

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

DECEMBER 2, 2003

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD, Commission Member

Office of Zoning STAFF PRESENT:

Clifford Moy  
Beverly Bailey  
John K.A. Nyarku

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

(2:26 p.m.)

CHAIRPERSON GRIFFIS: Good afternoon ladies and gentlemen. Let me get started. Today is Tuesday, December 2, 2003 Board of Zoning Adjustment for the District of Columbia.

My name is Geoff Griffis. I am chairperson. Joining me today is Mr. Etherly, Vice Chair and Ms. Miller. Representing the National Capitol Planning Commission is Mr. Zaidain and representing the Zoning Commission with us this afternoon is Mr. Hood.

I do thank all of you for your patience today. We had a very long deliberative session this morning and so we are now jumping into our afternoon session and we will try and expedite our entire agenda this afternoon.

Copies of today's hearing agenda, of course, are available to you. They are located at the entrance of the hearing room so you can pick that up and look where you are in the order.

Let me run through a few things very quickly so that we can get to our cases. First of all, all proceedings before the Board of Zoning Adjustment are recorded. Therefore, there are numerous

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1 things that you need to be aware of.

2 First of all when coming forward to speak  
3 to the board you will need to have filled out two  
4 witness cards. Witness cards are located at the table  
5 where you entered into. They're also located right in  
6 front of us at the witness table. Those two cards go  
7 to the recorder who sits to my right. That is prior  
8 to coming forward to give testimony.

9 When sitting down please make yourself  
10 very comfortable and you will need, of course, to  
11 speak into a microphone. A microphone should be on  
12 and importantly you need to state your name and your  
13 address once for the record so that we can, of course,  
14 give you great credit to the important things that you  
15 will be addressing for the board.

16 It brings up an important point. Our  
17 public hearings establish a record. That record of  
18 which is what we will deliberate and decide the cases  
19 on, therefore there are other things attendant to  
20 that.

21 The record is established by submissions  
22 to the board and also by the testimony that's  
23 presented today so speaking into a microphone is  
24 critical in order to be on the record meaning any  
25 comments made outside in the hearing room will not be

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1 part of the record and therefore won't be deliberated  
2 on.

3 So, please pay great attention to that and  
4 also try to limit yourselves in any sort of disruptive  
5 noises or actions in the hearing room because it won't  
6 be productive for anyone and it won't be allowed.

7 That being said the order of procedure for  
8 today special exceptions and variances, first we will  
9 hear statement and witnesses of the applicant.  
10 Second, we will have all government reports attendant  
11 to the application. That, of course, includes such  
12 reports as Office of Planning or Department of  
13 Transportation.

14 Third would be the reports of the Advisory  
15 Neighborhood Commission within which the property is  
16 located. Fourth would be persons and parties in  
17 support of the application. Fifth would be persons  
18 and parties in opposition to the application and  
19 sixth, finally, are closing remarks by the applicant.

20 Cross-examination is permitted by the  
21 applicant and parties in the case. The ANC as I've  
22 stated is automatically a party in the case and that  
23 is the ANC within which the property is located.

24 Our record will be closed at the  
25 conclusion of each case except for any material that

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1 the board specifically requests and we will be very  
2 specific on what is to be submitted into the record  
3 and when it is to be submitted into the Office of  
4 Zoning.

5 After that information is received no  
6 other information would be received and the record  
7 would be closed. So, to reiterate establish the  
8 record here today and then we will have subsequent  
9 filings if required.

10 The Sunshine Act requires that this board  
11 conduct public hearings on each case and those  
12 hearings must be made in the open and before the  
13 public.

14 This board may, however, conduct executive  
15 sessions during or after a hearing on a case and that  
16 is in accordance with our rules of procedure and the  
17 Sunshine Act and would be for the purposes of  
18 reviewing or deliberating on each case.

19 The decision of this board in contested  
20 cases as I have now said probably numerous and too  
21 many times must be based exclusively on the record  
22 that is created before us. Therefore, we ask the  
23 people present today of course not engage board  
24 members in conversation so that we do not give the  
25 appearance of receiving additional information and not

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1 solely deliberating on the record.

2 We will have to conclude our hearings  
3 close to six o'clock so we will schedule all the cases  
4 in order to facilitate that. I think it is  
5 appropriate at this time to pick up any preliminary  
6 matters.

7 Preliminary matters are those which relate  
8 to whether a case will or should be heard today such  
9 as requests for postponements, withdrawals, or whether  
10 proper and adequate notice has been provided.

11 If you are not prepared to go forward  
12 today with the case or you believe the board should  
13 not proceed with the case today now would be the time  
14 to bring that to the attention of the board. You can  
15 give an indication of having a preliminary matter for  
16 the board by coming forward and having a seat at the  
17 table.

18 Let me first go to staff and also wish a  
19 very good afternoon to Ms. Bailey and Mr. Moy from the  
20 Office of Zoning to see if they have any preliminary  
21 matters for us but if you do have preliminary matters  
22 from the audience you can have a seat so you are  
23 ready. Yes.

24 MS. BAILEY: Mr. Chairman, members of the  
25 board, good afternoon. Staff does not have any

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1 preliminary matters, Mr. Chairman.

2 CHAIRPERSON GRIFFIS: Does anyone else  
3 have any preliminary matters for the board? If not,  
4 let's call the first case in the afternoon.

5 MS. BAILEY: Application No. 17080 of the  
6 Asian-American LEAD, pursuant to 11 DCMR 3104.1 for a  
7 special exception to allow the establishment for  
8 community center under Section 209. The property is  
9 located in the R4 district at premises 1323 Girard  
10 Street, N.W. also known as Square 2855, Lot 828.

11 All those persons wishing to testify today  
12 on this application would you please stand to take the  
13 oath.

14 (Witnesses sworn.)

15 MS. BAILEY: Thank you. Mr. Chairman  
16 there are two requests for party status in this case.

17 CHAIRPERSON GRIFFIS: Good. Let me first  
18 have the applicant come forward and have a seat in  
19 preparation of presentation of their case and can  
20 introduce themselves.

21 VICE CHAIRPERSON ETHERLY: Mr. Chair.

22 CHAIRPERSON GRIFFIS: Oh, yes, Mr.  
23 Etherly.

24 VICE CHAIRPERSON ETHERLY: Thank you very  
25 much, Mr. Chair. If I may I'd like to disclose that

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1 due to a relationship on behalf of my employer with a  
2 member who is part of the board of directors for  
3 Asian-American LEAD I will be recusing myself from  
4 this case.

5 CHAIRPERSON GRIFFIS: Very well. Thank  
6 you very much for that disclosure. Anyone else?  
7 Okay, good afternoon. You're just going to touch the  
8 base. There's a button there. The light will come  
9 on. Perfect.

10 THE WITNESS: Good afternoon. Thank you.  
11 Thank you for having us appearing before you this  
12 afternoon. My name is Hung H. Bui. I live in D.C.  
13 My address is 2815 28th Street, Washington, D.C. 20008  
14 and to my right is Sandy Dang.

15 MS. DANG: My name is Sandy Dang and I'm  
16 the founder, executive director of Asian-American LEAD  
17 and I live in the District of Columbia. My address is  
18 4740 Connecticut Avenue.

19 CHAIRPERSON GRIFFIS: Okay. I'm sorry,  
20 sir your title?

21 THE WITNESS: I'm sorry. I'm the co-chair  
22 of the board of directors of the Asian-American LEAD.

23 CHAIRPERSON GRIFFIS: Excellent, okay  
24 thank you all very much. I'm assuming that you  
25 reviewed the entire record on this. Have you seen the

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1 party status applications in the record?

2 THE WITNESS: Opposing parties?

3 CHAIRPERSON GRIFFIS: Yes.

4 THE WITNESS: No, I have not.

5 CHAIRPERSON GRIFFIS: Have you seen the  
6 proponent party status?

7 THE WITNESS: No.

8 CHAIRPERSON GRIFFIS: I don't have any so  
9 it would be interesting if you have those.

10 THE WITNESS: No, I have not.

11 CHAIRPERSON GRIFFIS: Okay. Well, let's  
12 go through it. It's the adjacent owners Ms. Brizill,  
13 Mr. Imhoff. Board members any questions, concerns, in  
14 terms of the application for party status?

15 I'll reiterate just because the applicant  
16 has said that they haven't reviewed this but clearly  
17 the party is the property of which the party applicant  
18 comes from is directly adjacent to or as stated next  
19 door to the applicant's property.

20 There is listing of concerns and then six,  
21 of course, which is the most important aspect of  
22 either denying or accepting party status. Number six  
23 in the application which goes to whether and how a  
24 person would be more significantly, distinctly or  
25 uniquely affected if this was to be approved and it is

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1 listed as they are next door to the property. Any  
2 concerns, issues? Any opposition to granting party  
3 status?

4 MR. ZAIDAIN: I'm sorry, Mr. Chair, I was  
5 searching for my application. Which one are we  
6 referring to?

7 CHAIRPERSON GRIFFIS: And that's an  
8 excellent point to bring up and what I would suggest  
9 and actually I can hear from the parties requesting  
10 but I am assuming that this is one party that would be  
11 joined unless there is difficult in doing that.  
12 That's acceptable having the visual connection with  
13 that. Yes, so we're looking at one party application.

14 MR. ZAIDAIN: Well my suggestion was going  
15 to be to join them.

16 CHAIRPERSON GRIFFIS: Done. I'll take  
17 that.

18 MR. ZAIDAIN: Okay.

19 CHAIRPERSON GRIFFIS: Anything else? Does  
20 the applicant have any objections to granting party  
21 status to Ms. Brizill and Mr. Imhoff?

22 THE WITNESS: No, Mr. Chairman.

23 CHAIRPERSON GRIFFIS: Good. I haven't  
24 heard any voicing opposition to that. I think it's  
25 absolutely appropriate to grant party status to the

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1 adjacent neighbor in this regard and therefore we can  
2 grant the party status to the two requests.

3 So, let us move forward on that and note  
4 the parties in opposition. If there's nothing  
5 further, preliminary matters for the board, let's get  
6 right into the case presentation.

7 THE WITNESS: Yes. Before I make my  
8 presentation I'd like to provide you some of the  
9 material about our organization and some of the  
10 photocopies and the photo of the building in question.

11 CHAIRPERSON GRIFFIS: Okay, well I'm going  
12 to ask you that anything you submit into the record of  
13 course goes to our staff to the right but first you're  
14 going to deliver it to the parties and then to the  
15 board. Is the ANC here today? Do you have any  
16 objection to what we just did?

17 MR. SPALDING: No, I don't.

18 CHAIRPERSON GRIFFIS: That's good.

19 MS. BAILEY: Sir, you can hand that to me.

20 THE WITNESS: As you are aware we are here  
21 to seek your approval of our request to use the  
22 building in question, the one located on 1323 Girard  
23 Street to be used as, to be designated as a community  
24 center.

25 The Asian-American LEAD is a 501(c)(3)

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1 organization dedicated to development and I'm going to  
2 defer to my executive director to talk about Asian-  
3 American LEAD, a little about who we are and our  
4 history as well as the impact we've been making in the  
5 community we live in.

6 Sandy will talk about that and then I'll  
7 come back to talk about the reason why we have  
8 complied with all of the regulations and rules under  
9 the zoning ordinance and why some of the reasons why  
10 the board should be in support of our request.

11 CHAIRPERSON GRIFFIS: Okay. Let me give a  
12 quick direction. Critical to us is how you comply  
13 with the zoning and that would be Section 209.

14 THE WITNESS: Okay.

15 CHAIRPERSON GRIFFIS: So we can read  
16 you've submitted the outline of your organization and  
17 such. That is important in filling out the entire  
18 record but we don't need to spend a lot of time on it.

19 THE WITNESS: Yes, that's right.

20 CHAIRPERSON GRIFFIS: We'll get right into  
21 it.

22 THE WITNESS: A quick introduction about  
23 who we are.

24 CHAIRPERSON GRIFFIS: Good, thanks.

25 THE WITNESS: Sandy.

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1 MS. DANG: Yes, I just want to give you a  
2 brief history of our organization. The organization  
3 was -- I founded the organization in 1998 but prior to  
4 that in 1995 when I came into the community there at  
5 one point were about 6,000 Vietnamese refugee children  
6 and families living in the District of Columbia and  
7 these refugees came in the 1990s.

8 So, most of them are former political  
9 prisoners, Amerasian race, mixed race, their mother is  
10 Vietnamese but their father is American and many of  
11 these young people and families came to the District  
12 of Columbia. They live in Columbia Heights and they  
13 have a lot of needs.

14 When I came into the neighborhood in 1995  
15 I saw a lot of teenagers drop out of school, join  
16 gangs. Teenage pregnancy was on a high rise so we  
17 established this kind of services to address this  
18 problem.

19 And at one point I know that most of the  
20 children did not get adequate services from the D.C.  
21 public school. We have, the entire public school  
22 system didn't have one bilingual Vietnamese counselor  
23 to counsel these students.

24 So, we as an organization were set up to  
25 establish after school programs, mentoring, leadership

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1 training, family support services to help these  
2 families and many of these families are living low  
3 income, overcrowded housing, family of six living in  
4 an efficiency.

5 So you can see why we established this  
6 organization is to fill the gap, to fill the gap that  
7 D.C. government and D.C. public schools cannot fulfill  
8 to help these families succeed in this country.

9 As a former refugee myself I know how  
10 difficult it is to rebuild one life in this country  
11 and to become successful, to become, to get the  
12 opportunities that this country offers.

13 I want you to know that Asian-American  
14 LEAD has grown from an organization with \$15,000 to an  
15 organization now having a budget close to \$1 million  
16 and we've been recognized by many, many foundations,  
17 many government agencies.

18 If you open the "Washingtonian" magazine  
19 this month you will see that we are one of 20 good  
20 organizations to give money to because of the work  
21 that we're doing. Our success story has been -- the  
22 student that we provide services are now in college or  
23 some are graduated from college.

24 Our families are thriving. We now provide  
25 after school services at Bangkok Elementary School.

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1 We work with almost 12 public schools in the District  
2 of Columbia so you can see that this organization is  
3 building communities. It's making life better. It's  
4 an asset to the city and it's really an asset to the  
5 neighborhood.

6 You know the community center that we have  
7 right now is adjacent to the Easter Seals and it's a  
8 really great place because a lot of children can walk  
9 to the center. You know it's a safe haven for these  
10 children, a safe place for them to learn and to  
11 integrate into this community.

12 As you know the District of Columbia has  
13 become more multi-cultural, multi-racial and having  
14 these children come to our center and integrate into  
15 the greater community is very, very important.

16 We also open doors to other Asian-American  
17 groups so that they can come and they can help our  
18 children. We also have been working very hard with a  
19 lot of other ethnic communities.

20 We work with the Latin-American Youth  
21 Center, work with also church just to name a few. We  
22 work with the Columbia Heights as a collaborator. We  
23 do this, our success cannot happen if we haven't had  
24 so much support from this city, from foundations, from  
25 government agencies, from private donors, from

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1 corporations, from individuals.

2 So this is truly an effort of this city to  
3 fill the gap that is needed, much needed in the city  
4 so I urge you to think about this that this is an  
5 important part of this city. To be a vibrant city you  
6 need this kind of community service to build the  
7 lives, improve the lives of our refugee children and  
8 families and a lot of Asian-American lives and  
9 families. Thank you.

10 CHAIRPERSON GRIFFIS: Thank you very much.

11 THE WITNESS: Going back to some of the  
12 rules and regulations and I think I just want to  
13 emphasize the fact that we are a non-profit. We are  
14 operating to provide services to the immediate  
15 community, the people in the Mt. Pleasant and the  
16 Columbia Heights Shaw neighborhood.

17 D.C. is the home of roughly about 5,000  
18 Vietnamese Americans and 20,000 other Asian-Americans.

19 We are going to be the first Asian-American community  
20 center in the District of Columbia and we hope to  
21 provide good services and commit to be a good neighbor  
22 because the work that we have done in the last six,  
23 seven years we've been able to get a lot of support  
24 from a lot of organizations all the way from the D.C.  
25 Mayor's Office, from our council members Gene Grahams

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1 as well as Adrian Fendy.

2 We have recommendations, full support from  
3 the D.C. Office of Planning and as you will hear from  
4 the testimony today as well as the recommendation from  
5 ANC and Mr. Philip Spalding who will be testifying in  
6 our behalf a little bit later today.

7 And in the record you will find that we  
8 have a number of letter recommendations from our  
9 sister non-profit organizations as well as a petition  
10 containing signatures of most of the residents who  
11 live in that community.

12 Again, I want to emphasize the fact we've  
13 been doing a lot of good work in the community and are  
14 committed to being good neighbors. We so far have not  
15 received any objections that I'm aware of from our  
16 neighbors with the exception of the opponent here,  
17 appearing here today.

18 What I'd like to focus a little bit about  
19 the building. That building we purchased about a year  
20 and a half ago and one of the reasons why we purchased  
21 that building was the fact that it was a non-profit.  
22 It belonged to Sojourners and the primary reason we  
23 purchased the building was because it was providing  
24 the exact type of service that we intend to do.

25 It was operating as a community center

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1 even though Sojourners was designated as a church  
2 because it is a church-based organization and we are  
3 committed.

4 And one of the reasons why they sold that  
5 building to us was that because they wanted us to  
6 continue to carry the torch that they've been doing,  
7 carrying for the preceding 20 years and we continue  
8 to. We are committed to do that, carry that torch  
9 within that community.

10 The location is also very unique. That  
11 building located at 1323 Girard is located right next  
12 to two other non-profits and is virtually three blocks  
13 away from the Metro.

14 Now most of -- we are currently providing  
15 roughly 150 children in the public school district and  
16 these are Asian-Americans, primarily Vietnamese  
17 American but we are beginning to accept and embrace  
18 some Chinese-Americans and other Asian-Americans and  
19 that is the goal to provide an anchor for the Asian-  
20 American community in that region.

21 And we feel that we've been -- kind of  
22 what we're doing is very consistent with the type of  
23 work that Sojourners was doing before and in addition  
24 with the support that we get from a number of our  
25 neighbors as well as the other non-profits as well as

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1 all the way up to government agencies we feel we hope  
2 to make a positive change in the community.

3 And as a result asking for your approval  
4 of our request and this is, I want to stress this is  
5 very important because we have already made a  
6 significant investment to be part of that  
7 neighborhood.

8 And, again the service that we provide we  
9 are providing are to the people who live in that  
10 neighborhood so we don't anticipate any kind of  
11 opposition from our neighbors. Of course, we'd be  
12 willing to hear complaints from our neighbors.

13 CHAIRPERSON GRIFFIS: I'm glad you'd be  
14 willing because that's what this hearing is all about.

15 THE WITNESS: Yes, absolutely.

16 CHAIRPERSON GRIFFIS: Willing or not  
17 you're going to hear it.

18 THE WITNESS: Absolutely, yes.

19 CHAIRPERSON GRIFFIS: Okay.

20 THE WITNESS: And we are committed trying  
21 to solve those issues and concerns and we have with me  
22 and Sandy we have a number of colleagues who will be  
23 testifying. We have many supporters here.

24 CHAIRPERSON GRIFFIS: Well, let's get to  
25 that. Are you calling witnesses then or are they

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1 going to testify in support of the application?

2 THE WITNESS: I think I'm going to wait  
3 for the testimony from the Office of D.C. Planning as  
4 well as the ANC and then after that.

5 CHAIRPERSON GRIFFIS: So they're going to  
6 testify as persons.

7 THE WITNESS: Yes.

8 CHAIRPERSON GRIFFIS: Very well. Let's go  
9 to some board questions and that may inform you on  
10 what else you want to give us. First of all what's  
11 not at issue today is whether you're an asset to the  
12 community.

13 THE WITNESS: Yes.

14 CHAIRPERSON GRIFFIS: You're doing a great  
15 job or not. It's very important to understand that  
16 and get a feel for that so I appreciate you doing  
17 that.

18 A couple of things that you made in your  
19 opening statement in the filings, first of all you  
20 indicated, let me start with small stuff. You  
21 indicated that it's an asset that two other non-  
22 profits were located nearby. Why is that an asset?

23 THE WITNESS: Oh, I wouldn't necessarily  
24 term it that way but it would be since we are located  
25 between two non-profits I wouldn't necessarily think

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1 that our immediate neighbor would find that  
2 objectionable. We are not necessarily in the purely  
3 residential neighborhood. We are located in --

4 CHAIRPERSON GRIFFIS: How do you define a  
5 purely residential neighborhood?

6 THE WITNESS: Without any type of -- well  
7 business or non-residential use primarily.

8 CHAIRPERSON GRIFFIS: This is zoned for  
9 residential though.

10 THE WITNESS: It is, however, that  
11 particular block has been used for other reasons. Of  
12 course Easter Seals has been used as a community  
13 center for many years.

14 CHAIRPERSON GRIFFIS: Okay, let me just  
15 assume that that's your opinion and not in fact an  
16 interpretation of the zoning regulations and we can  
17 move on from that. What are the two non-profits that  
18 you're speaking of?

19 THE WITNESS: We are located between -- to  
20 our left we have Easter Seals. To our right I believe  
21 there is another non-profit running by the name of DC  
22 Watch and then a block away, two blocks away from us  
23 we have the center.

24 CHAIRPERSON GRIFFIS: Okay, that's okay.  
25 We don't need to go further. You indicated that there

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1 was a petition from the adjacent residents.

2 THE WITNESS: Yes.

3 CHAIRPERSON GRIFFIS: However, in  
4 reviewing the petition I didn't see any of the  
5 residents on the immediate block square and, in fact,  
6 I saw a preponderance if not the majority, if not 100  
7 percent of people that run associations, organizations  
8 and non-profits in the area. Is there another  
9 petition that I wasn't aware of?

10 THE WITNESS: Give me a minute. We do  
11 have another page and we have not submitted and that  
12 page would contain a lot of names of a lot of the  
13 people who live in a lot of names and a lot of the  
14 people who live in that particular block.

15 CHAIRPERSON GRIFFIS: Okay, excellent.  
16 We'll move that into the record when it's available.  
17 In the opening statement and also in the application I  
18 think you've clearly started to address all of the  
19 issues.

20 First of all you've indicated that there's  
21 a large Vietnamese population, the population that you  
22 serve and they happen to be in this neighborhood of  
23 Columbia Heights and therefore under 209.5 of which  
24 you need to address and come into compliance with it  
25 seems that your testimony does do that and that is

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1 that this community center shall be reasonably and  
2 necessarily convenient to the neighborhood in which it  
3 serves.

4 The other aspect of it, it is your  
5 testimony is it correct that this would not create any  
6 objectionable noise or traffic?

7 THE WITNESS: That's correct. We have  
8 been operating out of that particular building for a  
9 little bit over, close to a year now and so far we  
10 have not received any complaints.

11 CHAIRPERSON GRIFFIS: So you're not aware  
12 of any objectionable conditions.

13 THE WITNESS: Yes.

14 CHAIRPERSON GRIFFIS: Are you aware of the  
15 parking requirement that has come up, I believe it's  
16 the Office of Planning raised it?

17 THE WITNESS: Yes. We brought along our  
18 architect here and he's going to address some of the  
19 issues pertaining to the building as well as the  
20 parking situation but my belief is that that parking  
21 lot right next to the building can accommodate up to  
22 five cars but the thing is --

23 THE WITNESS: The parking lot off your  
24 property?

25 THE WITNESS: No, no, right next to the

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1 building there is a parking lot that can accommodate  
2 up to five cars.

3 CHAIRPERSON GRIFFIS: In the rear of the  
4 building?

5 THE WITNESS: No on the side. Yes. If  
6 you look at the map there's a driveway actually.

7 (Background discussion.)

8 THE WITNESS: If you have the application  
9 it's on Section 4 and I can show you.

10 CHAIRPERSON GRIFFIS: Just explain to me  
11 you're talking about parking on the east side so  
12 you're talking about driving five cars into the  
13 driveway and stacking them?

14 THE WITNESS: Yes.

15 CHAIRPERSON GRIFFIS: Is that your  
16 understanding of what would be compliant with the  
17 zoning regulation parking spaces?

18 THE WITNESS: We would have to consult  
19 with our architect making sure that we have an inlet  
20 and outlet but also we have an arrangement with the  
21 Easter Seals which the entity right next door to us  
22 will allow us to use the parking lot that they have,  
23 the adjacent parking lot which can accommodate up to  
24 30 cars.

25 CHAIRPERSON GRIFFIS: Excellent.

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1 THE WITNESS: Now rarely we're going to  
2 need that.

3 CHAIRPERSON GRIFFIS: I'm going to move  
4 you on very quickly with this so don't be offended if  
5 I'm very direct and pointed. However, what is your  
6 agreement? Do you have a lease signed with the  
7 Easter Seals with time and use and is that with you  
8 today?

9 MS. DANG: We have rented two parking  
10 spots from them.

11 CHAIRPERSON GRIFFIS: Okay so you have a  
12 document?

13 MS. DANG: Yes, I have a document here,  
14 yes.

15 CHAIRPERSON GRIFFIS: Okay, we're also  
16 going to have that come into the record. You said  
17 you're in existence, already in operation for a year.  
18 You have a certificate of occupancy that was issued  
19 to you is that correct?

20 THE WITNESS: It was issued. We grand-  
21 fathered in the previous use.

22 CHAIRPERSON GRIFFIS: Okay do you conduct  
23 worship services?

24 THE WITNESS: No.

25 CHAIRPERSON GRIFFIS: I see and it says

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1 that you don't have any sort of Saturday or Sunday  
2 activities. I would think that maybe that isn't when  
3 you do religious services.

4 THE WITNESS: No.

5 CHAIRPERSON GRIFFIS: Do you do any  
6 religious services?

7 THE WITNESS: Not that I'm aware of.

8 CHAIRPERSON GRIFFIS: How do you have a  
9 certificate of occupancy as a church then?

10 THE WITNESS: One of the reasons it was --  
11 we grand-fathered in what the previous use Sojourners  
12 so that we can obtain some additional time to file  
13 this zoning application. Hopefully it will be  
14 resolved once and for all.

15 CHAIRPERSON GRIFFIS: Okay. Any other  
16 questions from the board at this time?

17 (Background discussion.)

18 CHAIRPERSON GRIFFIS: Very well. Is there  
19 anything else at this time that you would like to  
20 present to the board?

21 THE WITNESS: Could you give us a minute?

22 I will defer to my architect to resolve the questions  
23 regarding the parking lot.

24 CHAIRPERSON GRIFFIS: Okay. This is what  
25 I'd like to do. We're going to move things along and

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1 I think it's going to help you.

2 THE WITNESS: Okay.

3 CHAIRPERSON GRIFFIS: We're going to go to  
4 the Office of Planning's report which has brought up  
5 the issue.

6 THE WITNESS: Okay.

7 CHAIRPERSON GRIFFIS: And then attendant  
8 to that as their report we'll have you present the  
9 architects. It's a little bit out of our formal order  
10 but right now I'd like to ask the ANC whether they have  
11 any cross-examination of the witnesses today. Does  
12 the party in opposition have any cross-examination?

13 MS. BRIZILL: Good afternoon. My name is  
14 Dorothy Brizill.

15 CHAIRPERSON GRIFFIS: You just need to  
16 turn the mike on please.

17 CROSS-EXAMINATION

18 BY PARTY IN OPPOSITION

19 MS. BRIZILL: My name is Dorothy Brizill  
20 and I reside at 1327 Girard Street.

21 MS. BRIZILL: Mr. Lui you indicated, you  
22 noted that the 1323 was not in a purely residential  
23 neighborhood and you cited abutting or neighboring  
24 non-profit and you specifically mentioned Easter  
25 Seals. Are you aware of any other non-profit

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1 organizations in the close proximity such as  
2 community-based residential facility, community  
3 centers or other community organizations within 100 to  
4 150 feet of your building?

5 THE WITNESS: Within 100 feet, aside from  
6 the Easter Seals I'm not aware of any other. That's a  
7 very short distance.

8 MS. BRIZILL: Are you aware of any such  
9 facilities across the street from your property?

10 THE WITNESS: No.

11 MS. BRIZILL: Are you aware of any such  
12 facilities across the alley from your property?

13 CHAIRPERSON GRIFFIS: Why don't we go  
14 directly to it if you're aware of some and see if they  
15 are aware of that one or the presentation or it can  
16 come up in the presentation of your own case.

17 MS. BRIZILL: It will come up in our  
18 presentation.

19 CHAIRPERSON GRIFFIS: Okay.

20 MS. BRIZILL: I just wanted to indicate --

21 CHAIRPERSON GRIFFIS: Establishing their  
22 awareness.

23 MS. BRIZILL: After being in the  
24 neighborhood for over a year they're not really  
25 attuned. Mr. Lui you also indicated that you have an

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1 agreement with Easter Seals regarding the use of their  
2 lot. Are you aware that Easter Seal has multiple  
3 agreements with a number of other individuals and  
4 organizations regarding those very same parking spots?

5 THE WITNESS: Sandy.

6 MS. DANG: No.

7 MS. BRIZILL: In the petition you have  
8 presented in your file as the chairman has indicated  
9 there is not a single resident of the neighborhood  
10 that is listed as a signator. Is it my understanding  
11 that you have an additional sheet that has residents  
12 of the surrounding blocks?

13 MS. DANG: Yes.

14 THE WITNESS: Yes, we do.

15 MS. BRIZILL: How many names?

16 CHAIRPERSON GRIFFIS: Actually let's wait  
17 to get it. They said they were going -- you're going  
18 to put that into evidence today, correct?

19 MS. BRIZILL: Well the parties will not be  
20 -- a party will not be able to.

21 CHAIRPERSON GRIFFIS: Well then let's  
22 answer the question. Do you know offhand how many  
23 signatures there are on it?

24 THE WITNESS: Roughly I would say about  
25 15, 20 the last time I saw the list.

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1 MS. BRIZILL: Of people who live within  
2 two blocks of your --

3 THE WITNESS: Yes.

4 CHAIRPERSON GRIFFIS: Let's say over ten.

5 THE WITNESS: Yes, its over ten.

6 MS. BRIZILL: Okay.

7 THE WITNESS: Definitely over ten, that I  
8 can assure you.

9 CHAIRPERSON GRIFFIS: Great. We'll have  
10 that into the record when it's available.

11 THE WITNESS: Yes.

12 CHAIRPERSON GRIFFIS: Nothing further?  
13 Okay. Let's go to the Office of Planning.

14 MS. THOMAS: Good afternoon, Mr. Chairman,  
15 members of the board. I'm Karen Thomas presenting the  
16 Office of Planning's report on the application  
17 submitted by Asian-American LEAD requesting a special  
18 exception under Sections 209 and 3321 to operate a  
19 community center at 1323 Girard Street, N.W.

20 The applicant proposes to modify the use  
21 of the existing building operating as a church to a  
22 community center. According to available certificate  
23 of occupancy, the structure was owned and operated by  
24 a church since 1984. The latest C of O issued on  
25 11/15/02 also authorized the current owners to occupy

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1 the structure for church purposes.

2 AALEAD is a registered non-profit entity  
3 within the meaning of Section 501(c)(3) of the IRS  
4 code. The stated purpose of the organization is to  
5 develop leadership in the Asian-American youth and  
6 families and strengthen community building for those  
7 families in the Columbia Heights and Mt. Pleasant  
8 neighborhoods.

9 Programming at the proposed center will  
10 include after school academic tutoring for students  
11 age 6 to 19, family strengthening and mentoring  
12 programs. OP is satisfied that the required  
13 programming criteria would be met since this agency  
14 already operates at 3045 15th Street, N.W.

15 The Department of Transportation indicated  
16 to OP that since the operations are localized and  
17 designed to serve the immediate community no adverse  
18 impact based on increased thru traffic in the  
19 neighborhood is predicted.

20 Its relocation would allow easier access  
21 of its programs to the community it is intended to  
22 serve and OP finds the justification of need provided  
23 by the applicant to be sufficient.

24 The community center will operate between  
25 the hours of 10:00 a.m. to 7:00 p.m. Monday through

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1 Friday. The center employs 11 staff persons and  
2 according to the applicant current programs cater to  
3 approximately 160 residents and at any given there are  
4 50 to 60 persons on site. The applicant also  
5 indicated that events would also be held at the center  
6 including receptions performances, exhibits and other  
7 similar events.

8 While similar programs exist in the  
9 immediate neighborhood, including the Easter Seals  
10 Foundation, OP does not believe the center's  
11 activities will become objectionable in the residence  
12 district in which it is located since its programs  
13 would cater to a small and under served population in  
14 the immediate neighborhood.

15 We also noted that the prior use of the  
16 building as a church also provided similar activities  
17 as proposed by the new community center and there is  
18 no recorded opposition from the neighborhood to those  
19 activities.

20 Based on this information OP does not  
21 think that the proposed use is likely to become  
22 objectionable to neighboring properties. For the  
23 reasons expressed by the applicant and OP's findings  
24 as discussed we find a justification of need for the  
25 community center acceptable for its targeted

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1 community's needs and reasonably convenient to their  
2 neighborhood.

3 The subject property has been in  
4 continuous institutional use since being converted  
5 from a residence in 1984. OP knows that the efforts  
6 of Asian-American LEAD in attempting to provide  
7 training and other services to an under served  
8 population within the Mt. Pleasant and Columbia  
9 Heights neighborhood are essential in preserving the  
10 character, diversity and social welfare of the  
11 neighborhood. Therefore, we recommend the approval of  
12 the requested special exception for a period of five  
13 years subject to renewal by the BZA.

14 To address your concerns about parking we  
15 believe that there should be some discussion of the  
16 parking requirements for the proposed center per  
17 Section 2101. This section requires one parking space  
18 for every 6,000 square feet of gross floor area and  
19 cellar floor area.

20 The building is approximately 6,000 square  
21 feet in gross floor area requiring approximately ten  
22 parking spaces. The applicant has submitted to us  
23 that the property can accommodate up to five spaces,  
24 which extends to the rear of the property for its  
25 employees. Of the 11 employees of the center only

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1 four drive to work.

2           However, since the proposed use is  
3 designed to serve localized needs we feel that such a  
4 relief could be granted with no detriment to the  
5 community and that concludes our report. Thank you.

6           CHAIRPERSON GRIFFIS: Thank you very much.

7           So, out of the discussion and granting what is it  
8 that you're proposing, an amendment to this  
9 application for relief from parking?

10           MS. THOMAS: If that's necessary, yes.

11           CHAIRPERSON GRIFFIS: What's your opinion?

12           MS. THOMAS: I think they should be  
13 granted some relief of the parking since they did say  
14 that they only have four people who drive to work and  
15 if they could provide some evidence that at least four  
16 spaces could fit on the property, four legal parking  
17 spaces, we would be amenable to that.

18           CHAIRPERSON GRIFFIS: Does the applicant  
19 have any questions, cross-examination of the Office of  
20 Planning? Why don't we step out of our stringent  
21 order here and let's bring you up and let's get your  
22 architect up and let's talk about this site and  
23 address the parking issue because what we're leaning  
24 to and we're going to need to make a decision very  
25 quickly is whether we have to amend the application.

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1                   If we amend it how we amend the  
2 application. If you need a variance for parking it  
3 may in fact talk about going for re-advertising which  
4 will preclude us from finishing today. So, let's get  
5 to the heart of that issue.

6                   Yes. No, I understand that. I'll give you  
7 an opportunity now if you want you can cross-examine  
8 OP or we can get to the bottom of all the issues. Do  
9 you want to do cross-examination first?

10                   That's all I'm going to do is bring up  
11 parking and get an understanding. We're going to get  
12 an understanding of the site and how you're proposing  
13 to do it. Okay? Who are you going to bring?

14                   MR. MUSHINSKY: My name is Allen  
15 Mushinsky. I am the principal from the architectural  
16 firm of Mushinsky Bolsky Associates in Bethesda,  
17 Maryland, 7910 Woodmont Avenue, Suite 1250, Bethesda,  
18 Maryland 20814.

19                   CHAIRPERSON GRIFFIS: As a quick aside  
20 looking at the plans that were submitted it looks as  
21 though you're adding an extra egress there is that  
22 correct?

23                   MR. MUSHINSKY: That's correct.

24                   CHAIRPERSON GRIFFIS: There's no way to  
25 access it from the inside.

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1 MR. MUSHINSKY: The exterior egress there  
2 in fact is being added to connect all four, the  
3 basement and three floors above.

4 CHAIRPERSON GRIFFIS: Well that seems to  
5 make sense but how do you access it? Looking at your  
6 plans it looks like that's a sculptural addition. I  
7 don't see it work to be direct.

8 MR. MUSHINSKY: I'm looking at my plan and  
9 it shows doors. I'm a little confused. Hopefully we  
10 all have the same thing.

11 CHAIRPERSON GRIFFIS: It's A-1.

12 MR. MUSHINSKY: If you look at Sheet A-1  
13 that's the basement and there is a rear door on the  
14 back on the right-hand side of the plan.

15 CHAIRPERSON GRIFFIS: Right you have  
16 double doors off of the basement level or ground floor  
17 plan.

18 MR. MUSHINSKY: No, this is single door.  
19 No, it's single door.

20 CHAIRPERSON GRIFFIS: All right, basement.

21 MR. MUSHINSKY: All right, basement, first  
22 sheet A-1, bottom right-hand corner it says A-1.

23 CHAIRPERSON GRIFFIS: Can I see that?

24 MR. MUSHINSKY: I can give you a copy.

25 CHAIRPERSON GRIFFIS: No, no, no I have

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1 those.

2 MR. MUSHINSKY: You should have the same  
3 thing.

4 CHAIRPERSON GRIFFIS: I was looking at the  
5 front, okay. Let's move on. So going to parking we  
6 have what I'm understanding the applicant giving  
7 testimony is that you're looking to stack in the  
8 driveway is that correct, that's how you can  
9 facilitate five?

10 MR. MUSHINSKY: Yes. The lot is 150 feet  
11 long. It's 40 feet wide. The clearance on the east  
12 side of the house the main clearance to the property  
13 line is 10'9" of which we don't need the full 10'9"  
14 obviously for a parking space with.

15 There is a driveway that is accessible  
16 from Girard Street and the intent is to stack five  
17 parking spaces for staff starting from Girard back to  
18 the -- just to the back of the house basically, not  
19 using the full 150 feet.

20 CHAIRPERSON GRIFFIS: Okay, but is it your  
21 opinion that that conforms with the zoning regulation  
22 parking spaces?

23 MR. MUSHINSKY: As far as the size of the  
24 spaces, yes. There's adequate space.

25 CHAIRPERSON GRIFFIS: What doesn't it

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1 conform with then?

2 MR. MUSHINSKY: It does conform. They're  
3 stacked spaces.

4 CHAIRPERSON GRIFFIS: Okay, where in the  
5 regulations would it allow stacked spaces to be  
6 counted?

7 THE WITNESS: Not offhand but we did,  
8 right?

9 MR. MUSHINSKY: Yes, we did. We submitted  
10 it but I can't address specific.

11 CHAIRPERSON GRIFFIS: Does Corporation  
12 Counsel whether stacked spaces are allowable to be as  
13 designed in the regulations?

14 CORPORATION COUNSEL: There are  
15 requirements about access to parking spaces that I  
16 think might preclude the stacking. Each one has to  
17 have access from a street or driveway?

18 CHAIRPERSON GRIFFIS: That would be my  
19 understanding, 2117.4 says each required space shall  
20 be accessible at all times directly from unimproved  
21 streets, alleys, or shall be accessible from improved  
22 streets and alleys via graded unobstructed private  
23 drives.

24 So, we have never had a stacked or tandem  
25 or anything of that nature be in compliance with the

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1 zoning regulation because obviously you can't access  
2 the last car in if you have four behind it.

3 That being said I think what we're looking  
4 for, are you in agreement with the Office of  
5 Planning's calculation under Section 2101.1 for the  
6 required parking spaces, the number?

7 MR. MUSHINSKY: Yes.

8 CORPORATION COUNSEL: Mr. Chair.

9 CHAIRPERSON GRIFFIS: Yes.

10 CORPORATION COUNSEL: If you'll look at  
11 the chart it's 21-6 the page number in mine it says  
12 Arena Armory, Assembly Hall Auditorium Community  
13 Center, Concert Hall, conventional dance hall, anyway  
14 the requirement is where the seats are not fixed, each  
15 seven square feet of usable space for seating shall be  
16 considered one seat for purposes of calculating the  
17 parking. It's not the one space per 600 square feet  
18 that OP was using.

19 THE WITNESS: Mr. Chair. We have a lawyer  
20 here.

21 MS. SIKORSKI: Can I say something? My  
22 name is Kerri Sikorski. My address is 1730 New  
23 Hampshire Avenue, N.W., Washington, D.C. 20009. I'm  
24 one of the lawyers who worked on the application.

25 Part of the reason, I agree that the

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1 appropriate parking thing is one seat for each ten  
2 seats of occupancy capacity and the way this building  
3 is laid out the main, you know, what you would view as  
4 kind of the main room for seating is just the main  
5 room when you walk in.

6 That's the only room that's kind of geared  
7 towards like assembly space. The rest of the building  
8 is, I mean it's like a house so you have rooms here  
9 and there and whatever and so that's the main room.

10 And in looking at the zoning regulations  
11 the requirements for a church and the requirements --  
12 which is the existing use and the requirements for a  
13 community center actually get you to the same place.

14 It's a similar kind of metric in how you  
15 calculate the number of spaces and so since we weren't  
16 making any change to the building in any way that  
17 impacted parking we weren't decreasing it or we  
18 weren't changing it in any way we were viewing it as  
19 being kind of grand-fathered into the parking  
20 requirements.

21 We're not changing anything having to do  
22 with the parking that Sojourners was using for the  
23 past 20 years for this building and so nothing that  
24 we're doing is changing that and the requirement is  
25 the same and so that was kind of why we did not do any

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1 sort of technical application for any parking variance  
2 per se.

3 CHAIRPERSON GRIFFIS: OP have an opinion  
4 on that? Were they grand-fathered in under a church C  
5 of O from a previous use?

6 MS. THOMAS: I don't think so.

7 CHAIRPERSON GRIFFIS: Corporation Counsel.

8 CORPORATION COUNSEL: I can't say  
9 definitively because we did talk about this yesterday  
10 and there was some -- it's possible that some spaces  
11 were grand-fathered but I can't say offhand how many.

12 Also I think the requirement is one space  
13 for each ten seats of occupancy capacity which is not  
14 really the same as your largest assembly space. It's  
15 the entire space that could be devoted. You're not  
16 dealing with fixed seats.

17 MS. SIKORSKI: It's kind of a difficult  
18 calculation when you're trying to really figure out  
19 what that means as to where would you put -- where  
20 would you put chairs and where would you, you know,  
21 how would you really calculate it.

22 And that's kind of where we came out with  
23 the idea that you would kind of use the only sort of  
24 space that's really the space where you're going to  
25 put set seats in the event that you would put them for

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1 the way that they use this building.

2 MR. ZAIDAIN: I have a question for the  
3 panel here. Have any of you guys seen the previous C  
4 of O?

5 MR. MUSHINSKY: Yes, I have.

6 MR. ZAIDAIN: What was the date of that?

7 MR. MUSHINSKY: This is for Sojourners  
8 right?

9 MR. ZAIDAIN: Yes.

10 MR. MUSHINSKY: What was the date of it?

11 THE WITNESS: I think it was back in --  
12 this is my best recollection I think it's dated back  
13 in '82 or '81.

14 MR. ZAIDAIN: So it was clearly after the  
15 enactment of zoning regulations?

16 THE WITNESS: I don't know that. I don't  
17 have an answer to that question.

18 CHAIRPERSON GRIFFIS: Was it after 1958,  
19 right?

20 MR. MUSHINSKY: Here we go. The Office of  
21 Planning just submitted it. It says Sojourners 1984.

22 MR. ZAIDAIN: '84, okay.

23 MR. MUSHINSKY: Okay, so it's my  
24 understanding that -- so Sojourners would have been  
25 held to the same standard in terms of parking

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1 regulations and they probably should have come in for  
2 a variance.

3 MR. ZAIDAIN: If ten is required now, am I  
4 correct?

5 CHAIRPERSON GRIFFIS: It seems like we  
6 don't have a definitive answer on that either.

7 MR. ZAIDAIN: Well, but --

8 CHAIRPERSON GRIFFIS: All right, for  
9 discussion yes ten are the parking spaces required.

10 MR. ZAIDAIN: Okay, well according to the  
11 Office of Planning's report, ten is required so ten  
12 would have been required under Sojourners.

13 The property hasn't changed so obviously  
14 Sojourners didn't provide for ten spaces so it seems  
15 to me that this is not a legal non-conformity and that  
16 we would still have to address the discrepancy in  
17 parking and then we would still have to address the  
18 discrepancy in parking.

19 MS. SIKORSKI: I don't want to interrupt  
20 you but I think they were calculating based on the  
21 6,000 number because if you use the church calculation  
22 you come out with four to five parking spaces I think.  
23 I mean I don't think you come out with ten.

24 MR. ZAIDAIN: Okay.

25 MS. SIKORSKI: I'm not sure of the exact

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1 number it needs. The church regulation envisions more  
2 I think of a church setting where you have pews and  
3 that kind of thing and so it's all kind of hard to  
4 extrapolate.

5 MR. ZAIDAIN: Oh, I agree.

6 CHAIRPERSON GRIFFIS: Yes, but why are we  
7 talking about the church?

8 MR. ZAIDAIN: Well, regardless I was just  
9 trying to figure out the argument has been put forward  
10 that this is a legal non-conformance.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. ZAIDAIN: So I was just trying to --

13 CHAIRPERSON GRIFFIS: No, I think it's an  
14 excellent point.

15 MR. ZAIDAIN: I was just trying to settle  
16 that.

17 CHAIRPERSON GRIFFIS: In your opinion it  
18 is not a legal non-conformity is that correct?

19 MR. ZAIDAIN: Right now I'm trying to  
20 figure out what Sojourners parking would have been  
21 required for it.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. ZAIDAIN: I take it this was self  
24 certified, correct?

25 CHAIRPERSON GRIFFIS: Yes.

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1 MS. MILLER: I just want to ask a  
2 clarifying question. The certificate of occupancy  
3 that you got you went for a new certificate of  
4 occupancy because there was a change in ownership and  
5 it says but they didn't change the description of use  
6 so it still says church on it.

7 THE WITNESS: Right.

8 MS. MILLER: Okay, will you be needing a  
9 new certificate of occupancy?

10 THE WITNESS: Yes, absolutely as soon as  
11 this approval is obtained or some solution on this  
12 application.

13 MS. MILLER: So and it will reflect then a  
14 change of use to community center from church?

15 THE WITNESS: Yes.

16 MS. MILLER: I'm just asking that because  
17 the grand-fathering question. It says church and  
18 there already was a grand-fathered waiver apparently  
19 of the spaces for the church.

20 THE WITNESS: Right. It was just much  
21 easier because we were waiting for the zoning  
22 application to be processed so we wanted this resolved  
23 and we'll obviously have to go back and obtain a new  
24 certificate of occupancy to reflect the actual use of  
25 the building.

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1 MS. MILLER: Okay so our issue is then if

2 --

3 THE WITNESS: This is far more important  
4 than the certificate of occupancy, the zoning issue.

5 MS. MILLER: If the use changes then  
6 whether the grand-fathering for the parking.

7 MR. HOOD: What was your reasoning for not  
8 changing the -- what was your rationale?

9 THE WITNESS: Pardon me?

10 MR. HOOD: Have you finished answering her  
11 question?

12 THE WITNESS: I just wanted to further  
13 elaborate on that. The building even though it was  
14 operated by Sojourner and Sojourner is a church-based  
15 organization it was never used as a church. It was  
16 always used as a community center for the last 20  
17 years.

18 CHAIRPERSON GRIFFIS: Okay.

19 THE WITNESS: Okay.

20 CHAIRPERSON GRIFFIS: Not much we can do  
21 with that though.

22 THE WITNESS: Yes, right, just for  
23 background information.

24 CHAIRPERSON GRIFFIS: Right. Okay.

25 MR. HOOD: That's okay.

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1 CHAIRPERSON GRIFFIS: I understand this  
2 may look problematic if you haven't done this before  
3 and we don't usually do this. Obviously we have  
4 problems. I think the board has serious problems with  
5 how the application is brought to us and whether it's  
6 full and complete or not.

7 My understanding at this point would be  
8 first of all the Office of Planning may have not  
9 calculated the parking requirement correctly; however,  
10 have evidenced the issue that there is a parking  
11 requirement.

12 And so I think we're going to need to take  
13 a look at that so we have several things and this is  
14 what I would propose. First, we'll go and continue  
15 this. We'll have cross-examination now on this issue.

16 Why don't we go because people are here to  
17 give testimony, hear the testimony. At the end of  
18 that and we will go to what needs to be submitted and  
19 we'll clarify everything and it may be an amendment to  
20 the application and if that's the case if we can  
21 decide that quickly today we'll announce that and then  
22 we'll set this for next week. If we are just taking  
23 in new information so be it. We'll have new  
24 information and set that.

25 THE WITNESS: Absolutely.

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1 CHAIRPERSON GRIFFIS: So just to bring  
2 everyone around. Is there additional information you  
3 wanted to provide, anything further? Okay, let's go  
4 to cross-examination then.

5 MS. BRIZILL: Mr. Griffis, I'd like to  
6 cross-examine the people who just testified.

7 CHAIRPERSON GRIFFIS: Absolutely.

8 MS. BRIZILL: As well as Office of  
9 Planning.

10 CHAIRPERSON GRIFFIS: Okay.

11 MS. BRIZILL: Okay. Mr. Lui you just  
12 testified that to your knowledge the building was used  
13 as a community center for the last 20 years. On what  
14 do you base that?

15 THE WITNESS: Based on our conversation  
16 with the executive director of Sojourner.

17 MS. BRIZILL: And you just indicated that  
18 Sojourner just owned it since 1982 as a church. A  
19 church is not the same as a community center.

20 THE WITNESS: That's correct. However,  
21 again, based on our conversation with Mr. Jim Wallace,  
22 who is the executive director of Sojourner, he has  
23 previously told us that the building was used for and  
24 it was indeed for community center. He was operating  
25 a number of community programs out of that building.

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1 MS. BRIZILL: Mr. Lui the certificate of  
2 occupancy and indeed any of the residents such as  
3 myself who've lived in that block for more than 25  
4 years will tell you that it was first and foremost a  
5 church and only in its later years did it become more  
6 of a community center but it was always still a  
7 church.

8 CHAIRPERSON GRIFFIS: Do you have a  
9 question.

10 MS. BRIZILL: So your comment is simply  
11 based upon what you were told by Jim Wallace?

12 THE WITNESS: Yes.

13 MS. BRIZILL: Ms. Sikorski you said in  
14 your statement that the organization has made no  
15 change to the parking that Sojourners had is that  
16 correct?

17 MS. SIKORSKI: Yes.

18 MS. BRIZILL: On what do you base that  
19 statement?

20 MS. SIKORSKI: Based on the architectural  
21 drawings and what they're proposing to do to the  
22 structure which is only to build an external  
23 staircase.

24 MS. BRIZILL: Ms. Sikorski you are aware  
25 that the rear of the building had a concrete slab that

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1 was used for parking that has been taken up and re-  
2 sodded so the rear, there was parking in the rear of  
3 the building which no longer exists. I assume as the  
4 architect you would know that, right?

5 MS. SIKORSKI: I'm not the architect.

6 CHAIRPERSON GRIFFIS: She's the attorney.

7 MS. BRIZILL: Okay, I need to call the  
8 architect then. Mr. Mushinsky, Ms. Sikorski has  
9 indicated that there has been no change in parking  
10 that the Sojourners had.

11 As the architect of record for the  
12 property are you aware that there was a concrete slab  
13 at the rear of the property that took up the entire  
14 yard and side yard and that that was the parking for  
15 Sojourners and that that is no longer available  
16 because that entire rear yard has been sodded over?

17 MR. MUSHINSKY: When the property was  
18 bought there was a concrete slab in the rear yard. It  
19 did not take up the entire rear yard. There was also  
20 a concrete driveway that ran from Girard Street back  
21 to --

22 MS. BRIZILL: Mr. Mushinsky that concrete  
23 slab would you acknowledge did provide for parking on  
24 it by Sojourners and the trucks that came to  
25 Sojourners, am I not right?

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1 MR. MUSHINSKY: I believe that's the case.  
2 I was not there when Sojourners was there so I don't  
3 know how they used it.

4 MR. BRIZILL: Okay, Mr. Mushinsky in your  
5 architectural conceptual rendering for improvements to  
6 the property you were going to build a structure at  
7 the rear of the building which would be the rear yard  
8 where there had been parking is that correct?

9 MR. MUSHINSKY: Not accurate.

10 MS. BRIZILL: Well, what part not  
11 accurate?

12 MR. MUSKINSKY: The stair that is proposed  
13 which shows on the rendering is at the western portion  
14 of the rear yard against the house. The slab, the  
15 amount of slab that was removed there probably imposed  
16 itself onto that footprint by maybe five percent or  
17 ten percent of the actual slab that was there.

18 What was done to clarify the reason the  
19 slab was removed because the slab was settled and the  
20 water was ponding in the rear yard. There was no way  
21 to get at it.

22 MS. BRIZILL: Mr. Mushinsky I'm not  
23 interested in that. I'm simply trying to get to the  
24 issue that there has been a change in the parking.

25 CHAIRPERSON GRIFFIS: What we're going to

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1 do is just have direct questions and simple direct  
2 answers.

3 MS. BRIZILL: The parking at the property  
4 because there was the driveway and there was rear  
5 parking there was no longer the availability of rear  
6 parking. There was simply parking in the driveway and  
7 that's simply the only thing I was trying to get at.

8 CHAIRPERSON GRIFFIS: Is that your  
9 understanding?

10 MR. MUSHINSKY: That's correct at this  
11 time.

12 CHAIRPERSON GRIFFIS: Okay.

13 MS. BRIZILL: I have a question for Mr.  
14 Lui I guess.

15 MR. DANG: His last name is Bui, B-U-I.

16 MS. BRIZILL: Okay, I'm sorry. You are  
17 providing testimony to the board that parking for the  
18 building would be provided in the driveway running  
19 adjacent to the property am I correct?

20 THE WITNESS: Yes.

21 MS. BRIZILL: The board has used the term  
22 stacked parking.

23 THE WITNESS: Yes.

24 MS. BRIZILL: Do you have any problems  
25 with that term?

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1 THE WITNESS: No.

2 MS. BRIZILL: Are you aware of the fact  
3 that as you've already indicated that immediately to  
4 the east of your property is a facility known as  
5 Easter Seal that is a school and a healthcare facility  
6 for crippled children, are you aware of that?

7 THE WITNESS: Yes.

8 MS. BRIZILL: Are you aware that on a  
9 regular basis school busses and other vehicles that  
10 service that building come and use the 1300 block of  
11 Girard Street, are you aware of that?

12 THE WITNESS: Yes.

13 MS. BRIZILL: Are you aware of the fact  
14 that on many occasions that fact that you have had  
15 cars stacked in the driveway where they have had to  
16 pull out into the street essentially cutting off  
17 school busses from getting to Easter Seal on many,  
18 many, many a day, are you aware of that?

19 THE WITNESS: That I'm not aware of. I  
20 don't think that the parking is being used that way  
21 right now.

22 MS. BRIZILL: Well, if I am the first car  
23 into the driveway or even the second car into the  
24 driveway and you're claiming you can stack five in  
25 that driveway how does the first or second car get out

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1 unless all of them pull out so that the first and  
2 second car can get out? How does that happen?

3 THE WITNESS: Like I say most of our staff  
4 do not use, do not come and use the parking space and  
5 those who do use it --

6 MS. BRIZILL: Your current staff.

7 THE WITNESS: Yes.

8 MS. BRIZILL: Your current staff.

9 THE WITNESS: Yes.

10 MS. BRIZILL: On your website you talk  
11 about your programs and you say that each participant  
12 in your after school program, for example, has a  
13 teacher, a mentor, a family support worker and an  
14 education advocate so that when you use the population  
15 number of 150 people you serve you have to use a  
16 multiplier because you're also talking about the  
17 parent possibly visiting facility, the mentor visiting  
18 the facility, a social worker visiting the facility.  
19 So, are you saying that none of these people are going  
20 to be driving?

21 THE WITNESS: Well, if you were looking at  
22 our applications most people we serve are actually in  
23 the community so they don't drive.

24 MS. BRIZILL: I'm not talking about the  
25 people you serve. I'm talking about the teachers, the

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1 mentors, the social workers and the education  
2 advocates.

3 THE WITNESS: There is a Metro station  
4 two, three blocks away and most of our mentors are  
5 after the orientation they're encouraged to meet the  
6 student outside the facility. Only when they are  
7 needed they will come to the facility to get the  
8 orientation and information.

9 MS. BRIZILL: Are you aware of the fact  
10 that at least twice a week there is alternate street  
11 parking in that block that requires only parking on  
12 one side of the street and that puts a tremendous  
13 pressure on the existing parking in that block  
14 already?

15 THE WITNESS: I'm aware of that. Again,  
16 we don't have any, we haven't had any problem parking  
17 our cars and, again, the people we use, the people on  
18 our staff right now are using the space I think is  
19 only about, I think we have about two, three people  
20 currently using parking space and we don't anticipate.

21 MS. BRIZILL: I'd like to stress I  
22 appreciate your honesty but you're talking about the  
23 people currently on staff.

24 THE WITNESS: Okay.

25 CHAIRPERSON GRIFFIS: And the board is

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1 well aware of that. We've been through this a lot of  
2 time.

3 MS. BRIZILL: I'd like to ask some  
4 questions of the Office of Planning.

5 CHAIRPERSON GRIFFIS: Yes.

6 MS. BRIZILL: Okay. I'm sorry I've lost  
7 your name.

8 MS. THOMAS: Karen.

9 MS. BRIZILL: What's your last name  
10 please?

11 MS. THOMAS: Thomas.

12 MS. BRIZILL: Ms. Thomas could I ask you  
13 some questions about the preparation. How did you  
14 prepare your memo and recommendations contained in it?  
15 Did you come out to the site?

16 MS. THOMAS: Yes, I did do one site visit.

17 MS. BRIZILL: What did that site visit  
18 consist of? Did you just go to the building 1323 or  
19 did you make any inquiries about what was going on in  
20 the rest of the block around the corner? I'm just  
21 trying to --

22 MS. THOMAS: We looked, I looked at what  
23 existed on the corner. I looked at the Easter Seal  
24 Foundation building, the residence, at the side of it,  
25 just looked at the street in general.

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1 MS. BRIZILL: Okay. Ms. Thomas are you  
2 aware of the number of other community-based  
3 residential facilities the large number of community  
4 programs, the other number of community centers or  
5 community such facilities in very, very close  
6 proximity to the subject property?

7 MS. THOMAS: The center, I looked at the  
8 center, the Easter Seal Foundation which was -- which  
9 is next door to this proposed community center. I  
10 looked at it. It's listed as an educational facility.  
11 It's not listed as a community-based residential  
12 facility.

13 I am aware that there are a number of  
14 community-based residential facilities in and around  
15 the Columbia Heights and Mt. Pleasant neighborhoods.

16 MS. BRIZILL: I would like to not use the  
17 term community-based residential facilities. What I  
18 would like to use is the term community facilities to  
19 include a whole range of things such as community  
20 centers, community-based residential facilities.  
21 Those things --

22 CHAIRPERSON GRIFFIS: Let me cut to the  
23 chase of the question. What ones are you aware of and  
24 what ones did you observe adjacent, around, in the  
25 square, adjacent to the square? Let's get through

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1 this quickly.

2 MS. THOMAS: I did not make a note of it.

3 We looked at it strictly from the point of community  
4 centers. We were aware that there are a number of  
5 similar type facilities but we looked at it from the  
6 point of community center and it's governed under  
7 different regular as the other facilities.

8 CHAIRPERSON GRIFFIS: Can you tell us  
9 which ones you are aware of?

10 MS. THOMAS: No, I can't.

11 CHAIRPERSON GRIFFIS: Okay.

12 MS. BRIZILL: Ms. Thomas did you look at  
13 1308 Girard Street?

14 MS. THOMAS: I'm not familiar with that  
15 address.

16 MS. BRIZILL: It's directly across the  
17 street from 1323. The numbers are slightly off but  
18 it's directly across the street.

19 CHAIRPERSON GRIFFIS: Right and what's the  
20 pertinence?

21 MS. BRIZILL: The pertinence is that it's  
22 a group home for --

23 CHAIRPERSON GRIFFIS: No, no, no. I don't  
24 want a statement. My point would be in direction of  
25 cross-examination bundle all the questions into one.

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1 MS. BRIZILL: Okay.

2 CHAIRPERSON GRIFFIS: Get them -- 1308 are  
3 you aware it's a CRBF that's across the street?

4 MS. BRIZILL: Okay.

5 CHAIRPERSON GRIFFIS: Is that your  
6 question?

7 MS. BRIZILL: Yes, are you aware?

8 MS. THOMAS: No.

9 MS. BRIZILL: Are you aware of 1318 and  
10 1320 Harvard Street which is directly behind this  
11 property across the alley?

12 CHAIRPERSON GRIFFIS: Is what?

13 MS. BRIZILL: As a drug treatment facility  
14 owned by Second Genesis?

15 MS. THOMAS: No.

16 MS. BRIZILL: Are you aware of 1313  
17 Harvard Street again directly across Harvard Street in  
18 the alley from the subject property as a residential  
19 facility for the mentally retarded?

20 MS. THOMAS: No.

21 MS. BRIZILL: Are you aware of 2801 13th  
22 Street which is a building at the corner of 13th and  
23 Girard on the northeast corner which is a residential  
24 facility for pregnant women?

25 MS. THOMAS: I'm aware of a facility. I

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1 don't know what type it was.

2 MS. BRIZILL: Okay are you aware of 2801  
3 14th Street, a senior citizen residential facility as  
4 well as senior citizen community center?

5 MS. THOMAS: At the corner, I'm not aware  
6 of the address is that at the corner of Girard?

7 MS. BRIZILL: Yes.

8 MS. THOMAS: Yes.

9 MS. BRIZILL: Are you aware of 1241 Girard  
10 Street, a residential facility for homeless women  
11 operated by Samaritan Inn?

12 MS. THOMAS: No.

13 MS. BRIZILL: Are you aware of 1238  
14 Harvard Street which is at the corner of 13th and  
15 Harvard Street?

16 CHAIRPERSON GRIFFIS: Ms. Brizill, if I  
17 can interrupt you because I asked the direct question  
18 what was she aware of? Tell us all the ones. She  
19 said she didn't know so going through it --

20 MS. BRIZILL: Okay, I would like to put on  
21 the record all these addresses that she doesn't know.

22 CHAIRPERSON GRIFFIS: Absolutely  
23 appropriate in the case presentation I would expect  
24 that.

25 MS. BRIZILL: Okay. Okay, I would just

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1 like to submit for the record all the other ones that  
2 are in.

3 CHAIRPERSON GRIFFIS: And do that not in  
4 cross-examination in your case presentation. Any  
5 other questions of the Office of Planning?

6 MS. BRIZILL: Could I ask the Office of  
7 Planning if, in fact, they were to assess the  
8 appropriateness of this facility in terms of noise and  
9 traffic? You didn't make an assessment of what other  
10 things such as community-based residential facility,  
11 community centers, community facilities, community  
12 projects that also might be straining the community?

13 MS. THOMAS: We are quite aware of the  
14 fact that there are a lot of residential type  
15 facilities and community type facilities in and around  
16 Columbia Heights and Adams Morgan, Mt. Pleasant  
17 neighborhood.

18 However, this was looked at specifically  
19 as a community center. We understand and appreciate  
20 the impact but we did look at the impact. We did ask  
21 DDOT's opinion on this. It was looked at as something  
22 that's very localized within walking distance of the  
23 Metro and within walking distance for the communities  
24 it is intended to serve.

25 MS. BRIZILL: I want to again stress, Ms.

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1 Thomas, that the list of facilities I was going to  
2 enumerate was not just community-based residential  
3 facilities. They did include community centers,  
4 community facilities and community programs.

5 CHAIRPERSON GRIFFIS: This is cross-  
6 examination, Ms. Brizill, not testimony.

7 MS. BRIZILL: Thank you.

8 CHAIRPERSON GRIFFIS: Any other questions?

9 MS. BRIZILL: One more. When you came out  
10 to look at 1323 Girard Street did any concern arise in  
11 you regarding the issue of parking?

12 MS. THOMAS: Yes. I did consider parking  
13 as an issue. I looked at the application. I didn't  
14 see that it applied for parking. That's why I raised  
15 it in the report.

16 MS. BRIZILL: Can you tell me why the  
17 application was not amended to reflect that concern  
18 because that was the first thing that struck me when I  
19 looked at the application?

20 CHAIRPERSON GRIFFIS: OP doesn't amend  
21 applications.

22 MS. THOMAS: We don't amend applications.

23 MS. BRIZILL: Okay.

24 CHAIRPERSON GRIFFIS: Anything else? Thank  
25 you very much. Does the ANC have any cross-

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1 examination?

2 MR. SPALDING: No.

3 CHAIRPERSON GRIFFIS: Very well. Let's go  
4 to the ANC report.

5 MR. SPALDING: Phil Spalding. I live at  
6 1929 13th Street, N.W., 20009 and I represent ANC 1B.  
7 The member district commissioner in whose territory  
8 this establishment would be is Charles Glover. He was  
9 present at the meeting in which we considered this and  
10 he is in full support and he lives in the next block,  
11 the 1200 block of Girard Street. In terms of brevity  
12 you do have our letter?

13 CHAIRPERSON GRIFFIS: Yes.

14 MR. SPALDING: Then I'll just stand on the  
15 letter.

16 CHAIRPERSON GRIFFIS: Excellent. Thank  
17 you. Any questions from the board?

18 MR. HOOD: I just have a question.  
19 Commissioner, do you know if Mr. Glover, I believe you  
20 said, was the SMD.

21 MR. SPALDING: Yes, he is.

22 MR. HOOD: Did he have a, while I know  
23 it's not required but did he have a single member  
24 district meeting with his constituents?

25 MR. SPALDING: Not to my knowledge, no.

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1 We did have a very good turnout at that ANC meeting  
2 and we did have a reasonable discussion of the  
3 presentation. There was no objection raised at the  
4 meeting.

5 MR. HOOD: Okay, thank you.

6 CHAIRPERSON GRIFFIS: Ms. Miller.

7 MS. MILLER: I'm just wondering if you're  
8 aware of what the parking situation was when the  
9 church was there, especially with respect to the rear  
10 yard parking that we've just heard may have been  
11 removed?

12 MR. SPALDING: No and none of that was  
13 brought up at the meeting.

14 MS. MILLER: Okay.

15 CHAIRPERSON GRIFFIS: Cross-examination?  
16 Actually does the applicant have any cross-examination  
17 first?

18 THE WITNESS: No.

19 CHAIRPERSON GRIFFIS: None, okay.

20 MS. BRIZILL: Mr. Spalding you just  
21 testified that to your knowledge Mr. Glover did not  
22 have an ANC single member district meeting?

23 MR. SPALDING: Not to my knowledge, no.  
24 He has never mentioned that to me.

25 MS. BRIZILL: Okay. Go your knowledge did

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1 Mr. Glover come and talk to any of the neighbors or  
2 residents who would be dramatically impacted by this  
3 facility?

4 MR. SPALDING: At the meeting I remember  
5 Mr. Glover saying that he had discussed this  
6 application with people who lived in the vicinity but  
7 beyond that I can't be any more --

8 MS. BRIZILL: Could you identify any of  
9 those people?

10 MR. SPALDING: No, not at this time.

11 MS. BRIZILL: Okay, thank you.

12 CHAIRPERSON GRIFFIS: Anything else?  
13 Follow up questions for the board? It's always good  
14 to see you sir. Thank you very much for being here  
15 this afternoon. Okay that's all the government  
16 reports I have attendant to this application unless  
17 anyone is aware, are you aware of any other government  
18 reports that were submitted?

19 THE WITNESS: No.

20 CHAIRPERSON GRIFFIS: Very well. Can I  
21 have a quick show of hands of those that are here to  
22 testify as persons in support of the application?  
23 Persons in support. Okay. Let's go to testimony at  
24 this time.

25 MR. SCHORTINGHOUSE: Good afternoon. I'm

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1 Bill Schortinghouse. I live at 1326 Girard Street,  
2 N.W. I own the property that's immediately across the  
3 street from the proposed facility.

4 MS. BAILEY: Mr. Schortinghouse were you  
5 sworn in?

6 MR. SCHORTINGHOUSE: Yes, I was.

7 MS. BAILEY: Did you take the oath, okay.

8 MR. SCHORTINGHOUSE: Yes, ma'am. I work  
9 from home. My office is in the front of my house so I  
10 have a view of this property in the street all day  
11 long since I'm working on my computer.

12 I've had the pleasure of interacting with  
13 the people that have been at the Asian-American LEAD  
14 for over a year. I have been inside their facility.  
15 I have met the children that are benefitting from the  
16 program.

17 I've met their directors and also met some  
18 of their staff. I've always been treated with great  
19 courtesy and I believe that this is an important  
20 project in our neighborhood.

21 As you know Columbia Heights has great  
22 diversity and this project will work toward  
23 benefitting a group of people who are under served and  
24 that are a member of our community and trying very  
25 desperately to become assimilated. This will be

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1 providing them a space and a nice residential setting  
2 that can help them become culturally attuned to our  
3 country and fit in and also will provide an  
4 opportunity for them to socialize in a nice  
5 environmental setting such as a residential area  
6 instead of in a high rise or on a commercial street.

7 Also this organization has already  
8 beautified the landscape and have taken great pains to  
9 beautify the building itself plus I have seen the  
10 proposed development and while you all are going to be  
11 addressing the parking issue and the other life safety  
12 I believe that the changes that they are making to the  
13 structure will not negatively impact my neighborhood.

14 The site is bordered by commercial shops  
15 on 14th Street so there's easy access for anything  
16 that the children need since nothing will be provided  
17 in the way of food service and also because they have  
18 access to the 14th Street bussing corridor and they're  
19 three blocks from the Metro station many of them will  
20 have easy access to this facility as well.

21 As far as the parking in the neighborhood  
22 I've been in this neighborhood since 1995. At that  
23 time, Sojourners was used exclusively as a daycare  
24 center and other types of community meeting times.  
25 They were running social programs from this

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1 organization and to my knowledge from 1995 on have  
2 never functioned as a church.

3 So, as far as the parking goes and the use  
4 goes being aware of that 1995 forward there have been  
5 no church services there to my knowledge.

6 This is a very small facility. I believe  
7 it's in keeping and character with the other  
8 properties in the neighborhood. The other facilities  
9 that we have, for example, across the street from that  
10 is a ward of the court for young men and the facility  
11 is a private residential facility.

12 The kids that are there are away during  
13 the day and they come there only in the evening. All  
14 of these facilities such as Easter Seals and Second  
15 Genesis which are the drug treatment facility behind  
16 this and the ward of the court facilities and the  
17 other residential units that are in our neighborhood  
18 of which we have many generally provide parking for  
19 staff behind the properties in the alley access.

20 Certainly there are two spaces behind for  
21 the residential ward of the court program. Easter  
22 Seals of course has 30 parking spaces. The NCB  
23 Estates have an entire probably 80 parking space  
24 parking lot that are dedicated to their community  
25 center and their facility.

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1                   So I have not noticed any impact  
2 negatively for the parking for this use of the  
3 facility. However you guys work out the driveway or  
4 the rear yard parking there has not been an impact for  
5 the number of cars coming and going from this  
6 facility.

7                   The side of the street that this property  
8 is on is consumed in large part by the large facility  
9 of Easter Seals and their parking lot. Then there is  
10 this facility basically four houses. This facility,  
11 Dr. Brizill's house, a single family residence and  
12 then adjacent to her property are two transient  
13 lodging, unlicensed transient lodging facilities. One  
14 is for the short term and the other has longer term  
15 tenants.

16                   The entire balance of that side of the  
17 street is the NCB Estates with their giant parking  
18 lot. None of those really impact since we have such a  
19 small number of actual residences on that side of the  
20 street, that entire side of the street is available  
21 for residents on my side of the street for parking.

22                   And so I don't believe that having this  
23 community center working during daytime when most of  
24 my neighbors are working away is going to impact the  
25 parking situation.

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1           Also I'm sure that the other residential  
2 facilities are providing adequate parking per code  
3 because they all have to be licensed. And also I  
4 believe having interacted with a number of the  
5 residents that all of those facilities that because  
6 they are generally indigent they do not have cars of  
7 their own and they are not contributing to the parking  
8 issue in the neighborhood.

9           I also believe that this facility will be  
10 serving the youth as risk which is a very, very strong  
11 problem in Columbia Heights right now and this will be  
12 providing a safe space for children in our  
13 neighborhood and I applaud their use of this facility  
14 for doing that and I would like very much for you to  
15 favorably approve their application.

16           CHAIRPERSON GRIFFIS: Excellent. Thank  
17 you very much Mr. Schortinghouse. So, I understand  
18 your testimony and all of it, don't go anywhere, have  
19 a seat, to indicate support for the application.  
20 However, if the application would be amended --

21           MS. BAILEY: Mr. Griffis, your microphone.

22           CHAIRPERSON GRIFFIS: Sorry, it just went  
23 off. You still wouldn't have any objection to the  
24 application if it was amended for relief from the  
25 parking requirement?

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1 MR. SCHORTINGHOUSE: I would not.

2 CHAIRPERSON GRIFFIS: Okay, thank you.  
3 Other questions from the board? Cross-examination by  
4 the applicant? ANC? Parties in opposition? Thank  
5 you very much. Any other persons here to testify in  
6 support of the application, support of the  
7 application?

8 Let me see are there persons here in  
9 opposition to the application to give testimony today,  
10 not parties. I know you're going to present a case.  
11 Okay. This is what I suggest. This is what I propose  
12 is that we continue this next week.

13 In that time we're going to clarify.  
14 We're going to have the applicant clarify the relief  
15 needed for the parking and any amendment to that. Of  
16 course this is all going to happen very fast because  
17 what's going to happen is all that information comes  
18 into the Office of Zoning.

19 It also needs to be served on the parties.  
20 The reason why I have a breaking point at this  
21 standpoint is that then it would give an opportunity  
22 for the presentation to the party's case, the party in  
23 opposition with that amended application.

24 I do not believe that we would have to go  
25 and revisit any other of the reports attendant to the

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1 application so we could just finish at that point.

2 Questions from the board?

3 MR. ZAIDAIN: Well, I hope this isn't,  
4 well this is going to probably make it a little bit  
5 muddier. We've got OCC saying that the standard for  
6 evaluating parking is one, Office of Planning saying  
7 it's another.

8 I need to look into it further. I think  
9 they both have some merit. I mean is there a way we  
10 can get some sort of opinion, get some additional  
11 guidance maybe from --

12 CHAIRPERSON GRIFFIS: I think that's  
13 exactly what we're going to get but we're not getting  
14 it here on the record at this late hour.

15 MR. ZAIDAIN: No, I'm just saying for the  
16 submittals.

17 CHAIRPERSON GRIFFIS: Absolutely. We're  
18 going to ask the applicant to sit before we leave with  
19 the Office of Zoning and then OCC and OP can chime in  
20 and get their opinion. Let's get it straight. All I  
21 want is something fairly clear when it comes back to  
22 us. Any other questions, clarifications from the  
23 board? Yes.

24 MS. MILLER: I have a question.

25 CHAIRPERSON GRIFFIS: A follow-up question

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1 from anyone that's given testimony. Yes, Ms. Miller.

2 MS. MILLER: I have a follow-up question  
3 for I think this is for Ms. Sikorski. We were  
4 discussing earlier the question of grand-fathering the  
5 parking and I wanted to ask you if you knew what the  
6 parking arrangement was for the church?

7 MS. SIKORSKI: I only know based on what  
8 the layout of the building is and where the driveway  
9 was and my understanding was that they were just using  
10 the driveway.

11 MS. MILLER: For how many spaces?

12 MS. SIKORSKI: Four or five I guess is  
13 what he's saying. I mean I did speak, unfortunately I  
14 didn't write it down who I spoke with but I did speak  
15 with someone in the zoning office about this issue  
16 before we did the application to make sure we did it  
17 the right way and they told me that this was the way  
18 to do it.

19 CHAIRPERSON GRIFFIS: Yes, we're not,  
20 that's fine.

21 MS. SIKORSKI: Yes, I don't know.

22 THE WITNESS: We'll check the application  
23 and make sure we're complying.

24 MS. SIKORSKI: It may be best to call back  
25 up the person who just testified because he was living

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1 there. I don't know exactly how many cars they parked  
2 in their driveway.

3 CHAIRPERSON GRIFFIS: When you purchased  
4 the property was there striping parking in the back on  
5 the concrete slab? No striping?

6 MS. DANG: You know when I came to the  
7 property there was a little slab of cement and it was  
8 all cracked and actually even one car would not fit in  
9 the slab.

10 CHAIRPERSON GRIFFIS: Got you.

11 MS. DANG: You know and so I mean it's so  
12 hard for Asian-Americans.

13 CHAIRPERSON GRIFFIS: Totally understood.  
14 I think a board member had an idea that this was a  
15 parking lot that we could count the parking spaces and  
16 then it all went away. That's not the case,  
17 understood. Okay, further questions.

18 MS. DANG: I just want to clarify one  
19 point. We serve a lot of children and families but  
20 our mentors they meet outside of the center.

21 CHAIRPERSON GRIFFIS: Okay.

22 MS. DANG: Our mentors meet outside the  
23 center.

24 CHAIRPERSON GRIFFIS: Okay.

25 MS. DANG: Also we have an after school

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1 program at Bangkok Elementary School, you understand,  
2 so.

3 CHAIRPERSON GRIFFIS: Well and just for  
4 your clarification too we're not making this up as we  
5 go. There's a chart in the regulations that tells us  
6 what your parking requirement is. All we're asking  
7 you is to address that.

8 THE WITNESS: We will comply with that.

9 CHAIRPERSON GRIFFIS: To say whether you  
10 make it, you don't and if you don't how are you going  
11 to deal with it?

12 THE WITNESS: Right.

13 CHAIRPERSON GRIFFIS: Excellent.

14 MS. DANG: Thank you.

15 CHAIRPERSON GRIFFIS: Anything else,  
16 clarifications? Okay so yes.

17 MS. BRIZILL: Mr. Griffis in terms of  
18 leaving the record continuing this next week what  
19 would be our role then because clearly we have  
20 information, knowledge of the parking lot in the back  
21 of the property and that is something in contention.  
22 I just want to be clear as regards addressing this  
23 issue of parking and what we can --

24 CHAIRPERSON GRIFFIS: Why don't you serve  
25 it on the applicants so they have it and serve it into

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1 the record. Do you have documentation you want to put  
2 in the record now?

3 MS. BRIZILL: Yes. Yes. No, no not right  
4 now but I mean.

5 CHAIRPERSON GRIFFIS: I mean now when you  
6 leave.

7 MS. BRIZILL: Right, okay. The parking  
8 lot has been big enough for a central kitchen to make,  
9 to turn around large trucks in that back yard.

10 CHAIRPERSON GRIFFIS: Okay.

11 MS. BRIZILL: Okay.

12 CHAIRPERSON GRIFFIS: I'm not sure what  
13 that means but nonetheless.

14 MS. BRIZILL: It's not a little concrete  
15 slab like Ms. Dang would like you to believe.

16 CHAIRPERSON GRIFFIS: Understood. It  
17 looks like we're going to talk a lot about parking.

18 THE WITNESS: We will review the  
19 regulation making sure it complies.

20 CHAIRPERSON GRIFFIS: Indeed so just to be  
21 absolutely clear we're going to set this. Staff is  
22 going to give me a time when we set this for next  
23 week. We're going to slip this one in. The record  
24 remains open because the testimony is not closed on  
25 this. So, any information that's gone into the record

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1 that's fine. Let's keep it rolling.

2 Note that anything you put into the record  
3 in the Office of Zoning has to be served to every  
4 other participant. That means the ANC, the applicant  
5 and the parties in opposition. I don't want to have a  
6 discussion next week how come this is in, they didn't  
7 give it to me.

8 Before you folks leave go out into the  
9 hall and figure out how you're going to serve each  
10 other because you got one week actually less than  
11 that. You probably have about two days to get all  
12 this in to make sure the board sees it.

13 So are you going to hand deliver it? Are  
14 you going to walk, meet in the center of the road,  
15 whatever it is make sure you know how you're doing it  
16 and we look forward to seeing you next week at -- no  
17 don't meet in the center of the road. That's not our  
18 board recommendation. We're going to make this first  
19 thing in the afternoon? Ms. Bailey?

20 MS. BAILEY: Mr. Chairman, first in the  
21 afternoon. There will only be three members next week  
22 Mr. Chairman.

23 CHAIRPERSON GRIFFIS: Is that right?  
24 That's fine. Mr. Etherly is not on this case so it  
25 works out somewhat correct. Very well, first in the

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1 afternoon, yes next Tuesday, the 9th of December,  
2 2003.

3 MS. BAILEY: And you were asking for the  
4 items that were mentioned today to be filed by this  
5 Friday.

6 CHAIRPERSON GRIFFIS: Yes.

7 MS. BAILEY: The 5th of December.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. BAILEY: And those items are coming  
10 from the applicant, a copy of the agreement that you  
11 have with Easter Seals for the parking, a petition  
12 with the signatures of persons who reside on the block  
13 and clarification of the parking requirement.

14 CHAIRPERSON GRIFFIS: Is that clear?

15 THE WITNESS: Clearly understood.

16 CHAIRPERSON GRIFFIS: Excellent, any  
17 questions, procedural questions? Okay, everyone is  
18 clear? Thank you all very much. I appreciate your  
19 patience. We'll see you here next week first thing in  
20 the afternoon on the 9th. That being said let's call  
21 the next case in the afternoon.

22 (Whereupon, the above-entitled matter was  
23 concluded at 3:53 p.m. and resumed at 4:05 p.m.)

24 CHAIRPERSON GRIFFIS: On the record.

25 MS. BAILEY: The next case, Mr. Chairman,

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1 is Application Number 17079 of Mark Lee Phillips,  
2 pursuant to 11 DCMR 3104.1, for a special exception to  
3 increase the number of sleeping rooms in a bed and  
4 breakfast, also known as a home occupation, from two  
5 to four or six rooms under subsection 203.8 and the  
6 provisions governing special exceptions within the  
7 Capitol Hill Overlay District under subsection 1202.1.

8 This site is located in the R-4 District at premises  
9 417 A Street, S.E., Square 818, Lot 27. Please stand  
10 to take the oath. Please raise your right hand.

11 (Witnesses sworn.)

12 MS. BAILEY: Thank you. Mr. Chairman,  
13 there are four requests for party status in this case.

14 CHAIRPERSON GRIFFIS: Excellent. Thank  
15 you. Board Members, let's pick up the request for  
16 party status at this time. Let me also just say lest  
17 you think that's the way applications go, what you  
18 have been sitting through, that is not the case. This  
19 is going to go according to our procedure and schedule  
20 because I'm anticipating that this is filed perfectly  
21 for us.

22 That being said, we have four requests for  
23 party status. Are they all present here? I'm sorry.

24 These are very difficult to read in copied form. Is  
25 Mr. Anders present? We also have a Mr. Berry, is that

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1 correct? We have a Mr. William Martin. We have  
2 Eiting, is that the pronunciation?

3 PARTICIPANT: She had to leave. She left  
4 a statement.

5 CHAIRPERSON GRIFFIS: If I understand that  
6 correctly, that party request had to leave. That  
7 being said, we have the first request for party status  
8 from Mr. Anders which is the adjacent party. First of  
9 all, let me ask if the other requests for party status  
10 have discussed joining under one party. In reviewing  
11 the application for party status, it seems to me there  
12 are similar issues, if not identical issues, attendant  
13 to all of them.

14 Secondly, of course anyone is able to  
15 present testimony as persons in the case proceeding.  
16 The standing for party status is a higher threshold  
17 that needs to be met. It's also a higher  
18 responsibility and participation. Some of that  
19 participation goes to presenting a full case and also  
20 conducting cross examination. You are a full  
21 participant in this.

22 In addition to that, the Board will  
23 require certain filings, submissions, evidence from  
24 parties. That is different than being a person just  
25 wanting to provide testimony. Are any of the party

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1 applicants that are requesting amenable to becoming  
2 persons to testify? No, so we're standing -- Why  
3 don't you come up then if you are going to say  
4 anything?

5 MR. ANDERS: Chris Anders at 415 A Street,  
6 S.E. Our request for party status is both for myself  
7 and for Aaron Schuham. Both names are on the  
8 application.

9 CHAIRPERSON GRIFFIS: Right. How about  
10 Mr. Barry, Mr. Martin, and Ms. Eiting?

11 MR. ANDERS: They are at different  
12 addresses.

13 CHAIRPERSON GRIFFIS: That I understand.  
14 They have similar issues. Have any of you that are  
15 requesting party status discussed joining under one  
16 party and presenting one case or sending one unified  
17 force in cross examination?

18 MR. ANDERS: We haven't discussed that. I  
19 could probably get back to you. We want to have an  
20 opportunity to cross examine.

21 CHAIRPERSON GRIFFIS: That's correct.

22 MR. ANDERS: I could check very quickly  
23 for you if we would just have one person do that.

24 CHAIRPERSON GRIFFIS: I will absolutely  
25 let you take a minute to discuss whether you join

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1 under one party. Let me also put it into this  
2 parameter. The last question which is the most  
3 important in my mind for reviewing party status  
4 requests is how one would be uniquely, distinctly, or  
5 significantly affected. If I have four people telling  
6 me they are all similarly affected, how are they  
7 uniquely affected?

8 And in expedition in any presentation of  
9 case, it will be repetitious. Repetitious testimony,  
10 case presentation, cross examination wouldn't be  
11 allowed. So conceivably the first party would cover  
12 everybody's issues and there would be nothing left to  
13 do. So why don't you take a minute and see if you  
14 want to join?

15 MR. ANDERS: Okay. Thank you.

16 (Pause.)

17 MR. ANDERS: We'll all join as one single  
18 party but if we could all have an opportunity to speak  
19 because different neighbors have different aspects of  
20 the testimony that they were going to present.

21 CHAIRPERSON GRIFFIS: Okay. We'll review  
22 that in terms of the request for party status now.  
23 Would it be your understanding that you would also  
24 join the party request from 107 Fifth Street, S.E.,  
25 Ms. Eiting?

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1 MR. ANDERS: Yes.

2 CHAIRPERSON GRIFFIS: In which case, does  
3 the Applicant have any objection to granting of the  
4 party status a single party status of what I will call  
5 the 5-A residents?

6 MR. NETTLER: No, we have no objection.

7 CHAIRPERSON GRIFFIS: No objection. Board  
8 Members, questions?

9 MEMBER ZAIDAIN: I actually just have a  
10 question in regards to the party status application  
11 for Mr. Anders. At the bottom of it, I guess these  
12 are witnesses you plan on calling during your case  
13 presentation.

14 MR. ANDERS: That was all potential  
15 witnesses. I think the witnesses that we would be  
16 calling are all the witnesses that are in the room  
17 today.

18 MEMBER ZAIDAIN: Okay.

19 MR. ANDERS: Which are all party witnesses  
20 now.

21 MEMBER ZAIDAIN: I notice that you had  
22 some D.C. agencies on there including MPD and DCRA.

23 MR. ANDERS: Yes, we won't be calling any  
24 of them.

25 MEMBER ZAIDAIN: Okay. Other than that, I

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1 have no objection, Mr. Chair.

2 CHAIRPERSON GRIFFIS: Okay. Any  
3 objections? Very well. We will grant a single party  
4 request in opposition to this application. We will  
5 let the record stay open for a name if you would like  
6 to propose one. Otherwise I'm going to refer to it as  
7 5-A. That goes to Fifth Street and A Street which is  
8 what the residents are on. Yes, question?

9 MEMBER MILLER: I just wanted to make a  
10 comment in response to Mr. Anders' question about  
11 could they all still be able to testify. I would  
12 think that they would be able to each make a statement  
13 because they would have been able to do that anyway as  
14 a person testifying. What this goes to is they would  
15 all be together on cross examination and filing papers  
16 and things like that.

17 CHAIRPERSON GRIFFIS: Right. Case  
18 presentation, I think we can do that. You also  
19 obviously are allowed to call witnesses. You can't  
20 have witnesses required to be here which is what Mr.  
21 Zaidain was essentially going to, MPD and DCRA. You  
22 cannot ask us to subpoena anybody for those witnesses.  
23 We'll clarify that if that comes up. Yes, for  
24 clarification, officially we'll have one person who  
25 will do cross examination of witnesses, one person

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1 from the party that would represent it.

2 MR. ANDERS: Just one clarifying question  
3 since none of us have been in front of you before, do  
4 the Federal Rules of Evidence apply if we want to make  
5 an objection to evidence being presented?

6 CHAIRPERSON GRIFFIS: Where's our legal  
7 counsel? She can answer that. Federal Rules of  
8 Evidence.

9 CORPORATION COUNSEL: The Board has its  
10 own rules in the Zoning Regs.

11 CHAIRPERSON GRIFFIS: That's correct.

12 CORPORATION COUNSEL: It's an  
13 administrative proceeding. So if you have an  
14 objection make it and the Board will consider it.

15 MR. ANDERS: But in terms of relevancy and  
16 objections.

17 CORPORATION COUNSEL: Yes.

18 CHAIRPERSON GRIFFIS: That's right.

19 MR. ANDERS: Thank you.

20 CHAIRPERSON GRIFFIS: Thank you very much.  
21 That being said, any other attendant preliminary  
22 issues? I'm not aware of any. Is staff aware of any?  
23 If not, let's proceed.

24 MR. NETTLER: You'll have to excuse me. I  
25 am just getting over a cold so I may lose my voice in

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1 and out. My name is Richard Nettler. I'm here on  
2 behalf of the Applicant for a special exception to  
3 deal with an increase in the number of rooms to be  
4 used as a bed and breakfast at the property address of  
5 417 A Street, S.E. from two to four.

6 I have a brief preliminary statement and  
7 then we have three witnesses who will offer testimony.

8 We have already provided you a pre-hearing statement  
9 with a number of different exhibits which we'll make  
10 reference to. You should each have a copy of the pre-  
11 hearing statement and that exhibit which has both  
12 pictures and other documents as I mentioned that we  
13 would be seeking to introduce.

14 I want to start off actually from the  
15 perspective of where this case began which was our  
16 position that in fact no special exception was  
17 actually necessary. The reason I start off from that  
18 place is because it's unfortunately the same place  
19 that was begun some years back with Swann Street which  
20 was a case heard by this Board involving a bed and  
21 breakfast in the Dupont Circle area.

22 It was somewhat of an interesting  
23 situation which at the time, back after these  
24 regulations were adopted to permit bed and breakfasts  
25 as a matter of right and to permit certain special

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1 exception relief with regard to bed and breakfasts and  
2 other home occupations, the Zoning Administrator and  
3 the Historic Preservation Division which worked with  
4 the Zoning Administrator had on a regular basis  
5 approved of applications to increase the number of  
6 rooms or for a bed and breakfast of six rooms as a  
7 matter of right on the basis of a certification  
8 received from the Historic Preservation Division, that  
9 time part of the DCRA, that the building was either a  
10 historic landmark or a building that contributed to a  
11 historic district.

12 The most prominent one of these is the  
13 mansion on O Street which many of you might be  
14 familiar with. It's a number of buildings, each of  
15 with had at the time a separate Certificate of  
16 Occupancy, each one increasing the units from two to  
17 six. Now, it's a much larger bed and breakfast.

18 This issue came up because at the time  
19 that Swann Street petitioned for or sought the same  
20 approval from the Zoning Administrator, the Zoning  
21 Administrator concluded that no instead the applicant  
22 had to seek relief from this Board under a special  
23 exception process. In that case, not only were they  
24 increasing it from two to six - it was a historic  
25 building - but wanted to go even further to increase

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1 it to nine as well to increase the number of  
2 individuals who would be employed on the premises.

3 The matter was heard by this Board as a  
4 special exception application rather than as an appeal  
5 which the staff had asked us as well to pursue in this  
6 situation. Nevertheless, the argument was made as I  
7 am making here today that the regulation, if you read  
8 it in the way that regulations are normally supposed  
9 to be read, provides for an increase of up to six  
10 rooms in a historic building that is certified.

11 I say that term "normal" because the  
12 regulation, while it may appear to be ambiguous, is  
13 written in the disjunctive rather than in the  
14 conjunctive. That means that it says that the maximum  
15 number of sleeping rooms shall be two. This is under  
16 the provision that we're dealing with here, C1.  
17 "Pursuant to 203.10(b), the maximum number of sleeping  
18 rooms may be increased to four or in a dwelling that  
19 is a historic landmark or is located in a historic  
20 district and certified as contributing, the number of  
21 sleeping rooms may be increased to six."

22 It doesn't say "and" so it must be read as  
23 an either/or situation in terms of what the number of  
24 sleeping rooms may be over and above two in what  
25 situations you can do so. This Board decided in the

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1 Swann Street case that indeed they agreed with the  
2 applicant that the maximum number of sleeping rooms  
3 for that premises, because it was certified, was six,  
4 went on to grant it a special exception to raise it  
5 from six to nine, and went on to grant the special  
6 exception provision that granted the other additional  
7 relief that was sought.

8 It's somewhat ironic because I represented  
9 the Dupont Circle Citizens Association in appealing  
10 that decision to the Court of Appeals on other  
11 grounds. The Court of Appeals has well recognized  
12 that under this provision a contributing building in a  
13 historic district is entitled to a maximum of six  
14 rooms. We raised this issue with the Zoning  
15 Administrator's Office and the Department of Consumer  
16 and Regulatory Affairs. Their position was that was  
17 dicta (PH).

18 The fact of the matter is it couldn't be  
19 dicta (PH) for reasons stated in the Court of Appeals  
20 decision. That is if there was a need to obtain  
21 relief to raise it to six under the special exception  
22 provision and then to obtain relief to go from six to  
23 nine because that's not provided in this provision -  
24 it would have been requiring another waiver for that  
25 provision - in addition to the other relief that was

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1 sought which was to have the additional person working  
2 there, then it would have been three special  
3 exceptions that are needed.

4 But under the Home Occupation Regulations,  
5 if you need more than two special exceptions, it must  
6 be treated as a variance. The Court of Appeals said  
7 so. So that's why it recognized there were only two  
8 special exceptions that were being obtained. That was  
9 to raise it from six to nine and to raise the number  
10 of employees from one to two.

11 Having said that, therefore, the decision  
12 on Swann Street by this Board is binding on this Board  
13 until either the Zoning Commission changes the  
14 regulations or until the Court of Appeals should rule  
15 otherwise in an appeal dealing with an interpretation  
16 of this regulation. But that decision is binding on  
17 this Board.

18 Nevertheless, in an abundance of caution  
19 and at the recommendation of your staff, we have  
20 pursued this as an application for a special  
21 exception. We are prepared to present the issues as  
22 to why a special exception nevertheless should be  
23 approved in this situation. We believe that we meet  
24 the requirements for both the general special  
25 exception requirements, the special requirements for

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1 relief under section 203.10(b) and as well as because  
2 this is in the Capitol District Overlay, the special  
3 exception requirements that apply there.

4 I note for the record that the Office of  
5 Planning is testifying in support of this application.

6 I'm sure you will hear from them. The Department of  
7 Transportation has found that there are no adverse  
8 consequences. The Architect of the Capitol has as  
9 well submitted a letter to that effect. We have some  
10 additional letters in support that we are willing to  
11 submit today as well.

12 MEMBER ZAIDAIN: Mr. Chair, I wanted to  
13 ask Mr. Nettler a question on this whole relief issue.

14 I know this is not an appeal, but at least on my  
15 tenure on the Board we have had a couple of these  
16 cases before us and we have had to deal with this  
17 regulation. I think it's an interesting situation.

18 What confuses me - and I wanted to hear what Mr.  
19 Nettler's opinion on this was - is why under  
20 203.8(c)(1) does it refer to 203.10(b) if it's not a  
21 special exception? If the intent of 203.8(c)(1) is to  
22 establish a matter of right provision, why does it  
23 refer to 203.10(b) which in my reading deals with  
24 aspects of a special exception review?

25 MR. NETTLER: Well, as I said, there are

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1 two points to that. One is you have to understand  
2 that the matter of right District-wide provision is  
3 that the maximum number of sleeping rooms is two.  
4 That's District-wide.

5 MEMBER ZAIDAIN: Right.

6 MR. NETTLER: Under (c)(1), the maximum  
7 number of sleeping rooms can be increased in our  
8 position in two circumstances. Either - the either is  
9 missing from the beginning of the sentence but it has  
10 to be read in the disjunct because of the or.

11 MEMBER ZAIDAIN: I understand.

12 MR. NETTLER: Either pursuant to  
13 203.10(b), the maximum number of sleeping rooms may be  
14 increased to four - that is everywhere in the District  
15 of Columbia outside of a contributing building in a  
16 historic district or historic landmark - or the  
17 maximum number of sleeping rooms may be increased to  
18 six if you are a building that is a historic landmark  
19 or a building certified historic in a historic  
20 district.

21 The reason why this Board concluded in the  
22 Swann Street case and as we argue here that the  
23 pursuant to 203.19(b) doesn't apply to the second  
24 component of (c)(1) is because the "and" would have to  
25 be in there for it to apply as distinct of the "or"

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1 because it's not a conjunctive phrase. It is a  
2 disjunctive phrase.

3 MEMBER ZAIDAIN: So you are saying when a  
4 building that is not a historic landmark or has not  
5 been certified by the SHIPO (PH) as contributing, if  
6 it wants to increase from two to four, it must go  
7 through the special exception process because of  
8 203.19(b).

9 MR. NETTLER: Right.

10 MEMBER ZAIDAIN: Then you are saying  
11 because of the word "or" being in there 203.10(b) is  
12 not applicable to the rest of that sentence.

13 MR. NETTLER: Right, instead, if a  
14 historic building wants to increase it beyond six, as  
15 was the case in Swann, then the provisions of  
16 203.10(b) would work themselves in under the specific  
17 provisions of 203.10(b) which would allow them to  
18 receive an exception from a provision of 203.10  
19 dealing with the specific bed and breakfast  
20 provisions. So that's why I say that in the Swann  
21 Street case, you can't ignore the fact that this Board  
22 already made a decision because otherwise it would  
23 have turned that case into a variance case under the  
24 specific provisions of the Zoning Regulations.

25 So in the absence of a decision by this

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1 Board to the contrary where the issue has been raised  
2 - and I have read the other cases that you have  
3 referred to where there have been Zoning Administrator  
4 decisions since Swann Street and this Board has been  
5 asked to grant a special exception. Nobody has raised  
6 the issue in those cases, and they actually got off on  
7 --

8 MEMBER ZAIDAIN: Well, I think there are  
9 other issues of relief in the other ones.

10 MR. NETTLER: That's correct as well.  
11 That's right. But there is no other case since Swann  
12 Street in which somebody has raised this issue  
13 specific to this particular provision. In this case,  
14 as I said, we're prepared to go forward on special  
15 exception. We think it's appropriate for this Board  
16 to rule on the other issue as well. We're only  
17 seeking to increase it to four bedrooms.

18 CHAIRPERSON GRIFFIS: Other questions?

19 MEMBER MILLER: I just want to get a  
20 clarification. I'm pretty sure I heard you say that  
21 you filed this case as a special exception upon the  
22 advice of the Zoning Office.

23 MR. NETTLER: Well, we filed it as an  
24 appeal. This office asked us to change it to a  
25 special exception.

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1           MEMBER MILLER:    Right, that's where my  
2 question is going.   It's to clarify that you think  
3 this really was more appropriate as an appeal.

4           MR. NETTLER:    Well, I think it's more  
5 appropriate for you to address the issue of whether  
6 the relief is necessary.   That would normally be done  
7 in an appeal.   I have seen so many cases in the last  
8 few years unfortunately that are coming across you as  
9 applications which have appeal issues as well in them.

10                           That's part of a function of the self-  
11 certification process as well.   Except in this case,  
12 we went to DCRA to try and get the issue resolved and  
13 went through it as an appeal.   The staff came back and  
14 said this is the way it should be done.   That's the  
15 way it was done in Swann Street.   So that's where we  
16 are before you.

17           MEMBER ZAIDAIN:   Did you ultimately self-  
18 certify this then?

19           MR. NETTLER:    It didn't need to be self-  
20 certified because the Zoning Administrator gave us a  
21 letter.

22           MEMBER ZAIDAIN:   You got kicked out by the  
23 ZA.

24           MR. NETTLER:    Right.

25           MEMBER ZAIDAIN:   You could have appealed

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1 that.

2 MR. NETTLER: Which we did.

3 CHAIRPERSON GRIFFIS: Don't start  
4 advocating for appeals.

5 MEMBER ZAIDAIN: Yes.

6 CHAIRPERSON GRIFFIS: This is just going  
7 to be clear and straightforward. Let's move on. Last  
8 question on this Mr. Nettler, 203.8(c)(2), does that  
9 support your position in regards to (c)(1)?

10 MR. NETTLER: Yes, it does.

11 CHAIRPERSON GRIFFIS: How so?

12 MR. NETTLER: Because it recognizes that  
13 under (c)(1) there are a certain number of sleeping  
14 rooms that are permitted as a matter of right. So if  
15 you have to reduce them under 202.5, then it would be  
16 superfluous. You can't read any administrative  
17 regulation to be superfluous. It just makes no sense  
18 to say that you can read it the way that it's being  
19 read by the Zoning Administrator.

20 CHAIRPERSON GRIFFIS: Okay. Good. Thank  
21 you very much. Let's proceed.

22 MR. NETTLER: Our first witness is Mark  
23 Phillips. Let me hand up these additional letters in  
24 support as well.

25 DIRECT TESTIMONY

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1 MR. PHILLIPS: Good afternoon, Chairman  
2 Griffis and Members of the Board. My name is Mark Lee  
3 Phillips. I am the Applicant in the instant matter  
4 and the owner of the property at 417 A Street, S.E. I  
5 purchased the property in May 1990. I am only the  
6 fourth owner of the property. Despite having only  
7 four owners since its construction in the 1890s, the  
8 property has had many occupants.

9 As set forth in my pre-hearing statement,  
10 the property has a long history of use as a rooming  
11 house dating back to its first occupants. This use  
12 was readily apparent when I purchased the property as  
13 there were four kitchens in the dwelling. The house  
14 is very large. It contains a total of five sleeping  
15 rooms on three floors and an English basement.

16 After purchasing the property, I have used  
17 it as my residence for my children and myself. In  
18 2002, my children having grown and gone onto college,  
19 I was faced with maintaining the property. I decided  
20 to operate a bed and breakfast on the property as  
21 there were four sleeping rooms not in use.  
22 Renovations to the property have included reducing the  
23 kitchens to one fully functional kitchen.

24 On the main level, there is also a small  
25 kitchenette which includes a coffee maker, dishwasher,

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1 sink, oven, and refrigerator. Two bathrooms have been  
2 added so that there is one bathroom per sleeping room.

3 These renovations were done irrespective of my intent  
4 to operate a bed and breakfast. That is, even if I  
5 had continued to use the property as only my  
6 residence, I would have made these renovations.

7 The addition of the kitchenette on the  
8 main level was made with the thought that it would  
9 facilitate serving meals in the dining room which is  
10 on the main level whereas the kitchen is on the  
11 basement level. I have operated a bed and breakfast  
12 with two sleeping rooms since November 2002. During  
13 the first year, I had a 60 percent vacancy rate.

14 In preparing for this hearing and the  
15 meetings with the ANC, I reviewed my guest logs and  
16 discovered that 55 percent of my guests stayed with me  
17 while visiting friends or relatives On the Hill. As  
18 an illustration of this fact, I recently received a  
19 letter of support from the Coons who live at 653 A  
20 Street, S.E. whose both sets of parents stayed at the  
21 bed and breakfast after the birth of their son in  
22 January.

23 Included in my pre-hearing statement is a  
24 detailed itemization of how I comply with Section  
25 203.8 of the Zoning Regulations. Rather than repeat

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1 that testimony, I would like to highlight a few  
2 crucial points as to my operations.

3 First, my home is a single family home and  
4 is currently the primary residence for my partner,  
5 Keith Wilkinson, and myself. To date, although there  
6 are four sleeping rooms available for use with the B  
7 and B, only two are occupied at any given time.  
8 Breakfast is the only meal served and is served only  
9 to overnight guests.

10 As illustrated by the photos submitted  
11 with the pre-hearing statement, the property maintains  
12 its residential character. In fact, that is part of  
13 the charm of the bed and breakfast. Any  
14 commercialization of the property would detract from  
15 that. As I mentioned earlier, I have returned the  
16 property back to a single family residence as opposed  
17 to its prior use as a rooming house.

18 There are no signs on the property. As  
19 such, there is no outside evidence that the property  
20 is used as a bed and breakfast. The home occupancy  
21 permit for the bed and breakfast is the only home  
22 occupancy permit for the property.

23 Second, with regard to parking, during the  
24 first year of operation, I only obtained temporary  
25 parking passes from the police department on three

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1 occasions. When I checked with the police department  
2 in early November, they only had two of these passes  
3 on record. My neighbors have accused me of obtaining  
4 a significantly higher number of passes but that  
5 simply is not the case.

6 I am sensitive to the parking restrictions  
7 in our neighborhood. Unlike many of our neighbors who  
8 have two and three vehicles per dwelling, my partner  
9 and I have only one vehicle. Because of the concerns  
10 raised by the community and because the majority of my  
11 guests are visiting people who reside On the Hill, I  
12 am willing to agree that I will not obtain parking  
13 passes for any such guests. Instead I will require  
14 that those guests make arrangements for parking, if  
15 any, through the people that they are visiting.

16 I have also agreed to limit my request for  
17 an increase in sleeping rooms to four rather than the  
18 six advertised. The fact is that the use of the  
19 property as a bed and breakfast does not generate much  
20 traffic. Any traffic generated is significantly less  
21 than would be if the property were to revert back to a  
22 rooming house or even a flat.

23 Most guests arrive at Union Station either  
24 by train or Metro and take a cab to the property. We  
25 do not currently advertise as having parking

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1 available. To our knowledge, no guests have parked  
2 illegally in the neighborhood.

3 Third, the use of the property for a bed  
4 and breakfast does not produce any odors or noises  
5 that rise to the level of adverse impact on the  
6 surrounding community. There are no materials or  
7 products produced at the property. There are no sales  
8 at the property. There's no outside storage.

9 The amount of trash generated by the bed  
10 and breakfast use is less than that which would be  
11 expected by a family of four. At the present time,  
12 there are no outside employees at the property.  
13 There's no special equipment used in the operation of  
14 the bed and breakfast that would not ordinarily be  
15 used at a residence. The bed and breakfast use does  
16 not produce any noxious odors, vibrations, glare, or  
17 fumes that are detectable to normal sensory perception  
18 outside the property.

19 With regard to noise, our immediate  
20 neighbor has complained of several factors. First, he  
21 complains that taxi cabs frequently pick up guests in  
22 the early morning hours, honking their horns to  
23 announce their arrival. However, this is an  
24 infrequent event at best and is not necessarily tied  
25 to our guests.

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1           Rather, my job requires me to travel at  
2 least once a month. Often I leave by cab to go to the  
3 airport. Whether calling for myself or my guests, I  
4 do request that cabs not honk their horn, and I find  
5 that most do not. Unfortunately I cannot control the  
6 actions of other drivers.

7           Second, my neighbor has complained of  
8 hearing noises through the walls. Such noise is to be  
9 expected with older row houses such as ours. Just as  
10 they hear plumbing sounds from our residence, we can  
11 hear noise from theirs. In his application for party  
12 status, my neighbor complains of the noise of four  
13 bathrooms being used simultaneously. This is simply  
14 not true because we have only rented two rooms at any  
15 given time.

16           Again, the noise generated by the B and B  
17 use tends to be less than that which would be  
18 generated by either a large family or a rooming house.

19           Our guests tend to stay with us as they are seeking a  
20 more intimate, private accommodation than that which  
21 is provided by a hotel. As such, they are quiet and  
22 respectful. We provide keys to each of our guests so  
23 that they do not have to use the doorbell during their  
24 stay.

25           With regard to noise and comings and

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1 goings of guests, given the high vacancy rate, there's  
2 less pedestrian traffic, certainly less regular  
3 traffic than that which would be associated with a  
4 family, flat, or rooming house. My neighbor complains  
5 that he can no longer sit on his front porch as he has  
6 been asked for directions or recommendations for local  
7 restaurants or attractions. We provide our guests  
8 with this information. Even if the people stopping to  
9 talk to our neighbor were guests at our B and B, such  
10 friendly conversation does not create an adverse  
11 impact on a quality of life in the neighborhood.

12 In short, the operation of the B and B has  
13 not adversely affected the neighborhood. An increase  
14 from two to four rooms will not create any adverse  
15 impact. In conclusion, I respectfully request that  
16 the Board grant my application to increase the number  
17 of sleeping rooms from two to four. I appreciate the  
18 opportunity.

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

21 DIRECT EXAMINATION

22 BY MR. NETTLER:

23 Q I just want to ask you one question. Do  
24 you accept guests after 10:00 p.m.?

25 A Actually our check in times that we

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1 advertise are between 3:00 and 8:00 p.m. We do not  
2 accept guests after 10:00 p.m.

3 CHAIRPERSON GRIFFIS: Anything else? You  
4 indicated that no signs are posted at all.

5 WITNESS PHILLIPS: That's correct.

6 CHAIRPERSON GRIFFIS: There's a letter  
7 part of the record that was submitted in that  
8 indicated that there was at one time a large sign on  
9 the front of the building announcing the future B and  
10 B coming to your neighborhood soon.

11 WITNESS PHILLIPS: The history on that is  
12 we did have a banner up for a short period of time.  
13 We were excited about the bed and breakfast opening.  
14 I contacted DCRA to find out if a permit was required.  
15 I was told that one was not so we put up the banner.  
16 I then received notice from DCRA saying that a permit  
17 was required.

18 CHAIRPERSON GRIFFIS: I see.

19 WITNESS PHILLIPS: So I went to DCRA and I  
20 got a permit. I put the banner back up again. Then I  
21 received another letter from DCRA saying that they had  
22 issued the permit in error so the banner was taken  
23 down.

24 CHAIRPERSON GRIFFIS: So that in your mind  
25 is resolved in terms of what's allowed signage-wise.

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1 WITNESS PHILLIPS: Yes.

2 CHAIRPERSON GRIFFIS: Indeed. Temporary  
3 parking passes, are those legally obtained by you?  
4 You go down to the District --

5 WITNESS PHILLIPS: Yes, we go down to 1-D-  
6 1. You have to verify that you are a resident in the  
7 District. You usually do that by presenting your  
8 driver's license and that you are having a guest stay  
9 in your house for a certain period of time. My  
10 understanding is any resident in the District can get  
11 one of those.

12 COMMISSIONER HOOD: Mr. Chairman, can I  
13 just piggy back on that?

14 CHAIRPERSON GRIFFIS: Yes.

15 COMMISSIONER HOOD: I'm trying to  
16 understand what this parking pass is all about. Is it  
17 a zoning pass?

18 WITNESS PHILLIPS: It's a temporary  
19 parking permit for the zone. That's correct.

20 COMMISSIONER HOOD: For the zone, okay.

21 WITNESS PHILLIPS: We're in Ward Six and  
22 the entire zone is two hour parking unless you are a  
23 resident.

24 COMMISSIONER HOOD: Okay. That ends at  
25 8:30 p.m., doesn't it?

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1 WITNESS PHILLIPS: That's correct. And  
2 it's not in effect on the weekends either.

3 COMMISSIONER HOOD: Thank you.

4 CHAIRPERSON GRIFFIS: Is it your  
5 understanding that's also applicable to home  
6 occupations?

7 WITNESS PHILLIPS: Yes.

8 CHAIRPERSON GRIFFIS: Clearly we don't  
9 regulate that or have any jurisdiction over it so as  
10 it has come up, I wanted to get that clarification. I  
11 think that may dispense with that issue entirely.  
12 Other questions from the Board?

13 MEMBER MILLER: How do people find out  
14 about your bed and breakfast?

15 WITNESS PHILLIPS: A couple of ways. We  
16 advertise in the local papers. We have a website  
17 that's available on the Internet. We use commercially  
18 available reservation services.

19 MEMBER ZAIDAIN: Obviously I assume most  
20 people that come are out of town guests, correct?

21 WITNESS PHILLIPS: Yes.

22 MEMBER ZAIDAIN: How do they get to the B  
23 and B from the airport or Union Station or wherever  
24 they are coming from?

25 WITNESS PHILLIPS: Most of them are coming

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1 from Union Station. We have had a lot of people come  
2 from New York. A few people have come from National  
3 Airport and they take a cab.

4 MEMBER ZAIDAIN: Do the people from Union  
5 Station usually take cabs too?

6 WITNESS PHILLIPS: Half of them take a cab  
7 and half of them walk. Usually the folks that come in  
8 to Union Station are familiar with the Hill. They  
9 have stayed there before and they know their way  
10 around.

11 MEMBER ZAIDAIN: Thank you.

12 CHAIRPERSON GRIFFIS: You are about five  
13 blocks from Union Station.

14 WITNESS PHILLIPS: That's about right,  
15 yes.

16 CHAIRPERSON GRIFFIS: Any other questions  
17 from the Board? Let's go through your whole panel and  
18 then we'll go to cross examination.

19 MR. NETTLER: Thank you. Our next witness  
20 is Robert Schwartz. He's an architect and planner who  
21 has been accepted before as an expert. Here is a  
22 resume for him. He's replacing a witness that we were  
23 going to have who was unavailable.

24 CHAIRPERSON GRIFFIS: Mr. Gross.

25 MR. NETTLER: Mr. Gross is unavailable

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1 today unfortunately. So we asked Mr. Schwartz to look  
2 at the property and the issues as well. I believe his  
3 testimony will be brief.

4 CHAIRPERSON GRIFFIS: He's being proffered  
5 as an expert in architecture and planning.

6 MR. NETTLER: Correct.

7 CHAIRPERSON GRIFFIS: Does the party in  
8 opposition have any objection to granting expert  
9 status to Mr. Schwartz? No objections from the party.  
10 Questions from the Board? Any objection? Very well.

11 I think it can be concurred as a consensus from the  
12 Board that Mr. Schwartz is now bestowed the status of  
13 expert.

14 DIRECT TESTIMONY

15 WITNESS SCHWARTZ: Thank you. This is  
16 Robert Schwartz.

17 CHAIRPERSON GRIFFIS: Could you please  
18 give your address.

19 WITNESS SCHWARTZ: 1811 Eighteenth Street,  
20 N.W. On the special exception issue, small B and Bs  
21 like this don't generate a lot of traffic in urban  
22 areas. There's a big difference between B and Bs in  
23 an urban area versus a suburban or rural location. I  
24 want to second what was said about people coming to a  
25 B and B. When you are going to be in a city like

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1 this, they usually don't drive and park in the city.

2 DIRECT EXAMINATION

3 BY MR. NETTLER:

4 Q Mr. Schwartz, could you just give some  
5 background as to the basis for your comments regarding  
6 B and Bs?

7 A The comment about parking comes from some  
8 testimony which I think was submitted to you that was  
9 from April 27, 1987. Someone had done a study of the  
10 number of people that drove to B and Bs in the  
11 District, and 82 percent of them did not drive and 18  
12 percent did. They came to places that had parking for  
13 them in most cases.

14 Q Did you evaluate the testimony that was  
15 received by the Zoning Commission when it adopted the  
16 regulations for B and Bs?

17 A Yes, I looked at that.

18 Q Did you look at those regulations and that  
19 testimony in the context of these regulations in this  
20 case and how they apply to this particular case?

21 A Yes, I was going to save that part for the  
22 last thing. At any rate, to follow along with that, I  
23 do concur with the reading.

24 Q No, I'm trying to get to something else.  
25 Excuse me, maybe you misunderstood my question.

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1           A       I didn't understand your question.

2           Q       In terms of your dealing with the special  
3           exception issue and your testimony regarding the  
4           manner in which B and Bs function, is that based on  
5           the testimony that the Zoning Commission had reviewed  
6           and other documents that you have reviewed in  
7           preparation for an evaluation of this particular B and  
8           B?

9           A       Yes.

10          Q       Could you give the Board some  
11          understanding of the different types of information  
12          that you looked at in terms of what you used to  
13          evaluate this?

14          A       I would have to have it in front of me to  
15          read off.

16          Q       Just generally.

17          A       I think that the Board has received all  
18          the same things that I reviewed.

19          Q       Don't make an assumption. Why don't you  
20          go through them?

21          A       I don't know if you have it here, but I  
22          can't say from memory all these things that I read.  
23          The first item is the statements of the Applicant. Am  
24          I doing the thing that you are asking the question  
25          about?

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1 Q I'm asking you what you relied on for  
2 making your --

3 A Well, one is independent information that  
4 I have or just experience that I have.

5 Q What was that experience?

6 A Trying to find statistics on B and Bs in  
7 the District. The second thing of course is I  
8 reviewed all of this information that's before the  
9 Board.

10 Q What's that?

11 A The statement of the Applicant, the  
12 history of the B and B. I'm very familiar with the  
13 neighborhood, the area around it. I have done many  
14 jobs there which is not part of the record of course.

15 The home occupancy permit discussion and the fact of  
16 the home occupancy permit that's there, the  
17 application that was made.

18 Q I'm sorry to interrupt you. You can  
19 continue with your testimony.

20 A Okay.

21 DIRECT TESTIMONY (cont.)

22 WITNESS SCHWARTZ: At any rate, I think  
23 that parking is usually the big issue in Capitol Hill.

24 That's what people are usually most nervous and have  
25 a problem with. I don't believe this is going to have

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1 a large negative impact on parking in Capitol Hill.

2 As far as the other impacts which the owner just  
3 reviewed, a small B and B like this doesn't have a  
4 commercial kitchen. They don't generate a lot of  
5 waste. It's a residential kitchen. They are not  
6 required to be regulated by the Board of Public Health  
7 in the same way a restaurant would be.

8 They don't have to have the same kind of  
9 exhaust fans and things like that. So the operation  
10 while you are making breakfast - perhaps they would be  
11 making breakfast for eight people - you can see how  
12 breakfast for eight people is something that you can  
13 do in your house with a residential kitchen. It  
14 doesn't require a commercial kitchen.

15 Noise, bright lights, things like that,  
16 small B and Bs like this and his particular operation  
17 don't have any kind of club or gathering space where  
18 people would be coming for an activity like that. So  
19 it's hard to imagine how there would be any negative  
20 impacts on the neighborhood from these other kinds of  
21 things that would happen there. I don't believe that  
22 this operation is going to have an adverse impact on  
23 the neighborhood.

24 DIRECT EXAMINATION (cont.)

25 BY MR. NETTLER:

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1           Q       Would you say that this use of the  
2 premises with four rooms would have any greater or  
3 lesser impact than the prior history of the use of  
4 this property for a rooming house?

5           A       It would be insignificant, the difference  
6 between two rooms and four rooms.

7           Q       No, listen to the question, not increasing  
8 this from two rooms to four rooms but between the four  
9 rooms here and the use of this premises as a rooming  
10 house as it was.

11          A       Well, a rooming house I think would  
12 generate more traffic and would be worse than a four  
13 room B and B.

14          Q       In what way would it be worse?

15          A       First of all, there would probably be more  
16 activity there. A B and B doesn't generate the same  
17 kind of activity if you were living in a place as  
18 compared to having four rooms which are not fully  
19 occupied all the time. The use of something like a B  
20 and B varies over time based on if it's the holiday  
21 season or as he said there are special events like  
22 someone coming for the birth of a grandchild.

23                    But the number of people there goes up and  
24 down in a way that something that constantly has  
25 occupancy doesn't have. There are more people using

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1 the place more of the time if you have a continuous  
2 occupancy unlike something like this. Have I answered  
3 your question?

4 Q You answered my earlier question.

5 A Okay.

6 DIRECT TESTIMONY (cont.)

7 WITNESS SCHWARTZ: The other thing I would  
8 like to add is that I read this ordinance the same  
9 way. I'm a little bit embarrassed to have to say this  
10 to you because it seems so obvious to me, but if I was  
11 analyzing this particular item, I would have the same  
12 either/or interpretation of this particular ordinance  
13 here. I would think that they would have phrased it  
14 differently using "and" or in some other way  
15 indicating that a special exception was required for a  
16 building contributing in a historic district.

17 MR. SCHUHAM: I actually would just like  
18 to object.

19 CHAIRPERSON GRIFFIS: You need to come up.  
20 You cannot say anything in this room unless you are  
21 on a mic. If you have an objection or anything, you  
22 might want to come and sit closer. I'll stop the  
23 proceedings to get you up here.

24 MR. SCHUHAM: I'm sorry. I would just  
25 like to object.

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1 CHAIRPERSON GRIFFIS: Your name.

2 MR. SCHUHAM: My name is Aaron Schuham. I  
3 live at 415 A Street, the adjoining property. I just  
4 want to place a limited objection that this expert  
5 isn't qualified based on what we received to offer  
6 legal opinion about how to construe that regulation.  
7 That's all.

8 CHAIRPERSON GRIFFIS: Noted, and I would  
9 tend to agree in terms of going too deep into the  
10 interpretation. As an expert in architecture, you  
11 have knowledge of the Zoning Regulations, is that  
12 correct?

13 WITNESS SCHWARTZ: Yes.

14 CHAIRPERSON GRIFFIS: You utilize them all  
15 the time in your profession.

16 WITNESS SCHWARTZ: Right.

17 CHAIRPERSON GRIFFIS: I'm allowing it just  
18 in terms of an expert in architecture that you would  
19 have an opinion on that. You are certainly not a  
20 zoning legal expert.

21 WITNESS SCHWARTZ: Right, I'm not  
22 maintaining that I'm a lawyer. I'm just saying as a  
23 practitioner this is the way I would interpret it.

24 CHAIRPERSON GRIFFIS: Indeed. Understood.  
25 Anything else?

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1 WITNESS SCHWARTZ: No, I'd just like to  
2 conclude and say that I'm in support of this because I  
3 don't think it has an adverse effect. I also feel  
4 that it really isn't a special exception. Thank you.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. NETTLER: No further testimony from  
7 Mr. Schwartz. I would have liked to have responded to  
8 the objection, but I'll leave it as it was.

9 CHAIRPERSON GRIFFIS: I'm sorry.

10 MR. NETTLER: I was not asking for a legal  
11 opinion.

12 CHAIRPERSON GRIFFIS: Understood.

13 MR. NETTLER: Our last witness is Ms.  
14 Jacqueline Reed.

15 DIRECT TESTIMONY

16 WITNESS REED: Hello. My name is  
17 Jacqueline Reed. I am the current president of Bed  
18 and Breakfast Accommodations Limited. It's a  
19 reservation service for a number of bed and breakfasts  
20 in the Washington, D.C. area. Also we handle  
21 Baltimore, Maryland.

22 Our organization was established in 1981.

23 I have been in charge of it since 1984. I was  
24 involved with the hearings for setting the regulations  
25 for bed and breakfasts in 1987. At that time, there

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1 were three reservation services representing between  
2 80 and 85 properties.

3 I am the person who submitted the  
4 statistics on the parking. I can tell you that Mr.  
5 Nettler is correct in the way that was intended to be.

6 I was there. I testified. I am the reason you can  
7 do six rooms. I was operating six rooms at that time.

8 I also have a bed and breakfast.

9 CHAIRPERSON GRIFFIS: Why don't you  
10 elaborate on that? Rather than agreeing with him  
11 which is not testimony, I want you to give me  
12 testimony about what you are talking about.

13 WITNESS REED: Okay. I also have a six  
14 room bed and breakfast which I have been operating  
15 since 1984.

16 CHAIRPERSON GRIFFIS: I'm not concerned  
17 with that. Go back to what your statement just was,  
18 the parking and the six and why it's a matter of right  
19 and not a special exception.

20 WITNESS REED: We went through a lot of  
21 testimony for this hearing. It took over a year to  
22 come to this conclusion. During that time, there were  
23 many meetings with Mr. Gross.

24 CHAIRPERSON GRIFFIS: That I'm not  
25 concerned with either. I want substance.

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1                   WITNESS REED: I had a property that was  
2 operating six rooms in a historic district. During  
3 the hearing, the National Trust for Historic  
4 Preservation submitted a letter indicating that the  
5 district was under federal mandate to preserve  
6 historic properties and that bed and breakfast was the  
7 largest thing to preserve historic properties. With  
8 that, the final resolution was that normal properties  
9 that are not historic, everybody can do two rooms no  
10 matter where they are.

11                   You can go up to four rooms if you are  
12 non-historic. But because of the mandate to preserve  
13 historic properties, it was recognized that bed and  
14 breakfast is the biggest thing nation-wide to preserve  
15 historic properties. So they wanted to make it so  
16 that historic properties could do six rooms as a  
17 matter of right.

18                   CHAIRPERSON GRIFFIS: So it's your  
19 understanding of the legislative history that's  
20 created this Zoning Regulation that they actually  
21 created the designation of difference, that being in  
22 historic contributing buildings and historic  
23 designated buildings and those that are not.

24                   WITNESS REED: Yes.

25                   CHAIRPERSON GRIFFIS: And they treat them

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1 differently in terms of the process, matter of right,  
2 and number of rooms.

3 WITNESS REED: Yes, and that's been the  
4 practice.

5 CHAIRPERSON GRIFFIS: So your testimony is  
6 in fact outside of a historic district or contributing  
7 building or designated building - let's call that a  
8 normal building - you are allowed by matter of right  
9 two bedrooms, is that correct?

10 WITNESS REED: Yes.

11 CHAIRPERSON GRIFFIS: Then through special  
12 exception you can increase it to four.

13 WITNESS REED: Correct.

14 CHAIRPERSON GRIFFIS: In a historic  
15 district for contributing buildings such as this  
16 application, you can actually have as a matter of  
17 right six bedrooms.

18 WITNESS REED: Up to six, yes.

19 CHAIRPERSON GRIFFIS: Thank you. Parking,  
20 you indicated you were part of the report on the  
21 parking.

22 WITNESS REED: Yes, there was much concern  
23 about parking during that time.

24 CHAIRPERSON GRIFFIS: It's hard to believe  
25 sitting on this Board there's concern with parking.

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1                   WITNESS REED:  As a part of the testimony,  
2 we were asked to do an analysis.  This was three  
3 different reservation services.

4                   CHAIRPERSON GRIFFIS:  I'm already there  
5 with you.  Go right to the statement and the fact that  
6 has been entered into the record that urban B and Bs  
7 have less parking.

8                   WITNESS REED:  At that time, 82 percent of  
9 the people arrived without a car at all.

10                  CHAIRPERSON GRIFFIS:  Eighty-two percent.

11                  WITNESS REED:  Eighty-two percent.

12                  CHAIRPERSON GRIFFIS:  In an urban area.

13                  WITNESS REED:  Yes.  Of the 18 percent  
14 that came with a car, 80 percent of those went to  
15 places that could provide parking.

16                  CHAIRPERSON GRIFFIS:  I'm sorry.  I didn't  
17 follow that, "went to a place that could provide  
18 parking."

19                  WITNESS REED:  Some bed and breakfasts  
20 have parking.

21                  CHAIRPERSON GRIFFIS:  I see.  So 80  
22 percent of the 18 percent went to actual B and Bs that  
23 had the provision of parking.

24                  WITNESS REED:  Exactly.

25                  CHAIRPERSON GRIFFIS:  Interesting.

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1 WITNESS REED: So a very small percent,  
2 which was 18 percent it turned out to be actually --

3 CHAIRPERSON GRIFFIS: Eighteen percent of  
4 the 18 percent.

5 WITNESS REED: Yes, surprisingly.  
6 Somebody stayed in a bed and breakfast that did not  
7 have parking.

8 CHAIRPERSON GRIFFIS: I see.

9 WITNESS REED: We found that the case was  
10 generally that those people came on the weekend when  
11 you can park on the street.

12 CHAIRPERSON GRIFFIS: How did you know  
13 this?

14 WITNESS REED: Because we went through all  
15 of our records.

16 CHAIRPERSON GRIFFIS: All of the  
17 reservation records.

18 WITNESS REED: All of the reservation  
19 records.

20 CHAIRPERSON GRIFFIS: In making a  
21 reservation I would need to tell you that I am  
22 bringing a car or not bringing a car.

23 WITNESS REED: Absolutely, yes.

24 CHAIRPERSON GRIFFIS: What happens if I  
25 decide at the last minute I'm going to drive?

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1           WITNESS REED: You don't because we tell  
2 them it's very important we know that you have a car  
3 because the entire downtown is restricted. That's one  
4 of the questions that we ask.

5           CHAIRPERSON GRIFFIS: I see.

6           WITNESS REED: Just as we ask you do you  
7 have any pet allergies. We don't want to put you in a  
8 house that has cats if you are allergic to cats.

9           CHAIRPERSON GRIFFIS: Mr. Zaidain.

10          MEMBER ZAIDAIN: I just need some  
11 clarification to make sure I understand. You  
12 represent or you are discussing B and Bs in D.C. in  
13 general, correct?

14          WITNESS REED: Yes.

15          MEMBER ZAIDAIN: Not nation-wide or east  
16 coast.

17          WITNESS REED: Right, D.C.

18          MEMBER ZAIDAIN: This is just D.C.

19          WITNESS REED: Though I can discuss them  
20 nation-wide.

21          MEMBER ZAIDAIN: I would contend that B  
22 and B as a use are different in areas that have mass  
23 transit. I have seen B and Bs in Charleston, South  
24 Carolina where they have big parking lots behind them.

25          CHAIRPERSON GRIFFIS: Indeed.

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1 MEMBER ZAIDAIN: It's different.

2 WITNESS REED: No, my experience has been  
3 here in D.C.

4 CHAIRPERSON GRIFFIS: Any other questions  
5 immediately from the Board? Anything else?

6 DIRECT TESTIMONY (cont.)

7 WITNESS REED: Yes, I would like to say  
8 that there have been also some statements that the  
9 people in bed and breakfasts contribute to crime. In  
10 the 20 years that I have been involved, not only has  
11 that not been the case, we have had guests who have  
12 actually thwarted crime.

13 There was a case actually of someone who  
14 stayed with me who arrived and actually saw somebody  
15 trying to break into an adjoining house. He had his  
16 camera and took pictures and came back and testified.

17 The people that stay in bed and breakfasts are  
18 professionals. They are people that any of you would  
19 like to have.

20 CHAIRPERSON GRIFFIS: Not to be flippant  
21 but if you stay in a bed and breakfast and decided to  
22 go out and do crimes, is that something you would  
23 report back to you in the reservation department?

24 (Laughter.)

25 WITNESS REED: No, but on the other hand,

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1 I just recently had a person who has been on the best  
2 seller list. I have had two judges. I don't think  
3 they are out committing crimes.

4 CHAIRPERSON GRIFFIS: What I don't want to  
5 step into is having a lot of debate because how we  
6 would actually establish that is the highest quality  
7 of person in the world would be difficult. But I  
8 understand your point clearly. Ms. Miller.

9 MEMBER MILLER: I just want to be clear.  
10 Was your survey nation-wide or local?

11 WITNESS REED: Local.

12 MEMBER MILLER: Local meaning?

13 WITNESS REED: Strictly Washington, D.C.  
14 bed and breakfasts.

15 MEMBER MILLER: So it didn't go to the  
16 Virginia suburbs or anything.

17 WITNESS REED: No, only the Washington,  
18 D.C. properties.

19 MEMBER MILLER: Thank you.

20 DIRECT EXAMINATION

21 BY MR. NETTLER:

22 Q Do you know that other B and Bs in  
23 historic districts that are contributing buildings  
24 have obtained home occupancy permits for up to six  
25 units without having to get a special exception?

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1           A       Yes, definitely.

2                   CHAIRPERSON GRIFFIS:   In D.C.

3                   WITNESS REED:   Yes.

4                   MEMBER ZAIDAIN:   Since the regulations  
5 have been enacted, do you know of B and Bs that went  
6 and pulled permits?

7                   WITNESS REED:   Absolutely, yes.

8                   BY MR. NETTLER:

9           Q       Is the mansion on O Street one of them?

10          A       Yes, and the Inn at Dupont.

11                   CHAIRPERSON GRIFFIS:   Follow up questions?  
12 Anything further, Mr. Nettler?

13                   MEMBER MILLER:   I think this may be in the  
14 pleadings but I just want to ask. Was there a change  
15 at a certain time when B and Bs were getting their  
16 permits for up to six rooms? Is it because there was  
17 a change in the Zoning Administrator? That was what I  
18 remember from the pleadings, is that correct?

19                   MR. NETTLER:   Correct.

20                   WITNESS REED:   Yes.

21                   MEMBER MILLER:   Okay.

22                   MR. NETTLER:   Now, I'm passing up copies  
23 of the Certificates of Occupancy that were granted for  
24 B and Bs as a matter of right for up to six units.

25                   CHAIRPERSON GRIFFIS:   There it is. It

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1 saves us from asking for it. Anything else, Board?  
2 Mr. Nettler, anything else? Any other witnesses?

3 MR. NETTLER: No, there are no other  
4 witnesses.

5 MEMBER MILLER: One more question. Mr.  
6 Schwartz was making a distinction or a contrast  
7 between rooming houses and boarding houses. I really  
8 wasn't clear why you were bringing up rooming houses.

9 WITNESS SCHWARTZ: I brought it up because  
10 Mr. Nettler I thought asked me about it, is that  
11 right?

12 MR. NETTLER: This used to be a rooming  
13 house.

14 WITNESS SCHWARTZ: Yes.

15 CHAIRPERSON GRIFFIS: It was a rooming  
16 house from the previous three owners, was it not?

17 MR. NETTLER: At least for most of the  
18 time. There was one small period of time, which we  
19 have documented in our pre-hearing statement, when it  
20 was a residence. At least from the enactment of the  
21 Zoning Regulations until the time it was bought by the  
22 present owner, it was being used as a rooming house.  
23 As he testified, there were four kitchens and four  
24 different rooms.

25 CHAIRPERSON GRIFFIS: There was a period

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1 where it housed widows, wasn't that correct?

2 MR. NETTLER: That's correct as well.  
3 We're giving you the Certificates of Occupancy for  
4 those as well. I just passed up the Certificates of  
5 Occupancy that collect all of those facts.

6 CHAIRPERSON GRIFFIS: Good. Anything  
7 further? Any other questions? The case will go to  
8 cross examination. Take your time, just be on point.

9 Do we need a chair? Would you pull up an extra chair  
10 so you can be comfortable? We'll give you one mic.  
11 Are you going to cross examine her? Very well. Take  
12 her chair.

13 MR. SCHUHAM: Mr. Chairman, there's just a  
14 few questions for Mr. Phillips.

15 CROSS EXAMINATION

16 BY MR. SCHUHAM:

17 Q Mr. Phillips, you stated that you had not  
18 posted any sign on the exterior of 417 A Street  
19 regarding your business, isn't that right?

20 CHAIRPERSON GRIFFIS: Except for the  
21 banner.

22 BY MR. SCHUHAM:

23 Q Other than the banner.

24 A That's correct.

25 Q Do you have any intention in the future of

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1 posting any sign on the exterior of your house?

2 A No.

3 Q Have you definitively decided not to post  
4 any sign on the exterior of your house?

5 CHAIRPERSON GRIFFIS: Is that the same  
6 question?

7 MR. SCHUHAM: I don't think so.

8 CHAIRPERSON GRIFFIS: Okay.

9 WITNESS PHILLIPS: I don't have any plans  
10 to.

11 BY MR. SCHUHAM:

12 Q Have you received any communications from  
13 the police department regarding the parking permits?

14 A No.

15 Q You stated that you have a policy of  
16 allowing check in until 8:00 p.m., isn't that right?

17 A That's right.

18 Q Would you admit however that guests have  
19 in fact checked in later than 8:00 p.m.?

20 A On occasion, yes.

21 Q How many?

22 A Two or three.

23 Q How late did the two or three arrive?

24 A I think the latest was around 11:30 p.m.

25 That was due to an airplane that was delayed.

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1 Q What about the other two?

2 A Somewhere between 8:00 p.m. and 10:00 p.m.

3 MR. SCHUHAM: Now just a couple of  
4 questions for Mr. Schwartz.

5 CROSS EXAMINATION

6 BY MR. SCHUHAM:

7 Q Mr. Schwartz, have you in fact visited 415  
8 A Street?

9 A I haven't been in it but I have been on  
10 the street.

11 Q Where have you been on the street?

12 A All around A and Fifth.

13 Q How long were you on the street?

14 A I have been there several times but I will  
15 say ten minutes.

16 Q Were you there for purposes of observing  
17 the B and B?

18 A I just wanted to look at the building.  
19 There wasn't anything going on when I was there.  
20 There was nothing special to observe.

21 Q What time of day was it?

22 A About 2:00 p.m.

23 Q Have you ever been there in the evening?

24 A I have but not to pay special attention to  
25 this building.

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1 Q How about the morning?

2 A I don't think I have been there in the  
3 morning, no.

4 Q So are you basing your expert opinions on  
5 the few times that you have been on A Street in the  
6 middle of the day?

7 A No, I'm giving opinions based on my  
8 knowledge of B and Bs and their impact on the  
9 neighborhood, not on the activity of this one.  
10 There's plenty of testimony about how much activity s  
11 there. I'm taking that as being true.

12 Q But you haven't personally observed the  
13 activity levels in the morning or evening going in or  
14 out of the B and B, is that correct?

15 A No, I haven't.

16 Q You made an observation in which you  
17 compared the traffic levels that you would expect at  
18 the bed and breakfast compared to a rooming house,  
19 isn't that correct?

20 A Right.

21 Q Have you actually in fact done any  
22 analysis of any specific rooming house compared to  
23 this bed and breakfast?

24 A No, I have done jobs though that have had  
25 them and seen activity, but I haven't done a study

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1 comparing them.

2 Q You said that you would expect that  
3 rooming houses would have more traffic than the bed  
4 and breakfast. That would be your general  
5 expectation, isn't that correct?

6 A Right.

7 Q Would you agree with me that the amount of  
8 luggage being hauled in and out of a bed and breakfast  
9 and the traffic created from that is likely to be  
10 higher than that created by a rooming house?

11 A Yes, for a rooming house, a person doesn't  
12 come with luggage frequently. On the other hand,  
13 there are moving in and out things that happen that in  
14 any one time might be greater if somebody moved in.

15 Q But they don't happen every time a guest  
16 comes in and out of a guest house, isn't that correct?

17 A No, they are living there and they are  
18 coming and going without suitcases.

19 MR. SCHUHAM: Thank you.

20 CHAIRPERSON GRIFFIS: Mr. Zaidain.

21 MEMBER ZAIDAIN: I actually have a  
22 question regarding the late arrivals. I can sense  
23 that we'll be hearing some more testimony and issues  
24 raised about that. What does that mean? Does that  
25 mean cab pulled up in front of the house and somebody

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1 gets out? Do you have people coming and getting their  
2 luggage out of the cab?

3 WITNESS PHILLIPS: Yes, they could.

4 MEMBER ZAIDAIN: There were some specific  
5 instances that were raised. Do you recall what the  
6 impacts of those late arrivals were?

7 WITNESS PHILLIPS: I'm not aware of any  
8 impact.

9 MEMBER ZAIDAIN: You cited one that was at  
10 11:00 p.m.

11 WITNESS PHILLIPS: That's right.

12 MEMBER ZAIDAIN: You seem like you might  
13 be aware of that. How did they get there?

14 WITNESS PHILLIPS: Yes, they called us  
15 from the airport saying that the plane had been  
16 delayed and that they would get to us as soon as they  
17 could.

18 MEMBER ZAIDAIN: Right, and they took a  
19 cab.

20 WITNESS PHILLIPS: They took a cab. We  
21 sat up and waited for them.

22 MEMBER ZAIDAIN: They pulled up in front  
23 of the house. You guys went out, unloaded the  
24 luggage, and came in.

25 WITNESS PHILLIPS: Yes.

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1 MEMBER ZAIDAIN: That's similar to the  
2 other late arrivals, right?

3 WITNESS PHILLIPS: It would be similar to  
4 anybody coming to the bed and breakfast.

5 MEMBER ZAIDAIN: But there's no band  
6 playing on the porch or fanfare or anything like that.

7 WITNESS PHILLIPS: No.

8 MEMBER ZAIDAIN: Thank you.

9 MR. NETTLER: I have some follow up  
10 questions.

11 CHAIRPERSON GRIFFIS: Yes.

12 REDIRECT EXAMINATION

13 BY MR. NETTLER:

14 Q You said that you travel a lot. Is that  
15 once a week, once a month?

16 A I usually travel for four or five days  
17 once a month.

18 Q Do you come back to the property with a  
19 taxi?

20 A Yes.

21 Q Do you sometimes come back late at night?

22 A Yes.

23 Q Do you sometimes bring back luggage?

24 A Yes.

25 MR. NETTLER: Thank you.

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1 CHAIRPERSON GRIFFIS: Excellent. Any  
2 recross on that testimony you just heard? Very well.  
3 Let's move on then to the Office of Planning which  
4 does have two reports on file. Is the party in  
5 receipt of the Office of Planning's latest submission,  
6 two reports? Let's get them. Am I correct in that?  
7 There was a revised report, right?

8 MR. PARKER: There was a supplemental  
9 report.

10 CHAIRPERSON GRIFFIS: What's the exhibit  
11 number? Mine is not an exhibit number. Do we have an  
12 additional copy handy? Give that to the parties.  
13 Very well. Let's go.

14 MR. PARKER: Thank you, Mr. Chairman. My  
15 name is Travis Parker with the Office of Planning.  
16 The first point I would like to make is the Office of  
17 Planning is not in agreement with the Applicant and  
18 Mr. Nettler's interpretation of the ordinance.  
19 However, I'll stick to the special exception  
20 arguments. Our first report stated some concerns that  
21 we had regarding the parking, traffic, and noise that  
22 were raised by the neighbors and by our staff.

23 We sought advice from the District  
24 Department of Transportation in regard to these issues  
25 of parking and traffic and received a memo from them

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1 that I hope you have dated November 24 stating that  
2 they did not see an adverse impact on the availability  
3 of parking in raising the number of rooms from two to  
4 four. We took this recommendation into account and  
5 submitted a supplemental report stating that had  
6 addressed our largest concern from the B and B. At  
7 this point, we have no objections to its approval.

8 CHAIRPERSON GRIFFIS: Questions from the  
9 Board? In your non-concurrence with Mr. Nettler's  
10 interpretation of the regulation -- Well, I'll let  
11 that go. Any other questions?

12 MEMBER MILLER: I was going to ask that  
13 question, whether you wanted to elaborate as to why  
14 you disagree with Mr. Nettler's interpretation.

15 MR. PARKER: Well, first of all, we would  
16 feel it's not germane to the issue. Would you like me  
17 to go into how our interpretation of the wording of  
18 this is different?

19 CHAIRPERSON GRIFFIS: Yes, briefly.

20 MR. PARKER: Let me see if I can get it in  
21 front of me. We believe that the pursuant to  
22 203.10(b) clause is applicable to that entire section  
23 1. The "either" if it were submitted or if it were  
24 inserted would be after that clause.

25 We feel that if the latter half of that

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1 paragraph were intended to be a by right, it would  
2 have been inserted under C after the number of  
3 sleeping rooms shall be two rather than in the  
4 paragraph preceded by pursuant to 203.10(b). That's  
5 the crux.

6 CHAIRPERSON GRIFFIS: Okay.

7 MEMBER ZAIDAIN: If I could follow that  
8 up. So the way I understand the argument at least  
9 from Mr. Nettler is that the non-historic - let's just  
10 use that phrase to cover all the historic angles - B  
11 and B up to four rooms has to be special exception.  
12 For a historic B and B, up to six rooms can be matter  
13 of right. That's Mr. Nettler's interpretation. I'm  
14 just curious as to what the difference is in terms of  
15 impacts.

16 To me, if I was the Zoning Commission, I  
17 would want to apply a special exception to something  
18 that could potentially have adverse impacts. Under  
19 his interpretation of the regulations, a non-historic  
20 B and B up to four rooms has impacts whereas a  
21 historic B and B up to six rooms does not have  
22 impacts. It's getting late and talking about  
23 regulations I can get tongue tied. Is that where you  
24 are coming from in terms of impacts, in terms of how  
25 to address the interpretation of the regulation?

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1 MR. PARKER: Yes, we believe this is  
2 intended to lead towards a special exception review of  
3 any bed and breakfast over two rooms. That includes  
4 historic districts and non-historic districts.

5 MEMBER ZAIDAIN: So in your mind, they  
6 both could potentially have impacts. The Zoning  
7 Commission enacted that because both of them would  
8 warrant a special exception-type review.

9 MR. PARKER: Correct.

10 CHAIRPERSON GRIFFIS: For that matter, if  
11 you are talking about impacts, you could look at the  
12 Applicant's submission and say fraternity houses are a  
13 matter of right. What's the bigger impact on the  
14 neighborhood, a fraternity house or a bed and  
15 breakfast? But let's not continue this discussion and  
16 move on.

17 (Laughter.)

18 CHAIRPERSON GRIFFIS: Any other questions  
19 of the Office of Planning from the Board? Any cross  
20 examination by the Applicant?

21 MR. NETTLER: Yes, unfortunately. Let me  
22 just deal with this briefly. In making this  
23 determination regarding the meaning of this section,  
24 did you look at the Office of Planning's testimony in  
25 the Swann Street case?

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1 MR. PARKER: Well, first of all, we  
2 haven't made a determination.

3 MR. NETTLER: You have an opinion.

4 MR. PARKER: An opinion, certainly, the  
5 Swann case being the nine rooms that you talked about  
6 earlier.

7 MR. NETTLER: Correct.

8 MR. PARKER: Your argument was that --

9 MR. NETTLER: I'm asking if you looked at  
10 the Office of Planning's memorandum in that case  
11 regarding the interpretation of the section.

12 MR. PARKER: I did not read that memo.

13 MR. NETTLER: Did you look at the  
14 testimony that was referred to by Ms. Reed in the  
15 Zoning Commission hearings on the regulation itself?

16 MR. PARKER: That was in your submittal. I  
17 did look at that.

18 MR. NETTLER: Did you look at the National  
19 Trust for Historic Preservation's submittal regarding  
20 this issue?

21 MR. PARKER: I believe that was in your  
22 original submittal as well.

23 MR. NETTLER: No, it's not. You haven't  
24 looked at the Zoning Commission's --

25 MR. PARKER: No, I have not.

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1 MR. NETTLER: You are familiar that the  
2 Zoning Regulations have a number of instances when it  
3 treats historic properties differently than matter of  
4 right properties, than non-historic properties, are  
5 you not?

6 MR. PARKER: As in this case, yes.

7 MR. NETTLER: With parking as well,  
8 correct?

9 MR. PARKER: Correct.

10 MR. NETTLER: Where it permits you to  
11 waive the parking in situations that could have a  
12 greater impact in some areas than others, correct?

13 MR. PARKER: Correct.

14 MR. NETTLER: You are familiar with the  
15 basis for the adoption of the SP zones in the late  
16 1970s and how that was to deal with historic  
17 properties.

18 MR. PARKER: Okay.

19 MR. NETTLER: You are familiar with that.

20 MR. PARKER: Yes.

21 MR. NETTLER: That was to allow for  
22 certain intensities of uses in historic districts that  
23 would not otherwise be permitted in non-historic  
24 districts, was it not?

25 MR. PARKER: Correct.

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1 MR. NETTLER: Which may have had the same  
2 types of impacts if they were outside historic  
3 districts but which were allowed to happen, correct?

4 MR. PARKER: Okay, correct.

5 MR. NETTLER: You are familiar with the  
6 Zoning Regulations dealing with historic buildings  
7 that are greater than 10,000 square feet to allow them  
8 to have certain commercial office uses like non-profit  
9 office uses because of the desire to protect those  
10 historic buildings.

11 MR. PARKER: In historic districts.

12 MR. NETTLER: In historic districts.

13 MR. PARKER: Correct.

14 MR. NETTLER: In all of those instances,  
15 there are situations when the Zoning Commission has  
16 decided that historic buildings should be treated  
17 differently even though they have greater impacts than  
18 if those buildings would be in non-historic districts,  
19 aren't they?

20 MR. PARKER: Yes, and they are allowing a  
21 different use here as well. It's still required to be  
22 reviewed in our opinion.

23 MR. NETTLER: Be reviewed by who?

24 MR. PARKER: By the BZA.

25 MR. NETTLER: You mean the parking

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1 requirements are reviewed by the BZA.

2 MR. PARKER: No, in the instance that  
3 we're talking about here.

4 MR. NETTLER: Well, your position is in  
5 this case that's what is supposed to happen.

6 MR. PARKER: In this section of the zoning  
7 ordinance.

8 MR. NETTLER: You were asked by Mr.  
9 Zaidain about the impact of reading this regulation in  
10 a way in which it would treat historic properties  
11 differently than it would treat them if they were not  
12 located in historic districts because of the potential  
13 impact that the increase in use would have in that  
14 area as distinct from what it would have in a non-  
15 historic district where a special exception would be  
16 sought. Do you recall that question?

17 MR. PARKER: No, I was asked whether --

18 MEMBER ZAIDAIN: As the maker of the  
19 question, what I was asking was the way he read the  
20 regulations was that special exceptions were required  
21 on both instances, historic and non-historic.

22 MR. NETTLER: I understood your question.  
23 Your question came from the predicate that why  
24 wouldn't they want to have a special exception process  
25 to deal with historic buildings that were increasing

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1 the use as opposed to just because they were historic  
2 when they were trying to have a special exception  
3 process to increase non-historic buildings because of  
4 its impacts as well.

5 MEMBER ZAIDAIN: Well, that would be an  
6 issue of what the intent of the regulations are, sure.

7 MR. NETTLER: Right.

8 MEMBER ZAIDAIN: He answered the question  
9 that he feels the intent was that yes they were both  
10 to be reviewed.

11 MR. NETTLER: That has nothing to do with  
12 your understanding having read the Zoning Commission  
13 record. That's just from your review of this  
14 particular regulation, is that correct?

15 MR. PARKER: Correct.

16 MR. NETTLER: I have no other questions.

17 MR. SCHUHAM: Just a couple of questions.

18 The opinion of the Office of Planning is based on the  
19 response that it received from DDOT, is that correct?

20 MR. PARKER: Among other things.

21 MR. SCHUHAM: What other things?

22 CHAIRPERSON GRIFFIS: You are holding the  
23 recent copy.

24 MR. SCHUHAM: I'm sorry the supplemental  
25 report.

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1 MR. PARKER: The change from the first  
2 report to the second report is as a result of the --

3 MR. SCHUHAM: And the report offers no  
4 opinions on any of the other objections that have been  
5 raised by the neighborhood other than parking, isn't  
6 that right?

7 MR. PARKER: Those were all addressed and  
8 were not the primary concerns in the first in the  
9 first report of the Office of Planning.

10 MR. SCHUHAM: Right, so what is reported  
11 here in the November 26 report doesn't disturb  
12 anything earlier with regard to any of the other  
13 issues raised by neighbors aside from parking.

14 MR. PARKER: Correct.

15 MR. SCHUHAM: Thanks.

16 MR. NETTLER: So it's my understanding  
17 that your position is that having addressed the  
18 parking issue from DDOT and the number of units up to  
19 four that the Office of Planning is then recommending  
20 approval of this special exception.

21 MR. PARKER: That is correct.

22 MR. NETTLER: Thank you.

23 MEMBER ZAIDAIN: Let me make sure I'm  
24 clear because he hit on something I was going to ask.  
25 You guys are now recommending approval.

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1 MR. PARKER: Right.

2 MEMBER ZAIDAIN: The DDOT report took care  
3 of your concerns regarding traffic, is that correct?

4 MR. PARKER: Parking.

5 MEMBER ZAIDAIN: In your memo, you do  
6 raise noise as an issue. I was wondering where that  
7 was coming from. Knowing Capitol Hill and being  
8 familiar with B and Bs, I was curious as to what noise  
9 was a concern of yours and where that was coming from.

10 MR. PARKER: Actually I believe the  
11 wording in the report was that we are sympathetic to  
12 the concerns regarding noise, however the noises  
13 associated with the bed and breakfast do not normally  
14 fall within the standards of adverse impact. We  
15 didn't feel that there was an adverse impact due to  
16 noise.

17 MEMBER ZAIDAIN: Okay. So essentially  
18 your recommendation in the November 21 memo was we  
19 wanted some more input from DDOT, you got it, and now  
20 you are recommending approval.

21 MR. PARKER: Correct. We wanted some  
22 acknowledgment from the Applicant of this issue. I  
23 believe there were some discussions earlier in his  
24 testimony of the noise coming from his property.

25 MEMBER ZAIDAIN: But it's not to a level

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1 that would be adverse.

2 MR. PARKER: Correct.

3 MR. SCHUHAM: Mr. Chair, we never received  
4 any copy of this earlier report which addresses these  
5 issues.

6 CHAIRPERSON GRIFFIS: The Office of  
7 Planning report.

8 MR. SCHUHAM: We don't have it and it's  
9 being discussed here. I guess we would like an  
10 opportunity to look at it. We would certainly like an  
11 opportunity at a minimum to respond to it in the  
12 record.

13 CHAIRPERSON GRIFFIS: Absolutely. Let's  
14 get you a copy before you leave tonight.

15 MR. SCHUHAM: Thank you.

16 CHAIRPERSON GRIFFIS: Actually it's in the  
17 official record so you could have come to pick it up  
18 and made a copy of it. Before you leave, make sure  
19 you do. We'll leave the record open for a submittal  
20 on that.

21 MR. SCHUHAM: Thank you.

22 MEMBER MILLER: I just want to get a  
23 clarification of your answer to Mr. Nettler with  
24 respect to whether the Office of Planning made a  
25 determination, I think was the word used, with respect

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1 to the interpretation of 203.8. I thought you said  
2 that Office of Planning didn't make a determination  
3 and you were just offering an opinion.

4 MR. PARKER: The Office of Planning agrees  
5 with the Zoning Administrator's determination.

6 MEMBER MILLER: Okay, so the Office of  
7 Planning has made --

8 MR. PARKER: The Zoning Administrator has  
9 made a determination.

10 CHAIRPERSON GRIFFIS: Well said.  
11 Understood. They made a recommendation to this Board  
12 in their report.

13 MEMBER MILLER: And OP agrees, okay.

14 CHAIRPERSON GRIFFIS: Anything further?  
15 Questions? Let's move on then. Is ANC-6B here?

16 MS. OLSON: Right here.

17 CHAIRPERSON GRIFFIS: Very good. Did you  
18 have any cross examination of Office of Planning while  
19 you are coming up?

20 MS. OLSON: No.

21 CHAIRPERSON GRIFFIS: Okay. Thank you.  
22 Go ahead.

23 MS. OLSON: Good evening, Mr. Chairman and  
24 Members of the Board. My name is Julie Olson. I  
25 reside at 320 G Street, S.E. here in Washington. I am

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1 the chair of Advisory Neighborhood Commission 6B. At  
2 its regularly scheduled and properly noticed meeting  
3 on November 5, 2003, ANC-6B voted seven to one to one,  
4 six being a quorum for the conduct of business, to  
5 oppose the application for a special exception by Mark  
6 Lee Phillips to increase the number of sleeping rooms  
7 in the bed and breakfast under a home occupation  
8 permit.

9 The Applicant argued before the ANC that  
10 day three points. (1) Six rooms are allowed in a  
11 historic district as a matter of right. (2) They have  
12 obtained a waiver of the parking requirements from the  
13 Historic Preservation Office. (3) The increased number  
14 of rooms will have no harm to the neighborhood and  
15 therefore qualifies for a special exception. The  
16 neighbors of this establishment argued to the ANC in  
17 opposition to all of these points.

18 On the first point, the ANC believes the  
19 Zoning Administrator was correct in requiring a  
20 special exception to increase the number of rooms  
21 above the current two under the terms of the home  
22 occupation permit. The law clearly sets the bar of  
23 the size of a B and B operation that qualifies under  
24 the home occupation permit process and gives basically  
25 a bonus to establishment in the historic district.

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1           It only gives this a bonus under the  
2 special exception process. It does not give matter of  
3 right status to anything above two rooms. That's our  
4 argument on that regulation. More importantly, since  
5 the case before the Board is whether to grant the  
6 special exception and not appeal to the Zoning  
7 Administrator's decision, any argument by the  
8 application concerning matter of right is mute. The  
9 question before the Board concerns them only in the  
10 special exception test.

11           The ANC is generally supportive of B and B  
12 establishments recognizing that B and Bs can  
13 contribute to the character of a neighborhood.  
14 However, we are also aware of the disruption to the  
15 neighborhood that such establishments can cause,  
16 especially those with more than two rooms. This is  
17 the reason the ANC strongly supports the provision in  
18 the law that requires a special exception for more  
19 than two rooms.

20           One of the potentially most disrupted  
21 elements of a B and B with more than two rooms  
22 concerns parking. Parking is already at a premium in  
23 this neighborhood. The introduction of a business  
24 establishment that takes away street parking during  
25 the evening hours can only exacerbate the problem.

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1           We note that most but not all of the bed  
2 and breakfasts in the area with more than two rooms  
3 provide off street parking for their guests. We  
4 believe that such a requirement for off street parking  
5 is important in minimizing the impacts on the  
6 neighborhood. Thus, the ANC was very disturbed to  
7 learn that the Applicant believes they have obtained  
8 some sort of waiver of the parking requirements from  
9 the Historic Preservation Office.

10           The neighborhood will already be  
11 negatively impacted by additional comings and goings  
12 of the guests in the expansion from two to four or a  
13 six room establishment. If the Applicant is not  
14 required to provide off street parking, the issue of  
15 the disruption to the neighborhood becomes even more  
16 acute. Under these circumstances where no additional  
17 parking is available, the expansion of the B and B  
18 operation beyond two rooms would have a serious  
19 detrimental impact on the neighborhood.

20           Thus, ANC-6B believes that the application  
21 does not meet the test for a special exception as  
22 outlined in Regulation 3104.1, specifically the clause  
23 which requires that a special exception will not tend  
24 to affect adversely the use of neighboring property.  
25 We opposed the granting of the special exception based

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1 upon the negative impact on the neighborhood.

2 I want to add one personal note on this  
3 issue as well. One of the most galling aspects of  
4 this case is the Applicant's flaunting of the Zoning  
5 Regulations. They come before you today to ask for an  
6 expansion from two rooms to at least four at this  
7 time. Yet if their advertising is any indication,  
8 they are already operating a four room establishment  
9 in violation of the current home occupation permit.

10 If you look at their website,  
11 [www.417inn.com](http://www.417inn.com), they repeatedly talk about their four  
12 rooms. They show pictures of and give prices for  
13 their four rooms; the Victoria and Albert room, the  
14 Bishop Sadderley Room, the Library Room, and the  
15 Garden Room. Two of these rooms can accommodate two  
16 persons. The other two have room for additional  
17 guests. This means at full accommodation we are  
18 looking at 11 or 12 guests. This is not a small bed  
19 and breakfast with minimal impact on the neighborhood.

20 This is a mini-hotel.

21 Returning to the parking issue, their  
22 website makes it clear that the nature of the  
23 operation increases the negative impact on the  
24 neighborhood. They advertise that on street parking  
25 is available with advanced notice and permits. In

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1 other words, they will get you a visitor parking  
2 permit so that you can avoid the residential zone  
3 parking restrictions. I believe this is an abuse of  
4 the visitor's permit system and clearly shows the  
5 detrimental impact of this establishment on the  
6 neighborhood.

7 Just also from my knowledge because this  
8 has been brought up in terms of the residential zone  
9 permit parking regulations, when working on issues  
10 within the ANC and also within the PSA that I belong  
11 to, these permit parking regulations are for  
12 residential use not commercial use. A resident at any  
13 single address can only have up to two weeks  
14 cumulative per year of these special parking permits.

15 So I'm curious to know how a bed and  
16 breakfast can fit into all of this. Again, finally  
17 let me repeat that ANC-6B believes that the granting  
18 of this special exception will have a negative impact  
19 on the neighborhood and urges you to reject this  
20 application. Thank you.

21 CHAIRPERSON GRIFFIS: Thank you very much.

22 The last statements you prefaced by saying "on a  
23 personal note." Are you saying that this isn't the  
24 ANC's position on those issues?

25 MS. OLSON: Several of us found the

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1 website after we had the meeting.

2 CHAIRPERSON GRIFFIS: So it's not the  
3 official ANC position.

4 MS. OLSON: It's not the official ANC.

5 CHAIRPERSON GRIFFIS: Certainly if the  
6 record stays open, you can follow up officially and  
7 see if they would support that. Technically I'm  
8 shocked that the ANC was very disturbed to learn of a  
9 historic designation by the State Historic  
10 Preservation Office. Being in a historic district,  
11 have you never run across that designation of a  
12 contributing building?

13 MS. OLSON: We have never come across a  
14 waiver of parking restrictions.

15 CHAIRPERSON GRIFFIS: Never a waiver for a  
16 historic or contributing building.

17 MS. OLSON: No.

18 CHAIRPERSON GRIFFIS: Okay. Ms. Miller.

19 MEMBER MILLER: Were there any neighbors  
20 at the ANC meeting that supported the B and B?

21 MS. OLSON: No.

22 MEMBER MILLER: How many people were at  
23 the meeting?

24 MS. OLSON: Some of the neighbors here  
25 probably know better than me. Being chair sometimes I

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1 look out and just see a sea of faces. I think there  
2 were probably seven or eight at most.

3 MEMBER MILLER: How did you advertise this  
4 issue?

5 MS. OLSON: It comes out regularly in our  
6 normal advertising of ANC meetings. We do it in  
7 various locations. We have a very large email list  
8 that we get people to sign up for when they come to  
9 the door to meetings. We publish it in the Hill Rag  
10 and Voice of the Hill newspapers. There's a minimum  
11 seven day requirement. We usually give ten at least.

12 CHAIRPERSON GRIFFIS: Was it properly  
13 noticed?

14 MS. OLSON: Yes, it was properly noticed.

15 MEMBER MILLER: But you noticed this  
16 specific issue, not just the meeting, is that correct?

17 MS. OLSON: Yes, we list the agenda two  
18 weeks ahead of time, at least what we know is going to  
19 be on the agenda. There's always last minute cases,  
20 but this was noticed way ahead of time.

21 MEMBER MILLER: The negative impact on the  
22 neighborhood that you are concerned about is the  
23 parking and specifically related to the parking  
24 permits.

25 MS. OLSON: Yes.

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1 MEMBER MILLER: Thank you.

2 COMMISSIONER HOOD: Mr. Chairman, a quick  
3 question.

4 CHAIRPERSON GRIFFIS: Yes.

5 COMMISSIONER HOOD: The one commissioner  
6 who voted against the motion at the ANC, was that the  
7 commissioner in which the B and B is located?

8 MS. OLSON: No, it was not.

9 COMMISSIONER HOOD: Thank you.

10 CHAIRPERSON GRIFFIS: Anything else?  
11 Questions for the ANC by the Applicant?

12 MR. NETTLER: Good afternoon. You made  
13 reference to the fact that there were a number of B  
14 and Bs, particularly in this ANC, that have produced  
15 some adverse impacts. Could you tell the Board which  
16 B and Bs that you are referring to?

17 MS. OLSON: Well, I think specifically if  
18 I remember correctly in our conversations within the  
19 ANC committee the Bull Moose was one of them.

20 MR. NETTLER: How large is the Bull Moose?

21 MS. OLSON: I'm not positive on that.

22 MR. NETTLER: If I told you it was ten  
23 rooms, would you be surprised?

24 MS. OLSON: I wouldn't be, no.

25 MR. NETTLER: Do you know that the Bull

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1 Moose does not have a Certificate of Occupancy as a B  
2 and B?

3 MS. OLSON: No, I did not know that.

4 MR. NETTLER: And that the Bull Moose is a  
5 rooming house.

6 MS. OLSON: No, I did not know that.

7 MR. NETTLER: Do you know anything about  
8 the Bull Moose's parking situation?

9 MS. OLSON: That's what I'm not positive  
10 about. Again, we discussed it. Some of the ANC  
11 commissioners knew exactly what was going on with that  
12 particular parking requirement. I think that they do  
13 have some off street parking. I'm not positive.

14 MR. NETTLER: Have you ever seen the  
15 advertising for the Bull Moose?

16 MS. OLSON: I believe I have in some of  
17 the local newspapers.

18 MR. NETTLER: Don't they advertise that  
19 they provide parking passes that they obtain from the  
20 Metropolitan Police Department?

21 MS. OLSON: I have never seen that. I  
22 would have noticed that one.

23 MR. NETTLER: Let me just show you  
24 information that's provided by Bull Moose. If you  
25 look at --

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1 MS. OLSON: Let me just state too that  
2 just because the Bull Moose does it, it doesn't mean  
3 that it's right.

4 CHAIRPERSON GRIFFIS: Well, and we have no  
5 jurisdiction over it.

6 MR. NETTLER: If the Bull Moose is not  
7 licensed as a B and B, then whatever way the Bull  
8 Moose is being operated is not relevant to how this B  
9 and B is being operated, is it?

10 MS. OLSON: Well, the Bull Moose was an  
11 example that I pulled out. There are several B and Bs  
12 that could be relevant to this particular case.

13 MR. NETTLER: Why don't you give me  
14 another B and B?

15 MS. OLSON: There's the Hereford House  
16 that is no longer a B and B. But since I know the  
17 owner personally, I know that she did not get visitor  
18 parking permits for her guests.

19 MR. NETTLER: Where was that B and B  
20 located?

21 MS. OLSON: Sixth and South Carolina.

22 MR. NETTLER: Are you aware that did not  
23 have a Certificate of Occupancy as a B and B but was a  
24 rooming house as well?

25 MS. OLSON: That I know the owner

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1 personally and it was a B and B regardless of the home  
2 occupation permit. If that's a problem, I think that  
3 need to go after all bed and breakfasts to make sure  
4 that they have the right home occupation permits.

5 CHAIRPERSON GRIFFIS: We're not going to  
6 take that up today. That's a lot to accomplish.

7 MS. OLSON: Exactly.

8 MR. NETTLER: So I want you to provide us  
9 with a B and B that's licensed as a B and B that you  
10 said provides all these problems that you have  
11 referred to.

12 MS. OLSON: Provides parking problems.

13 MR. NETTLER: No, you said in your initial  
14 testimony while you generally think that bed and  
15 breakfasts are good and operated well and have that  
16 type of impact that because of your experience with B  
17 and Bs in your ANC you have concerns about the impact  
18 of this particular B and B. I'm trying to find out  
19 what B and B has that impact. We have identified the  
20 Bull Moose which is not a legitimate B and B. You  
21 made reference to the one at Sixth and South Carolina  
22 which is not a legitimate B and B. I want to ask you  
23 is there another one that operates as a B and B that  
24 you are aware of?

25 MS. OLSON: 506 East Capitol Street which

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1 has parking.

2 MR. NETTLER: Do you have a Certificate of  
3 Occupancy for that one as a B and B as well?

4 MS. OLSON: No, I don't make it a routine  
5 effort of the ANC to look up all the Certificates of  
6 Occupancy.

7 CHAIRPERSON GRIFFIS: He's not being  
8 belligerent. Keep to his question. It is very  
9 straightforward.

10 MR. NETTLER: There's a reason as you know  
11 for licensing different types of uses in the District  
12 of Columbia so that you can have and so that the ANC  
13 can have an opportunity to ensure that the different  
14 requirements that apply to uses, whether they are  
15 rooming houses, B and Bs, and others, are being  
16 applied and complied with. So in terms of trying to  
17 understand the impact that one B and B which is  
18 seeking to license itself as a B and B has in  
19 conjunction with other uses, I am just trying to get  
20 at one that is similarly licensed as a B and B in your  
21 zone that you make reference to that has the type of  
22 impact that you refer to.

23 MS. OLSON: I think for example I just  
24 referred to one. Mostly we're concerned with this B  
25 and B.

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1 MR. NETTLER: So let's deal with this B  
2 and B then. First, with regard to the ANC meeting,  
3 were there two meetings held in this matter?

4 MS. OLSON: Yes, there is a Planning and  
5 Zoning Committee meeting that is held one week prior  
6 to the ANC meeting.

7 MR. NETTLER: How many residents spoke up  
8 against the B and B at that meeting?

9 MS. OLSON: About the same, probably seven  
10 or eight residents.

11 MR. NETTLER: Seven or eight residents  
12 spoke up or was it three who spoke up at that meeting?

13 MS. OLSON: To tell you the truth, I can  
14 go back and pull out our minutes from it but there  
15 were a few residents there, yes.

16 MR. NETTLER: A few, okay. At the second  
17 meeting, how many residents spoke up at the full ANC  
18 meeting against it?

19 MS. OLSON: Again, there was probably only  
20 a handful.

21 MR. NETTLER: So was it just one person  
22 who spoke up against it?

23 MS. OLSON: No, there was definitely more  
24 than one. There were at least three or four and there  
25 were more residents there in support.

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1 MR. NETTLER: With regard to the different  
2 issues that this Board has to deal with, let's deal  
3 with noise. What specific testimony can you provide  
4 that the ANC has observed or a single ANC member has  
5 observed with regard to noise that you think is a  
6 problem from this B and B?

7 MS. OLSON: Well, I think a lot of our  
8 information is coming from the residents who live  
9 right around there. The ANC doesn't make it a habit  
10 of stalking neighborhood properties to see what the  
11 impact is.

12 CHAIRPERSON GRIFFIS: Let's not embellish  
13 a lot of the answers.

14 MR. NETTLER: So you don't have any  
15 personal information about any noise.

16 MS. OLSON: Not myself personally.

17 MR. NETTLER: What is the type of noise  
18 that you have heard is a problem?

19 MS. OLSON: The cars honking, the taxi  
20 cabs out front, door slamming at all hours of night,  
21 people outside ringing doorbells, noise inside.  
22 Unfortunately the walls are probably very thin and  
23 they can hear a lot of noise from next door.

24 MR. NETTLER: In terms of your review of  
25 the website, you made reference to the fact that there

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1 were four rooms on there. Do you know that all four  
2 rooms are provided at any given time or that only two  
3 of those rooms that are being utilized for the B and  
4 B?

5 MS. OLSON: It was not specific. There  
6 was an assumption that there were four rooms  
7 advertised and prices were given for each room.

8 MR. NETTLER: But you don't have any  
9 information that all of those rooms in conjunction are  
10 being utilized as a B and B as opposed to somebody  
11 having the opportunity to choose as to one room or  
12 another, do you?

13 MS. OLSON: I don't have any evidence  
14 against it either.

15 MR. NETTLER: Your statement to the effect  
16 that you were surprised to learn that there are four  
17 rooms being provided is not based on the fact that you  
18 think that four rooms are actually being used but just  
19 for the fact that you saw that there were pictures of  
20 four rooms that are on the website.

21 MS. OLSON: I think also the assumption  
22 there is if I see a bed and breakfast on a website and  
23 it says that four rooms are there and I'm coming in  
24 for a wedding or whatever type of situation and  
25 there's a bed and breakfast that has four rooms

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1 available, yes I would think they would have four  
2 rooms available to rent at any one time.

3 MR. NETTLER: But you never questioned  
4 this owner or anybody else as to whether that's the  
5 case or not, have you?

6 MS. OLSON: We just found out about this  
7 website not so long ago. Also for the record, the  
8 website is now blocked so that nobody can use it. I  
9 assume that was intentional. I don't know.

10 CHAIRPERSON GRIFFIS: Neither do I.

11 MR. NETTLER: Neither do I. I have no  
12 other questions of this witness.

13 CHAIRPERSON GRIFFIS: No questions from  
14 the party in opposition. Very well. Thank you very  
15 much. I appreciate you being down here today.

16 MS. OLSON: Thank you.

17 CHAIRPERSON GRIFFIS: The party in  
18 opposition, is anyone else here to give testimony  
19 today? Please come up. One representative for the  
20 party, I'm going ask you how long your case  
21 presentation is.

22 MR. ANDERS: My part is going to go ten  
23 minutes. A total of 25 minutes. Mine is no longer  
24 than ten and Mr. Berry's is no longer than 15.

25 CHAIRPERSON GRIFFIS: All right. We're

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1 going to take a really quick break because I need to  
2 assess. My apologies are very strong on this. I am  
3 hoping to get to all of the cases today but we're  
4 getting close to 6:00 p.m. I need to assess from the  
5 Board whether we're going to maintain a quorum. If we  
6 have a quorum, we are going to continue on. I will  
7 know that in about three minutes I hope and then we'll  
8 resume.

9 (Whereupon, the foregoing matter went off  
10 the record at 5:38 p.m. and went back on  
11 the record at 5:55 p.m.)

12 CHAIRPERSON GRIFFIS: On the record.

13 DIRECT TESTIMONY

14 MR. ANDERS: Do you want me to start over?

15 CHAIRPERSON GRIFFIS: No, you are going to  
16 give us pieces of evidence.

17 MR. ANDERS: Since I don't have these with  
18 me, if it's possible to keep the record open. The  
19 first is there is a letter from the Zoning  
20 Administrator to either Mr. Phillips or his attorney  
21 refuting the legal claim that he's making today about  
22 how he has a matter of right.

23

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1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 (6:00 p.m.)

3 CHAIRPERSON GRIFFIS: What is the date on  
4 the letter?

5 MR. ANDERS: I don't have it with me.

6 MR. NETTLER: March 19.

7 CHAIRPERSON GRIFFIS: March 19.

8 MR. NETTLER: It's already part of the  
9 record.

10 CHAIRPERSON GRIFFIS: Right, both of those  
11 are in the record.

12 MR. ANDERS: Related to that, our  
13 understanding was that the legal issue was being  
14 withdrawn and that was the original appeal that they  
15 are making. Our understanding based on today is --

16 CHAIRPERSON GRIFFIS: The Board is not  
17 asking for arguments on that issue. The Board has  
18 enough information. If it decides to deliberate on  
19 that issue, it will take that up. At this point, we  
20 have a straightforward special exception application.  
21 So don't address it in your case presentation.

22 MR. ANDERS: Okay, would we have an  
23 opportunity to submit a letter briefing that issue?

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. ANDERS: The other letter that we

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1 wanted to put in - and I don't have it here today with  
2 me either - is there's also a letter from I believe  
3 the Zoning Administrator to Mr. Phillips that informed  
4 him that the parking requirement had not been waived  
5 which means that Mr. Phillips already, since he  
6 doesn't have any parking, is already violating the  
7 terms of his Certificate of Occupancy.

8 CHAIRPERSON GRIFFIS: Mr. Nettler, are you  
9 aware of what date that letter is?

10 MR. NETTLER: Yes, it's number 12. It's a  
11 letter to that effect as well as a letter withdrawing  
12 that position since they recognized that they made a  
13 mistake regarding the parking issue.

14 CHAIRPERSON GRIFFIS: Hold on. I now have  
15 conflicting information. You are saying it's your  
16 exhibit number 12.

17 MR. NETTLER: No, number 12 is the October  
18 31 letter.

19 CHAIRPERSON GRIFFIS: Right.

20 MR. NETTLER: I believe it makes reference  
21 to the prior.

22 CHAIRPERSON GRIFFIS: Is it one of your  
23 exhibits?

24 MR. NETTLER: Just a second. It actually  
25 is part of the initial appeal and application. Since

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1 that issue was withdrawn by the Zoning Administrator  
2 by the subsequent letter, it was not made part of the  
3 preliminary statement.

4 CHAIRPERSON GRIFFIS: Okay, so you didn't  
5 submit it in.

6 MR. NETTLER: Your files will have it from  
7 our previous filing.

8 CHAIRPERSON GRIFFIS: But did your  
9 previous appeal filing come into this?

10 MR. NETTLER: I believe it's there.

11 CHAIRPERSON GRIFFIS: I don't think it's  
12 in this record. No matter what, we'll have that  
13 letter submitted in if there's no objection.

14 MR. NETTLER: I have no problem with that.

15 MR. ANDERS: Then we would like to have an  
16 opportunity to submit different advertisements that we  
17 have collected that show that 417 A Street has been  
18 advertising I think even since before they opened that  
19 they had four rooms for rent.

20 CHAIRPERSON GRIFFIS: Let's get to your  
21 case presentation.

22 MR. ANDERS: I'm sorry. One additional  
23 thing is we also have a Certificate of Occupancy from  
24 the previous owner of 417 A Street showing that it was  
25 describing it as a two flat dwelling. Mr. Berry who

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1 will follow me will testify that the previous owner  
2 was a couple living upstairs and renting out an  
3 English basement apartment. So it was not being  
4 operated as a rooming house as the previous testimony  
5 has --

6 CHAIRPERSON GRIFFIS: I don't know what  
7 the relevancy of that is.

8 MEMBER ZAIDAIN: Yes, actually that's my  
9 question. We're talking a lot about the previous use.  
10 I'm trying to grasp exactly where that's supposed to  
11 lead us in terms of deliberating on the special  
12 exception.

13 MR. ANDERS: I'm not sure either but there  
14 was an awful lot of testimony here so I assume someone  
15 must be thinking that it's relevant that the previous  
16 use was a rooming house or maybe not a rooming house  
17 or a boarding house or maybe not a boarding house.  
18 They have been there 13 years. We have lived in our  
19 house for five and a half years. In that time, it's  
20 been entirely residential with two people living in  
21 their house and three people in our house.

22 MEMBER ZAIDAIN: Well, speaking for myself  
23 and just to give you some guidance on what I think we  
24 would like to hear is the previous uses is not going  
25 to have that much of an effect because it's a special

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1 exception. I would like to hear a lot on impacts if  
2 that's helpful.

3 CHAIRPERSON GRIFFIS: That's the truth.  
4 What we're doing is we're holding open the possibility  
5 in your case presentation that somehow advertising of  
6 other institutions, whatever you want to call them,  
7 are relevant, except for this objection.

8 MR. NETTLER: No, its not an objection. I  
9 believe he's referring to advertising regarding this  
10 particular building. There is a letter that's also  
11 attached to our pre-hearing statement from DCRA saying  
12 you can advertise that there are four rooms as long as  
13 you are only renting or using two of them at any given  
14 time for the B and B until such time as you get a  
15 special exception to allow it up to four.

16 CHAIRPERSON GRIFFIS: What exhibit is  
17 that?

18 MR. NETTLER: Exhibit 12 to the pre-  
19 hearing statement.

20 CHAIRPERSON GRIFFIS: That's the October  
21 31 letter.

22 MR. NETTLER: That's the advertising issue  
23 which was raised by the neighborhood to the Department  
24 of Consumer and Regulatory Affairs.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. ANDERS: Our main concern living  
2 immediately next door to them is with noise and  
3 traffic coming in and out of their house and also what  
4 we hear through the walls. Mr. Berry is going to  
5 speak about parking. I believe we share the same  
6 concerns about parking. Parking obviously affects the  
7 whole neighborhood. For us, we have the special  
8 problem of sharing a wall with them.

9 Five and a half years ago, we moved from  
10 an area that's very close to where the Swann Street B  
11 and B is. Looking at the court's opinion in that  
12 case, it's a neighborhood that has lots of different  
13 uses. It was a busy neighborhood. We wanted to have  
14 a child and raise a child and raise a family in a  
15 residential area. That's why we moved there. And  
16 that is what the neighborhood is.

17 It's a quiet street. The street is  
18 blocked by the Library of Congress, a block and a half  
19 away from our house. There is very little traffic  
20 going through. There's parks within two blocks within  
21 one direction and one and a half blocks in another  
22 direction on Fifth Street so there's not a lot of  
23 traffic of Fifth Street. There's almost no traffic on  
24 A Street. It's as quiet a neighborhood as you can  
25 have on Capitol Hill.

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1 All of the homes on our side of the street  
2 are single family homes. There is one person that  
3 rents out an English basement apartment at this point  
4 and that's it. Everything on the other side of the  
5 street is all residential with a townhouse that's been  
6 converted to an office building at the far end of the  
7 block. It's as residential as you can get. That's  
8 what we were looking for. That's why we moved there.

9 Since the conversion of this house into a  
10 B and B, they have added two new bathrooms to the  
11 three that were already there which means that there  
12 are now five bathrooms along the party wall. They  
13 already had two kitchens there which means that the  
14 party wall that we share basically has staircases that  
15 go -- There's a basement and three floors above that.

16 So they basically have three flights of  
17 stairs, five bathrooms, and two kitchens all on the  
18 party wall. Basically anything that really generates  
19 noise is all along the party wall. We have part of  
20 our living room and three of our bedrooms directly on  
21 the party wall. Our fourth bedroom is separated with  
22 a bathroom. So we get all of the noise that's coming  
23 from that and all the noise that's coming from the  
24 additional bathrooms.

25 Even with their supposed use of only two

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1 rooms now and from our own observation, Mr. Phillips  
2 and his partner live in the basement apartment. They  
3 don't live in the main house. The main house is  
4 basically totally vacant. It's furnished but vacant.

5 So those four rooms are all available for rent.

6 Maybe they are taking the position that  
7 people get to choose which of the four rooms but no  
8 one lives in any of the four rooms. They are also not  
9 making any concession by saying that they are not  
10 asking for six and that they are only asking for four.

11 They only have four rooms to rent.

12 We have heard bathrooms going in all four  
13 rooms. We have observed eight or nine people in a  
14 given morning going into the house. The numbers of  
15 people that are there often exceed the numbers that  
16 you would expect to see when only two rooms are being  
17 rented out. Certainly from just hearing what  
18 bathrooms are being used, how many different places we  
19 are hearing the showers, it's clear that they are  
20 exceeding the two that they are allowed to have.

21 There's nothing between us. It is the  
22 party wall. Our front doors abut each other. Our  
23 walkways both run along the same low, rod iron fence.

24 When they have guests, we have lots of interaction  
25 with their guests. Their front door is immediately

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1 below our bedroom. It hasn't been just one guest that  
2 has shown up at 11:30 p.m. on one occasion and only  
3 two other guests who have shown up past 8:00 p.m.  
4 There have been lots of guests that have shown up late  
5 at night.

6 Mr. Phillips is claiming that he gives  
7 keys to his guests now. There have been lots of  
8 guests who have gotten into big debates between  
9 themselves as to whether Mr. Phillips is up or not at  
10 1:00 a.m. or 2:00 a.m. when they are coming back from  
11 pub crawling or wherever they have been and then  
12 ringing the doorbell. We can hear the doorbell and  
13 all of this activity from our bedroom.

14 There are people who are using their cell  
15 phones outside of their building. I don't know  
16 whether he has a no cell phone policy, but we  
17 typically see people standing on their front steps  
18 using their cell phones. We have people smoking  
19 outside on their front steps. There is luggage being  
20 dragged up and down the stairs at all hours. It's not  
21 from Mr. Phillips' travel.

22 Mr. Phillips no longer uses his front  
23 door. He uses his back door. His back door goes out  
24 through the basement and it goes onto Fifth Street.  
25 If someone is coming for Mr. Phillips or if he is

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1 being dropped off, it's typically being dropped off at  
2 his Fifth Street entrance around the corner. So cabs  
3 are coming. Cabs are honking their horns as 6:00 a.m.

4 People are being dropped off. Luggage is coming in  
5 and out. None of that is Mr. Phillips. That's all  
6 their guests.

7 I don't want to belabor it, but the amount  
8 of noise and the disruption that we have had to what  
9 we thought was going to be a residential area has  
10 already been really substantial. The idea that it  
11 would be doubled is inconceivable. Then I guess the  
12 one other thing that we wanted to add - and we raised  
13 this with DCRA initially and there was a lot of  
14 discussion that we had with them - is building codes  
15 and things like that.

16 Apparently B and Bs have gotten all kinds  
17 of exceptions from all kinds of regulations. They  
18 also have all kinds of exceptions from fire codes and  
19 all. The house at 417 had a - and I don't know when  
20 it was installed but it was very old - fire escape.  
21 Before making their request for modifications and for  
22 the Certificate of Occupancy for a bed and breakfast,  
23 they tore down the fire escape.

24 It's a three story building above the  
25 basement. Mr. Phillips lives in the basement. Who

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1 knows? They have no sprinklers. They have no fire  
2 escape. It's all a block of row houses attached to  
3 each other. We're also concerned about what happens  
4 when you multiply the number of people in the building  
5 from a fire safety standpoint?

6 I did want to respond as a last little  
7 response point. Mr. Phillips suggested that there's  
8 really no difference and his attorney with some  
9 questions was suggesting that there's really no  
10 difference between this use and a large family. There  
11 is a difference in terms of regularity. Our neighbor  
12 on the other side wakes up earlier than us most  
13 mornings. We can tell that because we can hear their  
14 bathroom and their shower. But it's something where  
15 you know what time it's going to happen. People are  
16 living their regular lives and there's a certain  
17 regularity in that.

18 The other thing though is that there's  
19 also neighbors being neighbors are repeat players.  
20 Someone who shows up as a one time guest - and this  
21 has been our experience up to this point - is not  
22 treating other people, other neighbors with the same  
23 kind of respect and courtesy that people who are going  
24 to be regularly seeing each other, regularly getting  
25 to know each other treat each other.

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1 I think it has degraded what was a really  
2 wonderful, entirely residential area into an area  
3 where, the woman from the ANC characterized it as a  
4 mini hotel. That's really the goal is to operate a  
5 mini hotel and plop this commercial establishment into  
6 the middle of our residential area. So I really urge  
7 you to refuse this special exception.

8 CHAIRPERSON GRIFFIS: Thank you. A couple  
9 of quick questions. First of all, the party wall  
10 construction, do you know what material it is?

11 MR. ANDERS: We did some work on the wall.  
12 I know it's brick.

13 CHAIRPERSON GRIFFIS: Are your interior  
14 stairs on that party wall that's shared with the B and  
15 B?

16 MR. ANDERS: Yes.

17 CHAIRPERSON GRIFFIS: Other questions?

18 MEMBER MILLER: How long have you lived  
19 there?

20 MR. ANDERS: Five and a half years.

21 MEMBER MILLER: How was the building used  
22 before, as a residence?

23 MR. ANDERS: Our house or theirs?

24 MEMBER MILLER: The one that's at issue  
25 for the B and B.

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1 MR. ANDERS: 417 A Street, that changed  
2 hands in 1990. Mr. Berry might be able to talk more  
3 since he has lived there longer.

4 MEMBER MILLER: No, since you have lived  
5 there.

6 MR. ANDERS: Mr. Phillips testified that  
7 he raised his children there. There were never any  
8 children living there permanently. It was just him  
9 and his partner.

10 MEMBER MILLER: So when you were living  
11 next door --

12 MR. ANDERS: The entire time we have been  
13 there we have had a married couple on one side of us  
14 at 413 A Street, S.E., Councilman Thompson and his  
15 wife, and at 417 A Street, Mr. Phillips and his  
16 partner until a year and a half ago or a year ago.

17 MEMBER MILLER: So there were no more than  
18 two people living in that building next door to you  
19 for the entire period that you have been there.

20 MR. ANDERS: That's right.

21 MEMBER MILLER: Thank you.

22 CHAIRPERSON GRIFFIS: Anything else?

23 MEMBER ZAIDAIN: Yes, I'm trying to orient  
24 myself. How far are you from the Pennsylvania Avenue  
25 business district?

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1 MR. ANDERS: We're two blocks from  
2 Pennsylvania Avenue.

3 MEMBER ZAIDAIN: Two blocks.

4 MR. ANDERS: Actually we're on A. Then  
5 there's Independence. Then there's a little mini  
6 park. Then A Street is on the other side of that.

7 MEMBER ZAIDAIN: Do you find a lot of  
8 people walking to and from this area to the bars and  
9 back?

10 MR. ANDERS: Not really.

11 MEMBER ZAIDAIN: Even from the B and B.

12 MR. ANDERS: From the B and B?

13 MEMBER ZAIDAIN: Yes, either way.

14 MR. ANDERS: Yes, I don't know where they  
15 are going. There are people that come in and out of  
16 their place. We have a church at Third and A, S.E.  
17 that generates a lot of traffic. Most of the  
18 restaurants are either a little east or a little west  
19 of Fifth Street, there's not a lot of people looking  
20 to park right on our immediate block.

21 MEMBER ZAIDAIN: Are most of the houses  
22 around you owner occupied or are any of them rentals?

23 MR. ANDERS: I believe all of them are  
24 owner occupied.

25 MEMBER ZAIDAIN: I have no further

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1 questions.

2 CHAIRPERSON GRIFFIS: Any other questions  
3 from the Board? We're going to save cross for after  
4 the entire presentation. Next.

5 DIRECT TESTIMONY

6 MR. BERRY: My name is Gene Berry. I live  
7 at 100 Fifth Street, S.E. directly across the street  
8 parallel to the house in question. I'd like to follow  
9 up with Mr. Zaidain's question to Chris first. There  
10 has been an influx of bar traffic. Pennsylvania  
11 Avenue is wildly successful right now. We have  
12 noticed an influx of traffic. You can tell it's  
13 specifically related to them because they come and  
14 drop beer bottles between 2:00 a.m. and 4:00 a.m. on  
15 weekends. So we do have a lot of that.

16 Like Chris said, this is a residential  
17 neighborhood. There's only one other office space,  
18 the American Historical Society, one block up on the  
19 corner of Fourth and A, S.E. As far as that, there  
20 are no other businesses from the Library of Congress  
21 Adams Building which is the Third and A Street all the  
22 way to A and North Carolina Avenue. In the opposite  
23 direction between East Capitol and Fifth and  
24 Pennsylvania Avenue and Fifth, there are no business  
25 establishments other than the American Historical

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1 Society.

2 MEMBER ZAIDAIN: Did you say East Capitol  
3 and Fifth?

4 MR. BERRY: Yes, Jimmy T's is at East  
5 Capitol and Fifth. From that block toward the B and B  
6 in question, A Street, S.E. all the way to  
7 Pennsylvania Avenue, there are no businesses. There's  
8 one dentist, excuse me. There's one home occupation  
9 licensed on the corner of Fifth and A, but that is the  
10 only one.

11 CHAIRPERSON GRIFFIS: How would you know  
12 if there are other home occupations on the way in that  
13 area?

14 MR. BERRY: Well, I assume that he has a  
15 legal HOP. He is a dentist and he's been there for a  
16 long time.

17 CHAIRPERSON GRIFFIS: I understand that,  
18 but how would you know that you have actually now just  
19 characterized all the other businesses or home  
20 occupations?

21 MR. BERRY: Well, obviously commercial  
22 establishments. There are HOPs that are single  
23 proprietor people. They do fit in. They are  
24 unobtrusive. I'm just saying commercial  
25 establishments that are identifiable as is the B and B

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1 or as will be the B and B.

2 CHAIRPERSON GRIFFIS: I think that  
3 addressed Mr. Zaidain's interest in that area.

4 MR. BERRY: I'll try to be brief. I know  
5 we all want to go home.

6 CHAIRPERSON GRIFFIS: We're not going  
7 anywhere.

8 MR. BERRY: I think it's pretty clear.  
9 The Zoning Administrator has ruled twice on March 19  
10 and March 24 that a special exception is required on  
11 both counts, not only the increase in the number of  
12 rooms but also the parking and that there is in fact  
13 no parking waiver at this time. The Applicant got a  
14 letter dated September 9 from Mr. Denzel Noble which  
15 actually says that if you get a revised home  
16 occupation license for either four or six rooms, then  
17 you go to the Historic Preservation Office to get a  
18 certificate by that office that this property  
19 contributes to the historic character of the  
20 neighborhood and then the Administrator rules on that  
21 application.

22 The Applicant thinks that merely by a  
23 certification of the office they have a waiver. This  
24 is what I will leave with you for the record. The  
25 D.C. Historic Preservation Office gives these

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1 instructions for zoning and construction code waivers  
2 under B and B waivers. "After HPO certifies the  
3 property as historic, the Zoning Administrator  
4 determines the applicability of the waiver." He has  
5 done that twice.

6 MEMBER ZAIDAIN: What were you just  
7 reading from?

8 MR. BERRY: It's the information from the  
9 District of Columbia Historic Preservation Office of  
10 Planning given to people asking information on zoning  
11 and construction code waivers.

12 MEMBER ZAIDAIN: I ask you just for  
13 expediency. Mr. Nettler, is the document he's  
14 referring to in your exhibits? No. Is this something  
15 else?

16 MR. BERRY: It's in here.

17 MEMBER ZAIDAIN: What is that?

18 MR. BERRY: This is what I'm going to  
19 leave for the record.

20 MR. NETTLER: I have the actual waiver on  
21 my letter, on my exhibit as well as the Zoning  
22 Administrator's subsequent letters.

23 MEMBER ZAIDAIN: Okay. I just wanted some  
24 quick reference. So you are going to submit that.

25 MR. BERRY: Yes.

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1           MEMBER ZAIDAIN:  If you are going to read  
2 from it and reference it, you may want to give it to  
3 us now so that we can look at it while you are looking  
4 at it.

5           MR. BERRY:  Well, I was just going to read  
6 that one statement.

7           CHAIRPERSON GRIFFIS:  You are going to  
8 need to give that to staff.  You are not getting that  
9 back.  Do you have other copies?  Do you have enough  
10 copies for us?

11          MR. BERRY:  No.

12          CHAIRPERSON GRIFFIS:  Why don't we deliver  
13 that to Mr. Zaidain?

14          MR. BERRY:  I'm sorry.  I didn't realize I  
15 had to bring copies for everyone.

16          CHAIRPERSON GRIFFIS:  Yes, if you are  
17 putting it into evidence, we're going to need all 20  
18 copies or something.  I don't know what we require.

19          MR. BERRY:  Part of the argument all along  
20 has been as a matter of right the Applicant has a  
21 right to four to six rooms.  I think the Zoning  
22 Administrator has precluded that argument.  I'm not  
23 going to belabor it at this point.  As far as the  
24 certificate from the Historic Preservation Office, the  
25 Applicant has merely a statement from that office that

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1 says this particular house contributes to the  
2 character of the neighborhood. This is a Queen Anne  
3 house which is not unlike many other Queen Anne houses  
4 On the Hill and throughout the District.

5 CHAIRPERSON GRIFFIS: Let me caution you.

6 I don't want to hear a case presentation on whether  
7 this is a contributing building in a historic district  
8 or not.

9 MR. BERRY: Okay, I'm just saying in that  
10 "waiver" the Applicant thinks he has, that's all it  
11 says.

12 CHAIRPERSON GRIFFIS: We're pretty well  
13 aware of what those waivers are.

14 MR. BERRY: It's then up to the Zoning  
15 Administrator to determine, and he has determined that  
16 a special exception is required. In fact, BZA Case  
17 Number 17079 only asks for a special exception for the  
18 increase in rooms. They actually need a second  
19 special exception for the waiver of parking.

20 MEMBER ZAIDAIN: What section would that  
21 come under?

22 MR. BERRY: Section 20 --

23 CHAIRPERSON GRIFFIS: The parking?

24 MEMBER ZAIDAIN: The waiver that he's  
25 referring to.

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1 MR. BERRY: I'll have to find that.

2 MEMBER ZAIDAIN: Yes, please do.

3 MR. BERRY: I have all of this in my file.

4 MEMBER ZAIDAIN: Just to make sure I  
5 understand what your argument is, you are referring to  
6 the Applicant's Exhibit 5 which is the application to  
7 certify a historic building for D.C. Zoning  
8 Regulations, is that correct?

9 MR. BERRY: Right.

10 MEMBER ZAIDAIN: What is your contention  
11 that form means?

12 MS. BAILEY: That form means that  
13 particular house contributes to the character of the  
14 neighborhood or its historic property. It doesn't  
15 grant per se a waiver. It's up to the Zoning  
16 Administrator to take that piece of paper, that  
17 certification, look at it, and then determine whether  
18 the parking waiver is applicable to that particular  
19 property under those circumstances.

20 CHAIRPERSON GRIFFIS: How would he do  
21 that? What's the applicability?

22 MR. BERRY: Well, he has to determine  
23 whether he's going to allow it.

24 CHAIRPERSON GRIFFIS: Allow it based on  
25 whether it's a contributing structure in a historic

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1 district. What other parameters do you think the ZA  
2 looks at it for?

3 MR. BERRY: I'm not sure what they do.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. BERRY: That's one thing I wanted to  
6 discuss. The other thing is the parking permits  
7 obtained by the Applicant, according to the District  
8 of Columbia website for DMV, eligible --

9 CHAIRPERSON GRIFFIS: Are you talking  
10 about the temporary permits?

11 MR. BERRY: Yes.

12 CHAIRPERSON GRIFFIS: Is that in your  
13 written submission?

14 MR. BERRY: Yes.

15 CHAIRPERSON GRIFFIS: This is why I'm  
16 moving quickly off of these topics. We have  
17 absolutely no jurisdiction over these things. It's of  
18 great interest but not anything we can deal with. We  
19 have gotten over a lot of thresholds today actually  
20 fining people and taxis and all of that but I don't to  
21 take on preservation or DMV tonight.

22 MR. BERRY: Okay, then I'll try to  
23 summarize briefly and then give you what I have.  
24 You'll find in the footnotes some of the references to  
25 particular parking permits obtained from MPD and

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1 various things like that.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. BERRY: You may not have received this  
4 yet, but I have a letter dated December 1, 2003.  
5 Council Member Sharon Ambrose has written a letter.

6 CHAIRPERSON GRIFFIS: Yes, we have that in  
7 the record.

8 MR. BERRY: I would just like then to  
9 quote two parts.

10 CHAIRPERSON GRIFFIS: Good.

11 MR. BERRY: One is "what this boils down  
12 to is a seriously adverse impact on the neighborhood  
13 to which the neighbors have strongly objected." (2)  
14 This is Sharon Ambrose speaking. "I would like the  
15 record of this matter to reflect that I oppose the  
16 grant of a special exception in this case to increase  
17 the number of sleeping rooms under this home  
18 occupation permit and urge the BZA's rejection of this  
19 application." I will leave this for the record. I  
20 would like for you, in your consideration of this  
21 issue, to give great weight to the ANC-6B's  
22 overwhelming seven to one decision to oppose the  
23 special exception.

24 CHAIRPERSON GRIFFIS: You don't need to  
25 tell us that.

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1 MR. BERRY: The Capitol Hill Restoration  
2 Society has also unanimously opposed the special  
3 exception. I have two petitions, one of which was  
4 signed by 91 residents. The first was to oppose the  
5 conversion of a single family residence to a two room  
6 B and B. The second is 146 signatures of adjacent  
7 neighbors in the contiguous four blocks and a little  
8 beyond who oppose this increase to four.

9 CHAIRPERSON GRIFFIS: That's part of what  
10 you are putting in tonight.

11 MR. BERRY: Yes, 146 signatures of  
12 neighbors who oppose this. A couple of other things I  
13 would just like to bring up. One of the things added  
14 tonight to the record was a CHAMPS letter of support.

15 There were also two other support letters. The two  
16 letters you received tonight were residents that lived  
17 at least two blocks away. The CHAMPS letter was  
18 signed by the executive director. However, I know for  
19 a fact on my petition I have members of CHAMPS who  
20 have opposed this very same B and B.

21 CHAIRPERSON GRIFFIS: Did you want to  
22 utilize your time for us in actually presenting  
23 substantive testimony in terms of how this might have  
24 a negative impact? You don't need to evidence all of  
25 the things that are in the record. By mere fact that

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1 they are in, (1) they are part of the record but (2) I  
2 can assure you and guarantee that every single Board  
3 Member will read everything in this record if not  
4 once, several times.

5 DIRECT TESTIMONY (cont.)

6 MR. BERRY: Okay, that's good. I will  
7 then talk about some of the negative impacts. Parking  
8 of course is one of the primary things. A lot of  
9 people think that's the most important issue. Parking  
10 from Pennsylvania Avenue has become an issue. Parking  
11 from a B and B, whether it's two or four or six,  
12 impacts a particular block.

13 We just had a building two blocks away  
14 that went condo. That took away another 12 or 14  
15 parking places. So the crunch is on. As you heard  
16 before, parking is an issue before you all the time.  
17 With a B and B, when you have four or six rooms, you  
18 have people who are driving in and staying. You have  
19 guests who are coming to visit with and drop off  
20 people and park for long periods of time. You also  
21 have the noise Chris has testified to.

22 So those are some of the parking problems.

23 You have a number of letters that you have received  
24 from various neighbors that talked about parking in  
25 relation to the safety issue. Elderly people have

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1 lived there for 40 years who now have to park three or  
2 four blocks away some nights. One letter which I just  
3 received from a resident - and I'll leave that with  
4 you - talked about a mugging on East Capitol one  
5 night.

6 He has two small children and a wife who  
7 works late so he was very concerned about the fact  
8 that they had to park pretty far away. To be fair,  
9 it's not all the impact of this particular B and B.  
10 But the neighborhood will be impacted by this  
11 particular B and B and it is impacted by all the other  
12 uses in the neighborhood, the commercial uses.  
13 There's a B and B at the corner of Fifth and East  
14 Capitol that does have parking. It's a legal B and B  
15 with a license and they offer parking.

16 The Bull Moose Inn, I would just like to  
17 bring that up. It may be technically a rooming house,  
18 but it's advertised as a B and B. They advertise on  
19 their website the availability of visitor/residential  
20 parking permits. That's also in my record. So the  
21 fact that someone else does that doesn't mean it's  
22 right. Therefore this B and B shouldn't be able to do  
23 this. I would also like to say *ad hoc* bad decisions  
24 made in the past with respect to particular B and Bs  
25 such as the mansion on O Street or wherever shouldn't

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1 rule your determination of what you decide tonight or  
2 this week or whenever.

3 So there are a lot of issues. I won't go  
4 on because I don't like going on. We do have  
5 basically the community behind us. It's unanimous  
6 except for the Applicant. On that particular street,  
7 I have gotten signatures from every house on that  
8 block except one. That's merely because I haven't  
9 talked to this fellow because he's hard to find. On  
10 the other three blocks contiguous to Fifth and A, I  
11 have signatures from every household.

12 There are some rental properties on that  
13 block. They may try to make a point with that. There  
14 are two apartment buildings across the street with  
15 three or four room apartment rentals. I have  
16 signatures from some of the residents in that house.  
17 There may be one or two other rental places. There's  
18 a rental place right around the corner. Primarily  
19 this is a residential neighborhood and it has been  
20 that for a number of years.

21 CHAIRPERSON GRIFFIS: Even rentals make it  
22 residential.

23 MR. BERRY: Right, and that's why I moved  
24 there. I love looking at a beautifully restored Queen  
25 Anne house but I don't like looking at a big three by

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1 eight foot sign that's thrown across the turret to  
2 announce to the neighborhood that a B and B is coming  
3 whether you like it or not. A B and B that's two  
4 rooms that fits unobtrusively in the neighborhood is  
5 an asset indeed to the neighborhood.

6 A B and B that is a commercial entity that  
7 uses commercial services, that piggy backs on trash  
8 pick up, all sort of issues like that, leaf pick up,  
9 things that we pay for as residents, there's a  
10 different scenario here when you have a six or four  
11 room B and B. It becomes a commercial establishment.

12 As far as the argument the B and B reservation lady  
13 talked about earlier, there was at one point the need  
14 to save old houses, the need to give people  
15 opportunities to save old houses, but that's not the  
16 case now. The houses in this neighborhood go --

17 CHAIRPERSON GRIFFIS: That will be a shock  
18 to the Preservation Office, won't it?

19 MR. BERRY: Well, some of the houses now  
20 go for millions of dollars in this neighborhood as  
21 single family houses. So the whole issue of allowing  
22 a B and B to fit in as a quasi-commercial, quasi-home  
23 has really gone out the window with time.

24 CHAIRPERSON GRIFFIS: I see. So you are  
25 saying the use supported the preservation.

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1 MR. BERRY: It has historically, yes. I  
2 think that's what she was referring to in the  
3 legislative history.

4 CHAIRPERSON GRIFFIS: Okay, and of course  
5 we can't write the regulations tonight either but it's  
6 interesting.

7 MR. BERRY: You can't. You do have Sharon  
8 Ambrose's letter where she wants to pursue some of  
9 these zoning problems with respect to B and Bs in  
10 particular. I will just end with saying that I have  
11 before you 146 neighbors' signatures all of whom  
12 oppose this B and B. These are the people that live  
13 adjacent to this B and B. These are the people that  
14 park on the street in front of and around this B and  
15 B.

16 These are the people that bought houses  
17 with certain expectations. Many of them feel now that  
18 those expectations have been destroyed. The person  
19 that bought this house bought it to restore as a  
20 single family house and did so for a number of years.  
21 He didn't buy a B and B so it's not that he's  
22 suddenly surprised that he can't do this.

23 I would like to just end with Ms.  
24 Jacqueline Eiting's statement. She had to go to the  
25 airport. She was a party to this. She said "I am

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1 opposed to the BZA Application Number 17079 for two  
2 reasons --

3 CHAIRPERSON GRIFFIS: Do you have that for  
4 submission?

5 MR. BERRY: Yes.

6 CHAIRPERSON GRIFFIS: Let's just take it  
7 in as part of the party's submission. You don't need  
8 to read it into the record.

9 MR. BERRY: Okay.

10 CHAIRPERSON GRIFFIS: Thank you very much.  
11 You brought up quite a few issues for our  
12 consideration. First of all, in terms of the  
13 petition, we will certainly review it. But in the  
14 stating of the petition, are there evidence of issues  
15 that would be important when you signed it or was it  
16 just for and against? When talking to that, is there  
17 a place where individuals could identify the specific  
18 issues of impact to them?

19 MR. BERRY: Not particular impact. I can  
20 read it.

21 CHAIRPERSON GRIFFIS: That's okay. I'll  
22 see it. You made a statement that went it becomes a  
23 six bed B and B it becomes a commercial use. What are  
24 you basing that on?

25 MR. BERRY: Well, the fact that you have

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1 six rooms or you have four rooms instead of having a  
2 family living in a household.

3 CHAIRPERSON GRIFFIS: So in your opinion,  
4 it's more of a commercial use or fits in your mind as  
5 commercial.

6 MR. BERRY: You have a lot of different  
7 people going in every day, day in and day out. You  
8 don't have a family who is out. This is a commercial  
9 establishment with foot traffic, all times of the day  
10 and night, people coming in late from weddings, late  
11 from parties, late from the bars. This is not a  
12 family with children who go to bed at 9:00 p.m.

13 CHAIRPERSON GRIFFIS: But you were talking  
14 about commercial services too. Are there other things  
15 that are servicing this that are different than the  
16 adjacent apartment buildings or row houses and  
17 dwellings?

18 MR. BERRY: Well, I'm not a zoning lawyer  
19 or expert, but I believe that any four room apartment  
20 is supposed to have commercial trash pick up.

21 CHAIRPERSON GRIFFIS: So you think that  
22 there's a threshold based on the unit count which  
23 would then move you out of the services provided to  
24 single family homes.

25 MR. BERRY: I believe that's true, but I

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1 also think there should be some consideration of the  
2 commercial aspect of a B and B which is not considered  
3 in the way a B and B slips by all the Zoning  
4 Regulations, all the regulations as far as trash pick  
5 up and everything else.

6 CHAIRPERSON GRIFFIS: Is there off street  
7 parking provided in areas of the adjacent block or  
8 this specific block?

9 MR. BERRY: Off street parking for the B  
10 and B?

11 CHAIRPERSON GRIFFIS: For the houses.

12 MR. BERRY: For the houses, a few houses  
13 have parking, yes.

14 CHAIRPERSON GRIFFIS: Is there an alley  
15 that services it?

16 MR. BERRY: Yes.

17 CHAIRPERSON GRIFFIS: Do you have off  
18 street parking?

19 MR. BERRY: No.

20 CHAIRPERSON GRIFFIS: Other questions from  
21 the Board?

22 MEMBER MILLER: Were you at the ANC  
23 meeting on November 5?

24 MR. BERRY: Yes, I was.

25 MEMBER MILLER: Just to save time I am

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1 going to ask you was Mr. Martin there?

2 MR. BERRY: No.

3 MEMBER MILLER: Ms. Eiting?

4 MR. BERRY: Yes.

5 MEMBER MILLER: Mr. Anders?

6 MR. BERRY: Yes.

7 MEMBER MILLER: Mr. Schuham?

8 MR. BERRY: Yes.

9 MEMBER MILLER: Okay. Thank you.

10 MR. BERRY: Would you like some other  
11 names of people there that day?

12 MEMBER MILLER: I heard that there were  
13 seven people there. I was wondering how many were  
14 parties in this case.

15 MR. BERRY: There were seven or eight  
16 there. I believe there were six or seven at the  
17 second meeting. Mr. Weimer and Ms. Eiting were both  
18 at one or the other of the meetings. Mr. Martin was  
19 at neither meeting. He did sign the petition however.

20 CHAIRPERSON GRIFFIS: Other questions from  
21 the Board? Cross examination from the Applicant.

22 MR. NETTLER: Do you want to have both of  
23 them up here?

24 CHAIRPERSON GRIFFIS: Yes.

25 CROSS EXAMINATION

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1 BY MR. NETTLER:

2 Q Mr. Berry, I will talk with you first a  
3 little bit. Did you have a traffic study done of the  
4 level of traffic coming to this B and B?

5 A I haven't but I can.

6 Q I asked you if you had. You haven't had  
7 one done.

8 A No, but observations --

9 Q Let me ask you this. How many people have  
10 been coming to this B and B for weddings?

11 A I actually haven't taken a poll.

12 Q On a weekly basis or on a daily basis, how  
13 many people are coming to here leaving bars or  
14 restaurants?

15 A Well, the Applicant has been gone for at  
16 least the last eight to ten days so I'm not sure that  
17 anything has happened during that period.

18 Q Then let's talk about over the past year.  
19 The B and B has been there over the last year. How  
20 many people have come here from restaurants or bars on  
21 a daily basis?

22 A Sometimes it's hard to distinguish between  
23 the traffic just walking by from a particular bar to  
24 the B and Bs elsewhere or to other locations or to  
25 other families.

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1 Q So you do not know.

2 A I have not stood out there and taken a  
3 sample. You are right.

4 Q Do you know of any rooming houses in this  
5 area?

6 A Not legal ones.

7 Q How many illegal ones are you familiar  
8 with?

9 A I'm familiar with one. I actually haven't  
10 been there, but I have heard of one. That's not  
11 really relevant to this.

12 Q Do you know whether it's legal or not?

13 A Actually I think it's probably not because  
14 of the number of University of Texas interns that they  
15 put in there.

16 Q But you don't know for sure.

17 A No, I don't.

18 Q This mugging that you referred to on East  
19 Capitol Street, was that by somebody who had been  
20 staying at this B and B?

21 A No, and that wasn't the point to the  
22 reference to that.

23 Q How many residents have cars on this  
24 street?

25 A Well, my partner and I have one car.

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1 There are some people that have two cars.

2 Q How many people have two cars?

3 A I haven't taken a count. If you want me  
4 to --

5 Q I am just asking what you know.

6 A There are some people with one car. There  
7 are some people with two. There are some people with  
8 three.

9 Q Do you know how many cars then there are  
10 in total?

11 A No.

12 Q Do you know how many parking spaces there  
13 are on the street?

14 A No.

15 Q Do you know how many specifically have off  
16 street parking at those houses on A Street?

17 A On A Street.

18 Q Yes.

19 A Yes, I do.

20 Q How many?

21 A Probably legally there are two spaces  
22 behind the house on the corner of the alley. The  
23 house next door has one space that's probably half  
24 legal and half illegal. I believe that's it on that  
25 block.

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1           Q       With regard to the noise and this  
2 property, what type of noise have you personally  
3 heard, not your co-party Mr. Anders? What type of  
4 noise can you refer to coming from this property?

5           A       Well, one morning a little before seven I  
6 was walking my two Jack Russell terriers, Ricky and  
7 Lucy, and a taxi pulled up and I heard a horn blow.  
8 Two people came trudging down the steps carrying these  
9 huge bags.

10          Q       So it was a taxi that blew its horn. That  
11 was the noise.

12          A       Yes. Other instances, I heard people  
13 unloading from taxis. There was one guest from  
14 Tennessee that drove a white Suburban. I think I  
15 included a footnote of the parking permit that he  
16 obtained in my packet. That Suburban was full of  
17 people coming and going at different times.

18          Q       Did you have a chance to review the pre-  
19 hearing statement that was filed by the Applicant in  
20 this matter?

21          A       No.

22          Q       So I can understand then that you are not  
23 familiar with the October 31, 2002 letter from the  
24 Department of Consumer and Regulatory Affairs dealing  
25 with the parking requirement for this property.

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1           A       No, I'm just familiar with the September  
2 15 letter that refers to an email that your partner  
3 sent to Denzel Noble. I don't have the other letter.

4           Q       Did you ask for those letters from the  
5 Department of Consumer and Regulatory Affairs?

6           A       I have not yet. I didn't know the  
7 procedure. But I will obviously obtain those.

8           Q       Mr. Anders, you have lived in your  
9 property for a little over five years, is that  
10 correct?

11          A       Correct.

12          Q       How long have you had your baby?

13          A       Twenty-two months today.

14          Q       Does the baby cry at night?

15                   CHAIRPERSON GRIFFIS: Let's move off the  
16 common sense questions.

17                   MR. NETTLER: I'm trying to deal with the  
18 noise.

19                   CHAIRPERSON GRIFFIS: I understand.

20                   MR. NETTLER: You are leaving me so little  
21 room when you say that.

22                   BY MR. NETTLER:

23          Q       Do you have a lot of interaction with the  
24 guests at the B and B?

25          A       Not voluntarily.

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1           Q       What do you mean by that? Do they ask you  
2 for direction?

3           A       Just in the past month and a half we have  
4 had guests who we have had to ask to find another  
5 place to smoke because the smoke was coming into our  
6 house because they were standing on the front steps  
7 smoking.

8           Q       Did they move?

9           A       We actually ended up being told that it  
10 was none of our business and to get back into our  
11 house.

12          Q       Did you say anything to the Applicant  
13 about that incident at the time?

14          A       There's really no communication whatsoever  
15 between Mr. Phillips and any of the neighbors.

16          Q       The answer is no, is that correct?

17          A       He has --

18          Q       Excuse me, is the answer no?

19          A       There's no ability to have any kind of  
20 conversation or any kind of communication with Mr.  
21 Phillips.

22          Q       So the answer is no.

23          A       He has totally cut off any communication  
24 with any neighbors.

25                   CHAIRPERSON GRIFFIS: Understood.

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1 BY MR. NETTLER:

2 Q Does anybody ask you for directions?

3 A We've been asked for directions. We've  
4 had similar problems with people using their cell  
5 phones.

6 Q Is it your position that the people who  
7 ask you for directions is an adverse impact on you  
8 from the use of this property?

9 A I think in terms of it being a residential  
10 area. People are not asking for directions of how to  
11 get to Pennsylvania Avenue. Mr. Berry does not ask me  
12 how to get to Pennsylvania Avenue. He doesn't ask me  
13 how to get to Eastern Market, how to get here, or how  
14 to get there. But sitting on our front step, those  
15 are the kinds of questions that we get.

16 Q The ringing of the doorbell, that's an  
17 adverse impact on you, is that your testimony as well?

18 A That's right, at all hours and with much  
19 greater frequency than our other neighbor, Councilman  
20 Thompson and his wife at 413 A Street. It's maybe a  
21 fourth or fifth the number of doorbells being run on  
22 their house.

23 Q So how many times does the doorbell ring  
24 in a day would you say?

25 A It varies by how many guests they have.

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1 Q So tell me what it varies between.

2 A A couple to three or four.

3 Q So two to four and that's every day.

4 A That's when they are having guests.

5 Q How often do they have guests?

6 A You can ask Mr. --

7 Q I'm asking you. How often do they have  
8 guests?

9 A I would say probably three or four nights  
10 a week.

11 Q So three or four nights a week there's two  
12 to four doorbells ringing.

13 A Excuse me, but then it can go in spurts.  
14 They have clearly had guests who have been there for a  
15 week or two. Then they can have a week or two. I  
16 think in the past week Mr. Phillips wasn't home so  
17 they had no guests.

18 Q Do you know whether that ringing of the  
19 doorbell gets resolved by providing the guests with  
20 keys?

21 A Well, certainly there's an initial one,  
22 but I have also heard on several different occasions  
23 arguments going on about is he up, can we get back in,  
24 and ringing the doorbell multiple times. This is  
25 going on at one or two in the morning.

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1           Q       Let me ask you a question.  Let's say this  
2 house was occupied by a family which had some children  
3 who either were in college or were in high school.  
4 Let's just take that as an example.  You have a number  
5 of bedrooms here.

6                    Let's say those kids in high school or  
7 college want to come home at night.  They want to go  
8 out on the weekends.  They have friends who visit  
9 them.  Tell me what the difference that you see in  
10 children of those age using the property that would be  
11 different than what you just described in terms of  
12 these people coming to a house three or four times a  
13 week or not even that much.

14           A       I don't know.  I guess your question is so  
15 speculative.  You can come up with your own  
16 conclusions.

17           Q       I'm not coming up with my conclusions.  
18 I'm asking you for yours.

19           A       I'm not here as an expert.  I'm not here  
20 to provide you with my random thoughts to your random  
21 questions.

22                    CHAIRPERSON GRIFFIS:  You don't feel you  
23 can answer the question.

24                    MR. ANDERS:  I'm not going to answer your  
25 question.

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1 CHAIRPERSON GRIFFIS: You don't feel you  
2 can. Right, let's move on.

3 MR. ANDERS: What teenagers are you  
4 talking about? Do you want me to give you an answer?

5 CHAIRPERSON GRIFFIS: Gentlemen, please,  
6 I'm in charge here. You need to listen to me.  
7 Enough. Let's move on. If you can't answer the  
8 question, let's move on.

9 MR. ANDERS: Okay, I'll answer the  
10 question. A well supervised family, I wouldn't expect  
11 to hear anywhere near that level of noise.

12 BY MR. NETTLER:

13 Q When you lived in Dupont Circle or on  
14 prior occasions, did you live next to a house that was  
15 occupied by more than two people?

16 A Yes.

17 Q Was it occupied by children who were in  
18 high school or in college?

19 A In grade school. And I have lived in  
20 other places outside of D.C. where there have been  
21 families living next door with several children and  
22 heard less noise than I am hearing now.

23 Q When you described this neighborhood as a  
24 residential neighborhood, you indicated that it was on  
25 one side bordered by the Supreme Court, correct?

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1           A       No, the Adams Building of the Library of  
2 Congress is at Third and A Street.

3           Q       That sort of forms a border to this  
4 street.

5           A       Yes, which is why we have very little  
6 traffic. Then A Street ends at about Eighth or Ninth  
7 Street when it runs into North Carolina.

8           Q       Then about two blocks away is Pennsylvania  
9 Avenue, is that correct?

10          A       About a block and a half. Then in the  
11 other direction on Fifth Street is a park at  
12 Constitution.

13          Q       Are you aware of how many rooming houses  
14 are on this street or in this particular area that you  
15 just described?

16          A       No.

17          Q       How many apartment buildings are over  
18 here?

19          A       There are two apartment buildings on the  
20 other side of the street. Each one of them has three  
21 or four units in it.

22          Q       Have you been inside this building at all,  
23 the one that's the subject of this application?

24          A       Four or five years ago, yes.

25          Q       Do you know, at the time you were there,

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1 whether it has smoke alarms or sprinkler system or  
2 anything in it?

3 A No.

4 Q Mr. Anders, you do know you live in an  
5 urban area, correct?

6 CHAIRPERSON GRIFFIS: That's bordering on  
7 the common sense. Let's move on.

8 BY MR. NETTLER:

9 Q In terms of the noise that you have  
10 identified with regard to the bathrooms and the  
11 kitchens along the party wall, what do you foresee  
12 being changed by that if this application is not  
13 granted?

14 A Well, assuming that they abide by the  
15 restrictions in the Certificate of Occupancy, they  
16 will only be able to rent two rooms. So at most there  
17 will be two bathrooms going on at one time instead of  
18 four bathrooms.

19 Q What specific evidence do you have that  
20 they are not abiding by their Certificate of  
21 Occupancy?

22 A What specific evidence do I have?

23 Q Sure.

24 A Within the space of an hour or two, we  
25 have heard all four bathrooms going.

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1 Q Have you ever looked at any leasing  
2 arrangements for any of those rooms?

3 A Have we seen their business records?

4 Q Yes, I'm asking that.

5 A No, we haven't seen their business  
6 records.

7 Q Did you make a complaint to DCRA that they  
8 were using it for more than two bedrooms?

9 A Yes, we have told them that.

10 Q Do you know whether DCRA did an  
11 inspection?

12 A I don't know if they have done an  
13 inspection.

14 Q You didn't receive a letter from DCRA  
15 telling you that in response to your complaint there  
16 was no basis for it.

17 A No.

18 Q Did you read the pre-hearing statement  
19 that the Applicant filed in this matter?

20 A No.

21 MR. NETTLER: I have no other questions of  
22 this witness.

23 CHAIRPERSON GRIFFIS: Very well. Thank  
24 you.

25 MR. BERRY: Is it appropriate for me to

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1 follow up with one statement?

2 MR. NETTLER: No, I object.

3 MR. BERRY: May we recross the Applicant?

4 MR. NETTLER: Objection.

5 CHAIRPERSON GRIFFIS: Recross?

6 MR. BERRY: Cross exam the Applicant

7 CHAIRPERSON GRIFFIS: No, actually we're  
8 at a point now where we're going to the Applicant's  
9 closing and any rebuttal witnesses and that's it.  
10 There would be cross on any rebuttal witnesses. Mr.  
11 Nettler, how long do you need for rebuttal witnesses  
12 and closing?

13 MR. NETTLER: Rebuttal witnesses maybe  
14 five or six minutes.

15 CHAIRPERSON GRIFFIS: And closing?

16 MR. NETTLER: Maybe another four or five  
17 minutes.

18 CHAIRPERSON GRIFFIS: Let's go. Thank you  
19 gentlemen.

20 MR. NETTLER: I'm going to start with Ms.  
21 Reed.

22 REBUTTAL EXAMINATION

23 BY MR. NETTLER:

24 Q Ms. Reed, do you handle the bookings for  
25 this B and B?

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1 A Yes.

2 Q Are you aware of the fact that there are  
3 four rooms in this establishment?

4 A Yes, I am.

5 Q Do you know what the policy is with regard  
6 to the number of rooms that may be utilized for the B  
7 and B?

8 A Yes, we are not permitted to book more  
9 than two rooms. Under our agreement with Mr.  
10 Phillips, he must contact us and let us know of any  
11 bookings that he has made so that we are not promising  
12 something that is not available. So I am aware of his  
13 bookings as well.

14 Q Are you aware of them ever booking more  
15 than two people?

16 A I am positively certain that they have  
17 never booked more than two parties at the same time.

18 Q When you say "two parties," you mean there  
19 might be two people in one room and two people in  
20 another room.

21 A Yes.

22 Q The people who want to book, do they get a  
23 choice of four rooms?

24 A Yes, they are all pictured on the website.  
25 They can choose which room they would like to stay

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1 in.

2 Q If there's couple, they are only allowed  
3 to use one room, is that right?

4 A That's correct.

5 Q Are you aware of any instance when this  
6 has not been the case?

7 A No.

8 Q Are you familiar with this neighborhood?

9 A Yes.

10 Q Are there other B and Bs in this  
11 neighborhood?

12 A There are.

13 Q Could you describe how large they are or  
14 which ones they are?

15 CHAIRPERSON GRIFFIS: What's the relevance  
16 of that Mr. Nettler?

17 MR. NETTLER: We had descriptions about  
18 what the character of this neighborhood is and the  
19 traffic and parking and other issues. I wanted to get  
20 into what the reality is with regard to all of those  
21 issues.

22 CHAIRPERSON GRIFFIS: Okay.

23 WITNESS REED: They tend to be smaller,  
24 one to two rooms.

25 BY MR. NETTLER:

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1 Q Do you know what the parking situations  
2 are with regard to those B and Bs?

3 A They do not have parking.

4 Q Do you know whether there are rooming  
5 houses on this street as well?

6 A I am not familiar with that.

7 Q What about apartment buildings?

8 A There are apartment buildings, yes.

9 Q Would you characterize this street as a  
10 residential street?

11 A Yes.

12 Q Is it a residential street in any  
13 different sense than there are other residential  
14 streets in let's say Dupont Circle or other places in  
15 Capitol Hill?

16 A No.

17 Q Have you ever received any complaints from  
18 either individuals in the neighborhood about this  
19 particular B and B?

20 A No, and I would also like to state that  
21 only once have we sent someone with a car to that  
22 location.

23 MR. NETTLER: I will now ask Mr. Phillips  
24 some questions.

25 REBUTTAL EXAMINATION

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1 BY MR. NETTLER:

2 Q Have you ever let more than two rooms be  
3 used at the same time?

4 A No.

5 Q Has anybody made any complaints to you  
6 about the operation of the B and B?

7 A No.

8 Q Are you familiar with a letter that was  
9 sent to you by the Department of Consumer and  
10 Regulatory Affairs regarding the fact that you had  
11 four rooms there?

12 A Yes, I believe that was from Denzel Noble.  
13 There had been allegations made by the neighbors that  
14 more than two rooms were being rented and more than  
15 two rooms were being advertised. Mr. Noble  
16 acknowledged that it was proper, okay, acceptable for  
17 us to advertise four rooms as long as no more than two  
18 were occupied at any given time.

19 Q How many times did you have inspectors  
20 call to the B and B because of complaints that were  
21 made by people?

22 A Since the business has opened there have  
23 been none.

24 Q Before it was opened.

25 A Before it was opened, there was some

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1 construction for renovations taking place where the  
2 bathrooms were added. There were inspectors probably  
3 on a weekly basis. The complaints ranged from selling  
4 alcohol on the premises to having inaccurate permits  
5 for plumbing and electricity and those sorts of  
6 things.

7 Q Not to leave anything hanging, there were  
8 no violations found.

9 A No, there was not.

10 Q Are there five bathrooms along the party  
11 wall?

12 A There are actually four bathrooms along  
13 the party wall. The fifth bathroom extends out  
14 farther than the --

15 Q Do you know of occasions when they are all  
16 being used at the same time?

17 A No.

18 Q From where you and your partner live on  
19 the premises, are you able to hear conversations that  
20 go on or noise when people come into the building?

21 A Yes, we are able to hear people coming in  
22 and out.

23 Q Are there any parties that go on in the  
24 bedrooms upstairs?

25 A No.

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1 Q Do you know why your website has been  
2 blocked?

3 A No, I'm not sure what that's referring to.  
4 The last I looked at it was on Thanksgiving Day when  
5 I showed it to relatives.

6 MR. NETTLER: I have no other questions.

7 CHAIRPERSON GRIFFIS: Thank you very much.

8 Cross examination on the rebuttal testimony? Any  
9 questions specifically related to this testimony?

10 MEMBER ZAIDAIN: Could I ask one question  
11 really quick?

12 CHAIRPERSON GRIFFIS: No.

13 MEMBER ZAIDAIN: Okay.

14 (Laughter.)

15 MEMBER ZAIDAIN: You say you have a total  
16 of five bedrooms on your house and four of which are  
17 on the party wall.

18 WITNESS PHILLIPS: To be accurate, the  
19 property is a corner property so there is only one  
20 party wall.

21 MEMBER ZAIDAIN: Right.

22 WITNESS PHILLIPS: Our property extends  
23 farther out than the property next door. Actually  
24 three of the bathrooms are only partially on the party  
25 wall.

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1 MEMBER ZAIDAIN: How many of those serve  
2 the B and B operation?

3 WITNESS PHILLIPS: Four because each  
4 bedroom has a bathroom.

5 MEMBER ZAIDAIN: I guess my question is  
6 that there are two bedrooms --

7 WITNESS PHILLIPS: There's two bathrooms  
8 on each floor and then one bathroom on the lowest  
9 level.

10 MEMBER ZAIDAIN: I guess I am confused.  
11 You said there are four bathrooms that serve the B and  
12 B operation.

13 WITNESS PHILLIPS: Well, there's one for  
14 each bedroom.

15 MEMBER ZAIDAIN: So that means there are  
16 four bedrooms.

17 WITNESS PHILLIPS: Yes.

18 MEMBER ZAIDAIN: But you are only using  
19 two of them for your B and B operation.

20 WITNESS PHILLIPS: Only two of them are  
21 occupied at any given point in time, correct. All  
22 four of them are technically available.

23 MEMBER ZAIDAIN: I see what you are  
24 saying. So you are saying you have four available  
25 rooms but you only rent out two at a time.

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1                   WITNESS PHILLIPS:       That's right in  
2 accordance with the HOP.

3                   MEMBER ZAIDAIN: Thank you.

4                   CHAIRPERSON GRIFFIS: Ms. Miller.

5                   MEMBER MILLER: Why would you advertise  
6 for four rooms if you are only allowed to rent out  
7 two?

8                   WITNESS PHILLIPS: There's a couple of  
9 reasons. One is the rooms are different sizes so they  
10 have different price structures associated with them.  
11 The other is that the rooms are decorated  
12 differently. Some people prefer maybe a more feminine  
13 looking room or a more masculine looking room.

14                  MEMBER MILLER: You are restricted to only  
15 renting out two rooms at a time. Does that mean that  
16 people can't use all four bathrooms? If there are  
17 four people staying in two rooms, can people use the  
18 other bathrooms?

19                  WITNESS PHILLIPS: No, they can only use  
20 the bathroom that's associated with the bedroom that  
21 they have rented.

22                  MEMBER MILLER: Is there a restriction as  
23 to how many people can be in one room?

24                  WITNESS PHILLIPS: Yes, it would be  
25 limited by the bed space. Two of the rooms are

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1 limited to two people. Two of the rooms are limited  
2 to three people. There's a single sleeper sofa for  
3 children.

4 MEMBER MILLER: Thank you.

5 CHAIRPERSON GRIFFIS: Any other questions?

6 MR. NETTLER: I just have a follow up  
7 question for Mr. Phillips.

8 BY MR. NETTLER:

9 Q You said that they were precluded from  
10 using bathrooms in the other rooms. How do they know  
11 that they are precluded from doing that?

12 A Well, the doors are usually shut.

13 Q And they are locked.

14 A Yes.

15 CHAIRPERSON GRIFFIS: Cross on the  
16 rebuttal testimony? Any questions on what you have  
17 just heard? Let's go to closing.

18 MR. NETTLER: Thanks. I won't belabor the  
19 issue about the --

20 CHAIRPERSON GRIFFIS: Yes, which one?

21 MR. NETTLER: Regarding the Zoning  
22 Administrator's conclusion that we need any zoning  
23 relief, not to say that I'm not pushing that position  
24 which I think is an accurate one particularly since I  
25 think you are bound by what you have done before.

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1 There are a number of conditions that must be reviewed  
2 when addressing a special exception application. It's  
3 our position that we have addressed each one of them.

4 Before getting into each of them, I would  
5 like to say a few words. This is an urban area. The  
6 District of Columbia is an urban area. There are  
7 certain areas in the District of Columbia, whether  
8 they are R-1-A areas, R-1-B, other areas with single  
9 family homes, detached homes, you might say are more  
10 residential in an odd sense than other areas, but they  
11 are residential areas. They are residential areas  
12 within a city.

13 The Zoning Commission didn't make a  
14 distinction between whether you can have a B and B in  
15 one type of residential area or another type of  
16 residential area. It allowed B and Bs throughout the  
17 District of Columbia. It put a limitation on the  
18 number of rooms in the B and B, but it recognized  
19 after what was described as a year long period of  
20 testimony about the need for having B and Bs in an  
21 urban area and the good that they do in an urban area  
22 and recognizing as well that whether we call these  
23 commercial establishments or not they are permitted as  
24 a matter of right.

25 Many of them are because of the fact that

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1 we do have historic districts and they provide a type  
2 of amenity to people who come to different cities in  
3 other historic areas. They do provide a type of  
4 tourist arrangement that is different. So B and Bs  
5 tend to be located in historic districts because  
6 there's an ambiance about them that is conducive to  
7 those. Capitol Hill is no different from that.

8           There are things that come along with B  
9 and Bs just like with many other uses that are  
10 permitted as a matter of right in residential zones  
11 come with certain types of impacts. To say that they  
12 are adverse impacts is to belittle the term "adverse"  
13 because they come with impacts. They come with the  
14 fact that there are more people that come to a  
15 property. They come with the fact that whether they  
16 are schools or whether they are public schools or  
17 whether they are B and Bs or whether they are the  
18 other types of things that are permitted as a right  
19 they bring people to them.

20           The people congregate. People talk.  
21 People use cell phones. People smoke. People do a  
22 lot of things that you may not wish them to do, but  
23 under the Zoning Regulations it doesn't bring these  
24 out as impacts that are deemed inappropriate because  
25 when you have a special exception the issue isn't

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1 whether you have this impact that you can say is  
2 adverse to me or this impact which you can say is  
3 adverse to me.

4 It's the type of impacts that if you  
5 intensive the use that go beyond what you would  
6 normally associate with any type of use that would be  
7 permitted in a matter of right in a residential zone.

8 How do you mitigate those and have you successfully?

9 Not that you have eliminated them, how do you deal  
10 with those types of things? Those are the types of  
11 things that therefore the special exception  
12 regulations address.

13 In this case, the special exception  
14 regulations specifically for B and Bs or for home  
15 occupations look at a number of different items.  
16 First is that it's not in a multiple dwelling. This  
17 is not a multiple dwelling. It's a single family  
18 house. Second is that breakfast is the only meal that  
19 is served. Breakfast is the only meal that is served.

20 You haven't heard anything different for that.

21 We have gotten to the maximum number of  
22 sleeping rooms issue. The floor limitations don't  
23 apply in this situation. There's no required parking  
24 in this situation. As you have heard, the testimony  
25 is that for B and Bs the parking impacts are less than

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1 for non-B and B uses of these properties. Whether  
2 they are rooming houses, whether they are other types  
3 of uses, they generate a higher level of traffic  
4 impacts. In this particular case, DDOT has confirmed  
5 that this doesn't have either from a traffic or  
6 parking impact any impact at all.

7 There aren't any cooking facilities in any  
8 of the rented rooms. It's all under occupied as a  
9 principal residence. It has to comply with sections  
10 203.4 and 203.6. It's secondary to the use as a  
11 dwelling. It doesn't matter that it has the number of  
12 rooms that it may have in it because unlike other home  
13 occupation uses the secondary aspect of it is not  
14 judged by the amount of space that is used. It's  
15 judged by the fact that this is used as the person's  
16 principal residence. That's clearly the case here.

17 So the fact that there are four rooms and  
18 maybe a living room that is used is not the issue for  
19 a B and B while it might be an issue for say the home  
20 occupations that are used on the street by a number of  
21 individuals including one of the persons who sought to  
22 be party status, Ms. Eiting, who has a home  
23 occupation. In that case, you would have a limitation  
24 that goes to room space and things like that.

25 The provision dealing with the storage of

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1 materials, there are no materials that are stored here  
2 that are anything different than what you would have  
3 with an occupation in this house in terms of the  
4 breakfast that's provided. There haven't been any  
5 structural alterations that would make it to return  
6 the premises to exclusive residential use. This is a  
7 residential use. In fact, the structural alterations  
8 that were made here were to take away all of the  
9 kitchens that were in the premises here that would  
10 have allowed on an ongoing basis a much denser use.

11 CHAIRPERSON GRIFFIS: Mr. Nettler, may I  
12 ask a question in terms of the closing? First of all,  
13 I think the Applicant's submission clearly lays this  
14 out and very well lays this out. Might that be useful  
15 in terms of the closing to reference that?

16 MR. NETTLER: Well, given the time, it's  
17 best to do that. What I'm trying to focus on here is  
18 the fact that - and maybe I am belaboring it by going  
19 through these position - what you have here are a  
20 number of adverse impacts that people complain of that  
21 really aren't the impacts that the regulations ask you  
22 to focus on when dealing with a special exception for  
23 a bed and breakfast.

24 The regulations recognize that a bed and  
25 breakfast is a use that's permitted as a matter of

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1 right. It's the density that you have to focus on in  
2 terms of how that changes the nature of what the  
3 impact is at all of a matter of right use here.  
4 There's nothing that you have heard from the testimony  
5 that's been provided by those who are opposed to it or  
6 from the ANC that even goes to address it.

7 All you have heard is what their concerns  
8 are on a personal basis about either things that they  
9 can't quantify regarding who is visiting this, when  
10 they are visiting it, what times they are visiting it,  
11 whether there are people who are actually visiting it  
12 who are responsible for other problems that they are  
13 identifying in the neighborhood, or things that they  
14 quantify from the fact that they live next to in terms  
15 of noise that comes from the property. Noise and the  
16 types of things that the Office of Planning has agreed  
17 with us about are not the types of things that you are  
18 required or are necessary to look at in terms of this  
19 special exception.

20 The operation is a fairly well managed  
21 operation. You have heard testimony about that. You  
22 have heard testimony from Ms. Reed about the controls  
23 that her own service has in overseeing the operation  
24 from another source that oversees B and Bs generally  
25 and how this fits into the purposes for which these

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1 regulations were adopted. Given the testimony that  
2 you heard today, the comments that you have heard from  
3 the Office of Planning and other District agencies and  
4 the relevant issues that you must address, that the  
5 Board should grant this application for a special  
6 exception if it concludes that the special exception  
7 is needed in this instance.

8 CHAIRPERSON GRIFFIS: Thank you very much.

9 MEMBER ZAIDAIN: Mr. Chair, I have a  
10 question to follow up really quick.

11 CHAIRPERSON GRIFFIS: On his conclusion  
12 remarks.

13 MEMBER ZAIDAIN: Yes, something struck me  
14 as we were going through this.

15 CHAIRPERSON GRIFFIS: Okay.

16 MEMBER ZAIDAIN: Do you believe that we  
17 have the authority to apply conditions in this?

18 MR. NETTLER: Well, I'll tell you that if  
19 you agree --

20 MEMBER ZAIDAIN: Well, let's not talk  
21 about that. You didn't file an appeal. You filed a  
22 special exception.

23 MR. NETTLER: I did file an appeal.

24 MEMBER ZAIDAIN: Well, it's not before us  
25 now. In terms of the special exception, do you think

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1 we have the authority to enact conditions?

2 MR. NETTLER: You always have authority.

3 MEMBER ZAIDAIN: How come none have been  
4 proffered with this?

5 MR. NETTLER: What condition would you  
6 have me proffer?

7 MEMBER ZAIDAIN: Is it because of no  
8 communication? Let me explain my statement. Usually  
9 when we have a use in a residential area that's a  
10 special exception and people are claiming impacts and  
11 whatever, there is some effort to mitigate and make  
12 the operation work better by proffering conditions to  
13 us related to those impacts.

14 MR. NETTLER: Let me explain that because  
15 I think it's a good question. When I have been on  
16 both sides of the B and Bs that have come before this  
17 Board, the conditions that usually get addressed in  
18 the special exception situation as they did in Swann  
19 Street are situations where the owner of the B and B  
20 wants to do something more than just have the people  
21 stay there like have social events there or weddings  
22 on the premises. So there have been limitations that  
23 have been put on how many events you can have.

24 MEMBER ZAIDAIN: Right, events, that's one  
25 issue.

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1 MR. NETTLER: The problem here is when I  
2 look at the problems that have been suggested as  
3 adverse impacts, I'm trying to formulate what the  
4 conditions would be. That no more than two toilets  
5 should be flushed at one time. I don't mean to be  
6 obnoxious about it.

7 But if I'm going to respond to the  
8 objections that are made, I just don't see how those  
9 are types of conditions that either you could impose  
10 to address situations of somebody smoking outside or  
11 asking questions of someone for directions as to where  
12 a restaurant is located or conditions that are  
13 appropriate under the regulations. There has to be  
14 some nexus between the conditions that you impose and  
15 what the regulations are seeming to protect against.

16 MEMBER ZAIDAIN: It's a good thing you  
17 weren't here earlier. But that answers my question.

18 CHAIRPERSON GRIFFIS: Any other questions?  
19 Excellent. Thank you very much. Let's set this for  
20 decision making. We'll set it for January 6 because  
21 we need to get the transcript. We also have  
22 submissions. Ms. Bailey is going to run that down.  
23 We'll keep the record open if the party in opposition  
24 or the Applicant is amenable to filing a brief  
25 findings and conclusions. We have other submissions,

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1 Ms. Bailey.

2 MS. BAILEY: Mr. Chairman, I have two  
3 things from the opposition. That is a response to the  
4 OP and DDOT reports. I think Mr. Anders indicated  
5 that he had some other submissions to come in as well.  
6 Is that right, sir?

7 MR. ANDERS: That's right.

8 MS. BAILEY: Those are the only two things  
9 that I had, Mr. Chairman, other than of course if you  
10 would like parties to file findings of fact and  
11 conclusions of law.

12 CHAIRPERSON GRIFFIS: I wouldn't like it  
13 but we're going to leave the record open for it. Not  
14 to be humorous, but I don't think it's required,  
15 certainly not large findings. But however you want to  
16 organize it is fine. That being said, let's look at  
17 dates.

18 MS. BAILEY: Of course we're coming up on  
19 the Christmas holiday so December 22. Does that sound  
20 reasonable for the submissions?

21 CHAIRPERSON GRIFFIS: For all filings?

22 MS. BAILEY: I was thinking about the  
23 documents that are coming in from the opposition and  
24 then perhaps the 29th for the findings.

25 CHAIRPERSON GRIFFIS: I think that's fine

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1 if it's required. Is there any difficulty in meeting  
2 those dates?

3 MR. NETTLER: The only thing I would ask  
4 is that if there is something that comes in on the  
5 22nd - and I don't know what's coming in - that  
6 requires a response that we can respond to that with  
7 the findings.

8 CHAIRPERSON GRIFFIS: Yes, I think that  
9 would be fine to do. That's the only way you could do  
10 it.

11 MS. BAILEY: So it's the 22nd for the  
12 submissions and the 29th for the findings and January  
13 6 for the decision.

14 CHAIRPERSON GRIFFIS: I'm sorry. Can you  
15 repeat that?

16 MS. BAILEY: That's the 22nd for the  
17 submissions, the 29th for the findings of fact and  
18 also if Mr. Nettler wants to respond to anything  
19 that's submitted on the 22nd, and January 6 would be  
20 the decision.

21 CHAIRPERSON GRIFFIS: Excellent. That  
22 will be an interesting day, not because of this case  
23 but because of our schedule of the other cases. That  
24 being said, any other questions, procedural, schedule?  
25 All fully understood? Hungry? Go get some dinner.

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1 Thank you all very much. That's to the Applicant of  
2 course and not to my Board. I appreciate everybody's  
3 patience. Let's call the next case of the day and get  
4 it started.

5 MS. BAILEY: Application Number 17081 of  
6 Saint Patrick's Episcopal Day School pursuant to 11  
7 DCMR 3104.1 for a special exception to permit an  
8 existing child development center and private school  
9 under sections 205 and 206, having 93 faculty and  
10 staff in the R-1-B District at premises 4700  
11 Whitehaven Parkway, N.W., Square 1372, Lot 817, Square  
12 1374, Lot 5. Will all those persons who wish to  
13 testify on this application please stand to take the  
14 oath?

15 (Witnesses sworn.)

16 MS. BAILEY: Thank you.

17 CHAIRPERSON GRIFFIS: Ready to go. First  
18 of all, I think we need to take up the request for  
19 party status application. Lovendusky has put it in.  
20 That's the only note I have in terms of request for  
21 party status at this time. Board Members, you have  
22 preliminary questions. First of all, let me just  
23 start with the Applicant. They might want to  
24 introduce themselves.

25 MS. PRINCE: Allison Prince with Shaw

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1 Pittman here on behalf of Saint Patrick's School with  
2 Katherine Bradley, the chairman of the board of Saint  
3 Patrick's School, and Peter Barrett, the head of the  
4 school. I don't know if you would like to proceed  
5 first with Mr. Lovendusky. We are opposed to the  
6 request for party status.

7 CHAIRPERSON GRIFFIS: Okay, and the basis  
8 for opposition.

9 MS. PRINCE: Several points, Chairman  
10 Griffis. Mr. Lovendusky represented on the first page  
11 of his request for party status that he resides less  
12 than 200 feet from the property that is the subject of  
13 this application. That is absolutely not correct.  
14 Mr. Lovendusky resides one half mile from the campus  
15 that's the subject of this application.

16 Today's application involves only the main  
17 campus of Saint Patrick's School, not the junior high  
18 campus at 4925 MacArthur Boulevard which is across the  
19 street from Mr. Lovendusky's house. That campus is  
20 governed by a separate BZA order that's 16852. It  
21 includes a separate cap on enrollment, a separate cap  
22 on faculty and staff.

23 There is no precedent for requiring the  
24 school to notify the neighbors of all of its campuses  
25 when it seeks to take action with respect to one of

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1 its campuses. For example, George Washington  
2 University, when they have an application relating to  
3 its Mount Vernon campus does not provide notice to the  
4 Foggy Bottom neighbors, nor does Georgetown Day School  
5 notify the upper school campus neighbors when it takes  
6 an action with respect to the lower school. I could  
7 cite many other examples, Washington International  
8 School.

9 CHAIRPERSON GRIFFIS: Indeed. So if I  
10 understand your opposition to the granting of party  
11 status, it is that the adjacency of the school in  
12 question is separately monitored. It's a separate  
13 campus.

14 MS. PRINCE: Totally separate.

15 CHAIRPERSON GRIFFIS: With an independent  
16 BZA order.

17 MS. PRINCE: Independent BZA order.

18 CHAIRPERSON GRIFFIS: The issue that's  
19 brought up in terms of the application and notice is  
20 that it's all one facility or one school and therefore  
21 the impact is shared across no matter where it is. So  
22 your opposition is to that. The main campus which is  
23 the subject of this application is what is before us  
24 today.

25 Board Members, I think I would like to

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1 take up the issue with that. I am absolutely in the  
2 agreement with the opposition that the Applicant has  
3 spoken to because it is separate and independent. In  
4 fact, that's what my review and notes are regarding  
5 this application. I would tend not to favorably view.  
6 In fact, I would tend not to bestow party status on  
7 Mr. Lovendusky based on the distance.

8 Certainly as we have stated numerous  
9 times, the participation as a person giving testimony  
10 is absolutely appropriate in this. Even if the  
11 adjacency measure was met, I don't see how in fact the  
12 test which as I say redundantly, numerous times of a  
13 person would be more significantly, distinctly,  
14 uniquely affected in character or kind if the proposed  
15 action was granted. That of course is as opposed to  
16 anybody other in the general public. Let me hear  
17 other comments from Board Members.

18 VICE CHAIRPERSON ETHERLY: I agree with  
19 your position, Mr. Chair. I believe Mr. Lovendusky's  
20 application presents clearly a great deal of thought  
21 that can be presented as testimony in opposition. I  
22 am in agreement with your assessment, Mr. Chair.

23 MEMBER ZAIDAIN: Mr. Chair, I was thinking  
24 the same thing as I was reading the party status  
25 application. I assume we'll let Mr. Lovendusky

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1 briefly respond to this. On page 2 of his application  
2 in number 4, it seems he's trying to make the link  
3 there. To be frank, I didn't get it so maybe he can  
4 try to explain it. But in general, I'm in support of  
5 your position.

6 CHAIRPERSON GRIFFIS: I was giving Mr.  
7 Lovendusky the opportunity to have the last word and  
8 to hear the Board's position and opposition position  
9 on it. Anything further?

10 MEMBER MILLER: I would just like to note  
11 that I concur with what's been said by my fellow Board  
12 Members.

13 CHAIRPERSON GRIFFIS: Mr. Lovendusky, do  
14 you want to speak to your application for a request?  
15 Good evening to you, sir. Of course we appreciate  
16 your patience. Is it patience at this point? It has  
17 to be something higher than that because he's been  
18 sitting around all day.

19 MEMBER ZAIDAIN: Much higher.

20 CHAIRPERSON GRIFFIS: But don't let me  
21 interrupt.

22 MR. LOVENDUSKY: Good evening. I'm  
23 Michael Lovendusky. I reside at 4927 MacArthur  
24 Boulevard which is about a half mile away from the  
25 Whitehaven Campus but very near the middle school

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1 campus that was approved by order 16852 of the Board.

2 I'm here also on behalf of Mrs. Mileva Lovendusky who  
3 also resides at 4927 MacArthur Boulevard.

4 I believe the Board has in its file before  
5 it indication that I'm also here on behalf of Nora  
6 Carbin who resides at 4915 Ashby Street, N.W.,  
7 Washington, D.C. as well as Howard Fenton who resides  
8 at 4915 Ashby Street, N.W., Washington, D.C. as well  
9 as Anna Ormerad who resides at 4901 Ashby Street, N.W.  
10 as well as Douglas Ormerad who resides at 4901 Ashby  
11 Street, N.W. These six individuals are all residents  
12 of nearby properties to the controversial middle  
13 school at 4925 MacArthur Boulevard so I will refer to  
14 all of us in the plural as opponents.

15 You are right that there are several  
16 precedent setting elements to the application before  
17 you as well as the application that resulted in order  
18 16852. For example, this Applicant is the only  
19 private school in the District of Columbia that is now  
20 conducting activities at three campuses. Even at the  
21 time that they are concluded with their construction,  
22 should they be permitted to occupy their campus at  
23 4925 MacArthur Boulevard --

24 CHAIRPERSON GRIFFIS: You are losing me a  
25 little bit because how is this going to your status as

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1 a party.

2 MR. LOVENDUSKY: My point is that the  
3 activities at the three campuses are all integrated  
4 with one another. The very reason that the Applicant  
5 is before you at this time arises out of the  
6 activities at 4925 MacArthur Boulevard and the  
7 proceedings that resulted in order 16852. That is  
8 established by Exhibit 5 in the proceeding before you.

9 Exhibit 5 is the Saint Patrick's School  
10 amendment to cap on faculty and staff where they  
11 acknowledge that the reason they are here today is as  
12 a result of the fact finding that occurred in order  
13 16852. Order 16852 goes beyond the discussion of  
14 faculty and caps. The express terms of order 16852  
15 create an intertwining of the activities of the two  
16 campuses.

17 The students who will be attending the  
18 middle school will be congregating at the Whitehaven  
19 Campus and being transported to the MacArthur  
20 Boulevard Campus. Staff who is occupied at Whitehaven  
21 Campus will be transporting themselves to the  
22 MacArthur Boulevard Campus. There are other elements  
23 of the order 16852 that have importance with regard to  
24 this proceeding. The proposal in this proceeding that  
25 the Board adopt the concept of full-time equivalent

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1 staff status is something of profound implications to  
2 the neighbors of the middle school at 4925 MacArthur  
3 Boulevard.

4 CHAIRPERSON GRIFFIS: And that's  
5 understood. I think we understand that aspect of it.

6 It's not as if we don't concur perhaps on some of the  
7 issues that you raise in your standing. But getting  
8 over the threshold of party status is really what's at  
9 issue here.

10 MR. LOVENDUSKY: Well, the question before  
11 the Board I would submit is whether or not the  
12 activities of these campuses are integrated in a  
13 manner that is extraordinary. I submit to you it is  
14 by the express terms of order 16852.

15 VICE CHAIRPERSON ETHERLY: So to  
16 understand your argument, Mr. Lovendusky, it sounds  
17 like in order to get to the party status threshold you  
18 need us to buy the argument that this should be viewed  
19 as one cohesive campus.

20 MR. LOVENDUSKY: Absolutely.

21 VICE CHAIRPERSON ETHERLY: Even though it  
22 is spread out across a couple of different facilities.

23 MR. LOVENDUSKY: Yes, I would submit  
24 further to you that in retrospect it now seems clear  
25 that the residents of adjoining and nearby properties

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1 to the Whitehaven Campus should have received formal  
2 notice of the application in the proceedings of 16852  
3 because of the transportation issues that have been  
4 visited upon the residents of the Whitehaven Campus as  
5 a result of the order in 16852.

6 VICE CHAIRPERSON ETHERLY: Let me just get  
7 a little bit of clarification because, Mr. Lovendusky,  
8 you ran through it as you talked about some of the  
9 other neighbors that you are representing. I want to  
10 just be sure that we are clear. We're only dealing  
11 with one party status application and that is of  
12 yourself, correct? Perhaps this is more of a question  
13 to my colleagues even.

14 CHAIRPERSON GRIFFIS: I'm not seeing all  
15 the other addresses and people that you listed.

16 MR. LOVENDUSKY: I have received copies of  
17 communications from the Ormerad family and from the  
18 Fenton-Carbin family. I have not reviewed the file  
19 itself in the past week, but my understand was that  
20 they had been filed.

21 VICE CHAIRPERSON ETHERLY: That they had  
22 been filed.

23 MR. LOVENDUSKY: Yes.

24 CHAIRPERSON GRIFFIS: And requesting that  
25 you represent them.

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1 MR. LOVENDUSKY: Yes, specifically  
2 requesting that I represent them in this application  
3 for opponent status.

4 CHAIRPERSON GRIFFIS: I don't have those.

5 VICE CHAIRPERSON ETHERLY: But you would  
6 characterize all of these individuals as being  
7 individuals who are adjacent in proximity to the  
8 middle school.

9 MR. LOVENDUSKY: Correct, residents nearby  
10 the middle school.

11 CHAIRPERSON GRIFFIS: Does anybody have  
12 those?

13 MEMBER MILLER: No.

14 CHAIRPERSON GRIFFIS: Does the Applicant  
15 have those?

16 MS. PRINCE: I have a letter from Mr.  
17 Fenton and Ms. Carbin supporting his request for a  
18 party status.

19 CHAIRPERSON GRIFFIS: Okay, is that what  
20 you are referring to?

21 MR. LOVENDUSKY: Yes.

22 CHAIRPERSON GRIFFIS: But that's different  
23 than asking you to represent them as a party.

24 MS. PRINCE: That same letter says that  
25 "He represents our interests and has authority to

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1 represent us in this proceeding."

2 VICE CHAIRPERSON ETHERLY: Just for the  
3 sake of our discussion, Mr. Chair, I don't think that  
4 complicates the opening analysis.

5 CHAIRPERSON GRIFFIS: Okay.

6 VICE CHAIRPERSON ETHERLY: I think your  
7 assessment still applies. It's just perhaps from a  
8 procedural standpoint. I just want to be sure we're  
9 clear that would it be a denial of multiple party  
10 status request or would it be simply dealing with the  
11 request of Mr. Lovendusky as an individual party  
12 applicant?

13 CHAIRPERSON GRIFFIS: We have one request  
14 for party status.

15 VICE CHAIRPERSON ETHERLY: So just one  
16 request for party status, okay. Thank you.

17 CHAIRPERSON GRIFFIS: Further? I need to  
18 see those before I think about them. Do we have  
19 those? Did you get those from the record?

20 MS. PRINCE: We did.

21 CHAIRPERSON GRIFFIS: From our record?

22 MS. PRINCE: We did.

23 CHAIRPERSON GRIFFIS: What do you know  
24 about that? Let's take a couple of minutes and make  
25 copies of those.

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1 MR. LOVENDUSKY: Mr. Chairman, my office  
2 is about ten minutes away if you want me to run back  
3 to my office.

4 CHAIRPERSON GRIFFIS: We have it, right?

5 MR. LOVENDUSKY: You have one of them. It  
6 sounds like you don't have the second one.

7 MS. BAILEY: Mr. Chairman, that's Exhibit  
8 32.

9 CHAIRPERSON GRIFFIS: I hope so.

10 MS. BAILEY: Do you not have Exhibit 32,  
11 sir?

12 CHAIRPERSON GRIFFIS: No, in fact the  
13 exhibit log that I have doesn't go that high.

14 (Whereupon, the foregoing matter went off  
15 the record at 7:31 p.m. and went back on  
16 the record at 7:31 p.m.)

17 CHAIRPERSON GRIFFIS: Ms. Prince, you've  
18 just given us copies of Exhibit 32.

19 MS. PRINCE: That's correct.

20 CHAIRPERSON GRIFFIS: Mr. Lovendusky, you  
21 said you had other letters of similar nature.

22 MR. LOVENDUSKY: Yes.

23 CHAIRPERSON GRIFFIS: Which aren't in the  
24 record. I am now looking at the official record. So  
25 that would be the last submission that came in. Do

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1 you have copies of other letters?

2 MS. PRINCE: That's the only one that I  
3 secured from the record.

4 CHAIRPERSON GRIFFIS: Okay. While that's  
5 being copied for us, comments on that from the  
6 Applicant?

7 MS. PRINCE: Yes, I believe there's only  
8 one request for party status pending. I don't think  
9 it's at all relevant that several neighbors who also  
10 live one half mile away from this campus support Mr.  
11 Lovendusky's efforts to become a party. I will also  
12 note Saint Patrick's does not have three campuses.  
13 The existing junior high students are located in a  
14 temporary situation while the building is being  
15 renovated, but I think that hardly constitutes three  
16 campuses.

17 Finally, I would note that the  
18 transportation plan is not a link of the nature that  
19 would require you to combine the two applications  
20 together. It's not at all unusual. For example, the  
21 Foggy Bottom Campus of G.W. has a shuttle bus  
22 arrangement with the Mount Vernon Campus of G.W. When  
23 that arrangement was created, at the time the Mount  
24 Vernon Campus was approved, the Foggy Bottom neighbors  
25 were not notified of the Mount Vernon Campus, nor I

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1 might add were the 4700 neighbors notified of the 4925  
2 application in which Mr. Lovendusky participated so  
3 vigorously.

4 CHAIRPERSON GRIFFIS: Yes, I think that's  
5 an excellent point. I still hold fairly strongly that  
6 as independent reviews of special exceptions that they  
7 were taken. I do recall in our last deliberation  
8 there were aspects that were attendant to the special  
9 exception that went to the main campus, but we  
10 certainly didn't review the entire other buildings or  
11 uses or structures.

12 Let me just be clear because I think I may  
13 have gotten confused. We have now the Fenton letter  
14 which is Exhibit 32. You indicated that there are  
15 others perhaps attendant or similar to this. Where  
16 were they from? I mean the address, where are they  
17 located? Are they all on Ashby?

18 MR. LOVENDUSKY: Yes, the other letter  
19 would have been from the residence of 4901 Ashby  
20 Street, N.W., Washington, D.C.

21 VICE CHAIRPERSON ETHERLY: Mr. Chair, I  
22 also want to note that I do, if I recall correctly,  
23 believe that we do have a timeliness issue as it  
24 relates to party status request itself. I wanted to  
25 be sure to highlight that to my colleagues because I

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1 believe Mr. Lovendusky's request came in, if I'm  
2 looking at the date correctly, time stamped November  
3 24. Of course our rules do require that requests come  
4 in 14 days prior to our proceedings. I just wanted to  
5 note that as well.

6 MR. LOVENDUSKY: May I address that point,  
7 sir?

8 CHAIRPERSON GRIFFIS: Yes, briefly.

9 MR. LOVENDUSKY: Had I received notice, I  
10 would have been on time.

11 CHAIRPERSON GRIFFIS: Indeed. Very well.

12 Any other further questions the Board needs before it  
13 decides? I think it's important to have Mr.  
14 Lovendusky here especially with all of his knowledge  
15 and factual basis on this. However, I do not believe  
16 that the application rises to that of granting of  
17 party status. I think there are issues attendant to  
18 what was part of the application in fact that were in  
19 the Board's mind in review of the record and in fact I  
20 think would be specifically of import to adjacent  
21 residents to the school but also perhaps of import to  
22 the general public.

23 I don't see how noting those however and  
24 more specifically based on the distance away from the  
25 main campus and also the fact of the matter that we

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1 have taken up the middle school in another BZA  
2 application as a separate and independent and in fact  
3 that's the way it was viewed and should have been  
4 reviewed as the special exception application, an  
5 independent school there servicing the grades as we  
6 had put into. I would not support granting of party  
7 status at this time. Let me hear from other Board  
8 Members if they would oppose that.

9 VICE CHAIRPERSON ETHERLY: No, Mr. Chair,  
10 I definitely would speak in support of that  
11 understanding. Perhaps conceptually there clearly is  
12 an interrelationship with these campuses, but in terms  
13 of party status, our regulations and the application  
14 form itself especially does speak to that issue of  
15 proximity perhaps in a very broad way at least. By  
16 virtue of question number 3, I think there is a very  
17 important consideration as it comes to proximity and  
18 distance to the subject property of an application.  
19 That's something that we just can't simply overlook in  
20 this particular instance.

21 I would be hesitant at looking at,  
22 establishing a new precedent regarding the  
23 amalgamation of separate campuses for purposes of  
24 party status. As you said, Mr. Chair, I believe  
25 nevertheless through participation via testimony we

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1 can still get the benefit of what will probably be  
2 some very important observations from Mr. Lovendusky.

3 Thank you, Mr. Chair.

4 CHAIRPERSON GRIFFIS: Very well. Others?  
5 Any opposition?

6 MEMBER MILLER: I would concur. I just  
7 also want to resolve that the letter from Mr. Fenton  
8 and Ms. Carbin don't rise to the level of a request  
9 for party status so we don't need to address them.

10 CHAIRPERSON GRIFFIS: Thank you. Others?  
11 If not, I take it as a consensus to deny the request  
12 for party status of Mr. Lovendusky. With that, let me  
13 ask the Applicant how long they need in their rough  
14 estimation to present the case this evening.

15 MS. PRINCE: Ten minutes.

16 CHAIRPERSON GRIFFIS: To present?

17 MS. PRINCE: To present the entire case.  
18 We have one witness.

19 CHAIRPERSON GRIFFIS: Indeed. Then if I  
20 could ask your indulgence and allow us five minutes  
21 just to stretch our legs, we are going to come back in  
22 then and get directly into that.

23 MS. PRINCE: Great.

24 CHAIRPERSON GRIFFIS: Off the record.

25 (Whereupon, the foregoing matter went off

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1 the record at 7:39 p.m. and went back on  
2 the record at 7:51 p.m.)

3 CHAIRPERSON GRIFFIS: On the record.

4 MS. PRINCE: Good evening. I'm Allison  
5 Prince of Shaw Pittman. I'm here today on behalf of  
6 Saint Patrick's School. The sole purpose of today's  
7 application is to establish a cap on the employees at  
8 Saint Patrick's School that reflects the current  
9 conditions at the school.

10 The school has had extensive discussions  
11 with and input from ANC-3D resulting in the support of  
12 the ANC. We have one witness here today, Ms.  
13 Katherine Bradley, chairman of the board. In  
14 addition, Peter Barrett, the head of school, is also  
15 here to answer any questions.

16 I have one additional note because I  
17 suspect this issue will come up so I'm just going to  
18 address it in my opening and leave it at that. We are  
19 seeking to amend a cap that was established back in  
20 1990. I did in fact represent Saint Patrick's at that  
21 time. Then in 1999, at the time it sought approval of  
22 its gym, I interpreted that cap from the 1990 order  
23 that said there was a staff cap of 60. I interpreted  
24 the cap to mean it applied only to staff and not  
25 faculty.

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1           I thought the interpretation was  
2 reasonable at the time. It had been nine years since  
3 the earlier case. There had been no cases in the  
4 interim. Quite frankly, I didn't look back at the  
5 1990 file in detail to determine just how reasonable  
6 or unreasonable my position was.

7           I based my interpretation on the language  
8 of the condition itself that simply said there was a  
9 staff cap of 60. In connection with that gym case, I  
10 shared with the Board the total employee count of 93.

11          That was 64 faculty and 29 staff. We made no effort  
12 to hide employees. But unfortunately further study of  
13 the 1990 application through a lot of research that  
14 was mainly done by the ANC has made it clear that my  
15 interpretation was entirely wrong.

16          I myself used the term "staff" and  
17 "faculty and staff" interchangeably way back in 1990,  
18 14 years ago when I applied for that new cap.  
19 Accordingly I should have treated the cap on staff as  
20 a faculty and staff cap all along and should have  
21 advised the school accordingly. Had I done so, we  
22 would have amended the cap years ago as soon as the  
23 cap exceeded 60. Today we are here with the support  
24 of the ANC to correct this error. If you have no  
25 questions, I can proceed with the testimony of

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1 Katherine Bradley.

2 MEMBER ZAIDAIN: Actually I have a  
3 question. We might as well just get this out I guess.

4 The original order of 1990 is just staff and there is  
5 no full-time equivalent demarcation, correct?

6 MS. PRINCE: It does not refer to full-  
7 time equivalent.

8 MEMBER ZAIDAIN: Why the change between  
9 the two? Why are we not just talking about people?  
10 To me, FTE is a budgetary term. One FTE can mean five  
11 people or four people.

12 MS. PRINCE: Katherine's testimony really  
13 goes into that in great length. We believe there are  
14 very sound reasons to use FTE. We will tackle that  
15 today.

16 MEMBER ZAIDAIN: Good. Thank you.

17 DIRECT TESTIMONY

18 WITNESS BRADLEY: Good evening. I am  
19 Katherine Bradley. I live at 2211 30th Street, N.W.  
20 For four years, I have served as board chair of Saint  
21 Patrick's Episcopal School which is a nursery through  
22 grade eight parish day school with the main campus on  
23 Whitehaven Parkway in Northwest Washington. I had the  
24 pleasure of appearing before this Board several times  
25 in 2002 as Saint Patrick's sought permission from the

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1 Board to locate our then fledgling grades seven and  
2 eight program at 4925 MacArthur Boulevard.

3 Today we're coming before you with what I  
4 hope is a much simpler matter, our desire to have an  
5 honest, clear, new cap on faculty and staff at the  
6 elementary school campus. We are here addressing this  
7 issue because of research the ANC performed in 2002  
8 relating to our 1990 order governing faculty and  
9 staff. We are able as well to hope that this is a  
10 straightforward case today because of the ANC's  
11 support of this request and their generosity of spirit  
12 in deciding to look forward with a clean slate despite  
13 their serious opposition to the establishment of the  
14 grades seven and eight program.

15 On behalf of the school, I am grateful for  
16 their consideration and for the spirit of cooperation  
17 the ANC leadership has exhibited. We are pledged to  
18 do our part to in fact make this a successful fresh  
19 start. Saint Patrick's is asking for a status quo cap  
20 of 93 full-time equivalent, FTE, faculty, staff, and  
21 administration.

22 This is a status quo request that will  
23 commit us to no net growth in employees without  
24 returning to the ANC and the BZA for permission. This  
25 is also status quo in terms of impacts. We have ample

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1 parking and this request presents no overflow issues  
2 for the surrounding neighborhood.

3 A little bit of history. This request  
4 cannot be unusual in that it represents the first  
5 request for a revised cap in 13 years. What is  
6 surprising, as Allison has referenced, is the utter  
7 change in our representation of our status given that  
8 when we stood before you in 1999 and again in 2002 we  
9 reported faculty and staff numbers way in excess of  
10 the 1990 cap of 60 employees and we reported matter of  
11 factly that we had a staff cap only and that we had no  
12 faculty cap.

13 That statement was false. We believed it.

14 I believed it. But we were wrong. During the course  
15 of the 2002 hearings - and I actually learned it out  
16 in the hall moments before I was about to testify -  
17 that the 1990 hearing record showed that we were wrong  
18 and that in fact our faculty and staff numbers had  
19 been out of compliance since some time early in the  
20 1990s when the total number of employees at Saint  
21 Patrick's exceeded 60.

22 Research done by the ANC uncovered this  
23 indisputable information showing that the 1990 order  
24 was always intended to govern all Saint Patrick's  
25 employees and to cap them at 60 total employees. The

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1 only correct recourse would have been for the school  
2 to have returned to the BZA as soon as its employees  
3 were poised to grow above 60. Given that we cannot  
4 now turn back the clock and we cannot recreate  
5 hearings for several smaller increases we should have  
6 requested across time, we want instead to admit  
7 responsibility for this error and to come before you  
8 today to respectfully request a new accurate cap on  
9 employees.

10 Today we employ 92,7 FTEs or full-time  
11 equivalents. That translates into 103 whole bodies  
12 which is the term I'm using whenever you want to know  
13 how many people that is. We believe strongly that  
14 using FTEs is the most accurate, conservative approach  
15 to counting our employees across time. Further, we  
16 fear that imposing a different kind of count, the  
17 whole body count for lack of a better word, could harm  
18 our part-time workers by discouraging the school from  
19 offering part-time employment which exists for  
20 programmatic reasons and as a meaningful accommodation  
21 to teachers who have small children of their own or  
22 are phasing slowly into retirement.

23 We are requesting a cap of 93 FTEs which  
24 is a no growth, status quo request based on our  
25 current 92.7 FTEs. These 92.7 FTEs translate into 103

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1 people, 77 full-time and 26 part-time. There is no  
2 hidden hord of people behind any mythical FTE figure  
3 here. In fact, our whole body count of 103 people is  
4 very close to our FTE count, 92.7 FTEs. Our part-time  
5 workforce is not expected to grow as a percentage of  
6 the whole although there are annual fluctuations due  
7 usually to personal circumstances such as when a  
8 teacher has a child of her own or when a teacher or  
9 staff member begins a multi-year phase down to  
10 retirement.

11 Our program has natural part-time  
12 positions in our half day nursery, in our resource  
13 program, and in foreign language in our elementary  
14 school. We expect that this break down of full and  
15 part-time will stay roughly what it is now but with  
16 some fluctuations year to year to accommodate  
17 individual circumstances. We offer full benefits to  
18 part-time employees so we have no incentive to let  
19 this part of our workforce grow across time. Even so,  
20 we pledge to share our full and part-time breakdown  
21 with the ANC every year so that they too will rest  
22 assured that Saint Patrick's mix of part-time to full-  
23 time employees will not grow across time.

24 Why did we choose FTEs? We spent  
25 considerable time with our ANC discussing why we're

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1 moving forward with a cap request based on FTEs, a  
2 decision that after significant discussion the ANC did  
3 support. There are many ways to count employees.  
4 After considering all of them, we have concluded that  
5 FTEs are not only the most accurate way to reflect  
6 actual employment at Saint Patrick's but that an FTE  
7 census is also the most accurate way to keep track of  
8 employee growth or in this case projected non-growth  
9 across time.

10 Elementary schools are still heavily  
11 female in the composition of their workforces. At  
12 Saint Patrick's, our part-time positions make it  
13 possible for women who need flexibility and reduced  
14 working hours to continue in meaningful careers as  
15 they raise their families. Our part-time positions,  
16 either two or three day per week or half day positions  
17 coupled with our on-site infant-toddler center for  
18 faculty and staff children, has allowed us to be an  
19 exceptionally family friendly place to work.

20 We hope to address the need for a new cap  
21 without adversely affecting that very positive part of  
22 our program. Recognizing a three day per week worker  
23 or someone who works 8:00 a.m. to noon only as 0.06  
24 FTE is the accurate way to count someone who works  
25 only three days per week or who only works mornings.

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1 Moving away from this formula, in essence forcing the  
2 school to count a 0.6 person as a full employee for  
3 parking purposes, may discourage the school across  
4 time from making these part-time positions available.

5 We recognize however that our workforce  
6 that has doubled because of part-time employment creep  
7 could in fact tax the parking situation that we have.

8 We have no actual incentive to let this happen across  
9 time. We predict that the mix of part and full-time  
10 we have will stay roughly constant with some movement  
11 year to year but no trend line toward a significant  
12 part-time shift.

13 We will however share our part-time/full-  
14 time breakdown annually with the ANC so that there is  
15 honesty and transparency between us and so the ANC can  
16 verify that there is no part-time creep across time.  
17 We are also very comfortable with a condition that  
18 specifies that no more than a third of our total  
19 workforce may be part-time workers.

20 Finally, impacts. There should be no  
21 impacts associated with this request. We have 127  
22 parking spaces total at Saint Patrick's. Sixty-two of  
23 these are located on school property in the gymnasium.  
24 Twenty-three are rented from the Army Corp on land  
25 contiguous to the school. Forty-two are diagonal

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1 spaces improved by the school when we put in sidewalks  
2 and the diagonal spaces on Whitehaven Parkway. These  
3 are leased from the D.C. government.

4 We have ample parking space for every  
5 employee even at the time we have identified as the  
6 peak time for maximum people on campus at once which  
7 after careful study of the workflow at the school  
8 happens to be Tuesday around 11:00 a.m. with 100  
9 employees present. Using the FTE method of counting  
10 and assuming our request for 93 FTEs, 62 spaces on  
11 school property covers the elementary school parking  
12 requirement of two spaces for every three school  
13 employees.

14 Saint Patrick's total parking covers all  
15 employees and visitors except for rare special events  
16 like Halloween parades or Christmas pageants. Should  
17 the Board prefer to issue a cap that specifies  
18 individuals, our status quo number right now is 103.  
19 We can also meet that parking requirement although it  
20 would require using the child development center  
21 ratio, a step we would rather not take because that  
22 ratio translates into a higher number of employees  
23 even than we have now. We are asking for a no growth  
24 cap.

25 In closing, we are grateful to the ANC for

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1 surfacing this issue. As we intend to be in  
2 compliance with the letter and the spirit of the law  
3 at all times, we're happy to be able to come forward  
4 and ask for this revision in our faculty and staff cap  
5 on Whitehaven Parkway. Thank you for your  
6 consideration.

7 CHAIRPERSON GRIFFIS: Thank you very much.

8 Questions?

9 MEMBER ZAIDAIN: A couple. To make sure I  
10 understand what you testified to, you lost me when you  
11 were talking about 0.6 FTE equals one person. Is that  
12 a standard you are looking at?

13 WITNESS BRADLEY: If we have a teacher who  
14 works mornings only or who works three days a week and  
15 if the correct hours are 0.6 of a full-time job, then  
16 that person is counted as 0.6. If we move to what I  
17 call a whole body count, then a part-time employee who  
18 only works mornings or two or three days a week would  
19 be counted for the purposes of passing the parking  
20 requirement as a complete person if that makes sense.

21 MEMBER ZAIDAIN: That leads me to my next  
22 question. You said you use the standard two spaces  
23 for every three employees. So in order to calculate  
24 that under your FTE, if I understood what you just  
25 said correctly, you use people who work longer than a

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1 half day as a full-time. Can you restate that again?

2 WITNESS BRADLEY: Sure. Tell me if I am  
3 not answering the question correctly. Seventy-seven  
4 of our employees are full-time. Each of those is 1.0  
5 FTEs and 26 are part-time. That's going to vary. If  
6 you would like an estimate of the breakdown, we can  
7 ask Mr. Barrett. Most of those 29 are going to be  
8 0.6. We only have a swing of ten between our FTE  
9 count and our whole body count. So that shows you  
10 that in fact these aren't a lot of 0.1 or 0.2 people.  
11 They are largely three day a week.

12 MEMBER ZAIDAIN: So what do you use to  
13 calculate the parking ratio?

14 WITNESS BRADLEY: We use 93. We have 62  
15 spots on our land. If you use the two to three ratio,  
16 that gets you 93 and we're asking for 93 FTEs. We  
17 cannot count the whole of our 127 toward passing the  
18 parking requirement.

19 MEMBER ZAIDAIN: Right, that's what I'm  
20 struggling with. In your presentation, you talk about  
21 the benefits of FTEs and how you offer flexible  
22 programs and all of that. Believe me, I'm not  
23 disagreeing with that. I think we're all supportive.  
24 But to me, all of that is - and I have made issues of  
25 this in other school cases - an employment policy.

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1 That's a budgetary issue.

2 One of the impacts that we have to assess  
3 and I'm sure that one of the previous BZA in 1990  
4 assessed was people coming to and from that site and  
5 the impacts to the surrounding property owners.  
6 That's where we get in. I'm still struggling. Maybe  
7 we'll get more testimony and the Board can ask more  
8 questions on how an FTE gets us there. How does 0.6  
9 FTE translate into a parking issue and into a traffic  
10 issue?

11 WITNESS BRADLEY: Right, it's still one  
12 person coming back and forth either three days a week  
13 or every morning but that parking spot is not filled  
14 for a 40 hour work week.

15 MEMBER ZAIDAIN: Right. Exactly.

16 WITNESS BRADLEY: We're actually very  
17 comfortable, if the Board prefers it, using the whole  
18 body count.

19 MEMBER ZAIDAIN: Do you have a breakdown  
20 on what the maximum number of employees you have on-  
21 site at one time is?

22 WITNESS BRADLEY: Yes, Mr. Barrett did an  
23 analysis Tuesday at 11:00 a.m. That is the highest  
24 density time for faculty and staff.

25 CHAIRPERSON GRIFFIS: Which is 100.

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1 MEMBER ZAIDAIN: So three employees are  
2 not there that day.

3 WITNESS BRADLEY: Exactly.

4 MEMBER ZAIDAIN: Okay.

5 WITNESS BRADLEY: In case you want to go  
6 in the direction of what I call the whole body count,  
7 real people, I have done the calculations for how you  
8 could pass the parking requirement there. It does  
9 require using the child development center ratio which  
10 is a one to four ratio for our qualifying employees  
11 which is a subset of our employees.

12 MEMBER ZAIDAIN: Well, that would be my  
13 next question.

14 WITNESS BRADLEY: But it goes get you to  
15 the --

16 MEMBER ZAIDAIN: I want to make sure I  
17 understand. Are you saying taking part of your  
18 employment population that works in the child  
19 development area and using that ratio and then taking  
20 the rest of the school and applying a different ratio?

21 CHAIRPERSON GRIFFIS: Right, which would  
22 be breaking down a portion of that at a lower ratio, a  
23 lower parking count as opposed to what they are  
24 proposing now which is the FTE count.

25 MEMBER ZAIDAIN: Would a ZA do that?

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1 CHAIRPERSON GRIFFIS: Which is taking the  
2 entire employment population to the higher more  
3 restricted parking count.

4 WITNESS BRADLEY: It's the elementary  
5 school ratio which is two to three.

6 MEMBER ZAIDAIN: Well, but that's just for  
7 that component of the school.

8 WITNESS BRADLEY: No.

9 MEMBER ZAIDAIN: For the whole entire  
10 thing?

11 WITNESS BRADLEY: Yes, we can use that  
12 ratio. It's not the most lenient ratio. There's a  
13 more lenient ratio for anybody who works in a child  
14 development center or after school program. I think  
15 that's because those people don't tend to be there  
16 full-time which is probably why that ratio is  
17 different. We feel that the reason we like the FTE  
18 cap is it caps us exactly where we are. The statement  
19 we would like to be making is that we're asking for a  
20 no growth cap.

21 MEMBER ZAIDAIN: I appreciate that but I  
22 hope you understand where I'm coming from in terms of  
23 a planning and zoning standpoint in how FTEs can be  
24 incredibly challenging.

25 WITNESS BRADLEY: I do.

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1           MEMBER ZAIDAIN: I don't want to speculate  
2 on the myriad of problems that could bring up when you  
3 go to pull a permit based on FTE. I think in just  
4 reviewing things from impacts I struggle with it. But  
5 we have heard some testimony on alternative ways of  
6 looking at it.

7           WITNESS BRADLEY: The 103 full body count,  
8 since 26 of those are part-time, that actually allows  
9 those 26 people to go from an average of three days a  
10 week to being five day a week workers which does mean  
11 that more parking is filled up and there's more time  
12 that people are at the site. So that actually allows  
13 growth whereas a cap on FTE is exactly where we are.  
14 That means if we want to add any program, we have to  
15 do it by subtracting somebody doing a different  
16 function.

17           MEMBER ZAIDAIN: Okay.

18           CHAIRPERSON GRIFFIS: Of course in the  
19 reverse which Mr. Zaidain may be pondering as a  
20 problem is that the 77 full could become 117 part-time  
21 which would exacerbate the comings and goings.

22           WITNESS BRADLEY: Exactly.

23           CHAIRPERSON GRIFFIS: Is that something  
24 that is even realistic in terms of the program or the  
25 projected future programming of the school?

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1                   WITNESS BRADLEY: Not at all. It's not at  
2 all realistic to think that our workforce would become  
3 all part-time. We're really comfortable with some  
4 kind of condition here that specifies no more than a  
5 certain percentage of our workforce. We would need a  
6 tiny bit of flexibility because people's circumstances  
7 change. But if we're at 26 out of 103 now, that's  
8 something like 25 percent. We're really comfortable  
9 with something that says you can't have more than X  
10 percentage of your workforce as part-time workers.

11                   MR. BARRETT: If I may add to that, there  
12 are two aspect of our program that contribute  
13 virtually all of those 26 part-time positions.  
14 Families can choose a half day nursery program. Right  
15 away, there's a swath of our faculty that are  
16 potentially part-time. Now, they can also choose a  
17 full day program as well so some of those stay on.  
18 But a good number of them are 0.6.

19                   The other is our lower school resource  
20 which is also a morning program. Those are 0.6  
21 employees as well. So those are programatic,  
22 structural elements that create virtually all of those  
23 part-time positions. In fact, of those 26 part-time  
24 positions, I believe there are three that are anything  
25 less than 0.6 which I think establishes the impact of

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1 the structural elements of the program.

2 Those 0.6 positions are there because we  
3 have programs that create the need for them. We don't  
4 a need on these 77 full-time to begin halving them or  
5 otherwise fractionalizing them. There's no incentive  
6 for that.

7 MEMBER ZAIDAIN: Do you see the problem,  
8 again not to beat on the point? A 0.6, 0.5, 0.1,  
9 that's still one person driving to the site and  
10 leaving.

11 MR. BARRETT: Absolutely, I understand  
12 that dilemma.

13 MEMBER ZAIDAIN: You guys keep throwing  
14 these big terms around. You're going to lose us  
15 pretty quick.

16 (Laughter.)

17 MR. BARRETT: I think the FTE really for  
18 us now is the more conservative count. You are seeing  
19 opportunity in it and we're seeing constraint in it.

20 MEMBER ZAIDAIN: Well, it is in terms of  
21 your intensity of your school or the mission of your  
22 school but from my standpoint it's really not. If we  
23 say you can have 93 FTEs, what's to stop you, not to  
24 say you would do that, from taking ten FTEs and  
25 splitting that into ten different people a piece that

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1 are going to work one hour a week?

2 MR. BARRETT: That's why I think the offer  
3 of setting some kind cap in terms of the proportion of  
4 the workforce that can be part-time, whether it's one-  
5 third or whatever. I think one-third is reasonable.  
6 That would prevent the kind of action or activity that  
7 you are talking about.

8 CHAIRPERSON GRIFFIS: That's an  
9 interesting a proposal to not only cap the full-time  
10 employees but to cap the percentage that could become  
11 part-time.

12 MEMBER ZAIDAIN: I just have one quick  
13 question and then I'll turn it over. Have you ever  
14 had to certify or deal with DCRA on this issue of FTE,  
15 had to prove to them what your FTE count is? Well, I  
16 guess the previous Board order was 60 so you wouldn't  
17 have to do that, right?

18 MS. PRINCE: I can just add there are  
19 several schools that do use an FTE count.

20 MEMBER ZAIDAIN: Did I vote on any of  
21 those cases?

22 MS. PRINCE: Probably not.

23 MEMBER ZAIDAIN: I'm asking that  
24 seriously.

25 MS. PRINCE: One specifically includes a

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1 reference to FTE in the order that's for Georgetown  
2 Day School. Some of the colleges and universities  
3 refer to FTE.

4 MEMBER ZAIDAIN: Okay.

5 MS. PRINCE: It's a mechanism that is  
6 commonly used even in the case of an order that simply  
7 refers to 60. That is often translated by the school  
8 to mean 60 FTE.

9 CHAIRPERSON GRIFFIS: Well, to put it in  
10 to some quick history and background in my experience  
11 in looking at schools, first of all, we get an awful  
12 lot of testimony about how school programs have  
13 changed and requirements have changed. So old orders  
14 that may have been adopted or continued or changed  
15 adopt the wording that was fairly undefined. We come  
16 into a new era and the utilization of the terminology  
17 wasn't addressing some of the issues that were coming  
18 up.

19 So I think this Board, since I have been  
20 on it, has always struggled in what it means in terms  
21 of employees. We have even gotten into other  
22 applications of does the landscape crew count towards  
23 the count of staff. It went into an undefined area.  
24 I think we're still struggling with it. This is an  
25 interesting proposal being put forth in actually how

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1 you define the FTE even further in terms of  
2 percentages of what would be part-time.

3 MEMBER MILLER: I gather that at least I  
4 don't have a problem with part-time faculty and staff  
5 with respect to other impacts than parking. I'm  
6 trying to figure out how this affects parking  
7 requirements. I wasn't on the Board obviously when  
8 you came before the Board for the order that's  
9 controlling you. I'm wondering are the number of  
10 parking spaces tied to a regulation that says a  
11 certain number per person? So do we have to count  
12 bodies?

13 MS. PRINCE: That's not entirely clear.  
14 The regulations speak to teachers and other employees.  
15 That has over time in many cases been interpreted as  
16 FTE. FTE is not a defined term in the regulations.  
17 It's simply something that's evolved over time. As I  
18 said, it's very commonly used among the colleges and  
19 universities. So the regulations talk about teachers  
20 and other employees. They do not specifically state  
21 FTE.

22 MEMBER MILLER: When they calculated the  
23 number of parking spaces that were required for the  
24 school, did they say you have to have --

25 MS. PRINCE: Going back to the '90 cases,

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1 I am just simply not going to remember. In other  
2 school cases when we have looked at that, we have  
3 often used FTE and in some cases we have used head  
4 count.

5 MEMBER MILLER: For instance, let's say in  
6 this case. How many parking spaces are you required  
7 to have, 62?

8 MS. PRINCE: Well --

9 MEMBER MILLER: How many people does that  
10 cover? How many full bodies does that cover?

11 MS. PRINCE: There are two different  
12 ratios you can use here. This is complicated. It's  
13 taken us a couple of drafts to understand it  
14 ourselves. If you use only the elementary school  
15 parking ratio which is two spots for every three  
16 employees, 62 spots equals 93. It doesn't say equals  
17 93 what. We are saying we would like that to be  
18 equals 93 full-time equivalent and that's our cap.

19 Now, if you don't want to do it that way,  
20 if you say we really want you to use a whole body cap  
21 number, then what we have to do is use what's called  
22 the child development center ratio which is a more  
23 lenient ratio for just that subset of our employees  
24 who qualify which is infant-toddler center, nursery  
25 school, and after care. We have 20 such employees,

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1 not 20 FTEs but 20 people who qualify for that.

2 If you use the one to four child  
3 development center parking ratio, fortunately it  
4 divides evenly. It is five spots. If you say we have  
5 62 spaces on our property that can count towards  
6 parking requirements, 62 minus five - five is the ones  
7 for those 20 employees who are child development  
8 center - that leaves you 57 spaces. You divide by  
9 0.666, the two to three ratio for the elementary  
10 school, and that gets you 85 and a half which we can  
11 round down to 85 people.

12 That gives you a global cap of 105 people  
13 if you use that blended rate. I'm happy to give you  
14 this or to repeat that because I know it's confusing.

15 If you have to use a whole body cap, then we have to  
16 trigger the child development center parking ratio in  
17 order for the 62 spots on our land to qualify the 103  
18 whole body people that we have.

19 MEMBER ZAIDAIN: Why do we have to do  
20 that? Since this is under a special exception, can't  
21 we do an employee cap and require whatever additional  
22 or less parking?

23 MS. PRINCE: In a special exception for  
24 school, in no case can you approve fewer parking  
25 spaces than the regulations require, the two for

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1 three.

2 MEMBER ZAIDAIN: Right.

3 MS. PRINCE: I think maybe another way to  
4 state it is that --

5 MEMBER ZAIDAIN: Is that in the special  
6 exception text?

7 MS. PRINCE: Yes.

8 MEMBER ZAIDAIN: I don't want to interrupt  
9 you.

10 CHAIRPERSON GRIFFIS: Don't you remember  
11 this morning?

12 MEMBER ZAIDAIN: No, I don't actually.

13 MS. PRINCE: We fell it's a simpler,  
14 cleaner, more conservative approach to simply apply  
15 the two for three and FTEs as opposed to looking at  
16 the entire use which a portion of which is child  
17 development center and absolutely qualifies to use a  
18 less demanding parking ratio. We're not really asking  
19 you to make the decision which ratio you allow us to  
20 use.

21 We're simply saying if we go with the FTE  
22 approach we have enough parking spaces under the  
23 absolutely most conservative way to calculate them.  
24 If you go with body count, you have to look at our  
25 child development center separate and apart from our

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1 private school because the ratios are different.

2 MEMBER ZAIDAIN: Is that unheard of?

3 MS. PRINCE: No, absolutely not. In most  
4 cases, a child development center would apply the  
5 child development center ratio, and a private school  
6 would apply the private school ratio. If you have a  
7 blended use, you would take the benefit of the child  
8 development center for a portion of the use.

9 We're simply saying in this case with an  
10 FTE number we don't need to take advantage of the less  
11 demanding ratio, the child development center ratio.  
12 The numbers seem to work out in a very clean and  
13 simple way. And that seemed to be a sensible  
14 approach.

15 VICE CHAIRPERSON ETHERLY: I'm kind of  
16 where Mrs. Miller was. To an extent, it almost  
17 doesn't matter to me which way you cut it because it  
18 almost sounds very close to being semantics. But of  
19 course when you start digging under and pulling back a  
20 few of the onion leaves, you can see how complex it  
21 gets. When Ms. Bradley first started her testimony  
22 and I guess got into the middle of it, my eyes glazed  
23 over. But I think I get it.

24 What I'm struggling with is perhaps  
25 something Mrs. Miller hit on. If you look at the

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1 Zoning Regs - and perhaps when we get to the Office of  
2 Planning's report, they might speak to this because I  
3 know it was raised in their report - if you look at  
4 section 2118.3 - and this is part of what was being  
5 alluded to by the Applicant - the number of teachers  
6 or employees - and I'm reading from what is page 3 of  
7 the OP report - shall be computed on the basis of the  
8 greatest number of persons to be employed at any one  
9 period during the day or night including persons  
10 having both full-time and part-time employment.

11 That to me speaks a little bit to the  
12 question that was asked by Mr. Zaidain of Mr. Barrett  
13 and that was what's your high point. That Tuesday at  
14 11:00 a.m. snapshot revealed the high point to be  
15 around 100 or so. So while I think conceptually it  
16 almost doesn't matter to me which way you cut it, I'm  
17 wondering whether or not in the Zoning Regs the  
18 definition is set up in such a way that the important  
19 thing from a zoning standpoint is making sure the  
20 parking requirement can facilitate or handle what the  
21 high point is.

22 The high point appears to be measured  
23 based on 2118.3 by the number of bodies at the highest  
24 point day or night. So perhaps that's leading me to  
25 think even though it's more or less semantics from a

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1 conceptual standpoint I might be inclined to argue  
2 that from the Zoning Regs standpoint the way to cut  
3 this in the cleanest way so that we don't have this  
4 new interpretation everyone is going to have to  
5 struggle to implement is just to do the -- Gosh, where  
6 does that take me? I was on the train and then I just  
7 fell off.

8 MEMBER MILLER: Full body count.

9 VICE CHAIRPERSON ETHERLY: But I think  
10 that's where that line of reasoning is taking me, a  
11 full body count. I will definitely be open to further  
12 discussion from OP when we get to that point and maybe  
13 even from Corporation Counsel when we get to that  
14 point. Thank you, Mr. Chair.

15 MEMBER MILLER: I would just also like to  
16 get your reaction to this. I'm leaning towards the  
17 105 full body count if that's the right term to use.  
18 I think it gets too tricky to say how many are on the  
19 campus at any one time. I don't think I want to go  
20 there. But if we go with the maximum number of staff  
21 and faculty that there are parking spaces for using  
22 legal ratios, you can still within that use your FTEs,  
23 use part-time, use full-time.

24 You have the flexibility within 105  
25 because you are now saying you have 103 employees and

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1 you are able to be at your 92.7 FTE level that you  
2 want to be at right now. So actually if you use the  
3 105 number, you have even greater flexibility than you  
4 have now. Would you agree with that?

5 WITNESS BRADLEY: I don't disagree with  
6 that at all. In a way, I would want to hear the ANC's  
7 view on which way they would like to do this. It  
8 allows a little bit of growth that way that the FTE  
9 count from right where we are doesn't.

10 CHAIRPERSON GRIFFIS: I think that's an  
11 important point to hear from the others participating  
12 in this regarding this issue. We've asked the  
13 question numerous times from numerous directions. Any  
14 other questions on the testimony at this time? Does  
15 the ANC have any cross examination? Very well. Why  
16 don't we go to the Office of Planning's report then?

17 MS. BROWN-ROBERTS: Good evening, Mr.  
18 Chairman and Members of the Board. I am Maxine Brown-  
19 Roberts representing the Office of Planning. The  
20 proposed amendment meets the requirements of the  
21 provisions of section 206 in that in it's prior order,  
22 the BZA instituted conditions related to noise,  
23 traffic, parking, and the number of students. The  
24 number of faculty and staff has grown over the years.  
25 The proposed cap would be at a level that is

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1 appropriate for the school's current enrollment.

2           The staff and faculty can be accommodated  
3 in the provided parking lot and do not produce any  
4 objectionable noise or traffic. The proposed  
5 amendment is not expected to change the existing  
6 situation. As part of the special exception process  
7 for the junior high school, the Applicant worked with  
8 DDOT to formulate a traffic plan that includes car  
9 pooling to minimize traffic impacts on the site. DDOT  
10 has stated in their report that the proposed amendment  
11 would have no negative impact on the school's  
12 transportation management plan.

13           Regarding the discussion on the number of  
14 teachers and employees, the Office of Planning went  
15 along with the recommendation of the Applicant and  
16 also the ANC in calling for the 93 equivalent full-  
17 time employees. We spoke to DDOT on this issue. They  
18 said that they had no problems with having it as  
19 equivalent full-time employees. That was the extent  
20 of our discussions on that topic. We are aware of  
21 other orders that have used this formula. It has  
22 never come up in a discussion. It has never been  
23 fully discussed to this extent. So we didn't pursue  
24 it any further.

25           In the original order, the BZA found that

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1 the school is in harmony with the Zoning Regulations  
2 and does not adversely impact neighboring properties.

3 The proposed amendment will not change these  
4 conditions and will be in keeping with the intent of  
5 the BZA order to impose a cap on the number of faculty  
6 and staff at the school.

7 In summary, the application is in  
8 compliance with section 206 and 3104.1 of the Zoning  
9 Regs. Therefore the Office of Planning recommends  
10 that the Board of Zoning Adjustment approve the  
11 proposed amendment with the recommended condition. In  
12 addition, OP supports the conditions recommended by  
13 ANC-3D. Thank you, Mr. Chairman.

14 CHAIRPERSON GRIFFIS: Thank you very much.  
15 Questions from the Board of the Office of Planning?

16 MEMBER MILLER: I think you have said this  
17 but I just want to clarify. In those instances where  
18 the FTE theory was used, there weren't questions  
19 raised with respect to more traffic or parking  
20 problems.

21 MS. BROWN-ROBERTS: No, I think in those  
22 instances it was interpreted that it was going to mean  
23 instead of having one full-time person you were going  
24 to have two. That's been my experience. We didn't  
25 break it down as 0.5 or 0.3 and that sort of thing.

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1 It was two persons instead of one so it was very  
2 clean.

3 MEMBER ZAIDAIN: Have you worked on any of  
4 the cases where they used this in the campus plans?

5 MS. BROWN-ROBERTS: I haven't worked on  
6 any campus plan projects.

7 MEMBER ZAIDAIN: That have resulted with  
8 the FTEs.

9 MS. BROWN-ROBERTS: Right, I have not so I  
10 don't know off the top of my head.

11 MEMBER ZAIDAIN: But as far as you know,  
12 it's not this strict standard that needs to be used in  
13 the campus plan cases.

14 MS. BROWN-ROBERTS: No.

15 MEMBER ZAIDAIN: That's been the call of  
16 the Zoning Commission or the BZA in the past.

17 MS. BROWN-ROBERTS: Right.

18 MEMBER ZAIDAIN: Okay.

19 CHAIRPERSON GRIFFIS: Any other questions?  
20 Cross from the Applicant?

21 MS. PRINCE: No cross examination.

22 CHAIRPERSON GRIFFIS: Any cross from the  
23 ANC?

24 MS. GATES: Should I begin by introducing  
25 myself for the record?

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1 CHAIRPERSON GRIFFIS: Yes, please.

2 MS. GATES: Alma Gates, 4911 Ashby Street,  
3 N.W. I am here representing ANC-3D. Ms. Brown-  
4 Roberts, I just want to clarify one thing with you.  
5 There is no cite in the Zoning Code that deals with  
6 full-time equivalents, correct?

7 MS. BROWN-ROBERTS: I agree.

8 MS. GATES: I just wanted to hear once  
9 again your closing sentence.

10 MS. BROWN-ROBERTS: The Office of Planning  
11 supports the conditions recommended by ANC-3D.

12 MS. GATES: Thank you.

13 CHAIRPERSON GRIFFIS: Is that for  
14 emphasis?

15 MS. GATES: Kind of.

16 CHAIRPERSON GRIFFIS: Indeed.

17 MS. GATES: It was music to my ears.

18 CHAIRPERSON GRIFFIS: Right. Should we  
19 hear it again?

20 MS. PRINCE: If I could ask a question out  
21 of order.

22 CHAIRPERSON GRIFFIS: Sure.

23 MS. PRINCE: I believe, Ms. Brown-Roberts,  
24 that in recommending proposed conditions the only  
25 condition that you recommended was the cap limit and

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1 no other condition from the ANC. Specifically the ANC  
2 recommended a five year moratorium so to speak, an  
3 inability for the school to go back for five years and  
4 seek any adjustment to the cap. Your report as I read  
5 it did not endorse that condition.

6 MS. BROWN-ROBERTS: On page --

7 MS. PRINCE: Oh, I'm sorry.

8 MS. BROWN-ROBERTS: On page 3 --

9 MS. PRINCE: You did endorse that  
10 condition.

11 MS. BROWN-ROBERTS: Yes.

12 MS. PRINCE: All right. Sorry.

13 CHAIRPERSON GRIFFIS: Any follow up  
14 questions from the Board?

15 MEMBER ZAIDAIN: Are you referring to the  
16 bottom in the community comments?

17 MS. BROWN-ROBERTS: Yes.

18 MEMBER ZAIDAIN: So you are endorsing --

19 MS. BROWN-ROBERTS: Right, if you look on  
20 page 4 under number 3, it says "OP supports the ANC's  
21 recommended conditions."

22 MEMBER ZAIDAIN: Right, okay. That would  
23 include 1, 2, and 3 then.

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

25 MEMBER ZAIDAIN: We're now dealing with

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1 the five year issue and the ANC and the BZA yearly  
2 report on staffing and faculty levels.

3 MS. BROWN-ROBERTS: Yes.

4 CHAIRPERSON GRIFFIS: Is it OP's position  
5 that we have the jurisdiction or the authority to  
6 preclude an applicant from coming back for a certain  
7 amount of time?

8 MS. BROWN-ROBERTS: No, and I think that  
9 was the reason why we left it there and said we  
10 supported it and didn't put it in as one of our  
11 conditions.

12 CHAIRPERSON GRIFFIS: Okay, because we  
13 would be bound by our own rules of authority and  
14 jurisdiction. I'm not sure in fact --

15 MS. GATES: Who determines the conditions,  
16 Mr. Chairman?

17 CHAIRPERSON GRIFFIS: Well, we determine  
18 the conditions but that doesn't mean we condition  
19 anything. In fact, I think the most important thing  
20 that this current Board has done is craft and look at  
21 conditions that are understandable, measurable, and  
22 enforceable, and most importantly are within our  
23 jurisdiction and authority. That's a problem that in  
24 fact this Board has had in previous order where it  
25 starts to condition things that are outside of our

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1 jurisdiction, for instance, complying with  
2 environmental standards.

3 MS. GATES: Well then would you be able to  
4 deal with full-time equivalents?

5 CHAIRPERSON GRIFFIS: Absolutely.

6 MS. GATES: And not with prohibiting the  
7 school from coming back for five years.

8 CHAIRPERSON GRIFFIS: That's correct.

9 MS. GATES: I have seen other conditions  
10 like that.

11 CHAIRPERSON GRIFFIS: I know. I fully  
12 acknowledge that this Board has made mistakes in the  
13 past.

14 MS. GATES: Why would that be a mistake?

15 CHAIRPERSON GRIFFIS: Because it goes  
16 beyond our authority and jurisdiction.

17 MS. GATES: To say they can't come back?

18 CHAIRPERSON GRIFFIS: That's correct.

19 MS. GATES: You're putting a five year cap  
20 on things.

21 CHAIRPERSON GRIFFIS: My point is this  
22 Board cannot preclude an applicant from filing a new  
23 application. Certainly we have put conditions. We  
24 have put times on our orders. We have put caps on the  
25 orders. We certainly require that those be complied

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1 with. But to put a condition on that says and you  
2 can't come back to us for a certain amount of time I  
3 think goes well beyond what we're able to do.

4 MEMBER ZAIDAIN: I always thought that was  
5 a matter of law. Does Corporation Counsel have any  
6 thoughts?

7 CHAIRPERSON GRIFFIS: Well, it goes to the  
8 fact that we can't dismiss a case based on non-  
9 conformity which is something that we just addressed  
10 today albeit 12 hours ago but today.

11 MEMBER ZAIDAIN: That's true.

12 VICE CHAIRPERSON ETHERLY: Well, I think  
13 Corporation Counsel might have something to add to  
14 that.

15 CORPORATION COUNSEL: I would agree with  
16 what the Chairman said. What you said 12 hours ago  
17 still holds.

18 (Laughter.)

19 MEMBER ZAIDAIN: No, the issue is whether  
20 or not we can have a condition saying that they cannot  
21 file another application within five years.

22 CORPORATION COUNSEL: Right, you could  
23 adopt a cap and you can put a time limit on that cap  
24 if you wanted to.

25 MEMBER ZAIDAIN: When you say "cap," what

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1 do you mean?

2 CORPORATION COUNSEL: Cap on the staff.

3 CHAIRPERSON GRIFFIS: All that stuff that  
4 we do for schools.

5 MEMBER ZAIDAIN: I'm just talking about  
6 the ability to file an application.

7 CHAIRPERSON GRIFFIS: We can't.

8 MEMBER ZAIDAIN: That's my question.

9 CORPORATION COUNSEL: No, you can't. You  
10 can put a time limit on the approval you grant in a  
11 particular order, but you cannot preclude the  
12 applicant from coming back to ask for different  
13 relief. There's nothing in the regs that prevents  
14 them from coming back.

15 MEMBER ZAIDAIN: Okay, I just wanted to  
16 hear that. I do have a question for OP. In light of  
17 condition two - and if you want to say you don't know,  
18 that's fine - would it be safe to say that OP would  
19 not support another application within the next five  
20 years?

21 MS. BROWN-ROBERTS: I don't think we would  
22 know.

23 MEMBER ZAIDAIN: I'm just trying to --

24 CHAIRPERSON GRIFFIS: I think it would be  
25 hard to pin OP down for not supporting future

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1 applications.

2 MS. BROWN-ROBERTS: We don't know.

3 MEMBER ZAIDAIN: Then fine.

4 CHAIRPERSON GRIFFIS: This is what I would  
5 do. Certainly if this goes to an order which it will  
6 depending on the outcome of this hearing, I think it  
7 would be noted as a finding of fact that it's an  
8 agreement that was a consensus agreement between the  
9 Applicant and the ANC. It could certainly could be  
10 identified and specified as a finding. But to  
11 condition it, I cannot support that.

12 MS. GATES: Well, buy the same token, the  
13 school is offering to meet with the ANC. The ANC has  
14 no authority over whether they have 115 employees and  
15 they are only supposed to have 103. The only thing we  
16 can do is go to DCRA if we don't meet the timeliness  
17 issue.

18 CHAIRPERSON GRIFFIS: That's correct.

19 MS. GATES: In other words, you are asking  
20 the ANC to be standing on the front doorstep making a  
21 count of teachers because they are not going to tell  
22 us after 60 days have passed when we should have known  
23 by counting at the beginning.

24 CHAIRPERSON GRIFFIS: I'm sorry. I'm not  
25 following you.

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1 MEMBER MILLER: Let me just say this.  
2 There's nothing that says you should know what their  
3 count is. You are not going to lose your right to  
4 appeal because 60 days have gone by from when they may  
5 have exceeded their count. Is that what your concern  
6 is?

7 MS. GATES: Yes, I am.

8 MEMBER MILLER: No, there's nothing that  
9 says you would have to know their count.

10 MS. GATES: Thank you.

11 MEMBER ZAIDAIN: We're deliberating on the  
12 timeliness of an appeal that has not been filed yet.

13 (Laughter.)

14 VICE CHAIRPERSON ETHERLY: I share Mrs.  
15 Miller's response. She hit it right on the nail.

16 MEMBER MILLER: Thank you.

17 MEMBER ZAIDAIN: That would be a  
18 timeliness determination on the appeal. But according  
19 to Mr. Etherly we cleared up all the appeal issues  
20 earlier today.

21 CHAIRPERSON GRIFFIS: Let's move on.  
22 Anything else for the Office of Planning from the  
23 Board? Thank you very much. We appreciate your  
24 report. Let's run through the other submissions. Of  
25 course, DDOT has been identified in the Office of

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1 Planning report and has indicated in Exhibit 27 in our  
2 record and Office of Planning has said on the record  
3 that DDOT is okay with the FTE designation for the  
4 calculation of the parking. Let us now go then to the  
5 presentation by the ANC.

6 MS. GATES: Following deliberations on BZA  
7 Application 17081, ANC-3D voted on November 5 to  
8 recommend the following conditions and strongly  
9 recommends their inclusion in the final BZA order.  
10 Saint Patrick's Elementary School will hold quarterly  
11 meetings with ANC-3D and the community.

12 Saint Patrick's Elementary School will not  
13 return to the ANC or the BZA for any further expansion  
14 of faculty, staff, or students for a period of five  
15 years from the final date of BZA order 17081. And  
16 Saint Patrick's Elementary School will provide the ANC  
17 and the BZA with a yearly report on staffing and  
18 faculty levels with the breakdown of full-time and  
19 part-time employees.

20 The statement of Applicant and its  
21 proposed conditions filed with the BZA following Saint  
22 Patrick's November meeting with the ANC does not  
23 include ANC condition number 2. The ANC urges the  
24 Board of Zoning Adjustment to include this condition.

25 Saint Patrick's only now admits its error in spite of

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1 compelling evidence presented during the 2002 BZA  
2 hearings regarding the staff only cap.

3           Clearly the school has not been honest  
4 with the BZA, the ANC, or the community it claims to  
5 serve. This condition would prevent any further  
6 expansion for a five year period and would provide an  
7 opportunity for the school to prove to the BZA  
8 Compliance Officer and the community that when forced  
9 to do so, Saint Patrick's can abide by BZA orders and  
10 conditions.

11           Considering the current 103 staff and the  
12 absolute maximum cap of 60 set in 1990, there are 42  
13 more employees than allowed by BZA order 15374. In  
14 the 13 year period between the issuance of that order  
15 and 2003, the school has had two BZA hearings and  
16 ample opportunity to request an increase in its  
17 employee cap from the BZA.

18           Instead, Saint Patrick's has steadfastly  
19 denied being over its cap and out of compliance with  
20 the BZA order. Now that its 2002 hearing is over,  
21 construction on the junior high school is nearing  
22 completion and its staff is hired, the school admits  
23 its guilt. It has nothing to lose.

24           The origins of this case date back to 1990  
25 when Allison Prince submitted a special exception

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1 application on behalf of Saint Patrick's Episcopal Day  
2 School requesting an increase in students from 390 to  
3 427 and staff from 51 to 60. I draw your attention  
4 please to Exhibit A.

5 The subsequent BZA order reflected what  
6 was written on the application, but Ms. Prince made it  
7 clear to the BZA in her statement of the applicant  
8 that the school is seeking a modest increase in the  
9 enrollment and the total number of faculty and staff.

10 She also provided a detailed breakdown of the request  
11 of number of students, faculty and staff within the  
12 body of the application. In testimony, Ms. Prince  
13 stated Saint Patrick's is also seeking an increase to  
14 an absolute maximum staff and faculty of 60.

15 Even the Department of Public Works Policy  
16 and Planning's memorandum to the BZA indicated it  
17 understood Saint Patrick's was requesting an increase  
18 in faculty and staff. In 1990, the school came before  
19 the ANC and to the Palisades Citizens Association  
20 citing a new campus master plan with the request for  
21 additional classroom space and a gymnasium to meet the  
22 needs of their current student body and a pledge that  
23 there would be no additional grade levels, no  
24 additional students, no additional teachers, no  
25 additional cars.

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1           In 2002, the school knew it did not have  
2 clean hands when it came to the BZA with Application  
3 16852 for the junior high school. Although it had  
4 been informed it was over its cap by a member of the  
5 community, a denial was issued by Ms. Prince, and the  
6 school's application moved forward to the BZA. In  
7 fact, when the issue was raised during one of the  
8 hearings, Ms. Prince vehemently denied the school was  
9 over its cap and reiterated the school only had a  
10 staff cap. Even when documentation was presented to  
11 the contrary, the denial continued.

12           John Finney, chair of ANC-3D, filed a  
13 letter with DCRA regarding the cap. But in typical  
14 fashion, DCRA failed to respond. Yet the current  
15 statement of Applicant states "A detailed review of  
16 the file from the 1990 application however makes clear  
17 that the original cap was intended to include all  
18 employees." As the school's attorney and the  
19 initiator of its filings, Ms. Prince was aware all  
20 along that the school was not in compliance with the  
21 BZA order.

22           In September 2003, Saint Patrick's first  
23 came to ANC-3D to test the waters for today's BZA  
24 hearing and to admit it was out of compliance with its  
25 staff cap. The school also disclosed it is over its

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1 student cap and shared a letter dated September 22  
2 from Saint Patrick's to Denzel Noble, Acting Zoning  
3 Administrator, confessing that an error in the number  
4 of scholarships given this year pushed the school over  
5 its student cap by eight students.

6 Filled with true altruistic spirit,  
7 Advisory Neighborhood Commission 3D did not question  
8 the school's promise to return to its approved student  
9 cap during the next admission cycle. Finally, when  
10 Saint Patrick's came to the November ANC meeting in an  
11 official capacity, two themes based on the issue of  
12 faculty staff caps dominated discussions.

13 The first discussion involved the school's  
14 admission that it was over its employee cap by 43.  
15 While some commissioners regarded this as an attempt  
16 by the school to make a fresh start, the majority felt  
17 the school, while seriously out of compliance, has  
18 been deceptive and its admission does not wipe the  
19 slate clean.

20 The school also informed the commission  
21 that it has three part-time teachers and a chaplain  
22 who are teaching at the junior high school but whose  
23 hours are only charged to the elementary school. This  
24 notion raised serious concern and would permit the  
25 school to hire additional part-time teachers but claim

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1 only three are actually teaching in the junior high  
2 school.

3           ANC-3D supports the schools need to rehire  
4 good teachers in a part-time capacity because family  
5 situations have changed. This led the commission to a  
6 second discussion on the concept of full-time  
7 equivalents. Some commissioners likened the notion to  
8 the FTE practice employed by the federal government.  
9 But the comparison ended there. The same concept of  
10 slots that applied to the government FTE employee  
11 cannot be applied in the Saint Patrick's case because  
12 the school must abide by the Zoning Regulations and  
13 provide two parking spaces for every three employees.

14           The school has a limited number of parking  
15 spaces available on school-owned property. Each  
16 school employee represents a full person when at  
17 school and their cars represent whole vehicles. The  
18 FTE concept became more difficult to justify.  
19 Obviously the school has resorted to using FTEs in an  
20 effort to hide its actual number of employees and to  
21 make their numbers fit the requirements of the Zoning  
22 Regulations.

23           For example, the statement of Applicant  
24 fails to acknowledge that it currently employs 103  
25 employees and never mentions the number of church

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1 employees who share parking facilities with the  
2 school. Given the school's parking garage holds 62  
3 spaces that are shared with the church and there are  
4 42 angled spaces rented from the District, a total of  
5 104 spaces, the school's supply of campus parking is  
6 at capacity.

7 ANC-3D noted that page 5 of the statement  
8 of Applicant cites an additional 23 spaces in a lot  
9 leased from the Army Corps of Engineers and reminded  
10 the school that in 2002 the headmaster testified under  
11 oath that this would become a visitor's lot. The  
12 commission also observed that cars are often parallel  
13 parked along Whitehaven Parkway doubled up against the  
14 42 leased diagonal spaces. The headmaster stated this  
15 occurs when there are visitors and special occasions  
16 at the school. This admission provides further  
17 evidence that parking at Saint Patrick's is at  
18 capacity.

19 In conclusion, ANC-3D voted to allow the  
20 school to maintain the status quo 103 employees or 93  
21 FTEs as they have been hired. We would strongly  
22 encourage the BZA to include a condition that  
23 prohibits expansion of faculty, staff, or students for  
24 a period of five years and trusts that the BZA will  
25 afford the commission's views the great weight to

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1 which it is entitled by law. Thank you.

2 CHAIRPERSON GRIFFIS: Thank you very much.

3 So am I correct in noting that your last paragraph is  
4 a happy ending?

5 MS. GATES: It is. It's a tired ending if  
6 I don't sound happy. I'm sorry.

7 CHAIRPERSON GRIFFIS: That may be. Well,  
8 I think it clearly laid out the history and the  
9 progress and the vigilance of the ANC in looking at  
10 this. Let me go quickly back to the point where  
11 actually you threw me way off in talking about  
12 appeals. I think your issue was more of you don't get  
13 back into a situation that you have previously  
14 encountered and that is not knowing what is happening.

15 So it really goes directly to enforcement and  
16 compliance, is that correct?

17 MS. GATES: I believe so.

18 CHAIRPERSON GRIFFIS: If that's the case,  
19 I would certainly agree. First of all, I think things  
20 have changed as you stated in your statement in terms  
21 of the Compliance Officer that is now in the Office of  
22 Zoning. The recordation and filing of faculty and  
23 staff levels to the BZA would hopefully take care of  
24 that because I'm not sure what you would appeal if you  
25 found an order out of compliance.

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1           But that being said, I am happy to see  
2 that in fact the ANC-3D did vote to maintain the  
3 status quo. So you are affirming that it would be  
4 appropriate to use 93 FTEs in its calculation for a  
5 cap.

6           MS. GATES: That's the way the commission  
7 voted, yes.

8           CHAIRPERSON GRIFFIS: Further questions  
9 from the Board?

10           VICE CHAIRPERSON ETHERLY: Just one I  
11 think very important clarification that I want to be  
12 sure I hear on the record from Ms. Gates. If as you  
13 heard there are significant concerns about our  
14 authority, not our willingness, to impose a five year  
15 prohibition on returning to the Board, does that in  
16 any way change the ANC's position based on your  
17 understanding of the vote?

18           I take it you participated in the vote and  
19 the deliberation. I just want to be sure because your  
20 report is very clear about the three conditions you  
21 would like to see included. If that condition cannot  
22 be included as would seem to be the case - and I would  
23 agree with that interpretation - does that change in  
24 your mind the ANC's position on the application?

25           MS. GATES: I don't know that I can answer

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1 that.

2 VICE CHAIRPERSON ETHERLY: I appreciate  
3 your candor. It's a very important point because the  
4 report is very clear with regard to those conditions.

5 Thank you. Thank you, Mr. Chair.

6 CHAIRPERSON GRIFFIS: Ms. Miller.

7 MEMBER MILLER: This question is for the  
8 Applicant again if that's okay.

9 CHAIRPERSON GRIFFIS: Actually do we have  
10 any further questions of the ANC?

11 MEMBER MILLER: No.

12 CHAIRPERSON GRIFFIS: Cross examination of  
13 the ANC?

14 MEMBER MILLER: I'll come back.

15 CHAIRPERSON GRIFFIS: I'm sorry. Let's  
16 finish this up.

17 WITNESS BRADLEY: Just two clarifications.  
18 You are very right that Mr. Barrett identified the  
19 Army Corps lot which is the 23 spaces as a visitor  
20 lot. That means we direct visitors to look there  
21 first. That doesn't mean that no teachers or no staff  
22 ever park there.

23 CHAIRPERSON GRIFFIS: Is there a question  
24 for the ANC?

25 WITNESS BRADLEY: Was that not clear?

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1 MS. GATES: No, I understand what you are  
2 saying. But when you say it's a visitor's lot, we  
3 assume it's a visitor's lot and not just spill over  
4 parking for your full-time equivalent staff.

5 WITNESS BRADLEY: Probably there's a  
6 moment that we can come back and clarify at the end so  
7 I have no questions.

8 CHAIRPERSON GRIFFIS: Okay. Ms. Miller?

9 MEMBER MILLER: I'm still pondering the  
10 question about the parking spaces because I think that  
11 in raising the cap we have to be concerned that it  
12 falls within the regulation governing the number of  
13 parking spaces required for your employees. In  
14 looking at the regulations, if we just look at 2101.1  
15 where there's a schedule of requirements for parking  
16 spaces, setting aside the child development ratio, it  
17 says here for instance for elementary school "two for  
18 each three teachers and other employees."

19 Then 2118 is rules of interpretation.  
20 Then 2118.3 says "The number of teachers or employees  
21 shall be computed on the basis of the greatest number  
22 of persons to be employed at any one period during the  
23 day or night including persons having both full-time  
24 and part-time employment." What number is that  
25 looking at just those two statements?

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1                   WITNESS BRADLEY:     That is the Tuesday  
2 11:00 a.m. 100 individuals.

3                   MEMBER MILLER:    Is there an FTE equivalent  
4 to that or no or would we have to use the 100?

5                   MR.    BARRETT:       Well, it's obviously  
6 something less than 100 and that took me long enough.

7                   WITNESS BRADLEY:    If 103 is our total  
8 count of individuals employed and 100 is our maximum,  
9 then the maximum FTEs at any one time are going to be  
10 something smaller than 93 FTEs, is that clear?

11                   VICE CHAIRPERSON ETHERLY:   Let's make Mr.  
12 Barrett do the math. I'm just kidding.

13                   MS.    PRINCE:     Can I just cover this issue  
14 from a practical standpoint?     Over time the  
15 regulations have been interpreted in a way that the  
16 cap that is in the order is the number that is used.  
17 If the cap says 100 without a reference to FTE,  
18 parking is computed on the basis two for three based  
19 on the 100. If it says 100 FTE, it's calculated based  
20 on two for three.

21                   There's never been an effort - and I have  
22 worked with a lot of the independent schools - I have  
23 never seen any of the Zoning Administrators - and  
24 there have been many - try to understand that maximum  
25 present at any one time calculation probably because

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1 that could be tough to prove. If a school did want to  
2 become deceptive, they could really play around with  
3 schedules in a way that would make that very hard to  
4 interpret.

5 So if you were to say 93 FTEs, based on my  
6 experience, the Zoning Administrator would apply the  
7 two to three ratio based on the 93. If you said 100  
8 without a reference to FTE, he would base it on the  
9 two for three on that. That's just the way it's been  
10 implemented. You are opening up an issue that the  
11 previous Zoning Administrators haven't and the  
12 previous Boards haven't. But I would argue that it  
13 should be interpreted that way.

14 MS. GATES: Mr. Chairman, if I might, if  
15 there are 100 whole bodies at this school at 11:00 on  
16 Wednesday, there are 100 bodies there. There are not  
17 parts of bodies. I would just like to point that out.

18 CHAIRPERSON GRIFFIS: Thank you. I  
19 understand your point fully, but I think what the  
20 Board is dealing with how do we pick our point to hit?

21 The parking requirement and the schedule doesn't go  
22 for the 50 year flood or the 100 year flood, meaning  
23 the absolute worst case scenario. That's why we have  
24 had such a difficult time. That's why there's been  
25 different interpretations.

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1           How do we pick the right number that will  
2 address the demand that it continues through? So it's  
3 outside of Wednesday at 11:00 a.m. We need to make  
4 sure that's facilitated. But it's the other times  
5 also which may be less or may be slightly more.

6           So which addresses that? Is it faculty  
7 and staff on-site at one time, the greatest amount or  
8 is it full-time equivalents or is it a hybrid of  
9 others or is it just let them decide themselves? I  
10 think the difficulty in 2118.3 is as Ms. Prince has  
11 stated again - and frankly this is the second time  
12 we're going through this - how is it measurable? How  
13 would we establish compliance with that?

14           MS. GATES: Exactly.

15           CHAIRPERSON GRIFFIS: And that's where  
16 it's problematic to do. If we looked at something as  
17 an actual documentation of these are the employees,  
18 there's obviously a contract to it. It's accountable  
19 and measurable. Now we need to take a situation of  
20 that and translate that into its parking ratio which  
21 we have to go to the schedule for. I think that's a  
22 much more appropriate way to do it.

23           MS. GATES: No, that's where I was going  
24 with this. I'm sorry if I didn't --

25           CHAIRPERSON GRIFFIS: No, I like to

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1 reiterate what people say. I don't have any original  
2 thoughts so that was all yours.

3 MEMBER MILLER: Then my understanding is  
4 there are 105 spaces if you use the two different  
5 ratios or there are enough spaces to cover 105 bodies.

6 WITNESS BRADLEY: Not to complicate this  
7 terribly but that's on the precise number of employees  
8 that we have in child development center areas right  
9 now. If we went up one or down one in the child  
10 development areas, that ratio would change, right?  
11 Are you following that?

12 MEMBER MILLER: I am following that. I'm  
13 just wondering then --

14 WITNESS BRADLEY: So right now the precise  
15 number of child development center qualifying  
16 employees is 20. You run out the whole formula and  
17 you end up with 105 total employees, 85 elementary  
18 school and 20 child development center.

19 MEMBER MILLER: Well, if we used that  
20 number, do you predict that over the course of five or  
21 ten years or whatever your needs are still going to  
22 allow you to fall within that?

23 WITNESS BRADLEY: I assume mathematically  
24 but if you lost one on the nursery school and you  
25 gained one on the elementary school, you would still

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1 have same number of bodies but all of a sudden the  
2 parking ratio would change.

3 CHAIRPERSON GRIFFIS: The ratio would  
4 change.

5 WITNESS BRADLEY: But I assume we just  
6 have to be on top of that. I can't right now  
7 mathematically figure out exactly how that would work.

8 Given that we have 103 people now and that blended  
9 ratio allows 105, I would assume that creates the  
10 flexibility and we would just need to manage it  
11 carefully. I would like to direct back to the ANC  
12 though. We had hoped ANC and Saint Patrick's not to  
13 have to trigger the child development center ratio.

14 MS. GATES: No, I'm just glad Mrs. Bradley  
15 said that because in discussions she had been fairly  
16 straightforward about not wanting to use the child  
17 development figure.

18 CHAIRPERSON GRIFFIS: Okay, and the ANC  
19 also supports that.

20 MS. GATES: I don't believe it came up at  
21 the ANC meeting. That was just before.

22 CHAIRPERSON GRIFFIS: I see.

23 VICE CHAIRPERSON ETHERLY: Just to close  
24 Ms. Miller's point, the Applicant of course looked at  
25 the FTE number that you are proposing. You have

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1 already determined that the appropriate flexibility is  
2 contained within that number in terms of eliminating  
3 the need for us to prognosticate here and now what  
4 kind of flexibility you would need. So if we were to  
5 go with the FTE interpretation, you have already done  
6 that look and are comfortable that you have enough  
7 flexibility within that number to address your  
8 academic needs going forward.

9 MEMBER MILLER: Would your preference be  
10 to use the FTE number if you had the choice because it  
11 gives you greater flexibility or what?

12 WITNESS BRADLEY: For a variety of  
13 reasons, yes, we would prefer to use the FTE if the  
14 Board is comfortable with it.

15 CHAIRPERSON GRIFFIS: Any other clarifying  
16 questions from the Board at this point? Very well.  
17 Unfortunately let's take five minutes. Then we'll go  
18 for testimony and closing. Off the record.

19 (Whereupon, the foregoing matter went off  
20 the record at 9:04 p.m. and went back on  
21 the record at 9:14 p.m.)

22 CHAIRPERSON GRIFFIS: On the record.

23 VICE CHAIRPERSON ETHERLY: Let me just  
24 note really quick there was an additional government  
25 report from the Child and Residential Facilities Cares

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1 Division expressing support for the application. I  
2 wanted to note that for the record. It's Exhibit 24.

3 CHAIRPERSON GRIFFIS: Excellent. Thank  
4 you. Ready?

5 MR. LOVENDUSKY: Mr. Chairman,  
6 preliminarily do I have the flexibility of taking  
7 between five and ten minutes for the string of these  
8 remarks?

9 CHAIRPERSON GRIFFIS: Yes.

10 MR. LOVENDUSKY: Thank you. I am Michael  
11 Lovendusky. I reside at 4925 MacArthur Boulevard,  
12 N.W., Washington, D.C. I am here representing both  
13 myself as well as Nora Carbin who resides at 4915  
14 Ashby Street, N.W., Washington, D.C. as well as Howard  
15 Fenton who resides at 4915 Ashby Street, N.W.,  
16 Washington, D.C. as well as Anna Ormerad who resides  
17 at 4901 Ashby Street, N.W., Washington, D.C. as well  
18 as Douglas Ormerad who resides at 4901 Ashby Street,  
19 N.W., Washington, D.C., and Mileva Lovendusky of 4925  
20 MacArthur Boulevard, N.W., Washington, D.C.

21 We are neighbors of the Saint Patrick's  
22 Middle School. We are familiar with the proceedings  
23 both of this matter as well as in the matter that  
24 resulted in order 16852. In no uncertain terms, we  
25 would urge you to reject the notion of the FTE.

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1 Despite the Applicant's representation that 62 equals  
2 93, 62 does not equal 93 and it should not be allowed  
3 to equal 93 in any concept approved by this Board of  
4 Zoning Adjustment.

5 As one of the Members of the Board  
6 observed, it is very much an onion. It stinks like an  
7 onion. The more you unravel the onion, the more you  
8 realize that there is nothing there except the  
9 illusion of a meaningful thing. Let's do some of the  
10 math that is proposed for us. We heard from the  
11 Applicant that they now have 77 full-time employees  
12 and so each one of them would count as one FTE. They  
13 have 29 part-time employees.

14 The number of part-time employees will  
15 vary over time we are told by the Applicant. If you  
16 switched that around and you had 77 part-time  
17 employees, suddenly you would be speaking about 154  
18 real persons who would be coming to and from the  
19 Whitehaven Campus multiplying the impact in traffic  
20 and congestion as well as the parking disturbances by  
21 that factor of two.

22 The Applicant advises that at this present  
23 time there are three part-time employees who work less  
24 than 0.6 hours a day. The question would become what  
25 would prohibit them from having persons working one

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1 hour a day. On an eight hour a day, that would mean  
2 that you have eight people equaling one full-time  
3 equivalent. While that seems far fetched, there would  
4 be nothing in fact from them having a staff of 800  
5 individuals each working one hour a day.

6 They discuss a full-time job. What is a  
7 full-time job at Saint Patrick's? Is it an eight hour  
8 day? Is it a seven and a half hour day? Is the day  
9 in the morning hours? Is it in the afternoon hours?  
10 Is it in the evening hours? Is it possible that they  
11 could have employees working more than an eight hour  
12 day? How would those employees be calculated for FTE  
13 calculations?

14 In fact, if you look at the context of the  
15 100 real persons that they have operating on Tuesdays  
16 at 11:00 a.m. and you simply adopt the notion that  
17 they will move to a basis of half-time work for their  
18 real person employees, suddenly you would have 200  
19 people at the campus at Whitehaven on Tuesday at 11:00  
20 a.m. simply by the magic of the FTE union. The  
21 problem of course with the FTE union is it is  
22 impossible to enforce.

23 There is a tremendous injustice that is  
24 put upon the residential neighborhood with every  
25 special exception that allows a private school in the

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1 midst of a residential neighborhood. A private school  
2 such as the Applicant before you has tremendous  
3 resources. It has a tremendous budget. With that  
4 budget, it can hire lawyers. It can hire experts. It  
5 can hire contractors. It can hire employees;  
6 employees that can work eight hour days, four hour  
7 days, one hour days.

8 With a small army of employees and experts  
9 and lawyers, it can basically advance its agenda into  
10 the residential neighborhood. The residents have very  
11 little ability to defend against them because they are  
12 not an institution. The residents around the private  
13 schools do not want to come home after a hard day's  
14 work and institutionalize themselves and craft budgets  
15 so that they can hire lawyers and so that they can  
16 hire experts and so that they can hire employees to  
17 resist the impositions of the private school.

18 Yet this is what happens every time a  
19 private school is inserted by special exception into a  
20 residential neighborhood. It must be curtailed  
21 because every time it happens it destabilizes the  
22 residential neighborhoods. It happened on Whitehaven.

23 It's going to happen at 4925 MacArthur Boulevard  
24 unless the impositions of that particular middle  
25 school isn't stopped.

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1           The impositions will be exacerbated by the  
2 fiction of the FTE because the FTE by its very magical  
3 nature will be impossible of calculation and  
4 enforcement. The neighbors, the residents will not  
5 have the ability to police the number of FTEs at any  
6 time on the campus, either annually or on a daily  
7 basis or on a weekly basis without institutionalizing  
8 themselves somehow and committing their own budgets to  
9 hiring employees and experts and lawyers to do their  
10 battle for them. And that is a very tall order.

11           You have mentioned the importance of  
12 enforcement. I regret to report to you that despite  
13 the creation of the Compliance Specialist position, a  
14 noble idea indeed, it has not worked. There is no  
15 compliance with the order that already exists at 16852  
16 with regard to the Applicant before you. There is no  
17 enforcement of the order or its conditions.

18           You don't have to take my word for it.  
19 You can ask your Compliance Specialist how many  
20 complaints have been filed using the brand new zoning  
21 form 300 with regard to violations of the conditions  
22 in order 16852? How many complaints have been filed,  
23 and how many enforcement actions based on any one of  
24 those complaints have been actualized?

25           You could go even further. You could ask

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1 in fact if there has been any use other than with  
2 regard to this Applicant before you with regard to  
3 zoning form 300. If there has been a use beyond this  
4 particular Applicant, what is the record of  
5 enforcement at this date?

6 I would suggest to you that you will find  
7 that there is no enforcement of the orders or of the  
8 conditions or the plain meaning of the Zoning  
9 Regulations of the District of Columbia. For this  
10 reason, the opponents to this application would  
11 strongly urge you to use the wild notion of basing  
12 your determination on real persons.

13 The Zoning Regulations speak about real  
14 persons. They do not speak about FTEs. The Applicant  
15 itself admitted that while the FTE in its perception  
16 is a conservative approach, it could live by the wild  
17 approach of actually using a real person count of 103  
18 or 105. That is what the neighbors that I represent  
19 would urge you to adopt, a real person count of 103  
20 and 105.

21 Moving to my closing remarks, I would  
22 observe that with regard to lack of enforcement, one  
23 of the problems with the lack of enforcement is that  
24 the Applicant realizes that there's no enforcement and  
25 they have been able to operate with impunity despite

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1 their numerous violations, not merely of the faculty  
2 caps or the student caps but of all of the other  
3 numerous issues that have risen and are memorialized  
4 in the proceedings that resulted in order 16852.

5           You have before you a record and an  
6 application that includes Exhibit 5 where there is a  
7 clear admission that there was a violation that lasted  
8 12 years with regard to 32 students over the cap that  
9 existed and was set by this Board in 1990. I would  
10 submit to you that the Board in this particular  
11 proceeding, if it's going to have any meaning  
12 whatsoever for its orders and conditions, should  
13 impose a penalty for the violations that have been in  
14 place for 12 years.

15           The violations should be enumerated,  
16 either one per student of the 32 students that were  
17 above the cap set in 1990 or if that seems to be too  
18 much for the Board to accept, then one violation per  
19 year for the 12 years that the Applicant was in  
20 violation of the order in 1990. Those separate  
21 violations should be memorialized in the order to this  
22 proceeding.

23           That would mark the very first time that  
24 there was actually a penalty imposed for the violation  
25 of an order regarding the Applicant. That would be an

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1 important matter going forward as well as for the  
2 matter before you today. It would send a signal  
3 certainly not only to this Applicant but to all the  
4 private school applicants that are applying for  
5 special exceptions before you.

6 You know better than I that there are  
7 numerous applications by private schools for special  
8 exceptions and that there is a tremendous amount of  
9 controversy from the residents of adjoining and nearby  
10 properties to all of these private schools. The  
11 reason there is so much controversy and the reason  
12 there are so many applications for special exceptions  
13 is because the applicants know that there is no  
14 enforcement and that they can say whatever they want  
15 to you, to me, and to the Advisory Neighborhood  
16 Commissions knowing that they can move forward with  
17 impunity after they get the order that lets them into  
18 the residential neighborhood in the first place.

19 For all these reasons, I would close by  
20 urging you to reject the fiction of the FTE, to  
21 embrace real persons as required by the Zoning  
22 Regulations and to impose some symbolic and yet  
23 meaningful penalties for the violations that existed  
24 in this particular proceeding since 1990. Thank you.

25 CHAIRPERSON GRIFFIS: Thank you very much.

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1 First of all, just to address in terms of the non-  
2 compliance, there are several issues that you bring up  
3 of import to this Board. I don't think any applicant  
4 coming in here would say it's easy to get special  
5 exceptions when they are coming in non-complying, if  
6 you note, all the schools that you have talked about  
7 and how difficult it is to get through the public  
8 hearing on that.

9 But more specifically you talk a lot about  
10 enforcement. Enforcement is a problem that the Board  
11 deals with quite a bit. Our Compliance Officer and  
12 this Board, the Zoning Commission, and the Office of  
13 Zoning have no enforcement authority. That's where  
14 disconnect comes if there was any disconnect. I think  
15 the Compliance Officer position begins to bridge that  
16 disconnect.

17 Clearly enforcement is the authority and  
18 jurisdiction of DCRA. So what's been important is for  
19 us, this Board, the Zoning Commission and others, to  
20 have a vehicle which we can actually gather our own  
21 information that we might inform for any sort of  
22 enforcement mechanism.

23 In terms of penalty and position, I think  
24 the Board can take that under advisement and  
25 reevaluate its authority and jurisdiction in light of

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1 perhaps some recent decisions to see whether that is  
2 even a viable possibility. I don't disagree that  
3 maybe that is something that this Board needs to look  
4 at in looking at non-compliance of an order perhaps.  
5 So I think we can take that under advisement.

6 I understand your position that we should  
7 be looking at real persons to calculate. That is in  
8 fact based on the 103 or 105 for the cap and also for  
9 the parking calculation. That being said, are there  
10 any questions of Mr. Lovendusky? Mr. Zaidain.

11 MEMBER ZAIDAIN: I just have a quick one.  
12 You have actually suggested something that is a first  
13 for opponents in these cases. I doubt it will be the  
14 last. Are you suggesting that the regulations should  
15 be amended so that private schools are not allowed as  
16 special exceptions in residential zones and should be  
17 deemed incompatible?

18 MR. LOVENDUSKY: No, I would not want you  
19 to misunderstand that there is a proper role for  
20 private schools in the residential neighborhoods.  
21 There has to be a greater appreciation of the  
22 impositions that they bring upon the residents. There  
23 have to be greater sensitivities especially when they  
24 are moving to decentralized or operations onto  
25 multiple campuses and there are multiple campuses that

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1 are all located within the same advisory neighborhood  
2 commission and when the order that justify the  
3 placement of the campuses involve transportation  
4 between the campuses of either students or faculty and  
5 staff.

6 These all have aggregated impact on the  
7 residential neighborhoods. Greater sensitivity should  
8 be given to the actual composition of the student  
9 populations of the private schools themselves. The  
10 Zoning Regulations at 206.2 make clear that it's the  
11 adjoining and nearby neighbors who have the opinion  
12 which counts in evaluating the impact of the private  
13 school in any residential neighborhood.

14 If in fact the school is populated by  
15 students that are not from the immediate neighborhood  
16 but in fact are from Maryland and Virginia, as 39  
17 percent of the student population of the Applicant are  
18 from, that should raise questions about the propriety  
19 of the location of the private school in any  
20 residential neighborhood. The private schools  
21 locating in residential neighborhoods should serve the  
22 residential neighborhoods that they are located in.

23 CHAIRPERSON GRIFFIS: Mr. Etherly.

24 VICE CHAIRPERSON ETHERLY: Mr. Lovendusky,  
25 hypothetically speaking, what would your reaction be to

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1 a scenario where an FTE vehicle is employed but it is  
2 accompanied by language which would also set an  
3 explicit numerical cap? For example, let's say the  
4 FTE number is indeed 93 but it is accompanied by  
5 language that would say in no case should the  
6 applicant or should SPS exceed a total employee number  
7 part-time and full-time of 110.

8 MR. LOVENDUSKY: My reaction as an  
9 academic matter to that notion would be that there  
10 have to be standards set for FTEs. The standards  
11 would have to be the same from school to school, from  
12 order to order, from application to application.  
13 Because of its experimental nature, the FTE permission  
14 should expire every year requiring the applicant to  
15 come back before this Board every year to reinstate  
16 the FTE thereby enabling an annual evaluation of  
17 whether the FTE concept could at all work in any  
18 notion or form whatsoever.

19 VICE CHAIRPERSON ETHERLY: Okay. Thank  
20 you. Thank you, Mr. Chair.

21 CHAIRPERSON GRIFFIS: Anything else? Any  
22 cross? ANC.

23 MS. GATES: If there were an annual  
24 evaluation, would you not encourage the school to  
25 increase both its FTE and whole body count every year?

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1 MR. LOVENDUSKY: It's unclear. We are  
2 delving into the realm of the hypothetical. I don't  
3 know. But it would certainly involve the community at  
4 least on an annual basis as to whether the FTE concept  
5 has an impact on traffic, on parking, and whether the  
6 school itself is genuinely responsive to the  
7 impositions that are being visited upon the  
8 residential neighborhood.

9 I do not believe it would necessarily  
10 result in an increase in either the FTE or the real  
11 person count of staff. I would observe that the  
12 annual reevaluation would impose the burden upon the  
13 applicant itself to come back before the Board to  
14 require the reinstallation of the FTE. It would also  
15 of course increase the imposition on the advisory  
16 neighborhood commissions and the residents themselves  
17 to become policemen of this system. But at least they  
18 would have the comfort of knowing that there was some  
19 possibility of annual enforcement of the FTE.

20 MS. GATES: I'm not sure as an ANC  
21 commissioner I find that a comfort. I find it a lot  
22 of work. I must say that the last order 16852 has  
23 really involved a lot of work, part of it because I am  
24 an immediate neighbor to this school.

25 CHAIRPERSON GRIFFIS: I hate to interrupt,

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1 but is this leading to a cross examination question?

2 MS. GATES: Sorry. No, I was just  
3 responding to his statement. I will close with that  
4 and ask Mr. Lovendusky to please give his proper  
5 address for the record. I think out of force of habit  
6 the address he gave was that of Saint Patrick's Middle  
7 School.

8 MR. LOVENDUSKY: Thank you. My correct  
9 address is 4927 MacArthur Boulevard.

10 CHAIRPERSON GRIFFIS: We'll certainly  
11 correct the record for that. Very well. Thank you  
12 very much. Mr. Lovendusky, thank you for your  
13 endurance with us and being down here. Cross by the  
14 Applicant?

15 MS. PRINCE: Mr. Lovendusky, you referred  
16 to filing complaints with the Zoning Compliance  
17 Officer. May I ask how many complaints you have  
18 filed?

19 MR. LOVENDUSKY: One moment please. I'm  
20 looking at a pleading in the appeal of order 16852  
21 which is pending before the District of Columbia Court  
22 of Appeals at this time. I recently filed on behalf  
23 of the petitioners in that proceeding a motion to stay  
24 order 16852 pending the final adjudication of the  
25 appeal. I believe that I and my wife have filed four

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1 complaints using form 300.

2 MS. PRINCE: Those complaints centered on  
3 construction deliveries that you believe should be  
4 restricted to post-9:30 a.m.

5 MR. LOVENDUSKY: The first two complaints  
6 centered on a violation of condition number 3 of order  
7 16852. That condition required deliveries to be made  
8 between 9:30 a.m. and 4:30 p.m. In fact, the  
9 complaints cite deliveries as early as 5:45 a.m. and  
10 7:00 a.m. The latter two complaints using form 300  
11 address the deficiencies of the building permits which  
12 failed to include the conditions of 16852 as they are  
13 expressly required by the plain meaning of the Zoning  
14 Regulations themselves.

15 MS. PRINCE: Has the Compliance Officer  
16 responded to any of your allegations in your  
17 complaints?

18 MR. LOVENDUSKY: There was a response to  
19 the first two complaints with regard to the deliveries  
20 prior to 7:00 a.m. The response was non-responsive.  
21 I guess it was the Zoning Commission indicated that  
22 the order's conditions do not apply during the  
23 construction phase and that in fact the construction  
24 phase was governed by construction regulations that  
25 themselves prohibit deliveries prior to 7:00 a.m. So

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1 that was non-responsive. There has been no response  
2 to the second complaints with regard to the violations  
3 and the deficiencies of the building permits omitting  
4 the 20 conditions of order 16852.

5 MS. PRINCE: I have no more questions.

6 CHAIRPERSON GRIFFIS: Thank you. Again,  
7 we appreciate your patience, Mr. Lovendusky, and  
8 sitting through all of this. The other issue that Mr.  
9 Lovendusky brought up which are important to the Board  
10 for its deliberation on this case is he brought up the  
11 issue that we were talking about in terms of FTE and  
12 how we would not look at - eight hundred is the  
13 example that he gave - employees on-site.

14 I think one of the important aspects that  
15 came up is if we had a portion, a percentage, or a  
16 fraction of a part-time that would define that. The  
17 other aspect was how we define full-time and how we  
18 define full-time or over 40 hours if full-time was 40  
19 hours. So I put that on the minds of the Board as we  
20 continue with this and go to closing.

21 WITNESS BRADLEY: I have one rebuttal  
22 statement and then we will close.

23 CHAIRPERSON GRIFFIS: Or rebuttal and then  
24 closing.

25 WITNESS BRADLEY: Just very quickly. Mrs.

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1 Gates and I have had significant email correspondence  
2 over the issue of part-time teachers who are, as she  
3 testified, expensed only to the elementary school but  
4 who teach at MacArthur. That is not the case. This  
5 is probably my fault, Mrs. Gates, if I have not been  
6 clear enough in our correspondence.

7 We have three teachers who teach such  
8 minimal hours in the new middle school that they are  
9 still counted as 1.0 full-time at the elementary  
10 school but they also count toward the overall employee  
11 cap of the new middle school. So if there is any  
12 double counting, it is against our interest. There is  
13 no way to conceive that this is trying to hide  
14 employees to have additional employees not covered in  
15 the middle school cap. I needed to clarify that.

16 CHAIRPERSON GRIFFIS: Okay, does the ANC  
17 have any cross on that? Very well.

18 MS. PRINCE: We promised ten minutes for  
19 our whole presentation so I'll just note that we  
20 really appreciate your careful consideration of this  
21 application. I think the discussion of the FTE issue  
22 is important. It's important not only for our case  
23 but it will recur for you. I think you'll benefit  
24 from it as I will. We look forward to your decision.

25 I'm not certain what additional materials are

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1 necessary from us, but we're certainly willing to  
2 submit anything on the FTE issue that you suggest.

3 CHAIRPERSON GRIFFIS: Excellent. Thank  
4 you very much. Let's briefly discuss that then. Are  
5 there additional materials that the Board feels are  
6 required?

7 MEMBER MILLER: I have heard reference to  
8 it being used in other cases. I would be interested  
9 to know what cases it's been used in and how it's  
10 worked.

11 MS. PRINCE: I know the Georgetown Day  
12 Upper School case is governed by FTE. That is in the  
13 order. I believe there is at least one more order  
14 that has FTE in it. Then there are numerous other  
15 orders that refer to a number, and some of the schools  
16 that have a raw number use that number as an FTE  
17 number.

18 MEMBER ZAIDAIN: There's a lot of examples  
19 of both is what you are saying.

20 MS. PRINCE: There are all kinds of  
21 examples. I am happy to provide them to you.

22 MEMBER ZAIDAIN: I have a question. I'm  
23 sorry.

24 CHAIRPERSON GRIFFIS: I'm trying to define  
25 that so we don't get every single order of every

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1 single school.

2 MEMBER MILLER: I was just going to say in  
3 particular if it would be helpful to our analysis  
4 based on what we've been discussing tonight.

5 MS. PRINCE: Right, I think I'll just  
6 submit to you orders that literally have FTE in them.

7 CHAIRPERSON GRIFFIS: That's the way to go  
8 about it. Then we can look at our own orders if we  
9 need to. Mr. Zaidain, I'm sorry. Were you saying  
10 something?

11 MEMBER ZAIDAIN: Yes, I was just going to  
12 ask in this type of an application, do we do findings  
13 of fact?

14 CHAIRPERSON GRIFFIS: We can.

15 MEMBER ZAIDAIN: I think what it's going  
16 to come down to is does the Board want to do the FTE  
17 route or do the other routes?

18 CHAIRPERSON GRIFFIS: That's right.

19 MEMBER ZAIDAIN: So maybe we want to have  
20 alternative findings of fact submitted.

21 CHAIRPERSON GRIFFIS: I don't think that  
22 would be evidence of findings of fact. If we want a  
23 submission that would brief that issue and talk about  
24 it - this is my position - the information that we now  
25 have in the record is sufficient. We may be tired and

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1 not seeing all of it, but I feel fairly strongly that  
2 it's all there from Mr. Lovendusky's filings and also  
3 from the Applicant's filings and also the ANC's  
4 testimony today.

5 I think it is all sufficient enough for us  
6 to deliberate. With a fresh mind, it's not as  
7 complicated as it is at this point. So I don't see  
8 any necessity to ask for additional information  
9 outside of those orders that we just talked about  
10 unless you want a briefing or a memo or something of  
11 that nature.

12 MEMBER ZAIDAIN: No.

13 CHAIRPERSON GRIFFIS: Anything else then?

14 MS. GATES: Would you keep the record open  
15 for another week just in case there are additional  
16 submissions?

17 CHAIRPERSON GRIFFIS: I cannot after a  
18 hearing keep the record open for anything that's out  
19 there. Is there something specific you are  
20 anticipating?

21 MS. GATES: Not immediately.

22 CHAIRPERSON GRIFFIS: How about in a week?

23 MS. GATES: By Friday.

24 CHAIRPERSON GRIFFIS: Of what? No, I need  
25 to know substance. The record will be closed when I

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1 bang the gavel tonight unless we see something  
2 specifically that we will require to be added into the  
3 record.

4 MS. GATES: I have nothing to add. I just  
5 thought there may be something from one of the  
6 opposing neighbors.

7 CHAIRPERSON GRIFFIS: Like a statement or  
8 a letter or something of that nature.

9 MS. GATES: Yes.

10 CHAIRPERSON GRIFFIS: It's too late to be  
11 indirect. If we know what we're talking about, let's  
12 talk about it.

13 MR. LOVENDUSKY: Michael Lovendusky, if I  
14 may approach, it will be interesting not only to see  
15 the orders that will be provided by the Applicant that  
16 expressly address FTEs but it might be interesting to  
17 examine the record below the order to see what the  
18 nature of the discussion or opposition to the FTE  
19 concept was in, for example, Georgetown Day.

20 CHAIRPERSON GRIFFIS: Okay, I think that's  
21 probably what the Board will do as those are  
22 evidenced. Some of this current Board sat on those  
23 cases so that won't be that hard to investigate. Are  
24 you aware of other submissions that may be coming into  
25 the record?

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1 MR. LOVENDUSKY: No, but I was aware that  
2 there was one or a small number of orders that  
3 expressly did acknowledge the FTE concept. I have not  
4 had an opportunity to review those files to see what  
5 the nature of the discussion or opposition, if any,  
6 occurred at the time.

7 CHAIRPERSON GRIFFIS: Right, and that's  
8 well noted for the Board's consideration. Going back  
9 to the ANC, is there a letter you have in mind?

10 MR. LOVENDUSKY: I am reminded that Mr.  
11 and Mrs. Ormerad's letter has not appeared.

12 CHAIRPERSON GRIFFIS: That you have.

13 MR. LOVENDUSKY: I do have a copy of it so  
14 I could provide that for the record.

15 CHAIRPERSON GRIFFIS: Excellent, and the  
16 record will stay open obviously for that because it's  
17 been referenced in the case. Last chance, do you know  
18 of somebody who is going to submit?

19 MS. GATES: That's what I was referring  
20 to.

21 CHAIRPERSON GRIFFIS: So that's done.

22 MS. PRINCE: I lost you.

23 CHAIRPERSON GRIFFIS: Right.

24 MS. PRINCE: Is that letter in the record  
25 now?

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1 CHAIRPERSON GRIFFIS: It is not. It was  
2 briefly discussed.

3 MS. PRINCE: It's out there but it's not  
4 physically here.

5 CHAIRPERSON GRIFFIS: That's correct. As  
6 it has been presented, it is closely analogous to  
7 Exhibit 32.

8 MS. PRINCE: It's the missing letter.

9 CHAIRPERSON GRIFFIS: That's correct.

10 MS. PRINCE: All right. That's fine. So  
11 the record is open to submit the letter that should be  
12 here but isn't.

13 CHAIRPERSON GRIFFIS: That's correct.

14 MS. PRINCE: Got it.

15 CHAIRPERSON GRIFFIS: So we have the  
16 record open for two items if I am now following  
17 everything. That is for the citation of the order.  
18 You can just send us that and we can pull the order I  
19 think. The other is for that letter coming in. Ms.  
20 Bailey, are you aware of anything else that needs to  
21 be submitted into the record?

22 MS. BAILEY: I heard something about  
23 findings of fact, Mr. Chairman.

24 CHAIRPERSON GRIFFIS: Yes, indeed, you  
25 did. I think we have what we need. I would not

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1 require that.

2 MS. BAILEY: That's it, Mr. Chairman.

3 MS. PRINCE: Chairman Griffis, I think  
4 proposed conditions would be helpful because there has  
5 been discussion about conditions. There has been  
6 discussion about perhaps a percentage limit on part-  
7 time in the event that the FTE approach is taken. So  
8 proposed conditions from the Applicant may be helpful.

9 CHAIRPERSON GRIFFIS: There it is. I  
10 think that's fine. We can keep the record open for  
11 findings, conclusions, proposed conditions. I wanted  
12 to make it clear that I think we have what we need on  
13 this but that's an excellent point. So we'll do that  
14 which puts us off a bit for decision making on this in  
15 order to get that. We will not be meeting the 23rd or  
16 the 30th.

17 I think we're going to need to put this to  
18 a decision making on January 13 for a special public  
19 meeting in the morning. Ms. Bailey, if you are  
20 ameanable with the schedule in front of you, why don't  
21 we do two weeks prior to the 13th? Let's just have  
22 everything at one time. We don't need two dates on  
23 this. Is that acceptable to the Applicant before she  
24 tells me whether I can do that or not?

25 MS. PRINCE: New Year's Eve?

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1 CHAIRPERSON GRIFFIS: Served to our houses  
2 with a bottle of champagne.

3 (Laughter.)

4 MS. PRINCE: That's fine.

5 CHAIRPERSON GRIFFIS: I mean by the 2nd or  
6 whatever it is. I don't have the exact calendar. I  
7 just have our calendar.

8 MS. PRINCE: This is findings of fact and  
9 conclusions of law from each side or proposed  
10 conditions only.

11 CHAIRPERSON GRIFFIS: Well, the ANC can  
12 file that if they would like to, yes.

13 MS. PRINCE: Yes, findings of fact and  
14 conclusions of law.

15 CHAIRPERSON GRIFFIS: That's correct.

16 MS. PRINCE: The record is open for no  
17 other purpose other than to accept the findings and  
18 the letter that has not made it into the record but is  
19 on the premises.

20 CHAIRPERSON GRIFFIS: And the cases.

21 MS. PRINCE: Great.

22 CHAIRPERSON GRIFFIS: In which case,  
23 that's Friday the 2nd.

24 MS. BAILEY: Mr. Chairman, I think Monday  
25 would be better.

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1 CHAIRPERSON GRIFFIS: I knew it. You are  
2 so rational.

3 MS. BAILEY: Just because --

4 CHAIRPERSON GRIFFIS: January 5.

5 MS. BAILEY: Yes.

6 CHAIRPERSON GRIFFIS: Indeed.  
7 Difficulties? Does the ANC have any problem meeting  
8 that schedule?

9 MS. GATES: No, and you are asking us to  
10 file findings and conclusions.

11 CHAIRPERSON GRIFFIS: I'm keeping the  
12 record open if you were amenable to doing that.

13 MS. GATES: If we want to file them.

14 CHAIRPERSON GRIFFIS: That's correct, yes.  
15 So if the ANC wants to file findings, conclusions,  
16 proposed conditions just to put your statement on the  
17 record, the record is open to accept that. Anything  
18 else? Is everybody clear? We have our schedule. We  
19 have our submission requirements. Board Members?  
20 Applicant? ANC? Very well. A long day. Thank you  
21 all very much. That would then conclude our afternoon  
22 session at the hour of 9:45 p.m. Off the record.

23 (Whereupon, the above-entitled matter  
24 concluded at 9:49 p.m.)

25