

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING AND ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JUNE 24, 2003

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Board Member
CURTIS ETHERLY, JR.	Board Member
DAVID ZAIDAIN	Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD	Vice Chairperson
PETER MAY	Commissioner (Architect of the Capital)

COMMISSION STAFF PRESENT:

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

OTHER AGENCY STAFF PRESENT:

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ARTHUR JACKSON                      Office of Planning  
JOEL LAWSON                         Office of Planning  
DAVE McGETTIGAN                 Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

LORI MONROE, ESQ.

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

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Washington, D.C. 20037

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10:00 a.m.

CHAIRPERSON GRIFFIS: I will call our 24  
June 2003 morning hearing two session and welcome  
everyone again. This is the public hearing of the  
Board of Zoning Adjustment of the District of  
Columbia.

My name is Geoff Griffis. I am  
Chairperson. Joining me is Mr. Etherly and Ms.  
Miller. Also representing the Zoning Commission  
today -- this morning with us is Mr. May.  
Representing the National Capital Planning Commission  
is Mr. Zaidain. Also from the Office of Zoning we  
have Ms. Bailey and Mr. Moy on my right and Mr.  
Nyarku on my very far left.

Copies of today's agenda are available to  
you. They are located close to the door where you  
entered in the hearing room. Please avail yourself  
to take a look at that and we will keep our order  
this morning for calling cases, I must go through a  
few quick housekeeping items.

First of all, to be absolutely clear,  
there are several things that need to happen. When  
coming forward to speak to the Board you need to fill  
out two witness cards. Witness cards are available  
on the table where you entered into.

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1           They are also available in front. Before  
2 sitting down, if you would, deliver the two witness  
3 cards to the recorders who are sitting to my right  
4 and then you can come forward, have a seat, and make  
5 yourself comfortable.

6           When addressing the Board you need to  
7 turn on a microphone. I'll give instruction if  
8 that's not clear how to do it. Also, when starting  
9 to speak and give testimony before the Board you need  
10 to give us your name and your address. This is for  
11 proper recording purposes, of course.

12           I would ask that everyone turn off all  
13 their cell phones and beepers at this time so we  
14 don't have any disruption of the proceedings. Just  
15 be aware and avail yourself to understand that all of  
16 these proceedings and public hearings are being  
17 recorded.

18           The order and procedure for special  
19 exceptions and variances is, first, we hear  
20 statements and witnesses of the applicant. Second,  
21 we hear Government reports attended to the  
22 application. Third, we hear from the Advisory  
23 Neighborhood Commission. Fourth, we hear persons or  
24 parties in support. Fifth would be persons or  
25 parties in opposition. Sixth would be closing

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1 remarks by the applicant.

2 Cross-examination of witnesses is  
3 permitted by the applicant or parties in the case.  
4 The ANC in which the property is located is  
5 automatically a party in the case.

6 The record will be closed at the  
7 conclusion of each case and hearing except for any  
8 material that is specifically requested by the Board  
9 and we will be very specific on what is to be -- or  
10 what we hope to be anyway, I guess -- we try to be  
11 very specific on what is to be submitted into the  
12 record and when it is to be submitted into the  
13 record.

14 Of course, after receipt of that  
15 information the record would be finally closed and no  
16 other information would be accepted into the record  
17 or by this board.

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

25 The decision of the Board in contested

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1 cases must be based exclusively on the record and,  
2 therefore, we ask so that we do not give the  
3 appearance of not doing such that you not engage  
4 Board Members today in conversation.

5 I think we can now consider any  
6 preliminary matters. Preliminary matters are those  
7 which relate to whether a case will or should be  
8 heard today such as request for postponements,  
9 withdrawals or continuances, or whether proper and  
10 adequate notice has been provided.

11 If you are not prepared to go forward  
12 with a case today or you believe that the Board  
13 should not proceed with the case, now is the time to  
14 bring such a matter to our attention. I would take  
15 indication of someone having a preliminary matter  
16 here in the cases this morning by them coming forward  
17 and having a seat in front of us.

18 Let me first ask staff if they are aware  
19 of any preliminary matters for the Board.

20 MS. BAILEY: Mr. Chairman and Members of  
21 the Board, good morning.

22 CHAIRPERSON GRIFFIS: Good morning.

23 MS. BAILEY: There is a preliminary  
24 matter. It has to do with the first case that's on  
25 the agenda. It's Application No. 17024. That

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1 application was withdrawn, Mr. Chairman.

2 CHAIRPERSON GRIFFIS: Good. Thank you.  
3 So no action from the Board is required. Are there  
4 any other preliminary matters that you are aware of,  
5 Ms. Bailey?

6 MS. BAILEY: No others at this time, Mr.  
7 Chairman.

8 CHAIRPERSON GRIFFIS: Very well. Not  
9 seeing anyone approach, I would assume we can call  
10 our first case of the morning then.

11 MS. BAILEY: Application No. 17025 of R.  
12 E. Mazanderan, pursuant to 11 DCMR 3103.2, for a  
13 variance from the lot area and lot width requirements  
14 under Section 401, a variance from the lot occupancy  
15 requirements under Section 403, and a variance from  
16 the open court requirements under Section 406, to  
17 allow the construction of a flat (two family  
18 dwelling) in the R-4 District at premises 1627 Marion  
19 Street, N.W. (Square 444, Lot 131).

20 Please stand to take the oath. Please  
21 raise your right hand. Do you solemnly swear or  
22 affirm that the testimony you are about to give in  
23 this proceeding will be the truth, the whole truth,  
24 and nothing but the truth?

25 WITNESSES: I do.

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1 MS. BAILEY: Thank you.

2 CHAIRPERSON GRIFFIS: Good morning. How  
3 are you? I'm going to need you to turn on the  
4 microphone. Just touch the base there and the light  
5 will come on. Perfect.

6 MR. MAZANDERAN: This Board approved the  
7 construction of the flat in 1989.

8 CHAIRPERSON GRIFFIS: Actually, if I  
9 could just ask you to give me your name and your  
10 address for the record.

11 MR. MAZANDERAN: My name is Rouzbeh  
12 Mazanderan, Your Honor, and this is my wife, Shahla  
13 Mazanderan. The little boy is my son. Approved in  
14 1989 a copy of which is provided unanimously  
15 approving it the then BZA and ANC. Recently we were  
16 forced to come back to this Board because we couldn't  
17 construct at the time.

18 We went through the entire procedure with  
19 the ANC and the ANC voted unanimously on June 4th but  
20 didn't report to the BZA. On Thursday I called  
21 chairman of the ANC, "What happened to my  
22 application?" They said, "We don't report to BZA  
23 anymore."

24 I said, "If you don't report to BZA why  
25 did you bother to take a vote?" They said, "Well, we

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1 don't report anymore." I said, "You did you in the  
2 past." He said, "Yeah, we did in the past." I said,  
3 "What am I supposed to do?" He said, "You write  
4 something, bring it to me and I'll sign it." During  
5 the weekend I had to take a paper to his home and  
6 have him sign it. Yesterday I faxed his paper. May  
7 be approach?

8 CHAIRPERSON GRIFFIS: Okay. And we do  
9 often times not have the ANC weigh in. It does not -  
10 - I understand we do have that. It's not frankly  
11 critical. If we don't hear from the ANC we can move  
12 on. If it is timely filed and appropriately  
13 documented, we will give the ANC great weight. We  
14 look for that and we look for that input. As I said,  
15 we are able to proceed without it and we do have  
16 this.

17 Let's get into if you want to discuss  
18 briefly. I think there is an awful lot that can be  
19 relied on in the previous order because if I'm  
20 understanding you correctly, the facts of that case  
21 did not change. Is that correct?

22 MR. MAZANDERAN: That is correct.

23 CHAIRPERSON GRIFFIS: Okay. And in terms  
24 of the reliefs sought, there is some difference to  
25 that. Can you tell me, first of all, the background

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1 of this is the house was destroyed by fire. Is that  
2 correct?

3 MR. MAZANDERAN: That was before probably  
4 I was born.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. MAZANDERAN: As far as the neighbors,  
7 some elderly person said there was some structure up  
8 to late 1950s.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. MAZANDERAN: Ever since 1950s the  
11 city government razed the building to the ground and  
12 it's a vacant lot.

13 CHAIRPERSON GRIFFIS: Right. And the  
14 footprint that's going back is similar, identical to  
15 what was there previously?

16 MR. MAZANDERAN: Exactly. And 12 other  
17 houses on the block of immediate neighbors are built  
18 on exact same size lots.

19 CHAIRPERSON GRIFFIS: Right. And the  
20 rear of this building, what is its relation to the  
21 adjacent property?

22 MR. MAZANDERAN: All of them attached  
23 houses that have common walls.

24 CHAIRPERSON GRIFFIS: The rear wall on  
25 your property, where is it in relation to the rear

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1 wall on the adjacent property?

2 MR. MAZANDERAN: The rear of the building  
3 would be the back yard which is connected to the back  
4 alley.

5 CHAIRPERSON GRIFFIS: I understand. If  
6 you have your new rear exterior wall, is it in line  
7 with the next door exactly?

8 MR. MAZANDERAN: Exactly.

9 CHAIRPERSON GRIFFIS: So one would assume  
10 -- we don't have documentation but one would assume  
11 that, in fact, what you're rebuilding was what was  
12 originally there.

13 MR. MAZANDERAN: That's right, sir.

14 CHAIRPERSON GRIFFIS: Okay. Let me turn  
15 it over to you if you have other things to briefly  
16 outline. I will then go to the Office of Planning  
17 for their brief summation of their report and then  
18 we'll continue on.

19 MR. MAZANDERAN: I personally don't have  
20 anything to add except saying that this application  
21 was approved during 1989. I'm only asking for this  
22 Board to reapprove my order of 1989. I went through  
23 obtaining permit and pay them fees to obtain permit  
24 but they didn't get a chance to get it.

25 CHAIRPERSON GRIFFIS: Right. I

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1 understand that in terms of logic. If it was  
2 approved before, we should look at that. Of course,  
3 we don't reapprove orders. We'll create a whole new  
4 order. This is a whole new case and will stand on  
5 itself.

6 Any questions of the applicant at this  
7 time from the Board? Mr. May.

8 COMMISSIONER MAY: Yeah. I want to  
9 clarify on the rear wall the very back of your house  
10 you say is exactly the same as the next door  
11 neighbor?

12 MR. MAZANDERAN: Next door neighbor, yes.

13 COMMISSIONER MAY: Which one?

14 MR. MAZANDERAN: Next door neighbor to  
15 the south. To the north the neighbor, which was an  
16 elderly lady, doesn't live there anymore. She  
17 expanded her property further than the city  
18 government allows but I don't intend to go as far as  
19 she goes. She went so far that there's not much back  
20 yard in the back yard. Mine would be exactly the  
21 same size as my neighbor on the south side.

22 COMMISSIONER MAY: That's the critical  
23 point for me because I'm looking at the survey, or  
24 the neighborhood plan, and I saw your next door  
25 neighbor to the north looks like the house had been

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1 expanded.

2 MR. MAZANDERAN: Yes.

3 COMMISSIONER MAY: But the property to  
4 the south is in line with everything else on the  
5 block.

6 CHAIRPERSON GRIFFIS: And the south  
7 property is what you'll be attaching to.

8 MR. MAZANDERAN: Both of them will be  
9 attached.

10 CHAIRPERSON GRIFFIS: I mean towards the  
11 rear.

12 MR. MAZANDERAN: May I approach the  
13 Board?

14 CHAIRPERSON GRIFFIS: No. Do you have  
15 something to put in?

16 MR. MAZANDERAN: Yes.

17 CHAIRPERSON GRIFFIS: You can give it to  
18 staff. Of course, you won't be getting that back if  
19 you enter it into the record. What are we looking at  
20 here?

21 MR. MAZANDERAN: We are looking at the  
22 city map that shows how far the property is built on  
23 these lots.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. MAZANDERAN: To answer Mr. May's

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1 question.

2 CHAIRPERSON GRIFFIS: Correct. And what  
3 this is showing is actually an older plat or survey  
4 of the property before the north property --

5 MR. MAZANDERAN: Was extended.

6 CHAIRPERSON GRIFFIS: -- was extended.

7 Okay.

8 COMMISSIONER MAY: And before this  
9 property, the original house, burned up.

10 CHAIRPERSON GRIFFIS: Fabulous. Okay.

11 MEMBER ZAIDAIN: This plat is prior to  
12 this house burning down?

13 CHAIRPERSON GRIFFIS: Right, because  
14 that's showing what the original footprint was when  
15 it was built. You can see what is being proposed.

16 MEMBER ZAIDAIN: I guess you having this  
17 in the record the question I would have is what -- I  
18 think how to phrase this simply. What areas of  
19 relief are they looking for that were already  
20 represented or already basically in place before the  
21 building burned down? It may reflect why in the  
22 previous order the lot occupancy and the court width  
23 were not addressed.

24 COMMISSIONER MAY: Lot occupancy was  
25 addressed.

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1 MEMBER ZAIDAIN: No, it wasn't.

2 CHAIRPERSON GRIFFIS: What I think Mr.  
3 Zaidain is going to, and I think we can quickly move  
4 through this, if it was existing, had the same  
5 footprint, had all these nonconformities when it was  
6 first built which is prior to our Zoning Regulations,  
7 are they actually in need of being here for relief as  
8 they are rebuilding something that was destroyed an  
9 act of nature. Which brings an interesting point.

10 MEMBER ZAIDAIN: What section is the act  
11 of God provision?

12 CHAIRPERSON GRIFFIS: I don't have my  
13 finger on it. It's 2001.4, "If a nonconforming  
14 structure is destroyed by fire, collapse, explosion,  
15 or act of God to the extent that more than 75 percent  
16 of the cost of reconstruction of the entire  
17 structure, nonconforming structure shall..." Ooh,  
18 interesting. Okay.

19 MEMBER ZAIDAIN: So they do need to be --

20 CHAIRPERSON GRIFFIS: "...nonconforming  
21 structure shall not be restored or reconstructed  
22 except in conformity with all of the provisions of  
23 this title except for otherwise provided in 5 to 10.

24 If casualty of act of God results in  
25 damage to the extent of more than 75 percent and if

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1 the structure is nonconforming only with respect to  
2 percentage of lot occupancy, lot area, or lot width,  
3 the structure may be reconstructed or restored to its  
4 previous condition, or to a more conforming condition  
5 even if that condition does not comply with the  
6 applicable percentage of lot occupancy, lot area, or  
7 width of lot requirements."

8 It seems to me we are hearing a case for  
9 lot area, lot width, and it would be the court that  
10 would not be covered in that.

11 MEMBER ZAIDAIN: So 2005 says that they  
12 can restore essentially the nonconformity of lot  
13 occupancy, lot area, or width of lot requirements?

14 CHAIRPERSON GRIFFIS: That's right.

15 MEMBER ZAIDAIN: Now, do the rest of --  
16 does the 24-month period in 2001.6 apply? I don't  
17 think it does. Is that a separate provision for  
18 those areas not accepted?

19 CHAIRPERSON GRIFFIS: I don't know. It's  
20 an interesting read. I suggest we do this. It's an  
21 interesting point. They have a full application in  
22 front of us. Let's get through this and then I think  
23 we can decide it fairly quickly towards the end and  
24 how we want to address this. But if there are no  
25 other questions for the applicant, why don't we go to

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1 the Office of Planning.

2 MR. LAWSON: Mr. Chairman, Members of the  
3 Board, my name is Joel Lawson and I'm a development  
4 review planner with the D.C. Office of Planning.  
5 Just very briefly, the subject property is located  
6 mid-block at 1627 Marion Street, N.W. which runs NS  
7 through the center of square 444 from R Street to Q  
8 Street, N.W.

9 The square is developed predominately  
10 with rowhouses and one large apartment building  
11 facing Rhode Island Avenue and 7th Street. There's  
12 an alley to the rear of the subject lot.

13 The property has been vacant for many  
14 years as noted by the applicant. In 1989 in BZA case  
15 No. 15057 the BZA approved variances to lot area and  
16 lot width for a rowhouse with English basement. That  
17 approval has since expired and the property has  
18 remained undeveloped.

19 The owners have resubmitted new  
20 application for a two-story plus basement brick clad  
21 structure. The design of the rowhouse with English  
22 basement appears identical to that of the building  
23 approved in 1989. The property is zoned R-4 which  
24 permits rowhouses.

25 The applicant is requesting variances to

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1 lot, width, and size as the existing lot does not  
2 meet current minimum standards. OP believes that  
3 permitting the development of the existing lot with a  
4 rowhouse and intended use in the R-4 zone would be  
5 consistent with Zoning Regulations and the  
6 comprehensive plan generalized land use map.

7 Without these variances the property  
8 would not be developable. A variance to court width  
9 is also requested. The building is designed as in  
10 character with the street escape. Many other  
11 rowhouses provide narrow courts including the  
12 adjacent house which has a narrow court with windows  
13 facing the subject property.

14 Elimination of the court would,  
15 therefore, have an adverse impact on the adjacent  
16 house. The two courts combined appear to provide  
17 over eight feet in court width so the variance would  
18 not impair the intent of the Zoning Regulations.

19 The final request is for a small lot  
20 occupancy variance. OP does not believe that a case  
21 is being made for this variance as it would seem a  
22 conforming solution is feasible. Minor design  
23 changes would eliminate this variance and have  
24 minimal impact on the resulting new structure.

25 In conclusion, OP recommends that the BZA

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1 approve the variances related to lot area width and  
2 open court width. However, OP feels there is not  
3 sufficient justification for the small lot occupancy  
4 variance. This recommendation is consistent with the  
5 comprehensive plan and generalized language map and  
6 would not undermine the integrity of the Zoning  
7 Regulations.

8 This concludes the OP testimony and I'm  
9 available for questions. Thank you.

10 CHAIRPERSON GRIFFIS: Good. Thank you  
11 very much. Did you calculate what it would bring it  
12 into lot occupancy?

13 MR. LAWSON: I did. I believe it was  
14 around 30 square feet.

15 CHAIRPERSON GRIFFIS: Right. 30.6 square  
16 feet in your calculations which would mean what? In  
17 the rear portion of the exterior wall it would be  
18 setting it back 1.8 feet. Is that correct?

19 MR. LAWSON: Approximately that, yes.

20 CHAIRPERSON GRIFFIS: Okay. And when you  
21 factor into the third test in terms of -- well, let's  
22 put it into context which is implicit in the tests  
23 that we do. The context of this, does it not seem  
24 more appropriate to align to where it originally was  
25 and to the adjacent?

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1 MR. LAWSON: The Office of Planning -- I  
2 don't believe that the variance itself would make the  
3 house more or less conforming with the existing  
4 situation. I think the case is more that there is a  
5 test that needs to be met for lot occupancy and we  
6 don't believe that test has been met.

7 CHAIRPERSON GRIFFIS: Okay. I see. In  
8 terms of practical difficulty if you looked at the  
9 floor plans and moving it in two feet, specifically  
10 looking at the bedroom, was there any sort of  
11 deliberation on the Office of Planning's point of the  
12 functionality of that bedroom at a size that would be  
13 reduced by two additional feet?

14 They are not dimensioned on here,  
15 although one can extrapolate from the section, and  
16 the section is for the roof and the structure setting  
17 back 15 feet 6 inches, that goes beyond the bedroom.

18 My estimation would be that the bedroom is  
19 approximately 12 feet and taking off two more feet  
20 would be 10 feet. Was that any consideration?

21 MR. LAWSON: We looked at those issues  
22 about what the potential impact may be on the  
23 interior. We felt that there were ways that the  
24 interior could be altered to make each of the rooms  
25 conforming. As I said, it's not so much that the

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1 Office of Planning believes that the variances is  
2 untenable. It's that we couldn't find the  
3 justification for it.

4 CHAIRPERSON GRIFFIS: I see. Okay. Very  
5 well. Thank you. Questions?

6 COMMISSIONER MAY: Yes. In considering  
7 the size of the bedroom, is there some minimum  
8 bedroom size that you are going with or is it just  
9 code minimum bedroom size which is significantly less  
10 than 10 feet square?

11 MR. LAWSON: Well, we made, first of all,  
12 two assumptions. We made the assumption that the lot  
13 occupancy could be eliminated by simply reducing the  
14 size of that bedroom, in which case it would still be  
15 well within the normal size for a secondary or third  
16 bedroom.

17 Other additional changes on moving  
18 interior walls could increase the size of that  
19 bedroom by decreasing the sizes of other rooms on the  
20 interior.

21 COMMISSIONER MAY: Conceivably -- maybe  
22 you didn't consider this but did you look at the  
23 possibility of actually building a conforming open  
24 court? Then the area of the court becomes part of  
25 the lot occupancy calculation of the open space.

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1 MR. LAWSON: We did look at that. It  
2 would mean that the court would be able eight feet  
3 wide which would leave about, if my memory is right,  
4 nine feet wide.

5 COMMISSIONER MAY: Eight feet by the wall  
6 height dimension?

7 MR. LAWSON: By the wall height  
8 dimension, yes.

9 COMMISSIONER MAY: Okay. I was just  
10 thinking in terms of the minimum which is six which  
11 still would have left 10 feet of interior space.

12 CHAIRPERSON GRIFFIS: The opposite of  
13 that is don't build the court which is closely  
14 analogous to what was there and what is adjacent and  
15 just build the row dwelling which would be a property  
16 line wall all the way back to the extent. My point  
17 being you could conceivably have a wider end than the  
18 setback or the dog leg which would run into a problem  
19 that we have seen quite a bit in terms of -- perhaps  
20 I'm not being clear.

21 COMMISSIONER MAY: Yes, you're not being  
22 clear, or perhaps I'm being a little dim here.

23 MR. LAWSON: The Office of Planning did  
24 also look at that option. We certainly felt that  
25 would result in a fairly major redesign to the

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1 building. We felt it would be a solution that would  
2 not only be nonconforming to the visual character of  
3 the street, but also would have a negative impact on  
4 the air and light to the next door neighbor.

5 CHAIRPERSON GRIFFIS: I absolutely agree.

6 COMMISSIONER MAY: Well, the basic  
7 problem with that is it creates a land-lock bedroom  
8 which may be possible by building code if you make up  
9 for it with other means but if you didn't have the  
10 court, that middle bedroom would have no window.

11 CHAIRPERSON GRIFFIS: I bring it up only  
12 to say in terms of the variations that could happen,  
13 it seems like this is the most accommodating, or I  
14 would say the best in terms of the alternatives of  
15 what could happen if you define masses differently.

16 MEMBER ZAIDAIN: I have a quick question.

17 Does the Office of Planning have an opinion on  
18 whether or not 2001.5 applies? Reading from this it  
19 seems like there is an exception for percent of lot  
20 occupancy if it's 75 percent burned or more or  
21 damaged or more. That would obviously address the  
22 lot occupancy issue that you raised. Do you have an  
23 opinion on that?

24 MR. LAWSON: Actually, to be honest, I  
25 did not look at that section. The problem we would

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1 have is that there is really no way to determine  
2 exactly what the lot occupancy was before. This is  
3 very close to being a conforming solution and I think  
4 it would be difficult just using the kind of survey  
5 plans that we have here to accurately determine what  
6 the lot occupancy was because these plans are not  
7 particularly accurate necessarily.

8 MEMBER ZAIDAIN: So your point being it's  
9 hard to determine whether or not they are building  
10 back to what was preexisting before the fire?

11 MR. LAWSON: I agree that they are  
12 building very close to what was there before. They  
13 are also building it looks like identical to what the  
14 BZA approved back in 1989, but it's impossible to say  
15 whether the former building exactly conforming or not  
16 to lot occupancy. It may very well have been  
17 nonconforming and that's why Office of Planning would  
18 welcome the applicant providing additional  
19 justification for a lot occupancy variance.

20 MEMBER ZAIDAIN: Okay. Thank you.

21 MEMBER MILLER: I have a question for  
22 Office of Planning. Did you ask for additional  
23 justification for the lot occupancy and didn't  
24 receive it or what?

25 MR. LAWSON: We did not. We discussed it

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1 briefly on the phone to advise the applicant that we  
2 would be making this recommendation.

3 CHAIRPERSON GRIFFIS: Are there any other  
4 question by the Board to the Office of Planning?  
5 Does the applicant have any questions of the Office  
6 of Planning?

7 MR. MAZANDERAN: No. We spoke in details  
8 this past week and they said, "It looks like your  
9 plan fit in 1 percent of what it is supposed to be."

10 If it over the limit, it is at most 1 percent over  
11 the limit and thus minimal and we recommend you to go  
12 ahead with it. That was what Ms. Pruitt told me on  
13 Friday.

14 CHAIRPERSON GRIFFIS: One percent. Is  
15 that the conversation you had?

16 MR. LAWSON: It was a little bit closer  
17 to 2 percent but it was 1. something. I don't have  
18 the number in front of me.

19 CHAIRPERSON GRIFFIS: I'm just trying to  
20 understand of what.

21 MR. LAWSON: The calculated lot occupancy  
22 is around 61. something percent.

23 CHAIRPERSON GRIFFIS: So even in that the  
24 Zoning Administrator's discretion of 2 percent. Am I  
25 right? In which case it could have been exhausted in

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1 that realm also. All right. I think we're pretty  
2 clear. Anything else for the Office of Planning?

3 MEMBER ZAIDAIN: Can you clarify your  
4 point there for a second about the ZA?

5 CHAIRPERSON GRIFFIS: The Zoning  
6 Administrator has 2 percent discretion in reviewing  
7 applications.

8 MEMBER ZAIDAIN: For lot occupancy?

9 CHAIRPERSON GRIFFIS: For several things,  
10 but, yes, I believe lot occupancy is included in  
11 that. It's one of those other great sections that  
12 was recently written into the regulations. I can  
13 reference it for you if you need. Do you want me to  
14 find it?

15 MEMBER ZAIDAIN: I mean, I think it's  
16 kind of an important piece because we're talking  
17 about 1.97 percent difference. Obviously we're close  
18 to it but I think if the ZA has a discretion, then  
19 maybe it's not an issue we need to take up. Plus, I  
20 want to test your knowledge on your memorization of  
21 the sections of the code, Mr. Chair.

22 CHAIRPERSON GRIFFIS: Yes. We certainly  
23 need to spend our time on that. Section 407, "Minor  
24 flexibility of the Zoning Administrator's ruling.  
25 The ZA is authorized to permit a deviation not to

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1 exceed 2 percent of area requirements 401 and 403  
2 minimum lot dimensions, and maximum percentage of lot  
3 occupancy, and a deviation not to exceed 10 percent  
4 of the linear requirements 445, minimum rear yard and  
5 minimum side yard requirements and deviation from  
6 requirements of 406 minimum court dimensions not to  
7 exceed either 2 percent of the area standard or 10  
8 percent of the width standard provided that..." All  
9 sorts of stuff.

10 MEMBER ZAIDAIN: Thank you very much.

11 CHAIRPERSON GRIFFIS: My pleasure.

12 COMMISSIONER MAY: So what that says in  
13 essence is that we could vote down the lot occupancy  
14 variance and the ZA could still allow it to be built  
15 exactly as shown in the plans.

16 CHAIRPERSON GRIFFIS: I don't think that  
17 is actually what the section was written for as an  
18 appeal. I think the point was not to bring cases to  
19 us.

20 COMMISSIONER MAY: Right.

21 CHAIRPERSON GRIFFIS: I wouldn't want to  
22 frame it in the fact that we decide something the ZA  
23 can overrule us.

24 COMMISSIONER MAY: That's not what I was  
25 trying to portray but conceivably --

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1 CHAIRPERSON GRIFFIS: I think conceivably  
2 if we denied it, the Zoning Administration would be  
3 released from his flexibility.

4 COMMISSIONER MAY: Right. Okay. That's  
5 what I wanted to make clear.

6 CHAIRPERSON GRIFFIS: Yeah.

7 MEMBER ZAIDAIN: Would not be released.

8 CHAIRPERSON GRIFFIS: He would not be  
9 allowed to.

10 MEMBER ZAIDAIN: I see what you mean,  
11 that if anything we would just want to reference  
12 that. In term of that relief, we would reference  
13 that -- it's our understanding that the discretion is  
14 with the ZA on that.

15 CHAIRPERSON GRIFFIS: That's correct.  
16 The only point of bringing up 2001.5 407 is the fact  
17 that that -- perhaps we are spending too much time on  
18 this -- is that this may not have had to come before  
19 us. But it is before us now so let us move on with  
20 it and go to other Government reports.

21 Oh, gosh. Yes. Let's stick to Office of  
22 Planning then. There is a question. There's a  
23 letter submitted by WASA regarding the design, the  
24 hydraulic loading that would be placed in the storm  
25 and sanitary. Can you explain this? Were you

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1 shocked when you got this one?

2 MR. LAWSON: Well, I actually was not  
3 terribly surprised in that WASA lately has been  
4 issuing more or less a foreign letter. It would be  
5 the same for most applications. If they are  
6 applicable in this case at all it would be building  
7 permit, the issues dealt with with the building  
8 permit.

9 They are not related to the variances  
10 requested. They do provide possibly some information  
11 to the applicant of the kinds of things that may have  
12 to be discussed with WASA at the building permit  
13 stage.

14 CHAIRPERSON GRIFFIS: Okay, good. Two  
15 things that I think is important to point out. What  
16 you've just said is this is more of a boiler plate  
17 response from WASA, not applicant specific. Two is  
18 it doesn't address any of the zoning issues that we  
19 have.

20 Third, my own comment of this -- well, I  
21 think in the generalized nature of this letter this  
22 could accommodate 1,000 unit apartment building. In  
23 fact, it is probably more related to something of  
24 that size. If our water system can't support one  
25 additional townhouse on a developed townhouse square,

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1 we are in very deep trouble.

2 Any comments on that? I just wanted to  
3 clarify that we do have submissions from the ACD,  
4 Parks and Rec, and also DCRA. I don't think we need  
5 to address any of those in specific. They are part  
6 of the record unless people have -- very well.

7 Going to the ANC report, it was  
8 submitted. Today we did have a quick illumination of  
9 how that was done. We'll take great note that ANC-2  
10 will not be providing us with reports in the future.

11 That is all the Government reports and agencies that  
12 I have attended to this application unless others  
13 have notes of theirs. Not seeing any, let us go then  
14 to the applicant if they have any closing remarks.

15 MR. MAZANDERAN: I only can say that I  
16 think I am within my limits of building. I'm only  
17 asking to reapprove my application of 1989.

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

20 MR. MAZANDERAN: Thank you, sir.

21 CHAIRPERSON GRIFFIS: I would move  
22 approval of Application No. 17025. That would be for  
23 the variance from the lot area, lot width, and lot  
24 occupancy requirements, and also the variance from  
25 the open court requirements under Section 406.

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1 I think the case as presented stands on  
2 its own. I would rely on a substantial amount on the  
3 discussion that the Office of Planning presented in  
4 terms of addressing the open court width. I would  
5 also rely heavily that we have not gone to the great  
6 detriment of zone planner map and its reliance on  
7 Section 407.

8 Also, most importantly, Section 2001.5  
9 which indicates in situations such as this that it  
10 should be closer to matter-of-right. That we have an  
11 application in front of us, I think it is important  
12 just to proceed and take it up as variances.

13 I believe that it is absolutely  
14 appropriate -- among the tests being made it is  
15 absolutely appropriate to try to build it back. I  
16 think the regulations are speaking to in 2001.5 build  
17 back structures as they were nothing that perhaps our  
18 current regulations prohibit structures and masses  
19 that were originally built in the city. Some of  
20 which we find to be the most attractive and the most  
21 pleasant ones to inhabit and to be around we actually  
22 prohibit with our new regulations.

23 That being said, it is clear on the  
24 record that this footprint is going to align close to  
25 its original, although we don't have documentation

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1 specific to what the original was, it is clear by the  
2 adjacent properties that it is, if not an exact  
3 replica of the footprint, certainly an excellent  
4 approximation to it.

5 Others? Ms. Miller.

6 MEMBER MILLER: I would support this  
7 application as well but I just want to differ with  
8 you on your conclusion that they may have been able  
9 to bring this as a matter-of-right since there was an  
10 act of God, a fire, having destroyed the property.

11 Mr. Zaidain did point to 2001.6 which  
12 puts an expiration of 24 months on that. I would  
13 interpret that regulation to mean that he could this  
14 many years later do that.

15 CHAIRPERSON GRIFFIS: Okay. But you need  
16 to look clearly at 2001.6. 2001.6 looks at if it's  
17 destroyed at 75 percent or less. 2001.5 talks about  
18 75 percent or more destruction. 2001.6 talks about  
19 less and in the less, yes, clearly it has to happen  
20 within 24 months.

21 Now, it brings up an interesting point.  
22 Was it an act of God that D.C. demolished it? I  
23 don't know. They are not prone in those frames, I  
24 think, to be divine. However, we don't know what the  
25 substantial demolition was before it.

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1                   It was obviously critically structurally  
2 failing so it was determined it would be taken down.

3           I don't think it's bad to have that under  
4 discussion. I don't think we will remove this from  
5 the application because we don't know all the full  
6 documentation.

7                   MEMBER MILLER: That being said, I don't  
8 think it's really necessary to our determination in  
9 any of that how we read this regulation. I also want  
10 to point out with respect to the ANC report that in  
11 some cases we are supposed to give the ANC great  
12 weight and when we do that, they have to meet certain  
13 requirements.

14                   They have to hold a meeting. They have  
15 to have a quorum. They have to give notice to the  
16 public and I don't see that in the record in this  
17 case. Again, it's not making a difference in our  
18 ruling here.

19                   CHAIRPERSON GRIFFIS: Good.

20                   MEMBER ZAIDAIN: Just to finish out my  
21 end of the discussion, I guess, I think 2001.5 and 6  
22 kind of turn on the 75 percent more or less and I  
23 don't think there's enough information in the record  
24 to really determine how those apply.

25                   I think the bigger issue is the section

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1 that you pointed out, or that the Chair pointed out  
2 in regards to the ZA flexibility and the lot  
3 occupancy. I think that could have addressed that  
4 issue. I think there is enough information in the  
5 record that supports the granting of the other  
6 variances.

7 CHAIRPERSON GRIFFIS: Good. Thank you.  
8 Others?

9 COMMISSIONER MAY: I'm not sure what I  
10 want to say but I'll know when I extend the  
11 conversation a little bit more. First of all, in the  
12 2001.4, 5, and 6 when you look at the application and  
13 the relief that's requested if, in fact, the  
14 applicant could prove that this was the original  
15 footprint and that 75 percent was destroyed, and it's  
16 reasonable they could, then the only variance that  
17 would be needed would be the open court and I think  
18 that the case has been made for the open court.

19 It's a bit iffy for us to simply approve  
20 the open court and say the rest of them are not  
21 needed or you will have to go out and prove that the  
22 other ones are not needed. I'm not entirely  
23 comfortable going that route.

24 I'm not entirely comfortable either with  
25 the notion of simply improving the variance of the

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1 lot occupancy without having some basis for it. I  
2 want to point out that the notion that a what we are  
3 dealing with is a structure that is what we look at  
4 and like in buildings in Washington but we can't  
5 build them that way anymore is not a good argument to  
6 be making for approving it.

7 I don't think the Chairman is actually  
8 suggesting that. He has, I know, taken occasions  
9 like this to remind us that the zoning regulation and  
10 what we like to see in building and land use don't  
11 always agree and that there are probably some issues  
12 that we should address. Surely we're not suggesting  
13 that becomes the basis for granting a variance in  
14 this circumstance.

15 I think the only circumstance, or the  
16 only reason why we could go ahead and take the  
17 initiative and grant the variance in this  
18 circumstance is the notion that if the ZA has to  
19 present flexibility on this and it otherwise would  
20 not have come to us, then it's not unreasonable for  
21 us to say that this simply does not rise to the level  
22 where we have to say not, but it's very close to that  
23 level.

24 I think, frankly, if we were talking  
25 about 2.1 percent I would be calling for a separate

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1 vote on that particular issue because I would be  
2 inclined to vote against it because the regulations  
3 are the way they are for reasons and we're not here  
4 to rewrite them. We are here to render judgments on  
5 where exceptions are wise.

6 I also think that the notion that this  
7 building doesn't go any further back than anything  
8 else in the row, well, okay, that means that it  
9 doesn't stick out any further. I don't think that  
10 makes it any more or less conforming with what occurs  
11 in the neighborhood because if you look at any set of  
12 rowhouses in the city, the back walls some are  
13 consistent all the way across and sometimes they're  
14 not.

15 Sometimes there is a great variability  
16 with it and sometimes it's within the right of the  
17 development of the property and sometimes it's  
18 nonconforming and preexisting in the Zoning  
19 Regulations. Rear yards are an area where  
20 consistency is -- that kind of aesthetic consistency  
21 is not really a critical consideration.

22 I think, again, given the overall merits  
23 of this case, I think that the -- and the fact that  
24 the variance required for lot occupancy is less than  
25 the amount of discretion that is already granted to

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1 the ZA, I would be comfortable enough supporting this  
2 as it is.

3 I would like to make note of the fact  
4 that, and we didn't really address this, nor do we  
5 really have grounds for addressing it, this building  
6 will not be consistent with the rest of the block  
7 when you consider the fact that it has an English  
8 basement and the rest of the block does not. This  
9 building is going to be six, eight feet taller than  
10 anything else based on what I've read in the record  
11 here.

12 We don't actually have an elevation that  
13 shows that. Nor do we have grounds to deny any  
14 variances on that basis, but I think it's worth  
15 noting that this is not going to be the structure  
16 that harmonizes with the neighborhood to that great  
17 extent. It is going to stick out a little bit.  
18 Again, there is plenty of precedent for that in other  
19 areas in the city.

20 CHAIRPERSON GRIFFIS: Okay. Two issues  
21 that you brought up. First of all, yeah, we can look  
22 around the city and see other squares on which row  
23 dwellings are built on and they have differing  
24 setbacks. However, this specific one it is not. I  
25 mean, they are aligned so I think there could be. I

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1 totally agree with you.

2 COMMISSIONER MAY: Except for the  
3 property next door.

4 CHAIRPERSON GRIFFIS: Well, which was an  
5 addition and we don't even know if that was a legal  
6 addition so we wouldn't want to say in context to  
7 that.

8 COMMISSIONER MAY: That was the point I  
9 was making, that sometimes there have been additions  
10 and things go back so the back line is not as  
11 universal and consistent.

12 CHAIRPERSON GRIFFIS: Right. I don't  
13 want to give more importance to these elements  
14 because I think you stated very correctly the case  
15 and the reasons for supporting it. Also the  
16 diminished level of relief that is requested.

17 I wanted to make that point because I  
18 think going to the third test we have to look at  
19 whether it would be substantially detrimental to the  
20 public good or integrity. Now, this is not  
21 monumental but in my mind when I read that for this  
22 specific case I say if we had to introduce anything  
23 that happened that would not be in conforming with  
24 the setbacks of the original structure, I think that  
25 would impair the public good and the intent breaking

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1 that line in the rear and breaking the inconsistency  
2 of the row dwellings.

3 The other point of English basements, we  
4 don't have documentation of the adjacent or rest of  
5 the block. However, the photograph under Exhibit 4,  
6 if you look at it, it appears to me that there are  
7 English basements. I base that statement on the fact  
8 that there's the front door on the right which is  
9 upstairs. I can't count them because there are  
10 shadows. There is a basement fenestration and  
11 windows on both properties.

12 COMMISSIONER MAY: Well, then I don't  
13 know what the legal definition of an English basement  
14 is or whether we've defined it in the Zoning  
15 Regulations, but my interpretation of an English  
16 basement was actually something where you have --  
17 it's actually a story that's four feet.

18 CHAIRPERSON GRIFFIS: I understand that.

19 COMMISSIONER MAY: These are not four  
20 feet. Now, I --

21 CHAIRPERSON GRIFFIS: Not in front but  
22 possibly in the rear. But, as you say, it's not what  
23 is before us and flats are allowable in this zone.

24 COMMISSIONER MAY: It is actually  
25 probably closer than I had thought. I didn't look

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1 closely at the pictures. I was basing it on some of  
2 the written information that was in there that talked  
3 about the fact that there are no other English  
4 basements. There probably are no other occupied  
5 English basements if they are as low as they seem to  
6 be.

7 CHAIRPERSON GRIFFIS: Right.

8 COMMISSIONER MAY: It's not going to  
9 stick up as far as I thought. I'm glad you noticed  
10 that.

11 CHAIRPERSON GRIFFIS: Good. Anything  
12 else?

13 COMMISSIONER MAY: Yeah. I want to point  
14 out -- what was the other point you made? Now I've  
15 forgotten what I was going to say to you. Oh, if we  
16 were to actually get into a significant discussion of  
17 the third prong with regard to the consistency of the  
18 backsides of those houses, we would have a really  
19 long discussion on that one. I'm glad I don't have  
20 to argue that point because I would argue it  
21 fiercely.

22 CHAIRPERSON GRIFFIS: I'll let you stand  
23 on the record with that. Others?

24 MEMBER ZAIDAIN: I won't add anything to  
25 the discussion other than I agree with the Office of

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1 Planning's issue with the lot occupancy but I am  
2 relying on Section 407 to address that issue with the  
3 Zoning Administrator.

4 CHAIRPERSON GRIFFIS: Good. There was a  
5 motion before us and now I can't recall in this great  
6 deliberation whether it was seconded.

7 COMMISSIONER MAY: Second.

8 CHAIRPERSON GRIFFIS: Very well. Thank  
9 you, Mr. May. The motion before us has been  
10 seconded for approval of Application 17025. I would  
11 ask for all those in favor signify by saying aye.

12 ALL: Aye.

13 CHAIRPERSON GRIFFIS: Opposed?

14 MS. BAILEY: Record the vote?

15 CHAIRPERSON GRIFFIS: Yes. Thank you.

16 MS. BAILEY: The vote is recorded as 4,  
17 0, 1 to approve the application. Mr. Griffis made  
18 the motion, Mr. May seconded. Mr. Zaidain and Ms.  
19 Miller are --

20 CHAIRPERSON GRIFFIS: Oh, I'm sorry. Oh,  
21 gosh. That is my very big oversight. Is anyone here  
22 to give testimony? Well, in order to be absolutely  
23 precise, I am going to move that we table the motion  
24 that was before us at this time and note that I'll  
25 have a consensus from my Board, I am sure.

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1           Let us ask if there are any people that  
2 want to give testimony in support or in opposition at  
3 this time can come forward for Application 17025.

4 I'm sorry. I do apologize. That is a fairly  
5 catastrophic mistake on my point of not running  
6 through but we will give you our full attention.

7           MS. LONG: Thank you. My name is  
8 Elizabeth Long. Would you like my address?

9           CHAIRPERSON GRIFFIS: Yes, please.

10          MS. LONG: 1318 22nd Street, N.W.,  
11 Washington, D.C. 20037. That's Apartment 106.

12          MEMBER ZAIDAIN: Sorry. Could you repeat  
13 what street you live on again?

14          MS. LONG: 22nd Street, N.W.

15          MEMBER ZAIDAIN: That was me. Thank you.

16          CHAIRPERSON GRIFFIS: And that's, just to  
17 get context, where in relation to the property?

18          MS. LONG: About a mile and a half or two  
19 miles N.W.

20          CHAIRPERSON GRIFFIS: Two miles from the  
21 property that is before us?

22          MS. LONG: Right.

23          CHAIRPERSON GRIFFIS: Okay. Go ahead.

24          MS. LONG: However, the reason why I'm  
25 speaking, and I'm not familiar with your procedural

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1 requirements here, and --

2 CHAIRPERSON GRIFFIS: Well, we've kind of  
3 crushed them already anyway.

4 MS. LONG: I didn't really know when I  
5 should ask questions. I think you've addressed every  
6 issue that I have but I didn't fully understand what  
7 your resolutions were individually so I wanted to  
8 just raise some of my concerns even though I know  
9 you've spoken to each of them today.

10 CHAIRPERSON GRIFFIS: Can I ask you  
11 before you get into that --

12 MS. LONG: I purchased the property to  
13 the north of this empty lot.

14 CHAIRPERSON GRIFFIS: Okay.

15 MS. LONG: I'll be closing on the 30th of  
16 this month so I'll be the owner of that property. So  
17 I have some interest in what is built next door  
18 because it's obviously going to either impact  
19 positively or negatively the value of my property.

20 MEMBER ZAIDAIN: Just to make sure we  
21 understand, it's lot 132 you purchased? Is that  
22 true?

23 MS. LONG: I don't know the number of the  
24 lot.

25 CHAIRPERSON GRIFFIS: It's north or

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1 south?

2 MEMBER ZAIDAIN: Immediately north?

3 MS. LONG: Yes. It's the one that has an  
4 addition in the back the previous owner added.

5 Some of my concerns are -- I guess you're  
6 calling this lot occupancy. I'm not sure what that  
7 term of art means but one concern is obviously this  
8 is going to be designed for two families so I think  
9 it's going to put some pressure on parking and add to  
10 the noise of the street. This is now a quiet street.

11 I don't know if there are any other two-family  
12 apartment buildings or townhouses on my side of the  
13 street.

14 CHAIRPERSON GRIFFIS: Okay. Let me just  
15 clarify as you bring up the points. First of all, a  
16 flat isn't an allowable use and structure in this  
17 zone so --

18 MS. LONG: What do you mean by flat?

19 CHAIRPERSON GRIFFIS: A flat is the  
20 zoning designation for a two-unit basically.

21 MS. LONG: Okay. So why are they seeking  
22 a variance?

23 CHAIRPERSON GRIFFIS: They're not, not  
24 for the flat. The flat when it's talked about is a  
25 description of the property. What they are seeking

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1 variances for is the lot occupancy which is a  
2 footprint on the site. I don't know how else to  
3 describe it.

4 COMMISSIONER MAY: How much square  
5 footage the building actually occupies within the  
6 legal property itself.

7 MS. LONG: Okay. And then you decided  
8 that is what they are seeking? I mean, I heard you  
9 discussing it but I didn't quite understand what your  
10 thoughts were.

11 COMMISSIONER MAY: The lot occupancy in  
12 the proposed structure is 61 something percent.

13 CHAIRPERSON GRIFFIS: 61.3.

14 COMMISSIONER MAY: As opposed to 60  
15 percent which is allowed.

16 MS. LONG: Okay. Thank you. I'm  
17 resolved with that issue. I'm concerned about the  
18 open court requirement because (a) I don't understand  
19 what it means. I know it goes to the rear and what  
20 they are going to build, but (b) because I'm  
21 concerned about light and air coming into my property  
22 and how it would affect it. I was wondering if maybe  
23 that could be articulated further how that would be  
24 built. Maybe you've done that but I didn't  
25 understand.

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1 COMMISSIONER MAY: Have you had a chance  
2 to look at the proposed plans?

3 MS. LONG: No.

4 COMMISSIONER MAY: Okay. They are  
5 available in the public record. You can certainly  
6 take a look at the plans there. Perhaps the  
7 applicant would also have copies to share with you.

8 MR. MAZANDERAN: I have --

9 CHAIRPERSON GRIFFIS: The record is right  
10 next door, too.

11 MR. MAZANDERAN: I have a copy of the  
12 plan and I think she is talking hypothetically.  
13 She's not the owner yet.

14 CHAIRPERSON GRIFFIS: We don't need to  
15 argue that.

16 MR. MAZANDERAN: Her property to be is  
17 extending far behind the city limits.

18 CHAIRPERSON GRIFFIS: I understand that.  
19 There's no need to get argumentative or in any sort  
20 of heated debate here.

21 MS. LONG: I may not have an issue at  
22 all.

23 CHAIRPERSON GRIFFIS: We're just looking  
24 at it and clarifying. I think it's going to be  
25 important. Mr. May is giving you an indication that

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1 it is probably worth taking a look at the plans.

2 First of all, in our specific procedure  
3 we are supposed to address questions that relate  
4 specifically to the application. We'll take some  
5 time to help you understand some of what we've done  
6 but it's actually not appropriate for us to step out  
7 to kind of explain.

8 With that being said, if you look at the  
9 court, I think some of the pertinent discussion that  
10 we had up here, the court is created with a setback  
11 of the townhouse itself right towards the rear which  
12 all of them do. I believe yours does even with the  
13 addition on the back.

14 That is not conforming because currently  
15 in our new regulations before all those townhouses  
16 that came in after those townhouses were built we  
17 require huge setbacks. But what you are looking at  
18 is the potential of building this as a small  
19 nonconforming court or no court at all.

20 I think it is fairly clear in my mind if  
21 I look at this, that's what the decisions are. If  
22 you talk about light and air, I think you can have  
23 some confidence that in the past they built these to  
24 accommodate those.

25 After all, they were built before air

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1 conditioning. What you are looking at is either  
2 having that nonconforming area way or not having it  
3 which would put a building in a building line right  
4 up against yours. Do you have any windows  
5 fenestration on that side, on the south side?

6 MS. LONG: No.

7 CHAIRPERSON GRIFFIS: Right. Which also  
8 goes to the fact of how much argument you could make  
9 to having light and air that would be diminished by  
10 the extending of that piece of the property. Does  
11 that make sense? Now, light and air might be  
12 impacted if they were going up four floors and  
13 filling out the entire rear yard and then it would be  
14 fairly clear and common sense that something was  
15 being disrupted.

16 I'm not sure but I guess this goes back  
17 to some of me looking at the original structures and  
18 then looking at what our Zoning Regulations do. I'm  
19 not sure that light and air has changed that  
20 dramatically. I think certainly housing and housing  
21 regulations have to accommodate certain aspects, that  
22 being overcrowding or ventilation into bedrooms.

23 We have looked at, in fact, townhouses  
24 that were built prior to our Zoning Regulations that  
25 seem to accommodate well living situations and for us

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1 to come back now and say we were wrong somehow in the  
2 original, my point being, I guess, directly is I  
3 think you can have some confidence in relying on  
4 previous massing and construction of these  
5 structures.

6 What other questions?

7 MS. LONG: Procedurally what happens is  
8 when he provides notice, then the plans are available  
9 for anyone to look at prior to this hearing? Is that  
10 how that works?

11 CHAIRPERSON GRIFFIS: Yes, that's  
12 correct. The application is filed --

13 MS. LONG: So ideally I would have looked  
14 at that and then had an expert look at it, a builder  
15 perhaps, or an architect, and tell me their thoughts  
16 in the best case scenario.

17 CHAIRPERSON GRIFFIS: You could have,  
18 yeah. Absolutely.

19 MS. LONG: Okay. Next time I will do  
20 that.

21 CHAIRPERSON GRIFFIS: There is a  
22 substantial amount of public notice that is given  
23 just to be absolutely clear. First of all, all the  
24 property owners within foot radius are delivered  
25 letters. The property should be posted and that is

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1 for some requirement that we have in our regulation  
2 time wise. That's the big yellow or orange placards.

3 The other piece is that notification goes  
4 to the ANC. The ANC is to hold meetings.  
5 Applications are submitted in anywhere from 60 to 90  
6 days to probably two years knowing our schedule the  
7 hearing would be set.

8 MS. LONG: Can I just ask another  
9 question?

10 CHAIRPERSON GRIFFIS: Sure.

11 MS. LONG: I think it's great that he's  
12 building this townhouse and I'm sure it's going to be  
13 nice.

14 CHAIRPERSON GRIFFIS: Better than an  
15 empty lot, right?

16 MS. LONG: How do we -- how does one know  
17 that he's going to build it and it's going to look  
18 like other houses on the street? Is there any  
19 control after this hearing?

20 CHAIRPERSON GRIFFIS: There is absolutely  
21 control. If this was to proceed and be approved by  
22 us, what would be built is exactly what is in the  
23 plans.

24 MS. LONG: Which have already been  
25 reviewed by his office?

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1 CHAIRPERSON GRIFFIS: Whose office?

2 MEMBER ZAIDAIN: Office of Planning.

3 MS. LONG: His office.

4 CHAIRPERSON GRIFFIS: Yeah. But we're  
5 more important than Office of Planning.

6 MS. LONG: So there's been quite a bit of  
7 oversight regarding --

8 CHAIRPERSON GRIFFIS: It depends on what  
9 kind of oversight you want. Office of Planning looks  
10 at this for zoning issues and comprehensive plan and  
11 other issues. In terms of building code, that will  
12 still go through the permitting process, in which  
13 case that will be extensively reviewed and approved  
14 or not approved. That will be from plumbing to  
15 electric to whatever they want.

16 MS. LONG: Aesthetics as well since this  
17 is --

18 CHAIRPERSON GRIFFIS: What?

19 MS. LONG: How about the aesthetics of  
20 the exterior? Is that not a zoning issue?

21 MEMBER ZAIDAIN: Well, if you're talking  
22 about color of the building and things such as that,  
23 that is really not part of the issue that is  
24 reviewed. I will say that part of the Office of  
25 Planning's report does get into the impacts this will

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1 have in the character of the area.

2           Once you look at the Office of Planning  
3 Report, which is in the record, it talks about  
4 whether or not the granting of the court width  
5 variance would affect the character of the area. The  
6 report notes that a lot of the other buildings  
7 surrounding this, including yours, has the same type  
8 of court configuration.

9           Those types of elements are addressed as  
10 Office of Planning reviews the project. Also, I do  
11 want to relay that the Office of Planning has  
12 graciously stated that they would be willing to walk  
13 this individual through the process and through the  
14 plans after the hearing if she would like.

15           CHAIRPERSON GRIFFIS: I think that is  
16 absolutely appropriate. I'm not suggesting by any  
17 means that this would be reasonable, or rather a  
18 situation that you need to pursue, but if you found  
19 that there was something that was nonconforming with  
20 the law, you could appeal a permit which would be  
21 your remedy to review this.

22           Of course, brick type and color I don't  
23 believe, I'm fairly certain of that, would not be an  
24 appealable issue because it would not be permitted as  
25 in it would not be granted permit for that. The

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1 Office of Planning, I think, could easily indicate  
2 what's in the application and indicate any sort of  
3 recourse you might have if needed. Any other  
4 questions?

5 MS. LONG: No. Thank you very much.

6 COMMISSIONER MAY: Can I add one point?

7 CHAIRPERSON GRIFFIS: Yes. Mr. May.

8 COMMISSIONER MAY: For what it's worth,  
9 again, if you take a look at the drawings that are in  
10 the record, or get a copy from the applicant, the  
11 front elevation, according to these documents, it's  
12 supposed to be a replication of the facade of 1619  
13 Marion Street. You can look at 1619 and get some  
14 idea of what it will look like.

15 CHAIRPERSON GRIFFIS: And there's some  
16 good articulation. It looks like it's kind of  
17 historical, if it's not at least contextual.

18 We absolutely appreciate you taking the  
19 effort to come down here. Sorry that we were so  
20 unorganized in our process. It's the first time it's  
21 every happened. I'm sure it will never happen again.

22 That being said, I would like to bring  
23 back the motion of which was approval for 17025  
24 application, and that is from the variance of the lot  
25 area, lot width, lot occupancy. Also the variance

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1 from the open court. That is for properties located  
2 1627 Marion Street, N.W. It has been seconded. Is  
3 there further discussion on the motion? If not, let  
4 me ask for all those in favor signify by saying aye.

5 ALL: Aye. Thank you all very much. Why  
6 don't we record the vote.

7 MS. BAILEY: The vote is recorded as 4,  
8 0, 1 to approve the application, motion made by Mr.  
9 Griffis, seconded by Mr. May. Mr. Zaidain and Ms.  
10 Miller are in support. Mr. Etherly is not here  
11 today.

12 Mr. Chairman, I just wanted to make sure  
13 the applicant understands that once he gets the order  
14 he has two years to file for his building permit or  
15 else he will be back here again.

16 CHAIRPERSON GRIFFIS: So get going. Also  
17 noted, which you will see in the order as it's  
18 issued. This should be a summary order -- it will  
19 note the fact that your plans are attached to the  
20 order.

21 It's obvious that you are going to be  
22 pursuing that and not changing them with any  
23 great -- well, not changing them. Good. Thank you  
24 very much. Appreciate your patience with us. I'm  
25 sure we won't see you again for this property.

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1                   That being said, let's take five minutes.

2                   We are calling the last case in the morning which is  
3 case No. 17026. If that applicant would like to come  
4 forward and just get ready, we will be back in five.

5                   (Whereupon, at 11:04 a.m. off the record  
6 until 11:17 a.m.)

7                   CHAIRPERSON GRIFFIS: Very well. Let's  
8 reconvene and call the last case of the morning.

9                   MS. BAILEY: And that is application  
10 number 17026 of William Schortinghouse, pursuant to  
11 11 DCMR 3103.2, for a variance from the rear yard  
12 requirements under Section 404, to allow the  
13 construction of a rear deck and carport to an  
14 existing apartment house in the R-4 District at  
15 premises 1326 Girard Street, N.W. (Square 2860, Lot  
16 821, per sub).

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

21                   WITNESSES: I do.

22                   MS. BAILEY: Thank you very much.

23                   CHAIRPERSON GRIFFIS: Thank you all very  
24 much. Appreciate your patience today. Why don't we  
25 turn it over for introductions and you can jump right

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1 into the case.

2 MS. HICKS: My name is Gladys Hicks. I'm  
3 a zoning consultant. With me I have today Mr.  
4 Schortinghouse. He's the property owner of 1326  
5 Girard Street, N.W., which is the best looking  
6 building on the block. Also I have with me --

7 CHAIRPERSON GRIFFIS: Has that been  
8 substantiated by any authority?

9 MS. HICKS: I also have with me Robert  
10 Myers. He lives at 1323 Girard Street, N.W. He will  
11 speak today about the proposed development. Also I  
12 have with me Philip Spalding who is located at 1929  
13 13th Street, N.W.

14 The subject property is located in R-4  
15 residential zone and under the D.C. Zoning Regulation  
16 Section 330.1, the general use provision,  
17 subparagraph C, the conversion of a building or other  
18 structure existing prior to May 12, 1958, to an  
19 apartment house as limited by Subsection 350.4,  
20 Subparagraph C. 401.3 is allowed as a matter of  
21 right in the R-4 residential zone.

22 This building was built in the early  
23 1900s as a single family dwelling with a two-story  
24 carriage house located in the rear which is detached.  
25 Mr. Schortinghouse purchased this property in 1995.

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1  
2 Prior to the owner purchasing this  
3 structure it stayed in probate as air property for  
4 approximately 20 years. There are photographs to the  
5 right showing the deterioration to which the building  
6 went down. It was a very deteriorated building, the  
7 front main structure and also the rear detached  
8 accessory carriage house.

9 CHAIRPERSON GRIFFIS: Those pictures are  
10 also in the record, correct?

11 MS. HICKS: Yes, they are. Certificate  
12 of occupancy No. B177851 was issued to Mr.  
13 Schortinghouse to use the principal structure as an  
14 apartment house with four units on the first, second,  
15 and third floors in the basement.

16 Certificate of occupancy No. B99545 was  
17 issued on September 13, 1976, to Charlotte K. Thomas  
18 for an apartment house with six units on all floors.

19 Under Section 401.3 in order to convert an existing  
20 structure to apartment units, 900 square feet of land  
21 per each unit is required to establish an apartment  
22 house.

23 The existing height of the building is  
24 38.3 feet in height. It has a basement, first,  
25 second, third floor, and what we are calling the

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1 mezzanine level at the top.

2 Mr. Schortinghouse wishes to convert the  
3 existing basement. There is one unit in the basement  
4 to two units. He wants to convert the mezzanine or  
5 the top floor level which has been used for storage  
6 space into one apartment unit.

7 Also he's proposing to add a deck  
8 addition to the rear which would be two stories. And  
9 he wants to add a one-story carport to cover two cars  
10 to the rear.

11 Also there's a bump-out addition on the  
12 left side of the structure that Mr. Schortinghouse  
13 proposes to make. In trying to accommodate his  
14 proposed plan, he's running into a rear yard issue.

15 CHAIRPERSON GRIFFIS: To be clear, all  
16 that you've just described is matter-of-right  
17 development?

18 MS. HICKS: The apartment house use is  
19 matter-of-right development use because he has more  
20 than 900 square feet per each unit.

21 CHAIRPERSON GRIFFIS: Right.

22 MS. HICKS: He's just running into a rear  
23 yard problem. There was some mention of a lot  
24 occupancy issue but if you look under Section 403  
25 conversions, there's no lot occupancy prescribed for

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1 conversions in the R-4 residential zone. That's  
2 under Section 403.2 on the lot occupancy table.

3 MEMBER ZAIDAIN: Just to make sure, Mr.  
4 Chair, if I may, that I am understanding the project  
5 here, there's a connection between the existing house  
6 and the carriage house and that connection is going  
7 to be a new carport with a deck above and then a new  
8 bi-level deck so basically this is all connections  
9 that are providing a deck space and then a carport.  
10 Correct? And that's attaching to the existing  
11 carriage house.

12 MS. HICKS: Mr. Schortinghouse can go  
13 over the plans if you would like.

14 MEMBER ZAIDAIN: Why don't you do that  
15 then. It might answer my question.

16 MR. SCHORTINGHOUSE: Briefly what I'm  
17 seeking to do is gain two additional parking spaces  
18 off of the alley. To do this at one point when this  
19 house was constructed -- would you mind if I speak  
20 without the mike?

21 CHAIRPERSON GRIFFIS: No, you have to.  
22 We can hear you but you're not on the record.

23 MR. SCHORTINGHOUSE: When this house was  
24 built in 1900 it had a two-carriage unit in the back  
25 and the side of that is a courtyard where they had a

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1 stable for the horses. The existing stable structure  
2 has been removed.

3 The original lot extended all the way  
4 back here to the end of the carriage house so it was  
5 a full rectangle. In 1910 for alley widening  
6 purposes the city encroached eight feet into the rear  
7 yard and took a section of eight feet by 18 feet  
8 wide.

9 At that point when the house was built in  
10 1900 it was 40 feet from the property line which  
11 would have allowed 20 feet worth of development  
12 behind it and still had 20 feet of rear yard.

13 Because of the encroachment at this point  
14 I only have 32 feet in the rear so if I put up a 20-  
15 foot wide or 20-foot deep carport, then I will be  
16 encroaching into the rear yard and I do not have  
17 sufficient rear yard to do that.

18 The purpose is to establish two parking  
19 spaces from the alley access. The zoning only  
20 requires for the size of project that I have that I  
21 have two spaces of off-street parking. I'm  
22 attempting to configure this project in a manner  
23 which will allow for five spaces of off-street  
24 parking. In my neighborhood this is a big issue.

25 To provide for this so that I don't lose

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1 the recreational amenity space, I want to put a deck  
2 above this carport -- excuse me, above the parking  
3 pad so that I gain that entire area back as the  
4 amenity space.

5 I believe that is the purpose for  
6 designating a rear yard is to preserve amenity space  
7 for units. By putting a deck on top of this carport  
8 I have established that amenity space back. But  
9 because I'm creating an elevated structure this runs  
10 into the zoning problem of not having a rear yard  
11 even though it's going to be 12-feet high.

12 The supplemental issue for this is that  
13 by building this deck configuration I will be  
14 attaching the carriage house to the principal  
15 structure and be creating a single structure. Either  
16 way that I look at this I still have to have a rear  
17 yard zoning variance because at that point the  
18 carriage house being on the rear property line would  
19 have a zero percent rear yard.

20 Either way that I look at this if I don't  
21 use the carriage house or if I do use the carriage  
22 house, it is not important because I have to have the  
23 parking structure there to begin with for what my  
24 plans call for and I'm extinguishing the rear yard.  
25 That's the point that I wanted to make for you.

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1 CHAIRPERSON GRIFFIS: Good. In your  
2 submission you've also talked about the facilitating  
3 egress out of one or more of the units so that's what  
4 will be happening with the decks. They will be  
5 accessed out as part of the code required egress or  
6 as a --

7 MR. SCHORTINGHOUSE: The second ease that  
8 will be afforded by this deck structure are  
9 supplemental to the project and they enhance the fire  
10 safety.

11 CHAIRPERSON GRIFFIS: I see.

12 MR. SCHORTINGHOUSE: We have already  
13 discussed this with the structural engineers in the  
14 District and also consultants for our plan that this  
15 would be a supplement egress.

16 CHAIRPERSON GRIFFIS: Okay. Anything  
17 else?

18 MEMBER ZAIDAIN: Let me make sure I  
19 understand that point. I was looking for something  
20 as you were describing it so I apologize for having  
21 to reiterate it but the deck itself will serve as a  
22 secondary egress?

23 MR. SCHORTINGHOUSE: The structure is  
24 multi-level.

25 MEMBER ZAIDAIN: Right.

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1 MR. SCHORTINGHOUSE: If you can revert to  
2 the elevation parts of the plans, I think you can see  
3 that it's a multi-structure. There are three  
4 elevation drawings at the rear of the plans. I think  
5 they are pages P12, P13, and P14. As a matter-of-  
6 right I can build the deck structure off the rear 12  
7 feet from the house.

8 What will happen is I am connecting the  
9 rear deck structure that is adjacent to the carriage  
10 house into this so it forms a three level deck  
11 structure. The second floor deck will have an egress  
12 for the second floor unit and the carport will also  
13 provide a deck with stairs going down from that as a  
14 second floor egress from the carriage house.

15 MEMBER ZAIDAIN: You're saying that's an  
16 additional benefit of your project that is not  
17 required by code.

18 MR. SCHORTINGHOUSE: Actually, if I have  
19 the carriage house connected to the main house it  
20 becomes one principle structure. Then I am required  
21 to have a second egress from the second floor. I  
22 will be required to have a second egress from the  
23 second floor unit of the main house.

24 MEMBER ZAIDAIN: That's if this is  
25 connected so that's kind of the chicken and the egg

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1 thing. I mean, if this variance is granted, then you  
2 have to provide it. If it's not, then you don't.

3 MR. SCHORTINGHOUSE: Actually, that has  
4 not been made clear. There's some discussion in the  
5 structural engineers office that a second floor if  
6 there is office space or whatever use I'm putting up  
7 there, if it's occupied, then there should be an  
8 additional exit and that building should have two  
9 exits. This building only has one exit at the  
10 current time.

11 MEMBER ZAIDAIN: I would assume that is  
12 compliant to code. What you are altering is the  
13 deck. Well, that's not true. Okay.

14 CHAIRPERSON GRIFFIS: Okay. Any other  
15 questions?

16 MEMBER MILLER: Mr. Chairman, I have a  
17 question.

18 CHAIRPERSON GRIFFIS: Yes, Ms. Miller.

19 MEMBER MILLER: Could you clarify for me  
20 what you meant by saying you needed the alternative  
21 parking for your plans? I'm just having trouble  
22 following. Which are you referring to and which  
23 plans? Your apartment unit plans or your building  
24 plans or which plans are you talking about?

25 MR. SCHORTINGHOUSE: The development of

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1 this project.

2 MEMBER MILLER: The whole project?

3 MR. SCHORTINGHOUSE: The whole project.

4 MEMBER MILLER: You need all of the five?

5 But you don't need five parking spaces for it. You  
6 only need two?

7 MR. SCHORTINGHOUSE: Correct. For the  
8 number of units I'm offering which would be seven I'm  
9 only required to have two spaces of off-street  
10 parking.

11 MEMBER MILLER: Do you have two spaces  
12 available without getting a variance?

13 MR. SCHORTINGHOUSE: Yes. Actually, I  
14 have three. The reason what I'm doing this is  
15 because there's a great need in our neighborhood for  
16 parking and because I am having the ability to do  
17 this, this backyard space in my neighborhood and this  
18 alley is traditionally used for parking cars.

19 If there is a garage there, they park in  
20 the garage. If they don't have one, they park in the  
21 rear yard. I'm going to be offering that rear yard  
22 space as parking anyhow.

23 The problem is that I don't want to lose  
24 the amenity space which is the reason for having rear  
25 yard separation. You have 20 feet of amenity space

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1 or recreational space so my solution to this is to  
2 put a deck above the carport, or make a carport and  
3 put a deck above it so I gain that amenity space  
4 back.

5 MEMBER MILLER: Can you have two parking  
6 spaces without losing your amenity space?

7 MR. SCHORTINGHOUSE: No. But because if  
8 I use them as parking spaces in the rear yard, I  
9 don't have to have a variance.

10 CHAIRPERSON GRIFFIS: He can provide the  
11 parking without building the connecting structures.

12 MEMBER MILLER: Right.

13 MR. SCHORTINGHOUSE: Because of the  
14 development of how I want to do this and be able to  
15 offer that and not lose the amenity space which is of  
16 great value in our city, this is the solution that  
17 I've come up with.

18 MS. HICKS: I would also like to say that  
19 the first time I visited Mr. Schortinghouse I stayed  
20 over two hours and I got a parking ticket so if you  
21 stay over two hours there's no on-street parking for  
22 your guests and you get ticketed and it's very  
23 efficiently done. I can vouch for the fact that I  
24 think that the more parking you have the better.

25 CHAIRPERSON GRIFFIS: Mr. May.

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1                   COMMISSIONER MAY: Well, I really just  
2 wanted to clarify one point which I think has been  
3 clarified. That is that there is no -- that without  
4 this carport you could still provide parking there.

5                   MR. SCHORTINGHOUSE: That is correct.

6                   COMMISSIONER MAY: What this seems to be  
7 boiling down to is the desirability of connecting the  
8 carriage house to the main building.

9                   MR. SCHORTINGHOUSE: Yes. That is an  
10 ancillary reason for doing this.

11                   COMMISSIONER MAY: Which would then allow  
12 different use of the carriage house than what you are  
13 allowed to do right now.

14                   MR. SCHORTINGHOUSE: Actually, part of  
15 this project, yes, that will change its use by right.  
16 However, if this is not granted, the carriage house  
17 will still be usable as whatever the common use is at  
18 this point, artist studios and everything else.

19                   I can still provide up to eight units in  
20 the main building so it's not a unit count that I'm  
21 looking at. The highest best use for the carriage  
22 house obviously is a residential space. However,  
23 that's not what is actually driving this because I'll  
24 have use of that space.

25                   Plus my understanding of the code is that

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1 I am allowed up to eight residential units because of  
2 the lot coverage of 900 square feet and I'll still  
3 have the carriage house as an amenity space.

4 Essentially what is happening is if I don't connect  
5 it, I'm really getting nine units, eight units of  
6 residential and one of an amenity space which is also  
7 an artist studio.

8 It's not my desirability to do that  
9 because my units are planned to be about 2,000 square  
10 feet each and I'm not interested in chopping them up.

11 I think there's enough chopped up things in the  
12 District. That is what is actually driving that.  
13 The amenity space is very important.

14 I don't believe there is enough of it in  
15 the city and if I can do this and get the  
16 complementary use of the amenity space as a deck and  
17 also to have second egresses which are very  
18 important, then this is for my purposes the best  
19 solution and that's why I'm asking for the variance.

20 COMMISSIONER MAY: I wanted to ask one  
21 other question about the definition of the attic  
22 level or the labeling of the attic level as  
23 "mezzanine." Is there some reason why it's called a  
24 mezzanine because it doesn't fit my definition of a  
25 mezzanine but mine is only common sense.

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1 MR. SCHORTINGHOUSE: I'll let Gladys do  
2 that.

3 CHAIRPERSON GRIFFIS: Well, actually  
4 before we wade too far into that, it is interesting.  
5 I question why it was actually submitted into the  
6 record as it doesn't go directly to the rear yard  
7 variance.

8 COMMISSIONER MAY: What, mezzanine?

9 CHAIRPERSON GRIFFIS: Yeah.

10 COMMISSIONER MAY: Mostly it's curiosity  
11 whether there is some other -- it ties into the fact  
12 that this is essentially a use variance in a parking  
13 variance clothing because what it comes down to is  
14 regardless of what the intentions are -- this may not  
15 be your intention, but really what it boils down to  
16 is the use of the accessory building. This is really  
17 what the case hinges on. I'm wondering whether  
18 labeling this as a mezzanine is somehow tied into  
19 that. That's why I'm asking the question. Anyway,  
20 if you can explain to me.

21 MS. HICKS: We took the plans to a  
22 structural engineer which is Yaw Agipong at the  
23 Department of Consumer Regulatory Affairs, the  
24 Building and Land Regulatory Administration. He's  
25 the senior structural engineer.

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1                   We didn't know what to call the top level  
2 which has not been used for anything but storage over  
3 the years. We didn't know whether they had enough  
4 structural head room to use. We were checking on  
5 codes to see whether it was actually usable space,  
6 what could be called a story, an attic, or a  
7 mezzanine.

8                   I also had photographs of that top level  
9 showing how the rafters are coming up at an angle.  
10 Mr. Agipong actually went around and dotted around  
11 what he saw as usable space which would have  
12 structural head room of seven feet or more which  
13 would be considered habitable space.

14                   Then he looked at the levels before and  
15 in that calculation it looked like it was a mezzanine  
16 which is 1/3 of the level below so that's where we  
17 came up with the definition of mezzanine. Not all of  
18 that level is usable space because of the way the  
19 rafters are located.

20                   I don't know whether we have plans or  
21 those photos here with us today but some of that  
22 space at the top level is not usable because of the  
23 head room. If it's considered a loft, a mezzanine,  
24 if it has enough structural head room, it's usable as  
25 a unit.

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1 COMMISSIONER MAY: Okay. Ultimately the  
2 building height -- when this is actually finished out  
3 as finished space, the building height is then going  
4 to be defined by the --

5 MS. HICKS: By the head room, yes, under  
6 the building codes.

7 COMMISSIONER MAY: It's not the 30 some  
8 feet that it currently is.

9 CHAIRPERSON GRIFFIS: Right. But the  
10 height is not changing at all.

11 MS. HICKS: No, the height is existing.

12 CHAIRPERSON GRIFFIS: Okay. Other  
13 questions of the applicant at this time?  
14 Clarifications?

15 Yes, Ms. Miller.

16 MEMBER MILLER: I just want to be a  
17 little more clear. If you did not get the variance  
18 in this case for the rear yard, you would have two  
19 cars in the rear yard. Would there be open space  
20 remaining or what would it look like?

21 MR. SCHORTINGHOUSE: No, there would not  
22 be any open space remaining.

23 MEMBER MILLER: If you take up that rear  
24 yard?

25 MR. SCHORTINGHOUSE: The dimensions

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1 required by the city for parking spaces are nine feet  
2 wide and 19 feet deep so that would consume the rear  
3 yard.

4 MEMBER MILLER: Okay. Thank you.

5 CHAIRPERSON GRIFFIS: Anything else?

6 Ms. Hicks, you characterize this as a row  
7 structure. Is that correct?

8 MS. HICKS: Yes. One that goes from lot  
9 line to lot line.

10 CHAIRPERSON GRIFFIS: Does it?

11 MS. HICKS: Proposed. Proposed.

12 Currently it's --

13 CHAIRPERSON GRIFFIS: Oh, I see. You're  
14 saying with the addition in back.

15 MS. HICKS: With the addition it would be  
16 considered row.

17 CHAIRPERSON GRIFFIS: All right.

18 MS. HICKS: Also as far as lot occupancy  
19 under Section 403.2 is concerned, conversions to  
20 multiple dwellings, no lot occupancy is prescribed.

21 CHAIRPERSON GRIFFIS: Right. I  
22 understand that and I think that is a good note to --

23 MS. HICKS: We're trying to keep it  
24 within at least under 60 percent which is the maximum  
25 allowed for row structures.

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1 MR. SCHORTINGHOUSE: Actually, with the  
2 new additions the calculated lot occupancy would be  
3 55 percent.

4 CHAIRPERSON GRIFFIS: 55?

5 MR. SCHORTINGHOUSE: 56 percent.

6 MEMBER ZAIDAIN: Just to make sure I'm  
7 clear, so with the connection then that brings the  
8 carriage house as part of the main building  
9 footprint. That would classify as a row dwelling.  
10 Isn't that what you just stated because it's going  
11 along the lot line?

12 CHAIRPERSON GRIFFIS: Yes, in one  
13 iteration of it it is allowed and then row dwellings  
14 based on the lot are able to be converted so we have  
15 to go to conversions or other structures is really  
16 what it would become. It seemed to me from the  
17 evidence in the record and the photographs that this  
18 was not a row structure so that is why I was trying  
19 to get clarification but I'm clear on that.

20 MEMBER ZAIDAIN: I don't think it goes to  
21 the point we're dealing with but that converts it to  
22 a row dwelling and then the area in front of it is  
23 almost acting like -- would almost be considered a  
24 court now, one big court potentially.

25 COMMISSIONER MAY: You're right. Once

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1 you go lot line to lot line in the back, everything  
2 else is a court.

3 CHAIRPERSON GRIFFIS: But you have a 5'6"  
4 court which is allowable.

5 MEMBER ZAIDAIN: Well, okay.

6 MR. SCHORTINGHOUSE: Also, just for an  
7 enhancement, I'll show you this on the plan, the  
8 projected area where I want to put this carport is  
9 contiguous to the existing carriage house wall and  
10 the existing neighbor's parking garage so that there  
11 is no intrusion on light and air quality. It does  
12 not penetrate any -- there's no windows in the way so  
13 you should see this and I can point it out to you  
14 here.

15 CHAIRPERSON GRIFFIS: Okay. So you  
16 pointed out on the diagram that adjacent neighbor's  
17 garage structure and the proposed area for the  
18 carport. Okay. Any other questions at this time?  
19 Is there anything else the applicant wants to present  
20 in this case?

21 MR. SCHORTINGHOUSE: Yes. Additional  
22 letters of support.

23 MS. HICKS: We have additional letters of  
24 support and also Sanborn map showing the original  
25 configuration of the lot. I believe you have in the

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1 record from the D.C. Surveyors Office the existing  
2 configuration showing where the Department of Public  
3 Works took eight feet by 18 feet of the lot,  
4 therefore diminishing part of the rear yard.

5 I can submit that to the record, copies  
6 of the Sanborn map, and also letters of support. I  
7 also have a letter of support from Council Member Jim  
8 Graham.

9 CHAIRPERSON GRIFFIS: Correct. That has  
10 made it into the record.

11 MS. HICKS: Okay. Good.

12 MR. SCHORTINGHOUSE: The additional  
13 letters of support that are being offered as exhibits  
14 are letters from both of my adjoining property  
15 owners, both my next door neighbors, and from  
16 Councilman Graham, which you have already indicated  
17 is in the record.

18 CHAIRPERSON GRIFFIS: Very good. And we  
19 will look at those as they come in and then I will  
20 bring them up as we progress in the case to identify  
21 them further if so required.

22 Ms. Hicks, anything else?

23 MS. HICKS: I would just like to  
24 reference two Board of Zoning Adjustment cases. One  
25 is Appeal No. 16646, Daniel Sewer, and James W.

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1 McBride, that deals with connections between  
2 buildings. There's one other Board case I would like  
3 to reference, and that is Board of Zoning Adjustment  
4 case No. 16863, S & P Properties, 420 M Street, N.W.,  
5 Square 514, Lot 813. That will be all.

6 CHAIRPERSON GRIFFIS: And what is the  
7 reference for those?

8 MS. HICKS: The reference is similar  
9 cases.

10 CHAIRPERSON GRIFFIS: Have we approved  
11 them?

12 MS. HICKS: Yes. Well, the 16646 was a  
13 single family dwelling which was connected to a  
14 detach accessory structure. This is an appeal case,  
15 the 16646. The Board upheld the Zoning  
16 Administrator's issuance of the building permit.

17 420 M Street which is BZA case No. 16863.  
18 That has been a recent appeal case. It was  
19 approved. The decision date was November 5, 2002.  
20 It was a bench decision. The final order date is  
21 November 7, 2002. That was a connection between  
22 principal structure and rear structure with a  
23 walkway.

24 CHAIRPERSON GRIFFIS: What was the  
25 address on the second case?

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1 MS. HICKS: 420 M Street, N.W. I have a  
2 copy of the final order for both cases.

3 CHAIRPERSON GRIFFIS: Why don't we put  
4 that in the record.

5 MS. HICKS: Okay.

6 CHAIRPERSON GRIFFIS: If there's nothing  
7 further, we can go on to Office of Planning while  
8 that comes into the record.

9 Welcome, Mr. McGettigan.

10 MR. MCGETTIGAN: Thank you, Mr. Chair.  
11 My name is David McGettigan from the Office of  
12 Planning. The Office of Planning has evaluated the  
13 evidence submitted with the application and finds  
14 that there are no unique or physical aspect or  
15 condition of the property that is related to the need  
16 for the proposed deck or the connection to the  
17 existing carriage house.

18 All the structures on this block of  
19 George Street are similarly setback from the street.

20 No evidence was provided that showed an exceptional  
21 situation that would warrant converting the existing  
22 carriage house to a unit and constructing the related  
23 decks.

24 Also no evidence has been provided to  
25 document that the strict application of the Zoning

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1 Regulations results in a practical difficulty that  
2 remains reasonable use of the property as an  
3 apartment building and the use of the carriage house  
4 for the permitted accessory uses.

5 The intensified use of this property is  
6 not consistent with the intent of the zone plan, the  
7 character of the R-4 zone, or the public good. As  
8 stated in 330.3, the R-4 district shall not be an  
9 apartment house district as contemplated under their  
10 general residence districts since the conversion of  
11 existing structures shall be controlled by a minimum  
12 lot area per family requirement, though the minimum  
13 lot area per dwelling unit requirement is not  
14 exceeded by the proposed development granting a  
15 variance for the sole purpose of adding a dwelling  
16 unit and the carriage house is not consistent with  
17 the intent of the zone.

18 The additional parking, loading, and trip  
19 generation of the proposed use are not compatible  
20 with the existing neighborhood. Though the applicant  
21 indicates that these impacts are minimal, they are  
22 still an increase over the matter of right use of  
23 this property and cumulative impacts of such  
24 overcrowding on the residential neighborhood could  
25 have substantial impacts. Therefore, the Office of

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1 Planning feels that the applicant has not met the  
2 burden of proof for a variance and the Office of  
3 Planning recommends the application be denied. Thank  
4 you.

5 CHAIRPERSON GRIFFIS: Thank you, Mr.  
6 McGettigan.

7 Does the applicant have any cross-  
8 examination of the Office of Planning?

9 MS. HICKS: I just generally disagree  
10 with the report because the use is permitted as a  
11 matter-of-right.

12 CHAIRPERSON GRIFFIS: Do you have any  
13 questions of him?

14 MS. HICKS: No, I don't have -- well, I  
15 don't know whether Mr. Schortinghouse has any  
16 questions of Mr. McGettigan.

17 MR. SCHORTINGHOUSE: I have a question.  
18 My understanding from the planning report is that  
19 this increased use is not a matter of right. My  
20 understanding is that I have a matter-of-right for up  
21 to eight units and I'm not even going to that.

22 I'm having seven units so, as a matter-  
23 of-right, I am allowed to have the amount of traffic  
24 that that implies. The carriage house  
25 notwithstanding doesn't have to be a unit and I can

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1 still have eight units. I don't believe the addition  
2 of the carriage house is speaking to increased  
3 traffic and increased parking situation.

4 CHAIRPERSON GRIFFIS: Mr. McGettigan, is  
5 that your understanding and the Office of Planning's  
6 understanding?

7 MR. MCGETTIGAN: Well, that sounds  
8 reasonable but I think that we are still granting a  
9 variance to you. If you could do it as a matter-of-  
10 right, then you wouldn't need a variance.

11 CHAIRPERSON GRIFFIS: I believe my  
12 statement on this is that I'm seeking this for  
13 additional parking and premise. I can do this  
14 because it's not a matter of a number of units.

15 The reading that I get from the Office of  
16 Planning's Report is that one of the basis of denying  
17 this is because I'll be increasing use and traffic  
18 flow and parking, but I believe as a matter-of-right  
19 even not using the carriage house I'm still allowed  
20 eight units and I'm not doing that.

21 I'm confused as to how you are  
22 interpreting my matter-of-right to use this as eight  
23 units and still have the same amount of traffic flow  
24 whether I use the carriage house or not as one of  
25 those units.

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1 CHAIRPERSON GRIFFIS: Let me follow up  
2 with that. As this is the time of cross-examination,  
3 it's actually to ask direct questions and then they  
4 can respond.

5 Mr. McGettigan, go to your second page  
6 and you do make a statement of the intensified use of  
7 this property is not consistent with the intent of  
8 the zone plan and the character of the R-4 zone or  
9 the public good.

10 However, in the Zoning Regulations it is  
11 allowable for the number of units based on the lot  
12 size. Although this is not characteristic site size  
13 for R-4, in fact it is unique in its site size and  
14 structure, it is allowable to offer the number of  
15 units. Is that correct?

16 MR. MCGETTIGAN: That's correct.

17 CHAIRPERSON GRIFFIS: Okay. In that  
18 case, what I understand you saying is, however, be  
19 that as it may, the increased number of units is  
20 going to have in terms of citing the comprehensive  
21 plan and in terms of citing the difficulty in  
22 improving it, this would increase parking and traffic  
23 because of  
24 -- then go to page 4 under comprehensive plan,  
25 "Granting the variance to 330.3 in the R-4 zone would

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1 allow an increase in number of units that would  
2 increase parking and traffic."

3 With that statement, however, we're here  
4 to accommodate additional parking. This application  
5 if built as proposed would provide more parking than  
6 is required by the regulations of which we should,  
7 and do, hold as the appropriate number.

8 It's actually going above that. How are  
9 we to digest the argument of this is not an  
10 appropriate variance relief based on parking and  
11 traffic when that is what we are here for actually to  
12 accommodate and alleviate?

13 MEMBER ZAIDAIN: I have a question. Is  
14 that true? I don't understand this is a parking  
15 variance. I mean, they can provide the parking.  
16 It's the carport structure and the decks that we are  
17 dealing with here. Am I misunderstanding?

18 CHAIRPERSON GRIFFIS: No, you're not  
19 misunderstanding. We're not here for a parking  
20 variance or special exception. We're here for rear  
21 yard and the rear yard and the work associated with  
22 diminishing the rear yard setback is to accommodate  
23 the parking spaces.

24 MEMBER ZAIDAIN: No, it's to accommodate  
25 the carport structure.

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1 CHAIRPERSON GRIFFIS: Yes, you could look  
2 at it that way also.

3 MEMBER ZAIDAIN: I mean, tell me if I'm  
4 wrong. A carport doesn't need to be provided. It's  
5 just the parking space is to be enclosed. Correct?

6 CHAIRPERSON GRIFFIS: I think there are  
7 numerous issues that are evolving here. What I'm  
8 hearing the applicant say is parking is a hassle, if  
9 not more, in this area. As he is providing, or  
10 proposing to provide number of units, he feels it's  
11 important and it's important enough to go above and  
12 beyond the required parking spaces in order to  
13 alleviate not only for his property but for the  
14 surrounding area basically the public good.

15 In order to do that and also accommodate  
16 some of the outside recreation space, although that  
17 is not required for this number of units, but in  
18 order to keep that animation and in order to utilize  
19 the site as it is unique in its size and dimension  
20 and shape, in order to utilize that in the rear  
21 portion of it and also to accommodate additional life  
22 safety aspects, it makes sense in this application to  
23 deck across a carport which would be allowable.

24 MEMBER ZAIDAIN: Well, to provide that  
25 amenity as the applicant stated.

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1 CHAIRPERSON GRIFFIS: Yes.

2 MEMBER ZAIDAIN: That's my understanding  
3 as well. I wanted to make sure that I wasn't missing  
4 something.

5 CHAIRPERSON GRIFFIS: The flip side of it  
6 is -- we've taken up this morning, which we seem to  
7 pursue themes interestingly. The flip side is to  
8 look at what are the options which we don't do. I  
9 mean, we're not proposing this but to look at if this  
10 wasn't, in fact, granted conceivably you patio out  
11 the back and you have some BBQ space and you lose the  
12 aspects of the parking or some other dimension.

13 MR. MCGETTIGAN: I have to concede that  
14 the impacts are minimal and our thought was the  
15 cumulative impacts of such relief.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. MCGETTIGAN: I don't think we have --

18 CHAIRPERSON GRIFFIS: I have to interrupt  
19 you there because I think that is a critical point.  
20 We've seen in this neighborhood and we've seen around  
21 the city conversions, right? We have a row dwelling  
22 that is just under the square footage to allow 10  
23 units in a building.

24 Realistically let's say three or four  
25 units in a building. I think in the typical row

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1 dwelling the Board has a very difficult time in  
2 approving those type of applications outside which is  
3 obviously required, specific, unique, and exceptional  
4 circumstances. We are not faced with that type here.

5  
6 It is not how are we trying to fit the  
7 density because in the regulations we are allowed --  
8 the applicant is allowed to do this based on its land  
9 size so we don't have that issue of kind of  
10 increasing the density beyond what is typical for R-  
11 4.

12 MR. MCGETTIGAN: If I could also mention  
13 the life safety egress issue. When I wrote my report  
14 my understanding was that they would be able to use  
15 that with having only one exit and, therefore, there  
16 was no reason to have the second exit.

17 It seems like they've discovered that  
18 even if he used it for an office or some accessory  
19 use he might have to have the second egress so I  
20 think that's important for the Board to determine  
21 whether that's the case or not because I think it has  
22 some bearing on whether that deck is needed also as a  
23 second egress.

24 CHAIRPERSON GRIFFIS: Good.

25 MEMBER ZAIDAIN: Well, I appreciate that

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1 point. I think not only would we have to get into  
2 whether or not a second egress or this second egress  
3 is provided, but whether or not this is the only way  
4 to provide it. I don't think that is a discussion we  
5 need to get into.

6 CHAIRPERSON GRIFFIS: I understand. I  
7 think, no, we would not be looking to design this  
8 thing but we could ask for the substantiation of the  
9 code that requires it.

10 MEMBER ZAIDAIN: I don't think we even  
11 need to go that far to be honest with you but if you  
12 want to request that, I'm happy to see it.

13 CHAIRPERSON GRIFFIS: Okay. I'm not  
14 moved at this point to do that.

15 Others have questions for Office of  
16 Planning?

17 MEMBER MILLER: Mr. Chairman.

18 CHAIRPERSON GRIFFIS: Yes. I'm sorry,  
19 Ms. Miller.

20 MEMBER MILLER: If Office of Planning  
21 could address a little further your point about  
22 cumulative impact. Do you mean if we grant the  
23 variance in this case it's going to need variances  
24 all down the street in similar situations or what did  
25 you mean by that?

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1 MR. MCGETTIGAN: Well, yeah. One is  
2 precedent and two is there is some degree if you  
3 grant these variances that it starts to overcrowd the  
4 neighborhood. This is a very intensely population  
5 section of town as well.

6 MEMBER MILLER: When you say overcrowded,  
7 do you mean with more apartment units or do you mean  
8 with filling in structures in the back?

9 MR. MCGETTIGAN: No, with more apartment  
10 units.

11 CHAIRPERSON GRIFFIS: And when you say  
12 overcrowded or more dense than other neighborhoods,  
13 help me understand. When I look at the aerial  
14 photograph in your report, and even looking at the  
15 site plan/land use plan which is excellent that you  
16 guys submit these, I see an interspersing of  
17 apartments and a predominance towards 13th Street of  
18 row dwellings which I would imagine would be single  
19 family or flats. Are you saying there's the  
20 potential that whole area is developing into a higher  
21 density? Is the density off of 14th a concern?

22 MR. MCGETTIGAN: I think that ward is the  
23 densest in the city generally. The parking problems  
24 that is experienced is indicative of the overcrowding  
25 and overuse of the land and not enough parking

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1 available off site and so forth.

2 CHAIRPERSON GRIFFIS: Okay. I understand  
3 that. Ward 1 is one of the densest populations. Of  
4 course, Ward 1 is fairly large. The other issue in  
5 terms of precedent, I think we ought to be clear. I  
6 think Mr. McGettigan is exactly right to bring that  
7 up and bring that to our attention.

8 Clearly because we will approve this, I'm  
9 saying, does not mean that the adjacent neighbors can  
10 come in and get approval. The case still has to be  
11 made. There has to be some uniqueness to each  
12 application and that's why Board of Zoning Adjustment  
13 in approving or denying does not directly set  
14 precedent.

15 Mr. McGettigan, looking at your land use,  
16 there's a portion of which in the northern square  
17 towards Harvard Street as listed on this as R-5-D  
18 zone. I'll give you a second to pull that out. Do  
19 you have it?

20 MR. MCGETTIGAN: Don't have the current  
21 version.

22 CHAIRPERSON GRIFFIS: Do you have  
23 anything that -- you can probably look at even -- do  
24 you have your aerial photograph? I can give you a  
25 copy. Here comes one.

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1 MR. MCGETTIGAN: Thank you.

2 CHAIRPERSON GRIFFIS: Okay. Walk me  
3 around this. Let's go north towards 14th Street. Is  
4 that a surface parking lot there?

5 MR. MCGETTIGAN: Across the street?

6 CHAIRPERSON GRIFFIS: That's correct.  
7 Across Girard north towards 4th Street.

8 MR. MCGETTIGAN: I believe so.

9 CHAIRPERSON GRIFFIS: And that surface  
10 parking lot, I would assume, is attended to and  
11 supports that large structure that is showing on 14th  
12 that spans between Girard and Harvard. Is that  
13 correct?

14 MR. MCGETTIGAN: I would believe so.

15 CHAIRPERSON GRIFFIS: Do you know what  
16 that is?

17 MR. MCGETTIGAN: It looks to be a school  
18 or educational facility.

19 CHAIRPERSON GRIFFIS: Okay. Well, it's  
20 not designated that. We'll see. Obviously that is  
21 supported by the parking that is there. If you go  
22 towards 13th Street on the north side of Girard there  
23 is something there that has a square and a flag on it  
24 which is educational listed. Is that a surface  
25 parking lot in the rear of that?

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1 MR. MCGETTIGAN: Yes.

2 CHAIRPERSON GRIFFIS: Okay. And then  
3 across the street it seems to be only four structures  
4 and two of which look like they have driveways. Is  
5 that correct? Do you know? I'm not putting you on  
6 the spot. I just want to see if you have a better  
7 understanding than I do of this block. From the land  
8 use you are showing curb cuts so I am assuming that  
9 the two adjacent to 13th Street in that surface  
10 parking lot actually have driveways.

11 MR. MCGETTIGAN: Yes.

12 CHAIRPERSON GRIFFIS: Which would then  
13 accommodate the parking for those two leaving two  
14 other row dwellings on the back. What I'm trying to  
15 get to is I think it is absolutely important and  
16 critical to look at the impact would be whether it be  
17 adverse impact.

18 But I'm seeing in the uniqueness of this  
19 square, and even the surrounding squares, I go  
20 towards the end of the corner. Let's go towards  
21 Girard 14th between Fairmont and Girard. On that  
22 corner do you know what -- there's a -- it's listed  
23 as vacant that entire corner but it looks like  
24 there's some structure on there. Do you know what  
25 that is?

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1 MR. MCGETTIGAN: No, I don't.

2 CHAIRPERSON GRIFFIS: Okay. Well,  
3 clearly it's not developed. Aside from that it looks  
4 like another surface parking that accommodates that  
5 other larger structure which is multiple family  
6 dwelling listed. In fact, it looks like they may  
7 have two surface parking. It looks like the high  
8 density -- oh, and I continue on south of Fairmont  
9 and there's another surface parking.

10 It looks like -- fully understanding that  
11 this is a dense portion of the city, but looking at  
12 this it would -- it occurs to me that anything beyond  
13 the single family have accommodating surface parking,  
14 which doesn't diminish the fact that parking is  
15 probably tight, but I'm not sure that it goes to the  
16 level of -- the level of being concerned in terms of  
17 the applicant's proposed density on this site.

18 All right. Anything else from the Office  
19 of Planning? Mr. McGettigan, we absolutely  
20 appreciate it. It's an excellent and comprehensive  
21 report and the graphics are always my favorite.  
22 Yeah, actually the aerial photograph shows fairly  
23 distinctly the uses in that area.

24 Okay. That being said, let's move on.  
25 Unless there is anything else, we can go to and

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1 recognize the letter from Council Member Graham who  
2 is the Council Member of Ward 1 which this property  
3 is located. It is in support of the request for a  
4 zoning variance, as stated, necessary to complete the  
5 proposed carport and deck construction project.

6 I'll take note that he indicates that Mr.  
7 Schortinghouse's property is a valued asset addition  
8 to the quality and aesthetics of our neighborhood and  
9 the additional off-street parking spaces created is  
10 to be greatly encouraged. He does outline the  
11 application and the notes.

12 Unless there is anything else on that to  
13 be noted, let's move on to other Government reports.

14 I don't show any others attended to that so we can  
15 move on to the ANC-1B of which is represented here  
16 today.

17 MR. SPALDING: Mr. Chairman, Philip  
18 Spalding. I live at 1929 and 13th Street, N.W. I  
19 represent ANC-1B-02. You should have a copy of our  
20 letter addressed to you.

21 CHAIRPERSON GRIFFIS: Yes.

22 MR. SPALDING: I would like to preface it  
23 by saying as opposed to Commission 2-C we will be  
24 reviewing all of the projects that you bring to us.  
25 We will be sending 20 copies of the letter and we

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1 will be attending all of your meetings.

2 CHAIRPERSON GRIFFIS: I can't imagine an  
3 ANC saying they are not going to report. Okay.

4 MR. SPALDING: Mr. Schortinghouse  
5 appeared before ANC-1B in our June meeting. We were  
6 exceptionally impressed the history of his work with  
7 this property. As you have seen from his photographs  
8 that are in evidence, he has taken a property and  
9 restored it. It's been noted by the community and he  
10 has worked with his neighboring restorers and  
11 renovators in the Columbia Heights neighborhood.

12 We are definitely appreciative of any  
13 additional on-site parking that goes with conversions  
14 or, actually, any residential building in Columbia  
15 Heights and below. Ward 1 is very dense. Parking is  
16 exceptionally difficult for everyone and any  
17 additional parking that we can gain is appreciated.

18 We also appreciate in the design that Mr.  
19 Schortinghouse brought forward the design of the  
20 recreation space that he's providing. He seems to be  
21 accomplishing a number of things in this project that  
22 are of benefit to the community. We recognize that  
23 and voted to support him unanimously.

24 CHAIRPERSON GRIFFIS: Good. Thank you  
25 very much. Is there cross-examination by the

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1 applicant of the ANC representative?

2 MS. HICKS: No.

3 CHAIRPERSON GRIFFIS: Okay. Any  
4 questions from the Board? Ms. Miller.

5 MEMBER MILLER: Yes. I was wondering if  
6 you could address some of the variance tests that we  
7 have to consider how this might be unique and things  
8 like that.

9 MR. SPALDING: In the letter I do say  
10 that it does appear that a variance is needed. As  
11 far as uniqueness, and I know that is important, when  
12 you look at the structure and the land and the  
13 history of the use of the land that Mr.  
14 Schortinghouse is facing, there are some anomalies.  
15 The fact that the property did extend further back  
16 and the city did take territory to create the alley.

17 MEMBER MILLER: Can I just interrupt you?

18 MR. SPALDING: Yes. Go ahead.

19 MEMBER MILLER: That was one of the  
20 points I was looking at but doesn't that apply to all  
21 the houses along that alley?

22 MR. SPALDING: Yes, it does. It would  
23 have an impact on your decision regarding any of the  
24 properties along that alley. The District does take  
25 property occasionally. It does affect the eventual

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1 use of the property. It does limit uses and it does  
2 perhaps not rise to the degree of uniqueness but it  
3 does contribute to the fact that what would normally  
4 occur in an historical context has been changed.

5 Mr. Schortinghouse is addressing the  
6 circumstances that he is facing which are a little  
7 more limited. I think his design solutions are  
8 creative responses. Whether this rises to a  
9 uniqueness situation, I don't know. That's yours to  
10 decide. We see that it does need a variance but we  
11 found that his design solutions were of benefit to  
12 the community.

13 CHAIRPERSON GRIFFIS: When the ANC was  
14 reviewing this, did they not see the carriage house  
15 and the citing and they didn't evidence or see  
16 anything unique about the lot size?

17 MR. SPALDING: It was not brought forward  
18 in testimony at the ANC.

19 CHAIRPERSON GRIFFIS: Okay. Any other  
20 questions of the ANC?

21 Do you have a clarification, Mr.  
22 Schortinghouse?

23 MR. SCHORTINGHOUSE: Yes, on Ms. Miller's  
24 question about the taking of the land for the alley.

25 A little clarification is that the house that I have

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1 was built in 1900. It predates the alley so that the  
2 lot was built all the way back and the house was  
3 sited on the lot to maximize the use of it. The  
4 adjacent properties did not have their property  
5 incumbered by the city at the time that they were  
6 built.

7 It was prior to their building so that  
8 they were built in a shallower configuration to allow  
9 for the additional lot area in the back of the rear  
10 yard. In my case, I had that and it was taken away  
11 and that is the uniqueness of my property. No other  
12 properties on the block had that function.

13 CHAIRPERSON GRIFFIS: And that impacts  
14 the dimension of the rear yard, as you stated.

15 MR. SCHORTINGHOUSE: Correct.

16 CHAIRPERSON GRIFFIS: Okay. Excellent.  
17 Anything else for the ANC? Very well. Thank you  
18 very much. Appreciate your patience and you can go  
19 talk to ANC-2 and get them on board.

20 I don't have any other attended  
21 submissions to this so we can go to testimony. Are  
22 any persons planning to testify either in support or  
23 opposition can come forward and have a seat.

24 Unfortunately, I have to say good  
25 afternoon.

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1 MR. MYERS: Good afternoon. My name is  
2 Robert Myers. I don't live at 1323 Girard Street  
3 which is diagonally across the street from Mr.  
4 Schortinghouse's property, but we purchased that  
5 property from Sojourner's approximately one year ago  
6 for Asian American Lead which is a community-based  
7 nonprofit in the neighborhood that is doing programs  
8 very similar to what Sojourner's was doing on that  
9 site for many, many years.

10 The piece of property that divides our  
11 building the large building on the corner that you  
12 thought was a school, that's the Easter Seals  
13 Building so in between us is a very large parking  
14 lot. I think it is important to refer to it because  
15 nobody has talked about it, or one other I would like  
16 to bring up which I think is germane here.

17 I might mention that my position with  
18 Asian American Lead is co-chair of that organization.

19 I'm also active with the Friends of Girard Street  
20 playground which is a block west of the area we're  
21 talking about as a member of All Souls Church.

22 So when you look at the picture of that  
23 neighborhood, it's really quite unusual, that block,  
24 because there's a playground on that block at the  
25 corner of 14th Street and we have the parking lot

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1 between our two organizations which we share with  
2 them. They allow us to park there.

3 More importantly, at night those two  
4 organizations -- those buildings are not occupied and  
5 without speaking for Easter Seals, I know they plan  
6 to stay there. They have been very generous in the  
7 use of that parking lot by members of the  
8 neighborhood.

9 There's a gentleman who lives two houses  
10 down has a big white truck that is hard to park on  
11 the street. I know that he generally uses the Easter  
12 Seals parking lot as did Sojourner's for its bus to  
13 keep large vehicles off what is a narrow street.

14 But also those two buildings when they  
15 close at night, there is no one living there so there  
16 is parking for other residents. But as newcomers in  
17 the neighborhood, we are very concerned about the  
18 parking issue ourselves and we will probably be  
19 coming to you later to talk about some of our own  
20 issues.

21 I was a little sad to hear Mr.  
22 Schortinghouse's property described as the most  
23 attractive building on the block because we would  
24 like to think ours is. We're at work renovating to  
25 make that block a better block. If anyone is setting

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1 an example for us, it is he.

2 I think just looking at the pictures, I'm  
3 not an expert on zoning or anything else related to  
4 this except I have visited the property and it is  
5 really an unusual piece of property to have a  
6 carriage house like that in an area which was a  
7 stable. I think that the design that he has come up  
8 with is really imaginative and by right he is  
9 entailed to do one thing and he could do.

10 What he's doing for the neighborhood is  
11 providing two additional parking spaces almost  
12 gratuitously. I think that is to be commended. He is  
13 creating some amenity space for the people living  
14 there which seems reasonable to me.

15 The other thing that came to mind that  
16 hasn't been mentioned in terms of what Mr. McGettigan  
17 was saying is that this neighborhood is changing  
18 obviously and it's two blocks, two and a half blocks  
19 from a new Metro station. A lot of people are going  
20 to be walking to the Metro station to come in and out  
21 of the neighborhood hopefully.

22 Parking remains a problem and I think he  
23 is to be commended for coming up with this plan which  
24 is rather ingenious in terms of creating space for  
25 parking and amenity space as well. As a new neighbor

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1 on the block, I think he set a really good example  
2 for us and we hope he will be accepted in the  
3 neighborhood as a good a neighbor as he is.

4 CHAIRPERSON GRIFFIS: Good. Thank you  
5 very much. I encourage the competition of design and  
6 upgrades of buildings. Of course, in this  
7 neighborhood and all the others. We appreciate you  
8 coming down here today. Questions from the Board?  
9 Cross-examination by the applicant? Yes, Mr.  
10 Schortinghouse.

11 MR. SCHORTINGHOUSE: Point of  
12 clarification on the Easter Seals. The Easter Seals  
13 parking lot is not available for use by residents in  
14 the neighborhood. The Asian Lead have an  
15 accommodation with them that they can use it and  
16 Easter Seals do not permit the neighborhood residents  
17 to use it.

18 Also, the other major parking structures  
19 that you saw in the plan, one belonging to NCB  
20 Estates as senior housing, that is also not available  
21 for neighborhood residents. The New Amsterdam  
22 Building between Fairmont and Girard on 14th Street  
23 that has the three parking areas, that is also not  
24 available for neighborhood resident use.

25 The problem in the neighborhood is

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1 enhanced, or exacerbated actually, because they have  
2 recently begun charging their residents for parking,  
3 rental of that lot, and most of them have opted to  
4 move to street parking. This is an eight or nine-  
5 story building that now most of the residents are  
6 parking on the street as well.

7 CHAIRPERSON GRIFFIS: Good. Thank you.  
8 Anything else? Any other questions from the Board?  
9 I think that is an important clarification. What I  
10 was trying to do to establish and get an  
11 understanding of what was happening on the block  
12 because we have kind of competing issues.

13 Office of Planning is telling us that  
14 this may have, whether in this instance application  
15 or what, it will then create a difficulty with  
16 traffic and parking, the increase of it. Having to  
17 understand where the density is and if there was not  
18 accommodation for all those, I think it's clear that  
19 those are accommodated.

20 I don't question and I think it's  
21 absolutely true. Even on that block as you look at  
22 it with the curb cuts and the site surface parking,  
23 there is removal of street parking there. Obviously  
24 if you have a driveway you can't park there.

25 I don't question and it's now on the

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1 record and has been testified to numerous times that  
2 parking is a difficult situation. Whether this would  
3 be denied based on the fact that it would increase  
4 parking and traffic to such an extent is what I don't  
5 agree with.

6 I believe it's an appropriate and  
7 excellent point to accommodate parking on site  
8 whether it be for the regulation count or above. I  
9 think that is an appropriate piece. That being said,  
10 let's turn to the applicant for a final closure  
11 remarks and comments.

12 MS. HICKS: I'll just make a brief  
13 statement indicating that --

14 CHAIRPERSON GRIFFIS: Pardon me? I'm  
15 sorry. Is there anyone else here to give testimony  
16 today now that I've missed that once? I swear it's  
17 the first time I ever did that. Okay. If not, then  
18 let's continue.

19 MS. HICKS: I would just like to make a  
20 brief statement indicating that in planning this  
21 proposed addition to the rear, the architect along  
22 with Mr. Schortinghouse looked at visual impact, the  
23 visual impact the addition would have from the  
24 street. That's why they lined everything up mostly  
25 to the rear of the existing structures.

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1           Also, there are some unique items as  
2 noted previously about the property. Also, I feel  
3 that the granting of the relief would be -- can be  
4 done without substantial detriment to the public good  
5 and without substantially impairing the intent,  
6 purpose, and integrity of the zone plan as embodied  
7 in the zoning map and also the D.C. Zoning  
8 Regulations.

9           Also, the comprehensive plan goes to  
10 ownership and not property intensity. In this  
11 particular instance, though, we are trying to  
12 increase the number of units but it's in line with  
13 the provisions of Section 401 which is the lot area  
14 requirement of 900 square feet per each unit. The  
15 only issue that we have is the rear yard setback  
16 issue.

17           MEMBER ZAIDAIN: I have a question really  
18 quick. It's my understanding that in the R-4 the  
19 rear yard setback is 20 feet. Now, I know when you  
20 have jagged back lots like this you take the average,  
21 I believe, correct?

22           Even at its lowest point, it seems to me  
23 the new bi-level deck could be accommodated matter-  
24 of-right and what's encroaching and making this in  
25 need of relief is the parking deck and the connection

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1 to the existing carriage house. Am I correct in  
2 understanding that?

3 MS. HICKS: Yes. It's the carport.

4 MEMBER ZAIDAIN: Okay. Thank you.

5 MEMBER MILLER: I want to follow up on  
6 that, too, because that's what's been bothering me.  
7 I'm looking at the diagram. If you had a deck and  
8 parking spaces, you would need what you need the  
9 relief for is the above part that connects?

10 CHAIRPERSON GRIFFIS: They're just  
11 putting a deck on the carport.

12 MEMBER MILLER: Yeah, but it looked to  
13 me, and I could be wrong, but on the ground there  
14 seemed to be like a deck and space for two cars. Is  
15 that not correct?

16 CHAIRPERSON GRIFFIS: It's on the ground.

17 MEMBER MILLER: And leave some --

18 MEMBER ZAIDAIN: I would assume that  
19 these dash lines in here represent the parking spaces  
20 that are 9 by 19 required spaces. Is that correct?

21 MS. HICKS: Yes. There are two parking  
22 places.

23 MEMBER ZAIDAIN: Although they seem like  
24 they are kind of tucked in there just give or take a  
25 foot or so.

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1 MS. HICKS: It could be that one is 9 by  
2 19, the standard size parking space, and one is a  
3 compact parking space that cannot meet the 9 by 19.  
4 Mr. Schortinghouse feels that we are meeting both the  
5 9 by 19 space for two standard size parking spaces.

6 MR. SCHORTINGHOUSE: It's exactly 18  
7 feet.

8 MEMBER ZAIDAIN: What's exactly 18 feet?

9 MR. SCHORTINGHOUSE: The width of the two  
10 parking spaces, two 9 by 9.

11 MEMBER ZAIDAIN: But the length is 22'6"  
12 the way I read this so you've got 19 give or take a  
13 couple feet in between.

14 MS. HICKS: But if you detach it by a  
15 couple feet or a couple inches, they are going to  
16 have to ask for a rear yard variance because the  
17 carport would have to be set 12 feet from the center  
18 line of the alley. We would end up coming back  
19 asking for variance relief anyway that it's done.

20 MEMBER ZAIDAIN: In order to have the  
21 carport?

22 MS. HICKS: In order to have the carport  
23 or detached garage, it has to be set 12 feet from the  
24 center line of the alley so that taking of the eight  
25 feet really does -- well, it really will have an

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1 effect on anything that is being done.

2 MEMBER ZAIDAIN: I don't know where the -  
3 - you said detached garage?

4 MS. HICKS: If you have a detached garage  
5 or if you have a detached carport that is not  
6 connected to the principal structure, it has to be  
7 set 12 feet from the center line of the alley.

8 MEMBER ZAIDAIN: Right.

9 MS. HICKS: So we would still be coming  
10 in asking for relief.

11 MEMBER ZAIDAIN: That's because they  
12 would want to continue to have covered parking.

13 MS. HICKS: That's correct.

14 CHAIRPERSON GRIFFIS: Any other  
15 questions? Clarifications? Is the Board prepared to  
16 proceed today with this application?

17 COMMISSIONER MAY: Mr. Chairman.

18 CHAIRPERSON GRIFFIS: Yes.

19 COMMISSIONER MAY: I'm not sure but it  
20 kind of depends on where things go with this but I  
21 would like to start the discussion if I could.

22 CHAIRPERSON GRIFFIS: Okay.

23 COMMISSIONER MAY: The case that is  
24 presented here, the building, the project overall,  
25 there are a lot of things that can be said about it.

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1 A lot of very good things that can be said about it.  
2 There are a number of positives about it.  
3 However, there is one negative that I can't find any  
4 way to overcome which is the fact that it doesn't  
5 meet the three-prong test for a variance.

6 It is not an exceptional situation.  
7 There is not a practical difficulty. It's all self-  
8 imposed and that's the difficulty that I have. Now,  
9 are we ready to proceed today? Yes, I'm ready to  
10 proceed today and vote on that basis.

11 CHAIRPERSON GRIFFIS: Right. Okay. I  
12 think there is always some difficulty in any  
13 application that comes in, and that is there's a  
14 decision made by a developer, an applicant, a  
15 homeowner to do something.

16 Often times that moves into the request  
17 for relief from Zoning. To use somewhat that  
18 guideline, Mr. May, and what I'm hearing you say,  
19 every application we have is self-imposed because  
20 nothing necessarily needs to be built.

21 As I look at this, I see an extensive  
22 amount of criterion that goes to out test. First of  
23 all, the uniqueness, the uniqueness that relates to  
24 that which we are here for and the practical  
25 difficulty that arises of it.

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1           One of its most compelling is the fact of  
2 the history of when this was developed and when the  
3 site was actually plotted and set. It predated, as  
4 testified today, to the surrounding rowhouses,  
5 surrounding developments, but most importantly to the  
6 alley.

7           As that alley has, in fact, moved that  
8 impacted and directly related to the dimension of the  
9 rear yard setback. In fact, in noting the discussion  
10 that just came up about the carport and the setback,  
11 if the alley was, in fact, back where it was, this  
12 carport could set where it is now and, just in my  
13 estimation, would be matter-of-right and not need any  
14 sort of relief.

15           The practical difficulty that arises then  
16 with additionally the unique characteristics of the  
17 carriage house that is existing along with this and  
18 as it impedes into the alley lends itself to  
19 accommodating the rear yard, the open space, the  
20 matter-of-right unit allowed based on the dimension  
21 of the site itself.

22           In order to accommodate it, it's almost  
23 what we always have in terms of one part of the  
24 zoning application which is being pursued matter-of-  
25 right. However, based on the uniqueness of which we

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1 have here, there is another point that comes into  
2 difficulty, or practical difficulty.

3 That out of all of this which is matter-  
4 of-right arises in the rear yard and the proposed  
5 development, I think, is limited in even talking  
6 about lot occupancy. This is a brief digression and  
7 I clearly understand that. It is not as if structure  
8 is being built.

9 By strict definition a structure is being  
10 built but what I'm saying is we're not putting --  
11 what is being proposed is not to put a three-story  
12 additional density on this, but rather to elevate  
13 open space. Not only to elevate open space but to be  
14 dual in function, one of which is the parking on the  
15 ground level and the second of which is open deck  
16 outdoor space.

17 The other practical difficulty is as it  
18 would be accommodated a supporting exit off of these  
19 units and out of this matter-of-right allowable  
20 multi-family structure. In terms of impairing the  
21 intent and integrity of the zone plan, what I think  
22 of as the public good in the Zoning Regulations, I  
23 think there's been ample testimony based on the  
24 letters of support of which are in evidence from  
25 adjacent neighbors and the fact that this would not

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1 diminish or impair the intent. I'll hear from  
2 others.

3 COMMISSIONER MAY: Can I respond to some  
4 of the things you said?

5 CHAIRPERSON GRIFFIS: Oh, sure.

6 COMMISSIONER MAY: Okay. Good. Well, I  
7 consider the change in the alley dimension to really  
8 be a moot point because once we attach -- once the  
9 main building is attached to the accessory building,  
10 the rear yard variance is required for the accessory  
11 structure. In other words, the accessory structure  
12 becomes part of the main structure, therefore, you  
13 have to have a rear yard between it and the alley.

14 CHAIRPERSON GRIFFIS: But it exist.

15 COMMISSIONER MAY: I know it exist but it  
16 exist as an accessory structure that is allowed  
17 within a rear yard at this time. You see, the  
18 difficulty I have with this is that there is nothing  
19 that keeps the applicant from putting parking in that  
20 space. All we're talking about is the ability to add  
21 an amenity.

22 That is desirable but it's not allowed  
23 without a variance. Because there's not the  
24 uniqueness of the property or the practical  
25 difficulty it's very hard to approve. Then when you

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1 throw in the extra fact that connecting it in and  
2 making the accessory structure part of the main  
3 building, then it becomes even more difficult.

4 CHAIRPERSON GRIFFIS: If you are trying  
5 to ensure -- I think I understand what you're saying,  
6 but if you are trying to ensure that the carriage  
7 house is not attached to create one primary  
8 structure, that does not have to happen by doing  
9 this. That can be easily accomplished and I would  
10 say matter-of-right. You could put a covered  
11 structure there that attaches the main structure to  
12 the carriage house and not go through the rear yard.

13 COMMISSIONER MAY: Explain that again?  
14 My understanding -- I've never dealt with this issue  
15 before but my understanding would be that once you  
16 attach the accessory structure to the main building,  
17 you have to begin measuring rear yard from the back  
18 side of the accessory building because it's now part  
19 of the main building. There is no rear yard.

20 CHAIRPERSON GRIFFIS: That's true but  
21 nothing would change in terms of rear yard.

22 COMMISSIONER MAY: But if they built  
23 that, that would create a rear yard.

24 CHAIRPERSON GRIFFIS: If they built  
25 what's proposed, yes. What I'm hearing you say is

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1 you are trying to ensure that this doesn't attach to  
2 create one primary structure that would increase the  
3 units that would then diminish the rear yard.

4 My point is you can just, as a prime  
5 example, if you look at the site plan if you pull out  
6 a covered area off of the bay as is indicated there,  
7 cover that up, attach it, or put a foundation wall,  
8 do away with parking space No. 3, you now have one  
9 primary structure of which we haven't impacted the  
10 rear yard. The point --

11 COMMISSIONER MAY: But I don't think you  
12 can do that as a matter-of-right. You're saying you  
13 can do that as a matter-of-right. I don't think that  
14 you can because once you do, you create this  
15 noncompliant rear yard. Right now the rear yard  
16 complies because the main building is 30 feet off.

17 CHAIRPERSON GRIFFIS: Perhaps I'm not  
18 understanding you but I don't agree because you  
19 measure the rear yard the same way.

20 COMMISSIONER MAY: No, the accessory  
21 structure is allowed to be within the rear yard.

22 MEMBER ZAIDAIN: As it is now it's  
23 compliant.

24 COMMISSIONER MAY: Right. As it is right  
25 now it's a conforming structure.

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1                   MEMBER ZAIDAIN: The issue here, at least  
2 to me, and maybe I'm over simplifying it which can be  
3 dangerous to do in zoning matters sometimes I guess,  
4 the only thing that cannot be done here matter-of-  
5 right is the carport attaching it to the main  
6 building.

7                   The new bi-level deck can be built  
8 matter-of-right because it would be 22'6" according  
9 to this plan from the lowest point in the rear yard  
10 so I can't imagine the average of the rear yard being  
11 any more restrictive.

12                   The parking spaces can be provided so we  
13 get into, okay, what is this variance necessary for  
14 or what justifies this variance? The testimony that  
15 I have heard is in order to provide an amenity.  
16 That's the testimony we've heard.

17                   CHAIRPERSON GRIFFIS: Okay.

18                   COMMISSIONER MAY: I'm prepared to move  
19 forward with the vote, Mr. Chair.

20                   CHAIRPERSON GRIFFIS: Ms. Miller.

21                   MEMBER MILLER: My only concern with  
22 moving forward, and I would be happy to hear from the  
23 rest of the Board on this, is the applicant brought  
24 two cases to our attention which we haven't had an  
25 opportunity to read. I don't know if they are

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1 relevant to our decision at this time or not but I  
2 would be happy to postpone to read them.

3 CHAIRPERSON GRIFFIS: Very well.

4 MEMBER ZAIDAIN: I think that is a good  
5 point.

6 CHAIRPERSON GRIFFIS: Okay. Very well.  
7 First of all, I find that the Zoning Regulations in  
8 our hearing has been crushing on a case that is of  
9 such limited scope. We've dealt with larger issues  
10 and hundreds of thousands of square foot applications  
11 in less time. With that, I think we ought to move  
12 this for a decision making and we'll have two things.  
13 One, we'll have the submission of the case that  
14 we'll be able to read.

15 I would also allow the record to stay  
16 open for the applicant's representative to restate  
17 the test, uniqueness, practical difficulty, and not  
18 impairing the intent. The Board will review that  
19 reiteration. That, of course, will be served to the  
20 ANC. I believe if we are at 24, I'm going to set it  
21 for the first in the morning of July 8.

22 Ms. Hicks, are you clear?

23 MS. HICKS: The supplemental statements  
24 are due when?

25 CHAIRPERSON GRIFFIS: As soon as

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1 possible.

2 Ms. Bailey?

3 MS. BAILEY: Yes, Mr. Chairman.

4 MS. HICKS: And how many copies?

5 CHAIRPERSON GRIFFIS: I would say be due  
6 by next Tuesday so we can serve it. Is that correct?

7 MS. BAILEY: Yes, sir. That would be  
8 July 1st. Make sure I don't say the 4th again like I  
9 did last week. July 1st.

10 MS. HICKS: And how many copies do you  
11 want?

12 MS. BAILEY: Twenty copies is what we're  
13 asking for.

14 CHAIRPERSON GRIFFIS: I don't anticipate,  
15 unless the ANC has an idea that they will actually  
16 reconvene, responses to this but I want it served to  
17 participants and parties in the case. Is everyone  
18 clear? Everyone satisfied? In which case we can  
19 adjourn the morning session of 24 June.

20 As we are at 12:30, let's propose to  
21 reconvene at 1:15.

22 (Whereupon, at 12:36 p.m. off the record  
23 for lunch to reconvene at 1:15 a.m.)

24

25

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

1:35 p.m.

CHAIRPERSON GRIFFIS: Good afternoon, ladies and gentlemen. Let me call to order the 24 June 2003 public hearing of the Board of Zoning Adjustment. My name is Geoff Griffis. I am Chairperson. Joining me today is Mr. Etherly and also Ms. Miller. Representing the Zoning Commission with us this afternoon is Mr. Hood. Representing the National Capital Planning Commission is Mr. Zaidain.

Copies of today's agenda are available to you. You can look at it if you have questions. If you're not here for the case in the afternoon, you might want to look specifically at that and make sure you're here on the right day as we had one case before us that's continuation.

Please be aware that all proceedings before the BZA are recorded so there are several important things and issues to let you know. First of all, when coming forward to speak to the Board you will need to fill out two witness cards. Witness

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1 cards go to my right to the recorder. I do not  
2 believe you need to submit new witness cards if you  
3 have previously submitted witness cards but they will  
4 tell you if I'm wrong.

5 When coming forward you can have a seat,  
6 make yourself comfortable. You will need to speak  
7 into a microphone. Of course, these proceedings are  
8 recorded and that microphone should be on. I would  
9 ask the people when first coming forward to state  
10 their name and their address. That makes it  
11 obviously easy to chart the record and we can then  
12 tie your words to your name.

13 I would ask that everyone this afternoon  
14 do several things. First, you can turn off all your  
15 cell phones and beepers so that they don't disrupt  
16 any of the proceedings and those giving testimony  
17 before us. Also, of course, and will not need to  
18 reiterate, part of our rules, regulations, and  
19 procedures prohibit any disruptive noises or actions  
20 in the hearing room.

21 I'm going to skip order of procedure for  
22 our cases because we have already established and  
23 this is a continuation. I will reiterate that once  
24 this specific case is called but I do need the state  
25 the fact of cross-examination by witnesses is

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1 permitted by the applicant or parties in a case.

2 The ANC in which the property is located  
3 is automatically a party in the case. I do not think  
4 I'll need to refresh for this afternoon the numerous  
5 parties that we have because they have already been  
6 established.

7 The record will be closed at the  
8 conclusion of each case except for any material that  
9 is specifically requested by the Board and we will be  
10 specific on additional information that we require  
11 and when it is to be submitted into the record.  
12 After that is received the record would then be  
13 closed and no other information would be accepted by  
14 the Board.

15 The Sunshine Act requires us to hold  
16 hearings in the open and before the public. This  
17 Board may, however, consistent with its rules of  
18 procedure in the Sunshine Act enter executive session  
19 during or after the hearing on a case. This would be  
20 for purposes of reviewing the record or deliberating  
21 on a case.

22 The decision of this Board in contested  
23 cases must be based exclusively on the record and,  
24 therefore, we ask that people present today not  
25 engage Board Members in conversations so that we do

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1 not give the appearance of not deliberating solely on  
2 the record.

3 I appreciate everyone's patience in  
4 getting started this afternoon. I anticipate that we  
5 will be ending close to or after 6:00. I don't  
6 anticipate going very late. We can revisit that  
7 depending on energy level and enthusiasm as we get  
8 closer to 6:00, but that is my anticipation at this  
9 point.

10 Therefore, I believe we are -- actually,  
11 let me also say a very good afternoon to our able  
12 Office of Zoning Staff that's with us, Ms. Bailey,  
13 Mr. Moy. Mr. Nyarku is also with us in and out. Our  
14 corporation counsel this afternoon with us is Ms.  
15 Monroe.

16 Ms. Bailey, are there any sort of  
17 preliminary matters for the Board such as request for  
18 continuances, withdrawals, postponement, or perhaps  
19 that proper and adequate notice was not given? I  
20 would also ask if anyone has matters that would need  
21 to be raised can approach the table at this point.

22 I have one preliminary matter that I will  
23 address, Ms. Bailey, but let me see if you have  
24 others.

25 MS. BAILEY: No, Mr. Chairman. The

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1 preliminary matters this afternoon are site specific  
2 and will deal with the National Child Research Center  
3 specifically.

4 CHAIRPERSON GRIFFIS: Let me address on  
5 preliminary matter and it has to do with our new  
6 Board Member, Ms. Miller, who I believe will be  
7 addressing the Board regarding the case that is about  
8 to be called. I understand, and I think the Board  
9 fully supports her action. I will let her address  
10 that. I think that this is, and has been, actually  
11 an anticipated action and it comes to no surprise to  
12 this Board.

13 With that, Ms. Miller, if you have words  
14 of wisdom. Actually, let me interrupt briefly. Let  
15 me get my simple words in before your wisdom words.  
16 I think it ought to be clear just because there might  
17 be some concern or speculation or whatever it is, and  
18 I don't know what Ms. Miller is going to say  
19 specifically, not that this will be preemptive.

20 Ms. Miller has not been involved in any  
21 of the Board actions or review or deliberation on  
22 this case. In fact, it was almost a reminder as the  
23 Board Members came in that she would not be involved  
24 in this as we had not taken the time or had the  
25 opportunity to make any discussions or talk about any

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1 of the issues involved. That hopefully is not a bad  
2 introduction to what you need to say.

3 MEMBER MILLER: Mr. Chairman, as the  
4 Board and the parties are aware, prior to my  
5 conformation to serve as a member of the BZA I  
6 submitted a letter to the council of the District of  
7 Columbia indicating that should I be confirmed, that  
8 I would recuse myself from this particular case.

9 That letter dated April 21, 2003, was  
10 copied to the Chair of the BZA and was also  
11 circulated by e-mail to representatives of the  
12 parties in this case. The letter sets forth fully my  
13 grounds for determining that my recusal is  
14 appropriate in this case. Accordingly, I would like  
15 to read that letter at this time.

16 "Dear Chairman Cropp and Council Members  
17 of the District of Columbia. It has come to my  
18 attention that some members in my community have  
19 expressed concern regarding my nomination to the  
20 Board of Zoning Adjustment on the grounds that I may  
21 have a conflict of interest with respect to a case  
22 pending before the BZA.

23 The purpose of this letter is to resolve  
24 any doubt that should I be confirmed by the council I  
25 would not participate in any way on the pending case.

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1 The case to which they refer is BZA Application No.  
2 16970, that of the National Child Research Center,  
3 NCRC, a preschool located on a residential street in  
4 the Cleveland Park Historic District that is seeking  
5 authority from the BZA to expand.

6 On February 4, 2003, the Board of  
7 Directors of the Cleveland Park Historical Society  
8 heard presentations from interested parties in this  
9 case including NCRC, Cleveland Park Neighbors, and  
10 Friends of NCRC. As a member of the Board of  
11 Directors and, in particular, as the Vice President  
12 for Legal and Regulatory Affairs, I actively engaged  
13 in questioning the parties.

14 Following the presentations the Board of  
15 Directors went into executive session, discussed the  
16 case, and voted on a resolution that was submitted to  
17 the BZA on February 6, 2003, representing the  
18 position of the CPHS on this case.

19 In light of the concerns raised regarding  
20 my possible participation in this case as a member of  
21 the BZA, I have researched the law governing recusal  
22 as it applies to quasi-judicial agencies such as the  
23 BZA.

24 The District of Columbia Court of Appeals  
25 has clearly held that the same standards for recusal

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1 that apply to judicial officers apply to agency  
2 decision makers acting in a quasi-judicial capacity  
3 citing Morrison v. D.C Board of Zoning Adjustment and  
4 Dupont Circle Alcoholic Beverage and Control Board.

5           Judicial officers in the District of  
6 Columbia are governed by a code of judicial conduct  
7 effective June 1, 1995. Section 3-E-1 of the Code of  
8 Judicial Conduct provides in pertinent part a judge  
9 shall disqualify himself or herself in a proceeding  
10 in which the judge's impartiality might reasonably be  
11 questioned included but not limited to instances  
12 where (a) the judge has personal bias or prejudice  
13 concerning a party or a party's lawyer, or personal  
14 knowledge of disputed evidentiary facts concerning  
15 the proceeding.

16           In addition, per the District of Columbia  
17 Administrative Procedure Act, D.C. Code Section 2-  
18 509-C and the BZA's Rules of Practice and Procedure,  
19 11 DCMR Section 3127.2, the parties are entitled as a  
20 matter of due process to a decision based exclusively  
21 on the record before the Board.

22           Accordingly, while I have not drawn any  
23 conclusions nor harbor any prejudice or bias toward  
24 any party in this case, there is no doubt that I have  
25 heard evidence outside the record.

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1                   That fact in combination with my  
2 participation on a board of directors of an  
3 organization that has actually submitted a position  
4 on this case to the BZA leaves little doubt in my  
5 mind that should I be confirmed by this council to be  
6 a member of the BZA, then I should and would recuse  
7 myself from participation in any and all aspects of  
8 the pending case. I hope that this letter resolves  
9 any concerns regarding this issue. Respectfully  
10 submitted."

11                   Mr. Chairman, on May 6, 2003, the council  
12 of the District of Columbia confirmed my appointment  
13 to the BZA. Accordingly, in my capacity as BZA  
14 member, I hereby officially recuse myself from  
15 Application No. 16970 of the National Child Research  
16 Center in accordance with the representation set  
17 forth in my April 21, 2003 letter to Chairman Linda  
18 Cropp and the council members of the District of  
19 Columbia.

20                   CHAIRPERSON GRIFFIS: Ms. Miller, thank  
21 you very much. That was absolutely complete and to  
22 the point. We respect and understand your position  
23 and wish you a good afternoon off.

24                   MEMBER MILLER: Thank you.

25                   CHAIRPERSON GRIFFIS: Hopefully it's too

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1 hot out there.

2 With that, let us proceed and call the  
3 case in the afternoon.

4 MS. BAILEY: And that is Application No.  
5 16970 of the National Child Research Center, pursuant  
6 to 11 DCMR 3104.1, for special exception approval to  
7 continue an existing child development center (last  
8 approved by BZA Order No. 16307) with morning and  
9 afternoon programs for 120 children at any one time,  
10 ages 2 1/2 - 5 years and 38 FTE staff on all floors  
11 of the existing and proposed buildings on the site  
12 and for new construction of an addition and new  
13 building pursuant to 205; and pursuant to 11 DCMR  
14 3103.2, for variance relief from 3202.3, in order to  
15 allow the construction of an additional principal  
16 structure and the use of an additional principal  
17 structure, such that more than one principal  
18 structure will exist on a record lot and for relief  
19 from 2100.6 which requires the provision of parking  
20 spaces for the proposed additional principal  
21 structure on the NCRC property, in an R-1-B District  
22 at premises 3209 Highland Place, N.W. (Square 2072,  
23 Lot 30 (855 & 866)).

24 All those persons wishing to testify who  
25 were not sworn in previously, would you please stand

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1 to take the oath. Is there anyone here who will be  
2 testifying today who was not sworn in previously?

3 Would you please raise your right hand.  
4 Do you solemnly swear or affirm that the testimony  
5 you are about to give in this proceeding will be the  
6 truth, the whole truth, and nothing but the truth?

7 WITNESSES: I do.

8 MS. BAILEY: Thank you.

9 CHAIRPERSON GRIFFIS: We're all set then.

10 I think it's appropriate to bring up the preliminary  
11 matters that we have before us as I note there are  
12 four. For clarification of the Board there is the  
13 issue of deliberating and deciding whether area or  
14 use variances required the parking relief, if any is  
15 required, and also whether the main building has more  
16 than three stories or establishing the stories on  
17 this.

18 I would note that there is a fourth is  
19 why I include that. There is a request for  
20 reconsideration of our determination that the  
21 proposed carriage house is a principal structure.  
22 Let's begin. I know we have quite a bit of  
23 submissions addressing the first three and the fourth  
24 obviously has been deliberated.

25 To get the discussion started, I think --

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1 well, to get us started we have an interesting aspect  
2 to look at in terms of varying use. The Board has  
3 been faced with this in other cases. I don't similar  
4 or not similar.

5 I wouldn't make that distinction. The  
6 fact of the matter is when we look at the relief  
7 required, the variance test of which it comes under,  
8 we have a child development center that is an allowed  
9 use through the special exception.

10 We have the other issue that begins to  
11 discuss in principal structures and the allowability  
12 of principal structures and whether, of course, there  
13 is, in fact, the issue that two primary structures on  
14 a single lot can be occupied, I would say, through  
15 the special exception.

16 What comes to the forefront of the  
17 argument making this a use variance -- I'm going to  
18 be slower at this because I have to look at all of  
19 this paperwork up here and make sure I'm noting what  
20 I need to. I don't want that one. Well, I misplaced  
21 it at this point. However, I'll find it on my own.  
22 Believe me, this was all together coming out here.

23 All right. Well, the other issue goes to  
24 the actual adaptation or the use of two principal  
25 structures and whether that is allowable and how one

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1 gets relief from that if it to be looked at and not  
2 going into, as has been argued, the use of that, the  
3 use of two principal structures. I guess it's going  
4 to be under 3202.3 is what has been asked that the  
5 Board look at. I would draw the Board's attention to  
6 that and review it.

7 Okay. Obviously I'll hear from others  
8 but this is my thinking on this. When we look at use  
9 and area variances, all of the indication, first of  
10 all, I think we need to establish where the base use  
11 is. What is the use or occupation, the program of  
12 what's happening in these structures.

13 When we do that, we look at what is the  
14 availability, the allowability, what relief is  
15 actually required to do that. I think it's been  
16 fairly straightforward and convincingly argued that  
17 as a child development center, the use as the  
18 National Child Research Center is proposing is an  
19 allowable use.

20 That it steps to now the configuration of  
21 principal structures on a single lot, again, for  
22 what I believe are not, again, to state what I think  
23 fairly definitively, this goes to placement. It goes  
24 to structures. It goes to setbacks.

25 Everything points to in terms of the

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1 regulations, even 3202.3, which I'll read in a  
2 second, it goes to area aspects of the regulations or  
3 limiting factors which are area but not the specific  
4 use and so I am inclined to support the direction of  
5 this application as area variance is needed.

6 Even when we look at 3202.3 and you begin  
7 to look at what is limiting, it says, "A building  
8 permit shall not be issued for the proposed  
9 direction, construction, or conversion of any  
10 principal structure or for any addition to any  
11 principal structure against the land of proposed  
12 direction construction."

13 All of that goes to, again, the structure  
14 itself, the actual building, the physicality of it  
15 but not the use or the occupation. So I would be  
16 inclined in that respect to run in the direction of  
17 establishing this as an area variance but I'll open  
18 it up for others of the Board who would like to  
19 address that.

20 MEMBER ZAIDAIN: Mr. Chair, I would be in  
21 agreement with your statement. The use for which we  
22 are reviewing is a special exception. It's not a  
23 matter of right, but I don't really think that  
24 changes our legal framework, I guess, is one way to  
25 put it, when we review this in the sense that this

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1 use is deemed compatible in this R-1-B zone when  
2 certain standards are met against the special  
3 exception requirement.

4 Again, the use is deemed compatible which  
5 means that it is generally appropriate for this zone  
6 district. The variance before us is not to change  
7 that use. It is for that exact use.

8 I would even go as far as to say this is  
9 very similar to an FAR type of variance where it's a  
10 use that is permitted or deemed compatible with the  
11 zone district but there is a variance being requested  
12 to intensify or change -- well, intensify the use.  
13 That is the way I view this. Consistent with the  
14 Board's rulings when it comes to FAR variances and  
15 the like, it's my position that this is an area  
16 variance.

17 CHAIRPERSON GRIFFIS: Good. Others?  
18 Okay. I'm sorry, Mr. Hood.

19 VICE CHAIRPERSON HOOD: I don't know how  
20 much more I can add, Mr. Chairman. I agree with your  
21 assessment. Use of permitted and it is something  
22 that actually goes on so I would agree that we would  
23 move forward as an area variance.

24 CHAIRPERSON GRIFFIS: Good. Thank you.  
25 Two other notes to this. First of all, I think the

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1 courts have upheld that, in fact, in their  
2 interpretation and direction to this Board in many  
3 respects of what the difference is. I am moved by  
4 some of the language from the courts that talk about  
5 establishing the criterion for use, and that is one  
6 that would fundamentally change the area.

7 I understand the opposing arguments that,  
8 well, based on what's happening here there may well  
9 be or there is a fundamental change. But I think the  
10 control of that comes under the test for an area  
11 variance or any variance and that is the last prong  
12 of the test of whether it would impair the integrity  
13 of the -- it's already been too long of a day but we  
14 all know what it is.

15 The other aspect to it is it has been  
16 cited that there is a case of which this Board BZA  
17 Application 16693 of Carol Little was decided and it  
18 was fairly -- it has similar aspects to it. I know I  
19 have, and I know this Board has copies of that and  
20 has reviewed it. I believe in that reasoning and in  
21 reviewing our order that this Board did, in fact, err  
22 in its decision and its viewing of that specific  
23 case.

24 I think it is based on a reading of the  
25 regulations and noting how the use is differentiated

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1 from the citing of principal structures and that the  
2 use in that case in Carol Little I do not believe was  
3 different.

4 Of course, we are not deliberating that  
5 case but in viewing that, I think this Board was not  
6 correct in looking at it because it didn't have a use  
7 or a function that was ordinarily prohibited in that  
8 zone. I believe that we had the similar circumstance  
9 here.

10 So, with that, is there anything else  
11 others would like to add to that discussion? If not,  
12 then we can move on to the second which is required  
13 parking and whether and how this Board would look at  
14 any parking or if it was required what would be  
15 required.

16 That goes back to discussion of 2100, I  
17 believe it's .5, which we need to keep in front of us  
18 as we look and how it relates to then the subsequent  
19 paragraphs 2100.6, 2100.7.

20 I believe there is an argument that  
21 states that -- of course, I won't have all the legal  
22 jargon correct but as one reads a chapter or section  
23 that it is cumulative and as you read through that  
24 each relates and builds on the other.

25 I see that's a base logic in terms of

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1 reading the regulations. But I also know there are  
2 sections and I don't think it would be -- I don't  
3 think people would take opposition to the point that  
4 paragraphs do, in fact, become very specific and  
5 stand alone.

6 As I read 2100.5, "No additional parking  
7 space shall be required for historic landmark or  
8 building or structure located in the historic  
9 district that is certified by the State Historic  
10 Preservation Officer as contributing to the character  
11 of the historic district.

12 I see a great differentiation. I think  
13 the Zoning Commission in writing that regulation  
14 looked at that as a singular and stand alone  
15 designation of a particular property as in contrast  
16 or comparison to 2100.6 which reads, "An intensity of  
17 a building or structure existing before May 12,  
18 1958."

19 I'm not sure why the regulations if they  
20 wanted to encompass just old buildings wouldn't say  
21 then everything built before 1958. There is a  
22 differentiation. Or there could have been an  
23 additive or a subtractive form to it, and that is  
24 you could have had historic buildings and landmarks  
25 and buildings or structures before 1958 in both of

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1 those paragraphs. I see it somewhat inclusive in  
2 2100.5.

3 Now, there are aspects, of course, when  
4 uses change and intensities and I think we can get  
5 into that a little bit if need be. The other issue  
6 on 2100.5 then is what is the encompassing factor of  
7 that paragraph. Is that wholly focused and  
8 specifically limited to the building?

9 I think, although I'm fully aware that it  
10 is somewhat an interpretive connection for me to  
11 make, but in looking at 2100.5 I don't think that the  
12 intent of that paragraph is to say where the building  
13 line ends so does the designation. If I think of  
14 some of the contributing structures in this city, it  
15 goes to the land that surrounds be it aspects of the  
16 landscaping or the siting or locations.

17 I think I'm correct in saying that  
18 landmark status can be bestowed on all different  
19 aspects and individually on different aspects making  
20 it pieced. However, when you add into the  
21 contributing nature, I believe that it would  
22 encompass not only the building and structure but the  
23 grounds around it.

24 My reasoning for that, and maybe it is my  
25 own logic, but it seems to me when the regulations

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1 look at parking, parking has huge impact on  
2 development and construction whether it be below  
3 grade, whether it be on site.

4 I think the regulations were in many  
5 respects trying to take into account that you have  
6 existing or historic structures that should not be  
7 reconfigured only to accommodate parking and that  
8 there would be a higher purpose for an historic and  
9 contributing structure than to accommodate. Now,  
10 whether that's correct or not, I think there is some  
11 rationale to it and I mean correct in terms of does  
12 that work in every case.

13 Is the building good enough to save that  
14 we don't need to provide parking? I don't know, but  
15 as I read the paragraph, I believe that is, in fact,  
16 the nature and intent of that is to limit the  
17 requirements of reconfiguration of historic and  
18 contributing structures.

19 Others?

20 MEMBER ZAIDAIN: Mr. Chair.

21 CHAIRPERSON GRIFFIS: Yes, Mr. Zaidain.

22 MEMBER ZAIDAIN: For the sake of brevity,  
23 I'll say that I agree with your argument. The one  
24 issue that did raise some concern with me as I read  
25 the applicant's submittals was the issue of the

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1 parking credit. I guess in the interpretation that  
2 we are now discussing that becomes moot. Am I  
3 correct?

4 CHAIRPERSON GRIFFIS: I do not believe,  
5 first of all, that the parking credit is calculated  
6 in this submission by NCRC would be applicable to  
7 this case. In the second in terms of additional  
8 parking being required, I believe that 2100.5  
9 addresses that. It would be my reasoning at this  
10 point that no additional parking would be required.

11 MEMBER ZAIDAIN: Based on 2100.5. Based  
12 on our interpretation of 2100.5 and the fact that  
13 this is a contributing building.

14 CHAIRPERSON GRIFFIS: That's correct.

15 VICE CHAIRPERSON HOOD: Mr. Chairman, in  
16 reading the submittals and going back and forth, I  
17 was very unsure of whether 2100.6 -- kind of agree  
18 with what you're saying and it's been explained but I  
19 just didn't think 2100.5 negated 2100.6 because of  
20 intensity of the use. Again, going back and forth  
21 because, unfortunately, every submittal that I got I  
22 agreed with so that tells you my level of frustration  
23 in being confused on this issue.

24 CHAIRPERSON GRIFFIS: Which one did you  
25 read last?

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1                   VICE CHAIRPERSON HOOD: It was the one  
2 from Cleveland Park. I can show you it was Cleveland  
3 Park. I can assure you that I'm concerned about us  
4 going away from 2100.6. I just don't understand the  
5 Zoning Commission's rationale for doing 2100.5 and  
6 then you come right back with 2100.6.

7                   I think it should have read a little  
8 clearer and give us more clear definition on whether  
9 or not that was applicable to 2100.6. I agree with  
10 your rationale. I just want to make sure that we  
11 don't have to look at 2100.6.

12                  CHAIRPERSON GRIFFIS: I wouldn't want to  
13 say that the Zoning Commission was not rationale in  
14 their writings.

15                  VICE CHAIRPERSON HOOD: I didn't say  
16 that. If I did, I need to retract it.

17                  CHAIRPERSON GRIFFIS: The issue for me,  
18 and the way I say it just straightforwardly is in the  
19 paragraph why would there be such a distinct  
20 differentiation. It seems to me that there is a  
21 purpose for identifying the historic and contributing  
22 buildings.

23                  Now, it brings up an interesting point,  
24 though, because one might argue the new additions  
25 aren't contributing. In fact, it has been argued.

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1 Again, what I look to is the basis of the Zoning  
2 Regulations in 2100.5 are regulating parking.

3 They are regulating the designation or  
4 specific type of structure, I'll say, based on its  
5 age or contributing nature. Our regulations start  
6 and stop in 2100.5 on parking so the contributing  
7 aspect of it and the review of any additions to that  
8 come from a different board and the review of a  
9 different board which is Historic Preservation Review  
10 Board.

11 They would be the ones applicable to  
12 indicating whether one or additions or new structures  
13 were, in fact, compatible and there would be  
14 compatibility. Still, I go to the fact of the aspect  
15 of historic or contributing nature has to run with  
16 the entire context of the building. After all,  
17 historic designations are based on time context.

18 It's based on situation. It may be based  
19 on person. It may be based on architectural  
20 integrity. There are people here that know a heck of  
21 a lot more than I do on all these specifics. I don't  
22 see how you just remove especially a contributing  
23 site. I don't know if that helps you, Mr. Hood, but  
24 keep asking questions if you need more.

25 VICE CHAIRPERSON HOOD: No. I think

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1 that's fine, Mr. Chair. I just want to make sure  
2 that we really thought it through, which I'm sure we  
3 did. I can agree with you all on 2100.5. No  
4 additional parking spaces are necessary.

5 CHAIRPERSON GRIFFIS: Okay. Anything  
6 else?

7 Ms. Monroe, would you like to weigh in on  
8 the parking relief required?

9 MS. MONROE: I don't know if I should  
10 weigh in or not. I agree with you on the credit  
11 question, particularly because 2104 requires a change  
12 in use and we don't have a change in use so I think  
13 that kind of takes that issue away.

14 I think it's unclear how the regulations  
15 are written, as Mr. Hood said. There is a continuing  
16 interpretation by the Zoning Administrator. I think  
17 general the zoning public which is your  
18 interpretation. I think the Board has said that in  
19 the past. I think you can feel comfortable going  
20 with that.

21 If change needs to be made, I think it  
22 needs to be made in the regulations by the Zoning  
23 Commission to make clear whether 2100.6 applies also  
24 to historic and contributing buildings or not or if  
25 it only applies to pre-1958 buildings that are not

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1 historic.

2 I don't think it's terribly clear, to be  
3 honest with you, and I think you can go with your  
4 interpretation if you feel comfortable with that.

5 MEMBER ZAIDAIN: Our interpretation as we  
6 are working through here is applying not necessarily  
7 to the building but to the overall site. Correct?  
8 Because this is new construction we'll talking about.

9 CHAIRPERSON GRIFFIS: That's correct.

10 MEMBER ZAIDAIN: I generally agree with  
11 the direction that we're heading in terms of this  
12 interpretation. I guess my one kind of concern kind  
13 of stems from a hypothetical, and that is we're going  
14 through this process as this is a separate principal  
15 building that normally would be required to be on a  
16 new lot but we're kind of taking that as part of the  
17 relief that we have to work through in this.

18 Does that fact change the historic  
19 designation of it that this should technically be on  
20 a separate lot? Do you follow me?

21 CHAIRPERSON GRIFFIS: No.

22 MEMBER ZAIDAIN: Well, we're taking two  
23 principal buildings on one lot. 3202.3, I guess, is  
24 one area of relief. Let's say, for instance, that  
25 they didn't need that relief. Would that change the

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1 historic designation and they were going to build  
2 this on a new lot adjacent to the site?

3 CHAIRPERSON GRIFFIS: Anyone care to  
4 answer that?

5 MEMBER ZAIDAIN: First of all, does  
6 anybody understand my question?

7 CHAIRPERSON GRIFFIS: Yes. The question  
8 is if there was a new building built on a separate  
9 lot would it require parking.

10 MEMBER ZAIDAIN: Right. I mean, that's  
11 the question I'm asking in terms of our  
12 interpretation. I think at this point I'm in general  
13 concurrence with that. I just want to make sure that  
14 I'm understanding that this is being applied to the  
15 site.

16 MS. MONROE: Mr. Zaidain, can I just  
17 weigh in a second on this?

18 MEMBER ZAIDAIN: Yeah, I would for you  
19 to.

20 MS. MONROE: It's not exactly the same  
21 issue but if you look at 2100.5, it says, "No  
22 additional parking spaces shall be required for  
23 historic landmark or building or structure located in  
24 an historic district."

25 MEMBER ZAIDAIN: Located in an historic

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1 district.

2 MS. MONROE: It doesn't say historic  
3 site. It doesn't give any lot requirements. It goes  
4 only to that particular historic structure.

5 CHAIRPERSON GRIFFIS: The point being if  
6 you had an empty lot and you built a new building,  
7 then it would not fall under the designation of  
8 2100.5.

9 MS. MONROE: I don't think it would. It  
10 would have to be designated separately or certified  
11 or whatever word they use. Separately as  
12 contributing.

13 VICE CHAIRPERSON HOOD: Ms. Monroe, then  
14 it goes on to say -- maybe I'm getting confused.  
15 Then it goes on to say, "A building or structure  
16 located in an historic district."

17 MS. MONROE: It's certified as  
18 contributing to the character of the historic  
19 district. It's either a landmark or it's certified.  
20 The fact that it's just in the historic district is  
21 not enough.

22 It has to have certification from HPRB or  
23 it has to be a landmark designated by HPRB. But it  
24 only goes to that building and the question is does  
25 the building encompass the site that it's on. Is

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1 that part of that building -- intrinsically part of  
2 the building or is it not.

3 CHAIRPERSON GRIFFIS: Mr. Zaidain?

4 MEMBER ZAIDAIN: And things were running  
5 so smooth there for a minute. I have to say that  
6 does give me some concern. I would hate to --  
7 obviously from a standpoint -- from a functional  
8 standpoint this is operating as one entire site, but  
9 we've already deemed that this is a new principal  
10 building that normally would be required to be on a  
11 new lot.

12 However, that new lot provision, which is  
13 I think 3202.3, is one of the issues of the relief  
14 here. I think it probably wouldn't be in our best  
15 interest to go ahead and presume that relief is going  
16 to be granted and that a new lot will not be created.

17  
18 I would hate -- basically my concern is I  
19 would hate to see us set a precedent that just  
20 because you have a vacant lot in an historic district  
21 that all of your new buildings are exempt from  
22 parking. Right now I'm struggling on whether or not  
23 we are going to set that precedent because, in  
24 essence, we're talking about a new principal use on a  
25 new lot. Do you follow me?

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1 CHAIRPERSON GRIFFIS: No. Well, I  
2 understand the base logic but I don't think we are  
3 establishing a new principal use.

4 MEMBER ZAIDAIN: We've already determined  
5 that. A new principal building. I'm sorry.

6 CHAIRPERSON GRIFFIS: Principal  
7 structure. I agree this isn't the cleanest case to  
8 try and establish precedence and I don't think we  
9 should. I think we need to address what is  
10 specifically before us. We have in the past -- I'm  
11 not sure what the threshold would be where it stops  
12 being able to come under 2100.5 or not.

13 We have cases that this Board has decided  
14 in the past in terms of volume and square footage  
15 dwarf what we're looking at here. Yet, the parking  
16 requirements were not entertained by the Board in  
17 needing relief because of its historic designation  
18 meaning either the landmark or contributing building.

19 MEMBER ZAIDAIN: I understand that. I  
20 mean, I think it's pretty clear if it's an addition  
21 to an historic building. I would even go so far -- I  
22 would be comfortable if this was an accessory  
23 structure to a contributing building on the same lot.

24 I think --

25 CHAIRPERSON GRIFFIS: I think what's

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1 being put before and argued by the Board is that the  
2 site itself is contributing and that which you  
3 utilize it for and have additions or construction to  
4 it will come under the area of variances that would  
5 be required but that the 2100.5 would be applied to  
6 the building and site.

7 Others? Yes, Ms. Monroe.

8 MS. MONROE: I was going to say I don't  
9 know if you have to decide this right now in order to  
10 move along with the case or --

11 CHAIRPERSON GRIFFIS: I was hoping you  
12 weren't going to give the relief. I was push him a  
13 little bit more and get something decided at some  
14 point.

15 MS. MONROE: I don't know. I mean, if  
16 everybody feels comfortable with it or you could ask  
17 for argument.

18 CHAIRPERSON GRIFFIS: This is my  
19 preference actually. Board Members, if you're not  
20 prepared to decide this, that's fine. We can move  
21 on. What I would like to do is decide as much as  
22 possible so we know what the framework of this  
23 application is and that way we don't need to waste  
24 everybody's valuable time in addressing things they  
25 may not need to, or addressing the wrong things or

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1 not addressing them.

2 That being said, I'll take any indication  
3 from the Board if they are ready to proceed on this  
4 or we can move on to the next and see if we can deal  
5 with that one.

6 Mr. Hood, are you prepared to move on  
7 with parking?

8 VICE CHAIRPERSON HOOD: Mr. Chairman, I  
9 am fine. I'm prepared to move on. I was actually  
10 going to -- my next comment was going to be that we  
11 hold this in abeyance but if you want to proceed, I  
12 would agree. We do need to set the parameters and  
13 how we are going to proceed.

14 When you mentioned wasting time, I said,  
15 yeah, we need to make a decision. I actually would  
16 agree with your thoughts, even though Mr. Zaidain, my  
17 colleague, is confusing me but I would agree with  
18 what you said.

19 CHAIRPERSON GRIFFIS: That's why we put  
20 him way down there. Okay.

21 Mr. Etherly? Good. Then I would like to  
22 entertain a motion regarding that or, at least, an  
23 understanding of the Board. Actually, let me just  
24 pose it for the Board in terms of the direction that  
25 we'd be going. That would be that the parking relief

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1 would not need to be argued for decision before this  
2 Board at this time.

3 VICE CHAIRPERSON HOOD: I would second  
4 it.

5 CHAIRPERSON GRIFFIS: Okay. Discussion?  
6 Can I take it as a consensus of the Board then or  
7 let me hear opposition?

8 MEMBER ZAIDAIN: I'll be voting in  
9 opposition to the motion so call the role.

10 CHAIRPERSON GRIFFIS: All right. I will  
11 then indeed to try to be precise. I would ask that  
12 all those in favor signify by saying aye.

13 BOARD MEMBERS: Aye.

14 CHAIRPERSON GRIFFIS: Opposed?

15 MEMBER ZAIDAIN: Opposed.

16 CHAIRPERSON GRIFFIS: Very well.

17 MS. BAILEY: Did you want me to record  
18 the vote, Mr. Chairman?

19 CHAIRPERSON GRIFFIS: Yes, please.

20 MS. BAILEY: The vote is recorded as 3,  
21 1, 1 and that is the parking relief does not need to  
22 be argued under Section 2100.5 of the Zoning  
23 Regulations. The motion was made by Mr. Griffis, Mr.  
24 Hood second. Mr. Etherly is in support, Mr. Zaidain  
25 is opposed, and Ms. Miller is recused.

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1 CHAIRPERSON GRIFFIS: I'm sorry, Ms.  
2 Bailey. Would you just reiterate the vote?

3 MS. BAILEY: The vote is 3, 1, 1, motion  
4 made by Mr. Griffis, Mr. Hood second. Mr. Etherly is  
5 in support, that's your three. Mr. Zaidain is  
6 opposed, 1, and Ms. Miller is recused.

7 CHAIRPERSON GRIFFIS: Thank you very  
8 much. Let's go on to the third issue, the  
9 establishment of the stories, of course. It was  
10 brought to the attention of the Board that it might  
11 be nonconforming and that would lend itself to  
12 nonconformity, and then it would be the question of  
13 any addition to that would it be extending a  
14 nonconformity.

15 I would like to do this. I think it's  
16 very clear how that's established. The number of  
17 stories is counted at one point and that point is  
18 that which the height is calculated. It has been  
19 indicated by submissions that the height has been  
20 calculated for this structure from the center of the  
21 front elevation of this property. That's where you  
22 would start counting the stories.

23 Now, with that and my reading of the  
24 definitions, and also the sections attended to that,  
25 it is clear that a building might have FAR attended

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1 to it below a first story essentially creating a  
2 basement on a rear portion but would not have an  
3 additional story counted to it.

4 Meaning if the stories were as it is  
5 designated to be established at the front of the  
6 building, then that front of the building and the  
7 first level of the story was a cellar or graded up to  
8 the first floor, the site could drop behind it down  
9 to the rear, of which case you may have to depending  
10 on the zone calculate FAR.

11 I think there is a reason why we have two  
12 differentiations in measurements of area but I'm  
13 prepared to hear others on that count. Now, that  
14 does -- let me also step back. That establishes what  
15 I would say what we would designate. I don't know  
16 that we have the full documentation to make that  
17 determination of whether it's conforming or not  
18 conforming at this point.

19 But I think I would like to let that go  
20 to the case that is before us and if it is brought  
21 with evidence that it is nonconforming we can deal  
22 with it at that point. I don't think it would be  
23 laborious to do it. I think it is fairly  
24 straightforward. Let me ask if others have thoughts  
25 or deliberation on that. Nothing? Okay.

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1           In which case, if the Board feels -- what  
2 I would do just to be specific is that we can put  
3 that to those parties involved in this case that want  
4 to establish it one way or the other and they can  
5 provide evidence or cross-examination for that  
6 purpose. If the Board feels that it is desirable to  
7 have additional submissions, I think we can look to  
8 that, but at this point I think we can proceed.

9           That's all the preliminary matters I --  
10 oh, I had one other. Didn't I? The fourth issue was  
11 the request for consideration that has been made by  
12 the NCRC representatives for the Board to determine  
13 if the proposed carriage house is a principal  
14 structure and is required to be located on its own  
15 record lot.

16           The carriage house is a permitted  
17 accessory building and use. There is argument  
18 substantial and not framed for the reconsideration.  
19 Let me open it up to the Board for their discussion.

20           VICE CHAIRPERSON HOOD: Mr. Chairman.

21           CHAIRPERSON GRIFFIS: Yes.

22           VICE CHAIRPERSON HOOD: Since this is  
23 silent, actually you all left me. I'm still on the  
24 height issue. I'm reading one of the -- refreshing  
25 my memory on one of the correspondence I received and

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1 I'm curious. We're looking at the grade. All this  
2 is taken encompassed what the Zoning Commission has  
3 just passed.

4 Unfortunately, I don't know if you had  
5 that. Is that where we're going or are we looking at  
6 the regulations previous when this case was first put  
7 forward? Some of those definitions have changed.

8 MEMBER ZAIDAIN: I don't --

9 CHAIRPERSON GRIFFIS: As the regs stand  
10 when this was submitted.

11 MEMBER ZAIDAIN: My understanding of the  
12 Zoning Commission action was that it eliminated the  
13 ability to measure height from an elevated curb which  
14 I don't think --

15 VICE CHAIRPERSON HOOD: Well, you know,  
16 it may not --

17 MEMBER ZAIDAIN: It also reiterates the  
18 ability to measure from the center point of a curb  
19 line, which I think is what we're talking about here.  
20 I think it is supportive there.

21 VICE CHAIRPERSON HOOD: Okay. I'm just  
22 making sure we have that first.

23 CHAIRPERSON GRIFFIS: Right.

24 VICE CHAIRPERSON HOOD: You moved on, Mr.  
25 Chairman. Maybe I should have just let it come out

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1 in the hearing.

2 MEMBER ZAIDAIN: No, no. It's a good  
3 question.

4 CHAIRPERSON GRIFFIS: Are you clear, Mr.  
5 Hood, then?

6 VICE CHAIRPERSON HOOD: I think I will --  
7 just let it go on and let it come out in the hearing.

8 CHAIRPERSON GRIFFIS: Okay. It's not my  
9 understanding and certainly when this application was  
10 started and these hearings started we can look back  
11 at the date of the first hearing or even the  
12 submission of the application.

13 The definition of story in Section 199,  
14 Title 11, reads, "The space between the surface of  
15 two successive floors in a building are between the  
16 top floor and the ceiling, the underside of the roof  
17 framing."

18 That's not the important part which is  
19 why I mumbled it. But, "The number of stories shall  
20 be counted at the point from which the height of the  
21 building is measured. I think the clarity that we  
22 need to look as evidence may or may not be presented  
23 in terms of establishing the height of the building  
24 and then the attended issues whether it is  
25 established as nonconforming or not nonconforming.

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1 I think at this point in terms of the  
2 height we don't need to -- I think the clarity of  
3 what we look at needs to be stated but not a  
4 determination at this point. Okay.

5 In which case we move on to the  
6 reconsideration. We've been asked to reconsider our  
7 last determination that there was a principal  
8 structure for the carriage house. I am happy to hear  
9 anyone speak to that.

10 Again, I think it's difficult because  
11 this isn't -- of course, it would be difficult  
12 because they are not the cleanest of pieces and  
13 issues. I would like to hear from others on their  
14 thoughts of whether this would rise to the level of  
15 reconsideration.

16 MEMBER ZAIDAIN: Mr. Chair, I would not  
17 be in favor of granting the motion for  
18 reconsideration. I think we vetted this issue quite  
19 a bit in an earlier hearing. Reading the motion I do  
20 not come across anything that would make me want to  
21 change my position on that.

22 CHAIRPERSON GRIFFIS: Others? In  
23 concurrence of that opinion?

24 MEMBER ETHERLY: Thank you, Mr. Chair.  
25 I'm in agreement with Mr. Zaidain's statement.

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1 CHAIRPERSON GRIFFIS: Okay. Very well.

2 Mr. Hood?

3 VICE CHAIRPERSON HOOD: That's why I went  
4 last. I'll follow suit, Mr. Chairman. Let's move  
5 forward.

6 CHAIRPERSON GRIFFIS: Okay. In which  
7 case I'll just take it as a consensus of the Board  
8 that we will not at this point have a reconsideration  
9 deliberation on that motion previous. If I'm not  
10 mistaken then, that takes care of my preliminary  
11 matters. Are there other issues that we need to talk  
12 about before we step into this case for the  
13 continuation of the applicant's presentation of their  
14 case? Is anyone aware of anything else we need to  
15 discuss? Very well. Then let's continue. Ms. Dwyer  
16 is here and I believe that you are continuing with  
17 your case and had three witnesses that you were --

18 MS. DWYER: Yes. For the record, Maureen  
19 Dwyer with Shaw Pittman and we do have three  
20 witnesses. The first witness will be Chuck Anthony,  
21 the architect, and his testimony will address some of  
22 the material that were filed in the record. He is  
23 available to answer any questions about them.

24 The second witness would be Susan Piggott  
25 who is the Director of NCRC. The final witness would

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1 be Osborne George, our traffic and transportation  
2 consultant.

3 I would like to begin by asking Mr.  
4 Anthony just to proceed to address the additional  
5 information and other issues that may have come up.

6 CHAIRPERSON GRIFFIS: Good. Before you  
7 begin, I'm just going to turn the clock on. I have  
8 notes of the times of the last. I'm just going to  
9 keep record of the time that is happening here.  
10 We're anticipating that the presentation of the other  
11 cases will happen within 16 minutes or so. I'll just  
12 keep an idea of how that relates to your  
13 presentation.

14 MS. DWYER: All right.

15 MR. ANTHONY: Charles Anthony, Charles  
16 Anthony Architects, 100 Cathedral Street, Annapolis,  
17 Maryland. To supplement my testimony from the last  
18 hearing and to address some of the additional  
19 materials that were filed on the record, there are  
20 several points I would like to make.

21 First, I would like to walk you through  
22 the materials that we filed on June 10th in response  
23 to your request from the May 6th public hearing. The  
24 first one is the drawing of Ordway which is the same  
25 as was submitted on page 20 in our initial filing.

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1 We have simply added the dimensions as requested to  
2 that drawing.

3 As you can see, the top of the roof of  
4 the proposed carriage house is 27'4" above grade  
5 which is very similar to the adjoining house, Mr.  
6 Little's house. We also noted there in the center  
7 section the height of the terrace.

8 CHAIRPERSON GRIFFIS: Hold on for two  
9 seconds. I want to find this while you're walking us  
10 through.

11 MR. ANTHONY: I'm sorry.

12 CHAIRPERSON GRIFFIS: No, my apologies.  
13 I had this all in order at one point.

14 MR. ANTHONY: It looks like --

15 CHAIRPERSON GRIFFIS: Yes, indeed. I'm  
16 sorry. Was it attached in the submission or it's  
17 loose?

18 MS. DWYER: It was loose. It was not one  
19 of the tabs in the booklet.

20 CHAIRPERSON GRIFFIS: That's why I can't  
21 find it. Okay. And you are looking at the rear?

22 MR. ANTHONY: The Ordway Street  
23 elevation.

24 CHAIRPERSON GRIFFIS: Excellent. Okay.  
25 Yes, this is the pertinent information. Let me just

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1 see that I understand but also to get our board's  
2 focus on this. The issue was coming on the height of  
3 the differing aspects of each of those and the wall  
4 that is actually fenestrated and the guardrail above.

5 Okay. Excellent.

6 MR. ANTHONY: So, as I mentioned, we have  
7 the heights indicated, the guardrail, the wall, and  
8 the section between the two buildings and the grades  
9 at the street that face the building. As I  
10 mentioned, you can see that the heights of the  
11 proposed carriage house are very similar to the  
12 height of the neighbor's house, Mr. Little's house.

13 The next set of documents relate to the  
14 Neely/Badami residence, 3207 Highland. There should  
15 be three pages of pictures and one dimensioned  
16 drawing.

17 CHAIRPERSON GRIFFIS: Right. We have  
18 those.

19 MR. ANTHONY: The first page has four  
20 pictures grouped and then there's two large  
21 photographs. These four pictures show what is  
22 effectively the side of the Neely/Badami house but is  
23 really their entry front. They have a lovely yard to  
24 the side of their house and their front door is, in  
25 fact, from this side which effectively kind of makes

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1 the NCRC side the rear in terms of orientation of  
2 their house.

3 The lower right picture shows the  
4 relationship of the two buildings from the NCRC side.

5 And the lower left is looking at the space between  
6 the two buildings. Then going to the next photograph  
7 entitled, "Existing view from 3207 Highland Place  
8 towards NCRC" including the addition in white to the  
9 rear that extends the house and, in effect, is a two-  
10 story in-field enclosed porch similar to the concept  
11 that we had for our addition except ours is one  
12 story.

13 It shows the space between the back of  
14 their house and their garage. You can also see the  
15 skateboard ramp with grind rails that is located  
16 between the addition and the garage. Then in the  
17 next pictures, proposed view looking between 3207  
18 Highland Place and NCRC. We have depicted the  
19 proposed addition to the main building on the NCRC  
20 property and the maintenance shed.

21 I think as you can see from these  
22 drawings that the main building really does not --  
23 the addition that we are proposing does not tower  
24 over the Neely/Badami residence and, in fact, will  
25 remain in scale with their house and the garage

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1 maintenance shed is very much in scale and similar to  
2 the Neely/Badami garage.

3 We also have a supplemental sketch that  
4 shows a series of dimensions in plan. I just wanted  
5 to note a couple in particular. One is that there  
6 are 17 feet of side yard on the NCRC property which  
7 is wider than some lots in the city. Plus the 6'4"  
8 of side yard from the property line over to the  
9 Neely/Badami residence.

10 Okay. The next document that I have as  
11 requested relates to the indoor place space and the  
12 occupancy numbers. It's one page and shows a series  
13 of calculations. These essentially are the numbers  
14 that are allowable by code. I may have indicated in  
15 my testimony last time of a figure of about 150 but  
16 based on the calculations of using seven square feet  
17 net, there could be 177 people in this space that is  
18 1,245 square feet.

19 CHAIRPERSON GRIFFIS: The seven foot net,  
20 that is what, the determination out of building code  
21 for occupancy?

22 MR. ANTHONY: Yes.

23 CHAIRPERSON GRIFFIS: So that means one  
24 person could stand in seven square feet?

25 MR. ANTHONY: Right. I think it takes

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1 into account some allowance for isles and egress.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. ANTHONY: I think it's interesting to  
4 compare that also which is why we included it to the  
5 existing space which is in the playhouse which is 750  
6 square feet. We essentially did the same calculation  
7 for you there so that you can see essentially a net  
8 increase as opposed to just the amount for the new  
9 indoor play space itself.

10 CHAIRPERSON GRIFFIS: Right.

11 MR. ANTHONY: Okay. The next document  
12 that I have is a square foot breakdown by use that  
13 was requested. I'm not going to go through all these  
14 numbers but I think one of the things that's  
15 interesting here is if you look at a comparison of  
16 the totals that essentially the net increase for  
17 classroom space is only 3,615 square feet but the  
18 increase for administrative space is only 2,307 feet  
19 and it's the other category where there's an increase  
20 of 4,275 square.

21 That is the biggest jump. What's in that  
22 category is things like corridors, mechanical spaces,  
23 elevator, and the like, space that the school really  
24 doesn't have existing but are certainly needed as  
25 part of this new construction.

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1 CHAIRPERSON GRIFFIS: Forgive me. You  
2 said 4,200. I'm not seeing that figure under  
3 "other."

4 MR. ANTHONY: The difference between the  
5 existing other on the first page and the proposed  
6 other on the next page. I just did the math for you  
7 there.

8 CHAIRPERSON GRIFFIS: Oh, I see. And  
9 that's for all of the main house, playhouse.

10 MR. ANTHONY: That's for all the proposed  
11 work.

12 CHAIRPERSON GRIFFIS: I see. Okay. That  
13 makes sense.

14 MR. ANTHONY: The next thing I would like  
15 to address is the tree survey which I believe you  
16 have copies of that was filed in the record. As this  
17 survey indicates, it identifies trees which would  
18 likely have to be removed or relocated as a result of  
19 the new construction.

20 This is a preliminary analysis of the  
21 trees that will require attention. NCRC has retained  
22 the services of an arborist as well as a landscape  
23 firm to develop its final landscape plan that will  
24 show the specific trees that will be removed, as well  
25 as the replacement landscaping.

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1 I have a letter from the arborist that I  
2 would like to submit into the record. Based on this  
3 initial analysis by the arborist, Donald Zimar, I  
4 would just like to quote from the first paragraph.  
5 He states, "In general there is no danger to any  
6 historic or quality specimen trees as a result of the  
7 proposed construction."

8 Many of the trees to be removed are what  
9 he terms volunteers, and many are also identified as  
10 in deteriorating condition as a result of limb or  
11 root damage over the years. In its final landscaping  
12 plan NCRC will be focusing on relocating trees that  
13 can be saved on the two sides of the property so as  
14 to provide additional screening and buffering for the  
15 neighboring residences.

16 NCRC will also be selecting specimen  
17 trees that are appropriate for the site and the  
18 climate which are expected to have a long and healthy  
19 life in order to provide the needed shade and  
20 buffering well into the future.

21 That's everything I had for the  
22 additional filings. For the second part of my  
23 testimony today, I would like to address the issue  
24 raised by Mr. Lindsley Williams as to whether the  
25 existing structure is three or four stories and

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1 whether the addition requires variance relief.

2 In his letter submitted to the Board, Mr.  
3 Williams questioned whether the addition of a  
4 classroom on a level below the main floor of the  
5 existing building could create a situation where the  
6 resulting building could be seen as having four  
7 stories. This interpretation of the Zoning  
8 regulation is simply incorrect.

9 I have a drawing that I would like to  
10 enter into the record which is of the front or  
11 Highland Street elevation which I guess you already  
12 have.

13 MS. DWYER: We do.

14 MR. ANTHONY: Section 199.1 of the Zoning  
15 Regulations clearly states that the height of a  
16 building is measured from the middle of the front of  
17 the building. The height of the existing building  
18 from this measuring point is 36'4" as you can see on  
19 the drawing.

20 Section 199.1 also states that the number  
21 of stories is counted at the point from which the  
22 height of the building is measured. From the  
23 measuring point to the lower level ceiling is less  
24 than four feet, which by definition makes that a  
25 cellar. It's actually 2'10". A cellar is not

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1 counted as a story. Therefore, the main building has  
2 three stories.

3 The fact that the site slopes down toward  
4 the back and creates what appears to be an additional  
5 story or level does not change the fact that pursuant  
6 to the explicit and clear definitions of building  
7 height and story in the Zoning Regulations, the main  
8 building has only three stories as counted from  
9 Highland Place.

10 This interpretation also applies to a  
11 number of other buildings located on Highland Place  
12 the majority of which are three stories as measured  
13 from Highland Place. These buildings would also  
14 appear to have four stories if viewed from the rear.

15 This includes the Neely/Badami residence as well as  
16 the Beckner property, the two flanking properties to  
17 NCRC.

18 Then even if it could be argued that the  
19 building is four stories as measured from the rear  
20 and, thus, a nonconforming structure, since our  
21 addition is a two story addition that does not  
22 increase the nonconformity, it is permitted as a  
23 matter-of-right anyway.

24 For all these reasons I've described, the  
25 plans fully comply with the height and story

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1 requirements of the Zoning Regulations.

2 The third issue I would like to address  
3 is to further respond to several questions posed by  
4 Mr. Richard Nettler during my cross-examination last  
5 session. Specifically the question as to whether the  
6 property is unique.

7 MR. NETTLER: I'm going to object.

8 CHAIRPERSON GRIFFIS: On a mike.

9 MR. NETTLER: I certainly have not had a  
10 problem with him testifying as to issues in which  
11 you've asked for additional information which are  
12 still open issues. It's not appropriate for him to  
13 be addressing questions that I've asked before.

14 CHAIRPERSON GRIFFIS: Right. Revisiting  
15 the old testimony in order to be in more of a  
16 rebuttal stage of testimony. I tend to agree. At  
17 this point what we're looking at is new testimony  
18 based on the submissions. Of course, you will be  
19 crossed on that and can be redirected. If you could  
20 tie it into the new information to be provided, that  
21 would be appropriate.

22 MS. DWYER: Mr. Chairman, we'll save that  
23 for our rebuttal testimony. It was further  
24 explanation of the exhibit to our right. We have the  
25 actual lot sizes and information for all of the lots

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1 that are shown in that exhibit which he did not have  
2 at the last hearing, but we can save that for  
3 rebuttal.

4 CHAIRPERSON GRIFFIS: Oh, I see. So it's  
5 new information relating to the site and the size.  
6 Is that correct?

7 MS. DWYER: Right. He was asked at the  
8 last hearing if he could identify the lot sizes out  
9 of the lots that are shown on the easel and he didn't  
10 have before him that specific information. We now  
11 have the information, all of the lot sizes which  
12 supplements that exhibit.

13 CHAIRPERSON GRIFFIS: Are you talking  
14 about the lot sizes in some of the larger ones that  
15 are in green?

16 MS. DWYER: That is correct. That is  
17 correct.

18 CHAIRPERSON GRIFFIS: Okay. I do recall  
19 that question. Mr. Nettler, I would look at this  
20 unless you continue an objection as new information  
21 that was actually brought up that they could submit  
22 in.

23 MR. NETTLER: I don't have a problem in  
24 making a reference to the fact that he's got lot  
25 sizes on his plan --

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1 CHAIRPERSON GRIFFIS: You don't want him  
2 submitting these?

3 MR. NETTLER: -- but I don't think he's  
4 in a position in this context to start making  
5 characterizations as to what they mean or don't mean.

6 CHAIRPERSON GRIFFIS: Okay. Let's do  
7 that. What kind of documentation? Do you have  
8 documentation that you can submit?

9 MS. DWYER: Actually, what we'll submit  
10 and what he was referencing is information -- we've  
11 already submitted it to the staff. It's information  
12 that was filed in the record of the Historic  
13 Preservation Review Board that list all of the  
14 property addresses and the lot sizes in the historic  
15 district. It provides the backdrop for this exhibit.

16 CHAIRPERSON GRIFFIS: How big is that? I  
17 see. Okay. It's submitted in. The parties also  
18 have copies. Is that correct?

19 MS. DWYER: Right. Actually, it was  
20 submitted at the HPRB, as I said. It's in that  
21 record. It was submitted by Mr. Lindsley Williams  
22 and it points out the size of the NCRC property in  
23 relation to all the properties in the historic  
24 district. This just supplements that exhibit that  
25 Mr. Anthony had referenced the last time as to why

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1 this site is unusually large and unique.

2 CHAIRPERSON GRIFFIS: Right. Okay. Good  
3 enough. This is exhibit number what, 5,000? We'll  
4 get it to you. We're in the top 200. Okay. Let's  
5 carry on.

6 MS. DWYER: All right. That concludes  
7 Mr. Anthony's testimony. He's available for cross-  
8 examination.

9 CHAIRPERSON GRIFFIS: Any questions by  
10 the Board? I'm sorry. I thought I had one on the  
11 elevations in the rear. Let me just revisit that for  
12 a moment. I don't recall but, as a matter of fact,  
13 the rail on top, do you know what material that is  
14 proposed to be?

15 MR. ANTHONY: I'm sorry?

16 CHAIRPERSON GRIFFIS: The rail on top of  
17 the Ordway elevation. In one of the elevations it  
18 looks like it's a metal picket of some sort.

19 MR. ANTHONY: Yes.

20 CHAIRPERSON GRIFFIS: Is it solid?

21 MR. ANTHONY: It's an open rail vertical  
22 picket.

23 CHAIRPERSON GRIFFIS: Very well. The two  
24 dimensions that you have, 10'1", just for my clarity,  
25 that's to the property line? Is that correct?

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1 MR. ANTHONY: Yes, it is.

2 CHAIRPERSON GRIFFIS: And then there's a  
3 6'8" setback from the adjacent property?

4 MR. ANTHONY: That's to the face of the  
5 garage of the adjoining property.

6 CHAIRPERSON GRIFFIS: Right. Okay. Very  
7 well. Any other questions from the Board? Cross-  
8 examination then can begin on the new testimony that  
9 we have just heard. We had an established order.  
10 Let me just reiterate that today and make sure it's  
11 correct.

12 We'll start with the Cleveland Park  
13 Neighbors. If we could get Mr. Nettler a chair.  
14 Then we will go to the party of Badami, Beckner,  
15 Hunsicker, Little, and ANC-3C. We will then have  
16 friends of NCRC and Marshall party.

17 Mr. Nettler.

18 MR. NETTLER: Thank you. Richard Nettler  
19 for the Cleveland Park Neighbors.

20 Mr. Anthony, let's start with what is  
21 identified as page 20 on the exhibit that is before  
22 the Board. The house that's to the right of your  
23 proposed addition, that is the Little house. Is that  
24 correct?

25 MR. ANTHONY: Yes.

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1 MR. NETTLER: Okay. Is that -- I don't  
2 know if these are numbered but is that this house  
3 here in the picture?

4 MR. ANTHONY: No. What you're seeing  
5 there is the playhouse.

6 MR. NETTLER: This is the playhouse. All  
7 right. Do you have a picture of that house?

8 MR. ANTHONY: I believe it's in our  
9 original filing.

10 MR. NETTLER: It's your testimony that  
11 that house is about how high above the Ordway Street?

12 MR. ANTHONY: I don't know exactly. I  
13 was testifying as to the height of ours and said that  
14 it was approximately the same.

15 MR. NETTLER: Okay. Approximately the  
16 same. I'm going to hold up this picture again that  
17 you have submitted. If you could walk the Board  
18 across from the west to the east and give me the  
19 heights of the berm that presently exist all the way  
20 across.

21 CHAIRPERSON GRIFFIS: Haven't we done  
22 this?

23 MS. DWYER: Yes.

24 CHAIRPERSON GRIFFIS: Mr. Nettler, I'm  
25 not understanding why we're going back.

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1 MR. NETTLER: He's giving some figures  
2 which he hadn't given before as to the heights.

3 CHAIRPERSON GRIFFIS: Right. Let's get  
4 to those figures unless what you're saying is it  
5 wasn't established what the berm was. It seems to me  
6 that what we asked for in this elevation was to  
7 establish that. We have a relative scale of the  
8 structure that's coming across.

9 MR. NETTLER: Okay. Why don't you tell  
10 me how much of that berm is being eliminated then, is  
11 being taken out.

12 MS. DWYER: Mr. Chairman, I object. The  
13 point of this exhibit was to show the heights for the  
14 carriage house which are shown and none of Nettler's  
15 questions seem to be relating to any of the heights.

16 MR. NETTLER: The purpose of the exhibit  
17 was because it was impossible before to understand  
18 the impact of the construction on Ordway Street as  
19 you looked at the berm that presently existed and the  
20 elevations. Having provided the heights, at least of  
21 the construction trying to figure out what the impact  
22 is of that berm that we were trying to determine  
23 before.

24 CHAIRPERSON GRIFFIS: It's interesting  
25 because, as I'm understanding now, the Board and you

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1 may not share the impact. Your impact, as I'm  
2 understanding it now, is what is there currently and  
3 how the removal of such grading to what is going to  
4 be there is the impact. As opposed to the Board was  
5 looking at the new construction and its relative  
6 impact in terms of what is to be constructed, if that  
7 makes some sense.

8 MR. NETTLER: There's two impacts,  
9 correct, but the new construction is part and parcel  
10 of the removal of what exist today as a berm.

11 CHAIRPERSON GRIFFIS: Do we have a  
12 photograph of the elevation of Ordway that represents  
13 what you're trying to establish, Mr. Nettler?

14 MR. NETTLER: I've asked them if they  
15 believe that has -- they say that's in their package.

16 MS. DWYER: Mr. Chairman, if Mr.  
17 Nettler --

18 MR. NETTLER: If Mr. Anthony can identify  
19 where in the package that is shown.

20 MS. DWYER: Mr. Chairman, this is  
21 testimony going beyond the scope of Mr. Anthony's  
22 limited testimony today which was to explain the  
23 drawings. If Mr. Nettler would like another drawing  
24 that shows the before and after impact on the berm at  
25 that location, we can prepare that but that's not

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1 what this drawing shows. This drawing was to show  
2 the height of each of the components of the carriage  
3 house.

4 CHAIRPERSON GRIFFIS: Right. That's  
5 correct. What I want to do is just take two seconds  
6 if we can find that photograph. If it isn't a close  
7 account of a comparison that I can make then, yes, I  
8 believe we could actually wait for Mr. Nettler to put  
9 on the case of its larger impact and that can be done  
10 with photographs or not.

11 MR. NETTLER: Well, the problem here if  
12 I'm going to be able to test the accuracy of the  
13 figures that are on the document that has been  
14 provided today, there needs to be some way of being  
15 able to look at what is the heights of things that  
16 exist and the present conditions are for you to be  
17 able to determine whether those are accurate or not.

18 CHAIRPERSON GRIFFIS: That's what I'm  
19 trying to establish so we have that in the record so  
20 I can pull it out and look at it whether it even be a  
21 grading plan in which case we can look at it.

22 MR. NETTLER: If I could just add that on  
23 that drawing we do, in fact, give a grade at the  
24 curb, at the street. We also --

25 CHAIRPERSON GRIFFIS: On the use

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1 submission?

2 MR. NETTLER: Yes.

3 CHAIRPERSON GRIFFIS: Yes. Grade is  
4 308.28. I'm sorry, 304.28.

5 MR. ANTHONY: 304.28 and then the grade  
6 at the face of the building just so that, in fact,  
7 you could have that reference. You can add the  
8 dimensions we gave you to those engineering grades  
9 and effectively get the height.

10 MR. NETTLER: And what's the grade today?  
11 You don't have that on your document.

12 MR. ANTHONY: Well, the grade at the  
13 street is not changing.

14 MR. NETTLER: The height of the berm,  
15 what is the top grade?

16 MR. ANTHONY: I don't know exactly. I  
17 don't have that survey in front of me but it's very  
18 close to what is proposed there.

19 MR. NETTLER: So you're saying today that  
20 for you to construct the building to the immediate  
21 -- to the far west on the site or to the far right on  
22 page 20 is essentially the same. The grade is not  
23 being changed.

24 MR. ANTHONY: That's correct. The grade  
25 will be put back essentially as it exist today.

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1 MR. NETTLER: As it exist from Ordway or  
2 as it exist from Highland?

3 MR. ANTHONY: As it exist as you would  
4 look at the property from Ordway.

5 MR. NETTLER: Okay.

6 MR. ANTHONY: As shown on this drawing.

7 MR. NETTLER: On your submission of the  
8 square footage summary, am I correct that the  
9 existing total is 10,622 square feet? That is the  
10 existing conditions?

11 MR. ANTHONY: Yes.

12 MR. NETTLER: Okay. And your second  
13 document which shows the proposed use, is that an  
14 additional 20,819 square feet?

15 MR. ANTHONY: That's the total.

16 MR. NETTLER: That's the total. So you  
17 are adding essentially another 10,000 square feet.

18 MR. ANTHONY: Correct.

19 MR. NETTLER: Okay. Now, on the tree  
20 exhibit, am I correct that there are essentially 19  
21 trees that are being removed?

22 MR. ANTHONY: To be honest, I haven't  
23 counted them.

24 MR. NETTLER: Do you know the calipers of  
25 those trees?

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1 MR. ANTHONY: I believe it's indicated.

2 Well, actually the --

3 MR. NETTLER: Do you know the range of  
4 the calipers?

5 MR. ANTHONY: What's indicated on the  
6 drawing is the circumference of the trees measuring  
7 four and a half feet up. I guess I could do some  
8 quick calculations.

9 MR. NETTLER: How many of those trees  
10 that are being removed, I see they are marked by an  
11 X, in width what's the minimum and what's the maximum  
12 of the trees that are being removed?

13 MR. ANTHONY: I don't have the caliper  
14 dimensions with me.

15 MR. NETTLER: Do you know the height of  
16 the trees?

17 MR. ANTHONY: No, I don't.

18 CHAIRPERSON GRIFFIS: I count 21 are to  
19 be removed.

20 MR. NETTLER: I do, too.

21 CHAIRPERSON GRIFFIS: What did you say?  
22 I thought you said 19.

23 MR. NETTLER: Oh, did I say 19? That's  
24 correct, I said 19. I stand corrected, 21.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MS. DWYER: Mr. Chairman, let me just  
2 clarify that, as Mr. Anthony testified, these are not  
3 necessarily removed. They could be relocated  
4 elsewhere on site.

5 CHAIRPERSON GRIFFIS: And they are  
6 volunteers, right?

7 MS. DWYER: These are trees that are  
8 going to be impacted. They are volunteering for  
9 duty, yes.

10 MR. NETTLER: Mr. Anthony, you're not  
11 purporting to testify as a landscape architect. Are  
12 you?

13 MR. ANTHONY: No, I'm not.

14 MR. NETTLER: Or an arborist?

15 MR. ANTHONY: No.

16 MR. NETTLER: So as to whether they would  
17 survive removal or not is not something within your  
18 ability to testify to. Is it?

19 MR. ANTHONY: No. I just brought the  
20 letter from the arborist.

21 MR. NETTLER: Now, let's get to this  
22 issue about the story. On your document that you  
23 submitted today for the hearing today which has the  
24 front elevation of the existing building, you  
25 identify the space that is at the bottom of the

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1 property, the bottom of the building, as a cellar.

2 You have testified that is a cellar, correct?

3 MR. ANTHONY: Correct.

4 MR. NETTLER: Do you understand that the  
5 Zoning Regulations treat space as a cellar for some  
6 purposes and as a basement for other purposes?

7 MR. ANTHONY: Yes, I do.

8 MR. NETTLER: Where in the Zoning  
9 Regulations is a cellar treated -- is a space treated  
10 as both for different purposes?

11 MR. ANTHONY: I'm not sure I understand  
12 the question.

13 MR. NETTLER: Where in the Zoning  
14 Regulations does certain space that -- does the  
15 Zoning Regulations permit you to treat space as both  
16 a cellar and a basement?

17 MS. DWYER: Mr. Chairman, I would object.

18 I mean, if this is a point that Mr. Nettler wants to  
19 make in his direct testimony, that's fine but if he  
20 would ask Mr. Anthony a question about the  
21 measurements on this particular exhibit, that would  
22 be more germane to what he testified to.

23 CHAIRPERSON GRIFFIS: If I understand,  
24 even more direct, Mr. Nettler, I may have muddied the  
25 water in talking about that. The point of fact in

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1 the exhibit that is submitted, what we have is Mr.  
2 Anthony saying that it's a cellar at the point of  
3 which the story is calculated.

4 MR. NETTLER: And I'm asking him where in  
5 the Zoning Regulations does it allow him to treat  
6 this space as a cellar where it would otherwise be  
7 treated as a basement.

8 CHAIRPERSON GRIFFIS: I think that is  
9 straightforward enough.

10 MR. ANTHONY: It's in the definition of a  
11 cellar.

12 MR. NETTLER: All right. And do you know  
13 what the definition of cellar is?

14 MR. ANTHONY: I don't know whether I  
15 could quote it verbatim but essentially a cellar is -  
16 -

17 MS. DWYER: We'll read it from the  
18 regulations. Why don't you read the definition.

19 MR. ANTHONY: A cellar - that portion of  
20 a story the ceiling of which is less than four feet  
21 above the adjacent finished grade.

22 MR. NETTLER: And for purposes of  
23 measuring the ceiling of a cellar, where is the  
24 adjacent finished grade?

25 MR. ANTHONY: For the purposes of

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1 calculating the number of stories of a building, it's  
2 at the center of the front of the building which is  
3 the point where the measurement of the height of the  
4 building is taken.

5 MR. NETTLER: No. For purposes of  
6 counting the measurement of a building whether it's a  
7 story or whether it's the height of a building, it's  
8 from the center of the front of the building. That's  
9 not what it says in terms of how you -- the  
10 definition of a cellar. Is it? Does it tell you  
11 that a cellar can be -- that the height of a cellar  
12 can be the finished grade on the front of it, on the  
13 side of it, on the rear of it?

14 MR. ANTHONY: There's another part in the  
15 ordinance which I would have to find where it talks  
16 about number of stories and building height and it  
17 specifically alludes to the fact that a cellar is not  
18 counted as part of the number of stories and that for  
19 calculating the number of stories, which was the  
20 question at hand, that it is taken from the center of  
21 the front of the building for buildings where the  
22 height requirement is less than 40 feet.

23 MR. NETTLER: But doesn't that provision  
24 say that you don't count a cellar in the definition  
25 but if it doesn't say that you don't count a basement

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1 and if a basement space -- if space below the first  
2 floor is considered a basement, then it is not  
3 excluded from the count of the number of stories. Is  
4 that correct?

5 MR. ANTHONY: If the dimension which we  
6 show on this drawing was greater than four feet, it  
7 would be considered a basement and, therefore, a  
8 story.

9 MR. NETTLER: No. If the dimension was  
10 greater -- isn't it correct that if the dimension was  
11 greater than four feet, it would have nothing to do  
12 with whether it was a cellar or not because the  
13 question of whether something is defined as a cellar  
14 is whether it's less than four feet above the  
15 adjacent finished grade. Do you know of any zoning  
16 cases in which this Board has agreed with your  
17 interpretation of that regulation?

18 MS. DWYER: Mr. Chairman, I would object.  
19 I think the questioning is argumentative. This  
20 should be part of Mr. Nettler's direct case. The  
21 witness has answered the question to the best of his  
22 ability and has stated the facts as he has drawn them  
23 on the plan. If Mr. Nettler just based on case law  
24 or other BZA precedent, he could make that in his  
25 direct case.

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1 MR. NETTLER: Mr. Anthony, do you know of  
2 past instances when the owners of this building, the  
3 National Child Research Center, have sought a  
4 building permit and have claimed that this building  
5 is four stories?

6 CHAIRPERSON GRIFFIS: Ms. Dwyer, could  
7 you turn off your mike? If you're going to speak,  
8 you can keep it on but we're getting feedback.

9 MS. DWYER: I object. It's beyond the  
10 scope of this testimony. He didn't testify -- this  
11 is not a time to reexamine him on prior applications  
12 that may be filed but have been filed by the school.

13 CHAIRPERSON GRIFFIS: I understand that,  
14 except in submitting this and establishing the story,  
15 it does go a little bit to the background of if you  
16 were involved in other calculations of this, did you  
17 arrive at different outcomes?

18 MR. ANTHONY: I wasn't involved, I don't  
19 believe, in the previous application that he is  
20 referring to. I'm not aware of how it was applied  
21 for.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. NETTLER: You're not aware whether a  
24 building permit was --

25 MS. DWYER: The witness has asked and

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1 answered the question.

2 MR. NETTLER: Let me show you what I will  
3 mark as --

4 CHAIRPERSON GRIFFIS: In cross you're  
5 going to introduce evidence?

6 MR. NETTLER: Yes, I certainly am.

7 CHAIRPERSON GRIFFIS: For what?

8 MR. NETTLER: For the purposes of  
9 impeaching his testimony.

10 CHAIRPERSON GRIFFIS: Is it the past  
11 application?

12 MR. NETTLER: It's the past application.

13 CHAIRPERSON GRIFFIS: How is he going to  
14 prove he wasn't involved in putting together the  
15 application which is what he just said?

16 MR. NETTLER: He is here representing --

17 CHAIRPERSON GRIFFIS: But you're going to  
18 have to reexamine a past application and the  
19 understanding of what was done then?

20 MR. NETTLER: No. It states on it that  
21 it was four stories.

22 MS. DWYER: I object again. If Mr.  
23 Nettler wants to introduce that as part of his direct  
24 case, that is one thing. This witness has no  
25 knowledge of that past application and is not the

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1 person to ask about it.

2 CHAIRPERSON GRIFFIS: I think it's going  
3 to be more productive --

4 MR. NETTLER: Fine. We'll introduce it  
5 in our case.

6 CHAIRPERSON GRIFFIS: Yeah. I think it  
7 is because I'm not sure what Mr. Anthony could  
8 conceivably answer about it. Let's look for that in  
9 your case presentation.

10 MR. NETTLER: I have no further  
11 questions.

12 CHAIRPERSON GRIFFIS: Okay. Let's  
13 continue then. Cross-examination. The parties, I  
14 think, are familiar with the order so if they want to  
15 just avail themselves to come up when they are ready.  
16 Whenever you are ready.

17 MS. BADAMI: Okay. For the record, Linda  
18 Badami, 3207 Highland Place. I took notes on some of  
19 the things that you said, Chuck, so I have a few  
20 questions. Just as a point of clarification  
21 actually, the entrance of my house is on the side but  
22 my house is not oriented to the side. It still has  
23 the parallel function as the NCRC home did before it  
24 became a child research center.

25 CHAIRPERSON GRIFFIS: Is that a question?

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1 Is that your understanding, Mr. Anthony?

2 MR. ANTHONY: I was simply remarking on  
3 the fact they have a beautiful lawn to the side and a  
4 drive --

5 CHAIRPERSON GRIFFIS: Okay. Without  
6 going into detail, is that your understanding that  
7 there's an entrance on the side but the house is  
8 oriented towards the front?

9 MR. ANTHONY: No. My understanding and  
10 observation of it from the outside is that  
11 essentially the house is more oriented to the side  
12 with the front door in the center of the side.

13 CHAIRPERSON GRIFFIS: I see. Okay.

14 MS. BADAMI: Then the question is how did  
15 you arrive at that conclusion never having been in my  
16 house?

17 MR. ANTHONY: Simply from the time that  
18 we spent together at your house.

19 MS. BADAMI: When you were doing the  
20 square footage of NCRC in the other category, I  
21 wanted to know if you are also including nine or more  
22 bathrooms and the chair storage closets?

23 MR. ANTHONY: If the storage area or the  
24 toilet is within the classroom, it was counted in the  
25 gross square footage of the classroom.

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1 MS. BADAMI: Well, was it?

2 MR. ANTHONY: Yes, it was. But if the  
3 storage area was not designated to a specific  
4 classroom, then it was counted as other.

5 MS. BADAMI: So all bathrooms are  
6 included as classroom area?

7 MR. ANTHONY: Not all. Only the ones  
8 that essentially are accessed directly from the  
9 classroom.

10 MS. BADAMI: Okay. Regarding the grade  
11 of the proposed carriage house, you said that when  
12 the construction would be finished that it would be  
13 back as it was before?

14 MR. ANTHONY: Yes.

15 MS. BADAMI: How will you bury a building  
16 if the grade will be as it was before? If it is to  
17 remain as is it -- post-construction if the grade is  
18 to remain as it is now, the two floors would be  
19 visible.

20 MR. ANTHONY: If I understand your  
21 question correctly, what would happen is clearly the  
22 grade in front of the building would be disturbed as  
23 part of the construction process. But when we're  
24 finished, the appearance will be as we show on the  
25 drawing which is to restore essentially existing

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1 grade at the front of the building.

2 MS. BADAMI: Oh, so that appearance is  
3 only from Ordway Street?

4 MR. ANTHONY: Well, in fact, I think I  
5 testified last time that even the grades along the  
6 side of the building are essentially existing grades.

7 MS. BADAMI: So the side just at the --

8 CHAIRPERSON GRIFFIS: Which side are we  
9 talking about here?

10 MR. ANTHONY: I was referring to the side  
11 next to Little's which is the other side of the  
12 carriage house.

13 CHAIRPERSON GRIFFIS: From the Ordway  
14 elevation.

15 MS. BADAMI: I have a point-of-order  
16 question. Can Mr. Anthony receive notes from his  
17 attorney during this?

18 CHAIRPERSON GRIFFIS: That seems to be a  
19 recurring issue.

20 Ms. Monroe?

21 MS. MONROE: Yes, I think so.

22 MS. BADAMI: Okay. Can I receive notes  
23 from my attorney?

24 CHAIRPERSON GRIFFIS: If you were being  
25 represented, your attorney would be up here, correct?

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1 MS. BADAMI: Just a joke.

2 CHAIRPERSON GRIFFIS: Okay. Back to  
3 grade.

4 MS. BADAMI: Did you answer? Your  
5 question was what are we looking at?

6 CHAIRPERSON GRIFFIS: Yeah. I was just  
7 trying to be clear. You are concerned about the  
8 Ordway grade --

9 MS. BADAMI: I'm asking what he's  
10 referring to because what I'm hearing him saying is  
11 that he is referring to when you stand on Ordway and  
12 you look south towards Highland. I'm hearing him  
13 saying --

14 CHAIRPERSON GRIFFIS: Is that this way on  
15 the elevation?

16 MS. BADAMI: Correct.

17 CHAIRPERSON GRIFFIS: Okay.

18 MS. BADAMI: But when he says that the  
19 grade will be restored to its prior condition, I'm  
20 trying to find out exactly what that means because to  
21 me that implies all grade because he hasn't  
22 differentiated any part of the grade.

23 He has just said, yes, the front will be  
24 pretty much as it was. Now he said the side is going  
25 to be pretty much as it was but that's only along the

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1 fence between Henry Little's house and the carriage  
2 house.

3 CHAIRPERSON GRIFFIS: Okay. That's what  
4 I was understanding where you were going. Ask him  
5 specifically the area that you are concerned about.

6 MS. BADAMI: So at the rear of the  
7 carriage house will the grade remain as it is from  
8 the view of Henry Little's house looking east towards  
9 NCRC?

10 MR. ANTHONY: When you say the rear of  
11 the carriage house, do you mean the side facing Henry  
12 Little's or the side facing Highland?

13 MS. BADAMI: Where are the entrance  
14 doors?

15 MR. ANTHONY: They are facing Ordway.

16 MS. BADAMI: So the rear of the building  
17 is facing Highland Place.

18 MR. ANTHONY: Okay. The side of the  
19 carriage house that faces Highland Place there is an  
20 area that currently slopes down that will need to be  
21 regraded and tapered back to an existing grade  
22 condition so that we don't create a sump or a well  
23 where water would collect.

24 CHAIRPERSON GRIFFIS: Let me ask a  
25 clarifying question.

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1 MS. BADAMI: Of course.

2 CHAIRPERSON GRIFFIS: So now that we're  
3 talking about a rear of the carriage house, we are  
4 actually into the site. You are concerned with the  
5 grade as it goes down from the main structure to the  
6 new proposed structures. Is that correct?

7 MS. BADAMI: No. I'm still actually at  
8 the carriage house because the rear of the carriage  
9 house is going to be above current grade.

10 CHAIRPERSON GRIFFIS: The carriage house  
11 and the interior portion of the site.

12 MS. BADAMI: Oh, sorry. Yeah, yeah,  
13 yeah. Okay.

14 CHAIRPERSON GRIFFIS: Good. Go ahead.

15 MS. BADAMI: So the rear of the carriage  
16 house is going to be above existing grade. Correct?

17 MR. ANTHONY: Maybe the best thing to do  
18 would be to pull up that elevation of the south  
19 elevation of the carriage house.

20 MS. DWYER: Mr. Chairman, again, this is  
21 going back to cross-examination of original  
22 testimony.

23 CHAIRPERSON GRIFFIS: Right.

24 MS. BADAMI: It's a simple question. I  
25 don't want to see the board.

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1 MS. DWYER: I'm not saying it's not a  
2 simple question. It should have been asked at the  
3 last hearing.

4 CHAIRPERSON GRIFFIS: The point and the  
5 appropriateness for cross-examination, which this is  
6 cross-examination, it's cross-examination on evidence  
7 that was just submitted. It was the new evidence and  
8 that's why I was very confused of which grade you  
9 were talking to because what was submitted currently,  
10 or the new submission, is to an elevation that we're  
11 showing -- well, somewhat, and then the dimensions  
12 that were on it. I do have a little difficulty  
13 because if we open it up, we are going back to what  
14 we actually had presented.

15 MS. BADAMI: But I'm asking for  
16 clarification of a statement that he just made. I'm  
17 not trying to revisit what was done at the last  
18 hearing. He said that the grade was going to be put  
19 back to what it was. That's not from last meeting.

20 CHAIRPERSON GRIFFIS: Let's get to the  
21 grade at this elevation and then we'll move on as it  
22 is somewhat attended to the grade issue of question  
23 off of Ordway. Okay.

24 MS. BADAMI: Will the grade from my house  
25 be the same after the construction. Looking from my

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1 house looking at the carriage house will it be the  
2 same? Or from the Beckner's?

3 MR. ANTHONY: There is an area on the  
4 south side of the carriage house where because of the  
5 existing slope we would need to retaper the  
6 topography there in order to provide for proper  
7 drainage so it's not exactly the same as it exist.

8 MS. BADAMI: Okay. In your elevation that  
9 was just provided, the last page, why is the  
10 maintenance building not on this elevation?

11 MR. ANTHONY: Is it the Highland  
12 elevation?

13 MS. BADAMI: Yes.

14 MR. ANTHONY: Essentially because it's so  
15 far to the rear of the property and then it is shown  
16 in another place in the set. This drawing was pretty  
17 specifically addressing the front of the building at  
18 the Highland Place elevation.

19 MS. BADAMI: Is the maintenance building  
20 any further back than the playhouse?

21 CHAIRPERSON GRIFFIS: Let me clarify.  
22 First of all, the point in clarification of this  
23 elevation was to establish the height and the number  
24 of stories, which that's what it does. I mean I  
25 understand that there's not a lot shown here, but nor

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1 would an elevation be a picture. And to start cross-  
2 examination about why all the trees aren't drawn in  
3 here or cars, etc. --

4 MS. BADAMI: I'm asking for the  
5 elevations of the buildings. It's a north elevation  
6 and it shows the structures in the image.

7 CHAIRPERSON GRIFFIS: But this submission  
8 has -- allow me, please. This submission has a  
9 specific person and a purpose and a single purpose  
10 and that was to address the stories and that's what  
11 its done. I don't want -- if there's points of which  
12 we want to bring up, it's not appropriate in this one  
13 because I wouldn't expect it to be there, nor show  
14 any more information than it is actually supposed to  
15 be showing.

16 MS. BADAMI: Okay. When you referred to  
17 the trees, the letter said that it wouldn't be  
18 removing any historic or quality specimen trees. Are  
19 those trees serving any other function?

20 MR. ANTHONY: The trees that are  
21 remaining?

22 MS. BADAMI: That would be removed as  
23 your arborist said in his letter.

24 MR. ANTHONY: Well, they do provide shade  
25 and green and a buffering to adjoining properties.

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1 MS. BADAMI: Okay. And of the cellar,  
2 the addition off the back of the house you're  
3 classifying as a cellar. Is that correct? I wasn't  
4 following all of it. Is that still part of the  
5 cellar?

6 MR. ANTHONY: What I would like to say is  
7 I was clarifying the number of stories in the  
8 building and it's as measured from the front. From  
9 the rear it certainly is similar to your house. It  
10 has a walkout aspect and appears to be a taller than  
11 what you would think of as a cellar, but in terms of  
12 how we count stories, that lower level is a cellar.

13 MS. BADAMI: Right. And our existing  
14 structures have almost 100-year-old cellars or  
15 basements in them. What is the interior height of  
16 the addition on the ground floor?

17 MR. ANTHONY: The interior height of --

18 MS. BADAMI: The ground floor of the main  
19 house.

20 MR. ANTHONY: I think the ceiling height  
21 is nine feet. I'm not absolutely certain but I think  
22 that's correct.

23 MS. BADAMI: Okay. And the -- I'm sure  
24 as an architect you are familiar with certificate of  
25 occupancies and permits. Do they ask for stories and

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1 basements or stories and cellars?

2 MR. ANTHONY: In regard to what?

3 MS. BADAMI: In your history working with  
4 certificates of occupancies or building permits when  
5 you fill out the form does it ask for --

6 MS. DWYER: Mr. Chairman, I object again.  
7 This is beyond the scope of his testimony this  
8 afternoon.

9 CHAIRPERSON GRIFFIS: I tend to agree.

10 MS. BADAMI: Okay.

11 CHAIRPERSON GRIFFIS: Are you trying to  
12 establish how he designated that it's a cellar in  
13 terms of calculating the number of stories?

14 MS. BADAMI: Well, he's comparing my  
15 house to NCRC's house and I can get that because they  
16 are both almost 100 years old. They both have the  
17 grade and the ground floor is a full height ground  
18 floor that opens out onto grade. Actually, theirs  
19 doesn't but you just take some steps up. What they  
20 are proposing is building an addition.

21 CHAIRPERSON GRIFFIS: I understand the  
22 whole thing.

23 MS. BADAMI: Right. That goes past it.

24 CHAIRPERSON GRIFFIS: There's no reason  
25 that they should have given a comparison to an

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1 adjacent. It factors in no way to what I have heard  
2 in testimony in terms of establishing the height and  
3 stories of this particular structure.

4 MS. BADAMI: Well, for me listening in  
5 the back of the room it made it sound like the ground  
6 floor is a cellar and what they are proposing to do  
7 is not attach a cellar. The impact to me is going to  
8 be a nine-foot ground floor plus another story on top  
9 of it. I wanted to be clear that we're not talking  
10 about a cellar in terms of impact to me.

11 CHAIRPERSON GRIFFIS: Okay. And for  
12 total clarity I think the Board is well aware of that  
13 and the issue was for us to look at the front of the  
14 middle of the building where height is establish in  
15 order to count the number of stories. I think it's a  
16 given we've seen in the elevations and some of the  
17 grading that the site slope drops away at that  
18 building.

19 As I stated, I see a difference between a  
20 basement calculation and that which you would and the  
21 point of which you would calculate the number of  
22 stories just as you would calculate FAR.

23 MS. BADAMI: Okay. And then the last  
24 question. The images submitted taken from the back  
25 of my property looking at NCRC to the west you super

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1 imposed the image of the rear addition and converting  
2 the maintenance shed to the maintenance building.

3 The blueprints call for that to be three  
4 foot out from my garage. Why is it not drawn that  
5 way?

6 CHAIRPERSON GRIFFIS: I'm sorry. What  
7 are we looking at now?

8 MS. BADAMI: We're looking at their  
9 submission.

10 CHAIRPERSON GRIFFIS: The photographs?

11 MS. BADAMI: Yeah.

12 CHAIRPERSON GRIFFIS: Oh, right. I see.  
13 Okay.

14 MS. BADAMI: The photograph.

15 MR. ANTHONY: Well, I --

16 MS. BADAMI: The next page.

17 MR. ANTHONY: I'm looking at the  
18 dimensioned drawing in the plan.

19 MS. BADAMI: Well, he's not looking at  
20 what I'm looking at.

21 MR. ANTHONY: I have three.

22 MS. BADAMI: That's not it.

23 CHAIRPERSON GRIFFIS: Hold on. Neither  
24 am I so just give me a second here.

25 MR. ANTHONY: I'm sorry. The question

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1 was?

2 MS. BADAMI: If you look at the image, if  
3 you follow the vanishing line, you've drawn the  
4 maintenance building such that it's parallel or even  
5 inset from my garage, whereas the measurements on the  
6 proposal have it three foot towards Highland. I'm  
7 asking you why it isn't drawn properly.

8 MR. ANTHONY: Well, my intent was to draw  
9 it exactly as it was shown in this plan with that  
10 three-foot extension out. It is a perspective  
11 drawing where it's vanishing. I can only say that  
12 was my intent was to represent what was drawn here in  
13 the plan.

14 MS. BADAMI: So you agree it's an  
15 inaccurate drawing?

16 MR. ANTHONY: It's a pretty accurate  
17 representation of what you would see from this point  
18 of view, yes.

19 MS. BADAMI: But it's three feet off.

20 MR. ANTHONY: No. I'm saying that it's  
21 what I've drawn as a perspective drawing. I think  
22 it's a fairly accurate representation of what you  
23 would see as represented in this plan from this  
24 point.

25 MS. BADAMI: Okay. Well, I'll get to it

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1 another time then. Thank you.

2 CHAIRPERSON GRIFFIS: Good. Thank you.

3 Next, the Beckners. Indeed.

4 MR. BECKNER: Good afternoon, Mr.  
5 Chairman. Bruce Beckner, 3225 Highland Place.

6 CHAIRPERSON GRIFFIS: Yes.

7 MR. BECKNER: Mr. Anthony, I have just a  
8 couple of questions about this arborist survey if you  
9 know the answers. First, has there been any kind of  
10 site disturbance plan or other study made of how the  
11 site is going to be affected by the construction  
12 process, the heavy trucks and the grating machinery  
13 and so on?

14 MR. ANTHONY: No, there hasn't.

15 MR. BECKNER: Okay. So when the arborist  
16 made his evaluation of the number of trees that were  
17 going to be lost, he wouldn't have been able to take  
18 account of trees that might have been damaged by  
19 having heavy equipment running over top of its roots  
20 and compacting the dirt and so on.

21 MR. ANTHONY: I think he had an  
22 understanding of what it was we proposed to do and  
23 was using his judgment as to the effect of that on  
24 the trees.

25 MR. BECKNER: Did he have any information

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1 at all about where the equipment was going to be  
2 running on the property during construction?

3 MR. ANTHONY: I'm not sure explicitly  
4 what information he had. As I said, there's no  
5 specific construction plan.

6 MR. BECKNER: Okay. Nothing further.

7 CHAIRPERSON GRIFFIS: Thank you.

8 MR. HUNSICKER: Mr. Chair, for the  
9 record, my name is Steve Hunsicker. I live AT 3083  
10 Ordway Street, N.W. Mr. Anthony, just a couple of  
11 questions. You were talking about the grade on  
12 Ordway Street, you recall, and I believe you  
13 indicated that it would be about the same after  
14 construction as it is now.

15 You also produced the map that showed Xs  
16 on trees that would be removed, or expected to be  
17 removed. I'm interested in the five trees depicted  
18 along the Ordway frontage. This is roughly the N.W.  
19 corner of the property. I ask you if you know why if  
20 the grade is to be the same before and after  
21 construction, those five trees are shown as being  
22 removed or destroyed.

23 MR. ANTHONY: Those trees would be moved  
24 or couldn't stay because that would effectively be  
25 one of the, or probably the construction entrance

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1 that would give us access.

2 MR. HUNSICKER: So you've identified that  
3 area as a construction access?

4 MR. ANTHONY: That's one of the places on  
5 the site that would be convenient access to the site.

6 I think we were being conservative in our estimate  
7 of trees that would survive this construction so we  
8 assumed that if, as Mr. Beckner said, trucks would be  
9 driving through there that those trees would not  
10 survive.

11 MR. HUNSICKER: Have you identified any  
12 other likely construction entrance points?

13 MR. ANTHONY: No, I haven't.

14 MR. HUNSICKER: Do you know whether those  
15 five trees are volunteer trees?

16 MR. ANTHONY: I don't believe those are.  
17 Those were trees that were planted as part of a  
18 landscaping land prior to my involvement with the  
19 project.

20 MR. HUNSICKER: And do you know that that  
21 landscaping plan was the result of an agreement  
22 between NCRC and its neighbors back in 1994 to  
23 resolve a dispute that existed at that time?

24 MR. ANTHONY: I recall something to that  
25 effect, yes.

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1 MR. HUNSICKER: Okay. Thank you. Let me  
2 ask you questions about you also produced, I believe,  
3 some questions, a couple pages. One is entitled,  
4 "National Child Research Center Square Footage  
5 Summary." The other is the page that shows your  
6 estimates of capacity for people.

7 MR. ANTHONY: Yes.

8 MR. HUNSICKER: I'm trying to see if I  
9 can tie these two together. I see that looking at  
10 the page that shows capacity for people, tables and  
11 chairs, there's a reference to total net square feet  
12 of 245. Do you see that, sir?

13 MR. ANTHONY: Yes.

14 MR. HUNSICKER: Can you relate that to  
15 the square footage summary shown on the proposed use  
16 page, if you will?

17 MR. ANTHONY: They are really two  
18 completely separate subjects. This calculation was  
19 done in response to a specific question about the  
20 capacity of the indoor play space. The square  
21 footage summary is a summary of the different uses in  
22 the project and their square footages.

23 MR. HUNSICKER: Let me get at it this  
24 way. Is the indoor play space depicted on the one  
25 sheet, is that part of the ground level classroom

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1 space identified on the other document?

2 MR. ANTHONY: Of the carriage house, yes.

3 MR. HUNSICKER: So it's part of the  
4 carriage house ground level or is it --

5 MR. ANTHONY: Lower level.

6 MR. HUNSICKER: Excuse me. So, just to  
7 be clear, 1,245 square feet comes out of the carriage  
8 house lower level square footage of 2,295 square  
9 feet. Is that correct?

10 MR. ANTHONY: Yes. That square footage  
11 is included in the lower level of the carriage house.

12 MR. HUNSICKER: Okay. Have you provided  
13 us anywhere a document that allows us to show the  
14 seating capacity of all of the classroom space in the  
15 carriage house?

16 MR. ANTHONY: No, I have not. I wasn't  
17 requested to do that.

18 MR. HUNSICKER: Well, would it be  
19 appropriate to use the same square foot net that you  
20 show on the national child research center, that  
21 being seven square foot for chairs, 15 square foot  
22 net for tables and chairs?

23 MR. ANTHONY: No, it would not.

24 MR. HUNSICKER: Okay. How would we go  
25 about calculating the seating capacity for the

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1 carriage house in toto if we were to do so?

2 MS. DWYER: Mr. Chairman, I have a point  
3 of clarification. Is the purpose of this to  
4 determine the seating capacity for the children or  
5 the seating capacity for adults who would be using  
6 the space for something other than classroom?

7 MR. HUNSICKER: I'm just asking him to  
8 use the same assumptions that he used in producing  
9 the one space that represents a very limited portion  
10 of the total usable classroom space in the carriage  
11 house and tell us how he would calculate the total  
12 seating capacity in the carriage house.

13 MS. DWYER: But that was not the request  
14 for this information, Mr. Chairman. The request was  
15 to take the space that would be used for meeting  
16 space and show the capacity of that space. The  
17 school has said on the record that it is not using  
18 existing classrooms in other areas for meeting room  
19 space.

20 CHAIRPERSON GRIFFIS: I guess the  
21 question of clarification is to what end are you  
22 wanting to know the information. What's the point, I  
23 guess.

24 MR. HUNSICKER: Mr. Anthony, could your  
25 other spaces in the carriage house be used for

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1 conference gatherings? Could it accommodate seatings  
2 of people such as you show for the proposed motor  
3 indoor play meeting space?

4 MR. ANTHONY: Basically they are designed  
5 as classrooms and we have designated a specific area  
6 that is more of a multi-use play space, meeting  
7 space. That was what this calculation was about, the  
8 capacity of that space.

9 MR. HUNSICKER: But you would agree,  
10 would you not, that the other spaces could be used  
11 for meeting spaces as well?

12 MR. ANTHONY: Like I said, it's  
13 physically possible, yes.

14 MR. HUNSICKER: Thanks. I have no other  
15 questions.

16 CHAIRPERSON GRIFFIS: Okay.

17 MS. DWYER: I have a question on  
18 redirect. Mr. Anthony, could all the existing spaces  
19 in the school also be used for meeting spaces under  
20 the prior calculation?

21 MR. ANTHONY: Yes.

22 MS. DWYER: Thank you.

23 CHAIRPERSON GRIFFIS: Follow-up? Okay.  
24 Thank you very much.

25 The Little party.

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1 MR. LITTLE: I'm Henry Little. I'm the  
2 owner of the home immediately adjacent to NCRC on the  
3 west side of NCRC on Ordway Street. I just have one  
4 question and that is do you have any drawings among  
5 the ample drawings that you have back there that  
6 actually show what the visual impact is of the  
7 proposed expansion on my house as shown from my  
8 backyard? Are there any drawings among those? If  
9 so, may I see them, please?

10 MR. ANTHONY: The only drawing we have  
11 would be the west elevation of the carriage house.

12 MR. LITTLE: But there has been no effort  
13 to display what the impact would be on the neighbor  
14 that shares perhaps one of the longest common  
15 borders. May I see the drawing?

16 CHAIRPERSON GRIFFIS: We're doing cross-  
17 examination on the recently submitted. That's  
18 appropriate in your case presentation if you'd like.  
19 He's just evidenced the west elevation which I'm  
20 going to try and take a look at.

21 MR. LITTLE: Mr. Chairman, I just think  
22 to inform everybody we have lovely drawings of what  
23 it would look like from the street and what it will  
24 look like from both streets, but we don't know what  
25 it will look like --

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1 CHAIRPERSON GRIFFIS: We do have those.  
2 I have looked at the west elevation. If you want to  
3 explore that further, we certainly would look for  
4 that in your case presentation.

5 MR. LITTLE: The reason I ask this, I  
6 sent a little to Ms. Susan Piggott on September 6,  
7 2002, asking for this information.

8 CHAIRPERSON GRIFFIS: Is this going to  
9 develop into a question that Mr. Anthony can answer?

10 MR. LITTLE: Go ahead. You seem to --

11 CHAIRPERSON GRIFFIS: I'm sorry, Mr.  
12 Little. Let me just clarify where we are in this  
13 process. This is for cross-examination of the  
14 witness and that means you need to ask him questions  
15 that will help your case and it has to be based on  
16 questions that are directly related to the testimony  
17 that he gave specifically today.

18 MR. LITTLE: Okay.

19 CHAIRPERSON GRIFFIS: He is being called  
20 back to present the additional information.

21 MR. LITTLE: In that I flew in from San  
22 Francisco and I thought at last I had a chance to  
23 talk to somebody who might be forthcoming with  
24 information that impacts me perhaps more than anyone  
25 else, I thought I would take this opportunity but if

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1 it's not appropriate, I won't.

2 CHAIRPERSON GRIFFIS: Right. Mr. Little,  
3 let me also be very clear in the presentation of your  
4 case that is absolutely the appropriate time for you  
5 to present the information.

6 ANC-3C, representative to do cross-  
7 examination. No cross-examination on that? Does the  
8 Friends of NCRC or Katherine Marshall have any cross-  
9 examination of the witness of Mr. -- the architect?

10 MS. MARSHALL: No.

11 CHAIRPERSON GRIFFIS: Okay. Thank you.  
12 Then we are done with the cross-examination of this  
13 witness? Very well.

14 The next witness you are going to call  
15 will be Susan Piggott. Is that correct?

16 MS. DWYER: Yes, that's correct.

17 CHAIRPERSON GRIFFIS: We're going to take  
18 a five-minute break and then we'll go to that  
19 witness.

20 (Whereupon, at 3:37 p.m. off the record  
21 until 3:52 p.m.)

22 CHAIRPERSON GRIFFIS: Let me just  
23 address, first of all, at the pace we're going I  
24 would anticipate that we will get through all of the  
25 witnesses today through the traffic engineer and

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1 hopefully reach the Office of Planning. I'll hear  
2 from others if they disagree with me.

3 I do not believe we'll get to other  
4 Government agency reports, DDOT, or the ANC today so  
5 we would be rescheduling so if that helps people in  
6 terms of their afternoon. Let me take any of the  
7 parties involved if they disagree with that because  
8 I'm prepared to let them use their own judgment.

9 That is, anybody other than the Office of  
10 Planning to schedule their afternoon. We're hard on  
11 the Office of Planning so we don't cut them any  
12 slack. Is that amenable? There's no objection to  
13 that? Is that understood?

14 MS. DWYER: That's fine with NCRC.

15 CHAIRPERSON GRIFFIS: Okay. I have been  
16 given a message actually that people are approaching  
17 staff about asking whether they might go on or not so  
18 if that helps in terms of the assessment of whether  
19 you will or will not, we'll let it go at that.

20 Let's continue then and we are at the  
21 next witness.

22 MS. PIGGOTT: Good afternoon, Chairman  
23 Griffis and Members of the Board. My name is Susan  
24 Piggott and I am the Executive Director of the  
25 National Child Research Center, NCRC.

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1           Before I begin, I just need to warn you  
2           that I am getting over a nasty bronchitis and if I  
3           have a coughing spasm, I will have to get up and run  
4           out of the room. I just wanted to let you know that  
5           this is no way could construe that I am not willing  
6           to participate in this process and I'll be right  
7           back.

8           I have many responsibilities at NCRC.  
9           These include developing programs for the school,  
10          hiring staff and teachers, monitoring our compliance  
11          with licensing and zoning requirements, and  
12          maintaining ongoing relationships with our neighbors.

13          I take all of these responsibilities very  
14          seriously and I can assure you that NCRC has fully  
15          complied with and often exceeded the conditions of  
16          our 1998 special exception approval.

17          My testimony today will address several  
18          issues. I will give you a brief history of our  
19          program, staffing, and enrollment patterns; talk  
20          about our compliance of licensing requirements; talk  
21          about our transportation management plan which is in  
22          full compliance with BZA prior conditions; give you a  
23          little bit of information about plans for our site  
24          community outreach and changes that we have agreed to  
25          in response to concerns that have arisen from the

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1 neighbors; and talk to you about the importance of  
2 our project not only to our program but to the  
3 children of the District of Columbia as well.

4 Through my testimony I hope to assure you  
5 that we meet all the requirements under the Zoning  
6 Regulations and that our use is located and designed  
7 to create no objectional traffic conditions and no  
8 unsafe condition for students.

9 Let me begin with a brief history of the  
10 school's program, staffing, and enrollment. Let me  
11 just draw your attention to this chart over here to  
12 my right that has to do with enrollment. If you look  
13 at that chart you will see that during the 1980s NCRC  
14 maintained a stable enrollment of between 141 and 145  
15 students. Some came in the morning, some came in the  
16 afternoon, and some attended all day. In 1990  
17 research --

18 CHAIRPERSON GRIFFIS: I'm sorry to  
19 interrupt you. Why don't we just take a moment  
20 because I think people need to reposition themselves  
21 so they can view this while you give the testimony.  
22 We'll just get the parties over. If need be we can  
23 pull chairs out a little bit to accommodate.

24 Are there any additional chairs we can  
25 get over on this side? We can bring chairs right up

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1 here if we need to in front of the recorder. Thank  
2 you. Everybody comfortable? Can everyone see?  
3 Let's continue.

4 MS. PIGGOTT: In 1990 research in our  
5 field of early childhood development brought about  
6 some changes to our program. The first of these was  
7 that early intervention can make a huge difference in  
8 a child's life with regard to their later school  
9 success.

10 To this end, we lowered our entry age  
11 from three years old to two and a half and added our  
12 inclusion program for children with special needs.  
13 When we added this younger group our enrollment  
14 increased to a level between 167 and 171. If you  
15 again look at this chart, you can see that our  
16 enrollment has stayed within this range for the past  
17 13 years.

18 The addition of our children with special  
19 needs led to the hiring of a speech language  
20 pathologist and occupational therapist and a  
21 counselor. Additional research in the 1990s in the  
22 area of motor development taught us that motor and  
23 movement activities are beneficial for children not  
24 only for their physical development but also  
25 important for brain development for later learning.

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1           To this end we hired a part-time music  
2 teacher -- I'm sorry, motor teacher to carry out the  
3 goals of this program. As a result of these  
4 improvements, we now have 32 full-time equivalent  
5 staff members and approximately 171 children.

6           Upon completion of our project, we will  
7 increase our full-time equivalent staff from 32 to 38  
8 adding four teachers, two for each of the classrooms  
9 we're proposing, one additional resource teacher, and  
10 a maintenance person. That will increase our  
11 enrollment from 171 to 181 students.

12           Please keep in mind that even though our  
13 total enrollment will increase from 171 to 181, we  
14 are not requesting a change to our certificate of  
15 occupancy. We plan to continue a maximum of 120  
16 students at any one time.

17           Some of them will come in the morning,  
18 some in the afternoon, some all day, and still others  
19 don't come even all five days. When these students  
20 are added together, they make up a total enrollment  
21 of 181 students.

22           I would next like to address our  
23 licensing requirements. NCRC meets all applicable  
24 code and licensing requirements from the District  
25 Department of Health. We comply with Section 205.2

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1 of the Zoning Regulations. The Department of Health  
2 issues the license that regulates the number of  
3 students that we can have at any one time.

4 Our present Department of Health license  
5 authorizes 108 students at any one time. Even though  
6 our certificate of occupancy permits 120 under our  
7 Department of Health license we are limited to 108  
8 students.

9 With our new space we will have  
10 sufficient capacity to increase our license to 150  
11 students at any one time. This information is  
12 contained in the February 3rd report from the  
13 Department of Health that you have which is in the  
14 record.

15 NCRC does not intend to increase the  
16 number of students at any one time to 150. Instead,  
17 we have agreed to limit our maximum number of  
18 students to 120. Again, we are not asking for change  
19 in our certificate of occupancy with regard to the  
20 number of students. I want to make that clear. We  
21 have agreed to the number 120, the number that our  
22 current certificate of occupancy allows.

23 If you have heard previously from Alexia  
24 Halaby, the reason that we're not asking for an  
25 increase in our certificate of occupancy is that our

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1 goal is to form smaller group sizes of children in  
2 our classrooms to better serve our students,  
3 particularly those with special needs.

4 The District of Columbia Department of  
5 Health Report in the record has recommended approval  
6 of this application. We remain in close consultation  
7 with the Department of Health. They visit our site  
8 often to inspect and monitor and we will continue to  
9 comply with all licensing requirements.

10 The third issue I would like to address  
11 is the current operation of our transportation  
12 management plan. I'm proud to tell you that we  
13 support the principle of clean hands. We come before  
14 you having met or exceeded all the conditions in our  
15 1998 BZA order which essentially make up our TMP.  
16 This is my personal responsibility.

17 I was hired in the summer of 1998, just  
18 after the '98 BZA conditions were approved. The  
19 Chair of our Board of Trustees sat down with me and  
20 in our first orientation session went over these  
21 conditions with me and told me how important it was  
22 that we comply with these completely and precisely.

23 I made that my first priority. To that  
24 end I wrote a letter to over 100 neighboring  
25 households introducing myself, stating my absolute

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1 commitment to enforcing these conditions, providing a  
2 calendar of school events, pledging to be responsive  
3 and accessible, supplying a telephone number at which  
4 I could be reach immediately and inviting neighbors  
5 if any problem arose. There's a copy of my letter in  
6 our first prehearing submission under Exhibit O.

7 From 1998 until February of 2002 when we  
8 first brought to the community our plans, I had  
9 remarkably few calls regarding traffic. We keep  
10 records of the calls that we get and these calls were  
11 limited to about three or four per year.

12 As a matter of fact, a number of  
13 neighbors, immediate neighbors, would often stop me  
14 on the street and thank me for our efforts and tell  
15 me that not only could they see that we were trying  
16 hard, but that we had actually made a palpable  
17 difference in the traffic flow and management on  
18 Highland Place.

19 I just want to read to you an e-mail that  
20 was posted on the Cleveland Park liserv on January  
21 23rd from an immediate neighbor who lives right  
22 across the street from the school.

23 CHAIRPERSON GRIFFIS: What year was that?

24 MS. PIGGOTT: 2002. She says, "The  
25 school lives its mission statement every day. The

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1 director and the members of the board have made huge  
2 efforts to alleviate the neighbors problems of  
3 parents and caregivers parking illegally and  
4 inconsiderately, and they have produced results."  
5 This is from one of our opposing neighbors.

6           Every time the school receives a  
7 complaint, that complaint is handled in person  
8 immediately by myself or by my business manager. I  
9 always go personally to the house, meet with the  
10 neighbor, and often our conversation will result in a  
11 change to our TMP to address whatever it was that was  
12 brought up during that conversation.

13           The changes that we made beyond the 1998  
14 BZA conditions are included in Exhibit O to our first  
15 filing. You can see the list of those changes to our  
16 TMP and you can see that they go well beyond what we  
17 are required to do by the BZA in 1998.

18           To my knowledge, there has never been a  
19 traffic accident on Highland Place, nor an unsafe  
20 traffic condition in the long history of the 73 years  
21 that the school has been on that site.

22           I would like to just briefly describe the  
23 operation of our TMP and the best way to do that is  
24 to give you a quick snapshot of what happens in a  
25 typical morning. At 8:00 we place cones -- our staff

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1 places cones at a number of locations along Highland  
2 Place and Ordway Street. These cones are for the  
3 purposes of just showing where driveways are and  
4 marking illegal parking spaces.

5 At 8:30 in the morning at least 10  
6 members of our staff come out and take their places  
7 on the street and they wear orange vests just like  
8 this. I wear one, too. They take their places on  
9 the street and school begins at 8:35.

10 A staff member is located on the corner  
11 of Newark and 33rd Street -- Mr. Thomas is pointing  
12 out these locations -- Highland and 33rd Street,  
13 Ordway Street, and at a white line which is painted  
14 in the street which marks where neighbors' driveways  
15 are and indicates where cars should be for the  
16 beginning of school and for carpooling.

17 As cars pull up, other staff members that  
18 are not located at those locations take children from  
19 their cars and accompany them to the classrooms.  
20 Parents are not allowed to get out of their cars.

21 It is important for you to know that our  
22 parents are required to use Highland Place as a one-  
23 way street even though it's not a one-way street for  
24 everyone. They are not allowed to turn into 33rd  
25 Place but must proceed down Newark Street to the east

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1 entrance of Highland, come around, drop off their  
2 children, and exit at Newark and 33rd Place. This is  
3 an extra measure that we included in our TMP and we  
4 found that this one-way pattern works extremely well  
5 for managing traffic.

6 Our staff stays on the street until at  
7 least 8:50 in the morning, sometimes longer in the  
8 event of snow and rain. Anyone, caregiver, parent,  
9 grandparent who is not following our procedure  
10 receives an immediate call from me.

11 What I have just described is much more  
12 than what we are required to do by the BZA as part of  
13 our 1998 special exception approval. We fully comply  
14 again with our BZA conditions.

15 My teachers are out on the street every  
16 day rain or snow wearing these orange vests. They do  
17 it because they understand how important it is that  
18 we have good relations with our neighbors. Because  
19 of their consistent dedication day after day I  
20 believe that there cannot be a school in the District  
21 that has a more organized and well-run traffic  
22 operation.

23 In recent discussions that we have had  
24 with Department of Transportation, they have  
25 determined that allowing a line of cars waiting to

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1 drop children off, what they have termed "double  
2 standing" is not a safe condition even though it was  
3 approved by the BZA in 1998.

4           However, DDOT would like to see  
5 improvement and we have agreed. We have agreed to  
6 make a number of more changes to our TMP and this is  
7 the regulatory alternative that has been mentioned by  
8 DDOT in its report.

9           In our new improved TMP the following  
10 changes would be made. Parking would be restricted  
11 for the entire school frontage on Highland Place.  
12 Presently parking is prohibited for half of the  
13 frontage during school hours.

14           This would allow us to double the  
15 capacity of cars letting off children. We would be  
16 able to increase the number of cars from four to  
17 eight and this would reduce the opportunity for  
18 double standing. We have agreed to stagger arrival  
19 times for children at 10-minute intervals. This  
20 would also reduce the opportunity for double  
21 standing.

22           We have agreed to hire two uniform  
23 persons to monitor carpool from 8:15 to 9:15. Both  
24 will have signage to direct traffic so that if a car  
25 is coming from the opposite direction, a uniformed

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1 person could direct traffic to avoid any safety issue  
2 whether it has to do with one of our cars or a  
3 neighbor's car.

4 We have agreed to reschedule our  
5 prospective parent tours during nonpeak traffic  
6 periods. We have added a provision in our enrollment  
7 contract which will take place this coming school  
8 year which allows us to expel families who do not  
9 agree to abide by our transportation management plan.

10 We will require parents, staff to place  
11 ID sticker on their cars and provide tag numbers to  
12 us to help us with our enforcement so that we can  
13 tell which cars are NCRC cars. We will continue to  
14 hire three uniformed persons for all of our all-  
15 school events, we will designate a traffic liaison  
16 person from the NCRC staff, and we will create a  
17 liaison committee with neighbor representatives so  
18 they can help us address issues as they arise.

19 With these changes we believe that we  
20 more than fully address the issues that have been  
21 raised by DDOT. Our transportation management plan  
22 will continue to provide safe operation for the  
23 picking up and dropping off of children.

24 DDOT has also suggested making Highland  
25 Place one way as another alternative. We fully

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1 support this. We have found that it is very  
2 effective for our traffic. However, we also believe  
3 that a regulatory approach can work. We agree to be  
4 bound by whatever new condition the BZA imposes upon  
5 us just as we did in 1998.

6 The final point I would like to address  
7 is our community outreach and the changes we've made  
8 to our plans over the course of the last year and a  
9 half. As soon as our board of trustees approved a  
10 draft plan for what we wanted to do with our project,  
11 we immediately contacted neighbors to talk to them  
12 about what we propose and to elicit their comments  
13 about our project.

14 I personally made phone calls to the  
15 Beckners, to the home of Gaylord Neely and Linda  
16 Badami. I met with Laine Kaufman and by board  
17 members met with other neighbors on Highland and  
18 Ordway Street. Most of these telephone calls took  
19 place on January 18, 1992.

20 I met with any neighbor who would meet  
21 with me and review the plan and heard their concerns.

22 Many of the neighbors in opposition have never  
23 returned my phone calls or taken me up on my offers  
24 to have them tour the school so I have not had the  
25 opportunity to respond to many of them.

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1           The next thing I did was schedule a  
2 meeting at NCRC for our own parents and then another  
3 meeting that same day in the afternoon for neighbors.

4           That was on February 2, 2002. Over 100 neighbors  
5 attended.

6           I have to tell you that I was stunned to  
7 hear the level of the traffic concerns from some of  
8 our opposing neighbors because so few had been  
9 communicated to me over the past four years.

10           Nevertheless, we listened and we made a  
11 number of changes to our plans including reducing our  
12 proposed total enrollment. We had originally  
13 proposed to add 19 children and reduced that to 10.  
14 We reduced the size of our new building.

15           We've reduced the amount of space that is  
16 above ground in our new building and agreed to put it  
17 underground. As you've already heard, we have agreed  
18 to make many changes to our TMP. I can personally  
19 say that over the last year and a half we have made  
20 every effort to address every single issue that has  
21 been raised by the community.

22           The one thing that we simply cannot do is  
23 to not move ahead with our project. It's too  
24 important to our school, our students, and to our  
25 city. What we have done instead is to make every

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1 effort to accommodate the reasonable concerns of our  
2 neighbors and that's what we believe the special  
3 exception process requires.

4 Our program includes some accessory  
5 school events that are similar to those that all  
6 preschools have and these include things such as our  
7 parent/teacher conferences, back to school night, our  
8 annual pumpkin party to which we invite neighborhood  
9 children, and our pajama picnic. We also provide a  
10 six-week summer camp for about 130 students.

11 Consistent with our mission NCRC  
12 sometimes host workshops to share best practices with  
13 other child development facilities in the District of  
14 Columbia. This past year we hosted an early  
15 childhood education conference free for District of  
16 Columbia preschool educators from all around the  
17 city. We brought teachers together to hear speakers  
18 on topics of educational interest and to spend the  
19 day just discussing recent innovations in our field.

20 In order to do this we closed school,  
21 notified the neighbors in advance, hired three  
22 uniformed security people to help us with parking and  
23 with our visitors, and we provided off-site parking  
24 for some of the visitors with shuttle service.

25 We have conducted workshops such as these

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1 many times over NCRC's long history. It's part of  
2 our mission. We have them now. We have already had  
3 them and we presently hold them in our playhouse. In  
4 the future we will hold them in our indoor motor  
5 space. It's a more appropriate space.

6 That is the extent of the conferences  
7 that you've heard about over and over and that you  
8 may continue to hear about from opposing neighbors.  
9 That's what we're talking about. We are not a  
10 conference center. We are not proposing to be a  
11 conference center and we don't aspire to be one.

12 We do have an indoor play space. We are  
13 planning to add two small private rooms that we've  
14 called conference rooms. But you have to understand  
15 that when teachers talk about conferences they mean  
16 parent/teacher conferences.

17 We're talking about two very small rooms  
18 that have a table and chairs just large enough for  
19 two parents and me and two teachers and any  
20 representatives who come from the District of  
21 Columbia to meet with a family about a child and  
22 discuss their progress. That is the extent of what  
23 we mean when we say conferences. I want to make sure  
24 that's very clear and just put that issue to rest.

25 In the future such workshops will

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1 continue to be held on weekdays or Saturdays and we  
2 have agreed to limit them to a maximum of three in  
3 any 12-month period. We will provide off-site  
4 parking again sufficient to accommodate 30 vehicles,  
5 provide shuttle service, close school, hire our same  
6 uniformed officers.

7 Our additional 10 students will not be  
8 added until a building is constructed. At that point  
9 we will direct our students with classes in the new  
10 building to use the Ordway entrance to the school to  
11 reduce the number of cars on Highland Place.

12 We believe that it is extremely important  
13 for this project to be approved for this city as well  
14 as for our program. Our school is valuable to the  
15 District of Columbia in serving children with special  
16 needs and providing financial aid for a number of  
17 families, and serving as a resource for educators  
18 locally, nationally, and internationally.

19 As you are aware, or you may be aware,  
20 there is a critical shortage of preschool spaces for  
21 children in the District of Columbia. Ms. Dwyer is  
22 going to give you a handout from November 2002 that  
23 was statistics given to us and to the community by  
24 the Office of Early Childhood Development, the  
25 District of Columbia, the Department of Human

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1 Services, which will show you that there are a total  
2 of over -- well, almost 10,000 students on waiting  
3 lists in the District for preschool spaces.

4 In addition, we continue to allow our  
5 neighbors to use our playground on weekends and after  
6 school. We've enjoyed that. Over 80 percent of our  
7 playground will remain green space. I want to remind  
8 you again after listening to Mr. Anthony that you  
9 know that is more than any other lot in Cleveland  
10 Park.

11 Before I conclude, I would like to ask  
12 you to step back and just put some perspective on  
13 this project. NCRC has made very few changes to its  
14 physical plant in the 73 years that it's been on  
15 Highland Place. We have no grandiose ideas. We've  
16 never had any. Times change. We are only seeking to  
17 bring our program in line with the times, not to  
18 change our mission. We cannot continue our status  
19 quo. Our teachers and children are paying too high a  
20 price.

21 NCRC is the kind of school that I would  
22 hope neighbors would want in the neighborhood. We  
23 take seriously their concerns. We are responsive  
24 immediately when a concern arises and we've been an  
25 integral part of the neighborhood for 73 years.

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1 We're in Neighbor 2. And we want to continue to be  
2 good neighbors.

3 We are looking to you as the BZA to help  
4 us make sure that our conditions are crafted so that  
5 in the future they are clear and unambiguous for us  
6 as well as for our neighbors. That they are well  
7 articulated, measurable, enforceable, not just for  
8 our neighbors but for us as well. Thank you.

9 CHAIRPERSON GRIFFIS: We're going to try  
10 our best to meet that challenge if we get to that  
11 point.

12 MS. PIGGOTT: I hope so.

13 CHAIRPERSON GRIFFIS: Okay. Cross-  
14 examination. Questions by the Board immediately  
15 before we do that? Okay. I have just one quick  
16 clarification. You were talking about the events and  
17 the times. You said three in any one month.

18 MS. PIGGOTT: We said in any 12-month  
19 period. We were just trying to show that we were  
20 definitely willing to limit those workshops.

21 CHAIRPERSON GRIFFIS: Okay. Good.

22 VICE CHAIRPERSON HOOD: Mr. Chairman, I  
23 do have a question for Ms. Piggott.

24 The staggered times you mentioned, how  
25 are you going to enforce that?

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1 MS. PIGGOTT: Well, what we think would  
2 be the best way to do that is we have six different  
3 classrooms of children of different ages so what  
4 we'll do is we'll divide those classes into three  
5 groups and require one group to come at 8:25 in the  
6 morning, one group at 8:35 in the morning, and one  
7 group at 8:45 in the morning.

8 Remember that we are out there. We have  
9 ID stickers on the cars and tag numbers for everyone.

10 Plus this school is not that big of a school. We  
11 know everybody very, very well. I know every single  
12 parent. I know their names. I know the kids names.

13 I know who is out there and what time they are  
14 arriving so it's not like --

15 VICE CHAIRPERSON HOOD: Let me just say  
16 this. As we go through the process you might want to  
17 rethink that because often times I run late and I may  
18 run in with the 8:30 group. I just wanted to put  
19 that out there.

20 I had a number of other questions, Mr.  
21 Chairman.

22 VICE CHAIRPERSON HOOD: Not that you drop  
23 a child off there. Are you, Mr. Hood?

24 VICE CHAIRPERSON HOOD: Uh?

25 CHAIRPERSON GRIFFIS: Not that you're

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1 saying you're dropping a child off at NCRC?

2 VICE CHAIRPERSON HOOD: No, no, no. I  
3 wasn't insinuating that. I was just saying --

4 CHAIRPERSON GRIFFIS: Well, I think it's  
5 an excellent point of the preciseness. How precise  
6 can we be. I think that is one of the points. If we  
7 get to an issue of writing conditions, if we get to  
8 that level, I think that is something we've had to  
9 deal with before.

10 VICE CHAIRPERSON HOOD: Enforce it.  
11 Enforceability. That's where I'm going with that.  
12 Thank you.

13 MS. PIGGOTT: Thank you.

14 CHAIRPERSON GRIFFIS: Anything else?

15 VICE CHAIRPERSON HOOD: I had a number of  
16 others but I'm going to yield to the cross-  
17 examination. They will probably be answered then.

18 CHAIRPERSON GRIFFIS: Okay. Very well.  
19 Mr. Nettler.

20 MR. NETTLER: Thank you. Ms. Piggott,  
21 it's apparent from your testimony that you looked  
22 over the last, as you said, the 70 years of history  
23 of the NCRC at the site. Is that correct? In  
24 preparing for this hearing? Is that correct?

25 MS. PIGGOTT: I studied certain things

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1 about the past few years. Things that have come up  
2 such as our enrollment.

3 MR. NETTLER: And you studied the past  
4 record of the BZA hearing in 1998?

5 MS. PIGGOTT: What I studied was the BZA  
6 conditions. It's my understanding that it's that  
7 final document of BZA conditions that is important  
8 for me to comply with. Those are the things that I  
9 looked at extremely carefully and kept on my desk and  
10 made sure that we complied.

11 MR. NETTLER: Is that what you were told  
12 in 1998 when you joined NCRC that there was a  
13 distinction being made between what was in one  
14 decision as opposed to another decision, or is that  
15 something that you were told by your counselor  
16 recently?

17 MS. PIGGOTT: I'm not sure I understand.  
18 All I know is that the chair of my board went over  
19 the conditions with me and I know what they are.  
20 There are eight of them and I know that we have  
21 complied with them fully.

22 MR. NETTLER: Fully. Okay. We'll get to  
23 that in a minute. Let's deal still with the history.  
24 Were you at the hearing in 1998?

25 MS. PIGGOTT: No, I wasn't. I hadn't

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1       been hired by the school until after that.

2                   MR. NETTLER:   Okay.  When you took over  
3       at the school where were these workshops being held  
4       that you made reference to?

5                   MS. PIGGOTT:  The ones that I know about,  
6       many of them were held at the school.

7                   MR. NETTLER:  Okay.  Were any of them  
8       being held at a church near New Mexico?

9                   MS. PIGGOTT:  I don't know.

10                  MR. NETTLER:  Have any since then been  
11       held at a church across from New Mexico Avenue?

12                  MS. PIGGOTT:  No.

13                  MR. NETTLER:  Okay.  Now, with regard to  
14       the conditions that you understood to be enforced at  
15       the time that you took over, was there a condition  
16       that you have 28 full-time employees that you are  
17       aware of?

18                  MS. PIGGOTT:  Yes.  We realized at the  
19       time that we drafted our project that we had 32 full-  
20       time employee teachers, FTE.

21                  MR. NETTLER:  We'll get to that point but  
22       let's talk about 1998.  So you were aware in 1998  
23       that there was -- excuse me, Ms. Dwyer.  Let her  
24       testify.

25                  MS. DWYER:  I want her to understand your

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1 question so if you could say it slowly.

2 MR. NETTLER: She's allowed to -- she can  
3 on redirect certainly try and explain something but  
4 it's inappropriate for her to be directing her.

5 CHAIRPERSON GRIFFIS: Okay. We'll try  
6 and streamline it so questions can be asked and  
7 answered unimpeded.

8 MS. PIGGOTT: Repeat that.

9 MR. NETTLER: Yes. Did you understand at  
10 the time in 1998 that there was limitation of 28  
11 full-time employees for the school?

12 MS. PIGGOTT: No, I did not understand  
13 that. Let's say I was not focused on that. I was  
14 focused on the BZA conditions and the certificate of  
15 occupancy for the number of students that we were  
16 required to have in the school. Every year the  
17 Department of Health came out to our school and  
18 signed off on the number of staff that we had.

19 MR. NETTLER: But the Department of  
20 Licensing had nothing to do with the zoning order or  
21 the zoning process. Did it?

22 MS. PIGGOTT: No.

23 MR. NETTLER: Okay. When did you become  
24 aware that there was some requirement that you have  
25 28 FTEs on site?

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1 MS. PIGGOTT: I think, again, as I said,  
2 we realized this right about the time that we were  
3 putting our draft proposal together for our project.

4 MR. NETTLER: So that was a year ago?

5 MS. PIGGOTT: Well, that was around 2,002  
6 is when we started to realize our plan.

7 MR. NETTLER: Okay. And you realized  
8 then instead of having 28 you had 32. Is that  
9 correct?

10 MS. PIGGOTT: Yes, we had 32 full-time  
11 equivalent staff.

12 MR. NETTLER: Okay. So that was not  
13 consistent with what you then learned to be a  
14 requirement of your prior application. Was it?

15 MS. PIGGOTT: No. And we talked about  
16 that. We could have gone to the DCRA and asked that  
17 be amended. We knew that we were getting ready to  
18 come before the BZA and we elected to try to handle  
19 that issue when we came. I guess I should say that  
20 at the time we never anticipated that it would take  
21 long.

22 MR. NETTLER: That's five years.  
23 Correct? In which it's been in excess --

24 MS. PIGGOTT: No. It was --

25 MR. NETTLER: -- of the amount that was -

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1 - of the 28 employees.

2 MS. PIGGOTT: It wasn't until sometime in  
3 2000 that we were aware of that. It's now 2003.

4 MR. NETTLER: What was the FTEs before  
5 2000? From 1998 to 2000?

6 MS. PIGGOTT: It was 28 or below.

7 MR. NETTLER: When did you add those  
8 additional FTEs?

9 MS. PIGGOTT: We added those staff,  
10 again, right around the year 2000. We added about  
11 five staff members.

12 MR. NETTLER: Okay. So that would make  
13 it 33. Correct?

14 MS. PIGGOTT: Um-hum.

15 MR. NETTLER: All right. So not 32 but  
16 33.

17 MS. PIGGOTT: Well, one thing I want to  
18 make sure that we clarify is that in a preschool  
19 there are people that come on different days. For  
20 example, we have music teachers that come only on  
21 Monday and Thursday. We have a librarian that comes  
22 on Friday. We have some teachers that split their  
23 day and one teacher teaches a group in the morning  
24 and one teaches a group in the afternoon.

25 MR. NETTLER: You've requested an

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1 increase to 38 employees. Correct?

2 MS. PIGGOTT: Uh-huh.

3 MR. NETTLER: Of that 38 how many are  
4 expected to be full-time and how many expect to be  
5 part-time?

6 MS. PIGGOTT: That's difficult to answer.  
7 You may not be aware but I don't have limitless  
8 numbers of extremely qualified preschool teachers  
9 knocking on my door. What I do is I advertise, look  
10 different places, and sometimes I find excellent  
11 outstanding teachers that are willing to work full-  
12 time and sometimes they don't. That's why I look at  
13 the full-time equivalency number.

14 MR. NETTLER: So then it actually may be  
15 more than 38 that might be there if you are able to  
16 find more teachers. Is that correct?

17 MS. PIGGOTT: But not at the same time.  
18 Not at any one time.

19 MR. NETTLER: Okay. So you understand  
20 then that your request for 38 is only limited to at  
21 one particular time in this application?

22 MS. PIGGOTT: Yes.

23 MR. NETTLER: And is that also your  
24 understanding about the 181 students at any one  
25 particular time?

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1 MS. PIGGOTT: I believe their certificate  
2 of occupancy says that we can have 120 students at  
3 any one time. Again, I think I explained that our  
4 181 number derives from adding together our morning  
5 students, our afternoon students, our all-day  
6 students, and our students who come less than five  
7 days a week.

8 MR. NETTLER: I know that you've asked  
9 for the Board to be -- assuming the Board would grant  
10 your request for a special exception and your  
11 variance request, that it gives some clear direction  
12 as to how many FTEs you'll have. But how is the  
13 Board about to do that when you are unable to tell  
14 the Board what that number will be yourself?

15 MS. PIGGOTT: I think I can tell the  
16 Board with great confidence that our number of full-  
17 time equivalent staff will be 38. I just don't know  
18 how that would break out in terms of how many would  
19 be full-time and how many would be part-time.

20 MR. NETTLER: Okay. How many consultants  
21 come into your school on any given day in addition to  
22 these 32 FTEs?

23 MS. PIGGOTT: What do you mean by  
24 consultants?

25 MR. NETTLER: Do you have people that

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1 come in who aren't particularly teaching but were  
2 there for other purposes?

3 MS. DWYER: If I can just clarify. These  
4 consultants employed by the school?

5 MR. NETTLER: Employed by the school.

6 MS. PIGGOTT: We have no other  
7 consultants who are employed by the school.

8 MR. NETTLER: Could you break down then  
9 the 32 into the types of things that each one does at  
10 the school?

11 MS. PIGGOTT: Sure. We have 12 -- I  
12 really need to look at my sheet. I'm sorry. We have  
13 28 full-time staff members. Twelve of those are  
14 teachers. We have one speech language pathologist  
15 and --

16 MR. NETTLER: Is that part of the 28 or  
17 the 32?

18 MS. PIGGOTT: That's part of the 28. We  
19 have five what we call resource teachers. Some  
20 schools call those assistant teachers. Those are  
21 teachers that act as substitute teachers for us and  
22 otherwise help us out with other tasks and help us  
23 with our children with special needs.

24 There's me, we have a receptionist, a  
25 business manager, development director, one

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1 maintenance person, four administrative assistants,  
2 and a counselor. Then we have 10 part-time staff  
3 members.

4 MR. NETTLER: That adds up to 36 so that  
5 is possibly part of the 28 FTEs. What is the 28 FTEs  
6 then? You've given me -- if I just take away the 10  
7 part-time --

8 MS. PIGGOTT: No, we have 32 FTEs. Our  
9 10 part-time staff, again, as I've said, come on  
10 different days at different times. Those are our  
11 occupational therapists, our music teacher, our motor  
12 teacher, our librarian, our teachers that come half  
13 day.

14 MR. NETTLER: Okay. So part of that 10  
15 are included in the FTEs and part of the 10 are not?

16 MS. PIGGOTT: What we've used is a third  
17 of each full-time staff member to account for one  
18 full-time staff member.

19 MR. NETTLER: Okay. How many of all  
20 those staff people drive to the school?

21 MS. PIGGOTT: Right now about -- let's  
22 see. We have -- I just want to check and make sure  
23 that I give you the exact correct numbers. About 23  
24 percent of our teachers either take Metro or walk.  
25 If you include teachers that have Zone 3 stickers

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1 that's about 30 percent of our staff, so 70 percent  
2 of our staff then drive.

3 MR. NETTLER: So 70 percent drive. Okay.  
4 You mentioned the Zone 3 stickers. That is what  
5 percentage?

6 MS. PIGGOTT: That's three people.

7 MR. NETTLER: Three people. Okay. And  
8 are there any incentives offered for use of Metro?

9 MS. PIGGOTT: Yes. We offer Metro Check  
10 incentives for our employees and we will continue to  
11 do that.

12 MR. NETTLER: Okay. Do parents bring  
13 consultants that they hire to the school for  
14 assistance for their children?

15 MS. PIGGOTT: Yes. Sometimes they do.  
16 They pay for consultants and that is the same in some  
17 other preschools in the District as well.

18 MR. NETTLER: Okay. And how many  
19 consultants on a regular basis, say on a daily basis,  
20 will be at the school?

21 MS. PIGGOTT: Probably on an average one  
22 full-time equivalent person per day.

23 MR. NETTLER: And how many that are  
24 nonfull-time equivalents?

25 MS. PIGGOTT: We probably consult with

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1 four or five different people but, again, they come  
2 at different times because we are limited in our  
3 space and they have to use the same space.

4 MR. NETTLER: Okay. So those are in  
5 addition to the 32, 38 that you've been referencing.  
6 Correct?

7 MS. PIGGOTT: Yes.

8 MR. NETTLER: So it's actually 33 FTEs  
9 and perhaps as high as 42 or 43 total people expected  
10 to be coming to the school, at least from that group  
11 that we have just described.

12 MS. PIGGOTT: There are 39 teachers  
13 listed on our roster of staff, not 42.

14 MR. NETTLER: Okay. So 39 teachers.  
15 Those consultants are part of the teacher group?

16 MS. PIGGOTT: No, because we don't --  
17 they are not our staff. We don't pay them.

18 MR. NETTLER: No, but they do come to the  
19 site on a regular basis. Don't they?

20 MS. PIGGOTT: Yes. Again, average about  
21 one per day full-time equivalent.

22 MR. NETTLER: And the four or five, when  
23 do they come? You said there was one FTE and there  
24 were four or five.

25 MS. PIGGOTT: What I'm saying is we work

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1 with two or three speech pathologists or occupational  
2 therapists and they come on different days at  
3 different times. They are using the same space.

4 MR. NETTLER: And how do they get to the  
5 property?

6 MS. PIGGOTT: Again, the same way that  
7 our teachers do. Some walk, some ride the Metro,  
8 some drive. I can't give you information about that.  
9 I don't know exact information about that.

10 MR. NETTLER: Okay. And this group of  
11 people, are they distinguishable from the special ed  
12 consultants that might be on site?

13 MS. PIGGOTT: Those are the only  
14 consultants that we have to the site that we don't  
15 hire.

16 MR. NETTLER: Okay. And does that  
17 include any special needs, therapists, hearing and  
18 eye specialists?

19 MS. PIGGOTT: No. That includes the  
20 people that I've already mentioned.

21 MR. NETTLER: Okay. So let's then deal  
22 with the special needs therapists and the hearing and  
23 eye specialists. How many?

24 MS. PIGGOTT: I've already mentioned  
25 those. We have a full-time speech therapist and a

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1 full-time counselor.

2 MR. NETTLER: But in addition to the ones  
3 that you've already mentioned, are there additional  
4 ones who are coming?

5 MS. PIGGOTT: No.

6 MR. NETTLER: Are there any aids who come  
7 along with these other consultants?

8 MS. PIGGOTT: As I mentioned, we have  
9 five resource teachers that we refer to -- they are  
10 referred to by other schools as aids or assistant  
11 teachers but they are part of our staff and they work  
12 in our classrooms as substitute teachers and help out  
13 with other tasks.

14 MR. NETTLER: Okay. So these consultants  
15 that are hired by the parents, they don't have aids  
16 that come with those. Is that your testimony?

17 MS. PIGGOTT: Well, occasionally we will  
18 have a student that's an autistic student or on that  
19 spectrum who will need to come to the school with a  
20 shadow and that is a person who comes to school with  
21 them to help them participate fully in the program.

22 MR. NETTLER: So how often does that  
23 person come to the school?

24 MS. PIGGOTT: That person can come  
25 anywhere from three days a week to five days a week.

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1 At the present time we have one that comes in the  
2 morning and one in the afternoon.

3 MR. NETTLER: So we are now up to 40  
4 people. Would that additional person be an FTE as  
5 well?

6 MS. PIGGOTT: Yes. There's one that  
7 comes with one morning student and one that comes  
8 with one afternoon student.

9 MR. NETTLER: So now we're up to 40 even  
10 though you're requesting a limit of 38 people. The  
11 38 that you are requesting only refers to the people  
12 that you hire and not the other people who are coming  
13 to the school?

14 MS. PIGGOTT: Yes. I think that would be  
15 the case probably for any preschool or school.

16 MR. NETTLER: We're just dealing with  
17 your school here. We're not dealing with other  
18 preschools. Do you know where the aids park?

19 MS. PIGGOTT: They are part of our full-  
20 time staff. They are part of the numbers that I  
21 already gave you.

22 MR. NETTLER: No. I'm talking about the  
23 other. You said there was additional individuals who  
24 come. You described one as a shadow to one of these  
25 consultants. Do you know how they get to the school?

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1 MS. PIGGOTT: Any of our staff who drive  
2 to the school park in spots that are unrestricted  
3 around the school. There is a site right behind the  
4 school on Ordway Street where approximately 17 people  
5 can park. Some of our staff parks there. A good  
6 number of them park there.

7 Then there are -- you will have a chance  
8 to hear about this a little more from our traffic  
9 consultant but there are other unrestricted parking  
10 spaces in the neighborhood at which any of our other  
11 staff park.

12 MR. NETTLER: Let's deal with a number of  
13 students. Do you have additional children coming to  
14 the school in January and February for preadmission  
15 play sessions?

16 MS. PIGGOTT: Yes, we do. They are not  
17 students.

18 MR. NETTLER: Okay. Well, children.  
19 What is the number that come to the school in that  
20 program?

21 MS. PIGGOTT: Well, let's see. Between  
22 probably October and January about four days a week  
23 we have -- no, wait. That's not right. I'm sorry.  
24 Let me amend that. In January and February about  
25 four days a week on average we have what we call play

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1 sessions where children come to the school for a  
2 period of 45 minutes with their parents. There is  
3 usually approximately no more than eight children in  
4 those groups.

5 MR. NETTLER: And how many groups are  
6 there?

7 MS. PIGGOTT: Just one at a time.

8 MR. NETTLER: I understand one at a time  
9 but how many groups throughout the day might be  
10 coming?

11 MS. PIGGOTT: Just one each day.

12 MR. NETTLER: Each day there's one so  
13 that's an additional eight coming and leaving at  
14 after they have been there for 45 minutes?

15 MS. PIGGOTT: Yes.

16 MR. NETTLER: And do they arrive at  
17 approximately the same time as one of the groups of  
18 children that are there for the full morning or the  
19 full day?

20 MS. PIGGOTT: Yes. They have been  
21 arriving at 8:45. As I pointed out, an additional  
22 part of our transportation management plan is to  
23 change that group and put them in a non-peak traffic  
24 time so that they don't compete with the traffic that  
25 we already have coming to the school.

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1 MR. NETTLER: So those eight additional  
2 in January and February, they are not included in  
3 your figure of 181 or 120, are they?

4 MS. PIGGOTT: No.

5 MR. NETTLER: You started to talk about  
6 those who come in October. Are those who are  
7 visiting in the fall to assess whether to enroll  
8 children or not?

9 MS. PIGGOTT: Yes. Those are parents who  
10 are coming for tours of the school.

11 MR. NETTLER: And how often does that  
12 happen?

13 MS. PIGGOTT: That happens most days from  
14 about October through December. Again, that's  
15 approximately eight at a time.

16 MR. NETTLER: Eight at a time every day?

17 MS. PIGGOTT: Yes.

18 MR. NETTLER: So that's also in addition  
19 to the 120 and the 181 that you were talking about.  
20 Correct?

21 MS. PIGGOTT: Yes, and those were adults.

22 MR. NETTLER: And adults. Okay.

23 MS. PIGGOTT: They are only adults.

24 MR. NETTLER: Only adults. All right.

25 How do they come to the school?

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1 MS. PIGGOTT: They already come at a  
2 nonpeak traffic time. Again, as I told you, school  
3 begins at 8:35 and these begin at about 9:15 so they  
4 come at a later time. They, again, park in legal  
5 spaces around the school. There are a number of  
6 restricted parking spaces for a two-hour period.  
7 Again, these tours last for no longer than an hour.

8 MR. NETTLER: You also mentioned that you  
9 have a summer camp.

10 MS. PIGGOTT: Yes, we do.

11 MR. NETTLER: What are the times for the  
12 summer camp?

13 MS. PIGGOTT: Summer camp goes from 8:35  
14 in the morning. Different programs run until 5:00.  
15 The majority of the children come in the morning from  
16 8:35 to 11:30.

17 MR. NETTLER: And how many children?

18 MS. PIGGOTT: In the morning  
19 approximately 100.

20 MR. NETTLER: And in the afternoon?

21 MS. PIGGOTT: The remaining ones of  
22 approximately 30. Some of them come at 12:30. Some  
23 of our children are there for an all day program and  
24 leave at 3:00. Some leave at 3:30 and some stay  
25 until 5:00.

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1 MR. NETTLER: How many of the 100 are  
2 left over into the afternoon?

3 MS. PIGGOTT: About 40.

4 MR. NETTLER: So then 60 are leaving  
5 sometime around 11:30 and the remaining 70 are  
6 leaving sometime in the afternoon. Is that correct?

7 MS. PIGGOTT: Some leave at 11:30 and  
8 some leave at 12:30 after lunch.

9 MR. NETTLER: Do you have a certificate  
10 of occupancy for this camp?

11 MS. PIGGOTT: Our certificate of  
12 occupancy is the same as it is for the school year.

13 MR. NETTLER: You mean the certificate of  
14 occupancy has on it that it covers both a summer camp  
15 and a nursery school?

16 MS. PIGGOTT: No, but it doesn't say it  
17 doesn't and Licensing every year has signed off on  
18 our summer camp.

19 MR. NETTLER: We're not here about  
20 licensing. We're here about zoning issues.

21 MS. PIGGOTT: No, we don't have to my  
22 knowledge a different one that states "camp" on the  
23 certificate.

24 MR. NETTLER: Did you ever get an opinion  
25 from the Zoning Administrator as to whether you were

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1 required to get a certificate of occupancy for your  
2 summer camp?

3 MS. PIGGOTT: I didn't, no.

4 MR. NETTLER: Okay. Do you know whether  
5 the summer camp was mentioned to the Board of Zoning  
6 Adjustment in its 1998 proceeding?

7 MS. PIGGOTT: I don't know.

8 MR. NETTLER: Do you see anything in the  
9 order that you read regarding the 1998 proceeding  
10 that mentioned there was a summer camp?

11 MS. PIGGOTT: Not in the order.

12 MR. NETTLER: You participated in  
13 creating what is presently called a strategic plan  
14 for the school. Correct?

15 MS. PIGGOTT: That's right.

16 MR. NETTLER: Does that strategic plan  
17 provide for an after school program?

18 MS. PIGGOTT: No, it doesn't provide for  
19 one. There were six sections to it. One of the  
20 sections was about the school program. Under that  
21 section that was one of the things that the Board of  
22 Trustees decided to study and to decide if that was  
23 something that was merited and a good idea for our  
24 school.

25 MR. NETTLER: Are you contemplating an

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1 after school program now?

2 MS. PIGGOTT: We have an after school  
3 program. We added our after school program in 2001.

4 MR. NETTLER: And how many people are  
5 involved in the after school program?

6 MS. PIGGOTT: The same teachers who are  
7 there in the daytime are staff for the after school  
8 program. There are about four of them that just come  
9 and stay longer. The children are the same children  
10 that participate in our program during the course of  
11 the day. On any given day there are approximately  
12 five to 12 students that stay in that afternoon time  
13 between 3:00 and 5:00.

14 MR. NETTLER: Are you aware of the basis  
15 upon which the 1998 BZA application was sought? The  
16 reason for filing for relief?

17 MS. PIGGOTT: No.

18 MR. NETTLER: Are you aware of any  
19 notices of violation in the past that have been  
20 issued to you by licensing authorities regarding the  
21 number of students at the school, number of children  
22 at the nursery school?

23 MS. PIGGOTT: Licensing looked at our  
24 numbers this year and noticed that they had approved  
25 the number of children in each classroom for, again,

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1 the past 13 years. As a matter of technicality they  
2 wrote a waiver for us to continue that number of  
3 children per classroom. That is provided by the  
4 Department of Health and it's not an unusual thing  
5 for Licensing to do.

6 MR. NETTLER: Was a notice of violation  
7 issued to you in October of 2002?

8 MS. PIGGOTT: Yes, but, again, that was  
9 just for a vote the next day in terms of getting this  
10 waiver.

11 MR. NETTLER: And the notice of violation  
12 was because you had added children that brought the  
13 enrollment from 168 to 171?

14 MS. PIGGOTT: No. It was not because of  
15 that. We had the same number of children in the  
16 school that we always had. Of course, in a school  
17 enrollment varies a little bit from year to year  
18 based on how many children apply to your school, how  
19 many get in, how many get off a waiting list at  
20 another school.

21 That was not granted for that reason.  
22 They looked at our numbers and then granted us a  
23 waiver to tell us in their opinion it was fine for us  
24 to have the number of children that we have now and  
25 that we've had in the past 13 years and that we will

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1 have next year.

2 MR. NETTLER: And didn't the notice of  
3 violation state that the facility admitted that it  
4 was not adhering to the maximum group size  
5 requirements?

6 MS. PIGGOTT: Yes, it did.

7 MR. NETTLER: Was that because you had  
8 added children in 2002 that were not there in 2001?

9 MS. PIGGOTT: No. I think I've answered  
10 that. We had the same group sizes that we've always  
11 had and that citation was essentially revoked within  
12 the next 24 hours, or maybe even that day sitting  
13 down with the licensing person who was there.

14 As soon as she looked at our records and  
15 realized that licensing had signed up on these  
16 numbers for the past 13 years, she went right back to  
17 the office and the Department of Health wrote us our  
18 waiver. I have that in our records. It was just to  
19 enable us technically to continue having the same  
20 number of students we've always had.

21 MR. NETTLER: And wasn't there a time  
22 limit placed on the waiver that was given to you?

23 MS. PIGGOTT: The time limit was for a  
24 period of a year but we since have talked to the  
25 Department of Health again and they will grant us a

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1 waiver for the time until we achieve what we are  
2 trying to achieve with our project. I understand how  
3 the new classrooms will allow us to work with our  
4 group numbers to provide appropriate numbers.

5 MR. NETTLER: There was a letter issued  
6 to you on November 26, 2002, by the Department of  
7 Health in which it gave you until September 1, 2003,  
8 to bring yourself into compliance with the  
9 regulations. Wasn't that correct?

10 MS. PIGGOTT: That's correct but that's  
11 now changed.

12 MR. NETTLER: Do you have a copy of that  
13 letter that has changed that?

14 MS. PIGGOTT: No.

15 MR. NETTLER: Do you have a certificate  
16 occupancy for the use of the carriage house? The  
17 present use of the carriage house?

18 MS. PIGGOTT: Do you mean the playhouse?

19 MR. NETTLER: The playhouse.

20 MS. PIGGOTT: The structure that is  
21 referred to as a playhouse? No.

22 MS. DWYER: Mr. Chairman, we filed in the  
23 record information from the Zoning Administrator  
24 indicating that a separate C of O was not required  
25 for that structure.

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1 CHAIRPERSON GRIFFIS: I understand that.

2 MR. NETTLER: Now, with regard to the  
3 order that was provided, that was issued in 1998  
4 which you said you were familiar with.

5 MS. PIGGOTT: Yes.

6 MR. NETTLER: Do you recall anything in  
7 that order in which the school provided that I would  
8 not engage in any new construction for a period of  
9 eight years from the date of that order?

10 MS. PIGGOTT: No, that was not in our BZA  
11 conditions.

12 MR. NETTLER: No, was that something that  
13 the NCRC had represented in the proceedings and that  
14 was reflected in any of the orders that were issued  
15 for the NCRC at that time?

16 MS. PIGGOTT: I wasn't the director at  
17 that time and I can't speak to that, but I do know  
18 that at the time that I was hired in 1998, the school  
19 had absolutely no plans whatsoever to do any new  
20 construction or add any new students.

21 That was all addressed at the time when  
22 we sat down as a Board and developed our strategic  
23 plan for the school for the next few years. As I  
24 believe you'll remember that Ms. Halaby testified,  
25 all of those decisions were made in a very thoughtful

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1 way that looked to the future what was in the best  
2 interest of the school.

3 MR. NETTLER: Okay. So there wasn't any  
4 extra events since that time that required a change  
5 in that position that was being taken then, was  
6 there?

7 MS. PIGGOTT: No.

8 MR. NETTLER: Okay. The enrollment, at  
9 least according to your position, was the same in  
10 1998/1999 as it was in 1990 or somewhat in 1990 and  
11 today.

12 MS. PIGGOTT: Yes.

13 MR. NETTLER: Okay. The physical  
14 facilities were the same. Correct?

15 MS. PIGGOTT: Yes, they were.

16 MR. NETTLER: Okay. So if there were  
17 problems of overcrowding today, they existed at that  
18 time as well. Is that what your testimony is?

19 MS. PIGGOTT: Well, they did. I think it  
20 wasn't until our strategic plan, our board of  
21 trustees sat down. They actually took a tour of the  
22 school and we talked in detail about how the school  
23 was operating and the conditions under which the kids  
24 and the teachers were existing in the school.

25 What we determined were things such as we

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1 have this wonderful motor program in our school but  
2 we are carrying it out in a space that is completely  
3 inappropriate for it that has glass windows on one  
4 side. It's not large enough. Kids cannot run in it  
5 and we have no place to take our children on rainy  
6 days or snowy days or when there is inclement  
7 weather.

8 We also determined that we had no private  
9 spaces in the school where we could sit down with  
10 parents and talk to them about their children's  
11 progress. If you know anything about preschoolers,  
12 you know how important that is to parents. We are  
13 finding ourselves having to meet, have those meetings  
14 in a stairwell, a supply closet, places that were  
15 totally inappropriate for that.

16 We also realized that our teachers, the  
17 only space for them to work together or even eat  
18 lunch was a little small area that was essentially  
19 almost in the hallway as you proceed down the stairs.

20 It's not private. There are only about eight chairs  
21 that can exist around a table.

22 It really wasn't until we sat down and  
23 studied this. I was new to the school and the board  
24 looked at it and we recognize how significant the  
25 problems were that we had with our space and we

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1 realized that we had to do something about it.

2 MR. NETTLER: These were the same  
3 conditions that existed in 1998. Correct?

4 MS. PIGGOTT: Yes.

5 MR. NETTLER: With reference to that  
6 order as well, there is a condition that provides  
7 that the hours and days of operation shall be between  
8 8:00 and 5:00 p.m. Monday through Friday. Is that  
9 not correct?

10 MS. PIGGOTT: Yes, it is.

11 MR. NETTLER: Could you tell the Board  
12 and me where this weekend conference is provided for  
13 under this order or any of the night activities that  
14 go on at the school?

15 MS. PIGGOTT: We have, like I said,  
16 accessory events. Every school has back to school  
17 night for their parents to come and meet the  
18 teachers.

19 MR. NETTLER: We're talking about this  
20 school. You're not familiar with the orders that are  
21 entered with regard to other schools and what their  
22 hours of operation are. Are you?

23 MS. PIGGOTT: No.

24 MR. NETTLER: Okay. Let's just stick to  
25 this school. What is it in this order that

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1 authorizes you to have the functions that you do that  
2 are not between 8:00 and 5:00 Monday through Friday?

3 MS. PIGGOTT: Well, those are the  
4 standard things that schools need in order to provide  
5 an excellent program for parents and children.

6 MR. NETTLER: Okay. So there is nothing  
7 in this order that authorizes that. Is there?

8 MS. PIGGOTT: I will just mention that  
9 our early childhood conference was not held on a  
10 weekend. It was held on a school day and we closed  
11 school for that.

12 MR. NETTLER: Okay. So when you said you  
13 were in compliance with all the conditions of that  
14 1998 order, it was only the conditions that you  
15 thought you should be in compliance with, not  
16 conditions like the times which you should be  
17 operating or the number of employees. Is that  
18 correct?

19 MS. PIGGOTT: I was referring to the  
20 hours during which students are at the school  
21 participating in their classes.

22 MR. NETTLER: I take that the answer is  
23 yes. Thank you. Let's go to your traffic management  
24 plan.

25 MS. PIGGOTT: Okay.

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1 MR. NETTLER: How many violations of the  
2 traffic management plan have you issued in a year to  
3 any parent?

4 MS. PIGGOTT: At this particular point in  
5 time we don't have a formal violation procedure which  
6 we will have this coming year.

7 MR. NETTLER: Okay. Doesn't condition  
8 No. 7 of the order that was issued in 1998 require  
9 you to issue written violations that the staff shall  
10 warn violators and issue violation notices to be --  
11 by the Metropolitan Police?

12 MS. PIGGOTT: What it says is that the  
13 applicant's staff shall warn violators of traffic  
14 regulations. We have already testified that anyone  
15 that I ever saw or heard from any neighbor I  
16 contacted immediately. I often had them come into  
17 the school and sit down and talk with me about this  
18 or talk to them about contacting their grandparent or  
19 caregiver.

20 MR. NETTLER: How many times has that  
21 occurred then?

22 MS. PIGGOTT: Then it says, "Shall  
23 request enforcement by the Metropolitan Police if  
24 violations persist." We absolutely did that. We  
25 called police whenever we had anyone that we knew was

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1 an NCRC car that was not parked properly.

2 MR. NETTLER: How many times a week did  
3 you do that?

4 MS. PIGGOTT: In the period of time  
5 between when I came to the school and 2002 we kept  
6 records of the complaints that we had for neighbors.  
7 However, we also enforced our conditions ourselves  
8 whenever we saw that anything was taking place. We  
9 would not keep records about that.

10 MR. NETTLER: Do you know how many times  
11 a week that you notified parents that they were in  
12 violation?

13 MS. PIGGOTT: No, but I would say  
14 probably maybe once every two weeks.

15 MR. NETTLER: What is the number that you  
16 would inform the police department of?

17 MS. PIGGOTT: That was less, maybe once a  
18 month maximum.

19 MR. NETTLER: So in the last five years  
20 there have been about 60 violations that the police  
21 department have been told about and about, what, 60  
22 that the --

23 MS. PIGGOTT: Well, again, that was the  
24 maximum. There are times that several months would  
25 go by without us having to ever call the police

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1 department.

2 MR. NETTLER: How many violations -- how  
3 many times have you notified people of violations  
4 during the summer camp?

5 MS. PIGGOTT: I don't run summer camp. I  
6 have a camp director but I do help her with that.  
7 Whenever she, again, we handle that the same exact  
8 way. She's out at carpool, too, with an orange vest  
9 and whenever she sees anyone who is violating any  
10 conditions which might be something like parking a  
11 little too close to a driveway, she calls a parent.

12 We now have our ID stickers on the cars  
13 and our tag numbers. She calls them in or talks to  
14 them over the telephone and warns them about not  
15 doing that.

16 MR. NETTLER: Is that also once a week or  
17 is that more frequently?

18 MS. PIGGOTT: Since campus started I know  
19 that we've done that one time.

20 MR. NETTLER: Is that this year?

21 MS. PIGGOTT: Camp began on June 16.

22 MR. NETTLER: So once in the last week.  
23 What about camps of the last five years?

24 MS. PIGGOTT: I can't testify to that. I  
25 don't know.

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1 MR. NETTLER: Is it customary for you to  
2 monitor the traffic on a daily basis during the  
3 school year?

4 MS. PIGGOTT: Almost every day. I try to  
5 be on the street as often as I can and that comes out  
6 to be virtually every day. There are times when I  
7 have to be out of the building for a meeting or I'm  
8 home sick, but when I'm there as much as I possibly  
9 can I'm on the street.

10 MR. NETTLER: And so how many arrival and  
11 departure times are there during a given day?

12 MS. PIGGOTT: All right. In the morning  
13 we have an early bird program to which just a few  
14 children arrive at 8:00.

15 MR. NETTLER: And are you outside at that  
16 time?

17 MS. PIGGOTT: No. They drop off on  
18 Ordway Street and they are only about 10 of them.  
19 They sort of come one at a time between 8:00 and  
20 8:30. At 8:35 school begins and I come out on the  
21 street at 8:35 and stay often past 8:50. At 11:30  
22 some of our students leave. About 60 of our students  
23 leave at that time. Many of them walk or --

24 MR. NETTLER: What about those --

25 MS. PIGGOTT: -- ride in carpools.

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1 MR. NETTLER: What about the eight who  
2 come at 8:45 and leave 45 minutes later? Are you  
3 outside at that point also in January and February?

4 MS. PIGGOTT: Do you mean for the play  
5 sessions?

6 MR. NETTLER: Correct.

7 MS. PIGGOTT: No.

8 MR. NETTLER: Okay.

9 MS. PIGGOTT: That's one of the reasons  
10 that we discussed hiring our two uniformed police --  
11 off-duty police to be outside to help monitor that  
12 situation for us.

13 MR. NETTLER: How many other arrival and  
14 departure times during the morning?

15 MS. PIGGOTT: There's an arrival time at  
16 12:30 for approximately 60 children and other days  
17 it's approximately 49, 48 children -- 42.

18 MR. NETTLER: Are you outside at that  
19 point?

20 MS. PIGGOTT: Yes, I am. Then some  
21 children depart at 3:00 and some at 3:30. I'm out  
22 for as many as I can be. I'm always out at 8:35 and  
23 12:40 and as many of the other carpools as I can be  
24 out for.

25 MR. NETTLER: How many other departure

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1 times are there after the 3:00 and 3:30?

2 MS. PIGGOTT: After that there is -- the  
3 after school program again, which only involves  
4 approximately five to 12 students, and it varies day  
5 to day, those parents pull up to Ordway on the Ordway  
6 side of the street. After all of our staff have gone  
7 home the parking spaces are then open and they park  
8 and proceed up to the playhouse where the actual  
9 program takes place.

10 Because they are picking up their  
11 children between 3:30 and 5:00, there's one person  
12 coming approximately every 10 or 15 minutes so there  
13 is no carpool that we have to deal with. There is no  
14 problem at that time.

15 MR. NETTLER: You said the parking space  
16 is open. Is that because the personnel who work at  
17 the school are parking on those spaces on Ordway?

18 MS. PIGGOTT: Yes. That's in the  
19 unrestricted part of Ordway.

20 MR. NETTLER: So that's what they use as  
21 part of their parking lot is Ordway Street?

22 MS. PIGGOTT: Um-hum. I think I  
23 mentioned that.

24 MR. NETTLER: Now, is it your policy that  
25 parents should be able to rather than drop off their

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1 children that they should walk their children into  
2 the school?

3 MS. PIGGOTT: Yes, it is. Again, we --  
4 well, we believe that is developmentally appropriate  
5 practice for children of this age. A number of our  
6 children are perfectly capable of using the carpool  
7 and a number of them do. As the year progresses,  
8 many more of them start to as they become  
9 comfortable. But, again, if you know anything about  
10 preschoolers, particularly those with special needs,  
11 it takes some time for them to accomplish their  
12 separation from their parents.

13 MR. NETTLER: So the parents who are  
14 driving their children to the school who you don't  
15 want to have dropped off but you want to have walk  
16 into the school, where are they parking?

17 MS. PIGGOTT: They park in the restricted  
18 parking, the green signs that restrict parking for  
19 two hours. They are usually in the school for about  
20 10 minutes.

21 MR. NETTLER: And how many of those would  
22 you say fall into that category?

23 MS. PIGGOTT: I don't know. I know that  
24 that number diminishes as the school year goes on and  
25 the children are more comfortable with carpool.

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1 Again, we don't force that because we usually get to  
2 it more quickly if we work with the children and the  
3 parent.

4 MR. NETTLER: There are two streets that  
5 are basically used. Is that correct? Highland and  
6 Ordway?

7 MS. PIGGOTT: Yes, but some of our  
8 parents park on Newark Street. There is restricted  
9 parking on Newark Street. Some of them park there  
10 and walk in. It's not very far from Newark into the  
11 school.

12 MR. NETTLER: Okay. You have no policy  
13 in which you force certain parents to use one street  
14 as opposed to another street, is there?

15 MS. PIGGOTT: We don't right now but we  
16 have proposed to do that once we add our 10  
17 additional children and we have two classrooms on  
18 that side of the campus. It would make sense for us  
19 to require some of our children to be dropped off on  
20 Ordway Street which would reduce the number from  
21 Highland Place.

22 The reason we haven't done that as of now  
23 is Highland Place can be a street where cars are  
24 proceeding down the street very fast -- I'm sorry,  
25 Ordway. There are no sidewalks on either side of the

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1 street. There are no calming measures. We are aware  
2 of the fact that DDOT intends to reconstruct that  
3 street.

4 We feel that it makes sense for us to try  
5 to coordinate all those activities at the same time  
6 and to wait until those efforts take place. At that  
7 point in time we will direct our parents who have  
8 children in that new building to drop off on Ordway  
9 Street. Again, we believe that will reduce the  
10 number of cars coming to the school.

11 MR. NETTLER: Okay. You are aware that  
12 the Department of Transportation, or DDOT, has  
13 concluded that your present traffic management plan,  
14 or the lack thereof, creates adverse conditions. Are  
15 you not?

16 MS. PIGGOTT: I think what DDOT has said  
17 is the blind curve on Highland Place can create an  
18 unsafe condition, particularly when there are cars  
19 that are what they term double standing.

20 MR. NETTLER: Well, DDOT hasn't supported  
21 the traffic management plan that you are utilizing  
22 right now. Has it?

23 MS. PIGGOTT: Well, we've talked with  
24 DDOT and, as I said, we've agreed. We think our  
25 traffic management plan works well but we have agreed

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1 to add these things you have heard me list for you in  
2 order to improve the traffic management plan and deal  
3 with DDOT's concerns. We feel we will fully do that.

4 MR. NETTLER: Isn't it a fact that DDOT  
5 has told you that when it initially analyzed your  
6 traffic management plan in 1998 it was based on the  
7 assumption that your enrollment was 120?

8 MS. DWYER: I would object. I think  
9 these questions can go to DDOT as opposed to this  
10 witness.

11 CHAIRPERSON GRIFFIS: It's more  
12 appropriate. I'm not sure what this witness'  
13 understanding would mean.

14 MR. NETTLER: She's been told.

15 CHAIRPERSON GRIFFIS: Why not get it from  
16 the source then?

17 MR. NETTLER: I don't see the source  
18 here. Do you?

19 CHAIRPERSON GRIFFIS: DDOT?

20 AUDIENCE MEMBER: Right here.

21 MR. NETTLER: Oh, back there? I can't  
22 see around the pole. Thank you.

23 Do you use sound amplification systems on  
24 the grounds?

25 MS. PIGGOTT: We don't as part of our

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1 regular day-to-day school days. We have used it  
2 twice a year, once at our annual pumpkin party and  
3 once at our annual pajama picnic.

4 MR. NETTLER: And those are held when?

5 MS. PIGGOTT: Our pumpkin party is  
6 generally held on a Saturday sometime in October  
7 between 11:00 and 1:00.

8 MR. NETTLER: It's not Monday through  
9 Friday 8:00 a.m. to 5:00 p.m.?

10 MS. PIGGOTT: No.

11 MR. NETTLER: Okay. And the other event?

12 MS. PIGGOTT: Our pajama picnic is  
13 generally held in June in the afternoon.

14 MR. NETTLER: And what type of  
15 amplification system are you using?

16 MS. PIGGOTT: I don't know the exact kind  
17 but it's to amplify the voices. At the pajama picnic  
18 we have our two music teachers who play acoustical  
19 guitar and sing songs that the children know.

20 MR. NETTLER: You were here for the  
21 testimony given by the chairman of your board at the  
22 last hearing. Were you not?

23 MS. PIGGOTT: Yes.

24 MR. NETTLER: Halaby?

25 MS. PIGGOTT: Alexia Halaby.

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1 MR. NETTLER: Do you recall her statement  
2 with regard to your accreditation by the National  
3 Association for the Education of Young Children?

4 MS. PIGGOTT: I don't recall that. I  
5 know that we are accredited. I don't recall exactly  
6 what was said in that part of the testimony.

7 CHAIRPERSON GRIFFIS: Anything else?

8 MR. NETTLER: Yes. Just making sure I'm  
9 not being redundant.

10 CHAIRPERSON GRIFFIS: Indeed.

11 MR. NETTLER: Assuming that you are able  
12 to obtain the necessary approvals for this project,  
13 do you know the anticipated construction calendar for  
14 the project?

15 MS. PIGGOTT: No. We're in the process  
16 of our approvals. We certainly haven't reached the  
17 construction phase but we absolutely anticipate  
18 having a construction plan for the project. We will  
19 absolutely include neighbors and sitting down and  
20 discussing that.

21 MR. NETTLER: Do you anticipate any pile  
22 driving, blasting, or other activity for  
23 construction?

24 MS. PIGGOTT: I don't know.

25 MR. NETTLER: You haven't been informed

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1 by anybody regarding that?

2 MS. PIGGOTT: No.

3 MR. NETTLER: Is your present budget able  
4 to accommodate the new construction?

5 MS. PIGGOTT: We intend to finance our  
6 new construction partially by a capital campaign.

7 MR. NETTLER: Okay. And is the other  
8 part from the new additional students?

9 MS. PIGGOTT: No. We will -- what we  
10 will use for the new construction is we have no  
11 mortgage on our building and we will borrow some  
12 certain amount of money in order to accomplish the  
13 rest of it.

14 MR. NETTLER: Okay. Have you made any  
15 decisions regarding where the entrance to the  
16 construction site would be?

17 MS. PIGGOTT: No.

18 MR. NETTLER: Or whether there would be  
19 any road closing that would be required?

20 MS. PIGGOTT: No. We have no idea at  
21 this point. We haven't even discussed that.

22 MR. NETTLER: About how many applications  
23 do you get a year for the school?

24 MS. PIGGOTT: This past year we -- let me  
25 think a minute. I can't recall the exact number but

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1 we usually get I would say close to 300 applications  
2 for the school.

3 MR. NETTLER: And do all of these  
4 individuals who apply come to the school to visit?

5 MS. PIGGOTT: Not all of them. Most of  
6 them.

7 MR. NETTLER: Most of them?  
8 Approximately what percentage would you say?

9 MS. PIGGOTT: Oh, 90 percent.

10 MR. NETTLER: 90 percent. So about 270.  
11 Is that correct?

12 MS. PIGGOTT: Um-hum.

13 MR. NETTLER: And when are they coming to  
14 the school?

15 MS. PIGGOTT: Again, they come January  
16 and February. Sometimes it extends a little into  
17 March depending on how many students we have  
18 applying.

19 MR. NETTLER: Okay. So that's another  
20 270 visits to the site.

21 MS. PIGGOTT: Well, not more than what we  
22 have already discussed.

23 MR. NETTLER: Okay. About how many times  
24 during the day do you get deliveries to the school?

25 MS. PIGGOTT: I have no idea.

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1 MR. NETTLER: What type of deliveries do  
2 you get on a regular basis to the school?

3 MS. PIGGOTT: Mail, paper, printing.

4 MR. NETTLER: But you have no idea  
5 whether it's once a day, once every other day?

6 MS. PIGGOTT: I really don't know.

7 MR. NETTLER: Do you know where the  
8 individuals who deliver things park?

9 MS. PIGGOTT: No.

10 MR. NETTLER: Have you given any  
11 instructions to people who deliver to you on a  
12 regular basis as to where they should be parking?

13 MS. PIGGOTT: The delivery that comes to  
14 us on a regular basis is from a grocery store that  
15 delivers us snacks for our kids and we do instruct  
16 them to come during nonpeak hours and where to park.

17 MR. NETTLER: And where is that?

18 MS. PIGGOTT: In front of the school on  
19 Highland Place. They are usually there for a period  
20 of, I would say, not more than about 15 minutes.

21 MR. NETTLER: You said there has never  
22 been an accident on Highland in the 73-year history  
23 of the school.

24 MS. PIGGOTT: Not to my knowledge I said.

25 MR. NETTLER: There wasn't an accident on

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1 the day of the last hearing?

2 MS. PIGGOTT: Not that I know of. I have  
3 no idea.

4 MR. NETTLER: How many accidents have  
5 there been on Newark Street?

6 MS. PIGGOTT: I wouldn't know that, Mr.  
7 Nettler.

8 MR. NETTLER: Do you know that there have  
9 been accidents on Newark Street?

10 MS. PIGGOTT: Yes.

11 MR. NETTLER: Okay. Do you know if there  
12 have been accidents on Ordway as well?

13 MS. PIGGOTT: No, I don't know that.

14 CHAIRPERSON GRIFFIS: How many more  
15 questions do you have?

16 MR. NETTLER: Just a few actually.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. NETTLER: Is there any carpooling by  
19 parents that you are aware of?

20 MS. PIGGOTT: Yes. This past year we had  
21 26 children who carpooled. By that I mean there were  
22 two children each in 13 cars. It's somewhat  
23 difficult for preschoolers to carpool because the new  
24 regulations are always changing about car seats and  
25 how they have to be installed but we do encourage

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1 that as much as we can and sometimes our older  
2 children can carpool.

3 MR. NETTLER: Let me ask you -- this is  
4 the last line of questioning. Let me just ask you  
5 about the conference that you had last November.

6 MS. PIGGOTT: Sure.

7 MR. NETTLER: Again, how many people came  
8 to that conference?

9 MS. PIGGOTT: About 100 people. Of that  
10 100 that included our own staff.

11 MR. NETTLER: Okay. And this was on a  
12 weekend?

13 MS. PIGGOTT: It was on, I believe,  
14 November 8th which was a Friday.

15 MR. NETTLER: And it didn't go over into  
16 Saturday?

17 MS. PIGGOTT: No.

18 MR. NETTLER: Okay. And the hours for  
19 the conference?

20 MS. PIGGOTT: Approximately 9:00 to 4:00.

21 MR. NETTLER: Okay. And do you know  
22 where the people who came to the conference parked?

23 MS. PIGGOTT: Well, some of the people  
24 who came parked in our off-site parking. We had off-  
25 site parking for 30 vehicles. We also encouraged the

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1 people that we invited from the various schools  
2 around the District to carpool. We actually  
3 requested that people come in pairs, two in each car,  
4 to avoid traffic difficulties on that day.

5 MR. NETTLER: Was that in some notice  
6 that you sent to the participants?

7 MS. PIGGOTT: Yes.

8 MR. NETTLER: Let me show you what --  
9 tell me if you can identify this document.

10 MS. PIGGOTT: Okay. I didn't write this  
11 document. The three people that developed this  
12 conference for the school who are teachers in my  
13 school wrote this.

14 CHAIRPERSON GRIFFIS: What is it?

15 MR. NETTLER: Could you describe it to  
16 the Board, please?

17 MS. PIGGOTT: It's a letter to  
18 participants thanking them for registering and  
19 inclosing directions to NCRC with parking details.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. NETTLER: Do you see anything in that  
22 letter that directs them to or suggest any  
23 carpooling?

24 MS. PIGGOTT: No. That was in a  
25 different -- that was done both by telephone and in

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1 our mailing that we did. This does say that we're in  
2 a residential area with zone 3 parking and restricted  
3 two-hour parking. Unrestricted parking around the  
4 school is limited. We strongly encourage  
5 participants to carpool or ride the Metro.

6 MR. NETTLER: Do you know how many people  
7 -- do you know how many people drove to the  
8 conference?

9 MS. PIGGOTT: No.

10 MR. NETTLER: And this was billed as your  
11 first annual conference. Was it not?

12 MS. PIGGOTT: It was billed as that and  
13 it was difficult to put on. It was complicated and  
14 so it won't be our first annual one. We won't have  
15 one this coming year.

16 MR. NETTLER: I don't have any other  
17 questions.

18 CHAIRPERSON GRIFFIS: Thank you.

19 MS. DWYER: Can I just ask her one  
20 question on redirect?

21 CHAIRPERSON GRIFFIS: Yes.

22 MS. DWYER: This follows up on a question  
23 that you were asking.

24 I believe you were asked by Mr. Nettler  
25 whether you contact MPD concerning any violations or

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1 problems with NCRC parents or staff regarding parking  
2 restrictions. Do you know if MPD kept a record of  
3 all those calls or not?

4 MS. PIGGOTT: I don't know.

5 MS. DWYER: All right. Did you have any  
6 indication from them that they would compile a record  
7 or did they indicate it would be dealt with without a  
8 formal notation?

9 MS. PIGGOTT: I don't know.

10 MS. DWYER: Okay. Thank you.

11 MS. BADAMI: Hi, Susan. Again, for the  
12 record, Linda Badami, 3207 Highland Place. You  
13 described and used the diagram to show what happens  
14 on a typical morning. Where do you put the cones on  
15 a typical morning?

16 MS. PIGGOTT: We put out quite a number  
17 of cones.

18 MS. BADAMI: Let me ask specifically  
19 then. By driveways?

20 MS. PIGGOTT: Yes. We try to put one on  
21 either side of driveways where cars might be lining  
22 up to come to NCRC to just help people be more aware  
23 that there's a driveway there.

24 MS. BADAMI: So the north side of  
25 Highland Place?

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1 MS. PIGGOTT: Both sides.

2 MS. BADAMI: Oh, you do the south side  
3 also?

4 MS. PIGGOTT: Um-hum.

5 MS. BADAMI: Okay. So you described on a  
6 typical morning. Mid-day and at the end of the day  
7 who comes out to attend to the carpool aids?

8 MS. PIGGOTT: About the same number of  
9 people that come in the morning.

10 MS. BADAMI: When do they come out?

11 MS. PIGGOTT: They come out -- a number  
12 of them are teachers and class is dismissed, let's  
13 say, at 11:30 so they bring the children to the porch  
14 at 11:30 and dismiss from there. As soon as the  
15 children are on the porch the teachers that are going  
16 to be at the white line and then some of these places  
17 move to the white line. But we also have a number of  
18 administrators that help us with parking that aren't  
19 involved with the children and they usually come out  
20 early.

21 MS. BADAMI: You had said that you can  
22 come out as often as you can so that implied you  
23 can't come out all the time.

24 MS. PIGGOTT: Right.

25 MS. BADAMI: And other administrators

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1 can't come out all the time either.

2 MS. PIGGOTT: No.

3 MS. BADAMI: Teachers can only come out  
4 as their class allows. Correct?

5 MS. PIGGOTT: They come out right at  
6 dismissal time. However, I don't think there is ever  
7 a day where there aren't a good number of  
8 administrators on the street. If it's not me, it's  
9 my business manager and my director of development.  
10 There are several of us. We even use our  
11 administrative assistants and the secretaries that  
12 are in our offices. All those people help out. Our  
13 accountant helps us.

14 MS. BADAMI: Okay. So you all come out  
15 about the time the class is dismissed. Right?

16 MS. PIGGOTT: Yes.

17 MS. BADAMI: So none of the NCRC staff is  
18 available to see if any cars have come early. Is  
19 that correct?

20 MS. PIGGOTT: No. Well, what I'll say  
21 about that is that I have come out on a number of  
22 occasions when I can come out and walk down to make  
23 sure that cars are not coming early. I believe it  
24 says that they can come 10 minutes in advance and no  
25 sooner than that.

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1 MS. BADAMI: Okay. But you wouldn't be  
2 able to really testify to seeing that because you  
3 don't come out.

4 MS. PIGGOTT: I have not observed that  
5 and I have come out some.

6 MS. BADAMI: Some?

7 MS. PIGGOTT: Yes.

8 MS. BADAMI: Okay. And so you said that  
9 parents are not allowed to get out of their cars?

10 MS. PIGGOTT: Not when they are dropping  
11 off children.

12 MS. BADAMI: Okay. So when they park  
13 they can still park on Highland or 33rd place or  
14 Ordway or Newark?

15 MS. PIGGOTT: Then they have to get out  
16 of their cars.

17 MS. BADAMI: Right. And so they can take  
18 up a parking space and they can also walk? Is that  
19 correct?

20 MS. PIGGOTT: Yes.

21 MS. BADAMI: Back to the cones. You said  
22 you put the cones directly in line with the  
23 driveways. Right?

24 MS. PIGGOTT: We put cones one on each  
25 side of the driveways.

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1 MS. BADAMI: Right. So they boarder the  
2 driveway.

3 MS. PIGGOTT: To make sure that parents  
4 notice that there is a driveway.

5 CHAIRPERSON GRIFFIS: Okay.

6 MS. BADAMI: And I know that because, you  
7 know, it's one of my driveways. It's crowded  
8 parking. I mean, cars park right to the cones.

9 MS. PIGGOTT: Well, they park right to  
10 the cones but one of the reasons they park right to  
11 the cones is that the restricted parking sign goes  
12 right up to the driveway where the cone is.

13 MS. BADAMI: Are you aware of any -- of  
14 the amount of feet that you are supposed to park off  
15 of the driveway that you are supposed to allow for  
16 clearance?

17 MS. PIGGOTT: No. I'm not aware of that.  
18 Like I said, the signs that restrict parking go  
19 right up to the driveways within about --

20 MS. BADAMI: So for any cars that park  
21 right to the cone, which is right on my driveway  
22 line, no NCRC staff to your knowledge have ever  
23 called the police to cite them for a ticket?

24 MS. PIGGOTT: I would say not up to the  
25 cones but up to the signs, no.

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1 MS. BADAMI: Okay. In the June 2003  
2 pajama picnic --

3 MS. PIGGOTT: This year.

4 MS. BADAMI: This year, yeah. Did you  
5 use the sound system to announce any parking  
6 violations?

7 MS. PIGGOTT: I didn't hear that but I  
8 understood later that we did. I think we asked about  
9 one car is my understanding.

10 MS. BADAMI: I think it was two but  
11 whatever. So did you have uniform staff?

12 MS. PIGGOTT: I don't know that was a  
13 NCRC car actually.

14 CHAIRPERSON GRIFFIS: Okay. Let's move  
15 on.

16 MS. BADAMI: Did you call the police for  
17 that car?

18 MS. PIGGOTT: No. Well, I don't know  
19 actually. I don't know whether we did or not. We  
20 did have our uniformed people on the street.

21 MS. BADAMI: Okay. And then you said  
22 that you can't stop the project, or you don't want to  
23 stop the project. It's something you cannot do. It  
24 wouldn't be fair to the school, the students, and to  
25 the city. One of the reasons you want to do this

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1 project is that times change. When the school  
2 started 73 years ago how much of the property did it  
3 use? Do you know?

4 MS. PIGGOTT: I don't know.

5 MS. BADAMI: The C of O says two floors  
6 of the main house.

7 MS. PIGGOTT: Okay.

8 MS. BADAMI: And in the '30s and all the  
9 way up to the '70s at least what you are calling now  
10 the playhouse was a servants quarters or staff  
11 quarters or garage?

12 MS. DWYER: Objection. This is  
13 testimony, not a question.

14 MS. BADAMI: Okay. Do you know what the  
15 playhouse was used as?

16 MS. PIGGOTT: I'm sorry?

17 MS. BADAMI: Do you know what the  
18 playhouse was used as prior to when it was  
19 incorporated into the child use space?

20 MS. PIGGOTT: I don't know all the uses.

21 MS. BADAMI: About when did you start  
22 using it?

23 MS. PIGGOTT: I don't know.

24 MS. BADAMI: Okay. Is there anyway that  
25 you can offer assurance that times won't continue to

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1 change and once you're gone or once a different board  
2 of directors is there that NCRC won't change its mind  
3 and use the facilities they are proposing for any  
4 other use or change the certificate of occupancy?

5 CHAIRPERSON GRIFFIS: Let me just give  
6 some caution because I think the board has been  
7 experienced enough in a lot of these things where we  
8 revisit where one director said they weren't going to  
9 do something and then here we are looking at an  
10 application to do it.

11 Quite frankly, from my perspective, I  
12 think it wouldn't matter what she says. We are going  
13 to look at this application. We're looking at all  
14 the facts in this application and the impact.

15 Quite frankly, that's what it would do if  
16 it was to be revisited at any time period which we  
17 connected to. I hope I'm clear on that in that I  
18 don't think you should put any credence in what  
19 somebody says because times do change and things  
20 change and we revisit it all too often.

21 MS. BADAMI: Okay. And then one last  
22 thing about delivery and all to NCRC. How often is  
23 trash picked up?

24 MS. PIGGOTT: I'm not absolutely  
25 positive. I know at least once a week.

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1 MS. BADAMI: Okay. I think it's twice  
2 but is it the same --

3 CHAIRPERSON GRIFFIS: Let me just help  
4 you out a little bit.

5 MS. BADAMI: If it's once, fine.

6 CHAIRPERSON GRIFFIS: No, no. Just give  
7 me a moment. I'm going to just assist you a little  
8 bit in cross-examination.

9 MS. BADAMI: Thank you.

10 CHAIRPERSON GRIFFIS: A clear way of  
11 asking the exact question is to say, "Is it your  
12 understanding that the trash is picked up twice a  
13 week?" If she answers in some other way, then it  
14 will clearly help you in establishing your case  
15 presentation as you might offer facts that dispute  
16 what she says.

17 MS. BADAMI: Very good.

18 CHAIRPERSON GRIFFIS: Or it may evidence  
19 something other. Although an interesting point would  
20 be where is trash picked up from.

21 MS. PIGGOTT: Are you asking me that?

22 CHAIRPERSON GRIFFIS: Oh, sure. Why not.

23 MS. BADAMI: Where is trash picked up  
24 from?

25 MS. PIGGOTT: Trash is picked up on

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1 Highland Place. We have a dumpster and it's picked  
2 up usually early in the morning before school starts.

3 CHAIRPERSON GRIFFIS: It's your  
4 understanding that it may be more than once a week.  
5 Maybe twice a week. And it's a commercial hauler  
6 that picks up the trash?

7 MS. PIGGOTT: It's Bowie Services.

8 CHAIRPERSON GRIFFIS: So it's not the  
9 District of Columbia.

10 MS. PIGGOTT: No, there is District of  
11 Columbia. I think we use Bowie Services if we clear  
12 some leaves or something like that and we have extra  
13 trash.

14 CHAIRPERSON GRIFFIS: So your daily trash  
15 is picked up by the city?

16 MS. PIGGOTT: Yes.

17 CHAIRPERSON GRIFFIS: So it's on the same  
18 route as the residential pickups on that block?

19 MS. PIGGOTT: I believe so. I'm not  
20 absolutely positive.

21 CHAIRPERSON GRIFFIS: Okay.

22 MS. BADAMI: We'll revisit that later.  
23 Thank you.

24 CHAIRPERSON GRIFFIS: That's it? Very  
25 good. Thank you. Okay. Let's keep rolling. Mr.

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1 Beckner.

2 MR. BECKNER: For the record, again,  
3 Bruce Beckner, 3225 Highland Place. Good afternoon,  
4 Susan. How are you?

5 MS. PIGGOTT: Hello, Bruce.

6 MR. BECKNER: Hi. We're neighbors. I  
7 wanted to go back to the beginning of your contact  
8 with NCRC. You said that you began work as director  
9 of NCRC in 1998. Did I get that right?

10 MS. PIGGOTT: That's correct.

11 MR. BECKNER: And you were actually  
12 interviewing with NCRC people in the fall of '97. Is  
13 that correct?

14 MS. PIGGOTT: I would say the spring or  
15 maybe very late fall there was initial contact made  
16 and interviews were in the spring.

17 MR. BECKNER: I don't have it here, Ms.  
18 Piggott, but would you disagree with me if I told you  
19 that I received the notice from NCRC in December of  
20 '97 announcing the fact that you had been hired?

21 MS. PIGGOTT: Well, then I'm mistaken.  
22 I'm sorry.

23 MR. BECKNER: Okay. So does that refresh  
24 your recollection about the interview?

25 MS. PIGGOTT: Yes. Thank you.

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1 MR. BECKNER: At the time of your  
2 interview the physical facilities of the school were.

3 MS. PIGGOTT: That's right.

4 MR. BECKNER: And at that time did the  
5 school have more children applying than it could  
6 admit?

7 MS. PIGGOTT: Yes.

8 MR. BECKNER: Okay. To your knowledge,  
9 at that time was the school in violation of any D.C.  
10 health licensing regulations?

11 MS. PIGGOTT: It was not in violation.

12 MR. BECKNER: Okay. During your  
13 discussions with the school in the fall of '97 did  
14 they identify to you a need to expand the physical  
15 facility?

16 MS. PIGGOTT: No.

17 MR. BECKNER: Did you discuss that at  
18 all?

19 MS. PIGGOTT: No.

20 MR. BECKNER: Did they identify a need to  
21 increase enrollment of the school?

22 MS. PIGGOTT: No.

23 MR. BECKNER: Okay. Would it be fair to  
24 say then that as the end of '97 NCRC was operating  
25 satisfactorily in the same facilities that it is

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1 operating in today?

2 MS. PIGGOTT: I don't think it was  
3 operating satisfactorily. I think the issues that  
4 are present in the school had not been identified as  
5 such yet.

6 MR. BECKNER: Well, did you tell the  
7 people that you were interviewing with that you  
8 didn't think the school was operating satisfactorily?

9 MS. PIGGOTT: No.

10 MR. BECKNER: Okay. Have the school's  
11 physical facilities changed since you began running  
12 it in the fall of '98?

13 MS. PIGGOTT: No.

14 MR. BECKNER: Okay. And have you  
15 continued to have more applications than you could  
16 admit?

17 MS. PIGGOTT: Yes.

18 MR. BECKNER: And since '98 that you have  
19 been running the school, the D.C. Department of  
20 Health has not revoked your operating license, has  
21 it?

22 MS. PIGGOTT: No.

23 MR. BECKNER: Okay. And this year the  
24 school was accredited by the National Association for  
25 Education of Young Children. Isn't that correct?

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1 MS. PIGGOTT: That's correct.

2 MR. BECKNER: And that was a process that  
3 you, yourself, initiated. Isn't that right?

4 MS. PIGGOTT: Yes.

5 MR. BECKNER: Okay. I want to just  
6 briefly revisit the November 8th Childhood  
7 Conference. There was one thing about the letter  
8 that Mr. Nettler was asking you about, and that is  
9 -- I can show it to you to refresh your recollection.  
10 Doesn't the letter also advise people as to where  
11 they can park in the neighborhood?

12 MS. PIGGOTT: I believe it does.

13 MR. BECKNER: And it supplies a map? It  
14 says it supplies a map.

15 MS. PIGGOTT: That's right.

16 MR. BECKNER: So the school was inviting  
17 participants in this conference to park in the  
18 neighborhood. Isn't that correct?

19 MS. PIGGOTT: The staff parked off-site  
20 and was scheduled in and the school was trying to  
21 make visitors aware of legal parking in the area.

22 MR. BECKNER: Okay. Would you say based  
23 on your observation of the neighborhood that there  
24 are typically a lot of cars parked on the street?

25 MS. PIGGOTT: No, not necessarily.

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1 MR. BECKNER: So, in your view, then  
2 parking is not a problem?

3 MS. PIGGOTT: Parking on Highland Place  
4 at times because most of it is restricted parking.  
5 It may be difficult for periods of longer than two  
6 hours. For periods less than two hours it is quite  
7 easy to find parking on Highland Place.

8 CHAIRPERSON GRIFFIS: Why don't we save  
9 those kind of questions for the expert because my  
10 perspective of parking problems may be different than  
11 hers and yours.

12 MR. BECKNER: Okay. I want to talk about  
13 traffic a second. I think you stated in your direct  
14 testimony that NCRC was in complete compliance with a  
15 provisions of the 1998 BZA order. You specifically  
16 mentioned traffic. Is that right?

17 MS. PIGGOTT: That's right.

18 MR. BECKNER: Paragraph five of the order  
19 says, and I'm reading here, "Clearly identifiable  
20 NCRC staff using walkie-talkies or other  
21 communication technology shall monitor drop-off and  
22 pickup points on Highland Place and Ordway Street  
23 with specific attention to insuring that driveways  
24 and traffic is not blocked."

25 Is it your testimony that you have people

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1 on Ordway Street?

2 MS. PIGGOTT: Yes. We have usually two  
3 people on Ordway Street and sometimes one.

4 MR. BECKNER: Okay. And are they there  
5 at every time when there is a pickup or drop-off of  
6 children?

7 MS. PIGGOTT: Yes, 99 percent of the time  
8 unless we have a lot of people out with the flu or  
9 something. We do have people that are supposed to be  
10 stationed there at every pickup and drop-off.

11 MR. BECKNER: I'm trying to avoid  
12 repetition, Mr. Chairman.

13 With regard to the workshops, your  
14 testimony was that the school had always had  
15 workshops? Is that correct?

16 MS. PIGGOTT: Well, over its long history  
17 the school has sponsored a number of opportunities  
18 for educators in the District to come together and  
19 have workshops or conversations about innovations in  
20 the field.

21 MR. BECKNER: Well, what workshops other  
22 than the one that was held last November have been  
23 held by the school during your tenure as head of  
24 school?

25 MS. PIGGOTT: This one.

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1 MR. BECKNER: And you've been head of  
2 school since 1998. Is that correct?

3 MS. PIGGOTT: That's correct.

4 MR. BECKNER: Do you know of any other  
5 workshop that was held on the school's premises prior  
6 to your becoming head of school?

7 MS. PIGGOTT: Yes.

8 MR. BECKNER: When was that?

9 MS. PIGGOTT: There was one held in about  
10 the mid-'90s and one held in late 1990 or early 1991  
11 specifically with regard to the special needs program  
12 and early intervention practices.

13 MR. BECKNER: Okay. You also said that  
14 one of the reasons you needed more space was for the  
15 motor program. Was the motor program in place before  
16 you started running the school?

17 MS. PIGGOTT: Yes.

18 MR. BECKNER: Okay. So the motor program  
19 is not new?

20 MS. PIGGOTT: No. The motor program  
21 began sometime in the early '90s.

22 MR. BECKNER: All right. Now, Ms.  
23 Piggott, you mentioned, I believe, at the first  
24 meeting that the school held with members of the  
25 community to announce its plans that you were

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1 surprised at the volume of complaints about traffic.

2 Do you recall that?

3 MS. PIGGOTT: I was flabbergasted. As I  
4 said, I've had very few complaints. I was out there  
5 every day.

6 CHAIRPERSON GRIFFIS: Okay. We do recall  
7 what you said before.

8 MS. PIGGOTT: Yes, I was.

9 MR. BECKNER: And that meeting was held  
10 in February of 2002, right?

11 MS. PIGGOTT: That's right.

12 MR. BECKNER: Okay. Now, you have  
13 described to the Board a number of traffic management  
14 plan features which you say you are willing to  
15 implement but you haven't implemented. Is that  
16 right? For instance, staggered start times.

17 MS. PIGGOTT: We haven't implemented  
18 those yet.

19 MR. BECKNER: Okay.

20 MS. PIGGOTT: It's difficult to implement  
21 something new like that in the middle of the school  
22 year when you are training parents but we will  
23 implement that in the fall.

24 MR. BECKNER: You anticipated my question  
25 which was going to be since you heard in the spring

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1 of 2002 why you didn't implement all these traffic  
2 plan features beginning in the fall of 2002.

3 MS. PIGGOTT: Well, as a matter of fact,  
4 before the February 2nd meeting we implemented a  
5 number of changes just in response to every time that  
6 a neighbor did contact me. There's nothing in our  
7 BZA order, for example, about putting cones on the  
8 street.

9 That was something that came about as one  
10 of our ideas in response to neighbors talking to me  
11 about our parents not noticing driveways on occasion.

12 We implemented a number of things prior to the  
13 February 2nd meeting and then a number of things  
14 since then.

15 The only things we haven't implemented  
16 are things that we really need time to just train  
17 parents. For example, you can't expel a parent  
18 unless that is in your enrollment contract. It's now  
19 in our enrollment contract for next year and we are  
20 very willing to do that.

21 MR. BECKNER: But you weren't willing to  
22 do that in the spring of 2002 effective with this  
23 current academic year that just ended.

24 MS. PIGGOTT: By that time our enrollment  
25 contracts were already out. Those go out very early.

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1 It was too late.

2 MR. BECKNER: I think you said in your  
3 testimony that you did not think there was anything  
4 unsafe about the traffic conditions on Highland  
5 Place. Is that right?

6 MS. PIGGOTT: I hadn't observed anything  
7 unsafe. As a matter of fact, sometimes I think that  
8 our presence out there with so many people in orange  
9 vests has a traffic calming effect.

10 MR. BECKNER: Do you see parents pushing  
11 their kid's strollers down the middle of the street  
12 in Highland Place from time to time?

13 MS. PIGGOTT: Yes.

14 MR. BECKNER: Do you think that's safe?

15 MS. PIGGOTT: I believe those parents and  
16 also neighbors perceive that it's safe because so  
17 much of the time there are no cars at all in the  
18 street. I think that you get this impression as you  
19 are walking down the street that there are no cars  
20 and that there are not going to be any cars coming.  
21 You can see for a long distance.

22 MR. BECKNER: So should I infer from that  
23 if there are cars driving up and down the street that  
24 it is, in your view, unsafe to be pushing a stroller  
25 on the street?

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1 MS. PIGGOTT: We would be very supportive  
2 of widening sidewalks and adding sidewalks to  
3 Highland Place.

4 MR. BECKNER: I don't think you answered  
5 my question. My question was do you think it's  
6 unsafe for people to push strollers down the middle  
7 of the street when there's a lot of traffic present?

8 MS. PIGGOTT: I think it would be safer  
9 if there were sidewalks and people didn't have to  
10 walk in the middle of the street, yes.

11 CHAIRPERSON GRIFFIS: Glad we could get  
12 over that one.

13 MS. PIGGOTT: Hi, Sally.

14 MS. DWYER: Question here. There's one  
15 party, the Beckners, one person asking cross-  
16 examination.

17 MS. BECKNER: You said Beckners.

18 CHAIRPERSON GRIFFIS: Yeah, I understand.  
19 One of the things that is established with the  
20 parties, although it is a joining of the party, it's  
21 true we have one person that represents on cross-  
22 examination of witnesses. It is for the case of  
23 keeping this a little expeditious.

24 MS. BECKNER: I want to reiterate --

25 CHAIRPERSON GRIFFIS: You are on the

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1 record when you are talking into that microphone.

2 CHAIRPERSON GRIFFIS: We are having a  
3 pause. Take your time. I have a couple of  
4 questions. Or at least one of you need a minute more  
5 to review.

6 This talk of strollers down the street,  
7 amusing as it may be, are there sidewalks? I know we  
8 have photographs and documentation but you indicated  
9 you --

10 MS. PIGGOTT: There are sidewalks on the  
11 north side of Highland Place. They are very narrow.

12 CHAIRPERSON GRIFFIS: Very narrow as in  
13 three feet?

14 MS. PIGGOTT: Three feet or less than  
15 three feet.

16 CHAIRPERSON GRIFFIS: I can't have  
17 anybody talk, of course, except the person sitting at  
18 the microphone.

19 So from the peanut gallery I heard quite  
20 a bit of stuff but what is your understanding of what  
21 they are? They vary in size. Is that what you said?

22 MS. PIGGOTT: Well, yes, but they are  
23 quite narrow. I would say less than three feet.

24 CHAIRPERSON GRIFFIS: Okay. Very well.

25 MS. DWYER: We can provide that exact

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1 measurement for the record if you would like, what  
2 the width of the sidewalk is.

3 CHAIRPERSON GRIFFIS: It's fairly evident  
4 in the photographs. I don't need additional  
5 information. In fact, I think there are some  
6 portions of which are actually not well paved or  
7 level so it's fairly clear what the existing  
8 condition is.

9 Yes.

10 MR. BECKNER: Thank you, Mr. Chair. I  
11 just have like two more questions.

12 CHAIRPERSON GRIFFIS: That's okay.

13 MR. BECKNER: Ms. Piggott, going back to  
14 the traffic enforcement plan that you have. How many  
15 people does the school put out to manage traffic at  
16 the beginning of the day?

17 MS. PIGGOTT: At the beginning of the day  
18 I would say approximately 10 people. Sometimes it's  
19 a couple more and occasionally again if I have a  
20 number of people out sick it may be a couple less.  
21 It's always at least six to eight people on the  
22 street and that is rare. It's usually 10.

23 MR. BECKNER: And those people are on  
24 both Highland and Ordway Street?

25 MS. PIGGOTT: Yes.

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1 MR. BECKNER: Okay.

2 MS. PIGGOTT: And Newark and 33rd.

3 MR. BECKNER: And for the rest of the  
4 pickup and drop-off times during the day, is the same  
5 number of people out or more or less?

6 MS. PIGGOTT: There are probably somewhat  
7 fewer people but there is a good number of people.  
8 Again I would say six to eight people at least on the  
9 street. There is somebody on Highland. There's  
10 somebody at the corner of Newark and 33rd. There are  
11 teachers with walkie-talkies, one at the white line,  
12 one up on the porch.

13 Every parent has a carpool number, who is  
14 driving and picking up kids. We use the walkie-  
15 talkies so that we can quickly get the kids down and  
16 get them in the cars and move the carpool along and  
17 that does require a good number of people walking  
18 kids to cars and using the walkie-talkies.

19 MR. BECKNER: Thank you very much, Mr.  
20 Chairman.

21 CHAIRPERSON GRIFFIS: Thank you.

22 MR. HUNSICKER: Mr. Chairman, for the  
23 record, I'm Steve Hunsicker. I live at 3083 Ordway  
24 Street. Good afternoon, Ms. Piggott. Just a few  
25 questions, please.

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1 Do I understand correctly from your  
2 testimony that you are planning, you being NCRC, are  
3 planning as of today -- intending as of today to  
4 implement your new and improved transportation  
5 management plan as of fall of next year?

6 MS. PIGGOTT: Yes.

7 MR. HUNSICKER: Would you like to refer  
8 to it?

9 MS. PIGGOTT: I'm just going to make sure  
10 that every single thing on it we are planning to do  
11 in the fall. We are proposing restricting parking  
12 for the entire school frontage on Highland. We have  
13 to work with the city in order to do that. We will  
14 stagger our arrival times, hire two uniformed  
15 persons, change the times of our student visits.

16 We have already added provision to our  
17 enrollment contract. We already have our ID stickers  
18 and tag numbers. We have and will continue to hire  
19 three uniformed persons, have a trek  
20 liaison --

21 CHAIRPERSON GRIFFIS: This is bordering  
22 on -- hold on a second. Conceivably the absurd  
23 hypothetical because if this isn't approved, is there  
24 going to be a transportation plan. If it is  
25 approved, it will be defined. Maybe you want to talk

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1 about the specific impacts or adverse impacts of what  
2 each of these individual pieces are.M

3 MR. HUNSICKER: My question really is are  
4 you committed today to deal with the existing traffic  
5 situation, to implement the traffic management plan  
6 that you have laid out there without regard to  
7 whether or not your proposal is approved.

8 CHAIRPERSON GRIFFIS: Well, if it's not  
9 approved what are you assuming they have?

10 MR. HUNSICKER: I'm simply asking if they  
11 are committed to improving the existing traffic  
12 conditions as identified in the Department of  
13 Transportation report by implementing those  
14 conditions that they have identified that they are  
15 free to implement at this point in time.

16 In other words, I simply want to make  
17 sure that it's not conditioned. Their implementation  
18 of these conditions that they see as necessary to  
19 dealing with the transportation issues I want to make  
20 sure that is not contingent upon approval.

21 CHAIRPERSON GRIFFIS: Ms. Dwyer, is it  
22 your understanding if this application is not  
23 approved that the NCRC could continue operation?

24 MS. DWYER: I believe NCRC could continue  
25 its operation.

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1 CHAIRPERSON GRIFFIS: As existing?

2 MS. DWYER: As an existing operation.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. HUNSICKER: I'm sorry if I'm not  
5 making myself clear, Mr. Chairman.

6 CHAIRPERSON GRIFFIS: That's okay.

7 MR. HUNSICKER: Let me try one more time.

8 Ms. Piggott, is it correct that most, if  
9 not all, of the items listed on NCRC proposed  
10 modifications to transportation management plan are  
11 items that NCRC now has definite plans to implement  
12 in the fall of 2003?

13 MS. PIGGOTT: That's correct.

14 MR. HUNSICKER: You mentioned that one of  
15 the items that you may need to work on is the  
16 proposed signage on the Highland Street frontage of  
17 the NCRC property, I believe to allow that piece to  
18 be used as a queue line. Is that correct?

19 MS. PIGGOTT: We have space now for four  
20 cars to queue up and we're hoping to increase that  
21 number from four to eight cars and that would take  
22 care of DDOT's concern about double standing and  
23 reduce the opportunity for that double standing to  
24 occur.

25 MR. HUNSICKER: Are you aware that would

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1 eliminate some parking now relied upon by Highland  
2 Street residents?

3 MS. PIGGOTT: Yes.

4 MR. HUNSICKER: Ms. Piggott, do you know  
5 how many of your current children enrolled at NCRC  
6 reside within the District of Columbia?

7 MS. PIGGOTT: A tiny bit from year to  
8 year but it has always been around 75 percent.

9 MR. HUNSICKER: Finally, Ms. Piggott, I  
10 think you indicated some familiarity with the history  
11 of NCRC. Are you aware of a 1963 BZA order -- I  
12 believe it's included at Exhibit R in your  
13 application -- in which the BZA denied the  
14 application to increase enrollment from 70 to 80?

15 MS. PIGGOTT: Yes, I'm aware.

16 MR. HUNSICKER: Are you aware of any  
17 instance in which the BZA or the Department of  
18 Transportation, DDOT, approved the traffic  
19 implications of plan by NCRC to increase its  
20 enrollment above 70 to its current levels?

21 MS. PIGGOTT: No. I don't know.

22 CHAIRPERSON GRIFFIS: Above 70?

23 MR. HUNSICKER: Correct.

24 MEMBER ZAIDAIN: Did you say  
25 implications?

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1 MR. HUNSICKER: I'm simply asking whether  
2 she's aware of any order or report by the Department  
3 of Transportation or the BZA that considered the  
4 safety implications or traffic implications of  
5 increasing the enrollment from the level of 70  
6 addressed in 1963 to the current level of  
7 approximately 170.

8 CHAIRPERSON GRIFFIS: So by speculation  
9 of what you're asking, you are saying that the 1998  
10 BZA hearing and subsequent issuance of the '99 did  
11 not take into effect or into account traffic  
12 issues?Did

13 MR. HUNSICKER: Did not take into account  
14 traffic implications of an enrollment at current  
15 levels of 171 if you look at the DDOT report.

16 CHAIRPERSON GRIFFIS: Now, my question is  
17 how would she know that?

18 MR. HUNSICKER: My question was whether  
19 she could identify any instance in which the  
20 Department of Transportation had examined the traffic  
21 implications.

22 Thank you, Ms. Piggott. That's all I  
23 have.

24 MR. LITTLE: For the record, Mr.  
25 Chairman, I'm Henry Little. I'm the owner of the

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1 home at 3220 Ordway Street, N.W.

2 Hello, Ms. Piggott.

3 MS. PIGGOTT: Hello.

4 CHAIRPERSON GRIFFIS: In from San

5 Francisco.

6 MR. LITTLE: From San Francisco.

7 CHAIRPERSON GRIFFIS: I'm not going to  
8 let you forget that, of course, because we would all  
9 like to be there right now.

10 MR. LITTLE: It's nice this week. I just  
11 have a few brief questions out of respect for  
12 everybody's time. I would like to know, you  
13 mentioned a strategic planning process earlier, Ms.  
14 Piggott. I wonder if the staff or the board of NCRC  
15 included in that strategic planning process any of  
16 the immediate neighbors of NCRC, the people who live  
17 in close proximity. Were they actually involved in  
18 the strategic drawing of the strategic plan for the  
19 school?

20 MS. PIGGOTT: I would have to look at the  
21 exact list but I know that some of our board members  
22 at the time were neighbors.

23 MR. LITTLE: I mean immediate neighbors.  
24 I'm asking people who live --

25 MS. PIGGOTT: On either side of the

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1 school? No.

2 MR. LITTLE: Either side. The people  
3 most impacted. Did the board and the staff of NCRC  
4 explicitly decide not to include those people?

5 MS. PIGGOTT: No.

6 MR. LITTLE: To your knowledge is there  
7 any discussion that we decided not to contact the  
8 neighbors who live next door to involve them in the  
9 strategic planning process?

10 MS. PIGGOTT: No, never.

11 MR. LITTLE: So there was no explicit  
12 decision?

13 MS. PIGGOTT: No.

14 MR. LITTLE: Didn't you say earlier that  
15 one thing is clear -- I'm just paraphrasing -- that  
16 "We cannot not move ahead. It's essential for the  
17 students, for the school, and for the community."  
18 Did you say that or something to that effect?

19 MS. PIGGOTT: Yes, I did.

20 MR. LITTLE: Did you not say also just a  
21 moment ago that you would welcome the involvement of  
22 the neighbors, probably the people who live next door  
23 who are most impacted, in the planning of the  
24 construction plan?

25 MS. PIGGOTT: Yes, I did say that.

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1 MR. LITTLE: Don't you think it might  
2 have been a little more prudent to include those who  
3 are most impacted by this by living next door in the  
4 planning of the project up front rather than  
5 presenting them with a fada compli such as a house, a  
6 building twice the size of my house and 15 feet from  
7 my house and other such things instead of presenting  
8 them with a fada compli and then presenting them with  
9 an opportunity to plan how to build out that  
10 structure that you planned?

11 MS. PIGGOTT: We never presented the  
12 neighbors with a fada compli. As a matter of fact,  
13 we made it very clear on February 2, 2002 when they  
14 came to our meeting that this was a draft plan. As a  
15 matter of fact, when we handed out sort of a  
16 rendering, a little bit of a description, it had  
17 draft stamped right on the front of it.

18 At that particular time we explained that  
19 we very much wanted input from the neighbors.  
20 Nothing was set in stone. We had handout sheets. We  
21 invited neighbors to please sign up if they were  
22 interested in working on landscaping or traffic and  
23 no one signed.

24 MR. LITTLE: Can you understand from the  
25 standpoint of the neighbors that when you're talking

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1 about landscaping a building twice the size of my  
2 house, when you're talking about the excessive  
3 traffic that will bring, that might seem like an  
4 insincere opportunity to participate when, in fact,  
5 the actual scale of the building --

6 CHAIRPERSON GRIFFIS: We're not going to  
7 have any jurisdiction on what happened in the past.  
8 I'm not really sure what the point of exploring a lot  
9 of --

10 MR. LITTLE: I think there is a question,  
11 and that is is this plan still a draft with the board  
12 and the staff of NCRC? Because the community has  
13 offered this many times that we are willing to sit  
14 down, talk about the needs of the school, talk about  
15 the needs of the community and the immediate  
16 neighbor, and participate fully in the formulation of  
17 a plan that both you would expect the same from the  
18 neighbors if they were doing something that had a  
19 commensurate impact with the school. Would you be  
20 willing to do that at this point or is it a fada  
21 compli?

22 MS. PIGGOTT: Mr. Little, we have tried  
23 on numerous occasions to no avail to meet with  
24 neighbors and address their concerns in small  
25 meetings, large meetings, formal meetings, informal

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1 meetings. I canceled my whole June vacation to meet  
2 every single night with a group of neighbors. It is  
3 very difficult to get neighbors to agree on anything  
4 that they wanted, but we were able to reduce the size  
5 of the building and reduce the amount of the new  
6 building that was above ground. We looked at the  
7 TMP. We would be happy to talk about anything but in  
8 this process we have never been able to reach in the  
9 context of a settlement any kind of agreement that  
10 would allow us to move forward on our project.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. LITTLE: But would you be willing to  
13 go back now and engage people who obviously do have  
14 concerns which they brought up at great expense?

15 CHAIRPERSON GRIFFIS: Actually, Mr.  
16 Little, let me be frank. That doesn't concern me.  
17 What concerns me is the hearing that we're in right  
18 now. If they withdraw the next time we set this  
19 hearing, then so be it. I don't think we need to  
20 waste everybody's time trying to evoke that right  
21 now.

22 MR. LITTLE: Thank you. I respect that.  
23 I presume the answer is no. Thank you.

24 CHAIRPERSON GRIFFIS: Does the ANC have  
25 any cross-examination questions? Friends of NCRC or

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1 Ms. Marshall? Thank you. Okay then. Only one more  
2 witness. We're at 6:00. What I would like to do,  
3 and I would propose that we actually set this. I  
4 have reviewed the schedule and we are going to take  
5 up an entire day and schedule no other hearings.  
6 Unfortunately, that won't be until September 16.

7 I would anticipate, in fact, I can almost  
8 guarantee that we will finish it on that date. I  
9 think it would be a lot more helpful for everybody  
10 involved to get this done rather than piece it  
11 together a couple more times. If people need a  
12 moment to check schedules, let's do that.

13 I'll just stay here while we do that and  
14 make sure that the 16th works. Let me first verify  
15 the NCRC is available on the 16th all day, and the  
16 witnesses also. We would anticipate that only  
17 Osborne George, the traffic engineer, was called as a  
18 witness.

19 I think if the Board had questions --  
20 well, we'll try and formulate that before the 16th to  
21 anticipate any questions that might come up regarding  
22 specific witnesses. At this point I don't see any  
23 but we'll just hold that opportunity out. Is there  
24 any difficulty with any of the parties of the 16th?

25 Ms. Bailey, am I correct on that date?

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1 MS. BAILEY: Yes, Mr. Chairman.

2 CHAIRPERSON GRIFFIS: Excellent. The  
3 16th of September. That would mean it would start at  
4 9:30 and run until 6:00 and we'll give you a half-  
5 hour lunch break. There's no difficulty with that?  
6 Excellent.

7 Ms. Bailey, anything else we need to  
8 accomplish today?

9 MS. BAILEY: Do you want to establish  
10 submission dates? No submissions were requested  
11 during this particular hearing but did you want to  
12 establish --

13 CHAIRPERSON GRIFFIS: Right. No, I don't  
14 anticipate. I didn't think the Board was asking for  
15 any other so we don't need to set a schedule for  
16 that. Are there any questions or other  
17 clarifications that I can provide regarding our next  
18 hearing, what is to be done, when it's to be done?  
19 Everybody is clear then? Very well. Thank you all  
20 very much. Enjoy the evening. This will conclude  
21 then the 24 June.

22 (Whereupon, at 6:00 p.m. the hearing was  
23 adjourned.)

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