

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY
NOVEMBER 25, 2002

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

JOHN G. PARSONS,	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

Clifford Moy,	Secretary, BZA
Beverley Bailey,	Office of Zoning

OTHER AGENCY STAFF PRESENT:

Arthur Jackson,	Office of Planning
John Moore,	Office of Planning
Steven Morphin,	Office of Planning
Travis Parker,	Office of Planning
Karen Thomas,	Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Lori Monroe, Esq.

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<u>AGENDA ITEM</u>	<u>PAGE</u>
OPENING REMARKS	4
 <u>APPLICATION OF PSD TRUST</u>	
<u>17073</u>	8
Chris Collins, Esq.	8
Office of Planning, Steven Morphin	17
Closing	
Mr Collins	19
 <u>APPLICATION OF DEBORAH GELIN</u>	
<u>17074</u>	21
Deborah Gelin, Owner.	22
Office of Planning, John Moore	26
ANC-24, Thomas Birch	28
 <u>APPLICATION OF JUBILEE HOUSING, INC.</u>	
<u>17076</u>	32
Ashleigh Horne	32
James Greenwell, Architect	38
Kim Montrell, Good Shepherd Ministries	39
Office of Planning, Travis Parker	54
Closing	
Ms. Horne	58
 OPENING REMARKS	 62
 <u>APPLICATION OF EUGENE D. MYERS (NEW BEGINNINGS</u> <u>CHRISTIAN FELLOWSHIP, INC.</u>	
17077	66
Preliminary matters	66
Pastor Eugene Myles	72
Office of Planning, Karen Thomas	81
Closing	
Ms. Myles	84
 <u>APPLICATION OF TC MIDATLANTIC DEVELOPMENT, INC. ON</u> <u>BEHALF OF THE AVALON BAY COMMUNITIES, INC. AND RUBY</u> <u>RESTAURANT, INC.</u>	
<u>17078</u>	88
Dennis Hughes, Holland & Knight	89
Frederick Rothmeyer, TC MidAtlantic	91
Francis Durkin, Architect	93
Office of Planning, Arthur Jackson	105
Steven Sher, Holland & Knight	115
Corporation Counsel, Lori Monroe	120
Closing	
Mr. Sher	121
 <u>APPEAL 17043 OF THE STANTON PARK NEIGHBORHOOD</u>	

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ASSOCIATION 132

 Paul Trummonds 133

 Questioning of submissions

 Mr. Edwards 159

 ANC 6-C, Bill Crews 163

 ANC 6-A, Cody Rice 186

 St. Johns Parish, Richard Downing 203

 Mark Edwards 212

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

11:10 a.m.

CHAIR GRIFFIS: I would like to call for our Public Hearing of the Board of Zoning Adjustment of the District of Columbia. Of course, my name is Jeff Griffis, as you've been sitting here you probably have realized, I am Chairperson. And joining, of course, Mr. Etherly and also Ms. Miller. Representing the National Capital Planning Commission is Mr. Zaidain. Representing the Zoning Commission with this -- right, will be Mr. Parsons representing the Zoning Commission.

Copies of today's agenda are available to you. They are located at the door where you entered into the hearing room.

As I said, we will be very expeditious in getting through our public hearing morning session this morning. And I do appreciate everybody's patience with the Board. As you have seen, we have to set certain things for meetings.

But let me run through very important aspects of what we're about to engage in.

First if all, it should be noted that all public hearings before the Board of Zoning Adjustments are recorded. So, we ask several things of you. When

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1 coming forward, please have filled out two witness
2 cards. Witness cards are available to you at the
3 table you entered into the door. Also they should be
4 -- yes, right in front of us. Those two cards go to
5 the recorder who is sitting to my right.

6 I would ask that people turn off all
7 cellphones and beepers at this time so that you do not
8 disrupt your own testimony and case presentations.

9 Also, when coming forward to speak to the
10 Board at first you need to state your name and your
11 address for the Board so that we do have that on the
12 record and we can give you credit for all those
13 important things that you are about to say.

14 The order of procedures for special
15 exceptions and variances is this morning, first, the
16 statement of witnesses by the applicant.

17 Second, will be any government reports
18 attendant to the application such as the Office of
19 Planning and anything that has been submitted.

20 Third, would be the report from the
21 Advisory Neighborhood Commission.

22 Fourth, would be parties or persons in
23 support of the application.

24 Fifth, would be parties or persons in
25 opposition to the application.

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1 And finally we will have closing remarks
2 by the applicant.

3 Cross examination of witnesses is
4 permitted by the applicant and parties in the case.
5 Of course, ANC within which the property is located is
6 automatically a party in all cases and therefore, can
7 also cross examine.

8 The record will be closed at the
9 conclusion of our public hearing on a case, except for
10 any material that is specifically requested by the
11 Board, and we will be very specific as to what we need
12 submitted into the record and when it is to be
13 submitted into the Office of Zoning. It's an important
14 aspect to understand because, of course, once the
15 record is closed no other information will be accepted
16 and therefore no other information would be
17 deliberated on.

18 So, as you might have seen and gleaned,
19 the more pertinent information we can get, the easier
20 our decisions might be.

21 The Sunshine Act requires that all public
22 hearings on each case be held in the open and before
23 the public. This Board may, however, consistent with
24 its rules of procedure and the Sunshine Act, enter
25 executive session. That would be either during or

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1 after the public hearing on the case, and that would
2 be for the purposes of reviewing the record or
3 deliberating on the case.

4 The decision of this Board in contested
5 cases must be exclusively based on the record that is
6 created before us. And that's why it's so important
7 to get all that information while we are in the
8 process of the hearing. And, of course, avoid any
9 appearance to the contrary of not deliberating solely
10 on the record, we would that people present today not
11 engage Board members in conversation today so that it
12 does not look as if we were getting additional or ex
13 parte communications.

14 Let us jump right into preliminary matters
15 that are need for the Board's attention. If there are
16 any preliminary matters, I would ask Ms. Bailey of the
17 Office of Zoning to bring that to our attention, or if
18 there is anyone here present has any preliminary
19 matters for the Board.

20 Preliminary matters are those which relate
21 to whether a case can or should be heard today, such
22 as a request for a postponement, withdrawal or whether
23 proper and adequate notice has been provided. If you
24 have a preliminary matter for the Board, you can
25 indicate that by coming forward and having a seat.

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1 And I would ask, Ms. Bailey, are you are aware of any
2 preliminary matters for the Board at this time?

3 MS. BAILEY: Not at this time, Mr.
4 Chairman.

5 CHAIR GRIFFIS: Thank you very much.

6 Then why don't we call the first of the
7 morning?

8 MS. BAILEY: Application 17073 of PSD
9 Trust, pursuant to 11 DCMR ? 3104.1, for special
10 exception to allow an addition to a single-family
11 dwelling under section 223, not meeting the side yard
12 requirements (section 405). The property is located
13 in the Tree and Slope Protection Overlay District.
14 And it's also zoned R-1-A. It's located at premises
15 2740 32rd Street, N.W. also known as Square 2119, Lot
16 18.

17 Is there anyone else in the audience
18 associated with this case?

19 Mr. Collins, is that an attorney beside
20 you, sir? Okay.

21 (Witness sworn.)

22 MR. COLLINS: Good morning, Mr. Chair and
23 members of the Board. My name is Chris Collins with
24 the law firm of Holland and Knight.

25 Seated to my left is Jill Cooper who is an

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1 urban planner with our firm. And I believe this is
2 the first time that Ms. Cooper's here before you.

3 Seated to my right is Charles Priem.
4 Charles with Accent General Contracting. And seated
5 behind us is Mr. Bill Cochran, also with Accent.

6 This is a special exception to approve
7 construction in a side yard which does not comply with
8 the side yard requirements.

9 This existing construction is a result of
10 an honest mistake regarding the location of the side
11 lot line. This case has the support of the Office of
12 Planning. We have no objection from the ANC, a letter
13 to that effect. And also two letters from abutting
14 neighbors indicating no objection.

15 To summarize, there is a brick wall that
16 was thought to be on the side lot line between the
17 subject property and the property to the south. There
18 are three surveys which we have located, which
19 indicate that the brick wall is, in fact, on the side
20 lot line. And there are attached as Exhibits E - at
21 Tab E of our booklet Exhibits E4, E5 and E6.

22 They are E4 is a 1988 wall test plat which
23 shows you can see the brick wall along the side of the
24 property.

25 E5 is a 1993 house location survey

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1 indicating the brick wall along the side lot line.

2 And then E6 is a year 2000 topo survey
3 which also indicates the brick wall on the side lot
4 line.

5 CHAIR GRIFFIS: If I might interrupt you?

6 MR. COLLINS: Yes. Please.

7 CHAIR GRIFFIS: If I understand your
8 submission and your statement right now is that there
9 was reliance on the documents that you had.
10 Obviously, there's been some discrepancies, if I can
11 add, in the submissions you have an angled addition
12 that also makes the measuring at different points. And
13 really, fundamentally, we're looking at an overall
14 dimension of less than a foot? I had it in front of me
15 before, but I believe that we were looking at .79 to
16 .84 feet discrepancy?

17 MR. COLLINS: Well, at the point it's .79
18 to .8 -- there's two places.

19 CHAIR GRIFFIS: Right. Based on the angle
20 of the --

21 MR. COLLINS: There is a stairway
22 projection out from the house.

23 CHAIR GRIFFIS: Right.

24 MR. COLLINS: And then there is the rear
25 corner of the property.

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1 CHAIR GRIFFIS: Okay.

2 MR. COLLINS: The stairway projection is
3 between 7.16 and 7.21 feet from what is the side lot
4 line --

5 CHAIR GRIFFIS: Right.

6 MR. COLLINS: -- that we now understand
7 after having a wall check survey done. Actually, let
8 me rephrase that. We're not sure which now which
9 survey is correct.

10 CHAIR GRIFFIS: Indeed.

11 MR. COLLINS: We are going with the last
12 thing the correct one, because we have a wall check
13 for this project from a third party surveyor.

14 CHAIR GRIFFIS: Right.

15 MR. COLLINS: Who indicated that was the
16 fact. We are proceeding that way. We have gone to
17 Mr. Noble to ask him to exercise his authority --

18 CHAIR GRIFFIS: Right.

19 MR. COLLINS: -- to waive up to one foot.
20 And he said with regard to the stairway projection he
21 could do that. However, with regard to the rear corner
22 of the property, which at its closest point is 6.83
23 feet from the surveyed -- the most recent surveyed
24 site lot line, it is .17 feet over his authority.

25 CHAIR GRIFFIS: Right.

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1 MR. COLLINS: He can only waive up to one
2 foot. This is 1.17 feet. And 1.17 feet is 2.04
3 inches. This brick which I'm gesturing to for the
4 record, is 2 3/8ths inches in width. The distance
5 we're talking about is less than distance between my
6 fingerpoints.

7 CHAIR GRIFFIS: Aside from some of the
8 appeals we've heard recently, we are on a precise
9 moment here, aren't we?

10 Well, I would think what we would like to
11 do is actually set the time allowed for this
12 application based on the dimensional requirement
13 that's being asked for relief, in which case we need
14 to move quickly on.

15 I think it's very clear, and I think
16 actually the submissions it can start out very
17 complicated in terms of the wall checks and the
18 different surveys. But I think it's very clear to the
19 Board. And what I would like to do if you are
20 amenable, is actually have you finish your opening and
21 just summarize, and then take Board questions so we
22 can move on.

23 As you indicated, of course, you do have
24 recommendations and approval from the Office of
25 Planning, which is Exhibit 27. And we have no

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1 objection, which is Exhibit 24 of the ANC.

2 There are, as a special exception of
3 course, is we would look for any sort of evidence of
4 detrimental impact or we can run through all of 223,
5 which I normally do but will probably not do today.
6 But it obviously goes towards the use of privacy of
7 the adjacent and light and air impact. And we look,
8 of course, to any opposition that would come in to
9 evidence, though. The Board just doesn't just look if
10 there is no opposition to say well clearly there is no
11 impact. But I think there is sufficient information
12 that we can do our own assessment and review the
13 evidences to find the same outcome.

14 So, with that, if you want to finish your
15 opening.

16 MR. COLLINS: Sir, I just want to point
17 out several things. The test for special exception
18 relief under section 223 is found at beginning of page
19 4 of our applicant's submission. I can ask Mr. Priem
20 if he would adopt that as his testimony, if you so
21 desire.

22 The stairway projection, I'd just like to
23 point out several things. The stairway projection is
24 like in shape like a chimney. And you'll see that from
25 the photos which I'll just run through quickly.

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1 A chimney is allowed to project up to two
2 feet in a side yard. This is projecting less than one
3 foot in the side yard.

4 The rear corner of the property -- the
5 side wall is at an angle relative to the side lot
6 line. So it starts at a point of zero and flares out
7 to a maximum of 1.17 feet. So -- and given the
8 authority of the Zoning Administrator to waive up to
9 one foot, this is really from zero to .17 feet is what
10 we're talking about. This distance, again, less than
11 the depth of that brick in front of me.

12 The exhibits you've seen. I won't run
13 through all of them, except I think it's most
14 important to walk you through the photos at Tab D.

15 And I've put red arrows to orient you.

16 The first photo at Tab D shows the point
17 where the rear corner of the house is within the side,
18 required side yard. You can see along in that photo,
19 kind of along the left side, two walls. One is a
20 brick wall with a wooden fence on top of it. That is
21 the brick wall that the measurement was taken from.
22 There's another shorter wooden wall in front of that,
23 that is a wall to protect the brick wall during
24 construction. That's only a temporary wall that was
25 placed that so that there's no confusion on the

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1 Board's part as to which wall we're talking about.

2 The second photo, again, faces to the rear
3 of the property but is closer to the street. In that
4 case the red arrow points to the stairway projection,
5 which looks somewhat like a chimney projection. But
6 interestingly, you can also see that the eaves on the
7 side of the house projects farther into the side lot
8 line. And then there's a bay window above that
9 projects into the side yard. Those are permitted
10 projections.

11 CHAIR GRIFFIS: Right.

12 MR. COLLINS: Whereas, the stairway is not
13 because it touches the ground.

14 CHAIR GRIFFIS: Right.

15 MR. COLLINS: The third photo, again,
16 showing the rear point, the rear corner of the house
17 where the projection exceeds. The purpose of that
18 photo is to show you the very screened nature at that
19 point where the neighbor can hardly even see the
20 house, much less the projection at that point.

21 And then the next page shows -- it's
22 somewhat whited out because of the exposure -- but
23 again, the stairway projection relative to the
24 neighbor house and all the trees that are in that
25 location as well.

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1 And the final picture is from the street
2 looking toward the back. And the arrow simply points
3 in the direction of the side yard. Clearly, you cannot
4 see either of these two projections from the street --

5 CHAIR GRIFFIS: Right.

6 MR. COLLINS: -- into the side lot line.

7 So, unless there's any questions, I'd like
8 just to introduce Mr. Priem and have him summarize
9 very quickly any comments that he would like to make
10 relative to this application.

11 CHAIR GRIFFIS: Or he could adopt the
12 submission as his testimony, is that correct?

13 MR. COLLINS: Or he could adopt the
14 submission, if it's clear.

15 MR. PRIEM: I can adopt the submission.
16 It's clear that over that what we're presuming here is
17 accurate and true.

18 CHAIR GRIFFIS: Okay. And anything in
19 addition -- I don't want to preclude the direction --

20 MR. PRIEM: Nothing at all.

21 CHAIR GRIFFIS: -- you're getting from
22 your attorney, but --

23 MR. PRIEM: Nothing.

24 CHAIR GRIFFIS: Okay. It's nice brick
25 work and stonework.

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1 Any questions from the Board?

2 Very well, let's move on then to the
3 Office of Planning which is here with us today. Yes.

4 Good morning.

5 MR. MORPHIN: Good morning, Mr. Chairman
6 and members of the Board. My name is Steven Morphin
7 with the Office of Planning.

8 And if it's all right with the Chairman of
9 the Board, the Office of Planning would like to stand
10 on the record.

11 CHAIR GRIFFIS: You have no objection from
12 me.

13 Does the Applicant does have any questions
14 or cross examination of the Office of Planning?

15 MR. COLLINS: No, we do not.

16 CHAIR GRIFFIS: Board members questions of
17 the Office of Planning?

18 I would just note that it was an excellent
19 report, as always. But running through 223, it's
20 always very important to go through all the
21 subsections, as the Applicant's submission did. I
22 think it was important to have OP also.

23 It's surprising -- well, there it is.

24 Let's move then, is there anyone here
25 representing ANC-3C today? ANC-3C attendant to this

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1 application? If not, we can note of course that the
2 ANC took no objection, as Exhibit 24 in our file. And
3 I do believe that it may not merit being given the
4 great weight according to 3115.

5 Ms. Miller?

6 BOARD MEMBER MILLER: I think we should
7 note ANC-3C's support or not objecting. But, you know,
8 when we look at whether they technically complied with
9 3115.1, they didn't give the number that constitutes a
10 quorum and they didn't give us the vote. So, that's
11 why I don't think they technically should be afforded
12 great weight.

13 CHAIR GRIFFIS: Okay. As it seems --
14 well, there it is. We will certainly note their
15 position in the record.

16 Let's move on then. I do not have any
17 other submissions attendant to that in terms of
18 government reports.

19 We do have the letter of support which was
20 also listed -- in fact, it was from the adjacent
21 neighborhood. Am I correct that it's the adjacent
22 neighborhood and it states this in the submission, I
23 believe. But it's the one that actually fronts where
24 this side yard is.

25 MR. COLLINS: The letters are in the file

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1 from the neighbors on both sides.

2 CHAIR GRIFFIS: On both sides? Right.
3 Very well. And they are Exhibit 28 and 22.

4 I don't have any other submissions
5 attendant to the application unless you're aware of
6 any, Mr. Collins, or Board members.

7 MR. COLLINS: None.

8 CHAIR GRIFFIS: In this case, is there
9 anyone attendant to the application 17073 either in
10 support or opposition to give testimony as a person
11 today? If you would, rise and come forward. Not
12 seeing anyone give an indication of giving testimony
13 today, I think we can go to you for any closing
14 remarks you might have.

15 MR. COLLINS: Thank you for your
16 attention. We would request your approval of this
17 application at your earliest convenience.

18 CHAIR GRIFFIS: Very well.

19 Last questions of the Board? If not, then
20 I would move approval of 17073 PDS Trust for a
21 special exception to allow the addition to a single-
22 family dwelling under section 223, not meeting the
23 side yard requirements, which is section 405 on
24 premised 2740 32st Street, N.W. And I'd ask for a
25 second.

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1 BOARD MEMBER ZAIDAIN: Second.

2 CHAIR GRIFFIS: Thank you very much.

3 Of course, this is the TRP/R-1-A district.

4 I think the 223 special exception has been
5 substantially -- has been fully addressed and rise to
6 the merit of approval of this. It was, as I said, a
7 fairly complicated issue in terms of the discrepancy.

8 And, of course, it's always difficult to look at
9 something that it's in construction when it's coming
10 in just for an application. But I think that was all
11 very well clarified, and I think we can move forward
12 with this.

13 Does anyone have to speak to the motion?
14 Then I would ask for all those in favor signify by
15 saying aye.

16 ALL: Aye.

17 CHAIR GRIFFIS: And opposed? Abstain.

18 Thank you very much.

19 If we could record the vote.

20 MS. BAILEY: The Board has voted 5-0-0 to
21 approve the application. Mr. Griffis made the motion.
22 Mr. Zaidain second. Ms. Miller, Mr. Parsons and Mr.
23 Etherly are in agreement.

24 And are we doing a summary order with
25 this, Mr. Chairman?

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1 CHAIR GRIFFIS: I don't see any reason
2 unless the Applicant is --

3 MR. COLLINS: No, sir.

4 CHAIR GRIFFIS: -- requesting. Very well.
5 Then let's do a summary order.

6 Excellent. Thank you all very much.
7 Again, appreciate your patience.

8 And why don't we call the next case in the
9 morning?

10 MS. BAILEY: Application 17074 of Deborah
11 Gelin, pursuant to 11 DCMR ? 3104.1, for a special
12 exception to allow a rear addition to a single-family
13 semi-detached dwelling under section 223, not meeting
14 the lot occupancy requirements (section 403) rear yard
15 requirements (404) and nonconforming structure
16 provisions (subsection 2001.3). This lot is located
17 in the R-3 District at premises 1404 29th Street, N.W.
18 also known as Square 1258, Lot 809.

19 (Witnesses sworn)

20 CHAIR GRIFFIS: Good morning.

21 If you wouldn't mind, just touching the
22 base of the mike there and the light will come on.
23 There is a little button. Do you see it. Yes, there
24 it is.

25 MS. GELIN: My name is Deborah Gelin. I'm

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1 the owner of the single-family dwelling at 1404 29th
2 Street.

3 The house was built in the 1860s. And the
4 purpose of my special exception request is to expand
5 an existing bathroom so that it covers the space over
6 the existing -- space over the kitchen.

7 CHAIR GRIFFIS: Right.

8 MS. GELIN: And it won't change the square
9 footage of the lot occupancy. It's a nonconforming
10 structure. The house was, obviously, grandfathered
11 because it was built prior to 1958, or whatever. This
12 doesn't change any of that.

13 It doesn't any of the neighbor's light or
14 air concerns. I've submitted two letters of neighbors
15 in support of it.

16 BZA and the ANC support it.

17 Anything else?

18 CHAIR GRIFFIS: Excellent. Your addition,
19 in fact, 96 square feet.

20 MS. GELIN: Right.

21 CHAIR GRIFFIS: We like to figure that as
22 monumental around here. So with that, of course as
23 you've indicated, you have an existing nonconforming
24 in terms of the lot occupancy.

25 MS. GELIN: Right.

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1 CHAIR GRIFFIS: Also the rear yard. And I
2 believe there was something else.

3 MS. GELIN: Yes.

4 CHAIR GRIFFIS: But be that as it may,
5 you've made a statement, of course, and it reflects in
6 the record that you are not expanding a nonconformity.

7 And section 223 is actually one -- I think
8 one of the most critical sections of this zoning
9 regulations, which does allow for additions to single-
10 family houses to come in to not as a variance, but a
11 special exception. Meaning you don't have to prove
12 some practical difficulty that you want to expand a
13 bathroom, but rather it's not going to detrimentally
14 impact.

15 And so my understanding from your
16 testimony and your submissions is that, in fact, this
17 would not unduly effect the available light or air to
18 neighboring properties. Is that correct?

19 MS. GELIN: Exactly.

20 CHAIR GRIFFIS: Indeed. And the addition
21 wouldn't unduly compromise the privacy and use of any
22 of the neighboring properties?

23 MS. GELIN: No.

24 CHAIR GRIFFIS: Okay. And in which case,
25 it is not your opinion or testimony or presentation of

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1 this that the view from the street would somehow
2 visually intrude or not be pleasant?

3 MS. GELIN: Right. It's not at all
4 apparent from 29th Street and it's only partially
5 apparent through on O Street, which obscured by
6 foliage.

7 CHAIR GRIFFIS: Okay. Right. But the
8 critical aspect, and actually the cases often come in
9 and they say, well, look, you can't see it from the
10 street. And I understand that aspect if you can't see
11 it, well it can't be visually intrusive to the street.

12 But I think it really goes more towards you're
13 keeping with the character of the building that's
14 existing. And I think it's evidence which actually
15 goes to one of the requirements in terms of the
16 submission of adequate plans to show the scope of
17 work, that it is in fact keeping with the
18 architectural character and certainly would not be
19 visibly intrusive on the area around.

20 MS. GELIN: Yes.

21 CHAIR GRIFFIS: Very well. And of course,
22 you are not -- the lot occupancy, but for the R-3
23 District or it's allowable at the expansion for the
24 special exception at this point.

25 So, are there any questions from the

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1 Board? Yes, Ms. Miller?

2 BOARD MEMBER MILLER: The Office of
3 Planning's report says that the ANC voted unanimously,
4 I believe, to support the application, but I don't see
5 that in my records. Do we have a report or --

6 CHAIR GRIFFIS: Do you have in your
7 possession the ANC memo?

8 MS. GELIN: I don't have it with me.

9 CHAIR GRIFFIS: But the ANC is here.

10 MS. GELIN: The ANC is here.

11 BOARD MEMBER MILLER: Oh.

12 CHAIR GRIFFIS: So we'll get to that.

13 MS. GELIN: I've never seen the report.

14 CHAIR GRIFFIS: See, all the Board members
15 are trying to move this along so quickly.

16 MS. GELIN: Sorry. But I had them fax it
17 to the office.

18 CHAIR GRIFFIS: That's fine. We're going
19 to get to it.

20 MS. GELIN: Thank you.

21 CHAIR GRIFFIS: Indeed. Is there anything
22 else you would like to add to your testimony in your
23 case presentation this morning?

24 MS. GELIN: Nope.

25 CHAIR GRIFFIS: Very well.

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1 Let's move on to the Office of Planning,
2 and welcome them for an excellent report. And we'll
3 turn it over to you, sir,

4 MR. MOORE: Good morning, Mr. Chairman and
5 members of the Board. I'm John Moore, the Office of
6 Planning.

7 I'd like to make one statement regarding
8 the replacement for page 2 in the report.

9 CHAIR GRIFFIS: Good.

10 MR. MOORE: And if you'd look at your
11 original page 2, the second graphic. The weight of
12 the new bathroom sort of cause it to float in the
13 kitchen area. And the copy I gave you --

14 CHAIR GRIFFIS: Yes. It was a strange
15 addition you were proposing according to the Office of
16 Planning's report. It was cantilevered somewhere half
17 way between your first and second floor. And it may
18 have caused some concern if the Board understood that
19 to be the case. But, obviously, we didn't with the
20 other supportive documentation. And we are becoming
21 reliant on great graphics from the Office of Planning,
22 and I think that this is another example of good
23 illustration or representation. So we do appreciate
24 the submission, as you say.

25 MR. MOORE: Staff has a copy of it also.

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1 CHAIR GRIFFIS: Good.

2 MR. MOORE: With that correction, the
3 Office of Planning stand on the record in support of
4 the application.

5 CHAIR GRIFFIS: Fabulous. Thank you.

6 Do you have any questions of the Office of
7 Planning or any cross examination?

8 He has indicated that you have the
9 original memo from the Office of Planning and you now
10 have the revised second page, is that correct?

11 BOARD MEMBER MILLER: Well, I have one
12 thing. I don't know if it's revised or not. So, but
13 I'm fine with whatever --

14 CHAIR GRIFFIS: Follow the green dot on
15 the second page. Make sure it's --

16 BOARD MEMBER MILLER: I see a green. Yes.

17 CHAIR GRIFFIS: Okay. That's the only
18 revision on the second page.

19 BOARD MEMBER MILLER: Okay.

20 CHAIR GRIFFIS: In which case, if you
21 don't have any question -- Board questions to the
22 Office of Planning?

23 Again, laid out very clearly the site
24 contacts, the relevancy of the comprehensive plan and
25 most importantly for our purposes, is the analysis of

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1 the test for the special exception of which you've
2 just been walked through.

3 So, if there's nothing further, let's go
4 the ANC. The ANC is here and is presenting a letter
5 today?

6 (Witness sworn).

7 CHAIR GRIFFIS: Good morning.

8 MR. BIRCH: Good morning. I'm Tom Birch.
9 I chair ANC-2E. This project sits in our
10 jurisdiction.

11 In our November 4 public meeting we
12 reviewed the application and voted unanimously, we
13 have to objection to the application. A letter
14 November 5th was sent to you and should be in your
15 possession. But at any rate, I have a copy here if
16 you would like that.

17 CHAIR GRIFFIS: Yes. Why don't you just
18 follow up and put it in. I don't see it immediately in
19 this.

20 Okay. Anything else?

21 MR. BIRCH: That is all.

22 CHAIR GRIFFIS: Now that you're here,
23 maintain, of course, the ANC within which the property
24 is located is automatically a party in the case, and I
25 skipped so quickly over some of the things, that I

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1 will give you an opportunity to cross examine first of
2 all the Applicant and the Office of Planning if you
3 have any cross examination.

4 MR. BIRCH: No, I have no questions for
5 either the Applicant or the Office of Planning. Thank
6 you.

7 CHAIR GRIFFIS: No problem at all. And we
8 appreciate you coming down here to deliver that
9 letter.

10 If there's nothing further; questions,
11 questions of the Applicant, of the ANC? Okay.

12 BOARD MEMBER MILLER: No. I'm done.

13 CHAIR GRIFFIS: Then let's go to -- I
14 don't have any other of the submissions attendant to
15 that. You have made note, of course, of the letters
16 that were submitted in support, Exhibit 20 and 19, of
17 course, from 1400 29th Street 1414 29th Street. Are
18 you aware of any other submissions attendant to this
19 application?

20 MS. GELIN: No.

21 CHAIR GRIFFIS: Okay.

22 The last questions, let's go to any sort
23 of -- oh, I'm sorry. Ms. Miller?

24 BOARD MEMBER MILLER: Since we don't have
25 a copy of the letter, can you just -- Mr. Birch, can

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1 you just say the letter says and the ANC actually did,
2 or was there a quorum present, you know, what issues
3 did you --

4 MR. BIRCH: The letter says: Dear Mr.
5 Griffis, ANC-2E held it's regularly scheduled duly
6 noticed public meeting on November 4, 2003 at which
7 four of the seven Commissioners were present,
8 consisting a quorum.

9 The above referenced item was discussed,
10 that is application 17073, and the following motion
11 was presented and voted unanimously: ANC-2E has no
12 objection to the Applicant's request for special
13 exception to accommodate a rear addition as proposed
14 at 1404 29th Street, N.W.

15 Please include this in the record for the
16 November 25, 2003 hearing."

17 BOARD MEMBER MILLER: Thank you.

18 MR. BIRCH: Signed my name.

19 BOARD MEMBER MILLER: Thank you.

20 CHAIR GRIFFIS: Excellent. Thank you all
21 very much.

22 And in which case then, we're ready for
23 any sort of closing remarks, remarks you might have?

24 MS. GELIN: Just so you can grant the
25 special exception.

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1 CHAIR GRIFFIS: Excellent closing remarks,
2 actually.

3 In which case, let's move. I would in
4 fact move approval of application 17074 for the
5 special exception that would allow a read addition to
6 a single-family house that is a semi-detached dwelling
7 under section 223, and it didn't meet the lot
8 occupancy requirements, rear yard requirements and
9 therefore is a nonconforming structure that the
10 premises of 1404 29th Street has been fairly -- has
11 sufficiently that it meets the test of the special
12 exception of 223.

13 There is no voiced opposition. Office of
14 Planning is recommending approval. The ANC has also
15 supported the application, as have the adjacent
16 neighbors. With that, it is therefore -- I would ask
17 for a second of the motion.

18 BOARD MEMBER MILLER: Second.

19 CHAIR GRIFFIS: Thank you very much. Any
20 comments or further deliberation of the Board? If
21 not, then I can ask for all those in favor signify by
22 saying aye.

23 ALL: Aye.

24 CHAIR GRIFFIS: Opposed. Any abstentions?
25 Staff may record the vote.

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1 MS. BAILEY: The vote is recorded as 5-0-0
2 to approve the application. Mr. Griffis made the
3 motion, Ms. Miller seconded. Mr. Zaidain, Mr. Etherly
4 and Mr. Parsons are in agreement.

5 CHAIR GRIFFIS: Excellent. And I think we
6 should have a summary order on this.

7 MS. BAILEY: Thank you, sir.

8 CHAIR GRIFFIS: Very well. Thank you very
9 much. And appreciate your patience. Enjoy the
10 gorgeous day and your palatial expansion of 96 square
11 feet.

12 All right. Let's take a 5 minute break.
13 And we're going -- if I would ask the next Applicant
14 to start setting up and be ready, the Board will be
15 right back.

16 (Whereupon, at 11:39 a.m. a recess until
17 11:46 a.m.)

18 CHAIR GRIFFIS: Okay. Let's get started
19 with the last case in the morning then.

20 MR. MOY: The last case of the morning is
21 application 17076 of Jubilee Housing Incorporation,
22 pursuant to 11 DCMR ? 3103.2, for a variance from the
23 off-street parking requirements under subsection 201.1
24 and pursuant to 11 DCMR ? 3104.1, a special exception
25 for a child development center (before and after

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1 school program) under section 205 in the R-5-B
2 District at premises 1630 and 1650 Fuller Street,
3 N.W., 1631 Euclid Street, N.W., and 2550 Mozart Place,
4 N.W. That's in Square 2576, Lots 62, 63, 804 and 809.

5 CHAIR GRIFFIS: Anything else? Very well.

6 As a preliminary matter, first of all it
7 is noted or should be known to the Board at this point
8 that, of course, Haycock Warner Cole Architects is the
9 architect directed on this project. And that is my
10 employer, and therefore I will not be hearing this
11 case. So I will turn this over to Mr. Etherly, the
12 Vice Chair, to run this through and note that we did
13 promise all applicants out by 12:00 -- no, I am
14 kidding you. You guys take your time and enjoy.

15 Proceed and have a great time.

16 VICE CHAIR ETHERLY: Thank you very much,
17 Mr. Chairman.

18 For the record, if I could have our guests
19 at the table identify themselves and then we'll talk a
20 little bit about how we'll approach the next 16
21 minutes.

22 MS. HORNE: Okay. Great. Good morning.
23 My name is Ashleigh Horne from Shaw Pittman on behalf
24 of the Applicant.

25 I have with me today Kim Montroll, who is

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1 with Good Shepherd's Ministries and Jim Greenwell who
2 we would like to have recognized as an expert in
3 architecture of Haycock Warner Cole Architects. We
4 have his résumé available if the Board would like.

5 Also to answer questions we have Jim
6 Knight, who is a representative of Jubilee Housing,
7 the property owner.

8 VICE CHAIR ETHERLY: Excellent.

9 For my colleagues, what I would recommend
10 is let's get the architect's résumé circulated and we
11 can take up the expert status piece.

12 Is there a comment from staff?

13 MS. BAILEY: Mr. Vice Chairman, I'm not
14 quite sure if the parties, the Applicants were sworn
15 in. Were they?

16 VICE CHAIR ETHERLY: Thank you for
17 reminding me.

18 MS. BAILEY: Okay.

19 VICE CHAIR ETHERLY: If we could go ahead
20 and take care of that while the résumé is being
21 distributed.

22 MS. BAILEY: All right.

23 Those persons who will be testifying,
24 please stand.

25 (Witnesses sworn).

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1 VICE CHAIR ETHERLY: Excellent. Thank you
2 very much, Ms. Bailey, for that remainder.

3 My colleagues, you have the résumé of Mr.
4 Greenwell before you. Once again, Mr. Greenwell is
5 being offered as an expert, and that would be on what
6 grounds, shall we say, Ms. Horne? In general
7 architectural knowledge or development?

8 MS. HORNE: As an architect, yes.

9 VICE CHAIR ETHERLY: Okay. All right.

10 Hearing no objections, I will take it as
11 consensus that we would grant Mr. Greenwell the
12 outstanding status as an expert in architecture.
13 Hearing no objection, that is so done. Excellent.

14 Ms. Horne, just as a little bit of a
15 guidance, I think we have a fairly straightforward
16 application in front of us. So I would encourage but
17 not compel you to feel free to, shall we say, either
18 breeze through or condense your remarks. But, once
19 again, we don't want to inhibit the ability of anyone
20 to talk about the program and the application. But I
21 think once again, we have a very straightforward
22 variance component and a very straightforward special
23 exception component.

24 But with that being said, let me turn it
25 over to you. You can proceed.

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1 BOARD MEMBER ZAIDAIN: Mr. Vice Chair, I
2 certainly don't want to throw another monkey wrench
3 into anything.

4 VICE CHAIR ETHERLY: That's okay.

5 BOARD MEMBER ZAIDAIN: We've got actually
6 two rèsumès here and I just go a little confused.
7 James Greenwell is who we just granted --

8 MS. HORNE: Oh, excuse me. I'm sorry. We
9 have Mr. Greenwell and also his colleague, Ms.
10 Lennihan is here.

11 BOARD MEMBER ZAIDAIN: Okay.

12 MS. HORNE: And we just attached her
13 rèsumé to Mr. Greenwell's.

14 BOARD MEMBER ZAIDAIN: Okay.

15 VICE CHAIR ETHERLY: Okay. But in terms
16 of the expert designation for our purposes it will be
17 Mr. Greenwell?

18 MS. HORNE: Yes, Mr. Greenwell will be
19 testifying today.

20 VICE CHAIR ETHERLY: Okay. Okay.
21 Excellent.

22 Thank you, Mr. Zaidain.

23 VICE CHAIR ETHERLY: Ms. Horne?

24 MS. HORNE: And as I stated, my name is
25 Ashleigh Horne. And we are here to present a parking

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1 variance and special exception case on behalf of Good
2 Shepherd Ministries.

3 We have, as I said, Kim Montroll here to
4 answer any questions about Good Shepherd or their
5 programs.

6 I guess I'll just ahead and let Mr.
7 Greenwell proceed with a brief description of the area
8 and the project.

9 VICE CHAIR ETHERLY: First of all, Mr.
10 Greenwell, if I could have you turn on your
11 microphone. Excellent. Thank you very much.

12 MR. GREENWELL: Thank you. Good morning.
13 My name is Jim Greenwell. I'm an architect with
14 Haycock Warner Cole Architects. And we are the
15 architect for the renovation of four of the Jubilee
16 buildings located in Adams Morgan. We are also the
17 architect for the addition -- I'm sorry. For a new
18 building for the Good Shepherd Ministries.

19 The work that's going to be provided for
20 these buildings is a full renovation of the three
21 buildings in questions right now. The three buildings
22 on the map which I will show you in just a minute.
23 And the new building which is adjacent to two of the
24 buildings, the Fuller and the Mozart. If I can just
25 show you on the map the locations of those.

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1 VICE CHAIR ETHERLY: Now, Mr. Greenwell,
2 as you proceed, you would be able to pick up that
3 microphone and move it with you, if that'll work.

4 MR. GREENWELL: Okay. No problem. Sure.

5 We have four sites that we are talking
6 about. The first site is the Ritz, which is located
7 on Euclid Street. The other two buildings are located
8 on Fuller Street. This is called the Fuller Building
9 and this is called the Mozart.

10 And the site that we are talking about is
11 at the rear of the Fuller and the Mozart. It is a 45
12 foot wide site by 150 feet long. And that is where
13 the hardship comes in terms of the parking
14 requirements.

15 The three buildings in question right now
16 have an existing facility in them for God Shepherd.
17 And I might ask Ms. Montroll to describe the facility
18 that you have presently.

19 MS. MONTROLL: In the first floor of the
20 Ritz, which is at 1641 Euclid, we have a K through
21 second grade after school program. And there are 13
22 children registered in that.

23 In the basement of the Mozart, which is
24 1630 Fuller, we have an after school center for third
25 through 6th graders. And there are 23 children

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1 registered in that program.

2 And then in the basement of the Fuller,
3 which is 1650 there are 30 seventh through twelfth
4 graders registered in that program. It's also after
5 school.

6 I can say more if -- okay.

7 MR. GREENWELL: In each of the facilities,
8 the total square footage in the Ritz, it's about 1,000
9 square feet. In the Fuller it's less than 1500 square
10 feet. In the Mozart it is approximately 12000 square
11 feet. And then we also have a small office for the
12 Good Shepherd Ministries which is less than 500 square
13 feet.

14 The new building will consist of 6,750
15 square feet and is a four story building on this
16 narrow 25 foot by 150 foot structure.

17 We're asking for parking relief on all
18 four of these sites. The three existing buildings were
19 built prior to 1958, therefore no parking was required
20 as a result of that for the construction of the
21 building. And it is very difficult, it is practically
22 impossible to provide parking because of the lot
23 coverage. They cover most of the lot and there's
24 really no way to provide a drive aisle or even parking
25 without digging out the basement or really going to

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1 extraordinary means to provide the parking.

2 In terms of the new lot or the new
3 building, which is again this is a plan of the
4 proposed building. And we have provided in your packet
5 a diagram of a potential -- two potential parking
6 spaces for this. This lot being 25 feet wide, it's
7 really impossible to provide perpendicular parking, a
8 driveway and an 18 foot wide parking space. The total
9 width for that requirement would be around 32 feet.
10 So in 25 feet it's impossible to do parking like that.

11 However, we have shown a diagram where we
12 could provide two parking spaces in the front portion
13 of the lot. However, we would lose two street parking
14 spaces in order to provide the two on-site parking
15 spaces. So, therefore, it becomes very difficult to
16 provide any additional parking.

17 VICE CHAIR ETHERLY: So just clarify, Mr.
18 Greenwell, in terms of the application that's before
19 us, the preferred design would be without the two
20 parking spaces, as indicated right there.

21 MS. HORNE: Yes.

22 MR. GREENWELL: That is correct.

23 VICE CHAIR ETHERLY: Okay. Okay. Thank
24 you. Thank you.

25 What might be suitable for us at this

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1 juncture for my colleagues, if there aren't any
2 questions as relates to the broad overview, it might
3 be appropriate for us to focus our discussion on the
4 special exception first and then, of course, the
5 parking variance second. And once again, I'll look to
6 see if there are any specific questions as it relates
7 to the special exception.

8 Let me pause. Any specific questions as
9 relates to the overview of the project. If there are
10 none, I think we can move our discussion to
11 specifically speak to the special exception first and
12 then move into the variance conversation.

13 MS. HORNE: We would just first like to
14 note that the applicant has made a presentation to the
15 ANC Planning and Zoning Committee, and also the full
16 ANC. And we received support from the committee and
17 the full ANC. And those are in the record.

18 In addition, the members of the Reed Cook
19 Neighborhood Association have drafted a letter in
20 support, which we are now offering into the record.

21 VICE CHAIR ETHERLY: Excellent.

22 MS. HORNE: Finally, the Office of
23 Planning has also submitted a report in favor of the
24 application.

25 As far as the special exception standard

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1 for a child development center in the R residential
2 zone district, the Applicant must demonstrate that it
3 is capable of meeting the applicable code and
4 licensing requirements. And we would like to note
5 that under section 300.3 of 29 DCMR the Department of
6 Health regulations, because Good Shepherd is an after
7 school program, it is not required to be licensed by
8 the Department.

9 VICE CHAIR ETHERLY: Excellent.

10 MS. HORNE: Also, if Ms. Montroll could
11 briefly discuss whether any objectionable traffic
12 situation would be caused?

13 MS. MONTROLL: There's be no change in
14 traffic. The children all live in the neighborhood,
15 so the most number of pick-ups of parents for children
16 would be about five per day. And that wouldn't change
17 at all.

18 VICE CHAIR ETHERLY: Good.

19 MS. HORNE: And Ms. Montroll, does Good
20 Shepherd provide sufficient off-street parking
21 spaces?

22 MS. MONTROLL: Yes. We have rented spots.
23 Just up, when you continue up Mozart towards Columbia
24 Road, we have five spots behind the Festival Center.
25 And that's sufficient for our staff. We have 13 staff

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1 members; 7 live in the neighborhood and 5 drive.

2 VICE CHAIR ETHERLY: Okay.

3 MS. MONTROLL: And we use those spots for
4 the staff.

5 VICE CHAIR ETHERLY: Okay.

6 MS. HORNE: And, Ms. Montrell, do you see
7 any objectionable impact that Good Shepherd would
8 create on neighboring properties?

9 MS. MONTROLL: I don't see any changes
10 we'd create and we have the support of the neighbors.

11 MS. HORNE: Do you think any of the off-
12 site play areas would endanger children in traveling
13 between the play area and the center?

14 MS. MONTROLL: No, not at all.

15 MS. HORNE: And could you just briefly
16 explain the location of the play areas?

17 MS. MONTROLL: Yes. There's -- a play
18 area would be -- one would be a roof top on the new
19 building and then some space in front. And there's
20 also been an understanding with H. T. Cook Elementary
21 at the Ritz, views that's open to the public in the
22 afternoon, and we have our staff supervising there.

23 VICE CHAIR ETHERLY: Okay.

24 MS. HORNE: And finally, do you know any
25 reason why Good Shepherd would cause a cumulative

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1 adverse effect with other child development center in
2 the area or the neighborhood?

3 MS. MONTROLL: Not at all, no.

4 VICE CHAIR ETHERLY: Okay. Excellent.

5 Any question on the special exception
6 discussion that we've just had from the Applicant? Ms.
7 Miller?

8 BOARD MEMBER MILLER: I'm sorry. Just for
9 clarification. Special exception is applying to the
10 child development center which is in the current
11 buildings as well as going to be in the new building,
12 is that right?

13 MS. HORNE: Yes.

14 BOARD MEMBER MILLER: That still has to be
15 constructed?

16 MS. HORNE: Yes, that's correct.

17 BOARD MEMBER MILLER: Okay. Thank you.

18 VICE CHAIR ETHERLY: Any further questions
19 on the special exception?

20 Okay. If we can move to the variance
21 piece. Let me just confirm once again, 13 staff are
22 on site. And perhaps for Ms. Horne, the parking
23 requirement for staff of 13 is 3 spaces or four?

24 MS. HORNE: It would be 3 or 4, depending
25 on how the part-time number 13 was counted. Because

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1 it's one for every four.

2 BOARD MEMBER MILLER: Okay. Yes. Okay.

3 Mr. Zaidain?

4 BOARD MEMBER ZAIDAIN: I just have a
5 question in regards to if I understand your point
6 about human services. It's not required to have a
7 license because it's an after school program. But I'm
8 searching through the file, did Human Services issue
9 any kind of report?

10 MS. HORNE: No. Perhaps Office of
11 Planning might be -- might discuss that.

12 BOARD MEMBER ZAIDAIN: Okay.

13 MS. HORNE: But I believe they did solicit
14 the input of them, and they didn't respond.

15 BOARD MEMBER ZAIDAIN: Didn't respond?
16 Okay.

17 VICE CHAIR ETHERLY: Right. We'll get
18 into the Office of Planning report. But just for your
19 question, Mr. Zaidain --

20 BOARD MEMBER ZAIDAIN: Right.

21 VICE CHAIR ETHERLY: -- OP did reference
22 the inability to get a response.

23 BOARD MEMBER ZAIDAIN: Right. And I
24 understand.

25 VICE CHAIR ETHERLY: So as far as you

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1 know, Ms. Horne, there hasn't been any subsequent
2 paperwork to exchange hands?

3 MS. HORNE: No, not as far as I know.

4 VICE CHAIR ETHERLY: Okay. But once
5 again, I --

6 BOARD MEMBER ZAIDAIN: They're not
7 required to have a license. They probably left it at
8 that.

9 VICE CHAIR ETHERLY: Okay.

10 MS. HORNE: But I'd just like to note if I
11 could read into the record really quickly the
12 provision 300.3. "The provisions of this chapter
13 shall not apply to the following:" Letter D is "Child
14 development centers providing only a before or after
15 school child development program.

16 BOARD MEMBER ZAIDAIN: Okay.

17 VICE CHAIR ETHERLY: Okay. Ms. Miller?

18 BOARD MEMBER MILLER: I think you're
19 required to have three parking spaces is what you
20 said, given the number of employees at the child
21 development center.

22 I'm looking through my papers and I'm
23 jumping to OP, but basically they say that you're
24 leasing five parking spaces off-site, is that right?
25 Is there evidence in our record of a lease or evidence

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1 that you are leasing these five spaces, or is it in an
2 assertion in your submittal or what?

3 MS. HORNE: We did discuss that in our
4 pre-hearing statement. However, we did not include a
5 copy of any lease.

6 VICE CHAIR ETHERLY: Well, would it be
7 your testimony that you do have a signed lease that is
8 currently in force with another property owner
9 regarding the spaces?

10 MS. MONTROLL: We do, yes.

11 VICE CHAIR ETHERLY: Okay.

12 MS. HORNE: Actually, we can have them
13 point out the location of the parking, if you would,
14 Mr. Greenwell?

15 MR. GREENWELL: Sure. The location of the
16 parking is -- it's a block away. This is the corner of
17 Mozart Place and Columbia Road, which is the Festival
18 Center. It's just off the map. But it's at the rear
19 of the Festival Center, which is located right here.
20 So it's a block plus the width of the building away.

21 VICE CHAIR ETHERLY: Okay.

22 BOARD MEMBER MILLER: And if you would
23 just elaborate what information you have about the
24 lease, who it's with and what the duration of the
25 lease, or something like that?

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1 MS. MONTROLL: Sure. The lease is with
2 the Festival Center Incorporated. And the address of
3 that is 1640 Columbia Road, N.W. And it's a long term
4 lease with -- there's no designated end to the lease.
5 And we pay on a monthly basis, I believe.

6 BOARD MEMBER MILLER: And it's for certain
7 hours of operation?

8 MS. MONTROLL: Twenty-four hour.

9 BOARD MEMBER MILLER: Twenty-four hours?

10 MS. MONTROLL: Yes.

11 BOARD MEMBER MILLER: Okay.

12 VICE CHAIR ETHERLY: Okay.

13 MS. MONTROLL: We also have a Good
14 Shepherd van uses that spot. It's a 15 seater van we
15 use for the children's programs. And that stays off
16 the spot as well, so off the street.

17 VICE CHAIR ETHERLY: Okay. Now with
18 respect to the parking variance, if we could, Mr.
19 Greenwell, just speak very briefly once again to the
20 inability of the Applicant to place parking on site?

21 MR. GREENWELL: Again, the size of the
22 lot, it's a very narrow long lot. And it's 25 feet
23 wide by 150 feet long. And we have provided as part
24 of the amenity or outdoor space for the Good Shepherd
25 Ministries After School Programs, we're going to

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1 create a front courtyard which can be used for -- it's
2 not only entrance, but can also be used for outdoor
3 play area. So if we took up that space for parking,
4 that would cut down on our outdoor space.

5 But the real difficulty and hardship has
6 to do with the width of the lot. The lot being only
7 25 feet wide, you cannot parallel or you cannot
8 perpendicular park cars in that courtyard because of
9 the minimum of a 32 foot wide requirement for a T turn
10 type of pull in and pull out.

11 MS. HORNE: Mr. Greenwell, could you
12 explain why it would be practically difficult to
13 provide an underground parking garage on the site?

14 MR. GREENWELL: Again, even if we provided
15 a first floor or an underground parking space, you
16 would not be able to get the cars in and be able to
17 turn them around.

18 VICE CHAIR ETHERLY: Okay.

19 MR. GREENWELL: So it really is the
20 hardship is the narrowness of the lot.

21 VICE CHAIR ETHERLY: Okay.

22 MS. HORNE: And finally, Mr. Greenwell,
23 would you discuss why it would practically difficult
24 to provide parking in the rear of the lot?

25 MR. GREENWELL: The lot is inaccessible at

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1 the rear. The Fuller and the Mozart are on the north
2 side of the lot. The H.T. Cook School is on the south
3 side of the lot and there is an adjoining neighbor on
4 the west side of the lot.

5 So the only access to the lot is from
6 Mozart Place. And that's the 25 foot width.

7 VICE CHAIR ETHERLY: Okay.

8 MS. HORNE: And I'd also like to note that
9 the court of appeals has found a practical difficulty
10 when an applicant is a nonprofit entity and would have
11 to substantially have to reduce its facilities in
12 order to provide parking.

13 BOARD MEMBER MILLER: Okay. That's an
14 excellent point. And I'll note, of course, that it has
15 been testified to that a majority of the young people
16 that you're serving come from the immediate
17 neighborhood and communities. So a substantial
18 portion of your population walking to the facility.

19 Okay.

20 MR. GREENWELL: Over 50 percent of -- I
21 think it's 60 percent of the children that attend Good
22 Shepherd Ministries programs are residents of Jubilee
23 Housing. Jubilee Housing has seven buildings in the
24 Adams Morgan area. And the children, in addition to
25 that, are either friends of residents of Jubilee

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1 housing or relatives of Jubilee housing. A lot of the
2 children also have been past residents of Jubilee
3 housing.

4 VICE CHAIR ETHERLY:

5 MR. GREENWELL: And then still live in the
6 neighborhood.

7 VICE CHAIR ETHERLY: Okay. Thank you.

8 Any questions on the variance of the
9 presentation that we've just heard? Ms. Miller?

10 BOARD MEMBER MILLER: I just have a
11 follow-up question. When you say that a lot of the
12 students are friends of some of the residents or
13 relatives of the residents of Jubilee housing, are you
14 implying that they often walk home with those children
15 and therefore, they're not related to the parking and
16 traffic?

17 MR. GREENWELL: It's related to the
18 parking --

19 VICE CHAIR ETHERLY: Mr. Greenwell, if you
20 could turn your mike on. Thank you.

21 MR. GREENWELL: Sorry. The relevance of
22 the statement is because the kids live in the
23 neighborhood or are friends of the Jubilee housing
24 kids, and therefore the parents are not dropping them
25 off or bringing them in from other neighborhoods. So

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1 there's no additional requirement for parking.

2 MS. HORNE: Ms. Montroll, could you just
3 speak as to, again, the number of students that you
4 would estimate actually are driven to the property on
5 a daily basis?

6 MS. MONTROLL: I'd say about five a day
7 would be the maximum that come from other
8 neighborhoods or the parents pick up and drop off.

9 MS. HORNE: And how many volunteers might
10 drive to the property on a daily basis?

11 MS. MONTROLL: Very few. Most of our
12 volunteers live in the neighborhood or take public
13 transportation.

14 VICE CHAIR ETHERLY: Okay. Okay. Seeing
15 no further questions at this time on the variance
16 piece and special exception piece, and I'd like to
17 suggest that we move forward to agency and government
18 reports at this time.

19 I note that we do have the Office of
20 Planning Report at Exhibit 28. DDOT report at Exhibit
21 25. And then, of course, ANC-1C at Exhibit 24.

22 We are joined today by the Office of
23 Planning. Welcome to you, sir.

24 Please feel free to stand on the record,
25 if you would so prefer, or if there are any highlights

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1 that you want to specifically point the Board's
2 attention to, please feel free to do that.

3 Let me sure, of course, that the Applicant
4 is in receipt of the OP report and the DDOT report,
5 and the ANC report?

6 MS. HORNE: Yes, we are.

7 VICE CHAIR ETHERLY: Okay. Excellent. Yes
8 to all three of those questions.

9 Office of Planning?

10 MR. PARKER: Thank you Mr. Chairman,
11 members of the Board. My name is Travis Parker with
12 the Office of Planning.

13 I will just answer a couple of questions
14 or attempt to answer a couple of questions that were
15 just discussed, and then stand on the record as to the
16 remainder of the issues.

17 The questions regarding the Health,
18 Planning does agree with Ms. Horne's interpretation of
19 that section of the code. I did make attempts to
20 confirm that with Human Services, and was
21 unsuccessful. But we didn't consider that to be an
22 important issue since our interpretations agreed.

23 As to the parking lease, one of the
24 discussions within the Office of Planning was whether
25 this variance should be from the requirement to have

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1 parking or from the requirement that the parking be on
2 site. And we determined that it offers the Applicant
3 more flexibility to just leave the application is as,
4 as not requiring them to have any parking spaces even
5 though that they do have lease spots off. And that's
6 why we didn't require proof of the lease, since there
7 technically are no spaces required if this is
8 approved.

9 The only other change that I would make to
10 my report is that DDOT did submit, I think you have
11 that, stating that they have no objections to the
12 application.

13 Other than that, I would stand on our
14 report as submitted.

15 VICE CHAIR ETHERLY: Okay. Any questions
16 for OP from the Board? Let me turn to Ms. Miller
17 first?

18 BOARD MEMBER MILLER: Yes. I just want to
19 follow up on your conclusion that to leave the
20 variance for no parking required at all.

21 MR. PARKER: Okay.

22 BOARD MEMBER MILLER: Even though there is
23 off-site parking that they have. And is that because
24 you conclude that because most of the students and
25 children live within the neighborhood, that that would

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1 be just fine even if they didn't have any parking.

2 MR. PARKER: The feeling was that this is
3 a neighborhood center and that -- yes, both the
4 employees and the students are from the area.

5 BOARD MEMBER MILLER: Thank you.

6 VICE CHAIR ETHERLY: And just as a follow-
7 up, Mr. Parker, did your office take a look at the
8 leased parking space that is currently being utilized
9 by the Applicant?

10 MR. PARKER: How do you mean?

11 VICE CHAIR ETHERLY: Did you actually go
12 and take a look at the spaces where they have the
13 leased parking spaces?

14 MR. PARKER: No, I did not. I did not.

15 VICE CHAIR ETHERLY: Okay. No problem.
16 Just was curious on that.

17 Any other questions from the Board of the
18 Office of Planning? Any cross examination by the
19 Applicant of the OP report?

20 MS. HORNE: No.

21 VICE CHAIR ETHERLY: Okay. Excellent.

22 As referenced by the Office of Planning,
23 we are in receipt of an OP report at Exhibit 25 -- I'm
24 sorry. Of a DDOT report at Exhibit 25. The
25 Department of Transportation is not objecting to the

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1 application and the report was timely filed. That is,
2 once again, at, in our files at Exhibit 25.

3 I'd like to ask if we have a
4 representative ANC 1-C with us today. Seeing no, as
5 our Chair likes to say, mad rush or dash to the table,
6 we will note that Exhibit 24 we do have the ANC
7 Commission 1-C report and the ANC is supporting the
8 application. It is my understanding that the report
9 was timely filed. And if I can look to Ms. Miller, I
10 believe the report would satisfy our great weight
11 requirement, as I am looking for the statement
12 regarding what constitutes a quorum, however, for the
13 ANC. We do have a vote count as 7-0.

14 Ah, I see it.

15 BOARD MEMBER MILLER: Yes, there.

16 VICE CHAIR ETHERLY: I see it. So the
17 report would be able to be afforded great weight. And
18 once again, at Exhibit 24 ANC 1-C.

19 And, again, the Applicant is in receipt of
20 all three of those reports.

21 Okay. At this time it would be
22 appropriate to ask if there are any parties or persons
23 in support of the application here to testify? Any
24 parties or persons in support?

25 Any parties or persons in opposition to

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1 the application here?

2 Seeing none, I think it will be
3 appropriate for us if there aren't any final questions
4 from the Board at this Juncture? Seeing none, I think
5 it would be appropriate to move towards closing
6 remarks for the Applicant.

7 MS. HORNE: I would just like to conclude
8 that given the evidence that is submitted, the
9 Applicant feels that we have satisfied the special
10 exception and variance standards. And given the
11 unanimous support of the project, we would like to
12 request that the Board approve this application by a
13 bench decision.

14 VICE CHAIR ETHERLY: Okay. Thank you very
15 much.

16 I would look to the Board for any
17 indication of their pleasure. I think that perhaps if
18 there isn't any objection, it would be appropriate to
19 perhaps operate under a motion. And I would at this
20 time move approval of application 17076 of Jubilee
21 Housing pursuant to 11 DCMR ? 3103.2 for a variance
22 from the off-street parking requirements under
23 subsection 2101.1 and for a special exception for a
24 child development center under section 205 at premises
25 1630 and 1650 Fuller Street, N.W., 1641 Euclid Street,

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1 N.W. and 2550 Mozart Place, N.W. in R-5-B District,
2 and invite a second.

3 BOARD MEMBER ZAIDAIN: I'll second that.

4 VICE CHAIR ETHERLY: I think the record
5 has been amply set forward in this application as it
6 relates to the property from the standpoint of the
7 parking variance and, of course, also from the
8 standpoint of the special exception requirements as
9 outlined under 205.2.

10 We will note that the Applicant has noted
11 that a substantial portion of the young people that
12 are being served are coming from the community and in
13 terms of both traffic generation, that the amount of
14 trips that are generated therefore are very small with
15 regard to parents and staff to the site.

16 Mr. Zaidain, do you need to --

17 BOARD MEMBER ZAIDAIN: Well, I was just
18 going to say, I think those factors in this case are
19 much more important, and the fact that there are going
20 to be leased spaces off-site, I think that's
21 commendable and we support that, however it's not a
22 condition of this motion, and it's just one more
23 mitigating factor.

24 And I think that the hardship case has
25 been proven, too. And essentially there would have to

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1 be demolishing of structures in order to make room for
2 some more parking, which I think shows a clear
3 hardship in this case.

4 VICE CHAIR ETHERLY: Excellent.
5 Excellent. It's an excellent point, Mr. Zaidain.

6 Any further discussion on the motion?
7 Hearing none, I'd ask all those in favor please
8 signify by saying aye.

9 ALL: Aye.

10 VICE CHAIR ETHERLY: Opposed?
11 Abstentions?

12 All right. If we could record that vote,
13 please, Ms. Bailey?

14 MS. BAILEY: Mr. Vice Chair, before
15 recording the vote, am I correct in stating that there
16 will no conditions to accompany this order, correct,
17 sir?

18 VICE CHAIR ETHERLY: That would be my
19 understanding. Once again, looking to the Board and
20 seeing all in agreement there, yes, Mr. Bailey, there
21 would be no conditions.

22 MS. BAILEY: Okay. The vote is recorded
23 as 4-0-1 to approve the application. Mr. Etherly made
24 the motion. Mr. Zaidain seconded. Mr. Parsons and Ms.
25 Miller are in agreement, and Mr. Griffis did not hear

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1 this case.

2 VICE CHAIR ETHERLY: Okay. And the
3 Applicant did request a summary order.

4 MS. BAILEY: Summary order.

5 VICE CHAIR ETHERLY: I'll once again look
6 to my colleagues to see if there's any objection to a
7 summary order. Not having any opposition and ANC
8 support for this, I think it would be more than
9 appropriate for a summary order int his case.

10 MS. BAILEY: Thank you, sir.

11 VICE CHAIR ETHERLY: Excellent.

12 Well, thank you very much. We appreciate
13 the presentation. We wish you continued success in
14 your good works at Jubilee. And thank you very much
15 for your participation today.

16 Having no other business before the Board,
17 Ms. Bailey, if I'm correct?

18 MS. BAILEY: Not at this time, Mr.
19 Chairman.

20 VICE CHAIR ETHERLY: Excellent. Then I
21 would like to conclude our morning session of our
22 November 25th meeting.

23 Thank you very much.

24 (Whereupon, the meeting was adjourned at
25 12:18 p.m., to reconvene this same day at 1:26 p.m.)

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

1:25 p.m.

CHAIR GRIFFIS: Good afternoon, ladies and gentleman.

Let me call to order the November 25, 2004 Afternoon Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Jeff Griffis, I am Chairperson. And with today is Mr. Etherly, Vice Chair and also Ms. Miller, also another Mayoral appointee. Representing the Zoning Commission with us this afternoon is Mr. Parsons. And representing the National Capital Planning Commission is Mr. Zaidain.

Copies of today's agenda are available for you if you want to find out where you are on our schedule. Of course, those are on the wall as you entered into the hearing room.

There are several things very important and attendant to all public hearings before the Board of Zoning Adjustment, so I will go through them now and maybe even slow down a bit some I'm understandable.

First if all, it is very important to understand that all public hearings before the Board

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1 of Zoning Adjustments are recorded. Therefore, we ask
2 several things of everyone. First of all, when coming
3 forward to speak to the Board, you will need to fill
4 out two witness cards. Witness cards are available on
5 the table where you entered into the hearing room and
6 also on the table right directly in front of us.
7 Those two witness cards go to the recorder who is
8 sitting to my right prior to coming forward.

9 And, when coming forward to speak to the
10 Board make yourself very comfortable in the chair. I
11 need you to make sure that your microphone is on when
12 speaking and when first addressing the Board, you need
13 to give us your name and your address for the record.

14 The order of procedures for special
15 exceptions and variances before the Board is as
16 follows: First, we will have statement and witnesses
17 of the applicant.

18 Second, is government reports attendant to
19 the application such as the Office of Planning or
20 Department of Transportation.

21 Third, would be the report from the
22 Advisory Neighborhood Commission.

23 Fourth, would be parties or persons in
24 support of the application.

25 Fifth, would be parties or persons in

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1 opposition to the application.

2 And six, finally of course, we would have
3 closing remarks by the applicant.

4 Cross examination of all witnesses is
5 permitted by the applicant and parties in the case.
6 The ANC within which the property is located is
7 automatically a party in each case.

8 The record that we will create today will
9 be closed after the conclusion of our hearing, except
10 for any material that the Board specifically requests.

11 And we will be very specific if there is additional
12 information that is required about what it is and when
13 it should be submitted into the Office of Zoning. Of
14 course, it should without saying after that material
15 received, the record would then be finally closed and
16 no other information would be taken into the record.

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

24 The decision of this Board in contested
25 cases, of which all of them are contested -- well, I

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1 can't say that. Most of them are contested cases that
2 are before this Board. All those must be based
3 exclusively on the record that is created before us.
4 And, so we ask present today, of course, not engage
5 Board members in any conversations so that we do not
6 give the appearance of getting information outside of
7 the record that is about to be created for us.

8 That being said, the last piece is that I
9 would ask people present turn off all their cellphones
10 and beepers so that we don't have any disruptions
11 those giving testimony and presentation of cases.
12 And, I think it is appropriate at this time to
13 entertain any preliminary matters. Preliminary
14 matters are those which relate to whether a case
15 should or will be heard today, such as a request for
16 continuance, or withdrawals or postpones, or whether
17 proper and adequate notice of an application has been
18 provided.

19 If you believe that this Board should not
20 hear a case on the agenda this afternoon or you feel
21 that you are not prepared to present a case this
22 afternoon, I would ask you to indicate a preliminary
23 matter by coming forward and having a seat. And then
24 I would ask staff if staff have any preliminary
25 matters for the Board at this time.

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1 And also, wish a very good afternoon to
2 Ms. Bailey from the Office of Zoning, and also Mr.
3 Moy.

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

6 There is a preliminary matter concerning
7 the posting of the first case for the afternoon, Mr.
8 Chairman. But perhaps that's better dealt with after
9 the case has been called.

10 CHAIR GRIFFIS: Yes. If you're not aware
11 of any other preliminary matters, why don't we take it
12 up within the case.

13 MS. BAILEY: Application 17077 of Eugene
14 D. Myers (New Beginnings Christian Fellowship, In),
15 pursuant to 11 DCMR ? 3103.2 for a variance from the
16 off-street parking requirements under subsection
17 2101.1, for a church in the C-1 District at premises
18 4421 Sheriff Road, N.E. (Square 5126, Lots 824, 826
19 and 828).

20 Please stand so you may take the oath.

21 (Witnesses sworn).

22 CHAIR GRIFFIS: Good afternoon.

23 I'm going to have you just turn on your
24 microphones. Yes, just touch the base. Perfect.
25 Excellent.

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1 If I could have you just introduce
2 yourselves?

3 MS. MYLES: Co-pastor Jane E. Myles. The
4 address of the church, 4421 Sheriff Road, N.E.,
5 Washington, D.C.

6 CHAIR GRIFFIS: Okay. And your address?

7 MS. MYLES: My home address 1802
8 Manorfield Court, Mitchellville, Maryland.

9 CHAIR GRIFFIS: Okay.

10 PASTOR MYLES: I'm Pastor Eugene Myles.
11 Eugene D. Myles at New Beginnings. My home address is
12 1802 Manorfield Court, and that's in Mitchellville,
13 Maryland 20721.

14 CHAIR GRIFFIS: Good. Thank you both very
15 much.

16 As you may have understand, Ms. Bailey
17 indicated that the proper -- the requirements for
18 posting was not met on this application. Do you have
19 any information on that, why it was posted late or we
20 misinformed in that manner?

21 PASTOR MYLES: Your misinformed in that
22 matter. It's been up every since we picked it up. And
23 it was down maybe when that storm came up, and it was
24 down just for a matter of hours.

25 CHAIR GRIFFIS: Okay. So, Ms. Bailey, is

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1 it your understanding that perhaps the affidavit of
2 posting was not submitted in a timely manner?

3 MS. BAILEY: I'm looking at the affidavit,
4 Mr. Chairman. Exhibit 4 for the record. It indicates
5 that the property was posted on the 17th of November.

6 The property is required to be posted for 15 days. I
7 don't believe between the 17th and today it would be
8 15 days.

9 CHAIR GRIFFIS: Is that a correct date of
10 when the property was posted, or when was the property
11 posted?

12 PASTOR MYLES: Well, when we got the
13 affidavit signed, it would -- it was already up when
14 we got the affidavit signed.

15 CHAIR GRIFFIS: I see. When was it posted?
16 When did you put the signs up on the property?

17 PASTOR MYLES: The very day we picked them
18 up down here. I don't know exactly what day it was.
19 Within the 15 days, though.

20 MS. BAILEY: Perhaps the affidavit was
21 incorrectly filled out.

22 CHAIR GRIFFIS: Okay. Let's the best
23 approximate so we can move of this issue and actually
24 get to the substance --

25 PASTOR MYLES: Okay. We --

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1 CHAIR GRIFFIS: If I could have your
2 attention? It was clearly before the 17th?

3 PASTOR MYLES: Yes.

4 CHAIR GRIFFIS: Okay. And was it possibly
5 a week before the 17th?

6 PASTOR MYLES: It was several days before
7 the 17th.

8 CHAIR GRIFFIS: Okay.

9 I think, Ms. Bailey, if it's amenable, I
10 think the Board can look at this as an improper
11 information on the application. Very well.

12 Let's proceed then.

13 Let me turn it over to you just for a
14 brief presentation of the case, and then I'll run
15 through the rest of the agenda.

16 Oh, before we jump into this, are you in
17 possession of the Office of Planning's report?

18 PASTOR MYLES: Yes, sir, we are.

19 CHAIR GRIFFIS: Okay. And so you clearly
20 understand that they are recommending that this
21 application actually be amended to include a special
22 exception which allow more than 50 percent of the on-
23 site parking to be located off-site?

24 PASTOR MYLES: Yes.

25 CHAIR GRIFFIS: Okay. Could I ask the

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1 Office of Planning how they derived that as the
2 reading from my perspective of this is that we
3 actually have a variance -- well, why don't I let you
4 take it and we'll see where we are.

5 MS. THOMAS: I'm Karin Thomas for the
6 Office of Planning.

7 When we look at variance relief from
8 parking, at some point when you require more than 50
9 percent off-site that section 2116 kicks in.

10 CHAIR GRIFFIS: 2116.3?

11 MS. THOMAS: Point 5, yes.

12 CHAIR GRIFFIS: Point 5?

13 MS. THOMAS: Yes.

14 CHAIR GRIFFIS: Okay.

15 MS. THOMAS: And so since they weren't
16 going to be parking at least two -- they weren't going
17 to be at least one or two spaces on site of the seven,
18 at least half of the spaces you would have to apply
19 this special exception.

20 CHAIR GRIFFIS: Let me ask you then from
21 the very beginning, what did you understand the
22 variance request was for? Was it a variance from the
23 parking requirement?

24 MS. THOMAS: We understood it as variance
25 from the parking requirement, but I don't if it was --

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1 it didn't specifically state from all these spaces.
2 So we applied both.

3 CHAIR GRIFFIS: I see. So you took it as
4 a request for a reduction of the parking --

5 MS. THOMAS: Reduction in the parking,
6 yes.

7 CHAIR GRIFFIS: Okay.

8 Now let's get a quick clarity on actually
9 what you were requesting. Was it a variance from the
10 requirement of parking or was it a variance from a
11 reduction of what is required to be on site?

12 PASTOR MYLES: A variance from parking.
13 Because the building occupies the entire lot that
14 we're on.

15 CHAIR GRIFFIS: Okay. So if I understand
16 you correctly, I'm looking at the application. You
17 were requesting a variance from that number of spaces
18 required, which would be seven?

19 PASTOR MYLES: Right.

20 CHAIR GRIFFIS: And you have filled the
21 application with the idea that you will provide
22 parking outside, but you're still holding to the fact
23 that this is a variance from the parking requirement?

24 PASTOR MYLES: Yes.

25 CHAIR GRIFFIS: Okay.

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1 PASTOR MYLES: I hope I'm answering that
2 correctly.

3 CHAIR GRIFFIS: It sounds good to me.

4 OP have a comment on that?

5 MS. THOMAS: That's fine. Usually we take
6 this as a precaution just in case.

7 CHAIR GRIFFIS: No, I totally appreciate
8 that. And I just wanted to get clarity so we could
9 get--

10 MS. THOMAS: And we wouldn't want to hold
11 the application up if they had to come back for a
12 special exception.

13 CHAIR GRIFFIS: Good. Okay.

14 With all that cleared up, I think we can
15 turn it over to you for brief statements. And I don't
16 think we're going to have any other complicating
17 questions.

18 PASTOR MYLES: Well, we're here about --
19 due to the fact that we -- do you want me to start
20 from the beginning or what? I mean, we --

21 CHAIR GRIFFIS: No. Actually, what I
22 think is most important is to address the test for the
23 variance. Just outline very -- highlight some of the
24 things that you've submitted already and that would be
25 what is the uniqueness of the property that creates

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1 its practical difficulty of providing parking, and how
2 you don't think that this would in fact impair the
3 zone planner map.

4 PASTOR MYLES: Well, the fact that the
5 property is -- the church itself, the building sits on
6 just about all the property that's in question that
7 it's on. Consequently, we have asked that we be
8 exempt from -- and given the privilege to park on the
9 street or off-site parking based on that.

10 We have -- we only have 35 to 45 members.

11 CHAIR GRIFFIS: Right.

12 PASTOR MYLES: And a lot of the people --
13 we have been there without any congestion as far as
14 being able to park on streets. I mean, any difficulty
15 in the past. And we -- the people that we do use, we
16 carpool or they ride the subway or they're in the
17 neighborhood. And so consequently the -- any
18 difficulty with the -- causing any congestion because
19 of our parking it wouldn't be.

20 CHAIR GRIFFIS: What's the closest Metro
21 station?

22 PASTOR MYLES: There are two. One at
23 Minnesota Avenue and one at -- the other is at --

24 CHAIR GRIFFIS: Okay.

25 PASTOR MYLES: Minnesota and -- between

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1 two -- and between two. One on Minnesota and the other
2 one is on Minnesota Avenue extended.

3 CHAIR GRIFFIS: And they're walkable
4 distance?

5 PASTOR MYLES: Yes.

6 CHAIR GRIFFIS: Okay.

7 Whenever there is a need, we do, we
8 carpool. We usually -- the people in the neighborhood
9 walk to church, you know.

10 CHAIR GRIFFIS: Okay. Good. So what I
11 understand you're saying and also from the submissions
12 in the application is one of the uniqueness is the
13 fact that you have an existing building and it fills
14 up most of the site. And you've and actually you've
15 submitted, close to 100 percent of the site.

16 PASTOR MYLES: Right.

17 CHAIR GRIFFIS: The actual calculations
18 are probably closer to 96?

19 PASTOR MYLES: Right.

20 CHAIR GRIFFIS: Pretty close.

21 And then one of the other uniqueness of it
22 is you have a building restriction line which you're
23 not allowed to park by the regulations. You're not
24 allowed to park right out in front on the sidewalk or
25 in essentially what looks like your front yard.

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1 PASTOR MYLES: Right.

2 CHAIR GRIFFIS: There's also what's called
3 a paper alley behind the existing structure, meaning
4 and you probably well know it better than I do, that
5 it's a dirt kind of little way. Maybe looks kind of
6 like your backyard. And clearly even if you good
7 drive down that, it doesn't drive you anywhere which
8 you could access parking.

9 So fundamentally, you have this existing
10 condition of some uniqueness, the cited site, and the
11 practical difficulties of the fact that you cannot
12 find parking based on the size requirements for
13 parking spaces of seven. Is that correct?

14 PASTOR MYLES: That's the primary --

15 CHAIR GRIFFIS: I'm understanding your
16 testimony?

17 PASTOR MYLES: Yes. Yes.

18 CHAIR GRIFFIS: Excellent. And the other
19 piece of it is, of course, the test would be that you
20 wouldn't, if granted the relief from these seven
21 parking spots, wouldn't somehow be catastrophic to the
22 zoning in the area? This is an allowable use in this
23 building, as it is your understanding, correct?

24 PASTOR MYLES: Yes.

25 CHAIR GRIFFIS: Okay. Very well.

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1 Anything else you would like to summarize?

2 PASTOR MYLES: Can you think of anything

3 MS. MYLES: No, we just have regular
4 church services. Nothing.

5 PASTOR MYLES: And we do -- our services
6 are not -- we don't stagger hours, but we only
7 services on Sunday, which is outside of the prime time
8 for the other -- some of the bigger churches there.
9 And, of course, we have Bible study and prayer service
10 on Tuesday, which is an off night for everybody.

11 CHAIR GRIFFIS: How many evenings a week
12 is your church open for activities?

13 PASTOR MYLES: Once.

14 CHAIR GRIFFIS: Just Monday nights?

15 PASTOR MYLES: No, it's --

16 MS. MYLES: Tuesday.

17 PASTOR MYLES: -- Tuesdays. And sometimes
18 if there's a special service or a special activity for
19 the youth, we participate with the youth quite a bit.

20 CHAIR GRIFFIS: Okay. And it's been your
21 testimony that you don't see, even though there are
22 ten other churches in this area --

23 PASTOR MYLES: Right.

24 CHAIR GRIFFIS: You haven't seen a lot of
25 competition for parking?

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1 PASTOR MYLES: No.

2 CHAIR GRIFFIS: And what about special
3 services like funerals and weddings, and things like
4 that? Do you conduct on site or is it somewhere else?

5 MS. MYLES: We haven't had a funeral.

6 PASTOR MYLES: We haven't had a large
7 funeral. We have -- we've always -- we actually used
8 other churches.

9 CHAIR GRIFFIS: Right.

10 PASTOR MYLES: Or we've used the funeral
11 homes.

12 CHAIR GRIFFIS: Understood. Okay.

13 And, of course, it is in the record as
14 pretty clear, especially Office of Planning that this
15 is adjacent to an R-2 zone, which is a low density
16 residential. And is it your testimony the fact that
17 that would not add to the burden of on-street parking
18 based on the low density aspect of the residential? I
19 mean, they don't have a lot of cars down a block or
20 so, so they're not competing also?

21 PASTOR MYLES: No.

22 CHAIR GRIFFIS: Okay. Any other questions
23 from the Board? Ms. Miller?

24 BOARD MEMBER MILLER: Yes. Mr. Myles, I'm
25 sorry I missed the answer to this question already

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1 while I was looking through my papers. But I read in
2 one of your submittals that 35 to 45 members regularly
3 attend. Did you say how many members you actually have
4 in the church?

5 PASTOR MYLES: Right now, even less than
6 that right now. But we have -- and I can kind of -- I
7 mean, like most churches do. Some come and some go.
8 But we have on the average of 35, 40.

9 BOARD MEMBER MILLER: Oh? So you don't
10 have more than 35 members?

11 MS. MYLES: Oh, no.

12 BOARD MEMBER MILLER: Oh, okay. Do you
13 anticipate growing to a certain number?

14 MS. MYLES: It's --

15 PASTOR MYLES: Yes.

16 CHAIR GRIFFIS: Hundreds, right?

17 PASTOR MYLES: Hundreds, right.

18 CHAIR GRIFFIS: Yes, indeed.

19 BOARD MEMBER MILLER: Seriously?

20 PASTOR MYLES: Seriously, no. We do -- we
21 always welcome the idea that we would outgrow that
22 church, you know.

23 BOARD MEMBER MILLER: I just wonder if you
24 had a number in mind, because that might effect the
25 parking?

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1 CHAIR GRIFFIS: I think it's a good
2 question. And I'm sorry, but clearly churches want to
3 be as big as possible and keep growing.

4 PASTOR MYLES: Right.

5 CHAIR GRIFFIS: I think the number that's
6 pertinent is actually on -- you don't have -- you have
7 benches in the church, correct?

8 PASTOR MYLES: Right.

9 CHAIR GRIFFIS: And the regulations state
10 that in order for us to calculate benches it's based
11 on occupancy. That occupancy is based on every 18
12 inches of benches. And it's been estimated that you
13 have a potential population or occupancy of 72.

14 BOARD MEMBER MILLER: Thank you.

15 PASTOR MYLES: Right.

16 CHAIR GRIFFIS: A long way around it,
17 isn't it?

18 PASTOR MYLES: Okay.

19 BOARD MEMBER MILLER: Okay. That's what I
20 was looking for. Okay.

21 And I just have a follow-up question. I
22 think you said whenever there's a need your members
23 carpool. And I'm wondering what type of needs those
24 are when your members carpool?

25 PASTOR MYLES: Weekly.

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1 BOARD MEMBER MILLER: What?

2 PASTOR MYLES: You say how many or what?

3 BOARD MEMBER MILLER: No. What type of
4 need would result in a carpooling by your members?

5 PASTOR MYLES: Well, that's a weekly -- we
6 have one or two people to go and pick up different
7 people.

8 CHAIR GRIFFIS: So is that like elderly
9 folks that don't drive.

10 PASTOR MYLES: Elderly or young people.

11 CHAIR GRIFFIS: Or young people that don't
12 drive?

13 BOARD MEMBER MILLER: Okay. Thank you.
14 That's the kind of need. Okay. It's not the need that
15 there's not enough parking?

16 PASTOR MYLES: No. The need --

17 BOARD MEMBER MILLER: It's the need that
18 these people can't drive themselves. Okay. Thank
19 you.

20 CHAIR GRIFFIS: Does the church own a van
21 to do that or is it just the parishioners who have
22 their own cars?

23 PASTOR MYLES: Yes.

24 CHAIR GRIFFIS: That comes from the big
25 population. Okay.

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1 Other questions from the Board? Very
2 well.

3 Let's go on to Office of Planning and have
4 them present their report.

5 MS. THOMAS: Mr. Chairman, at this time we
6 would just stand on our record and leave it open if
7 you have any questions for us.

8 CHAIR GRIFFIS: Thank you very much. And
9 very helpful report, I must say. More than helpful.
10 It was a substantial addition to the application, one
11 outlining the entire case presentation that needed to
12 be addressed. And also noting that you have no
13 objection to the Board moving ahead with relief as a
14 variance from the parking. But we do appreciate the
15 note of special exception.

16 Does the Applicant have any cross
17 examination of the Office of Planning? Do you have
18 any questions about their report?

19 MS. MYLES: I don't have questions, sir.
20 But I do have a recommendation from an organization.

21 CHAIR GRIFFIS: Good. We'll get to that.

22 MS. MYLES: Oh, okay.

23 CHAIR GRIFFIS: So don't worry about that.

24 But you do have the Office of Planning's
25 report, correct?

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1 MS. MYLES: Yes, sir.

2 PASTOR MYLES: Yes.

3 CHAIR GRIFFIS: Okay. And you had a time
4 to review it and all of that?

5 PASTOR MYLES: Yes.

6 CHAIR GRIFFIS: Excellent. And, of
7 course, they are recommending approval, so it probably
8 wouldn't be prudent to be rough and cross examine them
9 and kind of, you know, make it tough on them.

10 But that being said, we don't have
11 anything to lose, so any tough questions from the
12 Board? Good. Not seeing any, then lets move on.

13 We do have attendant to this application
14 no ANC report.

15 Did you -- is anyone here from ANC-7C. We
16 don't have an ANC report on the record.

17 Did you have contact with the ANC?

18 MS. MYLES: Definitely.

19 PASTOR MYLES: Yes.

20 CHAIR GRIFFIS: And you presented the
21 project to the ANC?

22 PASTOR MYLES: Right. As a matter of
23 fact--

24 CHAIR GRIFFIS: Did they treat you well?

25 PASTOR MYLES: Yes.

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1 CHAIR GRIFFIS: Better than us? No, I
2 don't --

3 PASTOR MYLES: Well --

4 CHAIR GRIFFIS: That being said, was it
5 your understanding that they were going to submit a
6 report into the Board?

7 PASTOR MYLES: It was willing to, yes.

8 MS. MYLES: Yes.

9 CHAIR GRIFFIS: Okay. And they had a vote
10 while you were present?

11 PASTOR MYLES: No.

12 CHAIR GRIFFIS: Okay. That's all right.
13 It's not your burden to bring that. The ANC-- they
14 don't have one on file here. And that doesn't
15 preclude us from doing what we need to do.

16 So let's move on. I don't have any other
17 submissions that were noted in the application.
18 You've just indicated that you have another
19 submission.

20 MS. MYLES: Yes.

21 CHAIR GRIFFIS: If you want, you can give
22 it to the staff at the far right. Of course, you are
23 not getting that right so I do hope you have copies.
24 Actually, right up on the dias would be -- there is.
25 And that is while you have a seat, you can explain

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1 what it is and then we'll be able to take a look at it
2 when it gets to us.

3 MS. MYLES: Do you have a copy? It's a
4 letter of recommendation from the --

5 PASTOR MYLES: The Marshall Heights.

6 MS. MYLES: -- Marshall Heights Community
7 Development Organization on Benning Road, signed by
8 the Chair Board of Directors, Richard A. Hamilton.
9 And stating they have no problems with us and how we
10 have contributed to the community in several ways.
11 And how they personally have seen the work that we
12 have done in the community.

13 CHAIR GRIFFIS: I see.

14 Any questions from the Board?
15 Clarification on that? Local CDC supporting the
16 application? Very well.

17 Anything else? I don't have anything.

18 Are you aware of any other submissions
19 into your record?

20 PASTOR MYLES: No.

21 CHAIR GRIFFIS: Very well. Then I think
22 it's appropriate to turn it back over to you if you
23 had any closing remarks that you wanted to make,
24 summations, anything of that nature?

25 MS. MYLES: Yes, sir. I would like to ask

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1 if we can hear from you or a bench decision, we'd be
2 happy with that. We've got so many things that are
3 contingent upon what happens today.

4 And I would like to say this: That the
5 staff and the office over here, I think Ms. Davis and
6 Ms. Booth --

7 CHAIR GRIFFIS: Yes.

8 MS. MYLES: -- they have been fantastic.
9 Without them, we don't know. Because we didn't know,
10 we didn't have an attorney and this is work we were
11 doing, and they were so cooperative. And we would
12 like to say that.

13 CHAIR GRIFFIS: Understood. Why don't we
14 bring them out here? No, no. Actually, they're
15 probably listening, so I know they can hear you.

16 And I think that's very important to say,
17 because I know the Board appreciates all the hard work
18 that the staff does. And, obviously, we couldn't do
19 our simple little tasks without the great work of
20 staff. So, we appreciate those comments.

21 Anything, follow-up, Board? Last
22 questions? Anything of note? Okay.

23 One last piece. In your submission you
24 have essentially an agreement to have parking spaces
25 made available to the church off-site. And I think

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1 that's an important piece, and I think obviously
2 facilitates your operations. And I think it would be a
3 very clear directive that it is supportive of that,
4 and I would hope that you would pursue that and make
5 sure that there was a certain amount of parking off-
6 site available to the folks coming in for services,
7 and that would make it a heck of a lot easier for them
8 and quite convenient. But with that, I think we can--
9 and I would like to move approval of application 17077
10 of the New Beginnings Fellowship, Inc. for a variance
11 from the off-street parking requirements under section
12 2101.1, that is for a church, the premises of 4421
13 Sheriff Road, N.E., and would ask for a second.

14 BOARD MEMBER MILLER: Second.

15 CHAIR GRIFFIS: Thank you very much, Ms.
16 Miller.

17 I think it's very clear in the application
18 and the attendant pieces that clearly it is an
19 existing structure that is being accommodated for this
20 matter of right use. It does have a large site
21 occupancy of close to 96 percent, and clearly based on
22 the dismissed size, the existing structure and the
23 lack of actual access, the area required for the
24 parking spaces attendant to a occupancy of 72 is not
25 able to be complied with. And I do not think that the

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1 granting of variance would impair the intent and
2 integrity of the zone plan in any way. And with that,
3 I would -- I can ask for any other comments,
4 deliberations at this time? Any comments from the
5 Board? If there are none, then I would ask those for
6 in favor signify by saying aye.

7 ALL: Aye.

8 CHAIR GRIFFIS: And opposed? Any abstain?
9 Very well. Why don't we record the vote?

10 MS. BAILEY: The vote is recorded as 5-0-0
11 to approve the application. Mr. Griffis made the
12 motion. Ms. Miller second. Mr. Zaidain, Mr. Parsons
13 and Mr. Etherly are in agreement.

14 Summary order, Mr. Chairman?

15 CHAIR GRIFFIS: Yes.

16 I'm sorry, questions?

17 PASTOR MYLES: No. Invariably sometimes
18 New Beginnings, there's an S on it.

19 CHAIR GRIFFIS: Oh, you want us to spell
20 it right?

21 PASTOR MYLES: No.

22 MS. MYLES: I don't care. Just that
23 you're giving it us.

24 CHAIR GRIFFIS: Okay. All clear, Ms.
25 Bailey?

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1 MS. BAILEY: All clear, sir.

2 CHAIR GRIFFIS: Excellent. Thank you all
3 very much.

4 MS. MYLES: Thank you very much.

5 CHAIR GRIFFIS: Have an excellent
6 afternoon. And enjoy the neighborhood down there.

7 MS. MYLES: Thank you. Thank you, sir.

8 CHAIR GRIFFIS: Okay. That being said,
9 why don't we don't call the next case in the
10 afternoon?

11 MS. BAILEY: Application 17078 of TC
12 MidAtlantic Development, Inc. on behalf of the Avalon
13 Bay Communities, Inc. and Ruby Restaurant, Inc.,
14 pursuant to 11 DCMR ? 3104.1 for a special exception
15 from the roof structure requirements in order to
16 permit the development of a ten-story office building
17 with ground floor retail in the DD/C-2-C District,
18 pursuant to section 411 and subsection 770.6. The
19 property is located at 777 6th Street N.W. also known
20 as (Square 486, Lots 10, 11, 12, 13, 26, 804, 805,
21 806, 807 and 808).

22 Please stand to take the oath, all those
23 persons who will be testifying this afternoon.

24 (Witnesses sworn).

25 CHAIR GRIFFIS: Ms. Bailey, is there a

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1 preliminary matter on this?

2 Of course, it should be noted that Haycock
3 Warner Cole Architect is the architect of record,
4 which is my employer, and I will not be hearing this
5 case. So I turn it over to Mr. Etherly. And wish you
6 all a great fun and exciting time, and I will see you
7 shortly.

8 VICE CHAIR ETHERLY: Thank you very much,
9 Mr. Chair.

10 How about we jump right into
11 introductions. If you could, just introduce the panel
12 that's at the table, and then I'll have a couple of
13 opening remarks for how I think we can proceed. I
14 don't think we'll end up spending a lot of time with
15 this conversation. But let's do introductions first
16 and then we'll go from there.

17 MR. HUGHES: Thank you, Mr. Chair. Can
18 you hear me?

19 Good afternoon, Mr. Chairman and members
20 of the Board, for the record my name is Dennis Hughes
21 with the law firm of Holland & Knight, LLP.

22 Joining me this afternoon are Mr.
23 Frederick Rothmeyer representing TC MidAtlantic
24 Development, Inc. and to his right to Mr. Frank Durkin,
25 an architect from the firm of Haycock Warner Cole. And

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1 seated behind us if Mr. Steven Sher, Director of
2 Zoning and Land Use Services with Holland & Knight.

3 We appear before you this afternoon to
4 request special exception approval pursuant to
5 sections 3104, 770.6 and 411.11 of the zoning
6 regulations to allow roof structure not meeting the
7 normal set back requirements. The approval will
8 facilitate the construction of a ten story office
9 building with ground floor preferred uses at the
10 southeast corner of the intersection of 6th and 8th
11 Streets, N.W., which is located with the DD/C-2 zone.

12 Other than the request special exception the project
13 fully complies with the zoning regulations applicable
14 to the DD/C-2 zoning.

15 Before proceeding further, I would like to
16 confirm that is in receipt of the Applicant's
17 statement and support, which was filed with the Board
18 on November 12th.

19 VICE CHAIR ETHERLY: Yes.

20 MR. HUGHES: Thank you. The statement of
21 the Applicant sets forth the Applicant's position with
22 respect to compliance with 3104, 770.6 and 411.11 and
23 includes a series of exhibits for your reference,
24 which are as follows:

25 Exhibit A, we have surveyor's plat of the

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1 property. A footprint of the building shown.

2 At Exhibit B we have an excerpt of the
3 *Sanborn Atlas* showing the general location of the
4 property in the Chinatown area.

5 Exhibit C is a portion of the D. C. Zoning
6 Map showing the property's located in the DD/C-2 zone.

7 And then Exhibit D we have a series of
8 architectural drawings. And I refer you particularly
9 to sheets A105 showing the roof structure and plan and
10 A201 showing it in elevation.

11 And then finally testimony outlines at
12 Exhibits E through G.

13 I'd also like to confirm that the Board is
14 in receipt of the report in support of the application
15 from the Office of Planning, which is dated November
16 20th of this year and a letter in support of the
17 application from Advisory Neighborhood Commission 6C,
18 dated October 29th.

19 VICE CHAIR ETHERLY: Excellent.

20 MR. HUGHES: And we are pleased to have
21 the support of both the Office of Planning and ANC-6C.

22 VICE CHAIR ETHERLY: If I could, Mr.
23 Hughes, let me have you pause you right there. Because
24 as I intimated, I think we can have a pretty
25 straightforward dialogue around the application. I

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1 think the application is fairly complete and
2 straightforward. So I'm going to try to kind of
3 expedite us a little bit here.

4 MR. HUGHES: Thank you.

5 VICE CHAIR ETHERLY: It's my colleagues
6 are aware we have a special exception regarding the
7 roof structure. What I would suggest as we proceed
8 is: (1) Let me look to see if there are any questions
9 kind of right off the bat on the part of any of my
10 Board members, otherwise I'd perhaps like to have the
11 architect speak right to the issues around the
12 placement of the roof structure, why it has to go
13 where it needs to go. Let me point to Mr. Zaidain.

14 BOARD MEMBER ZAIDAIN: Yes. I have a very
15 general question, and this may seem obvious but I want
16 to make sure I'm clear. Is the reason why you can't
17 accommodate the setback for the roof structure, is it
18 because you're trying to obtain a particular floor
19 plan or floor plate or is it coming out of the
20 restrictions of the lot? Do you follow? Is it more
21 like the interior design type of problem or is it --

22 MR. HUGHES: It has multiple aspects to
23 it. Francis, you could probably answer that best.

24 MR. ROTHMEYER: Should I jump in?

25 MR. HUGHES: Yes.

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1 MR. ROTHMEYER: It's really a market
2 driven aspect with the site constraints. The site is
3 relatively small. It's about 20,000 square feet. And
4 for an office footprint that's tiny.

5 BOARD MEMBER ZAIDAIN: Sure.

6 MR. ROTHMEYER: In addition to that, the
7 site is very narrow. It's about 85 foot deep. So in
8 order to lay out a speculative office floor plan for
9 the type of users for the east end we're really
10 looking to have a little bit more depth between the
11 core and the facade. And Frank can further explain in
12 the plans how that lays out, but it's a market driven
13 under the site constraint type of situation.

14 BOARD MEMBER ZAIDAIN: Well, and given
15 that this is under a special exception as opposed to a
16 variance, I was just curious as to what the ultimate
17 driving factor is. I mean, there was some discussion
18 about the small nature or unique nature of the site,
19 which I don't dispute that. But there was also a
20 discussion about how the core relates to the rest of
21 the building layout. So maybe I should just wait
22 until after the architect presents.

23 VICE CHAIR ETHERLY: I think that's a very
24 appropriate place for us to weigh in. Let me look Ms.
25 Miller, perhaps, before going to the architect. Ms.

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1 Miller?

2 BOARD MEMBER MILLER: This is a very
3 preliminary question, but this issue has come up in
4 another case and I just want to ask you on page 2 of
5 your application you use a term of art and I would
6 like to ask you how you define it. You say with the
7 exception of a vacant three story row building at the
8 southwestern corner of the site, the subject property
9 is unimproved and is utilized as a surface parking
10 lot. Could you tell me what you mean by unimproved?

11 MR. HUGHES: It has no building
12 improvements on the property other than a single
13 rowhouse structure. I'm not sure if I follow the
14 question.

15 BOARD MEMBER MILLER: It has no building
16 on that part, that is not improved? Is that what you
17 mean by unimproved? There's no building on that part?

18 MR. HUGHES: Yes, that's what I mean.

19 BOARD MEMBER MILLER: It's not a trick
20 question.

21 MR. HUGHES: That's what I mean, yes.

22 BOARD MEMBER MILLER: Thank you.

23 VICE CHAIR ETHERLY: I will note perhaps,
24 Mr. Hughes, that you're getting the benefit of some of
25 our earlier discussion in another case where the issue

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1 of improved versus unimproved was quite the source of
2 deliberation and consternation for the Board. So --

3 MR. HUGHES: Thank you. I'll look forward
4 to the transcript.

5 VICE CHAIR ETHERLY: Just so you have a
6 sense of where that as coming from.

7 MR. HUGHES: Thank you.

8 VICE CHAIR ETHERLY: But good question,
9 Ms. Miller.

10 But I believe as Mr. Zaidain's question
11 was beginning to allude to, I think once again we have
12 a fairly straightforward special exception here. So
13 if the architect would like to proceed further, I'd
14 like to perhaps focus very specifically on where you
15 have the roof structure placed presently and what the
16 placement of the roof structure if done elsewhere on
17 the roof footprint would mean for the building from
18 your proposed use standpoint. So if you could stay
19 focused on one of those two points, I think we can
20 once again be very expeditious to that.

21 MR. ROTHMEYER: Certainly. Let me just
22 flip this board to the roof plan.

23 VICE CHAIR ETHERLY: Okay. And you can,
24 of course, feel free to lift the microphone up if you
25 want to speak from a standing position as you review

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1 the drawings.

2 MR. ROTHMEYER: Okay. Let me orient the
3 board.

4 This street along here is the front of the
5 building, along 6th Street. And to the left here is H
6 Street in the Chinatown District. The Red Roof Inn is
7 to the east, which is the top of the board.

8 There's a 16 foot alley and then the
9 building begins another 24 feet beyond that. So
10 there's a 40 foot difference between the back of our
11 building and the side of the Red Roof Inn.

12 We're placing the penthouse to that side
13 and as you probably know, the penthouse tracks through
14 the building floor plates to be the core of the
15 building.

16 If we were to locate it in the center in
17 accordance with the zoning regulations, it would
18 effect several things. On a typical floor, which is
19 shown here, you can see we have it divided up into
20 four potential tenants. And by moving the core down to
21 the center, we would get a very narrow band along the
22 back and the front which are currently the most --
23 this is the most desirable tenant space right above
24 the building entry and so forth. That becomes very
25 difficult to lay out if it's with such a narrow

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1 dimension.

2 The core is about 30 feet wide, so we're
3 down to an operational size of about 27 -- 28 feet,
4 which is very difficult for office planning for multi-
5 tenant floor.

6 The ground floor we have retail space on
7 the corner of 6th and 8th, which we think is a
8 terrific location. And by moving the core to the
9 center, we begin to disrupt that space and we wouldn't
10 have the open layout that a retail tenant is likely to
11 be attracted to. We have a great deal of it on the
12 alley side without the window surface and the open
13 floor that we would like to have.

14 BOARD MEMBER ZAIDAIN: It seems like you'd
15 create some unusable space on the alley side, too, if
16 you were to shift that out?

17 MR. ROTHMEYER: Absolutely. Right now
18 because the core is to the back like that it makes for
19 a very efficient layout with the loading docks and so
20 forth. If we move to the center, one of the issues is
21 that we would have to bring exit corridors from the
22 stairways which would probably cut retail space into
23 smaller pieces.

24 BOARD MEMBER ZAIDAIN: Right. Well, which
25 floor plan is that? I was trying to --

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1 MR. ROTHMEYER: This is a typical floor.

2 BOARD MEMBER ZAIDAIN: It's just a typical
3 for the top levels? Okay.

4 MR. ROTHMEYER: It's pretty similar from 2
5 through 10.

6 BOARD MEMBER ZAIDAIN: Okay.

7 VICE CHAIR ETHERLY: Any additional
8 questions? Mr. Parsons?

9 BOARD MEMBER PARSONS: What will the alley
10 facade look like? You're shown examples of the other
11 facades of the building, but what is the result of a
12 potential solid wall, I guess.

13 MR. ROTHMEYER: Right. If I could --

14 BOARD MEMBER PARSONS: Along this alley
15 for the Red Roof Inn to look at?

16 MR. ROTHMEYER: If I could flip to another
17 board, I'd be glad to show you. I don't have an
18 actual elevation of the rear facade in this package,
19 but I think that this is the H street elevation with
20 the Red Roof Inn adjacent to it. And I think you can
21 see that by moving the penthouse to the center of the
22 building would have marginal effect on what that alley
23 facade will look that.

24 The windows that you see here currently
25 are planned to wrap around so there will be windows on

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1 the back side for some indirect light for the office
2 space above. And then where there are not windows
3 toward the center of the core, this area here will be
4 designing a pattern on the precast concrete.

5 VICE CHAIR ETHERLY: And I think if I
6 recall correctly, you did indicate in your submission
7 that in essence you are somewhat mimicking what the
8 Red Roof Inn has done in terms of its own roof
9 structure. I think to an extent you may be able to
10 see it on Exhibit 4, which is some of the photographs
11 in terms of I believe a portion of the roof structure
12 from the Red Roof Inn. But perhaps to continue with
13 Mr. Parsons' question and I know Mr. Zaidain wants to
14 jump in here, will you have windows across the entire
15 rear of the book or you're essentially just on the
16 corner sides of H Street and the other side?

17 MR. ROTHMEYER: Right now the typical
18 floor the windows will extend to the stairways.

19 VICE CHAIR ETHERLY: Okay.

20 MR. ROTHMEYER: And also in the elevator
21 lobby.

22 VICE CHAIR ETHERLY: Mr. Zaidain?

23 BOARD MEMBER ZAIDAIN: Well, I don't
24 recall reading your submission what the materials are?

25 Did you say precast concrete and is it glass curtain

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1 wall --

2 MR. ROTHMEYER: Curtain wall on the corner
3 and then a standard window system in the precast.

4 BOARD MEMBER ZAIDAIN: Okay.

5 MR. ROTHMEYER: Along H Street.

6 BOARD MEMBER ZAIDAIN: Because as far as
7 Mr. Parson's question goes on the alley side, you were
8 going to have a window system up through where the
9 tenant spaces are and then did you say in the elevator
10 corridor you're going to have windows?

11 MR. ROTHMEYER: I'm sorry. In the
12 elevator corridor as well.

13 BOARD MEMBER ZAIDAIN: I see.

14 VICE CHAIR ETHERLY: Mr. Parsons, any
15 follow-up?

16 BOARD MEMBER PARSONS: Well, I'm not sure
17 I understand. The stairwells will have windows?

18 MR. ROTHMEYER: No, the stairwells will
19 not have windows.

20 BOARD MEMBER PARSONS: So that's where
21 your precast starts?

22 MR. ROTHMEYER: Right.

23 BOARD MEMBER PARSONS: And you're going to
24 score it in some fashion?

25 MR. ROTHMEYER: That's right.

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1 BOARD MEMBER PARSONS: You don't have any
2 drawings for that?

3 MR. ROTHMEYER: Not as part of the
4 submission we do not.

5 BOARD MEMBER PARSONS: Are there are going
6 to windows in the, I'll call it elevator lobbies as
7 you go up through the --

8 MR. ROTHMEYER: That's our intention, yes.

9 BOARD MEMBER PARSONS: And how long a span
10 is that precast?

11 MR. ROTHMEYER: I'm not sure I understand
12 the question. Without the windows in it?

13 BOARD MEMBER PARSONS: Right. From
14 stairwell to stairwell?

15 MR. ROTHMEYER: The overall length of the
16 core is about 100 feet. Right. It's broken up with
17 windows at the elevator bank.

18 BOARD MEMBER PARSONS: And those windows
19 at the elevator bank will look like you're showing on
20 these elevations on the board to the left? To your
21 right.

22 MR. ROTHMEYER: They will be similar in
23 size and shape to this window configuration.

24 BOARD MEMBER PARSONS: All right. Thank
25 you.

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1 VICE CHAIR ETHERLY: So in terms of
2 placement of the windows, I just want to be sure I'm
3 clear. As you're looking at A104 essentially from that
4 point -- it's always a joy when I get to invoke the
5 laser light pen. I'm just giddy here. Essentially
6 from that point, which is labeled as 9 on the drawing
7 all the way to 7, that's your precast, was it, Mr.
8 Parsons?

9 BOARD MEMBER PARSONS: Yes. Precast.

10 VICE CHAIR ETHERLY: That's precast there.
11 You're have a window essentially from 7 along this
12 span here and then precast all the way to 4? Okay.
13 Okay.

14 Any further questions? Mr. Zaidain?

15 BOARD MEMBER ZAIDAIN: Have the owners of
16 the property where the Red Roof Inn is, have you guys
17 met with them, have they seen it or anything like
18 that, just out of curiosity? I'm sure they were
19 notified of this proceeding. I'm just curious if you
20 guys know them and if they've seen your plans or
21 anything.

22 VICE CHAIR ETHERLY: Okay. And so the
23 Applicant is indicating that you haven't had any,
24 shall we say, more detailed discussions with Red Roof
25 Inn about the presentation of the rear of the

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1 building, so to speak?

2 MR. DURKIN: That's correct.

3 VICE CHAIR ETHERLY: Okay. Okay.

4 Mr. Zaidain's question is a good segue,
5 unless there's a follow-up, Mr. Zaidain. Mr.
6 Zaidain's question is a good segue into, shall we say,
7 some of the visibility issues as it relates to the
8 actual line of sight for the roof penthouse structure.
9 Of course, under this section of the regulations we do
10 have to look at whether or not there is any material
11 impairment to the light and air of adjacent buildings.
12 And so if you could once again, speak to one perhaps
13 from your sidewalk vantage points what do you
14 anticipate persons being able to see from the, shall
15 we say, at least from the parameter of the building
16 and then perhaps talking a little bit about from the
17 Red Roof Inn perspective what you suspect will be the
18 line of sight looking at that roof structure.

19 MR. ROTHMEYER: Certainly. Let me flip
20 back to the roof plan.

21 Because we're moving the penthouse back
22 towards the alley, it's actually going to reduce
23 visibility from the 6th Street side a great deal. I
24 suspect that you won't be able to see it at all.

25 From the H Street side we're 58 feet back,

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1 which is well beyond the regulations. And we are
2 adjacent to a 30 foot alley, the south side. And
3 we're also 58 feet back from that.

4 So in a sense, we're actually meeting more
5 of the spirit of the penthouse setback by pushing it
6 to the alley side.

7 VICE CHAIR ETHERLY: In terms of the site
8 lines from the top of the Red Roof Inn, conceivably
9 some of the units that are on what would be the rear
10 side of the subject property by your elevations, of
11 course, I think we're talking about the roof structure
12 being at some height above the highest most point of
13 the Red Roof Inn windows. So from a vantage point
14 perspective we don't have windows that are looking
15 straight out onto the roof penthouse essentially?

16 MR. ROTHMEYER: That's correct. That's
17 correct.

18 VICE CHAIR ETHERLY: Okay. Mr. Parsons?

19 BOARD MEMBER PARSONS: Did you think I had
20 something else I wanted to ask?

21 VICE CHAIR ETHERLY: Yes.

22 BOARD MEMBER PARSONS: All right.

23 VICE CHAIR ETHERLY: I saw the telltale
24 sign of Mr. Parsons' light, so I looked over to him.
25 My apologies, Mr. Parsons.

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1 BOARD MEMBER PARSONS: That's all right.

2 VICE CHAIR ETHERLY: Any further questions
3 on the visibility issue as it relates to the
4 impairment of light and air from the roof structure?
5 Okay. Seeing none, I think I'd like to at this point
6 if we could move towards government reports. And I
7 believe we have in our possession the Office of
8 Planning report, which is at Exhibit 27. And we are
9 joined by the Office of Planning. Let me first look
10 to the Applicant to confirm that they have receipt of
11 the Office of Planning's report?

12 MR. HUGHES: We do.

13 VICE CHAIR ETHERLY: Excellent.

14 Office of Planning, if you could proceed?
15 Please, of course, feel free to stand on the record
16 if you'd like. But if there are any highlights that
17 you want to point our attention to, please feel free
18 to do so.

19 MR. JACKSON: Thank you, Mr. Chairman and
20 members of the Board. My name is Arthur Jackson of
21 D.C. Office of Planning. And I'll briefly summarize
22 our report.

23 First of all, Office of Planning would
24 like to stand on the record with regard to the
25 information in the report. We'd just like to

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1 highlight the fact that we think that the application
2 conforms to the provisions under section 411.11 of the
3 zoning regulations.

4 We also think that the Applicant has taken
5 appropriate measures in adjusting the setbacks on the
6 other three sides of the building such that it has
7 minimized the impact and visibility from the street.

8 We think that the additional justification
9 provided by the Applicant for this project appears
10 sufficient on its face for what they're requesting.

11 And we also note that the ANC-6C
12 recommending approval of this application at their
13 meeting on October 9th on conditions which are really
14 more pertinent to their relationship to the ANC rather
15 than the Zoning Commission.

16 There were no concerns expressed by the
17 additional agencies contacted about this application.

18 And so with this information in mind, the
19 Office of Planning recommends approval of the
20 application as presented.

21 VICE CHAIR ETHERLY: Thank you very much.

22 As always, a very thorough and excellent
23 report from the Office of Planning.

24 I will note at page 3 of the report that
25 the Office of Planning did take a look in some detail

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1 and speak to the issue of the impact visual and
2 otherwise on the Red Roof Inn and agrees with the
3 Applicant's statements that the impacts to the Red
4 Roof Inn should be considered as negligible.

5 Any questions from the Board of the Office
6 of Planning's report? Mr. Parsons?

7 BOARD MEMBER PARSONS: One of my concerns,
8 Mr. Jackson, is it's apparent the Red Roof Inn, while
9 noticed, really doesn't have any knowledge of this.
10 Did you make any effort to talk to them?

11 MR. JACKSON: Directly, no.

12 BOARD MEMBER PARSONS: I guess the basis
13 for your decision that there's no impact on light and
14 air is the abnormal width of the space between the two
15 buildings?

16 MR. JACKSON: Well --

17 BOARD MEMBER PARSONS: Obviously to me by
18 the elevation show there, there's going to be an
19 impact on light from a wall that's 18? feet higher
20 than would be under normal circumstances. So what
21 brought you to this conclusion?

22 MR. JACKSON: Well, first of all, I think
23 we looked at the 18? feet as being an incremental
24 increase over the 110 feet, which is to say that if
25 there was a 110 foot building standing there with the

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1 penthouse being appropriately set back from the
2 property line, that building would cast a shadow that
3 in itself would be as tall or taller than the Red Roof
4 Inn. So over the course of the day light coming from
5 the east, light coming from the west would be shut off
6 from the Red Roof Inn by the end of the day.

7 So if you take that into account and just
8 consider that we're talking about the building's 120
9 feet tall. We're talking less than a 10 percent
10 increase over that height. Then I think that the
11 impact of that additional ten percent in itself would
12 be negligible.

13 Now, of course, the -- I'm sure the Red
14 Roof Inn would rather that there be no building there
15 at all and that they would always preserve their
16 visibility. However, with the additional setback
17 that's provided by the building -- by the Red Roof Inn
18 along that side, which appears to be equivalent to the
19 alley, we think that the circulation of air through
20 the area would not be a problem. But, again, looking
21 at this building being oriented north south and the
22 sun coming from east to west casting a shadow that
23 would impact the Red Roof Inn most directly in the
24 evening, we think that a ten percent difference in
25 height -- the impact from a ten percent difference in

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1 height might mean a few more minutes of light would
2 not get to the building during the course of an
3 afternoon. But otherwise the effect would be on --
4 given the overall effect of it under a 20 foot
5 building, would be very small.

6 BOARD MEMBER PARSONS: All right. I want
7 to talk about the view from the street down the alley.

8 The penthouse is 58 feet back from the
9 street.

10 MR. JACKSON: Yes.

11 BOARD MEMBER PARSONS: I guess I wish we
12 had some other exhibits, frankly. We have no
13 elevation of the building from the alley. We have no
14 images of what this will look like from the street.

15 I'm walking down the street, I'm looking
16 down the alley and I'm trying to get a feeling for how
17 much of a canyon-like effect is being portrayed by
18 this 100 foot long penthouse.

19 MR. JACKSON: Again, given the fact that
20 the overall building would be 120 feet tall and that
21 it's going to be a solid wall along that frontage, the
22 fact that you have an additional 18 feet on the top if
23 your perspective is from a 5'7" person walking along
24 the street -- now, in the alley I think the impact may
25 be somewhat different. But if you're -- I think the

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1 impact of what the Applicant has done is basically to
2 pay most attention to the impact from the street. So
3 that by setting the penthouse back, the impact on the
4 pedestrian walking along the sidewalk would be
5 minimized.

6 Now, but looking at the alley, I think the
7 alley given the importance the District has placed,
8 the facades, both streets on the facing sides, I think
9 the decision to move it -- move the penthouse to the
10 alley frontage, again, given the marginal increase
11 that we're talking about, would be less -- is again
12 very small. And as a person walking whose walking
13 down the alley, it's going to be cold and it's going
14 to be windy, just as alleys normally are. But the
15 impact of that penthouse on those set of circumstances
16 that would result from the two very tall buildings
17 being together still would seem to be marginal.

18 BOARD MEMBER PARSONS: Well, let's go back
19 to the height of the building. The height of the
20 building including the penthouse is?

21 MR. JACKSON: Well, it's 120 plus 18.6 or
22 18.5. So it's 138 feet.

23 BOARD MEMBER PARSONS: So that's one of
24 the tallest facades in the District of Columbia?

25 MR. JACKSON: Along that alley, yes.

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1 BOARD MEMBER PARSONS: Well, I guess you
2 see where I'm heading.

3 MR. JACKSON: Yes.

4 BOARD MEMBER PARSONS: I'll stop the
5 questions.

6 VICE CHAIR ETHERLY: Okay. Ms. Miller and
7 then I believe Mr. Zaidain had some comments.

8 Ms. Miller?

9 BOARD MEMBER MILLER: I still have a
10 couple of questions.

11 I think Mr. Parsons asked you if it was
12 one of the tallest buildings in the District --

13 BOARD MEMBER PARSONS: Facades.

14 BOARD MEMBER MILLER:

15 MS. THOMAS: Facades, sorry. And you said
16 along that alley. Do you have knowledge about how it
17 compares with other facades in the District?

18 MR. JACKSON: No.

19 BOARD MEMBER MILLER: Okay. And I just
20 want to make sure I'm correct to conclude from your
21 report and testimony today that you conclude that the
22 conditions proposed by the ANC are not appropriate for
23 an order in this case?

24 MR. JACKSON: I'm not making a judgment on
25 that, per se. But I note that one of the conditions

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1 has to do with sustainable development practices of
2 management and improving energy efficiency. Usually
3 the Zoning Commission -- the BZA to my memory has not
4 really dealt in more the environmental aspects of a
5 project unless we're talking about standard -- stone
6 water management issues.

7 And in the report that they're requesting
8 that the Applicant's requested to return to the
9 committee, I think it's a matter that the committee
10 would just expect to see it in the course of time.
11 Now, of course if the Commission -- I mean the BZA
12 would decide that they would want to include those
13 conditions, we have no opinion of that matter. But we
14 just thought as normal course of things, some of those
15 issues are more pertinent to their interaction with
16 the Chinatown group, particularly since these seem to
17 be somewhat related to the ongoing process with regard
18 to the Chinatown design review.

19 BOARD MEMBER MILLER: Is it correct to say
20 that OP recommends approval without conditions?

21 MR. JACKSON: Well, we recommend approval.
22 If the BZA wants to add those conditions, then we'd
23 leave that to your decision.

24 BOARD MEMBER MILLER: All right. Thank
25 you.

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1 VICE CHAIR ETHERLY: Mr. Zaidain, did you
2 have anything?

3 BOARD MEMBER ZAIDAIN: No.

4 VICE CHAIR ETHERLY: Okay. Any cross
5 examination of the Office of Planning report by the
6 Applicant?

7 MR. HUGHES: No, sir.

8 VICE CHAIR ETHERLY: Okay. I'll note for
9 the record that the Office of Planning in its once
10 again very thorough report did note that Exhibits 4
11 and 5 of its report submissions were obtained from the
12 Foreign AMS Department as well as Metropolitan Police,
13 both of which expressed no opposition to the
14 application as submitted. Once again, that's
15 contained in Exhibit 4 and Exhibit 56 of the Office of
16 Planning report which is itself at Exhibit 27.

17 I'd like to now move to the ANC-6C report.
18 Do we have a representative from ANC-6C present
19 today. Seeing no indication that we have an ANC
20 representative handy, as was alluded to, we do have a
21 report from ANC-6C. And if I could put my hands on
22 Exhibit 24, that report is dated October 29, 2003.
23 The Applicant, I believe, has already indicated that
24 they are in receipt of the ANC report?

25 MR. HUGHES: Yes, sir.

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1 VICE CHAIR ETHERLY: And the ANC, of
2 course, is noting its support for the application
3 based on a vote at a regularly scheduled October 8th
4 meeting at which a quorum was present.

5 I will note that the ANC report did not
6 state what constitutes a quorum. I may look to Ms.
7 Miller for validation of what I think would be some
8 cause for concern, at least in terms of being able to
9 accord great weight to the ANC's report, but
10 importantly for our purposes the ANC is expressing
11 support for the application.

12 As was also alluded to by Ms. Miller, the
13 ANC did include four conditions in its report. And I
14 think it is appropriate for us to note that those
15 conditions would, in my opinion, and I'd invite
16 comment from my fellow board members, but I would
17 suggest that those conditions and our ability to
18 enforce them would fall outside of our jurisdiction.
19 And, therefore, while we might take note of it, shall
20 we say, it would not be something that we could
21 incorporate into our decision. But I'd look for any
22 comment.

23 Let me go to Mr. Zaidain first and then to
24 Ms. Miller?

25 BOARD MEMBER ZAIDAIN: I'm just curious to

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1 hear from the Applicant, I guess because the ANC's not
2 here. We don't GET conditions like this all the time
3 for these kinds of projects. Did you guys agree to
4 this? Is this something you guys talked to with them,
5 or where did this come from?

6 VICE CHAIR ETHERLY: And just to outline
7 for the benefit of the record, I'll note that the ANC
8 outlines four conditions, the first of which is --

9 BOARD MEMBER ZAIDAIN: Well, I don't even
10 know if they're really conditions. Actually, Ms.
11 Miller and I were discussing that. It just says that
12 they support the special exception provided that the
13 Applicant agrees to one, two -- I mean it doesn't
14 really say whether or not they're asking us to
15 condition on it.

16 VICE CHAIR ETHERLY: And it's just kind of
17 odd.

18 BOARD MEMBER ZAIDAIN: Okay. Would the
19 Applicant like to speak to that?

20 MR. SHER: Mr. Chairman, for the record,
21 my name is Steven Sher, the Director of Zoning and
22 Land Use Services for the law firm of Holland &
23 Knight.

24 We did meet with the ANC. We did not
25 agree to the green roof condition. That's something

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1 that we thought was beyond what we could do and what
2 is required. It certainly isn't required --

3 BOARD MEMBER ZAIDAIN: And that would be
4 number one -- I'm sorry to interrupt you.

5 MR. SHER: Yes. Any code or regulation at
6 the moment.

7 With respect to the other three items
8 which all relate to Chinatown -- well, with respect to
9 the fourth one about reporting back to the ANC, we
10 actually did go back to their meeting the following
11 month and explain where we are. On the other two, we
12 are working through the Office of Planning's Chinatown
13 design review and we've got to go through that
14 process. So that's really not here, it's somewhere
15 else in the District Government, and we have to do
16 whatever we have to do to get through that.

17 BOARD MEMBER ZAIDAIN: Right. Well it
18 also seems like there's another process. Well, I
19 mean, I don't know. Is the Chinatown design review
20 process you just referred to, is that the Chinatown
21 Steering Committee?

22 MR. SHER: Yes. They are the ones who are
23 involved in that.

24 BOARD MEMBER ZAIDAIN: Okay. Because it
25 says comply with input from that committee. Do you

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1 have to comply with that anyway through that process.

2 MR. SHER: Well have to work through that
3 process. Right. We have to go through that process
4 and we are.

5 BOARD MEMBER ZAIDAIN: Okay.

6 MR. SHER: That's ultimately a decision
7 made by the District, not by the Chinatown Steering
8 Committee. They give input to the District.

9 BOARD MEMBER ZAIDAIN: Okay.

10 MR. SHER: But we've met with them. We're
11 working with them. We've been there what? Three
12 times, twice. Three times so far. And we'll continue
13 to try and work out what makes this building
14 appropriate for Chinatown.

15 BOARD MEMBER ZAIDAIN: Right. Just for my
16 information and Mr. Jackson may weigh in on this, too.

17 I mean, when you go through the Chinatown process, I
18 know there's the Chinatown development district
19 overlay or whatever the official name of it is, but
20 does that overlay reference the standard development
21 and the green -- the new green technology aspect?

22 MR. SHER: I'm sorry. It does not.

23 The Chinatown design review is separate
24 and apart from the zoning regulations. It is not
25 within the Chinatown subarea requirements of the

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1 downtown development district. IT was established by
2 Mayor's order in a completely independent review
3 process.

4 BOARD MEMBER ZAIDAIN: Really?

5 MR. SHER: Yes.

6 BOARD MEMBER ZAIDAIN: I did not know
7 that. Okay. But even in that directive, they don't
8 get into this green technology --

9 MR. SHER: No. It's design only.

10 BOARD MEMBER ZAIDAIN: Okay. All right.
11 Thank you.

12 VICE CHAIR ETHERLY: Ms. Miller?

13 BOARD MEMBER MILLER: Mr. Zaidain
14 basically addressed the question that I wanted to ask
15 about the agreement, you know, whether they agreed or
16 not.

17 I would just go back then to whether or
18 not the ANC's report should be afforded great weight.

19 And in looking at it in comparison with the
20 regulation 3115.1, they don't say what a quorum is and
21 they don't say -- they say the vote was unanimous and
22 we don't know what the vote really was, how many
23 people were there voting.

24 And they don't really say -- they don't
25 describe how it was noticed. It says regularly

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1 scheduled, so perhaps there's a manner in which the
2 community knows the date that the ANC meets. But I
3 think it is flawed in that respect and therefore
4 shouldn't be afforded great weight, but will note
5 their position.

6 VICE CHAIR ETHERLY: Okay. I would agree
7 with Ms. Miller. Thank you very much for outlining
8 those requirements. And I think we probably put an
9 appropriate pin in the component of the ANC's report
10 that speaks to some of these, shall we say, agreement
11 terms.

12 With that being said, I don't have notice
13 of any additional government reports. I'll look to
14 Corp Counsel for a moment.

15 MS. MONROE: Could I just interject and
16 ask a question of the Applicant?

17 How do you guys get 138? Can you explain
18 how you end up 138 when we have a Height Act
19 restriction?

20 MR. SHER: Well, the height of the
21 building is the width of the street plus 20 feet.

22 MS. MONROE: Right.

23 MR. SHER: 6th Street is 100 feet, we get
24 120.

25 MS. MONROE: Right.

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1 MR. SHER: The Height Act does not
2 actually limit the height of roof structures above
3 that. Zoning regulations provide the 18 foot 6
4 limitation. The zoning regulations require setbacks
5 from the edges of the roof.

6 MS. MONROE: Right.

7 MR. SHER: The Height Act requires set
8 backs from the street frontage.

9 So we're as, Mr. Durkin indicated, well
10 set back from 6th and H, but the reason we're here is
11 we're not set back on the alley side.

12 MS. MONROE: So what you're saying then is
13 the 130 Height Act limit is not applicable because the
14 limit of your building is 120, which is under that.

15 MR. SHER: Right.

16 MS. MONROE: And then the 18 is only for
17 the roof structure, which the Height Act has no effect
18 on? It's only --

19 MR. SHER: That is correct.

20 MS. MONROE: Okay. I just wanted to make
21 sure we got there. Okay. Thanks.

22 VICE CHAIR ETHERLY: Terrific. Thank you
23 very much for that clarification.

24 Any parties or persons in support at this
25 time? And once again, we are before application

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1 17078. Any parties or persons in support or
2 opposition? Seeing no indication, let me look at once
3 again any final questions from my Board colleagues.
4 Mr. Parsons? Okay.

5 Seeing none, I think I can turn the
6 Applicant for any closing remarks at this time.

7 MR. HUGHES: With the Board's indulgence,
8 I'd like to turn the mike over to Mr. Sher for just a
9 second.

10 MR. SHER: Not having had my normal
11 opportunity to wax eloquent, I'll wax eloquent at the
12 end.

13 As the Board is aware, what we're here for
14 is relief on the roof structure setback on the east
15 side alley of this building. We are well in excess of
16 the setbacks on both the north, side and west sides.
17 And Mr. Durkin and Mr. Rothmeyer have explained what
18 the impact of moving the penthouse to the center of
19 the floor plate does to both the ground floor where
20 retail service and arts and entertainment uses are
21 required and the upper floors which are office floor
22 uses and which would be disrupted in either a single
23 tenant or multi-tenant layout because of what would
24 happen with the core of the building being moved more
25 to the center of the site.

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1 We think we've met the standards of the
2 regulations for a special exception which the Board
3 has to address. As noted by the architects and it can
4 be seen on the plan, what is at issue here is the
5 incremental 18 foot 6 at the top, whether you draw
6 that on the east wall of the building or whether you
7 set it back, the impact on the Red Roof Inn is minimal
8 depending on the day of the year, the time of the day,
9 whether the sun is shining or not there will be some
10 additional amount of shadow cast on the top part of
11 the building for some period of time, but it is only
12 that increment caused by the 18 foot 6 being further
13 to the east than it would be if it met the normal
14 setback requirement.

15 We believe that that difference, and again
16 if you looked at the photographs that are in --
17 they're not in the prehearing statement, but they're
18 in our original application, would show that facade,
19 you can see two things by that series of photographs.

20 Number one, there are elements of that
21 wall of the Red Roof Inn which have substantial blank
22 spaces in them to begin with. And this is already in
23 your record, but you can see this is the facade of the
24 Red Roof Inn. It faces the hotel. So there are fairly
25 substantial pieces of solid brick wall there to begin

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1 with. And, again, you can see again from the
2 elevation on H Street how the relative height of our
3 roof structure is above any of these windows in this
4 wall of the Red Roof Inn. So we do not believe that
5 there will be any substantial detriment to the hotel.

6 That is also enhanced by the fact that the
7 Red Roof Inn is set back approximately 20 plus feet
8 from its own lot line, plus the width of the alley
9 creates a total separation there of about 40 feet. So
10 that combined with the impact that not having a
11 setback has on the floor plate of this building leaves
12 us to conclude that we have met the burden of proof
13 for the granting of the special exception. And we
14 would request the Board to act favorably on the
15 application.

16 VICE CHAIR ETHERLY: Mr. Zaidain?

17 BOARD MEMBER ZAIDAIN: Yes, I have a
18 question.

19 You know, I think what you've heard a lot
20 from Mr. Parsons is the concern on the impacts to the
21 adjacent lot, the Red Roof Inn.

22 I mean, though, the whole issue with the
23 setback. I mean, the Red Roof Inn is set back, as you
24 describe. But wouldn't that be more of a beneficial
25 impact to the air circulation as opposed to light or

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1 are you saying that helps both causes?

2 MR. SHER: Well, I don't know whether you
3 can tell from these photographs whether those windows
4 are operable windows or not or whether it's all
5 mechanical ventilation in those rooms that face the
6 alley. So as to whether air circulation is effected
7 by that or not, I don't know.

8 BOARD MEMBER ZAIDAIN: Okay.

9 MR. SHER: I suspect that even the alley
10 were only 16 feet wide, there would be enough air in
11 there as far as that was concerned.

12 The setback from the alley creating the 40
13 foot difference between the two walls certainly
14 impacts light. You've got more light going in there
15 because the angle is greater as it, again, relates to
16 the time of year, the time of day, the angle of sun,
17 whether the sun's even out or if it's raining. So
18 more of those windows on that wall will get direct
19 sunlight than they would if they were 24 feet closer
20 to the wall of the building. That is, in effect, the
21 Red Roof Inn's rear yard, so it's not ever going to
22 get any smaller.

23 BOARD MEMBER ZAIDAIN: Okay. I mean, I
24 see your point now. I had a hard time to realizing the
25 angles you're referring to.

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1 Did you guys do a lighting study or --

2 MR. SHER: Well, we do have one drawing
3 that shows the relative effect of what that does at
4 one angle, but it's not comprehensive in the sense
5 that it doesn't show you every day every hour.

6 BOARD MEMBER ZAIDAIN: Right.

7 MR. SHER: But we can show you the one
8 angle if you would like to see it.

9 BOARD MEMBER ZAIDAIN: Sure.

10 VICE CHAIR ETHERLY: If they would submit
11 that for the record, please. If you could pass that
12 along to staff.

13 BOARD MEMBER ZAIDAIN: Was there any like
14 massing studies done, I mean in terms of -- I tell you
15 what. I don't know if this is appropriate to ask for
16 or what the direction of the Board's going to be, and
17 I don't want to belabor this point. But I think this
18 is a good illustration or photo showing the impacts of
19 the -- showing the existing conditions of the alley.
20 It would be really helpful if there was a massing
21 rendering of showing the relationship between the two
22 with the alley there.

23 MR. SHER: You can see it on the left hand
24 elevation on the top floor.

25 BOARD MEMBER ZAIDAIN: No. I understand

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1 that. I'm just saying it seems to work a little bit
2 better showing the photo.

3 MR. SHER: One of the things that you do
4 see is, in fact, that the Avalon Bay Apartment House,
5 which is to the south of the Red Roof Inn and which
6 abuts part of the southside of the site, actually
7 comes closer out to the alley than the Red Roof Inn
8 building does.

9 BOARD MEMBER ZAIDAIN: Yes.

10 MR. SHER: Because that was built under a
11 different zoning category with a different rear yard
12 requirement than was applied to the hotel.

13 BOARD MEMBER ZAIDAIN: And where is that
14 again? I'm sorry.

15 MR. SHER: Again, says he holding up the
16 photograph. This is the Avalon Bay Apartment House to
17 the south of the hotel. And it goes further to the
18 west, but it is further south of the hotel. So it's
19 not really impacted by the roof structure at all. But
20 it is only required to have a 15 foot side yard
21 because it was built under the DD/C-2-C District. The
22 hotel was built under the HRSP-2 District and the rear
23 yard requirements were different.

24 VICE CHAIR ETHERLY: Ms. Miller?

25 BOARD MEMBER MILLER: I'm not sure if I'm

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1 understanding my Board members correctly. But I just
2 want to say it's my understanding about this
3 application that we're looking at the incremental
4 effect of the roof structure as opposed to the massing
5 effect of the building in general?

6 BOARD MEMBER ZAIDAIN: Well, I think what
7 our questions are if you look at 411.11 one of the
8 prerequisites are the impact of light and air to
9 adjacent buildings. And I think that's just kind of
10 the general.

11 I think we were getting into some kind of
12 design review a little earlier on, so I'm trying to
13 focus on that one aspect. So at least that's where my
14 concern is coming from.

15 VICE CHAIR ETHERLY: Okay. Any additional
16 questions? Seeing none, any final remarks from the
17 Applicant beyond Mr. Sher's usually eloquence?

18 MR. HUGHES: We just appreciate the
19 Board's time and request approval.

20 VICE CHAIR ETHERLY: Okay. I think it
21 would be appropriate, perhaps, for us to continue our
22 discussion under a motion here. And I would move for
23 approval of application 17078 of TC MidAtlantic
24 Development, Inc. on behalf of Avalon Bay Communities,
25 Inc. and Ruby Restaurant pursuant to 11 DCMR ? 3104.1

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1 for a special exception from the roof structure
2 requirements in order to permit the development of a
3 ten-story office building with ground floor retail,
4 pursuant to section 311 and subsection 770.6 at
5 premises 777 6th Street, N.W., and would invite a
6 second.

7 BOARD MEMBER MILLER: Second.

8 VICE CHAIR ETHERLY: Thank you very much,
9 Ms. Miller.

10 I think the case has indeed been made that
11 in terms of the difficulty of complying with the
12 requirements of 411.11 that you do have some
13 difficulties that arise from the impracticability of
14 placing the roof structure in such a way as to be
15 compliant 411.11. We've talked at length, of course,
16 about I believe that second component of the tests
17 here which relates to the impact of light and air.
18 And I am satisfied that the light and air impact on
19 adjacent properties and in particular, of course,
20 we've had significant discussion on the Red Roof Inn;
21 that that light and air impact would be minimal as
22 discussed in the Office of Planning report, but then
23 is also further illuminated by the discussion that
24 we've had here on the dias.

25 We were provided with a drawing A202 which

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1 provides essentially a very quick snapshot of a shadow
2 study from March 21st at 4:00 p.m., which also gives
3 some illustration of what the impact would be, once
4 again, on light and air of the Red Roof Inn. And I am
5 still of the mindset that you're going to have some
6 impact but as was indicated by the Office of Planning,
7 those impacts are going to be minimal. And when you
8 look to where the placement of the penthouse structure
9 is here in terms of the middle of that expansion of
10 the rear of the building, you're clearly looking at
11 minimal impacts visually from 6th Street and from H
12 Street, and from the other side of the building as
13 well.

14 I am comfortable that the visual impacts,
15 the light and air impacts are going to be minimal.
16 And given what we're looking at in terms of the floor
17 plan of the building, the placement of retail, the
18 efforts to shall we say maximize the ability to place
19 tenants in this building, I think you're looking at
20 what's going to be yet another very active and vibrant
21 contributor to the street scape that is Chinatown and
22 H Street.

23 I'd invite any additional comments. Mr.
24 Parsons?

25 BOARD MEMBER PARSONS: I am going to

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1 respectfully disagree with your statements. I am not
2 persuaded in any way that 85 feet of width of a
3 building makes it unmarketable with the central core.

4 I can't help but look at the elevation before you in
5 color and you look at the building to the right, which
6 is labeled 717 6th Street, which if all these things
7 are in scale, narrower than the subject building. And
8 somehow they were able to accommodate what isn't being
9 accommodated here.

10 Secondly, I'm very concerned about the
11 essentially 140 foot wall in this alley. I think it's
12 out of scale with the feeling of the street, H Street
13 as you're walking along looking down that alley. And
14 it's essentially a 15 percent increase in height of
15 the building as it faces the Red Roof Inn, which is a
16 building that may not be there forever. I don't know
17 what the lifespan of a motel is or hotel. But I just
18 think it's a very dangerous precedent. So I'll be
19 voting against the motion.

20 VICE CHAIR ETHERLY: Okay. Thank you very
21 much.

22 Any additional comments? Mr. Zaidain?

23 BOARD MEMBER ZAIDAIN: I share some of the
24 some concerns with Mr. Parsons. However, kind of
25 stepping back to what we're here to look at, it seems

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1 like what they could do matter of right and what
2 they're doing in terms of the penthouse, I still don't
3 see how there can be additional light brought into the
4 facade of the Red Roof Inn which faces the alley,
5 which would be the concern, at least in my mind. So I
6 think the drawing A202, the light study here clarified
7 it for me.

8 I will say that the rooms on that side of
9 the Red Roof Inn facing the alley will probably be a
10 bit dark and we'll now know where the discount hotel
11 rooms are downtown once this gets built.

12 VICE CHAIR ETHERLY: Okay. Any further
13 additional discussion? Hearing none, all in favor
14 please signify by saying aye?

15 ALL: Aye.

16 VICE CHAIR ETHERLY: Opposed?

17 BOARD MEMBER PARSONS: No.

18 VICE CHAIR ETHERLY: Abstentions?

19 All right. I believe we could, if we're
20 ready, I'd like to call that vote, please.

21 MS. BAILEY: The vote is recorded as 3-1-1
22 to approve the application. Mr. Etherly made the
23 motion. Ms. Miller second. Mr. Zaidain is in
24 agreement. Mr. Parsons is opposed to the motion. And
25 Mr. Griffis did not hear this case.

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1 Mr. Vice Chairman, are we doing a summary
2 order for this?

3 VICE CHAIR ETHERLY: Just a moment while I
4 get my ducks in a row here.

5 Having no opposition from the community
6 and given the ANC support, I think that would be in
7 order to do a summary order.

8 MS. BAILEY: Thank you, sir.

9 VICE CHAIR ETHERLY: Thank you very much,
10 Ms. Bailey.

11 Thank you very much to the Applicant for
12 your presentation.

13 MR. HUGHES: Thank you.

14 VICE CHAIR ETHERLY: We appreciate it.

15 That concludes our 17078 hearing.

16 I'd like to suggest let's take 5 minutes
17 while the next application gets set up. And we'll be
18 back shortly. Thank you.

19 (Whereupon, at 2:43 p.m. a recess until
20 3:18 p.m.)

21 CHAIR GRIFFIS: We'd like to call the last
22 case of the afternoon.

23 MS. BAILEY: Appeal 17043 of the Stanton
24 Park Neighborhood Association, pursuant to 11 DCMR ?
25 3100 and 3101 from the administrative decision of the

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1 Zoning Administrator in the issuance of Certificate of
2 Occupancy Permit Nos. C051289 and C051290 to Capitol
3 Hill Healthcare Group dated March 26, 2003, for a
4 community residence facility and hospital (60 beds and
5 60 parking spaces) respectively. Appellant alleges
6 that the Zoning Administrator erred by issuing the
7 occupancy permits where the proposed use is in
8 violation of the parking requirements. The R-5-D
9 zones property is located at 700 Constitution Avenue,
10 N.E. (Square 875, Lot 86).

11 Is there anyone here today who has not
12 been sworn in? Thank you.

13 Mr. Chairman, case is ready to go forward.

14 CHAIR GRIFFIS: Thank you very much.

15 As we left off, I believe we need to begin
16 with the property owner. We'll go to ANC-6C, ANC-6A,
17 the Parish party and then we have rebuttal and
18 closing.

19 We're going to make as much progress as we
20 can to 6:00. And at that point we will recess or we
21 will congratulate everybody on finishing.

22 That being said, Mr. -- oh, I'm sorry.
23 Boy, we've had a full litany of attorneys. Mr.
24 Trummonds.

25 MR. TRUMMONDS: Good afternoon. Mr.

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1 Chairman, members of the Board, I am Paul Trummonds on
2 behalf of the Capitol Hill Group, the owner of the
3 property located 708 Massachusetts and 700
4 Constitution Avenue, N.E., the site of the existing
5 Capitol Nursing Center and the Capitol Hill Hospital.

6 As you've already stated, this case is an
7 appeal of the Zoning Administrator's decision to issue
8 Certificates of Occupancy for the nursing center and
9 the hospital. This is not a special exception case
10 regarding Capitol Hill Group's operations on the
11 property.

12 The Appellants in this case has raised two
13 issues as the basis for its appeal. First, that the
14 prior conditions of the BZA govern the use of the
15 property and that the Zoning Administrator is not
16 authorized to disregard those conditions, and; second
17 that the determination of the required number of
18 parking spaces on the property can only be made by the
19 BZA, as discussed in detail in our response to the
20 appeal that was filed with the Board and the
21 Appellants.

22 We believe that the Appellants' argument
23 are flawed are in direct contravention of the zoning
24 regulations and the Board's recent decisions regarding
25 these very same issues. In fact, we believe that the

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1 Appellant has not met its burden of proving by a
2 preponderance of the evidence that the Zoning
3 Administrator erred in issuing these Certificates of
4 Occupancy.

5 I would also like to note that in regards
6 to the Certificate of Occupancy for the hospital,
7 there's been no evidence presented in the statements
8 by the Appellants or in their presentation that there
9 was anything in error with regards to the issuance of
10 the hospital's Certificate of Occupancy. All of the
11 discussion has been related to the Certificate of
12 Occupancy for the nursing center.

13 I would now like to highlight briefly the
14 arguments that we addressed in our statement. The
15 first is with regards to the matter of right use of
16 the nursing center.

17 As has been stated, on April 30, 1999 the
18 Zoning Commission amended the zoning regulations such
19 that community based residential facilities that
20 provide housing for the handicapped are permitted in
21 the R-4 and less restrictive zones as a matter of
22 right. The zoning regulations defined the handicapped
23 as a physical or mental impairment which substantially
24 limits one or more of such person's major life
25 activities.

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1 As evidenced by this affidavit filed in
2 our files as Exhibit F, the affidavit of the CFO of
3 the nursing center, the nursing center houses
4 residents with various degrees of physical and mental
5 impairments. And I would point to paragraph number
6 five. "The nursing center provided 24 hour medical
7 attention to its residents. All of the nursing
8 center's residents require assistance in performing
9 one of their major life activities, including but not
10 limited to eating, bathing, dressing, getting out of
11 bed, taking medications, etc."

12 We believe that it is readily apparent
13 that a nursing home satisfies the requirements of the
14 zoning regulations that it is a facility that provides
15 housing for the handicapped.

16 At the previous hearing Commissioner
17 Miller raised the question regarding the significance
18 of the Third Circuit cases that were cited by the
19 District of Columbia Department of Consumer Regulatory
20 Affairs Building and Land Regulation Administration,
21 specifically the Hovsons case as well as the Wagner v.
22 Fair Acres case. Both of these cases were held to
23 that, a nursing home is in fact a facility that
24 provides housing for the handicap.

25 I believe that the significance of these

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1 cases, in response to Commissioner Miller's question,
2 is not that the Court exempted these nursing homes
3 from those jurisdiction's zoning regulations, but
4 rather that a local jurisdiction cannot treat a
5 nursing home located in a residential area differently
6 than it treats other residential uses in a residential
7 district. So applying that to this case, determining
8 that the Capitol Hill Nursing Center provides housing
9 for the handicapped does not exempt the nursing center
10 from the parking requirements of the zoning
11 regulations, rather the current section 330.5(i)
12 requires the District to treat the nursing center in
13 the same manner that it treats other matter of right
14 residential uses in the R-4 and less restrictive
15 zones. Thus, there should be no BZA adopted conditions
16 for this property.

17 Therefore, like I say, there should be no
18 conditions in this property and, in fact, that is
19 exactly what the Zoning Administrator did in issuing
20 the Certificate of Occupancy to the nursing center.
21 Therefore, we believe that the nursing center on the
22 property is a matter of right use and that the Zoning
23 Administrator, it was appropriate and it was not in
24 error for the Zoning Administrator to issue the
25 Certificate of Occupancy for the nursing center.

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1 With regards to the second issue, the
2 required number of parking spaces and, really, I think
3 it's the issue of does the Zoning Administrator have
4 the authority to determine that number. This Board in
5 the Sunrise Assisted Living case, a case that was
6 mentioned in our statement as well as in the
7 Appellant's statement, determined that in fact the
8 Zoning Administrator does have that authority.

9 This kind of goes to the heart of the
10 issue here is to rule otherwise would kind of create
11 an absurd situation of telling an operator of a
12 community based residential facility that provides
13 housing for the handicapped that, yes, you can use
14 your property because you are a matter of right use.
15 However, you can't effectuate that use until you come
16 down to the BZA for a special exception process to
17 determine the necessary number of parking spaces.

18 At our last hearing Commissioner Zaidain
19 mentioned that, in fact, there are instances in which
20 a matter of right use comes before the Board for
21 special exception relief. I believe Commission Zaidain
22 noted section 411 of the zoning regulations, a case
23 that some of you just heard.

24 I would say the difference in that case is
25 there is still a way in which a property owner can

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1 design his building. He can design his building so
2 you don't need relief from the setback requirements.

3 In this case, no matter what the nursing
4 center or a community based residential facility that
5 provides housing for the handicapped does regarding
6 even if it builds not up to its matter of right FAR
7 limits or height, there's nothing that it can do to
8 allow itself to operate on the site without coming to
9 this Board. I would submit that that makes it not a
10 matter of right use anymore.

11 So in the present case the Zoning
12 Administrator determined the appropriate number of
13 parking spaces for this use by looking at what was
14 done in previous cases, the Sunrise Assisting Living
15 case and in this case they used the more restrictive
16 determination that was presented in the Sunrise case,
17 that of a ** parking space requirement for a facility
18 that is a rooming or boarding house, what in fact
19 means one space plus an additional space for every 5
20 beds or units.

21 We believe that the Zoning Administrator's
22 decision in this case was entirely appropriate and,
23 just as it was appropriate in the Sunrise case and, in
24 fact should be upheld. We believe that the Appellant
25 has not shown by a preponderance of the evidence that

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1 the decision of the Zoning Administrator was made in
2 error.

3 For all these reasons we submit that the
4 Zoning Administrator's decision was correct and that
5 the Board should discuss this appeal.

6 Thank you.

7 CHAIR GRIFFIS: Thank you very much. Are
8 you planning on any other witnesses or that's the
9 statement.

10 MR. TRUMMONDS: That is our statement.

11 CHAIR GRIFFIS: Okay. And you are going
12 to avail yourself to answer questions regarding this
13 submission?

14 MR. TRUMMONDS: Absolutely.

15 CHAIR GRIFFIS: Okay. And that being
16 said, if I follow you correctly, the position that
17 you're representing today is the fact that even in the
18 schedule 2101 which requires the Board to set the
19 parking count for a CBRF of above 16, if that is
20 factored into this facility and other facilities that
21 are housing for the handicapped it in fact directly
22 contradicts the fact that it's a matter of right? And
23 you've used an example where it wouldn't -- well, is
24 that a correct understanding?

25 MR. TRUMMONDS: That is correct. And I

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1 think it was an issue that was raised last time in a
2 response from Ms. Gilbert on behalf of BLRA. When you
3 look at 330.5(i) and it says community-based or the
4 following uses are a matter of right in the R-4
5 district, community-based residential facility
6 provided that notwithstanding any provision in this
7 title to the contrary. So if we were to say look at
8 2101 and the schedule requirements for parking spaces
9 that says the only way you can, in effect, use your
10 property, which is a matter of right use, is come to
11 the BZA and then we'll determine your parking space
12 requirement, that would in effect make 330.5(i) not
13 operative because it would no longer be a matter of
14 right use. Because you would have to come through
15 some sort of special exception process.

16 And, you know, realistically I think that
17 the problem that is here before us today is the fact
18 that in 1999 in Zoning Commission Order 869 when the
19 Zoning Commission amended the regs, truly they just
20 didn't follow through to 2100 and say we need to make
21 our regulations consistent.

22 BOARD MEMBER ZAIDAIN: That was going to
23 be my general question. I mean is it your basic
24 position that the regs as written in the parking
25 schedule are basically contrary to law, that portion?

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1 MR. TRUMMONDS: Correct.

2 CHAIR GRIFFIS: Okay.

3 MR. TRUMMONDS: And I think that's what
4 this Board determined in the Sunrise case.

5 CHAIR GRIFFIS: Well, it's contrary for
6 CBRFs that are housing the handicapped.

7 MR. TRUMMONDS: Correct.

8 CHAIR GRIFFIS: There are still CBRFs that
9 come under that provision of 2101.

10 MR. TRUMMONDS: That is correct.

11 CHAIR GRIFFIS: Okay. So in fact there's
12 a portion of it that's contrary based on the use or --

13 MR. TRUMMONDS: Yes. As it interacts with
14 this use, right.

15 CHAIR GRIFFIS: Yes.

16 MR. TRUMMONDS: And an example would be,
17 you know, in the definitions section that a facility
18 that provides housing for people who may otherwise be
19 handicapped except for they were deemed unable to set
20 aside major life activities due to illegal use or
21 addiction of a controlled substance so make it a half
22 way house or something that, that would not fit the
23 definition of a community based residential facility
24 that provides housing for the handicapped, therefore
25 that would be a use that would require special

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1 exception approval for both its use and for the
2 determination of the required number of parking space.

3 CHAIR GRIFFIS: Okay. And you've cited
4 Sunrise as setting the precedent for giving the
5 authority to the Zoning Administrator. Is there
6 previous guidance or are there points in the
7 regulations that actually determine that the Zoning
8 Administrator would be that authority to pick a
9 similar use in order to create a parking calculation?

10 MR. TRUMMONDS: I believe that is the only
11 precedent exactly on point that I know of. However,
12 as a matter of course the Zoning Administrator's
13 office is called on really everyday to make
14 determinations on various issues related to rear
15 yards, side yards and what is an appropriate
16 determination. Is this my rear yard, is this my side
17 yard. So I would say that the determination in this
18 case of the Zoning Administrator as to an appropriate
19 similar type use is well in the purview of the Zoning
20 Administrator's office.

21 CHAIR GRIFFIS: And lastly or -- well, I
22 have a couple of other questions. Can you help us
23 understand why a new Certificate of Occupancy was
24 applied for at this time period and if that is in fact
25 applicable to this appeal? And is it appropriate to

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1 get a new Certificate of Occupancy and why would it
2 be?

3 MR. TRUMMONDS: Right. And that kind of
4 goes back to the history of this case.

5 The Capitol Hill Group received a letter
6 from the Zoning Administrator's office saying there
7 are multiple -- we've searched our records, we found
8 multiple certificates of occupancy on this property.
9 Please get one certificate of occupancy for the
10 hospital and certificate of occupancy for the nursing
11 center. And that's what we did. And we followed
12 through that process to then do what the office of the
13 Zoning Administrator had asked.

14 CHAIR GRIFFIS: Okay. So this was more of
15 a clarifying step, is that --

16 MR. TRUMMONDS: Yes.

17 CHAIR GRIFFIS: And how many parking
18 spaces does the facility have currently?

19 MR. TRUMMONDS: I believe there's
20 approximately 167 to 176 parking spaces.

21 CHAIR GRIFFIS: And does that include
22 those attending to the hospital?

23 MR. TRUMMONDS: Yes, it does.

24 CHAIR GRIFFIS: So it's 167.

25 MR. TRUMMONDS: Right. And I would point

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1 to the affidavit of Henry J. Vaughn again, Exhibit F.

2 CHAIR GRIFFIS: Right.

3 MR. TRUMMONDS: Where he's attested that--
4 paragraph 9 "At the present the parking garage
5 utilized by the nursing center typically has
6 approximately 50 to 70 parking spaces that are not
7 used on a daily basis."

8 CHAIR GRIFFIS: Right. Okay. I think
9 that's all I have at this time.

10 Others? Ms. Miller, did you have a
11 question?

12 BOARD MEMBER MILLER: Yes. Mr. Trummonds,
13 could you refresh my memory? The BZA order that set
14 the parking for this facility --

15 MR. TRUMMONDS: Yes.

16 BOARD MEMBER MILLER: -- what's the
17 expiration date of that order?

18 MR. TRUMMONDS: That order there was BZA
19 application 15542, which was issued in 1991 authorized
20 the facility, there was no expiration on that order.
21 And that required 176 parking spaces. Subsequent to
22 that in 1999 the Capitol Hill Group presented a case
23 to the Board of Zoning Adjustment where they requested
24 additional beds in their nursing facility. In order to
25 obtain those additional beds, the BZA in order 16407

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1 required in order -- at that time it from 130 beds to
2 162 beds, they said that the Applicant would need to
3 provide 276 off-street-parking spaces.

4 After BZA order 16407 was issued there was
5 concern raised in the community and I believe it came
6 even to an appeal of this order. So in fact what the
7 Capitol Hill Group did is they never went up to that
8 162 bed level. So, thus, they were never required to
9 have 276 parking spaces. And in fact what it did,
10 because there was no expiration on our previous order
11 to allow us 130 beds, 176 parking spaces, that's the
12 order under which we will live.

13 The short answer is, there is no
14 expiration of the previous BZA special exception
15 order. However, I would answer that BZA special
16 exception order expired on April 30th 1999 when the
17 zoning regulations were amended such that the nursing
18 center became a community based residential facility
19 that provides housing for the handicapped so it is a
20 matter of right use.

21 BOARD MEMBER MILLER: Okay. I think this
22 goes to my following question, which is in this case
23 this facility would not have to come before the BZA
24 for a hearing on parking? It's already set. It's not
25 an additional burden that would be placed on the

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1 facility in this case?

2 MR. TRUMMONDS: I'm sorry.

3 BOARD MEMBER MILLER: Well, it goes to the
4 issue about matter of right status versus -- when
5 you're matter of fact under the Fair Housing Act, the
6 purpose is so that you don't have to be subject to
7 additional burdens different from other residential
8 facilities. And my point is in this case even though
9 there was a change in law, there was nothing that
10 would require this facility to come back before the
11 BZA for permission to use the facility as a nursing
12 facility. They didn't need to get any other
13 permission?

14 MR. TRUMMONDS: Right. But I guess my
15 answer to that would be it would truly be a blatant
16 violation of the Fair Housing Act in that we are
17 treating this facility differently than we are
18 treating other communities based residential
19 facilities that provide housing for the handicapped.
20 If we were going to apply a special parking space
21 requirement for this facility as opposed to another
22 facility that were to come in tomorrow, the next day,
23 that's I think what prevents the BZA from making that
24 determination is you can't treat community based
25 residential facilities that provides housing for the

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1 handicapped differently.

2 CHAIR GRIFFIS: So your point is, Ms.
3 Miller was talking about treatment in terms of process
4 and you're saying, yes, that may be true but treatment
5 in terms of parking requirement is also a treatment
6 that would not be of equity to other facilities?

7 MR. TRUMMONDS: You can't treat this
8 facility different than you treat other facilities.
9 And to provide a parking space requirement on this
10 facility that is different than another facility would
11 be clearly a violation of the Fair Housing Act, I
12 believe.

13 BOARD MEMBER MILLER: I hear your point.

14 My next question is, and I think I asked
15 this of DCRA, but where does it say in our regulations
16 how the BZA is supposed to determine comparable
17 facilities for purposes of parking?

18 MR. TRUMMONDS: I don't believe it
19 explicitly states in the regulations of how you apply
20 that. I think that what you do have is the standard of
21 review for Zoning Administrator decision. And I would
22 purpose that that standard review from this Board of a
23 Zoning Administrator's decision is by a preponderance
24 of the evidence. If when someone appeals that decision
25 of the Zoning Administrator, they show by a

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1 preponderance of the evidence that such a
2 determination was in error, then you can overrule that
3 Zoning Administrator's decision. But I think some
4 deference needs to be given to the Zoning
5 Administrator's decision in these types of cases.

6 BOARD MEMBER MILLER: Do you have any
7 opinion as to why the Zoning Administrator's looking
8 toward rooming houses as the most analogous situation
9 that was appropriate?

10 MR. TRUMMONDS: I believe it was probably
11 best answered at the last hearing, they were looking
12 under the residential rubric of looking under because
13 this is a community based residential facility, that's
14 why they were looking under those sections.

15 BOARD MEMBER MILLER: You made a reference
16 to a letter you got from the Zoning Administrator that
17 prompted you to seek -- or your client to see a new
18 CFO. Is that in the record?

19 MR. TRUMMONDS: I do not believe it is.
20 But we can submit that for you if you would like.

21 BOARD MEMBER MILLER: Okay. I would.

22 MR. TRUMMONDS: And, in fact, what -- yes,
23 we'll submit that.

24 BOARD MEMBER MILLER: Okay. And is it
25 your position that looking at that affidavit of Henry

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1 Vaughn that there are 50 to 70 parking spaces that are
2 not used on a daily basis so that, in fact, there's
3 not a need for as many spaces as is provided by the
4 BZA order?

5 MR. TRUMMONDS: I'm saying that there are
6 -- there are certainly a lot of letters in the record
7 of this case talking about the problem of parking in
8 this neighborhood. I would attest this -- there are
9 other factors in this neighborhood that also impact
10 on-street-parking availability, not just the Capitol
11 Hill Group in that there seems to be excess capacity
12 in their parking lot on a daily basis.

13 I'm not sure --

14 CHAIR GRIFFIS: Let me interrupt, because
15 I think Ms. Miller brings up a good question of
16 clarification of why you brought the attention to that
17 in the affidavit, but I also want to caution that we
18 will not being too far into entertaining the
19 detrimental impacts of a number of counting or not.
20 Because this isn't a special exception but an appeal,
21 which I know Ms. Miller's very aware of. But we're
22 not arguing whether there is or what the impacts or
23 whose creating the parking and all that. I just think
24 we need to be careful.

25 MR. TRUMMONDS: Right.

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1 CHAIR GRIFFIS: Okay.

2 BOARD MEMBER MILLER: I don't know if this
3 crossing into the merits. But the Zoning
4 Administrator made a determination about number of
5 spaces of parking, and I'm not sure whether we're
6 going to evaluating a use of discretion or not. So I
7 was just curious about how these numbers related to
8 that issue.

9 CHAIR GRIFFIS: Well, I think it's a fine
10 line. I think you're doing the right thing.

11 BOARD MEMBER MILLER: Yes.

12 CHAIR GRIFFIS: What I'm saying is we're
13 not hearing a special exception here where we're going
14 to show a huge case presentation for the detrimental
15 impact of this facility and the number of the parking
16 as opposed to who else is creating the problem. That
17 has no merit in an appeal for us. So that's where
18 it's going to be limited.

19 If you start talking about whether it was
20 an appropriate classification or the determination of
21 the Zoning Administrator to look at this as a rooming
22 house, that goes fundamentally to the appeal.

23 MR. TRUMMONDS: Ms. Miller, I in fact have
24 the letter from Mr. Noble. I'll submit this for the
25 record.

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1 CHAIR GRIFFIS: Any other questions from
2 the Board?

3 BOARD MEMBER MILLER: I just have a
4 question of clarification. I have in my notes that
5 you said there were a 167 to 176 parking spaces
6 provided. Can you divide up between what was for the
7 nursing facility and what was for the hospital?

8 MR. TRUMMONDS: I think they don't
9 differentiate between the two?

10 BOARD MEMBER MILLER: They don't?

11 MR. TRUMMONDS: No.

12 BOARD MEMBER MILLER: It's a total.

13 MR. TRUMMONDS: It's an open -- yes,
14 exactly.

15 BOARD MEMBER MILLER: Okay.

16 MR. TRUMMONDS: And truly, that 167 to 176
17 number there was at one point the go back two -- three
18 Zoning Administrators ago when it was Michael Johnson
19 went out on the site and he counted the number of
20 parking spaces and he found 176. Six or eight months
21 later, the next Zoning Administrator was called to go
22 out and count the number of parking spaces, and
23 somehow he counted 167. So --

24 BOARD MEMBER MILLER: Well, don't you
25 know?

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1 MR. TRUMMONDS: I mean, I would say
2 there's 176, but that's -- you know, I want to make
3 full disclosure of what other people have said. I
4 would say 176.

5 BOARD MEMBER MILLER: Okay. 176 spaces
6 for the total facilities?

7 MR. TRUMMONDS: Correct.

8 BOARD MEMBER MILLER: Okay.

9 CHAIR GRIFFIS: Well, a little bit of
10 discussion and it all works out.

11 BOARD MEMBER ZAIDAIN: Actually, I think
12 we discussed this the last hearing, but I don't recall
13 what the answer was. How many is required for the
14 hospital?

15 MR. TRUMMONDS: It's one to one.

16 BOARD MEMBER ZAIDAIN: It's one to one.
17 So there's 162 -- one to one for beds?

18 MR. TRUMMONDS: Yes. There were 60 days.

19 BOARD MEMBER ZAIDAIN: So 162 are for the
20 hospital? Right?

21 MR. TRUMMONDS: Sixty bed in the hospital,
22 60 parking spaces.

23 BOARD MEMBER ZAIDAIN: Oh, 60 beds in the
24 hospital.

25 MR. TRUMMONDS: Six zero, yes.

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1 BOARD MEMBER ZAIDAIN: Okay. Because I
2 just happened to use the letter as a reference here
3 and it says number of beds is 162, so 60 of those are
4 for the hospital, the rest are for the nursing home?

5 MR. TRUMMONDS: Correct. And truthfully,
6 part of the problems with this November 5, 2002
7 letter, why we went through this process of getting
8 the Certificate of Occupancy, is that it relates to
9 this issue that I was explaining to Ms. Miller before.

10 The 162 beds was what was required in
11 order 16407. To get 162 beds they would have been
12 required to provide 276 parking spaces. To get to 130
13 beds, they were required to provide 176 parking
14 spaces.

15 So when we got this letter, that's what
16 triggered -- this letter I just submitted. That's
17 what triggered this whole process where we came up and
18 we said we went through the entire process of this is
19 now the applicable zoning regulations to this
20 property. We will get the new Certificates of
21 Occupancy to reflect that is now appropriate.

22 BOARD MEMBER ZAIDAIN: So you're saying
23 that this letter is wrong and it's incorrect?

24 MR. TRUMMONDS: The last paragraph, yes.

25 BOARD MEMBER ZAIDAIN: It's a shame you

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1 didn't appeal it?

2 CHAIR GRIFFIS: Following on that line,
3 the BZA order of 1999 or application 16407 you're
4 saying that the property owner never brought that into
5 effect?

6 MR. TRUMMONDS: Correct.

7 CHAIR GRIFFIS: Which means it no longer
8 serves, is that --

9 MR. TRUMMONDS: Correct.

10 CHAIR GRIFFIS: Because, of course, these
11 orders are valid only for a period of two years after
12 the effective date of the order unless within such
13 period an application for the building permit or
14 certificate of occupancy is filed with DCRA?

15 MR. TRUMMONDS: Right. And, you know, I
16 don't know if this is appropriate or not, but I would
17 point to order 1647 in regards to -- I think this goes
18 to the determination that the Zoning Administrator
19 said. If you look at paragraph 14, page --

20 BOARD MEMBER MILLER: Wait. I want to have
21 it in front of me. Where is this tab?

22 MR. TRUMMONDS: This is Tab C of my
23 statement.

24 CHAIR GRIFFIS: Tab C.

25 MR. TRUMMONDS: Page number 4.

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1 CHAIR GRIFFIS: And paragraph number?

2 MR. TRUMMONDS: Paragraph 14. And it just
3 so happens that the expert witness in that case was
4 Ellen McCarthy, current Deputy Director Office of
5 Planning. And the second sentence started out she
6 pointed that "Under the zoning regulations a hospital
7 center, sanitarium or clinic is permitted as a matter
8 of right in more restrictive R-4 zones." Ms. McCarthy
9 added that a special exception will not even be
10 required for a community based residential facility if
11 a proposed Zoning Commission rule is approved and
12 adopted.

13 So even, you know, the Office of Planning
14 now Deputy Director at that time when she was the land
15 planning expert for Capital Hill Group envisioned and
16 was said this is what will happen when Zoning
17 Commission order 869 becomes effective.

18 CHAIR GRIFFIS: Okay. And she's
19 reflecting the whole development, correct, not just
20 the use?

21 MR. TRUMMONDS: Well, I think what she's
22 saying is that she's saying, first of all, hospital in
23 the R-4 matter of right. Second, the community based
24 residential facility Capitol Hill Nursing Center that
25 at the present time we're going through in the special

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1 exception. However, she was noting that at that time
2 the Zoning Commission case which became Zoning
3 Commission 869 --

4 CHAIR GRIFFIS: Right.

5 BOARD MEMBER MILLER: -- was moving
6 forward. And she said as soon as that order becomes
7 effective, we wouldn't even need to be here to go
8 through this process because it would be matter of
9 right, which is in effect what the Zoning
10 Administrator determined in this case when it issued C
11 of O to --

12 CHAIR GRIFFIS: Well, the thing that
13 happened in between there was the rule was adopted?

14 MR. TRUMMONDS: Exactly. I'm going to say
15 that it buttresses the Zoning Administrator's
16 decision.

17 CHAIR GRIFFIS: Okay. Other questions?
18 Anything else?

19 BOARD MEMBER MILLER: Well, I'm sorry.
20 It's been a while. What was the number that the
21 Zoning Administrator determined was appropriate,
22 number of parking spaces?

23 MR. TRUMMONDS: Twenty-five. They said
24 there was 117 beds, so applying this one plus one for
25 every five --

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1 BOARD MEMBER MILLER: Okay.

2 MR. TRUMMONDS: So it's 117 divided by
3 five plus --

4 BOARD MEMBER MILLER: For the nursing
5 facility?

6 MR. TRUMMONDS: Yes.

7 BOARD MEMBER MILLER: And there's 60 for
8 the hospital, is that correct?

9 MR. TRUMMONDS: For the hospital.
10 Correct.

11 BOARD MEMBER MILLER: So that's 85. And
12 what was the date of that, that he made that
13 determination?

14 MR. TRUMMONDS: The Certificates of
15 Occupancy were issued March 26, 2003.

16 BOARD MEMBER MILLER: 2000.

17 BOARD MEMBER MILLER: Yes. Okay. Is that
18 consistent with the November 5, 2002 letter?

19 MR. TRUMMONDS: I would say no, because I
20 think we brought to their attention his -- the BZA
21 orders 16407 and 15542 no longer applied.

22 BOARD MEMBER MILLER: Right. Okay.

23 MR. TRUMMONDS: Because of the change in
24 the zoning regulations.

25 BOARD MEMBER MILLER: Okay. So the

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1 November 5th letter says 200 parking spaces and the
2 ZA's determination was 85, right. That's the
3 difference?

4 MR. TRUMMONDS: Right.

5 BOARD MEMBER MILLER: Okay. It's the first
6 time we saw this letter.

7 MR. TRUMMONDS: No problem.

8 BOARD MEMBER MILLER: And I just wanted to
9 get my numbers straight.

10 MR. TRUMMONDS: Right.

11 CHAIR GRIFFIS: Nothing further from the
12 Board? Very well.

13 Let's proceed. This is going to be a
14 little different than the straight cross examination
15 as Mr. Trummonds, of course, won't be cross examined,
16 but you have availed yourself to question regarding
17 the submissions, which I think is appropriate. Unless
18 there is here that can adopt the submissions as
19 testimony and then be cross examined on them. Okay.

20 Then let us start with the ANC 6-C
21 questions or 6-A? I'm just kind of starting off with
22 the ANC if we wanted to. But it's up to you guys.
23 Who has questions?

24 MR. EDWARDS: Mr. Trummonds, I need a
25 little bit of help with the chronology of the events

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1 that happened after you received the November 5, 2002
2 letter.

3 I believe DCRA indicated that there was
4 litigation between the Capitol Hill Group and the
5 Zoning Administrator. Can you describe that
6 litigation?

7 MR. TRUMMONDS: I didn't testify to the
8 litigation.

9 MR. EDWARDS: Ms. Gilbert I believe stated
10 in her statement --

11 CHAIR GRIFFIS: Right.

12 MR. EDWARDS: -- that there was litigation
13 and because of the fear of that litigation was the
14 motivating factor for the issuance of the
15 Certificates of Occupancy.

16 CHAIR GRIFFIS: Right. No, I understand
17 your point. But I'm not sure why it's an appropriate
18 question for Mr. Trummonds to try and take up.

19 MR. EDWARDS: Because Mr. Trummonds was
20 the attorney of record in that litigation.

21 CHAIR GRIFFIS: I know. But it doesn't go
22 the submission on this appeal or anything of the
23 statements that Mr. Trummonds has offered us today.

24 MR. EDWARDS: It goes to the events that
25 led to the issuances of Certificate of Occupancy.

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1 CHAIR GRIFFIS: Right.

2 MR. EDWARDS: And I think Mr. Trummonds
3 can testify that in fact I notice a voluntary
4 dismissal of that action was filed the same day or the
5 day after the Certificate of Occupancy issued in this
6 proceeding.

7 CHAIR GRIFFIS: Okay. This is what I
8 would advise. First of all, Mr. Trummonds isn't going
9 to testify to anything today. He's going to make
10 statements on behalf of his client. But secondly, I
11 think it's going to be more effectual for you to do
12 that in any sort of presentation of case or submission
13 of documents rather than trying to elicit the
14 information you want out of Mr. Trummonds. Because
15 quite frankly, it's not an appropriate cross
16 examination or a questioning of submissions at this
17 point because Mr. Trummonds didn't, as they might say
18 if I was an attorney, open the door to that as his
19 submission.

20 So, do you have other questions.

21 MR. EDWARDS: Yes. Mr. Trummonds, I
22 believe you testified that when order 869 issued April
23 30, 1999 that essentially voided the BZA order in this
24 proceeding, is that correct?

25 MR. TRUMMONDS: That's correct.

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1 MR. EDWARDS: Then, Mr. Trummonds, I have
2 a question of why the Capitol Hill Group came to this
3 Board for zoning regulation on October of 1999 which
4 resulted in the issuance of order 16407?

5 MR. TRUMMONDS: Right. I was not their
6 counsel at that time, and I think I would have pointed
7 out to them what their land expert said in their case
8 16407 that they didn't need to come to that.

9 MR. EDWARDS: Mr. Trummonds, you testified
10 that you never went to 172 beds --

11 MR. TRUMMONDS: 162.

12 MR. EDWARDS: 162, but isn't it a fact
13 that in the Health Department proceeding Capitol Hill
14 Group provided information that you're not at a level
15 of 177 beds?

16 MR. TRUMMONDS: I don't know what they
17 presented in the Department of Health certificate of
18 need proceeding. Again, I'm not sure the relevancy of
19 that to this.

20 MR. EDWARDS: Mr. Griffis?

21 CHAIR GRIFFIS: Yes.

22 MR. EDWARDS: The Capitol Hill Group has
23 been involved has been involved in two proceedings in
24 this. They have told one set of facts to the Health
25 Department, Stanton Park has participated, has

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1 provided extracts from those materials to this Board.

2 CHAIR GRIFFIS: Right.

3 MR. EDWARDS: To now say that that's a
4 different proceeding and I can't testify to it and not
5 having a witness here, such as Mr. Bond or someone,
6 who could testify to it --

7 CHAIR GRIFFIS: Right.

8 MR. EDWARDS: -- I think is unfair to the
9 process.

10 MR. TRUMMONDS: Again, I would say --

11 CHAIR GRIFFIS: Well, but two things.
12 First of all, what would you have me do? And
13 secondly, isn't the burden of the appeal case on you?
14 If no one else shows up, it helps you an awful lot,
15 doesn't it?

16 So actually, to answer the first question,
17 I don't know what I can do. I can't subpoena anybody,
18 let alone require witnesses to be called.

19 MR. EDWARDS: All right.

20 CHAIR GRIFFIS: I mean, we're all in this
21 together. You have what I have, and that's what we
22 were presented today.

23 MR. EDWARDS: All right. Based on that, I
24 have no further questions, Mr. Chairman.

25 CHAIR GRIFFIS: Okay.

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1 CHAIR GRIFFIS: Others? ANCs? Any other
2 questions? No. Okay.

3 Does the Parish? No questions?

4 Very well. Follow up questions of the
5 Board? Okay.

6 Let's proceed then. Let's go to ANC 6-C.

7 MR. CREWS: Mr. Chairman, members of the
8 Board, my name is Bill Crews. I'm the Advisory
9 Neighborhood Commissioner for single-member district
10 6-C-07 and have been authorized by Advisory
11 Neighborhood Commission 6-C to represent 6C today in
12 support of the Stanton Park Neighborhood Association's
13 appeal. And we join in that support in this case.
14 I'll try and not read my statement verbatim, but to
15 point out the pertinent arguments.

16 We ask the Board to revoke the two
17 Certificates of Occupancy and to exercise your duty to
18 determine adequate off-street parking requirements for
19 these facilities.

20 Both you as Board members and us as
21 Commissioners voluntarily serve to represent the
22 residents of the District of Columbia in a manner that
23 ensures fair and equitable implementations of statutes
24 and regulations.

25 The subject party is located in ANC 6-C.

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1 Interestingly enough, the interests of ANC 6-C and 6-A
2 do differ.

3 For ANC 6-C we represent both the
4 neighboring residents of MedLink as well as those
5 residents of MedLink. We believe that we can reach a
6 fair and balanced resolution to the needs of both sets
7 of residents.

8 The residents of MedLink deserve the care
9 that is necessary for their serious health care needs
10 and for their quality of life. By MedLink's own
11 admission before the District of Columbia State Health
12 Planning and Development Administration on October 31,
13 2003, I believe a copy of that pertinent information
14 is with Parks submission, the hospital and nursing
15 home provide that care to these residents by offering
16 it as an integral operation providing high levels of
17 staffing to ensure a high quality seamless provision
18 of health care. They taut this integration as unique
19 in the District. And as I say, as representative of
20 the residents of 6-C, those residents deserve an
21 adequate staff and that staff needs parking.

22 The neighboring resident in ANC 6-C
23 continue to be effected by demand for on-street
24 parking generated by this property along residential
25 street within ANC 6-C. Evening and night parking

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1 within the surrounding areas in high demand, creating
2 hardships and safety concerns for residents who must
3 walk long distances after prolonged searched for legal
4 street parking, especially when non-residents use on-
5 street parking illegally.

6 These competing values, the conflicts they
7 provide and past balance resolutions and requirements
8 are well documented in the public record of the Office
9 of Zoning as well as this Board. ANC 6-C believes
10 that section 11 DCMR 2101.1 require this Board to
11 determine parking requirements for community based
12 residential facilities housing 16 or more persons in a
13 residential district. We content that this appeal is
14 different from the Nebraska Avenue decision in appeal
15 16716A in that the decision and order in that case
16 said nothing about a challenge to following section
17 2101.1. That decision and order did not specifically
18 ask nor answer the root question of whether the BZA or
19 the Zoning Administrator has the authority to set
20 parking requirements. It simply talked about the
21 Zoning Administrator's process and rationale for
22 deciding the number of parking.

23 In addition, that decision was based upon
24 speculative plans, not an actual ongoing operation
25 subject to various hearings, findings of facts and

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1 other determinations of the actual parking needs and
2 impact on these needs on residence, staff and
3 neighbors.

4 Stanton Park's testimony pointed out the
5 BZA's decision in Nebraska Avenue was based upon a
6 decision made before the zoning ordinance was amended,
7 and apparently before the Zoning Administrator
8 illegally, we contend, interpreted section 2101.1 as
9 not requiring BZA determination of off-street parking
10 requirements for community based residential
11 facilities with 16 or more beds.

12 Therefore, this is the first time this
13 interpretation by the Zoning Administrator is being
14 directly reviewed by this Board. And, again, I
15 reviewed the online version of section 2010.1 this
16 morning and it still reads that the Board of Zoning
17 Adjustment shall determine parking requirements for
18 community based residential facilities with 16 or more
19 persons house.

20 Under usual statutory construction
21 changing another section of the regulations relating
22 to matter of right uses without specifically changing
23 this specific requirement would require this specific
24 requirement to remain valid and operative. This
25 interpretation makes immanent public policy sense, and

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1 while that while matter of right use for housing
2 handicapped may be required under Federal law, there
3 is reasonable public policy concerns for legitimate
4 impacts such a facility, especially a large facility,
5 can cause in the public infrastructure and surrounding
6 neighborhood's right to safety and public welfare,
7 thereby warranting a public process by the BZA to
8 determine parking requirements. Following the letter
9 of 2101.1 allows for public involvement in the
10 decision on required parking.

11 We also strongly believe that the
12 Appellees and property owners' assertion that section
13 330.5 subsection (i) overrules 2101.1 is wrong. The
14 operative phrase in that section of 330.5(i) is "that
15 otherwise complies with zoning requirements of this
16 title that are of general and uniform applicability to
17 all matter of right uses in an R-4 district.

18 ANC 6-3 believes that the requirement for
19 BZA to set off-street parking requirements for
20 community based residential facilities of 16 or more
21 beds is of general and uniform applicability. It
22 applies to all community based residential facilities
23 whether there are handicapped residents or not. It
24 therefore in no way discriminates against handicapped
25 persons or their housing. There's nothing absurd

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1 about a matter of right use to have requirements
2 enacted to protect health, welfare and safety.
3 Several other sections of chapter 21, for example
4 2103.4, 2107.2 and 2108.3 list several criteria for
5 the Board to consider in determining the required
6 number of off-street parking. All these criteria can
7 be used reasonably by the Board for the required
8 determination of 2101.1.

9 We believe the appellee needs to have you
10 rule on this important distinction before it continues
11 to cowardly cave to any and all litigation claiming
12 discrimination against the handicap.

13 We have heard a statement by the
14 appellees' counsel that this current determination was
15 the result of wanting to settle a lawsuit. And just
16 after the continuation of this hearing last week an
17 article appeared in the November 19th *Washington Post*
18 on page 1 of the Metro section stating that DCRA had
19 once again cowardly changed the decision based upon a
20 threat of a lawsuit claiming discrimination against
21 the handicapped. Clearly 2101 does not discriminate as
22 it applies equally to those community based
23 residential facilities with handicap residents and
24 those who don't include handicap residents.

25 Are the appellee and the property owner

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1 contending, and isn't this Board prepared to rule that
2 any facility claiming any amount of handicapped
3 residents is entitled to special right to completely
4 ignore any provision of the zoning ordinance by
5 threatening a lawsuit or that they disagree with, or
6 that causes the owner of their property a hardship?
7 Does DCRA and the property owner contend that sections
8 2115, 2116, 2117 and 2118 don't apply because it would
9 be discriminatory, or should this Board determine that
10 these sections are of general and uniform
11 applicability to all matter of right uses?

12 It is time for you to stand up to this
13 intimidation. Protect the residents of the city from
14 bullying and fairly and equitable administer the
15 letter of the regulations.

16 We would argue that the Zoning
17 Administrator's decision is arbitrary and capricious
18 given the very public record of the impacts of this
19 facility on the parking situation in the neighborhood.
20 The two previous orders of this Board demonstrate the
21 serious impact of this facility on the neighborhood.
22 Even if these orders may not be enforceable now, the
23 underlying facts of the impact remain and have grown
24 based upon the testimony of the property owner before
25 the D.C. Health Planning and Development

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1 Administration.

2 There is testimony by the DCRA
3 representative in a statement by its counsel that the
4 Zoning Administrator did not even look at existing
5 conditions. How arbitrary, apparently based upon the
6 convenience of a desire to settle a lawsuit, rather
7 than an intrinsic nature of the actual demand for
8 parking and the impact on all residents. And that
9 arbitrary based upon convenience rather than the
10 intrinsic nature of the actual situation is definition
11 3A of "arbitrary" *Miriam Webster's Collegiate*
12 *Dictionary*, the 11th edition, page 63.

13 We'd also question the inconsistency in
14 the facility's public statement in this and other
15 venues. The operation of this facility does not seem
16 similar to either a rooming house or boarding house in
17 any plain meaning of those terms. In testimony given
18 before the State Health Planning Administration on
19 October 31st, the facilities' representative bragged
20 about the extreme staffing intensive qualify of care
21 provided residents and patients at this facility.
22 They talked about a seamless operation between nursing
23 home and hospital.

24 Therefore, if you fail to determine that
25 this Board should make the determination on parking

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1 requirements under the plain language of section
2 201.1, you should at a minimum find the Zoning
3 Administrator failed in not determining that the
4 nursing home as described by the facility was much
5 more like a hospital. And I might mention that there
6 has been no statements or testimony that the Zoning
7 Administrator is restricted by any rule, process or
8 procedure that they have to stay only with the
9 residential criteria in 2101. So that the minimum
10 find that the Zoning Administrator failed in not
11 determining that the nursing home as described by this
12 facility was much more like a hospital and require one
13 parking space for each bed. And at these numbers it
14 doesn't even begin to discuss the difference between
15 the current number of beds, as they state 60 hospital
16 117 nursing on the application for the Certificate of
17 Occupancy, and the much larger number of licensed
18 beds, 125 hospital 162 nursing center from the State
19 Health application.

20 So we would join in Stanton Park
21 Neighborhood Association's restatement of the history
22 of the beds, employees and potential future demands
23 for parking as the facility emerges from bankruptcy
24 and the landowner seeks additional uses for the
25 building as well as other arguments of fact and law.

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1 And while we appreciate the service these
2 facilities provide to their patients, some of whom are
3 potentially residents of 6C, and we stand ready to
4 work with them, their track record of cooperation and
5 following previous BZA orders cannot give us hope.
6 Truly you members of the Board of Zoning Adjustment
7 serving in the public interest must grant this appeal
8 and put in motion a transparent process for fairly
9 determining the parking requirements for this facility
10 as required by law and protects the public interest,
11 health, safety and general welfare and the rights of
12 the residents of District Columbia to equal
13 enforcement of the laws, regulations designed to
14 protect that public welfare and safety.

15 Thank you.

16 CHAIR GRIFFIS: Thank you very much. So
17 as I take it your case presentation is that if we
18 require special exception of everybody, that's
19 equitable treatment of everybody. So even in a matter
20 of right use, that's where your equity resides?

21 MR. CREWS: Well, it's not a special
22 exception here. It's just simply that the zoning for
23 this type of facility, community based residential
24 facility, whether it's handicapped or not, that 2101.1
25 requires that if it's over 16 beds --

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1 CHAIR GRIFFIS: I know.

2 MR. CREWS: -- set that.

3 CHAIR GRIFFIS: And what form would we
4 determine that parking? It would be a special
5 exception? It would be a public hearing?

6 MR. CREWS: It would be a public hearing,
7 but I don't know, you know, I'm not an expert enough
8 on the zoning ordinance to say that whether by default
9 becomes a special exception or if it's simply a matter
10 of a public process with hearing to have you determine
11 that.

12 CHAIR GRIFFIS: That's the public process
13 as we have. The public hearings would be a special
14 exception of variance unless you want to make a
15 foreign mission, and we could call together the FMBZA,
16 but that wouldn't be appropriate.

17 You made the statement in this talking
18 about the plans from the past application or appeal,
19 rather of Sunrise. And you said it was based on
20 speculative plans. I wasn't understanding what you
21 meant by that.

22 MR. CREWS: Well, I guess it may be the
23 fact that the facility had not been built yet and that
24 it was proposed uses, and my understanding from
25 reading that decision, was --

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1 CHAIR GRIFFIS: They were permanent plans
2 that were appealed?

3 MR. CREWS: Right.

4 CHAIR GRIFFIS: What makes that
5 speculative?

6 MR. CREWS: Well, that it hasn't occurred
7 yet. So this is what they're planning on doing. But
8 in this particular case the distinction is that
9 there's an actual history of actual use.

10 CHAIR GRIFFIS: Okay.

11 MR. CREWS: Just trying to help you find
12 some points of distinction.

13 CHAIR GRIFFIS: I understand. I think I
14 understand your point.

15 You seem to be trying to lead to us in
16 your case presentation finding an equitable process of
17 which to treat so that we, obviously, can comply with
18 the larger forces without getting into detail with
19 that. And yet you seem to go back always to the
20 specifics of this site.

21 How do we reconcile that in terms of how
22 do we treat something or create an equitable treatment
23 but you're asking us to look specifically at this
24 facility, this location, the demands that's placed on
25 it, the future demands of this; what is it that you're

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1 pointing us to that is the equitable treatment then?

2 MR. CREWS: Well, I think the equitable
3 treatment is in two steps. First of all, that
4 330.5(i) talks about matter of right unless it's a
5 general application. And that's the point I'm trying
6 to make is that this requirement in 2101.1 is general.

7 It applies. It doesn't discriminate against
8 handicapped residential facilities because it requires
9 both handicapped and non handicap when they have 16
10 beds or more that they would have to have a process to
11 determine the impacts. And that's the equitableness in
12 terms for the impacts on the neighborhood and on the
13 residents themselves.

14 CHAIR GRIFFIS: I see. Okay. And you
15 don't see an inherent conflict then if I'm
16 understanding you're saying, an inherent conflict of
17 actually having a different parking ratio for similar
18 facilities but based on different locations?

19 MR. CREWS: Well, I think so. I gave you
20 some suggestions of other parts of the zoning
21 ordinance in 2100 section --

22 CHAIR GRIFFIS: Right.

23 MR. CREWS: -- that has various criteria
24 for various purposes.

25 CHAIR GRIFFIS: Right.

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1 MR. CREWS: So it's not --

2 CHAIR GRIFFIS: But are you arguing then
3 specifically in this appeal that the Zoning
4 Administrator erred in looking at this as a rooming
5 house? I mean, you've made that point.

6 MR. CREWS: Right, I have two arguments.
7 The first argument is that the Zoning Administrator
8 erred in making that determination.

9 CHAIR GRIFFIS: Right.

10 MR. CREWS: It should be you all. And
11 then, you know, should that argument prevail, then in
12 the alternative I would say that he didn't make a very
13 good determination when he said that this was more
14 like a rooming house based on --

15 CHAIR GRIFFIS: Your point is it's more
16 analogous to the hospital use?

17 MR. CREWS: Exactly. Right.

18 CHAIR GRIFFIS: Understood. Okay.

19 Ms. Miller?

20 BOARD MEMBER MILLER: Could you address
21 how it's more analogous to a hospital than a rooming
22 house?

23 MR. CREWS: I think primarily based on,
24 again, the testimony of how they operate in terms of
25 the increased staffing needs and then, therefore, the

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1 parking needs of the staff that these are, my
2 understanding, respiratory impaired folks that need
3 care. In terms of a rooming house, I'm not sure that
4 there's, at least in my experience having lived in a
5 rooming house and having rented space in a group home
6 or so, that there's any staff involved at all.

7 BOARD MEMBER MILLER: Okay. So it's the
8 staff --

9 MR. CREWS: And, you know, there would be
10 other impacts. But I think the big issue is staff in
11 terms of both the care staff, the housekeeping staff,
12 the administrative staff to -- in other testimony they
13 talk about the -- you know, the various ways that
14 people pay for their residency there, either through
15 Medicare or Medicaid, private insurance or just
16 private pay. So that there's a significant amount of
17 infrastructure there to operate this facility as a
18 nursing home, much more so than anything I have come
19 across in terms of a rooming house.

20 BOARD MEMBER MILLER: Okay. There is a
21 point that you raise that I'm certainly interested in,
22 but you don't set any authority for it, and I'm
23 wondering if you looked or if you could cite
24 authority. And that's where you say "under usual
25 statutory construction changing another section of the

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1 regulations relating to matter of right uses without
2 specifically changing this specific requirement would
3 require this specific requirement to remain valid and
4 operative."

5 And so the Intervenor is taking the
6 opposite point of view. And I'm wondering if there's
7 any authority for this proposition?

8 MR. CREWS: Well, I guess I apologize,
9 once again, being a public member and having
10 additional responsibilities. But I would be glad to
11 provide the Board with some statutory construction
12 rules. I mean, it seems to me that that would be easy
13 to do, provided, I mean it'll take some time,
14 obviously. But in terms of my understanding of
15 statutory construction that the plain language of the
16 words usually rules. And that if you -- I believe the
17 statement of the Intervenor or the property owner was
18 that well the Zoning Commission must have forgotten to
19 change this one. Well, you know, I mean I think
20 that's a fairly recognized rule of statutory
21 construction is that if you didn't change the word,
22 you must have intended to change the word.

23 And, again, I can't give you a case
24 citing, but I think that's -- could be provided if
25 it's really a question, I guess, in terms of statutory

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1 construction.

2 BOARD MEMBER MILLER: Well, not the plain
3 meaning of the words. I'm really not going to that.
4 I'm really going to when there's a change as a matter
5 of right, what happens to a regulation that's still in
6 effect? You know, how does that apply?

7 BOARD MEMBER ZAIDAIN: Well, following
8 along the lines of what you were discussing, are you
9 taking the opposite view of the property owner in the
10 sense that not only did -- you know, the issue of the
11 Zoning Commission forgetting to change this
12 regulation, you know, whatever? But are you saying
13 that the Zoning Commission intended to leave it the
14 way it is, that they didn't just overlook it? That
15 they left that there intentionally?

16 MR. CREWS: Well, I think the real point
17 is, is that if they wanted to change that, they should
18 have changed it.

19 BOARD MEMBER ZAIDAIN: Yes.

20 MR. CREWS: And that by not changing it,
21 you can infer that they didn't want to change. And
22 that may not be necessary because it's still the way
23 the language works.

24 BOARD MEMBER ZAIDAIN: Yes.

25 BOARD MEMBER ZAIDAIN: Okay. But you're

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1 not taking -- well, maybe you are. I don't know. Are
2 you taking the even more further out -- well, not
3 further out, but the more kind of hardline position
4 that even though the Fair Housing Act is out there or
5 there's some federal law out there dictating XYZ, the
6 fact that it's still in the regulations means that it
7 still needs to be dealt with?

8 MR. CREWS: I don't know that it can be
9 inconsistent. And I don't know that you would want it
10 be inconsistent by claiming that -- I mean, that
11 provision is applied generally. It doesn't
12 discriminate against handicap facilities. All
13 facilities has to come and get their off-street
14 parking determined based on the impacts of that
15 facility in the neighborhood.

16 BOARD MEMBER ZAIDAIN: Right.

17 MR. CREWS: Based on this other --

18 BOARD MEMBER ZAIDAIN: Right. So you're
19 saying it's not inconsistent with Federal law?

20 MR. CREWS: No. I don't think it's
21 inconsistent at all.

22 BOARD MEMBER ZAIDAIN: Okay.

23 MR. CREWS: And I think the alternative
24 would lead us down to a road that, you know, that
25 trumps that -- you know, you taut out I've got a

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1 handicapped person in my residential facility that
2 none of this applies, that's the alternative I think.

3 BOARD MEMBER ZAIDAIN: Okay. Thank you.

4 CHAIR GRIFFIS: It's a good point to bring
5 to the Justice Department, too.

6 As a follow-up, do you think that -- does
7 the motivation of the operator of the CBRF in coming
8 for a certificate of occupancy matter to us and to
9 this appeal?

10 MR. CREWS: I think it's hard to tell
11 right now based on what has been presented here. So
12 far all we have is the statement by the DCRA counsel
13 that there was a lawsuit, and then we have this letter
14 that came today that we don't know what the chronology
15 of that is. And, you know, the fact that these folks
16 are residents of our ANC and I don't impugn bad
17 motive. Would be simply that there's been a
18 misinterpretation by the Zoning Administrator of who
19 determines the parking requirements for CBRFs of 16 or
20 more beds.

21 CHAIR GRIFFIS: Okay.

22 MR. CREWS: And that I've tried to
23 distinguish the Nebraska Avenue case in terms of
24 either on the reading of its decision that it didn't
25 actually address that, it just kind of assumed --

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1 CHAIR GRIFFIS: Right.

2 MR. CREWS: -- that therefore you don't
3 not to rely on that precedent and you can rule in this
4 case that the 2101 does not discriminate against
5 handicapped residential facilities and it does allow
6 you in that the basis of that is the fact that larger
7 facilities cause larger impacts. And there should be,
8 as envisioned by the plain language of the ordinance,
9 that should be a --

10 CHAIR GRIFFIS: I think that's fairly
11 clear. And what I'm understanding you to say is you
12 don't have at this point and you don't have to, a
13 direct position from the ANC of whether the motivation
14 of getting a certificate of occupancy is pertinent or
15 relevant to this appeal? And as a follow-up to that,
16 then is it possible the answer or does the ANC have a
17 position whether they're entitled to a new CFO?

18 MR. CREWS: Excuse me for a second.

19 You know, I was just trying to make sure I
20 don't shoot myself in the foot in answering this
21 question, because it's kind of a difficult question in
22 terms of certificate of occupancy is required for a
23 building to be used. And, again, I don't think we have
24 enough facts other than this letter that was handed
25 today on why this came about.

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1 You have the statement of the property
2 owner's attorney that upon looking at those changes
3 that they felt like they might be able to get a better
4 deal if they applied for a new CFO. They have all
5 sorts of variety of reasons. I don't know that it,
6 again, necessarily impacts on your decision in this
7 case in terms of --

8 CHAIR GRIFFIS: Your position, are they
9 entitled to a new CFO?

10 MR. CREWS: I think they're entitled to a
11 certificate of occupancy, whether it's new, existing
12 or -- I don't have an indication of, you know, just
13 based on the law, and we haven't specifically talked
14 about that at the ANC commission.

15 CHAIR GRIFFIS: Okay. Well, that's
16 appropriate then. Thank you.

17 Other questions of the Board?

18 BOARD MEMBER ZAIDAIN: Yes, I have a
19 question.

20 CHAIR GRIFFIS: Go ahead.

21 BOARD MEMBER ZAIDAIN: You've been focused
22 on the legal framework of these regulations. I mean,
23 wouldn't you agree that that's our main focus here is
24 how we interpret that?

25 MR. CREWS: I would hope so, yes.

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1 BOARD MEMBER ZAIDAIN: I mean, I guess
2 what I'm struggling with, and I hope I'm trying to
3 sound condescending, it may come off that way.

4 While we keep hearing testimony about the
5 motivation of these hearings' lawsuit, I really don't
6 see -- I mean you've mentioned it and Ms. Gilbert
7 mentioned it, the Appellant mentioned. I don't see --
8 what I'm asking is a fair question. I don't see how
9 that fits in with what we're trying to do in terms of
10 interpreting the regulations. I mean, is there
11 something I'm missing.

12 MR. CREWS: Well, I don't know. I mean --

13 BOARD MEMBER ZAIDAIN: I think it's a
14 motivational thing.

15 MR. CREWS: Yes.

16 BOARD MEMBER ZAIDAIN: And DCRA's
17 motivation is really not something that we have to
18 deal with here.

19 MR. CREWS: That the Zoning
20 Administrator's? I didn't hear whose motivation we
21 really weren't --

22 BOARD MEMBER ZAIDAIN: DCRA?

23 MR. CREWS: Yes, DCRA's motivation.

24 Well, other than why they either did not
25 follow 2101.1 or why they refused to look at the

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1 existing facts and uses of the current use of the
2 building and the previous findings of fact in issuing
3 this certificate of occupancy for 25 parking spaces
4 that we strongly agree with in terms of being in the
5 public interest and following the law in terms of what
6 the zoning ordinance, so --

7 BOARD MEMBER ZAIDAIN: Well it seems like
8 -- I mean, the way you've -- and I could have asked
9 these questions of any of them, so I apologize because
10 it seems like I'm picking on you. But, you know, the
11 way you just answered my question was the use of the
12 word "why." I mean, why they did or didn't do
13 something isn't really, in my mind, what we should be
14 doing.

15 MR. CREWS: Well, I mean --

16 BOARD MEMBER ZAIDAIN: We're looking at
17 whether or not they did and whether or not they should
18 have. Because you've actually framed the legal
19 arguments pretty well, and then this issue keeps
20 rising that to me is outside that box. And I'm just
21 trying to understand if it's something that we should
22 be looking at.

23 I'm not saying it to be condescending.

24 MR. CREWS: No.

25 BOARD MEMBER ZAIDAIN: I want to know if

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1 there's something I'm missing.

2 MR. CREWS: Again, I would just say that,
3 you know, that through the first issue that I know it
4 matters --

5 BOARD MEMBER ZAIDAIN: Okay.

6 MR. CREWS: -- why they didn't follow
7 2101.

8 BOARD MEMBER ZAIDAIN: Okay.

9 MR. CREWS: And on the second issue it
10 could impact why we would contend that it was
11 arbitrary and capricious. You know, I mean from then
12 on it's speculation and I don't know that that helps.

13 BOARD MEMBER ZAIDAIN: Right. Okay.
14 Okay.

15 MR. CREWS: On the why part.

16 BOARD MEMBER ZAIDAIN: No, no. I
17 appreciate the information you've raised. Thank you.

18 CHAIR GRIFFIS: Others? Other questions,
19 Mr. Zaidain? Very well.

20 Let's start with cross. Stanton Park, any
21 questions? DCRA? Property owner. 6-A? Parish?

22 Now we can't let them off that easily.
23 Thank you very much. We appreciate it. And appreciate
24 having the written submission, too, which is helpful.

25 Okay. Let's move on to 6-A.

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1 MR. RICE: Good afternoon. My name is Cody
2 Rice. I am Advisory Neighborhood Commissioner for 6-
3 A03, and I'm here representing ANC 6-A in support of
4 Stanton Park Neighborhood Association's appeal.

5 I've three brief points that I'd like to
6 make.

7 The first of those relates to parking.
8 Parking is a concern and I think you can look to the
9 letters from the residents on this case, and look to
10 the record from the previous BZA orders, and if you
11 want any more details I'm here to answer questions
12 about how it is, if you feel that that's relevant.

13 My second point is that the plain language
14 of the zoning regulations BZA determines. I'm talking
15 here about 2101.1.

16 CHAIR GRIFFIS: Right.

17 MR. RICE: You can think about the
18 alternatives that the Zoning Commission could have put
19 in place but didn't. It doesn't say that the Zoning
20 Administrator determines according to certain ratios,
21 as it does in other places. It doesn't say that BZA
22 delegates to the Zoning Administrator. And it isn't
23 silent, as it is in some cases.

24 Essentially there are three ways for
25 making these sorts of parking determinations. In some

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1 cases the code is silent and in those cases the Zoning
2 Administrator seems to have discretion. There are
3 rules set out for certain types of uses and the Zoning
4 Administrator implements those ratios. And there's
5 this provision where the Board of Zoning Adjustment is
6 required to determine and make that determination for
7 all CBRFs with 16 or more residents or beds,
8 regardless of whether it's serving a handicapped
9 population or not.

10 Going to the issue of 330.5(i) which DCRA
11 has made statements to the effect that this supersedes
12 2101.1, I would encourage you to look to the relevant
13 zoning order, Zoning Commission order 869 which put
14 that into place and note that that order discusses
15 specifically in the second paragraph that part of what
16 seemed to be motivating the order was that group homes
17 for handicap persons are subject to special spacing
18 and size limitations, and that those requirements
19 don't apply to multi-family housing facilities not
20 specifically designated to serve handicapped persons.

21 So it was addressing an issue where you had
22 requirements that applied to facilities that served
23 handicapped, but did not apply to facilities that did
24 not serve handicapped. So in that sense it's getting
25 back to the point that 2101.1 applies equally to all

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1 CBRFs, regardless of whether they serve the handicap
2 or serve another population.

3 CHAIR GRIFFIS: I'm sorry to interrupt
4 you. But what section of the order you citing?

5 MR. RICE: I'm looking at the first page,
6 the second paragraph.

7 CHAIR GRIFFIS: Okay.

8 MR. RICE: The background discussion.

9 CHAIR GRIFFIS: Right.

10 MR. RICE: I don't know if that's the
11 correct terminology for that section.

12 CHAIR GRIFFIS: The paragraph starts "The
13 Department of Justice determined"?

14 MR. RICE: I'm specifically looking at the
15 last three sentences which talk about the zoning
16 regulations.

17 CHAIR GRIFFIS: Is there a page number on
18 that?

19 MR. RICE: No, there's not a page number,
20 but it's the first page of the order or of the packet
21 in which the order is contained. This was distributed
22 by staff at the last hearing.

23 CHAIR GRIFFIS: And it's the second
24 paragraph on that page?

25 MR. RICE: Yes.

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1 CHAIR GRIFFIS: So it does start "The
2 Department of Justice determines"?

3 MR. RICE: Yes, that's the paragraph.

4 CHAIR GRIFFIS: Okay. Thank you.

5 MR. RICE: All right. May I continue?

6 CHAIR GRIFFIS: Yes.

7 MR. RICE: Okay. ANC-6A feels that it's
8 important that BZA make this determination as required
9 in the zoning code, the zoning regulations. BZA
10 making the determination would create notice of
11 changes in treatment of a facility and would solicit
12 input from the effected parties which -- and these
13 parties could attest to the effect of these
14 facilities.

15 In regards to the Zoning Administrator's
16 decision on this case, it does seem arbitrary to us as
17 well in that the Zoning Administrator only looked at
18 the residential categories and none of the other uses,
19 not considering employment at all. It seems that a
20 dwelling with 177 residents and a doorman and a
21 superintendent is quite different than a situation
22 like the MedLink facility where you have a combination
23 hospital and nursing center with 500 plus employees.

24 Thirdly, I would ask that when BZA does
25 make this determination, that you look at the full

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1 record of the past orders. Even if you don't apply
2 those past orders, there is an extensive record that
3 would help anyone making this decision, whether BZA or
4 the Zoning Administrator make a fair and equitable and
5 just determination of what the parking requirements of
6 a facility like this should be.

7 And in conclusion, I would say it makes no
8 sense to hold available spaces out of circulation when
9 doing so contributes to a parking shortage. If the
10 owner desires a reclassification, then the owner
11 should ask for BZA determination like any CBRF
12 operated for more than 16 persons whether handicapped
13 or not.

14 Thank you.

15 CHAIR GRIFFIS: Thank you very much.

16 You bring up lastly your point of it would
17 be an equitable treatment if the Board was to look
18 back at determine the parking on some of the other
19 public hearings that have gone on. So it's your case
20 of what -- when being talked about equitable
21 treatment, it's on a case-by-case basis?

22 MR. RICE: Well, I think the zoning
23 regulations are pretty clear that in cases where it's a
24 CBRF with more than 16, that BZA makes the
25 determination.

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1 CHAIR GRIFFIS: Okay. So on each of those
2 we need to be equitable, judicial and fair, but they
3 all might be different?

4 MR. RICE: I use equitable in a sense that
5 it would be a good thing if you looked at the entire
6 record.

7 CHAIR GRIFFIS: I see.

8 MR. RICE: That's my intent with that
9 statement.

10 CHAIR GRIFFIS: Okay. And the sum of what
11 you said is that the combination of a hospital and a
12 CBRF actually create a unique situation. You didn't
13 state that, but that's what I gleaned from your
14 statement' that then does put it into the requirement
15 for some sort of review and determination of
16 something, perhaps of a different classification than
17 might be apparent?

18 MR. RICE: What I can say is that when I
19 read the regulations it says BZA determines. And I
20 don't know exactly what form that determination should
21 take.

22 CHAIR GRIFFIS: Okay. Let me be direct
23 then.

24 MR. RICE: Sure.

25 CHAIR GRIFFIS: With a combination of a

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1 hospital and a CBRF you don't see that it's a correct
2 determination to view this as a rooming house and
3 calculate in the parking requirement, is that correct?

4 MR. RICE: I don't think that's correct
5 because I think the zoning code correctly recognizes
6 that when you get above a certain size, say 16 persons
7 or 16 beds, that there may be considerations of
8 staffing associated with that facility.

9 CHAIR GRIFFIS: Okay.

10 MR. RICE: That it would be appropriate to
11 take those into consideration in determining the
12 parking.

13 CHAIR GRIFFIS: Which goes back to your
14 point of how does somehow fairly determine the
15 parking; you need to look at the unique cases and what
16 they have to size or the location, all of those
17 attendant elements to establish the actual parking
18 ratio required?

19 MR. RICE: I believe that's consistent
20 with the 2101.1.

21 CHAIR GRIFFIS: And your position or the
22 position of the ANC is that this Board is the proper
23 body in which to establish that?

24 MR. RICE: That is our reading of the
25 zoning code.

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1 CHAIR GRIFFIS: Okay.

2 MR. RICE: I mean, whether it should be
3 changed or not, I guess that's a question for the
4 Zoning Commission.

5 CHAIR GRIFFIS: Right.

6 MR. RICE: But our reading of the
7 requirement as they exist now would seem to require
8 that the BZA make that determination.

9 CHAIR GRIFFIS: Good. And that's an
10 excellent point, obviously. The Zoning Commission
11 does write the regulations. And if they've made a
12 horrific mistake, well that's one we have to live
13 with, this Board that is. But it's a good point.

14 And now just to follow that up then if
15 this is the Board that would determine that parking,
16 your statement is that this Board really should look
17 at the past public process that has gone through that
18 has actually evidenced problems or demands for
19 parking, or has been able to then establish a certain
20 amount of parking requirement?

21 MR. RICE: Well, to the extent that the
22 BZA has good processes in place to elicit a record, to
23 elicit testimony, I don't know why -- you know, in
24 making this determination you would disregard that
25 record that's been created by the same body that's

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1 making the determination.

2 CHAIR GRIFFIS: The record that was
3 created in the past hearings on this case, is that
4 formulaic enough to be applied to any other facility?

5 MR. RICE: I don't think the zoning
6 regulations require a formulaic treatment, just that
7 BZA determine.

8 CHAIR GRIFFIS: But your position?

9 MR. RICE: My position?

10 CHAIR GRIFFIS: Yes.

11 MR. RICE: On whether it should be a
12 formula?

13 CHAIR GRIFFIS: Yes.

14 MR. RICE: Well, I think one easy formula
15 that could be applied is the hospital formulation. One
16 bed for one patient. Especially given the
17 similarities in staffing and treatment of patients.

18 CHAIR GRIFFIS: Understood. Which would go
19 to the wrong classification for the parking ratio that
20 was picked by the Zoning Administrator.

21 Let me go to you cited in the Commission
22 order 869 in that paragraph that reads "The zoning
23 regulation defines group homes for handicapped persons
24 as community based residential facilities, CBRFs. As
25 such, they are subject to special space and size

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1 limits and requires approval of the Board of Zoning
2 Adjustment. These same requirements do not apply to
3 multi-family housing facilities not specifically
4 designed to serve handicapped person."

5 So not specifically designed. I guess I'm
6 wondering what the point was in bringing that up.

7 MR. RICE: As was testified by the
8 attorney representing MedLink, he stated in response
9 to a question that there are CBRFs, residential
10 dwellings, CBRFs that do not serve the handicapped.

11 CHAIR GRIFFIS: Right.

12 MR. RICE: And my point in bringing up the
13 zoning order was that zoning order seems to be
14 addressing situation where facilities are treated
15 dissimilarly. And I don't think that 2101 creates a
16 situation where facilities are treated dissimilarly.

17 CHAIR GRIFFIS: I see.

18 MR. RICE: Any DBRF with more than 16
19 needs a determination from BZA.

20 CHAIR GRIFFIS: So you don't the
21 distinction, though, of a classification of a CBRF or
22 housing serving handicapped and all housing, or CBRF
23 serving handicapped and all CBRFs? Isn't that where
24 the equitable situation has to arise?

25 MR. RICE: Well, I have to look at is the

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1 written record. The Zoning Commission order and the
2 regulations. And because --

3 CHAIR GRIFFIS: Okay.

4 MR. RICE: -- this order came out and the
5 parking regulations did not change, my conclusion
6 would be that there's not an issue of inequity between
7 facilities because you're treating all CBRFs the same.

8 CHAIR GRIFFIS: Okay. Have you ever seen
9 the consent agreement with the Justice Department?

10 MR. RICE: No, I haven't. I have not.

11 CHAIR GRIFFIS: That's an interesting
12 point. Okay.

13 Questions? Other questions?

14 BOARD MEMBER MILLER: Do you have any
15 knowledge regarding how many persons rooming houses or
16 boarding houses; is there a minimum number?

17 MR. RICE: How persons they house?

18 BOARD MEMBER MILLER: Yes. I mean, in
19 comparing a CBRF in this case to a rooming house? I'm
20 just curious if there's any general number of people
21 that stay at rooming houses or boarding houses?

22 MR. RICE: In my experience as an ANC
23 Commissioner and sitting on the zoning committee of
24 that ANC, we have not reviewed any boarding houses.
25 So I don't have any direct knowledge of that.

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1 BOARD MEMBER MILLER: You made a reference
2 to holding available spaces out of circulation. Could
3 you elaborate? I didn't understand what you mean?

4 MR. RICE: There has been testimony that
5 there is between 167 and 175 spaces available in the
6 underground parking facility. Well, available on the
7 MedLink property. These were spaces that were
8 allocated to uses under the prior orders. Those
9 spaces still exist. The new Certificates of Occupancy
10 require the facility to provide, I believe, 117
11 spaces. So the balance of those spaces are what I'm
12 referring to as spaces that are held out of
13 circulation that could be provided for for this
14 combination hospital/skilled nursing center and thus
15 alleviate some of the parking pressures on the
16 neighborhood.

17 BOARD MEMBER MILLER: Okay. And I want to
18 be careful not to get into the merits. But I'm just
19 wondering if there's a correlation between that and
20 the affidavit that said there were 50 to 75, or
21 whatever, spaces that weren't used?

22 MR. RICE: I think, you know, without
23 getting --

24 BOARD MEMBER MILLER: Do you think they're
25 being used for that purpose?

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1 MR. RICE: Without getting into the
2 parking issue, I think if you look at the record from
3 some of the past orders relating to this facility,
4 there was a report from a DCRA inspection that talked
5 about some issues with some of the spaces; standing
6 water, equipment blocking certain spaces. So the fact
7 that they're not being utilized; I mean just from that
8 statement I don't if they're as --

9 BOARD MEMBER MILLER: Okay.

10 MR. RICE: -- as accessible as they should
11 be.

12 BOARD MEMBER MILLER: Okay. That's fine.

13 I don't want to go down that road very far. I just
14 wanted to understand what you meant.

15 Thank you.

16 CHAIR GRIFFIS: Good. Other questions of
17 the Board?

18 It comes out to my attention and my last
19 question asked you whether you ever reviewed the
20 consent agreement. And I am going to put it into the
21 record. Because I think that's one of the big pieces
22 that the Board is going to have to look at in terms of
23 making a determination on that. And it seems like we
24 all should have the same thing to look at. Well,
25 there it is.

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1 So, you can coordinate with the Office of
2 Zoning. It'll be in the record. We can make some
3 copies. Unless there's any objection to that by any
4 of the participants or Board members? Yes?

5 MR. CREWS: Just reserving my right to
6 object. Why again does this impact on --

7 CHAIR GRIFFIS: Good. If you're going to
8 say more than two words, you have to be on the record.
9 Because I can't repeat all that.

10 MR. CREWS: I'm sorry.

11 CHAIR GRIFFIS: Okay. Why is relevant?

12 MR. CREWS: Yes.

13 CHAIR GRIFFIS: It goes to the relevance,
14 first of all, of housing for the handicapped which is
15 what's being balanced here. And then how that then is
16 treated in terms of the zoning regulations. And I
17 think it may be fairly information for us to at least
18 be able to look to that for substance in what was
19 agreed to and what was actually pointed out.

20 Yes.

21 MR. CREWS: Oh, I'm sorry. If that's just
22 now being added to the record.

23 CHAIR GRIFFIS: Yes.

24 MR. CREWS: And do we have an opportunity
25 to see that, to provide -- do we have to provide any

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1 comments now or can we do this later, or what?

2 CHAIR GRIFFIS: I'll set that all up at
3 the end. And we will certainly have enough provision
4 of time.

5 MR. CREWS: Okay.

6 CHAIR GRIFFIS: The Board's not asking you
7 to be briefed on it by the parties or anything.

8 MR. CREWS: Okay.

9 CHAIR GRIFFIS: So we're not asking you to
10 say the consent agreement is a great thing, it's a bad
11 thing. It has nothing -- you know, we don't change
12 that; it is what it is. But it will certainly be able
13 to be utilized in any sort of final submissions; that
14 is findings of facts, conclusions of law.

15 MR. CREWS: That we would propose to you?

16 CHAIR GRIFFIS: That you would submit into
17 the Board. So I don't think we're going to argue it.

18 But I don't think this Board being aware of it and
19 possibly on different levels of awareness, it would be
20 equitable for us to be kind of having differing
21 understanding and you folks not having any
22 understanding or maybe more than us, who knows. I
23 don't know what people read on the weekends to find
24 enjoyment.

25 MR. CREWS: Okay.

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1 CHAIR GRIFFIS: So, I think it's easier if
2 we all have the same document.

3 MR. CREWS: That seems fine. Thank you.

4 CHAIR GRIFFIS: Okay. Anything else?

5 Mr. Trummonds, did you want to comment?
6 All right.

7 Additional then last questions of 6A? Any
8 other Board questions? Then let's go to cross. Does
9 Stanton Park have any cross?

10 Very well. Does DCRA? Any cross
11 examination. Cross, property owner? The ANC does
12 not. Parish?

13 Oh, you guys are all too friendly. We're
14 not used to this, quite frankly.

15 Thank you very. We absolutely appreciate
16 it.

17 Now, I will also hold the record if -- I
18 didn't see a written statement from you come across in
19 front of me. You didn't submit today?

20 MR. RICE: No, I did not.

21 CHAIR GRIFFIS: Okay. I think it would be
22 well worth having. And, obviously, it's a written
23 statement of what you've said not, obviously,
24 additional information. But we could keep the record
25 open for that if you would like.

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1 Let's move on then to the Parish party.
2 Very well. When you're ready.

3 MR. DOWNING: Thank you, sir.

4 My name is Richard Downing. I serve as
5 the Record of St. James Parish, the only other
6 property owner on the square occupied by our church,
7 rectory, parish hall and the MedLink building and
8 parking lot. You don't care about our parish bounds.

9 I would like to begin by saying that we
10 wish to be completely reasonable, if that is at all
11 possible. We do wish, however, to stand up for what
12 we perceive to be the rights of not only the people of
13 our neighborhood, but those of the people of the
14 District of Columbia.

15 The concern that's addressed in appeal
16 17043 outline a history of difficulties imposed upon
17 our neighborhood due first to Capitol Hill Care
18 Groups' consistent defiance of the Board of Zoning
19 Adjustments orders 16407 and their recent motion to
20 reduce the number of off-street parking spaces
21 required by the 1999 order, which I now understand, I
22 guess, was completely set aside because they didn't do
23 what they wanted to do. And I was in this room on the
24 day that they received that order. And they were just
25 as delighted as they could be. It was a great triumph

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1 and a great step forward for them. I don't know why
2 they didn't do it, didn't accept the Board of Zoning
3 Adjustment's gracious offer to increase their number
4 of beds in an order that would last for ten whole
5 years. It was remarkable, and I was much against it.

6 Compounding the difficulties experienced
7 in the neighborhood due to Capitol Hill's failure to
8 comply with the BZA's order requiring that a specified
9 and limited staff, patient, bed and off-street parking
10 space ratio be maintained, and that the Capitol Hill
11 Group properties remain free of trash, is the fact
12 that we knew nothing of their recent request for a
13 change in the parking requirements. We learned of it
14 only after it was effective and parking become more
15 difficult. We just knew nothing. The neighborhood, as
16 far as I knew, knew not one thing about any of this.
17 It just happened overnight. No note. Not process, no
18 -- at least the Historic Preservation Review Board
19 sends notes to the neighbors saying we're going to
20 have a hearing or something. It was quite remarkable.
21 I just noticed parking became impossible.

22 I say this simply to remind all of us that
23 much of the history of the troubled relationship
24 between the CHG and its neighbors stems from their
25 unwillingness to engage with interested neighbors

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1 about proposals or problems.

2 The BZA required the CHG to meet quarterly
3 with the ANCs and other concerned neighbors to try and
4 alleviate some of these types of issues before they
5 became contentious. This is yet another point of the
6 order with which CHG has failed to comply.

7 In addition, it's curious to me that of
8 the 276 original off-street parking spaces CHG was
9 required to provide, 100 of those places have been
10 sold in the past two years and were developed into
11 relative large -- this is opinion now and I'm not an
12 architect, but you are -- not terribly attractive
13 townhouses.

14 Furthermore --

15 CHAIR GRIFFIS: We all have differing
16 opinions.

17 MR. DOWNING: Yes, sir. But that's mine.

18 CHAIR GRIFFIS: Indeed.

19 MR. DOWNING: Furthermore, it was my
20 understanding that at that same time the CHG entered
21 into a contract with the Holiday Development
22 Corporation to sell all of the properties formerly
23 associated with the Capitol Hill Hospital on our
24 block, a move that had many positive implications for
25 our neighborhood, I thought. However, the contract has

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1 since been renounced by the CHG.

2 I'm just thinking about contracts and
3 covenants. It's a disposable society, I know, but I
4 don't think that most of us are free simply to
5 renounce a contract.

6 How seriously do they take their binding
7 agreements? What are the development plans for the
8 future and will our neighborhood and us, their
9 neighbor closest, have a voice in those plans?

10 History has made it quite apparent that we
11 have no reason to trust the Capitol Hill Group has the
12 best interest or any interest of our neighborhood in
13 mind. So I'm here to beg -- not ask, the BZA to prove
14 to the people of our neighborhood and the District
15 that our elected and appointed officials are capable
16 of and serious about enforcing the laws and
17 regulations of our city's government for the
18 protection of our citizen.

19 Thank you for your time.

20 And I tell you, three days I've spent with
21 you all, I would not want your job. I'm really
22 impressed with the care and concern, and the
23 attention. It's really remarkable. And I'm as a
24 citizen grateful.

25 CHAIR GRIFFIS: Thank you very much.

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1 Well, we owe most of our positive perception to the
2 full-time staff here at the Office of Zoning, of which
3 you only see a small part that sit with us. But that
4 being said, Mr. Downing, let me first ask, you stated
5 that you were last and participating in a public
6 hearing and it was probably for the special exception
7 in 1999, is that correct?

8 MR. DOWNING: Yes, sir.

9 CHAIR GRIFFIS: Okay. And you raised a
10 concern that you had no notice of anything changing or
11 going on at this point that would have brought you
12 here, is that correct?

13 MR. DOWNING: Yes, sir.

14 CHAIR GRIFFIS: And what I want to do is
15 that you fully understand, and the one thing if I can
16 make sure when you leave this room you understand is
17 this is an entirely different process.

18 MR. DOWNING: How come?

19 CHAIR GRIFFIS: As opposed to the special
20 exception, of which we have very rigorous notice and
21 we have several forms of notice, and we have several
22 editions of the notice. In fact, I think our notice
23 is better than HPRV. But that being said, as this is
24 an appeal --

25 MR. DOWNING: Right.

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1 CHAIR GRIFFIS: -- it would not
2 necessarily go out in the same notice fashion as a
3 variance or special exception. And it also frames
4 your last statement, which I thought was most
5 critical, that you ask, implore if not beg us to abide
6 by the regulations and the law.

7 Appeals are often boring because it's so
8 vested in the law. And that's really what we need to
9 focus on. The attorneys and the Board don't agree
10 with my statement of boring in law in one sentence.
11 However, that being said it is critical. And what I
12 find is, it's our decisions are incredibly limited by
13 the law and the regulations in appeals. And really
14 fundamentally what we're here to decide is whether an
15 error occurred. Did the Zoning Administrator make an
16 error? And that's what's before us.

17 So I think a lot of what you have stated
18 in your case presentation can help us and facilitate
19 our deliberation on that error. And some of it
20 cannot. It goes more towards a case presentation and
21 special exception. But I just want to make sure that
22 there is clarity for you, and it may well be, and I'm
23 saying too much -- but clarity of the different levels
24 of process that we have.

25 MR. DOWNING: I thank you for that. I

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1 really was trying to refer to the Zoning
2 Administrator's process for changing the parking
3 requirement.

4 CHAIR GRIFFIS: Right.

5 MR. DOWNING: That happened no one -- no
6 one, as far as -- except maybe -- I mean except the
7 attorneys involved, nobody knew about that.

8 CHAIR GRIFFIS: You mean the changing of
9 the regulations themselves?

10 MR. DOWNING: No, sir. I mean the changing
11 of the required number of off-street parking places
12 that reduced the number from what I thought was 276,
13 but really it was 176, apparently, to a far smaller
14 number.

15 CHAIR GRIFFIS: Right. Okay. And I
16 understand that. And perhaps I'm not being -- okay.
17 Well, there it is.

18 Any other questions? Follow up.

19 I think that's fundamentally the
20 difficulty that we're facing is figuring out whether
21 that was correct or not.

22 Cross examination? Ms. Miller?

23 BOARD MEMBER MILLER: Well, I was just
24 going to make the comment that our notice is better
25 than the CA's notice.

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1 CHAIR GRIFFIS: Now we're piling on.

2 Okay. Let's go then to Stanton Park any
3 cross? DCRA? Property owner? The ANCs? Nothing.
4 Okay.

5 Yes. Good.

6 MR. CREWS: Reverend Downing, you
7 testified that you live, your rectory where you live
8 as the pastor of the parish is in square 865?

9 MR. DOWNING: Yes, sir. It's really the
10 only other property owner on the block with all the
11 buildings that were Capitol Hill Hospital are now the
12 Capitol Hill Group's buildings.

13 MR. CREWS: Yes. So in fact there is
14 other residential use on square 865 contrary to
15 paragraph 14 in BZA order 16407 as the testimony of
16 their so-called expert?

17 CHAIR GRIFFIS: Is that a question to him
18 to answer?

19 MR. CREWS: Yes.

20 MR. DOWNING: Yes, I live on that square.
21 I've lived there for 27 years.

22 MR. CREWS: Okay. Thank you.

23 I have no further questions.

24 CHAIR GRIFFIS: Okay. Now just to clarify
25 your answer on that question, the expert -- you were

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1 just looking at the previous BZA order that was --
2 were you looking on paragraph 14 on that, Ms.
3 McCarthy, is that what was being referenced.

4 MR. CREWS: Yes.

5 CHAIR GRIFFIS: Is that your
6 understanding? Yes.

7 MR. DOWNING: Yes. Yes, sir. I don't
8 have that -- I don't have the -- that's in a little
9 binder that I think --

10 CHAIR GRIFFIS: But you just had it in
11 front of you, correct?

12 MR. DOWNING: No. Bill had it. And I saw
13 it right there.

14 CHAIR GRIFFIS: Okay.

15 MR. DOWNING: It's page 4?

16 CHAIR GRIFFIS: Indeed.

17 MR. DOWNING: BZA order 16407.

18 CHAIR GRIFFIS: Right. Good. Thank you.

19 MR. DOWNING: Top paragraph.

20 CHAIR GRIFFIS: Any other cross? Any
21 other -- very well.

22 Thank you very much.

23 MR. DOWNING: Thank you.

24 CHAIR GRIFFIS: Appreciate your being here
25 and several times here.

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1 If I am not mistaken with our rules of
2 procedure and order, we are left with any rebuttal
3 witnesses and closing -- I'm sorry. Rebuttal
4 witnesses and closing remarks.

5 Are you prepared to go to closing and are
6 you bringing any rebuttal witnesses?

7 MR. EDWARDS: Yes, I do have a rebuttal
8 statement.

9 CHAIR GRIFFIS: A rebuttal statement?
10 Okay. And then closing?

11 MR. EDWARDS: And then I presume we'll go
12 to closing yes.

13 CHAIR GRIFFIS: You do have it. Everyone
14 else is done. I mean, unless there's rebuttal, cross
15 and all that stuff, which we usually -- if that's the
16 case, then I'd like just to take five minutes so the
17 Board can stretch their legs. We'll come back and
18 we'll get to you.

19 Good.

20 (Whereupon, at 4:58 p.m. a recess until
21 5:17 p.m.)

22 MR. EDWARDS: Thank you.

23 The Department of Consumer and Regulatory
24 Affairs had stated in its presentation that Zoning
25 Commission order 869 which amended Section 350.1 of

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1 the zoning regs effective April 30, 1999 amounted to
2 an up zone by making housing for the handicapped a
3 matter of right in certain residential zone. If so,
4 it amounted to up zoning by stilts.

5 This case is the first time that up zoning
6 is sought to be applied to a health care facility.
7 Order 869 did not address such a possibility. Such
8 possibility was not contemplated by the parties to
9 that proceedings. Community organizations did not
10 contemplate such a result. Even the Capitol Hill
11 Group, the facility that's the subject of this appeal.

12 Because for more than a year and a half after the
13 issuance of order 869 Capitol Hill Group came to this
14 Board for zoning regulation, order 16407 issued
15 October 99, order 16407A issued September 2000. The
16 concept of housing for the handicapped was first
17 applied to an independent assisted living facility in
18 BZA appeal 16716A issued October 2, 2001. But that
19 facility, Sunrise is very different with a much lower
20 staffing and parking requirement than the skilled
21 nursing facility that is the subject of this appeal.

22 You will recall that Stanton Park in its
23 initial presentation argued that there is a difference
24 between the community based residential facility for
25 the handicapped and the health care facility under

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1 which the MedLink nursing home because it provides
2 skilled and intermediate nursing care clearly
3 qualifies. In support of that I would also direct
4 your attention to the Certificate of Occupancy that
5 was issued to the nursing home. It says a community
6 based residential facility-healthcare facility that
7 provides housing for the handicapped, 25 parking
8 spaces and 117 beds.

9 I believe the Board will agree that
10 healthcare facility is a specific definition under the
11 zoning regulations and by issuing this both to a CBRF
12 for the handicapped and a healthcare facility, they
13 created a situation not unlike this facility has
14 created in the past. It has always been a combination
15 hospital/nursing home. Hospital is a matter of right,
16 in the zoning in which it operates. But this facility
17 has come to this board in 1991 and 1999 saying treat
18 us as a special exception for our hospital/nursing
19 home facility. They've always specified the total
20 number of beds in the hospital and the nursing home,
21 the total number of parking requirements for the staff
22 of the hospital/nursing home. And in testimony before
23 the Health Department, they again emphasized the co-
24 location and integrated nature of the operations
25 making it unique. There's only one other facility in

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1 the District of Columbia that has that co-location and
2 integration of a hospital and an intensive or skilled
3 nursing facility, and that's Hadley Memorial Hospital.

4 Returning now to my prepared statement.

5 The fundamental issue in this appeal does
6 involve parking which, under 11 DCMR ? 2101.1 is to be
7 determined by this Board. That provision was never
8 raised and was not an issue in the Sunrise case.

9 2101 provides for all CBRFs of over 16
10 residents. But CBRFs there are seven different
11 categories of CBRFs, and they are very different
12 ranging from a youth care facility, an emergency
13 shelter, a healthcare facility. And each of those is
14 very use specific in terms of the population level,
15 the staffing level, the visiting level. And it is for
16 this reason that the zoning regulations -- and I did
17 go back at least until 1987 the provision of 2101
18 requiring the BZA to make the determination of parking
19 in all instances of CBRFs of over 16 residents has
20 been in place for that very valid reason that each of
21 these is different, each of these is use and site
22 specific as to what the parking requirements can be.
23 And it's not possible to come up with a ratio as you
24 might for a rooming house or another use.

25 The further issue raised by Stanton Park

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1 is that the DCRA has not made a reasonable
2 determination of the parking requirement or the
3 nursing home. They've determined that only 25 parking
4 spaces were required for the nursing facility. When
5 asked about the basis for that decision, Mr. Faye
6 Ogunney chief of Zoning Review Branch, testified that
7 information provided by the MedLink nursing facility
8 consisting of its application to the D.C. Department
9 of Health for a healthcare facility license as well as
10 the affidavit provided by Mr. Henry Vaughn, MedLink's
11 financial officer were relied upon to determine the
12 number of employees. But the affidavit of Mr. Vaughn,
13 which is attached to the MedLink prehearing statement
14 in this proceeding, does not quantify the number of
15 employees and the application only specifies the
16 number of professional employees. It does not specify
17 the number of food service, housekeeping or other
18 employees.

19 Further, to the extent that those
20 documents were taken into account could not have been
21 a considered evaluation since they were provided on
22 March 26 of this year, the very day that they issued
23 the Certificate of Occupancy. I suggest that
24 receiving this kind of information and issuing a
25 Certificate of Occupancy on the same day goes to the

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1 considered evaluation that those materials were
2 provided and goes to the reasonableness of the
3 determination.

4 The only reliable evidence of the current
5 number of employees is the information MedLink
6 provided to the Department of Health on October 2,
7 2003, which is attached to Stanton Park's statement at
8 the November 18th hearing. That specifies a total
9 number of 532 employees for the hospital and nursing
10 home. That information was provided on October 2,
11 2003 to the Health Department, and thus could not have
12 been taken into account in the Certificate of
13 Occupancy that were issues six months earlier on March
14 26, 2003.

15 Mr. Ogunney further testified that the
16 Zoning Administrator was restricted to a consideration
17 of residential uses, specifically a rooming or
18 boarding house in determining the parking requirements
19 for the nursing home. But nowhere is there any
20 requirement to support this restricted view.

21 Further, what kind of residential facility
22 would have a support staff of 532 employees for
23 resident population of 177?

24 For these reasons, the most competent
25 method of specifying the parking requirement is the

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1 directive of section 201.1 of the zoning regulation
2 that the parking should be determined by this Board.
3 If for some reason the Board determines that the case
4 should be sent back to the Zoning Administrator for
5 determination of parking, the Board should direct the
6 Zoning Administrator to take into account the number
7 of employees, impacting the community and other
8 relevant data that this Board has taken into account
9 in its prior orders for this very facility.

10 DCRA also argued that a skilled nursing
11 facility should be treated as housing for the
12 handicapped and the parking requirement of 2101.1
13 should be ignored. But the case law that DCRA has
14 provided seems to support the proposition that a
15 nursing home provides housing to persons that are
16 impaired or limited in performing one or more life
17 functions, and therefore may constitute housing for
18 the handicap. But there are significant distinctions
19 between those cases and the issues in this appeal.

20 In the first place, the cases involved the
21 application of Federal statutes having to do with
22 disabilities and limitations. In the case of Wagner
23 v. Fair Acres Geriatric Center the court explained
24 that Federal law defines a nursing home as an
25 institution which is engaged in skill nursing care,

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1 related service for residents that require medical or
2 nursing care, rehabilitation services and health and
3 related care and services to individuals because of
4 their mental or physical condition required care or
5 service above the level of room and board which can be
6 made available to them only through an institutional
7 facility.

8 I believe that the third classified may
9 embrace Sunshine's facility, which was the subject of
10 Nebraska Avenue. The first category, skilled nursing
11 applies to MedLink and this facility. So when we look
12 at the Federal cases that talk about nursing homes,
13 they're lumping together skilled nursing together with
14 assisted living in the same category and calling them
15 nursing home.

16 These DCRA cited Federal cases do not make
17 the important distinction that the DC Zoning code
18 makes between existing living facilities and licensed
19 nursing facilities. In the cases offered by DCRA the
20 facts indicate they are primarily assisted living
21 facilities, such as Sunrise rather than the skilled
22 nursing facility that is MedLink, even though the
23 language in those cases refers to the facilities as
24 nursing homes, which encompasses both facilities for
25 federal purposes.

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1 In the case of U.S. vs. Commonwealth of
2 Puerto Rico this involved a determination of the
3 Zoning Administrator to close down a two story eight
4 bedroom residence that was operated as housing for 13
5 elderly individuals. Substantially different from the
6 nursing home/hospital facility with 177 patients and
7 521 employees that's the subject of this appeal.

8 In the case of Hovsons v. the Township of
9 Brick, this involved the efforts of a developer to
10 obtain zoning approval to construct housing for
11 handicapped elderly people who would reside there,
12 very often, for the rest of their lives. Again,
13 different from the average patient stay of 11 months
14 for the nursing home that's the subject of this
15 appeal.

16 In ruling that the township should allow
17 the development as a reasonable accommodation in the
18 Fair Housing Act, the court offered a very important
19 caution. It is uncontroverted that the Township of
20 Brick has a substantial interest in enforcing its
21 zoning code and that under appropriate circumstances
22 local zoning codes are entitled to considerable about
23 of deference. We're mindful of the fact that in
24 requiring reasonable accommodation, Congress did not
25 mandate a blanket waiver of all facially neutral

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1 zoning policies and rules regardless of the facts.

2 DCRA further cites the Lapid-Laurel v.
3 Board of Zoning Adjustments for the proposition that
4 nursing homes provide housing for the handicap.
5 Lapid-Laurel involved a developer that was unable to
6 obtain zoning approval to construct a facility for the
7 elderly. The developer argued that the Board's denial
8 of Lapid's application for variances and site plan
9 approval violated the Fair Housing Amendments Act and
10 the requirement that municipalities make reasonable
11 accommodations and rules, policies, practices or
12 services when such accommodations may be necessary to
13 afford handicap persons an equal opportunity to use
14 and enjoy housing.

15 The court rejected the developer's
16 argument based on a weigh of the objective of
17 assisting the handicapped verses the need to impose
18 reasonable boundaries in accomplishing this purpose.
19 And those reasonable boundaries involved the
20 application of the above-quoted admonition to provide
21 deference to local codes. The problem the application
22 presented under local codes involved parking in terms
23 of egress and ingress, the design of the parking lot
24 in terms of deliveries, traffic safety and access for
25 emergency vehicles. The court concluded that these

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1 problems would cause an undue hardship on the
2 township, but had not been appropriately addressed by
3 the developer's presentation before the Board.

4 The last case comes even closer to home,
5 Bryant Woods Inn v. Howard County, MD. This a local
6 zoning requirement which were weighed against the
7 objective of providing housing for the handicapped.
8 The owner there of an 11 bedroom house in Columbia,
9 Maryland sought to expand his operation from 8 to 15
10 elderly residents, some of which suffered from
11 Alzheimer's and other forms of dementia. The owner
12 was unable to satisfy Howard County's traffic and
13 parking requirements and therefore sought a waiver of
14 the requirement on the ground that its residents would
15 not need additional parking. Howard County denied the
16 request and Bryant Woods appealed contending that
17 Howard County's refusal to change its zoning to
18 accommodate expansion from 8 to 15 residents violated
19 the Fair Housing Act by failing to make responsible
20 accommodations when it refused the owner's application
21 to expand.

22 In evaluating this claim the court
23 recognized the tension between Howard County's right
24 to control right use through neutral regulations and
25 its duty to make reasonable accommodation for the

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1 handicapped under the Federal Fair Housing Act.

2 In resolving this tension the court
3 concluded that the Fair Housing Act does not require
4 abandoning the deference that courts have
5 traditionally shown to local zoning codes, nor does
6 the Fair Housing Act provide a waiver of zoning policy
7 and rules that would give the disabled the ability to
8 determine where and how they would live with
9 regardless of zoning ordinances.

10 The FHA requires only that local
11 governments make reasonable accommodations to afford
12 persons with handicaps an equal opportunity to use and
13 enjoy housing in those communities. The court
14 concluded that to require zoning variance to allow
15 Bryant Woods Inn to expand its group home from 8 to 15
16 residents without providing adequate parking and not
17 to require the county to grant a similar waiver for
18 group homes not involving handicapped person would
19 advantage Bryant Wood Inn. This would be wrong
20 because the FHA, the Federal Fair Housing Act, only
21 requires an equal opportunity, not a superior
22 advantage.

23 Members of the Board, the consistent theme
24 of all these cases is that there is no impediment to
25 this Board continuing to regulate the nursing facility

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1 at MedLink as a healthcare facility and of exercising
2 its authority to determining the parking requirement
3 for the MedLink facility.

4 Again, I emphasize that section 2101 has
5 been in the code since 1987. It was left there
6 intentionally because of the very different types of
7 functions performed by CBRFs.

8 In terms of the parking that's there,
9 there has been some question about how much has been
10 committed. The hospital CFRO requires 60 parking
11 places, the nursing home requires 25 parking places.
12 There are a total of 176 parking places that could be
13 provided. They have not been always available because
14 the first level of the parking garage has been subject
15 to flooding and the upper levels have been used for
16 storage of materials which have been noted by the
17 inspector's report that have been provided to this
18 Board.

19 Mr. Chairman, that concludes my rebuttal.

20 CHAIR GRIFFIS: Thank you very much.

21 Let me see if I'm clear. It seems like
22 you started with a statement that went to this doesn't
23 fit into a CBRF, it fits into a healthcare facility
24 because there is so much skilled and intermediate, I
25 think was your term, intermediate care. Am I

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1 understanding that correct

2 MR. EDWARDS: That's correct.

3 CHAIR GRIFFIS: Okay. And then you said
4 that the definitions in the zoning regulations, 11
5 DCMR, would support that differentiation. Is that
6 your understanding?

7 MR. EDWARDS: That's correct. That's
8 correct. And the definition section that I think we
9 looked at last week, there is under community based
10 residential facilities various categories. And I
11 believe the third one is healthcare facility.

12 CHAIR GRIFFIS: Right.

13 MR. EDWARDS: And that is licensed to
14 provide skilled or intermediate nursing services --

15 CHAIR GRIFFIS: But doesn't that make a
16 healthcare facility a CBRF?

17 MR. EDWARDS: Pardon?

18 CHAIR GRIFFIS: Doesn't that make a
19 healthcare facility a community based residential
20 facility?

21 MR. EDWARDS: Yes, it does. Yes, it does,
22 Mr. Chairman.

23 CHAIR GRIFFIS: Okay.

24 MR. EDWARDS: However -- however, a CBRF
25 for the handicapped is also a CBRF. They are both

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1 CBRFs and both require the parking to be determined by
2 this Board if they have more than 16 residents.

3 CHAIR GRIFFIS: Right. I understand that
4 point.

5 Just to be clear, I don't see handicap as
6 a separate definition of CBRF. Is that what you were
7 meaning to say?

8 MR. EDWARDS: It is, I believe it's -- and
9 I will get the provision for you. I believe it's
10 under 330.5(i)

11 CHAIR GRIFFIS: That's fine. That's what
12 will get is to 330.5(i) --

13 MR. EDWARDS: That's correct.

14 CHAIR GRIFFIS: When they talk about the
15 classification CBRF under the definition. So we now
16 have a CBRF that's a healthcare facility, correct?

17 MR. EDWARDS: That's correct.

18 CHAIR GRIFFIS: Okay. And then you go to
19 330.5(i) which talks about community based residential
20 facilities that serve --

21 MR. EDWARDS: The handicapped.

22 CHAIR GRIFFIS: -- the handicap. And your
23 point is this doesn't serve the handicapped, this
24 immediate facility?

25 MR. EDWARDS: I'm saying that you could

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1 force it into serving the handicapped. But if you do
2 that then every nursing home that provides skilled
3 nursing care in the city becomes a CBRF. It's an
4 invitation for every one of those nursing homes,
5 Hadley Memorial Hospital and others, to develop their
6 parking lots as apartment buildings or sell them off
7 for development --

8 CHAIR GRIFFIS: Well, what does the
9 regulation say? I mean, we don't project out to say
10 well what's the impact if we decide that? We look
11 right to the regulations; it is or it isn't.

12 So you're taking a position and presenting
13 it to us and your position is this specific facility
14 is not serving the handicapped and does not --

15 MR. EDWARDS: It is not. Because it is
16 serving -- because it is a skilled nursing facility.

17 If you were to extend the concept of
18 serving the handicapped, every hospital would serve
19 the handicapped because you go to a hospital to get a
20 handicapped approved. You're definitely handicapped or
21 diminished in your abilities when you're under
22 sedation or anesthetic.

23 CHAIR GRIFFIS: Okay.

24 MR. EDWARDS: There has to be a reasonable
25 limit to what was sought to be served --

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1 CHAIR GRIFFIS: Why does there have to be
2 a reasonable limit? Where are you finding that?

3 MR. EDWARDS: The very purpose of and why
4 you asked for the consent agreement, I believe, is
5 what is the purpose of reasonable accommodation for
6 the handicapped? What is the population we seek to
7 serve? And it's so that we do not impose on housing,
8 dwelling, residences, different qualification for the
9 handicapped than you do for the non-handicapped. That
10 comes into play in rooming house. It comes into play
11 in boarding houses. And these were the kinds of
12 facilities that were the target of the Act.

13 Nursing homes, convalescent homes have
14 been around for years. It was not the intent, I think,
15 of the Fair Housing Act to say that we're going to
16 bring all nursing home into the Fair Housing Act and
17 we're going to bring all hospitals into the Fair
18 Housing Act.

19 CHAIR GRIFFIS: Okay. Just to be fair,
20 can I ask you how you establish your opinion of the
21 Fair Housing Act? When you say it's your opinion that
22 the Fair Housing Act does not state something, what is
23 the fundamental basis of that?

24 MR. EDWARDS: That the purpose was to
25 provide an equal opportunity --

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1 MR. TRUMMONDS: Okay. Let me try and
2 redirect the question. Is it from your reading of
3 court cases? I mean, what kind of weight do we give
4 that statement?

5 MR. EDWARDS: You give the equal
6 opportunity great weight, because it is in the
7 language of the Fair Housing Act --

8 CHAIR GRIFFIS: Which I am not being clear
9 at all.

10 Your statement, you just have given us
11 your opinion of what the Fair Housing Act states. And
12 I'm just asking you how are we supposed to weigh your
13 opinion? What's your opinion based on?

14 MR. EDWARDS: It's based on the cases I
15 have cited.

16 CHAIR GRIFFIS: Okay.

17 MR. EDWARDS: The attempt to bring into
18 the mainstream those who are in -- who are handicapped
19 persons in group housing situations.

20 CHAIR GRIFFIS: Okay.

21 MR. EDWARDS: I mean, you go to a nursing
22 home --

23 CHAIR GRIFFIS: I'm not questioning your
24 opinion.

25 MR. EDWARDS: Yes.

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1 CHAIR GRIFFIS: All I'm trying to do is I
2 am trying to establish what your opinion is based on.

3 MR. EDWARDS: Yes.

4 CHAIR GRIFFIS: And it's clearly based on,
5 obviously, you put in here and the case citings that
6 you've obviously spent a lot of time looking at this.

7 MR. EDWARDS: Yes.

8 CHAIR GRIFFIS: That's fine.

9 MR. EDWARDS: And I could find no cases
10 that applied these two a skilled nursing home.

11 CHAIR GRIFFIS: Right.

12 MR. EDWARDS: None that applied them to a
13 hospital. These did go to assisted living facilities,
14 and I think Sunrise was correct. But it stops at
15 Sunrise.

16 CHAIR GRIFFIS: Okay.

17 MR. EDWARDS: It doesn't go to all the
18 nursing homes in the city.

19 CHAIR GRIFFIS: Okay. Assisted living.

20 So and perhaps to ask the same question
21 again, but it goes a lot to -- well, no. I think I
22 understand your point. Okay.

23 Others? Yes, Ms. Miller?

24 BOARD MEMBER MILLER: To follow up on
25 that. I think you're saying that 330.5(i) doesn't

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1 apply to this nursing facility? Doesn't apply to
2 hospitals? And I guess I'm wondering how you
3 distinguish to what kind of CBRFs it does apply to?
4 Where do you draw the line and where is that from?

5 MR. EDWARDS: I think if you look under
6 the definition section of the zoning code, there's a
7 provision that if it qualifies under one of these
8 categories --

9 CHAIR GRIFFIS: CBRFs?

10 MR. EDWARDS: You don't have to look at
11 the other categories. And clearly a nursing home
12 qualifies as a health care facility because it
13 provides licensed nursing care. A hospital is defined
14 also as to what it provides. And by extension, if you
15 reach the nursing home it's only a step further to say
16 hospitals are also community based residential
17 facilities because they provide housing for the
18 handicapped.

19 BOARD MEMBER MILLER: Just to clear, are
20 you saying that the CBRF defined in this 199
21 definition, okay, are not included in 330.5(i)?

22 MR. EDWARDS: No. I'm saying that the
23 specific CGRF defined in 330.5(i) is a CBRF as are
24 those defined in 199. They are both CGRFs, which makes
25 a total of -- there were seven categories under the

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1 definition. Now we've added CBRF for the handicapped
2 as an eighth category.

3 BOARD MEMBER MILLER: Okay. You made
4 reference to only one other facility in the District
5 that has an integrated facility like this one, I think
6 you said it was Hadley. What kind of parking
7 requirements is it subject to?

8 MR. EDWARDS: I don't know. I'm basing
9 that solely on the testimony of the Capitol Hill Group
10 before the Department of Health's hearing on the 31st
11 of October when they described their facility as being
12 unique only one other like it in the city, being
13 Hadley Memorial because it provides integrated
14 hospital and skilled nursing care.

15 BOARD MEMBER MILLER: Is that referenced
16 in our record here?

17 MR. EDWARDS: No, it is not. No, it is
18 not. It's not.

19 BOARD MEMBER MILLER: Okay. And when you
20 talked about the seven different categories of CBRFs
21 you distinguished them --

22 MR. EDWARDS: Now there are eight.

23 BOARD MEMBER MILLER: Well, under 199.
24 Okay.

25 You distinguished them, I believe, in

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1 three ways and I wrote down two, and I want to make
2 sure I have them all. You said they're very different
3 with respect to their uses. Specifically with respect
4 to staffing, visiting and what was the other issue?

5 MR. EDWARDS: And resident population
6 level.

7 BOARD MEMBER MILLER: And resident -- Okay.

8 Also, you made reference to some document
9 the day that the CFO was issued that the hospital
10 received a document on the same day. What was that?

11 MR. EDWARDS: No. The DCRA received -- I'm
12 not sure when they received it, but the affidavit of
13 Henry Vaughn that the Zoning Administrator had relied
14 upon also was dated the 26th of March, 2003, the same
15 date as the CFOs.

16 BOARD MEMBER MILLER: Okay. That's all my
17 questions. Thank you.

18 MR. EDWARDS: Thank you.

19 CHAIR GRIFFIS: Do you happen to have 199
20 in front of you?

21 MR. EDWARDS: No.

22 CHAIR GRIFFIS: Definition sections of the
23 zoning?

24 MR. EDWARDS: I do not, but I can get it.

25 CHAIR GRIFFIS: Could you?

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1 What I'd like to do is just look at CBRFs,
2 because you brought up a notion that it probably took
3 me all too long to figure out you were saying, and
4 that is my diminished capacity. But what you're saying
5 is in fact that there are eight definitions now of
6 CBRF because 330.5 defines a new classification. And
7 so a very quick question but it will be helpful for
8 you to have it in front of you, so I'll just keep
9 chattering until you get it and you let me know when
10 you have it.

11 MR. EDWARDS: Yes, I am looking now at
12 attachment A to the Capitol Hill Group's pretrial
13 statement.

14 CHAIR GRIFFIS: Okay. As long as you're
15 in the title and section 199 which is the definition
16 followed by the CBRF community based residential
17 facilities. That's what you have?

18 MR. EDWARDS: Community based residential
19 facility,

20 CHAIR GRIFFIS: Okay. Second paragraph
21 under that definition starts with "If establishment is
22 in a community based residential facility as defined
23 in this section, it shall not be deemed to constitute
24 any other use permitted under the authority of these
25 regulations. A community based residential facility

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1 may include separate living quarters," etcetera.

2 How do you reconcile the first sentence?
3 I mean, doesn't that first sentence read a CBRF is as
4 defined below, and it can't be defined anywhere else
5 in the regulations?

6 MR. EDWARDS: I read that differently, Mr.
7 Chairman.

8 CHAIR GRIFFIS: Good. How did you read it?

9 MR. EDWARDS: I read that if you qualify
10 as a CBRF under the definition section --

11 CHAIR GRIFFIS: Yes.

12 MR. EDWARDS: -- that is as a healthcare
13 facility --

14 CHAIR GRIFFIS: Right.

15 MR. EDWARDS: -- then there's no need to
16 go to the definition of 330.5(i). Although that is
17 another form of CBRF.

18 CHAIR GRIFFIS: Oh, I see. So you're
19 saying we have seven defined and they're going to be
20 utilized through the regulations, but there are other
21 sections that define CBRFs that aren't in this? And so
22 these can't comply with those?

23 We'll have to get on the record my hand
24 gesture, because it's very important.

25 So, in all seriousness, if you find

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1 something defined in the definitions of the seven,
2 right?

3 MR. EDWARDS: That's correct.

4 CHAIR GRIFFIS: Then there will be other
5 sections that define CBRF and create other categories
6 is your position?

7 MR. EDWARDS: Only one -- only one, Mr.
8 Chairman.

9 CHAIR GRIFFIS: Well, if it can do it for
10 you, it's probably doing elsewhere, right? Unless
11 you've read the entire zoning regulations -- it
12 doesn't matter. All right.

13 So eight is created. So these seven can't
14 fit into 300.5 because that's actually defining a new
15 one and then giving us regulations that deal with that
16 one?

17 MR. EDWARDS: That is correct, Mr.
18 Chairman.

19 CHAIR GRIFFIS: I see. Okay. I think
20 your position in case is perfectly clear at this
21 point.

22 All right. Any other questions? Very
23 well.

24 Cross? Any questions from anybody? Okay.

25 And you have closing remarks?

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1 MR. EDWARDS: I do.

2 CHAIR GRIFFIS: Okay.

3 MR. EDWARDS: Members of the Board,
4 Stanton Park Neighborhood Association is not trying to
5 exclude the nursing home from our neighborhood. We're
6 not trying to prevent the operation of MedLink. In a
7 sense, Stanton Park Neighborhood Association is
8 seeking to grandfather MedLink's parking operations,
9 the parking facilities that were built to serve the
10 hospital and the nursing home. We're merely asking
11 that MedLink use all of its garage for employee and
12 visitor parking.

13 At the beginning you pointed out that
14 letters that the neighbors had sent in that now
15 comprise part of the file in this appeal would not be
16 considered and Stanton Park understand that. However,
17 the mere fact that such a large number came in when
18 they did is testimony of what impact these
19 Certificates of Occupancy are having on the community.

20 We ask you to carefully consider the co-
21 location of this hospital and the nursing home.
22 They're in the same building occupying different
23 floors. You can be transferred from one facility to
24 another.

25 They're using a common parking garage

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1 where the spaces allocated are not specifically leased
2 to the hospital or the parking garage.

3 What we ask you to bring from the other
4 prior orders is the concept of the integrated
5 operation of this facility and take it into account
6 when you determine the parking requirements of the
7 hospital and the nursing home recognizing that when
8 you go to 2101 you can find a specific ratio for a
9 hospital that you have to determine, the BZA has to
10 determine the parking requirements for the healthcare
11 facility. But we ask you to take them into account
12 together when you make your decision.

13 Thank you.

14 CHAIR GRIFFIS: Thank you very much.

15 That would then conclude the public
16 hearing on this appeal.

17 Let me just run through. We're going to
18 need to set some dates and some further procedure.

19 Okay. I'm sorry. There was a comment of
20 whether others had closings and closing opportunity.
21 I thought I was pretty clear on that. And I can be
22 corrected, however. In the appeal process we have case
23 presentations and then we go to rebuttal. There's
24 cross examination of rebuttal and there's a closing.
25 One closing.

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1 So, that being said, unless people need
2 additional time, we have ten minutes to kill before we
3 have to get out -- no.

4 I think it's sufficient. I think the
5 record is complete in fact at this point. And what I'd
6 like to do is set this for a decision making.

7 Ms. Bailey, what do we have? I think
8 this--

9 MS. BAILEY: We have a decision meeting
10 next week, but that would be too soon, I think, Mr.
11 Chairman.

12 CHAIR GRIFFIS: That's correct.
13 Unfortunately, it's going to be the first meeting in
14 January.

15 MS. BAILEY: The first meeting in January?
16 We have NCRC January 6th.

17 CHAIR GRIFFIS: That's okay. Yes.
18 January it is.

19 MS. BAILEY: January 6th, Mr. Chairman?

20 CHAIR GRIFFIS: Yes.

21 MS. BAILEY: Okay.

22 CHAIR GRIFFIS: That's only one case to
23 decide so far. Good. Okay.

24 Being as it is, first of all, we don't --
25 it can't be next week because we are going to require

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1 submission of facts and conclusions. We are going to
2 put into the record the consent agreement.

3 Can we send that out?

4 Yes.

5 MR. EDWARDS: Mr. Chairman, I was advised
6 by counsel for DCRA and for the property owner that
7 proposed findings and conclusions of law would not be
8 appropriate for this. So we tried to put everything
9 we could in --

10 CHAIR GRIFFIS: Am I getting all turned
11 upside down after this long day. That's true.

12 We're going to be serving the consent
13 agreement to everyone involved. And then what else
14 did we need to have submitted?

15 MS. BAILEY: You had asked for the
16 testimony of Cody Rice who spoke today.

17 CHAIR GRIFFIS: That's right. And we'll
18 keep the record open for that. Otherwise, the record
19 is complete and we're set for January.

20 I'm sorry. I had too many things on my
21 mind. Because I was trying to fit it into the December
22 2nd so that we might able to get a ruling out on this.

23 Our December 2nd meeting is absolutely packed and I
24 don't believe we would have the time, let alone the
25 preparation time. I say we set this for January, as

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1 I've indicated, the 6th of?

2 Yes?

3 MR. TRUMMONDS: So you're going to serve
4 the consent decree on all the parties?

5 CHAIR GRIFFIS: Right.

6 MR. TRUMMONDS: But the record's closed,
7 so you're not accepting anything on that?

8 CHAIR GRIFFIS: That's an interesting
9 position, isn't it?

10 Yes.

11 MR. TRUMMONDS: Okay.

12 BOARD MEMBER MILLER: I am just seeking a
13 point of clarification also. I thought maybe the
14 parties were going to have an opportunity to comment
15 on the application of the consent decree to this case.

16 No?

17 CHAIR GRIFFIS: No, I don't see that as
18 applicable. I mean, I think it's going to be
19 important because I think the Board has an
20 understanding of what it is and will deliberate on it.

21 And my whole point of actually introducing a document
22 into the record as the Chairman was more so that there
23 would be a full understanding of what the basis of
24 deliberations were going to be.

25 And so as I've stated when I brought that

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1 up, I don't want it to be briefed by everybody. But I
2 certainly want the document to be shared for a full
3 understanding.

4 So that being said --

5 MS. BAILEY: Mr. Chairman?

6 CHAIR GRIFFIS: Yes.

7 MS. BAILEY: I just need clarification
8 because Mr. Trummonds said something that I need to be
9 clear about. He indicated that the consent decree
10 would be served on the party by the Office of
11 Planning. Is it possible just to have it filed in the
12 record and for the parties to get a copy from the
13 file?

14 CHAIR GRIFFIS: Sorry. That's one of the
15 things that I was trying to take care of thinking
16 about other things, of whether we could in fact send
17 it out. If it's applicable -- I mean, I would like to
18 be able to send it out to everybody. But that's
19 obviously the Office of Planning. If there's no major
20 objections, we'll make available in the record and
21 copies can be made here.

22 MS. GISOLFI: May I offer a suggestion?
23 Simply that I believe --

24 CHAIR GRIFFIS: You're going to make
25 copies and send --

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1 MS. GISOLFI: DCRA has copies and I
2 believe that the property owner has a copy. So why
3 not just serve on the other --

4 CHAIR GRIFFIS: You want to take the
5 responsibility of serving it?

6 MS. GISOLFI: I wasn't trying to offer
7 that.

8 CHAIR GRIFFIS: Oh, I see.

9 MS. GISOLFI: I should have kept my mouth
10 closed. But I was going to suggest that there is only
11 three parties that it needs to be served on, or four,
12 as opposed to six if that makes it easier.

13 CHAIR GRIFFIS: Done. I'll lick the
14 envelopes and put the stamps on it myself. We're
15 going to send it out to the ANC members, Stanton Park
16 and also the Parish so that we all have the same
17 document. Okay.

18 Excellent. Other clarifications of the
19 muddiness I've created? Everyone clear?

20 MR. TRUMMONDS: Just to be clear. The
21 record's closed except for the submission of
22 Commissioner Rice's testimony?

23 CHAIR GRIFFIS: Right.

24 MR. TRUMMONDS: And no additional
25 materials will be allowed into record?

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1 CHAIR GRIFFIS: That's correct. Okay.

2 Any other questions? Clarifications?

3 Excellent.

4 Thank you all very much. Appreciate it.

5 And as promised, we got you out of here before 6:00.

6 So, Ms. Bailey, any other business for the

7 Board at this time?

8 MS. BAILEY: Yes, sir.

9 CHAIR GRIFFIS: Yes.

10 MS. BAILEY: I want to wish everyone a

11 happy Thanksgiving.

12 CHAIR GRIFFIS: Oh, indeed. Officially

13 from the Board. And thank you. And we wish you a

14 very happy Thanksgiving.

15 Very well. Have a safe holiday. And this

16 would conclude the 25th November 2003 afternoon

17 session.

18 (Whereupon, at 5:59 p.m. the hearing was

19 adjourned.)

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