

GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

FEBRUARY 11, 2003

+ + + + +

The Public Hearing was convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:55 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

PETER G. MAY, Commissioner
 ANTHONY HOOD, Commissioner

COMMISSION STAFF PRESENT:

BEVERLY BAILEY, Office of Zoning
 CLIFFORD MOY, Office of Zoning
 JOHN K. A. NYARKU, Office of Zoning

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OTHER AGENCY STAFF PRESENT:

STEPHEN MORDFIN, Office of Planning
ARTHUR JACKSON, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

LORI MONROE, ESQ.

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

9:55 A.M.

CHAIRMAN GRIFFIS: We call the Public Hearing of the Board of Zoning Adjustment of the District of Columbia. Of course, it is still February 11, 2003. And my name is Geoff Griffis. I am Chairperson. Joining me is Ms. Anne Renshaw, Vice Chair; also, Mr. Curtis Etherly. Mr. Zaidain is on his way out. He is representing the National Capital Planning Commission. And with us this morning representing the Zoning Commission will be Mr. May.

Copies of today's hearing are available to you. They are located at the table where you entered into the Hearing Room. And let me just say first a couple of things. Everyone should be aware that all of these hearings are being recorded. Therefore, there's attention that needs to be given. When coming forward to speak to the Board and give testimony, you will come to the table. I need you to fill out two witness cards. Those witness cards are located on the table in front of us and also at the table where you entered into the Hearing Room.

Before coming forward, you need to give those witness cards to the reporter who is sitting to my right. Also note that anything that is to be on

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1 the record and everything in this room has to be on
2 the record, it must be stated into a microphone and
3 that microphone must be one.

4 I would ask the people present at this
5 point turn off any cell phones or beepers so that we
6 don't disrupt the proceedings as we move ahead.

7 The order of procedure for special
8 exception and variance is first we have statements and
9 witnesses of the Applicant. Second, we have any
10 Government reports that are attendant to the
11 application. Third, we will hear from the ANC, the
12 Advisory Neighborhood Commission. Fourth would be
13 parties or persons in support of the application.
14 Fifth would be parties or persons in opposition to the
15 application. And sixth, finally, we will have closing
16 remarks by the Applicant.

17 Cross examination of witnesses is
18 permitted by the Applicant or parties. The ANC,
19 within which the property is located, is automatically
20 a party in the case.

21 The record will be closed at the
22 conclusion of each case except for any material that
23 the Board specifically requests and we will be very
24 detailed and specific on what material is to be
25 submitted and when it is to be submitted into the

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1 Office of Zoning. Of course, after that material is
2 received, the record would then be closed and no other
3 information would be accepted by the Board.

4 The Sunshine Act which requires that
5 public hearings on each case be held in the open and
6 before the public. However, the Board may, consistent
7 with the Sunshine Act and its own rules and
8 procedures, enter into Executive Session during or
9 after a case and public hearing for purposes of
10 reviewing the record or deliberating on the case.

11 The Board's decisions in contested cases
12 must be based exclusively on the public record.
13 Therefore, we ask that people present today not engage
14 Board Members in conversations so that we do not give
15 the appearance of not basing our deliberations solely
16 on the public record.

17 I think we will now take up any
18 preliminary matters concerning the cases for the
19 morning. Preliminary matters are those which relate
20 to whether a case will or should be heard today such
21 as requests for postponements, withdrawal or
22 continuance or whether proper and adequate notice has
23 been provided.

24 If you are not prepared to go forward with
25 a case today or if you believe that the Board should

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1 not proceed, now is the time to approach the Board and
2 you can have a seat at the table as an indication that
3 you have preliminary matter.

4 I will ask staff if they have any
5 preliminary matters for the Board at this point?

6 MS. BAILEY: Members of the Board, Mr.
7 Chairman, good morning.

8 CHAIRMAN GRIFFIS: Good morning.

9 MS. BAILEY: The first case of the
10 morning, 16948, Nicholas Perrins, that application was
11 withdrawn, Mr. Chairman, so no additional action is
12 needed on that case.

13 CHAIRMAN GRIFFIS: Okay.

14 MS. BAILEY: And concerning the two other
15 cases of the morning, there are preliminary matters
16 associated with those cases, but staff is recommending
17 that the preliminary matters be discussed when those
18 cases are called.

19 CHAIRMAN GRIFFIS: Excellent. Thank you
20 very much and good morning to you, Ms. Bailey and also
21 to Mr. Moy in the Office of Zoning and with us from
22 Corporation Counsel is Ms. Monroe.

23 With that then we are prepared to call the
24 first case of the morning?

25 MS. BAILEY: Yes sir.

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1 CHAIRMAN GRIFFIS: Very good. Sir?

2 MR. WILLIAMS: Good morning, Mr. Chairman,
3 Members of the Board, my name is Lindsley Williams.
4 The order in which the cases are listed today, if I
5 understand it, after the one that has been withdrawn
6 is first 16976, second in sequence listed, 16973, with
7 which I have an interest and last for the morning is
8 16963. It will be our request, I think this was
9 communicated to you through staff that our case be
10 taken up as the last of the morning cases. I can't
11 imagine the second -- the third case would object to
12 that, but I wanted to get clarification from you, if I
13 could as to whether or not the Board was agreeable to
14 that.

15 CHAIRMAN GRIFFIS: Are you waiting for
16 people to show up?

17 MR. WILLIAMS: That's part of it, sir.

18 CHAIRMAN GRIFFIS: Okay. I don't see any
19 difficulty in doing that. We can juggle our schedule
20 a little bit and assuming that the second case of the
21 day is here and ready to go, we will proceed with
22 that. If they're not, of course, we'll call your
23 case.

24 MR. WILLIAMS: We'll stay close by.

25 CHAIRMAN GRIFFIS: Indeed. Let's call the

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1 first case of the morning.

2 MS. BAILEY: Application No. 16976,
3 Vivienne A. Awasum, pursuant to 11 DCMR 3103.2, for a
4 variance from the off-street parking requirements
5 under subsection 2101.1, a variance from the rear yard
6 depth requirements under section 404, and a variance
7 from the side yard width requirements under section
8 405, to allow the new construction of a flat, this is
9 a two-family dwelling. The property is located in the
10 R-4 District at premises 757 Park Road, N.W., Square
11 2895, Lot 69.

12 All those persons wishing to testify
13 please stand to take the oath. Please raise your
14 right hand? Do you solemnly swear or affirm that the
15 testimony you are about to give in this proceeding
16 will be the truth, the whole truth and nothing but the
17 truth?

18 (Witnesses were sworn.)

19 Please have a seat at the table.

20 CHAIRMAN GRIFFIS: Good morning.

21 MR. BANDON-BIBUM: Good morning, Mr.
22 Chairman, my name is Chrys Bandon-Bibum. I'm here
23 with the owner.

24 MS. AWASUM: Vivienne Awasum.

25 CHAIRMAN GRIFFIS: And your address?

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1 MS. AWASUM: 9104 Tuckahoe Lane in
2 Adelphi, Maryland.

3 CHAIRMAN GRIFFIS: Okay, thank you.

4 MR. BANDON-BIBUM: Mr. Chairman, Members
5 of the Board, we are here to seek variance for
6 property 757 Park Road, N.W. We have submitted the
7 proposed plan to the Building Permit. We did receive
8 approval for electrical, mechanical, fire protection.
9 However, Zoning, we had a problem with Zoning because
10 of the requirement of one parking space, rear yard
11 provision and a side yard provision.

12 The site geometrically is a triangle site.

13 CHAIRMAN GRIFFIS: Right.

14 MR. BANDON-BIBUM: The apex is to the
15 rear. This creates an exceptional condition where
16 parking is practically impossible. The side yard
17 requirement of 8 feet we cannot achieve that. We have
18 4 feet. The rear yard of 20 feet, we cannot achieve
19 that. We are about 9 feet.

20 The proposed building maintains the
21 original footprint of the original building. On this
22 site today we have no property. It was demolished.
23 It was condemned and the owner acquiesced and paid for
24 the demolition. So we want to maintain the original
25 footprint of that building. Barring that, it's

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1 practically impossible to have a dwelling facility in
2 this space.

3 CHAIRMAN GRIFFIS: If you change the
4 footprint?

5 MR. BANDON-BIBUM: Yes.

6 CHAIRMAN GRIFFIS: Okay.

7 MR. BANDON-BIBUM: We are basically done.

8 Under records, we did submit the application. If I
9 may, I could go ahead and again repeat based on
10 subsection 3103.2 variance for the physical
11 characterization, configuration of the property,
12 provisions for the parking space of 9 feet by 19 feet,
13 20 feet rear yard and 8 feet side yard requirement
14 cannot be met.

15 As stated earlier the geometry of the
16 sides being a triangular space makes it practically
17 impossible to provide those requirements.

18 Point 2, granting the application will not
19 be any detriment to the public good. Traffic, noise
20 and lighting will not be affected. And in addition,
21 the proposed building attempts to match the prior
22 building and will enhance the vitality of the
23 neighborhood.

24 Item 3, granting the application will not
25 be inconsistent with the general intent and purpose of

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1 the zoning regulations and map. The attached
2 certificate of occupancy granted on February 19, 1960
3 for a second and third floor for a rooming house. So
4 indeed, there is in existence and certificate of
5 occupancy which was granted in 1960 for a rooming
6 house for that site.

7 Basically, we have stated our case.

8 CHAIRMAN GRIFFIS: Good, thank you very
9 much. I think it is fairly clear in terms of the
10 uniqueness and shape of the lot. Also, in addition is
11 that triangle is formed by a street and an alley,
12 making this the last end of the row. It's very
13 persuasive in my mind in terms of the parking.

14 Can you tell me just a little bit and
15 you've indicated now and also on your written
16 submission that the existing foundation is there and
17 you're building back on the existing foundation?

18 MR. BANDON-BIBUM: Yes.

19 CHAIRMAN GRIFFIS: That's particularly
20 interesting to me because here we have a building that
21 existed and then we had some zoning regulations
22 adopted and now we can't build was what originally
23 there. It seems to be a little problematic. But
24 nonetheless, that's what we have in front of us.

25 The materials that are used, it is being

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1 called out if I'm reading your documents correctly
2 that it's a brick face, the primary facade?

3 MR. BANDON-BIBUM: That is correct.

4 CHAIRMAN GRIFFIS: And was there any
5 discussion in terms of recreating some of the detail
6 of the existing structure on the primary facade?

7 MR. BANDON-BIBUM: Indeed. Indeed. The
8 building is designed to almost adapt the original
9 structure that was there. The facade is practically
10 about the same of what was there initially.

11 CHAIRMAN GRIFFIS: Okay, is the roof
12 similar?

13 MR. BANDON-BIBUM: The roof initially, the
14 front was a typical pitch roof which slopes in the
15 back and flats up. We've tried to maintain the apex
16 and maintain it across, towards the rear.

17 The front will give you the same facade
18 and the same look.

19 CHAIRMAN GRIFFIS: Okay. Now as you turn
20 the corner, what's interesting is that the brick stops
21 and it looks like there's siding that's going to be
22 put on.

23 MR. BANDON-BIBUM: That is correct.

24 VICE CHAIRPERSON RENSHAW: Mr. Chairman, a
25 question for the Applicant. Was the original building

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1 as tall as this building is going to be?

2 MR. BANDON-BIBUM: That is correct.

3 VICE CHAIRPERSON RENSHAW: Is the rear,
4 does the rear mimic the former dwelling?

5 MR. BANDON-BIBUM: That is correct.

6 VICE CHAIRPERSON RENSHAW: And there was
7 no garage attached to this house originally?

8 MR. BANDON-BIBUM: None at all.

9 VICE CHAIRPERSON RENSHAW: Is there any
10 way that a parking space can be fit in?

11 MR. BANDON-BIBUM: Absolutely not.
12 Absolutely impractical. I tried all kinds of ways and
13 to accommodate that you cannot build there at all.

14 CHAIRMAN GRIFFIS: What happens and I
15 think it was well stated that if one space was
16 provided, the issue is in order to make it a legal
17 space, it has to comply with our dimensions which are
18 9 by 19, off the top of my head.

19 MR. BANDON-BIBUM: That's correct.

20 CHAIRMAN GRIFFIS: And so if you look at
21 the footprint, there is not an area that that
22 dimension fits.

23 Now is there thought in terms of the site
24 plan and development that there would be a parking
25 space, although not zoning required size? Is there

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1 going to be any surface where parking would be
2 provided?

3 MR. BANDON-BIBUM: There is no provision,
4 as you can see from the site.

5 CHAIRMAN GRIFFIS: How is the back and the
6 property line going to be protected? Perhaps I missed
7 it, but is there fencing? Is there anything or is
8 that going to be open?

9 MR. BANDON-BIBUM: It's going to be open,
10 but the owner can accommodate that if she so pleases
11 to do.

12 CHAIRMAN GRIFFIS: Well, I think I would
13 assume Ms. Renshaw is going to here is if you have
14 that and it's open, aren't they going to park there?

15 MR. BANDON-BIBUM: No, I don't think so.
16 They basically cannot. No car can fit in the space
17 behind the building.

18 CHAIRMAN GRIFFIS: What's going to stop
19 them from pulling in and hanging out in the alley?
20 Just reading Ms. Renshaw's mind because I'm sure she's
21 going to bring this up.

22 MR. BANDON-BIBUM: I'm not sure it can be
23 prevented from hanging out in the alley, but frankly,
24 after having the structure in there, that would indeed
25 preclude anybody from parking in the alley because we

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1 have residents, we have people driving in the alleys
2 and access through the alleys.

3 CHAIRMAN GRIFFIS: Right.

4 MR. BANDON-BIBUM: So parking cannot be
5 there.

6 CHAIRMAN GRIFFIS: Well, I think it would
7 be appropriate if there was some sort of -- if that is
8 not to be done, that there is some sort of provision
9 that's put there so that it is not done. We all know
10 practicalities and all that. Clearly, the block is
11 residential. It looks to be single family or flats.
12 The amount of parking perhaps may not be overwhelming.

13 Ms. Renshaw?

14 VICE CHAIRPERSON RENSHAW: Just to ask is
15 Park Road a snow emergency route? Are there
16 restrictions on parking in the street during an
17 emergency?

18 MR. BANDON-BIBUM: No.

19 VICE CHAIRPERSON RENSHAW: We've had some
20 difficulties in my area, so I just am primed to ask.

21 MR. BANDON-BIBUM: Yes ma'am.

22 MR. ETHERLY: Mr. Chair, just thinking out
23 loud, there will be a deck connected, attached to the
24 rear of the property, correct?

25 MR. BANDON-BIBUM: No.

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1 MR. ETHERLY: No deck at all?

2 MR. BANDON-BIBUM: No deck.

3 MR. ETHERLY: Okay. Thank you. That
4 answers my question, Mr. Chairman.

5 CHAIRMAN GRIFFIS: We should take note and
6 Mr. Etherly was looking at Sheet A8 of which there is
7 details of wood deck and we can take note that it is
8 crossed out which I'm just seeing. So it does not
9 look like it's going to be used. It's not showing on
10 any of the plans.

11 MR. BANDON-BIBUM: That was taken out. I
12 tried to give the owner that access, but it wasn't too
13 practical. So I had to take it out.

14 CHAIRMAN GRIFFIS: Very good. Any other
15 questions from the Board at this time?

16 MR. MAY: How many stories is this
17 building? I've read the plan.

18 MR. BANDON-BIBUM: Three stories.

19 MR. MAY: It's three stories?

20 MR. BANDON-BIBUM: Yes.

21 MR. MAY: Why is it three stories and not
22 four?

23 MR. BANDON-BIBUM: Four will be beyond the
24 requirement of the height allowable for R-4.

25 MR. MAY: Right, that's why I'm asking the

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1 question. Maybe this is something where other Board
2 Members can help me out too.

3 CHAIRMAN GRIFFIS: Your concern is that
4 the basement is going to a story.

5 MR. MAY: The basement is 4 feet 5,
6 according to the drawings from the height of the
7 ceiling to the finished grade which in my mind makes
8 it part of the FAR and therefore -- I mean failing any
9 other definition, that's what I would use to define a
10 story. So from the way I read the plans, technically,
11 it seems to me that this is a four story building.
12 And that's why I asked you because maybe I'm missing
13 something from what's in the drawings.

14 MR. BANDON-BIBUM: Yes, I always call it
15 three, subject to interpretation. I did not want to
16 --

17 MR. MAY: I can't hear you.

18 MR. BANDON-BIBUM: I'm not sure how you
19 come up with four, but for all intents and purposes, I
20 have maintained a three story building there.

21 CHAIRMAN GRIFFIS: Here, just to start our
22 discussion. The definition of story in the
23 regulations, Title XI and I am piecing it together,
24 this is not a total reading. First of all it says
25 "the number of stories shall be counted at the point

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1 from which the height of the building is measured."
2 So the height of the building is going to be measured
3 from the center of the finished grade outside. So you
4 start up from there. So the first time you hit a
5 floor is the first floor. That would count towards
6 story.

7 MR. MAY: Okay.

8 CHAIRMAN GRIFFIS: That's one discussion.

9 Now we continue reading our definition and for the
10 purposes of determining the maximum number of the
11 permitted stories, the term story shall not include
12 cellar, stairs or elevator penthouses or other roof
13 structures provided that the total area, of course,
14 goes to 411 which is one third.

15 Now that does not immediately identify the
16 fact that basements are not counted, but I think and
17 let's get some interpretation here from the Board, my
18 reading is that it is from the base height. You don't
19 -- from the point of where you measure the height of
20 the building is where you start to count your stories.

21 VICE CHAIRPERSON RENSHAW: Go ahead.

22 MR. ZAIDAIN: Let me make sure I
23 understand. Are you suggesting that this is a cellar
24 then?

25 CHAIRMAN GRIFFIS: No, I'm not. What I'm

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1 saying in reading that and filling out the definition
2 that if they wanted to make it absolutely complete and
3 a home run on this they would have announced
4 basement/cellars. They don't do that. But I think
5 there's a reason why because a basement can -- could
6 conceivably -- well, there it is. I'm not sure why
7 they don't.

8 MR. ZAIDAIN: Fill in some gaps for me.
9 Who is "they" and what's a "home run"?

10 (Laughter.)

11 MR. MAY: I think "they" is the Zoning
12 Commission.

13 CHAIRMAN GRIFFIS: Right. The
14 regulations, if it had clearly stated that basement
15 was not included, then we wouldn't have any further
16 discussion.

17 MR. ZAIDAIN: Right.

18 CHAIRMAN GRIFFIS: My point is that we
19 need to return to the beginning point of the
20 definition and thereby look to the number of stories
21 shall be counted at the point from which the height of
22 the building is measured.

23 MR. ZAIDAIN: Which is from finished
24 grade?

25 CHAIRMAN GRIFFIS: Right. Ms. Renshaw?

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1 VICE CHAIRPERSON RENSHAW: I thought the
2 height of the windows above ground had something to do
3 with this. Remember the case that we had very
4 recently?

5 CHAIRMAN GRIFFIS: Okay, and to clarify,
6 in calculating FAR, a basement goes toward FAR
7 calculations, right? And that, in order to define a
8 basement as opposed to a cellar, it has to do with the
9 ceiling height which is above grade and if it's over a
10 dimension. That, in this zone, we are in R-4, if I'm
11 -- there is no FAR prescribed. So that's an issue for
12 us.

13 MR. MAY: There's no FAR prescribed, but
14 effectively it's always been limited at 1.8 because
15 you have 60 percent lot occupancy and you're allowed
16 three stories, so effectively it's 1.8.

17 CHAIRMAN GRIFFIS: It is. And obviously
18 the massing of all regulations seem to tie and in the
19 best case scenarios they all work together and are not
20 in conflict.

21 MR. MAY: I'm a little confused by your
22 reading of the definition here. Clearly, cellar does
23 not count as a story, but basement is absent in this
24 definition as a story and if we were to consider it,
25 theoretically, you're right. For it to be very clear,

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1 it would be specifically in or specifically out of the
2 definition.

3 What I'm confused about though is the
4 number of stories shall be counted at the point from
5 which the height of the building is measured. So in
6 other words, if it's at any given point along the
7 facade of a building, the point at which you measure
8 the height of the building is the point at which you
9 count the stories. It doesn't mean that you start
10 counting at grade and go up from there which is what I
11 thought I was hearing you say. At least not the way I
12 read it. Is that what you're saying that you start
13 counting from grade and everything above that counts
14 as a story?

15 CHAIRMAN GRIFFIS: Yes.

16 MR. MAY: See, I don't read it that way.
17 I read that it's at that point. Because what I'm
18 picturing what they were trying to address with this
19 wording was that you can have a building that along
20 its street front where you measure the building
21 height, it could be two stories at one end and it
22 could be five stories at the other, the point at which
23 you measure it though, the height of the building is
24 the point at which you count stories, along that
25 horizontal distance.

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1 CHAIRMAN GRIFFIS: Maybe this will help
2 and we should look at this because we need to know
3 what and how to measure the height of the building
4 which in this specific instant, as it's limited, it's
5 a 40 foot height, is it not?

6 MR. MAY: Yes.

7 CHAIRMAN GRIFFIS: The height of the
8 building may be measured from the finish grade level
9 at the middle of the front of the building to the
10 ceiling of the top story, so we're not moving along
11 the face. It is clearly in this residential
12 application the middle of the front of the building.

13 MR. MAY: Right.

14 CHAIRMAN GRIFFIS: And so your point is
15 that if that's your base point zero, then in order to
16 get to the first floor --

17 MR. MAY: No, what I'm saying is that you
18 -- it's at that point in the facade that you actually
19 count the stories. It doesn't mean that you start at
20 grade and go up and start counting. It just means
21 that you count at that point.

22 CHAIRMAN GRIFFIS: I see.

23 MR. MAY: Right?

24 CHAIRMAN GRIFFIS: I see.

25 MR. MAY: So I'm counting four stories

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1 here. I'm not counting over 40 feet. It's not over
2 40 feet to the ceiling of the top floor because I
3 added up the strong of dimensions and it's definitely
4 less than 40 feet.

5 CHAIRMAN GRIFFIS: Well, here's what we
6 need. Rather than making a direct interpretation, I'd
7 like to have some history on how the interpretation is
8 done and maybe we can request staff to do a couple of
9 minutes while we get through this and see if we can't
10 come back to that.

11 As you're looking, Mr. May, there's one
12 interpretation that this is actually four stories. So
13 it's three above and a basement.

14 MR. MAY: Which requires then another
15 variance.

16 CHAIRMAN GRIFFIS: Indeed it does.

17 MR. MAY: I have other questions too.

18 CHAIRMAN GRIFFIS: Yes.

19 MR. MAY: I actually would like to respond
20 first to something that the Chairman stated earlier on
21 about how we're in this situation we're essentially --
22 someone is attempting to rebuild on the existing
23 foundation and it's not possible by current codes.

24 Well, okay, but that's kind of the point
25 of zoning regulations to start with was to make a

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1 consistent code by which everything could be built.
2 Now I would agree that there are certainly
3 circumstances in the zoning regulations where what is
4 being prescribed doesn't allow you to do some of the
5 wonderful things that have been done in Washington
6 with this housing stock. I mean they're just not
7 possible with the current regulations. And we've
8 spoken about that and I would like to see that
9 addressed.

10 But in this particular case, the question
11 really centers on the uniqueness of this property and
12 is it possible to build a conforming building on this
13 property without having to grant these variances and
14 that still has to be proven to me and I'll start going
15 into some of those questions.

16 Now I guess along that line, or actually I
17 want to ask one smaller question, on the original
18 building what was the height at the back? Was there
19 one story on the back portion of the house because it
20 kind of looks that way from the photograph?

21 MR. BANDON-BIBUM: One story less?

22 MR. MAY: If you look at the one
23 photograph here on the original building, maybe it's
24 just the angle at which it was shot, but it kind of
25 looks --

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1 MR. BANDON-BIBUM: It's the angle in which
2 it was shot.

3 MR. MAY: Then it really doesn't make
4 sense because it lines up with the back porch of the
5 house next door which is only a two-story house.

6 MR. BANDON-BIBUM: What was the question?

7 MR. MAY: It just seems to me that this
8 was a two-story house or was a two-story portion at
9 the back and not three stories because it lines up
10 with the back of the house next door whereas it does
11 not line up with the front of the house next door. Do
12 you know what I mean?

13 MR. BANDON-BIBUM: And your question is?

14 MR. MAY: You think it originally was
15 three stories in the back?

16 MR. BANDON-BIBUM: Absolutely.

17 MR. MAY: It's a really deceptive
18 photograph. It doesn't show it.

19 CHAIRMAN GRIFFIS: This had a fire,
20 correct?

21 MR. BANDON-BIBUM: It had a fire and the
22 roof seemed to be not structurally sound so it was
23 condemned and erased.

24 CHAIRMAN GRIFFIS: Okay.

25 MR. MAY: Okay, you said that you made

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1 some attempts to lay out of a plan that gives you a
2 parking space and you couldn't find any way?

3 MR. BANDON-BIBUM: It's practically
4 impossible barring the configuration of that site as
5 you can see.

6 MR. MAY: Is that based on the assumption
7 that you would re-use the existing foundation or are
8 you talking about realizing anything at all?

9 MR. BANDON-BIBUM: Anything at all, that's
10 correct.

11 MR. MAY: I think your case would be more
12 persuasive if we actually some diagrams that showed
13 that because when I look at how wide the property is,
14 even though it's an unusual shape, I could draw a
15 triangle on that that conforms to the rear yards and
16 side yards and gives you a parking space. It gives
17 you quite a lot of buildable area.

18 MR. BANDON-BIBUM: If you look at the plan
19 in front of you and the back side of the bedroom.
20 That bedroom, as you can see, is basically about 14
21 feet.

22 MR. MAY: Which bedroom?

23 MR. BANDON-BIBUM: In the rear. In the
24 rear.

25 MR. MAY: Okay.

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1 MR. BANDON-BIBUM: That's 14 feet.

2 MR. MAY: Right.

3 MR. BANDON-BIBUM: You require 19 feet for
4 parking. So even eliminating that whole spot, that
5 whole space, still does not give you parking, will not
6 give you parking.

7 MR. MAY: But you're not building to the
8 property line there with the bedroom, right?

9 MR. BANDON-BIBUM: No. We have about four
10 feet there. That will be 18 feet.

11 MR. MAY: Okay. That seems to make sense
12 to me.

13 A fair amount of the argument does rely on
14 this notion that you have to reuse the existing
15 foundation, is that right? Did I read that correctly?

16 MR. BANDON-BIBUM: Not necessarily. It's
17 basically the configuration of the site dictates the
18 design of the facility. The site, as you see, apexes
19 to the rear. That initially, frankly, the initial
20 design of this site, I give him a lot of credit for
21 having been so innovative in coming out with the use
22 of the space for the space.

23 MR. MAY: But I read in the materials that
24 we received that emphasizes reusing existing
25 foundation as a money saving device essentially. Now

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1 without that, the cost of building this would become
2 prohibitive?

3 MR. BANDON-BIBUM: That is one of the
4 several reasoning behind what we have for this site.

5 It's not the main reason behind it, not at
6 all. Just one of the -- the configuration of the site
7 is the main reasoning behind this variance request.
8 Because to put back, as I indicated, number one, you
9 will not be able to make it a dwelling area. People
10 will not be able -- you cannot build something so
11 small and live in it. As you can see from the rear,
12 they took out an entire living quarters. It does not
13 even give you parking, so where do you go? You go
14 further in. The more you go in, the more it becomes
15 impractical for a dwelling facility.

16 MR. MAY: Okay. Again, it's -- I'm not
17 entirely convinced of this without having seen a
18 diagram that basically draws the setbacks and draws
19 the parking requirements and things like that. Maybe
20 you have that. But it's not in what we received.

21 MR. BANDON-BIBUM: No. Excuse me. As
22 presented on the plan, a bedroom.

23 MR. MAY: No, I understand the argument
24 that you made before, but it would help prove your
25 point to me and maybe I'm the only one who has this

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1 issue, but it would help prove the point to me if
2 there was a diagram that simply showed well, this is
3 how big the parking space is and therefore I can't fit
4 it on the site.

5 What we're having, what we have here is
6 essentially your statement that it is so simply
7 because it is so and that you've looked at it. I need
8 to see a little bit more proof of that. And I'm not
9 saying that it doesn't exist. I think there probably
10 is a case for variance of some sort here. I'm not
11 sure that this is all necessary. And that's where I'm
12 just a little bit skeptical about it.

13 MR. BANDON-BIBUM: I recognize your
14 concern, however, I want to go back to the plans where
15 parking is 9 by 19. I do have 14 feet of bedroom
16 space which if eliminated does not still give you
17 parking. That is the box of the potential parking, 9
18 by 19.

19 MR. MAY: Of course --

20 MR. BANDON-BIBUM: I'm not sure what
21 you're asking for, another piece of paper that would
22 delineate the 9 by 19.

23 MR. MAY: Not just 9 by 19, but the side
24 yard setback and the rear yard setback and everything
25 else to see what's left as buildable area and then

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1 when we look at the buildable area and we see that in
2 comparison to the overall site then we can say well,
3 yes, you're absolutely right, you need these variances
4 in order to make a reasonable building, but it's not
5 -- what you've demonstrated so far is that the
6 building that you've designed can't be built without
7 variances, but it doesn't prove to me, at least, that
8 no building could be built, no reasonable building
9 could be built without the variances.

10 But I'm only one person on the Commission
11 and I'm not sure that anybody else is really that
12 concerned by this issue.

13 MR. ETHERLY: Mr. Chair, if I may? I
14 believe Mr. May is raising some interesting points. I
15 think the key part of his inquiry was at issue,
16 reasonableness, and what are you left with if you do
17 try to work within the existing constraints of the
18 zoning regs.

19 Would the Applicant be able to give a
20 sense of what are the rears of the properties that
21 abut the alley as you move down that alley away from
22 the subject property, what do the rear of those
23 properties look like? From one of the pictures that's
24 included in the Office of Planning report and I'm
25 looking on page 3 for the benefit of my colleagues,

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1 I'm not certain that the Applicant might have a copy
2 of that report with them, but you can see a little bit
3 of the rear of the next door property as you move down
4 the alley. It appears that there's a porch kind of
5 under some living space at the rear of that building.

6 Are most of those properties along the alley built to
7 the edge of the alley?

8 MR. BANDON-BIBUM: Yes. The adjacent
9 building picks up say approximately 4 feet from the
10 rear of east of this property and other ones stay
11 straight on back all the way back towards Georgia
12 Avenue.

13 This side is really unique.

14 MR. ETHERLY: I mean as you look at the
15 overhead perspective included in the Office of
16 Planning Report at Attachment 1, I mean once again I
17 highlight, I believe the Applicant has made an
18 important statement and that is because you're at the
19 end of that alley and because of the triangular shape
20 of the lot, you don't necessarily have the same
21 benefit of the full lot space and once again it's part
22 of the reason why we're here, because you can see a
23 number of the properties as you move down the alley
24 away from New Hampshire Avenue, a number of those
25 properties do have parking spaces involved, but

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1 they're once again working with the benefit of a
2 full-sized lot.

3 MR. BANDON-BIBUM: That's correct.

4 MR. ETHERLY: Once again, I think Mr. May
5 has raised some interesting points, but I think, I mean
6 I can literally just see the outcome as you look at
7 that back bedroom and you look at the space that's
8 working. This is one Member -- you try to fit and you
9 draw it in and you try to fit the requisite parking
10 space in there, you lose that bedroom. The questions
11 come once again, you lose that bedroom plus some
12 additional things. So I hear where you're going, Mr.
13 May, but I'm not quite there.

14 I think it's pretty apparent, the impact
15 that would have on the project. Now perhaps that
16 raises a question well, is it reasonable to have a two
17 bedroom unit, perhaps without an additional closet or
18 without a bathroom because I think you do some damage
19 to some of those locations on the first floor. I
20 agree with you. That's probably the nut of the
21 inquiry there in terms of can you still get away with
22 building a property that works as a residential space.

23 So just thinking out loud, Mr. Chairman.
24 Thank you.

25 MR. MAY: I want to mention one other

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1 thing. I was handed a note indicating that a compact
2 car space can actually be 8 by 16. I'm not sure if
3 that can be used in this circumstance or not, but I
4 won't go there, whether it's 16 or 19, it's still
5 going to have the same impact and I guess I should
6 apologize for my own background which makes me want to
7 look at things like this and try to lay it out myself
8 and see if it can work. If I ever actually did that
9 with all these cases, I would never get anything done.

10 But I'm just a little bit skeptical that
11 you couldn't do a reasonable building without these
12 variances.

13 One other thing that I have to comment on
14 and that is on the application. It was stated that
15 the cost of constructing this is going to be \$85,000.

16 Is that based on a real estimate?

17 MR. BANDON-BIBUM: That was a guesstimate.

18 CHAIRMAN GRIFFIS: Total construction
19 cost?

20 MR. MAY: Because it's going to be a lot
21 more than that.

22 That's sort of where the foundation costs
23 --

24 MR. BANDON-BIBUM: I recognize that.

25 MR. MAY: Check something off for me

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1 because yeah, sure, another \$10,000 in foundation work
2 on an \$85,000 budget is a big hit, but \$85,000, I mean
3 this is a 4,000 square foot building. If you can
4 build anything in Washington for less than \$100 a
5 foot, I'm amazed.

6 MR. BANDON-BIBUM: Absolutely.

7 CHAIRMAN GRIFFIS: We should be clear also
8 that anything that's showing on the design documents
9 now is what we would approve and it would not be able
10 to be changed.

11 MR. BANDON-BIBUM: Yes.

12 CHAIRMAN GRIFFIS: We're talking about a
13 masonry elevation, a primary elevation.

14 MR. BANDON-BIBUM: Yes.

15 CHAIRMAN GRIFFIS: Let's revisit the
16 stories definition. We do have an interpretation that
17 I believe we should follow and it is, if we look at,
18 it's revisit everything. That is, we need to go to
19 the definition of story which establishes that if you
20 start counting stories from the measuring point, the
21 same measuring point as you established the height,
22 that is essentially from the front to the grade, in
23 that the definition of story then goes on to indicate
24 the purpose of determining the maximum number of
25 stories permitted, the number of permitted stories,

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1 the term story shall not include cellar, stairs,
2 elevator, penthouses or other roof structures, that it
3 does not identify basement, meaning it does not take
4 basement out of a defined permitted story. It is the
5 interpretation and I believe one well based, that a
6 basement does, in fact, count as a story. Meaning
7 this is a 4 story building, which, if I can digress
8 gain as I did in the very beginning, it seems to
9 confound me that in an R-4 regulations would not allow
10 us build townhouses that defines some of the most
11 elegant and define the elements of Washington, D.C.,
12 these neighborhoods we drive through that we love, we
13 cannot recreate. But that is a digression.

14 So we need to take this up and amend the
15 request. I do not believe that this would prejudice
16 anybody in any way as we have variances in front of
17 us. This includes an area variance of Section 400.1
18 to allow a 4 story structure which is also
19 interesting. Well, there it is.

20 Mr. May, do you concur?

21 MR. MAY: Yes, I think a basement does
22 count as a story and it's a 4 story building and that
23 we would have to consider a variance.

24 CHAIRMAN GRIFFIS: Okay, any other Board
25 Members have questions, concerns?

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1 Does the Applicant want to address that?
2 You don't have to. You understand what I've just
3 said?

4 MR. BANDON-BIBUM: Yes, I do appreciate
5 that interpretation.

6 CHAIRMAN GRIFFIS: I think it's fairly
7 clear, whether we like it or not is another question,
8 but not one in our jurisdiction.

9 Let's move on then. Is there anything
10 else you'd like to add to the application at this
11 point? I want to go to Office of Planning. We have
12 about 10 more, 15 more minutes on this. We also need
13 to hear from people giving testimony for the entire
14 application and then you will be allowed closing
15 remarks. So if there's anything else right now?

16 Very well. Let's go to Office of Planning
17 then for their report.

18 Do you have a copy of the Office of
19 Planning report?

20 MR. BANDON-BIBUM: No.

21 CHAIRMAN GRIFFIS: Okay.

22 MR. MORDFIN: Good morning, Mr. Chairman
23 and Members of the Board. My name is Stephen Mordfin
24 with the Office of Planning and this is BZA
25 Application No. 16976 for 756 Park Road, N.W. The

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1 Applicant is requesting three areas variances so as to
2 construct a flat on the subject project on an existing
3 foundation. The subject property is located within
4 the R-4 District and flats are permitted as a matter
5 of right. The requested variances are one, to reduce
6 the number of parking spaces from one to zero; two, to
7 reduce the minimum rear yard dept from 20 feet to an
8 average of 9.335 feet; and three, to reduce the
9 minimum side yard setback from 8 feet to 4 feet.

10 The subject property is unusually shaped.
11 it is triangular with one side abutting a public
12 street and one side abutting a public alley. Also,
13 the property narrows from the front to the rear so
14 that almost one third of the depth of the property is
15 narrower than the minimum required of 18 foot width.

16 The proposed building is to be setback
17 almost 12 feet from the front lot line. Although this
18 area is large enough to accommodate one parking space,
19 parking spaces are not permitted to the front of the
20 buildings, shifting the building forward to the front
21 lot line could then allow for a parking space
22 elsewhere on the site, however, this would then force
23 the proposed building and a quarter of the remainder
24 of the dwellings on that side of the block, resulting
25 in a potentially awkward situation.

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1 Due to the triangular shape of the
2 property, this site has little opportunity for rear
3 yard. It is this lack of opportunity for a rear yard
4 that is the practical difficulty in the provision of a
5 20-foot rear yard. The proposed side yard setback
6 varies between 4 feet and 16 feet. The subject
7 property narrows towards the rear of the site on the
8 side of the property that the 8 foot side yard setback
9 is required, making it difficult to provide the 8 foot
10 side yard.

11 The Office of Planning recommends approval
12 of the three area variances as submitted by the
13 Applicant. That concludes the report from the Office
14 of Planning.

15 CHAIRMAN GRIFFIS: Good, thank you very
16 much. Obviously, you're here and you have heard the
17 discussion about the stories. Do you have any comment
18 or any concern about adding that as one of the area
19 variances to this application?

20 MR. MORDFIN: I don't have any concerns
21 about adding that as an additional variance based on
22 the interpretation of what the story is, that
23 constitutes a fourth one.

24 CHAIRMAN GRIFFIS: Okay. I mean clearly
25 it's the same design that you looked at and if I

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1 understand you correctly.

2 MR. MORDFIN: Yes.

3 CHAIRMAN GRIFFIS: Okay. Any questions of
4 the Board for the Office of Planning?

5 Yes?

6 MR. ETHERLY: Mr. Chair, with the idea of
7 the additional story in mind, the Office of Planning
8 report has provided some excellent pictures which give
9 us a sense of perspective as it relates to the street
10 front, front scape of the block as you go down.

11 Is the Office of Planning in any position
12 to comment on what the general height appears to be
13 for adjacent properties as you move down the block?

14 MR. MORDFIN: I have something from our
15 office which indicates not the height in feet, but
16 rather the height in stories of the adjacent buildings
17 as you go down the street.

18 And as you go down toward -- from New
19 Hampshire towards Georgia, they are 2 story rowhouses
20 as indicated on this sheet.

21 MR. ETHERLY: Thank you. Thank you, Mr.
22 Chair.

23 MR. MAY: I had one quick question. Is
24 this in any kind of historic district?

25 MR. MORDFIN: No, it's not.

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1 CHAIRMAN GRIFFIS: Anything else for the
2 Office of Planning?

3 Does the Applicant have any cross
4 examination of the Office of Planning?

5 MR. BANDON-BIBUM: Thank you, Mr. Mordfin.
6 Thank you for your presentation. We don't have any
7 questions. We agree with your recommendation.

8 CHAIRMAN GRIFFIS: That's a pretty rough
9 cross examination.

10 (Laughter.)

11 CHAIRMAN GRIFFIS: Okay, you have the copy
12 of the planning report, correct, we just provided that
13 to you?

14 MR. BANDON-BIBUM: Yes.

15 CHAIRMAN GRIFFIS: If there's no other
16 questions, then let's move on.

17 Very good, Ms. Renshaw, the Government
18 reports.

19 VICE CHAIRPERSON RENSHAW: We have a
20 resolution from ANC-1A signed by Charles E. Matiella,
21 Chair, and the resolution was adopted on January 8th
22 at ANC-1A's meeting for which due notice was given and
23 a quorum present. And ANC-1A states that whereas the
24 property has been vacant and condemned and the
25 building demolished, whereas there never was a parking

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1 space associated with the building nor a side yard nor
2 a rear yard space meeting zoning regulations, whereas
3 there is a proposal to rebuild this site for two 4-
4 bedroom units, returning its use and contributing to
5 the revitalization of that block of Park Road, be it
6 resolved that ANC-1A supports the BZA variances
7 requested for this property.

8 CHAIRMAN GRIFFIS: Good, thank you. Board
9 Members any comments, questions of the ANC report we
10 just heard? It was timely filed.

11 Does the Applicant have any comments or
12 questions on the ANC report?

13 MR. BANDON-BIBUM: We happened to be
14 present at that meeting, the case was presented and
15 indeed, we agree with the recommendation.

16 We're happy.

17 CHAIRMAN GRIFFIS: As we might assume.

18 MR. BANDON-BIBUM: Yes.

19 CHAIRMAN GRIFFIS: Very well. That's all
20 the notes I have of any Government reports, any ANC
21 reports attendant to the application. Are you aware
22 of any other Government agencies that reported on this
23 application?

24 MR. BANDON-BIBUM: None at all.

25 CHAIRMAN GRIFFIS: I can slow down if you

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1 need me to say that, but I figured it wasn't.

2 Let's us go then to testimony from
3 persons. Is there anyone here to give testimony
4 attendant to Application 16976, either in support or
5 in opposition?

6 Anyone giving testimony today?

7 Yes. You're going to need to come
8 forward. Have you been sworn in?

9 Very well, if you wouldn't mind, just come
10 up to the table. Also, have you filled out witness
11 cards?

12 I'll have you just come over on this side
13 of the table and if you just remain standing, if you
14 give your attention to the staff, they'll swear you
15 in.

16 MS. BAILEY: Please raise your right hand.
17 Do you solemnly swear or affirm that the testimony
18 you are about to give in this proceeding will be the
19 truth, the whole truth and nothing but the truth?

20 (Witnesses were sworn.)

21 Thank you.

22 (Pause.)

23 CHAIRMAN GRIFFIS: Good, thank you. I
24 would just have you introduce yourself, name and
25 address for the record, whenever you're ready.

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1 MR. PHELPS: I live 755 Park Road. My
2 name is Leonard Phelps. And I've got some pictures of
3 when they tore the building down, damaged my place,
4 never come back to fix it. Now they're going to come
5 back and try to build and I've got the pictures and
6 you can look at them. You'll see.

7 So I don't want her to hook on to my
8 house, to build no more because they're old houses and
9 they will not stand the pressure. You can look at
10 these pictures what she do and you can tell me if I'm
11 right.

12 CHAIRMAN GRIFFIS: Okay. Let me just be
13 clear. If you put those in now, you're not getting
14 those back.

15 MR. PHELPS: Huh?

16 CHAIRMAN GRIFFIS: If you submit those
17 into the record, you're not getting them back or you
18 can make copies of it and then keep the originals.

19 Do you understand? If I accept that into
20 the record right now --

21 MR. PHELPS: I'll make some copies if you
22 want me to because I want you to see these and see the
23 damage that she's done to my house and six month ago
24 they ain't come back to fix it.

25 VICE CHAIRPERSON RENSHAW: Just a

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1 question. Is this Mr. Mondale?

2 MS. BAILEY: No, Mr. Phelps.

3 MR. PHELPS: P-H-E-L-P-S.

4 VICE CHAIRPERSON RENSHAW: All right.

5 CHAIRMAN GRIFFIS: Mr. Phelps, let me
6 address that issue specifically and that is in terms
7 of any sort of damage or destruction that happened
8 with the demolition. This Board is very concerned
9 with that and clearly would want to do everything that
10 we possibly could. We have no jurisdiction to do
11 anything about it.

12 Do you understand?

13 MR. PHELPS: You mean to tell me she can
14 be a --

15 CHAIRMAN GRIFFIS: No, I'm not saying she
16 can do or not do. What I'm saying is this Board
17 cannot do anything about that situation.

18 MR. PHELPS: Okay, only thing I'm
19 concerned of, I do not worry about what she build.
20 She do whatever she want, but she going to have to fix
21 my house back, the side of it as it were.

22 CHAIRMAN GRIFFIS: Right.

23 MR. PHELPS: Do you understand?

24 CHAIRMAN GRIFFIS: I do.

25 MR. PHELPS: So if she had done what she

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1 supposed to have done, I would have had aluminum
2 siding on my house for the winter. She just left it
3 all vacant, tore up and everything. I had to pay to
4 put a roof on my house. It cost me \$10,000.

5 CHAIRMAN GRIFFIS: The Agency and body
6 that can take care of that is DCRA. Did you call a
7 building inspector? Did you have that looked at? Did
8 you look at the permits for the demolition?

9 DCMR and what we'll do before you leave,
10 staff will give you numbers. That is in Enforcement
11 and Inspection Division of Building.

12 Our jurisdiction, all I can look at, all
13 we can look at today is the application before us in
14 terms of what is proposed to be built.

15 MR. PHELPS: Okay.

16 CHAIRMAN GRIFFIS: Is there any comments
17 you have -- you mentioned in your opening that you
18 didn't want her to attach to your building.

19 MR. PHELPS: Not on to mine, no.

20 CHAIRMAN GRIFFIS: Now you share a common
21 lot line wall or party wall, is that correct?

22 MR. PHELPS: Yes.

23 CHAIRMAN GRIFFIS: And what do you think
24 will be the detriment in bringing a building up to
25 where it originally was and attaching to that party

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1 wall?

2 MR. PHELPS: They'll tear it down just
3 like they did now.

4 CHAIRMAN GRIFFIS: So you're concerned
5 with the construction of how it actually happens and
6 that your wall might be --

7 MR. PHELPS: That building burned down.
8 It fell down from floor to floor. It knocked the
9 bricks out of my wall.

10 CHAIRMAN GRIFFIS: I see.

11 MR. PHELPS: And fell down. Kept on -- I
12 never could get in touch with nobody.

13 CHAIRMAN GRIFFIS: Okay.

14 MR. PHELPS: Didn't even know who she were
15 or whoever it was. They come to tear the building
16 down. She come on the scene, but you never could get
17 no idea out of her. One morning she come by --

18 CHAIRMAN GRIFFIS: Do you think you're
19 better off keeping it the way it is, an exposed party
20 wall or do you think that the new construction that's
21 proposed would be beneficial?

22 MR. PHELPS: The only thing I'm saying I
23 do not want her to hook on to mine. I want just
24 partied up and I'm going to put aluminum siding on it.

25 Whatever she puts on after that I want room between

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1 my house and hers so I can work on the side of mine.

2 CHAIRMAN GRIFFIS: Okay.

3 MR. PHELPS: If she wants to buy mine, she
4 got an opportunity to buy.

5 CHAIRMAN GRIFFIS: Indeed. So you want
6 her to set back on her property?

7 MR. PHELPS: Her have to. I ain't letting
8 her pass on to mine.

9 CHAIRMAN GRIFFIS: You understand in terms
10 of the zoning regulation, she has a right to attach to
11 that party wall because part of it is on her property
12 and she can build up to her property line.

13 MR. PHELPS: They put a fence up. I
14 couldn't get in there and do anything. They joined it
15 right to my house and the back of my house and fenced
16 it up. I couldn't do anything about it. I even got
17 rats in my basement on her account.

18 CHAIRMAN GRIFFIS: Right, okay. I
19 understand this has not been a good situation in terms
20 of its current state.

21 Any questions from the Board? Is there
22 anything else you'd like to tell us about the proposed
23 building?

24 Do you have a copy of the plans of what's
25 being proposed?

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1 MR. PHELPS: No.

2 CHAIRMAN GRIFFIS: Okay. I'm going to ask
3 the Applicant if they would provide you with a copy of
4 the plans.

5 Have you had any chance to look at it? Do
6 you know what they're proposing to build?

7 MR. PHELPS: No.

8 CHAIRMAN GRIFFIS: Okay. Anything else
9 you'd like to add, Mr. Phelps?

10 MR. PHELPS: That's all I have to say. I
11 want to say is I want them to fix my house up, the
12 side of it.

13 CHAIRMAN GRIFFIS: I think that's very
14 important.

15 MR. PHELPS: Before she starts to build
16 anything.

17 CHAIRMAN GRIFFIS: Ms. Renshaw?

18 VICE CHAIRPERSON RENSHAW: Mr. Phelps,
19 yours is a single family home?

20 MR. PHELPS: Yes ma'am.

21 VICE CHAIRPERSON RENSHAW: And how many
22 floors, how many stories do you have in your home?

23 MR. PHELPS: Two.

24 VICE CHAIRPERSON RENSHAW: Two.

25 MR. PHELPS: I got the basement, first

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1 floor and the second. I got a basement under it.
2 Then the first floor, then the second floor.

3 VICE CHAIRPERSON RENSHAW: All right.

4 CHAIRMAN GRIFFIS: You don't have an attic
5 level then? Do you have small windows in that, but
6 it's not occupied?

7 MR. PHELPS: There's an alley in the back.

8 CHAIRMAN GRIFFIS: The attic.

9 MR. PHELPS: We have an attic.

10 CHAIRMAN GRIFFIS: But there's not a room
11 or anything?

12 MR. PHELPS: Not no room, nothing like
13 that.

14 VICE CHAIRPERSON RENSHAW: I'm just going
15 to hold up -- it's Exhibit 4. Mr. Phelps, that is
16 your home right there?

17 MR. PHELPS: Yes ma'am.

18 VICE CHAIRPERSON RENSHAW: And do you
19 understand that what has been discussed is a building
20 that will go up four stories, I mean it's the basement
21 and three stories above, so when you look at the plans
22 that you will be provided, you will see that there is
23 a basement level and then there are three stories
24 above that, versus your house which has a basement and
25 two stories.

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1 CHAIRMAN GRIFFIS: She's saying do you
2 realize the proposed construction will match the
3 height of the building that used to be there?

4 MR. PHELPS: No. We weren't aware of
5 that.

6 CHAIRMAN GRIFFIS: You weren't aware of
7 that. Okay.

8 MR. PHELPS: The front part was up over
9 mine, the front part of it went up over the top of
10 mine.

11 CHAIRMAN GRIFFIS: Right.

12 MR. PHELPS: When they tore it down, they
13 left all of that and there come a wind storm one
14 evening it throwed it all over on mine and just
15 pulled the roofing clean down off of mine.

16 CHAIRMAN GRIFFIS: Right.

17 MR. PHELPS: They didn't tear it down
18 properly. I told them when they're tearing it down,
19 you all shouldn't leave that up there. You see the
20 front part of that picture you showed me, that whole
21 thing was up five foot above that.

22 CHAIRMAN GRIFFIS: Right.

23 VICE CHAIRPERSON RENSHAW: We have a
24 picture.

25 MR. PHELPS: Yes ma'am.

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1 CHAIRMAN GRIFFIS: Do you have any
2 comments about the new construction being built to the
3 same height that the old structure was? Do you have
4 any comments about that?

5 MR. PHELPS: The only thing I'm concerned
6 with, I don't have any problem with what she builds or
7 what she do, but I don't want it attached to mine.

8 CHAIRMAN GRIFFIS: Okay.

9 MR. PHELPS: Because the old houses and it
10 ain't going to take much to do damage to it, you
11 understand.

12 CHAIRMAN GRIFFIS: If the building was to
13 attach, wouldn't that save you cost of having to
14 weatherproof your exposed wall and wouldn't it save
15 you energy costs in terms of the loss of heat out of
16 that? So that would be a positive aspect for having a
17 structure attached to your building.

18 MR. PHELPS: I do not want it because when
19 it started falling down, if she got in touch with me,
20 she could have avoided it --

21 CHAIRMAN GRIFFIS: I understand. I
22 understand that the -- what's happened to date was not
23 good. And we take that with great seriousness.
24 However, we can't do anything about that.

25 MR. PHELPS: I understand.

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1 CHAIRMAN GRIFFIS: What we need to look at
2 is the future.

3 So I'm clear, you clearly don't want
4 something attached because it's been problematic in
5 the past and there's been great damage that hasn't
6 been remedied.

7 Okay, yes, did you have also some
8 testimony to give?

9 UNIDENTIFIED SPEAKER: No, I was just --

10 CHAIRMAN GRIFFIS: Would you mind turning
11 on your mic?

12 UNIDENTIFIED SPEAKER: No, I was just with
13 him, you know, addressing his concerns because like he
14 was saying he really don't mind her building, re-
15 building there. It's just the point of fixing what
16 they already destroyed.

17 CHAIRMAN GRIFFIS: Right. In that you're
18 all here today, I would certainly hope that you would
19 take a moment after this is done, that you discuss
20 that. I think it's very important. There are
21 remedies to that that you have at your disposal. As I
22 said, staff will let you know, but I would take the
23 opportunity to talk to the Applicant and their
24 representative and deal with that situation.

25 Any other questions from the Board?

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1 Does the Applicant have any cross
2 examination of the testimony they've just heard?

3 Cross examination of the witness.

4 MR. BANDON-BIBUM: Frankly, Mr. Phelps, I
5 do regret that your property has been damaged due to
6 the demolition of the property of 757 and as designed,
7 this building is going to have --

8 CHAIRMAN GRIFFIS: Cross examination here.
9 You're going to ask him questions based on his
10 testimony? You're making statements. I need a
11 question.

12 MR. BANDON-BIBUM: Question. He's
13 indicating that he doesn't want the proposed building
14 to be attached to the common wall. I just want to
15 assure him that --

16 CHAIRMAN GRIFFIS: I don't need
17 assurances. I need a question for cross examination.

18 MR. BANDON-BIBUM: Frankly, I don't have a
19 question for him.

20 CHAIRMAN GRIFFIS: Okay. Very well.

21 MR. BANDON-BIBUM: He has a concern which
22 has to be addressed.

23 CHAIRMAN GRIFFIS: Good. Is there anyone
24 else here today attendant with this application 16976
25 to give testimony in support or in opposition? Not

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1 seeing anyone come to the table, Mr. May, did you have
2 a question?

3 MR. MAY: I just had one final question of
4 the Applicant --

5 CHAIRMAN GRIFFIS: Let me excuse the
6 witnesses then and thank you both for being down here
7 this morning.

8 This is what I would do. At this point, I
9 would take the opportunity to go into the office right
10 adjacent to this. Take a look at that. Get the DCRA
11 numbers from the staff there. If you feel it's
12 important that those be submitted, then you can make
13 copies in the office. And then they can provide it to
14 the Applicant and they'll provide it into the record.

15 You can take care of all of that there. Again, I
16 thank you very much.

17 VICE CHAIRPERSON RENSHAW: Mr. Phelps,
18 just be sure that you get copies of some of the
19 material that's in the file that would be of interest
20 to you such as the Office of Planning report that you
21 can take a look at and review.

22 CHAIRMAN GRIFFIS: And don't go away if
23 you want to take the opportunity to talk to the
24 Applicant after we finish our hearing on this.

25 Mr. May?

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1 MR. PHELPS: Okay, thank you.

2 MR. MAY: One question I have for the
3 Applicant was how long have you actually owned the
4 property?

5 MS. AWASUM: Two and a half years.

6 MR. MAY: Two and a half years?

7 MS. AWASUM: Yes.

8 MR. MAY: So you bought it after the fire,
9 is that right?

10 MS. AWASUM: Yes.

11 MR. MAY: Okay, thanks.

12 CHAIRMAN GRIFFIS: Quick clarification.
13 On the photograph, we're seeing a fence. Is that
14 fence on the property line?

15 MR. BANDON-BIBUM: The fence was done to
16 protect the demolished site.

17 CHAIRMAN GRIFFIS: But is it on the
18 property line?

19 MR. BANDON-BIBUM: It is on the property
20 line, basically.

21 CHAIRMAN GRIFFIS: Well, if it is, either
22 the photograph is incorrect or you've got a smaller
23 property than you actually think you do.

24 VICE CHAIRPERSON RENSHAW: Yes.

25 CHAIRMAN GRIFFIS: It looks to me that

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1 there is -- and it may be the perspective of the
2 photograph, the fence looks like it's several feet
3 from the rear of the existing structure which means
4 there is no larger portion that sets back. It doesn't
5 look like you actually have the depth of 77 feet on
6 that.

7 Anyway, it's not pertinent. We take it as
8 what the property line is showing on the drawing. I
9 was just interested to see.

10 Okay, then there it is. We do have a
11 submission of a letter of concern from Ms. Mundell,
12 No. 24. Are you aware of that letter in the record?

13 VICE CHAIRPERSON RENSHAW: Ms. Mundell is
14 located at 3513 New Hampshire Avenue.

15 MR. BANDON-BIBUM: 35?

16 VICE CHAIRPERSON RENSHAW: 3513 New
17 Hampshire Avenue.

18 And it's just a very short letter to the
19 Board having some concerns. The back of her home
20 faces your property between the alley. She has a
21 garage and she parks her vehicle and she doesn't want
22 it blocked by heavy equipment and claimed that her
23 garage was blocked at the time that the property --
24 the building was torn down and she sustained some
25 damage to her garage and cement.

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1 CHAIRMAN GRIFFIS: Thank you, Ms. Renshaw.
2 And again, in reading this, clearly there is major
3 concern with the past history of this, but also the
4 construction. As you know, we look at land use and
5 permit issues. Construction is something that again
6 is overseen in the jurisdiction of another agency, but
7 I think this is important for you to understand if
8 this project goes forward, that the neighbors are very
9 concerned about access and being able to use their own
10 properties and what might happen during construction
11 and after.

12 Okay, I don't have any indication of
13 anything else submitted into the record in terms of
14 testimony or reports. Are you aware of anything that
15 we have not acknowledged?

16 MR. BANDON-BIBUM: No, not that I know of.

17 CHAIRMAN GRIFFIS: Okay. In which case I
18 will turn it over to you for any closing remarks that
19 you might have.

20 MR. BANDON-BIBUM: On behalf of Ms.
21 Owasum, I really want to thank the Chairman and the
22 Board Members and obviously the Zoning Office. I want
23 to thank you for taking the time to listen to us as we
24 present our case here for this construction of the
25 proposed building at 757 Park Road.

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1 Indeed, the building will only enhance and
2 improve that neighborhood. I happened to have grown
3 up around that area. I happen to be at Howard
4 University where the bank at Georgia Avenue used to be
5 my bank and indeed, when she called me to assist in
6 the process of developing this property I was indeed
7 thrilled that here we are back in the District of
8 Columbia trying to improve on this area. And I think
9 it's very vital that this property be realized and
10 indeed our request to the Board is to give it a
11 favorable approval of this request, indeed, again,
12 without much ado.

13 MS. AWASUM: Thank you very much.

14 CHAIRMAN GRIFFIS: Okay, clearly as you
15 know, and you've laid out, we have specific tests that
16 we need to look to be proven. As you've stated, I
17 don't think anyone could refute and I certainly
18 wouldn't that this does serve the public good. It
19 seems to be a very -- well, there it is, in terms of
20 the history, the existing structure that was there,
21 trying to bring that back, I think is very important.

22 Also, trying to hold that end of the row and the
23 corner and as is defined with the street and the alley
24 frontage.

25 We have run across a few issues of concern

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1 for the Board, however. And so let me ask the Board
2 first whether they're prepared to go forward today on
3 this or do we need to ask for additional information
4 and set this for decision making which would be our
5 first meeting on March 4?

6 What I have heard from Board Members is
7 perhaps we need some diagrams showing the studies that
8 were done in terms of the configuration and showing
9 how it is, in fact, practically difficult, if not
10 impossible to put together a residential structure on
11 this lot if all of the requirements from the
12 regulations were to be complied with.

13 Anyone else have any comments?

14 MR. MAY: Well, having made that request
15 for that particular piece of information, based on
16 what we've heard today, if the Board wanted to proceed
17 today, I would be prepared to do so without that
18 specific diagram based on the testimony that's been
19 presented.

20 CHAIRMAN GRIFFIS: Okay, and we might
21 predict how you would, in fact, proceed with this.

22 I think it would be advantageous to the
23 Applicant if we set this for decision making on the
24 4th of March. Let us outline, in fact, what we think
25 will be pertinent addition to the application for our

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1 own deliberation.

2 Mr. May, did I summarize well enough for
3 your concern in terms of diagrams and floor plan
4 layouts?

5 MR. MAY: No, if we are going to request
6 additional information, I'd like to throw a couple of
7 other things in there, too.

8 CHAIRMAN GRIFFIS: Throw them out there
9 for discussion.

10 MR. MAY: Okay, I'm concerned about the --
11 about how the site actually lays out, based on what
12 you cited in terms of where the fence is and in light
13 of Mr. Phelps' testimony, so I think that a slightly
14 more detailed site plan which actually shows the
15 property line in relationship to the property next
16 door, so we know that, in fact, we're dealing with a
17 party wall and not a lot line wall, and that we
18 address that in the process of showing this more
19 developed site plan, we actually can see more
20 precisely how the property lays out relative to the
21 alley.

22 It's the way the building is drawn on
23 there that doesn't give sufficient information in my
24 mind.

25 MR. BANDON-BIBUM: This is part of the

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1 submission.

2 MR. MAY: I understand that and I've seen
3 that and looked at it and done calculations on it
4 myself. So it's just a little bit more information
5 and again that's brought up primarily by Mr. Phelps'
6 concern.

7 The second thing is that I -- on second
8 look at the information that was presented, the
9 documents, the drawings themselves seem to be -- seem
10 to contradict some of the written material that was
11 submitted in that the drawings show new foundation
12 details and the written submission indicates a reuse
13 of the existing foundation and so I'd like to get that
14 a little bit clearer. Looking at the photographs, it
15 makes me kind of wonder whether, in fact, there is
16 still a good foundation there. Because I think that
17 if there is a case for this particular building over
18 another design, it is tied somewhat to the assertion
19 that you want to follow the old footprint because we
20 all, I think, appreciate the value of the District's
21 existing older housing stock and if this is a true
22 attempt to reproduce that, then I'd like to know with
23 greater certainty that that, in fact, is what's going
24 to happen here.

25 Anyway, so that's -- I think that's it for

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1 the concerns that I had. It's a diagram that analyzes
2 the setback requirements. It's a more detailed site
3 plan with the property next door shown more clearly
4 and some clarification of the foundation situation.

5 So those are three pieces I'd like to see.

6 VICE CHAIRPERSON RENSHAW: Mr. Chairman,
7 is there any additional relief that's need because of
8 the number of stories?

9 CHAIRMAN GRIFFIS: Yes, absolutely. We
10 had added an area variance from 400.1 for the number
11 of stories based on the drawings that are here. So we
12 would accept additional arguments on that, if you
13 thought it was needed to directly address that.

14 Any other additional information? Okay.
15 And then we would ask --

16 MR. MAY: I think I want to underscore
17 that point. I think all the information that we
18 presented so far had to do with the specifics of this
19 building the way it was designed and I think that to
20 go to a 4 story building is requesting another level
21 of relief that should be addressed specifically. In
22 other words, why does this have to be a 4 story
23 building? Why can't it be a 3 story building and
24 still be -- because the footprint is really what's
25 constrained by the other conditions of the site, so

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1 we're really -- you're getting, in theory, you're
2 getting extra floor area out of this. And that should
3 be addressed, I think, specifically in terms of the
4 tests for a variance.

5 CHAIRMAN GRIFFIS: Is that understood?

6 MR. BANDON-BIBUM: I'm not sure I
7 understood that. I believe R-4 calls for a 40 foot
8 limit.

9 CHAIRMAN GRIFFIS: Right.

10 MR. BANDON-BIBUM: And within that
11 constraint, the request for a variance --

12 CHAIRMAN GRIFFIS: But there are two
13 constraints on height and that is number of stories
14 and the physical dimension. And what would determine,
15 in fact, that the basement as it's laid out here,
16 counts toward a story. So although you're matching
17 what used to be the height and is within the allowable
18 height, it does not make the requirements for a number
19 of stories.

20 So what Mr. May is saying is make your
21 argument on the uniqueness, practical difficulty and
22 the third. As it is, as Mr. May has just said, may be
23 different than those area variances and the arguments
24 that were presented today.

25 Now clearly the definition that we pulled

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1 out is if this was a cellar, it would not count
2 towards a story.

3 MR. BANDON-BIBUM: May I get a little bit
4 of clarification of what a cellar is?

5 CHAIRMAN GRIFFIS: What a cellar is?

6 MR. BANDON-BIBUM: Yes.

7 CHAIRMAN GRIFFIS: I'm going to refer you
8 to 199, Title 11, Zoning Regulations.

9 It's defined. And it's very clear and if
10 it isn't we have technical people that you can talk
11 to. It will be based on the height above grade of the
12 ceiling of the lowest level.

13 Okay, anything else? Any other questions?

14 MR. BANDON-BIBUM: Could I address a
15 structural concern, Mr. May's concern?

16 CHAIRMAN GRIFFIS: Structural concern?

17 MR. BANDON-BIBUM: Structural concern.

18 CHAIRMAN GRIFFIS: Of the foundation? No,
19 actually, I think you have his notion, if you want to
20 submit something to it. His point is very clear.
21 You're showing new foundation details and you've said
22 we need to reuse the old foundation. So that will be
23 a two, three sentence paragraph of submission into the
24 record that we can look at. Unless it's very quick?

25 MR. BANDON-BIBUM: This will be very

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1 quick. The proposed foundation is done, pre-supports
2 that we have on site and there's any concern, I am a
3 registered structural engineer and I have designed
4 that in pre-supports. I don't want to go back to the
5 drawing board to recalculate everything. The pre-
6 supports will come in there and we open up the walls
7 and we have some concerns.

8 CHAIRMAN GRIFFIS: Do you know what the
9 lowest level of the existing structure was? Where's
10 the slab?

11 MR. BANDON-BIBUM: The slab is below --

12 CHAIRMAN GRIFFIS: Are you matching the
13 lowest level?

14 MR. BANDON-BIBUM: We are maintaining the
15 same slab, yes.

16 CHAIRMAN GRIFFIS: Okay, so your point is
17 this is a detail thrown in just in case you have to --

18 MR. BANDON-BIBUM: Yes.

19 CHAIRMAN GRIFFIS: Kind of like the deck
20 that's crossed off.

21 MR. BANDON-BIBUM: Exactly.

22 CHAIRMAN GRIFFIS: Interesting.

23 MR. BANDON-BIBUM: It's nothing to do with
24 what we plan to do or in anticipation.

25 CHAIRMAN GRIFFIS: Further information,

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1 Mr. Mays, that you would like to request in writing?
2 Has there been any structural evaluation or any sort
3 of soil borings done on the site?

4 MR. BANDON-BIBUM: We had no reason for
5 soil borings.

6 CHAIRMAN GRIFFIS: Right. Have you done
7 any excavation to uncover what's existing there, to
8 take a look at it?

9 MR. BANDON-BIBUM: Perhaps demolition, the
10 walls are all sound and we didn't think there was any
11 reason for any additional analysis.

12 CHAIRMAN GRIFFIS: Okay. Anything else,
13 Mr. May, you need on the foundation?

14 MR. MAY: No, I think that that probably
15 suffices, but I think in the process of doing the site
16 plan as requested, I think if you have any indication
17 of areas already of the foundation where you think
18 you're going to wind up replacing it, you can
19 certainly indicate it there. So there's no need to
20 address is separately.

21 CHAIRMAN GRIFFIS: Okay, let's turn to
22 staff just to reiterate what we're asking to be
23 requested and then the dates.

24 MS. BAILEY: March 4th, Mr. Griffis, was
25 the decision date at the Board's Public Hearing.

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1 CHAIRMAN GRIFFIS: That's correct.

2 MS. BAILEY: And it starts at 9:30 in the
3 morning.

4 MS. AWASUM: March 4th, sir?

5 MS. BAILEY: 9:30 in the morning. Mr.
6 Griffis, was there something else I'm supposed to be
7 doing here?

8 CHAIRMAN GRIFFIS: I'm sorry, could you
9 just give an indication of when we need materials
10 submitted by?

11 While she's looking for dates and
12 calendar, let me just reiterate that that's our
13 decision making, so that you're absolutely welcome to
14 be here. We will hear no more new testimony. So
15 everything that we need for our deliberation decision
16 needs to be in the record by the date you're about to
17 get. If there are any questions, now is the time to
18 raise in terms of what needs to be submitted, if we
19 haven't been specific.

20 MR. BANDON-BIBUM: That's exactly what I
21 was going to ask.

22 I'd like to have a noted delineation of
23 what indeed we are supposed to submit other than the
24 site plan. I'm not sure if any other requests, I may
25 have --

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1 CHAIRMAN GRIFFIS: Okay, there was a site
2 plan and in the site plan it should show, first of
3 all, the property lines. It should show graphically
4 the footprint of the adjacent property.

5 Also what was asked for, as you indicated,
6 that there were diagrams or some sort of studies done
7 on the site that proved that parking couldn't be
8 provided. We would just like to have that on the
9 record --

10 MR. MAY: And the other yard requirements,
11 too. That's a relatively simple diagram.

12 MR. BANDON-BIBUM: I'm sorry. There were
13 various studies that prove?

14 CHAIRMAN GRIFFIS: You indicated that you
15 had looked at and done that showed --

16 MR. BANDON-BIBUM: In terms of designing
17 it?

18 CHAIRMAN GRIFFIS: Yes, exactly, that the
19 building had to sit where it sits, that parking
20 couldn't be provided. And then the additional
21 argument which actually can go to your findings of
22 facts and conclusions of law, but to address the area
23 variance from number of stories.

24 How are we doing on dates?

25 MS. BAILEY: For the March 4th meeting,

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1 Mr. Chairman, February 21st, that's not this coming
2 Friday, but the following Friday, the 21st of
3 February, would that be sufficient time for you to get
4 this information?

5 MR. BANDON-BIBUM: That's plenty of time.

6 MS. BAILEY: Okay, so February 21st is
7 when the information is to be submitted to the Board.

8 And Mr. Chairman, I would suggest that on February
9 26th would be responses, if any, and findings of fact.

10 CHAIRMAN GRIFFIS: Absolutely. Okay, any
11 other questions?

12 MR. BANDON-BIBUM: None at all.

13 CHAIRMAN GRIFFIS: Have you ever filed a
14 findings and conclusions of law with this Board?

15 MR. BANDON-BIBUM: No.

16 CHAIRMAN GRIFFIS: An excellent thing to
17 do is to ask staff for previous or a template for it
18 and that will help so you don't need to invent it.

19 All right, anything else on this case?

20 MS. BAILEY: No sir.

21 CHAIRMAN GRIFFIS: Good in which case I
22 thank you both very much. We look forward to great
23 information coming in and we will see where we go with
24 that.

25 So we'll bring this up on the 4th of

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1 March.

2 Let's move to the next case then.

3 MR. BANDON-BIBUM: Thank you.

4 MS. AWASUM: Thank you.

5 CHAIRMAN GRIFFIS: Thank you. We're going
6 to take five minutes just to -- and then we'll call
7 the next case.

8 We have moved the schedule around, so the
9 next case is 16963. Of course, this is not the
10 official calling of it, but if the Applicant wanted to
11 get prepared and come to the table, we'll be right
12 back.

13 (Off the record.)

14 MS. BAILEY: Application No. 16963 of Tony
15 Thomas Associates, Inc., pursuant to 11 DCMR 3104.2.
16 Mr. Chairman, before I continue to read, there is the
17 old way it was advertised and there is a revised
18 relief that is being requested. Should I read the
19 revised version of this?

20 CHAIRMAN GRIFFIS: Well, I think, why
21 don't we -- I think we need to call it as originally
22 advertised and our first preliminary matter is going
23 to be taking up the request to amend the application
24 and we can do that once we're in the case, unless
25 others have differing opinions.

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1 MS. BAILEY: So I pardon myself, excuse me
2 for messing up. So I'll try it again. Application
3 No. 16963 of Toni Thomas Associates, Inc., pursuant to
4 11 DCMR 3103.2 for a variance from the area provisions
5 to allow occupational skill training and office space.

6 It was advertised for subsection 350.4. The property
7 is located in the R-5-8 District at premises 4601
8 Martin Luther King, Jr. Avenue, S.W., room 134. It's
9 in the Hadley Memorial Hospital in Parcel 252/93.

10 Please stand to take the oath of all those
11 persons testifying. Please raise your right hand. Do
12 you solemnly swear or affirm that the testimony you
13 are about to give in this proceeding will be the
14 truth, the whole truth and nothing but the truth?

15 (Witnesses were sworn.)

16 Thank you.

17 CHAIRMAN GRIFFIS: Good. Thank you very
18 much and good morning.

19 Let me have you introduce yourselves for
20 the record with address and I'm going to have you just
21 address the request to amend the application.

22 MR. ETHERLY: Mr. Chair?

23 CHAIRMAN GRIFFIS: Mr. Etherly.

24 MR. ETHERLY: Thank you very much, Mr.
25 Chairman. Just as a preliminary matter, for my

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1 colleagues' consideration, I have been in the past
2 affiliated with the Anacostia Coordinating Council of
3 which I was formerly a Board Member. Ms. Thomas, as I
4 recall, was also a Board Member and may, in fact,
5 still be a Board Member on the Council. Let me say
6 it's good to see you again, Ms. Thomas.

7 I make that disclosure because there is
8 that relationship there. Ms. Thomas and I, beyond
9 that affiliation are not very closely acquainted, nor
10 have we had an opportunity, of course, to talk about
11 the particular application in front of us. However,
12 be that as it may, I wanted to disclose that for the
13 benefit of my colleagues.

14 I don't have significant concern about my
15 ability to continue on the case and to sit
16 impartially, but I will simply note that my
17 affiliation with the Anacostia Coordinating Council as
18 a member of its board, continued for approximately two
19 and a half years and I was involved quite closely with
20 the Coordinating Council and part of that
21 organization's mission is precisely the type of
22 project that you see here. That's not to suggest, nor
23 am I aware of the Anacostia Coordinating Council has
24 taken a position on the project, but simply to note
25 that at one point in my prior -- in one of my prior

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1 community commitments, I was very actively involved in
2 precisely this type of work, east of the river, far
3 southeast, southwest.

4 I'd be more than open to entertaining any
5 questions.

6 Actually, let me restate that. I probably
7 would have some concerns about continuing to sit on
8 the case because once again, my work with the
9 Anacostia Coordinating Council focused precisely on
10 this type of program. I am a native of Washington,
11 D.C. and as such did live on Martin Luther King Avenue
12 for a number of years in the immediate Hadley Memorial
13 Hospital vicinity. So I'm very intimately familiar
14 with the area, with the hospital and the services that
15 it provides and to some extent with probably a lot of
16 the subject population that the program would deal
17 with. So I probably would have some concerns about
18 continuing, but I'd be open to any questions that my
19 colleagues may have.

20 MR. ZAIDAIN: What's the name of the
21 council?

22 MR. ETHERLY: Anacostia Coordinating
23 Council.

24 MR. ZAIDAIN: What is their specific
25 relevance to this project?

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1 MR. ETHERLY: None that I'm aware of. The
2 Anacostia Coordinating Council is not mentioned as far
3 as I can ascertain anywhere in any of our materials in
4 the file. But simply as the organization through
5 which there is a mutual common interest that I at one
6 point shared with the Applicant, Toni Thomas, who is
7 the Applicant in this case.

8 MR. ZAIDAIN: You stated that that council
9 has not taken a position on this, is there any reason
10 for them to?

11 MR. ETHERLY: Well, I did that just to
12 note that once again, as far as I'm aware, there was
13 not any formal action on the part of the Anacostia
14 Coordinating Council related to this application, but
15 the reason for my concern, nevertheless, is the
16 Coordinating Council is essentially a membership
17 organization, a collection of affiliated community
18 organizations that cover southeast, parts of southeast
19 and parts of southwest, Washington, D.C. and very
20 frequently they deal precisely with these types of
21 issues, but I want it to be clear that I'm not aware
22 of this issue coming up before the Council, but be
23 that as it may, because of my past work with them and
24 my focus and interest in far southeast and southwest
25 and some of my history from community standpoint, I

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1 would probably have some concerns about continuing.

2 MR. ZAIDAIN: I appreciate what you've
3 described, but I think all of us on the board are
4 active in other things and -- I mean I personally,
5 unless you feel like you can't be impartial, I have no
6 problem with you staying on.

7 MR. ETHERLY: Just to be clear for my
8 colleagues, I believe that is what I'm saying. This
9 is one instance where an organization that I've been
10 affiliated with at one point, worked very closely as
11 it related to this particular area of the city and I
12 have some experience there, that would concern me.

13 VICE CHAIRPERSON RENSHAW: Mr. Etherly, it
14 sounds to me as though you would prefer, you would
15 feel comfortable recusing yourself?

16 MR. ETHERLY: That is correct, Ms.
17 Renshaw.

18 CHAIRMAN GRIFFIS: Well, I think brings an
19 abrupt end to the discussion.

20 (Laughter.)

21 MR. ETHERLY: Okay.

22 CHAIRMAN GRIFFIS: Thank you very much,
23 Mr. Etherly.

24 Let's proceed then in terms of taking up
25 the request for amendment of the application as filed

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1 and introductions.

2 MS. THOMAS: Good morning. I am I. Toni
3 Thomas, president and founder of Toni Thomas
4 Associates.

5 MS. BROWDER: Good afternoon. I'm Pamela
6 Browder, Program Manager of Toni Thomas Associates.

7 CHAIRMAN GRIFFIS: Do you want to give
8 addresses?

9 MS. BROWDER: 4601 Martin Luther King, Jr.
10 Avenue, Southwest, Washington, D.C.

11 CHAIRMAN GRIFFIS: Very well.

12 MS. THOMAS: My address is the same.

13 CHAIRMAN GRIFFIS: Okay.

14 MS. WILSON: My name is Arlene Wilson.
15 I'm Director of Operations for Toni Thomas Associates.
16 4601 Martin Luther King Avenue, Southwest.

17 CHAIRMAN GRIFFIS: And who is going to
18 address the request for amendment? Ms. Thomas, is
19 that you?

20 MS. THOMAS: I will address the request.

21 CHAIRMAN GRIFFIS: And you have put in a
22 written submission which we've all read and studied.
23 I think what you're going to do is re-define the
24 program. And my understanding and you can correct me
25 that the actual offerings of the program have been

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1 changed, but that you believe that this was actually
2 misclassified in terms of the zoning definition.

3 What I ask you to do is point to where you
4 found the definition of private school and the
5 elements of which you then fall in to that definition.

6 MS. THOMAS: Thank you, Mr. Chair and also
7 Members of the Board. Initially, when we filed the
8 application, it was a statement that we were a trade
9 school and subsequent to that we sought and made
10 clarification that we are not a trade school, but in
11 fact, we are a private school.

12 CHAIRMAN GRIFFIS: And the definition as
13 trade school actually came from the Zoning
14 Administrator, is that correct?

15 MS. THOMAS: That's correct.

16 CHAIRMAN GRIFFIS: Okay. And how is it
17 that you feel that you are a private school?

18 MS. THOMAS: We are a private school in
19 that we operate a skills-based training program for
20 residents of the District of Columbia, funded through
21 District of Columbia offices and organizations,
22 Department of Employment Services primarily. And we
23 provide life skills training, job readiness and GED
24 preparation. That also leads to computer training,
25 office administration and website design.

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1 We are here before you today requesting
2 approval of a special exception to operate as a
3 private school consisting of up to 60 students and up
4 to 8 teachers.

5 We would also like to preliminarily
6 request a bench decision summary order, if at all
7 possible.

8 CHAIRMAN GRIFFIS: Why don't we get
9 through this and see where we end up.

10 MS. THOMAS: Thank you. What we'd like to
11 say is in response to the questions that were put
12 before us, the physical characteristics of the
13 property will not change. The property is a hospital,
14 a nursing facility. The site that we're using is the
15 old emergency room that is no longer in use as an
16 emergency room and we thought no better place to
17 create a job training and placement program, a job
18 training program than out of an old emergency room for
19 people that are hard to serve.

20 CHAIRMAN GRIFFIS: How do you see the
21 difference between job training and trade school?

22 MS. THOMAS: A trade school is, as we
23 understand it, is much more technical in that you are
24 learning a specific hard skill trade like electrical
25 trade and plumbing --

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1 CHAIRMAN GRIFFIS: So it's specifically
2 going to one specific area of employment?

3 MS. THOMAS: Yes.

4 CHAIRMAN GRIFFIS: I see.

5 MS. THOMAS: That's how I see the soft
6 skills versus I would use the term hard skills as a
7 trade school.

8 CHAIRMAN GRIFFIS: Okay.

9 VICE CHAIRPERSON RENSHAW: Mr. Chairman,
10 I'd like to ask the Applicant to address 334,
11 community service center and aren't you more
12 appropriately placed under 334? A community service
13 center to accommodate organizations created for the
14 purpose of improving the social or economic well being
15 of the residents of the neighborhood in which the
16 center is proposed to be located which may include,
17 but not be limited to centers for job training, family
18 counseling, consumer cooperatives and such other
19 facilities as are similar in nature and purpose,
20 etcetera? Aren't you more qualified to be in that
21 category?

22 MS. THOMAS: I don't think we do fit in
23 that category.

24 CHAIRMAN GRIFFIS: Are you organized for
25 profit?

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1 MS. THOMAS: Yes.

2 CHAIRMAN GRIFFIS: That kicks in.

3 MS. THOMAS: That was the difference. I
4 think that was the difference.

5 CHAIRMAN GRIFFIS: Okay.

6 MS. THOMAS: We are for profit. Thank
7 you.

8 CHAIRMAN GRIFFIS: Okay.

9 MS. THOMAS: Would you like me to proceed?

10 CHAIRMAN GRIFFIS: Of course.

11 MS. THOMAS: We also wanted to say that by
12 granting this application, we will not substantially,
13 we will not be a substantial detriment to the public
14 good in that the school will not have a negative
15 impact on traffic. The students, the majority of the
16 students who would attend the school would use public
17 transportation which stops right in front of the
18 building. There are -- and if for those who do drive,
19 there are sufficient parking spaces.

20 CHAIRMAN GRIFFIS: Are those going to be
21 designated to the private school?

22 MS. THOMAS: Yes. We have 11 spaces
23 designated for our use. I think there were 11 spaces
24 designated for our use.

25 CHAIRMAN GRIFFIS: Are you aware of

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1 Chapter 21's requirements for parking? Is that where
2 the 11 came from?

3 MS. THOMAS: Yes.

4 CHAIRMAN GRIFFIS: Okay.

5 MS. THOMAS: We did a calculation and made
6 sure that we were within the limits of the number of
7 students and faculty to the parking spaces.

8 CHAIRMAN GRIFFIS: And if there's overflow
9 or demand as the other parking -- I believe from the
10 last submission and this one, there is a large parking
11 facility, the site parking. Is it allowable for
12 people coming into the private to park elsewhere then?

13 MS. THOMAS: Absolutely. The spaces are
14 not so designated to say that this would be Toni
15 Thomas space versus the hospital space versus
16 businesses. The only spaces that are required are for
17 doctors and they're set up, but there's much more
18 parking space than is used.

19 CHAIRMAN GRIFFIS: So what is the 11
20 designation really mean?

21 MS. THOMAS: We wanted to make sure that
22 we met the requirements as specified by the District
23 of having adequate spaces and so we pursued that
24 matter to make sure that we were able to respond to
25 you that there was adequate spaces for parking for the

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1 students and the faculty.

2 CHAIRMAN GRIFFIS: So in reality there are
3 available at minimum 11 spaces.

4 MS. THOMAS: At minimum, yes.

5 CHAIRMAN GRIFFIS: Yes, Mr. May has
6 brought to my attention that we've jumped quickly into
7 the case itself.

8 And we have a preliminary matter ahead of
9 us and so let me just hear quickly from the Board and
10 we can dispense of this. Is there any opposition to
11 amending this application to make it a special
12 exception to permit a private school for 60 students
13 and 8 teachers? Any concern?

14 VICE CHAIRPERSON RENSHAW: I have concern
15 about terming this a private school.

16 CHAIRMAN GRIFFIS: Okay.

17 VICE CHAIRPERSON RENSHAW: I do not think
18 that that comes under the category of a private
19 school.

20 CHAIRMAN GRIFFIS: And what --

21 VICE CHAIRPERSON RENSHAW: I looked, we
22 have in the regulations a definition for public
23 school, but we don't have a definition for a private
24 school to fall back on. But this is a school that is
25 teaching a trade. It's going to be cycling the adult

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1 students in and out within a 6 to 8 week program.
2 They are there specifically to learn some occupational
3 skills to get a job and this is a free school and this
4 is a private entity in the fact that it is a for
5 profit entity, but it's getting its money from public
6 sources. This just does not -- private schools as I
7 know them are schools whereby you pay. That does not
8 exclude some scholarships, but it's where a party pays
9 for an education that is perhaps more academic in
10 nature. And I don't know that this Toni Thomas
11 Associates is accredited, is affiliated with for
12 instance, the National Association of Independent
13 Schools, something that would give me some pause to
14 say yes, this is a private school.

15 MS. THOMAS: First, let me say that it is
16 our long range plan, it is our goal to have -- to be
17 private paid, but we started our program through the
18 Department of Employment Services as a beginning.

19 And a requirement that of the Department
20 of Employment Services is that we apply for an
21 application as a nondegree institution and in order to
22 get to that part we had to start here and move from
23 here to the certificate of occupancy in order to meet
24 the requirements of the Department of Employment
25 Services.

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1 And so we're at the beginning phase of the
2 process.

3 CHAIRMAN GRIFFIS: Ms. Renshaw, you said
4 that this training for a trade. Do you want to be
5 more specific?

6 VICE CHAIRPERSON RENSHAW: Well, a trade
7 is a computer operator. You are being specific in the
8 skills that you are training for. Yours is a small
9 establishment, but I don't see this as -- this is not
10 an academic program, an academic school program. It
11 is strictly to provide occupational or vocational
12 skill training for those who need a job. But it does
13 not fall, in my mind, under the category of the
14 private school.

15 MR. ZAIDAIN: Well, Mr. Chairman, if I can
16 chime in here maybe we can give some kind of structure
17 to this debate.

18 It's my understanding from the regulations
19 when a certain specification is not defined, we have
20 to look at the dictionary, Webster's, correct? We're
21 dealing with two different terms that are not defined,
22 private school and trade school. They're obviously
23 referenced throughout the Zoning Code, but not
24 defined. So it seems we need to pull out Webster's.

25 Secondly, I thought I heard --

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1 MR. MAY: I have asked staff to look that
2 up.

3 MR. ZAIDAIN: That may help to frame our
4 debate here.

5 Secondly, you said that the ZA made the
6 determination about the private school versus trade
7 school?

8 MS. THOMAS: That's correct.

9 CHAIRMAN GRIFFIS: No.

10 MR. ZAIDAIN: No.

11 CHAIRMAN GRIFFIS: The ZA initially
12 determined that they meet -- required a use variance
13 because this was a trade school, but you don't have a
14 letter indicating --

15 MS. THOMAS: No.

16 MR. ZAIDAIN: This wasn't self-certified?

17 CHAIRMAN GRIFFIS: No, it was revised by
18 the Applicant under further study of the definition.

19 VICE CHAIRPERSON RENSHAW: With staff.

20 CHAIRMAN GRIFFIS: Yes. I don't think
21 it's inappropriate to say when we reviewed this last
22 time it was called up for a use variance. It was
23 immediately apparent to this Board that it would be
24 very difficult for them to prove the case whether they
25 wanted to go forward or not.

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1 MR. ZAIDAIN: You mean as a trade school
2 in a use variance situation?

3 CHAIRMAN GRIFFIS: Exactly. And in our
4 review of the application as submitted, it seemed to
5 lend itself perhaps to other definitions.

6 MR. ZAIDAIN: Right.

7 CHAIRMAN GRIFFIS: As the program was
8 described.

9 MR. ZAIDAIN: Right.

10 CHAIRMAN GRIFFIS: And so we gave the
11 opportunity to go out and try and reestablish that,
12 not changing the programs or anything of that nature.

13 MR. ZAIDAIN: Right.

14 CHAIRMAN GRIFFIS: But re-establish that
15 and that's where we are now.

16 MR. ZAIDAIN: I understand that and I
17 think we just need some guidance because the line is a
18 little gray between the two uses.

19 Mr. Webster.

20 MR. MAY: Mr. Webster speaking and I'm
21 sure this will make everything just crystal clear.

22 (Laughter.)

23 I have a definition of only private
24 school. We're getting trade school if that, in fact,
25 is in the dictionary.

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1 A private school is "a school that is
2 established, conducted and primarily supported by a
3 nongovernmental agency."

4 Now primarily supported is where we run
5 into some question about whether this really is a
6 private school. It's interesting that this definition
7 of private school doesn't go to what is taught at all.

8 So technically by this definition, a trade school
9 could be a private school.

10 VICE CHAIRPERSON RENSHAW: However, under
11 the definition it would have to be supported by
12 nongovernment agency.

13 MR. MAY: Right, but is that the entity
14 that runs the school or is it the entity that provides
15 primary funding for the school? And that's where it
16 gets confusing in my mind, because I think if you're
17 looking at -- it is established by a private, for
18 profit organization. It is conducted by a private for
19 profit organization. Primarily supported? What does
20 that mean? Does that mean --

21 VICE CHAIRPERSON RENSHAW: It means the
22 money comes -- would have to come from private
23 sources, rather than the primary support meaning
24 government monies.

25 MR. MAY: But if there are three prongs to

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1 this test of private school established, conducted,
2 supported, established and conducted, it is a private
3 school, primarily supported, it is not. It certainly
4 doesn't fit the definition of a public school. So I
5 think this definition it works as a counterpart to a
6 public school. I think if we looked at public school
7 it would say by a governmental agency. And just
8 deleted the "not" --

9 CHAIRMAN GRIFFIS: Point of clarification.

10 You said that a trade school could be a private
11 school, is that correct?

12 MR. MAY: The way I read this definition,
13 yes, because this doesn't go to --

14 CHAIRMAN GRIFFIS: That's fine. I
15 understand in terms of Webster's, it may be our
16 regulations distinctly take it out of that and if we
17 look to Section 206, used as a private school, but not
18 including a trade school. So there is a
19 differentiation there.

20 MR. MAY: Okay, so this really does hinge
21 on the question of what a trade school is.

22 MR. ZAIDAIN: Well, just to clarify one
23 point and I don't know if there was support for this,
24 but I don't think funding should be tied into the
25 definition because I'm sure there are private schools

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1 that get some sort of government funding in various
2 shape or form --

3 VICE CHAIRPERSON RENSHAW: But not
4 primarily supported by.

5 MR. ZAIDAIN: Well, I think if you looked
6 carefully at what happens in the District with so many
7 private schools even where they are filing the needs
8 of special education, for the District, they may --
9 their primary support may, in fact, come from the
10 city.

11 VICE CHAIRPERSON RENSHAW: For those
12 students.

13 MR. ZAIDAIN: If there are enough of those
14 students, it may be the primary support.

15 VICE CHAIRPERSON RENSHAW: I can't argue
16 that because I don't have the facts and figures in
17 front of me, but I took a look at the definition of
18 school, public in our regulations and it's good to
19 have this definition of the private school, but I
20 think that we do need to get a definition of a
21 technical or vocational school because even that is
22 set aside in the definition of school, public.

23 So there we are.

24 MR. MAY: Given that this hinges on the
25 exception, as I read it, it's the exception for a

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1 trade school. Private schools accepted by the trade
2 schools, so I think it really does become a question
3 of what we believe a trade school actually is and I'm
4 just filling time waiting for that definition.

5 (Pause.)

6 CHAIRMAN GRIFFIS: Well, even if looking
7 at trade school, I don't -- maybe we need to walk
8 through what is actually happening in the proposed
9 program to see then if it does fit into that.

10 Ms. Renshaw has brought up computer
11 training as a trade which --

12 VICE CHAIRPERSON RENSHAW: Well, it is.

13 CHAIRMAN GRIFFIS: I would take some issue
14 with because in this day and age I'm not sure what job
15 does not or would not require the basic use of a
16 computer and so that's directly going to that. In
17 terms of commercial driver's license for large trucks,
18 is that something that's being proposed as part of the
19 educational program?

20 MS. THOMAS: No, it isn't.

21 CHAIRMAN GRIFFIS: So something like that
22 would go, in my mind, directly to a trade. There's a
23 teaching that leads to some sort of designation or
24 license to then perform a specific business.

25 Mr. May?

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1 MR. MAY: Okay, we now have the definition
2 of trade school, "a school usually on the secondary
3 level devoted especially to teaching the practice and
4 theory of skilled trades."

5 CHAIRMAN GRIFFIS: Oh Lord.

6 MR. MAY: This is not secondary level, but
7 let's go back again to where you were going in terms
8 of what's actually being taught here. We have heard
9 reference to computer training. We've also heard
10 reference to GED programs. Is that also included in
11 this?

12 MS. THOMAS: GED preparation, life skills,
13 job readiness.

14 MR. MAY: Life skills is not skilled
15 trades?

16 GED is not skilled trades. I think that
17 one can make an argument that teaching computer skills
18 would be the modern equivalent, if you will, of
19 secretarial school. Secretarial school --

20 VICE CHAIRPERSON RENSHAW: It's not a
21 private school.

22 MR. MAY: It's not a private school. It's
23 a trade school. Right.

24 But I think that the definition here of
25 what's being conducted is broad enough that it's hard

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1 to call this a trade school.

2 VICE CHAIRPERSON RENSHAW: I find it very
3 easy to call it a trade school. I find it difficult
4 to call it a private school.

5 CHAIRMAN GRIFFIS: Okay, any other
6 comments on that? We do have the preliminary matter
7 in front of us. And I would, for further discussion,
8 move that we amend the application 16963 to read as a
9 relief under the special exception requirements to
10 permit a private school consisting of 60 students and
11 8 teachers of which we will go into the definition of
12 those numbers under 352.1 on premises 4601 Martin
13 Luther King Jr. Avenue, Southwest, and ask for a
14 second.

15 MR. MAY: Second.

16 CHAIRMAN GRIFFIS: Further discussion on
17 the motion?

18 VICE CHAIRPERSON RENSHAW: Yes.
19 Discussion. I feel that we with a vote, if it is
20 affirmative, if this is approved, is going to weaken
21 206.1 because it says, it states there under private
22 school use as a private school, but not including a
23 trade school, etcetera, in an R-1 area on which we are
24 calling back. But I just feel that we are opening the
25 door for changes in definitions where schools should

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1 come in as a trade school or a vocational school and
2 now they are going to be at our door as a private
3 school. So I just caution the Board about weakening
4 206.1 and I will not be voting for this.

5 MR. ZAIDAIN: Can you elaborate a little
6 bit more on your reasoning for why this is not --
7 don't tell me why it's not a private school. Tell me
8 why you feel it's a trade school.

9 VICE CHAIRPERSON RENSHAW: It is offering
10 skilled training. It's not an academically based
11 series of courses. It is strictly to get some skills
12 to go out and to get a job which is extremely
13 important, very beneficial, but does not in my mind --
14 is not the definition of a private school.

15 MR. ZAIDAIN: Under that definition are
16 you talking about giving people training to go get
17 jobs, what else does a school do? What did I go to
18 college for?

19 CHAIRMAN GRIFFIS: We're not going to
20 answer that question.

21 (Laughter.)

22 MR. ZAIDAIN: Right, I know. I've been
23 trying to figure that out for a while.

24 VICE CHAIRPERSON RENSHAW: We can take
25 that up at lunch.

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1 MR. ZAIDAIN: In terms of trade, it seems
2 to me trade makes it specific and does specific
3 trades.

4 VICE CHAIRPERSON RENSHAW: And the
5 computer is a specific trade. It's a specific skill.

6 MR. ZAIDAIN: I think the definition is a
7 little bit broader than that from what I've heard in
8 the testimony, am I correct?

9 VICE CHAIRPERSON RENSHAW: Well, I think
10 that we ought to go on and vote. I will not, as I
11 said, I will not be supporting this because I do feel
12 it's going to weaken 206, but that is my judgment.

13 CHAIRMAN GRIFFIS: Very well, well said,
14 Ms. Renshaw.

15 Mr. Zaidain, do you have anything to say
16 to the motion?

17 MR. ZAIDAIN: I don't understand why it
18 would weaken 206.

19 I will say it is a very tough call and as
20 I turn my back, I'll flip my quarter. And I'm
21 obviously joking.

22 CHAIRMAN GRIFFIS: Very well.

23 MR. ZAIDAIN: It just seems to me that
24 trade is a little bit more specific. I mean we can't
25 take into effect computer training. I know somebody

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1 who teaches at Howard University specific computer
2 courses. And I don't think you'd call Howard
3 University a trade school.

4 VICE CHAIRPERSON RENSHAW: No, but this is
5 a trade school. It is a vocational school.

6 CHAIRMAN GRIFFIS: Any new discussion?

7 MR. MAY: I'm not sure how new it is, but
8 I'll try to say it very quickly. I understand or I
9 appreciate the concern for weakening 206.1 and I just
10 want to say that when I cast my vote in favor of this
11 being considered a special exception it will be on the
12 basis that this -- the range of course work here is
13 sufficiently broad and encompasses far more than a
14 quote trade school would because it does include
15 preparation for GED, because it includes other
16 coursework and because computer training is such a
17 broad category at this time that it's hard for me to
18 consider that a trade per se.

19 CHAIRMAN GRIFFIS: Very well. I think
20 that's well said, Mr. May, and I think the specifics
21 of computer training are basic skills, not trade
22 skills. Trade skills, to me in my mind, seems to be
23 actually a very antiquated term, but speaks more to
24 training for a specific job, a specific career and
25 that is more on the trade or technical, that is, heavy

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1 machinery, driving trucks and I think that's the
2 reason why you would take that out of private school,
3 out of an allowable use in a residential area as
4 private school is a compatible use, however it
5 requires special exception. A trade school does not
6 come under special exception because the impact of a
7 surrounding area, especially in R-1 or above would be
8 much more so than private school.

9 As we have in front of us now, I tend to
10 agree that we are not looking at a program that is
11 pumping out heavy machinery operators or specific
12 machinery operators, but rather looking at the general
13 education in order to prepare one to enter or to
14 continue in the employment sector. As an actual
15 employment are or career or job title has not even
16 been identified in terms of being prepared for.
17 Again, I return to this as a more general educational
18 experience, not a specific trade school.

19 Last word, Ms. Renshaw.

20 VICE CHAIRPERSON RENSHAW: Yes, but again
21 just to point out that this is a school that will be
22 supported. It sounds like almost 100 percent by
23 Government monies and the private school definition is
24 support by non-Government agencies. So that is a
25 definition that we fall back on and we have to

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1 consider seriously when determining whether or not
2 this is a private school.

3 CHAIRMAN GRIFFIS: Good point.

4 MR. ZAIDAIN: I see Ms. Renshaw's point.
5 I also see the Chair's point in terms of measuring
6 impacts and I think when we get into these definitions
7 that I feel and obviously you're very confident on how
8 you look at it, but when we get into definitions that
9 are ambiguous and maybe antiquated, I think we need to
10 fall back on what are the relative impacts and I don't
11 see the differences in funding being an impact to the
12 community.

13 VICE CHAIRPERSON RENSHAW: But this is not
14 ambiguous.

15 MR. ZAIDAIN: The differences in funding,
16 how is that impact going to relate to -- how is that
17 measured in terms of the surrounding impacts, in terms
18 of traffic and issues that we're here to deal with.

19 VICE CHAIRPERSON RENSHAW: Yes, but first
20 we have to deal with the definition and that's what
21 we're on now, not the merits of the case.

22 MR. ZAIDAIN: Right, and I understand
23 that, but I think -- I imagine you can tell the way
24 this discussion is going, I think you're the only one
25 on the Board right now who is extremely confident on

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1 what the definition is. We're all trying to -- I'm
2 not saying you're not trying to reason through it.

3 VICE CHAIRPERSON RENSHAW: Because we have
4 to rely on the definition. In past cases when we have
5 had problems we've gone to the dictionary and had to
6 pull out a definition.

7 MR. ZAIDAIN: Right, I think that's what
8 we're doing right now.

9 VICE CHAIRPERSON RENSHAW: We've done
10 that.

11 CHAIRMAN GRIFFIS: Very well. Mr.
12 Zaidain, anything further?

13 MR. ZAIDAIN: I will beg the Zoning
14 Commission to clarify this in the regulations, other
15 than that, please call the vote.

16 MR. MAY: I'll note that. Thank you very
17 much. More work for Zoning.

18 VICE CHAIRPERSON RENSHAW: And also, a
19 better definition for trade and vocational schools.

20 MR. MAY: I just wrote it down. Thank
21 you.

22 CHAIRMAN GRIFFIS: Not being able to do
23 that today, why don't we look at -- first of all,
24 funding. I think it's an important piece.

25 MR. ZAIDAIN: It is important.

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1 CHAIRMAN GRIFFIS: And the issue for me
2 comes not out of the definition, but the lack of
3 definition and how it's defined elsewhere and you
4 brought up an interesting point, 334 and community
5 center and that is defined that cannot be organized
6 for profit and this is actually organized for profit.

7 That being said, I would ask for all those
8 in favor of amending the application, signify by
9 saying aye.

10 (Ayes.)

11 Opposed?

12 VICE CHAIRPERSON RENSHAW: Opposed.

13 CHAIRMAN GRIFFIS: Thank you all, very
14 much. Let's record that vote and now that we've done
15 our preliminary matters, get to the case.

16 MS. BAILEY: The vote is recorded as 3-1-1
17 to approve the application or to amend the application
18 to indicate that it is a private school and it does
19 fall under Section 206 of the zoning regulations. Mr.
20 Griffis made the motion. Mr. May seconded. Mr. May
21 is in the support. Mr. Etherly is not present or
22 participating and Ms. Renshaw is opposed.

23 CHAIRMAN GRIFFIS: Good, thank you very
24 much.

25 Ms. Thomas, we'll turn it over to you and

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1 try not to interrupt you as you zip through your case.

2 MS. THOMAS: Thank you. I started by
3 talking about the fact that the physical
4 characteristics of the property would not change. And
5 I did describe the types of educational experiences
6 that would be provided.

7 In addition to that, the physical
8 character of the building would not change
9 substantially. What we've done there --

10 CHAIRMAN GRIFFIS: All this is going to be
11 in tiers. There's no impact on the building.

12 MS. THOMAS: Absolutely not. That's
13 correct.

14 Also, there will not be any detriment to
15 the public good in terms of traffic, noise or
16 lighting. The facility is sort of in a campus
17 atmosphere. We enter from the rear of the building
18 which is the old emergency room. There are -- most of
19 the services are passive and in no way affect, would
20 create any disruptive behavior. There is a security
21 guard on the premises 24 hours a day.

22 CHAIRMAN GRIFFIS: You would enter in
23 through the same entrance and pass the security guard
24 then?

25 MS. THOMAS: No, interestingly enough, the

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1 security guard is near the rear of the building. The
2 station, it is the station that monitors the entire
3 facility.

4 CHAIRMAN GRIFFIS: So it's not the
5 hospital entrance that you'd be utilizing?

6 MS. THOMAS: No, it's through the rear of
7 the building.

8 CHAIRMAN GRIFFIS: Okay.

9 MS. THOMAS: All of the activities will be
10 held in the building and I talked about public
11 transportation which is a bus that stops right in
12 front of the building.

13 We believe that by granting our request it
14 will not be inconsistent with the general intent and
15 purpose of the zoning regs and the map. We talked
16 about the number of staff that will be there and the
17 students we anticipate, up to 8 instructors and up to
18 60 students with 6 to 8 weeks of classroom training.

19 My final comment would be by not granting
20 this exception would cause hardship to us, the
21 Applicant, in terms of the expenses that we have
22 incurred and the fact that it's very difficult to find
23 a space east of the river to deal with the client
24 group that we find hard to serve at the rate we've
25 been able to acquire this space.

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1 In conclusion, I would hope that you would
2 act favorably on our request.

3 CHAIRMAN GRIFFIS: Okay, and we'll give
4 you a time for concluding remarks also if anything
5 comes up after this.

6 First of all, let me just address what
7 your comment in terms of the costs that's expended in
8 order to study this and all that.

9 We actually cannot take that into
10 consideration. It doesn't go directly to the impact
11 that we've done.

12 In terms of location, I think that is very
13 pertinent in terms of one, serving the local
14 community, you want to be in the local community and
15 looking around and looking for a facility which your
16 testimony is that there are none other available or
17 none that are as applicable to this.

18 Also, 60 students, 8 teachers, 60 student
19 is enrollment, total enrollment?

20 MS. THOMAS: That will be at one
21 particular, up to that number we could not exceed.

22 CHAIRMAN GRIFFIS: So 60 students at one
23 time on the site. There will be no more than 60
24 students on site?

25 MS. THOMAS: That's correct.

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1 CHAIRMAN GRIFFIS: What's your enrollment?

2 MS. THOMAS: Our enrollment has been small
3 up to this point.

4 CHAIRMAN GRIFFIS: What's your anticipated
5 enrollment? Here's my issue and so that you're clear.

6 This Board, well, the BZA has had -- it does not seem
7 to be clear on how this Board has defined population,
8 especially when it comes to private schools. There
9 has been conditions that limit the number of students
10 and that limiting factor can be two-fold, that is, the
11 number of students on site at one time or total number
12 of enrollment.

13 This is becoming more and more important
14 to define.

15 Now, when I look at this and I don't think
16 it's as particular to this application, but it seems
17 to me that enrollment is more important to what we
18 have to look at in terms of impact of adjoining --
19 impact on use of adjoining properties. Because what
20 enrollment talks about is the potential for the
21 population to come and go out of the school. If, for
22 instance, you have 60 on-site at one time, but you
23 have 300 students enrolled, we could conceivably look
24 at common sense, maybe 250 trips to the school each
25 day, which doesn't speak to 60.

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1 Now I'm clearly being hypothetical here to
2 make my point. I bring that out just so that we are
3 clear. As I said, I don't think it is as pertinent to
4 this application as others. First of all, we have a
5 larger facility that you're looking at. You have
6 large surface parking available. Ingress and egress
7 out of this is hopefully perfected as ambulances have
8 come and gone from this facility.

9 So what I want to make sure is the Board
10 is specifically focusing on what we're actually
11 looking at and right now we're being proposed at 60 on
12 site and 8 teachers is full-time equivalent. Eight
13 teachers on site at one time?

14 MS. THOMAS: The number of teachers would
15 be predicated on the number of students that are
16 enrolled in the classes, so that's why I used the term
17 "up to" eight.

18 CHAIRMAN GRIFFIS: Okay, so if there are
19 60 students on site, there is going to be 8 teachers?

20 MS. THOMAS: That's right.

21 CHAIRMAN GRIFFIS: Okay.

22 VICE CHAIRPERSON RENSHAW: Are there going
23 to be any events where your total enrollment will come
24 together?

25 MS. THOMAS: It is not, no. The answer to

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1 the question of whether the total enrollment would
2 come together would be no.

3 The rationale for that is that we operate
4 on a small class process. Our ratio is normally 8 to
5 1 in terms of teaching the hard to serve. And so it
6 is not likely that 60 would be -- it would not work
7 well. So we would not have 60 in at one time.

8 VICE CHAIRPERSON RENSHAW: If your
9 enrollment, for instance, is many more than 60, but
10 you have 60 at any one time, would there be an event,
11 an occasion such as celebration of the opening of
12 whatever, your organizational classroom, what have
13 you, that you would bring everybody together, that
14 there would be on the premises coming to say an
15 outdoor parking lot affair, 300 people?

16 MS. THOMAS: If we were to do that, it
17 would happen in the evening and also we would use some
18 of the additional facilities within the hospital.

19 VICE CHAIRPERSON RENSHAW: So you are
20 contemplating something like that?

21 MS. THOMAS: We could do it and we could
22 do that. We historically use the local churches when
23 we have large events, because there are a number of
24 churches right in the area that have supported the
25 program and so when we have either a graduation or a

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1 larger recruitment that would happen at a church
2 and/or at a community facility.

3 MR. MAY: I'd like to clarify something.
4 I got a little bit confused there for a second. You
5 seem to suggest that it was unlikely that you would at
6 any given time you'd have 60 students there, right?

7 MS. THOMAS: In the facility at the same
8 time.

9 MR. MAY: Right, so what is the -- we're
10 all trying to get to the total enrollment question. I
11 mean I'm looking at the design of this thing and I
12 know you can't fit 60 students there.

13 MS. WILSON: We have like two large
14 classrooms.

15 MR. MAY: Right.

16 MS. WILSON: Fifteen in each, 30 at one
17 time. The classes flip flop, so it's like during the
18 course of the day, 60 might show up. The second half
19 of the day another 30 come in.

20 CHAIRMAN GRIFFIS: In laying this out, do
21 you have an idea of what your actual certificate of
22 occupancy population would be?

23 MS. THOMAS: No.

24 CHAIRMAN GRIFFIS: Do you have an
25 architect working on laying out?

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1 MS. THOMAS: No, we didn't start there
2 until we move from here.

3 CHAIRMAN GRIFFIS: Okay. They can do a
4 simple calculation based on the use, they can tell you
5 what will be allowable. Clearly, that won't directly
6 to the licensing and those other provisions, but it
7 will give you a handle on what you're actually going
8 to be able to put in there.

9 Okay, the point is, Mr. May, that we're
10 not looking at a population much more than 60 in
11 there, if 60.

12 MR. MAY: Right. I mean --

13 MS. WILSON: Actually, there's only 15 per
14 classroom now.

15 MR. MAY: And two classrooms.

16 MS. WILSON: And two classrooms.

17 MR. MAY: Two hundred square foot
18 classrooms.

19 CHAIRMAN GRIFFIS: I think we can move on
20 because also we haven't any yet, but we haven't had
21 any testimony opposing this based on the population.

22 So what I'd like to do is pursue this as
23 60 students on site, 8 on site as maximum for a clear
24 definition of what we're talking about.

25 Very well. Any other questions of the

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1 Board?

2 (No response.)

3 Then let us move to the Office of
4 Planning's report?

5 MR. MORDFIN: Good afternoon, Mr. Chairman
6 and Members of the Board. My name is Stephen Mordfin
7 with the Office of Planning. And this is BZA
8 Application No. 16963 for 4601 Martin Luther King, Jr.
9 Avenue, Southwest. This application is for a special
10 exception to permit a private school, the Community
11 Empowerment Training Academy, within an R-5A District.

12 The proposed school is to be located within a portion
13 of the Hadley Memorial Hospital and will consist of 60
14 adult students and 8 teachers. The subject
15 application is in conformance with Section 206 of the
16 zoning regulations in that the use will be a private
17 school, not a trade school; the school will not likely
18 become objectionable to adjoining and nearby
19 properties as it is proposed to be located within an
20 existing institutional building and no construction is
21 proposed. There is no need for an outdoor play area
22 as the school is for adults only and (3) sufficient
23 parking exists on site for the proposed use and all
24 existing uses as required by Chapter 21 of the zoning
25 regulations.

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1 The Office of Planning recommends approval
2 of the special exception request to permit a private
3 school for 60 students and 8 teachers within the R-5A
4 District.

5 That concludes the report of the Office of
6 Planning.

7 CHAIRMAN GRIFFIS: Thank you very much.
8 Also, as usual, the graphics and aerial photograph are
9 very helpful and I know we're informed of the parking
10 calculations as opposed to just looking at the
11 different uses and requirements. Good. Any questions
12 from the Board regarding the Office of Planning
13 report?

14 Mr. May?

15 MR. MAY: Yes, your reports indicates that
16 you have a letter from the ANC on this. I didn't see
17 that in my file. Maybe I missed it.

18 VICE CHAIRPERSON RENSHAW: There's a
19 letter from 8D-01, a single member Commissioner O.V.
20 Johnson, Exhibit 15.

21 MR. MAY: Okay.

22 VICE CHAIRPERSON RENSHAW: But it's not a
23 letter from the full ANC.

24 CHAIRMAN GRIFFIS: And therefore it
25 doesn't, on its face, when we get to it, it doesn't

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1 meet our technical requirements. But it's certainly
2 information.

3 VICE CHAIRPERSON RENSHAW: That's right,
4 it doesn't carry weight.

5 CHAIRMAN GRIFFIS: Ms. Thomas, do you have
6 any questions of Office of Planning?

7 VICE CHAIRPERSON RENSHAW: I've got a
8 question.

9 CHAIRMAN GRIFFIS: Yes.

10 VICE CHAIRPERSON RENSHAW: The Office of
11 Planning didn't really weigh in on the definition of
12 private?

13 (Laughter.)

14 Could you now?

15 MR. MORDFIN: Yes.

16 VICE CHAIRPERSON RENSHAW: And also the
17 issue of accreditation.

18 MR. MORDFIN: The issue versus private
19 versus trade school. I hadn't put it in the report
20 because I didn't think it was going to be germane to
21 what was going on and I didn't bring those definitions
22 with us, but we looked it up in a Webster's
23 dictionary, a large one that we have because when we
24 started this, I thought, as Ms. Renshaw stated,
25 there's no way that this would meet the definition of

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1 a private school. And I can get that information to
2 you from the dictionaries that we used where from
3 those two definitions we looked up private school and
4 trade school. It seemed that this did fit into a
5 private school and not a trade school definition. I
6 regret that I didn't bring those with me today.

7 So I can't comment on exactly what my
8 thought processes were at the time because I don't --

9 CHAIRMAN GRIFFIS: Clearly, you went
10 through that thought process to establish the fact
11 that you concur with the Board that it's a private
12 school under the definition?

13 MR. MORDFIN: Yes.

14 CHAIRMAN GRIFFIS: Okay, in which case we
15 ask -- Ms. Renshaw is probably going to do it, but you
16 submit those definitions into the record.

17 VICE CHAIRPERSON RENSHAW: Is the Board
18 empowered to anoint private schools? To determine
19 private schools? Is the Board -- I'll ask the Chair
20 then.

21 CHAIRMAN GRIFFIS: No, not me. You might
22 want to ask the lawyers.

23 MS. MONROE: Ms. Renshaw, I think the
24 Board is empowered to interpret the regulations and I
25 think that's what you're trying to do now and that's

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1 -- I don't think you're anointing anything. I think
2 you're trying to make sense of the regulations.

3 VICE CHAIRPERSON RENSHAW: Well, we are in
4 a sense conferring a status on this entity.

5 MS. MONROE: Through an interpretation of
6 the regulations. The Board, the majority of the Board
7 interprets it in a certain way. And that's how it
8 works.

9 VICE CHAIRPERSON RENSHAW: Heavily leaning
10 on a dictionary definition or lack thereof. Enough
11 said.

12 CHAIRMAN GRIFFIS: Other questions of
13 Office of Planning?

14 Ms. Thomas, do you have any cross
15 examination of the Office of Planning or their report?

16 MS. THOMAS: No, I do not.

17 CHAIRMAN GRIFFIS: Very well. Let's move
18 on then to the ANC, although we don't have the
19 official letter, Ms. Renshaw, do you have that in
20 front of you, that from the single member district.

21 VICE CHAIRPERSON RENSHAW: From O.V.
22 Johnson and he states that in response to the location
23 referenced above and acknowledging our support of Toni
24 Thomas Associates, Inc., Community Empowerment
25 Training Academy, we feel a use and occupancy variance

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1 should be issued for Hadley Memorial Hospital to
2 accommodate the operations of the training academy.
3 And the mission is to provide job training and
4 employment opportunities to the citizens of Washington
5 with a special interest in helping the residents of
6 Ward 8. And he feels that it's a great location,
7 access to delivery of services, breeds empowerment of
8 individuals who are in need of social, economic
9 advancement. And it nurtures the growth of our
10 community and they are welcomed by Advisory
11 Neighborhood Commissioners and that's his report.

12 CHAIRMAN GRIFFIS: Good, thank you. I
13 don't have any notes and don't recall anything else
14 being submitted officially into the record by other
15 agencies.

16 Ms. Thomas, are you aware of anything else
17 submitted into the record?

18 MS. THOMAS: No, not by any other
19 agencies, but we did get petitions signed. We went
20 throughout the neighborhood and got petitions signed
21 from 45 of the residents who live in the immediate
22 area.

23 CHAIRMAN GRIFFIS: Okay, that moves us on
24 to testimony. Is there anyone here present to give
25 testimony regarding Application 16963 in support or in

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1 opposition? You can come forward to the table and
2 take a seat as your indication of being here to
3 testify.

4 Not seeing anybody do that, that was not
5 previously submitted. Is that correct, the petitions?

6 MS. THOMAS: Yes, they were part of the
7 package. They are included in the original --

8 CHAIRMAN GRIFFIS: Oh, in the original,
9 okay. Indeed, indeed. Okay.

10 That actually was for and attendant to the
11 use variance which is clearly a higher burden of
12 proof.

13 Now if I'm understanding the cover sheet
14 of that, starts with "do you think D.C. residents
15 should receive free training?" Is that correct?

16 MS. THOMAS: Just one moment, please.

17 CHAIRMAN GRIFFIS: Sure.

18 (Pause.)

19 MS. WILSON: That really wasn't the cover
20 sheet. That was more or less like a flyer that we
21 used.

22 CHAIRMAN GRIFFIS: What did people sign?

23 MS. WILSON: They signed a petition that
24 followed that.

25 CHAIRMAN GRIFFIS: They're signing in

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1 support of that flyer then?

2 MS. WILSON: Yes. They were signing in
3 response to the flyer.

4 CHAIRMAN GRIFFIS: Okay. Well, we'll take
5 that for what it's worth.

6 Are you still providing a commercial
7 driver's license CDL?

8 MS. THOMAS: No, we're not.

9 CHAIRMAN GRIFFIS: Okay, I think I'd have
10 a hard time not signing that and finding anyone that
11 wouldn't sign it, frankly.

12 It doesn't go -- my point only, it doesn't
13 go specifically to what you were going for in terms of
14 the zoning relief, but I think it is clear that there
15 is support within the community for program. Any
16 questions of that?

17 Any other submissions regarding testimony,
18 persons in support or in opposition that you're aware
19 of?

20 Are you aware of any opposition in the
21 neighborhood?

22 MS. THOMAS: No, I am not.

23 CHAIRMAN GRIFFIS: It would be smart if
24 you didn't bring that up anyway, right?

25 (Laughter.)

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1 No, I'm sorry, that's very flippant and I
2 shouldn't say things like that on the record.
3 However, what else then? Does that fill the record?
4 Am I missing anything? Good.

5 Ms. Thomas, if I could turn to you for any
6 closing remarks at this time?

7 MS. THOMAS: I again thank you for the
8 opportunity to present this application and very
9 briefly we see it as a much needed resource, not only
10 east of the river, but in the city and we consider it
11 a privilege to be able to assist people to move from
12 unemployment and under employment into a position to
13 be able to become employed and stay employed and we
14 would only hope that you would help us to accommodate
15 this particular goal that we have and approve our
16 application.

17 CHAIRMAN GRIFFIS: Good. Thank you.
18 Board, are you ready to move today? Then I would
19 entertain any action as one would be so inclined.

20 VICE CHAIRPERSON RENSHAW: Since we are
21 leaning on the definition of again of private school
22 and support by non-Government agencies, i would really
23 like to get a report from Ms. Thomas in a period of
24 time to let the Board know how she is doing with
25 acquiring other funds. In other words, that you're

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1 not reliant on Government agencies to fund your
2 operation.

3 MS. WILSON: May I make a statement?

4 VICE CHAIRPERSON RENSHAW: Yes.

5 MS. WILSON: The reason we're here, DCRA
6 said we had to get the use and occupancy in order to
7 get the nondegreed licenses. It is our plan to become
8 accredited, but obtaining the use and occupancy permit
9 was one of the things you needed in order to get to
10 that point. So on our road to becoming accredited,
11 we're stopping here, but we do plan to get accredited
12 and offer our services to the general public as well.

13 VICE CHAIRPERSON RENSHAW: And you would
14 be accredited by what agency or organization?

15 MS. WILSON: It was DCRA, but also be able
16 to get accredited through the Department of Education
17 and be able to get Pell Grants and stuff like that and
18 offer grants people to come to our organization.

19 VICE CHAIRPERSON RENSHAW: But for the
20 time being, for the immediate future then you are
21 totally reliant on Government funds?

22 MS. THOMAS: No, we are not totally
23 reliant on Government funds. In fact, we have had
24 experience with private pay staff from the hospital,
25 the hospital has sent nursing staff to come in and

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1 brush up on their typing. We have -- we're in a
2 Catch-22 --

3 CHAIRMAN GRIFFIS: Can you set a tuition
4 for someone that wanted to come to school?

5 MS. THOMAS: Yes.

6 CHAIRMAN GRIFFIS: So you have a tuition
7 fee?

8 MS. THOMAS: Yes, we do.

9 CHAIRMAN GRIFFIS: Okay.

10 VICE CHAIRPERSON RENSHAW: That's good to
11 know.

12 MS. THOMAS: We're in a Catch-22 because
13 you don't want to go out and recruit people to come to
14 training that you don't have an occupancy permit to
15 conduct the training. So we've had to kind of slow
16 walk this process to make sure that we stay legal and
17 so that's been our -- that's been the issue for us.
18 Our goal is not to rely on the District Government or
19 any local government for funding. That's not a very
20 wise thing to do. But we need to be able to do it and
21 have it done properly.

22 CHAIRMAN GRIFFIS: Good. Anything
23 further, last minute comments? I would move approval
24 of application 16963 for the special exception to
25 permit the private school that would consist of 60

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1 students and 8 teachers as defined as population on
2 site under Section 352.1 on premises 4601 Martin
3 Luther King, Jr. Avenue, Southwest and I'd ask for a
4 second?

5 MR. MAY: Second.

6 CHAIRMAN GRIFFIS: Thank you very much,
7 Mr. May. Just to speak to the motion quickly, I think
8 the record clearly shows that this does come within
9 the general purpose and harmony of the zoning under a
10 private school in this R-5A District and I do not
11 believe that there has been any evidence shown that it
12 would create some sort of adverse use to the
13 neighboring properties. I think the Board has
14 actually explored areas that had not been evidenced in
15 order to ensure that in that this is going into an
16 existing larger facility, that can accommodate parking
17 and ingress and egress. That's all I have.

18 VICE CHAIRPERSON RENSHAW: I think this is
19 one school that -- where we're not going to have to
20 require a traffic management plan.

21 (Laughter.)

22 Since 95 percent of your students come by
23 Metro.

24 MS. THOMAS: Absolutely.

25 CHAIRMAN GRIFFIS: Do you want to hang

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1 around this afternoon to see what this could have
2 been?

3 Okay. Anything else? Very well, I'd ask
4 all those in favor signify by saying aye.

5 (Ayes.)

6 And opposed?

7 VICE CHAIRPERSON RENSHAW: No, I'm voting
8 for it, but is there any term limit on this?

9 CHAIRMAN GRIFFIS: Ms. Renshaw, are you
10 indicating that you'd like to have a discussion on
11 time?

12 We do both things. I think it's perfectly
13 appropriate at some, especially those that have
14 questionable operations that may create adverse
15 impacts and that is one of the important vehicles of
16 setting time limits so that the Applicant comes back
17 to visit the Board and we can see, did we make a
18 horrible, total mistake and it's ruined a
19 neighborhood?

20 I have seen evidence of that in this case
21 and that it is frankly going to be housed in an
22 institutional facility.

23 VICE CHAIRPERSON RENSHAW: That gives me
24 pause. We didn't get into the placement of the
25 vocational school.

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1 CHAIRMAN GRIFFIS: You mean within the
2 hospital?

3 VICE CHAIRPERSON RENSHAW: Within the
4 hospital itself because again, the hospital can
5 reacquire its space. We are in a time when senior
6 populations are growing. There may be a need for that
7 space.

8 CHAIRMAN GRIFFIS: Are you signing a lease
9 with the hospital?

10 MS. THOMAS: Yes.

11 CHAIRMAN GRIFFIS: How long is your lease?

12 MS. THOMAS: We have a year to year lease.
13 We have a year with renewal each year.

14 CHAIRMAN GRIFFIS: For just another year?
15 Well, there it is. I think it's very short. I think
16 the hospital is taking the steps that you're concerned
17 with actually ensuring the fact that they could take
18 that space over if there's expansion.

19 VICE CHAIRPERSON RENSHAW: But I would
20 recommend a term limit of five years to revisit the
21 Board, just to see how you're doing.

22 CHAIRMAN GRIFFIS: Do you have any
23 comments on that?

24 MS. THOMAS: No, we would welcome the
25 opportunity.

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1 CHAIRMAN GRIFFIS: Mr. May?

2 MR. MAY: I don't have any objection to
3 the term limit.

4 CHAIRMAN GRIFFIS: Mr. Zaidain?

5 MR. ZAIDAIN: I guess I'd have no
6 objection. We've not heard a lot of testimony that
7 usually comes out when they get into contentious
8 school situations that allow us to set a term limit.
9 It doesn't seem to be arbitrary.

10 CHAIRMAN GRIFFIS: Let's take 30 seconds
11 to think about this because I think it's self-
12 regulating here in terms of the institution, in terms
13 of the short-term lease. I think any adverse impact
14 which I think is very important that Ms. Renshaw is
15 bringing up, it actually goes directly to the hospital
16 and the hospital's administration and their use of
17 their facility, in that they're looking at year leases
18 to this, the school itself will have to -- will be at
19 the mercy of the hospital if there's any change in the
20 requirements of the hospital. Meaning if the hospital
21 needs to expand, they're going to expand. That's the
22 only thing that I think has really come up.

23 MR. ZAIDAIN: So you're saying that is a
24 reasonable time frame in order for it to kind of
25 co-exist with the surrounding uses?

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1 CHAIRMAN GRIFFIS: I'm saying we don't
2 need to put a time restriction on it, but I'm not
3 prepared to argue strongly for it.

4 So if there's anyone in objection to time
5 requirement?

6 MR. ZAIDAIN: I have no objection to a
7 time limit.

8 CHAIRMAN GRIFFIS: Okay. No objection,
9 Mr. May?

10 MR. MAY: No objection.

11 CHAIRMAN GRIFFIS: Then we'll take it as a
12 friendly amendment to include the condition of 5 years
13 as well as the population as set forth.

14 And we can just turn back the clock, put
15 that in our motion and our now vote. And say it's
16 done. Good.

17 MR. MAY: Do we need to re-vote?

18 CHAIRMAN GRIFFIS: I took it as the
19 consensus of the Board that we would put that in as a
20 condition of the motion.

21 So let us record the vote then again?

22 MR. ZAIDAIN: I was just going to suggest
23 that this discussion is leading me to remind the Board
24 that there was a summary order requested.

25 CHAIRMAN GRIFFIS: So noted, Mr. Zaidain.

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1 Let us record the vote again with just the amendment
2 to the motion.

3 MS. BAILEY: The vote is recorded as 4-0-
4 1. Motion made by Mr. Griffis, seconded by Mr. May;
5 Ms. Renshaw and Mr. Zaidain are in support and Mr.
6 Etherly is not present and not voting. The
7 application is approved for a total enrollment of 60
8 students and 8 teachers. It's restricted to five
9 years and Mr. Chairman, are you approving a summary
10 order for this?

11 CHAIRMAN GRIFFIS: I see no reason that we
12 couldn't do a summary order, but I do want to make a
13 correction. You stated a total enrollment to those
14 numbers and actually what we discussed and defined,
15 those were total on site.

16 MS. BAILEY: Sixty students on site at one
17 time.

18 CHAIRMAN GRIFFIS: Right.

19 MS. BAILEY: Thank you.

20 CHAIRMAN GRIFFIS: Great. Anything else?
21 Very well. Thank you very much. Have a good
22 afternoon.

23 MS. THOMAS: Thank you very much.

24 CHAIRMAN GRIFFIS: Aren't you lucky we
25 switched the schedule so you're done.

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1 MS. THOMAS: Thank you very much.

2 CHAIRMAN GRIFFIS: Okay, let's call the
3 last case of the morning, please.

4 MS. BAILEY: Mr. Chairman, is this case
5 before us at this point, the last case? Is it before
6 us at this point?

7 CHAIRMAN GRIFFIS: An excellent point.
8 Why don't we have the representative of what we have
9 known as Case No. 16973, application of the Bundy
10 Development Corporation.

11 MS. BAILEY: This is a motion to
12 reinstatement of the application, Mr. Chairman. Does
13 that matter need to be disposed of before we call the
14 case?

15 CHAIRMAN GRIFFIS: Yes, we're not -- let's
16 not take up the motion at this point.

17 If I could have you introduce yourself for
18 the record, please?

19 MR. WILLIAMS: Good morning, Mr. Chairman.
20 My name is Lindsley Williams and joining me at the
21 table at this time is Pamela Bundy. Ms. Bundy is
22 president of Bundy Development Corporation and is the
23 individual who sent you the letter dated February 3rd
24 that I believe staff is interpreting, as I would, as a
25 request for the case to proceed under the name of

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1 Chinatown East LLC, the owner of the property in
2 question.

3 We are prepared to put the case on either
4 by moving into evidence that which has already been
5 submitted to you, as explained in that letter, or to
6 put on a full case as you might direct. We are
7 prepared to go forward and we request that you allow
8 us to do so.

9 Also, joining us at the table now are the
10 architect for the project, Mr. Eric Colbert and an
11 associate of his Gayle Worsley. Ms. Worsley is an
12 architect that works in the firm that Mr. Colbert is
13 the principal of.

14 In our pre-hearing submissions, we tried
15 to outline the case and we also provided you with the
16 statements of the expertise of both myself as a land
17 use and zoning specialist and Mr. Colbert in the field
18 of architecture.

19 The question of the moment is can we
20 proceed? We hope that the answer will be favorable
21 and that we can move the case along as quickly as the
22 last one and that's my opening remark.

23 Ms. Bundy, do you want to say anything
24 else?

25 CHAIRMAN GRIFFIS: I think that's enough.

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1 Let me address that. I'm sorry, give me a second
2 here.

3 Here's our difficulty. I think the Board,
4 we did look at this this morning in Executive Session
5 and we don't like continuing cases or moving cases off
6 -- if it was the schedule, we want to bring it up.
7 This gives us some particular problem that I'm not
8 sure we can, in fact, hear it today. And let me go
9 through some of those.

10 First of all, not only would we have to
11 waive which will come to be quite a few rules and
12 regulations, but we have a posting problem in terms of
13 time. The other issues that is attendant to that is
14 with the withdrawal letter, which I'm not sure why
15 that happened, it seemed to be more appropriately a
16 request for continuance, but in that, we have a
17 withdrawal. We have a withdrawal of an application
18 that actually as I've been advised, didn't really
19 exist in terms of not having the proper authorization
20 to put the application in.

21 So here I have, we have the application
22 that couldn't have gone forward. It's now been
23 withdrawn. Now what does that get us? What's the
24 problem there?

25 The problem is that when I look at how we

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1 would balance if we threw out all our rules and
2 regulations which isn't necessarily a bad thing, I
3 mean if we can proceed. The problem is what we'd have
4 to weigh in that is what is the good and what is the
5 bad? Who's hurt by that? And when we go to adding up
6 the posting doesn't have the adequate amount of time
7 and we go to the advertising and fundamentally if
8 someone was coming in in opposition which you may not
9 have known of or concerned or was looking at this
10 application and they called the office yesterday, day
11 before or today, they would have been told it was
12 withdrawn. It did not exist. So therefore we do
13 prejudice the general public in calling this all o fa
14 sudden and creating this case.

15 Now the other piece of it is, Mr.
16 Williams, are you aware of additional information that
17 needs to come into the record to make this a full
18 application?

19 MR. WILLIAMS: Myself, I am not aware of
20 anything else that needs to be made. You should have
21 received this morning a document from Advisory
22 Neighborhood Commission 6C on point.

23 CHAIRMAN GRIFFIS: I'm not concerned about
24 reports.

25 MR. WILLIAMS: Excuse me, Mr. Griffis.

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1 The last line of that includes a recommendation that
2 the case be heard today. It also goes to the merits
3 of the case, but it also speaks to the very question
4 that is in front of you now. That's why I'm bringing
5 it up.

6 CHAIRMAN GRIFFIS: Which is what?

7 MR. WILLIAMS: That the case be heard.

8 CHAIRMAN GRIFFIS: How do you remedy the
9 advertising? How do you remedy the posting?

10 MR. WILLIAMS: Well, as to the posting,
11 what we tried to do, given the uncertainties, we were
12 waiting for an indication. We had expected to be able
13 to meet all of the filing and posting requirements and
14 without going and repeating what the letter said,
15 certain delays came about and we did not want to act
16 as though we were proceeding when, in fact, there was
17 uncertainty creating, if you will, the appearance o
18 fan official hearing being held in light of what had
19 been said.

20 CHAIRMAN GRIFFIS: Wait a minute, that's
21 my problem. We needed to create the appearance that a
22 hearing was going to happen.

23 MR. WILLIAMS: Excuse me, Mr. Griffis.
24 What we were seeking to do is when we had an
25 understanding from staff that they would entertain

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1 such a request which I followed up on the following
2 Monday from that, as soon as I had that indication, I
3 called Ms. Bundy's office and specifically spoke with
4 Mr. Rufus Frazier and asked him to immediately take
5 steps to create and erect the sign on the property to
6 start the meter. That occurred on Saturday -- Friday,
7 the week before this. So while we are why by a few
8 days --

9 CHAIRMAN GRIFFIS: You haven't fulfilled
10 the time requirement, right?

11 MR. WILLIAMS: It does not fulfill every
12 day of it, but it is not as though we posted it late
13 and that we didn't have cause for doing so. We could
14 have been equally faulted for posting something when
15 we did not know if it was going to proceed.

16 CHAIRMAN GRIFFIS: You wouldn't have been
17 faulted here.

18 MR. WILLIAMS: Well, this was a discussion
19 that I had with the staff here. They did not tell me
20 which way to proceed, but I was discussing with them
21 one way and the other of doing it and we elected to do
22 what we did. It is shy by 4 days out of the 15 and
23 that is not to me --

24 CHAIRMAN GRIFFIS: Let me clear.

25 MR. WILLIAMS: Yes sir.

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1 CHAIRMAN GRIFFIS: There's no reason and
2 it doesn't help us at all getting you down here, being
3 prepared and then sending you away. By all means,
4 this Board is trying to get to that point.

5 I have gotten advice and I haven't heard
6 anything that allows me to hear it. So I do want to
7 spend just a couple of minutes, otherwise, we're
8 wasting all of our times and I don't need to keep you
9 down here longer than possible.

10 This is what I'm prepared to do. This
11 will have to take a new application. My new
12 understanding also do we have a signed application by
13 the new owner? Ms. Bundy, you're the new owner, is
14 that correct?

15 MS. BUNDY: Yes.

16 MR. WILLIAMS: Her letter indicated that
17 she was prepared, if requested, to sign whatever
18 documents in the name of Chinatown East LLC. We
19 specifically sought advice in that letter as to how we
20 could go about creating exactly the record that would
21 be sufficient for us to proceed at this time or if not
22 at this very moment, shortly downstream without
23 getting back and starting all over. I think it is
24 appropriate to note that while there were shortcomings
25 along the way, the District of Columbia did accept the

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1 application when it was filed, as filed, which
2 contained the information that we had. They accepted
3 and processed the checks. There's a series of things
4 that have been done which gave us the feeling that
5 things were proceeding as they should. I am not
6 trying to trivialize any of this.

7 CHAIRMAN GRIFFIS: Nor can you put the
8 burden of accepting an application for its
9 completeness, thoroughness or anything.

10 Just because the Office of Zoning accepts
11 the file doesn't mean that it's correct.

12 MR. WILLIAMS: I understand your point,
13 Mr. Griffis.

14 CHAIRMAN GRIFFIS: Okay.

15 MR. ZAIDAIN: Mr. Chair, can I comment on
16 something and correct me if I have an
17 misunderstanding. Reading through the application
18 materials last night, it seems like there's still some
19 vagueness on whether a special exception is going to
20 be required. Is that true?

21 MR. WILLIAMS: It would be required if the
22 area variance FAR were not granted so as to allow us
23 to use the top floor and occupy it. If the FAR
24 variance is not granted, then we will have to go down
25 to a flat program of six floors of apartments and we

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1 would still need FAR variance for the parking deck
2 below it because part of it is below that grade. But
3 if we don't get the FAR variance to allow occupancy of
4 that 37.5 percent of the roof deck, if you will, of
5 the main roof, then we would need the special
6 exception because it would be a roof structure,
7 etcetera, etcetera.

8 MR. ZAIDAIN: Okay, I understand that.
9 The inclination that I got, aside from the legalistic
10 conversation here is I assume you're aware that there
11 has not been a OP Report filed.

12 MR. WILLIAMS: I am aware of that.

13 MR. ZAIDAIN: And noting -- and this is a
14 practical issue. This obviously isn't a legal -- we
15 can still continue without OP's report. Noting OP's
16 more significant role in the Chinatown District in
17 terms of their design review and also it seemed to me
18 from the readings that I was going through last night
19 about the -- I wouldn't say completeness of the
20 design, but maybe there's still -- that the design is
21 still evolving, that maybe -- well, that was just the
22 impression I got. Please correct me if I'm wrong. I
23 was thinking that maybe this was not entirely together
24 to come before us, just from a practical standpoint,
25 not a legal, because I would assume that you're still

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1 working with OP to get issues resolved.

2 MR. WILLIAMS: Mr. Zaidain, the Applicant
3 in the case, if we are allowed to speak, could speak
4 to that at some length about the discussions and the
5 status.

6 I would only say that to the extent that
7 OP is not here right now, they -- it is not as though
8 they will not have a chance through the final stages
9 of their own review process under Chinatown to put in
10 whatever design issues are raised.

11 My understanding from the discussions I've
12 had with Ms. Bundy and Mr. Colbert is that they have
13 agreed upon the design and that they were awaiting for
14 the Board's action to make sure that it was going to -
15 - sounds sort of like Catch-22 of the last case.

16 MR. ZAIDAIN: Don't take what I'm saying
17 to the extreme. You've obviously done this quite a
18 bit in your experience. I just want to make sure that
19 you are comfortable in terms of all the parameters and
20 design and everything to move forward today and it
21 seems like you are.

22 MR. WILLIAMS: I really would rely on Ms.
23 Bundy and Mr. Colbert who are the owner and architect
24 to state the design conclusions that they've come to.

25 MR. ZAIDAIN: I can tell she's

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1 comfortable. Like I said, that's a side issue. I'm
2 not supporting a position in terms of -- we may need
3 to continue this for legalistic reasons. I just
4 thought that maybe the practicality of the matter may
5 have been a different definition in terms of design
6 and all that.

7 CHAIRMAN GRIFFIS: Here's a fundamental
8 issue. We have an application form that was filled
9 out, that was not correct. It could not be correct.
10 And it has to do with the ownership which is what I'm
11 having personal trouble with. I understand the issue.

12 And therefore, that application could not
13 have proceeded even if -- if nothing had changed, it
14 could not have proceeded today and what we have now
15 and then there's a withdrawal letter of that
16 application which actually would have failed on its
17 own. And I'm not saying out of hearing, out of the
18 requirements of the process and now we're being asked
19 to take that application up today, but it will take a
20 huge amount of waiving our regulations to do it.

21 Here's another piece that we could do in
22 that. First of all, once it's withdrawn then we have
23 actually a time limit not before which a new
24 application or the application could be resubmitted,
25 which sets them off 90 days. So we have that aspect

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1 to look at.

2 I mean frankly, I've never looked at
3 having a withdrawal submitted and then asking it to be
4 taken back which is another bit of a problem. And it
5 all goes back to posting. Here is what I think we
6 want to do. I do not see the need or the prejudice
7 that would be created if we allow amendments to the
8 application in that of a substitution to the
9 paperwork. I'm not going to call it the application,
10 to the paperwork that was submitted into the Office of
11 Zoning, that being the application, Mr. Williams, your
12 signature as the official owner's agent, if you're
13 representing this case and do that. And then set this
14 for an expedited hearing and staff will set that
15 schedule and then we come back, we're all together.
16 The posting is proper. The re-advertising is proper.
17 And I think we have --

18 MR. WILLIAMS: Would we proceed under the
19 same case number as an amendment? That would be my
20 recommendation for the sake of simplicity and the
21 record keeping.

22 CHAIRMAN GRIFFIS: Simplicity and also
23 save you a fee.

24 MR. WILLIAMS: Significantly.

25 CHAIRMAN GRIFFIS: Right. Which was what

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1 I was trying to get to. I do not see -- the
2 substance, really what we're talking about is the land
3 and the application. We're not necessarily -- I mean
4 the ownership has changed and all that, but that
5 hasn't impacted -- well, there is an issue. The
6 problem is -- right. I can't do it. I know I can't
7 do it. And there's numerous reasons why --

8 MR. MAY: Mr. Chairman, can I ask a
9 question about this?

10 CHAIRMAN GRIFFIS: Yes.

11 MR. MAY: I don't want to confuse the
12 waters any more, but you said in the very beginning
13 that the application was in effect not a real
14 application because it was not by the owner of the
15 property.

16 CHAIRMAN GRIFFIS: That's correct.

17 MR. MAY: Is it conceivable that what, in
18 fact, we could do is reject it on that grounds and
19 without forfeit of fee, without forfeit of -- without
20 having to wait 90 days and everything else and then
21 simply hear it now as a new case, in essence. Not
22 hear it now, but hear it in a timely fashion because I
23 don't think we can hear it now for the posting reason.

24 CHAIRMAN GRIFFIS: That's what I was
25 trying to go to. The issue is the case number cannot

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1 be re-used as it was withdrawn and it's gone.

2 The other issue is in terms of a new
3 application, what we can try and do is try and
4 expedite the hearing of this based within the
5 advertising. I mean the fee that we take on these
6 applications, although I'm not involved in any of that
7 or setting the fees, but it goes to the cost of
8 advertising. It goes to the cost of setting out all
9 that and that's what -- I mean it's problematic, but
10 it's a reality, especially with this one.

11 I don't see any other way to go. I think
12 we look for a new application to come in and we set
13 this for an expedited hearing and I will pay direct
14 attention to the schedule to make sure it happens as
15 quickly as possible.

16 Mr. Williams, do you have anything else on
17 that?

18 MR. WILLIAMS: We are disappointed with
19 the direction of your remarks, profoundly so, Mr.
20 Chairman. I hear your words. I believe that the
21 Board has ample authority to waive the rules that we
22 suggested. It also has the authority to waive fees
23 and that is something --

24 CHAIRMAN GRIFFIS: That I absolutely
25 disagree with you on. Go ahead.

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1 MR. WILLIAMS: Mr. Griffis, the statement
2 I made is that it has the authority and I think you
3 would not disagree with me that you have the authority
4 to do that, whether you choose to do so is a separate
5 question.

6 CHAIRMAN GRIFFIS: Right. We've
7 deliberated and I have fairly extensive arguments on
8 the fact that we do not have jurisdiction --

9 MR. WILLIAMS: I haven't made the request.
10 What we could tell you and what I believe we will
11 tell you as soon as we possibly can is the
12 difficulties that we've gone through with this
13 project, the difficulties that Ms. Bundy has had in
14 trying to establish the viability of this program, we
15 are prepared to proceed and we believe that a delay at
16 this time is counter to the interest of the District
17 of Columbia and not counter to the interest of anybody
18 in the community. They're not here and they did know
19 about it. We've been working with the ANC, with the
20 surrounding neighborhood organizations. You name it,
21 we've been there and we were hoping to overcome the
22 issues that were identified in our letter of February
23 3rd.

24 CHAIRMAN GRIFFIS: Believe me, if I was
25 acting as a person and not with the regulations

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1 surrounding me, I would move ahead with this. There's
2 no reason why I would want to feel otherwise. I think
3 there is strong indication that binds this Board from
4 moving ahead with this today.

5 Mr. Zaidain, did you have something? I'm
6 sorry, I thought you were indicating that you had
7 something. In which case I think unless there's other
8 discussion, other opinions?

9 MR. WILLIAMS: Mr. Griffis?

10 CHAIRMAN GRIFFIS: Yes.

11 MR. WILLIAMS: If you are coming out in
12 the direction that you seem to be going which sounds
13 like a new application, would the Board be able to
14 send a signal as to whether or not some of the
15 materials, e.g., diagrams from the Surveyor's Office,
16 etcetera, etcetera can be utilized from the original
17 case or do we have to go back and start the time of
18 getting new diagrams, all those other requirements?

19 CHAIRMAN GRIFFIS: There's absolutely no
20 reason why you wouldn't utilize all the information
21 that was --

22 MR. WILLIAMS: So we can in effect join
23 the records even though there may be a separate case
24 number?

25 CHAIRMAN GRIFFIS: That's correct.

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1 MR. WILLIAMS: Thank you for the
2 clarification.

3 CHAIRMAN GRIFFIS: But for clarification,
4 it is a new application and will go through
5 readvertising. We will set the hearing as immediately
6 past the required time for posting and readvertising.

7 Any questions from the Board? Is everyone
8 clear on that? Do I have a consensus on that moving
9 forward in that direction?

10 Can I hear opposition to that?

11 (No response.)

12 Okay. Final questions? Okay. Yes.

13 (Pause.)

14 Okay, that being said, I'm sorry for that
15 and I wish there wasn't more clarification. We will
16 set that for schedule with staff coordination based on
17 the advertising and when the new information of the
18 application is in.

19 Is there anything else for us to do at
20 this point, Ms. Bailey, staff?

21 MS. BAILEY: No, Mr. Chairman.

22 CHAIRMAN GRIFFIS: Thank you very much.
23 In which case, regrettably, but informatively, I will
24 now close the morning session of 11 February 2003.

25 Let me give a quick indication, let us

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1 take 25 minutes for lunch and then we'll be back. So
2 by the clock in the hearing room, I'm looking at about
3 20 after. We'll round it off to 1:30 then, according
4 to that clock, at my urging of the Board. I'm
5 terribly sorry about that. We had extensive technical
6 issues to deal with and we'll see you all shortly.

7 (Whereupon, at 11:55 a.m., the public
8 hearing was recessed, to reconvene at 1:30 p.m.)

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

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12:55 p.m.

1
2 CHAIRMAN GRIFFIS: Good afternoon,
3 everybody. I would ask that the hearing please come
4 to order. This is the February 11, 2003 public
5 hearing of the Board of Zoning Adjustment of the
6 District of Columbia. My name is Geoff Griffis. I am
7 Chairperson. Joining me today is Ms. Anne Renshaw,
8 Vice Chair; also, Mr. Curtis Etherly who is sitting to
9 my right. Representing the National Capital Planning
10 Commission is Mr. Zaidain on my far left.
11 Representing the Zoning Commission with us this
12 afternoon is Mr. Hood. And I say good afternoon to
13 all of you.

14 Copies of today's hearing are available to
15 you or rather the agenda. I'm not sure it will tell
16 you much because you're all here for one thing. But
17 if we do run out of copies, we can have more made and
18 they will be given to you. You can just let staff
19 know in the office that's adjacent.

20 Let me run through a few technical items.
21 Everyone here should be aware that all public
22 hearings before the BZA are recorded. Those are
23 recorded for the official record. Therefore, there's
24 a lot attendant to that. First, when coming forward
25 to speak to the Board to give testimony, you need to

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1 have filled out two witness cards. Witness cards are
2 located at the table where you entered into and
3 there's probably two or three left at the table in
4 front of us. We will provide more witness cards as we
5 run out of those. Please let staff know in the office
6 if you cannot find them. Those two witness cards
7 filled out go to the recorder. That recorder is
8 sitting to my right.

9 When coming forward to speak to the Board,
10 you will need to speak into the microphone and the
11 microphone should be on. We will give you
12 instructions if that is actually not working.

13 You should also introduce yourself with
14 your name and your address.

15 Let me also ask that everyone here now
16 turn off any cell phones or beepers so that we don't
17 disrupt the proceedings. I would ask, also ask that
18 people refrain from any disruptive noises or actions.

19 Clearly, this is a packed room this afternoon, not
20 something that we are unused to. It is probably going
21 to get a little warm. Please, if you need to get up
22 and leave, that's absolutely fine. However, be
23 respectful, obviously, to the proceedings and to the
24 people giving testimony, whether you like what you're
25 saying or not. It's important that we hear everybody

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1 and we hear everybody fairly.

2 The order of procedure today will be first
3 to hear statements of the witnesses of the Applicant.

4 Second will be any Government agency reports
5 attendant to the application such as Office of
6 Planning, Department of Transportation, etcetera.
7 Third, we would hear from the Advisory Neighborhood
8 Commission, the ANC. Fourth, would be parties or
9 persons in support of the application. Fifth would be
10 parties or persons in opposition. And sixth, finally,
11 we will have closing remarks by the Applicant.

12 Cross examination of witnesses is, of
13 course, permitted by the Applicant and also parties in
14 the case. The ANC within which the property is
15 located is automatically a party in this case.

16 The record will be closed at the
17 conclusion of each case, except for any information
18 that we specifically request and the Board will be
19 very specific on what that information is and when it
20 is to be submitted into the Office of Zoning. After,
21 of course, we receive that, the record would then be
22 finally closed and no other information would be
23 accepted.

24 The Sunshine Act, which requires us to
25 have a public hearing on each case and hold that in

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1 the open, and before the public. However, the Board,
2 according to its rules of procedure and the Sunshine
3 Act may enter executive session during or after a
4 public hearing in order to review the record or to
5 deliberate on a case.

6 The decision of this Board in contested
7 cases must be based exclusively on the public record
8 and therefore we ask the people present today not
9 engage Board Members in conversation so that we do not
10 give the appearance that we are not basing our
11 deliberation and decision on the public record.

12 We will make every effort to conclude
13 today's session by 6 o'clock. We have quite a bit of
14 preliminary matters to get through and so we will
15 obviously assess our schedule. As we get to, if we do
16 get to close to 6 o'clock, I will clearly give
17 indications of what our procedure, what is left for us
18 to do and when we will get to it.

19 That being said, let us take preliminary
20 matters. Preliminary matters are those which relate
21 to whether a case will or should be heard today such
22 as requests for postponements, continuances or
23 withdrawals or whether proper and adequate notice of
24 the hearing has been given. If you are not prepared
25 to go forward with the case today or if you believe

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1 that the Board should not proceed now is almost the
2 time to raise such a matter.

3 I'm going to ask staff first if they have
4 any procedural preliminary matters. Then I will
5 outline for everyone here present what I think we'll
6 get into which, as you've probably come to learn, if
7 you haven't seen me before, I'm the worst at
8 predicting what actually is going to happen. But with
9 that, staff, is there any procedural preliminary
10 matters?

11 MS. BAILEY: Mr. Chairman, Members of the
12 Board, the audience, good afternoon. Yes, Mr.
13 Chairman, there are several preliminary matters.
14 Staff is recommending that the case be called and then
15 the Board can deal with the preliminary matters.
16 There are at least three or four of those.

17 CHAIRMAN GRIFFIS: Very well, I would
18 absolutely agree. Before the case -- well, there it
19 is. Let me also say good afternoon to Ms. Bailey from
20 the Office of Zoning and also Mr. Moy. Mr. Nyarku is
21 also with us from Zoning and Ms. Monroe is
22 representing Corporation Counsel with us this
23 afternoon.

24 With that, let's call the case in the
25 afternoon then.

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1 MS. BAILEY: Application No. 16970 of
2 National Child Research Center, pursuant to 11 DCMR
3 3104.1, for a special exception to continue an
4 existing child development center, last approved by
5 BZA Order No. 16307. The school is with morning and
6 afternoon programs for 120 children at any one time,
7 ages 2 1/2 to 5 years, and 38 staff. The application
8 is to occupy all floors of the existing building.
9 Relief is being requested under Section 205 for the
10 construction of additions to the existing building.
11 It's located in an R-1-B District at premises 3209
12 Highland Place, N.W., Square 2072, Lot 30, that's 855
13 and 866.

14 All those persons wishing to testify
15 today, would you please stand to take the oath?

16 CHAIRMAN GRIFFIS: Anybody even thinking
17 about giving testimony today they can just stand and
18 be sworn in. Give your attention to Ms. Bailey,
19 please?

20 MS. BAILEY: Do you solemnly swear or
21 affirm that the testimony you are about to give in
22 this proceeding will be the truth, the whole truth and
23 nothing but the truth?

24 (Witnesses were sworn.)

25 Thank you.

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1 CHAIRMAN GRIFFIS: Good, thank you, Ms.
2 Bailey. First of all, as the case is now called I
3 want to indicate what I had as a preliminary matter
4 and that is for those giving, having supplied us with
5 an application for party status. There was a map put
6 out at the lunch recess for your filling in and that
7 is you were to list your name address and that was
8 joined to a number. That number was to be put on a
9 map that indicated where your residence is.

10 Is there anyone here who is requesting
11 party status that did not get the opportunity to put
12 that information down on the map? If you could just
13 raise a hand?

14 Okay. If, in fact, -- is that correct,
15 sir? Are you requesting party status? Okay, then if,
16 in fact, it comes to my attention and you can bring it
17 to my attention by addressing staff if you are aware
18 of someone coming in, it will be informative.
19 However, I think we can take that up when we take up
20 the party status.

21 Now what I'm going to do, clearly there
22 are folks in front of me that have preliminary
23 matters. What I'd like you to do is just introduce
24 yourself, tell me what your preliminary matter is and
25 then I need to assess where we go with that and let me

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1 start on the right here.

2 MS. DWYER: For the record, my name is
3 Maureen Dwyer with the law firm of Shaw Pittman. I'm
4 counsel for the Applicant, National Child Research
5 Center. We are here with several preliminary matters.

6 We're opposing the preliminary matter which is the
7 motion to dismiss and the motion for declaratory
8 relief. We are proposing and requesting continuance
9 of the hearing in order that we can work with the
10 Department of Transportation and respond to issues
11 they raised which we were just apprised on Friday.

12 We have also submitted in the record a
13 response to an issue that was raised by the Office of
14 Planning and at least one of the opposition groups the
15 questions of whether Section 2516 applies to this case
16 and if the Board determines that it does, we would
17 amend the application to include that additional area
18 of relief.

19 CHAIRMAN GRIFFIS: Do you have that? When
20 was that submitted?

21 MS. DWYER: That was submitted this
22 morning. It's a relatively thick document with a lot
23 of attachments. It's a 2-page letter. I have
24 additional copies if you need them.

25 CHAIRMAN GRIFFIS: Mr. Zaidain, do you

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1 have that, the Pittman -- I need to see a copy because
2 that is actually an issue that we were going to bring
3 up which may save us some time.

4 There's a submission briefing the fact of
5 whether relief is required under 2516 which goes to
6 whether an accessory structure is being proposed for
7 two separate structures.

8 Just so we don't seem like we can't find
9 things, but for everyone's edification while we're
10 passing this out, I have removed an extensive amount
11 of documents. This was submitted to us on this case
12 this morning. So for your awareness, there's an awful
13 lot of information and this is from everybody
14 involved. There's no one in particular to blame, one
15 side or the other. But just to let folks know, that's
16 quite a lot for us to digest in the 20 minutes that we
17 took for lunch which is why it took more like 45?

18 That being said, we have this. I have not
19 seen this document in which case and I'm not sure why,
20 but that goes well. So you have three issues, clearly
21 to our -- okay, there it is. Three issues.

22 Yes sir?

23 MR. WILLIAMS: Good morning, Mr. Chairman,
24 Members of the Board. My name is Lindsley Williams.
25 I reside at 3307 Highland Place with my wife. My home

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1 is located approximately three houses and one small
2 street from the subject property. My preliminary
3 question is whether or not adequate notice was given
4 under the provisions of 2516. I have a document to
5 submit to articulate the points. That's the principal
6 preliminary issue.

7 The second preliminary issue just raised
8 was that in Ms. Bailey's very careful effort to read
9 the call notice to this case, she said it was in terms
10 of to use all floors of the existing building in the
11 singular. I believe the text that was advertised uses
12 the plural and that is in effect the heart of the
13 issue of 2516 and I would speak to it at a time that
14 you would recognize me to do so.

15 CHAIRMAN GRIFFIS: Okay, but you have two
16 issues. You're talking about proper notice and then
17 you're talking about what is actually required for
18 relief. Is that correct?

19 MR. WILLIAMS: Yes sir.

20 CHAIRMAN GRIFFIS: Mr. Williams, are you
21 coming in as a requested party?

22 MR. WILLIAMS: No sir.

23 CHAIRMAN GRIFFIS: You're speaking as an
24 individual?

25 MR. WILLIAMS: As an individual. There

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1 are parties in support seeking recognition. There's
2 the Applicant. There are parties in opposition.

3 CHAIRMAN GRIFFIS: I don't need to know
4 everybody else. What are you doing?

5 MR. WILLIAMS: It's just me.

6 CHAIRMAN GRIFFIS: And are you present in
7 opposition?

8 MR. WILLIAMS: If we get to that stage
9 with this application, I will be appearing in
10 opposition.

11 CHAIRMAN GRIFFIS: Okay.

12 MR. WILLIAMS: Reluctantly, but
13 opposition.

14 CHAIRMAN GRIFFIS: Thank you. Yes?

15 MR. NETTLER: My name is Richard Nettler
16 with Robins, Kaplan, Miller, Ciresi. I represent a
17 number of neighbors who I think have checked off on
18 your list and who were on a list that I provided to
19 you with our motion to dismiss and request for party
20 status.

21 We have a number of issues and in light of
22 Ms. Dwyer's statement I'll try to address it from her
23 issues as well. We have filed a motion to dismiss.
24 We join with Mr. Williams in terms of the issue
25 regarding Section 2516 which we will address at the

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1 appropriate time.

2 We are in opposition to the party status
3 sought by the Friends of NCRC and we, of course, have
4 an opposition to the postponement that's been
5 requested this afternoon which we were served with as
6 we walked into the hearing this afternoon. And we
7 will, of course, address the party status for my --
8 for the neighbors that I represent as well at the
9 appropriate time.

10 CHAIRMAN GRIFFIS: Okay. So you're
11 joining under 2516, but not necessarily under adequate
12 notice?

13 MR. NETTLER: Not necessarily under
14 adequate notice, although if 2516 does apply here,
15 clearly this proceeding could not go forward, could
16 not be completed because the documents and information
17 that must be provided to this Board to allow for
18 review of Section 2516 are extensive, would require a
19 number of other agencies, including the Federal
20 Government.

21 CHAIRMAN GRIFFIS: It wouldn't preclude us
22 from getting into it and requiring that information be
23 submitted though, but we're not at that --

24 MR. NETTLER: That's if you get beyond the
25 notice issue.

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1 CHAIRMAN GRIFFIS: Yes. Okay. We won't
2 get into that at this point.

3 Very well, this is what I propose. I
4 think we need to take up party status first. As I
5 think everyone now is -- is everyone clear on what
6 we're doing?

7 We have a numerous amount of motions that
8 will either make this go today, postpone it or do
9 away with it all together.

10 Now what I need in any motion before the
11 Board is a response from the parties in it, so that
12 does lend itself to granting party status. So I would
13 like to take that up, first, unless the folks at the
14 table have any concerns about that?

15 Ms. Dwyer, do you have any concern of
16 taking up party status first?

17 MS. DWYER: No, that's fine.

18 CHAIRMAN GRIFFIS: Very well.

19 MR. WILLIAMS: Mr. Griffis?

20 CHAIRMAN GRIFFIS: Yes.

21 MR. WILLIAMS: The thrust of the question
22 on 2516 is whether or not the structure being proposed
23 in the application along Ordway Street --

24 CHAIRMAN GRIFFIS: I'm aware of what the
25 issue is.

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1 MR. WILLIAMS: Is even before you. And
2 that structure is not before you, then some of the
3 bases for seeking party status in relationship to it
4 could be ruled unnecessary.

5 CHAIRMAN GRIFFIS: It's certainly
6 unnecessary, but there's nothing that precludes me
7 from doing party status and there's nothing, in fact,
8 I am looking forward to that in order to be informed
9 from several sides.

10 For instance, if I take up 2516 at this
11 point, I can listen to Ms. Dwyer and I can have her
12 submit.

13 Mr. Nettler has no party status before us
14 at this point and will not argue either in support or
15 in opposition. So it doesn't seem to make a whole lot
16 of sense to jump into a lot of these issues.

17 With that, Mr. Nettler, I'd like to take
18 up your request for party status and there's, I hope I
19 can rely on everyone's patience because we are going
20 to have to be crossing an awful lot of documents that
21 are in front of us, individual applications, tying
22 them together and making sure that we have joined
23 everyone that wants to.

24 That also being said, party status, of
25 course, is a granting of great status before our Board

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1 and it comes with great responsibility. I have said
2 this before and it's important to repeat, party status
3 gives you a higher level of participation in every
4 public hearing. Anyone here present and anyone that
5 you want to call to get down here in the next couple
6 of hours is able to give testimony. And I should say
7 that, everyone is able to give testimony as a person
8 in any public hearing.

9 When you are granted party status, that
10 comes with great burden and responsibility. You are a
11 very formidable participant in the case. You will be
12 granted cross examination privileges of all witnesses.

13 You will be burdened to submit information that the
14 Board requests. You will be relied upon for this
15 Board and our deliberations to submit findings of
16 fact, conclusions of law.

17 In making the case for party status, you
18 must show as the application sets forth the six or
19 seven criteria, the most important being how you are
20 uniqueness or distinctively affected, if this was to
21 be granted. Noting the number of party requests, one
22 has to ask how many unique situations could there be?

23 That being said, I would hope that two things happen.

24 One, you think strongly about whether you actually
25 want to participate as a party in this case or are

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1 just here to give very persuasive and passionate
2 testimony which would be very appropriate.

3 If you, in fact, have a request for party
4 status and have found that you have similar issues,
5 concerns, oppositions or items of support with the
6 person sitting next to you, with your neighbor down
7 the block, it would be very advantageous for the
8 success of your own application to talk to them about
9 joining in one.

10 We obviously have Mr. Nettler here who is
11 now going to walk us through the number of people he
12 will be representing as party in this case, if so
13 granted.

14 Well, I think we'll open it up to you, Mr.
15 Nettler, and I would hope and I think I will revisit
16 this as we go into other applications. I'm not sure
17 what everyone is thinking at this point or whether or
18 not one would want to join or not join, but I will
19 perhaps broker the idea if people want to join to have
20 more added on, if in fact, it's granted. But there it
21 is for you to think about.

22 Mr. Nettler, let us take up first -- let's
23 go down the names that you have in your party status
24 as we have them also listed here today on the map and
25 then we'll cross with what we have individually

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1 submitted. Is that okay with you?

2 MR. NETTLER: That's fine. I did want to
3 make one comment because while I don't think it
4 pertains necessarily to all of the individuals on my
5 list, it may pertain to some and some who have
6 individually sought party status, but recently in a
7 case involving an appeal from the Board of Zoning
8 Adjustment, involving whether the individuals who
9 challenged the Board of Zoning Adjustment actually had
10 standing, the Court's focus was on the 200 foot limit
11 in terms of understanding whether a party had standing
12 or not. I think in terms of the uniqueness aspect of
13 the equation that you have identified is really, I
14 think established by the zoning regulations themselves
15 which establishes the 200 foot radius and the Courts
16 have recognized that in the past.

17 And so I think in terms of identifying
18 those who do not or those who do have party status,
19 the focus should be on that issue.

20 CHAIRMAN GRIFFIS: So you're moving us to
21 look more on geography than anything else?

22 MR. NETTLER: Correct.

23 CHAIRMAN GRIFFIS: Yes, okay. Well, let
24 me just preface that by our regulations does set out
25 and it is very articulated in my role as Chairman and

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1 that is not to accept any redundant or unuseful --
2 that's not the regulation's words -- testimony and my
3 point and focus on redundant is that it will be very
4 pertinent to anyone's case in how they want to present
5 it, if it is done effectively and efficiently once,
6 rather than having 10 people come up and say the same
7 thing to us. I can pretty much guarantee by the third
8 we won't hear much more. It's just human nature.

9 So taking that into account, yes, I do
10 agree. Geography, the distance, clearly is important
11 and obviously that's why we had it mapped out so we
12 can look at that.

13 MR. NETTLER: Having said that, as I said
14 that's not really our issue. If we want, we can go
15 through the list that I have provided you as Exhibit 1
16 to our motion for party status and I have in front of
17 me the sign-in sheet that you had provided at the door
18 as well.

19 And what may be easier to do because I
20 also have in front of me copies of the motions to
21 appear as parties that were submitted separately from
22 mine is actually to tell you which ones should be
23 removed from my list as opposed to which ones on my
24 list -- it's the same thing. Maybe that's an easier
25 way of doing it.

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1 But going down the list that you have in
2 front of you from -- that was by the door, those who
3 would be removed who have their own individual party
4 request are Steve Hunsicker, Henry Little, George
5 Nelson; No. 7, which I can't read the last name on;
6 Mr. Beckner, No. 11; Gaylord Neely, No. 12. That's
7 it, I believe.

8 CHAIRMAN GRIFFIS: 17, John Thoren.

9 MR. NETTLER: John Thoren is not one of
10 mine.

11 CHAIRMAN GRIFFIS: Okay, so let's read
12 yours.

13 MR. NETTLER: So we have John and Leslie
14 Oberdorfer. We would exclude Gaylord Neely. We have
15 Cheryl Tennille.

16 CHAIRMAN GRIFFIS: You're not reading off
17 the list, the new list?

18 MR. NETTLER: Excuse me. You want me to
19 go back and read off the list?

20 CHAIRMAN GRIFFIS: Whatever it is, let's
21 use the same one. If I'm taking them off of one, let
22 me look at that. Does that work for you? On the list
23 that we just created.

24 MR. NETTLER: That works for me.

25 CHAIRMAN GRIFFIS: Okay.

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1 MR. NETTLER: The first one is Charles
2 Both, Laine Kaufman, Pelletreau, Dorothy Rich, Susan
3 Taylor, Joann McLaughlin, Gregory Craig, Jane Vanneman
4 and her husband, Fetterman, Ince and Sotsky. And
5 there are a number of others who haven't signed in as
6 party status on this, but who are not going to be
7 giving any testimony either with us, but if you want
8 me to go through, they're still on our list, but
9 they're not --

10 CHAIRMAN GRIFFIS: So you're removing
11 people from joining you in party?

12 MR. NETTLER: Right, that was the first
13 group I gave you as ones I removed, again, which was
14 Hunsicker, Little, Nelson, No. 7 which I can't read,
15 Beckner, Neely.

16 They're seeking their own party status, as
17 I said.

18 CHAIRMAN GRIFFIS: Okay.

19 MS. DWYER: Mr. Chairman, if I could
20 respond to that?

21 CHAIRMAN GRIFFIS: Yes.

22 MS. DWYER: NCRC would take the position
23 that any of the parties that are listed as being
24 represented by Mr. Nettler should be included in the
25 grouping and have one party status as opposed to

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1 separating some of them out, unless they come forward
2 and demonstrate some unique reason why they should not
3 be included on that list. But clearly, they have been
4 part of the larger group all along. They are well
5 represented by counsel and in the interest of
6 streamlining the hearing process, it would be better
7 to have one person cross examining than having those
8 excluded and individuals.

9 CHAIRMAN GRIFFIS: I would tend to agree.

10 However, if they -- we'll have to hear from them
11 individually, unless you have --

12 MR. NETTLER: They certainly have the
13 right to remove their name from my list and --

14 CHAIRMAN GRIFFIS: That's very true.

15 MR. NETTLER: And go forward to you as a
16 party and if you deem it inappropriate for them to be
17 a party, then they can make a decision as to the way
18 they want to be back on our list.

19 CHAIRMAN GRIFFIS: Right.

20 MR. NETTLER: But I think that's their
21 right, not mine to put forth.

22 CHAIRMAN GRIFFIS: Indeed. Yes. And I
23 don't think -- well.

24 Okay. My notes indicate there was a total
25 of 22 requests for party status. I'm showing a list

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1 of 19, so hopefully we'll ferret out who's been
2 missed.

3 Mr. Nettler, do you want to talk briefly
4 then about your standing and the application?

5 MR. NETTLER: Well, briefly, in terms of
6 their standing, these individuals, some of who live
7 across the street --

8 CHAIRMAN GRIFFIS: I see. Can you give me
9 30 seconds?

10 MR. NETTLER: Sure.

11 (Pause.)

12 CHAIRMAN GRIFFIS: I'm sorry, Mr. Nettler,
13 I'm going to need two minutes.

14 (Pause.)

15 CHAIRMAN GRIFFIS: Okay, let me resume. I
16 appreciate people's patience. There were a few things
17 I needed to find.

18 Let's move ahead, Mr. Nettler.

19 MR. NETTLER: Let me first say that it's
20 my view that even if one of these individuals who I
21 represent meets the standard, then that permits me to
22 go forward on their behalf as a party.

23 It's our position that they all do. They
24 are owners of property that is either immediately
25 adjacent to NCRC or they are across from NCRC and

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1 certainly all of them are within 200 feet of NCRC.

2 The development and expansion that NCRC is
3 seeking has a number of impacts on them individually
4 in terms of their enjoyment of their own properties
5 because of the traffic conditions that have been
6 created and that will be created by this increase in
7 use, that has been proposed by NCRC on property values
8 and this is different from the public at large,
9 property values of the individuals' property because
10 of the use. In fact, with regard to many of these
11 individuals as you will no doubt see when the
12 testimony is presented, they have been -- their
13 property has either been damaged by or utilized by
14 those parents of children who have been, who cannot --
15 who have not been abiding by the traffic regulations
16 of the District of Columbia and they continue to be
17 impacted because of that, by the uses of the property
18 on the weekends, some of the illegal uses that have
19 been made of the property that we will get into at
20 some point in the testimony as well.

21 CHAIRMAN GRIFFIS: What are the issues
22 attendant to that?

23 Are there specific issues to illegal use
24 without going to the merits?

25 MR. NETTLER: Well, to the extent that the

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1 property is used on the weekends and were used for
2 uses that are not authorized by their certificate of
3 occupancy, it certainly has impacted again their use
4 and enjoyment of their own property.

5 CHAIRMAN GRIFFIS: How so? Like what are
6 the elements?

7 MR. NETTLER: Well, if the property is
8 used on a Saturday and there's nothing that permits
9 them to do so, then their ability to use the streets,
10 their children to play in the streets or the children
11 to play in their backyards or their use of --

12 CHAIRMAN GRIFFIS: So it goes to traffic
13 that's created?

14 MR. NETTLER: It goes to traffic, it goes
15 to environmental issues affecting the property from
16 the excessive number of cars coming to the property.
17 It goes to the vistas that will be impacted by these
18 houses if the trees that are proposed to be torn down
19 are going to be torn down.

20 CHAIRMAN GRIFFIS: That goes to a new
21 issue, right?

22 MR. NETTLER: Those are all issues that
23 are affecting these particular individuals.

24 CHAIRMAN GRIFFIS: I understand that. I
25 was just trying to get a bullet point element of when

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1 you say illegal use on the weekends, how is that
2 actually being --

3 MR. NETTLER: There's noise that's
4 amplified --

5 CHAIRMAN GRIFFIS: Noise.

6 MR. NETTLER: There's noise is one.

7 CHAIRMAN GRIFFIS: Indeed.

8 MR. NETTLER: There's traffic is two.

9 CHAIRMAN GRIFFIS: Two.

10 MR. NETTLER: And we're dealing with the
11 proposed application, there are vistas in terms of the
12 trees that are lost and the impact on the environment
13 of these adjacent houses just in terms of those
14 aspects of it.

15 So I think -- and how old those --
16 ultimately, as well, impact the value of the
17 properties that surround this school.

18 Then there are the direct impacts on the
19 properties as well when there are conferences at the
20 premises or the premises are utilized for an improper
21 purpose and there is an overabundance of traffic that
22 ends up using the garages, the driveways and lawns of
23 some of these people's properties. That certainly has
24 an impact on their --

25 CHAIRMAN GRIFFIS: When you say "events",

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1 clearly we're not getting to the merits of the case
2 here or anything that you want to testify of, when you
3 say for party status, what are the unique aspects that
4 events create outside of what you've already listed?
5 Are there any?

6 MR. NETTLER: Certainly in terms of the
7 noise and the traffic that is a consequence of it
8 being used for those purposes.

9 CHAIRMAN GRIFFIS: That's understood. I
10 just want to make sure that I'm hitting all the
11 categories, let us say, of what is going to be
12 discussed here.

13 Anything else?

14 MR. NETTLER: I think that's it.

15 CHAIRMAN GRIFFIS: Good, Mr. Nettler has
16 laid out for his group of parties the issue of how
17 they would be, first of all, Mr. Nettler, they're all,
18 you've stated, within 200 feet of the property in the
19 application, is that correct?

20 MR. NETTLER: That's correct.

21 CHAIRMAN GRIFFIS: The issues that have
22 been laid out in terms of what type of impact
23 distinctively and uniquely that would affect these
24 people more so than the general public go to traffic
25 issues, to property value. Property value also goes

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1 to property damage, that is value as you've indicated,
2 Mr. Nettler, would be, I would imagine you're going to
3 argue diminished if the addition was put on and the
4 use continued.

5 There are environmental impacts. I would
6 put that also within traffic in terms of fumes, but
7 also you've indicated environmental noise impacts
8 which I think stand on its own, and also the removal
9 of trees which goes to a larger heading that I heard
10 you say was the vistas that would be changed. I think
11 you would argue diminished to the negative impact of
12 the adjoining properties. And events that didn't seem
13 to evidence new, but also were redundant as some of
14 those issues, fit into those issues, maybe bring it to
15 a worse level in your opinion.

16 Am I missing anything?

17 MR. NETTLER: I think that's a good
18 synopsis, so far.

19 CHAIRMAN GRIFFIS: I like doing that, it's
20 easier.

21 Okay, then let's make sure we have exactly
22 how many people are in there. I have you representing
23 11 households, Mr. Nettler. Is that correct?

24 MR. NETTLER: Well, there are 11
25 households who had signed in on your -- but let's see.

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1 MR. ETHERLY: Mr. Chairman, I believe Mr.
2 Nettler, counting his count, I believe it's 33.

3 MR. NETTLER: There are 33, correct. And
4 I've taken out of that the ones that we went through
5 from the list.

6 CHAIRMAN GRIFFIS: Fabulous clarification.

7 MR. ETHERLY: So from Exhibit 1 of Mr.
8 Nettler's original submission there were 33 members
9 associated with his group from which we are
10 subtracting six.

11 MR. NETTLER: That's correct.

12 (Pause.)

13 MR. NETTLER: Excuse me. It's just four
14 that are being removed.

15 MR. ETHERLY: Four individuals from your
16 list?

17 MR. NETTLER: Right. I've been corrected
18 that Beckner and Hunsicker were not on my original
19 list.

20 (Pause.)

21 CHAIRMAN GRIFFIS: Okay, we're going to
22 take our time doing this so we don't miss anybody.
23 Clearly, if we get through this and you think you
24 haven't been heard, but we have a huge list from Mr.
25 Nettler. We have a list of our own that were actual

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1 submissions. And then we now have the sign-in and
2 that's what's taking us some time in making sure that
3 we're not throwing somebody out needlessly. Because
4 now what I'd like to do is hear a brief deliberation
5 from the Board first, unless you want to hear
6 opposition to the party status.

7 Why don't we start with that, Ms. Dwyer.
8 Is there any opposition from the Applicant to granting
9 the party request of this group?

10 MS. DWYER: No, Mr. Chair, we have no
11 opposition.

12 CHAIRMAN GRIFFIS: Okay, is this group
13 going to be identified in any such way, Mr. Nettler?

14 MR. NETTLER: Yes, I've identified in my
15 submission as The Neighbors.

16 CHAIRMAN GRIFFIS: Indeed. Board Members?
17 Everyone clear on the --

18 MR. NETTLER: I understand another
19 individual, Henry Little, has asked to be a separate
20 party.

21 That's right, he's already on there as a
22 separate party.

23 CHAIRMAN GRIFFIS: Yes.

24 MR. NETTLER: Right.

25 MR. ETHERLY: Mr. Chair, I think I'm

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1 fairly clear on Mr. Nettler's submission and would
2 probably not have any concern about the application.

3 I mean perhaps, Mr. Chair, what I might
4 suggest is maybe once again, as you noted, we might
5 have to piecemeal through this, but perhaps as a
6 suggestion we could read Mr. Nettler's Exhibit 1, make
7 sure we have the appropriate members of that
8 submission highlighted, drop off the individuals that
9 have been dropped off by virtue of testimony today and
10 then read through very quickly our request for party
11 status list which are probably going to be
12 significantly overlapping.

13 CHAIRMAN GRIFFIS: Right.

14 MR. ETHERLY: Just to make sure.

15 CHAIRMAN GRIFFIS: Let's go ahead and do
16 that. If you wouldn't mind taking that up, Mr.
17 Nettler. I need you to pay attention, clearly, that
18 these are the people that were on your list and those
19 in attendance, if you don't hear your name and you
20 think you're supposed to be on this list. And then
21 we'll get the phone book out and see how that plays.

22 MR. NETTLER: You are going to read the
23 list with the deletions or without the deletions.

24 CHAIRMAN GRIFFIS: He's going to add the
25 deletions. So he's not going to read -- see that?

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1 We're already getting ahead of ourselves.

2 Read the folks that are on your list and
3 then we will identify those that were deleted.

4 MR. ETHERLY: Might I make a suggestion?
5 Why don't we do the following: you offer the list or
6 offer the notes off of your list that should be
7 deleted. That way we can put this list to bed.

8 MR. NETTLER: Correct.

9 MR. ETHERLY: And then we need to
10 reconcile the request for party status list that the
11 office received which probably overlaps substantially
12 with the Chair's permission, of course, and then
13 finally cross referencing the submissions from the
14 sign ins today.

15 MR. NETTLER: I think that's a better way
16 of doing it.

17 Neely is not -- Oberdorfer is on. But
18 let's the ones that are off on my list. Oberdorfer is
19 on. Neely is off. Tennille is on. Namion is on.
20 Rodriguez is on. Ince is on. Both is on. Poole is
21 on. Kaufman is on. Malatesta is on. Hoss is on.
22 Pelletreau is on. Fetterman is on. Bartoni is on.
23 Badami is on. Afzal is on. Wood is on. Vanneman is
24 on. Stern is on. Taylor is on. Tesblum and Evans
25 are on. Chain are on. Hamilton is on. Craig is on.

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1 Moreno is on. Little is off. Siegel is on. Harter
2 is on. Atkeson is on. Carabette and Molinaroli is
3 on. Sotsky is on. Peters is on and Rooney is on.

4 (Pause.)

5 CHAIRMAN GRIFFIS: Mr. Nettler --

6 MR. NETTLER: I should just tell you that
7 Badani is part of -- as I see on the list, is part of
8 Neely. That's on --

9 CHAIRMAN GRIFFIS: Excuse me?

10 MR. NETTLER: If you look at item 12 on
11 your list, you'll see that Neely and Badami are
12 together as separate and I had included her on my
13 list. She's on the top of the second page. She would
14 come off my list.

15 CHAIRMAN GRIFFIS: Do we have them listed?
16 Did you say come off your list?

17 MR. NETTLER: Right. She and Neely have
18 sought separate party status.

19 CHAIRMAN GRIFFIS: Okay, at this point I
20 have for request for party status not being identified
21 with Mr. Nettler. I have a Spencer Rich Dorothy, 3301
22 Newark Street. Are you present? And that is correct,
23 you're not with Mr. Nettler? Good.

24 I have a Neely household, 3207 Highland
25 Place. Is that correct?

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1 Jon Thoren of 4039, that's correct? And
2 when I say that's correct, you're agreeing with the
3 fact that you are wanting to put in individual
4 requests for party status.

5 I have Bruce and Sally Beckner, is that
6 correct?

7 Steven Hunsicker, 3083.

8 I have a Joan McLaughlin and Charles
9 Briody.

10 And then I have Henry Little at 3220, is
11 that correct? Okay.

12 And there will be a need for -- oh yes,
13 we'll take yours up in terms of timely filing.

14 Right, you'd like to join Mr. Nettler's
15 group, is that correct?

16 Mr. Nettler, are you amenable for a
17 friendly merger?

18 MR. NETTLER: I'm amenable to a friendly
19 merger.

20 CHAIRMAN GRIFFIS: All right, we'll put
21 them down. Okay. Any I missing any request for party
22 status in opposition? Is there anyone here that
23 thinks they have --

24 MS. RICH: I will merge mine with Richard
25 Nettler.

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1 CHAIRMAN GRIFFIS: And your name is?

2 MS. RICH: Dorothy Rich.

3 CHAIRMAN GRIFFIS: Dorothy Rich has
4 indicated that she would also like to join the party
5 status of Mr. Nettler.

6 Mr. Nettler, I will take your disagreement
7 if you scream objection, otherwise, we'll just
8 progress with the flow that we're going.

9 Yes sir?

10 MR. THOREN: I'm Jon Thoren. I'm not in
11 opposition.

12 CHAIRMAN GRIFFIS: Ah, very good. Thanks.
13 So you are requesting party status in support, Mr.
14 Thoren. Okay.

15 Who else? Am I missing anyone else that
16 believes they have a request for party status in
17 opposition to the application that has not been called
18 out?

19 It can't be that easy. It's only taken us
20 an hour and a half.

21 We have a party in support application,
22 the Friends of NCRC. We have party request in support
23 from Katharine Marshall. We have party in support,
24 Mr. Thoren who has just indicated as such. Are there
25 others?

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1 (Pause.)

2 MR. WILLIAMS: Mr. Griffis?

3 CHAIRMAN GRIFFIS: Yes, Mr. Williams?

4 MR. WILLIAMS: Mr. Griffis, again,
5 Lindsley Williams for the record. I worked in 1998
6 with the Haas' who are my neighbors. Neither of them
7 is here today. They requested party status. Clearly
8 if they're not here today, they will not be asking
9 questions in the nature of cross examination. It
10 would be my suggestion that you blend them in with Mr.
11 -- the group here for today, but if there's a question
12 about establishing them as a party status at a later
13 period, perhaps you could take it up at that time.

14 CHAIRMAN GRIFFIS: Yes. No, I don't want
15 to take it up at another time.

16 Although that makes perfect common sense,
17 Mr. Williams, no, I can't decide that they're going to
18 join. If they're here, they're here. They can answer
19 that. Otherwise, they're going to stand alone on the
20 submission that's written.

21 Okay, our next great process is to pull
22 out -- I'm into showing you our files today, so I hope
23 you all are very interested. This is the amount of
24 request for party status documentation that we got and
25 now we are going to go through this, actually, this is

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1 in process, has been for some time, pulling out anyone
2 that actually submitted a request for party status of
3 which we're going to have to deal with that hasn't
4 announced themselves, isn't on somebody's list.

5 So while we're taking up Mr. Nettler's
6 request for party status, that is going to be nicely
7 filed and organized, hopefully to my right.

8 Board Members, questions, problems?

9 Yes, we're taking up Mr. Nettler's party
10 status, The Neighbors.

11 MS. DWYER: Mr. Chairman, could I just
12 suggest for purposes of clarification that the group
13 be given a different name because there are many
14 neighbors in the room, some of which are in support,
15 so perhaps this could be the Opposition Neighbors as a
16 group.

17 CHAIRMAN GRIFFIS: You know, we could be
18 briefed on the name. I do take this very seriously,
19 but there's nothing wrong with a little humor to cut
20 the heat in this room.

21 Mr. Nettler, is that understand, the name,
22 how it might be confusing? Are you amenable to
23 adopting a new name?

24 Do you need to caucus on that with your
25 entire group? All I need is something that's going to

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1 be very identifiable that we will quickly be able to
2 refer to. I imagine that everything that is put in
3 will be from that group, and so it is important to
4 have a name that is identifiable.

5 I guess the point and clearly what's going
6 to be said is that some neighbors are in favor and
7 some are in opposition.

8 I don't think -- while he's conferring, he
9 doesn't need to hear this, I don't think the Board is
10 deluded enough to realize that a naming of a group
11 will somehow sway us in understanding what their --
12 indeed.

13 (Pause.)

14 MR. NETTLER: Why don't we do it as the
15 Opposing Neighbors?

16 CHAIRMAN GRIFFIS: Wow.

17 MR. NETTLER: Neighbors One, how about?
18 From what I understand from Ms. Dwyer's suggestion,
19 the other -- we have those who are seeking party
20 status in support are either the Friends or
21 individuals who are going to be known by their name.
22 There's no one else seeking party status as The
23 Neighbors.

24 UNIDENTIFIED SPEAKER: I'm seeking party
25 status as a neighbor.

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1 CHAIRMAN GRIFFIS: Before this really gets
2 out of control, I can't have anyone talking in the
3 hearing room for two major reasons. One, it's
4 disruptive and the second is you're not on the record,
5 although it's being said in the room.

6 Mr. Nettler?

7 MR. NETTLER: If that's not a problem, why
8 don't we have Cleveland Park Neighbors. Why don't we
9 just do that, our group is called Cleveland Park
10 Neighbors, it's an ad hoc group of individuals.

11 MS. DWYER: That's fine.

12 CHAIRMAN GRIFFIS: I think the Board will
13 take note of the objection and clearly identifying as
14 a group by name does not -- it may be presumptuous in
15 terms of what and how large it actually is and I think
16 that's the concern. So I think we can make note and
17 certainly in our order that goes out, we can make
18 great note of what that is and believe me, the parties
19 are listed and the individuals are listed.

20 I guess -- there it is. We have now what,
21 Cleveland --

22 MR. NETTLER: Cleveland Park Neighbors.

23 CHAIRMAN GRIFFIS: CPN. Boy, let's hope
24 that's the hardest issue we have to get through.

25 What is next then, let me run through.

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1 I'm going to go on the list of people that I have of
2 people that were submitted. No, maybe we should act
3 on Mr. Nettler's party status. Are there any other
4 questions?

5 You're going to have to help if I've said
6 this before, Mr. Nettler. It's already been a long
7 day.

8 You have participants in your group that
9 did not individually submit an application. Have I
10 brought that to your attention already?

11 MR. NETTLER: Yes, they've done so through
12 me.

13 CHAIRMAN GRIFFIS: Okay, and I just want
14 to make total clarification that in that group you
15 are, in fact, representing and that will serve as the
16 application for party status.

17 MR. NETTLER: Right.

18 CHAIRMAN GRIFFIS: Okay. Any concerns,
19 questions?

20 Board Members? We've run through, the
21 items have been identified. We've all reviewed the
22 applications.

23 Very well, do I have any objection of
24 granting party status to the Cleveland Park Neighbors,
25 as defined?

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1 MR. HOOD: No objection.

2 MR. ETHERLY: No objection.

3 CHAIRMAN GRIFFIS: I take it as the
4 consensus of the Board and we will bestow the great
5 honor of party status on the Cleveland Park Neighbors.

6 Mr. Nettler, you will be representing that
7 group. We will anticipate that you or your designee
8 be a participant in this proceeding. That means we
9 will have you for cross examination purposes and not a
10 table or a large panel, unless of course, you are
11 unable and you can designate one other person.

12 Next, then if I could, I'm going to have
13 Ms. Dwyer stay at the table. You guys, I think I'm
14 finished with for the immediacy. I will ask if you
15 have, Mr. Nettler, any objection to the next party
16 statuses as they come up, but I'd like to get the next
17 three people up that are requesting party status and
18 oh gosh, I hope I have this all correct. Dorothy Rich
19 -- oh yes, indeed, see. You're just going to have to
20 keep me organized. We have Neely, Jon Thoren. I'm
21 sorry, Mr. Thoren, you can remain seated. We'll take
22 you up in a second.

23 I have Beckner. Is that three? Yes.

24 Mr. Beckner, if you wouldn't mind having a
25 seat? Is there not a spare chair in the house?

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1 If I could -- is John around? If I could
2 have someone from staff just help pull out some extra
3 chairs, I think we're going to need some down in this
4 area. We have Neely, Beckner --

5 (Pause.)

6 CHAIRMAN GRIFFIS: Good, tell me who I
7 have in front of me? We'll start on my left.

8 MS. NEELY: I'm Gaylord Neely. I live at
9 3207 Highland Place.

10 CHAIRMAN GRIFFIS: Okay.

11 MS. BADAMI: I'm Linda Badami. I live at
12 3207 Highland Place.

13 CHAIRMAN GRIFFIS: And you're a single
14 party?

15 MS. BADAMI: Yes.

16 CHAIRMAN GRIFFIS: Do you want to briefly,
17 you've identified several issues of concern. First of
18 all, Exhibit 76 is their party status application.
19 They are number -- did you have an opportunity to sign
20 in on the party status request?

21 MS. BADAMI: Line 12.

22 CHAIRMAN GRIFFIS: Thank you so much.
23 Indeed, there it is. And then yes, Board Members if
24 we just look to 12, they're the adjacent property and
25 they have identified several issues of unique impact.

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1 I'll go through a few of these, but garbage and trash
2 pick up is one of the pieces, expansion to the main
3 house and that impact on their adjacent property.
4 View and noise issues, traffic and parking, and of
5 course, economic factors. Is there other issues that
6 you want to -- or let me say does the Board have any
7 questions?

8 MR. HOOD: Mr. Chairman, you said they're
9 designated as No. 12 on the map that we have in front
10 of us?

11 CHAIRMAN GRIFFIS: That's correct.

12 MR. HOOD: With that, I wouldn't have any
13 problem making them a party.

14 MR. ETHERLY: I would agree, Mr. Chair.

15 VICE CHAIRPERSON RENSHAW: That's fine.

16 CHAIRMAN GRIFFIS: Ms. Dwyer?

17 MS. DWYER: We have no objection.

18 CHAIRMAN GRIFFIS: Any other? Okay. In
19 which case, I take it as the consensus of this Board
20 to grant party status and how do you want to be
21 represented? I need one person in the party?

22 MS. BADAMI: I'll be speaking for us.

23 CHAIRMAN GRIFFIS: Okay. And you are
24 Linda -

25 MS. BADAMI: Badami.

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1 CHAIRMAN GRIFFIS: Badami, very well.

2 Thank you.

3 MS. BADAMI: Thank you.

4 CHAIRMAN GRIFFIS: Next, who is there?

5 MS. BECKNER: I'm Sallie Beckner, I live
6 at 3225 Highland Place.

7 MR. ETHERLY: For the benefit of my
8 colleagues that would be party status application
9 Exhibit No. 82.

10 CHAIRMAN GRIFFIS: And do you know what
11 number you're on the list?

12 MS. BECKNER: No. 11.

13 CHAIRMAN GRIFFIS: Indeed. And you are
14 the other adjacent neighbor attached to the property.
15 Okay.

16 MS. BECKNER: Yes.

17 CHAIRMAN GRIFFIS: You've also talked
18 about the impact of the increased children on the open
19 playground which is directly adjacent, obstruction of
20 view to open space and several hazardous conditions.

21 Are there other issues that you find
22 uniquely qualify you as in requesting party status?

23 MS. BECKNER: Well, my husband has a
24 couple, but I assume traffic was on there as well.

25 CHAIRMAN GRIFFIS: Yes.

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1 MS. BECKNER: I have another issue that
2 hasn't been brought up because we have not seen any
3 structural engineering reports and I'm concerned about
4 water run off and the change of the slope of the land.

5 My property is right adjacent to the playground. And
6 where a lot of this building and this digging of
7 direct is going to take place and we know nothing
8 about --

9 CHAIRMAN GRIFFIS: Can we call that civil
10 issues and storm water management? Okay. Civil
11 engineering is what I mean, not civil as in let's be
12 nice.

13 (Laughter.)

14 Okay, you had additional?

15 MR. BECKNER: No, I didn't have anything
16 additional.

17 CHAIRMAN GRIFFIS: Let me ask because this
18 will be even more pertinent as we move on, is there --
19 those issues are uniquely affecting and you don't
20 believe that Mr. Nettler representing the larger group
21 could represent your individual issues. Is that
22 correct?

23 MS. BECKNER: No, I don't.

24 MR. BECKNER: The issues that we've
25 identified are to some degree unique and are not

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1 shared by the members of the Nettler group. And I
2 want to tell the Chairman that we will coordinate our
3 work with the Nettler group to avoid duplication of
4 testimony and giving cumulative evidence. I know you
5 are concerned about that.

6 CHAIRMAN GRIFFIS: Okay, I think that
7 would be excellent. I would push you again to say
8 then why wouldn't you join and be a participant in
9 that one party?

10 MR. BECKNER: Because I live next door and
11 when the school lights off a gas blower at 7 a.m. on
12 Sunday morning, I'm the first guy that it wakes up
13 from that.

14 CHAIRMAN GRIFFIS: And I think that's
15 true. Ms. Dwyer, any objection to granting party
16 status?

17 MS. DWYER: We have no objection.

18 CHAIRMAN GRIFFIS: Board Members?

19 MR. HOOD: No objection.

20 MR. ETHERLY: No objection.

21 CHAIRMAN GRIFFIS: Very well, I take that
22 as a consensus of the Board then and grant party
23 status.

24 Now also to be very clear in terms of
25 cross examination and questioning, in case anyone

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1 hasn't been through this before, you think preliminary
2 matters take a long time, cross examination will take
3 an extensive amount of time, conceivably. It has in
4 the past. I'm not sure if it will at this one.

5 Who will be representing your party?

6 MR. BECKNER: I will be.

7 CHAIRMAN GRIFFIS: Okay. Very well, thank
8 you very much.

9 We now have three parties in this case.
10 Let us hear from -- Mr. Hunsicker. Mr. Little. Is
11 there anyone else that thinks that they put in a
12 request for party status in opposition? Request for
13 party status in opposition? Yes sir.

14 All right, I'm having trouble hearing you.

15 Let me make sure that I understood. You are part of
16 the Nettler group, is that correct? That's okay. I
17 want to know of people outside of Nettler, outside of
18 party status we've granted that believe they are not
19 included.

20 All right, in which case, sir?

21 MR. HUNSICKER: I am Steve Hunsicker. I
22 live at 3083 Ordway Street. I believe I'm --

23 CHAIRMAN GRIFFIS: No. 2.

24 MR. HUNSICKER: Yes, No. 2. That is
25 directly across the street from the NCRC entrance on

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1 Ordway Street. I've lived there for 15 years. My
2 direct unique impacts are addressed in my papers, but
3 very briefly starting in 1994 I was part of a group
4 that negotiated for landscaping, permanent landscaping
5 along the Ordway Street landscape. That would be
6 replaced by the NCRC proposal by a wall of
7 institutional buildings. That is directly across the
8 street from my house.

9 My driveway is directly across the street
10 from their entrance. I experience routine and
11 multiple NCRC vehicle turnarounds in my driveway which
12 has damaged the driveway and my property.

13 I'm also concerned about the construction
14 of the new building. The civil engineering point
15 raised before is particularly pertinent to me whereas
16 people on Highland Street live upstream from that
17 drainage problem, I live downstream from that drainage
18 problem and I'm concerned that the storm sewer right
19 in front of my house which has been overwhelmed in the
20 past with NCRC runoff would be overrun again, this
21 time with construction debris.

22 I would like to address these particular
23 concerns in very short testimony. I also may
24 participate in cross examination but I certainly
25 understand the need to avoid redundancy and I will do

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1 that.

2 CHAIRMAN GRIFFIS: But you would like to
3 be able to participate in cross examination?

4 MR. HUNSICKER: I would like to have the
5 opportunity to do so. I will not be redundant of any
6 cross examination.

7 CHAIRMAN GRIFFIS: You don't think you
8 could do that facilitating through Mr. Nettler?

9 MR. HUNSICKER: I will cooperate and
10 listen very closely to Mr. Nettler's group and his
11 cross examination and I will not be redundant.

12 CHAIRMAN GRIFFIS: What about when I
13 require filings of fact and conclusions of law?

14 MR. HUNSICKER: I will be prepared to do
15 so.

16 CHAIRMAN GRIFFIS: Indeed. Ms. Dwyer?

17 MS. DWYER: We have no objection.

18 CHAIRMAN GRIFFIS: Board Members?

19 VICE CHAIRPERSON RENSHAW: No objection.

20 CHAIRMAN GRIFFIS: Mr. Hunsicker, we've
21 heard from not orally today, but from submissions from
22 two neighbors that are close in proximity to you and
23 I'm not certain how -- in fact, three, counting the --
24 well, Mr. Little who we will hear from shortly.

25 I guess I'm just wondering how you could

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1 not be redundant. Now you've talked about damage to
2 your physical property of which Mr. Nettler actually
3 also brought up. So I imagine that's going to be
4 addressed. That was the one key piece that I heard.
5 In terms of storm water management, you have
6 representatives on Ordway.

7 Where am I led to grant you a unique
8 situation and party status?

9 MR. HUNSICKER: Well, as I mentioned I am
10 directly across the street from the NCRC entrance on
11 Ordway Street. My driveway, I suspect, is very
12 heavily utilized, more heavily utilized than most, if
13 not all of the other driveways on Ordway Street by
14 people that are turning around. Consequently, there's
15 very real damage to my driveway.

16 Secondly, I participated in prior
17 resolutions with NCRC that would be destroyed by what
18 they're proposing in this application and finally, as
19 I mentioned, there are storm sewers directly in front
20 of my property.

21 CHAIRMAN GRIFFIS: I see. So the drainage
22 on Ordway goes towards your property?

23 MR. HUNSICKER: Yes.

24 CHAIRMAN GRIFFIS: Any other concerns?

25 MR. HOOD: Mr. Chairman, if I could just

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1 Mr. Hunsicker, to make sure I understand.

2 Mr. Hunsicker, your driveway, I could draw
3 a straight line from your driveway to the entranceway
4 of NCRC?

5 MR. HUNSICKER: Yes.

6 CHAIRMAN GRIFFIS: What lot number are
7 you?

8 MR. HUNSICKER: 822.

9 MR. HOOD: No. 2 on our map.

10 VICE CHAIRPERSON RENSHAW: On the map it
11 looks as though you're to the side, not directly
12 across from the subject property.

13 MR. HUNSICKER: The driveway that I share
14 with my neighbor is on my east boundary and so I say
15 it's directly across the street by a straight line, it
16 is to me. I look at from my dining room window and
17 see the entrance. It's certainly the closest driveway
18 proximate to that entrance way on my side of the
19 street.

20 MR. HOOD: And your driveway is being
21 utilized?

22 MR. HUNSICKER: Absolutely.

23 MR. HOOD: With that, Mr. Chairman, I have
24 no problem granting Mr. Hunsicker -- I'm sorry, did I
25 pronounce that correctly?

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1 MR. HUNSICKER: It's Hunsicker. I answer
2 to anything close.

3 (Laughter.)

4 CHAIRMAN GRIFFIS: I think I started a bad
5 trend.

6 There is then -- I do believe we have a
7 consensus.

8 MR. ZAIDAIN: He brings up the issue of
9 storm water management and obviously that's a big
10 issue for the Buckners, I believe it was.

11 It would be nice to -- I would assume that
12 you're not -- it would be nice to see those two groups
13 merge and cover that topic together, but I don't know
14 if that's possible.

15 CHAIRMAN GRIFFIS: Absolutely. One of the
16 responsibilities also, as you're well aware, or maybe
17 you're becoming aware, we haven't even gotten into the
18 heart of this case and it's 3 o'clock. We will not
19 finish this today. So you will be required or in
20 order to participate as a party, we will be seeing you
21 for numerous times that we do have these hearings. So
22 you can all take that into account.

23 I think I am fairly convinced in the
24 uniqueness in terms of the actual drainage off of
25 Ordway that Mr. Hunsicker would be -- have a unique

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1 perspective and lend itself to participating as party
2 status, unless there are further concerns?

3 MR. HUNSICKER: That's fine.

4 CHAIRMAN GRIFFIS: Very well, we will
5 bestow such an honor by consensus of the Board.

6 MR. HUNSICKER: Thank you.

7 CHAIRMAN GRIFFIS: Mr. Little? Is that
8 correct?

9 MR. LITTLE: That's it.

10 CHAIRMAN GRIFFIS: That's process of
11 elimination for you, isn't it?

12 Yes sir, now we have a problem with your
13 application.

14 MR. LITTLE: It arrived late.

15 CHAIRMAN GRIFFIS: Yes.

16 MR. LITTLE: By a day because I faxed it
17 the night before 14 days ahead of time and I've got
18 evidence of the fax cover here. It went through. It
19 arrived on the 28th in your office here, just 14 days
20 from today.

21 CHAIRMAN GRIFFIS: Wow. You faxed it from
22 California, is that correct?

23 MR. LITTLE: Which is where I live.

24 CHAIRMAN GRIFFIS: That's a long trip and
25 okay, when did you fax it in?

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1 MR. LITTLE: The 28th.

2 CHAIRMAN GRIFFIS: At 3:05 p.m. Is that
3 correct?

4 MR. LITTLE: My says 1636 p.m. which is
5 western time, so you got it after hours on the 28th,
6 it will be 7 o'clock, 7:30.

7 CHAIRMAN GRIFFIS: Well, we gave you an
8 hour. It was due on the 28th at close of business.

9 MR. LITTLE: Well, the facts are that I
10 got it there three hours late or so. If I overnighted
11 it, you would have had in the next morning by about
12 10.

13 CHAIRMAN GRIFFIS: For clarification, Mr.
14 Little, well, you don't have this. There is a small
15 lot that separates you from NCRC?

16 MR. LITTLE: No. I'm the three lots. We
17 share a common fence with NCRC.

18 CHAIRMAN GRIFFIS: I see.

19 MR. LITTLE: There are those three lots,
20 kind of triangular shaped in total on Ordway Street to
21 the west.

22 CHAIRMAN GRIFFIS: Okay. Does anyone
23 have, Mr. Little, here's the issue. You were a little
24 confused by the time zones in getting this in?

25 MR. LITTLE: No, I just was -- I'm getting

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1 older and I'm a little confused occasionally.

2 (Laughter.)

3 CHAIRMAN GRIFFIS: I don't know what my
4 excuse is.

5 So you were thinking it was supposed to
6 come in that day? Give me something.

7 MR. LITTLE: I lost track of time and I
8 realized late in the day that I needed to get it out
9 and I did it as expeditiously as possible. If I'm
10 late, I'm late. That's your judgment.

11 CHAIRMAN GRIFFIS: Well, we have a
12 differing opinion, so I'm not going to belabor that
13 too much.

14 Ms. Dwyer, you have an opinion on the
15 lateness of filing?

16 MS. DWYER: I don't have an opinion on the
17 lateness of the filing, but an issue regarding the
18 filing itself. And while ordinarily we wouldn't
19 object to party status for an adjacent property owner,
20 as Mr. Little has indicated, he doesn't reside there.

21 He's living in California, so my question would be to
22 what extent is he familiar with the use of the
23 property to be able to offer some unique perspectives
24 since he is, as of this date, not living there and
25 certainly not experiencing any of the activities or

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1 impacts that some of the other neighbors have raised.

2 MR. LITTLE: May I respond to that?

3 CHAIRMAN GRIFFIS: Yes.

4 MR. LITTLE: First of all, I experienced
5 it for 14 years. One of my sons went to NCRC. We
6 lived there from 1984 until 1998 and for professional
7 reasons moved to California, but we do intend to go
8 back which is why we rented the house. It's been
9 rented now for five years. But the impacts that are
10 unique are quite obvious. We're going to be closer
11 than that wall away from a huge wall of building,
12 twice the size of our house. It's going to be like
13 living next to one of the walls you see out along I-66
14 going to Dulles Airport. It's that. And so all of
15 the impacts of noise, visual, air conditioning units
16 are amplified, particularly my wife and I who own the
17 house and we'll moving back there, spend an awful lot
18 of time out in the backyard and all the neighbors
19 behind me can attest to that because we used it
20 greatly during the summer and it's going to greatly
21 impact our quality of life, not to say economic values
22 and other issues.

23 CHAIRMAN GRIFFIS: Does your house sit on
24 all three lots?

25 MR. LITTLE: Yes, well, but it's literally

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1 probably six or seven feet away from the fence and we
2 did get a variance from the Board of Zoning Adjustment
3 to add an addition on to our house and then their
4 building is going to be built 10 feet on the other
5 side of that fence. So we're talking about --

6 CHAIRMAN GRIFFIS: We're going to check
7 into that.

8 MR. LITTLE: I don't do it the way NCRC
9 did in 1994. I was party --

10 MR. ZAIDAIN: In terms of the proposal,
11 I'll save you some time from digging out the plans,
12 you're next to the bike house?

13 MR. LITTLE: No, the west side.

14 MR. ZAIDAIN: Okay.

15 MR. LITTLE: And I will go out of my way
16 to cooperate with Mr. Beckner and Ms. Beckner and
17 Steve Hunsicker.

18 CHAIRMAN GRIFFIS: Here's a practical
19 matter. Are you going to be in town for the entire
20 proceedings?

21 MR. LITTLE: It depends on how long they
22 go on. I'm here for a week, so I'd be glad to go,
23 start up tomorrow and go right through the weekend.

24 CHAIRMAN GRIFFIS: We meet one Tuesday
25 each week. Luckily, there's only one Tuesday in each

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1 week.

2 MR. LITTLE: I can stay next week. Here's
3 my view right now, from my view, just to get an idea.

4 And that's going to be -- I won't be able to see any
5 of this. It will be blanked out. That's my back
6 yard. That's when I look out one of my little windows
7 next to a fireplace. Do you want to pass this around?

8 CHAIRMAN GRIFFIS: So you think you have a
9 unique view? We've heard other parties clearly that
10 are concerned about the lack or loss of and you
11 indicate that you have a unique --

12 MR. LITTLE: This is what I lose 17 feet
13 away.

14 MR. ZAIDAIN: I think you bring up an
15 important point, Mr. Chair. As we've gone through
16 these bigger cases we have a lot of party status, we
17 get a lot of requests for continuances because
18 somebody can't make it and we're trying to balance 15
19 people's schedules and things like that. I mean I
20 have some concern that you don't live in this state,
21 let alone on this side of the country. Are you sure
22 you can cooperate in this?

23 MR. LITTLE: I can cooperate. I'll do my
24 best. I will cooperate. I will also cooperate with
25 the Beckners and --

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1 MR. ZAIDAIN: I can tell we'll probably
2 going to be here until Halloween as it is. I mean the
3 way these big things go and I just think that he needs
4 to have some clarification that this is a greater
5 burden that we're putting on you. As we get into
6 this, the schedule is very, very important and I don't
7 think that this Board would look favorably on a
8 request for continuance because somebody couldn't get
9 back into the state.

10 CHAIRMAN GRIFFIS: Mr. Zaidain brings up
11 an important point that I think everyone should hear
12 and that is when we do start getting requests for a
13 continuance, because of people's schedule, the Board's
14 going to have to err on the fact of how many people
15 can show up and we are going to hold pretty -- there
16 are a lot of schedules and the most important schedule
17 in this is ours, of course. I say that with some
18 seriousness. But the point is we're going to try to
19 get you in as we continue this to get this done as
20 quickly as possible. So there are going to be times
21 where we're just going to have to take an afternoon or
22 a morning that we have and we schedule things out
23 three months at a time. So it kind of gives you an
24 idea. We're booked until April, I think at this
25 point. Anyway, we're just so darn popular, I guess.

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1 That being said, Mr. Little, have we
2 dissuaded you? Have we persuaded you? Are you
3 standing on your party status application?

4 MR. LITTLE: Yes, I am. And I will not
5 seek any continuances on my part for not being able to
6 be here, I promise that.

7 CHAIRMAN GRIFFIS: Well, we can't take you
8 -- anything could happen. Any complaints, concerns?
9 I'm somewhat moved by the fact that Mr. Little is also
10 of unique location. I do think it could, in fact, be
11 represented but as Mr. Little wants to stand alone, I
12 have no objection to it unless there are other
13 objections from Board.

14 Mr. Nettler, you approached the table, is
15 there an objection to party status of Mr. Little?

16 MR. NETTLER: I was going to ask a
17 question, but it's been responded to.

18 CHAIRMAN GRIFFIS: Thank goodness. That
19 being said, we'll take that as the consensus of the
20 Board, Mr. Little. Congratulations, if that is so
21 necessary or deemed.

22 Okay, let's go to parties in support. I
23 have Friends of NCRC and I believe Anne Large is
24 representing that? Very well, if you wouldn't mind,
25 let's fill the table up. Let's get Mr. Thoren up

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1 because we've called him three times and he probably
2 ought to come up on this one.

3 Is that everyone in opposition? Everyone
4 in opposition? Anyone here think they are a party in
5 opposition that we haven't dealt with?

6 Looks pretty clean. Okay.

7 (Pause.)

8 MR. ZAIDAIN: I guess we can do a roll
9 call here. Is this Katharine Lee Marshall? Are you
10 here in opposition or --

11 CHAIRMAN GRIFFIS: No, she's a proponent.

12 MR. ZAIDAIN: Okay.

13 CHAIRMAN GRIFFIS: I think we have
14 everybody. We're being slow, but we're being correct.

15 MR. ETHERLY: So, Mr. Chair, just to
16 summarize from the opposition standpoint, we have a
17 group represented by Mr. Nettler. We have Neely,
18 Beckner, Hunsicker and Little that covers all of the
19 opposition parties.

20 In terms of the pro applicants for party
21 status, we have once again, Mr. Thoren, Friends
22 organization or group and Ms. Marshall.

23 MR. HOOD: I have a different list. Could
24 you go over your opposition list?

25 MR. ETHERLY: Once again, Mr. Nettler's

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1 group, Neely, Beckner, Hunsicker and Little.

2 CHAIRMAN GRIFFIS: Neely is being
3 represented by Linda Badami.

4 MR. HOOD: We're missing one and I can't
5 read my own writing, but I want to say --

6 CHAIRMAN GRIFFIS: Badami.

7 MR. HOOD: Okay. All right, but she's
8 going to be the one representing?

9 CHAIRMAN GRIFFIS: Correct.

10 MR. HOOD: Okay. I wrote her name. Okay.

11 CHAIRMAN GRIFFIS: In terms of parties and
12 I've overlooked the fact, but in terms of party
13 status, we're also looking for a presentation of a
14 case and so I probably should have said that earlier
15 to scare more of you, but nonetheless, there it is.

16 We don't often have parties in support or
17 request for parties in support. I find it interesting
18 and I would like to hear from each of you and I think
19 what we need to just quickly balance is why you
20 believe the party status is important in support
21 rather than giving testimony in support and I leave
22 that totally to you all, and then of course, to fold
23 in what I've been saying is it possible to join all of
24 you? Are you all looking to participate, present
25 cases, cross examine a witness and do submission

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1 filings as we require?

2 It's up to you. Let me just ask, you are
3 Anne Large, is that correct?

4 MS. LARGE: Yes sir.

5 CHAIRMAN GRIFFIS: Does it matter, Mr.
6 Thoren, do you want to start? Actually, this is what
7 I'm going to do.

8 MS. MARSHALL: Why don't you just start
9 here and go this way?

10 CHAIRMAN GRIFFIS: Don't I have a hard
11 time with these things?

12 MS. MARSHALL: Yes.

13 CHAIRMAN GRIFFIS: This is what I'm trying
14 to do to get you all to hear each other, so I'm going
15 to start with Ms. Large and then hear everybody and we
16 will decide then, we'll come back after and maybe
17 something will happen. Sometimes I can predict where
18 I'm going with these things which may not make sense
19 on the immediacy, but there it is.

20 Ms. Large?

21 MS. LARGE: I'm here representing the
22 Friends of NCRC. We are a group of 194 people in
23 Washington, D.C. One hundred thirty-nine of them are
24 in the ANC and 14 of them are within the map area that
25 you have. We request party status because we would

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1 like to present a case and we would like to be able to
2 cross examine and we were formed because we are a
3 group in the neighborhood and feel that the
4 representations of the how Cleveland Park Neighbors
5 are not reflective of the viewpoints of the
6 neighborhood as a whole. So we'd like the opportunity
7 to present that case as well.

8 CHAIRMAN GRIFFIS: So in terms of the
9 outcome of this hearing, whether relief is granted or
10 is denied would have serious impact on those that you
11 represent, is that correct?

12 MS. LARGE: Yes sir.

13 CHAIRMAN GRIFFIS: Okay.

14 VICE CHAIRPERSON RENSHAW: Are we
15 questioning now?

16 CHAIRMAN GRIFFIS: Yes.

17 VICE CHAIRPERSON RENSHAW: Now is your
18 case going to be different from that put on by the
19 Applicant?

20 MS. LARGE: Well, I'm not part of the
21 school. I'm part of the neighborhood and I believe
22 that there are negative consequences to the
23 neighborhood, not just the school if the application
24 is not approved.

25 We stated this on our application, but if

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1 the enrollment is either stopped or curtailed, we
2 believe many of our group are parents or potential
3 future parents and we also believe that property
4 values are enhanced by the school as it is and it will
5 be further enhanced by the proposal. And again, if
6 it's not proposed that won't happen.

7 And in our application as well, those who
8 live on Ordway believe that the school's proposal will
9 also enhance the Ordway Street and again, if it is not
10 approved, it will detract from that.

11 CHAIRMAN GRIFFIS: So you have additional
12 evidence and case to present outside of the
13 Applicant's case?

14 MS. LARGE: Yes sir.

15 CHAIRMAN GRIFFIS: Very well. Yes?

16 MR. NETTLER: I do have an objection to
17 them being recognized as a party. Would you like me
18 to go into this now?

19 CHAIRMAN GRIFFIS: Yes, let's hear it.

20 MR. NETTLER: First of all, they've
21 identified themselves as some association, albeit an
22 association that has members from throughout the
23 District of Columbia and only a limited number who are
24 in this particular area. I think in their submission
25 3 they identified as part of it.

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1 As an association what they have not filed
2 with you and so we have no opportunity to see whether
3 it's accurate or not, they haven't filed with you any
4 articles of incorporation that shows whether they're a
5 member association or not.

6 CHAIRMAN GRIFFIS: Let's get to the heart
7 of that objection. Meaning when you say "association"
8 a group of folks that have come together on this
9 specific issue or are you looking to get incorporated
10 as a capital association? If you can talk about this,
11 then you probably should be joined in her.

12 MR. THOREN: I'm willing to do that, but I
13 have sort of my own situation, but I'm one of the
14 organizers of Friends of NCRC.

15 CHAIRMAN GRIFFIS: See, it's not as easy
16 as it's going one side to the other.

17 (Laughter.)

18 MR. THOREN: I could speak to that.

19 CHAIRMAN GRIFFIS: And then we'll return,
20 Mr. Nettler, to hear your --

21 MR. THOREN: We are not a membership
22 organization. We are just a group of people that got
23 together. There are no dues. We are not
24 incorporated. We are just people in the neighborhood
25 that came together and basically signed a petition in

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1 support of this. We have appeared at the ANC and a
2 couple other neighborhood organizations like the
3 Cleveland Park Citizens Association.

4 CHAIRMAN GRIFFIS: Okay.

5 MR. THOREN: And the Cleveland Park
6 Historical Society.

7 CHAIRMAN GRIFFIS: So you're close to
8 association as this Cleveland Park Neighbors are, is
9 that correct?

10 MR. THOREN: I don't know if they've
11 actually formed a formal organization or not. I have
12 no knowledge about that.

13 CHAIRMAN GRIFFIS: Okay, maybe that was a
14 bad analogy.

15 MR. NETTLER: If I might comment on that.

16 As I stated, we saw the standing on the individual
17 basis alone, not as an association. Just recently, in
18 fact, last September in Friends of Tilden Park, the
19 Court said if you are an association, albeit a loose
20 association and you do not have any members, you do
21 not have standing. The only way you can acquire
22 standing is either if you have an association that has
23 a membership or if you are an association that we have
24 --

25 CHAIRMAN GRIFFIS: We can get to the

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1 bottom of that very quickly, Mr. Nettler. This group
2 is being formed on this single issue and is being
3 formed for standing before this Board and that's what
4 its party application is. Is that correct?

5 MS. LARGE: Yes.

6 MR. NETTLER: Then the Court of Appeals
7 would say it has no standing then.

8 CHAIRMAN GRIFFIS: It can have standing as
9 a group formed in party.

10 MR. NETTLER: Individuals within the group
11 can have standing. Those who can meet the test for
12 standing --

13 CHAIRMAN GRIFFIS: The point, Mr. Nettler,
14 which goes to my question of do you have people that
15 have joined your application for party status that did
16 not put in specific applications for party status and
17 you said yes.

18 MR. NETTLER: Because I put in an
19 application for party status on behalf of all of
20 those.

21 CHAIRMAN GRIFFIS: And how do you see that
22 as different than their --

23 MR. NETTLER: The individuals that I put
24 in for party status all live within 200 feet of the
25 property and have similar --

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1 CHAIRMAN GRIFFIS: And in your own
2 statement opening up, if there was one person that
3 made the test for party status, all would make it.

4 MR. NETTLER: No. If there was one person
5 for making party status, I would represent the party
6 on their behalf. But if it was an association that
7 purports to say it is doing so on behalf of
8 individuals, many of whom, most of whom according to
9 their application do not live within 200 feet of this
10 property, then it can say that the Friends of NCRC has
11 standing itself. It has to identify those individuals
12 who would and seek standing on behalf of those
13 individuals. That's the distinction between an
14 association that doesn't have members and a non-
15 association that is seeking standing on behalf of
16 individuals who live within 200 feet of the property.

17 CHAIRMAN GRIFFIS: But it also goes to the
18 fact that we would have to agree with your other point
19 on opening that 200 feet was the base designation for
20 granting party status or not.

21 MR. NETTLER: Well, the Court of Appeals
22 has already said that that's the case.

23 MR. ZAIDAIN: I have a question on our
24 map. I appreciate staff doing for us for this. It
25 has identified several people as No. 18 and those are

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1 all members of Friends of NCRC. Do you know who I'm
2 talking about?

3 And this includes one that is adjacent.
4 Could you state your address again?

5 MS. LARGE: I'm not one of those. My
6 address is 3520 35th Street. I'm three blocks from
7 the school.

8 MR. ZAIDAIN: Okay. 35th Street.

9 MS. LARGE: The corner of 35th and Porter.
10 It's on the west side of 34th Street.

11 MS. DWYER: And Mr. Chairman, if I could
12 just state for the record that both the Board of
13 Zoning Adjustment and the Zoning Commission have
14 recognized organizations such as Friends of NCRC as
15 parties. One example would be the American University
16 Campus Plan case where there was an umbrella
17 organization that was formed in response to a campus
18 plan application, so I think there is precedent for
19 both this Board and the Zoning Commission and then
20 that carried through to the D.C. Court of Appeals. So
21 I would disagree that this has to be a membership
22 organization.

23 CHAIRMAN GRIFFIS: Was that group in
24 opposition or --

25 MS. DWYER: That was a group in opposition

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1 at that time to the campus plan.

2 MR. NETTLER: And I did participate in
3 proceedings involving American University and there
4 was no objection raised as to standing. I'm pointing
5 out a D.C. Court of Appeals decision that was issued
6 this past September which is the Friends of Tilden
7 Park in which the Court said specifically that if you
8 are an association and you do not have a membership,
9 there are certain indicia that you're supposed to --
10 you may have supporters of your cause, but you are not
11 an organization that by itself has standing.

12 MR. ZAIDAIN: I was just going to suggest
13 that they do have from the map that I'm looking at,
14 they do have representatives that are within 200 feet.

15 So why can't they constitute the Friends of NCRC and
16 then the group that Mr. Nettler has an issue with can
17 just be supporters of that group?

18 MR. HOOD: Mr. Chairman, I would agree
19 with Mr. Zaidain.

20 MR. ZAIDAIN: If the whole entire group
21 was outside of the 200 feet, that's fine, but it's
22 not. There's people that clearly have standing here
23 and they can be part of this organization and make the
24 same case.

25 We're kind of getting semantical on it.

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1 CHAIRMAN GRIFFIS: I do agree and I don't
2 want to spend a lot more time on it. However, I do
3 recall and I can't recall the case, but we've granted
4 party status for people outside of 200 feet. It's
5 very, very rare, but there have been cases that have
6 been done. We've also granted party status for groups
7 of people of which several were outside. So I don't
8 want to make this monumental, but it seems to be a
9 fairly clean way that if the Friends of NCRC was to be
10 the core association of those within the 200 foot
11 radius of the property and then to be listed the
12 numerous supporters of that group, I think that would
13 be very appropriate.

14 Mr. Nettler, do you have any objections to
15 that?

16 MR. NETTLER: My objection continues for
17 the reasons I stated, that it can't be on behalf of
18 Friends of Tilden Park and they haven't submitted, as
19 we did on behalf of the list that we had, an
20 individual application on behalf of those three
21 individuals to give you an idea as to whether they are
22 uniquely affected by this situation as opposed to this
23 larger group that somehow lives around the District of
24 Columbia or elsewhere.

25 So my objection stands, but --

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1 CHAIRMAN GRIFFIS: You have an objection
2 that we don't have paperwork on each of these
3 individual homeowners within 200 feet?

4 MR. NETTLER: No, there's no paperwork
5 that was submitted in support of them as distinct from
6 the Friends of Tilden -- the Friends of NCRC and based
7 on Friends of Tilden Park. As an association, they
8 would not survive. If they had submitted something
9 merely as a group, those three individuals, that might
10 be a different case, but that's not what they've done.

11 MS. MARSHALL: Mr. Griffis, may I ask a
12 question?

13 CHAIRMAN GRIFFIS: If you turn your mike
14 on?

15 MS. MARSHALL: If the opponents to this project
16 are to be called the Cleveland Park Neighbors and if
17 this group has a lot of people from Cleveland Park in
18 it, Cleveland Park isn't very big. Certainly, what
19 three or four streets. If most of them are Cleveland
20 Park neighbors, they deserve to be considered.

21 CHAIRMAN GRIFFIS: Let me keep this
22 discussion to the request and the parties at this
23 point. My point is it's not name. There's a legal
24 standing issue that Mr. Nettler is bringing up and I'm
25 trying to get to the bottom of.

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1 MS. MARSHALL: I know.

2 CHAIRMAN GRIFFIS: If it was as simple as
3 just naming.

4 MR. ZAIDAIN: I want to ask a real quick
5 question. I don't have a scalable map here, Mr.
6 Nettler, could you just -- is Charles Both, Charles
7 and Deborah Both and Dorothy Rich, they're part of
8 your group, correct?

9 MR. NETTLER: Yes, you made Dorothy Rich
10 part of my group.

11 MR. ZAIDAIN: Unfortunately, I don't have
12 a scalable map. Do you know if they're within 200
13 feet?

14 MR. NETTLER: I know that Charles Both is.

15 MR. ZAIDAIN: I'm trying to look at the
16 lot lines. You provided notice to individuals? He
17 received a notice, okay.

18 And what about Dorothy Rich?

19 MR. HOOD: Mr. Zaidain, if it's the same
20 as Spencer Rich, then they were provided notice. I'm
21 not sure if that's the same household.

22 MR. ZAIDAIN: What's the address there?

23 MR. HOOD: 3301.

24 MR. ZAIDAIN: Okay, I was trying to get an
25 idea of what's 200 feet.

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1 MS. DWYER: Mr. Chairman, if I could just
2 say, I think Mr. Nettler has on his list individuals
3 who did not separately request individual party
4 status.

5 CHAIRMAN GRIFFIS: That's correct.

6 MS. DWYER: And I think at this point if
7 we could have the Friends of NCRC as a party on behalf
8 of the named individuals who live within 200 feet that
9 might be a compromise position.

10 CHAIRMAN GRIFFIS: Ms. Large?

11 MS. LARGE: Yes, I would agree.

12 CHAIRMAN GRIFFIS: That's amenable?

13 MS. LARGE: That's amenable.

14 MR. ETHERLY: I was thinking along those
15 very same lines, Mr. Chairman. Once again, Mr.
16 Thoren, you would fall into that category, correct?

17 MR. THOREN: Yes. I would be happy to be
18 combined with Friends of NCRC.

19 MR. ETHERLY: Okay. We'll get into your
20 request -- we may have talked a little bit about it.
21 You are a parent, correct?

22 MR. THOREN: Yes, I have two daughters at
23 the school presently.

24 MR. ETHERLY: Are you familiar with the
25 three additional households that are denoted as being

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1 adjacent to your property heading away from the
2 subject site?

3 MR. THOREN: Yes, I am.

4 MR. ETHERLY: Are you aware if those are
5 also parents?

6 MR. THOREN: No. I believe that I am the
7 only one on Ordway Street who has children there
8 currently.

9 MR. ETHERLY: Well, Mr. Chair, I would be
10 very amenable to the course of action that was
11 suggested by counsel for the Applicant. Mr. Nettler
12 makes an interesting argument, but my concern is that
13 if you take it to its logical conclusion it really
14 creates a high bar that runs the risk of preventing
15 the opportunity of individuals to participate and
16 that, I'm a little concerned about. I'm swayed by the
17 fact that you do have a number of individuals who have
18 been identified as being affiliated with this group
19 who are in the vicinity that give them -- and they
20 have property, legal property interests in adjacent
21 properties.

22 Clearly, I think the parental interests
23 there offer some additional meat as we deal with the
24 issue of social impacts, both pro and con, with
25 respect to the application before us. I'd be inclined

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1 to move forward in the direction that was laid out.

2 CHAIRMAN GRIFFIS: Good. Thank you, Mr.
3 Etherly.

4 Ms. Large, I'm indicating that we have
5 seven households that will create the core of your
6 group. Is that correct?

7 MS. LARGE: That is correct.

8 CHAIRMAN GRIFFIS: Which leads me to the
9 fact that it would be appropriate for us to have
10 listings of those names and addresses and I think we
11 will as we move forward, Mr. Nettler, whether I was
12 direct on it or not that those that are in the area
13 that are interested in participating and supporting
14 that we have one representative, so I think it would
15 be absolutely appropriate for that to happen.

16 Any other questions? Any other
17 objections, Mr. Nettler?

18 VICE CHAIRPERSON RENSHAW: Just to
19 understand, Mr. Chairman, the Friends represented by
20 Ms. Large, are you going to be the representative
21 then?

22 MS. LARGE: I am. Although --

23 VICE CHAIRPERSON RENSHAW: You will submit
24 paperwork on those who you are representing?

25 MS. LARGE: Yes.

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1 VICE CHAIRPERSON RENSHAW: Such as what
2 Mr. Nettler did with his group?

3 MS. LARGE: Yes.

4 VICE CHAIRPERSON RENSHAW: Okay.

5 CHAIRMAN GRIFFIS: Was there a problem?
6 Okay.

7 Mr. Nettler?

8 MR. NETTLER: I want my objection to
9 stand.

10 CHAIRMAN GRIFFIS: Okay, very well. Board
11 Members, any objections?

12 Mr. Thoren, it is correct that you have
13 joined this group?

14 MR. THOREN: Yes.

15 CHAIRMAN GRIFFIS: Very well, then not
16 hearing any objections from my Board, I would take
17 that as a consensus to grant party status to the
18 Friends of NCRC as defined.

19 Let us to go Ms. Marshall.

20 MS. MARSHALL: I'm not a member of any
21 group. I'm probably the oldest person here and I
22 think maybe I've lived 50 feet away from the entrance
23 to the school for 44 years and I'll bet it's more than
24 anybody else in this room has lived in that
25 neighborhood for -- right? No, one. Okay.

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1 All right, my children didn't go there. I
2 don't have any connection with the school except that
3 I share the curb of Highland Place with NCRC. Of
4 course, the traffic has increased.

5 VICE CHAIRPERSON RENSHAW: Ms. Marshall,
6 do you want to be a party?

7 MS. MARSHALL: I do.

8 VICE CHAIRPERSON RENSHAW: You want to be
9 a separate party in support?

10 MS. MARSHALL: Absolutely. I'm going to
11 be the remaining neighborhood. I've been in Cleveland
12 Park for 44 years.

13 CHAIRMAN GRIFFIS: Do we need to get a
14 consensus on that?

15 MS. MARSHALL: I believe I live in
16 Cleveland Park. I believe I'm a neighbor and I'm not
17 opposing.

18 CHAIRMAN GRIFFIS: Okay, Ms. Marshall, in
19 all seriousness, you did timely file a request for
20 party status, part and parcel, what you're saying is
21 your unique standing actually is that you have great
22 history --

23 MS. MARSHALL: Absolutely.

24 CHAIRMAN GRIFFIS: And let us say
25 perspective of --

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1 MS. MARSHALL: Perspective.

2 CHAIRMAN GRIFFIS: Of what has been there
3 and what may well be any sort of adverse --

4 MS. MARSHALL: I can't see what different
5 ten kids are going to make.

6 CHAIRMAN GRIFFIS: Okay.

7 VICE CHAIRPERSON RENSHAW: How is she more
8 affected?

9 CHAIRMAN GRIFFIS: I can't answer that.
10 Ask her.

11 VICE CHAIRPERSON RENSHAW: Ms. Marshall,
12 how are you more distinctly, significantly or uniquely
13 affected in character or kind by the action here?

14 MS. MARSHALL: Well, I think I'm probably
15 as close as anybody else, really, and directly across
16 the street. I mean within 50 feet. So I'm as close
17 as Ms. Neely and I'm as close as the Beckners.

18 VICE CHAIRPERSON RENSHAW: And you cannot
19 merge with Ms. Large's --

20 MS. MARSHALL: I would rather not merge.

21 VICE CHAIRPERSON RENSHAW: And why is
22 that?

23 MS. MARSHALL: Because I think I'm unique.

24 MR. ZAIDAIN: Do you know that with party
25 status you've got a responsibility to cross examine --

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1 MS. MARSHALL: I understand. I
2 understand.

3 MR. ZAIDAIN: And submit documents?

4 MS. MARSHALL: I'm sure I'll be able to do
5 that.

6 MR. ZAIDAIN: I'm not saying that. I'm
7 not suggesting that at all.

8 MS. MARSHALL: And I certainly intend to.
9 Now you have a problem.

10 (Laughter.)

11 CHAIRMAN GRIFFIS: What gave you that
12 indication?

13 Mr. Nettler?

14 MR. NETTLER: She filed late.

15 CHAIRMAN GRIFFIS: I'm sorry, for some
16 reason I read that and said something totally
17 different.

18 MS. MARSHALL: I did file late. I was out
19 of town and --

20 MR. NETTLER: Second, at least I
21 understand and maybe that can be clarified, I
22 understood that she was a member of Friends of --

23 MS. MARSHALL: No, I'm not.

24 MR. NETTLER: But that's been clarified.
25 Second, if she doesn't have children there, didn't

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1 have children there, is she supporting the application
2 and hasn't identified, as I'm aware of, an injury to
3 her if the application is denied.

4 MS. MARSHALL: I think --

5 CHAIRMAN GRIFFIS: This is what we'll do
6 procedurally. I'm going to have one person talk and
7 when they're finished we'll get to the next, unless I
8 want to interrupt.

9 Mr. Nettler?

10 MR. NETTLER: That would be different from
11 those who you've either given party status to or who
12 would be in the zone of interest who could otherwise
13 obtain party status. I don't think that a case has
14 been made out for party status if you get beyond the
15 timeliness of her application.

16 CHAIRMAN GRIFFIS: Well, it's an
17 interesting argument. However, it flies in the face
18 of what you started with your own arguments in terms
19 of geographic location as being principal.

20 The other piece that you've indicated, it
21 is always hard to look at a party in support and then
22 to view what would be the negative impact or the
23 detriment to you. It's almost trying to take it in
24 reverse, but let us first get to Board Members. Is
25 there any objection to waiving this party status

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1 application in?

2 Mr. Nettler, I take it that you are
3 objecting to that waiving of the rules?

4 MR. NETTLER: I'm objecting to waiving of
5 the rules.

6 CHAIRMAN GRIFFIS: Okay. We'll start with
7 that one. And Ms. Marshall, you indicated it was late
8 because?

9 MS. MARSHALL: I was out of town a lot
10 this summer and my mail piled up and I got back and
11 you know.

12 CHAIRMAN GRIFFIS: Okay. So it was the
13 personal timing of notice.

14 Any objections?

15 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I
16 honestly think that Ms. Marshall is better placed with
17 the Friends.

18 CHAIRMAN GRIFFIS: We're taking party
19 status. We have to get her application in before we
20 look at it.

21 Any objections? I take it as a consensus
22 then to waive the rules and accept Ms. Marshall's
23 application for party status.

24 Ms. Renshaw, you have a concern about her
25 application?

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1 VICE CHAIRPERSON RENSHAW: Yes, as I said,
2 I think that she is better placed with the Friends.

3 MS. MARSHALL: May I speak to that?

4 CHAIRMAN GRIFFIS: Because, yes, just a
5 second. Because you don't see anything uniquely
6 defined in her application?

7 VICE CHAIRPERSON RENSHAW: No. I think
8 that the Friends are going to supply a great deal of
9 testimony as far as the negative consequences to the
10 neighborhood and certainly Ms. Marshall could supply
11 the Friends with the history, should they want to
12 touch that in their testimony.

13 CHAIRMAN GRIFFIS: Okay. Ms. Marshall?

14 MS. MARSHALL: May I speak?

15 CHAIRMAN GRIFFIS: Yes.

16 MS. MARSHALL: The opponents have a lawyer
17 representing a number of people. They also have at
18 least four more people who are coming up here
19 independently because they live close. That's really
20 why they are and it's because they're opponents.

21 Now, here we have the proponents who are
22 going to make a case. They have the Friends of whom
23 this man has already joined. How about one other
24 voice, me?

25 CHAIRMAN GRIFFIS: And that's an important

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1 point and by no means would anything we do stop you
2 from having a voice in this hearing. It is just the
3 point of party status and that is if you want to
4 testify, it would be important and you would have
5 ample time to do it.

6 MS. MARSHALL: Yes. Well, I'm not going
7 to back down. You decide.

8 CHAIRMAN GRIFFIS: Okay.

9 MS. DWYER: Mr. Chairman, if I could just
10 say that you permitted Steve Hunsicker as a party in
11 opposition as an individual because he ostensibly
12 lived across the street from the entrance of the
13 school. There is not, in fact, a driveway entrance on
14 Ordway. The entrance to the school where the children
15 are dropped off is principally on Highland, right
16 across the street from Ms. Marshall's house. So I
17 think she is in a very unique situation and if Mr.
18 Hunsicker could be admitted as an individual party, I
19 don't think there's any basis to deny her the same
20 request.

21 CHAIRMAN GRIFFIS: An interesting balance.
22 Mr. Hood?

23 MR. HOOD: Mr. Chairman, I would have to
24 agree with the comments, the latter comments I heard
25 from Ms. Dwyer.

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1 I'm looking at this, I don't know if I
2 exactly agree with what was said by my colleague. It
3 looks as though Ms. Marshall sits by herself. I don't
4 know if she's Friends of NCRC. It's kind of a pattern
5 and then the same with -- I just want to make sure
6 that we are consistent across the board.

7 She's right across the street and I don't
8 see how she's affiliated with Friends of NCRC in the
9 map that I have. Maybe I have something different.
10 But I think she may be affected definitely too.

11 MS. MARSHALL: I guess I'm the only person
12 on Highland Place who is not objecting.

13 CHAIRMAN GRIFFIS: Okay. Other Board
14 Members? Anything else, Mr. Nettler?

15 MR. NETTLER: I'm not going to belabor the
16 point, but the only thing I wanted to add, when you --
17 in terms of characterizing the inconsistency, still
18 you have to identify what injury you would -- befall
19 you if you were denied the status and there's a
20 distinction here when you're opposing something that's
21 going to be built as opposed to something that
22 wouldn't be built as to what the consequence of it not
23 being built and how that affects you.

24 CHAIRMAN GRIFFIS: That's true.

25 MR. NETTLER: And that I haven't heard

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1 anything in terms of --

2 CHAIRMAN GRIFFIS: What I've heard in
3 terms of her unique status and impact is first of all,
4 she's been there one of the longest on the block and
5 so has that piece that then carries into what her
6 character and what her investment has been. As we
7 talk about opposition and parties in opposition, it's
8 already been thrown out there's property values and
9 there's quality of life issues.

10 I think in her words we can understand the
11 fact that 44 years have given her ability to note what
12 is important and that she will as she's saying be
13 uniquely impacted if there's a change in that status
14 or any of those changes in the status.

15 So I don't think that we're going out on a
16 limb here. And I think it's a fairly strong
17 application. There is always some difficulty in
18 looking at this as a party status that has been
19 defined for an opposition position and looking at it
20 in favor. But as always, we err very well and
21 cautiously on the side of hearing from everybody and I
22 think the case has been proven for Ms. Marshall to be
23 granted party status.

24 MS. MARSHALL: May I say one thing about
25 property values?

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1 CHAIRMAN GRIFFIS: No, first I'm going to
2 move ahead and ask my Board if there's any objection.

3 VICE CHAIRPERSON RENSHAW: No, but I think
4 what Mr. Nettler was getting to is an answer for his
5 question from Ms. Marshall about --

6 CHAIRMAN GRIFFIS: He doesn't need it. We
7 need it. If we feel that we need that answer, then --

8 MS. MARSHALL: About property values would
9 affect if the school doesn't go forward?

10 CHAIRMAN GRIFFIS: Ms. Renshaw, do you
11 want to ask a question of Ms. Marshall?

12 MS. MARSHALL: Because I have an answer
13 for that.

14 VICE CHAIRPERSON RENSHAW: Well, if you're
15 going to be a party you'll have ample opportunity to
16 bring up --

17 MS. MARSHALL: You don't want to hear it
18 now?

19 VICE CHAIRPERSON RENSHAW: Not at this
20 time.

21 MS. MARSHALL: Okay.

22 VICE CHAIRPERSON RENSHAW: We'll pass.

23 CHAIRMAN GRIFFIS: Any other concerns from
24 the Board?

25 MR. ZAIDAIN: It's obviously an unusual

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1 situation. We have so many parties, let alone parties
2 who are proponents. I would just hope that they take
3 the same care as we hope the opposition does in making
4 sure that redundant testimony isn't given throughout
5 this whole process. But other than that, I'm fine
6 with it.

7 CHAIRMAN GRIFFIS: Very well, then not
8 hearing any objection from the Board I would take that
9 as a consensus to grant party status to Ms. Marshall.

10 MS. MARSHALL: Thank you.

11 CHAIRMAN GRIFFIS: We are now going to
12 outline what's our next steps and then we're going to
13 take a short recess so everyone can kind of step --
14 when we return and I think we'll take a quick 10
15 minutes, we are taking up the motions.

16 Our first motions will be that of Mr.
17 Nettler's that were put in who is a standing party in
18 this case. And that is the motion and I would just
19 generalize it, a motion to dismiss. And we will take
20 that up.

21 There is also opposition from the
22 Applicant to that motion. Parties now should have
23 that or should get that, perhaps, if they are looking
24 to speak to that motion, either in the positive or
25 negative.

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1 We will then go to the motion for a
2 continuance of this case from the Applicant and under
3 this huge pile of things I have great notes.

4 Before we end the day, we will have
5 everyone understanding when we leave what we're coming
6 back to actually undertake. My meaning is the Board,
7 in its Executive Session, had some questions
8 essentially of definitions and actually the other big
9 issue will be in terms of the Section 2516 and how
10 we're defining that. So we will all leave with a good
11 definition of the relief that's required on this.

12 Mr. Williams, a very quick question, sir?

13 MR. WILLIAMS: Mr. Chairman, you didn't
14 articulate in terms of what would be happening next as
15 to whether you would hear from me on my remarks.

16 CHAIRMAN GRIFFIS: Mr. Williams, you
17 indicated that you wanted to be heard from this Board
18 as a person.

19 MR. WILLIAMS: I wanted to interpose a
20 question about the proper notice and the scope under
21 2516 as a preliminary matter as to whether or not the
22 case should be heard or not. I believe it's an
23 appropriate preliminary point.

24 CHAIRMAN GRIFFIS: Okay. I don't know how
25 that's going to handle. But I need 10 minutes here

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1 and I would request that you talk to Mr. Nettler, if I
2 can so burden you.

3 (Off the record.)

4 CHAIRMAN GRIFFIS: Mr. Nettler, we're
5 going to be taking up your motion first. That motion
6 is to dismiss the application.

7 MR. NETTLER: Yes, would you like me to
8 begin?

9 CHAIRMAN GRIFFIS: Well, yes. You have a
10 lengthy written submission. Are you prepared to
11 summarize, is that correct?

12 MR. NETTLER: Yes, and I do want to add
13 and that's why Mr. Williams is sitting next to me. As
14 we had in our response the issue of Section 2516 to
15 the motion, because it amplifies actually the basis
16 for our initial motion to dismiss.

17 This application was filed as you know for
18 an expansion of the physical premises of NCRC by
19 what's now known as the Cleveland Park Neighbors. The
20 basis for our motion to dismiss was because of our
21 belief that the Applicant at the time they filed this
22 -- at the time NCRC filed its application and through
23 today was in violation of the prior order that this
24 Board had entered or prior orders that this Board had
25 entered regarding the previous relief that was sought

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1 which was for an 8-year period of time in which was to
2 establish an increase in the enrollment of NCRC,
3 initially to 108 students and then to 120 students.

4 As we pointed out in our motion, it's our
5 belief that they are in violation of that order and
6 that unlike other applications that you've heard where
7 the Applicant has come in after receiving notice that
8 they are in violation of a prior Board order, or have
9 realized that they are in violation of a prior Board
10 order and sought special exception relief for that to
11 obtain consent of this Board to have either that order
12 modified to reflect the true circumstances, that was
13 not the case here. It certainly was not the case when
14 we filed our motion to dismiss because the issue of
15 the enrollment and the issue of staff was not an issue
16 that the Applicant sought your approval of,
17 notwithstanding the fact that we've been raising the
18 issue as to their enrollment.

19 They have now come before you in their
20 prehearing submission and have asked you to give them
21 this additional relief which they say notwithstanding
22 our motion to dismiss which they contest as being
23 accurate which would provide them with a cover of
24 having an order that would provide them the enrollment
25 and the staff levels to which they now ask you to deal

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1 with.

2 The problem with that way of dealing with
3 this situation is the same as the 2516 issue and that
4 is every time we or Mr. Williams or somebody else with
5 the Office of Planning identifies a problem with
6 either the existing use of the premises under the
7 prior special exception or the existing proposal
8 before you because of its failure to address certain
9 pertinent issues in terms of how it's being developed,
10 they simply ask you to either reject what our position
11 or the Office of Planning's position or Mr. Williams'
12 position may be, or grant us that relief. Well,
13 that's not the way a matter is supposed to come before
14 this Board.

15 The community, the ANC, the District of
16 Columbia Government is entitled to the opportunity to
17 address the issues when reviewing an application that
18 for which the relief is being sought, not to have a
19 moving target that leaves the Office of Planning
20 somewhat blind in how to deal with this, leaves the
21 Board possibly blind on how to ultimately deal with
22 this application because of the holes that we think
23 exist and leaves the community unable to determine
24 whether there are more or less people who are willing
25 to support or oppose this application. It's simply

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1 not appropriate and certainly from the ANC's position
2 as well.

3 In this situation and I know I've fully --
4 I think I've addressed in some detail the issue over
5 what the prior orders of the Board said in terms of
6 the enrollment limits and the staff limits, there's --
7 I want to add a couple of comments on that aspect of
8 it. There's an incongruity here to their position
9 that there is no enrollment limit on them at the
10 present time. They sought a special exception in 1998
11 for 108 students because they had been notified by the
12 District of Columbia Government that their Certificate
13 of Occupancy was wrong.

14 They sought that and they obtained a
15 limit of enrollment of 120. That is specifically in
16 the Board's order that was first issued in this
17 situation.

18 CHAIRMAN GRIFFIS: But how does that go to
19 a Motion to Dismiss?

20 MR. NETTLER: I'm going to bring that
21 around to this. They specifically sought that and
22 were -- and that specific limits were placed on them
23 in that Board order.

24 The Board reconsidered the matter not
25 because of any issue that was raised by the Applicant

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1 at the time, but because the community had not been
2 properly notified and having been notified raised some
3 of the same issues that we've raised here today in
4 terms of traffic and other impacts. And as a
5 consequence, additional conditions were agreed to in
6 the subsequent order that was entered by the BZA that
7 was in addition to an approval of the application that
8 sought 108 and then 120 students.

9 We now know that they have somewhere
10 between 171 students enrolled at the school and that
11 their argument today is that what either (1) there was
12 no limitation placed on them at all; or (2) that the
13 limitation only reflected not enrollment, although
14 that's the specific words that they use, but their
15 occupancy at any one particular time which facially
16 could not be correct since 120 by other D.C. agencies
17 is not even a possibility for occupancy at one
18 particular time at this school by the --

19 CHAIRMAN GRIFFIS: But you don't know of
20 any other circumstance where the Board may have
21 granted whatever sort of cap, however it was defined,
22 for a population that may, in fact, not coincide with
23 the building code requirements?

24 MR. NETTLER: No. I know of no other
25 circumstances where the Board has approved of a

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1 special exception for a school where the enrollment
2 was one thing and the occupancy was something else.

3 CHAIRMAN GRIFFIS: Oftentimes we have
4 requests, an application specifically for schools,
5 that come for zoning relief prior to getting a
6 Certificate of Occupancy which would define what their
7 available occupation or population would be.

8 MR. NETTLER: No, I'm not challenging the
9 idea of the 120 or the 108. I'm just saying that the
10 argument, the post hoc rationalization that the 120
11 must have been related to occupancy doesn't have any
12 bearing on the relief that they were seeking because
13 even at the time they couldn't have 120 students at
14 one time and they still can't have 120 students at one
15 time. It only buttresses our position that when the
16 Board said their enrollment was limited to 120, the
17 Board wasn't saying that their occupancy was 120. The
18 Board was told that their enrollment was a specific
19 number. They were given relief based on that specific
20 number. They were given relief based on a specific
21 number of teachers which they clearly are in excess an
22 that number keeps on rising depending on what meeting
23 the community attends and the most recent one being
24 the Cleveland Park Citizens Association where the
25 number has now risen to 38 and not the number that we

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1 were told at some prior meetings.

2 But the problem here is that this Board,
3 in our view, has the authority, given the context in
4 which this matter has come before it to dismiss it
5 because of these violations, to require them to come
6 either into compliance with the law or your orders or
7 to file a request for special exception that addresses
8 all of these issues that they are belatedly seeking
9 relief from, including the 2516 issue.

10 And let me move on to the Section 2615.
11 It became apparent, I think both to us and to the
12 Office of Planning when this proposal was presented to
13 the Historic Preservation Review Board and what became
14 apparent from a review of the Certificate of
15 Occupancies that have been issued for this site is
16 either they have not been in compliance with the
17 zoning regulations 2516 because there is another
18 building on the site which is not -- which does not
19 have a Certificate of Occupancy which has been used
20 for school purposes for classes or because their
21 proposal as addressed before the Historic Preservation
22 Review Board provides for additional buildings and not
23 merely an addition to the existing buildings, that
24 they are presently providing either two principal
25 buildings on a single subdivided lot which is not

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1 permitted under the zoning regulations or their
2 application seeks to obtain your approval for without
3 actually characterizing this as to have two principal
4 buildings on a single subdivided lot.

5 They have submitted today a letter in
6 which they state with a number of decisions attached
7 to it that this is not a situation where we have two
8 principal buildings, but an accessory building. The
9 fact is if you look at the cases that they've relied
10 upon and if you look at the regulations and the
11 definition of school and what are accessory uses, the
12 use of an additional building for classroom purposes
13 is not an accessory use. It is a principal use. It
14 is not within those identified as accessory uses. All
15 of those cases that they have relied upon fall into
16 one of two categories. Either they are like athletic
17 facilities, clearly identified within your own
18 regulations, the Zoning regulations as accessory uses,
19 or they're campus plans. Well, if what they're saying
20 is the Georgetown University, George Washington
21 University, American University campus plan constitute
22 a basis for judging whether the creation of this
23 campus requires a 2516 -- does not require a 2516
24 relief, then we're not dealing with a school situation
25 here. We're dealing with regulations involving campus

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1 plans. That clearly can't be applicable to this
2 situation because then the review of this proposal may
3 not even be in your jurisdiction.

4 CHAIRMAN GRIFFIS: Let's talk more about
5 that. No, actually. The issue we're getting deep
6 into defending and arguing whether it's two principles
7 or not, we need to now bring me back to how can I
8 dismiss, based on the fact that there's some ambiguity
9 about what type of relief. Now what I heard earlier
10 on stated was well, clearly the notification and
11 announcement of this application would have had
12 problems. I'm not sure that would necessarily mean a
13 direct dismissal. But if I'm not mistaken, Mr.
14 Nettler, if we say the Board was to decide that these
15 are two principal buildings on a single lot, does that
16 not put it into a special exception?

17 MR. NETTLER: It puts it into a special
18 exception except a special exception that requires a
19 number of other things that must be done --

20 CHAIRMAN GRIFFIS: But still a special
21 exception in terms of notification?

22 MR. NETTLER: In terms of notification.

23 CHAIRMAN GRIFFIS: Would the notification
24 be substantially changed or altered from what has
25 presently been notified?

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1 MR. NETTLER: Well, there would be a
2 number of aspects to the review that you have to do
3 that would be substantially changed. The issue --

4 CHAIRMAN GRIFFIS: Would it have
5 prejudiced anybody in the neighborhood in the location
6 of looking at the notification whether it be in the
7 mailing or in the posting?

8 MR. NETTLER: In the mailing or the
9 posting, it would -- yes. It would in the sense that
10 the issues that relate to a -- which would then be
11 either, the creation of two tax lots to deal with the
12 problem or the -- or relief from the provision, no,
13 you'd have to create two tax lots under the 2516 to
14 get relief from the problem.

15 CHAIRMAN GRIFFIS: Okay, it's still a
16 process though, something that we'd bring up. In
17 terms of direct notification -- here's where I'm
18 going. What I'm going to ask, we have a substantial
19 submission from Shaw Pittman that quite frankly we
20 have briefly reviewed and I want to take time to look
21 at it in terms of deciding 2516, the issue of
22 buildings and how they're defined. And I think that
23 we would ask, first of all, we have now granted party
24 status that we can have all the parties address the
25 Board in filings if so moved and then we can take that

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1 up. I'm assuming we're not going to get to arguing
2 that substance today, so at our next hearing we would
3 have that.

4 I am not moved, nor have I heard anything
5 persuasive that would tell me that a Motion to Dismiss
6 based on the notification with the issue of 2516 would
7 be persuasive.

8 MR. NETTLER: I want to give Mr. Williams
9 some of my time on that issue since it was an issue
10 that he has done a particular amount of research on
11 and I think it would be appropriate for this Board to
12 consider that and so as part of my presentation on
13 this, I'm asking him to --

14 CHAIRMAN GRIFFIS: You're calling a
15 witness on your own motion?

16 MR. NETTLER: Exactly.

17 CHAIRMAN GRIFFIS: Interesting. Here's my
18 caution, although I'd love to hear Mr. Williams who
19 has great depth and knowledge. My concern is that
20 we're setting the boundaries here for a big hearing
21 and our concern overall with frankly the eight to nine
22 parties that we have, I am going to try to stick very
23 directly to our process and procedures.

24 In this case, Mr. Williams, let's be brief
25 and you can address the Board quickly, but note what

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1 I've just said if we're looking at, in fact, that
2 announcement of this application, the notification,
3 that's all I'm concerned with at this point. I'm not
4 concerned about the substance of 2516.

5 Ms. Dwyer?

6 MS. DWYER: Mr. Chairman, I would object.

7 I think the goal of hearing from Mr. Nettler was to
8 hear on the basis of his motion. You've now allowed
9 him to orally amend his motion to include a new area
10 of relief that he has not briefed. You are allowing
11 him the opportunity to include a witness on that
12 motion and then conceivably every other party can
13 request the same treatment. Mr. Williams is not even
14 a party to the case and I think it's most
15 inappropriate. And I think at this point the Board
16 should reserve its decision to what Mr. Nettler has
17 said orally and what's in the record and if the Board
18 feels that it would like to invite additional comment,
19 it can open it up to all of the parties to the case to
20 file written submissions. But I think at this time
21 that Mr. Nettler is confined to the substance of his
22 motion and his oral comments this morning or this
23 afternoon.

24 MR. NETTLER: Let me just respond briefly.

25 CHAIRMAN GRIFFIS: Yes.

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1 MR. NETTLER: This issue became apparent
2 after the -- at the Historic Preservation Review Board
3 hearing.

4 CHAIRMAN GRIFFIS: It was contained in the
5 presentation to the Historic Preservation and talked
6 about and I wasn't -- I should say I was there, but I
7 wasn't in the hearing. My project presented after --
8 my point is you said it became apparent to you at HPRB
9 that there were two structures because I'm assuming
10 because they refer to them as, this is the structure
11 over here, that's different in definition that what
12 they're coming for in terms of -- different in
13 definition for zoning regulations.

14 MR. NETTLER: No, no. Let me just finish.
15 Going to the point of whether this has been raised
16 for the first time, first of all, in reply to NCRC's
17 opposition to our Motion to Dismiss, I raised the
18 issue about 2516.

19 CHAIRMAN GRIFFIS: Right.

20 MR. NETTLER: And the issue goes not to
21 just to what is being proposed, but like the issue in
22 which we received the Motion to Dismiss for violation
23 of the prior order, it goes to what exists today and
24 what exists today is a situation that is in violation
25 of the zoning regulations.

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1 The use of the -- what they call the
2 playhouse is in violation of the zoning regulations.
3 For one, there's no Certificate of Occupancy for it.
4 and two, it is being used for a principal use, not an
5 accessory use. And it, like these other issues that
6 we've raised which are a problem with the manner in
7 which this application has been presented to you and
8 our belief warrants a dismissal of the application.

9 If they want to refile it and present it
10 appropriately and deal with all the issues that
11 everybody has been discovering in the Office of
12 Planning and everybody else and the Department of
13 Transportation, let them do so. But that's not, in
14 this posture, appropriate before you to consider.
15 We're not supposed to be shooting at a moving target
16 whenever we hear testimony.

17 CHAIRMAN GRIFFIS: But you're bringing up
18 two important points and I maybe was not direct. The
19 Board itself has some questions of the application and
20 getting it directly stated for us and we will clear
21 that up.

22 In terms of that type of moving target, I
23 agree with you, but it is only in continuing to hear
24 this case that we will need to know exactly what we're
25 looking at, as I will say affirmatively any discussion

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1 this Board has will be based on very firm definitions,
2 meaning we will all know and be of one mind of what
3 we're talking about, whether we agree or not is a
4 different piece.

5 When you say moving target in terms of
6 existing noncompliance, I have a difficult time, first
7 of all, going there and looking at a new application.

8 Secondly, finding and I know your submission speaks
9 to it, but I'm still not convinced that we actually
10 have the authority to throw something out because of
11 previous noncompliance or even a structure that is as
12 you're stating not being properly utilized or is in
13 noncompliance with the zoning regulations.

14 MR. NETTLER: Let me move on to the issue
15 and I think you do have the authority and I think you
16 do because you have the authority to enforce your own
17 orders including, although other Applicants have
18 addressed it up front.

19 CHAIRMAN GRIFFIS: How do we enforce our
20 own orders?

21 MR. NETTLER: By referring this to the
22 Department of Consumer Regulatory Affairs for
23 enforcement under the order that was issued before.
24 And to ensure that somebody who comes before you in an
25 application that seeks to extend what was previously

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1 provided to them is in compliance with those orders.

2 CHAIRMAN GRIFFIS: But just for clarity,
3 we would request enforcement.

4 MR. NETTLER: That's correct. And you
5 have done so in the past.

6 You have done so in situations even where
7 you have initially granted relief and I'm thinking of
8 a matter involving area variances that you've granted
9 and special exceptions where you've granted a relief.

10 That decision has been in one case overturned or
11 reconsidered by you and the Applicant has gone forward
12 in violation of the zoning regulations. And you have
13 asked the Department of Consumer Regulatory Affairs to
14 instead enforce an order that brings them into
15 compliance before allowing them to do anything
16 further.

17 CHAIRMAN GRIFFIS: But we've also done the
18 opposite and we also take numerous cases that are
19 self-certified and we do not look beyond the
20 application that's there for total compliance with the
21 zoning regulations. In fact, well, there it is.

22 MS. DWYER: Mr. Chairman, may I address
23 his motion? May I respond?

24 CHAIRMAN GRIFFIS: Are you finished?

25 MR. NETTLER: No, because I still wanted

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1 to address the issue as to Mr. Williams presenting for
2 you I think has been passed up to the Board.

3 CHAIRMAN GRIFFIS: All right, I've got to
4 ask my Corporation Counselor because conceivably if
5 Mr. Williams starts to testify, I open up cross
6 examination of this and I'm not sure how we cross
7 examination on a preliminary matter of a motion. Just
8 a second, Ms. Monroe, do you have an opinion?

9 MS. MONROE: I think, first of all, the
10 2516 issue was brought up in the briefings. But I
11 don't think Mr. Williams can testify. I don't know
12 what he's testifying as, what kind of creature is he?

13 CHAIRMAN GRIFFIS: Do you want to address
14 that to Ms. Monroe?

15 MR. WILLIAMS: Mr. Chairman, my name again
16 for the record is Lindsley Williams. And I sought to
17 address the Board before the parties were established,
18 in part to avoid some of the potential confusion.

19 The question you asked at the beginning of
20 the hearing, Mr. Griffis, was something along the
21 lines if there are persons in this room who have some
22 information or an issue as to whether or not the case
23 should be heard, etcetera, etcetera, and it was at
24 that time that I tried to raise the question of
25 whether or not 2516 was something that would influence

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1 the course of the case. I would be happy to speak
2 under the umbrella of Mr. Nettler or independently,
3 but I would like to be heard as though I had been
4 heard before the parties had been established.

5 I will answer questions, if asked to do
6 so.

7 CHAIRMAN GRIFFIS: Okay, let's go very
8 quickly. I'll hear one objection. If parties want to
9 sit closer up front because what I'm going to need to
10 do is in these issues, if there's an objection from
11 any party that's participating, they need to approach
12 and have a seat and we can get -- there are additional
13 chairs here. That will give me an indication. I may
14 not always think of at every decision and every step
15 to ask if there are additional parties.

16 Now, Mr. Williams, what I need you to do
17 address then is those preliminary matters, those which
18 go to whether or not an application will or should be
19 heard today and that goes to, if I understand you
20 correctly, some sort of problem with the notification
21 or posting.

22 MR. WILLIAMS: That's correct, Mr.
23 Griffis.

24 CHAIRMAN GRIFFIS: Okay.

25 MS. DWYER: Mr. Chairman, if I could just

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1 interject?

2 CHAIRMAN GRIFFIS: Yes.

3 MS. DWYER: Can we separate the motions?

4 CHAIRMAN GRIFFIS: Yes.

5 MS. DWYER: Can the Board first consider
6 Mr. Nettler's motion and have what Mr. Williams is
7 going to say be something separate? I mean the basis
8 of Mr. Nettler's motion when it was filed is that the
9 case should be dismissed because the school was not in
10 compliance with prior conditions of the Board. And I
11 think the Board can address that question and then it
12 can reinvoke discussion on this Section 2516 issue
13 which all of us would like to present some information
14 on.

15 CHAIRMAN GRIFFIS: That makes perfect,
16 logical sense.

17 Mr. Williams, if you would have some
18 patience, we'll get to that. Let's dispense with
19 this.

20 Mr. Nettler, are you finished briefing on
21 your brief at the motion?

22 MR. NETTLER: Yes.

23 CHAIRMAN GRIFFIS: Very well, Ms. Dwyer?

24 MS. DWYER: Yes, on behalf of NCRC, we
25 obviously oppose the Motion to Dismiss and the Motion

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1 for Declaratory Relief. And I'm not going to repeat
2 everything that we submitted in our written pleadings.

3 Number one, we don't believe that the Board has the
4 authority to grant the request for declaratory relief.

5 The opposition has cited sections of the DCAPA that
6 does not pertain to this contested case proceeding.
7 We don't think there is any basis under the zoning
8 regulations, the DCAPA or the Zoning Enabling Act that
9 gives the Board the authority to provide any
10 declaratory relief. The thrust or the factual
11 assumption for the motion to dismiss is that there was
12 a condition in the prior order that NCRC is not
13 complying with. It is factually incorrect. We have
14 attached and you also have copies from the opposition
15 of the 1998 order which is Order 16307. And if you
16 look at the conditions that are contained in that
17 order, there is absolutely no condition that in any
18 way discusses, let alone limits or places a cap on the
19 number of children. Therefore, the whole basis of the
20 motion that there is noncompliance with a condition is
21 false.

22 CHAIRMAN GRIFFIS: There's some cap.
23 I mean just in the application itself it identifies
24 that the center for 120 students and 28 staff. There
25 may be ambiguity of how you define that.

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1 MS. DWYER: Right, I don't think you could
2 define that as a cap. I think that was the way the
3 application was characterized when it was filed. That
4 was a description of what the Applicant was seeking
5 and I think what the Applicant at that time was
6 looking for was a Certificate of Occupancy for 120
7 children. As Mr. Nettler said, the whole reason they
8 came to the Board is that they had a Department of
9 Health license that allowed them to have more children
10 than their Certificate of Occupancy and they were
11 trying to bring the Certificate of Occupancy in
12 compliance with that. That governs the number of
13 children at any one time. There was no discussion in
14 the record. There was no even testimony by the Board
15 as to some outside number or some limitation.

16 CHAIRMAN GRIFFIS: Because I'm confused.
17 Once you put a number to something, it does lend
18 itself to a limitation.

19 MS. DWYER: Right, but the limitation
20 would be numbered at any one time and that's where the
21 confusion is.

22 CHAIRMAN GRIFFIS: And that's what I
23 understand.

24 MS. DWYER: Right.

25 CHAIRMAN GRIFFIS: I think there is some

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1 ambiguity there of what -- we have only on the face of
2 what you've drawn us to in this particular order that
3 number. But I just wanted to be clear that there was
4 not an identifiable number and what that was capping,
5 who knows, but it certainly was children and it was
6 120.

7 MR. ETHERLY: So Mr. Chairman, if I could
8 follow up just on that precise point, under that
9 reasoning, Ms. Dwyer, is there a cap at all on the
10 school?

11 MS. DWYER: The only limitation on the
12 school is a limitation in their Certificate of
13 Occupancy in their Department of Health license. And
14 --

15 MR. ETHERLY: As it relates to occupancy
16 at any one time?

17 MS. DWYER: Which is occupancy at any one
18 time.

19 MR. ETHERLY: So under that argument, the
20 school could then enroll 200,000 students and you
21 would be well within your right under your
22 interpretation of the order, as long as only 120 are
23 in the building at any one time.

24 MS. DWYER: That would be an extreme
25 interpretation of the order. I think --

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1 MR. ETHERLY: But accurate.

2 MS. DWYER: No. I mean the order reflects
3 the fact that this is a school with limited hours in
4 the day and the limited number of children that can
5 attend. And I think in other cases where you've had
6 preschools, you understand from those cases that many
7 time there are morning programs, afternoon programs.
8 Some children go Monday, Wednesday, Fridays, others
9 Tuesdays and Thursdays.

10 I think because this is a school with a
11 morning and afternoon program that conceivably under
12 its prior -- under its existing Certificate of
13 Occupancy, the outside number would be 120 in the
14 morning and 120 in the afternoon or 240. And that
15 would be the outside number based on licensing and
16 Certificate of Occupancy.

17 MR. ETHERLY: Okay.

18 MS. DWYER: I think as the record reflects
19 and even as the exhibits from the opposition are
20 reflected, the school at the time that it went to the
21 Board of Zoning Adjustment in 1998, in fact, had more
22 children than 120. The total enrollment was indeed
23 higher, recognizing that not all these children were
24 there full day, every day of the week.

25 We are coming before you now and we are --

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1 we filed this as an application for a special
2 exception, recognizing that our present enrollment is
3 171 and the school is planning to add 10 additional
4 children. So that is the increase and that is the
5 case that we're coming before you with.

6 When you look at all of the conditions of
7 the prior order, all of those conditions were traffic
8 related and we are complying with every one of them
9 and there's been nothing by the opposition to suggest
10 that not all of those are not being fulfilled by the
11 Applicant.

12 So I don't believe there is any basis for
13 the Board to dismiss the application. It's been
14 properly filed. It's properly before you. If
15 anything, as the Chair has pointed out, there may have
16 been some ambiguity, but certainly nothing that would
17 indicate a condition that we were not complying with
18 and further, as you yourself have indicated, there are
19 numerous cases where Applicants come before you
20 seeking changes in conditions because they are out of
21 compliance with conditions and you hear and decide
22 those cases on the merits, make new conditions and
23 hear those cases going forward.

24 CHAIRMAN GRIFFIS: Two things to that and
25 then I want to go to Corporation Counsel to ask them

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1 their opinion on whether we have any authority to
2 dismiss for declaratory relief.

3 But two things on noncompliance, it has
4 been a big issue for this Board and this Board takes
5 very seriously, first of all, when an application
6 comes in on noncompliance, it kind of makes you wonder
7 what do we do here if we do these orders and put
8 conditions on things? We've had a previous
9 application, actually all the previous applications
10 where there was some difficulty involved and my
11 meaning to that is I have not been persuaded and I'll
12 hear more about whether we actually have the authority
13 to dismiss, but I do not think that this goes
14 unnoticed in terms of how we deliberate on this case
15 and the facts of the case and how that obviously
16 impacts both the case by the Applicant and the case in
17 opposition.

18 Clearly, it serves no one to be in
19 difficult situations like this and I'm hoping that
20 with this particular application that we can clear up
21 some of what might well be some misconceptions or some
22 misunderstandings. I can guarantee if this goes
23 through, as I've stated, that everyone walking out
24 with what we do will be very clear on what we've
25 awarded and how that is defined.

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1 Ms. Monroe?

2 MR. NETTLER: Mr. Chair, before the
3 Corporation Counsel answers, I just want to clarify
4 two factual statements that were made by Ms. Dwyer.
5 One is in terms of enrollment, I think it's
6 interesting that when she concluded her statement she
7 said they're seeking an enrollment, approval for an
8 enrollment of students, not occupancy. Occupancy and
9 enrollment are terms of art and throughout the entire
10 proceeding before this Board in 1998, the question was
11 what is your enrollment going to be? Or what is your
12 enrollment, not what is the occupancy at any one
13 particular time and the answer by the school directly
14 through their counsel at that point was 120 was the
15 enrollment. There was not to be any increases in
16 enrollment. Those are terms of art.

17 And secondly, I think it's unfair to
18 characterize our motion to dismiss as not also
19 pointing out the significant violations of the other
20 conditions in the orders that were entered and there
21 were two orders that were entered, the other
22 conditions dealing with the traffic plan that was
23 supposed to be established.

24 CHAIRMAN GRIFFIS: Okay.

25 MS. MONROE: Mr. Chairman, I think you

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1 need to separate out the Motion to Dismiss from the
2 Motion for Declaratory Relief. You have the authority
3 to dismiss it if you so desire, if you think that's
4 the correct way to go. You don't have authority to
5 grant declaratory relief. The Administrative
6 Procedures Act, Section 2508 which has been discussed,
7 does not allow declaratory relief in contested case
8 and this is obviously a contested case, special
9 exceptions generally are considered contested cases.
10 Also, 2508 makes declaratory relief appropriate
11 essentially in two instances in order to remove
12 uncertainty as to the application of a statute or
13 regulation or to terminate a controversy and neither
14 of those apply here.

15 So I don't think you have authority to
16 grant the declaratory relief, but I would deal with
17 that separately from the rest of the motion.

18 MR. ETHERLY: Mr. Chair, without a need to
19 necessarily elaborate, I would agree wholeheartedly
20 with Corporation Counsel's reading as it relates to
21 the declaratory relief that's sought. 2508 is very
22 clear with respect to the parenthetical language that
23 Ms. Monroe cited.

24 Once again, while we have the authority to
25 issue a declaratory order, other than a contested

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1 case. To me that's very clear, so I'd be very
2 comfortable with that reading.

3 CHAIRMAN GRIFFIS: Okay, any others? Is
4 everyone clear. Last comments on that? Mr. Nettler,
5 did you want to address?

6 MR. NETTLER: No.

7 CHAIRMAN GRIFFIS: Ms. Dwyer?

8 MS. DWYER: No further comments.

9 MR. ETHERLY: So just for the sake of
10 clarity, Mr. Chairman, if it would be appropriate to
11 offer a motion to deny the Party Opponents' request
12 for declaratory relief, I would be so inclined to make
13 that motion, Mr. Chair.

14 MR. ZAIDAIN: I'll second for purposes of
15 discussion.

16 MR. ETHERLY: Once again, I think
17 Corporation Counsel's explanation of the relevant
18 statute on point here is very clear and I don't feel
19 that further discussion would be necessary.

20 MR. ZAIDAIN: As Corporation Counsel
21 stated, there were two aspects to this. One is the
22 declaratory judgment and the other is the enforcement
23 issue.

24 And she said, we would dismiss, I guess,
25 for whatever grounds we see fit, but I really don't

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1 see any productivity of this Board getting into
2 enforcement because we would essentially have to have
3 a whole other hearing and argue the merits of whether
4 or not they're actually in violation of their order
5 and this is not a civil infractions case, and this is
6 not that body to do so.

7 MR. ETHERLY: Well, keep in mind just for
8 purposes of my colleagues, I'm following Corporation
9 Counsel's suggestion that we parse out the two issues
10 and deal with the declaratory relief request.

11 MR. ZAIDAIN: So that's what your motion
12 pertains --

13 MR. ETHERLY: Precisely.

14 MR. ZAIDAIN: Okay.

15 MR. ETHERLY: So we're not dealing yet
16 with the Motion to Dismiss. But once again, I hope
17 that second would still stand.

18 MR. ZAIDAIN: It certainly does.

19 CHAIRMAN GRIFFIS: Further discussion? If
20 not, I'd all those in favor, signify by saying aye.

21 (Ayes.)

22 Opposed?

23 (No response.)

24 Why don't we record that vote and we can
25 move on.

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1 MS. BAILEY: The motion is denied to
2 dismiss the application based on declaratory relief.
3 The motion was made by Mr. Etherly, seconded by Mr.
4 Zaidain; Mr. Griffis, Ms. Renshaw and Mr. Hood are in
5 support, so it's 5-0-0.

6 MR. NETTLER: I thought it was divided
7 into two parts.

8 MR. ZAIDAIN: I was corrected. It was
9 just a motion for the declaratory relief.

10 MS. MONROE: The motion for declaratory
11 relief is not to dismiss, two separate issues.

12 MS. BAILEY: The motion is denied for
13 declaratory relief.

14 MR. ZAIDAIN: Right.

15 CHAIRMAN GRIFFIS: Okay, then let's take
16 up the motion to dismiss. There have been numerous
17 items that are brought up today and also in the
18 filing, occupancy of the property. I think we're all
19 clear on it. I'd have further discussion on that by
20 the Board.

21 MR. ZAIDAIN: I'll just cut and paste what
22 I said five minutes ago. I think the issue -- we hear
23 all the issues of enforcement quite a bit in front of
24 the Board and I think they're absolutely important and
25 certainly obviously they mean a lot to a lot of

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1 people. That's why we have such an attendance here
2 today, but I think we go down a troubled path if we
3 get into that kind of a way to dismiss a case because
4 then we're going to have to hear testimony and collect
5 data on whatever and whether or not they're actually
6 in violation and I just don't see this Board being
7 able to do that when we have an application in front
8 of us.

9 And is it Corp. Counsel's opinion that we
10 have the authority to do that if we so choose and
11 dismiss a case on that specific grounds?

12 MS. MONROE: The grounds of past
13 violations?

14 MR. ZAIDAIN: Yes.

15 MS. MONROE: Well, the question is, you
16 said it's a fact-based question. Were there
17 violations or not?

18 MR. ZAIDAIN: We would have to make
19 findings based on that.

20 MS. MONROE: I don't think you have
21 authority -- I mean you have authority to make a
22 determination, but you can't enforce it. There's
23 nothing you can do.

24 MR. ZAIDAIN: Wouldn't we have to have a
25 process to make findings of whether or not they

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1 actually were in violation?

2 MS. MONROE: Yes, you would have to
3 determine that first.

4 MR. ZAIDAIN: Just to make sure I'm clear,
5 Mr. Nettler, is that what you're arguing, that we
6 would have to go through that kind of process?

7 MR. NETTLER: I'm not arguing that you
8 have to go through that process because I think the
9 record, you just have to deal what are the admissions,
10 that you have an order, you have a record from a prior
11 BZA case and you have an acknowledgement by the
12 Applicant that their enrollment is 171 and their
13 teacher, their staff is at 38. It's for you to look
14 at your prior order and say -- and the proceedings
15 that were handled in that prior proceedings and say
16 whether there was a cap on enrollment and whether that
17 cap was at 120 and if that's -- if the answer is yes,
18 then their statement today that they're 171 or in
19 their application or that there is no cap --

20 CHAIRMAN GRIFFIS: But you're saying that
21 for all your issues that you're bringing up about
22 noncompliance, that basically you've said it and have
23 substantiated it in some cases that if we were to
24 believe that and run with it.

25 MR. NETTLER: The traffic ones I think you

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1 can separate out from the enrollment issue.

2 CHAIRMAN GRIFFIS: I see. So based on
3 just singularly the enrollment issue that is a severe
4 enough motion or issue that we could grant the motion
5 to dismiss or --

6 MR. NETTLER: Or you could hold off
7 dealing with the motion to dismiss and take evidence
8 on the entire matter and then decide what the
9 appropriate relief is if you should believe that that
10 was the case.

11 Because if you should hear the entire case
12 and I'm not saying that you should, I'm just giving
13 you an alternative, if you should do that and you
14 decide that the application should not be granted that
15 you still have to deal with the consequences of their
16 violation of your order and it may not be in the
17 context of a declaratory relief, but you still have to
18 issue an order dealing with those findings that you
19 may make.

20 MS. DWYER: Mr. Chairman, if I could
21 address that. We believe that the Board can decide
22 the motion to dismiss today based on the evidence of
23 record. And we believe that it should be denied. The
24 cases that we have cited are clear and the opposition
25 has not cited one case that says that in order to

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1 determine whether there's compliance with a condition
2 you look beyond the four corners of the order and
3 invent a new condition. There is absolutely no case
4 that they can point to. And all of the cases that we
5 cited are clear that testimony presented at a hearing,
6 statements made at a hearing, none of that translates
7 into a condition as this Board has recognized, you
8 take your conditions very seriously. When they are
9 put in an order it serves on notice to any party that
10 that property is subject to those conditions. You
11 cannot give those conditions that kind of legal effect
12 and then say but in addition, there might be things in
13 the record, read the transcript, read the testimony.
14 There might be something else.

15 There is nothing in that order that the
16 opposition can point to that is a condition that
17 suggests a limitation on enrollment. So the school is
18 not as a matter of law or fact, in violation of any
19 condition. They can testify at the hearing --

20 CHAIRMAN GRIFFIS: Isn't the direct point
21 that you're making enforceability goes to the order
22 and not the transcript or record?

23 MS. DWYER: Absolutely.

24 MR. NETTLER: The problem is there are two
25 orders in this case and there is a statement that the

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1 Board makes at the beginning of its order which states
2 what the relief is that's being sought. And that's
3 what you approved in addition to granting additional
4 conditions.

5 CHAIRMAN GRIFFIS: And I agree with you,
6 Mr. Nettler, except for the point in this specific
7 order does seem to be -- I wish it was ours because we
8 could tell you what we were thinking, but I don't
9 think we had anybody on -- well, there it is.

10 We can't just make the statement that in
11 the announcement of what is said the relief is
12 therefore defined because there is a lot stated in the
13 -- I'm sorry, what?

14 MR. ETHERLY: I'm sorry.

15 CHAIRMAN GRIFFIS: There's a lot stated,
16 of course, in defining the application and if we go
17 into interpreting all of those things I mean one could
18 go much too far.

19 MR. NETTLER: You're not interpreting
20 anything. You are looking at the four corners of your
21 order which said the Board concludes that granting the
22 requested relief -- what is the requested relief? The
23 requested relief is for 120 students and 28 staff.

24 CHAIRMAN GRIFFIS: See, what I'm hearing
25 argued is that that's more descriptive. Was then the

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1 relief for ages 2 and a half to 5 years?

2 MR. NETTLER: You can't simply ignore the
3 fact that there's two orders in that case.

4 CHAIRMAN GRIFFIS: No, and I totally
5 agree and that's where I'm thinking, that's where my
6 mind is in terms of the ambiguity. I mean I find
7 great difficulty that this was ever issued, but that
8 it was. It's difficult to go back and then assert
9 this is, in fact, what the cap level was and this is
10 how it was actually defined.

11 MR. NETTLER: Because it says so in the
12 order. The first order was a cap. It said the
13 condition is a cap of 120 students and a faculty of
14 28.

15 MS. DWYER: The first, Mr. Chairman, the
16 first order was superseded by the second. The second
17 order is the only order that has any legal validity.
18 The conditions that were proposed for that order were
19 the very conditions recommended by the community.
20 None of those conditions were recommended to deal with
21 enrollment. It was not an issue. They were dealing
22 with traffic and that is what the conditions reflect
23 and again, as the Courts have said, this Board cannot
24 go back and try and get into the minds of the prior
25 Board Members.

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1 I agree that going forward we can be very
2 clear which is why we are trying to be as clear as
3 possible in our application and on future conditions
4 we're recommending, but at this point in time in terms
5 of deciding whether there's been noncompliance by NCRC
6 with any condition, there is no condition that they
7 are not complying with.

8 CHAIRMAN GRIFFIS: It seems like that's
9 where we are in terms of deciding at this point, if I
10 break this into smaller issues.

11 Mr. Nettler, you're reading of application
12 16307 is actually it adopted the previous order as
13 part of its own?

14 MR. NETTLER: Well, it had to have because
15 it was asking for 120 students and 28 staff.

16 CHAIRMAN GRIFFIS: But where does it then
17 tell me that this is actually inclusive or absorptive
18 of the previous order?

19 MR. NETTLER: Well, because it wasn't
20 asking for 400 students or for an unlimited amount of
21 students on the premises. It was, on page 2, saying
22 that the Board was granting the relief that was sought
23 which was an enrollment of 120 and a staff of 28.

24 CHAIRMAN GRIFFIS: But let's look
25 specifically at 16307 because you keep saying that

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1 there's an enrollment of 120. Where does the word
2 enrollment come?

3 MR. NETTLER: The enrollment comes from
4 two places. The enrollment comes from the initial
5 order that was filed which was not set aside. It
6 doesn't say that it was set aside in this order anyway
7 and the other -- all that was changed was one
8 condition that was changed in terms of the period for
9 which it was in effect, was reduced from 15 to 8
10 years. It wasn't set aside.

11 And the second thing is what the relief
12 was that was being sought. You can't ignore --
13 there's no case that says you don't go back and look
14 at what the relief was that was sought in trying to
15 determine what order that was issued. None of those
16 cases that were cited --

17 CHAIRMAN GRIFFIS: But would you enforce
18 the previous order and not this application 16307?

19 MR. NETTLER: You enforce it by limiting
20 their enrollment to 120 students.

21 CHAIRMAN GRIFFIS: How could you pull up a
22 previous order and call to it as an enforcement
23 mechanism?

24 MR. NETTLER: What happens is when they
25 violate the order and the Department of Consumer and

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1 Regulatory Affairs is advised that there is an
2 occupancy or there is an enrollment in this case, an
3 enrollment that is more than 120, then the Department
4 of Consumer and Regulatory Affairs will look at the
5 order, look at the relief that was requested, look at
6 the relief that was granted and make a determination
7 as to whether that was, in fact, the case.

8 CHAIRMAN GRIFFIS: I appreciate your
9 argument. I guess my question would be what DCRA look
10 at?

11 MS. MONROE: Mr. Chairman, can I say
12 something about the two orders?

13 CHAIRMAN GRIFFIS: Yes.

14 MS. MONROE: I think the second order
15 supersedes the first order. It's generally the way it
16 works. The second order was on a full rehearing. It
17 wasn't a reconsideration of the first. And the first
18 order and the second order actually have conditions
19 that conflict because the first order had a condition
20 allowing I think 15 years. The second order had eight
21 years. So you can't really read them together and the
22 second order nowhere incorporates the first one into
23 it.

24 So the second order is really all we're
25 dealing with which doesn't have a specific enrollment

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1 condition.

2 CHAIRMAN GRIFFIS: It may well have been a
3 mistake of the second order not to fully define what -
4 -

5 MS. MONROE: It speaks to 120 children.
6 but it doesn't have a condition.

7 CHAIRMAN GRIFFIS: Right.

8 MR. ETHERLY: And I think, Mr. Chair,
9 that's probably the real critical issue here, that
10 sways me to side with the Applicant on this side.

11 What I'm struggling with, Mr. Nettler, is
12 essentially I liken this, although we're not sitting
13 in a court of law with those types of procedures in
14 place, I am kind of likening it to reading a court
15 case and as you well know there are certain parts of a
16 court case you look at and there are certain parts you
17 don't. There's stuff that's called dicta. There's
18 stuff we don't and I'm wondering if you're just simply
19 caught in the ambit of looking at -- I won't refer to
20 it as dicta, but in your reliance on the language that
21 comes in the preamble of our orders, what I'm
22 concerned with is as the Applicant's counsel has set
23 forward, there's a need for clarity and specificity
24 here as it relates to conditions. The fact that there
25 is no clear enrollment cap language after those

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1 important words, ordered that this application be
2 granted subject to the following conditions. I'm not
3 swayed and I'm looking here --

4 MR. NETTLER: The problem is --

5 MR. ETHERLY: Let me finish that thought
6 because the concern is if you don't have language
7 there, you then run the risk of not having that
8 predictability, that sense of certainty that you like
9 to see in regulation, in law. So that's where my
10 concern is. Help me work with that.

11 MR. NETTLER: Two responses. First of
12 all, that's not the way the Court looks at
13 administrative orders. It looks at not just the
14 order, but it looks at the entire record and what was
15 the relief that was sought.

16 There's nothing in this order that says
17 you can't have a law office on the premises. Does
18 that mean that they could have a law office if they
19 wanted to? Of course not.

20 CHAIRMAN GRIFFIS: But that would require
21 relief.

22 MR. NETTLER: That's right. But what
23 requires relief here was to have a school of 120
24 students because it required relief. It doesn't say
25 here that you could have --

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1 CHAIRMAN GRIFFIS: No, but there's nothing
2 identifying the limitation of enrollment.

3 MR. NETTLER: What identifies the
4 limitation is the relief that was sought. You did not
5 say notwithstanding your application for 120 students
6 you can have 7,000 students on the premises here, you
7 have an application -- your relief that you're seeking
8 -- remember, this is a special exception, this is not
9 something a matter of right is defined by what you're
10 seeking.

11 CHAIRMAN GRIFFIS: Right.

12 MR. NETTLER: And we are granting what
13 you're seeking. And what you're seeking is 120
14 students, not 7,000 students.

15 CHAIRMAN GRIFFIS: I don't think anyone
16 argues with that. It clearly says a development
17 center for 120 students --

18 MR. NETTLER: It doesn't need to be a
19 condition here because a school, a private school
20 cannot have an unlimited amount of students in a
21 residential zone. They have to be able to get relief
22 from you for the number of students that they have in
23 that school. That's why they came to you when they
24 had approval for only 90. They had to get your relief
25 for 120. They can't say that under the zoning

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1 regulations they have a matter of right to have 400
2 students in this school, enrolled in this school,
3 because under the law, they have to get a special
4 exception to go to 400 students, to go to 171
5 students, any number.

6 MR. HOOD: Mr. Chairman?

7 CHAIRMAN GRIFFIS: Mr. Hood.

8 MR. HOOD: Can I just say that first, I
9 think this was discussed earlier. Maybe we can move
10 in the posture of putting this motion in abeyance and
11 maybe dealing with it later and when I say later
12 that's after the hearing because I can tell you what
13 my problem is. After you've been down here for a
14 while and you're crafting conditions and whether
15 they're in compliance or not, and especially if
16 they're not in compliance, and the hard work that the
17 Board has put into it like I think you stated earlier,
18 when these entities are not in compliance, I have a
19 problem with that. And I'm not making any accusations
20 that they're not in compliance or that they are. But
21 I have a serious problem with that because we sit down
22 here and I guarantee you and I believe there is a way
23 we can deal with it.

24 That's why I would hope that maybe my
25 colleagues will join me and I think a suggestion was

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1 already mentioned, that we put this motion in
2 abeyance. If you all disagree, then that's fine. But
3 I think we should still leave that as evidence may
4 prove that they're not in compliance and if they're
5 not in compliance then I have a serious problem with
6 that because after you sit down here for a while,
7 making these conditions, instituting them so everybody
8 can be above board on an equilibrium and then come
9 back years later and they're out of compliance. I'm
10 not saying they are or not.

11 CHAIRMAN GRIFFIS: I understand that, but
12 we have two directions that I see. We can have a full
13 hearing on compliance and look at past history and try
14 to get a current picture of three things. We could
15 grant the dismissal based on the fact that we believe
16 and then persuaded that there is some noncompliance.
17 Or third, we can dismiss the motion and hear the case
18 and as it is evidence of noncompliance we have
19 numerous parties that are prepared to tell us whether
20 it is or isn't, I would imagine in their cases, then
21 that will inform us as to how we decide the present
22 application.

23 MR. HOOD: Let me say this, Mr. Chair, i
24 don't think we need to take the motion to dismiss off
25 the table. In previous hearings that I've been

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1 involved with, we have held it in abeyance.

2 CHAIRMAN GRIFFIS: I understand.

3 MR. HOOD: We've listened to the hearing
4 and then we took it back up once we, as a Board,
5 proceeded.

6 We've done that in the past.

7 CHAIRMAN GRIFFIS: Okay. I think that's
8 well said. I'm prepared to act on the motion within a
9 matter of three minutes.

10 MR. ETHERLY: And Mr. Chair, if I may,
11 heading in the direction that Mr. Hood was going in,
12 one of the other pieces that even if you kind of hold
13 in mind where Mr. Nettler was going with his argument,
14 he offers an interesting -- I won't say interesting,
15 but he provides the template that the Board needs to
16 follow if it does indeed find compliance concerns.

17 I'll direct your attention to page 2 of
18 the January 24th submission which was the response to
19 the opposition where Mr. Nettler notes and I think
20 correctly, of course, Corporation Counsel could
21 correct me if I'm wrong, but noted that with respect
22 to dismissing applications and/or appeals, if the
23 dismissal is based upon an Applicant's failure to
24 comply, the Board must first provide due notice of the
25 deficiency and allow a reasonable period of time as

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1 determined by the Board for the Applicant to remedy
2 the deficiency.

3 So even if we were inclined, or even if
4 you are inclined to find a compliance issue here,
5 there still is a procedural, a protocol that needs to
6 be followed, if I'm correct in that reading.

7 MS. MONROE: That is dealing with Chapter
8 31, meaning the procedural --

9 MR. ETHERLY: Okay.

10 MS. MONROE: It's not compliance
11 conditions.

12 MR. ETHERLY: By the way, Mr. Chairman,
13 I'm prepared to move forward on this motion and deal
14 with it appropriately.

15 VICE CHAIRPERSON RENSHAW: Mr. Chairman?

16 CHAIRMAN GRIFFIS: Yes.

17 VICE CHAIRPERSON RENSHAW: I support my
18 colleague, Mr. Hood. I think that this should be set
19 aside and determined at a later date.

20 What I want to do is move ahead to the
21 description of today's application which we need to
22 talk about.

23 CHAIRMAN GRIFFIS: Okay.

24 VICE CHAIRPERSON RENSHAW: So I would move
25 that we set aside the motion to dismiss and determine

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1 that at a later time.

2 MR. ZAIDAIN: I'm in favor of what Mr.
3 Etherly advocated in terms of moving forward. I think
4 we're walking down a really rocky road here. If we
5 get to the point that every time there's a contested
6 case in front of us we're going to hear hours and
7 hours of testimony of whether or not that proposal is
8 in compliance or not --

9 CHAIRMAN GRIFFIS: Let me interrupt you
10 for a second. There's a motion. If it has a second,
11 we can have further discussion.

12 MR. ZAIDAIN: Who made the motion, I'm
13 sorry.

14 CHAIRMAN GRIFFIS: Ms. Renshaw just made a
15 motion to --

16 VICE CHAIRPERSON RENSHAW: I made the
17 motion.

18 MR. HOOD: You made the motion? I'll
19 second.

20 CHAIRMAN GRIFFIS: Discussion?

21 MR. ETHERLY: Just for clarification, that
22 is a motion to table?

23 VICE CHAIRPERSON RENSHAW: To set aside.

24 MR. ETHERLY: My only concern with that
25 motion and it inhibits my ability to support it is I

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1 just don't think it's clean. I don't think it's clean
2 and organized.

3 I'd just as soon dispose of this motion,
4 move forward. I think some compelling arguments have
5 been made on both sides, but I'm just simply not
6 swayed that a condition was existent in the prior
7 order that is cited by the party opposition.

8 I hear the argument. If I perhaps saw
9 some language in that condition section of the prior
10 order that was there, I'd be more inclined to perhaps
11 support that, but I'm just not there. And as a
12 result, I would move forward.

13 MR. HOOD: Mr. Etherly, I don't think that
14 the motion and Ms. Renshaw can correct me, I don't
15 think the motion is pro or con. What it was just
16 doing was just taking the motion.

17 MR. ETHERLY: I understand, Mr. Hood. But
18 I am fully in favor of not seeing -- we've had a very
19 productive 80 hours here thus far and this is only the
20 beginning of the iceberg. I'd just as soon knock them
21 out as the pins come forward and we keep going.

22 MR. HOOD: Let me just say this, Mr.
23 Chairman, and I'm not throwing dispersion on anyone,
24 but when you sit down here for five years making
25 conditions and when they come back here and they're

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1 not being followed, then you have a different
2 approach.

3 MR. ETHERLY: I absolutely understand the
4 frustration with that, though but this is the Board of
5 Zoning Adjustment, not the Board of Zoning
6 Enforcement. I don't see how -- if the enforcement
7 here is the big issue, why didn't it come up through
8 the channels like the G.W. appeal is in front of us
9 right now? It's not the same thing.

10 MR. HOOD: I would agree. All I simply
11 ask is that we not do away with the motion, that we
12 can deal with it on the back end as approached on the
13 front end. That's all we're asking.

14 CHAIRMAN GRIFFIS: Okay.

15 MR. ZAIDAIN: I'm with Mr. Etherly.

16 VICE CHAIRPERSON RENSHAW: Call the
17 question.

18 CHAIRMAN GRIFFIS: We will expedite that.

19 The last words on the motion before I call the vote
20 is I'm not convinced that we have clarify on whether
21 there's compliance or not compliance, Mr. Hood and
22 that's why it's difficult to jump to the conclusion
23 that we are actually in an enforcement mode, rather
24 than in a new hearing and new application mode.

25 We have a motion before us to table the

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1 motion to dismiss and I would ask for all those in
2 favor of that motion signify by saying aye.

3 (Ayes.)

4 And opposed?

5 (Opposed.)

6 CHAIRMAN GRIFFIS: Why don't we record
7 that vote?

8 MS. BAILEY: Mr. Chairman, the motion
9 failed for lack of a majority vote that was made by
10 Ms. Renshaw, and Mr. Hood are in support. Mr.
11 Griffis, Mr. Zaidain and Mr. Etherly are opposed to
12 tabling this motion for a later date.

13 CHAIRMAN GRIFFIS: Very well.

14 MR. ZAIDAIN: For the sake of expediency,
15 I'll make a motion to dismiss the motion. Can
16 somebody help me? Dismiss the motion to deny --

17 MR. ETHERLY: I'll second it, Mr. Chair.

18 MR. ZAIDAIN: Thank you. I absolutely
19 agree with all the enforcement issues here, but I
20 don't see how that is something for us to grant a
21 grounds to dismiss the case on. I think there are
22 different avenues that the aggrieved neighbors can
23 take and I think it's obviously something that we're
24 going to hear a lot about through this process.
25 That's my position.

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1 CHAIRMAN GRIFFIS: Others? Quick
2 discussion?

3 MR. HOOD: I don't think I need to
4 reiterate again. That's all right, that motion died,
5 so I won't rehash it.

6 CHAIRMAN GRIFFIS: I think we're all of
7 the understanding and I think we've heard both
8 persuasive arguments and we have to wrestle with that
9 in its immediacy. I have great difficulty in the
10 previous order and how undefined it was.

11 I think that we can, in fact, in this new
12 hearing bring clear definition to it so that we don't
13 run into this problem. There's nothing worse than
14 being faced with the fact that it is ambiguous on each
15 side, making any decision very difficult and I think
16 digesting all of this just in a motion, a preliminary
17 motion to dismiss is not the appropriate way.

18 I think it will, as we bring evidence up
19 in this case, clearly help us in our decision making
20 and not being positive or negative, it will be a
21 factual and that is something that we'll do. So
22 therefore, we do have the motion to deny the motion to
23 dismiss before us.

24 I'd ask if anyone else had discussion on
25 it? If not, then I would ask for all those in favor

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1 signify by saying aye.

2 (Ayes.)

3 And opposed?

4 (Opposed.)

5 MS. BAILEY: The vote is recorded as 3-2-0
6 to deny the motion to dismiss the application. Mr.
7 Hood and Ms. Renshaw are opposed to the motion. Mr.
8 Griffis, Mr. Zaidain and Mr. Etherly supports the
9 motion.

10 CHAIRMAN GRIFFIS: Thank you. Okay, it
11 seems to me we were now going to revisit the issue of
12 2516.

13 Let me be absolutely direct. We are
14 asking the parties to brief the Board on this issue
15 that we will take up at the next hearing as scheduled,
16 but we do have a preliminary matter that was brought
17 to our attention and that is how this relates to the
18 proper notification and that would, in fact, preclude
19 us from hearing anything this afternoon, so we could
20 all get out of here early, Mr. Williams.

21 Wait a minute, we've already passed that
22 opportunity.

23 (Laughter.)

24 Go ahead, Mr. Williams, please.

25 MR. WILLIAMS: Thank you, Mr. Chairman.

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1 My name again for the record is Lindsley Williams. I
2 reside at 3307 Highland Place, N.W., separated by
3 approximately four properties from the subject
4 property to the application.

5 What I'm trying to do in my materials, Mr.
6 Chairman, I believe you're being provided copies now,
7 is this the case?

8 CHAIRMAN GRIFFIS: I don't know. What is
9 in the materials?

10 MR. WILLIAMS: It begins with a caption
11 called notice provided and at the bottom of the page,
12 you'll see a copy of the existing Certificate of
13 Occupancy. The materials, I'm not going to walk you
14 through each one of them. My purpose here is to
15 simply say from my consideration of the case and from
16 my review of the record and from my review of the
17 zoning regulations, I believe that Section 2516 very
18 much applies to the case and I believe that because it
19 was not called out for consideration in the hearing
20 notice that the hearing notice was potentially
21 inadequate and ask you to weigh in on that question.

22 The issue is significant because, among
23 other things, if you looked at the main building which
24 is the only building under the current C of O, and
25 then said well, I guess the other buildings are

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1 accessory buildings, you might then come to the
2 question where can accessory buildings be located?
3 And the answer is under the rules that accessory
4 buildings may be located --

5 CHAIRMAN GRIFFIS: Before you step into
6 that whole argument, let me grant you for discussion
7 what you think it should be. Tell me what you think
8 it should be?

9 MR. WILLIAMS: I believe there are now two
10 principal use buildings and that the Applicant is
11 seeking to establish a third. Only one is permitted
12 under the existing Certificate of Occupancy and that
13 relief needs to be sought and earned against a test
14 which while similar to the special exception test and
15 its various details, still has differences. There are
16 different reports required from OP and --

17 CHAIRMAN GRIFFIS: Notification, stick to
18 notification. Even if I grant you for hypothetical
19 reasons that it is what you describe it as and that's
20 what we're going to be briefed on and we'll make that
21 decision later, what is the advertising for that
22 relief?

23 MR. WILLIAMS: The advertising for that
24 relief would be to say to seek section for all floors
25 of existing and proposed buildings on this site under

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1 Section 205 and Section 2516, blah, blah, blah.

2 CHAIRMAN GRIFFIS: It would be a special
3 exception?

4 MR. WILLIAMS: It would still be a special
5 exception.

6 CHAIRMAN GRIFFIS: And how was this
7 notified and posted?

8 MR. WILLIAMS: This was posted in terms of
9 Section 205 only and I believe that the --

10 CHAIRMAN GRIFFIS: As a special exception?

11 MR. WILLIAMS: As a special exception.

12 CHAIRMAN GRIFFIS: So your concern is that
13 there may have been more people interested in being a
14 participant in this case based on the fact that there
15 was a differing element of the section for special
16 exception.

17 MR. WILLIAMS: The number of people
18 interested is already quite high. The question is how
19 they prepare for the case as they are either arguing
20 in favor or against and more important, Mr. Griffis,
21 is that given the issue and the way in which 2516 is
22 written, I can see the case going forward with some
23 kind of approval coming. I can see the case going
24 forward of some kind of disapproval coming or other
25 limitation.

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1 CHAIRMAN GRIFFIS: Okay.

2 MR. WILLIAMS: And what I don't want to
3 see happen after we get to the end of this your
4 efforts, mine, Mr. Nettler's, friends, Cleveland
5 Parkers, Mrs. Marshall, everybody here, I don't want
6 to see 2516 roll out as though it had never been heard
7 of before, creating another stumbling block which was
8 not contemplated.

9 CHAIRMAN GRIFFIS: We're going to have all
10 the parties brief the issue.

11 MR. WILLIAMS: I understand. I did not
12 know that when I wrote this.

13 CHAIRMAN GRIFFIS: I understand that. But
14 aren't we getting, I guess here's where I'm thinking,
15 aren't we getting closer and closer to being moot your
16 question of whether it was possibly or whether the
17 notification was proper in that we're not going to
18 hear testimony today and we're not going to hear case
19 presentation.

20 MR. NETTLER: Actually, that's not the
21 case. Depending on how the Applicant would respond to
22 the need to get relief on a 2516, you could either
23 have use or an area variance case presented to you
24 because and I don't know because I don't know how they
25 would deal with the tax laws that would have to be set

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1 up for this, there could be a noncompliance with the
2 area requirements that are provided under 2615 in
3 which case they would need to get an area variance
4 because of that or there could be, if they decided
5 that it was not something that they wanted to go
6 forward with then they would need to do a use
7 variance.

8 So it's kind of again not an issue that's
9 solely in the context of a special exception. A
10 special exception allows it for you when you seek to
11 go forward on a tax law situation and you have a
12 certain proposal that you're proposing that may comply
13 with all of those aspects of it, but if you're not,
14 you may in addition have to get an area variance.

15 CHAIRMAN GRIFFIS: Okay.

16 MS. DWYER: Mr. Chairman, we would submit
17 and that was one of the reasons because this issue
18 came up late in the process that we suggested that the
19 application be amended today so that this relief is
20 requested in the alternative or as you suggested, to
21 invite parties to comment on it.

22 Everyone who is interesting in this case
23 is sitting in this room. The DCAPA does not require a
24 re-noticing or readvertising. All of the parties are
25 here. The issues in a case can be amended provided

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1 there is reasonable notice given to all the parties
2 and we're all here. So if the Board decides that this
3 application does need to be considered under Section
4 2516, we can proceed at the next hearing on that
5 basis. And I don't think there's any issue today with
6 the notice to everyone or any additional DCAPA
7 requirements.

8 We do believe very strongly that that
9 section does not apply and that if were applied in
10 this case, it would have to be applied in every other
11 school case in the District of Columbia and there are
12 numerous examples where you have accessory buildings,
13 whether they're classrooms or gymnasiums or libraries,
14 that they are accessory buildings.

15 CHAIRMAN GRIFFIS: That's stepping us into
16 kind of arguing the issue.

17 Here's what I propose that we do, have the
18 parties brief. And we can decide this in Executive
19 Session and notify the parties so that we do come into
20 the next hearing with a firm understanding of whether
21 this is an issue and how it will be an issue on the
22 application. Is there an objection to that?

23 MR. NETTLER: The only thing I would add
24 to that if you're going to ask for a briefing is that
25 the application certify that if Section 2516 would

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1 apply, that they would not have to get any area
2 variances, that they would meet all of the area
3 requirements that are provided for under 2516.

4 CHAIRMAN GRIFFIS: How would you propose
5 that be certified?

6 MR. NETTLER: If it's not, then how can we
7 go forward without knowing whether there was an area
8 variance needed or not?

9 They'd have to take their buildings and
10 measure out and see whether they've got front yards,
11 side yards, rear yards and all that that would comply
12 as if it was a theoretical lot.

13 MR. ZAIDAIN: I think that what the
14 general question is is there additional relief needed
15 given the proposal. So why -- just in the briefs,
16 just have that included, 2516 and as the Applicant
17 works through it any other relief needed parties in
18 opposition can respond to. We can address it from
19 there.

20 I mean if that does come up, obviously
21 that's going to bring up the noticing aspect again or
22 whatever and we're going to have to work through that,
23 but it seems like all that's going to have to be
24 addressed.

25 MR. NETTLER: And the problem of

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1 addressing it without something being provided is that

2 --

3 MR. ZAIDAIN: That's what I'm asking for.

4 MR. NETTLER: Where are the lot lines
5 going to be drawn?

6 MR. ZAIDAIN: I'm sorry?

7 MR. NETTLER: Lot lines.

8 MS. DWYER: Right, the burden would be on
9 the Applicant if the Board decides that the special
10 exception for 2516 is needed to demonstrate that it is
11 compliance with it. And if we cannot do that, then we
12 are going to fail the test at the hearing and we're
13 going to have to go back and refile an application.
14 So we are going to know that information and be
15 presenting that.

16 CHAIRMAN GRIFFIS: Right. I think it does
17 get back to the point of us not projecting out what
18 the worse case or what other scenarios are. I mean I
19 think we have to take it on face with the Applicant
20 and what they put before us and if we do find that it
21 is proven that in fact it is not correct, then that
22 does pose itself to a failure in the hearing that's
23 before us.

24 However, we have amended applications and
25 we keep them within the realm. We certainly don't

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1 amend a special exception to a use variance without
2 having additional notification.

3 Mr. Nettler, I know you brought up that
4 point, but just by saying it doesn't make this
5 application go in that direction.

6 MR. NETTLER: Well, I'll tell why I say
7 that, why that becomes even more imperative because if
8 2516 does apply, then under the -- and I'll -- you'll
9 see where this is going, okay?

10 Under the Historic Preservation law you
11 cannot subdivide a lot in a historic district into two
12 or more theoretical lots without getting relief from
13 the Historic Preservation Review Board.

14 CHAIRMAN GRIFFIS: Okay.

15 MR. NETTLER: So if you don't get that
16 relief, then the only thing you're going to be able to
17 get here is a use variance. You'll not be able to get
18 a special exception --

19 CHAIRMAN GRIFFIS: That's based on the
20 presumption that the argument will fail, that this is
21 not an accessory --

22 MR. NETTLER: It's a notice issue. It
23 becomes a notice issue to the public because --

24 MS. DWYER: It's based on the presumption
25 --

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1 MR. NETTLER: There may be some argument
2 to be made that on a special exception when you've
3 notified a special exception qua special exceptions
4 that you don't need to do other notices and I'll leave
5 that up in the air for now. But that's certainly not
6 the case when it goes from a special exception to an
7 area variance or a use variance. That you do have to
8 give other notice.

9 CHAIRMAN GRIFFIS: No, I understand.
10 Okay. Yes? That's okay.

11 The issue that we've always founded on --
12 I cut you off, the issue that we've always gone to,
13 Mr. Nettler, and the importance of notification and
14 where we have stepped out of bounds in terms of our
15 requirements for notification has been to ensure the
16 fact that everyone is fully aware and able to
17 participate in the hearing. And that's why I'm not so
18 far over the cliff on this one of problems of
19 notification.

20 MR. NETTLER: It's a technical issue, but
21 the Court has said it's a technical issue that you
22 have to comply with.

23 CHAIRMAN GRIFFIS: I understand your
24 point.

25 MS. DWYER: But that is based on a

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1 presumption that (a) 2516 applies; (b) that we can't
2 meet the requirements; (c) that the Review Board is
3 not going to grant -- it's a lot of assumptions in
4 that and I think the Board at this point should be
5 requesting the briefing from the parties and make its
6 own decision and then the case will be advertised and
7 noticed and everyone will show up for the hearing
8 knowing the correct burden of proof and the test to be
9 met.

10 CHAIRMAN GRIFFIS: Good. And here's what
11 I'd like to do is exactly that, parties to brief on
12 that issue and then we have additional information.

13 What I'd like to do is get those briefings
14 in on 2516 as early as possible, so I will ask parties
15 participating on how much time would be required for
16 that because what I would like to do is expedite a
17 decision or some sort of ruling. We'll see if that
18 happens in Executive Session, so that we might have a
19 more prepared direction for our next hearing.

20 And then there's additional pieces that
21 I'm going to want to have addressed.

22 Why don't we start at the end and see when
23 we are available next and then we will back --

24 MS. BAILEY: Mr. Chairman, the first date
25 is February 25th in the afternoon. That's a date that

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1 had been discussed. I'm not quite sure if you still
2 want to hold to that date.

3 CHAIRMAN GRIFFIS: Right.

4 (Pause.)

5 MR. NETTLER: I understand the ANC has a
6 problem because if you're going to be requesting
7 information from all the parties and the ANC is a
8 party and they don't meet until the 24th.

9 CHAIRMAN GRIFFIS: That's going to be
10 difficult. In submissions and briefings on specific
11 items, I'm not sure we can wait a month or two months
12 for an ANC meeting.

13 MR. NETTLER: Just asking for the
14 briefing?

15 CHAIRMAN GRIFFIS: Well, our hearing would
16 be -- what's your concern in terms of the ANC on the
17 25th? We're proposing the afternoon of the 25th. We
18 have one case of which people may be familiar with and
19 so we would conceivably, realistically we wouldn't
20 call this until 2:30. If we decide on that date and
21 I'm going to hear from everybody, if there's problems,
22 I mean we're going to work this out, but again as I
23 stated earlier with 16 parties and lots of friends,
24 we're going to have to cut somebody off because the
25 date is not going to make it for everybody.

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1 On that date, what I would clearly make
2 people prepare for is that we will go well beyond 6
3 o'clock. We'll take good breaks, but I want to get a
4 good chunk in, if not the entire hearing done on the
5 25th.

6 MS. DWYER: Mr. Chairman, the Applicant
7 can be there on that date and have all of its
8 witnesses in this case.

9 CHAIRMAN GRIFFIS: Do I have parties close
10 to the table that can tell me dates and their
11 acceptability to it?

12 Mr. Nettler, just tell me again the
13 difficulty with the ANC?

14 MR. NETTLER: I'm just being told that the
15 ANC meets on the 24th and to the extent that they have
16 to address an issue, I'm assuming you're going to be
17 dealing with this issue either then or before then.
18 As a party they would want to be able to respond to
19 it. It presents a difficulty for them. I'm just
20 being told that.

21 CHAIRMAN GRIFFIS: Let me throw it out
22 there and well --

23 MR. NETTLER: You can ask the ANC member
24 here.

25 CHAIRMAN GRIFFIS: Absolutely, if they're

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1 available, they should be at the table.

2 Is there anybody that --

3 MR. THOREN: It's fine with Friends of
4 NCRC.

5 CHAIRMAN GRIFFIS: Okay.

6 MS. MacWOOD: I'm Nancy MacWood, the chair
7 of ANC-3C. We can be prepared on the 25th, but if
8 you're looking for briefs in advance of the 25th that
9 would be impossible for us to comply with because we
10 don't meet -- our next meeting is February 24th.

11 CHAIRMAN GRIFFIS: Now I understand.
12 Okay.

13 Let's -- wow. Briefs are going to be due
14 on the 25th for goodness sakes. How quickly can we
15 get that done?

16 MS. DWYER: We can have our brief done by
17 Friday.

18 CHAIRMAN GRIFFIS: This Friday?

19 MS. DWYER: Yes.

20 CHAIRMAN GRIFFIS: Mr. Nettler, how much
21 time do you need, realistically. The importance here
22 is to get this complete, so conceivably we can do it
23 without additional testimony. So err on the side of
24 asking for more time than being impressive. And if it
25 gets in on Friday, well, I guess we could have it

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1 delivered to the Board specially.

2 MR. NETTLER: I would be able to do it a
3 week from today.

4 CHAIRMAN GRIFFIS: Week from today, so the
5 following Tuesday. Okay. Any other parties' concerns
6 about timing for briefing Section 2516?

7 Okay, and in regards to the ANC, frankly,
8 what we may end up doing if there is substance that
9 was taken up regarding this particular piece of
10 information that we're looking for, I think we can, in
11 fact, hear it on the 25th. So direct yourself
12 accordingly. Otherwise, you're available on the 25th
13 for the hearing, correct?

14 MS. DWYER: Mr. Chairman, if I could
15 clarify then, the briefs will be filed on Tuesday,
16 February 18th and could we, could you include the
17 requirement that every party get hand delivered a copy
18 of what is filed?

19 CHAIRMAN GRIFFIS: Yes. And we'll -- I'm
20 going to be -- we'll be very clear on it, but clearly,
21 we want to get this to everybody all at once.

22 Now the other particular piece of this if
23 you're a party, we need to know exactly where you're
24 being served. The other issue that we don't want to
25 come into is parties showing up saying well, I didn't

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1 get anything and it may have gone to your home and
2 you've been at work for a week. So let's be very
3 clear on where people are going to be served and what
4 I would ask is that the parties stay and get that done
5 today and make sure that we have one list in this
6 office that will then be duplicated and transmitted to
7 everybody because as a party, anything that you submit
8 into the record has to be served on all other parties
9 and it is your responsibility to do that.

10 And Ms. Dwyer has brought up an excellent
11 point. We need these done very quickly so you can't
12 drop it in the mail on whenever we just said it was
13 due. It won't get there.

14 You guys don't have a lot of time to write
15 a whole lot. So what I would like is also to caution
16 you to not write a whole lot. That is, clearly, let's
17 be direct, concise and very articulate on the issue.

18 MR. NETTLER: You had requested that the
19 Friends provide you with information related to the
20 individuals that they are --

21 CHAIRMAN GRIFFIS: Yes, I think Ms. Bailey
22 has --

23 MS. BAILEY: That's what I was going to
24 say, Mr. Chairman.

25 CHAIRMAN GRIFFIS: Okay.

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1 MS. BAILEY: That the Friends are to
2 provide the list and Mr. Nettler is also to provide a
3 list based on the discussion today.

4 MR. NETTLER: What list am I supposed to
5 provide?

6 MS. BAILEY: The list of all the persons
7 you'll be representing based on the discussion today.

8 MR. NETTLER: I thought I already did
9 that.

10 MS. BAILEY: It was kind of in pieces.

11 CHAIRMAN GRIFFIS: I see. If you would
12 just update your list that's identical to the format
13 that you submitted. I think that is actually very
14 helpful and an excellent idea.

15 Here's the other issue that I would like
16 to ask from the Applicant -- no, I think we're okay.

17 Anything else that we're needing at this
18 point for submission for going ahead to the 25th?

19 (Pause.)

20 Mr. Nettler?

21 MR. NETTLER: If you could, you had said
22 to be prepared to go beyond 6 o'clock on the 25th?

23 CHAIRMAN GRIFFIS: Yes.

24 MR. NETTLER: Could you give me an idea of
25 what "beyond" is?

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1 CHAIRMAN GRIFFIS: I'd pay my babysitter
2 until 10 o'clock.

3 MR. NETTLER: Okay.

4 CHAIRMAN GRIFFIS: I don't know.
5 Actually, it's an excellent point to bring up and we
6 ought to set some parameters. Clearly, we don't like
7 going beyond 6 o'clock and frankly, it's hard to keep
8 all this juggling and moving ahead.

9 I would think that -- I want to put in at
10 least a good 5 to 6 hours on this case. So if we look
11 at that from the basis of when we end the first case.

12 The first case does not look like it will take that
13 long. However, I do anticipate 50 to 70 people being
14 here for that case. I'm not sure they're all
15 testifying. They all showed up before. There was a
16 continuance granted and they all left.

17 However, it may not be a half an hour
18 case. So if we started at 2, I would anticipate we
19 would run until 7 or 8.

20 MR. NETTLER: You're saying the case
21 before us has 50 people as well?

22 CHAIRMAN GRIFFIS: Oh yes.

23 MR. NETTLER: Okay.

24 CHAIRMAN GRIFFIS: But it's not a school
25 or a daycare.

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1 (Laughter.)

2 Which will help us shift gears. And you
3 know, if there is an objection to that, it's well
4 worth hearing now. My motivation is to get this done
5 as quickly on our schedule as possible.

6 This Board has spent an awful lot of time
7 going through all this documentation. We're only
8 getting more. The closer we have this, the fresher it
9 is in our minds and frankly the easier it is for us
10 and I think easier for everybody else.

11 MR. NETTLER: I don't know everybody's
12 individual situation, but people have to make
13 arrangements, I'm sure --

14 CHAIRMAN GRIFFIS: Exactly.

15 MR. NETTLER: I know some of these BZA
16 hearings have gone until 2 o'clock in the morning.

17 CHAIRMAN GRIFFIS: I think it would be
18 very safe to say on the 25th that if you -- that you
19 would be out of here no later than 9 o'clock. Believe
20 me, we all have jobs the next day. This is our one
21 day down here. We will start on that day at 8 o'clock
22 in the morning. That will be 12 to 13 hours straight
23 for us.

24 VICE CHAIRPERSON RENSHAW: What?

25 MR. HOOD: Mr. Chairman, correction, we

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1 would have had a job --

2 (Laughter.)

3 CHAIRMAN GRIFFIS: That's very true. And
4 so with that, is there anything else? Is everyone
5 absolutely clear? Now is a great time to bring up any
6 questions of clarity, further information?

7 UNIDENTIFIED SPEAKER: About where we
8 serve our briefs --

9 CHAIRMAN GRIFFIS: What I'm going to ask
10 is Mr. Moy are you available to go to the desk and
11 we're going to get that all clear now. And the
12 question was about where and how service is to be
13 given.

14 So Mr. Moy is going to meet all the
15 parties at the front desk in the office and we're
16 going to get the list together and make sure everyone
17 knows where they are to be served and what service
18 means.

19 Anything else? Thank you all very much
20 for your patience. We'll see you on the 25th. This
21 would adjourn then the 11 February 2003 --

22 MR. BOTH: My name is Charles Both. I'm
23 not a party. I'm represented by Mr. Nettler. I just
24 have a question since you asked for questions.

25 You're having a briefing that's going to

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1 be filed on next Tuesday.

2 CHAIRMAN GRIFFIS: Correct.

3 MR. BOTH: If I understood you correctly,
4 you all are going to decide in Executive Session that
5 issue prior to the hearing?

6 CHAIRMAN GRIFFIS: It was my anticipation.

7 I would not count on that happening as this Board
8 comes together only on Tuesdays, meaning we would get
9 everything and I'm not sure we'll have time, able to
10 do that.

11 MR. BOTH: Well, the question then is if
12 it is decided for technical reasons there is some
13 either problem with the notice or problem with whether
14 you need a variance, whether you need measurements,
15 does that mean when everybody comes here on the 25th
16 we may be again told that because of the decision on
17 this issue, we're not going forward? That's what I
18 thought you had in mind by having it briefed before
19 hand so we wouldn't have to go through this.

20 CHAIRMAN GRIFFIS: Right, and I certainly
21 hope that wouldn't be the situation. If there's a
22 decision made by the Board in Executive Session, it
23 will be served on all the parties and so they will
24 know how to act accordingly.

25 If, in fact, we take it up and have time

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1 and we have to deal with it first in our next hearing,
2 yes, there's a potential that we'll get into that
3 argument again. I'm hoping that we're coming and
4 that's the point of asking for this to be briefed,
5 that we will have clarity and we'll have clarity on
6 action and direction, so we won't have to drag
7 everyone through this.

8 Good. Anything else? Great. Thank you
9 all very much.

10 (Whereupon, at 5:39 p.m. the public
11 hearing was concluded.)

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