

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY
February 25, 2003

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:45 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD MEMBERS PRESENT:

GEOFFREY GRIFFIS	Chairperson
ANNE RENSHAW	Vice Chairperson
CURTIS ETHERLY, JR.	
DAVID ZAIDAIN	

Zoning Commissioners Present:

Carol Mitten
John Parsons
Anthony Hood

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Staff Present:

Beverly Bailey	Office of Zoning
Clifford Moy	Office of Zoning
John Nyarku	Office of Zoning
Stephen Mordfin	Office of Planning
Jennifer Steingasser	Office of Planning
Karen Thomas	Office of Planning
Arthur Jackson	Office of Planning

D.C. Office of Corporation Counsel:

Lori Monroe, Esq.
Mary Nagelhout, Esq.

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

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

9:45 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. I will call to order the 25 February 2003 public hearing of the Board of Zoning Adjustment for the District of Columbia. My name is Geoff Griffis. I am Chairperson.

Joining me today is Ms. Anne Renshaw, Vice Chair. Shortly behind us is Mr. Curtis Etherly who will be on my right. Representing the National Capital Planning Commission is Mr. Zaidain and representing the Zoning Commission this morning with us is Ms. Mitten. Also, we'd welcome and say good morning to the able Office of Zoning Staff Ms. Bailey, Mr. Moy, and also Mr. Nyarku who is with us. Representing the Corporation Counsel is Ms. Monroe.

Copies of today's hearing are available to you. They should be located at the table where you entered into the hearing room.

Also on that table are the witness cards. Anyone giving testimony today should fill out two of those cards before coming forward to the table. Those cards do go to the recorder who is sitting at my right.

Let me run through a few pertinent pieces.

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1 Everyone should be aware that all public hearings are
2 recorded. So, we ask that there not be any sort of
3 disruptive noises or actions and also and most
4 importantly that when speaking to the Board you do
5 come forward and you do speak into a microphone that
6 is on. If it isn't, we'll give you instruction.

7 That being said, the order of procedure
8 for the special exceptions and variances this morning
9 will be first we will statements and witnesses of the
10 applicant. Second, would be any government reports
11 attended to the application, that is, Office of
12 Planning, et cetera. Third would be the report from
13 the Advisory Neighborhood Commission. Fourth, we
14 would hear parties or persons in support. Fifth,
15 would be parties or persons in opposition and sixth,
16 finally, we'll have closing remarks by the applicant.

17 Cross examination of witnesses is
18 permitted by the applicant and 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
23 specifically requested by the Board and the Board will
24 be very specific on what material is to be submitted
25 and when it is to be submitted into the Office of

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1 Zoning. After that information is received, of
2 course, the record would then be finally closed and no
3 other information would be accepted.

4 The Sunshine Act requires that the public
5 hearing on each case be held in the open and before
6 the public. The Board may, however, consistent with
7 it's rules of procedures and the Sunshine Act, enter
8 executive session during or after a public hearing on
9 the case and that is for purposes of reviewing a case
10 or deliberating on it.

11 The decision of the Board in contested
12 cases must be based exclusively on the public record.

13 So, we ask people present today not to engage Board
14 members in conversation so that we do not give the
15 appearance of not basing our deliberations solely on
16 the public record.

17 I would ask that everyone in attendance
18 this morning at this time turn off any cell phones or
19 beepers so that we don't have any disruptions of the
20 proceedings and I believe we can take up preliminary
21 matters at this time.

22 Preliminary matters are those which relate
23 to whether a case will or should be heard today, such
24 as, request for postponements, continuance, withdrawal
25 or whether proper and adequate notice of the hearing

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1 has been given.

2 If you are not prepared to go forward with
3 a case today or if you believe the Board should not
4 proceed with a case on the agenda this morning, I
5 would ask that you approach the table.

6 I will first turn to staff to see if there
7 are any preliminary matters that they are aware of for
8 the Board's attention.

9 MS. BAILEY: Mr. Chairman, members of the
10 Board, good morning.

11 CHAIRPERSON GRIFFIS: Good morning.

12 MS. BAILEY: There is a preliminary matter
13 and it has to do with the Sheridan School Application
14 16977. There is a request for this case to be
15 rescheduled to another date.

16 CHAIRPERSON GRIFFIS: I see. You're
17 representing the school? If you wouldn't mind
18 introducing yourself for the record.

19 MR. DEPUY: Mr. Chairman, members of the
20 Board, for the record, I'm Jacques DePuy, attorney
21 with Greenstein, DeLorme & Luchs, representing the
22 applicant Sheridan School in BZA Application 16977.

23 CHAIRPERSON GRIFFIS: Good morning, Mr.
24 DePuy.

25 MR. DEPUY: Good morning.

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1 CHAIRPERSON GRIFFIS: What I had intended
2 to do with this is frankly call the case as this is a
3 motion for a continuance and to go through the party
4 applications and grant party status so that we might
5 take care of that and then take up the motion.

6 Do you have any concern or objection to
7 doing that?

8 MR. DEPUY: Well, Mr. Chairman, the
9 Advisory Neighborhood Commission ANC-3F by letter
10 dated February 17th, and I've given staff extra copies
11 for the members, supported the continuance and also
12 specifically asked the Board if it would take up party
13 status requests at the continued hearing rather than
14 at -- at this time.

15 CHAIRPERSON GRIFFIS: Interesting.

16 MR. DEPUY: I don't believe any of --

17 CHAIRPERSON GRIFFIS: Is that -- that was
18 not in the record? That letter?

19 MR. DEPUY: That was filed in the record
20 February 19th.

21 CHAIRPERSON GRIFFIS: Indeed, it's the
22 February 17th letter. Correct?

23 MR. DEPUY: That's correct.

24 CHAIRPERSON GRIFFIS: Okay. I do have
25 that.

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1 MR. DEPUY: And I don't believe any of the
2 party --

3 CHAIRPERSON GRIFFIS: No.

4 MR. DEPUY: -- parties are here. So, it
5 would make it difficult to have a dialogue with
6 respect to any of those requests and frankly --

7 CHAIRPERSON GRIFFIS: Sometimes it's
8 difficult to have dialogue. So.

9 Well, let me first make a procedural
10 statement, Mr. DePuy. The Board has enough
11 information to decide party status based on any
12 application that's submitted and based on its timely
13 submission and we have in the past taken oral
14 testimony or comments from party status, but it's not
15 required. So, I believe that we could take up party
16 status if we were so inclined.

17 However, with the ANC letter and that's
18 interesting that I had frankly overlooked that aspect
19 of it, let me hear from Board members to see whether
20 they'd be amenable to taking up the motion. It is
21 supported by the party in the case at this point, the
22 -- the ANC-3F.

23 Ms. Mitten.

24 COMMISSIONER MITTEN: I just want to ask
25 Mr. DePuy, one of the aspects of the ANC request for

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1 not taking up party status today is that the time
2 period for filing be extended until 14 days prior to
3 the rescheduled hearing.

4 CHAIRPERSON GRIFFIS: Right.

5 COMMISSIONER MITTEN: Do you have any
6 objection to that?

7 MR. DEPUY: We do not object to that.

8 COMMISSIONER MITTEN: And then if I were
9 to support the request for a continuance, one of the
10 things that I would want to see when we reconvened is
11 the existing order 15656 condition 11 requires the
12 applicant to submit an annual report to the Zoning
13 Administrator setting forth its ongoing compliance
14 with the terms of the order and I would like that
15 annual report to be submitted to the -- for the record
16 so that when we reconvene we can determine compliance.

17 MR. DEPUY: We'd be glad to do that.

18 CHAIRPERSON GRIFFIS: I don't -- yes, I
19 think that is a good request. However, I just want to
20 make clarification. We're not going into a hearing to
21 decide compliance.

22 COMMISSIONER MITTEN: I think that -- I --
23 I take your point, but I think that it's important to
24 determine whether or not an applicant who is
25 requesting a -- a special exception with conditions --

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CHAIRPERSON GRIFFIS: Right.

COMMISSIONER MITTEN: -- has complied in
the past --

CHAIRPERSON GRIFFIS: Okay.

COMMISSIONER MITTEN: -- with such a --

CHAIRPERSON GRIFFIS: I guess it's just
terminology then. I -- I would say that that would
substantiate or establish compliance or noncompliance
rather than us making decisions on whether there's
compliance. Okay.

That being said, Ms. Renshaw.

VICE CHAIRPERSON RENSHAW: Mr. -- Mr.
Chairman, I'd like to ask Mr. DePuy will you have by
the next hearing a detailed landscaping plan and a
traffic and transportation study?

MR. DEPUY: We will and we will submit
those to the neighbors and to the ANC well in advance
of the -- of the continued hearing. In fact, as -- as
our letter indicates, that's one of the bases for the
request in order to have sufficient time to complete
the traffic report and secondly meet with the
neighbors in the ANC and other parties with respect to
both of those.

CHAIRPERSON GRIFFIS: Of course, we don't

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1 have any other parties. Any other --

2 MR. DEPUY: The ANC.

3 CHAIRPERSON GRIFFIS: -- other potential
4 participants in that case.

5 MR. DEPUY: Yes.

6 CHAIRPERSON GRIFFIS: Okay. And going to
7 that directly, you just said that you would supply
8 that to the neighbors. Do you -- how are you doing
9 that? Like what is your list? How are you notifying
10 people? What's the distribution?

11 MR. DEPUY: The -- the school like many
12 schools has quarterly meetings and we have an upcoming
13 meeting on March 6th and we will make those materials
14 -- if the traffic study is available by then, we'll
15 make those materials available then. We are providing
16 -- we've provided notice of our request for a
17 continuance to all parties within two -- all owners
18 within 200 feet and we're trying to make the community
19 aware of the school's revised request as widely as
20 possible.

21 CHAIRPERSON GRIFFIS: Okay. And just on a
22 kind of common sense if someone was to call the school
23 interested, they would have copies of the information
24 that was being distributed that might be able to be
25 picked up there?

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1 MR. DEPUY: Yes.

2 CHAIRPERSON GRIFFIS: Okay. Very well.
3 Any other concerns, comments?

4 Then we have a motion presented to us.
5 Can I hear a motion from the Board?

6 COMMISSIONER MITTEN: Mr. Chairman --

7 CHAIRPERSON GRIFFIS: Yes.

8 COMMISSIONER MITTEN: -- I move that we
9 grant the request for a continuance of BZA Application
10 Number 16977.

11 CHAIRPERSON GRIFFIS: Very well. Is there
12 a --

13 VICE CHAIRPERSON RENSHAW: Second.

14 CHAIRPERSON GRIFFIS: -- discussion?

15 Clearly, this motion is being supported --
16 being requested by the applicant and supported by the
17 ANC which is a party in the case.

18 Then I would ask for all those in favor
19 signify by saying aye.

20 (Ayes.)

21 CHAIRPERSON GRIFFIS: And opposed?

22 Very well. Let's set a date on this. I
23 imagine you have some work to do and we do have a
24 booked schedule. The 25th of May --

25 MR. DEPUY: Mr. Chairman, if I -- if I --

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1 CHAIRPERSON GRIFFIS: -- 2003, Mr. DePuy,
2 is probably what you were about to say. Is that
3 acceptable?

4 MR. DEPUY: That would be acceptable.
5 Yes.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. DEPUY: And give, I think, sufficient
8 time for neighbors to review plans and for meetings to
9 take place.

10 CHAIRPERSON GRIFFIS: Very well. Let me
11 check with staff on calendar if that's open.

12 MS. BAILEY: That's open, Mr. Chairman.

13 CHAIRPERSON GRIFFIS: Very well. And what
14 are we looking at?

15 MS. BAILEY: Morning session.

16 CHAIRPERSON GRIFFIS: Morning session and
17 how many cases do we have in the morning on that?

18 MS. BAILEY: Scheduled for that date, it's
19 not showing any cases at this time, Mr. Chairman.

20 CHAIRPERSON GRIFFIS: Okay. What I'd like
21 to do is try and hold back to two cases. I'm the
22 worst at putting more cases on than needed. So, if we
23 can put just a note on that. I imagine just with the
24 preliminary we're going to need some additional time.

25 MS. BAILEY: Is that two cases in the

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1 morning, Mr. Griffis?

2 CHAIRPERSON GRIFFIS: I would -- yes, I
3 would -- let's put a note to ourselves that we'd try
4 and keep that to adding just one other case if
5 absolutely required.

6 MS. BAILEY: Okay.

7 CHAIRPERSON GRIFFIS: Mr. DePuy, is there
8 anything else?

9 MR. DEPUY: No. Thank you.

10 CHAIRPERSON GRIFFIS: Very well. Thank
11 you very much. Let's us go on. Are there other
12 preliminary matters?

13 MS. BAILEY: Not from staff, Mr. Chairman.

14 CHAIRPERSON GRIFFIS: None from staff.
15 Any other preliminary matters? Very well. Not seeing
16 anyone approach, let us call the first case in the
17 morning then.

18 MS. BAILEY: Application Number 16981 of
19 Robert Bagnall and Alexander Tang pursuant to 11 DCMR
20 3103.2 for a variance from the lot occupancy
21 requirements under Section 403 and a variance from the
22 nonconforming structure requirements under Subsection
23 2001.3 for the construction of a wood deck and stairs,
24 screens, and new masonry wall to a single family
25 dwelling in the R-3 District at premises 2234

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1 California Street, N.W. (Square 2529, Lot 284).

2 Please stand gentlemen to take the oath.
3 Please raise your right hand.

4 Do you solemnly or affirm that the
5 testimony you are about to give in this proceeding
6 will be the truth, the whole truth, and nothing but
7 the truth?

8 MR. TANG AND MR. BAGNALL: Yes, ma'am.

9 MS. BAILEY: Thank you.

10 CHAIRPERSON GRIFFIS: Good morning,
11 gentlemen.

12 Let me have you introduce yourselves
13 first.

14 MR. TANG: My name is Alex --

15 CHAIRPERSON GRIFFIS: Can you just touch
16 the base of the mike there? There it is.

17 MR. TANG: My name is Alex Tang.

18 MR. BAGNALL: My name is Bob Bagnall.

19 CHAIRPERSON GRIFFIS: Okay. And is there
20 anyone else participating in this case for you, with
21 you? Very well.

22 Let me turn it over to you then and you
23 can present your case.

24 MR. TANG: Good morning. We are seeking
25 your approval for a variance from Subsections 2001.3A

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1 and C so that we can rebuild the outdoor deck on our
2 existing garage roof which would be connected to our
3 house with a staircase down to ground level and a
4 smaller deck.

5 It is our understanding that the staircase
6 and the deck require a variance, but we're submitting
7 the entire design for your consideration and for any
8 additional relief that you believe may or may not be
9 necessary so that the entire deck design can be
10 approved as -- as a whole.

11 CHAIRPERSON GRIFFIS: Okay. First
12 clarification and I note the 2001.3. Mr. Zaidain, did
13 you see something in the Office of Planning report?

14 MEMBER ZAIDAIN: We just noted earlier
15 that I -- I think Office of Planning and I'm not sure
16 if you can answer this, Mr. Mordfin, might be using
17 the old zoning text and that C is not the actual
18 section. That it's -- I don't have the text in front
19 of me. I think it's 2001 --

20 CHAIRPERSON GRIFFIS: It is 2001 --

21 MEMBER ZAIDAIN: -- A and then --

22 CHAIRPERSON GRIFFIS: --.3A, B, and 1, 2,
23 3.

24 MEMBER ZAIDAIN: A, B and 1, 2, 3. Okay.

25 Sorry.

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1 CHAIRPERSON GRIFFIS: No longer is there a
2 C.

3 MEMBER ZAIDAIN: So, just a minor -- minor
4 correction there.

5 CHAIRPERSON GRIFFIS: So, although that
6 isn't enough to throw the whole case out, we ought to
7 make clarification at least that we're looking at the
8 -- the current zoning for the notes and it is under --
9 the 2001, of course, is for nonconforming. In the
10 case file and presentation, the building has been in
11 existence prior to 1958. Is that correct?

12 MR. BAGNALL: That is correct.

13 CHAIRPERSON GRIFFIS: Okay. And it had,
14 in fact, a nonconforming then by current zoning
15 regulations the lot occupancy. That's also correct?

16 MR. BAGNALL: Correct.

17 CHAIRPERSON GRIFFIS: Okay. Now, you know
18 the test for the variance has -- has three basic
19 levels. Did you want to just address those briefly?

20 MR. TANG: Yes, for element number one
21 about the uniqueness of the property, the house and
22 the garage occupy most of the property. So, there is
23 really no private yard area or balcony or deck space.

24 The house sits at the corner of 23rd and
25 California. So, we are exposed on two sides with a

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1 front yard the -- excuse me -- on the California
2 Street side and about a five-foot strip of grass on
3 the 23rd Street side. So, the only private area of
4 the house is the side that is on the east of the house
5 which is occupied by a garage which takes up most of
6 the outdoor space except for about 8 feet by 16 feet
7 at ground level.

8 The previous owners had constructed a deck
9 on top of the garage and we would like to rebuild that
10 deck and in addition, add to the deck by replacing the
11 access ladder with a staircase that would sit at
12 ground level as well as a smaller deck that would
13 connect the space between the garage and the house.

14 The smaller deck at ground level and the
15 staircase would be screened from the street view by a
16 new masonry wall and we have asked the -- we have had
17 that element of it approved by the Historic
18 Preservation Board, but in essence the --

19 CHAIRPERSON GRIFFIS: Never heard of them.

20 MR. TANG: -- the -- the -- on account of
21 the -- the narrowness of -- of that area, the only
22 place to build the deck would be on top of the garage
23 and we feel that it -- that -- that -- that does
24 constitute a uniqueness and -- and that there is no
25 other alternative other than to -- to, you know,

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1 request approval perhaps to -- to take down the garage
2 or build balconies neither of which would be
3 historically appropriate in our view and that -- we
4 believe that that probably meets the standard of -- of
5 uniqueness.

6 On the second element as -- as far as
7 hardship, we do believe it -- it would be a hardship
8 for us to -- to either not have any recreational space
9 or to make changes to the house that -- that wouldn't
10 be appropriate to it in order to obtain such
11 recreational space.

12 And then third whether the relief could be
13 granted without substantial detriment to the public
14 interest, we -- we don't believe it would block
15 anybody's sunlight, air or -- or views. All the
16 construction would be outdoor space and we actually
17 think that it would enhance the appearance of the
18 property.

19 CHAIRPERSON GRIFFIS: Okay. And it
20 certainly wouldn't impair the intent and integrity of
21 the zone plan or map. Correct?

22 MR. BAGNALL: No.

23 MR. TANG: No.

24 CHAIRPERSON GRIFFIS: As this is a
25 residential zone and it's staying residential use.

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1 MR. TANG: Yes, and none of the space
2 would be enclosed --

3 CHAIRPERSON GRIFFIS: And then
4 everything's proposed --

5 MR. TANG: -- or occupiable.

6 CHAIRPERSON GRIFFIS: Okay. First a
7 clarification. Hardship is a bit higher of a test. I
8 think we're talking about practical difficulty here
9 and what I've understood you to say part of your
10 uniqueness it's then actually creating the practical
11 difficulty is -- is access. Access to the garage
12 itself from the cars to the -- to the first floor of
13 the building and then access to the -- the patio on
14 top of the garage of which you are refinishing an
15 existing patio. Correct?

16 MR. TANG: That is correct.

17 CHAIRPERSON GRIFFIS: Okay. Any other
18 questions from the Board?

19 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I
20 would like the applicant to walk us through the plans
21 if you have them with you which we hope you do.

22 CHAIRPERSON GRIFFIS: Good. While you're
23 pulling that out, I think we'll get some direction on
24 that, too. One of the other pieces that I just wanted
25 to pull out in terms of the uniqueness which I believe

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1 is in the written but clearly is graphically
2 represented and it is a unique positioning and a
3 unique shape of the lot not to mention the actual
4 access into the garage seems to be fairly unique not
5 coming perpendicular off the alley but rather
6 perpendicular off California Street. Is that correct?

7 MR. BAGNALL: Yes, but just to clarify on
8 what's shown as the plat at attachment three to our
9 submission, the alley was -- is -- was closed many
10 years ago.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. BAGNALL: And that's no longer an
13 operating alley.

14 CHAIRPERSON GRIFFIS: Right. Okay. Which
15 is also interesting. Very well.

16 Now, I think the -- the issue for the
17 board in terms of walking through the plans is just to
18 get a -- a -- a better understanding of what's being
19 constructed, where those stairs lead to, what floors
20 they access, and all that.

21 MR. BAGNALL: I think probably the best
22 place to start is attachment four to our submission.
23 What's numbered --

24 CHAIRPERSON GRIFFIS: Go ahead.

25 MR. BAGNALL: Do you need a copy?

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1 VICE CHAIRPERSON RENSHAW: A-4.

2 MR. BAGNALL: I'm sorry.

3 VICE CHAIRPERSON RENSHAW: You said A-4?

4 MR. BAGNALL: No, at attachment four, page
5 A-5 which is a section that shows the different
6 levels. It starts off at ground level which is the
7 level of access to the garage, goes up a few steps
8 about three feet to a deck which would essentially be
9 at the level of the main floor of the house and then
10 continues up a flight of steps to a landing which
11 connects to the roof of the garage which is about 8
12 feet above ground level.

13 CHAIRPERSON GRIFFIS: Okay. If -- if I
14 look at, in fact, A-3 which I think some of the
15 confusion comes from it's labeled second floor plan.

16 MR. BAGNALL: Yes.

17 CHAIRPERSON GRIFFIS: And the Board is
18 interested to know is there an exterior access to that
19 stair from the second floor?

20 MR. BAGNALL: No.

21 CHAIRPERSON GRIFFIS: Very well. And if I
22 follow those stairs up, I -- I reach a -- a landing
23 height of 105 inches. Is that correct?

24 MR. BAGNALL: Yes.

25 CHAIRPERSON GRIFFIS: Okay. And the

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1 garage decking is at 105 plus or minus.

2

3 MR. BAGNALL: I think -- I think the
4 garage decking is actually a little below 105.

5 CHAIRPERSON GRIFFIS: So, you step down to
6 it?

7 MR. BAGNALL: You step down.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. BAGNALL: Because there's a lip at the
10 front.

11 CHAIRPERSON GRIFFIS: You need the height
12 head clearance to walk into your door to get into that
13 step. So, you have to bring that landing up that --

14 MR. BAGNALL: Yes.

15 CHAIRPERSON GRIFFIS: Indeed.

16 Ms. Mitten, any other questions,
17 clarifications?

18 Ms. Renshaw?

19 VICE CHAIRPERSON RENSHAW: Well, I'm just
20 puzzling over A-5 because we go up some stairs, one,
21 two, three, four stairs and we're on the main level of
22 the house and then to the left is a door which takes
23 you into the house.

24 MR. BAGNALL: That's right.

25 VICE CHAIRPERSON RENSHAW: Is that

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1 correct?

2 Then you have three steps and then four
3 steps and you're on the roof of the garage, but what
4 are the windows to the side?

5 MR. BAGNALL: Those are existing windows
6 on the main floor of the house.

7 VICE CHAIRPERSON RENSHAW: Existing
8 windows on the main floor of the house.

9 MEMBER ZAIDAIN: You talking about these?

10 VICE CHAIRPERSON RENSHAW: No, I'm talking
11 about these.

12 MEMBER ZAIDAIN: Well, yes, these.

13 VICE CHAIRPERSON RENSHAW: Why don't you
14 hold it up and point and then he'll tell you what it
15 is? What is that?

16 MR. BAGNALL: That is an existing window
17 into the dining room on the main floor.

18 MEMBER ZAIDAIN: Okay. And that'll be at
19 the same level as the roof deck?

20 MR. BAGNALL: I mean the sill of that
21 window is about at the same as the level of the roof
22 deck.

23 MEMBER ZAIDAIN: Okay.

24 MR. BAGNALL: Of the garage.

25 MR. TANG: It may be easier to see in the

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1 drawing that follows on page A-6 of that attachment.

2 MEMBER ZAIDAIN: Well, is there any -- is
3 there any access to the roof deck from the house?

4 MR. BAGNALL: No.

5 MEMBER ZAIDAIN: Okay. So, the only
6 access -- the only access point is by walking up from
7 the garage area up the two flights to the second
8 floor?

9 MR. BAGNALL: Or you can go from the main
10 level of the house out to the deck that's about 10
11 feet above ground.

12 MEMBER ZAIDAIN: Right. Sure.

13 MR. BAGNALL: And then you walk up those
14 steps --

15 MEMBER ZAIDAIN: Right.

16 MR. BAGNALL: -- to the garage roof.

17 MEMBER ZAIDAIN: Right. But, there is no
18 direct access from the -- from the house itself?

19 MR. BAGNALL: No. No.

20 MEMBER ZAIDAIN: Okay. Just out of
21 curiosity my question would be why you guys didn't
22 want to be able to walk out onto that deck from the
23 house or you weren't able to --

24 MR. BAGNALL: The -- the --

25 MEMBER ZAIDAIN: I guess that's the dining

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1 room there, but I --

2 MR. TANG: The -- the top of the garage is
3 between the first and second levels of the house.

4 MEMBER ZAIDAIN: Oh. Okay.

5 MR. TANG: So, it would be impossible to
6 have a direct connection between the house and --

7 MEMBER ZAIDAIN: Yes, I see it.

8 MR. TANG: -- the garage top without
9 having steps either leading up from the first floor of
10 the house or down from the second floor of the house.

11 In either case, it would actually obscure the light
12 in the only open area --

13 MEMBER ZAIDAIN: Right.

14 MR. TANG: -- between the house and the
15 garage.

16 MEMBER ZAIDAIN: Yes, I see what you're
17 saying. Yes, that would mean that the dining room
18 window is probably in the center of the wall of the
19 dining room?

20 MR. TANG: So -- right. That's correct
21 and --

22 MEMBER ZAIDAIN: In the interior.

23 MR. TANG: -- and it's quite possible that
24 if we were to -- to attempt to build something
25 directly between the house and the garage we'd also be

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1 obscuring not only our light but also possibly light
2 and views of other --

3 MEMBER ZAIDAIN: Right.

4 MR. TANG: -- neighbors and so we chose
5 what we thought was the -- the least disruptive
6 solution which kept the outdoor open -- outdoor area
7 open.

8 MEMBER ZAIDAIN: Okay.

9 MR. BAGNALL: And also from a security
10 point of view, you want to limit the amount of access
11 out of the house.

12 MEMBER ZAIDAIN: What are the -- at the
13 garage level next to the base of the first stairwell
14 which I would assume is the garage pad so to speak,
15 what is that -- what are those two doors?

16 MR. BAGNALL: Those are barn doors into
17 the garage.

18 CHAIRPERSON GRIFFIS: Are those existing?

19 MR. TANG: Yes.

20 MR. BAGNALL: Yes.

21 CHAIRPERSON GRIFFIS: And I bet you
22 couldn't replace them. Right?

23 MR. BAGNALL: We'll get to that.

24 CHAIRPERSON GRIFFIS: That's not our
25 jurisdiction.

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1 MR. BAGNALL: Oh. Okay.

2 CHAIRPERSON GRIFFIS: Any other questions?

3 MR. BAGNALL: Yes. Okay.

4 CHAIRPERSON GRIFFIS: Clarifications?

5 Everyone's in the base understanding of what it is?

6 I mean clearly I think we have before us
7 is an existing nonconforming structure. It's
8 uniqueness is in shape access and also dimension in
9 terms of distance from the existing garage structure
10 to the existing primary structure. There is ladder
11 access currently. The practical difficulty is created
12 by not having access to the existing deck on top of
13 the garage and also facilitating the access into the
14 garage for it's proper use.

15 Are there any other issues that we need to
16 bring up in terms of the presentation of the case?

17 Anything else you want to bring to light?

18 MR. TANG: We would just like to note that
19 we have received the approval of our immediate
20 neighbors, the condo association next door, and the
21 ANC. Which -- all of which should be documented in
22 the file.

23 CHAIRPERSON GRIFFIS: Good. Yes, it is
24 and as we rip through this, we'll make note of that
25 also. We'll indicate, but if there's nothing else --

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1 MEMBER ZAIDAIN: Well, Mr. Chair.

2 CHAIRPERSON GRIFFIS: Yes.

3 MEMBER ZAIDAIN: To make sure I understand
4 even though we're talking about design issues, I mean
5 there's no issues with -- we're just talking about lot
6 occupancy.

7 CHAIRPERSON GRIFFIS: That's correct.
8 Variance of course.

9 MEMBER ZAIDAIN: Right.

10 CHAIRPERSON GRIFFIS: Addition to a
11 nonconforming --

12 MEMBER ZAIDAIN: Well -- okay. Well --

13 CHAIRPERSON GRIFFIS: What?

14 MEMBER ZAIDAIN: No, go ahead and proceed.
15 I'll work through my own problem here.

16 MR. TANG: And, Mr. Chairman, may --

17 CHAIRPERSON GRIFFIS: Yes.

18 MR. TANG: And I just wanted to add that
19 we also did receive the approval of the Sheridan
20 Kalorama Historic Association and by the Historic
21 Preservation Board and Mr. Steve Kalorama and the
22 staff.

23 CHAIRPERSON GRIFFIS: A fine and able
24 staff member at the Historic Preservation indeed.

25 Let us then go into government reports if

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1 there's nothing further and go to the Office of
2 Planning report.

3 Are you in -- you have copies of the
4 Office of Planning report?

5 MR. TANG: We did receive those.

6 CHAIRPERSON GRIFFIS: Yes. Okay. Very
7 well. It is recommending that it be approved. Our
8 Office of Planning representative is with us today.
9 If they would like to walk through this perhaps
10 briefly.

11 MR. MORDFIN: The Office of Planning
12 requests to stand on the record.

13 MS. BAILEY: Excuse me. Would you please
14 identify yourself?

15 MR. MORDFIN: I'm sorry. Good morning.
16 I'm Stephen Mordfin with the Office of Planning and
17 the Office of Planning requests to stand on the
18 record.

19 CHAIRPERSON GRIFFIS: Very well. I don't
20 think there's any problem with that. Is there any
21 questions from the Board members of the Office of
22 Planning's report which is quite thorough? Does the
23 applicant have any questions of Office of Planning?
24 Any questions of the report? Clarifications?

25 MR. BAGNALL: No, we stand on the record.

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1 CHAIRPERSON GRIFFIS: Probably good to do
2 when they recommend approval. Okay.

3 Anything else then in the Office of
4 Planning?

5 Very well. I will take note through the
6 Office of Planning as -- as the applicant has also
7 indicated gives us community comments and other agency
8 comments. They did, in fact, mention Historic
9 Preservation Review Board approved the structure and
10 deck application on the consent calendar. Is that
11 correct? It doesn't matter. Very well.

12 The ANC-2D, Ms. Renshaw, did you have
13 that --

14 VICE CHAIRPERSON RENSHAW: Yes.

15 CHAIRPERSON GRIFFIS: -- in front of you?

16 VICE CHAIRPERSON RENSHAW: Yes, we have
17 ANC-1D and the letter --

18 CHAIRPERSON GRIFFIS: Is it 1D?

19 VICE CHAIRPERSON RENSHAW: It is.

20 MR. TANG: At -- at the --

21 VICE CHAIRPERSON RENSHAW: It is.

22 MR. TANG: -- end of the year, I think
23 they changed over to 2D.

24 CHAIRPERSON GRIFFIS: Oh. Right. You're
25 on that --

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1 MR. TANG: But, it is. We had to --

2 CHAIRPERSON GRIFFIS: -- fringe area.

3 MR. TANG: -- receive approval from the --

4 VICE CHAIRPERSON RENSHAW: Restricting.

5 All right.

6 CHAIRPERSON GRIFFIS: Okay. So, you're
7 currently 2D?

8 MR. BAGNALL: Correct.

9 MR. TANG: Correct.

10 CHAIRPERSON GRIFFIS: Right. Okay.

11 VICE CHAIRPERSON RENSHAW: 2D. Okay.

12 Well, anyway, we have a letter from the chairman and
13 there was a meeting on December 16th to support the
14 application and this is the Sheridan Kalorama Advisory
15 Neighborhood Commission and it's signed by Lance
16 Salonier.

17 Again, they met on December 16th. They
18 voted 2-0. There are only two?

19 MR. BAGNALL: Correct.

20 VICE CHAIRPERSON RENSHAW: And that's, of
21 course, the quorum that is needed to endorse the
22 zoning variance and for the extension of the deck and
23 the letter stated that the vote followed a
24 presentation to the community of the plans at the
25 commission's regular meeting in October, October the

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1 21st, '02, wherein endorsement of the plans was fully
2 supported by the community at large and the immediate
3 neighbors.

4 And, Mr. Chairman, we have letters of
5 support from the neighbors at the appropriate time.

6 CHAIRPERSON GRIFFIS: Yes, let's go
7 through that.

8 We do have Ross Bua. Is that the way you
9 say it?

10 MR. BAGNALL: Yes, Bua.

11 CHAIRPERSON GRIFFIS: It -- it is Exhibit
12 Number 8, the letter of support. Also as indicated,
13 St. Nicholas Condominium which is Exhibit Number 9 and
14 Barbara and Andrew Kaputo.

15 MR. BAGNALL: Kaputo.

16 CHAIRPERSON GRIFFIS: Is that right?

17 MR. BAGNALL: Yes.

18 CHAIRPERSON GRIFFIS: Very well. Exhibit
19 Number 10 and then you indicated that you had Sheridan
20 Kalorama Association?

21 MR. BAGNALL: That's correct. We don't
22 have a written letter from them.

23 CHAIRPERSON GRIFFIS: Okay. Well, I'm
24 sure they -- they put in something for historic
25 preservation in part of that whole process.

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1 MR. BAGNALL: And they spoke at the ANC
2 meeting.

3 CHAIRPERSON GRIFFIS: Right. Very well.
4 Okay. Any other questions?

5 Is there anyone else here to give
6 testimony attended to this application either in
7 support or in opposition?

8 Not seeing a mad rush to the table, I take
9 that as no.

10 Am I missing any other reports? Anything
11 else attended to this application? My notes don't
12 indicate any. Very well.

13 Then, I turn over to you if you have any
14 closing remarks that you would like to add.

15 MR. TANG: Just that if possible, we'd
16 request a bench ruling and a summary order at this
17 meeting if it's --

18 CHAIRPERSON GRIFFIS: Very well.

19 MR. TANG: -- feasible.

20 CHAIRPERSON GRIFFIS: We'll take that
21 under advisement.

22 Board members?

23 MEMBER ZAIDAIN: I have a question just to
24 make sure I understand --

25 CHAIRPERSON GRIFFIS: Yes.

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1 MEMBER ZAIDAIN: -- the whole project
2 here.

3 There's an -- the existing concrete slab
4 -- there's an existing concrete slab now. Kind of --
5 and a deck.

6 CHAIRPERSON GRIFFIS: On grade?

7 MEMBER ZAIDAIN: Yes.

8 CHAIRPERSON GRIFFIS: On alley -- on the
9 alley grade.

10 MEMBER ZAIDAIN: On grade. Correct?

11 Well, what are the -- what are the
12 existing conditions?

13 MR. BAGNALL: Well, between the garage and
14 the house, there is a concrete slab and there was a
15 back stoop and landing.

16 MEMBER ZAIDAIN: Okay. So, what's
17 increasing the lot occupancy is the front -- is this
18 new front wall kind of embellishment. Correct?

19 MR. BAGNALL: Well --

20 MEMBER ZAIDAIN: And then --

21 MR. BAGNALL: -- and according to the
22 Zoning staff, the deck and the stairs are viewed as
23 increasing lot occupancy.

24 MEMBER ZAIDAIN: Is that true? Even
25 though -- even though it's covering an existing --

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1 COMMISSIONER MITTEN: They're more than
2 four feet off the ground.

3 MEMBER ZAIDAIN: Oh, that's the standard.

4 MR. BAGNALL: Actually, I think it's three
5 feet off the ground.

6 MEMBER ZAIDAIN: Okay.

7 MR. BAGNALL: But, the Zoning staff seemed
8 to feel that the variance was required.

9 MEMBER ZAIDAIN: What's three feet off the
10 ground? What do you mean? Thirty-six inches.

11 CHAIRPERSON GRIFFIS: That's a good
12 answer.

13 MR. BAGNALL: The -- the --

14 CHAIRPERSON GRIFFIS: I thought it was
15 actually above the first floor.

16 MEMBER ZAIDAIN: No. No, I mean -- I mean
17 when you said, you think the standard is three feet or
18 you think --

19 MR. BAGNALL: No, the proposed deck -- the
20 smaller deck is three feet above the ground.

21 CHAIRPERSON GRIFFIS: Okay.

22 MEMBER ZAIDAIN: Okay. I was not aware of
23 that standard in the zoning regulations. Okay.
24 That's -- indeed that's fine.

25 CHAIRPERSON GRIFFIS: Any other questions?

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1 Is the Board amenable to action on this?

2 COMMISSIONER MITTEN: I would move, Mr.
3 Chairman, that we approve Application Number 16981 for
4 the reasons that you had articulated earlier regarding
5 the unusual condition in terms of an existing
6 nonconformity in a historic district, the practical
7 difficulty that would be created by the lack of
8 outdoor recreation space which is clearly an intent of
9 the residential zones where lot occupancy is limited
10 and are to promote that and that there would be no
11 substantial detriment to the public good or
12 substantial impairment to the zone plan. In fact, I
13 think this promotes the zone plan.

14 CHAIRPERSON GRIFFIS: Very well. Is there
15 a second?

16 VICE CHAIRPERSON RENSHAW: Second.

17 CHAIRPERSON GRIFFIS: Thank you, Ms.
18 Renshaw. Any discussion? Further discussion I should
19 say. Very well.

20 Then I would -- I would add that I think
21 the application is -- is further strengthened by the
22 design that's actually presented and I think it -- it
23 has done well to attach to an existing fairly
24 articulated building and taking up all the different
25 spaces and issues that are needed and I think that

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1 lends itself to its excellent presentation.

2 If there's no other comments, then I'd ask
3 for all those in favor of the motion of approval to
4 signify by saying aye.

5 (Ayes.)

6 CHAIRPERSON GRIFFIS: And opposed? And we
7 can record the vote.

8 MS. BAILEY: The vote -- the Board has
9 voted 5-0-0 to approve the application. Ms. Mitten
10 made the motion. Mr. -- Ms. Renshaw seconded. Mr.
11 Griffis, Mr. Etherly, and Mr. Zaidain are in support
12 and that's approval of Application 16981 and is this a
13 summary order, Mr. Chairman?

14 CHAIRPERSON GRIFFIS: I have no objection.
15 I see it's appropriate to have a summary order unless
16 Board members feel differently. In which case we can
17 do that.

18 MS. BAILEY: So, be it, Mr. Chairman.

19 CHAIRPERSON GRIFFIS: Good. Thank you
20 very much.

21 Gentlemen, thank you very much.

22 MR. BAGNALL: Thank you.

23 CHAIRPERSON GRIFFIS: Best of luck.

24 MR. TANG: Thank you for your --

25 VICE CHAIRPERSON RENSHAW: No more

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1 climbing that ladder. That really was how you got up
2 to the roof of your garage.

3 MR. TANG: The previous owner was 80 years
4 old and I think that's one reason they moved because
5 the wife didn't want to see him falling off the ladder
6 at some point.

7 VICE CHAIRPERSON RENSHAW: I would agree.

8 MR. BAGNALL: Thank you very much.

9 MR. TANG: Thank you very much.

10 CHAIRPERSON GRIFFIS: Thank you. Very
11 well. Let's call the next case in the morning.

12 MS. BAILEY: Application of Gloria Junge,
13 pursuant to 11 DCMR 3104.1 for a special exception to
14 construct a one-story addition to a single family row
15 dwelling under Section 223 not meeting the lot
16 occupancy requirements of Section 403. The property
17 is located in the R-4 District at premises 1356 North
18 Carolina Avenue, N.E. Square 1034, Lot 102.

19 Please stand to take the oath. Do you
20 solemnly swear or affirm that the testimony you're
21 about to give in this proceeding will be the truth,
22 the whole truth, and nothing but the truth?

23 MR. WENTWORTH: I do.

24 MS. BAILEY: Thank you.

25 MR. WENTWORTH: Good morning. My name is

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1 Bruce Wentworth. I am an architect and I'm here to
2 represent Gloria Junge who is the owner of the
3 property. We're seeking a special exception to
4 nonconforming condition. The house was built about
5 1910.

6 She currently has only one bathroom on the
7 second floor and there's no basement and what we are
8 seeking to do is the following. This is the house.
9 There's a small additional that was built some time
10 ago on the back here and we are seeking to fill in the
11 dog-leg space with a one-story addition and that would
12 allow Ms. Junge to get a bathroom on the first floor,
13 remodel her kitchen and create a laundry room since
14 she has no basement.

15 We would then be at a 70 percent lot cover
16 which we currently are anyway. So, we're not going to
17 go back any further than the existing.

18 CHAIRPERSON GRIFFIS: Actually, let me
19 interpret you right there.

20 There's -- there's some question about the
21 Zoning Administrator indicating that that side yard
22 which is 5 feet or less doesn't go to lot occupancy
23 which would put the lot occupancy to 63.4 percent.

24 But, what you're saying is actually you've
25 calculated that in as part of the lot occupancy

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1 because it counts towards the building area.

2 MR. WENTWORTH: Yes.

3 CHAIRPERSON GRIFFIS: And, therefore,
4 you're at 70 percent lot occupancy.

5 MR. WENTWORTH: Yes.

6 CHAIRPERSON GRIFFIS: And that essentially
7 is not changing because you're putting a structure
8 there.

9 MR. WENTWORTH: Yes.

10 CHAIRPERSON GRIFFIS: Very well. Board
11 members.

12 I would absolutely agree with that
13 understanding.

14 COMMISSIONER MITTEN: I -- I would agree
15 with it and I would like someone to communicate to the
16 Zoning Administrator that the Board of Zoning
17 Adjustment does not agree with his interpretation of
18 the calculation for lot occupancy where there is an
19 open court of less than 5 feet.

20 CHAIRPERSON GRIFFIS: Right. Because I
21 think it's very clear and direct in the -- in the
22 definition. Clearly, the lot occupancy definition
23 then refers you to building area and building area
24 does calculate court/side yards less than 5 feet.

25 Please continue.

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1 MR. WENTWORTH: So, as I said, we're only
2 seeking to fill in the dog-leg with a one-story
3 addition that will allow her to have a first-floor
4 bathroom, a modern kitchen, and a laundry room.

5 Would you like to see the -- the drawings?

6 This is a drawing of the rear portion of the house.
7 The dark lines which are here are the existing
8 building and this is where the dog-leg will be filled
9 in to create a bathroom, the new kitchen, and a
10 laundry space.

11 This drawing shows the rear addition.
12 This is existing. We're altering the windows and this
13 is the small fill-in for the dog-leg with some
14 skylights. This has been approved by the Historic
15 Preservation Office.

16 CHAIRPERSON GRIFFIS: That materials as
17 indicated on that elevation are what's being pursued
18 and was also presented to preservation?

19 MR. WENTWORTH: Yes.

20 CHAIRPERSON GRIFFIS: Okay. And that is
21 the siding is actually -- it's a concrete siding?

22 MR. WENTWORTH: That's correct.

23 CHAIRPERSON GRIFFIS: Okay.

24 VICE CHAIRPERSON RENSHAW: And there are
25 no windows on the expanse of the addition? The 18.7

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1 feet.

2 MR. WENTWORTH: We aren't allow to. It's
3 a firewall.

4 CHAIRPERSON GRIFFIS: It's on the property
5 line.

6 VICE CHAIRPERSON RENSHAW: Yes.

7 MR. WENTWORTH: It's on the property line.

8 VICE CHAIRPERSON RENSHAW: Okay. I was
9 going to ask you that.

10 MR. WENTWORTH: These are the photographs.
11 They're hard to see, but this is the front of the
12 house which she recently restored the front porch and
13 you can see -- difficult to see it, but here is the
14 existing addition and this is the dog-leg here that
15 would be filled in.

16 Any questions?

17 CHAIRPERSON GRIFFIS: It's an excellent
18 question. Any questions?

19 VICE CHAIRPERSON RENSHAW: What is the
20 address of the next neighbor that is going to be on
21 the other side of the 18.7 foot extension?

22 MR. WENTWORTH: That would be to the west.
23 The one that would be most impacted by this?

24 VICE CHAIRPERSON RENSHAW: Yes.

25 MR. WENTWORTH: That would be --

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1 CHAIRPERSON GRIFFIS: Well, I think her
2 question goes directly to do you have a letter of any
3 kind from that adjacent neighbor?

4 MR. WENTWORTH: Oh, Yes.

5 VICE CHAIRPERSON RENSHAW: We have --

6 MR. WENTWORTH: Yes, we have letters from
7 all the neighbors.

8 VICE CHAIRPERSON RENSHAW: We have letters
9 in the file. I just wanted to be sure of the address
10 of --

11 CHAIRPERSON GRIFFIS: Right.

12 VICE CHAIRPERSON RENSHAW: -- the
13 immediate neighbor.

14 MR. WENTWORTH: It's probably 54 because
15 you're going -- you're going west.

16 CHAIRPERSON GRIFFIS: And what's the name?

17 MR. WENTWORTH: I don't recall. But, I
18 know we have a letter from them. Because they
19 specifically --

20 VICE CHAIRPERSON RENSHAW: It's looks like
21 Fletcher or Hatch, Josh and Cynthia Hatch.

22 MR. WENTWORTH: That's probably it.

23 VICE CHAIRPERSON RENSHAW: 1354 --

24 MR. WENTWORTH: Yes.

25 VICE CHAIRPERSON RENSHAW: -- North

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1 Carolina.

2 MR. WENTWORTH: They were the one most
3 impacted.

4 VICE CHAIRPERSON RENSHAW: Yes.

5 MR. WENTWORTH: And this has all be
6 approved by the ANC -- both of the ANCs. Because we
7 were also redistricting.

8 CHAIRPERSON GRIFFIS: And you're not aware
9 of anybody that had concern about whether -- frankly,
10 how it might adversely affect the use of any of the
11 adjacent properties?

12 MR. WENTWORTH: No, sir, everyone's been
13 very positive about it.

14 CHAIRPERSON GRIFFIS: Any other questions
15 of the applicant at this time? Okay. Let's move on
16 then and go to the Office of Planning's report.

17 MR. MORDFIN: Good morning, Chairman and
18 members of the Board. My name is Stephen Mordfin with
19 the Office of Planning and the Office of Planning
20 would like to stand on the record in this case also.

21 CHAIRPERSON GRIFFIS: Very well. Board
22 members any questions of the report?

23 I want just to make a total clarification.
24 Clearly the building area and lot occupancy came up
25 and I think Office of Planning stated it well in their

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1 report that they were informed by the Zoning
2 Administrator and then laid it out for us. So, that
3 was helpful to be that clear.

4 Did the applicant's representative have
5 any questions of the Office of Planning or their
6 report?

7 MR. WENTWORTH: No, sir.

8 CHAIRPERSON GRIFFIS: Do you have their
9 report?

10 MR. WENTWORTH: I believe so. Yes.

11 CHAIRPERSON GRIFFIS: Okay. Anything
12 else? Clearly, the Office of Planning is recommending
13 approval on this.

14 Very well. Then, let's go to the ANC-6B I
15 believe.

16 VICE CHAIRPERSON RENSHAW: Mr. Chairman --

17 CHAIRPERSON GRIFFIS: Yes.

18 VICE CHAIRPERSON RENSHAW: -- we have a
19 letter in the file, very, very brief, dated January
20 22nd and it's signed by Candace Avery, the Executive
21 Director not the chair or an officer which stated that
22 they had a meeting on the 14th of January and they
23 voted unanimously 9-0-0 to support the application to
24 allow construction of a one-story addition to her home
25 at 1356 North Carolina Avenue.

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1 CHAIRPERSON GRIFFIS: Indeed. Two
2 question, Ms. Renshaw. Do ANC's have executive
3 directors?

4 VICE CHAIRPERSON RENSHAW: Some ANC's have
5 directors or office managers.

6 CHAIRPERSON GRIFFIS: I see.

7 VICE CHAIRPERSON RENSHAW: And I think
8 that this ANC just elected to call Ms. Avery an
9 executive director or perhaps she decided that that
10 would be her title.

11 CHAIRPERSON GRIFFIS: I see and this
12 letter as signed, Ms. Renshaw, is it your
13 understanding that it should be granted the great
14 weight afforded the ANC?

15 VICE CHAIRPERSON RENSHAW: No, I'm afraid
16 not. It should have been signed by the chair or the
17 vice chair.

18 CHAIRPERSON GRIFFIS: Okay.

19 VICE CHAIRPERSON RENSHAW: Because it does
20 not stipulate in the letter that she is signing on
21 behalf of and that approval was given to the executive
22 director to communicate with the Board at the meeting.

23 CHAIRPERSON GRIFFIS: All right. What I
24 think we'd do is we ask the applicant as proceed in
25 this just to submit into the record a property signed

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1 ANC letter or they can make the request for that.

2 Ms. Mitten.

3 COMMISSIONER MITTEN: Well, I was just
4 going to say that unless it's your intention to keep
5 the record open to receive that and to not make a
6 decision today, that that would be -- I don't think
7 that's necessary in light of the fact that -- we can
8 take into consideration the ANC's sentiment. We just
9 can't give it great weight.

10 CHAIRPERSON GRIFFIS: That's true.

11 VICE CHAIRPERSON RENSHAW: But, is there
12 nothing in the file that is in opposition to this
13 application. So, that there is nothing that would tip
14 the balance here.

15 CHAIRPERSON GRIFFIS: Okay. I'm perfectly
16 amenable to that.

17 Then I don't have any other indications
18 that any other government reports outside of those
19 mentioned and also cited in the Office of Planning's
20 report. Preservation Review Board, of course, has
21 been mentioned.

22 Is the applicant aware of any other
23 government reports attended to this application? Is
24 anyone here --

25 MR. WENTWORTH: No.

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1 CHAIRPERSON GRIFFIS: -- attended to this
2 application to give testimony either in support or in
3 opposition to this case that can come forward to the
4 table at this time?

5 Let us just -- let -- clearly, there are
6 numerous letters of support. I have six indicated in
7 my notes and as we've discussed, we have addresses
8 from the adjacent neighbors that are addressed in the
9 special exception. In which case, I don't see
10 anything else in the file that we need to bring up
11 unless the applicant's aware of anything -- other
12 filings.

13 MR. WENTWORTH: No.

14 CHAIRPERSON GRIFFIS: Then I would turn to
15 you for any closing remarks that you might have.

16 MR. WENTWORTH: Well, we would very much
17 appreciate your approval of this.

18 CHAIRPERSON GRIFFIS: Very well. Noting
19 that we only have two people in the hearing room, I
20 will draw my attention to you, sir, and if you're here
21 for this application, this would be the final time
22 that you might be able to give testimony.

23 MR. COLES: I'm a neighbor behind the
24 residence. I have --

25 CHAIRPERSON GRIFFIS: Okay. If you -- if

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1 you wouldn't mind just to come up to the table. See
2 when I have a packed hearing room, I can't call
3 everybody up to the table, but since you're here,
4 please, sir.

5 MR. COLES: My name is Alphonso Coles.
6 Resident of 1333 Constitution Avenue, N.E. and I am in
7 favor of this application.

8 CHAIRPERSON GRIFFIS: Good. Thank you
9 very much. And you're -- it wouldn't be on the record
10 what you indicated where you live. Where in proximity
11 to the --

12 MR. COLES: It would be behind the
13 residence.

14 CHAIRPERSON GRIFFIS: Okay. So, you share
15 the alley.

16 MR. COLES: I don't know if they have
17 direct alley access, but I --

18 CHAIRPERSON GRIFFIS: Oh, I see.

19 MR. COLES: It's a dirt path. It's dirt
20 path more or less.

21 CHAIRPERSON GRIFFIS: Indeed. Indeed.
22 Most of the alleys are after this snowstorm.

23 VICE CHAIRPERSON RENSHAW: But, you
24 overlook the applicant's backyard?

25 MR. COLES: I -- yes, I can see the -- the

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1 rear of the house from -- from my residence.

2 VICE CHAIRPERSON RENSHAW: Very good.
3 Thank you.

4 CHAIRPERSON GRIFFIS: Good. Thank you
5 very much.

6 Anything else? Discussions? Board
7 members, questions? Board amenable to the action on
8 this today?

9 COMMISSIONER MITTEN: Mr. Chairman, I move
10 approval of Application 16978.

11 CHAIRPERSON GRIFFIS: Is there a second?

12 VICE CHAIRPERSON RENSHAW: Second.

13 CHAIRPERSON GRIFFIS: Discussion?

14 I think clearly the applicant has shown
15 both in his submission and also in today's testimony
16 that they meet the test of the special exception and
17 that is walking through the plans we see that this is
18 a -- a one-story addition that has not been indicated
19 or evidence that would impair any of the light or air
20 or use of adjacent properties and I believe it is well
21 within the intent of the zoning regulations. There
22 has been no evidence of opposition to this indicating
23 elements that we would look at of concern. In which
24 case, I think it is a very strong application.

25 Are there any other comments? Questions?

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1 In which case, I'd ask for all those in favor signify
2 by saying aye?

3 (Ayes.)

4 CHAIRPERSON GRIFFIS: Opposed?

5 MS. BAILEY: Mr. Chairman, the vote is
6 recorded as 5-0-0 to approve Application 16978 of
7 Gloria Junge. The motion was made by Ms. Mitten.
8 Seconded by Ms. Renshaw and Mr. Griffis, Mr. Etherly,
9 and Zaidain are in support.

10 And a summary order, Mr. Chairman?

11 CHAIRPERSON GRIFFIS: I believe it's
12 appropriate here a summary order. Is there any
13 objection? Does the applicant object to having a
14 summary order on this case?

15 MR. WENTWORTH: No, that would be great.

16 CHAIRPERSON GRIFFIS: Very well. I think
17 that's appropriate. Thank you very much.

18 In which case, good luck and have a
19 pleasant day.

20 MR. WENTWORTH: Thank you very much.

21 CHAIRPERSON GRIFFIS: Is there any other
22 business that we have in the morning session?

23 MS. BAILEY: Not for the morning, Mr.
24 Chairman.

25 CHAIRPERSON GRIFFIS: Very well. Then I

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1 can adjourn the morning session of the Board of Zoning
2 Adjustment for the District of Columbia.

3 (Whereupon, the hearing was recessed at
4 10:34 a.m. to reconvene at 1:13 p.m. this same day.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:13 p.m.

CHAIRPERSON GRIFFIS: Good afternoon ladies and gentlemen. For the 25 February 2003 public hearing of the Board of Zoning Adjustment for the District of Columbia. My name is Geoff Griffis. I am Chairperson.

Joining me today is Ms. Anne Renshaw, Vice Chairperson. Representing the National Capital Planning Commission is Mr. Zaidain. Representing the Zoning Commission is Mr. Parsons.

We will have our fifth member joining us shortly as he has been called to an important meeting on the Hill. We -- some of us have slight Federal responsibilities which we don't like to talk about because the local is so much more important, but Mr. Etherly will be with us for the duration of the afternoon although missing parts of it.

Copies of today's hearing are available to you. They are located at the table at the door you entered into the hearing room. If there are not enough copies, certainly, you can bring that to the attention of the staff in the office adjacent to the

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1 hearing room and more will be provided.

2 Please be aware that all public hearings
3 before the Board of Zoning Adjustment are recorded.
4 That means we ask several things. First of all, that
5 the people refrain from any disruptive noises or
6 actions in the hearing room and also when coming
7 forward to speak to the Board that you speak into the
8 microphone and that microphone should be on.

9 Also prior coming forward to give
10 testimony, I need folks to fill out two witness cards.

11 Witness cards are located at the table you entered
12 into and at the table in front of us. Before speaking
13 to the Board, those cards are to go to the recorder
14 who is sitting to my right. That way everyone gets
15 their names into the legal records.

16 I would also ask that at this time people
17 turn off any cell phones or beepers so that we don't
18 disrupt those that are giving testimony and we can
19 keep them focused and the Board also focused.

20 The procedure this afternoon for special
21 exceptions and variances will be first we will
22 statements and witnesses of the applicant. Second,
23 will be government reports attended to the
24 application. Those include such reports as Department
25 of Transportation, Office of Planning, and anything

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1 else that was submitted. Third, we would go to the
2 report of the Advisory Neighborhood Commission.
3 Fourth, would be parties or persons in support of the
4 application. Fifth, would be parties or persons in
5 opposition and sixth, we will have closing remarks by
6 the applicant.

7 Cross examination of witnesses is
8 permitted in these public hearings by the applicant
9 and parties. The ANC within which the property is
10 located is automatically a party in the case.

11 The record will be closed at the
12 conclusion of each hearing except for any material
13 that is specifically requested by the Board and the
14 Board will be very specific on what material is to be
15 submitted and when it is to be submitted into the
16 Office of Zoning. After that material is received, of
17 course, the record would then be finally closed and no
18 other information would be accepted into the record.

19 The Sunshine Act requires that public
20 hearings on each case be held in the open and before
21 the public. This Board may, however, consistent with
22 it's rules of procedure and the Sunshine Act, enter
23 into executive session during or after the public
24 hearing on the case for the purposes of reviewing the
25 record or deliberating on the case.

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1 The decision of this Board in contested
2 cases must be based exclusively on the public record
3 and, therefore, we ask that people present today not
4 engage Board members in any kind of conversation so
5 that we do not give the appearance to the contrary.

6 I believe we can now take up any
7 preliminary matters with the cases before us this
8 afternoon. Preliminary matters of those which relate
9 to whether a case will or should be heard today, such
10 as, request for postponements, continuances,
11 withdrawals or whether proper and adequate notice has
12 been provided for each case.

13 If you are not prepared to go forward with
14 a case today or if you believe that the Board should
15 not proceed, now is the time to approach the Board. I
16 will have as an indication that people have
17 preliminary matters by coming forward to the table and
18 having a seat.

19 I will ask staff and also wish them a very
20 good afternoon. Ms. Bailey from the Office of Zoning
21 and Mr. Moy and Mr. Nyarku who is taking able care of
22 us and representing Corporation Counsel representative
23 today.

24 Ms. Bailey, any preliminary matters for
25 the case this afternoon?

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1 MS. BAILEY: None at this time, Mr.
2 Chairman.

3 CHAIRPERSON GRIFFIS: Very good. In which
4 case, yes.

5 MR. GUYOT: Mr. Chairman.

6 CHAIRPERSON GRIFFIS: I'm just going to --
7 have a seat. I need your name. Have you provided a
8 witness card?

9 MR. GUYOT: Yes.

10 CHAIRPERSON GRIFFIS: Excellent.

11 MR. GUYOT: Mr. Chairman, there's --
12 there's been a request by the Westminster Civic
13 Association to be a -- to have party status.

14 CHAIRPERSON GRIFFIS: Yes.

15 MR. GUYOT: Is that a preliminary --

16 CHAIRPERSON GRIFFIS: It is essentially a
17 preliminary matter in granting party status, but it's
18 appropriate to do when we call the case and we will --
19 that is one of the first pieces that we'll bring up.

20 MR. GUYOT: Good deal.

21 CHAIRPERSON GRIFFIS: Very well. Anything
22 else? Any questions?

23 That was for the record I believe and I
24 can be corrected, Mr. Guyot has just addressed the
25 Board.

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1 Very well. Let's call the first case in
2 the afternoon.

3
4 MS. BAILEY: Mr. Chairman, members of the
5 Board, good afternoon.

6 When the applicant was last here, Mr.
7 Chairman, on November 26, 2002, there were some
8 changes. They requested that the number of spaces be
9 reduced and they also eliminated two lots. I'll be
10 reading the announcement the way it was advertised and
11 then at the conclusion, going over those changes that
12 were requested previously.

13 This is the application of The Most
14 Worshipful Prince Hall Grand Lodge Number 16938. The
15 application is pursuant to 11 DCMR 3104.1 for a
16 special exception to establish an accessory parking
17 lot having 32 spaces under Section 214 and pursuant to
18 11 DCMR 3103.2 a variance from the requirement that
19 the parking spaces be located within 200 feet of the
20 use to which they are accessory under Subsection 214.3
21 and a variance from the requirements that accessory
22 parking spaces be contiguous to or separated only by
23 an alley from the use to which they are accessory
24 under Section 214.4. The property is located in the
25 R-4 District at premises 1902 and 1906 Vermont Avenue,

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1 N.W. Square 333, Lots 824, 825, and 827.

2 As I indicated, some changes were made to
3 this application and the applicant is now requesting
4 approval for 22 parking spaces and lots 824 and 825
5 were deleted.

6 All those persons wishing to testify would
7 you please stand to take the oath?

8 Do you solemnly swear or affirm that the
9 testimony you are about to give in this proceeding
10 will be the truth, the whole truth, and nothing but
11 the truth?

12 WITNESSES: I do.

13 MS. BAILEY: Thank you.

14 CHAIRPERSON GRIFFIS: Let me say while you
15 are getting ready at the table, I think it was made
16 aware to you and let me reiterate for everyone that's
17 here, we have, as always, a very busy schedule and so,
18 what we're anticipating is that this case can be heard
19 in it's entirety within two hours and we're going to
20 try and keep it to that and we'll reassess when we get
21 close to that time allotment. So, we are at about
22 1:20. So, we're looking at about 3:15/3:30.

23 MR. NUNLEY: All right. Good afternoon,
24 ladies and gentlemen, Chairman Griffis.

25 CHAIRPERSON GRIFFIS: Oh, and --

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1 MR. NUNLEY: I'm sorry.

2 CHAIRPERSON GRIFFIS: Yes, why don't I
3 have you introduce yourself and then we do have one
4 issue to bring out.

5 MR. NUNLEY: All right. My name is Edgar
6 Nunley. I am acting as -- on behalf of The Most
7 Worshipful -- the lodge.

8 CHAIRPERSON GRIFFIS: Good. And with you
9 today?

10 MR. NUNLEY: Want to introduce yourself?
11 Just push the button.

12 MR. ELLINGTON: My name is John Ellington,
13 Jr., past Grand Master to The Most Worshipful Prince
14 Hall Grand Lodge of the District of Columbia.

15 CHAIRPERSON GRIFFIS: Very well. Thank
16 you very much.

17 As was brought to our attention briefly
18 and as we were well aware of, we have a request for
19 party status in this case.

20 It's always difficult when we have a
21 continuance on a case of what is timely and how we
22 base that timeliness. The Board in the past has, in
23 fact, set its deadline on the date of which the public
24 hearing goes ahead.

25 That would be today in the case of this

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1 application. That would mean 14 days prior to this
2 would have been the deadline for the submission of the
3 party application.

4 I believe that it does fit within that
5 time frame. In which case, Board members, I will take
6 -- actually, let me hear from the applicant and their
7 representative if there is any objection regarding the
8 request for party status.

9 Do you have the application?

10 MR. ELLINGTON: For party status?

11 CHAIRPERSON GRIFFIS: Yes.

12 MR. ELLINGTON: No, I do not.

13 CHAIRPERSON GRIFFIS: Well, you -- you
14 weren't served it?

15 MR. ELLINGTON: No.

16 CHAIRPERSON GRIFFIS: Have you seen it?

17 MR. ELLINGTON: No, I have not.

18 CHAIRPERSON GRIFFIS: Well, let's get a
19 copy out there.

20 MR. ELLINGTON: Thank you. My
21 understanding is that no one associated with the lodge
22 has seen it.

23 AUDIENCE MEMBER: Mr. Chairman, I do have
24 a copy of it here. I could show it to counsel.

25 MR. ELLINGTON: Thank you. We have no

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1 objection.

2 CHAIRPERSON GRIFFIS: No objection. Board
3 members, discussion, issues?

4
5 Is the Vice President Tanya Shan here?

6 MS. SHAN: Yes, I --

7 CHAIRPERSON GRIFFIS: Are you -- are you
8 -- could you come forward?

9 Good afternoon.

10 MS. SHAN: Good afternoon.

11 CHAIRPERSON GRIFFIS: I'd have you turn
12 your microphone on. Just introduce yourself.

13 MS. SHAN: Good afternoon. My name is
14 Tanya Shan. I'm Vice President of the Westminster
15 Neighborhood Association.

16 However, I'm here today because of a
17 fluke. I work on the Hill and I had some Hill
18 business that was scheduled for 2:00 and I wasn't
19 suppose to be here. So, Lynn Johnson who is a member
20 of WNA is actually scheduled to speak on my behalf.
21 But, as it turned out, I was able to make it. So, I'm
22 just actually sitting in the back at the moment.

23 CHAIRPERSON GRIFFIS: Okay. Could you
24 just provide your address for the record?

25 MS. SHAN: My address is 1901 Vermont

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1 Avenue, N.W.

2 CHAIRPERSON GRIFFIS: Okay. And actually,
3 my direct question was who is going to be representing
4 the party if granted?

5 MS. SHAN: Well, Lynn Johnson.

6 MR. JOHNSON: I will, Your Honor. Lynn
7 Johnson.

8 CHAIRPERSON GRIFFIS: Okay. Okay. Mr.
9 Johnson. That's fine.

10 Let me just ask then the representative --
11 actually Mr. Johnson, you can come forward and
12 introduce yourself for the record if you don't mind
13 sitting down.

14 Please give your name and your address.

15 MR. JOHNSON: Good afternoon. Yes, and I
16 am Lynn Johnson a resident at 922 Westminster Street,
17 N.W.

18 CHAIRPERSON GRIFFIS: And then can you
19 tell us -- clearly WNA is as the application is
20 showing a civic association that represents the
21 residents in the area. Do you have a membership
22 number?

23 MR. JOHNSON: Yes, WNA is that. I'm not
24 clear about a membership number.

25 CHAIRPERSON GRIFFIS: Do you know --

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1 MR. JOHNSON: Are you asking about myself?

2 CHAIRPERSON GRIFFIS: No, an approximation
3 of --

4 MR. JOHNSON: Oh.

5
6 CHAIRPERSON GRIFFIS: -- what the
7 association encompasses.

8 MR. JOHNSON: We are -- yes, it -- it
9 encompasses roughly the space immediate east of the
10 subject property to 9th Street and down into S Street.
11 Approximately 120 households. We may have
12 approximately 35 paid members at any one time.

13 CHAIRPERSON GRIFFIS: Okay. So, it's a
14 dues association and that's how you count your
15 membership?

16 MR. JOHNSON: That's correct.

17 CHAIRPERSON GRIFFIS: Okay. Do you have
18 50 or more members current in their dues at this
19 point?

20 MR. JOHNSON: We do not.

21 CHAIRPERSON GRIFFIS: Ten or less?

22 MR. JOHNSON: No, more than that.

23 CHAIRPERSON GRIFFIS: Okay. There's not a
24 threshold for party status, but clearly I'm just
25 trying to give the Board an idea of -- of the -- the

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1 base of what the Westminster Neighborhood Association
2 deals with.

3 Any other questions, Board members?

4 VICE CHAIRPERSON RENSHAW: Just a little
5 bit of background on how long the association has been
6 operating and are you 501C3?

7 MR. JOHNSON: Yes, Member Renshaw, we are
8 501C3. We have been operating for approximately seven
9 or eight years. We've become a -- we've become a
10 501C3 approximately five years ago. We're certainly a
11 nonprofit association both for District of Columbia
12 purposes and for federal tax purposes.

13 CHAIRPERSON GRIFFIS: Other questions?

14 COMMISSIONER PARSONS: Do you know if
15 there's an abutting association of the same nature
16 that actually encompasses the site in question? In
17 that you're 50 feet away, does somebody abut you?
18 Another organization?

19 MR. JOHNSON: Yes, in fact, there are --
20 there are two other ones. There's one that abuts us
21 to the south called Friend's Street Neighborhood
22 Association. They have filed an opposition in this
23 record here.

24 There's also a larger one called the
25 Cardoza Shaw Neighborhood Association that covers 18

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1 square blocks of which we are part of and certainly
2 that covers all of the subject property and they also
3 have filed an opposition that should be in your file
4 to this case.

5 COMMISSIONER PARSONS: Okay. Thank you.

6 CHAIRPERSON GRIFFIS: You say that the --
7 the Westminster Neighborhood Association works with or
8 is part of the Cardoza Shaw Association?

9 MR. JOHNSON: In fact, they're two
10 separate associations.

11 CHAIRPERSON GRIFFIS: Correct.

12 MR. JOHNSON: We both have -- obviously,
13 we cover a much smaller geographic area.

14 CHAIRPERSON GRIFFIS: Yes.

15 MR. JOHNSON: And the CSNA covers many
16 associations.

17 CHAIRPERSON GRIFFIS: Good. Okay.
18 Clearly, when -- just to make sure that you
19 understand, when we have filings, there's information
20 in the record from those other associations that you
21 indicated, but they have not applied for party status.

22 MR. JOHNSON: That's correct.

23 CHAIRPERSON GRIFFIS: Okay. And then you
24 do know the responsibilities of party status and what
25 that means in terms of your participation in the case.

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1 You have cross examination if awarded. You will also
2 be responsible for providing the Board with any
3 information that would be requested, for instance,
4 briefing an issue, submitting findings of fact,
5 conclusions of law if asked for.

6 MR. JOHNSON: I'm aware of that.

7 CHAIRPERSON GRIFFIS: Good.

8 MR. JOHNSON: Mr. Chairman, and I should
9 also tell you that I'm a practicing attorney.

10 CHAIRPERSON GRIFFIS: That makes it all
11 the more interesting. Doesn't it?

12 Very well. I don't see any concern in --
13 well, I should say I don't see any reason for
14 rejecting the application for party status. Clearly,
15 they have illuminated in their application for party
16 status and also in their filings specific issues that
17 related directly to their membership and that is
18 attended to the residents of the surrounding area.

19 I would hear any other comments from the
20 Board members. In which case, I can take that as a
21 consensus of the Board to grant party status to the
22 Westminster Neighborhood Association and Mr. Johnson
23 will be representing that.

24 In which case, we will see you and only
25 you. Is that correct?

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1 MR. JOHNSON: That is correct.

2 CHAIRPERSON GRIFFIS: Okay. If -- if it
3 does come to be needed that there is substitution, of
4 course, we can make that available. Of course, we
5 don't like having six people doing cross examination
6 at one time. So, we will look to you, Mr. Johnson, to
7 organize your party.

8 That being said, I think we can move on.
9 In which case, let's go to the applicant and move into
10 the -- into the case.

11 Mr. Johnson, you're free to have a
12 comfortable seat behind.

13 MR. JOHNSON: Thank you.

14 MR. NUNLEY: Thank you, Chairman Griffis.

15 Good afternoon, Chairman, Board members, staff, and
16 government representatives.

17 We're here seeking special exception
18 relief to continue a parking lot, accessory parking
19 spaces for the Grand Lodge that has been in existence
20 for nearly 30 years.

21 We're seeking special exception and
22 special exception relief pre-deems that the lot itself
23 is consistent with the R-4 zone within -- within which
24 the property is located.

25 CHAIRPERSON GRIFFIS: Let me interrupt you

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1 just briefly.

2 MR. NUNLEY: Yes.

3 CHAIRPERSON GRIFFIS: You're also prepared
4 and you are arguing for variance relief.

5 MR. NUNLEY: Yes, we are.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. NUNLEY: Yes.

8 CHAIRPERSON GRIFFIS: I think the Board
9 has some concern and let me give you a little
10 direction.

11 MR. NUNLEY: All right.

12 CHAIRPERSON GRIFFIS: This is not a very
13 clear issue especially with this looking at 213 or 214
14 in terms of parking spaces. Whether this should, in
15 fact, be before us as a use variance or an area
16 variance and so, what I'm going to ask you is whether
17 you're prepared today to make the argument on both
18 cases, that is, the undue hardship and the practical
19 difficulty.

20 MR. NUNLEY: Well, Chairman Griffis, I
21 just realize -- just found out yesterday that there
22 was an issue as to whether or not the more appropriate
23 relief would be under 213 or 214.

24 The zoning regulations apparently has
25 recently been amended I say within the past year.

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1 Been amended to imply that the section 214 is specific
2 to accessory parking spaces for uses that are allowed
3 in the R-1. Of course, the lodge is not allowed in
4 the R-1. It's allowed -- first allowed in the R-4
5 zone which is the same zone within which the parking
6 would be located. We have prepared as advertised to
7 go through this proceeding as special exception relief
8 with variances from the two conditions for special
9 exception relief. In all honestly, I think we can
10 meet the test under 213. I'm -- I'd --

11 CHAIRPERSON GRIFFIS: No, I'm -- and let
12 me be clear. I'm not asking you to -- to move away
13 from 213 but stay within 214. What my point was even
14 if we were looking at either of the sections, it's not
15 necessarily clear whether granting from certain
16 provisions that may go to distant would not make it --
17 the discussion is still out on whether those -- the
18 variances from those would be use or area and so, what
19 I'm asking you under 214, which I am perfectly
20 amenable to moving ahead with, whether you're prepared
21 in your argument of a variance to address an undue
22 hardship case?

23 MR. NUNLEY: Yes.

24 CHAIRPERSON GRIFFIS: Okay. Then -- then
25 we're clear.

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1 MR. NUNLEY: So, again, to start with we
2 -- the special exception is predeemed -- the -- the
3 predeemed capable with the -- the zone within which
4 it's located. Within which the use is located. The
5 use itself is a use that would be first allowed in the
6 R-4 zone. So, there's capability there as well. We
7 do believe that we meet the standards for special
8 exception. The lot has been there for 29 years,
9 nearly 30 years. There have been no documented
10 complaints about the operation of the lot.

11 Now, we're also seeking special exception
12 from the provisions of 214 -- bear with me a second.
13 I apologize, Chairman Griffis. Bear with me a moment.
14 There's a lot of paper here that's come to me very
15 recently.

16 All right. From Sections 214.3 because
17 the parking lot is not located in its entirety within
18 200 feet of the use to which it's accessory and also
19 from Section 214.4 because the parking lot is not
20 separated solely by an alley or a proximity
21 requirement, we believe that we've met the -- the
22 burden for a variance because the lodge building is
23 located within a C2AR district.

24 The building itself is six stories,
25 occupies an entire lot. It's impossible to put

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1 parking on the site. The -- if -- if the building
2 were built today, it would require over 110 spaces.
3 It's impossible to provide those spaces anywhere in
4 the lot or within the proximity required by the
5 regulations. The only option for providing the
6 parking is the -- are the two lots -- the lot that is
7 owned by the lodge and that lot is -- does not meet
8 those two sections.

9 But, we believe we -- we -- we've met the
10 burden of proof for the extraordinary exceptional
11 situation because of the distance from the -- the
12 building and the fact that it is impossible anywhere
13 on that site to provide accessory parking within the
14 regulations.

15 CHAIRPERSON GRIFFIS: But, you're not
16 arguing that you're being required to provide 112 I
17 think is what the record shows?

18 MR. NUNLEY: No. No, I'm not arguing that
19 we're being required to provide that. What I'm
20 arguing is we're trying to provide spaces to mitigate
21 the -- the impact on parking based on the approved and
22 continuing use of the lodge within a reasonable
23 proximity to the lodge.

24 CHAIRPERSON GRIFFIS: Okay. And your
25 point is comparative in terms of if you built it --

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1 MR. NUNLEY: Exactly.

2 CHAIRPERSON GRIFFIS: -- today that's what
3 would be required.

4 MR. NUNLEY: Exactly.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. NUNLEY: Now, we understand that there
7 is opposition to the project. A lot has been in
8 operation for like I said 30 years or nearly 30 years.
9 There are no -- no substantiating complaints against
10 the lodge.

11 Once the community made us aware of the
12 complaints, we took steps to try to alleviate their
13 concerns. The -- we do have a guard that's stationed
14 on-site during the entire time that the lot is in
15 operation. We've added additional landscaping and the
16 -- the plat of the parking lot shows that we are also
17 putting in a screen wall to protect adjacent
18 properties. The lot is paved. It has -- it's
19 striped. It has wheel stops to protect properties
20 adjacent to it and we have made contact with Chief
21 Ramsey to get assistance in trying to -- to allay some
22 of the concerns of the community as regards the
23 illegal or what they allege to be illegal entry and
24 exit from the parking lot as well as other concerns
25 about allegations of noise disturbances that may have

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1 been reported to the police department.

2 We have a letter here dated February 3rd
3 where we have asked Chief Ramsey for his assistance in
4 maintaining it plus the -- the lodge has informed all
5 of its members about the concerns of the community and
6 directed that they be sensitive to these concerns and
7 -- and respect the neighborhood.

8 The lodge has been in this neighborhood
9 for many, many years.

10 CHAIRPERSON GRIFFIS: Yes.

11 MR. NUNLEY: And has always worked with
12 the community in the past to -- it's -- it's -- it --
13 to deal with whatever social issues they may have,
14 assistance in helping them meet whatever their goals
15 may be and we will continue to work that way. We're
16 working with them now.

17 I had no problem with the -- the
18 organization that asked for party status because we've
19 been working directly with them trying to come to some
20 amenable agreement as to how we can live together as
21 neighbors and still maintain this parking lot.

22 We understand that the ANC has voted
23 against us, but we believe that we might even be able
24 to bring them on board. The -- and one of their --
25 the minutes to their June 6th meeting of 2002 is an

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1 indication that there was support for this agreement
2 if an agreement could be signed between the lodge and
3 the Westminster Neighborhood Association and we've
4 been working with them trying to make some sort of an
5 agreement to get that kind of support.

6 Other issues such as traffic. We've had a
7 traffic study done. That's a part of the record.

8 If you'd like, I can make this letter from Chief
9 Ramsey a part of the record as well. To Chief Ramsey.

10 I'm sorry. Showing that we have been trying to work
11 to -- toward the community's concerns.

12 CHAIRPERSON GRIFFIS: That's already in
13 the record if I'm not mistaken.

14 MR. NUNLEY: Oh, is it? Okay. All right.
15 I apologize. Again, I -- I came into this late. So,
16 please bear with me.

17 So, again, we believe that we might be
18 able to garnish support from the ANC-1B if we're able
19 to come to some agreement with the Westminster group
20 and we have been working trying to effect such an
21 agreement.

22 CHAIRPERSON GRIFFIS: Okay. Two things on
23 that for direction.

24 MR. NUNLEY: Yes.

25 CHAIRPERSON GRIFFIS: This Board obviously

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1 operates on hearing the tests for the variances or
2 special exception and we've been chastised in the past
3 although I don't think we've ever done it as holding
4 popularity contests. We do not hold a popularity
5 contest and so, it's important that there -- that you
6 mitigate or do away with your opposition, but the
7 importance to us is why that happens.

8 If your opposition is to disappear or
9 become supportive, we need to know in terms of the
10 zoning tests that we're looking at what has been
11 mitigated for them. So, when you talk about bringing
12 the ANC on board or Westminster, it probably is more
13 fruitful for you to discuss their issues and how you
14 have addressed those issues because that may very well
15 go directly to the test which I think we ought to stay
16 more focused on and that is what's the uniqueness
17 here, what's the practical difficulty, what's the
18 hardship and tell me and this Board how granting this
19 variance would not impair the intent and integrity of
20 the zone plan and map?

21 MR. NUNLEY: Well, as I stated earlier in
22 not so much detail, I guess, the -- we feel that we
23 meet the test because a building of this size was
24 obviously intended by the regulations when the parking
25 came into effect, when the regulations were

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1 promulgated in '58, that a building of this size
2 should have parking to mitigate the effect on the
3 surrounding neighborhood. We aren't able by any means
4 at this point to provide the parking that would be
5 required today. That's why we did the analysis just
6 to show what would be required.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. NUNLEY: We can use -- we do have this
9 small space that we are able to use again to mitigate
10 some of the parking issues that would not be an issue
11 had that building been built today.

12 In addition, we have made contact with
13 other agencies in the area that do have parking to try
14 to sort of mitigate even further the impact on the
15 surrounding neighborhood for the large events that are
16 sometimes -- that sometimes take place at the lodge
17 hall.

18 CHAIRPERSON GRIFFIS: Right. And I know
19 my Board. They're going to ask you have you signed
20 any agreements? What kinds of events are you talking
21 about? I mean give me specifics on that.

22 MR. NUNLEY: All right. We have not
23 signed an agreement yet. We have talked with --
24 what's the name of the organization?

25 CHAIRPERSON GRIFFIS: Frankly, there's --

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1 there's submissions in the record that identify other
2 venues for parking.

3 MR. NUNLEY: Yes, other potentials and we
4 have spoken with -- give me one second. I have it
5 written here. It's in one of the pages, but all this
6 stuff came to me so late. Thank you.

7 The Housing Finance Agency -- the Housing
8 Finance Agency at 815 Florida Avenue.

9 CHAIRPERSON GRIFFIS: How far away is that
10 from the property?

11 MR. NUNLEY: It's about two blocks.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. NUNLEY: We -- this was one of the
14 suggestions made by I believe Westminster and we have
15 -- we have gotten a positive -- some positive feedback
16 from -- from them. What they're asking us for now is
17 to get them a list of the -- of the dates and times
18 that we will have these large affairs so that they can
19 determine whether they can make the parking available
20 to us and that's what I meant when I was saying we're
21 in negotiations with them. We spoke with them only
22 recently in response to community concerns.

23 CHAIRPERSON GRIFFIS: Okay. Are you
24 looking at any other locations? Actually, it would be
25 very appropriate for you to address the Board as your

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1 attorney should not be testifying, but he is outlying
2 the testimony that we're about to hear.

3 MR. ELLINGTON: Mr. Chairman, any parking
4 that will allow us to park in that neighborhood, who
5 will grant us a contract or something on these special
6 occasions, we're looking into those parking areas that
7 -- that do that kind of business. We don't know what
8 the cost may be or even if they will allow us to do
9 that, but we are looking. In that surrounding area,
10 we are looking at that.

11 My name is John Ellington, Past Grand
12 Master, Washington, D.C.

13 CHAIRPERSON GRIFFIS: Good.

14 MEMBER ZAIDAIN: Mr. Chair.

15 CHAIRPERSON GRIFFIS: Yes.

16 MEMBER ZAIDAIN: You've brought up the
17 issue of a traffic impact analysis. Was that
18 submitted into the record?

19 MR. ELLINGTON: I believe so. It was done
20 by O. R. George and Associates.

21 CHAIRPERSON GRIFFIS: Are you presenting
22 him as a witness today?

23 MR. ELLINGTON: He should be here. Mr.
24 George is here. Yes.

25 MEMBER ZAIDAIN: Unless --

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1 CHAIRPERSON GRIFFIS: It was part of the
2 original submission. Is that correct?

3 MR. ELLINGTON: Say again please.

4 CHAIRPERSON GRIFFIS: It was not part of
5 the documents that were submitted recently for this
6 hearing. It was part of the original submission.

7 MR. ELLINGTON: The copy that I have is
8 dated 2/20. I was under the impression that it had
9 been submitted for record.

10 CHAIRPERSON GRIFFIS: January 20. Mr.
11 Moy, do you have record of that?

12 MR. MOY: I'm checking that now, sir.
13 Well, it was -- it was referenced in the materials and
14 then DI references it as well in their supplemental or
15 in their --

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. MOY: Yes, supplemental report. I --
18 I don't --

19 CHAIRPERSON GRIFFIS: I'm sure Mr. George
20 brought a copy if not numerous. We can get copies
21 made and get them out to the Board by the time he's
22 called. Any other quick clarifications from the
23 Board.

24 VICE CHAIRPERSON RENSHAW: A quick
25 question, Mr. Chairman.

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1 Mr. Nunley, you referenced large
2 gatherings. How large is large?

3 MR. NUNLEY: They have a -- a hall within
4 the lodge that seats 500 people. That would be the
5 maximum -- maximum at anytime.

6 VICE CHAIRPERSON RENSHAW: All right. And
7 do you have account as to how many events with 500
8 people -- approximately 500 people will take place
9 during the year?

10 MR. NUNLEY: That's what we're putting
11 together at this point in our negotiation with housing
12 finance. I do not have that at this moment.

13 VICE CHAIRPERSON RENSHAW: Based on past
14 years, how many?

15 MR. ELLINGTON: Yes, ma'am, we -- in
16 December, we have what we call an annual session when
17 we have visitors coming in from throughout the country
18 to visit with us and from time to time, we have other
19 national organizationals that come into the temple
20 periodically. For example, in 2003 in October, we're
21 having a national organization come in. Part of the
22 Masons. Coming into -- for a -- a grand visitation.
23 In December, annually we have that. So, we have those
24 type of people coming in which will -- will effect
25 parking on two or three days at one time out of the

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1 week.

2 VICE CHAIRPERSON RENSHAW: And what are
3 the hours? Are they there from 9:00 to 5:00 or does
4 it go into the evening?

5 MR. ELLINGTON: During those sessions, the
6 hours are from actually 9:00 to 5:00 is the meeting
7 time and sometimes we have evening events which will
8 go probably to -- to about 12:00.

9 VICE CHAIRPERSON RENSHAW: All right. So,
10 you may be talking about ten events with approximately
11 500 people?

12 MR. ELLINGTON: No, per year, we're
13 talking about maybe two or three major events and
14 they're not every year.

15 VICE CHAIRPERSON RENSHAW: Okay. All
16 right. Thank you.

17 CHAIRPERSON GRIFFIS: You brought up
18 briefly that you're going to be doing certain things
19 or have done recently certain things as in paving,
20 striping.

21 MR. ELLINGTON: Yes.

22 CHAIRPERSON GRIFFIS: And landscape.

23 MR. ELLINGTON: Yes.

24 CHAIRPERSON GRIFFIS: Screen wall.

25 MR. ELLINGTON: Yes.

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1 CHAIRPERSON GRIFFIS: Were these --

2 MR. ELLINGTON: Screen wall is to be done.
3 It's not up yet.

4 CHAIRPERSON GRIFFIS: Okay. What was the
5 condition prior to today of this surface lot? Was
6 there landscaping? Was there striping? Were there --

7 MR. ELLINGTON: We have landscaping now.
8 There's -- there's striping and have been striping for
9 -- for many years. Yes.

10 CHAIRPERSON GRIFFIS: Okay. So --

11 MR. ELLINGTON: And the landscaping we had
12 done approximately maybe a couple of months ago.

13 CHAIRPERSON GRIFFIS: My point is going
14 back in which there's an submission of the prior
15 approvals which would have had to have been --

16 MR. ELLINGTON: Right.

17 CHAIRPERSON GRIFFIS: -- in compliance
18 with a -- a Section 2300 which lays out quite a bit of
19 specifics and you're saying that in the past, for
20 instance, this lot has been free and clear or refuse.

21 MR. ELLINGTON: Yes, sir.

22 CHAIRPERSON GRIFFIS: You have a
23 maintenance program that takes care of it and cleans
24 it up.

25 MR. ELLINGTON: Yes, sir.

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1 CHAIRPERSON GRIFFIS: It was striped. It
2 was properly surfaced.

3 MR. ELLINGTON: Yes.

4 CHAIRPERSON GRIFFIS: There were not any
5 parking spaces that were over the property line?

6
7 MR. ELLINGTON: No, sir.

8 CHAIRPERSON GRIFFIS: Okay. How far away
9 is the curb cut entranced into the parking lot from
10 the adjacent corner?

11 MR. NUNLEY: One hundred and forty-five
12 feet.

13 CHAIRPERSON GRIFFIS: Where do you show
14 that?

15 MR. NUNLEY: I got that -- Mr. George just
16 advised me. He's taking measurements. It's not shown
17 on this plat that I'm looking at.

18 CHAIRPERSON GRIFFIS: Twenty-two. I think
19 it's closer to 50 feet.

20 MR. NUNLEY: Chairman Griffis.

21 CHAIRPERSON GRIFFIS: Yes.

22 MR. NUNLEY: May I ask --

23 CHAIRPERSON GRIFFIS: Let's get that.
24 We're not -- you know, whenever you get it calculated,
25 let's put it in.

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1 MR. NUNLEY: I was going to ask Mr. George
2 to see -- he's done the traffic study. He's done a
3 detailed evaluation of the lot.

4 CHAIRPERSON GRIFFIS: Good.

5 MR. NUNLEY: And he's in a much better
6 position --

7 CHAIRPERSON GRIFFIS: Good.

8 MR. NUNLEY: -- to answer that. If I
9 can --

10 CHAIRPERSON GRIFFIS: He can borrow my
11 scale if needed. Very well. Let's not interrupt you,
12 try not to any further.

13 MR. NUNLEY: No, I appreciate the
14 interruptions for direction. Yes.

15 So, we do feel that we have met the test.
16 We are, in fact, trying to be good community members.
17 There is no other option for off-street parking for
18 this very large building and we believe that that is
19 an extraordinary condition in and about this area that
20 -- that should justify the test or should meet the
21 test for the variances.

22 MR. MOY: Excuse me, Mr. Chairman. While
23 there's a pause. Just for the record that there's no
24 official submission of a transportation report from
25 the applicant. That's for the record.

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1 MR. NUNLEY: May we submit that now?

2 CHAIRPERSON GRIFFIS: Probably should.
3 We're going to make -- we're making enough copies and
4 we need to present a copy to the ANC and also to the
5 party.

6 MR. JOHNSON: Your Honor, if we could for
7 the record make an objection.

8 CHAIRPERSON GRIFFIS: Obviously, you just
9 need to have a seat on the mike.

10 MR. JOHNSON: Thank you.

11 CHAIRPERSON GRIFFIS: And for
12 clarification, you don't need to address me as Your
13 Honor because I am not a lawyer or a judge.

14 MR. JOHNSON: Thank you.

15 CHAIRPERSON GRIFFIS: Yes.

16 MR. JOHNSON: For the record, I -- we
17 object to having a report of some technical substance
18 admitted at this moment. We have not seen it. We
19 have not been aware of it. We were not even made
20 aware that one had been done. I think at this --
21 given the rules, at this late stage, we can't even
22 adequately cross examine that or -- or argue against
23 it.

24 CHAIRPERSON GRIFFIS: Okay. Do you have
25 any objection to hearing the presentation of the

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1 report by Mr. George if we can insure that there be
2 ample time for cross examination?

3 MR. JOHNSON: No objection.

4 CHAIRPERSON GRIFFIS: Okay. And what
5 we've done in the past if we don't reconvene in an
6 entire public hearing so we don't bring people down
7 here, we can take cross examination questions in
8 writing and have them answered and we can establish
9 that if it's -- if it's amenable or appropriate and
10 doesn't prejudice you as a party.

11 Yes, sir.

12 MR. GUYOT: Mr. Chairman, I'd like to
13 object to Mr. George's testimony because as I
14 understand it, that testimony was geared to 16091
15 which this present case excludes two-thirds of the
16 property in question. We think that's a -- that's a
17 fundamental difference and I -- I just -- I recognize
18 Mr. George as an expert, but I'm -- I don't want there
19 to be any misunderstanding about this.

20 CHAIRPERSON GRIFFIS: Good.

21 MR. GUYOT: So, we would vigorously
22 object.

23 CHAIRPERSON GRIFFIS: But, you're --
24 wouldn't that be more appropriate to bring up in cross
25 examination to illuminate that, in fact, his study may

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1 be flawed if I'm following your direction that is
2 taking in a larger piece?

3 MR. GUYOT: No, Mr. Chairman, I want -- I
4 want to go on the record early --

5 CHAIRPERSON GRIFFIS: I see.

6 MR. GUYOT: -- to make sure that there --
7 there should be a distinction.

8 If we're going to allow all of the
9 evidence of 16091, let me hear that because we loved
10 that testimony in our position that we have.

11 CHAIRPERSON GRIFFIS: Okay. Well, let's
12 see what they do.

13 MR. GUYOT: Well, I -- I don't think
14 that's the way --

15 CHAIRPERSON GRIFFIS: I can't -- I can't
16 predict what he's going to do. But, I appreciate that
17 and so your objection is that this testimony may, in
18 fact, be based on a prior -- or a prior definition of
19 what was coming in for relief.

20 MR. GUYOT: Mr. Chairman, given it's
21 absence from this file of 16938, I have every reason
22 to assume that.

23 CHAIRPERSON GRIFFIS: Okay. Okay.
24 Discussion?

25 MR. NUNLEY: May I call -- Chairman

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1 Griffis.

2 CHAIRPERSON GRIFFIS: Yes.

3 MR. NUNLEY: Mr. Osborne has a report
4 consistent with what's before the Board currently.

5 CHAIRPERSON GRIFFIS: Okay. And I
6 appreciate that and I -- I think the Board is aware of
7 the concern and -- and more importantly, you should be
8 aware of the concern in directing your witness.

9 Are you finished with the preliminary
10 presentation of the case?

11 MR. NUNLEY: Yes, I am.

12 MR. ELLINGTON: Mr. Chair, I'd just like
13 to take a few minutes to kind of go over some things
14 that I had to present to the BZA.

15 CHAIRPERSON GRIFFIS: Excellent.

16 MR. ELLINGTON: Good afternoon, Mr.
17 Chairman and distinguished members of the Board of
18 Zoning Appeal. My name is John Ellington, Jr., Past
19 Grand Master of The Most Worshipful Prince Hall Grand
20 Lodge of the District of Columbia.

21 I am appearing before this Board on behalf
22 of The Most Worshipful Prince Hall Grand Lodge located
23 at 1000 U Street, N.W. to request that your -- that
24 you grant special exception parking and variances to
25 the Grand Lodge that would permit our members and

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1 staff to park on vacant lots that we currently own and
2 thereby take 21 vehicles out of the potential parking
3 spaces that otherwise would be for residential and
4 retail use for the U Street Shaw Cardoza neighborhood.

5 If our membership and staff are not
6 permitted to use the lots which are owned and I
7 emphasize owned by the Grand Lodge, then it will force
8 our members to park on nearby residential streets.
9 Frankly, we don't want to do this and we know that our
10 neighbors do not want to do this.

11 Our members have been parking on these
12 lots since 1974 pursuant to a special exception and
13 our variances that were obtained from the city in
14 September 1987 and I do have a document here. We sent
15 a letter to the BZA requesting a renewal of the
16 parking variances and received no response from the
17 BZA. Therefore, we continue to park on the lot until
18 this date.

19 In 2002, we came before the Board to
20 expand the parking variance including additional lots
21 that the Grand Lodge had purchased. This started the
22 process we are engaging in today.

23 Initially, the Grand Lodge received
24 conditional support for its application from the ANC-
25 1B with -- with one of the conditions being that we

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1 provide nine spaces out of the additional spaces to
2 the community. The original request would have given
3 us only nine additional spaces. We would not have
4 gained anything for the money that would have been
5 spent. Certainly, we would not have agreed to that.

6 If this request is approved, we have -- we
7 would have 21 parking spaces after landscaping.
8 Therefore, nine spaces for the members of the
9 community in our opinion really does not help ease the
10 ever increasing parking challenges in our
11 neighborhood.

12 There were members of the ANC-1B and the
13 Westminster Association who stated that housing would
14 be built on our -- should be built on our vacant lots.

15 Now, we don't know whether the opposition from them
16 is about building houses or nine parking spaces.

17 Certainly, in the future, the Grand Lodge will
18 be developing a strategic plan as to how to best use
19 these properties for the mutual use and benefit of the
20 Masonic family and the community. For the moment,
21 however, we're trying to solve any parking crisis that
22 impacts the Grand Lodge and the neighborhood.

23 The Grand Lodge is fortunate to have some
24 vacant parcel so as to not add to the parking
25 challenge.

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1 Mr. Chairman and members of the Board, the
2 Grand Lodge and its members have been an intricate
3 part of the U Street Cardoza Shaw neighborhood since
4 1929. Our members and administrative staff operate
5 this building from 8:00 a.m. to 5:00 p.m. Most of our
6 meetings are in the evenings and we have been
7 socially, politically, and economically entwined in
8 the neighborhood. Adopt a school program, scholarship
9 program, and a laundry list of others. We have been
10 in the neighborhood before during the '68 riots and we
11 happily witnessed and contribute to the residents of U
12 Street.

13 We recently completed a one million dollar
14 renovation of our facade of our building and are
15 planning other renovations. The Grand Lodge
16 particularly is sensitive to the parking issue that
17 have come as a result of the rebirth of U Street and
18 we think that we can at least minimize the impact on
19 the residents and U Street retail by having our
20 members and staff park on properties owned by the
21 Grand Lodge. This is why we are seeking the Board's
22 approval.

23 Our Grand Lodge has been in the
24 neighborhood for 74 years through good times and bad
25 times and now good times again. We will remain in the

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1 neighborhood and want to continue to contribute to the
2 vibrant and resurgence of the historic U Street
3 neighborhood.

4 And with that, sir, we just thank you for
5 your consideration.

6 CHAIRPERSON GRIFFIS: Thank you very much.

7 Board members, questions?

8 In which case, let's got straight to cross
9 examination by the parties. The order of cross
10 examination will be the ANC first and then the party
11 Westminster.

12 Of course, cross examination does go
13 directly to the testimony that you've heard.

14 MR. NUNLEY: Chairman Griffis.

15 CHAIRPERSON GRIFFIS: Yes.

16 MR. NUNLEY: Chairman Griffis, may I ask
17 Mr. George to give his presentation before we go to
18 cross? On the traffic, sir.

19 CHAIRPERSON GRIFFIS: Right. Our normal
20 procedure is once we hear -- depending on a case, but
21 our normal procedure is once we hear testimony, let
22 cross examination happen. Then, we can move on.

23 MR. NUNLEY: All right.

24 CHAIRPERSON GRIFFIS: If you think that is
25 difficult for you, we can hear the entire case and

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1 then proceed through cross examination. What's your
2 quick response on that? You would rather do cross
3 examination after the entire case.

4 MR. NUNLEY: No, we -- you want to do it
5 now? Yes, we prefer to have the full case presented
6 first.

7 CHAIRPERSON GRIFFIS: Okay. Board
8 members, any problems with that? Let's do it then.

9 Parties amenable to that? Good. So, keep
10 good notes on your questions and we'll call you up at
11 the end.

12 MR. NUNLEY: Thank you.

13 CHAIRPERSON GRIFFIS: Is Mr. George being
14 offered as an expert witness in this case?

15 MR. NUNLEY: Yes.

16 CHAIRPERSON GRIFFIS: Do we have a
17 submission of his résumé in this file? Is it part of
18 your --

19 MR. GUYOT: Mr. Chairman, we will concede
20 Mr. George is quite an expert.

21 CHAIRPERSON GRIFFIS: Thank you. The ANC
22 does concede that, in fact, Mr. George is an expert.

23 Does Westminster have any objection to
24 accepting Mr. George as an expert in traffic
25 engineering?

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1 MR. JOHNSON: Not in that field, Your
2 Honor.

3 CHAIRPERSON GRIFFIS: No other -- Board
4 members, I'm certain we're familiar. There is a bit
5 of proforma of the résumé. Any concerns? Question of
6 Mr. George? Any changes in his status since last week
7 granted expert status to him? No questions of that
8 nature?

9 Mr. Guyot, you have a question?

10 MR. GUYOT: Mr. Chairman.

11 CHAIRPERSON GRIFFIS: Good.

12 MR. GUYOT: I just want to restate my
13 objection to his testimony.

14 CHAIRPERSON GRIFFIS: Indeed.

15 MR. GUYOT: Okay.

16 CHAIRPERSON GRIFFIS: And with that
17 objection to the testimony, again, I -- and I'll hear
18 from Board members if they have other comments, but to
19 object before we hear something, is always problematic
20 for us in that if -- if you're objecting to the
21 contents of it, clearly I will under my direct
22 jurisdiction not allow anything that is not directly
23 applicable or redundant in this case. But, to
24 outright object to it at this point without knowing
25 the full contents is difficult for the Board and we've

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1 always erred on the side of hearing everything and
2 then filtering out what, in fact, is required.

3 Unless other Board members want to engage
4 in discussion on that, I suggest that we do proceed.

5 It does bring up the point of -- question
6 of what's happening with the adjacent lots that used
7 to be attended to this or to the -- the original
8 application, but I think we can ask that of the
9 applicant and we'll pay particular attention to Mr.
10 George and how he has focus to the specific
11 application as amended.

12 With that, Mr. George, and we also take
13 note, of course, to the objection that the report has
14 been given to the parties and so, we will accommodate
15 as required any further information on cross
16 examination.

17 Board members, any objection? I take it
18 as a consensus to allow Mr. George to proceed as an
19 expert witness.

20 Mr. George.

21 MR. GEORGE: Okay. Thank you. Good
22 afternoon, Mr. Chairman, members of the Board.

23 I don't know if it's appropriate for me to
24 do this on the record, but I must say that I believe
25 my somewhat tardy arrival caused some confusion and I

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1 apologize to the Board and to the applicant. It's due
2 to the fact that --

3 CHAIRPERSON GRIFFIS: You were caught in
4 traffic?

5 MR. GEORGE: No, sir.

6 CHAIRPERSON GRIFFIS: That would have been
7 a good joke.

8 MR. GEORGE: No. No, sir, I -- I've had
9 to say that one, but one of my employees fell and
10 broke both her arm and her clavicle --

11 CHAIRPERSON GRIFFIS: Oh.

12 MR. GEORGE: -- on the ice in front of our
13 building --

14 CHAIRPERSON GRIFFIS: I'm sorry.

15 MR. GEORGE: -- at around mid-morning and
16 that really affected us.

17 CHAIRPERSON GRIFFIS: I'm sorry.

18 MR. GEORGE: Yes. I trust that I can
19 recoup from that and just to clarify, Mr. Chairman, I
20 would like to confirm that we submitted our report
21 which is dated February 5, 2003 to the Department of
22 Public Works on the 5th of -- of February which it was
23 done 20 days before the hearing. I think this is the
24 typical requirement.

25 Why it did not get into the actual record

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1 of the case, I do not know. But, I think the fact
2 that DDOT has replied -- submitted their review, their
3 response including reference to our report, I believe
4 speaks to that issue.

5 I'd like also to confirmed that our report
6 focused on the subject property which is Lot 827 which
7 is -- borders Vermont Avenue and T Street. So, I
8 believe our report addressed the matter that is before
9 the Board.

10 Mr. Chairman, this exhibit is a replica of
11 one that is in our report and we've provided a copy to
12 your staff for circulation. I'd like to use this
13 exhibit real briefly to set the scene and discuss the
14 issues relevant to the relevant section -- as they
15 affect the relevant sections of the zoning
16 regulations.

17 The exhibit shows the subject property
18 situated at the northwest quadrant of the Vermont
19 Avenue/T Street intersection. The primary use is
20 approximately 175 feet away, the Masonic Temple which
21 was the subject of earlier presentation before you.

22 The primary use fronts on U Street and as
23 you heard is germane to my presentation, the -- the
24 site was -- was developed prior to 1958 and is not
25 provided with any off-street parking.

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1 We performed our assessment from the
2 perspective that first of all, the lot has been used
3 or the subject property has been used as a parking lot
4 since the 1970s. The last approval was in 1982.

5 The applicant's statement refers to the
6 fact that there is considerable revitalization taking
7 place along the U Street corridor. Our inventory
8 shows that the subject property and the -- the primary
9 use is more or less hemmed in by residential uses
10 including the Westminster community which -- which we
11 heard mentioned and a number of the streets are
12 restricted to residential parking permit only and --
13 and that includes parking along the west side of
14 Vermont Avenue in proximity to this side.

15 CHAIRPERSON GRIFFIS: For the entire block
16 from U Street?

17 MR. GEORGE: Yes, along the west side.

18 CHAIRPERSON GRIFFIS: Right.

19 MR. GEORGE: This entire section is the
20 subject of residential parking permit.

21 CHAIRPERSON GRIFFIS: Down past T Street?

22 MR. GEORGE: Yes.

23 VICE CHAIRPERSON RENSHAW: Mr. George.

24 MR. GEORGE: Yes, ma'am.

25 VICE CHAIRPERSON RENSHAW: Just a

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1 question. Isn't the subject property close to the
2 Grim Key Building?

3 MR. GEORGE: To the?

4 VICE CHAIRPERSON RENSHAW: Grim Key
5 Building. The headquarters of the fire department.
6 Right across the street.

7 MR. GEORGE: That is correct.

8 VICE CHAIRPERSON RENSHAW: Vermont Avenue.

9 MR. GEORGE: Yes, ma'am.

10 VICE CHAIRPERSON RENSHAW: And that is --
11 that little cutout that you are referring to, isn't
12 that used by the fire department as parking for the
13 officials in the building?

14 MR. GEORGE: No, I think that's -- that's
15 incorrect. The first department building is on the
16 east side.

17 VICE CHAIRPERSON RENSHAW: But, there is
18 very little parking over there.

19 MR. GEORGE: Yes, that is correct.

20 VICE CHAIRPERSON RENSHAW: And so, the --
21 the fire department relies on street parking and it's
22 hard to come by.

23 MR. GEORGE: On-street parking.

24 VICE CHAIRPERSON RENSHAW: On-street
25 parking and so, that little indent is used on a first-

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1 come first-served basis.

2 MR. GEORGE: Our inventory shows that this
3 is covered by the residential parking permit program,
4 RPP. Right.

5 There are -- we -- we actually have the
6 number of spaces, but our inventory shows that this
7 indentation -- remember there are residences along
8 here. There are residences along here. So, this
9 cutout or lay by or recessed area is covered by the
10 residential parking permit restriction with its two-
11 hour -- two-hour parking limits between 7:00 a.m. and
12 8:30 p.m. Yes.

13 I think you speak to an important point,
14 Ms. Renshaw. The fact that with the mix of uses in
15 the area, parking is at a premium.

16 Also, they serve in an area that
17 approximate a five-minute walking distance to the
18 primary -- the primary use on this case and there are
19 approximately 586 parking spaces.

20 I mis-spoke. The 586 related to the
21 turnover of the number of vehicles we observed because
22 we did do extensive parking usage surveys. What I
23 should have said that there are a total of 117 parking
24 spaces within that approximately five-minute walking
25 distance from the main entrance to the temple.

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1 To focus again on the -- the parking lot
2 itself, the lot has been used as a parking lot. It's
3 currently striped to accommodate 28 vehicles. It is
4 our observation that perhaps some of those spaces are
5 not properly dimensioned and may not be in complete
6 compliance with the zoning regulations. We believe
7 that the applicant's redesigned proposed re-striping
8 and redesign complies with the zone -- with the zoning
9 regulations.

10 CHAIRPERSON GRIFFIS: You mean in terms of
11 size and location of the spaces?

12 MR. GEORGE: In terms of the size.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. GEORGE: The dimensions. In terms of
15 the aisle width and in terms of the location of the
16 entrance from the adjacent street.

17 CHAIRPERSON GRIFFIS: And what's the
18 distance to that entrance?

19 MR. GEORGE: Yes, and I -- I believe you
20 are current. I think we were dealing with several
21 reductions of drawings and this was a measure
22 distance. So, it shows that we are 172 feet from the
23 rear of the Masonic Temple to the area of the lot.
24 So, this distance, it's -- it's not 145. That was an
25 error due to the reduction of the drawings that we --

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1 we were given to work with.

2 CHAIRPERSON GRIFFIS: Well, you could
3 verify clearly that it's -- it's not less than 40
4 feet. Correct?

5 MR. GEORGE: It is. Yes.

6 CHAIRPERSON GRIFFIS: It is not less than?

7 MR. GEORGE: It is not less than 40 feet.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. GEORGE: It is not less than 40 feet
10 and if the record is left open, I'd be happy to
11 provide the exact dimension for the record.

12 CHAIRPERSON GRIFFIS: Well, I think we
13 just need verification and the record can stay open
14 for that in that the provision of 2300, of course,
15 says that no vehicular entrance or exit shall be
16 within 40 feet --

17 MR. GEORGE: Yes.

18 CHAIRPERSON GRIFFIS: -- of the street
19 intersection as measured from the intersection of the
20 curb lines extended.

21 MR. GEORGE: Yes.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. GEORGE: Yes. Yes. We -- we can
24 provide a brief note verifying that.

25 All observations show, Mr. Chairman, that

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1 during the daytime uses peak occupancy of parking
2 spaces within that walking distance is in excess of 90
3 percent. In the -- during the evening hours because
4 of the eating, dining, entertainment activity, parking
5 is even more at a premium and, of course, again, we
6 like to put this in the context of the residential
7 parking permit restrictions within the area.

8 You've heard from the applicant that a
9 number of the activities virtually -- occur virtually
10 every day of the week and generally occur during the
11 evening hours generally after 6:00 sometimes ending
12 after the cessation of service along the -- the Metro
13 line.

14 We've also heard that a number of the --
15 the members are elderly people. Some of them are
16 handicapped. We understand that the lot will be used
17 on an assigned basis during the evening to particular
18 members. We -- during the daytime, it would be used
19 again on a similar basis for tenants of the building.

20 We believe that while traffic engineering
21 deals with raw numbers of vehicles and parking type of
22 activities, we believe the type of uses that are
23 associated with the lot are also germane. This is not
24 a nightclub or a restaurant. So, we're dealing with
25 particular membership and I do not know, I am not

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1 privy to the type of activities that take place in
2 there, but I -- we understand that they are of a
3 solemn and contemplating nature which does not involve
4 the serving of alcohol and which would in itself
5 induce rowdy and inappropriate behavior.

6 So, while this is not pure traffic
7 engineering, we think that it is germane to the issue
8 since I've heard -- I'm aware that the Board is
9 normally concerned about such matters in the -- in the
10 case of parking lots.

11 I do not believe that traffic engineering
12 -- the -- the flow of traffic within the area is a
13 significant issue. The -- the facility has been there
14 since the early 1900s. There's no change in the
15 primary use.

16 We have, however, looked at the situation
17 of capacity and of safety in the vicinity of the lot
18 and that takes our focus to the section of Vermont
19 Avenue and T Street.

20 Vermont Avenue is one of the corridors
21 which serve commuter traffic into the city. However,
22 it is not one of your primary routes. Ninth Street
23 and 14th Street and Georgia Avenue, these are more
24 primary north/south routes and so, we found no
25 capacity or no safety deficiencies at the -- at the

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1 adjacent intersection.

2 We went further and obtained accident
3 records from the city with respect to the adjacent
4 intersection since as you mentioned, Mr. Chair, this
5 -- the -- the location of the entrance could impact
6 safety of the intersection and we've been advised by
7 DDOT that over the past three years there was one
8 accident at that location. That level of accident
9 occurrence is extremely low and did not warrant
10 further investigation on our part as to the cause and
11 to the exact location, but --

12 CHAIRPERSON GRIFFIS: The location is
13 what? From the entire block or just that corner?

14 MR. GEORGE: The intersection.

15 CHAIRPERSON GRIFFIS: I see.

16 MR. GEORGE: And by intersection, DDOT
17 defines that as the -- as approximately 150 feet in
18 all directions.

19 CHAIRPERSON GRIFFIS: How long have they
20 been keeping those kind of records?

21 MR. GEORGE: We've been obtaining them for
22 the past ten years or so. So --

23 CHAIRPERSON GRIFFIS: Pretty reliable in
24 your expert opinion?

25 MR. GEORGE: In our -- in our opinion on

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1 -- based on not so much on my opinion, but my
2 experience, they are reliable because there are
3 situations when we could actually follow up and get
4 the actual police reports based on these. So, they
5 are based on actual police report records.

6 Mr. Chairman, I believe that based on
7 these factors, the continued use and I stress that
8 word because we're not talking about a new use. We're
9 talking about a use that has been continuing for over
10 30 years. It is our opinion that re-striping of the
11 lot, retaining the entrance where it is off Vermont
12 Avenue, and providing for emergency access only to the
13 alley that the use of the lot as proposed by the
14 applicant should not result in objectionable
15 conditions to abutting property.

16 I am not speaking as a landscape architect
17 or site designer, but I have been advised that, and
18 we've shown it on our plan, that the applicant
19 proposes to provide the necessary screening in terms
20 of height and so on as far as a wall from the adjacent
21 residential property.

22 CHAIRPERSON GRIFFIS: Ms. Renshaw has a
23 question.

24 VICE CHAIRPERSON RENSHAW: Yes, Mr.
25 George, were you able to observe the traffic exiting

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1 from the lot during the evenings or even during the
2 day and tell the Board in what direction these cars
3 predominantly went?

4 MR. GEORGE: I'd -- I'd be happy to.

5 VICE CHAIRPERSON RENSHAW: And also, would
6 you describe the median area of the -- of Vermont
7 Avenue?

8 MR. GEORGE: Yes.

9 VICE CHAIRPERSON RENSHAW: And would also
10 address U-turns which are popular --

11 MR. GEORGE: Yes. Yes. All right.

12 VICE CHAIRPERSON RENSHAW: -- in that
13 area.

14 MR. GEORGE: Yes. Vermont Avenue is a
15 divided highway. There's a median and so, as we show
16 on the exhibit, one will flow in this direction. One
17 will flow in the north direction. T Street is also a
18 one-way street.

19 Traffic should only enter the lot from the
20 southbound roadway along Vermont Avenue turning into
21 the lot and should only exit the lot and turn right.
22 That is heading south.

23 VICE CHAIRPERSON RENSHAW: Go right.

24 MR. GEORGE: Yes. Okay.

25 VICE CHAIRPERSON RENSHAW: But, right at

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1 the corner, do they then make a U-turn and go north on
2 Vermont?

3 MR. GEORGE: I have seen vehicles making
4 U-turn at this location. I can't say -- I do not
5 recall specifically where they -- whether there were
6 vehicles exiting the lot, but recognizing that this is
7 a parking area also, I would say that that type of
8 situation I wouldn't call it a constraint, but that
9 type of situation applies to the parking within the
10 lot as well as the on-street parking along here.

11 In other words and for clarity, if someone
12 parks here and they wish to go eastbound or
13 northbound, they would make a U-turn. There are no
14 signs restricting U-turns and I believe U-turns are
15 permitted in the -- in the city. If that -- U-turns
16 at intersections where they're not prohibited are
17 obviously permitted.

18 CHAIRPERSON GRIFFIS: Is T Street two way?

19 MR. GEORGE: T Street is one way
20 eastbound.

21 CHAIRPERSON GRIFFIS: I see.

22 MR. GEORGE: Yes. And I would just add if
23 I may if I assume -- I should not assume, but the one
24 way operation of T Street makes for a much more
25 efficient type of operations. Where again, if indeed

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1 they have been occurring with any degree of
2 frequently, Ms. Renshaw, then I would say none of this
3 is borne out as a safety deficiency based on the
4 accident records.

5 VICE CHAIRPERSON RENSHAW: Thank goodness.

6 MR. GEORGE: All right. Thank you.

7 CHAIRPERSON GRIFFIS: As laid out now, Mr.
8 George, is the -- what you're showing for the parking
9 lot, does it have access to the alley -- vehicular
10 access?

11 MR. GEORGE: Yes, sir. Yes.

12 CHAIRPERSON GRIFFIS: And it's intended
13 that that would also be an entrance and exit from the
14 lot?

15 MR. GEORGE: The -- the alley, Mr.
16 Chairman, is a narrow one. I believe the dimension is
17 actually 12 or 15 feet. I can double check that, but
18 it does serve two-way traffic.

19 CHAIRPERSON GRIFFIS: Right.

20 MR. GEORGE: And the flow is very, very
21 light. I've recommended to the applicant that the
22 alley be gated and that it be only used for emergency
23 access and they have agreed to that.

24 CHAIRPERSON GRIFFIS: So, that's showing
25 on this -- on the submitted site plan?

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1 VICE CHAIRPERSON RENSHAW: Would you, Mr.
2 George, indicate on the design where the gates would
3 be?

4 MR. GEORGE: It would be along this
5 dimension. This is the east/west portion of the alley
6 and the -- the parking -- the north/south parking ends
7 here at the -- at the point around 26 feet from the 90
8 degree turn of the alley and the gate would be located
9 in this position.

10 There is presently a gate there. There
11 has been one. We're recommending that it be either
12 reconstructed, replaced to conform with the upgrade
13 that the applicant is proposing.

14 VICE CHAIRPERSON RENSHAW: So, therefore,
15 cars would not be exiting into the alley system?

16 MR. GEORGE: On -- on a regular basis, no.

17 VICE CHAIRPERSON RENSHAW: On a regular
18 basis.

19 MR. GEORGE: That is correct.

20 VICE CHAIRPERSON RENSHAW: On an irregular
21 basis?

22 MR. GEORGE: I would -- I would perhaps
23 ask the applicant who would be the operator to speak
24 to that as far as the regularity of the use.

25 MR. ELLINGTON: At the present time and in

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1 the past, we have not used that as a regular exit and
2 entrance. It was there for emergency use and most of
3 the time, it is closed.

4 CHAIRPERSON GRIFFIS: What's an emergency
5 use?

6 MR. ELLINGTON: Well, if you have to go
7 out the -- well, if there's no -- there's a blockage
8 in our normal use and we have to get -- get the cars
9 out or something like that. Somebody have -- have an
10 accident. Then we have another exit --

11 CHAIRPERSON GRIFFIS: I see.

12 MR. ELLINGTON: -- to -- to --

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. ELLINGTON: -- to go out.

15 CHAIRPERSON GRIFFIS: Mr. George, anything
16 else?

17 MR. GEORGE: That's it, sir. Thank you.

18 CHAIRPERSON GRIFFIS: Are there questions
19 from the Board about Mr. George's testimony or report
20 that was submitted?

21 VICE CHAIRPERSON RENSHAW: Just give us an
22 idea of traffic counts. I'm sure this is in your
23 report. We've just received this. Along Vermont
24 Avenue and T Street, traffic counts. Did you do that?

25 MR. GEORGE: No, we didn't -- we did not

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1 do formal traffic counts. We didn't think -- didn't
2 find that they were called for given that we're
3 reducing the -- the number of spaces, given the fact
4 that the primary use -- there is some usage during the
5 day, but it's from a -- a relatively small percentage
6 of the building as -- the -- the -- the space that is
7 -- that is leased out and given the fact that most of
8 the activities which the applicant alludes to would
9 occur during the nighttime hours after 6:00, 6:00
10 p.m./7:00 p.m. time frame, we think that that's well
11 outside the afternoon peak period that would require
12 us to focus on traffic operations.

13 VICE CHAIRPERSON RENSHAW: We understand
14 that there is a guards booth and where would that be?

15 MR. GEORGE: I see the applicant --

16 MR. ELLINGTON: Okay. The guard booth is
17 on the back side, up -- further up near -- near the
18 house there. It is not a -- a stationary. It is a
19 movable shed that we built there for the guard, but
20 it's -- it's about -- it's in the back of -- of the
21 parking lot there.

22 VICE CHAIRPERSON RENSHAW: And you always
23 have someone there in the evenings when you have --

24 MR. ELLINGTON: In the evenings, yes --
25 yes, ma'am.

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1 VICE CHAIRPERSON RENSHAW: -- evening
2 functions?

3 MR. ELLINGTON: Yes.

4 CHAIRPERSON GRIFFIS: Is it in direct
5 position to the gate at the alley or is it sitting in
6 a parking space?

7 MR. ELLINGTON: It's not sitting in a
8 parking space.

9 CHAIRPERSON GRIFFIS: Can you turn your
10 mike on?

11 MR. ELLINGTON: It is not sitting in a
12 parking space. We just sit it back from the parking
13 space in the corner near the end of -- near the
14 building that's -- that's located there which we own.

15 CHAIRPERSON GRIFFIS: Okay. Any --

16 MR. ELLINGTON: Sir, that -- that is on --
17 on the side near where the wall will be going up.

18 CHAIRPERSON GRIFFIS: You want to point to
19 the site map?

20 MR. ELLINGTON: (Off microphone.) It's
21 right in this area.

22 CHAIRPERSON GRIFFIS: That's where it's
23 proposed to be?

24 MR. ELLINGTON: That's where it's at now.

25 CHAIRPERSON GRIFFIS: That's where it is.

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1 Okay. So, it is adjacent to where -- the location of
2 the gate that you just talked about.

3 MR. ELLINGTON: (Off microphone.) I'm
4 sorry. I was looking at the wrong -- it's right here.
5 This housing area here. It's right in the back of
6 that.

7 CHAIRPERSON GRIFFIS: Which according to
8 your site plan is in parking space 15?

9 MR. ELLINGTON: Okay. This is our new
10 site plan that we want to conform to.

11 CHAIRPERSON GRIFFIS: Okay. Where is the
12 -- where is the guard booth going to be? Can you
13 hear? Okay. You need to pick up a microphone next to
14 you.

15 MR. ELLINGTON: We haven't determined at
16 this time where the guard station --

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. ELLINGTON: -- will be because --

19 CHAIRPERSON GRIFFIS: Keep the record
20 open. You can mark up with the corrected dimension on
21 that and just give the location of the guard booth.
22 That's going to be easier. In some respects, we're
23 not that -- not that interested unless we're drawn to
24 what has happened in the past. What we're looking at
25 is what's the new application? What are we going to

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1 approve? As the past BZA order of special exception
2 expired in 1987, we have a totally new application
3 before us at this time.

4 Anything else, Mr. George? Questions of
5 the Board? Any -- very well. Then let's go directly
6 -- let me get an assessment. Other witnesses that are
7 being called.

8 MR. HOWARD: My name is Clyde Howard.

9 CHAIRPERSON GRIFFIS: Yes.

10 MR. HOWARD: And if I may, Mr. Chairman, I
11 would like to make a comment in reference to the
12 gentleman's depiction here on --

13 CHAIRPERSON GRIFFIS: All right. Let me
14 get clarification. Are you being called as witness --

15 MR. HOWARD: Yes.

16 CHAIRPERSON GRIFFIS: -- in the
17 presentation of this case?

18 MR. HOWARD: Yes.

19 CHAIRPERSON GRIFFIS: Okay. And can I get
20 an address for the record?

21 MR. HOWARD: My address is --

22 CHAIRPERSON GRIFFIS: Yes.

23 MR. HOWARD: -- 2217 13th Street, N.W. and
24 I represent the Shaw Coalition Redevelopment
25 Corporation Incorporated.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. HOWARD: I would like to make a
3 comment in reference to Ms. Renshaw's question to the
4 gentleman.

5 There is a break in that island. There is
6 a break in that island about here which the fire
7 department uses to make U-turns. Also, there's an
8 offset where they park in front of Grim Key School.
9 There is a parking area in the rear of Grim Key School
10 which they access on T Street via an alley or from
11 Vermont Avenue from here.

12 This has been somewhat of a problem for
13 the people living here on 10th Street. Originally,
14 with this African American Civil War Memorial, this
15 was intended to be a cutout for businesses to off-road
16 sightseers to see the site. That never worked out.
17 They made this parking, residential.

18 As a consequence, there's always a battle
19 going on with the fire department in trying to find a
20 parking space for the residents that live here.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. HOWARD: And the same applies along
23 this side of the island as well.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. HOWARD: And with that, Mr. Chairman,

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1 I'd like to go forward with my testimony.

2 CHAIRPERSON GRIFFIS: That would be
3 excellent.

4 MR. HOWARD: Good afternoon, Chairman.
5 Good afternoon. Is this thing on?

6 CHAIRPERSON GRIFFIS: Yes.

7 MR. HOWARD: Good afternoon, Chairman
8 Griffis and members of the Board. I'm here
9 representing the Shaw Coalition Redevelopment
10 Corporation Incorporated to lend our support for the
11 zoning relief sought by The Most Worshipful Prince
12 Hall Grand Lodge under 11 DCMR Paragraph 3404.01
13 Section 214.

14 We like other organizations within the
15 community have a relationship with the Prince Hall
16 Masons that has extended over many years. Their
17 request to utilize lots 824 and 825 in Square 333 for
18 off-street parking is a sensible approach to the
19 parking problems that have been exacerbated by the
20 continued licensing of businesses in Ward 1 that do
21 not have parking facilities for their customer base.
22 Residential units that are being built in Ward 1 do
23 not have adequate off-street parking where statistics
24 indicate that there are three cars to every household
25 with children.

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1 For more than a century, the members of
2 the Prince Hall Masons have provided many charitable
3 services and deeds for the Washington, D.C. community
4 at large. The membership meets regularly at the
5 Masonic Temple building which is central to the
6 execution of the social and educational benefits for
7 the needy and less fortunate. Caring and helping for
8 the human condition has been the hallmarks of the
9 Masonic organization and in order to carry out that
10 mandate, the membership must have the capability to
11 park and not impact the community's available parking
12 on the street.

13 With the extensive parking of the D.C.
14 fire department that occupies spaces for long periods
15 of time and Metro employees parking until their tour
16 of duty ends, and others from Maryland and Virginia
17 that park to ride the bus and subway, the convenience
18 of a parking lot as an accessory should not be too
19 much to ask for when the Masonic organization has
20 given so much to the community at large.

21 Within the immediate vicinity of the
22 Masonic parking lot are ten parking lots. Of the ten
23 parking lots, one is a former gas station now a vacant
24 lot that is used by the 930 Club. Three are not
25 attached to the building that are using them and one

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1 of the three is a commercial lot. One lot is used by
2 Industrial Bank which is across the street from the
3 bank. One is located on U Street around the corner
4 from Grim Key School where the fire department is
5 located that uses the lot. Also, two lots are on --
6 are located on 9th Street across from one another that
7 are not attached to any one building but serve more
8 than one business located on 9th Street, N.W.

9 I do not want this Board to think that the
10 Masonic parking lot is the only parking lot around
11 within this community. With the Strategic
12 Neighborhood Action Plan making parking one of its
13 primary goals in this neighborhood, I would think that
14 this Masonic parking lot serves this action plan in a
15 small way to relieve a parking problem that has now
16 grown to horrendous proportions.

17 Parking facilities are needed in this
18 central portion of the city. There's not enough space
19 to build housing with garages that will accommodate
20 the numbers of cars that now reside in the community.

21 Parking has reached the limit of spaces for on-street
22 parking in all sectors of the area. The subway has
23 increased the level of parking coincident with the
24 increase of businesses that enjoy the flexibility of
25 both subway and bus to move from a residential center

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1 to a vast new commercial center that is increasing
2 everyday in the downtown core.

3 Washington, D.C. is inundated with cars
4 and the ability to provide off-street parking should
5 not be discouraged, but should be praised as an oasis
6 of relief to a city being smothered with vacant space
7 being gobbled up to construct office buildings that
8 will generate more traffic, bring in more people
9 looking for some place to park.

10 The Board's favorable decision for The
11 Most Worshipful Prince Hall Grand Lodge is a step in
12 the right direction toward -- toward relieving some of
13 the congestion that is being experienced by the
14 residents in the community.

15 I thank the Board for allowing me to
16 testify before it.

17 CHAIRPERSON GRIFFIS: Thank you, very
18 much.

19 MR. ELLINGTON: Sir, may I just make one
20 last statement.

21 CHAIRPERSON GRIFFIS: Well, let's just say
22 you'll -- you'll have time for conclusions also. So,
23 you don't need to give your closing remarks right now.

24 MR. ELLINGTON: It's not a closing
25 remarks. It's just something --

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. ELLINGTON: Traffic concerns, we have
3 made contact with the D.C. Department of
4 Transportation corresponding with Director Taggalini.

5 CHAIRPERSON GRIFFIS: Taggalini. Yes.

6 MR. ELLINGTON: To request that a do not
7 enter sign be appropriately displayed at the corner of
8 Vermont Avenue and T Street, N.W. due to reports that
9 motorists -- motorists illegally enter the parking lot
10 from the incoming southbound lane of Vermont Avenue.
11 We have asked them to do something about that.

12 CHAIRPERSON GRIFFIS: Wow. That's a
13 shame. You need a sign like that going the wrong way
14 up the street.

15 MR. ELLINGTON: Absolutely. Yes.

16 CHAIRPERSON GRIFFIS: Okay. Any other
17 questions? Briefly.

18 VICE CHAIRPERSON RENSHAW: Yes, just
19 briefly, I did not -- Clyde, I did not get your last
20 name please.

21 MR. HOWARD: Howard.

22 VICE CHAIRPERSON RENSHAW: Howard.

23 MR. HOWARD: Yes.

24 VICE CHAIRPERSON RENSHAW: All right. Mr.
25 Howard, would you just give us a 30-second response to

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1 the Shaw Redevelopment Corporation? What is it?

2 MR. HOWARD: The Shaw Coalition
3 Redevelopment Corporation was an entity that was
4 involved in the Sam Jackson Plaza Project under the
5 former Mayor Marion Barry. Jeffrey Coyne was the
6 project leader on that particular project and as you
7 well know, it went kaput. You now have a --
8 condominiums that are built there now and we were also
9 involved with the Manhattan Laundry in the 1300 block
10 of Florida Avenue.

11 VICE CHAIRPERSON RENSHAW: Okay.

12 MR. HOWARD: We settled the Manhattan
13 Laundry with Go Dong Bank of New York who went -- who
14 went belly up.

15 CHAIRPERSON GRIFFIS: Okay. I don't think
16 she needs -- I think her pertinent point though is are
17 you still organized? Are you still incorporated?

18 MR. HOWARD: Yes, we are. Yes, we are.

19 CHAIRPERSON GRIFFIS: How do you establish
20 membership? What is your --

21 MR. HOWARD: Our membership -- we have a
22 board of directors. We don't have membership.

23 CHAIRPERSON GRIFFIS: Very well. How --

24 MR. HOWARD: Yes.

25 CHAIRPERSON GRIFFIS: -- how -- what's

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1 your board of director membership?

2 MR. HOWARD: We have seven people on our
3 board.

4 CHAIRPERSON GRIFFIS: And you have --
5 still have regular meetings?

6 MR. HOWARD: We still have regular
7 meetings. We still provide the city with appropriate
8 papers that they need to assure that we still are in
9 existence.

10 CHAIRPERSON GRIFFIS: Okay.

11 VICE CHAIRPERSON RENSHAW: Great. Thank
12 you.

13 CHAIRPERSON GRIFFIS: Thank you very much,
14 Mr. Howard.

15 Any other witnesses?

16 MR. NUNLEY: No.

17 CHAIRPERSON GRIFFIS: Does that conclude
18 the presentation of your case at this time?

19 MR. NUNLEY: At this time, yes.

20 CHAIRPERSON GRIFFIS: Very well. Let's go
21 into cross examination.

22 Mr. Howard, I'm going to have you take a
23 seat so that there's some room for the parties.

24 I'm going to have both parties come up and
25 then we can recall Mr. Howard if you have cross

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1 examination questions.

2 I think logically for us, but you run it
3 as you will, if you want to start with the first
4 testimony and then move on to Mr. George and then Mr.
5 Howard, that would be pertinent.

6 The ANC can start first and --

7 MR. GUYOT: In your testimony, you
8 mentioned a relationship with the NAC -- with the ANC
9 and you -- you quoted specifically the June 6th
10 meeting. Have you looked at the minutes of that June
11 6th meeting?

12 MR. NUNLEY: Yes, I have them here.

13 MR. GUYOT: All right. Here they are
14 right here and I'd like for you to read the second
15 paragraph.

16 And, Mr. Chairman, this goes to the
17 question in response to his assertion about that
18 meeting and about a relationship with the ANC.

19 Please read the second --

20 MR. NUNLEY: Which paragraph?

21 MR. GUYOT: -- the second paragraph. The
22 Board has this and it's the --

23 MR. NUNLEY: "At the regularly scheduled
24 meeting of ANC-1B notice of which was properly given
25 on June 6th, 2002 at which a quorum, seven members

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1 required, of nine members was present. The members of
2 ANC-1B voted by a vote of four in favor, three
3 opposed, and two abstentions to support the
4 application for a special exception to allow an
5 accessory parking lot on Square 333 Lots 824 and 825
6 1906 Vermont Avenue with two conditions. The
7 commissioners -- the commission's support was
8 conditioned upon the Prince Hall Grand Lodge, the
9 applicant, meeting with members of the community and
10 arranging to provide nine parking spaces for members
11 of the community and the applicant reaching an
12 agreement with members of the community including
13 specifically the caretaker of the Westminster
14 Neighborhood Association on the landscaping and
15 screening of the parking lot. Despite repeated
16 reminders of this obligation to receive the ANC's
17 support, the applicant has failed to meet any of the
18 two conditions for the ANC's support. Therefore, ANC-
19 1B opposes the granting of a special exception for an
20 accessory parking lot as described in BZ Application
21 16901."

22 CHAIRPERSON GRIFFIS: Okay. Direct
23 question.

24 MR. GUYOT: Mr. Chairman, that -- these
25 minutes will clearly reflect --

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1 CHAIRPERSON GRIFFIS: Ask your questions.
2 He set a stage for a question and we're all on the
3 edge of our chair here.

4 MR. GUYOT: All right.

5 CHAIRPERSON GRIFFIS: What's the cross
6 examination question?

7 MR. GUYOT: The cross examination question
8 is after --

9 CHAIRPERSON GRIFFIS: This is Mr. Guyot's
10 question.

11 MR. GUYOT: -- after having read this
12 paragraph, would you still be as comfortable of
13 assuring -- of securing the support of ANC-1B if this
14 process continues?

15 MR. NUNLEY: All right. What this says to
16 me is if we are able to come to an agreement with the
17 Westminster Neighborhood Association, then yes, I
18 would expect a positive vote from ANC. I have -- what
19 I have in front of me --

20 MR. GUYOT: Well, I'm -- I'm asking the
21 questions.

22 CHAIRPERSON GRIFFIS: Okay. Right. I'll
23 -- I'll give direction. We'll get this all settled
24 and what we're going to do is cross examination
25 clearly is very quick, specific questions. We've

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1 allowed that reading which we won't do again.

2 He'll get directly to what he wants
3 answered and then as short an answer as you can do.
4 It can happen rapid fire. Now --

5 MR. GUYOT: Good.

6 CHAIRPERSON GRIFFIS: -- keep well in mind
7 that these questions are to poke holes in the case
8 that's just been presented and that's benefit for us.
9 We need to see that. So, we're not going to get into
10 a lot of bickerment. I'm sure we're not going to need
11 to even if that's a word, but let's continue.

12 MR. GUYOT: All right. What reason do you
13 have to believe that after reading that paragraph that
14 absent the withdrawal of this application by the
15 Masonic Temple that there would be any support by ANC-
16 1B?

17 MR. NUNLEY: What this leaves me to --
18 what this leaves me to believe is that the concern of
19 the ANC is that the lodge, the applicant, has not
20 considered the concerns of the community. The
21 applicant -- and incidently, we have met with the
22 Westminster Association.

23 MR. GUYOT: Look. The ANC -- is it not a
24 fact that at a subsequent hearing before this BZA, the
25 Masonic Temple repudiated that agreement? Your client

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1 was at the meeting.

2 MR. NUNLEY: I was not at the meetings.

3 MR. GUYOT: Yes. No. No, I'm talking
4 about you were at the ANC meeting when this decision
5 was made. You were there.

6 MR. NUNLEY: So, your question is to --

7 MR. GUYOT: My -- my question is was it
8 not your position at the last BZA hearing that this
9 agreement was not germane, was not relevant and you
10 disassociated the Masons from it?

11 MR. ELLINGTON: No, that's not -- that's
12 not correct.

13 MR. GUYOT: Why is it not correct? You --
14 did you not say -- represent that you did not agree to
15 this?

16 MR. ELLINGTON: Sir, let me just kind of
17 clarify this. In the -- in the meeting, original
18 meeting, in June, there was asked for nine parking
19 spaces according to them, according to the minutes
20 that they have.

21 Now, again, as I stated before, if we're
22 going to obtain additional nine spaces --

23 CHAIRPERSON GRIFFIS: Okay. We're clear
24 on why you can't give up the nine spaces.

25 MR. ELLINGTON: Then how -- how -- how are

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1 we going to give nine spaces.

2 CHAIRPERSON GRIFFIS: I think Mr. Guyot's
3 trying to get to more of you had an agreement. It may
4 have been on the table. Did you take it off the table
5 and that's the last question. We'll move on.

6 MR. ELLINGTON: We -- we -- we took that
7 off the table.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. ELLINGTON: Our last BZA hearing.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. ELLINGTON: Yes.

12 MR. GUYOT: Mr. Chairman, our vote by the
13 ANC in support was conditioned upon them --

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. GUYOT: -- agreeing.

16 CHAIRPERSON GRIFFIS: And that's clear in
17 the letter.

18 MR. GUYOT: All right. Now --

19 CHAIRPERSON GRIFFIS: Next question.

20 MR. GUYOT: The next question is why would
21 there be any assumption the -- what attempt have you
22 made to meet with ANC-1B subsequent to this decision?

23 MR. NUNLEY: I'm not aware of any attempt
24 to meet ANC-1C -- 1B after.

25 MR. GUYOT: Okay. Neither am I. What

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1 attempt have you made to meet with Westminster Civic
2 Association?

3 MR. NUNLEY: Representatives of the lodge
4 have met with Westminster in person at least once
5 since that time and by phone at least on one other
6 occasion that I'm aware of.

7
8 MR. GUYOT: Is it not a fact that the
9 Westminster Civic Association offered a point of
10 mutual agreement in which they would join with this
11 and ask ANC-1B -- well, didn't it happen within the
12 last five days?

13 MR. NUNLEY: It would have happened within
14 the last five days.

15 MR. GUYOT: And what was the result of
16 that?

17 MR. NUNLEY: The result of that was that
18 the lodge was unwilling to accept the agreement as
19 written and in that the agreement as written did not
20 capture the spirit of the verbal agreements made at
21 that meeting.

22 MR. GUYOT: After the last ANC meeting,
23 representatives of the Masonic Temple went to the
24 Cardoza Shaw Civic Association and made a
25 presentation. Is that correct?

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1 MR. ELLINGTON: That's correct.

2 MR. GUYOT: And at that meeting, the
3 Chairman of the Cardoza Shaw asked whether or not
4 anyone wanted to make a resolution to overturn their
5 opposition to this application. Did anyone make such
6 a motion?

7 MR. ELLINGTON: No, they said that they
8 would table this -- this situation at that time. They
9 would not -- they did not vote on anything at that
10 meeting.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. ELLINGTON: They would table it.
13 That's --

14 CHAIRPERSON GRIFFIS: All right. So,
15 clearly we have the picture that's been painted for us
16 that there is not a full agreement in the community.
17 What we need to now focus on is the case presented for
18 the zoning relief required and for the subsequent
19 holes one might poke in that case presentation.

20 MR. GUYOT: You ready?

21 CHAIRPERSON GRIFFIS: Absolutely.

22 MR. GUYOT: All right. Mr. Chairman, we
23 believe that at a regularly scheduled meeting of ANC-
24 1B --

25 CHAIRPERSON GRIFFIS: Is this a question?

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1 MR. GUYOT: No, but you -- okay.
2 Question. I'll stick to questions.

3 CHAIRPERSON GRIFFIS: Yes, we're still in
4 cross examination.

5 MR. GUYOT: We're still -- all right.

6 CHAIRPERSON GRIFFIS: After you finish
7 cross, we're going to go to Westminster --

8 MR. GUYOT: All right.

9 CHAIRPERSON GRIFFIS: -- to cross and then
10 we'll do presentation.

11 MR. GUYOT: Please provide me with the
12 main address and telephone number of anyone living in
13 that immediate area representing either Westminster,
14 Cardoza Shaw or ANC-1B that supports this application.

15 MS. BAILEY: Mr. Chairman, normally cross
16 examination is limited to the testimony that has been
17 presented and I don't recall any presentation by the
18 applicant in response to what -- the questions Mr.
19 Guyot is asking.

20 MR. GUYOT: This gentleman testified that
21 he had every reason to assume that he could secure the
22 approval of Westminster and every reason to assume
23 that he could secure the approval and support of ANC-
24 1B.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. GUYOT: That was his direct testimony,
2 Mr. Chairman.

3 CHAIRPERSON GRIFFIS: And -- and I -- I
4 understand that and I don't think the Board is of the
5 understanding that it would be easy to secure that and
6 let me just go to -- because there was actually a
7 petition that was submitted in support. Am I correct?

8 MR. NUNLEY: That's correct.

9 CHAIRPERSON GRIFFIS: And I -- did -- Mr.
10 Guyot, have you seen that petition in support?

11 MR. GUYOT: No, I have not.

12 CHAIRPERSON GRIFFIS: Okay. I think that
13 goes directly to the question and I think Ms. Bailey
14 is absolutely correct. Cross examination goes
15 directly to the testimony.

16 As that was submitted, I would ask that a
17 copy be provided to Mr. Guyot for his review.

18 Next question.

19 MR. GUYOT: How far -- you mentioned the
20 subway. How far is the entrance of the subway to --
21 to the entrance of the -- of the Masonic Temple? Mr.
22 Nunley?

23 MR. NUNLEY: I'm sorry.

24 MR. GUYOT: How far is the entrance of the
25 Masonic Temple from the entrance -- from the exit of

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1 the subway?

2 MR. NUNLEY: I don't -- I can't tell you
3 in exact feet, but it's very close.

4 MR. GUYOT: How close?

5 MR. ELLINGTON: I think that Mr. George
6 answered that. I think from the beginning of the
7 Masonic Temple it's about 145 feet. Mr. George.

8
9 CHAIRPERSON GRIFFIS: No, actually not.
10 I'll clarify it totally here. In the -- the site plan
11 of the Board, I think we can be well aware that the
12 Metro entrance is adjacent to the Masonic Temple
13 building. It's -- they're both on U Street. The
14 distance Mr. George was talking about is -- is the
15 distance away from Metro to your parking lot, but Mr.
16 Guyot is making a point that I think is very clear to
17 the Board.

18 Okay. Next.

19 MR. GUYOT: After looking -- having
20 someone look at this list, Mr. Chairman, very few of
21 them live in the neighborhood and we can't find any
22 members of the civic association --

23 CHAIRPERSON GRIFFIS: Ask a question or
24 bring it up in your case presentation.

25 MR. GUYOT: All right. Why should the

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1 Masonic Temple not agree to the agreement to the
2 settlement offered by Westminster?

3 CHAIRPERSON GRIFFIS: Actually, Mr. Guyot,
4 I perfectly understand the -- the reasoning and
5 rationale, but even if they said right now, we sign,
6 it doesn't help this Board in its deliberation for the
7 regulations or for the test under the regulations.

8 MR. GUYOT: Okay.

9 CHAIRPERSON GRIFFIS: So, I would -- I
10 would absolutely encourage if we don't finish today,
11 that continued conversation happen and agreements try
12 to be made, but as I said before, we're not counting
13 here. We have a test that has to be proven.

14 MR. GUYOT: We don't think it has been --
15 Mr. Chairman, believe me, we want to expedite this as
16 much as you do.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. GUYOT: Because we think we should be
19 able to settle this out today --

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. GUYOT: -- to everyone's satisfaction.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. GUYOT: I have no more questions for
24 these witnesses.

25 CHAIRPERSON GRIFFIS: Thank you very much.

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1 MR. GUYOT: Mr. -- I want -- I have a
2 question for Mr. George, but I'll -- I'll let him do
3 it in order and then I'll ask Mr. George this
4 question.

5 CHAIRPERSON GRIFFIS: If -- if --

6 MR. JOHNSON: Good.

7 MR. GUYOT: Thank you.

8 CHAIRPERSON GRIFFIS: Is that okay?

9 MR. JOHNSON: That's fine.

10 CHAIRPERSON GRIFFIS: That's fine. All
11 right. Let's go.

12 MR. JOHNSON: Mr. Nunley.

13 MR. NUNLEY: Yes.

14 MR. JOHNSON: Good afternoon.

15 MR. NUNLEY: Good afternoon.

16 MR. JOHNSON: You mentioned a screen wall.

17 MR. NUNLEY: That's correct.

18 MR. JOHNSON: Can you describe what a
19 screen wall is?

20 MR. NUNLEY: It's a -- a -- a wall
21 dictated by the zoning regulations to buffer adjacent
22 properties, but I don't understand the question.

23 MR. JOHNSON: All right. Section 20 --
24 sorry.

25 CHAIRPERSON GRIFFIS: 2300. Let's cut

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1 right to the chase. Are you asking him what material
2 the screen wall is? Where it is? Why it is?

3 MR. JOHNSON: The first I've heard of a
4 screen wall. I don't know -- I don't know what he's
5 talking about. I'm aware of Section --

6 CHAIRPERSON GRIFFIS: What's your concern
7 in terms of this case? That they provide it?

8 MR. JOHNSON: My -- my concern, yes, is
9 that -- is that what they're trying to use to comply
10 with Section 2302.2 --

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. JOHNSON: -- which talks about other
13 row hedges or a brick or stone wall, 12 inches deep
14 and 42 inches high.

15 CHAIRPERSON GRIFFIS: So, the question is
16 can you clarify what you're proposing as a screen wall
17 around the parking lot?

18 MR. NUNLEY: We'll be using both. We'll
19 be using landscaping along the Vermont Avenue and
20 screen wall adjacent to the -- the property that we
21 abut.

22 CHAIRPERSON GRIFFIS: Bingo. Screen wall.
23 So, what is this screen wall? Is it brick?

24 MR. NUNLEY: It is brick.

25 CHAIRPERSON GRIFFIS: It is brick.

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1 MR. NUNLEY: It is brick.

2 CHAIRPERSON GRIFFIS: How high is it?

3 MR. NUNLEY: Forty-two inches. It's
4 consistent with the -- the requirements of the
5 regulations.

6 CHAIRPERSON GRIFFIS: Is there a concrete
7 cap on it? Is it a brick cap? What does it look
8 like?

9 MR. NUNLEY: All I know is that the
10 substance of the wall is brick. We --

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. NUNLEY: -- can put a concrete cap on
13 it if -- if they'd like.

14 CHAIRPERSON GRIFFIS: Does that give
15 clarification to what they're proposing as a screen
16 wall around the site?

17 MR. JOHNSON: It -- it makes it more
18 problematic, Mr. Chairman. There's nothing that I'm
19 aware of in their site plans to all of you or to any
20 of us that they're doing anything like that.

21 CHAIRPERSON GRIFFIS: That's an excellent
22 question. Is it graphically represented in the case
23 submissions?

24 MR. NUNLEY: It -- it is graphically
25 represented on one of the plats. Bear with me. I'll

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1 pull that out. The one that shows the landscaping
2 also shows the screen wall.

3 MR. ELLINGTON: Mr. Chair, the --

4 CHAIRPERSON GRIFFIS: Yes.

5 MR. ELLINGTON: -- the screen wall that
6 we're speaking of is at the back of the parking lot
7 where there are two houses. That goes in the back.
8 Not -- not around the entire parking lot.

9
10 CHAIRPERSON GRIFFIS: Does that show
11 anywhere in the submissions?

12 MR. NUNLEY: Yes, I'm looking through the
13 plat now. The -- the plat that should be --

14 MR. ELLINGTON: Okay, sir. The parking
15 lot is here. You have houses -- there's a house there
16 and there's a house there and we're talking about
17 putting brick along that back to the alleyway not
18 around the entire parking lot.

19 MR. NUNLEY: All right. I -- I see what
20 has happened. The screen wall is showing on one plat
21 and not on the plat with the landscaping.

22 CHAIRPERSON GRIFFIS: Mr. Johnson, are you
23 clear? Does that bring it --

24 MR. JOHNSON: I'm -- I'm clear, but --

25 CHAIRPERSON GRIFFIS: -- clarity?

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1 MR. JOHNSON: -- it's more important that
2 the Board become clear and it sounds as though they're
3 talking about putting it on --

4 CHAIRPERSON GRIFFIS: Don't walk too far
5 away from a mike.

6 MR. JOHNSON: Okay. Thank you. They're
7 talking about putting it on roughly one-half of what
8 I'm going to call the west boundary of the parking lot
9 with the lower half being --

10
11 CHAIRPERSON GRIFFIS: Lift -- lift your
12 mike up. Lift your mike up.

13 MR. JOHNSON: Power? It's on. Can you
14 hear me? I'm sorry.

15 CHAIRPERSON GRIFFIS: Yes.

16 MR. JOHNSON: Mr. Ellington can correct
17 me, but it's going to -- the -- the brick wall is
18 going to be on the west side roughly one-half the
19 distance. The other half being taken up with a house.

20 CHAIRPERSON GRIFFIS: Is that correct?

21 MR. NUNLEY: Yes, that's the way it's
22 showing on the plat. I believe that's part of the --

23 CHAIRPERSON GRIFFIS: Okay. I'm clear.

24 MR. NUNLEY: -- record.

25 MR. JOHNSON: Mr. Nunley, are you aware

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1 that the regulations require a hedge or a brick wall
2 around the entire perimeter?

3 MR. NUNLEY: I don't -- no. Would you
4 show me the regulation? I assume you have it there.
5 I don't -- I didn't bring my code book with me and I
6 don't try to remember these regulations.

7 We are using both screening from the
8 street and the masonry wall as a buffer to adjacent
9 -- to protect adjacent residential property.

10 MEMBER ZAIDAIN: Mr. Chair.

11
12 CHAIRPERSON GRIFFIS: Yes.

13 MEMBER ZAIDAIN: Just some clarification
14 on the point. Are you suggesting that they -- that
15 they are required to have a masonry wall around the
16 whole entire perimeter? Did I hear you say that right
17 or just along that western property line?

18 MR. JOHNSON: No, that entire perimeter
19 save the entrance are. That's correct. That's under
20 -- under regulations.

21 MEMBER ZAIDAIN: Where -- where is that
22 required?

23 MR. JOHNSON: 2302.2 and I do not have
24 that in front of me.

25 MR. NUNLEY: We tried to screen it from

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1 residential properties -- adjacent residential
2 properties.

3 CHAIRPERSON GRIFFIS: Well, that's not
4 right.

5 MR. JOHNSON: That -- I'm sorry. That is
6 what I have in my -- I know it's 2302.2.

7 MEMBER ZAIDAIN: Well, what I -- well --

8 CHAIRPERSON GRIFFIS: It's 2303. Oh, boy.

9 MR. ELLINGTON: Mr. President -- Mr.
10 Chair, it's a change in direction. The Office of
11 Planning has sent as a list of things that we needed
12 to do and one of those things was for us to put the
13 screening walls next to -- next to the properties and
14 that's what we put in our plans not -- not around the
15 entire property and I'll assumption we're going --
16 going according to what the Office of Planning done in
17 accordance with the code or regulation.

18 MEMBER ZAIDAIN: Well, my quick reading of
19 the regulations, I think it's a screen -- a screening
20 wall in between the screen from the residential --
21 adjoining residential properties. I don't think it's
22 around the whole entire site. I don't think you have
23 to screen it from the right of way of T Street or --
24 or Vermont Avenue just from my look at it -- looking
25 at it.

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1 MR. JOHNSON: If you -- if I can speak --

2 MEMBER ZAIDAIN: If that's -- if that's
3 indeed required, I mean that's --

4 CHAIRPERSON GRIFFIS: Okay.

5 MEMBER ZAIDAIN: -- a whole other level of
6 relief.

7 MR. JOHNSON: Without having the -- the
8 regulation in front of me, I think Mr. Zaidain is
9 correct that it talks about residential property and I
10 suppose the question then becomes definitionally what
11 are we talking about residential property. Certainly,
12 we have residential property to the south and to the
13 east also, but there's a street between the two of
14 them.

15 It seems that the wall would still be
16 required on a logical context because we have
17 certainly the light -- headlight problems coming from
18 the parking lot to the houses that are across the
19 street as well as to the houses that are immediately
20 next to the parking lot.

21 MR. NUNLEY: The regulation has always
22 been interpreted to mean contiguous residential
23 properties.

24 MR. JOHNSON: I'm -- I'm at a disadvantage
25 in that I don't have it in front of me now either.

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1 CHAIRPERSON GRIFFIS: Okay. Well, there
2 it is. We'll -- we'll get clarification as we review
3 Chapter 23 and clearly the point now -- the question
4 has elicited the fact of what is actually going to be
5 provided.

6 However, you are showing landscaping off
7 your property line. Are you not? See you're --
8 you're going to be providing that public space
9 landscaping in front -- that fronts T Street.

10 MR. ELLINGTON: That's correct.

11 CHAIRPERSON GRIFFIS: Okay. The next
12 question, Mr. Johnson.

13 MR. JOHNSON: Yes, just -- just briefly.
14 The landscaping that's shown here if I can ask Mr.
15 Nunley or Mr. George, is that the specific number of
16 hedges that are shown here that actually are intended
17 to be installed? Mr. George?

18 CHAIRPERSON GRIFFIS: There is a submitted
19 landscape plan that itemizes the actual plants that
20 are going to be put in. That's what's being proposed?
21 Good. Do you have a copy of that, Mr. Johnson?

22 MR. JOHNSON: I do not.

23 CHAIRPERSON GRIFFIS: We'll get you a
24 copy.

25 MR. JOHNSON: And -- and the problem with

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1 it, of course, is that the regulations state that it
2 shall be a thick and dense set of hedges or
3 evergreens. So -- and it doesn't say it, but
4 obviously the point is it needs to block out the light
5 and -- and the noise to the extent that it can.

6 Certainly, what's there now and certainly,
7 what is being proposed here does not appear to be a
8 set of dense hedges.

9 CHAIRPERSON GRIFFIS: Is that a question?

10 MR. JOHNSON: And I was asking that to Mr.
11 Nunley if he knew.

12 CHAIRPERSON GRIFFIS: Okay.

13 COMMISSIONER PARSONS: Mr. Johnson, I
14 think you'd -- you'd be better off to look at the
15 landscape plan. That is not it. It's very dense.
16 It's very thick. It's evergreen.

17 MR. JOHNSON: Thank you.

18 CHAIRPERSON GRIFFIS: Next question.

19 MR. JOHNSON: Okay. Mr. Nunley, you have
20 asked for -- is it 21 parking spaces?

21 MR. NUNLEY: That's -- I believe that's
22 what shows on the layout. Yes.

23 MR. JOHNSON: How many cars are parking
24 there now?

25 MR. ELLINGTON: We have -- we have 28

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1 spaces there now and that is a result of re-striping
2 that -- that area a few months ago.

3 CHAIRPERSON GRIFFIS: Twenty-eight spaces
4 in the parking lot that's showing here?

5 MR. NUNLEY: They will be re-stripped.

6 MR. ELLINGTON: They will be re-stripped.

7 MR. JOHNSON: Mr. Ellington, are you aware
8 that your 1988 order from this Board permitted you to
9 park 21 subject to 22?

10 MR. ELLINGTON: No, I'm not. I wasn't
11 aware.

12 MR. NUNLEY: Yes, that -- that is correct.

13 MR. JOHNSON: Thank you, Mr. Nunley.

14 Mr. Ellington, when did you start parking
15 29 spaces there?

16 MR. ELLINGTON: Twenty-eight.

17 MR. JOHNSON: I'm sorry. Twenty-eight.

18 MR. ELLINGTON: That was about -- during
19 the summer months of 2002.

20 MR. JOHNSON: And prior to the striping
21 how many cars did you have parking there?

22 MR. ELLINGTON: I think we gained a few
23 parking -- we had 21 prior to that.

24 MR. JOHNSON: Are any of those parking
25 spaces specifically set aside?

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1 MR. ELLINGTON: Should be one -- one space
2 for handicapped.

3 MR. JOHNSON: Well, although -- you have
4 -- you have one handicapped now.

5 MR. ELLINGTON: Right.

6 MR. JOHNSON: Is that correct?

7 MR. ELLINGTON: Yes, and we have four set
8 aside for our Grand Lodge officers.

9 MR. JOHNSON: Are those -- I'm sorry. Set
10 aside for?

11 MR. ELLINGTON: The Grand Master.

12

13 MR. JOHNSON: Are those Grand Masters and
14 -- and related executives elderly and/or handicapped?

15 MR. ELLINGTON: They're -- they're -- some
16 of them are over 60. They're not handicapped.

17 MR. JOHNSON: The other parking spaces who
18 is entitled to park on them and I'm talking about the
19 Mason members?

20 CHAIRPERSON GRIFFIS: Well, actually, let
21 me try and gain the pertinence to these questions.

22 MR. JOHNSON: The -- the pertinence to the
23 questions might be premature. The -- my understanding
24 was they've asked for this parking lot because they
25 have many elderly and handicapped members that -- that

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1 need to park there and it appears certainly
2 historically and I suspect perspective that this lot
3 will be not be used for either elderly or handicapped.

4 CHAIRPERSON GRIFFIS: Okay. I believe I
5 hear some disagreement. Actually, it -- as the -- as
6 the point being in terms of the zoning regulations and
7 you can put the hand mike down and use the table mike.

8 MR. JOHNSON: Thank you.

9 CHAIRPERSON GRIFFIS: The -- clearly, what
10 we'd be looking at is the required size of each space.

11 Now, if you want to somehow elicit the fact that the
12 basis and crux of their case is that they have elderly
13 or handicapped parking, I think not asking them
14 directly are these handicapped people you may want to
15 rethink that or give something else in your testimony
16 that -- that brings that out.

17 MR. NUNLEY: If -- if I might give a
18 response to one of your earlier questions, the 28
19 spaces we put were striped when the parking lot was
20 repaved. Mr. George's report clearly indicates that
21 re-striping will be necessary once the application is
22 approved because the spaces that are there were not
23 done consistent with the regulations. It was just
24 someone come in -- came in trying to upgrade the
25 parking lot and just striped it based on what they

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1 thought was allowable. That -- we understand that the
2 -- they will have to be re-stripped consistent with
3 this plan that we provided.

4 MR. JOHNSON: Mr. Ellington, for the
5 record, is it true that right now the -- the lot --
6 the spaces are first come first served to the members?

7 MR. ELLINGTON: Yes, sir, except for those
8 four designated areas.

9 MR. JOHNSON: You indicated that you made
10 some inquiries as to available other parking in
11 addition to your lot. Is that correct?

12 MR. ELLINGTON: Yes, sir.

13 MR. JOHNSON: And you indicated in
14 response to WNA's suggestions to you that you talked
15 to the Housing Finance Agency at 9th and roughly 900
16 block of U Street. Is that correct?

17 MR. ELLINGTON: That's correct.

18 MR. JOHNSON: Did they tell you that they
19 have 50 spots available for your use -- for your use?

20 MR. ELLINGTON: They -- no, they did --
21 they said that they had 50 spots, but they would have
22 to look into everything. We are negotiating with them
23 at this present time. So, we don't know what we have
24 available, what the cost may be or anything.

25 MR. JOHNSON: How long ago did you

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1 initially contact them?

2 MR. ELLINGTON: Right after we -- we had
3 the meeting that we had with the WNA, Westminster
4 Neighborhood Association.

5 MR. JOHNSON: And for the record, that was
6 February 20th -- the evening of February 20th which is
7 last Thursday.

8 MR. ELLINGTON: Yes, sir.

9 MR. JOHNSON: You contacted HFA on Friday?

10 MR. ELLINGTON: Yes, sir.

11 MR. JOHNSON: All right. Did they tell
12 you how many spaces they might have available for you?

13 MR. ELLINGTON: They said about 50 spaces,
14 but we didn't --

15 MR. JOHNSON: Okay.

16 MR. ELLINGTON: -- we didn't reach no kind
17 of agreement or anything. We're just talking about
18 it.

19 MR. NUNLEY: As testified earlier, we --
20 they asked that we put together a plan giving them an
21 idea of when we would need the spaces so that they can
22 respond to our request.

23 MR. JOHNSON: In fact, your testimony
24 talked about putting together a plan of large affairs.

25 Is that correct? Mr. Ellington, is that what you

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1 talked to them about?

2 MR. ELLINGTON: The HFA?

3 MR. JOHNSON: Yes.

4 MR. ELLINGTON: Yes, sir, and -- and the
5 -- the parking in the evenings as well.

6 MR. JOHNSON: Yes. All right. This is
7 something new to the Board. Now, you was talking
8 about parking in the evening on -- during a daily
9 basis?

10 MR. ELLINGTON: if -- if that's what we --
11 we come up with after we negotiate with them, yes.

12 MR. JOHNSON: The question --

13 MR. ELLINGTON: Anything that we -- they
14 can provide us with, we'll certainly consider.

15 MR. JOHNSON: The question is, Mr.
16 Ellington, I'm sorry. The question is did you ask HFA
17 about parking there on a regular daily or nightly
18 basis?

19 MR. ELLINGTON: Yes, sir.

20 MR. JOHNSON: All right. Did you speak to
21 the owners of the private parking lot at 1932 9th
22 Street? For the record, that's roughly two blocks
23 away. Is that correct?

24 MR. ELLINGTON: We have no spoke with them
25 yet. Our intention is to -- to speak with them.

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1 MR. JOHNSON: In the 72 years you have
2 been there, have you spoke with the parking lot at 9?
3 -- I'm sorry -- 1900 block of 12th Street?

4 MR. ELLINGTON: 1900 block. What -- what
5 parking lot is that?

6 MR. JOHNSON: This is directly north of U
7 Street on 12th Street.

8 MR. NUNLEY: He can't respond to the 72
9 years they've been there.

10 MR. ELLINGTON: I don't know.

11 MR. JOHNSON: No. I guess the point, Mr.
12 Nunley, is that we're here today at a hearing before
13 the Board --

14 CHAIRPERSON GRIFFIS: Please ask some
15 questions. Make your points in your presentation.

16 MR. JOHNSON: And have you talked with the
17 parking lot at the Reeve Center?

18 CHAIRPERSON GRIFFIS: Actually, before you
19 list all the ones that you're about to list, why don't
20 you ask them all who have you talked to in other
21 parking arrangements?

22 MR. ELLINGTON: And the -- the only ones
23 we have talked with is the HFA.

24 CHAIRPERSON GRIFFIS: Indeed.

25 MR. JOHNSON: What budge do you currently

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1 have allocated for the proposed changes that you put
2 before the Board?

3 CHAIRPERSON GRIFFIS: Actually, I didn't
4 hear any testimony on budget or budgetary figures
5 unless you're aware of any.

6 MR. JOHNSON: We'll withdraw.

7 Mr. Ellington, you indicated that you sent
8 a letter to the BZA in 1987. Is that correct? Asking
9 them what you should do about your expired parking lot
10 exception?

11 MR. ELLINGTON: November 3rd, 1987. Yes.

12 MR. JOHNSON: I'm sorry. November 3rd?

13
14 MR. ELLINGTON: Yes.

15 MR. JOHNSON: All right. Are you aware
16 that it's your responsibility having obtained the
17 exception to apply for that exception on your own?

18 MR. ELLINGTON: yes.

19 MR. JOHNSON: And can you tell the Board
20 why it took more than 12 years to do that?

21 MR. ELLINGTON: During that period of
22 time, we had an attorney handling that for us and, of
23 course, we can't contact him. So, we don't know. I
24 really don't know what took place. I do have a copy
25 of the letter and that's -- that's all I have.

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1 MR. JOHNSON: Mr. Ellington, Clyde Howard
2 who testified here is a member of the Mason's. Is he
3 not?

4 MR. ELLINGTON: He is and -- and a
5 resident of -- of that area.

6 MR. JOHNSON: If the Board does consider
7 your request and you have proposed developments from
8 brick walls to hedges to striping and other things,
9 are you willing to have the Board impose time
10 deadlines on you at this time?

11 MR. NUNLEY: That's within the discretion
12 of the Board. I don't understand the question.

13 MR. JOHNSON: I'm simply asking Mr.
14 Ellington if the Masons are willing to consider time
15 deadlines for some of these improvements.

16 MR. NUNLEY: We won't be able to get the
17 certificate of occupancy until the improvements are
18 made.

19 CHAIRPERSON GRIFFIS: Time deadlines. You
20 mean use of the parking is what you're going to, Mr.
21 Johnson?

22 MR. JOHNSON: No, I was really talking
23 about the time conditions of approval such that these
24 various improvements must be done by a date certain
25 subject to which --

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1 CHAIRPERSON GRIFFIS: I see. Okay. May I
2 finish the question? Bring up that may be more strong
3 in your testimony offering some of those conditions,
4 of course, and the Board would clearly look at that.
5 I think the regulations will dictate finding out a lot
6 of the elements that if approved would be required.

7 Anything else?

8 MR. JOHNSON: Yes. Mr. Ellington, what
9 time do the meetings generally get done at night at
10 the Masons?

11 MR. ELLINGTON: Between 11:00 and 12:00 at
12 night.

13
14 MR. JOHNSON: And do they ever go past
15 12:00?

16 MR. ELLINGTON: Sometimes.

17 MR. JOHNSON: Do they ever go past 1:00?

18 MR. ELLINGTON: No, not that I know of.

19 MR. JOHNSON: And are you aware of what
20 time the Metro closes that's right next door?

21 MR. ELLINGTON: No, I'm not aware.

22 MR. JOHNSON: Do you ever counsel or
23 encourage your members to use the Metro or public
24 transportation?

25 MR. ELLINGTON: Yes, sir, we started that

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1 when the Metro was open. We first started --

2 MR. JOHNSON: How do you --

3 MR. ELLINGTON: -- we started counseling
4 our members to use Metro.

5 MR. JOHNSON: Mr. Ellington, how can you
6 encourage them if you don't know yourself what time it
7 closes?

8 MR. ELLINGTON: I can still encourage them
9 to use Metro.

10 CHAIRPERSON GRIFFIS: Actually, a direct
11 question and -- but, let's keep the moans and groans
12 down because it may start the Board moaning and
13 groaning and then once you get us going, it's hard to
14 stop. But, why don't we go directly to the -- I think
15 the heart of that question which is a good one is how
16 do you notify members of -- of the -- the Metro and
17 the provision of its use and encourage its use?

18 MR. ELLINGTON: We have what we call
19 jurisdictional meetings two or three times a year and
20 we bring up the -- we have brought up those issues at
21 those meetings.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. ELLINGTON: And a jurisdictional
24 meeting is the entire membership.

25 CHAIRPERSON GRIFFIS: And so, in

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1 publication, they go out to memberships at the
2 mailings or there's indication that there's a --

3 MR. ELLINGTON: That happened.

4 CHAIRPERSON GRIFFIS: Okay. Is there
5 schedules at all kept on site for the Metro or
6 anything of that nature? Like maps or anything like
7 that. Information.

8 MR. ELLINGTON: No, there isn't.

9 CHAIRPERSON GRIFFIS: Okay. Mr. Johnson,
10 any other questions?

11 MR. JOHNSON: Mr. Ellington, you put some
12 type of guard shack on the property approximately a
13 year ago. Is that right?

14

15 MR. ELLINGTON: During the summer months.

16 CHAIRPERSON GRIFFIS: Yes. Okay. There's
17 a shack on the property.

18 MR. ELLINGTON: On August time frame.

19 MR. JOHNSON: Did you obtain a permit for
20 that?

21 MR. ELLINGTON: No, we did not and we're
22 -- we're under the understanding that we did not have
23 to obtain a permit on a building such as that.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. ELLINGTON: There's not --

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1 CHAIRPERSON GRIFFIS: Actually, we
2 couldn't have any jurisdiction whether it's correctly
3 permitted or not. You can appeal that, of course, and
4 we'll hear it, but we can't hear it now.

5 MR. ELLINGTON: It is movable.

6 CHAIRPERSON GRIFFIS: Let's go.

7 MR. ELLINGTON: It's portable.

8 CHAIRPERSON GRIFFIS: Next question.

9 MR. JOHNSON: You currently do not have a
10 C of O for that parking lot. Correct?

11 MR. ELLINGTON: Have a what?

12 MR. JOHNSON: I'm sorry. Certificate of
13 Occupancy?

14 MR. ELLINGTON: Currently?

15

16 MR. NUNLEY: That's correct. It's
17 expired.

18 MR. ELLINGTON: No, that's correct.

19 MR. JOHNSON: All right.

20 MR. NUNLEY: It's the basis for this case.

21 MR. JOHNSON: Would you be willing --
22 would you be willing if the Board cannot make a
23 decision immediately to terminate the use of that lot
24 that is currently illegally being used as a parking
25 lot until this Board gives you approval?

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1 MR. ELLINGTON: If the Board so -- if the
2 Board -- in my opinion, if the Board directs that, we
3 have no choice but to do that.

4 CHAIRPERSON GRIFFIS: I don't think you
5 understood the question and so, let me try and clarify
6 it briefly.

7 If we don't finish this today and decide
8 it on the bench, are you willing to stop using that
9 surface parking lot until we come to some decision?
10 That's a good yes or no answer.

11 MR. ELLINGTON: Definitely. I would say,
12 you know --

13 CHAIRPERSON GRIFFIS: No?

14 MR. ELLINGTON: No.

15 CHAIRPERSON GRIFFIS: Okay. Next
16 question.

17 MR. ELLINGTON: We -- we want to use it.

18 MR. JOHNSON: Mr. Ellington, are you aware
19 that your prior orders did not permit you to use that
20 parking lot for commercial rental purposes?

21 MR. ELLINGTON: Are -- are we aware of
22 that?

23 MR. JOHNSON: Yes.

24 MR. ELLINGTON: Yes.

25 MR. JOHNSON: And yet, you have used it

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1 that way. Have you not?

2 MR. ELLINGTON: We have.

3 MR. JOHNSON: You have. Are you aware
4 that --

5 MR. ELLINGTON: Yes, but -- but we
6 discontinued that. We don't -- at this point, we are
7 not -- we don't have anything on the books as far as
8 commercial property.

9 MR. JOHNSON: Okay.

10 CHAIRPERSON GRIFFIS: Okay. Next.

11 MR. JOHNSON: Mr. Nunley, are you aware
12 that Jimmy Bell who filed the initial statement with
13 this Board indicated that they had no plans to build
14 any walls or screening walls as you now call them?

15 MR. NUNLEY: No, I have no idea what Jimmy
16 Bell may have done prior to my involvement.

17 MR. JOHNSON: As representative, are you
18 not -- are you not --

19 CHAIRPERSON GRIFFIS: Do we -- Mr.
20 Johnson, do we care?

21 MR. JOHNSON: If -- if there's been a -- a
22 resubmission --

23 CHAIRPERSON GRIFFIS: Right.

24 MR. JOHNSON: -- Mr. Chairman, no, I
25 haven't seen it. But, if there has been one --

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1 CHAIRPERSON GRIFFIS: Yes. Okay.

2 MR. JOHNSON: -- then it's a moot issue.

3 CHAIRPERSON GRIFFIS: I'm sorry. I
4 thought it was handed to you because I think it's
5 pretty pertinent and it shows the landscaping and the
6 wall provision. I think that's what we should focus
7 on --

8 MR. JOHNSON: Okay.

9 CHAIRPERSON GRIFFIS: -- rather than what
10 was past because this would supersede it. We might as
11 well throw the other stuff out.

12 MR. JOHNSON: Mr. Ellington, are you aware
13 that that parking lot as it geographically exists is
14 prime property for development?

15 MR. ELLINGTON: Yes.

16 MR. JOHNSON: I only have questions now
17 for Mr. George. Should I turn it over to the ANC?

18 CHAIRPERSON GRIFFIS: Yes, Mr. George.
19 I'll note that the time is getting to be about 3:15.

20 MR. JOHNSON: I'm sorry. Mr. George, good
21 afternoon.

22 CHAIRPERSON GRIFFIS: Good afternoon.

23 MR. GEORGE: Good afternoon again.

24 MR. JOHNSON: In preparation of your
25 testimony today, how many times did you personally

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1 visit the site parking lot?

2 MR. GEORGE: I'd say at least seven or
3 eight times.

4 MR. JOHNSON: Personally?

5 MR. GEORGE: Yes, sir.

6 MR. JOHNSON: Times of day? Varied or the
7 same?

8 MR. GEORGE: They varied.

9 MR. JOHNSON: Did you do a weekend visit?

10 MR. GEORGE: Yes, sir.

11 MR. JOHNSON: Mr. Howard indicates that
12 there's a cup in the Vermont Avenue -- I thought you'd
13 call a dividing line approximately here. Is that
14 correct?

15 MR. GEORGE: Yes, a bit further to the
16 north. A bit further up to the north.

17 MR. JOHNSON: Is there some reason why
18 it's not on you diagram?

19 MR. GEORGE: Yes, a very good reason. We
20 focused on the situation which pretty much enclosed
21 the -- the property. In other words, the west side of
22 Vermont Avenue and along the U Street and 11th Street
23 site.

24 There's a good reason because we think
25 that the width of Vermont Avenue particularly with the

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1 raised median forms a sort of natural divide. So, you
2 are correct. We did not show, for example, the first
3 station property or the details in the median and it
4 is for that -- for the said reason.

5 MR. JOHNSON: In your seven or eight
6 visits to the site, did you notice any cars coming
7 northbound on Vermont and at T Street instead of
8 coming up this way illegally entering in the
9 southbound lane traveling up the 50 or you say 175
10 feet whatever it may be to the entrance and taking a
11 left into the parking lot?

12 MR. GEORGE: No, I never noticed that.

13 MR. JOHNSON: You indicate that the
14 parking lot is approximately 175 feet from the rear of
15 the Grand Hall. Is that correct?

16
17 MR. GEORGE: That is correct.

18 MR. JOHNSON: Are you familiar with the
19 parking regulations in this city?

20 CHAIRPERSON GRIFFIS: Ask the direct
21 question.

22 MR. JOHNSON: The question is are you
23 aware that -- that that 175 feet is not how you count
24 whether they need a variance or not for the 200 feet
25 requirement?

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1 CHAIRPERSON GRIFFIS: That's why they're
2 here.

3 MR. JOHNSON: Yes.

4 CHAIRPERSON GRIFFIS: And your point is
5 that the regulations say that the entire parking lot
6 has to be within 200 feet not a portion of it. Okay.

7 MR. JOHNSON: During your seven or eight
8 visits, Mr. George, are you aware of the chain-link
9 fence that is erected on the west side of the parking
10 lot?

11 MR. GEORGE: Could you show me the
12 location on the exhibit for clarification please?

13 MR. JOHNSON: Right here.

14 MR. GEORGE: Yes.

15 MR. JOHNSON: Were you aware that that
16 chain-link fence is damaged and permits people to
17 enter and exit the lot?

18 MR. GEORGE: I don't understand your
19 question.

20 CHAIRPERSON GRIFFIS: How does that go to
21 traffic engineering is what Mr. George is saying?

22 MR. JOHNSON: Let me withdraw it. If
23 they're going to --

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. JOHNSON: They've proposed to change

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1 it, Mr. Chairman. So, let me withdraw the question.

2 CHAIRPERSON GRIFFIS: And, you know, I
3 would again tell you that and I'm sure you're aware,
4 but in your case presentation, you can bring all of
5 this out rather than --

6 MR. JOHNSON: Very well.

7 CHAIRPERSON GRIFFIS: More like pulling
8 teeth to get some of this stuff.

9 MR. JOHNSON: Mr. George, finally, from
10 your knowledge of the hedges that will be -- that are
11 submitted to the Board in your -- in their proposal,
12 what level of -- of effect will they have on stopping
13 the headlights going into the residential houses?

14 MR. GEORGE: Oh. Okay. Appreciate the
15 question, Mr. Johnson, but again, I was admitted as an
16 expert in traffic engineering --

17 MR. JOHNSON: Sorry.

18 MR. GEORGE: -- not landscape
19 architecture.

20 MR. JOHNSON: Are you -- were you made
21 aware of how many Masons drive to the Grand Lodge on
22 an average night?

23 MR. GEORGE: No, I was not.

24 MR. JOHNSON: Subject to check, are you
25 aware that -- in fact, if we can ask Mr. Ellington.

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1 Mr. Ellington, forgive me. Your memory I think was --
2 was it 150 -- 120 on average?

3 CHAIRPERSON GRIFFIS: I believe they
4 indicated that the current regulations based on the
5 size and use of their property would require about 112
6 parking spaces. Is that what you mean?

7 MR. ELLINGTON: That's -- that's what it
8 comes from.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. JOHNSON: Mr. George, given your
11 experience in your field and given that there are 21
12 lots here give or take, is it your recommendation that
13 the members make the ultimate use of public parking
14 given the situation of the Metro next to it?

15 MR. GEORGE: Of public parking did you say
16 or --

17 MR. JOHNSON: No, of public transportation
18 use by the Masons.

19 MR. GEORGE: Yes, I as a professional and
20 personally a strong proponent of the use of -- of
21 public transportation and we would recommend that
22 highly. Yes.

23 MR. JOHNSON: No further questions of Mr.
24 George.

25 CHAIRPERSON GRIFFIS: Any of Mr. Howard?

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1 MR. JOHNSON: None.

2 CHAIRPERSON GRIFFIS: Any -- do you cross
3 examination of Mr. Howard?

4 MR. GUYOT: No. I have one question of
5 Mr. George.

6 CHAIRPERSON GRIFFIS: Oh, indeed. I'm
7 sorry. You do have cross examination of Mr. George.
8 Proceed.

9 MR. GUYOT: Mr. George, in your study, you
10 heard -- you heard testimony today of ten parking
11 spots in that immediate -- parking places in that
12 vicinity. Did you make a study of the use by the
13 Masons of any of those?

14 MR. GEORGE: Could you be clear as to the
15 ten parking spaces that you're referring to?

16 MR. GUYOT: Oh, yes, you know, the HFA,
17 the 920 -- the 930 Club --

18 MR. GEORGE: Okay.

19 MR. GUYOT: -- 12th Street.

20 MR. GEORGE: Okay. Yes.

21 MR. GUYOT: The -- the adjoining parking
22 spaces on 9th Street. Did you consider any of the ten
23 of those as a possible alternative for the Masons?

24 MR. GEORGE: No, our study focused on the
25 -- the application, the proposed use, and whether or

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1 not it would comply with the zoning regulation.

2 MR. GUYOT: And in your testimony, you
3 said that the -- the liquor was not served to the
4 Masons. Isn't it true that Masons have a liquor
5 license that we helped them get?

6 MR. GEORGE: I did not study that.

7 MR. GUYOT: So, you didn't know that.

8 MR. GEORGE: No.

9 MR. GUYOT: Okay. All right.

10 MR. GEORGE: Yes.

11 MR. GUYOT: I just -- I didn't want you to
12 miss inform the Board.

13 MR. GEORGE: All right. Thank you.

14 MR. GUYOT: Yes.

15 CHAIRPERSON GRIFFIS: Anything else?

16 MR. GUYOT: No.

17 CHAIRPERSON GRIFFIS: Okay. Very well.

18 We are at interestingly enough 3:20.

19 I would suggest at this point that we set
20 this for the next approximate date and which we will
21 begin with the government reports. That's Office of
22 Planning and Department of Transportation. We will
23 then hear the presentation of the ANC case and then we
24 will have the parties' cases and it comes to my
25 attention and I believe we have March 18th available.

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1 MR. GUYOT: Mr. Chairman.

2 CHAIRPERSON GRIFFIS: Yes.

3 MR. GUYOT: I hope you would reconsider
4 that because I -- I think we can settle this.

5 CHAIRPERSON GRIFFIS: We cannot get
6 through the rest of this case.

7 MR. GUYOT: Okay. All right.

8 CHAIRPERSON GRIFFIS: I mean just based on
9 the simple requirements. We're going to have
10 testimony from Office of Planning, DDOT. We've have
11 cross examination.

12 MR. GUYOT: All right.

13 CHAIRPERSON GRIFFIS: I have the
14 presentation of both your cases and then I have
15 rebuttal testimony and then I have closing all of
16 which is another good two and a half hours.

17 MR. GUYOT: We tried.

18 CHAIRPERSON GRIFFIS: Indeed and I wish I
19 could finish it and go home.

20 MR. GUYOT: No, I understand. I
21 understand.

22 CHAIRPERSON GRIFFIS: But, we may be
23 looking at another five to six hours here today.

24 MR. GUYOT: Okay.

25 CHAIRPERSON GRIFFIS: Is that correct?

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1 MR. MOY: March 18th in the afternoon is
2 fine.

3 CHAIRPERSON GRIFFIS: Is that the NCIC?

4 MR. MOY: We don't have that yet.
5 Although, the next available date would be May the --

6 CHAIRPERSON GRIFFIS: Eighteenth. Okay.
7 Or May 6th.

8 Let me -- let me ask everyone check their
9 schedule. I need to take 30 seconds to talk to staff
10 and my Board. If you would, check your availabilities
11 for March 18th in the afternoon.

12 (Whereupon, at 3:25 p.m. off the record
13 until 3:28 p.m.)

14 CHAIRPERSON GRIFFIS: Okay. Let me just
15 verify availabilities on the 18th. Then we're going
16 to just have last questions from the Board for today
17 and we will then continue this case.

18 Eighteenth availability Westminster. Yes.
19 ANC, correct and applicant also?

20 (Yes.)

21 CHAIRPERSON GRIFFIS: Excellent. Then
22 that being said questions from the Board.

23 COMMISSIONER PARSONS: Mr. Chairman, I
24 won't -- I won't be able to be here on the that
25 afternoon, but I'll certainly read the transcript and

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1 the record of the proceedings and be able to vote, but
2 I did want to ask Mr. Ellington something that -- you
3 mentioned in your testimony that spoke to the -- I'll
4 paraphrase you. So, not trying to quote you. But,
5 what I grasped from it was that you are willing or
6 anxious to discuss with the community the longer range
7 future of this parcel of land.

8 MR. ELLINGTON: Sir, yes. In my -- in my
9 deposition, I stated that the Grand Lodge will be
10 strategizing to implement plans to benefit the
11 community and as well as the Masonic family.

12 COMMISSIONER PARSONS: Well, did you --
13 did you --

14 MR. ELLINGTON: That -- that means
15 development if possible. We just -- we just renovated
16 to make the U Street corner look good, our facade.

17 COMMISSIONER PARSONS: Yes.

18 MR. ELLINGTON: We -- we have three
19 houses. We renovated those to make the community look
20 good. So, certainly, we -- we're going in a priority
21 type thing here to certainly get to that point.

22 COMMISSIONER PARSONS: So, did --

23 MR. ELLINGTON: We're looking at that.
24 Yes.

25 COMMISSIONER PARSONS: So, you mean then

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1 that in the long term the parking lot would presumably
2 disappear in -- in favor of -- of development with
3 architectural --

4 MR. ELLINGTON: In a long term -- not --
5 not presumably disappear. We may be looking at the
6 very structure of where staff may be parking under a
7 structure or something, housing, et cetera.

8 COMMISSIONER PARSONS: Okay.

9 CHAIRPERSON GRIFFIS: I think Mr. Parsons
10 is getting -- asking directly -- you might want to
11 clarify because actually what you said in addition to
12 that is that you are asking us for temporary short-
13 term relief to park there.

14 COMMISSIONER PARSONS: That's where I was
15 going.

16 CHAIRPERSON GRIFFIS: Which leaves an
17 indication of, you know, you've got other plans. That
18 -- that being said, I don't -- if you can answer that
19 definitively immediately that's great. If not, bring
20 clarification when we continue.

21 MR. ELLINGTON: Yes, sir, we're doing that
22 and if -- if the Board come and said five years
23 exceptional variance, we should have something in
24 place at -- at that time --

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. ELLINGTON: -- to say where we are --

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. ELLINGTON: -- in the development, et
4 cetera.

5 CHAIRPERSON GRIFFIS: Indeed.

6 MR. GUYOT: Mr. Chairman.

7 CHAIRPERSON GRIFFIS: And I think that
8 clarity will be very helpful in your communication
9 with the community.

10 Mr. Guyot.

11 MR. GUYOT: Mr. Chairman, if that were
12 true, we would be here arguing on -- on behalf of the
13 Masons.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. GUYOT: They've refused to deal with
16 Cardoza Shaw --

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. GUYOT: -- the ANC and Westminster.

19 CHAIRPERSON GRIFFIS: And now, you have an
20 extra --

21 MR. GUYOT: We opened our arms.

22 CHAIRPERSON GRIFFIS: -- you have an extra
23 two weeks or so to continue that fascinating
24 discussion.

25 MR. GUYOT: Mr. Parsons --

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1 CHAIRPERSON GRIFFIS: All right.

2 MR. GUYOT: -- please understand the --
3 this history that we've tried to project. We've made
4 every effort to have various organizations meet with
5 them. Their position is they don't need anyone at
6 all.

7 CHAIRPERSON GRIFFIS: Very well. Any
8 clarifications? Questions about what we're doing on
9 March 18th?

10 There are submissions that we've asked
11 for. I'm assuming that you have notes of what we've
12 indicated that would, of course, be needed by the end
13 of the hearing. It would be most appreciated if it is
14 done by the 18th and if you have questions, you can
15 contact staff and they will re-illuminate those
16 elements that we talked about.

17 Let me also indicate that as we are
18 continuing, I'm going to allow the parties in question
19 to review the documents that were submitted. I'm
20 going to ask anything that was not submitted that you
21 take five minutes while you're all here to evidence
22 the information that you weren't served so that the
23 applicant might make a list and get you the documents
24 that you need.

25 On the information that was presented

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1 today, Mr. George, specifically I would anticipate
2 that you would prepare and review your notes and if
3 there are non-redundant questions next we meet -- Mr.
4 George, are you going to be brought back on the 18th?

5 MR. GEORGE: I'll be available.

6 CHAIRPERSON GRIFFIS: Okay. Let's be --
7 let's be very --

8 MR. GUYOT: Mr. Chairman, what time on the
9 18th?

10 CHAIRPERSON GRIFFIS: Good question. I'll
11 get right to it.

12 But, let's be very accommodating to
13 everyone involved. If you have questions for Mr.
14 George in cross examination, you might want to -- no,
15 if you can, tell the applicant and they will bring Mr.
16 George back. Because there's no reason for Mr. George
17 to be back here. He's better off chasing cars
18 somewhere else in the city making it safe for
19 pedestrians.

20 Time. We have the afternoon. What case
21 number are we in the afternoon on the 18th?

22 MS. BAILEY: Currently, Mr. Chairman, it's
23 the only case that's scheduled for the afternoon on
24 the 18th.

25 CHAIRPERSON GRIFFIS: Woo. All right.

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1 So, you're first so far. Very well. So, that would
2 be 1:00 in the afternoon on the 18th of March.

3 Any other questions? Clarifications?
4 Where we are? What's expected? What's going to
5 happen next we meet? If not, very well.

6 Thank you all very much. I appreciate
7 your good efforts this afternoon.

8 The Board's going to take 10 minutes while
9 we change out and bring in the next case.

10 (Whereupon, at 3:32 p.m. off the record
11 for a recess until 3:52 p.m.)

12 CHAIRPERSON GRIFFIS: I think we can
13 reconvene the afternoon session, 25 February.

14 Why don't we call the next case in the
15 afternoon?

16 MS. BAILEY: Application Number 16970 of
17 National Child Research Center pursuant to 11 DCMR
18 3104.1 for a special exception under Section 205 to
19 continue an existing child development center with
20 morning and afternoon programs for 120 children at any
21 one time, ages 2? to 5 years and 38 -- and 38 staff on
22 all floors of the existing buildings on the site and
23 the constructions of additions to the existing
24 buildings. The previous BZA application was approved
25 under Case Number 16307. The site is located in an R-

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1 1-B District at premises 3209 Highland Place, N.W.
2 Square 2072, Lot 30 also known as Lots 855 and
3 866.

4 Mr. Chairman, this is a continuation of a
5 case that was previously heard on February 11th.

6 Is there anyone here who will be
7 testifying today who was not sworn in previously and
8 who needs to be sworn in today?

9 CHAIRPERSON GRIFFIS: Everyone's been
10 sworn in? That takes care of our business today.
11 Thank you all very much. Indeed.

12 Why don't you stand? You can give your
13 attention to the staff member.

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

19 Mr. Chairman, there are two matters that
20 are before the Board at this time. One of which is
21 the applicant is requesting a continuance of this case
22 and the second has to do with the applicability of
23 Section 2516 -- 2516 of the zoning regulations.

24 CHAIRPERSON GRIFFIS: Excellent. Thank
25 you.

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1 Is any of the parties or applicant aware
2 of any other preliminary matters that the Board needs
3 to address?

4 MS. DWYER: Mr. Chairman, there's one
5 other preliminary matter that we would like to raise.

6 We have received the form indicating that
7 the site is exempt from the parking and loading
8 requirements because of its historic status and we
9 wanted to file that in the record and we just wanted
10 your confirmation that the exemption applies to the
11 entire site including the new additions and we wanted
12 to do that as a preliminary matter as well.

13 That was an issue that was also raised in
14 the Office of Planning report and we wanted to make
15 sure that in the event the case is continued that any
16 advertisement be correct and if for any reason we need
17 to deal with a parking variance, we want to have that
18 decided today so that we know that going forward.

19 We believe that as the form indicates the
20 exemption under Section 2100.5 from having to provide
21 any parking applies to the entire site and I can
22 address that at some point if you'd like me to or I
23 can address it now.

24 CHAIRPERSON GRIFFIS: Okay.

25 MS. DWYER: But, I have a copy of the

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1 letter.

2 CHAIRPERSON GRIFFIS: And could you -- and
3 your -- and that's all that you have submitted in --
4 attended to that issue?

5 MS. DWYER: That's correct.

6 CHAIRPERSON GRIFFIS: Okay.

7 MS. DWYER: We have nothing in writing.

8 CHAIRPERSON GRIFFIS: And then why don't
9 we give it to all the parties. This is what I propose
10 then. Let us take up the matter of 2516. We do have
11 written submissions which are substantial and
12 illuminating that Board has reviewed. What I'd like
13 to do is have very brief summaries of the submissions
14 and we'll go -- we'll start with the applicant and
15 we'll -- we will then go to the party represented by
16 Mr. Nettler.

17 I will then ask other parties if they have
18 brief statements attended to the submissions or maybe
19 they have their unique view, but they will be very
20 brief.

21 The Board will then assess whether it can
22 make a decision immediately on 2516. Then we will
23 move to the -- I would say then let's take up the
24 historic nature of the addition and whether parking is
25 actually required. After which, we can take up the

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1 motion to continue and then depending, we may take a
2 dinner break which should probably work out. Okay.

3 Everyone clear?

4 MS. DWYER: Yes.

5 CHAIRPERSON GRIFFIS: Great. Then let's
6 begin.

7 MS. DWYER: All right. And my associate
8 Paul Tummonds is going to address Section 2516.

9 MR. TUMMONDS: Thank you. For the record,
10 my name is Paul Tummonds, Law Firm of Shaw Pittman, on
11 behalf of the applicant.

12 As the Chair as mentioned, we filed on
13 February 19th our brief addressing that ability of
14 Section 2516. We reiterate that we do not believe
15 that it is applicable to this case for the following
16 reasons.

17 First, the legislative history of Section
18 2516 is clear that this section was never intended to
19 be applied to child development center or school use.

20 The legislative history is clear that this section of
21 the zoning regulations was intended to address those
22 situations where developers were looking to develop
23 multi-unit housing on large interior lots that had
24 minimal street frontage. As you know from the
25 materials that we've submitted in this case, that does

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1 not apply to this case.

2 We have NCRC which has been on this site
3 for over 70 plus years using the site as a child
4 development center and this site has extensive street
5 frontage along both Highland Place as well as Ordway
6 Street.

7 In our reply brief that the Cleveland Park
8 Neighbors filed yesterday, they noted that in the
9 legislative history to this section there was some
10 discussion of the need for protections to residential
11 districts when you have more than one principal
12 structure on the lot.

13 We don't deny that. That is exactly the
14 case that should be for the intent of this section
15 which was developers looking to put multiple unit
16 housing on lots.

17 This Board and the zoning regulations
18 allow for the protection of residential districts
19 based on the use of a property as a child development
20 center. That is Section 205 of the zoning
21 regulations. Section 206 of the zoning regulations
22 deals with private school in a residential district.
23 Section 210 deals with universities and colleges.

24 The zoning regulations have pertinent
25 sections that address impacts on residential

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1 districts. That's not what 2516 is for in this case.

2 The second reason why 2516 is not
3 applicable to this case deals with the fact that the
4 zoning -- this section of zoning regulations has never
5 been applied to private school use. We noted four
6 instances in which the Washington International School
7 has made applications to this Board subsequent to
8 April 17th, 1989 in which the regulations were charged
9 which required special exception approval. In
10 addition, the Moray School has been here -- been to
11 the Board on two separate occasions. Again,
12 subsequent to April 17th, 1989.

13 In each of those instances or in all six
14 of those instances, the Board of Zoning Adjustment
15 approved the special exception use without the --
16 without applying Section 2516 to those cases. In both
17 of -- in all of these instances, multiple buildings
18 existed on the school property.

19 This Board and the Court of Appeals have
20 correctly and consistently determined that additional
21 building on a school property are accessory buildings.

22 My third point is that when NCRC came
23 before this Board in 1998 where we had an existing
24 principal building, the playhouse building as well was
25 located on the lot. In 1998, this Board did not

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1 require NCRC to receive approval pursuant to Section
2 2516.

3 And I think finally and probably most
4 importantly, the existing playhouse on the property
5 and the existing carriage house on the property are
6 truly accessory uses to NCRC's use of the larger
7 property. The proposed use of the carriage house and
8 the existing use of the playhouse for classrooms,
9 indoor motor play space as well as meeting space for
10 teacher/parent conferences certainly are clearly
11 accessory to the use of this property as a child
12 development center.

13 The Cleveland Park Neighbors pose an
14 argument that we believe would really be fraught with
15 peril for this Board to follow. They would have this
16 Board really adopt a bifurcation the definition of a
17 principal or accessory use such that a gymnasium, a
18 performing arts centers or even a parking garage
19 utilized for a private school would not require 2516
20 review no matter how large because they were deemed to
21 be accessory uses. However, a building that could be
22 very small, much smaller in relation to those other
23 uses which had a classroom space in such a building
24 would need to abide by Section 2516.

25 In addition, looking at the individual

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1 space uses of every building on a property would
2 require this Board to delve into the minutia of the
3 internal operations of every child development center,
4 private school, college or university that comes
5 before this Board.

6 And I think finally one of the most
7 important effects is what would be if this Board were
8 to follow that line and require 2516 review. It would
9 be faced with a very vexing question of what about a
10 facility that has a mix of uses, a gymnasium. What
11 would you say to the fact that a school has a physical
12 education requirement. So, that, in effect, becomes a
13 classroom. Is then a gymnasium a classroom?
14 Following CPN's argument, thus a primary use. So,
15 2516 would be required or as an accessory use as the
16 -- this Board previously and the Court of Appeals has
17 clearly stated, a gymnasium is an accessory use.

18 In addition, a similar argument could be
19 made with regards to performing arts space. If a
20 building has an auditorium, rehearsal spaces for let's
21 say both vocal and musical instruments, what is that
22 if you have classroom spaces in there as well as
23 performing arts space?

24 We think that all of these issues are such
25 that this Board should follow the previous decisions

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1 of this Board as well as the Court of Appeals and find
2 that Section 2516 is not applicable to this case.

3 Thank you.

4 CHAIRPERSON GRIFFIS: Thank you, Mr.
5 Tummonds.

6 Mr. Nettler.

7 MR. NETTLER: Thank you. Richard Nettler
8 on behalf of the Cleveland Park Neighbors.

9 Let me approach the -- the issue from this
10 perspective. Let's deal first with the -- the issue
11 about the supposed legislative history.

12 Prior to the adoption of the regulations
13 now governing principal buildings on a single
14 subdivided lot in which I was the -- represented the
15 petitioners who drafted those regulations for the
16 Zoning Commission, the regulations provided that the
17 -- any -- anyone seeking to locate a principal
18 building whether in a residential or a commercial
19 district was required to either obtain a theoretical
20 subdivision which complied with certain area
21 requirements that were contained in the regulations
22 whether it was residential, commercial use, whatever
23 use. If it was a principal building, it was more than
24 one principal building on a single subdivided lot,
25 they had to do -- go through a theoretical subdivision

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1 process.

2 All that the regulations did, and when
3 this was adopted and changed 2516, was provide that
4 instead of doing it as a matter of right if you met
5 the area requirements and you were in a residential
6 zone, in a residential zone because of the impacts it
7 had on residences that if you're located in a
8 residential zone or if you're in a commercial zone and
9 you're within a certain distance of a residential
10 zone, that would certainly apply to a nonresidential
11 building, you had to meet the special exception
12 requirements of Section 2516.

13 It didn't say and it certainly does not
14 say 2516 is limited to a residential building in a
15 residential district and that 2517 is limited to a
16 residential building in a commercial district. It
17 applies to any building, any situation in which you
18 have a -- two or more principal buildings on a single
19 subdivided lot. That is actually -- that's absolutely
20 clear. There's nothing in the regulation that says
21 otherwise.

22 So, then your question has to be -- is
23 twofold. One is is the additional building that's
24 being constructed a principal building and two, if
25 it's -- well, first of all, the question is whether

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1 it's an accessory use and second whether it's an
2 accessory building. Because the definition of
3 accessory building contemplates that it could arise to
4 the level of a principal building as in the situation
5 with the pool house in Davidson that we cited to. If
6 the size of the building is -- is of such a magnitude
7 that it's not the normal or customary size for a pool
8 house, clearly, a pool house is an accessory use in a
9 residential area which the court recognized, but
10 because the pool house was of such a large size in the
11 Davidson case, the court concluded as did the -- as
12 did this Board that it became instead a principal
13 structure not just an accessory structure.

14 We're not asking this Board to do anything
15 different than what it's required to do in any
16 situation that comes before it, that is, to make sure
17 that the proposal that is before it complies with the
18 zoning regulations. So, if you're a university, you
19 have certain campus plan requirements that allow for
20 certain accessory uses and certain regulations that
21 govern those situations. If you're a private school
22 situation, you'll have certain accessory uses that are
23 recognized as accessory uses for accessory buildings
24 to private schools and if you're a child community
25 center like a private school, there are certain

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1 recognized accessory uses as distinct from principal
2 uses. That just answers the -- the issues as to
3 what's an accessory use.

4 The next question -- and here our position
5 is that this is not an accessory use because it's
6 essentially the exact same use that's being provided
7 for in the principal building today. In fact, they're
8 moving those uses in the principal building to this
9 building that's -- that's larger or the same size of
10 the building that's on the site.

11 Even if you were to agree that this was an
12 accessory use and to engage in the analysis that you
13 must do in every -- any situation when you have
14 someone who comes before you with more than one
15 principal building or more than one building on a
16 single subdivided lot, you then have to decide whether
17 the size of this building is of such a size that it
18 takes it out of the category of being accessory
19 structure and converts it into a principal structure
20 and here there's no -- there's -- you know, we're
21 kidding ourselves if we don't recognize the fact that
22 this is essentially if not doubling more than doubling
23 the size of what's being -- what exists on this site.

24 Under any rational review of the analysis
25 that the Court required in Davidson, it is a principal

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1 building. It has been converted into a principal
2 building even if the use inside of it should you
3 decide is not -- is accessory.

4 And -- and the parade of horrors that the
5 applicant suggests to you really is -- is illusory.
6 First of all, the cases that it relies upon are all
7 private school situations. The -- the zoning
8 regulations recognize the types of uses that are
9 accessory to a -- a private school, but it certainly
10 would not -- it certainly would be the case that if a
11 -- a private school had a situation where it had a
12 garage facility and in the garage it located on the
13 top floor and on the first floor and any other floors
14 classrooms and the garage facility was twice the size
15 of the -- of the school itself that that building
16 notwithstanding the fact that there is a -- an
17 athletic use being made of the interior could be
18 converted under Davidson and into a principal
19 building. You'd still have to make that
20 determination.

21 Here, you have to look at what are the
22 types of uses that are normally accessory to a child
23 development center and the applicant hasn't asked you
24 to do that. The applicant has asked you to look at
25 something else. It's asked you to look away from what

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1 we're doing. Look at what other people have done on
2 cases that have no application to us. Look at
3 schools. Don't look at a nursery school. I cannot
4 recall and I have -- I've gone through a number of the
5 -- of the decisions before this Board and I've looked
6 at a variety of different Larview articles and
7 regulations from other jurisdictions. I can't find a
8 situation where a nursery school or a child
9 development center is of the type that's being
10 proposed here. It's essentially turning this into a
11 regular campus.

12 And that's -- first of all, it's
13 inconsistent with the -- the old -- the old standards
14 that created the -- this -- this building here and
15 they haven't cited to you any situation comparable in
16 the District of Columbia involving a child development
17 center.

18 They've relied on one case in their
19 initial submission. The Naylor, what they call a
20 preschool which if you look at the Board's order was
21 not a preschool. It proceeded under the -- under a
22 different section of the zoning regulations as a
23 private school not as a preschool and it involved a
24 situation, of course, where you had existing buildings
25 including buildings that preexisted the 1958 zoning

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1 regulations. So, to the extent that they could have
2 even have been considered a principal structure under
3 the current regulations or principal building under
4 the current regulations, they were grandfathered in
5 anyway.

6 The fact of the matter is you have to deal
7 with a child development center not with George
8 Washington University. You have to deal with a
9 building that's more than the size of the existing
10 building. You have to deal with uses that replicate
11 the uses that are in the principal building.

12 Under anybody's interpretation that I've
13 seen whether it's Larview articles or other
14 jurisdictions or this court in this jurisdiction, that
15 is a principal building. It is a -- it is -- creates
16 a situation where you have as a consequence two or
17 more principal buildings on a single subdivided lot.

18 Now, I raised the issue the last time that
19 this would have to be noticed because of the specific
20 requirements of the special exception and what I've
21 also looked at is whether, in fact, there would be
22 additional relief that would be required here.
23 Because if you look at the plans and you agree that
24 there is a need for a special exception for this
25 relief, it's not clear that this other principal

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1 building complies with the area requirements of a tax
2 lot or 2516 because the rear yard of this building I'm
3 assuming on Ordway looks as if it's less than 25 feet
4 from the -- from Ordway. You don't know that fact
5 because nothing's been presented to you to -- to
6 substantiate one way or another whether it meets any
7 area requirements if it was to be placed on a
8 theoretical lot.

9 But, that's something that the applicant
10 has the responsibility for doing not you and they've
11 presented you a situation where they've left a lot of
12 things. They -- they left a lot of things up to other
13 people's imagination, but which clearly are not
14 consistent with the zoning regulations and clearly
15 require some serious and thoughtful review by the
16 applicant as to how this matter goes forward.

17 Let me deal with one last issue and that's
18 this playhouse that they suggest you approved in 1998
19 as a -- as an accessory building. In the first place,
20 if you look at your -- the record in the 1998 case and
21 when we get -- if we ever get into it, we will do
22 that, there's nothing suggested as to what's going on
23 in this -- in this playhouse that would cause -- that
24 would allow you to say that that was -- serious
25 consideration was given to that. Just as we have

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1 argued and I think with more credibility that the 1998
2 order limits their enrollment to 120 students because
3 that's exactly what they sought and nothing else.
4 They need to be hoisted upon their own petard.
5 Because if you look at that order, there's nothing in
6 the order that suggests you're reviewing any issue
7 regarding an accessory use for this playhouse. They
8 never got a Certificate of Occupancy for it anyway
9 even after the 1998 decision.

10 So, it's kind of late and ad hoc for them
11 to come here now and say that that's a decision that
12 you made in 1998 when there's nothing in anyone of the
13 orders that suggests that you did so.

14 In closing, 2516 applies. There's nothing
15 in 2516 that says it doesn't. It's an accessory use.

16 If it isn't, it's a principal use. If it's -- if you
17 consider it an accessory use, it's in a principal
18 given it's size as the Office of Planning I think
19 adequately pointed out and obviously supports us in
20 this -- in this -- on this issue and they are required
21 to provide you with an adequate basis to go forward in
22 this and they have not done so either by notice or by
23 review of a theoretical subdivision that would address
24 whether they need area variances in addition to the
25 special exception relief that we think is clearly

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1 required.

2 CHAIRPERSON GRIFFIS: Thank you, Mr.
3 Nettler.

4 Let me hear from then the parties in
5 opposition. Is Badami, Beckner, Hunsicker, Little,
6 and ANC-3 -- we'll start with ANC-3.

7 AUDIENCE MEMBER: We -- we have no
8 comments.

9 CHAIRPERSON GRIFFIS: How about we do it
10 this way? If anyone has comment, they can come up to
11 the table. How about parties in support? We have
12 friends and Ms. Marshall.

13 Then Board members, let me take questions
14 from all present to the briefings that we've just
15 heard and also that submitted prior. Any quick
16 questions?

17 MEMBER ZAIDAIN: I just -- I have one real
18 quick. I just need some clarification from Mr.
19 Tummonds on his argument on how it relates to the
20 previous order.

21 Obviously, there's a lot of -- a lot of
22 issues here and a lot of paper. So, I want to make
23 sure I'm -- I'm on the -- I'm in the understanding.

24 Your argument was based towards the
25 playhouse and what we approved then in 1998 and not --

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1 and obviously this carriage house that we're currently
2 discussing is new construction. So.

3 MR. TUMMONDS: I guess what I'm saying in
4 -- in '98, there were obviously two structures. The
5 -- the playhouse existed and when this Board approved
6 the NCRC's use, there was the main building and there
7 was that second structure. In that case, this Board
8 did not say oh, NCRC you also in addition to receiving
9 approval pursuant to Section 205, you also have to
10 receive approval pursuant to Section 2516.

11 MEMBER ZAIDAIN: Well, I -- I think what
12 I'm struggling with is how does that relate to the
13 carriage house. I mean the carriage house is
14 something completely -- I wouldn't say completely, but
15 is noticeably different than the -- than the
16 playhouse.

17 MR. TUMMONDS: But, I think -- it goes to
18 this notice of what they're saying is because we are
19 putting on another separate structure, the carriage
20 house which is a structure that is separate from the
21 existing main building, therefore -- and because in
22 that carriage house you have classroom spaces --

23 MEMBER ZAIDAIN: Yes.

24 MR. TUMMONDS: -- classroom spaces all of
25 a sudden make that building a principal structure such

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1 that you now have more than one principal structure on
2 the lot. So, it's -- it really goes to because you're
3 putting a new building and because that building just
4 happens to have a classroom in it, it's principal. If
5 that building was say a gymnasium, that's accessory
6 because gymnasium use is accessory to a school use.
7 That is what we're drawing the analogy to -- to '98.

8 Just the fact that there is a separate
9 structure on there. There were two structures in '98.

10 There will now be three structures.

11 MEMBER ZAIDAIN: So, you're saying that --
12 that in essence the way that this Board looked at the
13 playhouse in 1998 is the same way we should look at
14 the carriage house now --

15 MR. TUMMONDS: Exactly.

16 MEMBER ZAIDAIN: -- in essence.

17 CHAIRPERSON GRIFFIS: Any others?

18 Mr. Tummonds, how do you address this
19 threshold issue of building size as it goes to
20 accessory or principal?

21 MR. TUMMONDS: I think if -- attached as
22 Exhibit J to our statements is the Court of Appeals
23 decision in the National Cathedral School case. On
24 page two of that case, I will read down I guess
25 starting kind of halfway to two-thirds of the way down

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1 that paragraph where it starts with nor does. Is
2 anyone with me?

3 "Nor does anything in the regulation imply
4 that a facility loses that character when it reaches a
5 certain size." That is referring to an accessory use,
6 the gymnasium that was approved by the Board of Zoning
7 Adjustment, the gymnasium that was 83,100 square feet
8 in size. So, I -- I don't agree that just by the size
9 of a building becomes such that that then makes a
10 principal structure. This -- the Court of Appeals
11 said you can have an 83,000 square foot gymnasium
12 which is an accessory structure to the NCS case.

13 CHAIRPERSON GRIFFIS: And then how do you
14 address getting us to the private school? As Mr.
15 Nettler has laid out, the sections clearly identify
16 those as opposed to child development centers.

17 MR. TUMMONDS: I guess I think that we're
18 applying 2516 to -- I think goes back to our
19 underlying argument that 2516 does not apply to any of
20 these uses. 2516 doesn't say that it applies to child
21 development centers. It doesn't say that it applies
22 to private school and it doesn't say that it applies
23 to universities or colleges. I don't think there's
24 anything that says we have to treat it differently a
25 child development center than say the private school.

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1 I'm not sure if I'm answering your
2 question --

3 CHAIRPERSON GRIFFIS: Perhaps.

4 MR. TUMMONDS: -- appropriately.

5 CHAIRPERSON GRIFFIS: Mr. Nettler, how do
6 you address the threshold of building size with a
7 specific reference to the court case on athletic
8 facilities? Also with the addition of a comment by
9 Mr. Tummonds' argument if -- if you required a
10 classroom physical education course, is that not
11 facilitating additional classrooms on the site and,
12 therefore, out of your definition taking it out of
13 accessory but making it principal?

14 MR. NETTLER: Well, a couple of issues.
15 First of all, as it -- as the court recognized the
16 national and the -- and the case that was referred to
17 the -- they were dealing with an athletic facility for
18 a public school. There are listed under the
19 definition of a -- of a school -- a private school,
20 excuse me -- there is uses that are described as
21 accessory uses. There are -- and -- and, of course,
22 an athletic facility is one of them. Those -- those
23 accessory uses don't apply to a child development
24 center.

25 The court clearly stated in Davidson as I

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1 -- and I quoted that "The plain language of the
2 district's regulations by referring not only to
3 subordinate building but to customarily incidental
4 uses makes clear that a building is not an accessory
5 building where given its size, design, and declared
6 purposes it can reasonably be expected to duplicate
7 the functions of the main building rather than, in
8 fact, serving as incidental to those uses."

9 Now clearly, a pool house as the court
10 recognized in Davidson and as this Board recognized,
11 there are pool houses all over the District of
12 Columbia. The problem is if you have a pool house
13 that is three or four times the size of what an
14 accessory pool house is, you then -- (1) you start to
15 question whether the use is really accessory, but
16 regardless of whether the use is really accessory
17 because it's doing something else, the fact is that by
18 its size and by its design, the Board is -- is -- has
19 the discretion to say that under the regulations, that
20 meets the definition of a -- of a -- of a principal
21 building and, therefore, it isn't an accessory
22 building and, therefore, isn't allowed on the lot
23 because of its size.

24 The -- the -- the fact of the matter is
25 it's -- it's -- these are issues -- these are fact

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1 issues -- as the court recognized in both Davidson and
2 as the -- in the other case, these are fact issues
3 that the Board has to decide based on plans that are
4 submitted to it.

5 We -- we're -- nobody disputing here the
6 size of this building. Nobody's disputing what the
7 uses are that are being made of this building and
8 nobody is disputing that this is not being -- that
9 there is no relief being sought under 2516. The only
10 thing left to decide is whether given the size of this
11 building and given all the uses that are being moved
12 from the principal building into this building so that
13 they could have their classrooms here and so that they
14 could essentially replicate what they had in the
15 existing building that you essentially have the
16 school, excuse me, you essentially have the child
17 development center, a preschool. You have a child
18 development and preschool. You have two of them on
19 this site. That's essentially what you've got and
20 when you have two of them on there -- when you have
21 two of them because you -- you --

22 CHAIRPERSON GRIFFIS: Following that
23 argument wouldn't you then need two administrative --

24 MR. NETTLER: Absolutely note.

25 CHAIRPERSON GRIFFIS: -- positions and the

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1 duplication of everything that runs?

2 MR. NETTLER: No, it's not a question of
3 duplication. The question is whether the size gets to
4 the point where you're no longer merely an accessory
5 building.

6 You can't make reference to -- to the
7 wellness center at George Washington University or to
8 -- which is a campus plan issue or to a gymnasium at a
9 -- at a public high school or a private high school.
10 Those don't have any application to -- remember what
11 we're considering here. A nursery school. We're
12 considering children who are ages from two to five who
13 are brought into a house which -- whose functions are
14 normally carried out in parts of other people's
15 houses, nursery schools, preschools, whatever that are
16 being replicated simply on a building of the same size
17 or larger than the existing building.

18 That -- that changes the very nature of
19 what's going on in this site into something that
20 whether it's a campus as we've called it, whatever it
21 is, it's a -- it's another principal building.

22 If you have a situation as -- as you made
23 reference to in terms of -- the regulations don't
24 require you to replicate it. They certainly didn't
25 require you to replicate in the pool house situation

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1 the fact that there is a kitchen, bathrooms, a
2 laundry, a -- or bedrooms or anything else or a living
3 room or dining room in the pool house. The problem
4 was the pool house got too big.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. NETTLER: It got too big. It became a
7 principal building.

8 MS. DWYER: Mr. Chair.

9 MR. NETTLER: And if you wanted it to be a
10 principal building, then you had to get zoning relief
11 to do that --

12 MS. DWYER: Mr. Chairman, could I just
13 address one point?

14 CHAIRPERSON GRIFFIS: Yes.

15 MS. DWYER: The difference between the
16 pool house case and Mr. Nettler's not been able to
17 cite any school case in which -- that supports his
18 view. In that case, you had no other review. A pool
19 house is a matter of right. They could just put the
20 pool house in the back of their property.

21 That's why you have Section 205. You
22 already have a special exception process for a child
23 development center. You already have the protections
24 to review the uses of the building, the size the
25 building, the setbacks, the screening, the play areas,

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1 all the things that impact a residential
2 neighborhood. So, you have that under Section 205 and
3 there's no need for a duplicate requirement by adding
4 2516.

5 MR. NETTLER: Well, that --

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. NETTLER: -- that is obviously not
8 correct. If you look at the provisions of 2516, it
9 addresses a whole bunch -- a variety of other issues
10 that are not -- and requirements of reports from other
11 D.C. agencies that are not part of a review for a
12 child development center.

13 The -- the continuous reference to --

14 CHAIRPERSON GRIFFIS: But, do they go to
15 different elements that would -- would not be reached
16 in the special exception for a child development
17 center?

18 MR. NETTLER: Well, it wouldn't be in this
19 situation. Because as I said here, it looks as if
20 they need an area variance to be able to --

21 CHAIRPERSON GRIFFIS: Yes, but that --
22 that -- if we get to 2516, then that leads us to an
23 area which is very specific to this.

24 You've made the point that no -- Ms. Dwyer
25 is incorrect in saying that a special exception

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1 process won't walk us through all the elements that we
2 need to see.

3 MR. NETTLER: Because --

4 CHAIRPERSON GRIFFIS: That's the way I
5 interpret it. So, what is different in 2516 that, in
6 fact, would look -- make us so moved to say yes,
7 you're absolutely right in that respect?

8 MR. NETTLER: Because the core would
9 require you to and you -- and, therefore, you are
10 required to address certain specific issues that are
11 identified in 2516.

12 CHAIRPERSON GRIFFIS: Like what?

13 MR. NETTLER: First of all, that the --
14 (1) that the requirements of this chapter in terms of
15 use, height, bulk, open space around each building and
16 the limitations on structures on alley lots if they
17 would apply are -- are -- are reviewed. That's not --
18 that's not an aspect which you are to review this
19 issue.

20 2516 provides for additional area
21 requirements than merely a situation involving a -- a
22 child development center such as a certain rear yard
23 in the front, a rear yard in the back as dealt with
24 all theoretical lots that don't apply on -- as a
25 matter of right situation. You don't have any front

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1 yard requirements in a -- in a matter of right
2 situation for a building.

3 It has the -- it has certain requirements
4 in terms of access to that -- those buildings on a
5 theoretical lot that don't presumably apply to a
6 single lot of record.

7 It has as you see under Section 2516.5
8 dealing with certain open space -- open space -- open
9 space requirements and (d) dealing with the boundaries
10 of where a theoretical lot is located.

11 In 2516.6, there has to be a common means
12 of ingress and egress in that situation. If we're
13 taking it, you know, in the abstract, in that
14 situation while it may not apply here, it would apply
15 in -- in other situations because they're on
16 theoretical lots.

17 CHAIRPERSON GRIFFIS: But, doesn't that
18 support the argument, Mr. Nettler, that these are
19 clearly primary or independent, my word, independent
20 buildings that need access, need separation, need
21 density control?

22 MR. NETTLER: They're independent in the
23 sense that they are -- it's not so much that they're
24 independent. It's because of the -- the problem was
25 the impact on residential properties that they needed

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1 these controls.

2 CHAIRPERSON GRIFFIS: But, isn't that
3 covered in the special exception for child
4 development?

5 MR. NETTLER: No, because the -- because
6 here were you're doing it by a theoretical lot as
7 opposed to two record lots for example -- I mean they
8 could do this as two record lots and they'd still have
9 other requirements to meet. If you do it by a
10 theoretical lot, it's because you've located the
11 building on a portion of your lot such that you don't
12 meet certain requirements or can't meet certain
13 requirements that a record lot would meet and,
14 therefore, you have to comply with these additional
15 requirements because they have these additional
16 impacts on adjacent residential properties.

17 It's -- there's nothing to -- would
18 preclude them from if you should conclude that these
19 are two principal buildings on a single subdivided lot
20 from them simply creating two record lots and then the
21 record lot issue would do away with some of the
22 requirements on the theoretical lot requirement. But,
23 it takes it out of the notion that we're dealing with
24 a -- two principal buildings on a single subdivided
25 lot.

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1 The fact of the matter is -- and that's --
2 I think there's a confusion that's attempted to be
3 generated here by the applicant as to what are
4 requirements if you go forward as a theoretical lot
5 under 2516 from the notion under the zoning
6 regulations that you simply cannot have two principal
7 buildings on a single subdivided lot.

8 In -- in the pool house situation, for
9 example, you can create another theoretical lot to
10 house the pool house. So, the pool house -- qua pool
11 house that was being constructed would not be allowed
12 to be constructed at all because you couldn't do a
13 2516 type of theoretical lot and you couldn't do a
14 record lot.

15 In this situation, there's an out for the
16 applicants. They either go forward as a theoretical
17 lot, but they have to go forward as a theoretical lot
18 or they go forward as a record lot and they seek
19 review for -- for that -- for that use --

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. NETTLER: -- separate from what's
22 being done here, but it's not -- but it can't go
23 forward as if it was an accessory use to this building
24 because of it's size, design, and what is being and
25 how it's being used for.

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1 CHAIRPERSON GRIFFIS: Understood.

2 Mr. Tummonds, would this other structure,
3 the carriage house, does that facilitate an increased
4 enrollment for the school or an increased potential
5 for occupancy based on the building's square foot
6 area?

7 MR. TUMMONDS: Yes, as you said, this --
8 this building will have classroom space, will have
9 indoor motor play space. It will have meeting space.

10 So, when the Department of Health goes and
11 takes a look at the licensure capability of this site,
12 it will factor in the fact that there is classroom
13 space in the carriage house.

14 CHAIRPERSON GRIFFIS: And then can you
15 address the Board's concern about how an accessory
16 building could facilitate the expansion of the -- the
17 primary function of the -- of the primary building?

18 MR. TUMMONDS: I think this all goes --
19 all of this Section 2516, Section 205 all go to the
20 impacts of a use on the adjacent residential
21 neighborhoods. That's what was the purpose behind
22 2516 is. They felt that prior to the special
23 exception review process, you were having these
24 developments of properties such that they were
25 negatively impacting adjacent properties.

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1 Section 205 -- 205.5, one of the factors
2 that we have to prove is that the center shall be
3 located and designed so that there will be no
4 objectionable impacts on adjacent or nearby properties
5 due to noise, activity or -- or visual or other
6 objectionable conditions.

7 I think that you have the ability under
8 205 to take a look at all of the entirety of the
9 impacts of NCRC's use of the property whether that
10 impact is in the existing main building, whether that
11 impact is in a carriage house so located on the
12 property or in the playhouse. You have the ability to
13 take a look at all that and so, that when as Mr.
14 Nettler said that we don't know if the side yard is
15 such, you can take a look at that pursuant to 205.5
16 and you can say, you know what? We think that this
17 building is located too close to this property line
18 because of potential objectionable conditions.

19 MEMBER ZAIDAIN: I -- I -- I just want to
20 -- I want to -- I want to touch on that real quick.

21 CHAIRPERSON GRIFFIS: Mr. Zaidain.

22 MEMBER ZAIDAIN: So, are you saying that
23 under 205 and specifically, you're talking about on
24 205.6 I think you said or -- or 7. I mean with that
25 exempted from say Chapter 2100 which would be the

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1 parking regulations where we would look in the special
2 exception, we would look at whether or not you meet
3 adequate parking and there's no adverse impacts and
4 you wouldn't have to fall under that section either.

5 MR. TUMMONDS: No.

6 MEMBER ZAIDAIN: Do you follow what I'm
7 saying?

8 MR. TUMMONDS: But, I mean yes,
9 absolutely. But, there's also --

10 MEMBER ZAIDAIN: So, I don't understand
11 why 2516 is different from the rest of the zoning
12 code.

13 MR. TUMMONDS: Because you could, in fact,
14 require -- you could condition approval on something
15 which is more stringent than 2516 would require which
16 would be -- you just have to look at the standard.
17 What is the required rear yard setback in the R-1 zone
18 and the R-4 zone. You could look at -- you could say
19 the parking requirements are X, but because of
20 whatever use on the site, we -- you could require more
21 parking than would be required under 2100. That's the
22 authority that you have under 205.

23 MEMBER ZAIDAIN: So, you're saying that
24 because it's in 205 that we have the flexibility to
25 essentially waive your requirements for other parts of

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1 the zoning regulations.

2 MR. TUMMONDS: No.

3 MS. DWYER: No. No, what we're -- what
4 we're saying is that --

5 MEMBER ZAIDAIN: That's the way it sounds.

6 MS. DWYER: -- each special exception
7 stands on its own and to -- to say you need duplicate
8 special exemptions when the intent is being met by one
9 and has consistently and historically been met by one
10 it sufficient.

11 For example, a lot of private schools have
12 child development centers. They have preschool
13 programs. They don't do a separate special exception
14 for the preschool program because it's folded into the
15 school use. You don't require a special exception to
16 get each individual piece of it if there is a special
17 exception that fits and that addresses all of the
18 issues.

19 This Board has historically under Section
20 205 and under the private school cases looked at all
21 of the issues that Section 2516 is suppose to look at.

22 When I --

23 MR. NETTLER: Actually, that's not true.
24 If you look at the -- your decision of the -- School
25 and the Washington National School on -- on Reservoir

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1 Road, there was requirements for separate special
2 exemption relief for the child development center
3 located there as well as the -- as the -- as the
4 public -- the private school.

5 But, well, let's look at what's really
6 going on.

7 MEMBER ZAIDAIN: Hold on a second before
8 we -- before we get off of that.

9 I mean so under that -- under that
10 thinking, you use the example of parking and requiring
11 more and -- or requiring less and allowing more, so in
12 essence when somebody comes in for a special exemption
13 and we go through the whole process, we can
14 essentially grant variances it sounds like.

15 MS. DWYER: No, what we're saying is when
16 -- when someone comes in for let's say the child
17 development center use.

18 MEMBER ZAIDAIN: Yes.

19 MS. DWYER: Okay. You -- in addition to
20 going through the special exception, you have to show
21 that you meet the other zoning requirements. We -- we
22 believe we do. I mean that's why we've raised this
23 whole issue of the -- of the parking issue. Because
24 we're an historic site.

25 MEMBER ZAIDAIN: Right. Well, I

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1 understand that.

2 MS. DWYER: And -- and if for any reason
3 you don't meet other requirements, then you would have
4 to get a variance from that. We're not -- we're not
5 saying that as part of a special exception you can
6 give variance relief without having it be advertised
7 or noticed.

8 MEMBER ZAIDAIN: Yes.

9 MS. DWYER: What we're saying is that
10 historically under the special exception review for
11 schools and child development centers --

12 MEMBER ZAIDAIN: Yes.

13 MS. DWYER: -- you have looked within the
14 special exception at the neighborhood impact issues
15 that were the intent and focus of this new Section
16 2516.

17 So, as -- as Mr. Tummonds has said, the
18 impact issues are addressed.

19 We have not found any situation where you
20 have required a school whether it's building a
21 classroom building or a performing arts center or an
22 auditorium of an athletic facility to in addition to
23 going through special exception review for the school
24 to also go through 2516. A few blocks away is the
25 Washington International School.

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1 MEMBER ZAIDAIN: Yes.

2 MS. DWYER: I think we attached a plan of
3 that. You can count the buildings that are on that
4 site. The whole reason that you allow schools to have
5 accessory buildings and uses and do everything under
6 this section is that you can have things like shared
7 parking and coordinated loading and access and all
8 those issues. It would -- it would not be in either
9 the neighborhood's interest or the school's interest
10 to say that for each building it has to define a
11 separate lot and do easements and parking and loading
12 for that particular building. It would -- it would
13 destroy the site.

14 MEMBER ZAIDAIN: But, isn't that the
15 intent of 2516 to give you relief for that through a
16 special exception?

17 MS. DWYER: The intent --

18 MEMBER ZAIDAIN: You were talking about
19 cutting up the lots if they principal buildings.

20 MS. DWYER: Right. The intent --

21 MEMBER ZAIDAIN: And I don't think that's
22 -- that's not necessarily what we're arguing. We're
23 still arguing whether or not you need the -- the
24 special exemption process to do what you want to do.

25 MS. DWYER: Right. The intent of 2516 is

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1 when you have a large site and you're going to be
2 dividing it and have residential development and
3 you're going to have different property owners to make
4 sure that each of those property owners has access to
5 their property and meets all the zoning requirements.

6 It's not applicable to a school use.

7 It -- it -- it would -- as I said, we
8 cannot think of one example where this Board has taken
9 that section and applied it to a school use whether
10 it's a preschool or an elementary school or a high
11 school or a college or university use. It's just not
12 intended.

13 The other thing about this case is that in
14 addition to the review that we're going through here
15 under 205, this is also an historic district. So,
16 we've already gone through review. There are ample
17 protections in the existing review processes to
18 address impact on the neighborhood.

19 MR. NETTLER: Let me -- let me suggest to
20 a couple of things. First of all, let's make clear
21 we're just -- we're talking about child development
22 centers. The definition of a child development center
23 is different than a private school and what's
24 accessory under the regulations is different. So,
25 let's focus in on that first.

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1 You know, if you look at this, you say to
2 yourself, you know, why -- why should 2516 -- why
3 should this be a problem for them. Because it
4 shouldn't be difficult for them to create a record lot
5 here or it shouldn't be difficult for them to create a
6 theoretical lot. What's really going on here? Let me
7 suggest to you there are two things that are really
8 going on here.

9 CHAIRPERSON GRIFFIS: Well, actually, I
10 don't know how pertinent that is.

11 MR. NETTLER: Well, it is because it's for
12 you to understand why there's a principal building and
13 why their -- their argument is not a credible
14 argument.

15 Because there are two things that are
16 going to happen whether they do a theoretical lot or a
17 -- or another record lot. One is there's going to be
18 an issue to you as to whether the parking waiver that
19 applies to the house then gets applied to this new lot
20 and I'm going to suggest to you that it wouldn't.
21 That the Historic Preservation Division of DCRA is
22 taking the position new construction, new lots. We're
23 not -- even in the historic district, we're not
24 applying a parking waiver to it and, therefore, we got
25 a parking problem here.

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1 And the second --

2 CHAIRPERSON GRIFFIS: Yes, I don't think
3 we're unaware of the road this might lead down, but on
4 -- on the converse which probably will come up as, you
5 know, what road are we leading down when we start
6 saying we need so many special exceptions. Because
7 there's -- there's a potential that there might be
8 variance relief.

9 MR. NETTLER: You don't need it. That's
10 why I'm saying it's a red herring because --

11 CHAIRPERSON GRIFFIS: No, I'm just -- I'm
12 just saying perhaps the -- the fruitlessness of
13 getting into theoretical -- I understand your point.

14 MR. NETTLER: Well, it's --

15 CHAIRPERSON GRIFFIS: And even so though
16 that doesn't presuppose that there isn't a strong case
17 for a variance. That's why I don't want to project
18 too far out. I want to keep --

19 MR. NETTLER: Well, you were asking -- you
20 asked before what the -- what would be different --

21 CHAIRPERSON GRIFFIS: Yes.

22 MR. NETTLER: -- if they were to do -- go
23 under a theoretical -- under a theoretical subdivision
24 in terms of the review for 2516. One, in terms of
25 whether they get a waiver from parking or not. Okay.

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1 That's one issue and two, there would be an issue as
2 to whether they actually could get a subdivision from
3 historic preservation and historic preservation issue
4 -- requirement in terms of how that might apply to
5 your review would be different as well.

6 But, remember here, we're dealing with a
7 child development center and -- and you're asking what
8 are the consequences and I'm saying it's a red herring
9 because in the first place it's a -- we don't have the
10 burden of trying to show you that there are child
11 development centers that have gotten relief under
12 2516. That's because child development centers by
13 their very nature and by their definition are very
14 small uses. Why somebody would come in for a campus
15 plan type of approach for a child development center
16 simply hasn't been presented to you.

17 For schools, you got a long history of
18 what are accessory uses for schools and the
19 regulations deal with some of those. They're not
20 unknown to you. They exist. They've been dealt with
21 over the last 70 years and you've got an established
22 precedent. You're not going to all of a sudden say
23 let's see the Washington International School is
24 coming in with a gymnasium and is a -- is a gymnasium
25 part of a -- normally part of a school? Of course it

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1 is. I mean it says so in the regulations and it's not
2 -- it doesn't cause you to do anything different.

3 But, here we have a situation that simply
4 hasn't been presented to you because child development
5 centers are small, small uses. They are if you look
6 at the definition a building or part of a building.
7 They're not buildings. They're not campuses. They're
8 not buildings that are laid out like universities.
9 They are small kids in small places that are dealt
10 with in small buildings.

11 CHAIRPERSON GRIFFIS: So, we have
12 accessory kids, too.

13 MR. NETTLER: Not with this situation.

14 CHAIRPERSON GRIFFIS: Very well.

15 MS. DWYER: And, Mr. Chairman, if I could
16 just say that in this case indoor motor activity is
17 the gymnasium for these small children.

18 CHAIRPERSON GRIFFIS: Okay.

19 MS. DWYER: That -- that is the equivalent
20 of the NCS case.

21 CHAIRPERSON GRIFFIS: And you're saying
22 that because that's going to be the primary use for
23 these structures?

24 MS. DWYER: For the carriage house.

25 CHAIRPERSON GRIFFIS: For the carriage

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1 house.

2 MS. DWYER: It has the indoor motor space
3 in addition to classrooms. So, if you're -- if you're
4 going to start saying that a gymnasium for the
5 National Cathedral School is accessory, then the
6 indoor motor space is certainly accessory to the child
7 development center.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. DWYER: And then what do you say that
10 the rest of the building isn't and then you have to
11 separate the building. It's -- it's a road that this
12 Board should not be going down.

13 CHAIRPERSON GRIFFIS: Okay. Mr. -- I'm
14 sorry. Ms. Badami if I'm not mistaken.

15 MS. BADAMI: For the record, my name's
16 Linda Badami. I live at 3207 Highland Place.

17 I want to address an issue that was
18 breezed over rather quickly and that's the certificate
19 of occupancy that came in 1998 which was presented by
20 Susan Pickett and the building that it's listed is
21 3209 Highland Place. It's described as primarily
22 brick.

23 CHAIRPERSON GRIFFIS: I'm sorry. But,
24 where are we going with this?

25 MS. BADAMI: Because the Certificate of

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1 Occupancy was for one building and so, when you're
2 talking about --

3 CHAIRPERSON GRIFFIS: What does that tell
4 us though? Was the second structure there?

5 MS. BADAMI: The second structure was
6 there, but the Certificate of Occupancy wasn't given
7 for it.

8 So, when you're talking about an accessory
9 use which is what they're saying that this new
10 building will be, you also need to incorporate the use
11 of the existing structure and combining the two of
12 them is what you're really looking at. Because they
13 only have a -- a license to operate in the main house
14 and now they're talking about using both the carriage
15 house and the playhouse as an accessory use.

16 CHAIRPERSON GRIFFIS: Okay. I don't think
17 I'm following you. So, what you're saying is we may
18 be looking at two new structures essentially. One's
19 going -- proposed to be constructed and one isn't.

20 MS. BADAMI: One is there, but has never
21 been given a Certificate of Occupancy to be used as an
22 accessory building or otherwise and there's going to
23 be a new constructed -- newly constructed building.

24 So, when you combine those two buildings,
25 it's foolhardy to say that that's -- that's just an

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1 accessory use.

2 CHAIRPERSON GRIFFIS: Okay. I'm not sure
3 the direct connection of whether there's a Certificate
4 of Occupancy goes to that, but I think that's a good
5 point to bring up.

6 MR. NETTLER: Well -- well, Mr. Zaidain
7 had asked the question about whether it was part of
8 the 1998 --

9 CHAIRPERSON GRIFFIS: No, I understand why
10 it's important to bring the information. I'm having
11 personally difficulty in -- in getting from a
12 Certificate of Occupancy going to now the test of how
13 we decide principal building and accessory use and
14 accessory buildings, but that's my problem. I just
15 thought I'd share it with everybody.

16 MR. NETTLER: Well, but I -- I think the
17 -- the issue is because if you look at the plans,
18 those -- the new building and the old building have
19 been joined together and so, not only the building
20 ends up being larger than --

21 CHAIRPERSON GRIFFIS: Physically joined is
22 what you're saying?

23 MR. NETTLER: Yes.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. NETTLER: Right. Larger than what --

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1 CHAIRPERSON GRIFFIS: I just wanted to
2 make sure everyone's clear on what you're saying.

3 MR. NETTLER: Correct. Physically joined.
4 Not only is it larger than what the -- the only
5 building that had any Certificate of Occupancy on it,
6 but if you look at the nature of the uses and the --
7 and the intensity of the use, it also is a lot more
8 than what is at the existing house today.

9 CHAIRPERSON GRIFFIS: The combined two
10 structures.

11 MR. NETTLER: That's right.

12 CHAIRPERSON GRIFFIS: The intensity of
13 use.

14 MR. NETTLER: Right.

15 CHAIRPERSON GRIFFIS: How do you measure
16 the intensity?

17 MR. NETTLER: The school, the number of
18 kids that are going to be there, the types of uses
19 that are in there which are the classrooms and all of
20 those types of uses.

21 CHAIRPERSON GRIFFIS: But, going directly
22 then you -- you -- you're looking at the occupancy --
23 potential occupancy of the two structures as they
24 compare to the main structure?

25 MR. NETTLER: Right. There's two levels

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1 of inquiry here that the court has said. You look at
2 the size. You --

3 CHAIRPERSON GRIFFIS: Right.

4 MR. NETTLER: -- look at the -- the
5 design. You look at the use and the intensity and in
6 terms of looking at that, you usually look at the
7 intensity of that use.

8 CHAIRPERSON GRIFFIS: Okay. Board
9 members, other questions?

10 MEMBER ZAIDAIN: Yes, I --

11 VICE CHAIRPERSON RENSHAW: Yes, I do.

12 MEMBER ZAIDAIN: Well, do you want to go?
13 I'll defer to you. I've already talked.

14 VICE CHAIRPERSON RENSHAW: All right.

15 CHAIRPERSON GRIFFIS: Ms. Renshaw.

16 VICE CHAIRPERSON RENSHAW: Thank you, Mr.
17 Chairman.

18 A question for Mr. Tummonds. You raised
19 the shade on the carriage house facility increasing
20 enrollment and I'd just like to touch back on that
21 because the size of the carriage house is going to in
22 your interpretation lead to a possible or probable
23 increase in the DOH licensing requirement and I'd like
24 to ask you to what limit? Is that going to take the
25 applicant up to the 181 or 185 or does it go beyond

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1 that? Because there's a direct impact --

2 MR. TUMMONDS: Absolutely.

3 VICE CHAIRPERSON RENSHAW: -- from that on
4 traffic.

5 MR. TUMMONDS: Right. Right. As we've
6 stated in our submissions, the applicant has agreed to
7 cap the number of students on the property at any one
8 time at 120.

9 We've heard discussions back and forth
10 about the possibility -- well, the fact that you only
11 have one DOH licensure capability right now for 108.
12 We have had discussions with Ms. McCoy of the
13 Department of Health. She has reviewed these plans.
14 She has submitted -- I'm not sure -- Mr. Jackson can
15 tell you from Office of Planning whether the
16 Department of Health has submitted its official report
17 on this matter, but the Department of Health has
18 stated that with the proposed new classroom space as
19 we've noted in this application, there would be
20 licensure capability of 150 students. However, we
21 said we are going to cap that number of students at
22 120.

23 So, again, we wanted to take that issue
24 off the table. Well, you know, you don't even have
25 the ability to go to that. Yes, we do. We're not

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1 going to go that high.

2 VICE CHAIRPERSON RENSHAW: Is that
3 permanent?

4 CHAIRPERSON GRIFFIS: Oh, I don't know why
5 we ask that question anymore.

6 VICE CHAIRPERSON RENSHAW: Like to get it
7 on the record.

8 CHAIRPERSON GRIFFIS: Yes, we see the
9 value of that in the past. Not for this particular
10 application however, but for others that perhaps we
11 have seen. I mean I think that's realistic. I don't
12 mean to be -- belittle that point. It is clear the
13 Board feels very strongly if we put a cap on something
14 that we expect it to be maintained. But, to have
15 promises which have come in numerous times in my short
16 period of this, that's schools, applicant, developers,
17 whatever it is make promises. They can't forecast
18 what five years/ten years down the road is in
19 expansion plans or needs or requirements, changes, et
20 cetera.

21 So, Mr. Zaidain, you had a question.

22 MEMBER ZAIDAIN: Yes, I just want to kind
23 of get this down to a basic -- some basic issues here.

24 By citing 205, you're basically saying,
25 and this is to the -- to the applicant, that this use

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1 fits in the definition child/elderly development
2 center -- child development center as defined in the
3 zoning code?

4 MS. DWYER: That's correct.

5 MEMBER ZAIDAIN: So, is there anything
6 going on in the carriage house that was related to
7 services for the parents or principal guardians of the
8 children attending the center? Anything going on in
9 that carriage house that was related to those two? Do
10 -- do you follow what I'm saying?

11 MS. DWYER: No.

12 MEMBER ZAIDAIN: If you look at the
13 definition --

14 MS. DWYER: Right.

15 MEMBER ZAIDAIN: -- of child/elderly
16 development center --

17 MS. DWYER: Right.

18 MEMBER ZAIDAIN: -- which -- which I think
19 we agree that this is what this is falling under.

20 MS. DWYER: Right.

21 MEMBER ZAIDAIN: It says a child/elderly
22 development center includes the following accessory
23 uses: counseling, education, training, and health and
24 social services of the parents or principal guardians
25 of children attending the center. So, are those

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1 accessory uses being performed in the carriage house?

2 MS. DWYER: Yes, the -- the carriage house
3 will include counseling space. It will include
4 education space, training space, and the indoor motor
5 activity for the health of the children attending the
6 center.

7 MEMBER ZAIDAIN: But --

8 MS. DWYER: The other --

9 MEMBER ZAIDAIN: -- but the -- the code
10 says for parents or principal guardians of the
11 children attending the center.

12 MS. DWYER: Oh, I see what section you're
13 doing. In addition to --

14 MEMBER ZAIDAIN: I'm looking in the
15 definitions.

16 MS. DWYER: Right. Well, there will be
17 some meeting space I know for parents to come in and
18 meet with teachers. There is counseling space for
19 therapists. The school has a very large percentage of
20 their students that are special needs children. So,
21 they do have therapy space for counseling. But --

22 MR. NETTLER: Is that counseling for --

23 MS. DWYER: The -- the other -- what --
24 what I would like to point out is there is another
25 section of the zoning regulations in the R-1 District

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1 that says any accessory use that is customarily
2 incidental to the principal use is permitted and that
3 is the definition that all the courts have used when
4 they have looked at what is an accessory use and I
5 would find it very difficult to say that classroom and
6 indoor motor activity space is not accessory to a
7 preschool.

8 Section 202.11 allows other accessory uses
9 customarily incidental --

10 MEMBER ZAIDAIN: Wait a minute. Cite that
11 section again.

12 MS. DWYER: Section 202.11. Other
13 accessory uses customarily incidental to the uses
14 permitted in the R-1 District under the provisions of
15 this section shall be permitted and the courts when
16 they've looked at the definition of, you know, what's
17 customarily incidental, they look at private schools.
18 They look at classroom buildings. They look at
19 performing arts buildings and as I said, indoor motor
20 space and classrooms and meetings rooms for parents
21 and teachers in my opinion and in the zoning treatises
22 that I've looked at is clearly accessory to a
23 preschool.

24 MEMBER ZAIDAIN: Okay. Thank you.

25 CHAIRPERSON GRIFFIS: Any other questions

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1 from the Board for clarification on this issue?

2 In which case, I'm -- I'm sensing the fact
3 that the Board needs just ten minutes to quickly
4 deliberate on this. So, why don't we do that in
5 executive session and return and see if we can take
6 action on this.

7 (Whereupon, at 4:54 p.m. off the record
8 for executive session until 5:23 p.m.)

9 CHAIRPERSON GRIFFIS: Thank you all very
10 much for your patience.

11 I believe the Board has some deliberation
12 that we can take on this. I think we've had
13 substantial information on both sides regarding the
14 issue and it's -- it's clearly coming down to the fact
15 of how we regard the proposed construction as shown in
16 the application and I'd open it up for people to begin
17 discussion.

18 MEMBER ETHERLY: Mr. Chair, if --

19 VICE CHAIRPERSON RENSHAW: I'll -- I'll
20 yield to my colleague.

21 MEMBER ETHERLY: Thank you very much, Ms.
22 Renshaw.

23 Just -- just very briefly. First of all,
24 I think that the briefing both orally and in writing
25 was -- was very good on both sides.

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1 It's a very close -- close call in my
2 thinking, but I think -- I think the problem that the
3 applicant runs into here is the nature of that second
4 -- that second building.

5 Some of the -- some of the case -- case
6 law that was cited speaks to that issue of accessory
7 versus principal use and I believe one of the cases
8 invoked the language that if -- if essentially the
9 first building were to burn down, would you still be
10 able to do what you want to do in that second building
11 and I think it's -- it's a pretty close call, but it's
12 my sense, just one Board member speaking, that I think
13 you can still do what you're set for to do in that
14 second building and that creates a concern.

15 So, in my mind, I see this as a principal structure.

16 I think the challenge comes into how you
17 then deal with that and I'd -- I'd be interested in
18 some more discussion because I'm not certain if the
19 2516 is the cleanest fit with respect to how do you
20 resolve that issue, but I think on a very, very
21 fundamental question of accessory versus principal
22 use, I think you're closer to principal use with
23 regard to that second building than an accessory use.

24 CHAIRPERSON GRIFFIS: Okay. Let's hear
25 more deliberation on that specific issue and that is

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1 is -- have you found it to be primary or accessory
2 structure?

3 Ms. Renshaw.

4 VICE CHAIRPERSON RENSHAW: Yes, thank you,
5 Mr. Chairman.

6 First of all, I too want to commend both
7 parties, the applicant and the opposition through Mr.
8 Nettler for the materials advanced to the Board. They
9 made for in my opinion very intriguing reading and I
10 found myself not just reviewing this material once,
11 but several times because I wanted to bounce the
12 ideas. It was as if you were sitting in front of me
13 and we were having a -- a debate. So, in that regard,
14 I appreciate the work that you all have done.

15 But, aided by this deliberation today, I
16 find that the carriage house is indeed in my mind a --
17 a principal building not an accessory building and --
18 and I was led into this because of the use and then
19 also because what was on my mind was the -- the fact
20 that this additional space is going to trigger or it
21 could trigger or it could possibly or probably trigger
22 additional children on site and so, with that, I kind
23 of packaged it all and led to the conclusion that this
24 is indeed a -- a principal use not an accessory
25 building.

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1 CHAIRPERSON GRIFFIS: Thank you, Ms.
2 Renshaw. Others? Mr. Zaidain?

3 MEMBER ZAIDAIN: Well, I guess I -- I
4 would just -- I mean I -- I think the dialogue that we
5 had with the applicants during the -- the question and
6 answer kind of stated -- kind of outlined my position.

7 I mean I agree with Ms. Renshaw and Mr.
8 Etherly first on the quality of the presentation we
9 got from the -- the applicants and the parties.

10 It's extremely informative on how to do
11 these things and it kind of brings to light some
12 definite -- what's the word I'm looking for --
13 impracticalities in the zoning regulations, but they
14 are what they are and that's what we have to look at
15 when we have developments like this.

16 But, to me, it came down to looking at the
17 fact that this is a child development center and that
18 205 does to apply in that sense and that it does fall
19 within that definition and the list of accessory uses
20 and I just don't see how we can deem this an accessory
21 building and an accessory use given those parameters
22 and I'll leave it at that. So.

23 CHAIRPERSON GRIFFIS: Not the strongest
24 definition or rather --

25 MEMBER ZAIDAIN: No, it's not and that's

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1 what -- that's what makes it a little frustrating.

2 CHAIRPERSON GRIFFIS: Perhaps not.

3 MEMBER ZAIDAIN: But, as I said, it is
4 what it is and that's why we have a Zoning Commission
5 member here today.

6 CHAIRPERSON GRIFFIS: Let me clarify. I
7 mean I think you would agree that it is -- it is
8 fairly definitive in its outline what accessory uses
9 are, but --

10 MEMBER ZAIDAIN: It is.

11 CHAIRPERSON GRIFFIS: -- whether that
12 actual realistic or practical or should be redefined.

13 MEMBER ZAIDAIN: It certainly doesn't
14 provide a lot of flexibility so to speak for a larger
15 scale child development center such as this.

16 CHAIRPERSON GRIFFIS: Indeed not.

17 MEMBER ZAIDAIN: And how and the proper
18 way to review them.

19 CHAIRPERSON GRIFFIS: We are, in fact,
20 faced with a fairly unique situation I think which is
21 evidence of both sides of the argument.

22 Any others? Comments.

23 COMMISSIONER HOOD: I just want to concur.

24 CHAIRPERSON GRIFFIS: Yes, Mr. Hood.

25 COMMISSIONER HOOD: I would just concur

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1 with my colleagues. I've been kind of quiet because I
2 can tell you that I have flipped back and forth in my
3 seat for the past hour and a half or so on -- on
4 whether or not -- which way to go and whether or not
5 205 and was it 2516 apply. I thought it did, but I
6 wasn't sure as Board Member Etherly said whether it
7 was a clean fit.

8 But, I do think that we need to go in a
9 direction where it's a clean fit, but I -- I still
10 would say that carriage house to me looks to be a
11 principal use and I would agree with the comments of
12 all my colleagues.

13 CHAIRPERSON GRIFFIS: Okay. Mr. Hood, I
14 appreciate those comments and it leads us directly
15 into the next. What I'm hearing from this Board is
16 the majority feel that with the information presented
17 orally today and the written submissions, that they
18 have decided by majority that it is, in fact, a -- a
19 principal use in the proposed construction.

20 I -- Mr. Hood, you've -- you have stepped
21 into what I have also understood from this Board as
22 difficulty in looking at the direct correspondence to
23 2516 exceptions to building lot control for this
24 particular application.

25 Let me put out that, in fact, in the

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1 deliberation and reading an awful lot of the
2 regulations and exploring ourselves in the executive
3 session, that I believe it would be and I'll take note
4 of opposition from my Board members. Perhaps more
5 appropriate to look under Section 3202.3 for a
6 variance. 3202.3 does cover -- I'll read it directly
7 as flip to it. No, I'm sorry. 3202.3 I think is what
8 I mean. Yes, indeed. That's why we need longer
9 breaks.

10 But, goes to the fact of how a variance
11 can come in as it relates to two primary structures on
12 a single lot. That would be our direction. I do not
13 believe unless the Board members feel it necessary
14 that we need that -- well, here is what I propose if
15 -- if folks are amenable. Of course, that would
16 create a variance for this case and also a special
17 exception, of course, under 200 or 205.

18 We can either have briefings on that or
19 what I would suggest rather is that that be somewhat
20 our direction to the applicant and the applicant, of
21 course, is free to decide how they would proceed in
22 this. I think we can take up the other issues today
23 that are before us and -- and see then again how far
24 along we go.

25 Any comments on that? Am I clear?

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1 MEMBER ZAIDAIN: No. Are you asking us to
2 give a clear direction on what relief for them to seek
3 or --

4 CHAIRPERSON GRIFFIS: Are you in agreement
5 that 2516 was not a perfect glove fit for this
6 application and that you had difficulty with seeing
7 how this application would fit into that and the
8 variance and are you amenable or are you more inclined
9 to look at 3202.3 in -- in dealing with principal
10 structures on a single lot?

11 MEMBER ZAIDAIN: I do agree with the
12 problems with 2516 as you -- as you stated, but it
13 seems to me there are some other ancillary things
14 here. I -- I assume we're going to get into a
15 discussion now that we've a determination about re-
16 advertising.

17 There is a motion for a continuance. I
18 would assume -- I have not read the letter from the
19 applicant, but I would assume it's to keep working
20 with the District agencies given their reports.

21 CHAIRPERSON GRIFFIS: Right.

22 MEMBER ZAIDAIN: What I'm saying is --

23 CHAIRPERSON GRIFFIS: We need to over this
24 first issue.

25 MEMBER ZAIDAIN: No, but what I'm saying

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1 is is all that may culminate together to do -- to give
2 a clear direction on the relief. That's -- I mean
3 there may be some refinements to the plan or -- or --
4 or whatever. I'm just -- I don't want to lead the
5 applicant in a direction that -- and shut the door on
6 other avenues that they may need to come back to
7 later.

8 CHAIRPERSON GRIFFIS: Okay. I can hear
9 from others because --

10 MEMBER ZAIDAIN: That's just my opinion.

11 CHAIRPERSON GRIFFIS: -- Mr. Zaidain, I
12 think -- what I understood from the majority of
13 comments is that you -- you were pretty much convinced
14 based on the record currently that there are two
15 primary structures on this lot.

16 MEMBER ZAIDAIN: I am convinced of that.

17 CHAIRPERSON GRIFFIS: Therefore --

18 MEMBER ZAIDAIN: I don't think that's
19 going to change under --

20 CHAIRPERSON GRIFFIS: -- we're not under a
21 special exception at that point and my only -- my only
22 comment to it is that I -- I have sensed in the
23 conversation from this Board difficulty in seeing how
24 2516 directly fits the relief sought for this
25 application and so, what -- what I am indicating for

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1 discussion is a direction that the application may
2 look to that may be more of a direct fit to the relief
3 that would be required in this application.

4 MEMBER ZAIDAIN: I think that's fine. I
5 mean I --

6 CHAIRPERSON GRIFFIS: I don't think we can
7 require it.

8 MEMBER ZAIDAIN: Yes, I -- okay.

9 CHAIRPERSON GRIFFIS: We can amend the
10 application immediately and go on, but I think that
11 based on -- based on the amount of detail that's
12 already coming out that I think it would be more wise
13 to let the applicant decide.

14 MEMBER ZAIDAIN: That's basically what I'm
15 saying, but I will defer to the rest.

16 VICE CHAIRPERSON RENSHAW: But --

17 CHAIRPERSON GRIFFIS: Ms. Renshaw.

18 VICE CHAIRPERSON RENSHAW: Mr. Chairman
19 and colleagues, if and when this is re-advertised, I
20 would ask for a better description of the application,
21 a more comprehensive description of the application.
22 Because I struggled through the description as it is
23 laid out now. Because after reviewing all of the
24 materials, it didn't match and so, I would charge the
25 applicant with making sure that whatever description

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1 is presented to the Board and to the public that it
2 really reflect what is happening at the school -- at
3 the child development center and what you're
4 requesting.

5 CHAIRPERSON GRIFFIS: Okay. And Board
6 members, other questions about that process and here's
7 what I'm going to do. I am going to ask that the
8 applicant make comment to our deliberation at this
9 point and then we can make a formal motion if -- if so
10 required and we will have rebuttal or additional
11 comment from the parties.

12 MEMBER ETHERLY: Mr. Chairman, if I may,
13 just with respect to what you've outlined as an
14 appropriate next step, I would be in agreement with
15 that -- with -- with that avenue. Clearly, perhaps
16 the most important thing that you stated was the fact
17 that the applicant is not -- should not consider
18 themselves bound by the suggestion. As is the case
19 with any applicant, they make the determination about
20 what relief they seek.

21 But, I believe the issues surrounding 2516
22 once you -- once you make a determination that that
23 might be applicable and you start looking at the
24 relevant test under that provision, there's some
25 challenges there that I think would be difficult to

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1 comply with especially as you deal with a theoretical
2 lot subdivision and those types of issues and some of
3 that was alluded to in the applicant's argument
4 regarding the applicability.

5 I still think the outcome is appropriate,
6 but I think the -- the Chairman's suggestion gives the
7 applicant some guidance as to how to best make this
8 work not from the standpoint of any kind of indication
9 that approval would be forthcoming. I think the Chair
10 is definitely stating that, but just with regard to --
11 to what addresses the challenge that you face now with
12 the fact that you have what amounted to principal
13 buildings on the -- on the subject property --

14 CHAIRPERSON GRIFFIS: You bring up an
15 interesting point that wanted to continue on and that
16 is what was our difficulty with 2516 and as we heard
17 discussed, my difficulty with 2516 it seems that all
18 the provisions that were to be looked at really did
19 lead to a multiple development on a large track. I
20 mean even the fact of what is referred to for review
21 from Office of Planning, you know, it goes to big
22 issues even of urban design. I mean we're talking
23 about urban design. That -- that seems to me not just
24 looking at specific little building, you know, one on
25 a -- on a big lot but rather a large track type of

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1 review process. You know, entire public safety issues
2 were also brought up. So, that's the difficulty in --
3 in continuing under 2516 in -- in my opinion.

4 Okay. Others?

5 MEMBER ETHERLY: Just --

6 CHAIRPERSON GRIFFIS: Yes.

7 MEMBER ETHERLY: -- just to piggyback on
8 that, Mr. Chairman, in terms of the deliberative
9 aspect of this, the interesting thing about -- about
10 -- about this question is that to an extent, you both
11 had a piece of it right. In that, I think the
12 applicant had a point that 2516 once again is -- is
13 not quite the fit. I didn't go all the way with you
14 and say that it just didn't apply altogether. Because
15 I think as the -- as the party opponents raised, there
16 nevertheless are some issues raised and I'm not saying
17 one way or the other dispositively, but there's some
18 issues raised by this -- this entity or thing and I --
19 I say that with all due affection regarding NCRC.

20 And how do you characterize it because
21 there is a challenge of the fact that we're talking
22 about a child development center. But, there's some
23 interesting and new things happening here that we
24 haven't necessarily seen before. How do you deal with
25 that challenge and -- and do it in such a way that you

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1 don't do a disservice to the existing zoning regs and
2 -- and be sensitive to what you're bringing before us.

3 So, I think -- I think that's -- that's
4 the additional piece to where -- where the Chair was
5 heading in that. So, you got a piece of it right and
6 the question is how do we work that into -- into re-
7 advertising or moving forward with this case.

8 Thank you, Mr. Chair.

9 CHAIRPERSON GRIFFIS: Other Board members.

10 Ms. Dwyer.

11 MS. DWYER: Mr. Chairman and members of
12 the Board, on behalf of the applicant, we would like
13 to amend the application then to request a variance
14 from Section 3202.3 and re-advertisement so that we
15 can go forward with this project and I realize that
16 they'll have to be, you know, additional delay in
17 terms of the scheduling of the hearing to permit the
18 re-advertisement, but we very much want to do that and
19 take your direction and move the project forward.

20 MR. NETTLER: Can I make one comment?

21 CHAIRPERSON GRIFFIS: Absolutely.

22 MR. NETTLER: Thanks. As -- it's always
23 difficult for an attorney to recognize a failing on
24 his part, but I struggled to find 3202.3 because I
25 knew the language existed without finding the section.

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1 But, I think you're absolutely right and
2 -- and it is a variance issue because 2516 would --
3 would come in only if the way the applicant tried to
4 resolve the issue was by doing a theoretical
5 subdivision.

6 CHAIRPERSON GRIFFIS: Exactly.

7 MR. NETTLER: But, 3202.3 makes it clear
8 that once you've made a decision that it's a -- two
9 principal buildings and you don't have a theoretical
10 subdivision before you, you have to get a variance.

11 CHAIRPERSON GRIFFIS: So, you don't
12 disagree and object to the applicant's --

13 MR. NETTLER: I don't disagree. You would
14 have to re-notice the case.

15 MS. DWYER: We're in agreement.

16 MR. NETTLER: We are in agreement on that
17 issue. That's correct.

18 CHAIRPERSON GRIFFIS: It took two hours.
19 Okay. Well, that pleases me. I think -- I think this
20 Board has a lot to thank as it's already done with the
21 submissions from the parties that did and also our --
22 our staff and corporation counsel.

23 That being said, then let's take up the
24 issue of -- of parking so that we can have clarity on
25 that, too. That is one of the issues that was brought

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1 up. I'm going to ask for -- you can certainly comment
2 about it in terms of the applicant and the parties in
3 the case.

4 Oh, I guess I should offer an opportunity
5 to any of the other parties either in support or
6 opposition to make comment as the applicant has done
7 and one of the parties in opposition to the direction
8 that we've now taken which I can reiterate if people
9 are unclear which is one reason to approach the table
10 or with comments one can approach the table.

11 I'll give you a moment to get the bravery
12 and the blood flowing in the legs.

13 And if no one does approach then, we can
14 move on and look at the parking. Parking requirement
15 was brought up. If we look at -- sorry. Oh, I'm
16 sorry. There -- see there it is.

17 MR. HUNSICKER: My name's Steve Hunsicker.

18 CHAIRPERSON GRIFFIS: Yes, Mr. Hunsicker.

19 MR. HUNSICKER: Could I -- I'm unclear
20 about the period of time that the re-advertisement --

21 CHAIRPERSON GRIFFIS: That's an excellent
22 point and what I'm going to say is as we end this for
23 today, I will make absolutely clear that everyone
24 knows what the timing is on the advertising and when
25 the next set hearing will be.

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1 But, it's not going to be tomorrow. I can
2 guarantee you that.

3 Mr. Nettler, you're and all the parties,
4 are you in receipt of the application to certify
5 historic buildings for D.C. Zoning Regulations which
6 was submitted by the applicant today? Is everyone in
7 receipt of that? Mr. Nettler, are you in receipt?

8 MR. NETTLER: The fact that the -- that
9 the building has been certified as a contributing
10 building, correct.

11 CHAIRPERSON GRIFFIS: It seems to me as I
12 read this the lot and square have been certified.

13 Do you -- do you disagree?

14 MR. NETTLER: I don't disagree, but it's
15 -- what I would have a disagreement with is to what
16 affect this is. Because as I understand it, you can
17 question the Office of Planning on this. That in the
18 -- in the break, that the Office of Planning called
19 and while this does provide a certification, it does
20 not provide a waiver. That the Department of Consumer
21 Regulatory Affairs has not yet -- not yet decided
22 whether to grant the waiver that was sought only
23 recognizing that it has a certification before it.

24 So, that issue still have to be decided by
25 the Department of Consumer Regulatory Affairs and --

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1 and you can ask the Office of Planning regarding that.

2 MS. DWYER: I would submit --

3 CHAIRPERSON GRIFFIS: I'm sorry. Yes.

4 MS. DWYER: I would submit that the Board
5 of Zoning Adjustment can make that decision. In the
6 prior case, the Board decided that the exemption
7 applied to the site back in 1998 and that is
8 ultimately a Board decision. So, it's before the
9 Board appropriately for you to decide.

10 MR. NETTLER: Well, actually, that's not
11 exactly what happened. In the -- in the prior case,
12 there was a Zoning Administrator letter that required
13 them to get -- to get a variance for that. That issue
14 then became before you as to whether they should or
15 should not and that can get -- we can get into a whole
16 discussion as to why they should or shouldn't, but the
17 fact of the matter is Department of Consumer
18 Regulatory Affairs hasn't yet decided whether to grant
19 a waiver and while they're going to be going through a
20 re-notice period anyway, it's -- it's premature for
21 you to take any action on this while the Department of
22 Consumer Regulatory Affairs is doing something with
23 it.

24 MS. DWYER: I -- I disagree. Because the
25 -- if the Department of Consumer Regulatory Affairs

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1 makes an erroneous decision as they did the last time
2 and it comes back to the Board, the Board is the
3 ultimate decider. We are talking about re-advertising
4 the case and if there's any variance relief that is
5 needed, we need to know that today so that both
6 variances can be noticed.

7 CHAIRPERSON GRIFFIS: Mr. Nettler, let's
8 look at 2100.5. No additional parking spaces shall be
9 required for an historic landmark or a building or
10 structure located in an historic district that is
11 certified by the State Historic Preservation Officer
12 as contributing to the character of that historic
13 district.

14 MR. NETTLER: Right.

15 CHAIRPERSON GRIFFIS: Am not holding in
16 the submission a certification of the historic
17 buildings and does that not include --

18 MR. NETTLER: Right. And -- and -- and
19 the issue before the Department of Consumer Regulatory
20 Affairs is not with regard to the existing building.
21 It's regard to whether their should be a waiver for
22 the new construction. The new construction is not a
23 -- or historic buildings obviously. They're not built
24 yet. But, the Department of Consumer Regulatory
25 Affairs is --

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1 CHAIRPERSON GRIFFIS: Ms. Dwyer, is this
2 -- is this -- there's an issue which I think we'll
3 need to clarify for the Board knowing what I'm hearing
4 in my other ears. Is whether -- how -- what's the
5 threshold for us? Is it that it is, in fact,
6 certified by the State Historic Preservation Office as
7 contributing to the character or is it the DCRA that
8 then grants the waiver?

9 MR. NETTLER: Well, in -- in the normal
10 situation where you don't have a special exception or
11 variance situation before you, if the DCRA in the
12 first instance makes a decision as to whether to grant
13 a waiver based on a certification and in a normal
14 situation where you have a contributing building and
15 you're putting additions on the contributing, of
16 course, you do get a waiver. That's -- that's a
17 typical situation.

18 But -- and you can verify this from the
19 Office of Planning. As I understand the Department of
20 Consumer Regulatory Affairs though is evaluating
21 whether new construction particularly of the -- of the
22 intensity of this is entitled to the waiver that would
23 otherwise go to the building itself.

24 CHAIRPERSON GRIFFIS: Well, it goes to the
25 direct question then is this waiver -- is your

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1 understanding, Ms. Dwyer, that this application and
2 the certification for a State Historic was looking at
3 the proposed work and thereby certifying that the --
4 the new construction.

5 MS. DWYER: Absolutely. That waiver was
6 following the staff report which we attached as
7 Exhibit G in our prehearing submission in which the
8 Historic Preservation Review Board reviewed the entire
9 project and determined that the additions were
10 compatible and consistent with the character of the
11 historic district.

12 CHAIRPERSON GRIFFIS: Contributing.

13 MS. DWYER: Right. Contributing. So,
14 following that --

15 CHAIRPERSON GRIFFIS: Okay.

16 MS. DWYER: -- they issued the exemption.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. NETTLER: No. No, that's -- that's
19 not what happened and you can talk -- you can ask Ms.
20 Steingasser. Talk to the staff.

21 CHAIRPERSON GRIFFIS: I know. You keep
22 saying that. I think we'll refer to her in a moment.

23 MR. NETTLER: Okay.

24 CHAIRPERSON GRIFFIS: But, I want to get
25 some clarification in front of --

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1 MS. DWYER: And -- and the -- the 1998
2 order which we attached at Exhibit D says that at that
3 point in time the Board determined that a parking
4 variance was not needed because of the zoning
5 regulations which exempt historic structures from
6 providing additional parking when the use is changed.

7 MR. NETTLER: That was for the existing
8 historic structure not for new construction.

9 CHAIRPERSON GRIFFIS: I understand that,
10 but you can get a waiver from the -- the State
11 Historic Preservation Office for a contributing
12 building --

13 MR. NETTLER: The State Historic
14 Preservation Office does not give waivers.

15 CHAIRPERSON GRIFFIS: I'm sorry. You get
16 the certification from the State Historic Preservation
17 Office and the certification is all -- is the only
18 thing that our regulations ask for.

19 Let's go to Office of Planning.

20 MS. STEINGASSER: Thank you, Chairman.

21 We have asked the Zoning Administrator to
22 weigh in on this determination. We were looking at
23 Section 2100.6 which is if we turn the page at the top
24 of the page which talks about when the intensity of
25 use of a building or structure existing before 1958 is

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1 increased by an addition or addition of employees,
2 dwelling unit, gross floor area, seating capacity or
3 other unit of measurements specified in 2101. Parking
4 spaces shall be provided for the addition or
5 additions. So, we -- we have asked the Zoning
6 Administrator to weigh in on this particular issue.

7 What's before you now is indeed a
8 certification from the Historic Preservation Office
9 that -- that the existing structure is contributing.
10 It is not -- it is my understanding that it is not
11 their intention that this serve as a parking waiver as
12 approved by HPRB. HPRB does not have the authority to
13 grant parking variances but rather --

14 CHAIRPERSON GRIFFIS: No, I understand
15 that. Let's -- let's go to that point and -- and
16 point six goes to intensity of use.

17 MS. DWYER: Mr. Chairman, if I could
18 address --

19 CHAIRPERSON GRIFFIS: The parking -- the
20 parking as we calculated goes to number of employees
21 and, therefore, we would have to establish that either
22 the number of employees is increasing or actually
23 there's no increase in employees for the school or
24 they're increasing in less than 25 percent. That
25 would also give them a waiver from parking.

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1 Yes.

2 MS. DWYER: And my point is that back in
3 1998 when the applicant came before the Board, they
4 were increasing the intensity of use at that time.
5 They were adding more children. They were adding more
6 staff and the Board did not look at this section
7 because it -- the -- the historic district exemption
8 applies regardless of Section 2100.6.

9 CHAIRPERSON GRIFFIS: Yes, but that was
10 cleaner. Wouldn't you -- wouldn't you agree? It was
11 cleaner with just the historic building and I don't
12 think what's in dispute is the designation of the --
13 of the --

14 MS. DWYER: Right.

15 CHAIRPERSON GRIFFIS: -- existing.

16 MS. DWYER: But, for a -- but, for a use
17 like this, it's not the square footage of the building
18 that determines the parking.

19 CHAIRPERSON GRIFFIS: I agree it's not the
20 square footage of the building.

21 MS. DWYER: It the number of children or
22 staff.

23 CHAIRPERSON GRIFFIS: Right.

24 MS. DWYER: In this case, staff. So, that
25 change in 1998 regardless of whether there was new

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1 construction and it is changing again now, but it's
2 the same test.

3 MR. NETTLER: That can't be. Remember,
4 you just decided that this was another principal
5 building.

6 If they are unable to get variance, their
7 only -- the only avenue of relief is either to do a
8 theoretical subdivision or a record lot. That -- it's
9 -- it's -- you can't argue that by creating the new
10 lot that you now have a historic structure on the lot.

11 That's not what's being done here.

12 That's why the Department of Consumer
13 Regulatory Affairs is looking at the issue to
14 determine when you have this type of intensity of
15 development on a site whether the waiver should not
16 only cover -- goes beyond merely the historic building
17 on the site and covers the new construction.

18 It's not just because you have an increase
19 of employees. You have an increase in gross floor
20 area and -- and parking spaces that would otherwise
21 apply to that gross floor area which is a component of
22 -- of -- of schools when you look at the number of
23 parking spaces and -- and other issues and that's why
24 it's -- it's I think in the first instance best left
25 for the Zoning Administrator to make a determination

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1 in this instance or for them to -- to seek a, you
2 know, a variance on this issue as well.

3 CHAIRPERSON GRIFFIS: All right. Well,
4 here's where I am and then I want to hear from the
5 other parties that's approached.

6 I think that there -- there would be no
7 additional parking required if the -- if the new
8 construction was actually certified as contributing to
9 the character of the historic district in which it's
10 located, if the intensity of use as classified for
11 parking under Chapter 21 did not increase more than 25
12 percent or if, you know, in another saying -- well,
13 no, then that would it.

14 So, let's hear.

15 MR. NETTLER: Can I just say one thing? A
16 -- a Review Board does not say that new construction
17 becomes contributing. The -- the standard of the
18 preservation law isn't compatible --

19 CHAIRPERSON GRIFFIS: I do you refute --
20 I don't understand then what 2100.5 tells me. It's no
21 additional spaces shall be required for an historic
22 landmark or building or structure located in an
23 historic district that is certified. If they can --

24 MR. NETTLER: Right. The --

25 CHAIRPERSON GRIFFIS: Any building or

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1 structure can get certified.

2 MR. NETTLER: Right. But, the new
3 construction doesn't get certified as contributing.
4 The new structure --

5 CHAIRPERSON GRIFFIS: Why can't it?

6 MR. NETTLER: Because under the
7 regulations, a contributing building has to meet a --
8 it goes into what are called period of significance
9 issues for historic districts. You have to have been
10 -- this gets into a very, very esoteric discussion on
11 -- under existing regulations.

12 CHAIRPERSON GRIFFIS: We got time. We're
13 here all night.

14 MR. NETTLER: Okay. This gets into
15 very --

16 CHAIRPERSON GRIFFIS: Now, actually not.

17 MR. NETTLER: But -- but, the issue is
18 when -- when you -- when you get approval for new
19 construction, the -- the review that's done is whether
20 the new construction is compatible with the historic
21 district.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. NETTLER: Not whether it becomes a
24 contributing building in itself.

25 CHAIRPERSON GRIFFIS: So, you're saying a

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1 new building built in an historic district cannot be
2 certified.

3 MR. NETTLER: It can never be a
4 contributing building.

5 CHAIRPERSON GRIFFIS: How long does it
6 take for a new building to get certified? It has to
7 turn old somehow? I mean is that what you're saying.

8 MR. NETTLER: You'd have to change the
9 period of significance for -- I mean --

10 CHAIRPERSON GRIFFIS: You can tell I'm a
11 big preservation. I'm probably pissing some people
12 off. But --

13 MR. NETTLER: Yes, you have the change the
14 period of significance and then it has to be -- the
15 rule of thumb is 50 years. You can do it for less
16 than 50 years, but you would have to change the
17 period. For example, they're doing that with
18 Georgetown next week? Next week.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. NETTLER: Or this -- this week.

21 CHAIRPERSON GRIFFIS: Are you in
22 agreement, Ms. Dwyer?

23 MS. DWYER: Excuse me.

24 CHAIRPERSON GRIFFIS: Do you -- are you in
25 agreement in terms of that a new construction in an

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1 historic district --

2 MS. DWYER: No, I'm -- I'm in
3 disagreement. I -- I believe that when the Review
4 Board reviews a project and in this case they review
5 the entire site. They reviewed the new construction
6 on the site as it relates to the -- the -- what they
7 term the principal or main building that their
8 determination can be that the existing buildings and
9 the new construction are contributing to the character
10 of the historic district and when they signed that
11 form, that is in essence what they were saying.

12 CHAIRPERSON GRIFFIS: Okay. I want to
13 give a chance to the other party to speak.

14 MS. BADAMI: Linda Badami again. I wanted
15 to respond to a statement Ms. Dwyer made referring to
16 the 1998 BZA hearing.

17 In a conversation between Mr. Watson and
18 Kay Stafford the Director of NCRC at the time on page
19 eight, question from the attorney "In the last five
20 years, has the number of staff or number of children
21 changed at the center?" Answer "No."

22 So, it directly contradicts what Ms. Dwyer
23 just said that the amount of staff and child
24 enrollment had increased.

25 MS. DWYER: The 1998 case was for approval

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1 of the Certificate of Occupancy change from 90 to 120
2 children at any one time. That was a change of
3 intensity of use.

4 CHAIRPERSON GRIFFIS: Okay. Is that
5 clear? You disagree. Correct?

6 MS. BADAMI: I disagree.

7 CHAIRPERSON GRIFFIS: Okay.

8 MS. BADAMI: Yes.

9 CHAIRPERSON GRIFFIS: Questions, Board
10 members? Okay. Thank you.

11 Board members? Where are you?

12 VICE CHAIRPERSON RENSHAW: Where are you?

13 CHAIRPERSON GRIFFIS: Parking. Here's my
14 understanding. Having heard this discussion, the
15 whole point and purpose for this Board was to if we
16 could definitively establish whether parking would be
17 required, whether there would be relief from any sort
18 of parking, and I don't know where you are with that.

19 Whether you feel that there's a definitive direction
20 that we can take from or whether you set them all off
21 to figure it out for themselves.

22 I -- I thought that we -- perhaps we might
23 come together at least in a majority with an
24 understanding of how we would look at parking or how
25 definitively to look at parking for this application.

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1 MEMBER ZAIDAIN: Well, this is an
2 application to DCRA. Right? They're suppose to --

3 CHAIRPERSON GRIFFIS: I mean our zoning
4 application.

5 MEMBER ZAIDAIN: Okay. Okay. Well, I
6 just want to make sure I understand what I'm looking
7 at. This is -- been part of an application and a
8 certification. The way I read this and then what -- I
9 think what we need to -- to understand is what exactly
10 is being certified here.

11 I mean you see a note. I hereby certified
12 that this property is either an historic landmark or a
13 building and then you also see the notation for a
14 square and lot, but then it also refers to an address.

15 So, I think we're in a position we're
16 trying to determine if the new construction here,
17 i.e., the carriage house is part of this certification
18 and I'll be honest. I -- I can't make that
19 determination right now. Unless -- I mean unless
20 there's additional information that can be presented.

21 CHAIRPERSON GRIFFIS: Okay. Well, here's
22 the situation I think we're facing. We're -- we're
23 having to re-advertised this which will give us the
24 length. The applicant can look at that. Certainly,
25 it's heard our concerns and comments and as we -- as

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1 they put together the new advertising, they will see
2 fit to which direction to take. If we return on
3 whichever date and time we set this for a new
4 schedule, we may have this discussion again and that's
5 what I would just have everyone prepare for then.

6 MS. DWYER: Then, Mr. Chairman, on
7 behalf --

8 CHAIRPERSON GRIFFIS: Yes.

9 MS. DWYER: -- on behalf of the applicant,
10 what we would do is just advertise in the alternative.

11 So, in the event you decide that a parking variance
12 is needed, it will have been advertised and we are
13 protected then. So, the application would be amended
14 then to include both of those variances, parking as
15 well as Section 3202.3.

16 CHAIRPERSON GRIFFIS: I think that's wise.

17 How at this point I'm not sure. We won't hold you to
18 this.

19 MS. DWYER: I think -- I think we can --
20 you know, just as they did last time, we can clearly
21 meet the test for the variance because the whole
22 intent of --

23 CHAIRPERSON GRIFFIS: Right. Okay. I
24 think that's -- I think that's very wise.

25 MS. DWYER: All right.

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1 CHAIRPERSON GRIFFIS: Mr. Nettler.

2 MS. DWYER: Can I -- can I --

3 MR. NETTLER: Well, we're not agreeing
4 that they would meet the test. I'd certainly agree
5 that that's the appropriate way to go is to advertise
6 for another variance.

7 MS. DWYER: Can I confirm that both of
8 those variances are area variances and that is the
9 test?

10 MR. NETTLER: I don't believe the first
11 one is an area variance.

12 MS. DWYER: The variance from Section
13 3202.3 would be an area variance.

14 MR. NETTLER: No, I believe that's always
15 been treated as a use variance. More than one
16 principal building on it.

17 CHAIRPERSON GRIFFIS: All right. It's --

18 MR. NETTLER: You can --

19 CHAIRPERSON GRIFFIS: -- it was area. Ms.
20 Monroe, do you have an opinion on that?

21 MS. MONROE: I just walked back in after
22 discussing parking and I don't know what you're
23 talking about.

24 CHAIRPERSON GRIFFIS: That's what we've
25 always said about you. You have perfect timing.

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1 MS. DWYER: We're -- we're talking about
2 Section --

3 CHAIRPERSON GRIFFIS: 3202.3.

4 MS. DWYER: Is that an area variance?

5 CHAIRPERSON GRIFFIS: Area or use?

6 MS. MONROE: Let me look at it. Just give
7 me a second.

8 MEMBER ETHERLY: Mr. Chair, pending --
9 pending corporation counsel's look at it, I would -- I
10 would be inclined to -- to go with your -- your
11 instinct on it that it would be an area variance, but
12 I would -- I would appreciate guidance.

13 VICE CHAIRPERSON RENSHAW: I go the other
14 way.

15 CHAIRPERSON GRIFFIS: Well, while Ms.
16 Monroe who is our corporation counsel looks at the
17 regulations, I think we can explore it.

18 MR. NETTLER: There are -- there are prior
19 decisions of the Board on this issue. If maybe in the
20 interim before this gets noticed, you can -- we both
21 can call those out, but my recollection is it's
22 treated as a use variance.

23 MS. MONROE: Mr. Chairman.

24 CHAIRPERSON GRIFFIS: Yes, Ms. Monroe.

25 MS. MONROE: Just from the reading of it,

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1 I would say an area variance. Because you're not --
2 this is a use that's already accepted in the zone and
3 is already -- it's changing to a different use that
4 wouldn't normally be okay in that zone. You're just
5 changing the dimensional --

6 CHAIRPERSON GRIFFIS: I agree and even in
7 -- in reviewing 3202.3, Mr. Nettler, I don't see
8 anything that even speaks to use rather than it is all
9 area and lots. I mean we're talking about principal
10 structure. We're talking about construction
11 conversion.

12 MR. NETTLER: You can't -- well, in -- my
13 recollection is that in the past that I've looked at
14 it from the perspective that you can't use a building
15 on non-accessory. Even -- even if it was a matter of
16 right use, you can't have a -- two principal buildings
17 with principal uses on the same lot and so, it's been
18 -- it's --

19 CHAIRPERSON GRIFFIS: Oh, man.

20 MR. NETTLER: I think it's -- it's a
21 better course of valor for us to --

22 CHAIRPERSON GRIFFIS: No, I understand.

23 MR. NETTLER: -- look at the prior zoning
24 orders rather than guess at what it is.

25 CHAIRPERSON GRIFFIS: I -- I agree.

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1 That's -- that's -- I don't know how we facilitate
2 that unless you want to provide that for the applicant
3 in order to inform them on how they've decided to go
4 forward.

5 I -- I -- what I hate to do is have this
6 as the next preliminary matter when we meet six months
7 from now.

8 MR. NETTLER: I think we can have a
9 resolution before that notice goes out.

10 CHAIRPERSON GRIFFIS: With our
11 participation or not?

12 MR. NETTLER: Between the two of us I'm
13 sure.

14 CHAIRPERSON GRIFFIS: Fabulous.

15 MS. DWYER: We could have agreement --

16 MR. NETTLER: A third agreement. Right.

17 CHAIRPERSON GRIFFIS: Okay.

18 MS. DWYER: In any event, it'll -- it'll
19 be advertised as a variance. We would like to know
20 now so we know what the burden of proof is. I -- I
21 agree with court counsel and I agree with you that I
22 think it's an area variance. It's talking about
23 structure and it's talking about lot and it's not
24 talking about the use, but if we do not have that
25 direction from the Board, then we will prepare under

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1 both tests.

2 CHAIRPERSON GRIFFIS: Well, as stated
3 initially, we have not amended the application, but --
4 but you have and I think that we would give direction.

5 I think right now our initial direction is that it is
6 area. Clearly, what I want to avoid is us -- in all
7 -- in all seriousness having this as a preliminary
8 matter when we reconvene this case to decide whether
9 we're looking at a use or an area variance.

10 So, if we could be absolutely ironclad. I
11 am not adverse and, of course, the attorneys may
12 differ with me, that is my attorneys not you guys,
13 that if you want to put in the record your
14 communication that would be helpful as we would not be
15 looking to respond or the Board would not respond, but
16 certainly that would help us in -- perhaps in our
17 preparation. I'd leave that, of course, open, but I
18 do not believe there would be any reason why we
19 wouldn't accept that.

20 And just because I'm feeling charitable,
21 too, if it did become problematic and it was a Board
22 decision, I want to do that before we get to the
23 hearing. I'm not sure we need everyone participating.

24 We would obviously notice all the parties and perhaps
25 we could meet under a special meeting and decide it

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1 prior to what will -- we will set up for I'm hoping an
2 entire afternoon in rational day hours to -- to
3 continue on this case.

4 So, any other questions? Should we take
5 up the motion for a continuance?

6 MS. DWYER: Which is --

7 MR. NETTLER: I think that's become moot.
8 Hasn't it?

9 MS. DWYER: It's probably moot in light of
10 the need for re-advertisement.

11 CHAIRPERSON GRIFFIS: Is indeed.

12 MS. DWYER: Yes.

13 CHAIRPERSON GRIFFIS: And I was hoping to
14 be able to say that word, but you guys beat me to it.

15 Then do we have any other issues before us
16 with this case? Anything else outstanding in terms of
17 pertinent preliminary matters with substance? I will
18 get now directly. If we don't, to schedule and how we
19 set this.

20 Ms. Bailey, when you're able, let us look
21 at first of all outlining what is required for the
22 time for re-noticing.

23 MS. BAILEY: Mr. Chairman, May 6th in the
24 afternoon is a date that's being suggested at this
25 point.

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1 CHAIRPERSON GRIFFIS: Okay. And that
2 gives ample time for the requirements for
3 notification. Is that correct?

4 MS. BAILEY: Yes, it does.

5 CHAIRPERSON GRIFFIS: Now, how much and
6 do -- it is my assumption and I'm just kind of moving
7 along with it that -- that the basis of this change as
8 it is just amended and it is, in fact, re-advertised
9 just for everyone's clarity and concurrence that this
10 is the same case -- case number. We are maintaining
11 all the parties and participants in this case and
12 everything that has been supplied in the record
13 remains in the record. It may become, in fact, non-
14 useful based on changes in the application.

15 Does anyone disagree with that? Good.

16 MS. BAILEY: Mr. Chairman, I would assume
17 that the applicant will file a prehearing statement or
18 a statement 14 days ahead of time.

19 MS. DWYER: That is correct.

20 MS. BAILEY: And the Office of Planning
21 and the ANC if they intend to file supplemental
22 reports, that would come in seven days ahead of time.

23 MS. DWYER: Yes, that's our assumption.

24 CHAIRPERSON GRIFFIS: Okay. I will hear
25 absolute objections from the parties in the case to

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1 the date of 6 May 03. We are going to set it for the
2 afternoon. Is that correct, Ms. Bailey?

3 MS. BAILEY: Yes, Mr. Chairman.

4 CHAIRPERSON GRIFFIS: And we're going to
5 hold the afternoon for this entire case.

6 MS. BAILEY: The entire afternoon.

7 CHAIRPERSON GRIFFIS: Which we won't need
8 to use it all I'm sure, but we'll give it to you
9 anyway.

10 Do -- do people need five minutes to check
11 schedule or is that -- everyone can make it on the
12 6th?

13 MS. DWYER: We can make it on the 6th.

14 CHAIRPERSON GRIFFIS: Thank you. Mr.
15 Nettler, you're available on the 6th?

16 MR. NETTLER: Yes.

17 CHAIRPERSON GRIFFIS: Ms. Marshall, are
18 you available on the 6th?

19 MS. MARSHALL: (Off microphone.)

20 CHAIRPERSON GRIFFIS: Other parties?
21 Everybody's okay with this?

22 MS. DWYER: Yes.

23 CHAIRPERSON GRIFFIS: Wow.

24 MS. DWYER: Good.

25 CHAIRPERSON GRIFFIS: It must be far

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1 enough away. Very well.

2 Anything else I'm missing, Ms. Bailey?

3 Excellent.

4 Ms. Dwyer?

5 MS. DWYER: Thank you.

6 CHAIRPERSON GRIFFIS: Mr. Nettler, any

7 other specifics we need to cover today?

8 MR. NETTLER: No.

9 CHAIRPERSON GRIFFIS: In that case, I can
10 adjourn the 25 February 2003 Board of Zoning
11 Adjustment for the District of Columbia public
12 hearing.

13 (Whereupon, the hearing was concluded at
14 6:05 p.m.)

15

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