he is with them or other  
10 teachers as well. I can say from my own personal  
11 experience every single time they have been well  
12 behaved, they've been in a single file line, and  
13 they've been quiet.

14 MEMBER ETHERLY: Okay. So you reside in  
15 an apartment complex or an apartment building.

16 MR. JASON: Yes.

17 MEMBER ETHERLY: What floor are you  
18 located on?

19 MR. JASON: I'm the second floor. It's a  
20 pretty short building. It's traditional.

21 MEMBER ETHERLY: No problem. Do you have  
22 windows in the apartment?

23 MR. JASON: Absolutely.

24 MEMBER ETHERLY: What do your windows

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1 front onto?

2 MR. JASON: My windows look directly at  
3 the River School building. As a matter of fact, that  
4 area echos quite a bit, so if it were as noisy as  
5 Neighbors United Trust contends, I mean, I definitely  
6 would be complaining.

7 MEMBER ETHERLY: But given your personal  
8 circumstance and the proximity of that window to the  
9 River School facility, you have no major complaints.

10 MR. JASON: No complaints at all. As a  
11 matter of fact, when I'm even walking by it, I can't  
12 even really get to the Safeway or anything else  
13 without walking by the St. Patrick's School. It's  
14 honestly so quiet I don't know if they're open  
15 sometimes except that I see the teachers in there. It  
16 is extremely quiet.

17 MEMBER ETHERLY: Okay. Thank you.

18 CHAIRPERSON GRIFFIS: Others? Ms.  
19 Renshaw.

20 VICE CHAIRPERSON RENSHAW: Yes, Mr.  
21 Chairman. To Mr. Jason, how long have you lived at  
22 this location?

23 MR. JASON: Three years.

24 VICE CHAIRPERSON RENSHAW: How many kids

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1 are at that school?

2 MR. JASON: Currently at St. Patrick's  
3 now? I believe they now have an enrollment, well,  
4 actually I could ask. How many? Twenty-nine students  
5 at this time.

6 VICE CHAIRPERSON RENSHAW: Okay. What  
7 about your experience with the kids outside? Do they  
8 play outside at that location?

9 MR. JASON: Well, I believe that one of  
10 the teachers, Dan Spector, will lead the kids out.  
11 I'm not sure what activities he's leading them to. I  
12 just see that they're leaving the school. As they are  
13 leaving and at all times, they have supervision. They  
14 are always in a single file line.

15 I'm not sure if that's because St.  
16 Patrick's has just laid down the law or if it's just  
17 that this is a mixture of their upbringing, their own  
18 character, and just that they happen to be very well  
19 behaved children. They're out there. I think maybe  
20 they're all there for all I know.

21 VICE CHAIRPERSON RENSHAW: Are you at home  
22 when the children are dismissed?

23 MR. JASON: Absolutely. I come and go. I  
24 have classes on Tuesday and Thursday. I also work at

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1 the Commercial Litigation Department at the DOJ on  
2 Monday, Wednesday and Friday. The DOJ typically  
3 doesn't really get going until 9:00. During the  
4 morning hours, I'm out when they're out.

5 When they're car pooling, I'm around  
6 there. When I have to drive to school on Tuesday and  
7 Thursday, I'm there as well in the thick of it. The  
8 same thing just during my days. When I'm home,  
9 they're around.

10 VICE CHAIRPERSON RENSHAW: Do you have an  
11 assigned parking space at your apartment house?

12 MR. JASON: Actually I'll tell you right  
13 now, I've lived in the Palisades and I've never hurt  
14 for parking in my life. I have a Zone 3 sticker.  
15 There is always parking available in the Palisades.  
16 It's pretty tough not to find it if you don't have a  
17 sticker.

18 First of all, just to say compliance  
19 mechanisms do work. We have meter maids, and I'm not  
20 sure the politically correct term for that, but  
21 parking enforcement officers I guess that will patrol  
22 the area. If your sticker does not match our  
23 community, you get stuck with a pretty hefty ticket.  
24 If your waiting really a long time around the zoning

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1 area where St. Patrick's is operating, where they're  
2 dropping their kids off, they will bring you to task.

3 So it is strict.

4 We also have a police officer set up to  
5 make sure people obey the speed limits in the  
6 Palisades. So there are a number of mechanisms to  
7 make sure that order is maintained and that people are  
8 respectful of one another. I can assure you if it  
9 were a big problem with noise, most of us know the  
10 officers in our community by name. We would have  
11 probably talked to them and said these kids are being  
12 really noisy. They wake me up in the morning or I  
13 can't seem to get around. There would be a response.

14 VICE CHAIRPERSON RENSHAW: Are you a  
15 member of the Palisades Citizens?

16 MR. JASON: Yes, ma'am.

17 VICE CHAIRPERSON RENSHAW: Did you attend  
18 the ANC meetings and speak out in support?

19 MR. JASON: I didn't attend the ANC  
20 meetings or the PCA meetings at that time. I've  
21 become a much more active member now. I regret that I  
22 didn't before especially since all the activity around  
23 this. When I was told originally about the vote that  
24 it was so overwhelmingly in support of the school at

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1 the ANC and at the Palisades, I thought maybe it  
2 wasn't so important that I went.

3 Of course, they're going to vote in favor.

4 I was really shocked when the vote came  
5 overwhelmingly down and you hear rumors that if there  
6 were maybe another person in ANC, they just wanted one  
7 other person who lived in the neighborhood to be in  
8 support than maybe there would have been a swing vote.

9 VICE CHAIRPERSON RENSHAW: Right.

10 MR. JASON: At one point, I even thought  
11 about trying to join the ANC.

12 VICE CHAIRPERSON RENSHAW: Well, good. So  
13 you don't regularly go to the ANC meetings, but now  
14 you will because you're a convert. Good.

15 MR. JASON: Well, I realize now that your  
16 voice counts.

17 VICE CHAIRPERSON RENSHAW: Mr. Finney is  
18 taking note of your name. Just to ask the rest of the  
19 panelists, did you all attend the ANC meetings on  
20 this?

21 MR. SMITH: Yes.

22 VICE CHAIRPERSON RENSHAW: Mr. Smith did.  
23 The rest of you.

24 MR. BREWSTER: I attended the PCA. There

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1 were two nights in a row. I couldn't do both of them.

2 I attended the PCA meeting.

3 VICE CHAIRPERSON RENSHAW: All right. But  
4 not the ANC. Mr. Smith.

5 MR. SMITH: I attended and attempted to be  
6 recognized to express my position. It was the policy  
7 of the ANC not to hear from residents outside the  
8 immediate neighborhood. As John Finney explained, he  
9 was adhering closely to the narrow rules. He did not  
10 recognize me.

11 VICE CHAIRPERSON RENSHAW: Okay. The  
12 other members of the panel.

13 MR. MAVES: Yes. I was there.

14 VICE CHAIRPERSON RENSHAW: For which?

15 MR. MAVES: For both. ANC and Palisades.

16 VICE CHAIRPERSON RENSHAW: All right.  
17 Thank you very much.

18 CHAIRPERSON GRIFFIS: Anything else?

19 VICE CHAIRPERSON RENSHAW: No. That's it.

20 CHAIRPERSON GRIFFIS: Any other questions  
21 from the Board? Any questions because of the new  
22 testimony that you just heard from Mr. Jason? Very  
23 well. Gentlemen, I thank you very much and appreciate  
24 your patience and participation this afternoon. Let's

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1 fill the table again. We have five chairs. Can we  
2 set up an on deck station somewhere? Get people  
3 comfortable.

4 Also to remind anyone giving testimony,  
5 I've noticed most of you are handing up the witness  
6 cards, just make sure that you do either before or  
7 after you give your testimony. Is there a preference  
8 of which side we'd like to start on? Would you like  
9 to begin, sir? Excellent. I would ask you to turn on  
10 your microphone, give me your name and address, and  
11 just give me an indication whether you've submitted a  
12 written letter.

13 MR. METCALF: I didn't know I was going to  
14 testify until I heard Mr. Finney speak. Now I'm  
15 energized.

16 CHAIRPERSON GRIFFIS: Very well.

17 MR. METCALF: My name is Vice Admiral  
18 Joseph Metcalf. I'm a retired Naval person. I spent  
19 41 years in the Navy. I'm a resident of this area. I  
20 bought a home here in 1987. I've been here since  
21 then. However I'm not unfamiliar with community  
22 things. I've owned four homes in this area. We've  
23 moved a number of times. I'd like to speak about what  
24 I know something about which is the price of homes.

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1 CHAIRPERSON GRIFFIS: Indeed.

2 MR. METCALF: I disagree vigorously with  
3 Mr. Finney. One of the first things you do when you  
4 go to buy a home, at least people my age when I was  
5 doing it and it continued on when my grandchildren  
6 arrived, is you want to know what the school system  
7 is. It definitely affects what you're doing, what  
8 you're going to buy. We've always been successful in  
9 buying in a good school system. That continued on  
10 to the home we have right now although I'm not  
11 particularly interested in schools anymore.

12 The reason I'm here is not that I have an  
13 ax to grind with anything that's going on here. I'm a  
14 member of St. Patrick's, but that's it. I don't have  
15 any other interests except for property that we own  
16 here in the area. As I said, I think that a school,  
17 St. Patrick's in particular, is a big plus, not a  
18 detractor. Strong schools have always been a reason  
19 why we went and bought a home in a school district.

20 I think a good, powerful area that has  
21 schools is an economic advantage. My experience is it  
22 increases the value. It increases the probability  
23 that the value is going to stay high. I'm more  
24 interested in that being of the age where our

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1 principle investment is a school.

2 If I might say one thing, Mr. Chairman,  
3 I'm impressed. I came here because I think it's my  
4 duty as a citizen to find out what goes on and what  
5 you people do. I'm impressed. You have a hell of a  
6 job.

7 CHAIRPERSON GRIFFIS: And we're  
8 volunteers.

9 MR. METCALF: Yes. I checked on that.  
10 You're volunteers plus I call you. That's important.  
11 When I retired from the Navy, I wasn't able to join  
12 the Board, so I became a District boy scout, Mr.  
13 Chairman, where you do those types of things.

14 CHAIRPERSON GRIFFIS: Indeed.

15 MR. METCALF: In other words, I owe my  
16 community something. That's the way I did it.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. METCALF: Also coming to meetings like  
19 this is also why I'm here.

20 CHAIRPERSON GRIFFIS: Good and we thank  
21 you for your participation. I think it is an  
22 important civic responsibility to have participation  
23 on these and other issues in the community. Good  
24 afternoon, ma'am.

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1 MS. MCCLINTIC: Good afternoon. My name  
2 is Kate McClintic. My husband and I have lived in the  
3 Palisades area for over 20 years. I too was very  
4 frustrated with Mr. Finney's testimony that I thought  
5 was full of erroneous and inaccurate speculation.  
6 From a view point of maybe somebody who long ago had  
7 the need for children to go to school, I do understand  
8 that Mr. Finney sent his children to exclusive private  
9 schools. So when he assumes this self righteous  
10 nature about St. Patrick's, I find that very  
11 offensive.

12 I'm here basically to say however that I  
13 am a parent of St. Patrick's. I've had three children  
14 at St. Patrick's. I have a fifth grader there now.  
15 My particular ax to grind is the frustration that my  
16 husband and I felt having moved to the District and  
17 feeling very happy and gratified to be residents of  
18 the District, but when my two daughters graduated from  
19 St. Patrick's from the sixth grade, one went to school  
20 in McLean, Virginia and the other went to school in  
21 Potomac, Maryland.

22 That is really and truly because there are  
23 not enough schools in the District that can accept  
24 these children in their middle years. I think we

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1 estimated it was over 7,000 miles a year that I put on  
2 my car driving to Potomac and to McLean twice a day.  
3 We just feel the value of St. Patrick's in the  
4 neighborhood. We think it's a blessing. We think it  
5 adds vitality to the neighborhood.

6 I think it's a perfect use for that space.

7 If it's not a school, I can't imagine what could be  
8 better than a school. I think of the Spanish Embassy  
9 up the street on Fox Hall Road and what an eyesore it  
10 is and what it would be to have an embassy move into  
11 that property and commandeer all the parking and have  
12 parties at night. I think that a school is just about  
13 the noblest use of that space.

14 CHAIRPERSON GRIFFIS: Good. Thank you  
15 very much. You have submitted a written statement.  
16 Correct?

17 MS. MCCLINTIC: I have.

18 CHAIRPERSON GRIFFIS: Can you give me your  
19 address for the record?

20 MS. MCCLINTIC: Yes. It's 5115 Palisade  
21 Lane.

22 CHAIRPERSON GRIFFIS: Thank you.

23 MR. RUPP: Good afternoon. My name is  
24 Steven Rupp. I've lived in the District for 30 years.

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1 We have two very quiet children attending St.  
2 Patrick's. My house is located on the corner of 35th  
3 Street and Volta Street which is directly across the  
4 street from the main entrance of Georgetown Visitation  
5 School.

6 Georgetown Visitation is a real school.  
7 It has a population of 400 students with full drop off  
8 and pick up. Prior to attending these zoning  
9 meetings, it never occurred to me that living across  
10 from a school was a negative. The fact is we rarely  
11 have been disturbed by noise from the school.

12 It seems odd to me, and I begin to wonder  
13 why. The reason is that the traffic on 35th Street  
14 drowns out most noise coming from the school. That is  
15 even with a stop sign at Volta to slow the traffic  
16 down.

17 Now, realizing 35th Street is no Mac  
18 Arthur Avenue with streaming traffic going 35 or 40  
19 miles an hour, I decided to go sit on the lawn at the  
20 site with a tape recorder. Mac Arthur Avenue is less  
21 than 50 feet from the subject building as is the  
22 neighbors on Mac Arthur. The traffic is a continuous  
23 flow of cars, trucks, buses, motorcycles, ambulances  
24 going to Sibley traveling 35 to 50 miles an hour. The

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1 noise created by rubber hitting pavement and exhaust  
2 systems is loud and disturbing.

3 I tried moving back on the lawn to the  
4 rear of the parking lot. It didn't help much. I even  
5 then moved up the street on Ashby Street halfway up  
6 the street. Again, it didn't help much. Traffic  
7 noise travels as the experts have testified. Also as  
8 in the case on 35th Street, the traffic noise is  
9 compounded by airplane noise. Planes seem to go  
10 overhead on Mac Arthur every five to seven minutes as  
11 they do in Georgetown.

12 In conclusion, I believe any potential  
13 noise factor caused by the proponent, the limited  
14 school has been greatly exaggerated and would not  
15 disturb the serenity of this neighborhood. Further,  
16 given the thousands of vehicles that pass by here  
17 daily or even hourly it's hard to imagine how a half  
18 dozen or so small buses bringing the kids to and from  
19 school would disrupt the natural flow of this area or  
20 the harmony. I can assure Mr. Finney that my house  
21 has not lost value. In fact, the tax assessor says  
22 for the past year it's increased 66 percent. Thank  
23 you.

24 CHAIRPERSON GRIFFIS: Thank you very much.

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1 Before you begin sir, could you just restate your  
2 name?

3 MR. RUPP: I tried to get it in. It's  
4 Steve Rupp, 1527 35th Street.

5 CHAIRPERSON GRIFFIS: Are you planning on  
6 submitting that written statement?

7 MR. RUPP: I will.

8 CHAIRPERSON GRIFFIS: Very good.

9 MR. AICHES: Commissioners, my name is  
10 Alan Aiches. I live at 5839 Sherrier Place, N.W. in  
11 the District. I'm here as a private citizen today in  
12 support of St. Patrick's going into the site of 4925  
13 Mac Arthur Boulevard. You have a letter from me dated  
14 March 27 which lays out my views on this matter, so I  
15 don't think I'll use any of my time to repeat any  
16 factual information from that or from all the other  
17 information you've heard.

18 I believe based on the facts in my reading  
19 of the Code this is the highest and most acceptable  
20 use of the property. I would have an objection if the  
21 school did not go in there. Like you, I am a  
22 volunteer. I chair the Zoning Committee of the  
23 Palisades Citizens Association. Right now an  
24 indifference to John Finney, we are dealing with some

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1 very important issues in the city about zoning  
2 matters.

3 My objection to not having the school go  
4 into that site would be that what I have seen happen  
5 throughout the city and certainly in the last several  
6 years in the Palisades is the pushing to the extreme  
7 of the building codes. Because this property is not  
8 in any kind of a protected overlay, it has a mature  
9 tree canopy. It has a lot of open green space as you  
10 know. The likelihood is that the property would be  
11 developed with three very large, very tall houses on  
12 that site.

13 I think of Mac Arthur Boulevard as  
14 certainly a major artery in and out of the city. I  
15 grew up in Los Angeles and I attended a grammar school  
16 on Melrose Avenue which is a major street in Los  
17 Angeles running east-west just south of Sunset  
18 Boulevard. That school was surrounded on three sides  
19 by houses, but Melrose Avenue was much the same as Mac  
20 Arthur Boulevard. Primarily it was a residential  
21 area, but the area along Melrose was commercially  
22 zoned just as portions of Mac Arthur Boulevard are  
23 commercially zoned.

24 One of the great things about this

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1 neighborhood is that it has a village like atmosphere.  
2 That's why all of us moved there. That's why we want  
3 to try to keep it that way. I'll stop, but you have  
4 my statement in my letter. I'll be happy to take any  
5 questions you might have. Thank you.

6 CHAIRPERSON GRIFFIS: Good. Thank you  
7 very much.

8 MS. GEBHARD: Hello. I'm Gwen Gebhard. I  
9 have already submitted a written statement. My  
10 address is 4920 W Street. I support the current plan  
11 put forth by St. Patrick's Episcopal Day School to use  
12 the property at 4925 Mac Arthur Boulevard. My husband  
13 and I own this house. We've lived there for four  
14 years at 4920 W Street.

15 We're one block away from the Victorian  
16 building. We live here with our two daughters, ages  
17 13 and 9. My daughters attend Washington  
18 International School where they are enrolled in the  
19 French Bilingual Program. We lived for two years in  
20 Brussels where they learned French. We have a  
21 commitment to bilingual education, so when we returned  
22 to the states we enrolled them in Washington  
23 International School.

24 We enjoy living in the Palisades community

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1 very much. I will not and do not send my children to  
2 St. Patrick's because we have made this commitment to  
3 bilingual education. However, I think that having a  
4 school nearby adds to the quality of the community.

5 I like the St. Patrick's plan for several  
6 specific reasons. The green space and trees would  
7 remain as they are. The house and its architectural  
8 integrity would be continued. No additional  
9 residential development would occur at this time.  
10 Sidewalks would be cleared off after the snowfalls.

11 I would greatly prefer to have St.  
12 Patrick's as a neighbor than most of the imaginable  
13 alternatives. My real concern would be that a  
14 developer would tear down the whole house and replace  
15 it with three houses because it is zoned as three  
16 lots. I find this alternative extremely upsetting.

17 The issue of traffic around Ashby Street  
18 and W Street is something that I think can be dealt  
19 with in a reasonable way. The school has taken a  
20 proactive and positive approach by hiring a traffic  
21 consultant and holding public meetings. I attended  
22 one such meeting at the school on Monday evening,  
23 February 11. The idea of using two or three shuttle  
24 buses to bring the students from the White Haven

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1 campus is sensible and practical.

2 My hope in fact would be that by having  
3 the shuttle buses stop to unload along Mac Arthur  
4 Boulevard would help to slow some of the traffic that  
5 currently speeds along well above the speed limit.  
6 Frankly, the speeding traffic is a greater concern to  
7 me than the possible increase of cars using Ashby and  
8 W Streets.

9 The issue of increased noise around the  
10 proposed school property seems to me to be stretching  
11 the fiction of this being a quiet, calm, empty  
12 neighborhood. This is not suburbia. As many  
13 Palisades residents say, this is a village. It's a  
14 noisy village. We have church bells, airplanes, a lot  
15 of car traffic along Mac Arthur even during mid-day.  
16 We have children. We have dogs. We have people  
17 walking around the sidewalks, sirens, and even police  
18 horses walking through on an irregular basis.

19 I have been working at home for the past  
20 four years. I had a home office. I can attest to the  
21 fact that this is not a particularly quiet area. I  
22 believe that to complain about middle school children  
23 and their noises when they are not in class is  
24 frivolous.

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1                   Finally, the current occupants of 4925 Mac  
2 Arthur Boulevard do not add anything to the quality of  
3 life in this neighborhood. I was going to complain  
4 about the fact that they don't sweep the walks in the  
5 wintertime, so it's a hazard to walk around, walking  
6 your dog around the block which is what I do because  
7 they freeze and ice over. I think that St. Patrick's  
8 would take care of that problem.

9                   CHAIRPERSON GRIFFIS: Good. Thank you  
10 very much. Questions from the Board first.

11                  VICE CHAIRPERSON RENSHAW: Ms. Gebhard,  
12 I'm just looking at the map that we have. Is your  
13 home on W Street between 49th and Mac Arthur  
14 Boulevard?

15                  MS. GEBHARD: Yes it is. It's just one  
16 house in from Mac Arthur. Do you have a map there? I  
17 can show you.

18                  VICE CHAIRPERSON RENSHAW: That's all  
19 right. I have it. You made a statement something  
20 about no further development at this time. Could you  
21 explain that?

22                  MS. GEBHARD: Right. Well, I mean, my  
23 thought is if the school is able to keep the building  
24 and they use the building as written out in the plan

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1 that's fine. But what happens one day if they sell  
2 the building? If they sell the building particularly  
3 if they are not able to go through with this plan,  
4 then somebody else is going to buy it. A developer  
5 won't need to go before the Zoning Board to get  
6 permission to build whatever they want to build. So  
7 that's what I meant by no further development at this  
8 time.

9 VICE CHAIRPERSON RENSHAW: Okay. Thank  
10 you.

11 MS. GEBHARD: I mean, I'm just looking  
12 down the road.

13 VICE CHAIRPERSON RENSHAW: Did you go to  
14 the ANC and Palisades?

15 MS. GEBHARD: Absolutely.

16 VICE CHAIRPERSON RENSHAW: You were on  
17 hand for all those meetings.

18 MS. GEBHARD: Oh, yes.

19 VICE CHAIRPERSON RENSHAW: Did you  
20 testify?

21 MS. GEBHARD: No. I couldn't because I  
22 didn't arrive in time. I had to feed my kids. It ran  
23 late in the evening, so I stayed a long time but I  
24 didn't get there on time.

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1 VICE CHAIRPERSON RENSHAW: But you were  
2 there in attendance. Good.

3 MS. GEBHARD: Yes. There were a lot of  
4 people testifying. I finally decided I didn't need to  
5 add my two cents.

6 VICE CHAIRPERSON RENSHAW: All right. To  
7 the Admiral Metcalf, what is your address?

8 MR. METCALF: 4658 Charleston Terrace.

9 VICE CHAIRPERSON RENSHAW: Charleston.

10 MR. METCALF: I belong both to the Fox  
11 Hall as well as the Palisades.

12 VICE CHAIRPERSON RENSHAW: Did you attend  
13 the ANC and PCA meetings?

14 MR. METCALF: I attended the PCA meeting.

15 VICE CHAIRPERSON RENSHAW: But not the ANC  
16 meeting.

17 MR. METCALF: I didn't know there was such  
18 a thing.

19 VICE CHAIRPERSON RENSHAW: You didn't know  
20 there was an ANC.

21 MR. METCALF: No.

22 VICE CHAIRPERSON RENSHAW: No? And you've  
23 lived here for how long?

24 CHAIRPERSON GRIFFIS: You said that to the

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1 wrong person.

2 VICE CHAIRPERSON RENSHAW: You sure did.  
3 Mr. Finney, I hope that you and Vice Admiral Metcalf  
4 have a talk out in the hall. Very good.

5 CHAIRPERSON GRIFFIS: Oh dear. Anything  
6 else?

7 MEMBER ETHERLY: Yes, Mr. Chairman. Once  
8 again very briefly. Please pardon me if I  
9 mispronounce last name, Mr. --

10 MR. AICHES: Aiches.

11 MEMBER ETHERLY: Aiches. Thank you very  
12 much. I'm taking a look at Exhibit 69 which is your  
13 March 27 letter. I just wanted to inquire very  
14 quickly. You're the current chairman of the Palisades  
15 Citizens Association Zoning Committee. Correct?

16 MR. AICHES: Yes.

17 MEMBER ETHERLY: You reference in your  
18 letter the issue of the buffer that's been offered by  
19 the Applicant as a measure to help mitigate any of the  
20 noise concerns from the noise in the parking lot.

21 MR. AICHES: Can you tell me where that  
22 is? I have the letter in front of me, but I want to  
23 look at it.

24 MEMBER ETHERLY: The last page of you

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1 letter, final bullet before the closing paragraph.  
2 What I'm interested in is just a little more comment  
3 from you on the sufficiency of that buffer. We had  
4 some pictures that were added to the record which you  
5 probably do not have in your possession. We don't  
6 have an exhibit number assigned to it yet, but I  
7 believe they are pictures primarily of the Wright-  
8 Skrivseth home. From a couple of the shots, I don't  
9 want to reference this too closely because you don't  
10 have a copy in front of you.

11 MR. AICHES: Well, I do have a copy of  
12 those two photographs you're talking about.

13 MEMBER ETHERLY: Okay. I'm looking in  
14 particular to this one here. (Indicating.) I just  
15 wanted to once again get some comment on the issue of  
16 a buffer and your sense of whether or not the buffer  
17 that has been talked about is sufficient.

18 MR. AICHES: I think with all candor a  
19 properly landscaped buffer with the right kind of  
20 vegetation I would say speaking from a personal point  
21 of view and from a professional point of view what I  
22 just said would be much more highly desirable than  
23 having a house that went three stories right next to  
24 me. That will cut off a lot of light, a lot of air,

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1 and a lot of privacy that the people who live in that  
2 house now enjoy.

3 It seems that the preference on the part  
4 of some is to go ahead and build on that site so that  
5 the tax-base is supported by that property. I don't  
6 think that the differential in the amount of taxes  
7 that would be derived from that property are going to  
8 make a lot of difference in the city's tax revenues,  
9 in being able to balance the city's budget. I think  
10 there are other considerations that we need to start  
11 thinking about in the city as per land use and zoning  
12 and height amassing and context and scale. I can go  
13 on if you want.

14 MEMBER ETHERLY: But it's your --

15 MR. AICHES: But I think that kind of a  
16 buffer would be far preferable along that edge. I  
17 think that certainly what could be done along the back  
18 side of the property would be far more protective in  
19 terms of noise in my judgement than what's there now  
20 which is very little.

21 MEMBER ETHERLY: Okay. Thank you.

22 CHAIRPERSON GRIFFIS: Any other questions?  
23 Very well. Does the Applicant have any cross  
24 examination of the testimony given? Do the parties?

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1 ANC?

2 MR. FINNEY: No questions.

3 CHAIRPERSON GRIFFIS: Good. Very well.  
4 Thank you all very much. Are there others?

5 (No response.)

6 CHAIRPERSON GRIFFIS: Very well. If  
7 you're comfortable, we're comfortable. The more we  
8 can get up here, the better. You know the drill. Why  
9 don't we start at this end and give your name,  
10 address, and if you would not mind actually start with  
11 whether you submitted a written document. I'm doing  
12 that because I'm keeping track of everyone who is  
13 here. I have lists, and it helps me for my record  
14 keeping. So if you wouldn't mind starting, ma'am. I  
15 need you to turn the mic on which is just touching the  
16 base of that. Perfect.

17 MS. SWEENEY: And I'll be very short. My  
18 name is Patricia Sweeney. I live at 2700 Quebec  
19 Street in the District. I submitted a letter to the  
20 Board. I am here in support of the testimony of Ms.  
21 Castille.

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

24 MS. REED: My name is Mary Ann Reed. I

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1 live at 4841 W Street, N.W. It is one block up from  
2 Mac Arthur Boulevard. I have lived in the Palisades  
3 for 16 years. I'm in my eleventh year as a St.  
4 Patrick's parent. I have a seventh grader and an  
5 eighth grader currently in the Mac Arthur campus at  
6 St. Patrick's.

7 My older child will probably not benefit  
8 from this at all if the application is approved. My  
9 younger child might for one year. However, I still  
10 support this. I will be a neighbor of this school in  
11 this neighborhood for many years after my children  
12 have gone on to another school. I still feel that it  
13 is the right use for this piece of property in the  
14 neighborhood.

15 I much prefer to see that piece of  
16 property maintained as it is right now. It would be  
17 greatly improved to have St. Patrick's there. They  
18 have improved White Haven in my opinion. They keep  
19 the grounds beautifully there. They do pay attention  
20 to traffic. I think if you went back through all the  
21 Thursday Bulletins you would find that Peter Barrett  
22 nine times out of ten has mentioned traffic and car  
23 pooling in those.

24 I'm also deep in the thick of things with

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1 the neighbors. I have been privy to many  
2 conversations which displayed their overwhelming  
3 anxiety that this property be traded from a night time  
4 use and weekend use of adults to becoming a school for  
5 as they sometimes say hoodlums and delinquents. These  
6 are my children they're talking about, but I don't  
7 share that feeling at all. These are lovely children.

8 They are always perfectly behaved and scrupulously  
9 supervised. They are never left to their own devices.

10 St. Patrick's has made every overture  
11 toward our neighborhood to discuss this, to try to  
12 mediate, to address concerns. Every concern that's  
13 been articulated I feel that they have gone ahead and  
14 been proactive about and addressed. Still the  
15 neighbors are not willing to even meet and discuss.  
16 It's just out of the question because they have one  
17 thing in mind and that's to prevent St. Patrick's.  
18 They don't have any other end necessarily.

19 I definitely support everything that Ms.  
20 Castille will testify to today as well and the other  
21 people who have spoken on behalf of the school. It's  
22 a wonderful school. I do have every confidence after  
23 having dealt with them for 11 years that they will do  
24 what they say they are going to do.

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1 CHAIRPERSON GRIFFIS: Thank you very much.

2 MS. CASTILLE: Good afternoon. My name is  
3 Cameron Castille. I have submitted a statement to  
4 the B.A. last March although it differs from that  
5 which I'm going to read now. I live at 4819 Indian  
6 Lane, N.W. in Spring Valley.

7 I am a 22 year resident of the  
8 neighborhood surrounding St. Patrick's and a parent at  
9 the school for the past nine years. When I chose the  
10 school for my children in 1993, we had options nearby  
11 and outside the District and chose to have our  
12 children educated at St. Patrick's close to our home.

13 Every school day since that time I and other of my  
14 car pool drivers have taken my children to and from  
15 school every day in our car pool with anywhere from  
16 six to two children in the car.

17 During the past few months, I have  
18 attended all of the ANC and many of the PCA meetings  
19 where the St. Patrick's zoning request has been  
20 discussed. I'm a vocal supporter of St. Patrick's  
21 middle school program begun only last year because it  
22 was created to address a serious problem of a shortage  
23 of middle school spaces in the District of Columbia, a  
24 problem of which I have first hand knowledge.

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1           Two years ago my daughter graduated from  
2 St. Patrick's sixth grade and was forced to seek  
3 schooling beyond the Beltway along with others in her  
4 class because of the lack of spaces in D.C. middle  
5 schools. In response to this pressing need, St.  
6 Patrick's decided to move forward quickly with a grade  
7 seven and eight program to guarantee that no child is  
8 left behind despite having only the year before  
9 decided not to expand beyond grade six.

10           When the need arose, they responded  
11 immediately. For this, they should be lauded and not  
12 criticized. I've been shocked to hear deliberate  
13 misinformation intended to frighten potential  
14 neighbors to St. Patrick's proposed low impact middle  
15 school and appalled to witness ANC Commissioners  
16 voting against the direct wishes of their constituents  
17 because of the Chair's narrow interpretation of the  
18 statutes.

19           Information has been circulated which  
20 dismisses out of hand St. Patrick's serious attempts  
21 to ameliorate concerns about traffic and noise or  
22 commit via covenant to cap the enrollment at 60 and  
23 pledge to preserve the current green space. In fact,  
24 the significant relief from future expansion of the

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1 site offered by St. Patrick's in the form of the  
2 covenant was dismissed cavalierly by the Ashby Street  
3 residents without examination.

4 The Ashby residents fear a potential  
5 problem with St. Patrick's as a neighbor that is not  
6 real nor cannot be documented with any validity. What  
7 can be documented is the desperate need in our  
8 neighborhoods, my neighborhood, for space near our  
9 homes where our children can be educated. I urge you  
10 to address the real existing desperate need locally to  
11 provide adequate spaces for middle school education  
12 for D.C. children rather than succumb to the perceived  
13 fear that St. Patrick's will be a rowdy neighbor.

14 The Ashby Street residents have nothing to  
15 fear from this church-based school whose reputation is  
16 to help raise and educate the most civil student  
17 population in the area. No one teaches children to be  
18 better citizens than St. Patrick's, and the presence  
19 of these children will not cause objectionable effects  
20 in the Ashby Street neighborhood. The children of St.  
21 Patrick's Middle School simply want a place locally  
22 where they can disembark from a bus and go inside to  
23 attend school. Thank you.

24 CHAIRPERSON GRIFFIS: Thank you very much.

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1 Yes, sir.

2 MR. KEFFOR: My name is Jeff Keffor. I  
3 live at 5332 □ Carolina Place in the Palisades where  
4 my wife and I have lived for about 12 years. We have  
5 three children now attending St. Patrick's. I have a  
6 confession to make. My children are not as well  
7 behaved as Ms. Reed's, but since my oldest is only in  
8 third grade I have about four years until we have them  
9 at Ashby Street. I have some time to work on that.

10 I attended the PCA Board meeting and the  
11 PCA general meeting as well as the two ANC meetings.  
12 I was struck by something that relates to my  
13 upbringing. I was raised in Pennsylvania outside of  
14 Philadelphia in what then was rural countryside. My  
15 father was a school administrator and across his 35  
16 years had the opportunity to build several schools.  
17 Some were in residential neighborhoods. Others were  
18 in the middle of cornfields.

19 Despite the differences in locations in  
20 neighborhoods that those schools went in, the one  
21 thing that all those projects had in common was there  
22 was always somebody or a group of people who objected  
23 to something about the school, about the location,  
24 about the plan. I said to my father after going to

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1 some of these meetings didn't that ever really bother  
2 you that no matter where you wanted to put the school  
3 there was always someone who found something to object  
4 to.

5 He said it did on the first school. After  
6 that, you realize that schools inherently mean change.

7 It doesn't matter whether they're in the middle of  
8 100 acre tract or whether they're in a very tightly  
9 packed residential neighborhood. He said what you  
10 have to learn to do and make an effort to do and  
11 figure out how to do well is to mitigate the change  
12 and to work with the neighbors. He said nine times  
13 out of ten, 99 times out of 100 you're going to be  
14 able to do that as long as you make the effort and are  
15 honest and diligent about it.

16 In my opinion, St. Patrick's, Mr. Barrett,  
17 Ms. Bradley and others have tried to address up front  
18 and mitigate almost every concern that has been raised  
19 by the neighbors. I think they've done that in good  
20 faith. They've been proactive about it. I think at  
21 some point you have to be able to look people in the  
22 eye and decide whether you can trust them.

23 I understand the neighbor's position.  
24 They don't want a school period. The discussion about

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1 the right number of students I thought was interesting  
2 because in the neighbors' opinion the right number of  
3 students for the perfect school is zero. I also think  
4 that lets you make the perfect the enemy of the good.

5 We need schools. Schools are necessary.

6 If every time you had an objection to a  
7 school you didn't build a school or you moved it  
8 somewhere else, we would have all the schools  
9 clustered in the middle of the desert because there's  
10 no one there to object. On the other hand, there's no  
11 one there to go to the school either. That's my time.

12 Thank you.

13 CHAIRPERSON GRIFFIS: Thank you very much.

14 MR. SPENCER: Hi. My name is William  
15 Spencer. I live on 2825 49th Street. You have my  
16 letter dated April of this year outlining my support  
17 for St. Patrick's. I've been living in the Palisades  
18 for the past ten years. I am the parent of a very  
19 well disciplined and well behaved St. Patrick's  
20 student.

21 I'm active in the Palisades Citizens  
22 Association, particularly the excellent Fourth of July  
23 parade and picnic. I just wanted to make two basic  
24 points just to expand on my letter. The first one is

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1 that investment in education and kids is fundamentally  
2 good for our neighborhood. The first question anybody  
3 asks whenever they're buying real estate and making a  
4 decision on whether to buy a home is how are the  
5 schools.

6 There are limited options here in the  
7 District. It's a real shame. We've seen a number of  
8 families leave the Palisades and Wesley Heights  
9 neighborhood all for Montgomery County and McLean,  
10 Virginia because there are no other options for  
11 schools. What St. Patrick's offers is a neighborhood  
12 solution that doesn't exist otherwise.

13 The other point that I wanted to make was  
14 that St. Patrick's will renovate and restore a  
15 landmark on Mac Arthur Boulevard. This is one of the  
16 oldest buildings, one of the first buildings on Mac  
17 Arthur. This is vastly superior to condominiums,  
18 mansions, or embassies with security setbacks.

19 It's not the first time a school has been  
20 on this site. The trees are preserved. The building  
21 is improved. In fact, the neighborhood is improved as  
22 a result. Thanks.

23 CHAIRPERSON GRIFFIS: Thank you very much.  
24 You indicated your last name was Spencer.

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1 MR. SPENCER: Yes.

2 MR. MURPHY: Good afternoon. My name is  
3 Bob Murphy. I have been a resident of N.W. for the  
4 last 15 years. In 1956, I was born at Garfield  
5 Hospital in N.W., so you can figure out how old I am.

6 I am here essentially in witness and  
7 support of the testimony of William Smith. If it  
8 pleases the Board, and I understand how time sensitive  
9 this is, I would just like to complete his thoughts.  
10 He had summarized thoughts regarding points of view  
11 from the neighbors, St. Patrick's School, and the  
12 B.A..

13 He asked a handful of questions from St.  
14 Patrick's perspective. The first question was what  
15 business of this hearing is the layout and operation  
16 of the church property on another street. If Ashby  
17 neighbors object to St. Patrick's compliance with  
18 District rules elsewhere, is that properly before this  
19 hearing? Is the public good furthered by permitting  
20 opponents such lengthy questioning about irrelevant  
21 issues?

22 In bold print he notes that this fall's  
23 classes were denied the use of the school house. As  
24 public policy should we waste private educational

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1 funds while questioning over months experts who are  
2 unchallenged? St. Patrick's reports hearing costs to  
3 exceed \$300,000. Serving on the finance committee for  
4 St. Patrick's, I understand how severe this issue is  
5 and what it means to perhaps those that are attending  
6 this school from the good graces of financial aid by  
7 the school. While not your mission, can you ignore  
8 this waste of charitable funds?

9 Board of Zoning Adjustment. Justice  
10 delayed is justice denied. Permitting these hearings  
11 to extend over more than half a year wastes precious  
12 tax payer's money, your time, Staff facilities, delays  
13 other urging cases. Have you served the public good  
14 by denying these seventh and eighth graders the use of  
15 their school house, Mr. Smith asks.

16 Permitting your relevancies, amateurism,  
17 repetitions to the extent that these hearings damage  
18 more than the students and the donors because your  
19 conduct reflects on our city. Have you no regard to  
20 the huge costs your hearing opposes? The school house  
21 was so zoned long before the neighbors moved next  
22 door. Can you permit NIMBY to dictate D.C. policies  
23 when the majority of residents support St. Patrick's?  
24 By law, your responsibility extends far beyond

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1 immediate neighbors to further the common good.

2 Mr. Smith goes on to note that he worked  
3 in the Executive Office of the President including the  
4 Eisenhower years which totaled eight. Eisenhower said  
5 if you can't get it on one piece of paper, get it out.

6 It reminds me of another popular political mantra.  
7 It takes a village. I think we ought to think about  
8 how important our children are to our community.  
9 Thank you.

10 CHAIRPERSON GRIFFIS: Thank you very much.

11 Board questions?

12 MEMBER ETHERLY: Thank you, Mr. Chair.  
13 Ms. Castille, a quick question for you. You've heard  
14 an extensive amount of testimony about car pooling. I  
15 was very interested to note that you have some  
16 experience in that regard.

17 MS. CASTILLE: I do.

18 MEMBER ETHERLY: Could you speak to or  
19 comment on any thoughts you have about the  
20 responsiveness of any of your fellow parents to the  
21 car pooling efforts as they currently stand to date or  
22 even perhaps the proposed car pooling program that has  
23 been put forward by St. Patrick's in response to some  
24 of the community concerns?

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1 MS. CASTILLE: I have over the last  
2 several years had children at various schools and  
3 participated in the car pool line at all of these  
4 schools, probably four or five locally. I can say  
5 categorically that St. Patrick's car pool line is the  
6 least offensive car pool line around.

7 I have older children who attend  
8 Georgetown Day School now. I spend about an hour each  
9 day on Mac Arthur Boulevard in this car pool line.  
10 I'm wondering why St. Patrick's has been so grilled  
11 over this issue. Mr. Barrett, the head of the school  
12 since I believe his first month at the school has  
13 chosen to spend some time in his weekly bulletin to  
14 the parents discussing the need for responsible car  
15 pooling. He does this year after year, month after  
16 month.

17 I understand he's come up with some very  
18 creative solutions to the problem just in the past  
19 couple of months. In my opinion, the blockage of  
20 White Haven Street is minimal compared with other  
21 schools of similar size in the Cleveland Park  
22 neighborhood or even in the Palisades neighborhood. I  
23 believe that St. Patrick's really consciously has  
24 tried to ameliorate the situation.

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1                   MEMBER ETHERLY:        Have you seen any  
2 instances where parents have -- Perhaps I'm asking you  
3 to speak out of school here pardon the pun, and I  
4 don't want to speak incorrectly so I don't recall that  
5 perhaps there are restrictions in place now or  
6 provisions for people who violate any car pool policy  
7 that may exist now, but -- Perhaps the best way to  
8 phrase this question is do you have a sense of how  
9 many parents are dropping kids off individually?  
10 Please feel free to just say I wouldn't have a sense  
11 for that.

12                   MS. CASTILLE:    I think that a lot of the  
13 parents who are dropping off children individually are  
14 those parents who have their kids in car seats. There  
15 is a real issue with children remaining in car seats  
16 or booster seats longer and longer up until ages five,  
17 six, seven. I think that has been raised as an issue  
18 by Mr. Barrett and discourages car pooling.

19                   I've certainly seen people from the  
20 neighborhood and outside where situations change on a  
21 daily basis, and they're picking up their child after  
22 a sports practice and things like that. That does  
23 happen, but I do believe that the St. Patrick's parent  
24 body in particular has been made aware of the

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1 importance of this situation. I think that the  
2 neighbors will find the St. Patrick's parent  
3 population very responsive to the needs of the school  
4 and this issue.

5 MEMBER ETHERLY: Okay. So it's been your  
6 experience that if a car pool policy is put in place  
7 where violations would be dealt with very seriously,  
8 you would be comfortable in believing that the school  
9 would take appropriate action to address any parent  
10 who violates --

11 MS. CASTILLE: I believe the school would  
12 do that, and I believe the parents would meet their  
13 contractual obligations as set forth in the enrollment  
14 contract.

15 MEMBER ETHERLY: Thank you. For any other  
16 members of the panel who are either parents or who  
17 might have some experience in this regard, your  
18 comments would also be greatly appreciated.

19 MS. REED: I think that things have  
20 greatly improved this year as a result of the car  
21 pooling initiative that they put in place when letters  
22 to the parents went out over this summer. I have been  
23 at the main campus for meetings three or four times  
24 this year and have discovered that I am about to leave

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1 at 3:00. I've thought I'm not going to be able to get  
2 out of here. I go out and there is no backup at 3:00.

3 MS. SWEENEY: The other thing I might add  
4 is the children help enforce the rules. Mr. Barrett  
5 will tell a child if they're not doing what they're  
6 supposed to, and we get yelled at by our children if  
7 they're not behaving. I can cite the example of the  
8 ban on cell phones and cell phone talking.

9 My son has now unplugged the cell phone of  
10 my husband and puts it in the glove box so that he's  
11 not allowed to talk on it while he's doing the car  
12 pool. There is a real effort. The parents do try and  
13 follow what we're supposed to be doing.

14 MS. CASTILLE: May I make one last  
15 statement? Of the five schools that my children have  
16 attended, St. Patrick's is the only school where the  
17 head of the school personally supervises morning and  
18 afternoon car pool by standing in the middle of White  
19 Haven Parkway. I think Mr. Barrett has a very direct  
20 relationship with this car pool and knows exactly  
21 what's going on. If he were to notice people who were  
22 not paying attention or who were not living up to the  
23 terms of their contract, he would certainly be well  
24 aware of it and able to deal with it very quickly.

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1           MR. KEFFOR: Not to pile on, but one of  
2 the first things that I noticed about the school which  
3 I found very unusual was that Peter Barrett is there  
4 at every car pool. It's not new. He's been doing  
5 that for all I know as long as he's been at the  
6 school. I was very impressed and actually surprised  
7 by that. It's not something that the school takes  
8 lightly at all.

9           CHAIRPERSON GRIFFIS: Good.

10          MR. SPENCER: They are dead serious about  
11 enforcing the car pool restrictions. It's quite  
12 impressive.

13          CHAIRPERSON GRIFFIS: Excellent. Thank  
14 you.

15          MS. REED: Now that they're all telling  
16 their story, I'll just say one more quick thing. One  
17 time I did an infraction of the rules. The line was  
18 too long. My husband was late for work. I crossed  
19 White Haven and let my oldest child sixth grader out  
20 in front of the German Embassy and he walked down.  
21 That afternoon when I picked him up in car pool the  
22 first thing he said when he got in the car was mommy  
23 Mr. Barrett said if you ever do that again.

24          MR. MURPHY: I feel the need to confess as

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1 well. I couldn't leave this evening without sharing  
2 my two infractions. One was an incorrect entrance of  
3 White Haven. I too was late. I tried to drop off  
4 against the grain and was literally almost thrown up  
5 against the car and searched. It was something I'll  
6 never do again.

7 I did drop off one time on Fox Hall. My  
8 wife heard about it later that day. So this is a  
9 school where at center court in the gymnasium are four  
10 students holding hands. To say that this is a hands  
11 on, nurturing experience, it's nothing like I'm sure  
12 any of us grew up with in terms of an educational  
13 environment. Everything that everyone has said today  
14 is probably understated. I would love to have this  
15 institution as my neighbor. I don't just say that  
16 because I have two children there. If I'm under oath,  
17 that's my testimony.

18 CHAIRPERSON GRIFFIS: Very well.

19 MEMBER ETHERLY: Thank you very much, Mr.  
20 Chair. I would just simply state for the record that  
21 I trust Counsel for the Applicant would instruct the  
22 Applicant not to take any action against parents who  
23 make statements about infractions or what have you.

24 (Laughter.)

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1 CHAIRPERSON GRIFFIS: Indeed. Other  
2 questions from the Board? Cross examination by the  
3 Applicant. The parties. ANC. Indeed. Then thank  
4 you all very much. Are there others?

5 MS. PRINCE: If I may just note, these are  
6 the final two persons in support. However, many have  
7 left. If the record will remain open and I believe it  
8 will, I would appreciate the opportunity to ensure  
9 that their statements are allowed into the record.

10 CHAIRPERSON GRIFFIS: I think we can  
11 accommodate that. Before you start, you'll need the  
12 mic. Let me also just make a note. Ms. Prince, in  
13 terms of leaving the record open clearly if there's a  
14 submission of a written document already, we won't  
15 need an additional one, but we will keep it open for  
16 anyone that hasn't had an opportunity to submit. That  
17 will of course be afforded of anyone in opposition  
18 also. Good afternoon.

19 MS. SOCK: Hello. I'm Pamela Sock. I'm a  
20 resident of D.C. I live in Foggy Bottom. I have a  
21 kindergartner at St. Patrick's. I am here in support  
22 of the testimony of fellow parent, Woody Bolton.

23 MR. BOLTON: Thank you. Mr. Chairman,  
24 Members of the Board, good afternoon. My name is

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1 Woody Bolton. I reside with my family at 5020 Warren  
2 Street in ANC-3D. I have two children at St.  
3 Patrick's School.

4 My family moved to the District of  
5 Columbia from Virginia last year because our children  
6 began to attend St. Patrick's School. There are many  
7 families like ours who have moved into the city in  
8 order to be closer to the schools that their children  
9 attend. Strong educational options for our children  
10 don't just help retain existing families they help  
11 attract new ones to the District of Columbia.

12 I have attended many of the community  
13 meetings concerning this proposal and am familiar with  
14 many of the neighborhood concerns. I believe that St.  
15 Patrick's has worked tirelessly and with every effort  
16 to address literally every issue that has been raised  
17 by the Palisades neighbors. St. Patrick's has shown  
18 creative approaches such as the shuttle bus and  
19 coveeting a cap of 60 students at the Ashby Street  
20 location.

21 Further, I too can attest to the use of  
22 car pool. It has been quite effective throughout our  
23 neighborhood. I question whether anything can be done  
24 short of abandoning this proposal that would result in

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1 the support of the neighbors who are most opposed. I  
2 strongly urge you to allow the junior high school to  
3 locate on this property.

4 The site would be retained for school use  
5 which is consistent with its last four decades of  
6 history. Significant open space will be retained.  
7 The needs of our children and the community will be  
8 met. I appreciate your time.

9 CHAIRPERSON GRIFFIS: Thank you.  
10 Questions from the Board Members. Did you have a  
11 written submission previously?

12 MR. BOLTON: No, sir.

13 CHAIRPERSON GRIFFIS: Are you going to  
14 submit something for the record?

15 MR. BOLTON: Yes, sir.

16 CHAIRPERSON GRIFFIS: Okay. Very good.  
17 Cross examination. Applicant. Parties. ANC. Very  
18 well. Thank you very much. Let us assess at this  
19 point. We are approximately at 5:00. I would like to  
20 go to the parties in opposition case. What I need to  
21 know right now, we have an hour and 15 minutes for the  
22 presentation of the case in opposition.

23 Do you have a decided time breakdown of  
24 each of the parties in the case? Let me get you up to

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1 a table because I'd like to get a quick clarification  
2 if you don't mind. The clock will be running for an  
3 hour and 15 minutes during the presentation of the  
4 case, so the first one on could run on for an hour and  
5 leave 15 minutes for the rest. In order for equity  
6 among your team, I thought I might get an established  
7 time. It's totally up to you. It makes no difference  
8 to the Board clearly.

9 MR. LOVENDUSKY: Mr. Chairman, our  
10 ambition has been to fit all of our testimony into 75  
11 minutes. We didn't parse it out with any precision.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. LOVENDUSKY: We're comfortable that  
14 we'll have it done.

15 CHAIRPERSON GRIFFIS: I can do this. If  
16 you had an allotment of time, I could set the clock  
17 for each presentation. That way, you would have a  
18 better assessment of where you are, or we'll just keep  
19 it running and you will flip in as you will.

20 MR. LOVENDUSKY: The way we proposed to  
21 proceed is that you could keep the clock running  
22 except there would be a few moments when we would ask  
23 it to be stopped to accommodate some physical  
24 rearrangements. We imagine putting three individuals

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1 up at the table initially to discuss the first half of  
2 our presentation. That part of the presentation will  
3 conclude with our expert testimony on traffic. At  
4 which point, there will presumably be some questions.

5 MS. FELDMAN: Usually they let the whole  
6 opposition case go.

7 CHAIRPERSON GRIFFIS: Why don't you turn  
8 that mic on while she talks?

9 MS. FELDMAN: We did it a little unusually  
10 with your permission. We don't mind if the Applicant  
11 wanted to stop and do cross exam of our expert traffic  
12 person. We were assuming we would do our whole hour  
13 and 15 minutes and then they would cross examine.

14 CHAIRPERSON GRIFFIS: That's what I'm  
15 assuming. I don't see any reason not to.

16 MR. LOVENDUSKY: In any event at that  
17 point, there would still be a change of individuals at  
18 the table.

19 CHAIRPERSON GRIFFIS: Absolutely.

20 MR. LOVENDUSKY: We would ask for the  
21 clock to stop.

22 CHAIRPERSON GRIFFIS: Absolutely. So  
23 we'll have a running clock. I will give indication to  
24 stop it if we have a moment that you need to change

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1 out the team. The last decision you need to make is  
2 do you want to begin that now or would you like to  
3 take a 45 minute break for some dinner and then  
4 continue.

5 MS. FELDMAN: How about ten minutes?

6 CHAIRPERSON GRIFFIS: That's fast eating.

7 MR. LOVENDUSKY: We would appreciate a  
8 small break.

9 CHAIRPERSON GRIFFIS: Small break and then  
10 we'll get into it. Then we can break after your case  
11 and we'll come back for cross examination. Excellent.  
12 We'll be back in ten minutes.

13 (Whereupon, the foregoing matter went off  
14 the record at 5:07 p.m. and went back on  
15 the record at 5:27 p.m.)

16 CHAIRPERSON GRIFFIS: On the record. We  
17 can resume. When you folks are ready, we can  
18 introduce. Also let me just note that we're almost at  
19 after hours, so please if everyone wants to feel  
20 comfortable and take jackets off that would be  
21 fantastic. As we go into this last quarter of the  
22 case, let me turn it over to you for introductions or  
23 whomever will be doing that.

24 MS. FELDMAN: Would it be appropriate

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1 before we're on the record to just qualify our traffic  
2 expert, or do you want me to stop and do that in the  
3 middle?

4 CHAIRPERSON GRIFFIS: No. Let's take that  
5 up right now.

6 MS. FELDMAN: Okay.

7 MS. VANSICKLE: Yes. Thank you. We  
8 appreciate the opportunity. We are going to be  
9 presenting Joe Mehra to discuss traffic. We'd like to  
10 qualify him as an expert witness.

11 CHAIRPERSON GRIFFIS: Hold the clock for a  
12 moment.

13 MS. VANSICKLE: We've given the resume and  
14 the copies of his testimony to Ms. Bailey. As you're  
15 looking at it, I will just say he's appeared in front  
16 of the Board, in front of the B.A. before on a number  
17 of occasions.

18 CHAIRPERSON GRIFFIS: Okay. Board Members  
19 have had a moment had to review. I'll take any words  
20 of opposition.

21 MEMBER ETHERLY: Mr. Chairman, just from a  
22 quick review of Mr. Mehra's resume, I would have no  
23 difficulty with his designation as an expert witness.  
24 I would like to inquire, Mr. Mehra, are there any

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1 projects in your experience that you would  
2 characterize as being somewhat similar to the project  
3 at hand. It's not a prerequisite.

4 MR. MEHRA: Sure. I have done several  
5 actually schools. One of the schools I did in the  
6 District was the traffic review for the Field School.

7 MEMBER ETHERLY: Okay. Thank you, Mr.  
8 Chair.

9 CHAIRPERSON GRIFFIS: Any other questions  
10 from the Board? Any objections from the Applicant's  
11 representatives or parties? No objections from the  
12 ANC. Any objections, Mr. Finney?

13 MR. FINNEY: No.

14 CHAIRPERSON GRIFFIS: Thank you very much.  
15 In which case, I can tell you the consensus of the  
16 Board to accept as an expert witness Mr. Mehra.  
17 Excellent. Ready?

18 MS. FELDMAN: Good day, Chairman Griffis  
19 and Members of the Board. I am Nancy Feldman, a  
20 neighbor. My W Street property is about 50 feet from  
21 the back of the subject's site. I'm also a trustee of  
22 Neighbors United the group. We appreciate this  
23 opportunity to address the Board in opposition to the  
24 special exception of St. Patrick's to put a junior

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1 high school in our backyards.

2 Notwithstanding all of the detail  
3 necessarily examined in the course of this hearing, we  
4 believe that this is a simple case. The school is  
5 seeking to impose an intense, non-residential use on a  
6 small parcel of less than half an acre in a close in,  
7 quiet residential neighborhood. Upon a thoughtful  
8 review, none of the proposed conditions or other  
9 patches that the Applicant has offered to us would  
10 come close to remedying the harm it would cause our  
11 neighborhood. That harm would constitute an  
12 irreparable injury.

13 I might say parenthetically that the site  
14 isn't actually three matter of right residential lots.

15 It's less than three because it's 150 feet on the  
16 front but shorter than that on the depth, so there  
17 would have to be a variance or another special  
18 application. So when we're thinking of what would go  
19 in here if this one didn't work, think two houses, not  
20 three houses.

21 Once St. Patrick's had decided to change  
22 its public position and open a junior high school  
23 there were plenty of other choices available for its  
24 location, including space at its current site. Now

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1 there are three large houses there. They already own  
2 the one in the middle, and they have made cash offers  
3 to buy the two on the sides. I don't know where those  
4 negotiations are. They wouldn't tell us what use they  
5 were planning for those, but they did offer  
6 substantial sums.

7 Also, the Office of Planning has a program  
8 to match up available commercial or school or other  
9 sites with potential buyers. They're not actual  
10 matchmakers, but they do make available a list of  
11 properties. We were told about that at a community  
12 meeting that Office of Planning held for our  
13 neighborhood in Ward Three.

14 Also, there were other private sites  
15 around town that other schools have managed to acquire  
16 and that they I guess weren't interested in. Those  
17 continue to come on the market. But as the school's  
18 chairperson told me personally in February, the  
19 property was much cheaper than other sites already  
20 zoned for comparable use. This way they only had to  
21 outbid residential bidders. While it's not surprising  
22 to us that an institution that pays no property or  
23 income tax or other carrying charges for using city  
24 property which it enjoys, and I believe they have an

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1 \$11 million tax free revenue bond financing, was able  
2 to outbid individuals and small developers who do have  
3 considerable tax burdens in the District.

4           There are quite a few local non-  
5 residential uses that are matter of right under  
6 certain circumstances in R-1; churches, farms, child  
7 and elderly development centers, home-based  
8 businesses, community centers, bed and breakfasts and  
9 of course public schools. These are either you'll  
10 notice low density or they are available for use by  
11 residents and other members of the public.

12           In contrast, private schools which offer  
13 neither of those advantages to the community require  
14 an extra step; the special exception process with a  
15 finding that each particular application be in harmony  
16 with the general purpose and intent of the Zoning  
17 Regs. Those are to protect the quiet residential  
18 areas now developed with one family detached dwellings  
19 and adjoining vacant areas likely to be developed for  
20 those purposes which exactly describes that house, and  
21 the zoning is also intended to stabilize residential  
22 areas and promote suitable environment for family life  
23 which we would suggest would not really be stabilized  
24 and promoted with 60 children, 12 staff and a lot of

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1 other people.

2 Also, it's supposed to not tend to  
3 adversely affect the use of neighboring property.  
4 That's a decision for the B.A., but we hope that you  
5 will at least notice the objections by most of the  
6 close in people and to be subject to specific extra  
7 conditions; the Section 206 conditions. Thus, a  
8 private school program is not automatically predeemed  
9 compatible.

10 The Applicant keeps citing various Court  
11 of Appeals cases, but they just really beg the  
12 question. It's not predeemed compatible. It's simply  
13 not prohibited. The private school has the  
14 opportunity and it has the burden of proof to make its  
15 case.

16 We already have seven private schools in  
17 the Palisades. They are appropriately located. Some  
18 of them are in commercial space like the ones on Mac  
19 Arthur Boulevard that we heard about. Other ones are  
20 on generous acreage, and they have plenty of buffers  
21 to protect adjacent homes. In the past, we ourselves  
22 supported less intense uses of this property and  
23 various other properties.

24 My record for one as a long time civic

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1 activist, ANC Member, and PCA president, I have  
2 supported many developments. I am not rabid anti-  
3 development person. I have been a friend of  
4 institutions and have worked with lots of them to work  
5 out something.

6 Our part of the Palisades is a stable,  
7 long standing, residential enclave with many retirees  
8 and many people who work at home including artists and  
9 writers. We're asking you to help us preserve the  
10 balance, not tip it over into a completely  
11 institutional setting, to protect the remaining  
12 residential fabric of our neighborhood, and to  
13 restrict institutional expansion to appropriately  
14 sized and buffered sites. We've heard a lot about  
15 urban villages, but you don't have an urban village  
16 without urban villagers. It's a disappearing breed  
17 that we're trying to protect here.

18 We are not NIMBYs, and we're not afraid of  
19 change. But neither are we foolish enough to accept  
20 uncritically everything that calls itself positive  
21 change. If there's anything that we do fear, it's the  
22 strong aversion of most people in the neighborhood to  
23 this proposal being completely ignored and the impact  
24 downplayed and minimized and the impact on immediate

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1 neighbors and even the broader community on the basis  
2 of unrealistic and unenforceable promises and  
3 assurances.

4 In practical terms, we believe that after  
5 a sizeable investment and retrofitting, an initial  
6 technical compliance for the certificate of occupancy  
7 no matter how bad the resulting problems would be this  
8 proposed use would never be unraveled. We hope you  
9 can understand our justifiable and reasonable anxiety  
10 to this threat to our tranquility.

11 For a harbinger of its likely impact, we  
12 ask you to take a look at White Haven Parkway in the  
13 aerial map of the Office of Planning report. Twenty  
14 years ago White Haven was a residential street with  
15 very nice houses on it and some educational  
16 institutional uses. Now you can see how it evolved  
17 from that mix with massive, sprawling structures  
18 taking over the residential. No green space except  
19 for one last home owner who has a big buffer, but  
20 still, and a large amount of traffic completely  
21 clogging what was one of our only two connecting  
22 streets to our residential arteries Fox Hall and Mac  
23 Arthur during critical times of the day.

24 We now have exactly one connecting street

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1 left, W Street where I live, also a one lane with cars  
2 parked on both sides. W is parallel to Ashby. It's  
3 the logical place for St. Patrick's parents and other  
4 related traffic to access the proposed facility.

5 We can foresee an immediate adverse effect  
6 on W, on 49th, and the other narrow cross streets,  
7 almost none of which have sidewalks, between Mac  
8 Arthur and Fox Hall. It took us several years of work  
9 to finally get some stop signs on those streets to  
10 discourage commuters. Now we're going to have this.

11 Please note that one of the signatories on  
12 our petition is Patrick Burke who is the head of the  
13 D.C. Metropolitan Police Traffic Unit. He lives on W  
14 and sees these problems first hand. We are taking the  
15 opportunity to present to the Board the original  
16 petition, copies of which are found at A and E of the  
17 opposition's submission dated April 9 in your record.

18 There are 203 signatures from 31 households out of  
19 the 33 within 200 feet and also 172 in the immediately  
20 surrounding area.

21 The text which has been described as  
22 incendiary but when you read it or re-read it, I think  
23 you'll see it's quite reasonable. It incorporates by  
24 reference all the objections we brought out during

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1 these hearings and is still very relevant. Doug had  
2 to leave, but Harry Gates who gathered most of the  
3 signatures is present to answer any questions that the  
4 Board or the Applicant may have regarding the process  
5 of gathering the signatures.

6 The rest of our presentation will review  
7 the Section 206 factors, namely traffic, noise, number  
8 of students, and parking as well as other objectional  
9 factors relating to privacy, safety, and some other  
10 concerns. We'll comment upon various of the proposed  
11 conditions that have been offered through the course  
12 of this hearing.

13 You will hear from Tina Vansickle and our  
14 traffic expert, Joe Mehra, then Alma Gates with a  
15 video, Cathy Wright for the abutting neighbors, she's  
16 Larry Skrivseth's wife and they worked on this  
17 together and Michael Lovendusky who lives directly  
18 across from the property. We ask the Board to be  
19 mindful that enforcement of all the proposed  
20 restrictions and conditions would depend upon a  
21 community liaison group to be "established,  
22 maintained, and conducted" by the Applicant. Critical  
23 compliance verification would be self certified.

24 Under such circumstances, we believe it is

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1 very relevant to consider the Applicant's history of  
2 non-compliance and lack of credibility in its  
3 neighborhood dealings. This is a school that has  
4 continually refused to cooperate in mitigating  
5 problems that it caused unless it has an application  
6 pending. It admitted it was over its staff cap and it  
7 had taken federal land without permission or payment  
8 until it was caught and now is negotiating for it to  
9 do it properly.

10 It admitted it didn't notify us about its  
11 change of position regarding the junior high because  
12 it had matter of right zoning in its temporary rental  
13 on Mac Arthur Boulevard. Really their attitude was we  
14 don't have to kowtow to you because we don't have an  
15 application pending, so we're just not even going to  
16 tell you. Then they really further insulted the  
17 credibility by conveniently characterizing such  
18 behavior as an honest reversal.

19 Finally, we ask you to please consider the  
20 enormous burden that you would place on the ANC and  
21 also on all of us just to process the complaints and  
22 the problems in attempt to document the what we would  
23 believe to be inevitable non-compliance to the  
24 satisfaction of government officials who have hundreds

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1 of other cases to deal with also. Thank you very  
2 much. Tina.

3 MS. VANSICKLE: Thank you very much, Mr.  
4 Chairman and the Members of the Board. I'm Tina  
5 Vansickle. I'm going to be working through a  
6 discussion with Joe Mehra regarding the impacts on the  
7 traffic. It will proceed for about 12 minutes. Mr.  
8 Mehra, are you familiar with the Marty Wells report?

9 MR. MEHRA: Yes. I am familiar with the  
10 Marty Wells report. The report shows that they  
11 collected of traffic data in December 2001. They used  
12 turn and movement counts to compute the levels of  
13 service for the existing conditions. This shows that  
14 there was a level of service C with a delay of 19.5  
15 seconds per vehicle on eastbound White Haven Parkway  
16 at Fox Hall Road during the a.m. peak hour. With the  
17 proposed improvements with the three lane in and the  
18 removal of parking, the level of service actually  
19 worsens to a level of service D with a delay of 27.9  
20 seconds per vehicle as shown in Table 10 of those  
21 reports.

22 MS. VANSICKLE: Did you conduct your own  
23 analysis of the existing conditions and level of  
24 service? How do your findings relate to the Marty

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1 Wells on existing service?

2 MR. MEHRA: We conducted a limited level  
3 of service analysis. For the same intersection on  
4 White Haven eastbound and Fox Hall Road during the  
5 a.m. peak hour, we came up with a level of service F  
6 with a delay of 130.8 seconds per vehicle.  
7 Incidentally, Grossley did a traffic survey for the  
8 Field School. One of the intersections that was  
9 analyzed was Fox Hall at White Haven. They also came  
10 up with a level of service F for the eastbound White  
11 Haven at Fox Hall Road.

12 MS. VANSICKLE: Do you believe Marty Wells  
13 omitted or did not include important factors that  
14 could impact the findings for future level of service?

15 MR. MEHRA: In the original traffic report  
16 that was submitted with the application, the report  
17 did not include traffic from other recent B.A.  
18 approvals such as the George Washington University  
19 Mount Vernon Campus or the Field School. The George  
20 Washington Campus was estimated to add approximately  
21 140 trips during the morning peak hour on White Haven  
22 Parkway. The Field School was estimated to add  
23 approximately 73 vehicle trips at the intersection of  
24 White Haven and Fox Hall Road.

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1 MS. VANSICKLE: What would be the impact  
2 of adding these considerations into the analysis of  
3 future conditions?

4 MR. MEHRA: The addition of these vehicle  
5 trips to the St. Patrick's School on White Haven  
6 Parkway would obviously result in worse level of  
7 conditions than computed by the Wells report. We  
8 should note that the George Washington traffic would  
9 occur at the same time as the St. Patrick's School  
10 traffic during the morning peak hour. The levels of  
11 service A or B which is estimated for the two school  
12 driveways will be worse after the addition of the  
13 George Washington Mount Vernon Campus traffic.

14 MS. VANSICKLE: Can you comment on  
15 parking?

16 MR. MEHRA: The -- plan and the three  
17 laning of White Haven Parkway relies on removal of 65  
18 parking spaces or approximately 35 percent of their  
19 total supply. This is a significant reduction in  
20 parking supply and will result in a parking shortfall  
21 on White Haven Parkway. Further, that DDOT has  
22 mentioned that this should be an experiment or on a  
23 trial basis, if it shows that the parking shortfall is  
24 significant, what will happen to the three laning of

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1 White Haven Parkway?

2 MS. VANSICKLE: What does your review of  
3 the shuttle bus plan suggest for its likely success?

4 MR. MEHRA: St. Patrick's School is  
5 proposing to use two shuttle buses to transport the  
6 students from White Haven Parkway campus to the  
7 proposed Mac Arthur Boulevard site. This plan assumes  
8 that all parents or guardians will drop off their  
9 children at White Haven Parkway and then the students  
10 will be driven by shuttle bus to Mac Arthur Boulevard.

11 On paper, this plan seems to be fine, but  
12 it's difficult to implement. The reasons for this  
13 implementation is as follows. First of all, White  
14 Haven Parkway is currently congested during the peak  
15 hours. The proposed circulation improvements will  
16 result in less congested conditions. However, the  
17 traffic from already approved institutional uses will  
18 add more traffic on White Haven Parkway and Fox Hall  
19 Road. The result may be that they end up with as much  
20 congestion as is present today.

21 Secondly, the late arriving students will  
22 be forced to be driven to Mac Arthur Boulevard since  
23 they may have missed the last shuttle bus from White  
24 Haven Parkway. For the students carrying projects or

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1 large heavy materials, they will find it difficult if  
2 not impossible to transfer to the shuttle bus for  
3 transfer to Mac Arthur Boulevard.

4 Some parents and guardians will be driving  
5 by the Ashby school site on Mac Arthur Boulevard  
6 anyway. It will be very convenient for them to drop  
7 off the children at Ashby rather than drive to  
8 congested White Haven Parkway and then have the  
9 students shuttled back to Ashby and Mac Arthur  
10 Boulevard. Finally, it is difficult to monitor and  
11 enforce the "Do not drop off children at Mac Arthur  
12 Boulevard School" policy everyday.

13 MS. VANSICKLE: What does your review of  
14 the car pool plan suggest for its likely success?

15 MR. MEHRA: DDOT has recommended that a  
16 satisfactory car pooling plan be a condition of B.A.  
17 approval and that at a minimum the plan should  
18 establish as a requirement that the number of trips  
19 generated by the school not increase as a result of  
20 increased number of students attending the proposed  
21 middle school. The Wells report has indicated that  
22 presently there is essentially no car pooling.

23 The report further states that there are a  
24 significant number of after school activities such as

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1 study hall, dance, cooking, language, sports, et  
2 cetera. The timing of these activities and the  
3 magnitude of participation by students makes it  
4 extremely difficult to draw up an effective car  
5 pooling program.

6 MS. VANSICKLE: Did you review the updated  
7 Wells submittal report from July?

8 MR. MEHRA: Yes. I did review the  
9 supplement that was provided in July. The supplement  
10 provides technical data that was used by Wells and  
11 Associates to draw up their recommended plan for St.  
12 Patrick's School. A review of this data and its  
13 application shows some inconsistencies and errors.

14 For example, figure 1 shows the existing  
15 peak hourly flow rates which is four times the peak 15  
16 minute volume as 428 vehicles entering the school in  
17 the morning peak period. This number should be 460  
18 based on a peak 15 minute flow of 115 vehicles  
19 entering the school which is shown on page 5 of the  
20 document. Similarly the eastbound White Haven Parkway  
21 traffic volumes at the east school driveway is shown  
22 as 296. This should be 340 vehicles based on a peak  
23 15 minute flow of 85 vehicles again shown on page 5 of  
24 the document.

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1                   These are two examples that show that the  
2 existing peak hourly flow rates are under reported by  
3 approximately 15 percent. Further, the report shows  
4 that the school peak hour is from 7:45 to 8:45 a.m.  
5 However, when you look at the data at the driveways  
6 that was shown in the supplement the peak hour for the  
7 school is 7:30 to 8:30 a.m.

8                   The inbound traffic to Georgetown  
9 University on White Haven Parkway is approximately 53  
10 vehicles during their a.m. peak hour. DDOT's  
11 Palisades traffic notes that 151 inbound vehicle  
12 trips are generated by George Washington University  
13 during the a.m. peak hour. Approximately 90 percent  
14 of these which is 136 vehicles would be traveling on  
15 White Haven Parkway. This shows that the Wells report  
16 has under reported George Washington University  
17 traffic by a significant number during the a.m. peak  
18 hour.

19                   Using traffic volumes that are  
20 significantly under reported, the document shows the  
21 following results. Number 1, the queue on westbound  
22 White Haven Parkway at Mac Arthur Boulevard increases  
23 by 23 percent from the existing 449 feet with the  
24 recommended plan. Secondly, the queue on -- Fox Hall

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1 Road at White Haven Parkway increases by 388 percent  
2 from the existing 113 feet with the recommended plan.

3 Finally, the queue on westbound White Haven Parkway  
4 and the school driveway reduces by 60 percent from its  
5 current 578 feet.

6 MS. VANSICKLE: What is your summary  
7 conclusion based on this?

8 MR. MEHRA: We have reviewed the data  
9 assumption and findings of the Wells reports for the  
10 existing conditions and future scenarios including the  
11 impacts of George Washington University and the Field  
12 School. Our review of the data that Wells used to  
13 report their findings found under representation of  
14 existing peak hour traffic morning flow. We also  
15 found under representation of traffic associated with  
16 George Washington University for establishing future  
17 scenarios.

18 Even using the Applicant's own data, we  
19 found a worse level of service at eastbound White  
20 Haven Parkway at Fox Hall Road. Under existing  
21 conditions, a level of service F which the District  
22 deems inadequate was a level of service C. Taking  
23 into account the higher volume of traffic to the  
24 expected from George Washington University then used

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1 in the report, we conclude that the level of service  
2 in the future will not be sufficiently ameliorated by  
3 the traffic management plan offered by the school.

4 In addition, traffic on White Haven  
5 Parkway will be worse than projected by Wells. We  
6 believe the car pool program will be hard to draw up  
7 and sustain over time due to the fact of how school  
8 activities are structured and the range in hours of  
9 operation. We believe that the shuttle bus will not  
10 be effective or sustainable due to the worse level of  
11 congestion expected on White Haven Parkway during the  
12 relevant a.m. and p.m. pick up and drop off periods.

13 Further, additional factors such as late  
14 students, logistics of carrying projects, the  
15 convenience of direct drop off at the proposed site  
16 will all work against a successful implementation of  
17 the shuttle bus program. Accordingly, we believe that  
18 it is highly likely that with the congestion  
19 difficulties and implementation of the shuttle bus  
20 program and other behavior patterns facing parents  
21 they will likely drop off students directly at the  
22 Ashby site.

23 MS. VANSICKLE: Thank you, Mr. Mehra.  
24 That concludes our portion.

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1 MR. MEHRA: Okay.

2 MS. FELDMAN: If we could stop the clock  
3 for a moment while we bring up the person with the  
4 video. It's already loaded though.

5 CHAIRPERSON GRIFFIS: Okay.

6 MS. FELDMAN: Thank you.

7 (Pause.)

8 PARTICIPANT: Ms. Bailey, could you help  
9 us run the video or do you have someone here that's  
10 familiar with this?

11 MS. FELDMAN: We've got it.

12 CHAIRPERSON GRIFFIS: Are we going  
13 directly to the video?

14 MS. FELDMAN: No.

15 CHAIRPERSON GRIFFIS: Okay. I think we  
16 might just have some initial questions of introduction  
17 of the video. In fact, why don't we ask those now so  
18 we don't do it on your time?

19 MS. FELDMAN: Thank you.

20 MEMBER ETHERLY: Thank you very much, Mr.  
21 Chair. First of all, if you could identify yourself  
22 and give your address for the record please.

23 MS. GATES: My name is Alma Gates. I live  
24 at 4911 Ashby Street, N.W.

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1                   MEMBER ETHERLY: Thank you very much, Ms.  
2                   Gates. Before you got into the balance of your  
3                   testimony as the Chairman noted so we wouldn't have to  
4                   interrupt you, I wanted to ask a couple of preliminary  
5                   questions regarding the video.

6                   MS. GATES: Sure.

7                   MEMBER ETHERLY: I would anticipate that  
8                   you may or may not get an objection to the video. I  
9                   don't necessarily think it would be warranted. Just  
10                  once again in anticipation, you note in the remarks  
11                  that you're going to give that the video was taped  
12                  between September 4 and 23 of this year.

13                  MS. GATES: It was taped on two separate  
14                  days, not between those days.

15                  MEMBER ETHERLY: Okay. So on September 4  
16                  and on September 23.

17                  MS. GATES: Correct.

18                  MEMBER ETHERLY: Do you yourself have  
19                  knowledge of who took, who recorded the videotape?

20                  MS. GATES: Yes I do.

21                  MEMBER ETHERLY: Who would that be in this  
22                  case?

23                  MS. GATES: Megan McGuire.

24                  CHAIRPERSON GRIFFIS: And that's a citizen

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1 or is that a professional photographer.

2 MS. GATES: It's a citizen.

3 CHAIRPERSON GRIFFIS: Okay.

4 MS. GATES: A very amateur as you will  
5 see.

6 CHAIRPERSON GRIFFIS: Indeed.

7 MS. GATES: And I directed it. I was with  
8 her at all times.

9 MEMBER ETHERLY: Okay. As the Chairman  
10 was beginning to allude to, the time in which the  
11 video was taken on those two separate days.

12 MS. GATES: On September 4, it was done in  
13 the morning between 7:30 and 8:30. On September 23,  
14 it was done again in the morning from about 7:45 to  
15 8:15 and then in the afternoon from approximately 2:50  
16 to 3:30.

17 MEMBER ETHERLY: To the best of your  
18 knowledge or recollection, where was the video set up  
19 or where was the vantage point for the video that  
20 you're hoping to show?

21 MS. GATES: On the morning of the 4th, the  
22 vantage point was White Haven Parkway. Then we moved  
23 over to Ashby Street and took some film there. On the  
24 morning of the 23rd and the afternoon of the 23rd, we

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1 were on White Haven Parkway. We did return to Mac  
2 Arthur Boulevard just to put this all in context.  
3 That was about five minutes. It's one pan with Mac  
4 Arthur Boulevard.

5 MEMBER ETHERLY: Thank you very much, Mr.  
6 Chairman. Once again, the only reason why I felt it  
7 necessary to do that is just to get a sense of the  
8 context in which we're going to be viewing the video.  
9 I don't necessarily see any problem or any  
10 prejudicial concerns raised by the video.

11 I don't mean to necessarily make such a  
12 big issue of it, but I think it would be appropriate  
13 to once again get a sense of what the context of the  
14 video was and who was responsible for the video's  
15 creation. I'm certain that the Chair will direct you  
16 that we will of course need to have that video  
17 submitted into evidence, a copy. So if you have that,  
18 it would be helpful.

19 MS. GATES: Yes. We're prepared to leave  
20 it.

21 MEMBER ETHERLY: Perhaps once again not  
22 getting too far ahead of ourselves, Mr. Chairman, I  
23 don't know whether or not there might be a need for  
24 any comment from Counsel for the Applicant with regard

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1 to the video.

2 CHAIRPERSON GRIFFIS: I'm certain they'll  
3 avail themselves if needed. Why don't we go ahead if  
4 there's not anything else and begin your testimony or  
5 your case.

6 MS. GATES: Thank you.

7 MEMBER ETHERLY: Thank you, Mr. Chair.

8 CHAIRPERSON GRIFFIS: Thanks.

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1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 (6:00 p.m.)

3 MS. GATES: Chairman Griffis, Members of  
4 the Board, good evening. My name is Alma Gates  
5 representing the neighbors opposed to the application  
6 of St. Patrick's to place a private school in the  
7 midst of our residential neighborhood.

8 The Palisades community remembers that as  
9 far back as 1983 St. Patrick's has been claiming to  
10 solve its self generated traffic problems. Fox Hall  
11 Village twice said no to the school's plans for  
12 expansion because traffic related to this school was  
13 seriously impacting that neighborhood. When denied,  
14 they moved over to White Haven Parkway and constructed  
15 a new facility.

16 Their 1983 application to the B.A. gave  
17 the following description. There was no problems with  
18 parking vehicles on both sides of White Haven Parkway  
19 because this street is a very low volume street.  
20 There are no problems in terms of traffic engineering,  
21 traffic operations, and safety. This representation  
22 by St. Patrick's proved to be incredible. The traffic  
23 and congestion the school had generated in Fox Hall  
24 Village was recreated and worsened on White Haven

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1 Parkway.

2 In 1990, the school returned to the B.A.  
3 to increase its student population from 390 to 440 and  
4 its faculty and staff from 51 to 60, the caps under  
5 which the school is currently operating. Robert Ross  
6 Peterson, Mr. Barrett's predecessor, informed the B.A.  
7 at that time "Our school has always been aware of the  
8 need to control the number of vehicles that flow in  
9 and out of the site each day in the morning and the  
10 evening. We have made deliberate efforts to encourage  
11 car pooling. We have established staggered pick up  
12 times and arrival times."

13 Again, all of these representations proved  
14 to be incredible. Robert L. Morris hired to conduct  
15 this school's traffic survey noted that St. Patrick's  
16 had an average vehicle occupancy of 3.2. Both the  
17 intersections at Mac Arthur and White Haven and Fox  
18 Hall and White Haven were functioning at a level of  
19 service A. Level of service is the measure used by  
20 the District Department of Transportation to determine  
21 driver delay at an intersection with A being very  
22 little or no delay and F being inadequate or long  
23 delay.

24 In December 1999, the school returned to

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1 the B.A. to request permission to build a gymnasium  
2 and expand its classroom space. In his remarks Head  
3 Master Peter Barrett testified "Please remember that  
4 the campus master plan seeks no increase in the number  
5 of students who attend St. Patrick's and no change in  
6 the grade levels we offer, no additional grade levels,  
7 no additional students, no additional teachers, no  
8 additional cars."

9 He continued "The first phase work has  
10 also reduced congestion along upper White Haven  
11 Parkway during our arrival and dismissal car pools  
12 especially in the afternoon when cars can move more  
13 safely around our waiting car pool line in either an  
14 east or west bound direction. We have transformed the  
15 ragged, cluttered southern edge of upper White Haven  
16 Parkway into a tidier, more attractive and safer  
17 boundary for this street." These representations have  
18 proven to be incredible.

19 In late 2001, the school informed the  
20 Palisades community it was expanding although it had  
21 pledged not to do so when it won its support for a new  
22 gymnasium and classroom addition a year and a half  
23 earlier. The extra traffic resulting from the  
24 addition of 50 students over a six year phase in

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1 period beginning in 1990 and the additional staff  
2 members which now number between 80 and 100 has had  
3 significant impact. The levels of service on  
4 eastbound White Haven Parkway and westbound White  
5 Haven have dropped to unacceptable levels.

6 The parking that the traffic expert said  
7 was no problem in 1983 has become such a problem that  
8 DDOT has required its removal to install a third  
9 through lane in an attempt to improve the flow of  
10 traffic. Average vehicle occupancy is currently at  
11 1.3 and the number of cars transporting students has  
12 tripled in ten years.

13 Once again the school has made assurances  
14 they will get the traffic under control.  
15 Simultaneously the school maintains that previous car  
16 pool plans failed because of seat belt laws and the  
17 many different locations of the students, but that now  
18 although those conditions persist car pooling can  
19 succeed.

20 You are now going to see a video taped on  
21 September 4 and 23 of this year which we would like to  
22 enter into evidence in this case. The video first  
23 displays the site of the proposed special exception at  
24 4925 Mac Arthur Boulevard illustrating how narrow the

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1 intersection Ashby Street is to any traffic arriving  
2 or departing from the proposed school. You will also  
3 see how compact and completely residential the  
4 neighborhood is.

5 The video then moves to St. Patrick's on  
6 White Haven Parkway where the school proposes to add  
7 shuttle buses to ferry the middle school students to  
8 and from the Mac Arthur site. The White Haven footage  
9 displays two typical days of traffic. As you will  
10 see, the traffic there is typically congested and  
11 confused with parents ignoring traffic signs, traffic  
12 laws, DDOT plans, and St. Patrick's rules and  
13 guidance. Now we'll move to the video.

14 (Video presented.)

15 MS. GATES: (Indicating.) This is Ashby  
16 Street. This car is turning off of Mac Arthur  
17 Boulevard. You can see this is a short narrow street.

18 Right in front of that truck is the entrance to the  
19 proposed site. You can see these are very narrow  
20 driveways, very difficult to back out.

21 There's the Italiano house with no  
22 driveway. We're going to pan over to the school now.

23 See the driveway. We are now at the opposite end of  
24 the block on Mac Arthur Boulevard. That was W Street.

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1 You can see these houses are fairly close together.  
2 The Hoy house is there in the background. The school  
3 is on the left. There is the bus pad where the  
4 students will be dropped off.

5 This is Ashby Street at the intersection  
6 of 49th just to show you the other end of the street.

7 We're now on White Haven Parkway. All the school's  
8 teachers and visitors who use these diagonal spaces  
9 are required to back in. This particular one is  
10 backing in to one of two handicapped slots. The  
11 entrance to the car pool lane is right there on the  
12 right.

13 This taxi cab is stopped. It's dropping  
14 children off on the curb, actually in the street. The  
15 cars behind the children are in the car pool lane.  
16 This is very early. This mother rather than get in  
17 the line has decided to pull over into the no parking  
18 zone and walk her children across the street, not  
19 using the crosswalk the school has provided.

20 This car is going to have to back into  
21 this spot. I think it's interesting to watch this  
22 maneuver. This van has also stopped off on the curb  
23 dropping children off. We will see this van again on  
24 the 23rd.

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1 PARTICIPANT: Is it --

2 MS. GATES: No it is not. You'll see that  
3 on the 23rd. It's blocking the fire hydrant, and it's  
4 parked in a no parking zone. This is the east parking  
5 lot for 30 cars. These are cars going into the drop  
6 off lane, Mr. Barrett directing traffic. This blue  
7 car on the left of your screen is going to pull up and  
8 park illegally against the diagonal cars.

9 There goes Mr. Barrett. This woman is  
10 getting out of her car in the middle of the street.  
11 No, she's not in the crosswalk. Mr. Barrett helping  
12 her across the street. There's the car we saw earlier  
13 and another car in front of it illegally parked.  
14 Another car backing in. Another shot of the east  
15 parking lot.

16 We are now at the lower end of White  
17 Haven. That bus is backing in just as the St.  
18 Patrick's bus will have to back in to either the  
19 driveway or the parking lot. You can see how it has  
20 blocked traffic. By the way, it had its flashers on  
21 and cars continued to pull around it. This is one of  
22 the driveways of the gym. These cars are all  
23 illegally parked on both sides of the street.

24 I have to be honest and say I cannot

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1 identify the cars there. I can just tell you that  
2 they are illegally parked and there are no parking  
3 signs on the left side of the screen. Here's the van.

4 This is now the 23rd. The van has stopped again,  
5 dropping children out right there on the street in  
6 front of the fire hydrant.

7 As I said earlier, there just seems to be  
8 no regard for traffic laws or signs. That's the sign  
9 you just saw. The crosswalk is right here. As you  
10 watch this and you see cars pulling out of the drop  
11 off lane, notice which way they turn. According to  
12 Mr. Wells' report and the school's regulations, all  
13 cars are supposed to make a left turn. That's a bus  
14 that has dropped children off at the Lab School.

15 PARTICIPANT: Is it parked --

16 MS. GATES: No it is not. It is parked  
17 right there where it says no parking at any time.  
18 Right hand turn, right hand turn, right hand turn.  
19 They are supposed to be making left hand turns.

20 COMMISSIONER MITTEN: Mr. Lovendusky, if  
21 you are going to participate, turn on your mic for us.

22 MS. GATES: You're going to begin to see  
23 the back up right here on Fox Hall Road. This truck  
24 has just pulled up and parked right in front of the

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1 school. The man is going to get out and just walk  
2 away. There's Mr. Barrett on the left. You can see  
3 the cars turning off of Fox Hall Road. The back up is  
4 starting.

5 MR. LOVENDUSKY: Is that a legal space?

6 MS. GATES: No it isn't. It's no parking.  
7 It's right in front of the school.

8 MR. LOVENDUSKY: How many feet away from  
9 the turning --

10 MS. GATES: There's actually a car parked  
11 in front of that. That's the Mount Vernon bus turning  
12 into their driveway.

13 MR. LOVENDUSKY: (Inaudible.)

14 MS. GATES: That's right. This is a  
15 little bumpy here for a while and I apologize for  
16 that.

17 MR. LOVENDUSKY: Is that a pick up line?

18 MS. GATES: This is actually blocking Fox  
19 Hall Road now. Yes. This is all the drop off line.  
20 I'm sorry for this. Now it's over. You can see these  
21 cars just continue to be backed up there. A car is  
22 going to pull up right here on Fox Hall Road  
23 attempting to make a left turn. The truck is still  
24 parked there. There's the car trying to make the left

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1 turn off of Fox Hall. This is just another shot  
2 farther down the street. You can still see the cars  
3 are backed up.

4 VICE CHAIRPERSON RENSHAW: Was that car  
5 trying to do a U turn?

6 MS. GATES: It did do a U turn.

7 VICE CHAIRPERSON RENSHAW: It did do one.

8 MS. GATES: There's one of the Mount  
9 Vernon buses. There's the car that was in front of  
10 the truck. We're now at the intersection of Mac  
11 Arthur and White Haven. Those three children are  
12 walking to the Lab School which is on your left.  
13 Watch that silver Jeep that just made a turn and how  
14 long it takes it to back out and turn around.

15 MR. LOVENDUSKY: Is there a sidewalk for  
16 the students to walk on?

17 MS. GATES: There is no sidewalk. But you  
18 can see the congestion at this intersection. Just  
19 people walking in the street randomly. This is  
20 morning rush hour. There's the silver Jeep coming  
21 out. I don't know where that person is going.

22 This is the CVS parking lot on U Street.  
23 At 8:00 a.m., you can see it's pretty full. People  
24 are just pulling in here and parking now. That's one

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1 of the car pool cars. That's the Field School. We  
2 just took this shot to show you the back up created  
3 every time one of their buses pulls out. This is Fox  
4 Hall Road. It backs down almost as far as White  
5 Haven.

6 This is the afternoon of the 23rd. This  
7 bus is picking up St. Patrick's students. It's not in  
8 the driveway, and it's not in the east parking lot.  
9 The person directing traffic, I assume a staff member,  
10 is going to have to get that car to move so the bus  
11 from Mount Vernon can get out. Notice how much room  
12 this bus takes up when it turns. Imagine three lanes  
13 of traffic there. How is this going to work?

14 This again is Fox Hall Road. This is  
15 about 3:10 p.m., not rush hour. These are cars going  
16 down to get in the pick up line. The Mount Vernon bus  
17 has just left again. We're getting toward the end of  
18 this pick up time, but here's the traffic all the way  
19 down here. In a minute, you're going to see a car try  
20 to come up the street while some other cars are trying  
21 to get through and how congested it is. Another bus.

22 We knew there were 145 buses last year.  
23 It seems there are more buses now. I haven't asked  
24 Mount Vernon, but they were coming and going the whole

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1 time we were there. There is a Volvo on the wrong  
2 side of Fox Hall Road. This is the end now. This is  
3 about 3:30. Now you'll see this car try to get by  
4 right here. We hope you can see that not much has  
5 changed.

6 CHAIRPERSON GRIFFIS: Can we stop the  
7 clock while Ms. Gates composes herself?

8 MS. GATES: Pulls herself together.

9 CHAIRPERSON GRIFFIS: Do you want to  
10 rewind that?

11 MEMBER ETHERLY: And Mr. Chair, just for  
12 the benefit of my colleagues, September 4 by my rough  
13 referral to my calendar was a Wednesday and September  
14 23 was a Monday.

15 MS. GATES: I'm ready to begin.

16 CHAIRPERSON GRIFFIS: Good.

17 MS. GATES: I submit this testimony today  
18 as a private citizen. I am also however Traffic Chair  
19 of the Palisades Citizens Association and member of  
20 the Ward Three Transportation Task Force as well as a  
21 member of the Mayor's task force on parking. I deal  
22 with traffic on a daily basis. I speak from  
23 experience.

24 I have lived within the Palisades my

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1 entire life, 63 years, and have witnessed the changes  
2 on White Haven Parkway over the past 25 years. School  
3 related traffic is a major problem. Keeping the  
4 number of cars at current levels is not an acceptable  
5 solution. Running school buses through the community  
6 far outside school boundaries is not a solution.  
7 Removing unzoned parking, public parking is not a  
8 solution.

9 Parents have been encouraged to car pool  
10 since 1983, but average vehicle occupancy has gone  
11 from 3.2 to 1.3. Maintaining the status quo by  
12 raising the average vehicle occupancy to 1.6 is not an  
13 ambitious solution. It is not a solution to force it  
14 upon the neighborhood and implement an incomplete car  
15 pool plan. St. Patrick's amended car pool plan  
16 doesn't even cover the morning drop off periods which  
17 would only be attempted a year or so later.

18 St. Patrick's amended plan includes a  
19 trivial financial penalty and afternoon pick up times  
20 that may actually be counter-productive to traffic  
21 reduction or stabilization. The 3:00 p.m. dismissal  
22 process lasts for almost 40 minutes and is currently  
23 affecting White Haven Parkway, Fox Hall Road, W  
24 Street, Mac Arthur Boulevard, and the V Street cul-de-

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1 sac below Reservoir Road where junior high parents  
2 drop off and wait to pick up students on afternoons  
3 when there are no after school activities.

4 Spreading traffic throughout the community  
5 is not a solution. Spreading traffic over a six hour  
6 afternoon period four days a week is not a solution.  
7 The community no longer believes the school can  
8 improve its traffic impact. We have good reasons for  
9 our beliefs. The community no longer believes DDOT  
10 when it says it has every reason to believe the school  
11 will improve its traffic record.

12 Neither do we believe the Office of  
13 Planning when it tries to force fit a school for 60  
14 junior high school students into a house on Mac Arthur  
15 Boulevard and where by the way almost 10,000 speeding  
16 tickets were issued this summer during the months of  
17 July and August. Placing additional burden and  
18 responsibility on the community through more required  
19 meetings and monitoring is not a solution. St.  
20 Patrick's families spread over 23 zip codes will not  
21 change their commuting patterns.

22 The proposed DDOT solution is the  
23 community liaison program. This is not a new concept.  
24 Community liaison gatherings take place all over the

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1 city. In the Palisades, I currently attend such  
2 meetings at GW Mount Vernon, Rock Creek International  
3 School, and Field School. My experience is that they  
4 result only in chat sessions with the schools being  
5 very defensive and making excuses for their non-  
6 compliance and then only if they are actually caught.

7 DDOT itself has not begun the four month  
8 test it promised the B.A. would start in early July  
9 nor has it done the significant run configuration it  
10 contemplated for this project. I'm going to skip  
11 ahead. St. Patrick's is asking the neighbors to make  
12 another leap of faith and allow the establishment of  
13 their junior high school on Mac Arthur Boulevard at  
14 Ashby Street. They pledge they will make it work this  
15 time in spite of an abysmal history in Fox Hall  
16 Village and on White Haven Parkway.

17 They pledge they will make it work this  
18 time in spite of pass-fail car pool plans and a failed  
19 van service. But history has taught St. Patrick's a  
20 fresh start and the construction of a new school on  
21 White Haven in 1983 could not make it work. The  
22 addition of a parking lot and a gymnasium could not  
23 make it work. An army of teachers and the Head Master  
24 directing traffic could not make it work.

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1           The neighborhood is unwilling to take on  
2 faith that a new unproven car pool plan would make it  
3 work. It would be unfair and contrary to common sense  
4 for the B.A. to expect it of us. The school has  
5 spread its traffic volume across White Haven, Fox  
6 Hall, W Street, V Street and beyond and now wants to  
7 extend congestion even further by moving down to Ashby  
8 Street via Arizona, Loughboro, and Fox Hall Road.

9           We have good reason to believe that over  
10 time the approval of this proposal would result in the  
11 Ashby, Mac Arthur, and W Street corridor going the way  
12 of White Haven. Inevitably, St. Patrick's buses would  
13 find the overly long route a burden and use  
14 neighborhood streets just as parents will drop off  
15 students in the Mac Arthur/Ashby Street area rather  
16 than face the queue on White Haven.

17           We appeal to the B.A. to preserve the  
18 stability, character, and residential fabric of our  
19 neighborhood. We appeal to the B.A. to recognize that  
20 the school can find an appropriate site for its junior  
21 high school where there are facilities that support  
22 the needs of its adolescent students without impacting  
23 nearby neighbors or necessitating the over use of  
24 community resources. We appeal to the B.A. to respect

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1 the 203 petitioners who oppose the establishment of a  
2 junior high school at the corner of Mac Arthur  
3 Boulevard and Ashby Street because such a proposed  
4 intense use is overwhelmingly objectionable and does  
5 not protect the community from adverse impacts. Thank  
6 you.

7 MS. WRIGHT: Thank you. My name is Cathy  
8 Wright. I am speaking on behalf of the Wright-  
9 Skrivseth household and the abutting neighbors, the  
10 Hoys . You've heard a great deal over the past months  
11 from experts citing average statistics on traffic, on  
12 noise, on flow of people. You've heard a great deal  
13 about St. Patrick's and testimonials about what a  
14 wonderful school it is and the children.

15 Fundamentally, it's our belief that this  
16 is not about education in the Palisades nor is it  
17 about whether St. Patrick's is a good school or a bad  
18 school but about the impact of an institution coming  
19 into a residential area of our small homes for the  
20 Palisades which admittedly is getting developed, but  
21 we're a really small enclave. Most immediately it's  
22 going to be my family, the Hoys , the Lovendusks and  
23 our concentric circle of immediate neighbors that will  
24 feel the impact of this. We are all extremely

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1 distressed about again the residential fabric of our  
2 community being destroyed by institutions coming into  
3 the neighborhood.

4 To illustrate this, I'd like to take you  
5 on a little tour of our immediate neighborhood. I'll  
6 do that by my own somewhat less than professional  
7 diagram and the photos that have been submitted for  
8 the record. First I'd like to make one point. That  
9 is about comparative usage. I truly believe there's  
10 no reasonable way that one can compare the use that  
11 the psychoanalytic institute made against the future  
12 use of this property. Five days a week from 7:30 to  
13 4:00 is not at all similar to one evening two times a  
14 month and Saturday mornings.

15 Sixty seventh and eighth graders plus ten  
16 or 12 staff and teachers is not at all similar to  
17 several care takers and adults attending professional  
18 meetings. Just the number of hours of usage alone is  
19 dramatically different. Roughly 32 hours a month  
20 through the psychoanalytical institute versus what  
21 will be probably at least 180 hours a month. That is  
22 four times larger than what we have experienced since  
23 1962 when the psychoanalytical institute went in  
24 there.

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1 St. Patrick's has said that it will  
2 preserve the property and improve it, but what we have  
3 seen is that really there will be quite a few changes  
4 that will go on in that property. There will be the  
5 extension of a life safety wing. The pink that I've  
6 drawn in there shows the expansion. There will be the  
7 expansion of the life safety wing which very possibly  
8 will endanger some very old and beautiful trees on the  
9 property.

10 While in the original plan there was a  
11 promise not to expand the parking lot, in reality the  
12 plan as you can see where I've drawn in the pink is  
13 where the latest plan we received in July indicates an  
14 expansion of the old parking lot. The lawn will be  
15 used recreationally by 15 to 20 students three or four  
16 times daily. There will be an increase in the level  
17 of noise both by the students as well as by the coming  
18 and going of cars.

19 We've heard about fences proposed by the  
20 Office of Planning, but even in their own report,  
21 they're very contradictory. In some points, they say  
22 a solid fence is what's needed. In other places, they  
23 say an open fence to preserve light and air. Whether  
24 that noise will stop at the end of the grass is

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1 debatable. We've really been in a dilemma about how  
2 do we talk about buffers, how do we talk about fences,  
3 how do we talk about safety when it's all very  
4 conflicted.

5 Turning to the diagram there, what I tried  
6 to show is not as many of these pictures do the  
7 building in isolation but as it really stands with the  
8 homes around it. The blue at the top is my home. As  
9 you can see it has porches. Our living room, our  
10 dining room, our bedroom, our kitchen, our deck are  
11 four feet away from the property line. We sit on  
12 average between four and 12 feet below the property  
13 height. For the Hoy's they are about 11 feet back,  
14 but again their home is right there looking right down  
15 on that wooden fence. It's their bedrooms, their  
16 living room, their deck, their patio, their pool.

17 If you turn to the photos that were  
18 distributed, I think that what you will see there  
19 brought very visually close is just how intimately  
20 these homes are placed juxtaposed to the property. As  
21 I mentioned, we're 42 inches. As you can see, we sit  
22 well below the property line, so any fence while it  
23 might protect us from frisbees and toys and balls also  
24 has a detrimental impact in that it blocks light and

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1 air. The Hoy's home is in a slightly different  
2 position. They sit well above, so noise rises to  
3 their property.

4 As you can see because of the water run  
5 off and the weakness of the wall, we've had to build  
6 our own little cinder block dam to prevent water  
7 coming into our home. I tried to cite the number of  
8 feet as you move back. Again, this wall is not very  
9 strong, so we were also very concerned that there  
10 wasn't a structural engineer who had looked into  
11 issues of the weight that all of these additional cars  
12 will be imposing and what that might do to the ground,  
13 the wall, and just the structural soundness.

14 As you move through here you can see our  
15 living space is right next to the parking lot. While  
16 it's been one thing to tolerate it for a couple hours  
17 on a Saturday morning or two evenings a week to have  
18 this constant daily usage is going to be a tremendous  
19 intrusion into our ability to sit out there and enjoy  
20 our property as it will for the Hoy's. I think these  
21 photos really speak for themselves to see the  
22 proximity of our homes to the planned property.

23 I would like to note that we live with our  
24 windows open most of the year. With the exception of

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1 the few very bitter cold months of the year, we live  
2 out there. This is an extension of our household. We  
3 read. We work. We tend to our families, sleep, and  
4 try to rest from the world that we live in. It really  
5 is our little haven. We value it immensely. We  
6 breathe the air and will breathe the air from the  
7 increased amount of exhaust, the fumes that are going  
8 to be present in a parking lot that is designed now to  
9 accommodate 19 people every single day.

10 We are concerned about St. Patrick's  
11 actions. In the past as we got close to a new  
12 hearing, we would get a new approved plan. Sometimes  
13 that would be we'll build a driveway for this  
14 neighbor, we'll put some more shrubs in, we'll trim  
15 some more parking places. It's been a real patchwork,  
16 you know, something here and something there. That  
17 has really struck us as being cobbled together to  
18 respond to the issue of the moment.

19 The reality in our view is that this piece  
20 of property which is smaller than a half an acre just  
21 is unsuitable for the degree of use that's being  
22 proposed. One thing I would like to point out is in  
23 1983 the B.A. had ordered buffers for St. Patrick's as  
24 it had expanded. In that order, it had requested or

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1 required a 16 to 18 foot buffer of staggered pines.  
2 The red line I've drawn there is an 18 foot  
3 approximation. If we were able to get buffers that  
4 came in 18 feet what you would see there is that the  
5 parking spaces would dramatically be affected which in  
6 turn might mean that the parking lot would have to  
7 expand into the lawn or that extra parking would have  
8 to flow out onto Ashby Street.

9           Objections. As I said, we really  
10 tremendously object to our little residential  
11 neighborhood starting to have institutions plunked  
12 down right in the middle of it. We are removed from  
13 the commercial part of Mac Arthur Boulevard. While we  
14 do value the urban village and being able to walk to  
15 the library, walk to shops, walk to a variety of  
16 facilities, our part even though it's Mac Arthur  
17 Boulevard is still totally residential. We would like  
18 to keep it that way.

19           We truly believe and fear that this may be  
20 the thin edge of the wedge and that because we have  
21 smaller homes that they would be more easily acquired  
22 and a few years down the road we would also be running  
23 into a situation like we've seen on White Haven  
24 Parkway where all the homes that were once there have

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1 gradually gotten gobbled up by institutional  
2 interests. We're very concerned about the pedestrian  
3 and driving safety that will be the impact of buses  
4 stopping, making traffic stop, that a bad situation  
5 will get even worse.

6 We've talked about property values. I do  
7 have some empirical evidence. We met with our  
8 property assessor, Carolyn Monk, on April 29 to talk  
9 about our property assessment. At that time, we had  
10 raised the issue of St. Patrick's coming in. She had  
11 acknowledged to us that even the potential of that was  
12 something that could drive down the assessed values.

13 I spoke with her again on July 9 because  
14 we hadn't received our final assessment. She  
15 confirmed to me that they had lowered our property  
16 value assessment and had taken this into account. At  
17 the same time, she had also pointed out to me that  
18 they had already begun to see the property values  
19 around the Field School decline. I'm not an  
20 assessment expert, but I would assume that it would be  
21 possible to track this through the tax assessor's  
22 office. Clearly in this day and age when the stock  
23 market is crashing around us for those of us who have  
24 made major investments in our home, selfishly perhaps,

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1 but we would like to see them retain their value.

2 We also object to the Office of Planning  
3 and DDOT just assuming that we have nothing better to  
4 do with our lives than to start participating in and  
5 in their report it says quarterly meetings with St.  
6 Patrick's. We have jobs. We have children. We have  
7 a variety of other commitments in our life. While I  
8 am a member of the PCA and I do go to ANC meetings, I  
9 also hate to think that I now have to become a monitor  
10 of an institution and start attending more and more  
11 meetings to make sure that the things that make my  
12 home valuable to me, not in monetary terms, are  
13 maintained.

14 I have a husband who is ill and couldn't  
15 even stay for the rest of this. I'm sure we all have  
16 other priorities in our lives. While we certainly  
17 would do it, it's not with a great deal of enthusiasm.

18 I do resent a little bit their assumption that we  
19 have nothing better to do with our lives and to become  
20 monitors of the neighborhood and this school.

21 In conclusion, I would like to just say  
22 that 40 years ago OP turned down a very similar  
23 request. In the meantime, conditions have worsened.  
24 Traffic has gotten worse. The situation has become

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1 more dense. I don't quite understand why it's okay  
2 now, but it wasn't 40 years ago.

3 We're not against children. We're not  
4 against education. We're not against religion. We  
5 just do not want to have our lives transformed by an  
6 institution next door. We will have no real  
7 protection and little recourse as the fragile elements  
8 of this plan begin to unravel as they surely will.  
9 We've heard time and time again from St. Patrick's  
10 trust us, we're going to make this all better. But I  
11 think as you've heard from various testimonies it's  
12 very difficult for us to put that kind of trust in the  
13 institution.

14 Several years from now the people from St.  
15 Patrick's will probably have moved on to other  
16 positions. The experts that have been here will go on  
17 to other projects. The children will go on to other  
18 high schools. We are the people who are going to be  
19 left day in and day out for the rest of our lives  
20 having to confront with this situation and deal with  
21 it. I would really implore you to help us preserve  
22 our quiet, residential area. Maybe we can all work  
23 together to find another more suitable location for  
24 St. Patrick's. Thank you.

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1 MR. LOVENDUSKY: Mr. Chairman, I'm Michael  
2 Lovendusky, party opponent to the application. I  
3 reside at 4927 Mac Arthur Boulevard which is right  
4 across Ashby Street from the proposed site with my  
5 family. With six days of hearing, a thousand pages of  
6 testimony, a thousand pages of documents, a dozen  
7 witnesses including several expert witnesses, one  
8 would think this is a complicated case.

9 The reason it appears to be a complicated  
10 case is because the Applicant has labored to persuade  
11 both the nearby and adjacent neighbors as well as the  
12 Board to turn off our common sense. They have labored  
13 to confuse both the neighbors and the Board as to the  
14 genuine law as well as to the irrefutable facts that  
15 are immediately relevant to the case. The nearby and  
16 adjacent neighbors have refused to turn off our common  
17 sense.

18 A simple common sense difference to the  
19 expressed language of the regulations and the  
20 irrefutable facts of this case lead to a simple  
21 conclusion that this application should be denied.  
22 The attempt to confuse us about the law began in the  
23 very beginning of this application in the brief that  
24 was submitted. They expressly declared that the

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1 Applicants were entitled to the special exception when  
2 in fact they of course are not entitled because if  
3 they were entitled as a public school might be  
4 entitled to the special exception they would not have  
5 to be before you at all.

6 The most nefarious instance of the attempt  
7 to confuse us about the laws occurred during the  
8 testimony of their expert noise witness. You may  
9 recall he attempted in his expertise to make us  
10 believe that unamplified human voices were in fact not  
11 noise subject to being governed or regulated by the  
12 Board of Zoning Adjustments. Upon cross examination,  
13 we coincidentally were able to establish that there is  
14 a Chapter 28 in the Municipal Regulations that do  
15 address unamplified human voices being a noise and was  
16 immediately relevant to our discussions here.

17 What is most shocking about that  
18 particular incident is that Counsel for the Applicant  
19 should have, might have been expected to clarify and  
20 correct the expert witness about this important point.

21 She elected not to do so. It was only upon the  
22 coincidence of cross examination having some  
23 familiarity with Chapter 28 that we were able to  
24 reveal that particular confusion.

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1           The most instructive instance in the  
2 confusion of the law has to do with the applications  
3 to the Board of Zoning Adjustments with regard to  
4 faculty and staff caps. It was logical for the nearby  
5 and adjacent neighbors to scrutinize all of the B.A.  
6 approvals of special exceptions to St. Patrick's since  
7 that historical precedent is very important for us  
8 evaluating whether we can understand St. Patrick's to  
9 mean what they say and say what they mean.

10           When you look at the historical record of  
11 these B.A. approvals of their special exceptions and  
12 whether they've lived up to what they said, they have  
13 not lived up to what they said. The most glaring  
14 example of course was their very promise that they  
15 would not be looking to create a middle school. Here  
16 they are.

17           The more interesting one had to do with  
18 the faculty and staff caps where they were willing to  
19 parse words so carefully in such a clever manner as to  
20 deny that they in fact were in violation. We hope the  
21 Board was paying attention. We hope the Board in fact  
22 does evaluate their historical compliance with all of  
23 your orders because we are convinced that the  
24 historical record indicates that you cannot accept

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1 what they say as being what they mean. There's a  
2 question of whether they say what they mean and  
3 whether they mean what they say.

4 Perhaps the most insidious confusion about  
5 facts though was their suggestion that the objections  
6 referred to in Section 206.2 of the regulations have  
7 to be reasonable objections. The word "reasonable"  
8 does not appear at all on 206.2. In fact, the reasons  
9 for objections are enumerated with some particularity.

10 The word "objectionable" is unencumbered by the  
11 adjective reasonable in its two occurrences in that  
12 particular regulation.

13 Now the 203 adjacent and nearby neighbors  
14 of the incident property are in fact very reasonable,  
15 responsible individuals of this community. We're not  
16 afraid of establishing the reasonability of our  
17 objections. But there is a more interesting reason as  
18 to why they raised that particular matter. It has to  
19 do with their planning.

20 Planning, planning, planning. Has anyone  
21 bothered to count the number of plans, supplemental  
22 plans, modified plans, plans for drainage, plans for  
23 traffic, plans for architects, plans for parking.  
24 There are so many plans in this case that we have lost

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1 track, but we have struggled to keep up with them. We  
2 have struggled to keep up with every evolution of  
3 every one of their plans.

4 The fact is that the plans are so many and  
5 ever changing because there is a tactic that they want  
6 an ever and constantly moving target. More  
7 importantly, they want to create an illusion that they  
8 are trying to solve the fundamental problems of their  
9 application, but the problem with their application is  
10 that there are facts that simply cannot be denied.  
11 One of the facts is the site is too small for a middle  
12 school. Another fact is that the area is  
13 fundamentally a residential neighborhood.

14 Chairman Griffis observed himself that if  
15 in fact you squeeze on part of their plans you end up  
16 having problems and repercussions in other parts of  
17 their plans. That's why if in fact you attempt to  
18 negotiate adequate buffers to the immediately abutting  
19 properties it's going to impose itself upon the  
20 parking spaces. If you increase the parking space,  
21 it's going to cut into the green space. Of course the  
22 preservation of the green space is supposedly one of  
23 the reasons why we're supposed to support the  
24 application.

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1           The most involved plans have to do with  
2 the traffic. The site is so small of course that they  
3 have to export the problems to the White Haven campus.

4           It wasn't our idea to decentralize St. Patrick's into  
5 three campuses. That is more campuses than any other  
6 private educational institution in the District of  
7 Columbia. The third campus of course is the rental  
8 property on Mac Arthur Boulevard. Even after that  
9 goes away, they are proposing to have a full fledged  
10 high school.

11           The important thing to understand about  
12 the three campuses is that they are not independent  
13 campuses. They rely upon one another. They  
14 decentralize and have a tremendous impact upon the  
15 entire Palisades community. That is another reason  
16 why the application before you is perhaps a precedent  
17 setting application. If in fact the private  
18 institutions can in fact get around the Zoning  
19 Regulations by decentralizing their campuses and  
20 exporting the problems from one campus to another  
21 campus to another campus throughout the neighborhoods,  
22 they will have a vastly wider area of the residential  
23 neighborhoods of the District in which to advance  
24 their plans.

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1 In fact, when you realize --

2 CHAIRPERSON GRIFFIS: Sum up.

3 MR. LOVENDUSKY: When you realize it is  
4 something more of a shell game, the facts are that the  
5 site is too small for a gymnasium, a basketball court  
6 outside, a lunchroom, a cafeteria, a nursing station.  
7 The traffic is impossible. They are projection 3,600  
8 additional vehicular trips in the District per year.

9 The historical record indicates that their  
10 car pooling doesn't work. They admitted that it  
11 doesn't work. Why reward them for plans based on  
12 their admission that their car pooling doesn't work.

13 Common sense suggests that parents coming  
14 in from Virginia, Maryland, Spring Valley, and Wesley  
15 Heights down Mac Arthur Boulevard will not go past the  
16 site of the school down to White Haven to drop off  
17 their kids so they can be bused back. They're going  
18 to drop them off either at the school or in  
19 sensitivity to our watching that they'll drop them off  
20 a block away or two blocks away and let them walk the  
21 resulting difference adding to the congestion and the  
22 traffic on Mac Arthur Boulevard.

23 CHAIRPERSON GRIFFIS: Twenty more seconds.

24 MR. LOVENDUSKY: The noise as an issue

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1       itself was remarkable.     Again you may recall upon  
2       cross examination, we asked their noise expert to  
3       explain peace and quiet.     Peace and quiet is very  
4       understandably important to the residents.

5                 In fact, what he said was they don't go  
6       there.     They don't talk about quiet, but the  
7       regulations identify the quiet and the stability of  
8       the neighborhoods as paramount interest of the Zoning  
9       Regulations and something to be protected in the  
10      residential areas.

11                CHAIRPERSON GRIFFIS:     Good.     Thank you  
12      very much, Mr. Lovendusky.

13                VICE CHAIRPERSON RENSHAW:   Mr. Lovendusky,  
14      do you have a copy of your remarks that you can submit  
15      for the record?

16                MR. LOVENDUSKY:     I've extemporized these  
17      remarks, Ms. Renshaw, so I have not prepared them.

18                CHAIRPERSON GRIFFIS:     You can put a  
19      written submission in.

20                MR. LOVENDUSKY:     Okay.

21                VICE CHAIRPERSON RENSHAW:   If you would  
22      please.

23                MR. LOVENDUSKY:     I certainly would be glad  
24      to do that.

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1 CHAIRPERSON GRIFFIS: Good. What's the  
2 Board's pleasure? Would you like to questions from  
3 the Board first or do cross examination?

4 MEMBER ETHERLY: Let's do questions from  
5 the Board.

6 VICE CHAIRPERSON RENSHAW: Cross.

7 CHAIRPERSON GRIFFIS: We're at a moment of  
8 non-consensus. Let's do questions from the Board.  
9 Hopefully that may cover some of the cross  
10 examination. We'll see how it goes. I'll open it up  
11 to anybody to start if you would like.

12 MEMBER ZAIDAIN: Mr. Chair, can we get the  
13 traffic consultant back up to the table? I'll ask a  
14 couple of questions. You had mentioned that you had  
15 reworked the Wells study to include other B.A.  
16 approvals such as the GW Mount Vernon project. I'm  
17 not familiar with these projects off the top of my  
18 head.

19 I was curious on how you did that. Did  
20 you take the details of this projects in terms of the  
21 additional square footage or the users of those  
22 facilities or did you take already submitted traffic  
23 studies that were put into the record during those  
24 cases? How exactly did you do that?

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1           MR. MEHRA: First of all, I did not really  
2 take the traffic from George Washington University or  
3 the Field School, add them together, and do an  
4 analysis. We did the existing conditions analysis  
5 which is what's out there today.

6           In terms of reviewing the Wells report  
7 what we were looking at was did they add the traffic  
8 from George Washington University and/or the Field  
9 School in the analysis. To estimate their traffic, we  
10 used their traffic reports that were prepared by the  
11 Field School which was Grossley and Associates. For  
12 the GW traffic, we actually looked at the Palisades  
13 study that was done by DDOT.

14          CHAIRPERSON GRIFFIS: So you had actual  
15 trip counts that you put into your own analysis.

16          MR. MEHRA: Right.

17          MEMBER ZAIDAIN: That were generated for  
18 the Field School.

19          MR. MEHRA: For the Field School. The  
20 DDOT report mentioned that they took the George  
21 Washington University numbers from the traffic study  
22 that was done for George Washington University.

23          MEMBER ZAIDAIN: Do you have the dates of  
24 those reports you're talking about?

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1 MR. MEHRA: The Field School is the year  
2 2000. The GW is probably either 1999 or 2000.

3 MEMBER ZAIDAIN: Okay. For some reason I  
4 had written down that you had mentioned some previous  
5 B.A. proceedings.

6 MR. MEHRA: The Field School report was  
7 submitted to B.A., so the numbers that I mentioned  
8 were taken from that report.

9 MEMBER ZAIDAIN: Right. So you took the  
10 information contained in those reports and then put  
11 them into the Wells study so to speak.

12 MR. MEHRA: Yes. Basically doing a  
13 comparison with what they had versus what the other  
14 studies showed.

15 MEMBER ZAIDAIN: Okay. Thank you.

16 CHAIRPERSON GRIFFIS: You made a statement  
17 that there would be a parking shortage created on  
18 White Haven. I believe you said there would be a  
19 removal of plus or minus 50. I think it was a little  
20 over 50. How did you establish that statement, and  
21 what is the demand of street parking on White Haven?

22 MR. MEHRA: Basically what I said was that  
23 DDOT did the analysis of how many parking spaces would  
24 be removed by putting in a third lane on White Haven

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1 Parkway. That number was I believe 65 spaces which is  
2 35 percent of the total supply that exists there  
3 today. So I was just saying that when you remove 35  
4 percent of the parking spaces that there could be a  
5 potential for a shortage in the future.

6 CHAIRPERSON GRIFFIS: Okay. But you in  
7 your assessment didn't look at what existing demand  
8 there is for street parking on White Haven. It would  
9 just be your sense and your expertise clearly if you  
10 remove 65 there's a potential for shortage.

11 MR. MEHRA: Right. There's a potential  
12 for shortage.

13 CHAIRPERSON GRIFFIS: I see. You made a  
14 statement in terms of the timing of activities and the  
15 magnitude of participation by students. You were  
16 talking about what might say after normal school  
17 hours; study hall, dance, cooking, language, sports,  
18 et cetera. Would that not diminish the peak trips  
19 into the school if it was spread out in the afternoon?

20 MR. MEHRA: That is true, but those are  
21 already factored into the peak hour calculations. The  
22 point I was trying to make was when you have all these  
23 activities that occur after the school is over that  
24 the potential for car pool is diminished because you

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1 don't have the mass that's leaving at the same time so  
2 that you can have an effective car pool program.

3 CHAIRPERSON GRIFFIS: I see. Others?

4 COMMISSIONER MITTEN: I wanted to just  
5 follow up on the questions about the parking on page 2  
6 of your report. You suggest that Mr. Wells report,  
7 the timing of it, close to Christmas may have thrown  
8 off the occupancy counts. Did you do any separate  
9 calculation of the occupancy of the parking spaces?

10 MR. MEHRA: No we did not.

11 COMMISSIONER MITTEN: Okay. It's always  
12 troubling when two experts come to different  
13 conclusions, not to say that it doesn't happen in my  
14 line of work, but in terms of the methodology for  
15 calculating, and this would be on page 3 when you're  
16 discussing the peak hour calculation, is the  
17 methodology that is used to take a 15 hour wedge and  
18 extrapolate for an hour based on the peak 15 minutes  
19 or is it to actually figure out what the peak hour is  
20 and do actual counts for that peak hour?

21 MR. MEHRA: What we normally do is count  
22 the traffic in 15 minute increments but over the full  
23 one hour. We use the actual counts for the one hour  
24 as the one hour volume. There is another thing that

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1 we call the peak hour factor which goes into the  
2 calculations of the levels of service. The peak hour  
3 factor is computed by taking the highest 15 minute  
4 traffic volume in that one hour period. What you see  
5 there is according to that.

6 COMMISSIONER MITTEN: I guess one of the  
7 things I'm trying to sort out on page 3 is you're  
8 suggesting that there's an inconsistency and/or and  
9 error in the calculation of Mr. Wells peak hour count.

10 What I'm just trying to sort out is what is the  
11 methodology. Is it to take an actual count for the  
12 peak hour, or is it to extrapolate from a peak quarter  
13 hour?

14 MR. MEHRA: Normally we take the actual  
15 count in the one hour and use that.

16 COMMISSIONER MITTEN: Okay. Would that  
17 account for the disparity between the extrapolation  
18 that you do and the count that Mr. Wells had reported?

19 MR. MEHRA: Actually what Mr. Wells'  
20 report shows is that they took the peak 15 minute  
21 period in that one hour and multiplied by four to get  
22 the peak one hour volume. When you do the  
23 calculation, it doesn't come out to be that way.

24 COMMISSIONER MITTEN: Okay. The issue

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1 about the level of service, this would be on page 1,  
2 the difference in the level of service on eastbound  
3 White Haven Parkway at Fox Hall Road. Can you, from  
4 examining Mr. Wells information and then doing your  
5 own calculation, explain to us where the difference  
6 comes in? How did he get level of service C, and how  
7 did you get level of service F?

8 MR. MEHRA: I think in that particular  
9 case there was a difference in the methodology that  
10 was used. Wells used a synchro-model to calculate the  
11 level of service. What I have used is the highway  
12 capacity software.

13 COMMISSIONER MITTEN: Okay. Now break it  
14 down for a lay person. A synchro-model is what versus  
15 the highway capacity model.

16 MR. MEHRA: The highway capacity model  
17 basically looks at each intersection individually to  
18 see what the level of service is at that particular  
19 intersection. The synchro-model basically looks at  
20 several intersections simultaneously to see if one  
21 intersection has an impact on the other intersection.

22 COMMISSIONER MITTEN: If you're looking at  
23 a synchro-model, how can you rate individual  
24 intersections if you're focusing on multiple

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1 intersections simultaneously?

2 MR. MEHRA: It's a simulation model that  
3 actually can compute the levels of service at each  
4 intersection also.

5 COMMISSIONER MITTEN: I heard everything  
6 you said and I still don't know what the difference  
7 is.

8 MR. MEHRA: In this case, the difference  
9 is that there are different model levels used.

10 COMMISSIONER MITTEN: Let me ask it this  
11 way. Since these are gradations of service, and in  
12 part it's a perception. Are you stuck in traffic? So  
13 F is you're stuck in traffic.

14 MR. MEHRA: Right.

15 COMMISSIONER MITTEN: And C is that you're  
16 not stuck in traffic. So are people perceiving that  
17 they're stuck in traffic at White Haven and Fox Hall  
18 Road in your opinion?

19 MR. MEHRA: I think the video showed that  
20 there were a lot of cars actually waiting on White  
21 Haven at Fox Hall to make a left or right turn. I  
22 guess that's probably the answer in terms of what is a  
23 perception of the level of service.

24 COMMISSIONER MITTEN: Okay. That's all I

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1 have on traffic, Mr. Chairman.

2 CHAIRPERSON GRIFFIS: Mr. Etherly.

3 MEMBER ETHERLY: Thank you, Mr. Chair. I  
4 just want to clarify something, Mr. Mehra. I think  
5 the conclusion that you're reaching is an important  
6 one because I think what you're saying is the level of  
7 service is worse than perhaps it was previously  
8 suggested. I don't want it to necessarily get colored  
9 the wrong way.

10 I think what you're saying and I think  
11 what we have in terms of submissions from the traffic  
12 expert for the Applicant I think are essentially the  
13 same thing. I just want to make sure I'm reading this  
14 correctly. I understand that the initial presentation  
15 of the data that we received in the submissions that  
16 were provided by the Applicant, and I'm looking at Tab  
17 K of Exhibit 63, notes in Table 10 your C and D level  
18 of services under the existing and future intersection  
19 level of service delays and queues.

20 MR. MEHRA: Right.

21 MEMBER ETHERLY: That's in Table 10. If  
22 you look at what is dated as the July 5 submission  
23 which is numbered as Exhibit 296, you look at what is  
24 titled "Post-April 2, 2002 Analysis." You get the

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1 levels of service designations that you are  
2 referencing.

3           Essentially what I'm getting at is the  
4 traffic expert for the Applicant presented the  
5 appropriate data which shows that the level of service  
6 is indeed C as you denoted for eastbound White Haven  
7 under existing conditions and then F for future  
8 reversed access scenario once again eastbound White  
9 Haven as well. So it perhaps is a small point. I'm  
10 still where you are arriving at which is the level of  
11 service is bad.

12           MR. MEHRA: Right.

13           MEMBER ETHERLY: It gets worse when you  
14 take into account George Washington Mount Vernon and  
15 the Field School. So I'm there with you, but I just  
16 want to be sure. At least if I'm reading the data  
17 correctly, the Applicant presented us with the data  
18 it's just that you're highlighting the fact that it's  
19 bad no matter how you slice it.

20           MR. MEHRA: That's correct. It's their  
21 analysis and their results.

22           MEMBER ETHERLY: Okay.

23           MR. MEHRA: The only additional analysis  
24 that I did was look at the intersection of White Haven

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1 and Fox Hall in the existing conditions.

2 MEMBER ETHERLY: Now I want to come back  
3 to where Ms. Mitten was on page 3 of your submitted  
4 remarks regarding this review. I risk incurring the  
5 wrath of my colleagues as I walk slowly through  
6 something, but I'm still not there in terms of  
7 understanding this error that you have identified.

8 I'm sure we'll get through it in cross  
9 examination, but I just assume bite the bullet and try  
10 to walk through it now. If you could take us through  
11 once again page 3 under review of July 3 supporting  
12 documentation at the very least that first paragraph  
13 where you walk through what the actual vehicle count  
14 should be. You're noting that the Wells traffic study  
15 arrives at a 428 number, but you're saying that for  
16 example that number should actually be 460. Could you  
17 help walk us through how you got to the 460?

18 MR. MEHRA: Yes. If we can refer to  
19 Figure 1 in the supplement.

20 MEMBER ETHERLY: Okay. So that's Figure 1  
21 in the supplemental submission.

22 MR. MEHRA: Right.

23 MEMBER ETHERLY: So that would be Exhibit  
24 296. Just to make sure I'm looking at the same thing,

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1 Figure 1 is going to be that document there.  
2 (Indicating.)

3 MR. MEHRA: That's right. If you look at  
4 the very top graphic and look at the comment on the  
5 right hand side.

6 MEMBER ETHERLY: "Existing peak hourly  
7 flow rate."

8 MR. MEHRA: It says "Existing peak hourly  
9 flow rates." Below that it says "Four times peak 15  
10 minute volumes December 2001."

11 MEMBER ETHERLY: Yes, sir.

12 MR. MEHRA: So when you take the peak 15  
13 minute volume from December 2001 and multiply by four  
14 you get higher numbers that were shown in this graphic  
15 on some movements. I'm not checking each and every  
16 one.

17 MEMBER ETHERLY: Okay.

18 MR. MEHRA: Those were a couple of them  
19 that I highlighted in this paragraph on page 3.

20 MEMBER ETHERLY: So how did you arrive at  
21 the 460 number just using that one number as an  
22 example? That's what I'm struggling with. It's a  
23 powerful point if you're pulling it off. If you're  
24 highlighting an error that throws some question on the

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1 probative value of the Wells study, that's an  
2 interesting piece of information.

3 MR. MEHRA: If you can follow with me.  
4 There's no page number but if you look at the fifth  
5 page.

6 MEMBER ETHERLY: So that would be the  
7 Wells --

8 MR. MEHRA: It says existing traffic count  
9 on this.

10 MEMBER ETHERLY: Got you. So that's going  
11 to be that chart.

12 MR. MEHRA: And below that it says "Look  
13 intersection White Haven Parkway and east" something.  
14 I can't read it.

15 MEMBER ETHERLY: Yes. White Haven Parkway  
16 and east loop.

17 MR. MEHRA: If you look at the extreme  
18 left column, it says time period.

19 MEMBER ETHERLY: Yes, sir.

20 MR. MEHRA: Just follow down and look at  
21 8:00 to 8:15.

22 MEMBER ETHERLY: Where you have the 203  
23 number total.

24 MR. MEHRA: Yes. If you follow that 8:00

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1 to 8:15 and look at column six which says the left  
2 turn on westbound White Haven Parkway, the number is  
3 115.

4 MEMBER ETHERLY: Yes, sir at 115. Okay.

5 MR. MEHRA: So if you multiply 115 by  
6 four, you get 460.

7 MEMBER ETHERLY: You get the 460.

8 MR. MEHRA: So that's where I'm referring  
9 in that particular section.

10 MEMBER ETHERLY: Okay. Just a quick  
11 question. How do you think the Applicant's traffic  
12 expert got to the 428 number?

13 MR. MEHRA: I am not sure.

14 MEMBER ETHERLY: Okay. But you're saying  
15 the number should be 460.

16 MR. MEHRA: To complete that, if you go  
17 back to this table and look at the left turn number at  
18 the very first driveway coming from Fox Hall Road,  
19 you'll see the number 428 there. It's in the left  
20 turn column. That's the difference. That in my  
21 estimation would be 460 but it's shown as 428.

22 MEMBER ETHERLY: Okay. Thank you. Thank  
23 you, Mr. Chair.

24 VICE CHAIRPERSON RENSHAW: Mr. Chairman,

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1 an assortment of questions and if the appropriate  
2 person would jump in here because I may hop around  
3 given the lateness of the hour. I'd like to know  
4 first from Ms. Wright you're directly next door to the  
5 Applicant's property. How long have they been your  
6 neighbor?

7 MS. WRIGHT: I purchased the property in  
8 February 1987.

9 VICE CHAIRPERSON RENSHAW: '87. How long  
10 has the Applicant been your neighbor?

11 MS. WRIGHT: I believe they moved in there  
12 in '62. I'm sorry. Do you know?

13 MR. LOVENDUSKY: Do you mean St.  
14 Patrick's?

15 VICE CHAIRPERSON RENSHAW: St. Patrick's.

16 MS. GATES: They are our neighbor on White  
17 Haven Parkway. They moved in 1983 I believe.

18 VICE CHAIRPERSON RENSHAW: '83. As far as  
19 the -- Mr. Lovendusky?

20 MR. LOVENDUSKY: Just to clarify, I  
21 believe you're asking how long has St. Patrick's  
22 actually owned 4925 Mac Arthur.

23 VICE CHAIRPERSON RENSHAW: Exactly.

24 MS. WRIGHT: Oh.

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1                   MR. LOVENDUSKY: They've owned it I think  
2 since January. March.

3                   VICE CHAIRPERSON RENSHAW: From March.

4                   MR. LOVENDUSKY: Other than an initial  
5 rental of the property back to the psychoanalysts,  
6 they have not been using the property.

7                   VICE CHAIRPERSON RENSHAW: But they are  
8 the owner of records since March 2002. I see  
9 affirmation from the St. Patrick's officials. Ms.  
10 Wright, you noted in the pictures that you have given  
11 the Board that you have some water problems. I also  
12 note from one of the pictures that one of the  
13 retaining walls looks to be cracked. Is that correct?

14                  MS. WRIGHT: Yes. The wall is cracked in  
15 several locations.

16                  VICE CHAIRPERSON RENSHAW: All right.  
17 This is an adverse circumstance with water that you  
18 say is coming from that property onto your property.  
19 You put up these cinder blocks. Have you discussed  
20 with the school since it owns the property about  
21 making sure that this water problem is remedied ASAP?  
22 Did you do that?

23                  MS. WRIGHT: It was our understanding that  
24 the National Park Service was the body that had

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1 precedence here. In very preliminary discussions when  
2 we first learned that St. Patrick's intent, we had  
3 gone to the first meeting that we were aware of. That  
4 was an issue that we had raised; the water issue, the  
5 run off, the damage of the wall.

6 Then either at that meeting or  
7 subsequently we learned that the National Park Service  
8 had intervened in the sense of making the demand of  
9 St. Patrick's or I guess whoever would come to own the  
10 property that this would be addressed. Since those  
11 early discussions, there has been no subsequent  
12 discussion of this except to the extent that I think  
13 it was in the June or July meeting.

14 When I was looking at one of the diagrams  
15 where the parking was proposed to be up within about  
16 two feet of the property line, I had raised the  
17 question as to whether a structural engineer had even  
18 looked at the wall and that area to see what the  
19 impact would be. I was told at that point that an  
20 engineer had not studied it.

21 VICE CHAIRPERSON RENSHAW: But there is no  
22 time line for the correction of the water problem to  
23 your property irregardless of whether or not the  
24 school operates from that location.

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1 MS. WRIGHT: That's correct. I'm not sure  
2 what the role or how aggressively or what the rules  
3 are for the National Park Service and their  
4 intervention here. We've been in something of a  
5 dilemma I guess trying to figure out what happens next  
6 or who takes the next steps.

7 VICE CHAIRPERSON RENSHAW: So that's an  
8 open issue for you.

9 MS. WRIGHT: Yes. Very much.

10 VICE CHAIRPERSON RENSHAW: Ms. Gates, the  
11 Mac Arthur Boulevard is two lanes of traffic in each  
12 direction.

13 MS. GATES: Yes.

14 VICE CHAIRPERSON RENSHAW: Has Metro  
15 definitely agreed to the use of that bus stop for the  
16 bus loading and discharge area?

17 MS. GATES: My understanding from St.  
18 Patrick's earlier testimony was that they did not own  
19 the bus stop, that it was DDOT. I believe in  
20 particular Ken Laden who could give that permission.

21 VICE CHAIRPERSON RENSHAW: Have you asked  
22 Ken Laden about this or gotten anything in writing  
23 from DDOT about the bus stop?

24 MS. GATES: I cannot remember, Ms.

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1 Renshaw. I know at one point I had a question in my  
2 cross examination that asked him about it, but as you  
3 will recall my questions to him were shortened  
4 considerably. I don't know if it ever got on the  
5 record, and no I have not heard anything about the bus  
6 stop.

7 VICE CHAIRPERSON RENSHAW: Have you been  
8 back to DDOT about DDOT's supposed activities on White  
9 Haven? In other words, when those are going to take  
10 place.

11 MS. GATES: I sent a letter to DDOT on  
12 August 13 to which I have had no response. Last week  
13 I did happen to be with Dan Tangerlini at a parking  
14 meeting before the City Council. Immediately he had  
15 Colleen Smith and Larry Brown come out and meet with  
16 me. I believe it was Friday. We reviewed the signs  
17 on White Haven Parkway. Larry Brown assured me they  
18 would be installed this week.

19 VICE CHAIRPERSON RENSHAW: But they made a  
20 site visit with you because of your appeal to this.

21 MS. GATES: Yes. To Mr. Tangerlini.

22 VICE CHAIRPERSON RENSHAW: How often have  
23 you called the police or had to seek some intervention  
24 from the city about the traffic situation on White

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1 Haven?

2 MS. GATES: How many stars are in the sky?

3 Really. I deal with the police regularly through our  
4 police service area monthly meetings. I'm in touch  
5 with Lieutenant Sullivan, our PSA Lieutenant. I  
6 actually have people on a committee, one in  
7 particular, who does a weekly report for the police  
8 that is given to Pat Burke as well as Lieutenant  
9 Sullivan.

10 VICE CHAIRPERSON RENSHAW: If parents  
11 drive by and/or queue up on Mac Arthur and/or Ashby  
12 Street if that comes to pass if the school is there,  
13 how would a resident deal with this?

14 MS. GATES: In which sense?

15 VICE CHAIRPERSON RENSHAW: In which sense  
16 in a need to make a complaint or a need to reach out  
17 to somebody to change it because there is a queue or  
18 there are cars parked or something like that.

19 MS. GATES: I think if we were dealing  
20 with DDOT we could wait quite a while. I do have a  
21 fairly good relationship with the police. However, I  
22 don't always get them the first time I call. I think  
23 it would be unfortunate if we had to take a police man  
24 away from his duties to be monitoring the traffic at

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1 that particular location if that's what you're asking.

2 VICE CHAIRPERSON RENSHAW: Okay.

3 MS. GATES: Excuse me. One more thing.  
4 We do have an opportunity on a monthly basis to submit  
5 to the Second District traffic concerns. Mr. Finney  
6 is the coordinator for this process. We work together  
7 on it and cite areas that have become problematic.  
8 The police then focus on those areas during the month.

9 VICE CHAIRPERSON RENSHAW: Would you just  
10 walk through very quickly the route of the buses when  
11 they leave the school at the Mac Arthur Boulevard  
12 location? Where do they go? Just remind us the  
13 route.

14 MS. GATES: Sure.

15 CHAIRPERSON GRIFFIS: Are you asking for  
16 her understanding of what that is?

17 VICE CHAIRPERSON RENSHAW: Yes.

18 MS. GATES: If the bus leaves the bus stop  
19 that I showed you in the video at the foot of Ashby at  
20 Mac Arthur Boulevard, the bus would proceed straight  
21 ahead to Arizona Avenue. It would make a right turn  
22 onto Arizona Avenue. At the intersection with  
23 Loughboro which is a dead end, they would make a right  
24 turn. They would follow Loughboro to Fox Hall Road.

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1 Fox Hall Road to White Haven Parkway. Again, they  
2 would make a right turn onto Fox Hall.

3 VICE CHAIRPERSON RENSHAW: In the  
4 community meetings, has this routing been discussed  
5 with the residents along that route?

6 MS. GATES: At one Palisades meeting, it  
7 did come up. Because these are more major  
8 thoroughfares than Ashby Street, it was presented in a  
9 more cavalier manner. One woman who did live on Mac  
10 Arthur Boulevard raised the issue that as far as she's  
11 concerned Mac Arthur Boulevard in many cases is a  
12 neighborhood street. We do have residences as you  
13 know all along Mac Arthur Boulevard.

14 VICE CHAIRPERSON RENSHAW: Okay. Thank  
15 you for your clarification.

16 CHAIRPERSON GRIFFIS: If you recall in  
17 your video, there was a van that we saw twice that was  
18 unloading students.

19 MS. GATES: Yes.

20 CHAIRPERSON GRIFFIS: Do you know whose  
21 van that is?

22 MS. GATES: I have no idea. I didn't  
23 speak to any of the people from St. Patrick's.

24 CHAIRPERSON GRIFFIS: Did you observe

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1 where they were going?

2 MS. GATES: No. I observed the fact that  
3 they had come up White Haven Parkway. You may have  
4 noticed in the video that all the cars getting into  
5 the queue were coming off of Fox Hall Road. This van  
6 had come off of Mac Arthur as did that taxi cab.

7 CHAIRPERSON GRIFFIS: I see.

8 MS. GATES: So they had come from the  
9 intersection of Mac Arthur Boulevard up the western  
10 most entrance to White Haven Parkway with Fox Hall  
11 being the eastern most entrance.

12 CHAIRPERSON GRIFFIS: The second van we  
13 saw the one van twice and then --

14 MS. GATES: It was the same van.

15 CHAIRPERSON GRIFFIS: Understandable.  
16 When the second one pulled up, you indicated that it  
17 had parked illegally. You made a statement close to  
18 "and they just walked away from it." We saw a  
19 gentleman in a very orange shirt coming at us. You  
20 don't know where he was going. Do you?

21 MS. GATES: No I do not.

22 CHAIRPERSON GRIFFIS: Okay. What was the  
23 indication that it was parked illegally? Is there a  
24 no parking?

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1 MS. GATES: Yes there is. It's in front  
2 of the school.

3 CHAIRPERSON GRIFFIS: And it's no parking.  
4 What is the parking at that point?

5 MS. GATES: It's no parking on school days  
6 from 7:00 to 4:00.

7 CHAIRPERSON GRIFFIS: So it's the same as  
8 the sign that we saw in the video. Is that correct?

9 MS. GATES: Yes.

10 CHAIRPERSON GRIFFIS: Okay. On the graph  
11 that's showing, you indicated that the pink line  
12 indicated a 16 foot buffer or an 18 foot. I believe  
13 you mentioned it came from a previous BZA order where  
14 that was proposed or was actually conditioned. Where  
15 is that dimension coming from?

16 MS. WRIGHT: It's coming from BZA order  
17 14009 which was issued in 1983 to St. Patrick's  
18 requiring a 16 to 18 foot buffer of staggered pines.

19 CHAIRPERSON GRIFFIS: In 1983 clearly  
20 that's not this site. Is that correct?

21 MS. WRIGHT: Not this site. It's the  
22 White Haven site.

23 CHAIRPERSON GRIFFIS: Okay.

24 MS. WRIGHT: It was to protect the

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1 neighboring residences that existed at that time.

2 CHAIRPERSON GRIFFIS: You indicated your  
3 property assessment. Your assessor made a comment  
4 that your particular individual assessment had  
5 actually been driven down. They were indicating that  
6 perhaps around the Field School they were already  
7 seeing a diminishing of assessment in the property  
8 values. Are you proposing to submit for record that  
9 statement from your assessor and your property  
10 assessment?

11 MS. WRIGHT: I can speak with Ms. Monk.  
12 This was in our meeting and then subsequently in a  
13 telephone conversation. We did receive a reduction in  
14 our assessment. I can get back to her and see if she  
15 would put that into a statement.

16 CHAIRPERSON GRIFFIS: Okay. I'm not sure  
17 I absolutely need it. However, anticipating if you  
18 are cross examined on that it would be most important  
19 to have that as the record in the case. Mr.  
20 Lovendusky, you made a comment about 6,000 vehicle  
21 trips in D.C. It was towards the end, and I know you  
22 were rushing. Can you clarify what that actually was?

23 MR. LOVENDUSKY: Yes. That's a simple  
24 mathematical extrapolation of the information that has

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1       been provided by St. Patrick's. They are proposing an  
2       additional 1,260 bus trips among their campuses  
3       including 4925 Mac Arthur Boulevard and an additional  
4       5,040 other vehicular trips per year.

5                 That's simply an extrapolation of the  
6       vehicles that would be used to transport the students  
7       from one site to another and also the vehicles that  
8       would be used by faculty and staff both arriving and  
9       departing. If one does the math, those are the  
10      numbers that result. I would observe if I might be so  
11      bold that the pedestrian traffic between their Mac  
12      Arthur Boulevard rental site and 4925 Mac Arthur  
13      Boulevard will increase by 13,020 trips per year over  
14      the years they would occupy both sites.

15                CHAIRPERSON GRIFFIS: Okay. Plus 13,000.

16                MR. LOVENDUSKY: Mr. Chairman, the numbers  
17      and the mathematics actually appear in Respondent  
18      Lovendusky's first response to the application in the  
19      record.

20                CHAIRPERSON GRIFFIS: Thank you. I did  
21      recall it. I have not reviewed that in a while, so I  
22      wanted a clarification on your part. I think that's  
23      what I have. Others?

24                COMMISSIONER MITTEN: I just had two

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1 questions for Ms. Wright. Are you aware of the fact  
2 that your house is as close to your property line on  
3 your side yard as it is in part contributes to the  
4 adverse impacts of whatever is on the other side? You  
5 have a side yard that's three and a half feet wide.  
6 What would normally be expected in that zone is eight  
7 feet, so in part it's where your house is located that  
8 puts you that much closer to this property. Are you  
9 aware of that?

10 MS. WRIGHT: Well, my house was built in  
11 1926.

12 COMMISSIONER MITTEN: Right.

13 MS. WRIGHT: I purchased it because I  
14 loved the house. I wasn't really cognizant I guess  
15 really of those issues at that time. Unfortunately I  
16 can't move my house.

17 COMMISSIONER MITTEN: Right. But you  
18 understand that the placement of your house on your  
19 lot wouldn't be allowed now. So that puts you that  
20 much closer to the property.

21 MS. WRIGHT: Right.

22 COMMISSIONER MITTEN: I believe Mr.  
23 Konapelsky testified that where the fence would be  
24 located is between depending on where you are in the

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1 jagged design it would be either ten or eight feet  
2 from the property line. In the alternative to this  
3 proposal if this didn't go forward and a dwelling were  
4 built there, there could be a three story dwelling  
5 within eight feet of the property line.

6 MS. WRIGHT: Yes. We've considered that.

7 In fact, when this property first went on the market,  
8 that was certainly something we were concerned about.

9 However, speaking for both the Hoy's and ourselves  
10 while some might view that as detrimental our view is  
11 that if we had families living next to us who were  
12 permanent residents and who shared the same kinds of  
13 concerns about the neighborhood and the residential  
14 character that we would be happier to have homes next  
15 to us even if that did mean that. A house is bigger  
16 than a fence clearly but the quality and the nature of  
17 what's occupying that land would be vastly different.

18 COMMISSIONER MITTEN: So your primary  
19 concern is not with looking at a fence. It's with  
20 what is going on the adjacent property. Is that fair  
21 to say?

22 MS. WRIGHT: I would say it's both in this  
23 instance. The fence is truly something that's more  
24 concern from a safety point of view, both ours and

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1 whomever is on the other side because we have a four  
2 to 12 foot drop off as you progress back through the  
3 property. It's a dilemma because if you have a solid  
4 fence that buffers the noise that has a down side as  
5 well. If you have an open metal fence that protected  
6 us from children accidentally falling off as they play  
7 or things coming over, then I guess we would hope that  
8 there would be a sufficient amount of tree buffering  
9 that would absorb sound and protect us visually from  
10 that.

11 COMMISSIONER MITTEN: Okay. Thank you.

12 CHAIRPERSON GRIFFIS: Is any portion of  
13 that retaining wall on your property?

14 MS. WRIGHT: No. It's the dividing line.

15 CHAIRPERSON GRIFFIS: Okay.

16 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I  
17 want to just touch back on this storm water run off  
18 business. I'm looking at the statement of the  
19 Applicant page 18. This is dated received April 2,  
20 2002.

21 Ms. Mitten brought up the fact that  
22 because your house, Ms. Wright, is so close to the  
23 property line, three and a half feet, it contributes  
24 to an adverse situation. You have stated that the

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1 house was there when you purchased the property of  
2 course and you can't move the house. But this storm  
3 water run off now uncontrolled on the property says  
4 the Applicant will be controlled.

5           However to my knowledge there is a  
6 District law saying that a property owner has to  
7 control the water on that property. In other words,  
8 it cannot be dispersed on another property owner's  
9 property. So I am just asking the question as to why  
10 this water run off problem has not been corrected by  
11 now.

12           MS. WRIGHT: The water run off problem has  
13 been exacerbated in the recent past. When we first  
14 moved in, it was no where near as bad as it has  
15 become. I don't know if that is because of the  
16 weakening of the wall or the ground settlement. It's  
17 really worsened in the past year or so.

18           We had talks with the psychoanalytical  
19 institute at that point. Then they made it clear to  
20 us that they were leaving. At that point, we were  
21 trying to figure out what to do next. When the  
22 property transitioned, we thought this is an excellent  
23 opportunity to address this. Simultaneously although  
24 we really hadn't anticipated it, the National Park

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1 Service got involved. Now, how or why I really don't  
2 know.

3 VICE CHAIRPERSON RENSHAW: Well, it states  
4 in the Applicant's statement that storm water  
5 management concepts have been discussed with  
6 representatives of the National Park Service which  
7 controls the property on the west side of Mac Arthur  
8 Boulevard across from the subject's site. So it does  
9 not have anything to do with the site at the corner of  
10 Mac Arthur and Ashby, the National Park Service.

11 So I am just pointing out that there is no  
12 reason for the Applicant to delay on correcting the  
13 water run off problem, the uncontrolled water run off.

14 I just want to bring that out because it has  
15 undermined the wall that is between your property and  
16 the Applicant's property.

17 MS. WRIGHT: Thank you.

18 CHAIRPERSON GRIFFIS: The message has been  
19 delivered.

20 MS. WRIGHT: Thank you.

21 CHAIRPERSON GRIFFIS: Any other questions  
22 on the testimony we've heard, submissions? Very well.  
23 Cross examination by the Applicant.

24 MS. PRINCE: I'll try to proceed in an

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1 orderly fashion. I'll start first with Ms. Gates.  
2 Ms. Gates, are you aware that you captured the first  
3 day of Kindergarten in your first video taping session  
4 and that one parent had felt compelled to walk her  
5 child in?

6 MS. GATES: I had no idea what was going  
7 on up there on those days, no.

8 MS. PRINCE: Do you have a problem with  
9 vehicles backing into the angled parking spaces along  
10 White Haven Parkway as required by DDOT?

11 MS. GATES: Personally? Is that what  
12 you're asking me?

13 MS. PRINCE: You seem to be pointing out  
14 the backing into the angled parking spaces as if  
15 something was wrong. In fact, there were many things  
16 you pointed out as if something was wrong when in fact  
17 they were done in strict compliance with regulations.

18 That was one instance, so do you have a problem with  
19 vehicles backing in as required by DDOT?

20 MS. GATES: No, Ms. Prince, I don't. I  
21 was simply pointing out that it seems to be quite  
22 awkward.

23 MS. PRINCE: Are you aware that the  
24 parking in front of the gym that you pointed out as

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1 illegal is in fact legal?

2 MS. GATES: It is not legal.

3 MS. PRINCE: And that the school is in the  
4 process of trying to have those spaces made illegal  
5 and that the parking in front of the church where the  
6 van was discussed as parking illegally was in fact  
7 legal.

8 MS. GATES: I believe the sign has been  
9 taken down in front of the church. I was under the  
10 impression that it had been replaced from my  
11 conversation with Larry Brown.

12 MS. PRINCE: But you're now aware that  
13 those are legal parking spaces which you said were  
14 illegal spaces.

15 MS. GATES: Well, as you will recall all  
16 the spaces from Gingers Lane to the west side of the  
17 gym were to be removed. There are temporary signs up  
18 there now.

19 MS. PRINCE: We're talking about the north  
20 side. That's the north side. I'm sorry. That's the  
21 north side that you're talking about now. The illegal  
22 parking in front of the church that you were referring  
23 to is on the south side. It is in fact legal parking.

24 MS. GATES: I believe the sign is missing.

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1 MS. PRINCE: You referred to illegal right  
2 hand turns out of the driveway. Are you aware that  
3 those right hand turns are permitted in the handbook?

4 MS. GATES: May I read to you from Marty  
5 Wells' testimony?

6 MS. PRINCE: Are you aware that the  
7 handbook was changed this year as part of --

8 MS. GATES: No. You haven't given me a  
9 copy of the handbook.

10 MS. PRINCE: As part of the plan that's  
11 been implemented. Did you note that cars were passing  
12 freely on Fox Hall Road even when the back up went  
13 almost to Fox Hall?

14 MS. GATES: Well, I noted that they were  
15 over on the wrong side of the street.

16 MS. PRINCE: Are you aware that there's a  
17 right hand turn lane onto Fox Hall at that corner?

18 MS. GATES: Off of White Haven?

19 MS. PRINCE: Off of White Haven. Off of  
20 Fox Hall. I apologize. Off of Fox Hall.

21 MS. GATES: There is an indentation in the  
22 street.

23 MS. PRINCE: It's a tapering in the road.  
24 You're aware of that.

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1 MS. GATES: It's a widening, not a  
2 tapering.

3 MS. PRINCE: Right. You witnessed 440  
4 children getting to and from school. Now that you're  
5 aware that a lot of the maneuvers that you felt maybe  
6 were illegal are in fact legal, can you conceive of a  
7 smoother and more organized way to get those number of  
8 children to and from school?

9 MS. GATES: Well, Ms. Prince, not included  
10 in those children coming to school were the junior  
11 high students or the nursery school students.

12 MS. PRINCE: Are you aware that the car  
13 pool plan has been implemented with great success and  
14 that the goal set forth by DDOT has been exceeded?

15 MS. GATES: No I'm not. I have not been  
16 up there monitoring the traffic. But you did see a  
17 back up and it lasted for quite a while.

18 MS. PRINCE: Are you disappointed that the  
19 car pool plan has been so successful?

20 MS. GATES: No. I'm delighted because I  
21 have waited on Fox Hall Road many times in the back up  
22 line for St. Patrick's.

23 MS. PRINCE: Ms. Gates, why did you feel  
24 it was relevant to show a Lab School car dropping off

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1 Lab School students who then went on to walk to the  
2 Lab School?

3 MS. GATES: It was just there. It just  
4 happened.

5 MS. PRINCE: So a lot of what you showed  
6 us really didn't have anything to do with St.  
7 Patrick's. Is that right?

8 MS. GATES: Perhaps that one incident  
9 didn't have anything to do with St. Patrick's.

10 MS. PRINCE: The man who parked illegally  
11 but now we find parked legally that walked no where.  
12 You have no knowledge of him being associated with St.  
13 Patrick's.

14 MS. GATES: He was parked in an area where  
15 there should be a no parking sign that has been  
16 removed.

17 MS. PRINCE: No. We're talking about the  
18 south side of White Haven.

19 MS. GATES: I understand what you're  
20 saying. If you go up and look, I believe one of the  
21 signs is missing. Larry Brown said it should have  
22 been replaced.

23 MS. PRINCE: Ms. Gates, moving on to the  
24 petition that's been a point of focus in this hearing.

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1 I understand and you said you were involved in the  
2 circulation of the petition to determine community  
3 sentiment. In circulating that petition, did you  
4 discuss the potential of a future expansion of the  
5 school or the possibility that the school would later  
6 become a high school?

7 MS. GATES: I may have mentioned it to  
8 people. However, St. Patrick's did disclose that.

9 MS. PRINCE: Did you or your husband write  
10 a letter discussing that same potential that was  
11 posted at Safeway?

12 MS. GATES: A letter that was posted at  
13 Safeway?

14 MS. PRINCE: Yes. There was a letter.

15 MS. GATES: At the very beginning?

16 MS. PRINCE: Right. At the very  
17 beginning, did you write a letter that was distributed  
18 through the community and posted at Safeway discussing  
19 the potential that the school would later become a  
20 high school?

21 MS. GATES: That they were looking to  
22 build a high school. Probably, yes.

23 MS. PRINCE: Okay.

24 MS. GATES: And I didn't make that up.

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1 MS. PRINCE: When the school initially  
2 approached you about the application, you expressed an  
3 interest in meeting. Why since that time have you so  
4 strenuously avoided a dialogue?

5 MS. GATES: I avoided a dialogue because I  
6 didn't want to be put in a position as a member of the  
7 Palisades Board of discussing this off the record so  
8 to speak. I did not want to be compromised.

9 MS. PRINCE: So you felt it was in the  
10 interest of all the parties to have no dialogue on the  
11 application.

12 MS. GATES: I didn't represent the  
13 parties.

14 MS. PRINCE: The school relied in good  
15 faith on your expressing interest in the meeting. The  
16 meeting never happened. Do you think there's any  
17 issue with that?

18 MS. GATES: As the meeting grew closer, I  
19 decided it was not in my best interest to meet as an  
20 individual with the school.

21 MS. PRINCE: So no meetings would be  
22 beneficial.

23 MS. GATES: I did go to the traffic  
24 meeting with the school. Yes I did. Whenever there

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1 was a public forum and I was not being singled out, I  
2 went to the meeting.

3 MS. PRINCE: Did you ever tell anyone who  
4 lives in the vicinity of the proposed school that  
5 Peter Barrett had threatened a St. Patrick's parent  
6 that he would not renew a child's contract or issue a  
7 contract to a second child if that parent did not  
8 support the proposal? I would like to remind you that  
9 you are under oath.

10 MS. GATES: I don't recall ever doing  
11 that.

12 MS. PRINCE: You don't recall any such  
13 discussion to that effect. Perhaps your husband made  
14 a representation like that.

15 MS. GATES: I can't answer for him, Ms.  
16 Prince. I don't remember that.

17 MS. PRINCE: You don't remember anything  
18 like that. Did you participate as a party in the gym  
19 case in 1999? You mentioned you've lived in the  
20 neighborhood a long time. That was a case just three  
21 years ago.

22 MS. GATES: I did not participate.

23 MS. PRINCE: Not in any way did you attend  
24 the hearing.

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1 MS. GATES: No.

2 MS. PRINCE: Are you familiar with any  
3 discussions or representations made at the hearing  
4 other than those that you've read in the record? Were  
5 you at the ANC meetings? Were you actively involved  
6 in that case because of all your extreme concerns  
7 about White Haven Parkway and its functioning?

8 MS. GATES: No I didn't. I had a full  
9 time job at that time.

10 MS. PRINCE: You had no involvement with  
11 that case.

12 MS. GATES: No I didn't.

13 MS. PRINCE: I don't think I have anymore  
14 questions for Ms. Gates. Mr. Lovendusky, in your  
15 opposition response you appear concerned about the  
16 operation of a summer school on the side. You are  
17 aware at this point that there will be no summer  
18 school.

19 MR. LOVENDUSKY: It's my understanding  
20 there's a condition to that effect.

21 MS. PRINCE: When you did your math, that  
22 complicated calculation on 30,000 cars or whatever the  
23 number was, how many days in a year did you use?

24 MR. LOVENDUSKY: The precise number is in

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1 my opposition response. I used numbers that were  
2 provided by St. Patrick's in one of its early  
3 informational brochures that was distributed at the  
4 time.

5 MS. PRINCE: So you did take into account  
6 no summer school, no weekends.

7 MR. LOVENDUSKY: Yes. I used the precise  
8 number of days of the St. Patrick's calendar. I  
9 recall it was about 217 school days.

10 MS. PRINCE: It's 170 school days, but we  
11 can check that math.

12 MR. LOVENDUSKY: Or better yet, yes, we  
13 can do the math on the precise number of days. It  
14 would be an excellent thing to do.

15 MS. PRINCE: Do you believe that school  
16 use just shouldn't be permitted in the residential  
17 zone?

18 MR. LOVENDUSKY: I believe that school use  
19 in the heart of a residential zone is probably  
20 inappropriate for any residential zone in the District  
21 of Columbia. That's correct.

22 MS. PRINCE: Right. You may want to  
23 consider a text amendment --

24 MR. LOVENDUSKY: Private schools.

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1 MS. PRINCE: To rewrite the Zoning  
2 Regulations. I have one more question for you.  
3 You've expressed a lot of anxiety about direct drop  
4 off. I think it's well established that schools take  
5 attendance and St. Patrick's will. If St. Patrick's  
6 takes attendance at the gym and keeps attendance  
7 records and takes attendance at 4925 and keeps  
8 attendance records which is not a complicated thing,  
9 it's something that will occur daily, why will it not  
10 be easy to capture that parent who feels the need to  
11 do a direct drop off in total violation of all the  
12 rules and regulations?

13 MR. LOVENDUSKY: For the same reason that  
14 it's impossible to capture the accurate faculty and  
15 staff count at the school in order to evaluate whether  
16 St. Patrick's is in compliance with earlier Board of  
17 Zoning Adjustment rules.

18 MS. PRINCE: We will get to that issue,  
19 but not with you, Mr. Lovendusky. Is Nancy here?

20 MS. FELDMAN: Yes.

21 MS. PRINCE: Ms. Feldman, do you believe  
22 that school use is generally inappropriate in the  
23 residential zone?

24 MS. FELDMAN: No I don't.

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1 MS. PRINCE: You don't?

2 MS. FELDMAN: No. I think it's a very  
3 good thing, but I think it needs to be an  
4 appropriately acreaged place.

5 MS. PRINCE: Are you aware that there are  
6 houses on 47th Street immediately adjacent to the Lab  
7 School, that there's an entire residential enclave  
8 immediately adjacent to Georgetown Day School, that  
9 the Field School is surrounded by residences? Are you  
10 aware of those situations?

11 MS. FELDMAN: The way those are laid out  
12 they have a lot more space. They have a lot more  
13 buffering. The Georgetown Day is on commercial Mac  
14 Arthur Boulevard. You know that because your client -  
15 -

16 MS. PRINCE: And as well --

17 COMMISSIONER MITTEN: Try not to talk over  
18 the top of each other because it's not going to come  
19 out on the record.

20 MS. PRINCE: Do you believe that you will  
21 be able to hear the children from the 4925 property?

22 MS. FELDMAN: Oh, yes.

23 MS. PRINCE: You believe that --

24 MS. FELDMAN: I'm a gardener. I'm always

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1 in the garden. My garden is 50 feet away.

2 MS. PRINCE: I was very surprised to hear  
3 your reference to Patrick Burke's signature on the  
4 petition when he specifically requested the removal of  
5 his name.

6 MS. FELDMAN: No he didn't. His wife Nora  
7 did. We never heard from him.

8 MS. GATES: I'd like to answer that  
9 because I got the call from Nora Burke.

10 MS. FELDMAN: And so did I.

11 MS. GATES: Patrick gladly signed that  
12 petition. It was Nora who called and said (1) she  
13 wanted to remain neutral and (2) she wanted her family  
14 signature taken off the petition. Her family  
15 signature was not on there. It was Patrick. Patrick  
16 has never once approached us about removing his  
17 signature.

18 CHAIRPERSON GRIFFIS: Okay.

19 MS. PRINCE: Ms. Feldman, is it your  
20 position that unamplified children's voices are  
21 inherently objectionable?

22 MS. FELDMAN: No. Only if they're over a  
23 certain decibel level.

24 MS. PRINCE: If this use is approved over

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1 your objection, is there anything the school can do to  
2 address your concerns?

3 MS. FELDMAN: Well, I think we're not  
4 going to get into that because we do take the position  
5 that right now we're either pregnant or we're not  
6 pregnant. If the Board decides to approve it, that  
7 would be the time when we would consider if there is  
8 anything that could be mitigated.

9 That's why we didn't meet with you. We  
10 explained that. Your current configuration is way too  
11 intense for our purposes. We would be happy to have  
12 something that was roughly equivalent to the number of  
13 people, cars, pets and so on that you would get with a  
14 couple of families. We made some suggestions. You  
15 never even had the courtesy to get back to us and say  
16 you weren't interested.

17 MS. PRINCE: In the Chess Club, I did.

18 MS. FELDMAN: Yes. The Chess Club.  
19 Right.

20 MS. PRINCE: You've described your  
21 neighborhood as quiet and peaceful. It is quiet and  
22 peaceful to you despite the well documented airplane  
23 noise and traffic along Mac Arthur. Yet the noise of  
24 children a mere fraction of the time that planes can

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1 be heard and at an average sound level that's far less  
2 than the planes is objectionable.

3 MS. FELDMAN: When you have a child of  
4 that age, I don't know if you do. I think you're are  
5 younger. I've actually lived through having a child  
6 of that age. You can clearly hear them over  
7 airplanes, ambient traffic and lots of other things.  
8 Trust me you can. But I didn't have 60 of them. I  
9 just had the one.

10 MS. PRINCE: Would you prefer that the  
11 buses discharge the students in the existing parking  
12 lot?

13 MS. FELDMAN: No.

14 MS. PRINCE: Would you prefer that  
15 individual parents drop off students?

16 MS. FELDMAN: I would prefer the school  
17 not to be there and to be someplace where they could  
18 happily and safely bring their buses into a nice  
19 facility, not either hold up other people's traffic or  
20 create any safety issues.

21 MS. PRINCE: You have spoken about the  
22 approval of the gym. Is that a case with which you  
23 were involved? Did you attend the hearing as a party  
24 on the gym?

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1 MS. FELDMAN: What happened in the gym  
2 case as you well know since you represented them was  
3 when they gave us assurances that there would be no  
4 expansion of staff, students, traffic or anything else  
5 we all said okay, we don't object to it. We didn't  
6 even come to the hearing. That gave you a clear field  
7 to misrepresent the number of staff that was approved.

8 MS. PRINCE: Getting to the staff issue,  
9 the B.A. order as you're well aware specifically  
10 includes a staff cap and not a faculty cap.

11 MS. FELDMAN: No. We've gone through that  
12 already.

13 MS. PRINCE: Did you attend the hearing  
14 before the Board of Zoning Adjustment in connection  
15 with the gym where I raised the issue to the Board?

16 MS. FELDMAN: You cleverly arranged with  
17 us so that none of us would object. We didn't feel we  
18 had to go. If any of us would have been there of  
19 course we would have jumped all over you. We thought  
20 we were safe and that we didn't have to attend.

21 MS. PRINCE: I'm confused. I've heard  
22 that White Haven Parkway is a bad situation from you  
23 folks. I've heard that quite frequently. Yet nobody  
24 felt it was bad three years ago at the time of the

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1 gym.

2 MS. FELDMAN: With all the assurances  
3 your client gave us, we were comfortable not having to  
4 object. If we didn't have to object, we felt we  
5 didn't have to attend. We'll never make that mistake  
6 again as you know.

7 MS. PRINCE: No more questions for Ms.  
8 Feldman.

9 MS. FELDMAN: Thank you.

10 MS. PRINCE: Mr. Mehra. Are you familiar  
11 with the DDOT commission Palisades traffic study that  
12 indicates that the White Haven Parkway/Fox Hall Road  
13 intersection currently operates at a level of service  
14 B in the a.m. and in the p.m.?

15 MS. FELDMAN: Did you testify to that on  
16 direct? Because if you didn't that's not appropriate  
17 for cross examination.

18 MR. MEHRA: No.

19 MS. PRINCE: I think the Palisades traffic  
20 study is a fundamental underpinning and would show  
21 that you were prepared for the hearing. Your  
22 familiarity with the traffic study is critical. This  
23 entire area has been studied extensively by a DDOT  
24 commission report. I want to know if you're familiar

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1 with it. I think your testimony --

2 MS. FELDMAN: I'm going to object to that  
3 because that's a huge --

4 CHAIRPERSON GRIFFIS: I heard your  
5 objection. I don't recall. Is that actually part of  
6 the relevance?

7 MS. PRINCE: He did mention the study in  
8 his testimony.

9 CHAIRPERSON GRIFFIS: The Palisades study  
10 is it?

11 MS. PRINCE: Traffic impact study.

12 CHAIRPERSON GRIFFIS: Where did he  
13 reference that?

14 MEMBER ZAIDAIN: From my understanding,  
15 that's where he got the count for the George  
16 Washington University.

17 CHAIRPERSON GRIFFIS: Is that where you  
18 indicated that you gave the count?

19 MS. FELDMAN: Actually --

20 CHAIRPERSON GRIFFIS: Actually, let me  
21 have you answer. Is that where you got the counts for  
22 the George Washington School?

23 MR. MEHRA: I can't remember. Alma gave  
24 me something which had that number on it.

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1                   COMMISSIONER MITTEN:       That's what is  
2                   referenced on page 3 of Mr. Mehra's testimony. He  
3                   says DDOT's Palisades traffic study notes that.

4                   CHAIRPERSON GRIFFIS:   Indeed on page 2 I  
5                   would think -- no I'm sorry.

6                   MS. FELDMAN:   I believe if you review our  
7                   submission, I do not have it with me at the table,  
8                   there's a letter from Gray Baxter that states the  
9                   number of buses and cars that will come to GW every  
10                  day.

11                  CHAIRPERSON GRIFFIS:   Okay. But here's  
12                  the analysis in your testimony that's citing the DDOT  
13                  Palisades traffic study. I don't see any reason why  
14                  he can't answer the question.

15                  MEMBER ZAIDAIN:   That was the answer to  
16                  the question I asked him earlier.

17                  CHAIRPERSON GRIFFIS:   Right. Let's go  
18                  ahead.

19                  MS. PRINCE:   Are you familiar with the  
20                  DDOT commission Palisades traffic study that indicates  
21                  that the White Haven Parkway/Fox Hall Road  
22                  intersection currently operates at a level of service  
23                  B in the a.m. and in the p.m.?

24                  MR. MEHRA:   I remember looking at the a.m.

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1 I don't remember looking at the p.m. numbers. It is  
2 a level of service B in the a.m.

3 MS. PRINCE: Did you know that the  
4 Palisades traffic study projects that the White Haven  
5 Parkway/Fox Hall Road intersection will operate at an  
6 A level of service in the future with the additional  
7 traffic that will be brought about by GW, Field School  
8 and St. Patrick's?

9 MR. MEHRA: No. I have not looked at that  
10 part, no.

11 MS. PRINCE: Did you know that the same  
12 study projects levels of service B and C at the future  
13 Mac Arthur Boulevard/White Haven Parkway intersection  
14 in the future?

15 MR. MEHRA: No. I have not looked at  
16 that.

17 MS. PRINCE: Did you measure the average  
18 vehicle occupancy at St. Patrick's before the car pool  
19 program was implemented and after the car pool program  
20 was implemented?

21 MR. MEHRA: No I did not.

22 MS. PRINCE: Were you in fact even  
23 familiar that the car pool program had been  
24 implemented?

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1 MR. MEHRA: Yes I was.

2 MS. PRINCE: You were familiar with that.

3 Are you familiar with that the car pool program has  
4 exceeded the goal set by DDOT?

5 MR. MEHRA: No I'm not.

6 MS. PRINCE: I was interested to find your  
7 comments about the synchro-model. Have you ever  
8 testified because I believe you have that the synchro-  
9 model that was used by Wells was in fact the best  
10 methodology?

11 MR. MEHRA: I did not say that.

12 MS. PRINCE: You've never said that.

13 MR. MEHRA: No.

14 MS. PRINCE: Are you aware that DDOT  
15 testified that there would be a sufficient number of  
16 parking spaces available after the three lane  
17 condition was introduced on White Haven Parkway?

18 MR. MEHRA: I think if that was the case  
19 Ken Laden would not have put a trial period in place  
20 that --

21 MS. PRINCE: Do you think he was  
22 interested getting community consensus and reaction on  
23 the parking space removal rather than forcing the  
24 parking removal with no community consensus and no

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1 input? Although he had concluded in his report that  
2 there would be no adverse impact.

3 MR. MEHRA: I think --

4 (Inaudible.)

5 MS. PRINCE: No question. I withdraw the  
6 question, the non-question. I don't have any more  
7 questions for Mr. Mehra. I have a few for Ms.  
8 Skrivseth.

9 MS. WRIGHT: It's Ms. Wright.

10 MS. PRINCE: I'm sorry. I know that.  
11 You're Ms. Wright. I know that. There have been some  
12 statements made to the contrary, but you are aware  
13 that under the Zoning Regulations this property could  
14 be divided as a matter of right into three lots.

15 MS. WRIGHT: Yes I am.

16 MS. PRINCE: And that the residence next  
17 door to yours could be constructed to a height of 40  
18 feet.

19 MS. WRIGHT: Yes.

20 MS. PRINCE: But you would prefer a  
21 residence to a fence. It's the use on the other side  
22 of the fence that concerns you.

23 MS. WRIGHT: It's the use on the other  
24 side of the fence, yes. That's correct.

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1 MS. PRINCE: Do you think it is any  
2 benefit to you whatsoever that the fence as proposed  
3 would be placed well into the property line of St.  
4 Patrick's so that your three foot side yard would in  
5 effect appear to be more of a seven to 11 foot side  
6 yard?

7 MS. WRIGHT: It's difficult to discuss the  
8 specifics of a fence at this point. Clearly location  
9 and type of fence have a tremendous impact. As I have  
10 said several times, it's really a dilemma for us  
11 because the kind of fence again that would block the  
12 noise would also block air and light. We really are  
13 quite in a quandary. It's fine to speculate and say  
14 if we put it here, if we put it there, if we built it  
15 this way, if we built it that way. At this point, I  
16 really can't answer that question for you.

17 MS. PRINCE: You've discussed, and we're  
18 by all means open to discussing extensive buffering  
19 all along, the buffer along the St. Patrick's playing  
20 fields on White Haven. Do you believe that a buffer  
21 for a playing field with active organized sports  
22 activity a large amount of the time is the same size  
23 buffer that would be appropriate for this use?

24 MS. WRIGHT: I would really need to

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1 consult with a professional about this. What you  
2 carry in your mind's eye we would really need to talk  
3 to professionals about what protects what and what  
4 landscaping versus fencing does in terms of protection  
5 visually and sound and safety.

6 MS. PRINCE: You've stated that you  
7 represent Ms. Hoy and her husband. St. Patrick's has  
8 stated repeatedly that should the use get approved we  
9 know we need to work with you to make sure you are  
10 comfortable with the use. Do you believe that the use  
11 if approved that we could work together to come up  
12 with solutions that might address at least some of  
13 your concerns? Will you engage in a dialogue?

14 MS. WRIGHT: Well, if the B.A. were to  
15 decide that of course we would have to engage in a  
16 dialogue. This has been one of our dilemmas all the  
17 way along. In very early stages, we had of course  
18 talked to St. Patrick's. We're not professionals. We  
19 are people who live in homes that want to protect  
20 them.

21 Then our sense was there was a divide and  
22 conquer mentality that we'll negotiate with this  
23 person and buy this concern off or buy that concern  
24 off which is why we thought it was appropriate to stop

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1 these bilateral discussions and really weigh in with  
2 how we truly felt about this. Now, if we have no  
3 other recourse or no other choice of course at that  
4 stage we will have to sit down and discuss it.

5 We have very strong views that this is not  
6 appropriate. I think if we're forced to deal with  
7 this and you were forced to accommodate that buffering  
8 that had been proposed in the earlier instance, I  
9 mean, as you can see it has this domino effect of  
10 really jeopardizing other elements of the proposal.

11 MS. PRINCE: The issue has been brought up  
12 about the retaining wall on your property and the  
13 water issue. This is an issue that's been raised  
14 since the beginning. You are aware that St. Patrick's  
15 is committed to addressing the drainage issue, that  
16 St. Patrick's has a plan that was reviewed by the  
17 National Park Service to address what is a fully  
18 acknowledged issue, and that once there is a plan  
19 approved or a plan not approved that there is a  
20 commitment to addressing the issue.

21 MS. WRIGHT: We've seen that. I guess it  
22 was out of the April meeting that there was a plan,  
23 but we have heard nothing since.

24 MS. PRINCE: Do you understand that it

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1 would be inappropriate to attempt to address that  
2 issue now while there's still not an understanding of  
3 where the buffer would be located and exactly how the  
4 buffer would relate to the existing parking area? You  
5 understand the timing.

6 MS. WRIGHT: Well, on one hand, I see what  
7 you're saying. On the other hand, Ms. Renshaw has  
8 made us I guess more aware of the fact that this is a  
9 serious issue that could be addressed regardless of  
10 how things evolve.

11 MS. PRINCE: You're aware that the plans  
12 that have been discussed with respect to storm water  
13 management entail ripping up portions of the parking  
14 lot.

15 MS. WRIGHT: Yes.

16 MS. PRINCE: That is in fact why it would  
17 be advisable to know what the plan is before  
18 attempting to resolve it.

19 MS. WRIGHT: Well, is that a question?

20 MS. PRINCE: I'm just clarifying with you,  
21 making sure you understand that we are committed to  
22 resolving it. It is a proposed condition in the B.A.  
23 order. We have conferred with the Park Service on it.  
24 We fully acknowledge that it's an issue that needs to

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1 be addressed, but we need to know what's going to  
2 happen on the site to understand how to address it.

3 CHAIRPERSON GRIFFIS: Do you understand  
4 that is the question.

5 MS. PRINCE: That wasn't a question.

6 MS. WRIGHT: That wasn't a question. I  
7 see what you're saying.

8 MS. PRINCE: I have no more questions.

9 CHAIRPERSON GRIFFIS: That's it? Okay.  
10 We are ready to move on to --

11 VICE CHAIRPERSON RENSHAW: Mr. Finney.

12 CHAIRPERSON GRIFFIS: Indeed. Mr. Finney,  
13 did you have any cross examination of any of the  
14 parties' testimony?

15 MR. FINNEY: I don't think so.

16 CHAIRPERSON GRIFFIS: Very well. It's not  
17 a requirement in any way. Thank you all very much.  
18 Can I get an indication of who is here, who is left  
19 that would like to give testimony of persons in  
20 opposition at this time? Is there anyone here that is  
21 -- You're going to have to come forward. You're going  
22 to be giving testimony in opposition.

23 MS. GIBBONS: Yes.

24 CHAIRPERSON GRIFFIS: Let me just

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1 reiterate in case you weren't here previously you have  
2 three minutes. When you start, we will start the  
3 clock.

4 MS. GIBBONS: My name is Ann Gibbons. I  
5 live at 4905 W Street, N.W. I've owned the property  
6 since 1976. I do not favor St. Patrick's using this  
7 property for a school. I think it has inadequate land  
8 to support the number of students, faculty, and staff.

9 I believe that the positions presented on  
10 traffic are appropriate and that the school as far as  
11 I know is an excellent school. I believe it will be  
12 far better served to find an appropriately sized  
13 property that is set up for school use so that it is  
14 safe for the staff and the students both inside the  
15 building and outside the building, traffic, walking  
16 and other transportation issues.

17 We're in a location where they could  
18 happily exist in an appropriate neighborhood, not in  
19 our neighborhood which is very residential, small  
20 properties, close together, and a very solid group of  
21 neighbors who support each other and are extremely  
22 friendly. I wish that you please take into  
23 consideration the testimony that our experts have  
24 presented and find in our favor denying the request of

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1 the St. Patrick's School to be given a variance for  
2 using this property as a school. Thank you.

3 CHAIRPERSON GRIFFIS: Thank you very much.

4 Any cross examination? Applicant is indicating no.  
5 Any of the parties?

6 MS. FELDMAN: We had approximately 14  
7 people who were going to speak in opposition. Some of  
8 them have already submitted letters. They had to  
9 leave. We would just ask if the rest of them could  
10 submit written material.

11 CHAIRPERSON GRIFFIS: Absolutely.

12 MS. FELDMAN: Thank you.

13 CHAIRPERSON GRIFFIS: As stated for the  
14 support and also for the opposition, we'll keep the  
15 record open. We'll establish a date where we'll have  
16 that closed. It will be ample time I'm certain. We  
17 do have a full record and exhibits of all the letters  
18 of opposition. If I'm not mistaken, we've read most  
19 of these already.

20 With that, we're making good time. It is  
21 8:10. I would like to take ten minutes. When we  
22 resume, we will have rebuttal testimony, witnesses and  
23 then we will have cross examination of that if there  
24 is any and then closing. I imagine we'll be out of

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1 here before 10:00. We'll see you in ten minutes. Off  
2 the record.

3 (Whereupon, the foregoing matter went off  
4 the record at 8:05 p.m. and went back on  
5 the record at 8:18 p.m.)

6 CHAIRPERSON GRIFFIS: On the record. Mr.  
7 Lovendusky, do you want us to wait rebuttal testimony  
8 and closing? Is that what you were indicating?

9 MR. LOVENDUSKY: I suspect one moment  
10 please. Chairman Griffis, I guess the question is  
11 whether the rebuttal will be on Mr. Mehra's testimony  
12 or any part thereof.

13 CHAIRPERSON GRIFFIS: Is it anticipated  
14 that there's rebuttal testimony on the traffic?

15 MS. PRINCE: Not until later.

16 CHAIRPERSON GRIFFIS: Not until later.  
17 Okay. Let me also just communicate the doors are  
18 locked downstairs. If there is someone who might be  
19 able to wait for him in order to let him back in.

20 PARTICIPANT: I can go.

21 CHAIRPERSON GRIFFIS: There were a lot of  
22 volunteers to leave.

23 (Laughter.)

24 CHAIRPERSON GRIFFIS: Okay. I believe

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1 we're ready whenever you are.

2 MS. BRADLEY: Good evening. I'm Katherine  
3 Bradley. I'm St. Patrick's Board Chair. I have only  
4 one rebuttal point and that is to add to Nancy  
5 Feldman's description of my conversation with her, not  
6 to dispute the words at all but to dispute the nuance  
7 that she gave to that. That being that we were buying  
8 4925 Mac Arthur Boulevard because it was cheaper to in  
9 some senses poach a residential property than to go  
10 somewhere else.

11 In point of fact, especially in the  
12 Palisades, that residential land that could be built  
13 upon for a school has been frightfully expensive.  
14 There is no residential discount. The Brady Estate on  
15 Fox Hall Road recently sold for about \$17 million or  
16 it was offered for that as a new residents for the  
17 Mayor. The Cafritz estate I believe was sold to the  
18 Field School for about \$9 million. That's before any  
19 kind of new construction was put on it.

20 Even the White Haven land that has been  
21 offered as a potential solution for St. Patrick's  
22 Middle School is residential land. That land itself  
23 would cost almost \$2 million before any kind of school  
24 could be constructed there. In point of fact, 4925

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1 Mac Arthur is a less expensive option for us, but it  
2 has nothing to do with the fact that it's  
3 residentially zoned.

4 It's less expensive because it has an  
5 existing building that has already been fitted out for  
6 seminar style classes. It's already very useable for  
7 us. So we don't have to start from scratch and build  
8 a \$3 million or \$4 million building to stand on that  
9 land. We simply have to renovate and upgrade for  
10 handicapped purposes.

11 MR. BARRETT: Peter Barrett, Head of  
12 School. I'd like to address two items brought up in  
13 the testimony of the ANC Chair and then make some  
14 comments about the video that we saw earlier.

15 First, the ANC Chair testified that St.  
16 Patrick's exists to provide education to the upper  
17 social classes I believe he characterized them as. I  
18 might point out that this year we have close to \$1  
19 million available in financial aid to families with  
20 moderate to significant financial need to attend St.  
21 Patrick's. One million dollars.

22 Seventeen percent of the student body  
23 receives financial aid. Many other families who do  
24 not receive financial aid make significant financial

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1 sacrifices to send their children to St. Patrick's. I  
2 just want to correct that mischaracterization by the  
3 ANC Chair earlier this evening.

4 Also, in talking about the terrible  
5 traffic spill over onto Fox Hall Road, Mr. Finney  
6 related a conversation with ANC Commissioner, Anne  
7 Heuer. I cannot comment on Mr. Finney's conversation  
8 with Ms. Heuer regarding traffic and car pooling on  
9 White Haven Parkway. Not only did I not participate  
10 in the conversation between Mr. Finney and Ms. Heuer,  
11 but I also did not participate in the reported  
12 conversation between Ms. Heuer and me.

13 If we had indeed found that nothing seems  
14 to work, then we wouldn't have even tried to implement  
15 a car pool initiative which we have done to great  
16 effect this year. Mr. Wells will comment on that  
17 later.

18 With respect to the video, it's really  
19 hard to know where to begin with that. That is not a  
20 narrative document. I caution you as you view that.  
21 It is a disjointed collection of images with a  
22 distinct gotcha tone. I would submit that a stable  
23 camera trained on White Haven Parkway would show how  
24 steadily and easily the car pool line moves without

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1 blocking Fox Hall Road as alleged during the  
2 screening.

3           Virtually the only time they show traffic  
4 even approaching Fox Hall Road is when we had stopped  
5 traffic to facilitate the movement of the GW bus out  
6 of the new White Haven entrance to GW. Look at it.  
7 Look at the video. Look at what's on White Haven  
8 Parkway between the GW Mount Vernon entrance at that  
9 time and the St. Patrick's driveway. There's no  
10 traffic there. That's because we held it up for the  
11 bus. That's the only time we come close to Fox Hall  
12 Road.

13           There is indeed a taper lane on Fox Hall  
14 for cars turning right onto White Haven. It takes  
15 seven or eight cars in that taper lane before you even  
16 begin to block Fox Hall Road. You never see that in  
17 the video.

18           I was delighted to learn that one of the  
19 dates we would be treated to today was September 23.  
20 On the afternoon of September 23 in the midst of  
21 dismissal, I had the time to leave my post, the point  
22 we call it, to approach the film crew. I was  
23 delighted we were there. "I hope you keep your camera  
24 trained on White Haven Parkway," I said. They weren't

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1 filming by the way. They were just chatting.

2 "Where are all the children," Ms. Gates  
3 asked me. "They're going home in car pools," I  
4 responded. That's the way the car pool initiative is  
5 supposed to work. "But where are all the children,"  
6 she repeated. "We know they're here." Glad to see  
7 September 23 represented.

8 Ms. Prince has already touched on some of  
9 those disjointed images. These are not two typical  
10 days of school. One was September 4. It was either  
11 the first day of school for some of our kindergartners  
12 or the second day of school for our older children.  
13 The woman seen walking her child across the street was  
14 walking him in as Ms. Prince pointed out to his first  
15 day in Kindergarten. Gotcha? Maybe. And she was a  
16 parent new to Kindergarten.

17 The other woman who left the vehicle and  
18 crossed the street was a new parent whose son had  
19 arrived for just his second day. It is unlikely that  
20 she ever traversed that same ground again. There's no  
21 need to. The system works too well.

22 The disjointed images show the same van  
23 dropping off children at the curve eastbound on White  
24 Haven Parkway. I think you asked about that yourself,

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1 Mr. Griffis. The camera did not remain still long  
2 enough to count the number of children disembarking.  
3 That would have been interesting I think. That van  
4 also drops a child at Our Lady of Victory School as  
5 well as at other schools in northwest D.C.

6 True, he does proceed eastward from Our  
7 Lady of Victory which is located west of St.  
8 Patrick's. He proceeds eastward on White Haven  
9 Parkway following the Our Lady of Victory drop off.  
10 Then the St. Patrick's children are dropped off safely  
11 at the curb. Then the van moves on. He always does  
12 that each morning between 7:30 and 7:40 when there are  
13 virtually no other cars on the street.

14 Ms. Prince has already talked about the  
15 back end diagonal spaces. One of my favorite moments  
16 in all this was when we sat with Gary Burch and  
17 reviewed our plan that had pull in spaces for those  
18 diagonals. Gary pushed his chair back from the table  
19 and said, "well guys is everything okay." And John, I  
20 don't know who John was, said, "looks great except  
21 they're pointed the wrong way." The District required  
22 us to redesign those as back in spaces. Gotcha?  
23 Don't think so.

24 Cars are now welcome to turn either left

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1 or right out of the driveway during the morning drop  
2 off period. There's a lot of talk about illegal  
3 parking in front of the church on the south side of  
4 White Haven and also in front of the gym. I have  
5 asked DDOT to post both of those locations. Mr. Brown  
6 has told me they can be posted. They have never been  
7 posted. They are legal now. They will be legal until  
8 they are posted as illegal.

9           Clearly not all cars seen on the video  
10 making U turns, parking in front of our gym, are not  
11 St. Patrick's vehicles, all of those. Lab School  
12 students walking in the street. That wouldn't be  
13 necessary on upper White Haven where St. Patrick's has  
14 constructed a sidewalk along with diagonal spaces.  
15 That has dramatically increased pedestrian safety  
16 there. In fact, our creation of the sidewalk and the  
17 diagonal spaces on upper White Haven would provide a  
18 much different picture than the one provided in the  
19 video on lower White Haven where they were admittedly  
20 Lab School students walking in the street.

21           A bus backing up. That's a Lab School bus  
22 twice the size or thereabouts of the shuttle buses  
23 proposed by St. Patrick's. What the video should have  
24 showed was car pool as virtually the non-event it has

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1 become. Yes, we bring children to St. Patrick's each  
2 morning, and yes, we send them home again. But the  
3 impact has been reduced in intensity and duration.

4 That video did not show a congested,  
5 impassable, unsafe street even at the height of  
6 arrival and dismissal and even on the second day of  
7 school. I would submit that the jumpiness and poor  
8 quality reflects the efforts to show just that. But I  
9 would recommend to you that you review that video with  
10 great care. I think the only thing chaotic about what  
11 you saw was the video itself.

12 Lastly, I've heard a lot about what a mess  
13 White Haven is. I would remind Ms. Gates how in the  
14 summer 2001, and remember Ms. Gates testified that she  
15 has called the police about traffic problems on White  
16 Haven Parkway as many times as there are stars in the  
17 sky. In summer 2001 at a meeting of the Second  
18 District Police Station, Partnership for Problem  
19 Solving I believe was the group, in a public meeting,  
20 she asked me to consult with the principal at Key  
21 School to help them resolve their car pool issues  
22 there.

23 I would submit that the representations  
24 about White Haven Parkway, the video images and the

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1 spoken testimony entirely misrepresents a true  
2 situation there. I would be delighted to bring the  
3 popcorn and watch that video with you. Thank you.

4 CHAIRPERSON GRIFFIS: Thank you. I think  
5 what we're running with is an established piece. Why  
6 don't we hear all of it and then we'll go and cross  
7 all of them.

8 MR. KONAPELSKY: I'm David Konapelsky. I  
9 wanted to comment on Nancy Feldman's statement that  
10 the property could only be divided into two lots.  
11 Actually the Zoning Code allows for a division into  
12 three lots. The third lot would be an average of ten  
13 foot divisions sliced through the property. You wind  
14 up with two houses or two proposed properties, one of  
15 2,176 square feet and one of 2,337 square feet.

16 On the Skrivseth-Wright side of the  
17 property, the Zoning Code would allow for a house or a  
18 proposed residence eight feet from her lot line of  
19 somewhere around 104 foot long and 40 feet high. So  
20 it's quite a substantial building that could go there.

21 Also, if you did want to maintain the 50 foot yard in  
22 the front, a developer could conceivably cut down the  
23 terrace and get two lots of 50 feet on the front.

24 Also, I wanted to comment on Mr.

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1 Lovendusky's comment that he was overwhelmed by the  
2 quantity of plans offered to date. I think it's  
3 important to note that it's part of the creative  
4 process that architects and engineers deal with daily.

5 What we have actually done is design development  
6 through this zoning process and evolved the plan with  
7 parking, buffer, fences, planting, direct functional  
8 access from Mac Arthur Boulevard, trash enclosures  
9 away from neighbors' yards, handicapped accessibility  
10 facilities, and a design that respects trees and this  
11 site.

12 I think the point that I want to make is  
13 we kept changing the plans and evolving to this point  
14 because St. Patrick's concerns are the same as the  
15 neighbors' concerns. They deemed it was important for  
16 me as the architect to develop the plans and evolve  
17 something that would work for both St. Patrick's and  
18 the neighbors.

19 CHAIRPERSON GRIFFIS: Thank you.

20 MR. HARVEY: I'm Scott Harvey from  
21 Polysonics just addressing issues on noise. Mr.  
22 Lovendusky brought up issues about the noise code. I  
23 hope to clarify those issues about the noise code.  
24 There are two chapters in the DCMR that address noise.

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1       There's the 2700 chapter, and there's the 2800  
2 chapter.

3               Polysonics addressed initially and still  
4 holds to the issue addressed in the 2700 chapter,  
5 Section 2704.8. I'll quote, "The unamplified voice  
6 shall be exempt at all times." That is the end of  
7 that statement, that section. That's the one that we  
8 feel is applicable to the school at this point.

9               Section 2800 which Mr. Lovendusky  
10 proposed, as I see it if we back up and look at what  
11 Section 2800 is addressing, it is addressing places of  
12 business. It addresses the use of musical  
13 instruments, loud speakers, mechanical equipment,  
14 construction, construction in residential zones. It  
15 addresses explosives. It addresses hockers and  
16 peddlers. It addresses trash collection and vehicle  
17 mounted loud speakers.

18               The specific Section 2800.2. Bear with  
19 me, I'll read it in completion. "It shall be unlawful  
20 for any person to make, continue, or cause to be made  
21 or continued any noise disturbances by the operation,  
22 use or playing of any musical instrument or device,  
23 loud speaker, sound amplifier or other similar device,  
24 unamplified voice," and here's the important part "for

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1 the production or reproduction of sound on private  
2 property or public space."

3 To me, the intention here is when you are  
4 carrying out an activity on your property whose intent  
5 is to produce noise. They very specifically say  
6 "production of noise or reproduction of noise." I  
7 would contend that this is not the intention of having  
8 children on the play area at the St. Patrick's School.

9 Further down in Section 2800.4, "Sounds  
10 shall not project from outside a place of business."  
11 Clearly as I understand it, this is not a place of  
12 business. So implying that, this section deals with  
13 places of business. We would rely back on the 2700  
14 section.

15 Mr. Finney addressed issues of noise level  
16 and/or more that we espoused that the level of the  
17 children wouldn't be offensive or loud. I think  
18 that's incorrect. I don't think we downplayed the  
19 level of the noise of the children. We spoke and  
20 referred to objective sound measurements that we made  
21 of children playing football and the noises they made  
22 during that process. That noise was due to screaming  
23 or loud shouting if you will.

24 We also never proposed that this noise

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1 would be masked by the sound of traffic or airports or  
2 other things in the surrounding neighborhood. We  
3 simply stated that this noise level would be no louder  
4 than the existing noise level. Masking to me implies  
5 covering up and you wouldn't be able to hear it.  
6 Again, we never said you wouldn't hear it. It would  
7 just not be any louder than the current noise  
8 conditions.

9 That's the objective interpretation of  
10 this study that we did. There's been some questions  
11 about the subjective issues. So if we talk in terms  
12 of peace and quiet, we've heard a lot of people state  
13 currently that they are living in a peaceful and quiet  
14 neighborhood, that their current conditions are quiet.  
15 And I will use their terms.

16 That falls directly in place on what we  
17 had established already. If they are currently living  
18 in a quiet neighborhood, they will continue to live in  
19 a quiet neighborhood because the noise level from the  
20 students won't increase that noise level. So if they  
21 consider it quiet, let it be quiet.

22 We made our study and concluded without  
23 the idea of buffering. When we said the noise level  
24 is what it is and it's not louder than the current

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1 conditions, the school came back to us and said is  
2 there anything we can do. That's when we started  
3 establishing the idea of a noise buffer. A noise  
4 barrier, a solid partition at property line or set  
5 back from the property line is effective in reducing  
6 noise.

7 There has been some establishment that  
8 buffering will not work or is impossible. Buffering  
9 works. We design these kinds of barriers a lot, all  
10 day long. It's what we do as a profession. It's  
11 effective. It reduces noise. So what noise level is  
12 there would be further reduced by the solid fences on  
13 the property. Likewise, it will mitigate noise from  
14 parking. There have been issues of parking; slamming  
15 doors, people talking in the parking lot. The  
16 buffering will address that noise as well.

17 I guess I would ask you that if you get  
18 bogged down in the numbers, if we start doing numbers  
19 which is loud and which is louder back up and take a  
20 reasonable person approach. When a person goes to  
21 that site for the first time thinking about noise, the  
22 first thing you're going to realize is Mac Arthur  
23 Boulevard is there making noise all day long and the  
24 planes are flying overhead all day long. The addition

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1 of children playing is not going to increase that  
2 noise level at all. Thank you.

3 CHAIRPERSON GRIFFIS: Thank you. Concern?

4 MR. LOVENDUSKY: Mr. Chairman, we don't  
5 know where our traffic expert is.

6 CHAIRPERSON GRIFFIS: Right behind you.

7 MR. LOVENDUSKY: Oh, okay.

8 CHAIRPERSON GRIFFIS: I was keeping an eye  
9 and noticed when he came in.

10 MR. WELLS: I'd like to touch on three  
11 points. The first one is that we under estimated the  
12 St. Patrick's traffic, I believe it was characterized  
13 by 15 percent. The second one is the use of the  
14 capacity analysis technique. We used synchro. I  
15 believe Mr. Mehra presented some results based on the  
16 highway capacity manual. Then the third one is I'd  
17 like to rather than doing a lot of arm waving bring  
18 some real numbers to the effectiveness of the car pool  
19 program. Let me take those in order.

20 First, Ms. Mitten, as you pointed out, it  
21 is standard practice to conduct capacity analyses  
22 based on peak hour traffic volumes. Those are 60  
23 minute volumes. Let me review with you the fact that  
24 the actual driveway volumes, the actual school St.

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1 Patrick's driveway volumes in December when we  
2 measured them were 222 in the morning and 135 in the  
3 afternoon.

4 The actual volumes we used in the capacity  
5 analyses because it is a short peak, the flow rates we  
6 used were 428 and 240. In fact, the numbers we used,  
7 the volumes we used in our capacity analyses were  
8 roughly three-quarters to twice again as much traffic  
9 as was actually measured. So we used high peak hour  
10 factors to conduct our capacity analyses.

11 It was not based on taking individual  
12 traffic movements and multiplying by four. We looked  
13 at all of the movements going through the driveway  
14 intersections and computed a peak hour factor and  
15 applied that to all of the movements. I know that's  
16 complicated. I assume you don't want to go through  
17 all of the numbers.

18 I am not prepared to do that this evening,  
19 but I'll submit something to the record after the  
20 hearing. It is not accurate to say that we under  
21 estimated the driveway volumes. In fact, we have  
22 increased them significantly to represent accurately  
23 the queuing behavior on White Haven Parkway.

24 Also, related to that point when you might

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1 have gotten the impression from Mr. Mehra's  
2 presentation that we had inaccurately identified the  
3 peak hours of the driveway. In fact, the peak hour in  
4 the morning of traffic going into the driveway is 7:30  
5 to 8:30. If you look at the combination of traffic  
6 going into the driveway and through traffic on White  
7 Haven Parkway, it's 7:45 to 8:45. We used the 7:45 to  
8 8:45 because there's more traffic going through that  
9 intersection at that moment. There's not a big  
10 difference, but that's the difference between 7:30 and  
11 7:45.

12 The second point. Synchro versus the  
13 highway capacity manual. We indeed did use the  
14 synchro-model in our capacity analyses in the St.  
15 Patrick's study. That's the same procedure used by  
16 DDOT's consultant in the Palisades Traffic Impact  
17 Study. We used the same methodology as DDOT's  
18 consultant.

19 We did not use the highway capacity  
20 manual. I remember clearly in a case that was heard  
21 by the Zoning Commission, Ms. Mitten you may recall  
22 this, it's the Albemarle Townhouse case. I was  
23 criticized by Mr. Mehra for indeed using the highway  
24 capacity manual. He said "That's not the appropriate

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1 methodology. You ought to use something that is a  
2 simulation model like synchro."

3 With regard to our findings, capacity  
4 findings, and Mr. Mehra's findings, I would note that  
5 our findings are much more consistent with DDOT's  
6 findings which indicate that Fox Hall and White Haven  
7 is operating at level of service B today. That's in  
8 the study that Mr. Mehra referenced. In fact, in the  
9 future, that intersection can work at level of service  
10 A taking into account existing traffic and a half  
11 percent per year background traffic growth.

12 Traffic that will be generated by the GW  
13 campus. Traffic that will be generated by Field  
14 School. The additional traffic that would be  
15 generated by St. Patrick's and let's not forget the  
16 Mayor's mansion if that is to go there. Also, they  
17 factored in a new traffic signal which is programmed by  
18 DDOT for actual construction.

19 Finally, the car pool program. If this  
20 could be passed out. What you are about to receive  
21 are before and after average vehicle occupancy  
22 observations at St. Patrick's before and after the car  
23 pool program was implemented. I think everybody  
24 agrees that the extent of car pooling before this

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1 program was implemented was low. We thought we could  
2 do better.

3 We thought we could increase the average  
4 vehicle occupancy from roughly 1.3 to roughly 1.6. I  
5 believe various Board Members at different times have  
6 observed that this car pool plan calls for behavioral  
7 changes in order to increase the average vehicle  
8 occupancy. Our opponents have claimed that these  
9 changes can't be made. I think in Mr. Mehra's words,  
10 and I think I got this roughly right, it would be  
11 extremely difficult to implement an effective car pool  
12 program.

13 Our opponents say not only can't these  
14 changes be made but they won't be made. St. Patrick's  
15 won't enforce their program. You can't trust St.  
16 Patrick's. The proponents claim these changes can be  
17 made. In fact, they have been made. You heard St.  
18 Patrick's parents say Mr. Barrett in fact enforces  
19 this program.

20 So what are the facts? Well, we measured  
21 the average vehicle occupancy before the car pool  
22 program and after both during the a.m. and the p.m.  
23 peak hours and peak periods. You have two very  
24 similar looking pieces of paper. I direct your

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1 attention first to the ones that have the headings  
2 "Peak Period." This includes the vehicles going in  
3 and out of the car pool lane between 7:00 and 8:30  
4 a.m. and between 2:30 and 4:30 p.m.

5 The top two pie charts here indicate  
6 before the car pool program. Before, the average auto  
7 occupancy in the a.m. peak period is 1.39. In the  
8 p.m. peak period, it's 1.34. That's our base. That's  
9 where we started from. What it says in the morning if  
10 you look at the blue, big slice of pie there, that's  
11 68 percent.

12 In other words, two-thirds of all St.  
13 Patrick's parents drove one student to school. Two  
14 out of three. Roughly a quarter had two children in  
15 the car. Five percent had three in the car. Only one  
16 percent had four or more.

17 I won't go through this in every one of  
18 these pies, but if you look directly below in the a.m.  
19 peak period what the actual vehicle occupancy is now  
20 it's 1.80. I think Peter deserves a great deal of  
21 credit for increasing the average vehicle occupancy  
22 from 1.39 beyond the stated goal of the program of 1.6  
23 to and actual 1.80. The average vehicle occupancy has  
24 increased by 0.41 or by 29 percent. In the p.m. peak

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1 period, we've gone from 1.34 to 1.70. Again, this  
2 exceeds the goal of 1.6. We've increased the average  
3 vehicle occupancy by 27 percent.

4 The results are more impressive during the  
5 peak hour. The peak of 7:30 to 8:30 and 2:30 to 3:30  
6 we go from a 1.41 to a 1.82. We go in the afternoon  
7 from a 1.33 to a 1.85. The program quite simply  
8 works. It goes to show that St. Patrick's parents can  
9 indeed post. Thank you.

10 CHAIRPERSON GRIFFIS: Questions from the  
11 Board limited to the new testimony that we've just  
12 heard from the witnesses?

13 MEMBER ETHERLY: Yes, Mr. Chairman. Very  
14 briefly, I just want to run through a couple items  
15 that were raised in rebuttal. Let me begin with Mr.  
16 Barrett. Thank you very much, Mr. Barrett, for  
17 commenting on the video.

18 I think your rebuttal testimony probably  
19 sensed the fact that at first blush the video was a  
20 rather tough look, tough snap shot, so I was happy to  
21 hear some comment. I just want to be very clear.  
22 It's your testimony that those definitely were perhaps  
23 very unusual days in terms of the daily operation of  
24 the school.

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1 MR. BARRETT: The testimony was that there  
2 were two days. One was September 4 and the other was  
3 September 23. I wanted to check my notes there. I  
4 don't have them available. September 4 could not be a  
5 less typical day. The second day of school for our  
6 older children and the first day of school for half of  
7 our kindergartners and therefore, also for the parents  
8 of those kindergartners.

9 Kindergarten represents for us a move from  
10 our nursery school for three and four year olds into  
11 our lower school. Kindergarten is the first grade  
12 level there. It's a move to a different part of the  
13 building, larger part of the institution, less self  
14 contained if you will. Parents do walk their children  
15 in on that day.

16 MEMBER ETHERLY: Okay.

17 MR. BARRETT: September 23 is a fully  
18 typical day. My regret is that the video failed to  
19 capture just how typical it is.

20 MEMBER ETHERLY: One of the things that  
21 appears in the video in a few instances it would  
22 appear that you are quite visible in terms of being  
23 out on the parameter of the property and in some  
24 instances even in the street.

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1 MR. BARRETT: Actually in the middle of  
2 the street. That may be my resentment that I don't  
3 star in the video.

4 (Laughter.)

5 MEMBER ETHERLY: Without getting into too  
6 much detail because I have it in front of me,  
7 typically how many additional traffic monitors or  
8 other teachers are you using to help you handle or  
9 control the car pool and where are they positioned.

10 MR. BARRETT: Just to begin on White Haven  
11 Parkway itself, I am positioned right at the turning  
12 point there, the left hand turn into the Parkway.  
13 Further east on White Haven is a faculty member with a  
14 walkie-talkie who radios the numbers in to the school  
15 office. Then they go onto the PA system.

16 MEMBER ETHERLY: That's going back towards  
17 Fox Hall.

18 MR. BARRETT: Yes. Eastward. And then  
19 since the opening of the White Haven entrance to GW,  
20 we have stationed a third faculty member at that  
21 entrance point to facilitate the move of their bus  
22 traffic in and out. The neighborhood was most focused  
23 as you probably know about getting the entrance moved  
24 from W Street to White Haven. We never opposed that.

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1 In fact, we have worked very hard to absorb that  
2 traffic and those new motions if you will into our own  
3 car pool activities. You actually saw that on the  
4 video.

5 MEMBER ETHERLY: Okay. Let me jump to Mr.  
6 Wells because Mr. Barrett mentioned something in his  
7 rebuttal testimony. I just wanted to make sure it's  
8 incorporated into the traffic study. He noted the one  
9 van which I believe serves and makes stops at a number  
10 of --

11 MR. BARRETT: If I may, it's a private  
12 contractor. The parents engage or enter into private  
13 contracts with that van driver, not only St. Patrick's  
14 parents but as I suggested Our Lady of Victory parents  
15 and at other schools.

16 MEMBER ETHERLY: Okay. That van of course  
17 is captured in your assessment, in your analysis.

18 MR. WELLS: Right. Correct.

19 MEMBER ETHERLY: Is the driver of that van  
20 or the operator of that company or business aware of  
21 what the car pool policy is or at least what you're  
22 trying to do?

23 MR. BARRETT: He's not the lucky recipient  
24 of all of my material on that, but quite frankly, Mr.

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1 Hunt would do what I asked him to do. I do believe  
2 that he is coming from Our Lady of Victory School.  
3 I'm not going to ask Mr. Hunt to go around and  
4 approach from Fox Hall as our parents do.

5 I could have him enter the driveway.  
6 That's true. But as I noted, arrival can begin at  
7 7:30. He arrives at the latest by 7:40. So he  
8 actually does dismiss his children there and then move  
9 on. I see no reason quite frankly because it happens  
10 safely and without providing any congestion in an  
11 uncongested street. It happens without any difficulty  
12 at all. Then he's on his way.

13 MEMBER ETHERLY: Thank you. Thank you,  
14 Mr. Chairman.

15 VICE CHAIRPERSON RENSHAW: Mr. Barrett,  
16 have you instructed Mr. Hunt who I take it is the van  
17 driver --

18 MR. BARRETT: That's correct.

19 VICE CHAIRPERSON RENSHAW: Have you  
20 instructed him not to pause at a fire hydrant?

21 MR. BARRETT: No. I would be delighted  
22 to. Quite frankly, as I said, Mr. Hunt would do  
23 whatever I would ask him to do. I could simply have  
24 him pull into the driveway and that would be that.

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1 VICE CHAIRPERSON RENSHAW: So that is  
2 something that could be done within the next day.

3 MR. BARRETT: Mr. Hunt will pull into the  
4 driveway tomorrow.

5 VICE CHAIRPERSON RENSHAW: Very good. Mr.  
6 Chairman, I just want to bring back into focus the  
7 fact that the transcript from July 9 when I was not  
8 here, there was the indication that Mr. Barrett could  
9 answer some questions about this two hour time limit  
10 on outdoor play. Is this the time?

11 CHAIRPERSON GRIFFIS: Yes. Do you recall  
12 that? If you would just run through briefly the  
13 outline of the play and the time that the kids are  
14 going to be outside. I seem to remember also that the  
15 testimony was on the number of kids that would be out.

16 MR. BARRETT: Right.

17 VICE CHAIRPERSON RENSHAW: It's stated  
18 that you would be available should clarification of  
19 the two hour time limit on outdoor play be desired.

20 MR. BARRETT: All right. Let me talk  
21 about, now that we have two grades, what the actual  
22 schedule shows at our 4880A location on Mac Arthur  
23 Boulevard. The academic day begins at 8:00. There is  
24 a single 15 minute break for both seventh and eighth

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1 grades midway through the morning. There is then an  
2 hour long lunch period from 11:30 to 12:30. There are  
3 no further breaks in the afternoon with the academic  
4 day concluding at 2:45 p.m.

5 So we're talking about a 15 minute period  
6 in the morning and what is now an hour long lunch  
7 period in the afternoon. It is true that there would  
8 be some staggering if you will of our use of the lunch  
9 facility or the outside facility and terrace. What I  
10 said before is that generally speaking we probably  
11 would have half of each grade using the outside green  
12 space at each time, but it's unlikely that all of the  
13 members of one grade level would want to be outside at  
14 the same time or in the green space.

15 Remember that there's an ample terrace at  
16 4925. I know I testified many months ago that as we  
17 left the site when Mr. Harvey had done the sound  
18 readings and a student looked at the terrace and said  
19 got to get some tables out there for us so that we can  
20 spend some of our lunch out there. That's true as  
21 well. So they wouldn't always be using just the green  
22 space in order to be outside.

23 VICE CHAIRPERSON RENSHAW: Where is the  
24 terrace?

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1                   MR. BARRETT:        It fronts Mac Arthur  
2 Boulevard.    So with some staggering of the morning  
3 breaks and the noon time lunch period, I would expect  
4 that some portion of the student body could be outside  
5 for roughly perhaps a 90 minute period.    I don't  
6 recall the testimony to a two hour limit, but that  
7 sounds pretty close as to what we could approach if  
8 there's some staggering involved.

9                   VICE CHAIRPERSON RENSHAW:    So if there is  
10 a 15 minute break in the mid-morning period and you  
11 have 40 students, you would divide it equally.

12                  MR. BARRETT:        Well, we would do it by  
13 grade level.

14                  VICE CHAIRPERSON RENSHAW:    By grade level.

15                  MR. BARRETT:        Do it by grade level.

16                  VICE CHAIRPERSON RENSHAW:    So what would  
17 be the maximum number of children who would be out  
18 there?

19                  MR. BARRETT:        The rule of sum I've been  
20 using is half of half the student body.    So at a full  
21 enrollment of 60, the largest number of students out  
22 there would be 15.    Probably 15 to 20.    That's if they  
23 all chose to do that in a single grade.

24                  VICE CHAIRPERSON RENSHAW:    Would that be

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1 the same using this terrace that fronts on Mac Arthur  
2 Boulevard for the lunch period?

3 MR. BARRETT: I would expect so as well,  
4 yes. Basically one grade level would eat lunch inside  
5 and then the other grade level would be having its  
6 break or recess. Then they would flip-flop. But  
7 there would be guidelines about how many students  
8 could be out at any one time. We do that now. That  
9 seems a reasonable approach going forward.

10 VICE CHAIRPERSON RENSHAW: So there would  
11 be approximately 90 minutes to 120 minutes of outdoor  
12 activity given how you have to stagger the groups  
13 going outside.

14 MR. BARRETT: Possibly as long as that,  
15 yes. I don't think we would get to two hours. I  
16 think we're more in the range of 90 minutes as we  
17 stagger.

18 VICE CHAIRPERSON RENSHAW: Does the 90  
19 minutes include the possible outdoor for lunch?

20 MR. BARRETT: No. They would likely eat  
21 lunch inside. Again, if a lot of scheduling like that  
22 emerges as we get the feel of the building that's  
23 happened in 4880A across the last two years, if eating  
24 lunch on the terrace makes sense and it can be a good

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1 relaxed time for the students, then I think that they  
2 should be able to eat lunch out there. That would be  
3 a different use from the casual recreation on the  
4 green space. It would be simply children eating lunch  
5 together.

6 VICE CHAIRPERSON RENSHAW: What I'm trying  
7 to get is a feel for on a good day, weather  
8 permitting, how long a period will the students be  
9 outdoors? There will be a continuous period of time  
10 from mid-morning when the first group of students go  
11 out for a break. It sounds to me as though there's  
12 going to be activity out there for a period of time  
13 beyond maybe 90 minutes.

14 MR. BARRETT: Not during the morning  
15 break, no. Even if we broke the group down into four  
16 equal parts and each took a 15 minute break out there,  
17 that would only be an hour. I don't think that would  
18 be necessary during the morning break, and quite  
19 frankly not all of them would choose to go outside  
20 during that break.

21 VICE CHAIRPERSON RENSHAW: So the morning  
22 break is not going to slam into the lunch time.

23 MR. BARRETT: No. It's a mid-morning.

24 VICE CHAIRPERSON RENSHAW: So 10:00?

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1 MR. BARRETT: I believe it's in that  
2 timeframe.

3 VICE CHAIRPERSON RENSHAW: So 10:00 to  
4 11:00 and then 11:30 to 12:30.

5 CHAIRPERSON GRIFFIS: This is what I would  
6 suggest.

7 MR. BARRETT: What would you suggest, sir?

8 CHAIRPERSON GRIFFIS: I would suggest that  
9 you submit in as a proposed condition your program for  
10 outside time; the time that it would take place and  
11 the number of students that you would have out.

12 MR. BARRETT: We'd be delighted to do  
13 that.

14 VICE CHAIRPERSON RENSHAW: Because the  
15 questions have led me to believe that this is not  
16 really set down. That you haven't thought it through.

17 MR. BARRETT: And I think that's fair as  
18 we look ahead to moving into a new building. We can  
19 certainly bring more focused thinking to that and  
20 model out what it would look like. It's unlikely that  
21 we would be outside approaching two hours a day, but  
22 that could well be the maximum time. It sounds like a  
23 more explicit statement of what that might look like  
24 would be helpful as a proposed condition. We'll be

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1 pleased to do that.

2 CHAIRPERSON GRIFFIS: It's my recollection  
3 also that the students were going off site for the  
4 physical ed classes that they'd be taking.

5 MR. BARRETT: Right. But they would leave  
6 not to return. That would be leaving the facility,  
7 going down the steps, getting on the bus.

8 CHAIRPERSON GRIFFIS: This I understand.  
9 It would not be programed in as outside time as part  
10 of the some physical education.

11 MR. BARRETT: Correct.

12 CHAIRPERSON GRIFFIS: So we'll look for  
13 that as a condition that we'll outline the program as  
14 a proposed condition. Other questions of the  
15 witnesses at this time from the Board? Very well.  
16 Let us move to cross examination then. Does Mr.  
17 Finney want to start on that from the ANC? Cross  
18 examination of the new testimony and limited to the  
19 new testimony.

20 MR. FINNEY: Mr. Chairman?

21 CHAIRPERSON GRIFFIS: Yes, sir.

22 MR. FINNEY: The hour is late. We've been  
23 here nearly 11 hours.

24 CHAIRPERSON GRIFFIS: Indeed. We have

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1       been.

2                   MR. FINNEY: I could offer rebuttal, but I  
3       choose to forego that opportunity.

4                   CHAIRPERSON GRIFFIS: In effect.

5                   MR. FINNEY: I feel that we're getting  
6       caught up in details now that are obscuring the basic  
7       decision that lies before you. I think all the  
8       arguments have been presented on both sides.

9                   CHAIRPERSON GRIFFIS: Very well.

10                  MR. FINNEY: I'm also fearful that as this  
11       discussion goes on it is getting more acerbic and more  
12       accusatory.

13                  CHAIRPERSON GRIFFIS: Indeed.

14                  MR. FINNEY: Indeed my voracity has been  
15       challenged. I don't think that bodes well for the  
16       future should you unfortunately or against our  
17       judgement decide to locate the school there. We're  
18       going to have to cooperate and talk in some way.

19                  CHAIRPERSON GRIFFIS: That is very true.

20                  MR. FINNEY: I don't think this is  
21       contributing to a future spirit of cooperation.

22                  CHAIRPERSON GRIFFIS: I understand your  
23       point.

24                  MR. FINNEY: And I shall decline to do any

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1 cross examination.

2 CHAIRPERSON GRIFFIS: Very well. Thank  
3 you very much. I appreciate your words of wisdom.  
4 Let us continue then with cross examination. I think  
5 we know the order by now.

6 MS. FELDMAN: Ms. Bradley, you did address  
7 our short conversation about the price of the  
8 property. Since you have discussed that in rebuttal,  
9 can you confirm or it's our understanding you brought  
10 the property for \$1.4 million or was that just the  
11 first ground.

12 MS. BRADLEY: One million six two fifty.

13 MS. FELDMAN: Okay. Did you look at other  
14 properties before you decided to buy that one?

15 MEMBER ZAIDAIN: Mr. Chair, we've heard a  
16 lot of testimony about the price of the property, a  
17 lot of hinting of economic impacts and things like  
18 that. I think the Board is clear on some of these  
19 issues. Furthermore, I don't think that the alternate  
20 sizes and pricings of those sites or this current site  
21 is part of the criterion of special exception. So can  
22 we limit this somewhat? I sense we could go back and  
23 forth until at least midnight on how much alternate  
24 sites are when it really isn't that relevant to this

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1 issue.

2 CHAIRPERSON GRIFFIS: I would tend to  
3 agree with you.

4 MS. FELDMAN: What I was trying to get at  
5 was to ask her whether in fact it was that price  
6 because it was small, not because it was residential.

7 MEMBER ZAIDAIN: I still don't see the  
8 relevance of that, but go ahead if you can answer  
9 that.

10 MS. FELDMAN: Well, we're saying the site  
11 is too small for the use. This would be a way to say  
12 if there were other things she had looked at and they  
13 were more it might be because they were bigger.

14 CHAIRPERSON GRIFFIS: Wow. That's a bit  
15 of a leap indeed.

16 MS. BRADLEY: I'm happy to answer it.

17 CHAIRPERSON GRIFFIS: Briefly.

18 MS. BRADLEY: Nancy, I certainly think  
19 that is true. This is less than for instance the  
20 Brady property because it is smaller.

21 MS. FELDMAN: Rosedale, et cetera.

22 MS. BRADLEY: It is less than Rosedale  
23 because it is smaller. It also happens to be  
24 perfectly sized for the needs of our grade seven and

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1 eight program.

2 MS. FELDMAN: Mr. Barrett, when you were  
3 talking about the inappropriateness of us taping on  
4 September 4, were you aware that at that time we  
5 thought we were going to finish up this case on  
6 September 10? That hadn't been canceled yet if you  
7 will recall. So that was a Tuesday. Did it occur to  
8 you that it might be reasonable for us to do that then  
9 because that was when school started and we only had a  
10 couple possible days to do it, it might rain and we'd  
11 need time for processing? Did that occur to you?

12 CHAIRPERSON GRIFFIS: I think the question  
13 is clear.

14 MR. BARRETT: The reasonableness of your  
15 choices, I'll leave that up to you. The hearing then  
16 was postponed. There were ample opportunities beyond  
17 that for further filming.

18 MS. FELDMAN: And so we went to September  
19 23 also.

20 MR. BARRETT: The only thing I will  
21 question, and it's not your reasonableness. You're  
22 welcome to film on White Haven any time. I'd be  
23 delighted to be the director though next time.

24 MS. FELDMAN: You were the star.

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1           MR. BARRETT: The only thing I question is  
2 the representation made this evening that those were  
3 two typical days at St. Patrick's School. One of them  
4 was. The other as I testified earlier could not be  
5 less typical.

6           MS. FELDMAN: As to all of the film, you  
7 made the point that if you could confirm that the back  
8 end parking was legal, that a lot of the traffic  
9 wasn't St. Patrick's, it was other schools, that it  
10 was a special day. There were specific reasons why it  
11 was unusual. Do you realize that from the neighbors'  
12 point of view you just did a classic turn of the kind  
13 of excuses we would expect when we would ask somebody  
14 why traffic still looked bad someplace?

15           MR. BARRETT: What I had to account for  
16 was not the condition of traffic there. I had to  
17 account for the condition of the video and the editing  
18 of that video. Marty Wells has observed the car pool  
19 out there on a couple of days. Anyone with a balanced  
20 eye is welcomed out there. I won't apologize for  
21 anything then. I think you'll see traffic moving  
22 beautifully with a good average vehicle occupancy of  
23 the cars as demonstrated by these pie charts.

24           MS. FELDMAN: Okay. Excuse me --

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1 MR. BARRETT: And we will take  
2 responsibility for what's out there.

3 MS. FELDMAN: My question was do you  
4 realize how it would sound from the neighbors' point  
5 of view when you list all these things that are not  
6 your fault and that would be a typical type of excuse  
7 we would expect to hear. That was my question.

8 MR. BARRETT: I had to play the hand the  
9 was dealt by the video.

10 MS. FELDMAN: Given that a lot of these  
11 things were as you point out the angled parking is  
12 required, the other schools are going to be there,  
13 there are more schools coming on board, don't those  
14 kinds of reasons actually hurt your case because they  
15 are things that you can't control and you can't  
16 change? They are other people's messes that impact on  
17 White Haven Parkway.

18 MR. BARRETT: For example, we never  
19 opposed the moving of the GW entrance to White Haven.  
20 We have dramatically across time reduced congestion  
21 through our own efforts on White Haven Parkway to the  
22 extent that we could absorb the GW traffic there. You  
23 can see that in the video. We will continue to do  
24 that. So, no.

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1 MS. FELDMAN: You think the other people's  
2 traffic problems are somewhat controllable or  
3 modifiable by you.

4 MR. BARRETT: Sure. I would not identify  
5 GW traffic, a satellite campus of a major university,  
6 as a major contributing factor to congestion on White  
7 Haven Parkway.

8 MS. FELDMAN: You did mention the staff  
9 who were out there directing traffic. Have you, since  
10 our May discussion of this, checked to see whether  
11 it's legal for them to do so?

12 MR. BARRETT: We do what needs doing under  
13 the entire transportation plan which you --

14 MS. FELDMAN: The answer is a yes or no  
15 question.

16 MR. BARRETT: Under the transportation  
17 plan, we would engage off duty policemen to monitor  
18 the new traffic movements which we could not --

19 MS. FELDMAN: We noticed on the video  
20 there were no off duty policemen.

21 MR. BARRETT: That's correct.

22 MS. FELDMAN: You said they were going to  
23 be installed whether or not this project went through.  
24 Where were they?

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1                   MR. BARRETT:    They were to be installed  
2                   with the implementation of a new traffic flow which  
3                   could only come with the driveway reconstruction.  We  
4                   did not receive, despite our best efforts, a public  
5                   space permit for reconstruction of the driveway in  
6                   time for the beginning of the school year.  As a  
7                   result, the traffic flow remains identical to what it  
8                   has been in past years.  We have not been able to  
9                   implement in full the traffic plan recommended by  
10                  DDOT.

11                  MS. FELDMAN:    Okay.  You haven't yet  
12                  ascertained whether it's legal to have your staff out  
13                  there directing traffic.

14                  MR. BARRETT:    No.

15                  MS. FELDMAN:    Thank you.

16                  MR. LOVENDUSKY:   Thank you, Mr. Wells,  
17                  with regard to these charts produced in the eleventh  
18                  hour of this sixth day of hearing.  When exactly was  
19                  before and when exactly is after?

20                  MR. WELLS:    Before was in December 2001.  
21                  It was contemporary with the rest of the traffic work  
22                  we did for the traffic study.  After was September 25.

23                  MR. LOVENDUSKY:   After was September 25,  
24                  2001?

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1 MR. WELLS: 2002.

2 MR. LOVENDUSKY: So what was a timeframe  
3 over which the data was collected for both times?

4 MR. WELLS: They were single day surveys.  
5 We were out there for multiple days observing the flow  
6 of traffic. We conducted the actual detailed counts  
7 on a single day.

8 MR. LOVENDUSKY: These are average counts.  
9 Correct?

10 MR. WELLS: They represent what happened  
11 on those days.

12 MR. LOVENDUSKY: How many vehicles were  
13 involved on those days?

14 MR. WELLS: If memory serves, roughly 200  
15 to 220 is what I recall in December. We're down to  
16 about 150 in the after in the September 25, 2002. The  
17 reason for the difference is roughly the same number  
18 of students and higher average vehicle occupancy,  
19 therefore, fewer vehicles.

20 MR. LOVENDUSKY: Is it not true that if  
21 the exact same numbers of vehicles was used in both  
22 tests that the pie charts would look different?

23 MR. WELLS: But there weren't the same  
24 number of vehicles using the driveway.

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1 MR. LOVENDUSKY: That's why it's difficult  
2 to extrapolate meaningful information because there  
3 was a different number of vehicles used for the pie  
4 charts.

5 MR. WELLS: No. Not at all. This  
6 represents the proportion of vehicles carrying one  
7 student, two students, three students, or four or more  
8 students.

9 MR. LOVENDUSKY: On an average basis.

10 MR. WELLS: On those particular days.

11 MR. LOVENDUSKY: This information has been  
12 self certified by Marty Wells and Associates.

13 MR. WELLS: It's certified by me. That's  
14 correct.

15 MR. LOVENDUSKY: Thank you. Mr. Harvey,  
16 do I understand your rebuttal testimony to be then  
17 that the chapter 28 municipal regulations do or do not  
18 apply to the facility at 4925 Mac Arthur?

19 MR. HARVEY: My interpretation says that  
20 it does not apply.

21 MR. LOVENDUSKY: But you do understand  
22 that chapter 28 addresses unamplified human voices  
23 involved in trash collection.

24 MR. HARVEY: I saw it addressing trash

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1 collection as a separate entity. I didn't look into  
2 the trash collection section. I figured that's the  
3 noise from picking up trash.

4 MR. LOVENDUSKY: Are you aware that St.  
5 Patrick's students occasionally use musical  
6 instruments?

7 MR. HARVEY: No I'm not.

8 MR. LOVENDUSKY: If they do use musical  
9 instruments, then you would acknowledge that chapter  
10 28 would apply.

11 MR. HARVEY: There's never been a mention  
12 of a musical instrument as being played outside on the  
13 play area of St. Patrick's. That's not been an issue.

14 MR. LOVENDUSKY: Ms. Bradley, it was your  
15 testimony upon rebuttal that there is no land  
16 available in the Palisades for a campus other than  
17 4925 Mac Arthur.

18 MS. BRADLEY: I don't believe I said that.

19 MR. LOVENDUSKY: Okay. What did you say?  
20 Could you please remind me of what you said?

21 MS. BRADLEY: The whole of my rebuttal  
22 statement?

23 MR. LOVENDUSKY: Well, the part as to  
24 looking high and low in the Palisades for a site for

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1 the school.

2 MS. BRADLEY: I don't think I said that  
3 either. What I was specifically rebutting was the  
4 nuance in Nancy's statement that we were essentially  
5 poaching low prices residential property. Residential  
6 property is not low priced.

7 MR. LOVENDUSKY: But your rebuttal  
8 testimony was specifically with regard to Palisades  
9 real estate.

10 MS. BRADLEY: I used two examples. Both  
11 of those were Palisades residential sites. One of  
12 which has already been bought by a school and turned  
13 into a school for grades seven through 12.

14 MR. LOVENDUSKY: How many zip codes are in  
15 the Palisades?

16 MS. BRADLEY: Two.

17 MR. LOVENDUSKY: How many zip codes are  
18 the parents of your students?

19 MS. BRADLEY: I think you had that number.  
20 I have never counted that number myself.

21 MR. LOVENDUSKY: Would you be surprised to  
22 know that it's 23 zip codes?

23 MS. BRADLEY: No I would not.

24 MR. LOVENDUSKY: So did you look in the

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1 other 21 zip codes for property?

2 MS. BRADLEY: We're a school committed to  
3 the District of Columbia. We're a school already  
4 located and existing in the Palisades.

5 MR. LOVENDUSKY: Did you look in any of  
6 the rest of the quadrant of northwest other than in  
7 the Palisades?

8 MEMBER ZAIDAIN: We've already covered all  
9 of this, Mr. Chair.

10 MR. LOVENDUSKY: No further questions.

11 CHAIRPERSON GRIFFIS: Ms. Wright, did you  
12 have cross examination?

13 MS. WRIGHT: This is a question for Mr.  
14 Barrett. When you put together this schedule or  
15 estimate of the amount of time that children would be  
16 spending out during the day, could you also include  
17 the amount of time from the point when the children  
18 are dropped off in the morning through going up to the  
19 terrace, maybe sitting there before classes begin  
20 particularly with the earlier buses and the same at  
21 the end of the day when children are being picked up.

22 I mean, if they come out and they're waiting for the  
23 buses or there are multiple buses there waiting to  
24 pick them up presumably that will also be a period of

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1 time they might be playing.

2 MR. BARRETT: I'll try to capture that as  
3 best we can, yes.

4 MS. WRIGHT: Great. Thank you.

5 CHAIRPERSON GRIFFIS: Any other cross  
6 examination from the parties? Very well.

7 MS. FELDMAN: We would like to reserve the  
8 opportunity to see what Mr. Wells submits. He's going  
9 to submit additional material to you. And we just got  
10 these charts. We'd like time to consider them and  
11 submit a writing.

12 CHAIRPERSON GRIFFIS: Tonight?

13 MS. FELDMAN: No.

14 CHAIRPERSON GRIFFIS: Indeed. I  
15 understand.

16 MS. FELDMAN: We'd like just to reserve  
17 the opportunity to submit writings.

18 CHAIRPERSON GRIFFIS: Clearly anything  
19 that we asked for in terms of submissions we will have  
20 ample time to have responses to that except for those  
21 submissions that we asked, we stated will not have  
22 responses to.

23 MS. FELDMAN: Also, we would like a copy  
24 of the September 25 data that Mr. Wells said that he

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1 produced that he already has in hand that we don't  
2 have.

3 CHAIRPERSON GRIFFIS: It would appear he's  
4 indicating that would be no problem.

5 MS. FELDMAN: Good. Thank you.

6 CHAIRPERSON GRIFFIS: If they get a copy,  
7 we get a copy. Very well. I thank you all. I think  
8 you can sit down. Are you delivering closing? Okay.  
9 How much time do you need for closing?

10 MS. BRADLEY: I haven't timed it exactly,  
11 six or seven minutes.

12 CHAIRPERSON GRIFFIS: Okay. I think we  
13 can handle that. We do have an option that you can  
14 submit it in writing, but it would be perfectly  
15 appropriate if you want to give it at this point.

16 MS. BRADLEY: How about I talk fast?

17 CHAIRPERSON GRIFFIS: Very well.

18 MS. BRADLEY: We've all been here for a  
19 long time. I am going to try to be brief. There are  
20 only a few basic reasonable facts that I want to go  
21 over as a closing statement for St. Patrick's  
22 Episcopal Day School. I'll go over them quickly so we  
23 can all get home.

24 First, let me put forward an honest

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1 statement here. No one would identify as their first  
2 choice that a school move in next door to them.  
3 That's a simple fact of life. We've heard testimony  
4 tonight that some people love having schools, but very  
5 few people would say my very first choice to have as a  
6 neighbor is a school.

7 Any resident would prefer the lowest  
8 intensity use possible for a property near their home.

9 You heard about the petition circulated against St.  
10 Patrick's that mentioned traffic congestion and  
11 parking problems and future expansion to other  
12 properties. Who wouldn't have signed that?

13 You don't ask for a school to move in any  
14 more than you ask for a teenage boy next door who  
15 plays a lot of basketball to please move in. That's  
16 not the way we make decisions in this city. We don't  
17 get to choose who moves in. We have standards of  
18 fairness that we all abide by. When we disagree, we  
19 have impartial judges to sort things out.

20 It may not be our first choice, but if  
21 it's a fair use of the land and a school moves in most  
22 of us accept that some facets of city life like  
23 schools do come with minor inconveniences. But they  
24 also bring great blessings to the common good. That's

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1 really what this comes down to. What minor impacts  
2 are acceptable in a city on a busy thoroughfare in  
3 order to allow the creation of something obviously  
4 designed to be a blessing to children and families  
5 both of our neighborhood and throughout the  
6 Metropolitan area.

7 This summer across the street from my own  
8 home a school leased a former embassy property for a  
9 program with several hundred children, a case that  
10 will soon be before you I'm sure. So I understand  
11 better than I did before what it feels like to be the  
12 neighbor in this kind of dispute. On my street, will  
13 there be impacts to manage? Of course.

14 But having worked on this case on Mac  
15 Arthur Boulevard, I'm convinced that there are good  
16 solutions to every impact the school has, solutions  
17 that we can get to without much problem if we agree to  
18 work constructively together. In order to get there  
19 though, you have to first accept that schools are  
20 expected to be located in residential zones. Without  
21 that basic shared understanding absent from much of  
22 this debate with our Ashby Street neighbors, the  
23 shared community conversation doesn't get anywhere  
24 fast.

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1           Let me move to five points about this  
2 case. Point 1 is schools are expected to be in  
3 residential zones. The code makes that clear. It's  
4 the practice all over this city. In this case, a  
5 school has operated at 4925 Mac Arthur for 42 years,  
6 operating with full BZA approval and enjoying broad  
7 community support. The wider community as represented  
8 by last April's three to one margin landslide vote at  
9 the Palisades Citizens Association supports St.  
10 Patrick's use of this property.

11           The inherent proposition here is sound.  
12 The status quo supports this use. Although I  
13 understand nervousness that change especially that  
14 caused by a school can cause I have to ask what has  
15 changed about this property, about 4925 Mac Arthur  
16 between now and a few years back so as suddenly to  
17 make this site so inappropriate for school use. The  
18 answer is nothing has changed.

19           Point 2 is how low impact do we expect  
20 schools to get. We've heard that the solutions that  
21 St. Patrick's has offered in order to mitigate impacts  
22 of school procedures are themselves objectionable.  
23 For instance, we're substituting shuttle bus drop off  
24 and pick up for traditional car pool lines. It has

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1       been argued that this solution, several school buses  
2       on Mac Arthur Boulevard is in and of itself  
3       objectionable.

4               Arguments have been made that seem to  
5       suggest that any vehicle bringing a child or a teacher  
6       to school at this site or any sound coming from  
7       adolescent vocal chords can be called objectionable  
8       and therefore be used as reason for denial of this  
9       special exception.     But this is a highly absurd  
10      argument.     It's well established that school use is  
11      presumed compatible with the residential zone, and  
12      therefore features of a school's operations that would  
13      be typical for any school cannot be deemed inherently  
14      objectionable.

15              All schools involve children arriving at  
16      and departing from the site.     No schools muzzle their  
17      children.     All schools involve the occupancy of a  
18      building by students.     Each of these things is typical  
19      and expected for all our schools in residential zones.

20      Our opposition has not identified a single feature of  
21      St. Patrick's operation that is atypical for a school.

22      They have simply identified our efforts to minimize  
23      the effect of typical school functions.

24              Point three is the Zoning Code doesn't

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1 intend schools to have no impact. It intends them to  
2 take steps to minimize impacts. Schools clearly  
3 should mitigate their impacts in order to protect the  
4 legitimate needs of neighbors. It is a clear standard  
5 for independent schools locating in residential zones  
6 to pay attention to noise, traffic, and other  
7 objectionable conditions.

8 The way the code is written should lead to  
9 civil, productive discourse between neighbors and  
10 schools about how to minimize impacts so that  
11 residential life is protected. I am very sure after  
12 working this case for the last year that schools have  
13 many ways they can accommodate the legitimate needs of  
14 neighbors. The school we are proposing I suspect will  
15 be the lowest impact school on record here in D.C. We  
16 can do that because we're proposing a limited number  
17 of students and we purchased a building that's already  
18 well set up for our needs, running a grades seven and  
19 eight program with small groups of seminar style  
20 classes in an academic program.

21 You know the specifics of our program. It  
22 is small and manageable. Those elements that  
23 traditionally cause concern are noise, traffic,  
24 parking, and number of students. We think we have

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1 overwhelmed the standard for each of these. We've  
2 been willing to devise conditions, covenants, and  
3 agreements to address any articulated concerns ranging  
4 from absolute controls over future growth, fencing,  
5 landscaping, liability issues relating to a neighbor's  
6 pool, or even parking concerns for one neighbor  
7 without a driveway.

8 Point 4 is our impacts must be compared to  
9 the impacts of the prior user. One test is whether we  
10 have successfully minimized impacts. Another is  
11 whether we perform well when our plan is compared to  
12 the impacts of the former owner which enjoyed broad  
13 based community support. The test is whether we've  
14 significantly increased objectionable qualities over  
15 their prior levels in the area. That is this site  
16 from a 1990 DC case.

17 In this case, we are substituting one  
18 educational use for another, so that comparison is  
19 easy enough to make. Our plan is to do much better  
20 than the former owner did. That use was accepted by  
21 the neighborhood. How will we do better? Our school  
22 involves daytime use instead of evening and night use.

23 Our school involves weekday use instead of weekend  
24 use.

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1           We have the ability to park all our cars  
2 accessing the site in the parking lot, so we will  
3 remove the prior users reliance on neighborhood  
4 streets for parking during their meetings. We will  
5 correct significant existing drainage problems  
6 affecting the contiguous neighbors Ms. Wright and Mr.  
7 Skrivseth and the National Park Service across the  
8 street. Finally, although our students will indeed  
9 come and go five days per week compared to the  
10 previous owner's two or three meetings per week, we  
11 still compare well if you look at total hours of  
12 occupancy of the building since they did indeed have  
13 office workers there every day during the week.

14           Point 5 is to reassure neighbors our  
15 proposal has multiple layers of enforcement. You've  
16 heard assertions that the proposed conditions are not  
17 enforceable, but I think it will be a real feat not to  
18 live by these conditions as we've included multiple  
19 layers of enforcement underpinning this proposal. We  
20 have an immediate early check point with phased  
21 enrollment. We have an obligation to meet with the  
22 community regularly and to provide detailed annual  
23 reports to the Board.

24           Further, through a legal covenant, we

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1 remain willing to give significant future control to  
2 the nearby neighbors themselves giving them a veto of  
3 sorts over future BZA action that could expand the  
4 scope of the proposed school beyond 60 students.  
5 These three layers of ongoing control with the help of  
6 the new zoning enforcement official should reassure  
7 neighbors that we will perform to the standard we are  
8 setting out.

9           So in conclusion, I want to return to who  
10 we are as an institution and as a collection of  
11 parents and teachers wanting what is best for these  
12 children surely but also as a faith-based community  
13 wanting harmony restored in our relations with these  
14 neighbors. We stumbled into this without anticipating  
15 a fight. We saw a site where we could preserve open  
16 green space, a site that had a four decade history of  
17 educational use. We thought we would be welcomed.  
18 That was a wrong assumption.

19           If this application is approved, it will  
20 have taken us almost two years from site  
21 identification until we can be in this building. We  
22 will turn immediately if we are approved to finishing  
23 up plans for a \$700,000 systems renovation and  
24 handicapped upgrade project to be completed before we

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1 could welcome our students. I raise this specifically  
2 in order to remind the Board that we are going to be  
3 investing significant resources to bring this building  
4 to full handicapped accessibility. It's impossible  
5 for us to make this commitment with any kind of short-  
6 term or a term I would propose of less than ten years  
7 for this site in order to justify the investment that  
8 we must make to bring the building to handicapped  
9 standard.

10 There is one glimmer of hope however and a  
11 hope that goes beyond just a simple aspiration that we  
12 will finally use this site. That returns to who we  
13 are as an institution. Our more distant hope is that  
14 we can work together with this neighborhood for good.

15 Everything that St. Patrick's believes about good  
16 citizenship and ethical conduct will be on display at  
17 4925 Mac Arthur Boulevard and that eventually there  
18 will be harmony between St. Patrick's and it's  
19 Palisade neighbors.

20 Other schools have faced fierce  
21 opposition. Once the school is up and running,  
22 harmony and cooperation do return. Most neighbors do  
23 admit later that their fears were unfounded. The  
24 awful scenarios of gridlock and mass fire sales just

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1 don't come to pass. Instead, communities accept  
2 schools within their midst and move on toward  
3 productive, cooperative, community life. That state  
4 beyond even the outcome of this hearing is what we  
5 hope to accomplish.

6 I want to thank you for your time and your  
7 patience. We're very grateful for the consideration.

8 Thank you.

9 CHAIRPERSON GRIFFIS: Thank you very much.

10 If I'm not mistaken, that would conclude our hearing  
11 on this case. This is going to take a few more  
12 minutes. I ask for everyone's patience. We need to  
13 run down exactly what the Board is asking to be  
14 submitted, when it will be submitted, response time of  
15 the submissions, and then we will set a date for  
16 public meeting and deliberation on this case.

17 I would anticipate that we would look to  
18 December for our public meeting. Actually why don't  
19 we work backwards on that. While Staff checks the  
20 availability of that date, I will also request that  
21 all parties and the Applicant submit --

22 MEMBER ZAIDAIN: What was that date again?

23 Did you give the date?

24 CHAIRPERSON GRIFFIS: The Staff will give

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1 us the specific date. I'm looking at December.

2 MEMBER ZAIDAIN: I'm just envisioning all  
3 the transcripts that I have to read, so I'm begging  
4 for mercy.

5 CHAIRPERSON GRIFFIS: Indeed. There's  
6 that consideration as well.

7 MEMBER ZAIDAIN: As long as you don't  
8 bifurcate it.

9 CHAIRPERSON GRIFFIS: We will need ample  
10 time for responses. As I was saying, however, we will  
11 be asking for the submission of all parties and the  
12 Applicant of findings of fact and conclusions of law.

13 In that, as we have touched on briefly this evening,  
14 I would also ask if the parties felt appropriate to  
15 submit proposed conditions.

16 We have already identified a specific  
17 condition. I would ask the Applicant also to do the  
18 same outside of the specific one we're going to be  
19 looking for. With that, let us go down the list of  
20 all the information we're looking to receive.

21 MS. BAILEY: Mr. Chairman, did you want me  
22 to start with the list?

23 CHAIRPERSON GRIFFIS: That would be  
24 fantastic.

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1 MS. BAILEY: The Office of Planning is to  
2 provide what I'm calling a supplemental report, but  
3 there was some discussion concerning the Office of  
4 Planning's thoughts concerning the number of years  
5 that the application could be approved for.

6 CHAIRPERSON GRIFFIS: Good.

7 MS. BAILEY: In addition, the Office of  
8 Planning is also to look at the community liaison  
9 program and how well that is working at other  
10 locations in the Palisades neighborhood and perhaps at  
11 other locations in the city as well. Mr. Finney is to  
12 provide information about property values. That's  
13 residential properties that are located close to  
14 institutional buildings.

15 Written submissions from all persons in  
16 support and in opposition. There were several persons  
17 who spoke today in support and in opposition. That  
18 written testimony should be provided. There's a list  
19 of persons. Mr. Chairman, I have some of them if you  
20 would like for me to identify. Mr. Lovendusky is  
21 certainly among that group.

22 Ms. Cathy Wright is to provide the Board  
23 with a statement from the District's Assessors who  
24 indicated that the location of institutional

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1 properties adjacent to residential properties lowers  
2 their value. Mr. Marty Wells is to provide  
3 clarification of traffic data he discussed in the  
4 rebuttal arguments. Mr. Barrett is to provide a  
5 program for outdoor play along with other conditions.  
6 He's also to discuss other periods of time when the  
7 children will be outside.

8 Mr. Marty Wells, in addition September 25  
9 traffic data is to be provided by you, sir. Findings  
10 of fact, conclusions of law from all of the parties  
11 and the Applicant and proposed conditions, Mr.  
12 Chairman. That's the things that I have.

13 CHAIRPERSON GRIFFIS: That's your list?

14 MS. BAILEY: Yes, sir.

15 CHAIRPERSON GRIFFIS: Good. That  
16 corresponds with mine. Any other Board Members?

17 VICE CHAIRPERSON RENSHAW: One other  
18 thing. Earlier in the day some many hours ago, we  
19 reviewed the parking lot situation. I thought when I  
20 saw the visual on a board that it would be very  
21 helpful to have an overlay of what the parking lot  
22 looks like now against what the future look of the  
23 parking lot is to be.

24 CHAIRPERSON GRIFFIS: Sounds good to me.

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1 VICE CHAIRPERSON RENSHAW: Okay.

2 CHAIRPERSON GRIFFIS: Is that possible to  
3 be submitted? Excellent.

4 COMMISSIONER MITTEN: Mr. Chairman, I'd  
5 also like to ask someone, and if we have to go through  
6 OP to DDOT, to submit the Palisades Traffic Study.

7 CHAIRPERSON GRIFFIS: The Neighbors United  
8 indicated that they had provided that study to your  
9 expert in traffic. Who did provide that study?

10 MS. GATES: I have one copy which I'm a  
11 little reluctant to hand over. I can show you it's  
12 about this thick. (Indicating.) It has all the tables,  
13 everything in it that DDOT did for Palisades, but I  
14 only got one copy of it.

15 CHAIRPERSON GRIFFIS: Mr. Finney, do you  
16 have a copy?

17 MR. FINNEY: Yes. I think you can easily  
18 get a copy by calling Mr. Laden's office.

19 CHAIRPERSON GRIFFIS: I agree.

20 MS. GATES: Would you like me to take that  
21 responsibility to call Mr. Laden?

22 CHAIRPERSON GRIFFIS: That would be great.  
23 That's exactly what I was trying to do, delegate  
24 responsibility. However, in all seriousness if you

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1 find that it is not producing what the Board is  
2 requiring, you should let this office know and we can  
3 take it up. So don't spend a lot of time doing it if  
4 it doesn't happen on the first phone call. Others? I  
5 think that is it. Let's go through dates.

6 MR. MOY: Mr. Chair, what looks good in  
7 December is December 3. We have a normal decision  
8 meeting date at that time.

9 CHAIRPERSON GRIFFIS: Excellent.

10 MR. MOY: So that would allow submission  
11 of materials by November 8 and responses by November  
12 22.

13 CHAIRPERSON GRIFFIS: Okay. For our  
14 notes, we should allow substantial time for  
15 deliberation on this. We will take note Staff and  
16 Board Members of not overloading the 3rd for our own  
17 decision making. Board Members are not allowed to say  
18 dates. Only Staff can at this late hour otherwise  
19 we're going to get very confused. That's it for  
20 submission dates. Did you say that already?

21 MR. MOY: Yes I did.

22 CHAIRPERSON GRIFFIS: Fabulous. Is  
23 everyone clear as I am not?

24 MR. MOY: Let me repeat them. Submission

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1 materials by November 8, time for responses by  
2 November 22, then we'll have our decision meeting on  
3 December 3.

4 MS. PRINCE: One quick clarification.  
5 Typically when there are submissions due for example  
6 on November 8 that would not include the findings of  
7 fact and conclusions of law.

8 CHAIRPERSON GRIFFIS: Indeed.

9 MS. PRINCE: That would occur on the 22nd  
10 so everyone could incorporate into their findings  
11 whatever materials there are.

12 CHAIRPERSON GRIFFIS: That's correct. The  
13 findings and conclusions will be the last things  
14 submitted. Clearly they are not responded to. Any  
15 other questions? Is everyone absolutely clear on  
16 that?

17 VICE CHAIRPERSON RENSHAW: Mr. Chairman,  
18 somebody with a calendar, that gives us how many days  
19 for the Board to review from November 22 and when is  
20 Thanksgiving?

21 CHAIRPERSON GRIFFIS: We'll meet for  
22 Thanksgiving and talk about this.

23 VICE CHAIRPERSON RENSHAW: Over the  
24 turkey? Carve up the case over the turkey?

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1 (Laughter.)

2 CHAIRPERSON GRIFFIS: It gives us roughly  
3 two weeks if my math serves.

4 VICE CHAIRPERSON RENSHAW: Does your math  
5 serve you well at this late hour?

6 PARTICIPANT: Six working days.

7 VICE CHAIRPERSON RENSHAW: Six working  
8 days.

9 COMMISSIONER MITTEN: Every day is a  
10 working day at the B.A..

11 MEMBER ZAIDAIN: Yes. You can count  
12 Saturday and Sunday in that too if you want, yes.

13 CHAIRPERSON GRIFFIS: Okay. I think we  
14 have ample time to look at the final submissions for  
15 deliberation on the first meeting in December. Again,  
16 last opportunity. Is everyone clear? I absolutely  
17 appreciate everyone's patience for going through this  
18 entire day and the previous days with us. It is my  
19 pleasure to adjourn our morning session of the B.A. on  
20 October 8, 2002. Off the record.

21 (Whereupon, the above-entitled matter  
22 concluded at 9:46 p.m.)

23

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