

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

DECEMBER 9, 2003

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE MILLER	Board Member
DAVID ZAIDAIN	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

PETER MAY	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

Clifford Moy	Secretary, BZA
Beverley Bailey	Office of Zoning

OTHER AGENCY STAFF PRESENT:

Arthur Jackson	Office of Planning
Stephen Mordphin	Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Mary	Nagelhout,	Esq.
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P-R-O-C-E-E-D-I-N-G-S

9:56 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order the 9th of December 2003 public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Geoff Griffis. I am the chairperson.

Joining me today is Ms. Miller. Representing the Zoning Commission is Mr. May and representing the National Capital Planning Commission is Mr. Zaidain.

Copies of today's hearing agenda are available to you. They are located on the wall as you entered into the hearing room. You can certainly pick on up and see where you are on our agenda.

Let me run through a few very important but quick things. First of all, all public hearings before the Board of Zoning Adjustment are recorded. Therefore, we ask several things of you.

First of all, when coming forward to speak to the Board, you will have needed to fill out two witnesses cards. Witness cards are available on the table you entered into and the table in front. Those two witness cards go to the recorder who sits to my

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1 right prior to coming forward.

2 And when having a seat and making yourself
3 comfortable, please state your name and address for
4 the record. You need only do that once and then we
5 can proceed.

6 Of course, anything established for the
7 record for our deliberation needs to be said on the
8 record and, therefore, needs to be said into a
9 microphone. That microphone should be on.

10 The order of procedure for our public
11 hearing today, special exception and variances will be
12 first. We'll hear from the applicant. The
13 presentation of their case and any witnesses that they
14 will call.

15 Second, we would hear government reports
16 such as the Office of Planning's report or any other
17 government agency that has submitted to the
18 application.

19 Third would be a report from the Advisory
20 Neighborhood Commission.

21 Fourth would be persons in support of the
22 application.

23 Fifth would be persons in opposition of
24 the application or parties if any are established.

25 Sixth would be closing remarks by the

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1 applicant.

2 Cross examination of witnesses is
3 permitted by the applicant or parties in the case.
4 The ANC within which the property is located is
5 automatically a party in the case and, therefore, can
6 conduct cross examination.

7 The record that we establish today will be
8 closed at the conclusion of the public hearing except
9 for any material that is specifically requested by the
10 Board and we will be very specific as to what is to be
11 submitted and when it is to be submitted into the
12 Office of Zoning.

13 Of course, it goes without saying when
14 that is received, the record would then be finally
15 closed and no additional information would be accepted
16 into the record.

17 The Sunshine Act requires that this Board
18 conduct all its hearings in the public and before the
19 public. This Board may, however, consistent with its
20 rules of procedures and the Sunshine Act, enter into
21 executive session. Executive sessions are for the
22 reasons of reviewing the record or deliberating on a
23 specific case.

24 The decision of the Board in contested
25 cases of which special exceptions and variances are --

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1 in contested cases our deliberation must be based
2 solely on the record that is created before us today.

3 So, along with all that information of
4 getting all the important information into the record,
5 additionally we would ask that people present today
6 not engage Board members in conversation so that we do
7 not give the appearance of receiving information
8 outside of the official record.

9 I would ask that everyone turn off any
10 cell phones or beepers at this time so we don't have
11 any disruption of the hearing as we proceed and I
12 believe that after my very good morning to the Office
13 of Zoning staff that's with us, Ms. Bailey and Mr.
14 Moy, that we can entertain any preliminary matters.

15 Preliminary matters are those which relate
16 to whether a case will or should be heard today such
17 as requests for a postponement, continuances or
18 whether proper and adequate notice has been provided
19 for each case.

20 If you do not believe the Board should
21 hear a case on our agenda this morning or you believe
22 that you are not prepared to proceed with a case, now
23 would be the time to bring that to the attention of
24 the Board and you can do so by coming forward and
25 having a seat at the table.

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1 Let me ask staff if they are aware of any
2 preliminary matters for the Board with our morning
3 agenda.

4 MS. BAILEY: Mr. Chairman and to all, good
5 morning.

6 No, Mr. Chairman, staff has no preliminary
7 matters.

8 CHAIRPERSON GRIFFIS: Very well. Then why
9 don't we call the first case.

10 MS. BAILEY: Application Number 17084 of
11 Christina M. Handley, pursuant to 11 DCMR 3103.2, for
12 a variance from the lot occupancy requirements under
13 Section 403, a variance from the rear yard
14 requirements under Section 404, and a variance from
15 Subsection 2001.3 from the nonconforming structure
16 provisions to allow the construction of a deck in the
17 R-5-B District at premises 1418 Q Street, N.W. The
18 property is located in Square 209 on Lot 875.

19 All those wishing to testify, please stand
20 and raise your right hand to take the oath.

21 Do you solemnly swear or affirm that the
22 testimony that you will be giving today will be the
23 truth, the whole truth, and nothing but the truth?

24 Thank you and have a seat at the table.

25 CHAIRPERSON GRIFFIS: You just need to

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1 turn on the microphone which is -- there's a button
2 right in the bottom. There it is.

3 MS. HANDLEY: Good morning. My name is
4 Christina Handley. I live at 1418 Q Street, N.W.,
5 Washington, D.C.

6 Begin or --

7 CHAIRPERSON GRIFFIS: Sure.

8 MS. HANDLEY: Do -- do you -- okay. So, I
9 just tell you what I want to do and you'll --

10 CHAIRPERSON GRIFFIS: Absolutely. Just
11 roll with it and we're going to be --

12 MS. HANDLEY: -- ask the questions.

13 CHAIRPERSON GRIFFIS: -- rude and
14 interrupt you constantly.

15 MS. HANDLEY: Okay. Okay. So, my house
16 on Q Street is -- is the only one that's set back. It
17 has a rather large front yard. It's -- on -- all on Q
18 Street between 15th and 14th. They're all row houses.

19 In the back of my yard, the first floor of
20 my house is a rental unit. I rent it out. It's a
21 two-bedroom apartment. I live on the second and third
22 floors.

23 In the back of my house, there's a roll-up
24 garage and that's where I park my car and
25 traditionally, I've had to walk out into the alley,

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1 down the alley, up 15th, and around to the -- around
2 to the front.

3 There's some safety issues I have with
4 that having had some bad experiences. So, what I
5 would like to do is build an entrance into -- from the
6 back in the second floor, but I want to do it smartly.

7 I want to build the entrance so that I can walk up a
8 spiral staircase, have -- have a carport and on top of
9 that carport, it'll -- it'll be enclosed so the
10 weather -- because there's a car underneath and then
11 the top of that will be a deck.

12 So, my application I -- I talked to an
13 engineer and got certified plans. Talked to an
14 architect, showed pictures of how it is now, what I'd
15 like to do. So, I try to be as thorough as I can.
16 Got the lawyer to sign off and explain all the issues
17 I just mentioned to you, the safety, what I want to
18 do, and the two options I'm pursuing and -- and I
19 included that in the application which we can go over.

20 I have before you.

21 There's a -- I guess there's a process to
22 this and you wanted me to obtain support from the ANC,
23 ny neighborhood commission. So, I talked to them.
24 They wrote a letter which should have been forwarded
25 in part of the -- the package.

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1 I also got letters from my neighbors
2 because we share a property and they support the
3 activity, too.

4 And the pictures, what I took of what I
5 wanted to do, it's a quality project. I don't -- I
6 think it would, you know, improve the property. I
7 don't -- I wouldn't do a sloppy job which is sort of,
8 you know, which is why I took the time, you know, to
9 have an engineer look at it, have an architect look at
10 it, tried to preserve like, you know, right now --
11 tried to preserve. Talked to the historic
12 preservation office and because there's some ivy and
13 it's nice in the city to -- to keep some of the
14 woodwork and the ivy that's hanging back there.

15 So -- so, I can go over and explain any
16 questions you might have and the pictures, the
17 application, I've just basically gone through the
18 process that you guided me to do and you -- your
19 representative has come out and also put forward a
20 letter which they -- I understand my application I
21 went more towards an extreme application. I could
22 have applied maybe a lesser stringent --

23 CHAIRPERSON GRIFFIS: Right.

24 MS. HANDLEY: -- special variance.

25 CHAIRPERSON GRIFFIS: Right.

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1 MS. HANDLEY: So --

2 CHAIRPERSON GRIFFIS: Right now you're
3 coming in for -- for several variances.

4 MS. HANDLEY: Yes.

5 CHAIRPERSON GRIFFIS: Variance, of course,
6 is a higher threshold of a test for us and -- and as
7 opposed to a special exception. The Office of
8 Planning, Mr. Jackson --

9 MS. HANDLEY: Yes.

10 CHAIRPERSON GRIFFIS: -- who will present
11 his report shortly I believe probably talked to you
12 about reducing the lot occupancy and that would have
13 brought it into a special exception and a special
14 exception would essentially have gone into is there
15 any sort of adverse impact, are you blocking light or
16 sun.

17 A variance, of course, is set forward that
18 there has to be something unique for the property and
19 I understand your submissions -- what you've said
20 today is that you are unique in your square and in the
21 area by the large front setback, the larger front
22 yard, which obviously diminishes the rear -- the rear
23 yard and the ability to put structure and park back
24 there.

25 The practical difficulty is -- is -- I've

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1 understood your application and what you're saying
2 today is it's -- directly it's access to your -- to
3 your residential unit on the second floor.

4 So, let's go to any sort of questions from
5 the Board for clarification on what's being proposed
6 here and open it up in that frame.

7 I note in your application, you've also
8 indicated that it will be similar to the -- to the
9 neighbor's construction. Is that correct?

10 MS. HANDLEY: Yes, the materials that they
11 used when I spoke with the engineers, the materials
12 that they used instead of having bricks, what they
13 call CMUs, they used a more expensive material, the
14 steel posts which are 4 by 4.

15 CHAIRPERSON GRIFFIS: Right.

16 MS. HANDLEY: So, that's why I -- I showed
17 the pictures is -- is to try to use more efficient
18 materials because of the space limitations.

19 CHAIRPERSON GRIFFIS: Okay. And just
20 quickly, do you know the -- the -- the reasonings
21 behind reducing this to 70 percent lot occupancy? I
22 mean it seems to me it's very close.

23 MS. HANDLEY: It's actually 70.6. So, for
24 me to make the change to 70 percent is easy. I just
25 need to reduce the -- the depth of the deck. Move it

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1 back a couple of inches and I meet 70 percent.

2 CHAIRPERSON GRIFFIS: Right.

3 MS. HANDLEY: So, that in terms of when
4 they build or execute, it's -- it's just the depth
5 that I could move in forward --

6 CHAIRPERSON GRIFFIS: Right.

7 MS. HANDLEY: -- and it will have gone
8 below to 70 percent.

9 CHAIRPERSON GRIFFIS: This has a huge
10 impact for us in terms of how we review this. It's
11 either a variance or a special exception. Well,
12 frankly, it's a variance for us today.

13 Let's -- let's go to quick questions if
14 there are any.

15 Yes, Mr. May.

16 COMMISSIONER MAY: Yes, first of all, you
17 -- you mentioned this neighbor's deck which is the
18 metal posts and the wood deck. Is that an adjacent
19 neighbor or is it a few doors down or something like
20 that?

21 MS. HANDLEY: A -- a few doors down. I
22 took those pictures like of the spiral staircase --

23 COMMISSIONER MAY: Yes.

24 MS. HANDLEY: -- the metal -- the prefab.

25 That's what I'm going to do. The same as his.

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1 COMMISSIONER MAY: Okay. I just wanted to
2 see how close that was.

3 The next thing is what's the -- the -- you
4 -- the plans that you've given us are plans for a deck
5 and I'm wondering how carport enters into this?

6 Is it -- is it a separate structure
7 underneath this?

8 MS. HANDLEY: It's the same structure.
9 The deck is going to provide the covering. Underneath
10 the deck they'll put the -- a material that -- and the
11 water will run off of it.

12 So, it will -- the deck will be covering
13 and that will provide the enclosed carport.

14 COMMISSIONER MAY: The deck will be --
15 will be a --

16 MS. HANDLEY: Dual purpose.

17 COMMISSIONER MAY: It -- it will actually
18 be a waterproof surface. So, it won't be -- there
19 will no light or no -- no air, no water gets through
20 the deck surface itself.

21 MS. HANDLEY: That's my intention and they
22 say that, you know, the two contractors I spoke with
23 says yes, you can do that. So, if it rains, the water
24 doesn't fall --

25 COMMISSIONER MAY: Right.

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1 MS. HANDLEY: -- go through. They put the
2 sealant or -- or plastic material. Well, it's not
3 plastic. It's a -- it's a -- it's a combination,
4 synthetic, natural wood material.

5 COMMISSIONER MAY: Yes.

6 MS. HANDLEY: So, that the -- it'll
7 enclose it.

8 COMMISSIONER MAY: Okay. So, it'll be --
9 it'll be --

10 MS. HANDLEY: And the temperature, the air
11 will still come from outside.

12 COMMISSIONER MAY: Right.

13 MS. HANDLEY: But, the water and the snow
14 will run off.

15 COMMISSIONER MAY: It'll be sloped and all
16 that sort of stuff.

17 MS. HANDLEY: Yes.

18 COMMISSIONER MAY: How -- how tall or how
19 far off the ground will the actual deck surface be?

20 MS. HANDLEY: I believe 21 feet. The
21 exact measures are --

22 COMMISSIONER MAY: It'll be 21 feet off
23 the ground?

24 MS. HANDLEY: It will be -- it might be
25 nineteen, but it'll go to the second floor.

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1 COMMISSIONER MAY: Yes.

2 MS. HANDLEY: So, let me -- please one
3 second, I'll answer your question.

4 COMMISSIONER MAY: Okay.

5 MS. HANDLEY: The -- if you look at the
6 engineering, it says 20 by 20 by 12. So, yes, the
7 height will be -- of the poles will be about 20. So,
8 it's going to be about 18 feet, maybe 19 or 20 because
9 of -- that's where the second floor is.

10 COMMISSIONER MAY: Twenty by -- where is
11 -- I'm sorry. Where is 20 by --

12 MS. HANDLEY: I'm sorry. I'm looking at
13 the -- the engineering design.

14 COMMISSIONER MAY: Yes.

15 MS. HANDLEY: And the pole right here says
16 20 by 20 by 12.

17 COMMISSIONER MAY: Twenty inch by 20 inch
18 by 12.

19 MS. HANDLEY: By 12. So, that would --

20 COMMISSIONER MAY: That's a concrete
21 footing.

22 CHAIRPERSON GRIFFIS: Yes, that's your
23 footing.

24 COMMISSIONER MAY: That's the -- that's
25 the dimension of the --

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1 MS. HANDLEY: The concrete --

2 COMMISSIONER MAY: -- of the foundation
3 for the pole.

4 MS. HANDLEY: Oh.

5 CHAIRPERSON GRIFFIS: It's a 20 by 20
6 square 12 feet deep --

7 COMMISSIONER MAY: Yes.

8 CHAIRPERSON GRIFFIS: -- 12 inches deep.

9 MS. HANDLEY: Okay. I know -- hold -- I
10 know when we measured, we measured --

11 COMMISSIONER MAY: Okay. Well, in any
12 case, it's going to -- it's going to --

13 MS. HANDLEY: It about 19 feet.

14 COMMISSIONER MAY: Okay. I -- I think
15 that frankly is high.

16 MS. HANDLEY: Okay.

17 COMMISSIONER MAY: But, the -- the point
18 I'm getting at is that it's going to be -- I mean
19 typically a -- a garage or carport is going to be in
20 the neighborhood of, you know, 9 or 10 feet above
21 ground.

22 MS. HANDLEY: Yes.

23 COMMISSIONER MAY: And so, you're going to
24 be many feet above that. I had guessed 14/15
25 something like that.

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1 MS. HANDLEY: Okay.

2 COMMISSIONER MAY: And with -- the net
3 affect of that is if it's not enclosed on the sides,
4 is that your car is still going to get rained on.
5 It's still going to get snowed on and you're still
6 going to have the potential for people to climb over
7 it. You know, somebody could drive up, hop over the
8 wall or whatever. So, are you doing -- are -- are you
9 intending to enclose it any further in any way?
10 That's what I'm -- that's what the basic question is
11 really.

12 MS. HANDLEY: Yes, I would. Yes, I would.
13 I -- my -- because the walls right now --

14 COMMISSIONER MAY: Yes.

15 MS. HANDLEY: -- there's a brick wall --

16 COMMISSIONER MAY: Yes.

17 MS. HANDLEY: -- and there's the woodwork
18 there and on the other side, there's also a brick
19 wall.

20 COMMISSIONER MAY: Yes, your property line
21 is enclosed. Is that correct? You can't --

22 MS. HANDLEY: On the sides. So, the -- it
23 will preclude from facing out on the left-hand side.
24 No wind and snow would get in there because the
25 neighbor's brick wall and the wood is -- is on the

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1 left. I'll show you the -- the picture. This -- this
2 is the left-hand side. So, the deck would be right --
3 like okay. This is the left-hand side.

4 COMMISSIONER MAY: Yes. Right.

5 MS. HANDLEY: So -- so, my -- the -- this
6 would be --

7 COMMISSIONER MAY: It would be above the
8 window?

9 MS. HANDLEY: That would be right above --
10 right -- probably like at the top of this woodwork.

11 COMMISSIONER MAY: Right. Okay. No, I
12 understand that. What I'm -- it would still be --
13 you'd still have --

14 MS. HANDLEY: But, I would like enclose
15 it.

16 COMMISSIONER MAY: -- above the opening --
17 like you -- do you have a roll-up door now?

18 MS. HANDLEY: Yes.

19 COMMISSIONER MAY: Okay. And that roll-up
20 door is 8/9/10 feet off the ground. Right?

21 MS. HANDLEY: About nine.

22 COMMISSIONER MAY: So, then above the
23 roll-up door there is going to be?

24 MS. HANDLEY: A wall.

25 COMMISSIONER MAY: A wall.

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1 MS. HANDLEY: Yes.

2 COMMISSIONER MAY: Made of?

3 MS. HANDLEY: Of the -- the material to
4 build the -- the deck. It's -- it's a -- it's a wood
5 -- combination wood and synthetic. It's call Trex.

6 COMMISSIONER MAY: Trex.

7 MS. HANDLEY: Trex.

8 COMMISSIONER MAY: Okay.

9 MS. HANDLEY: So, it's a combination of
10 wood and synthetic.

11 COMMISSIONER MAY: Okay.

12 MS. HANDLEY: That's a typical --

13 COMMISSIONER MAY: I'm familiar with the
14 -- the material.

15 MS. HANDLEY: Okay.

16 COMMISSIONER MAY: Okay. That's -- I'm
17 asking all these questions because it's not --

18 MS. HANDLEY: Of course.

19 COMMISSIONER MAY: -- clear from here and
20 -- and --

21 MS. HANDLEY: Yes.

22 COMMISSIONER MAY: -- it's -- it -- I
23 think it does factor into how this is -- would be
24 perceived --

25 MS. HANDLEY: Okay.

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1 COMMISSIONER MAY: -- in terms of -- of
2 the -- the variances.

3 Let me look here. Now --

4 MS. HANDLEY: And I -- I would need to put
5 the -- that -- that deck wall because on the other
6 side is -- is someone's apartment. They're building
7 the condos.

8 COMMISSIONER MAY: Yes.

9 MS. HANDLEY: So, that's on the other side
10 of the alley.

11 COMMISSIONER MAY: Across the alley.

12 MS. HANDLEY: Across the alley is the
13 other home and there's large windows there and that's
14 going to be someone's condo. So, for privacy, is why
15 I would use the Trex, the wall, to go all the way
16 around --

17 COMMISSIONER MAY: Right.

18 MS. HANDLEY: -- like if I'm looking out.
19 All the way around. So, you --

20 COMMISSIONER MAY: So, when you look out
21 from the first floor --

22 MS. HANDLEY: Yes.

23 COMMISSIONER MAY: -- window that looks
24 out over your car right now --

25 MS. HANDLEY: Yes.

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1 COMMISSIONER MAY: -- you're going to see
2 -- you're -- you're not going to have any -- you're
3 going to be looking into a room basically. You'll be
4 looking into the carport.

5 MS. HANDLEY: Yes.

6 COMMISSIONER MAY: And it's -- the carport
7 itself is going to be the width of your property and
8 it's going to be 15 -- 19 feet tall.

9 MS. HANDLEY: Yes.

10 COMMISSIONER MAY: And it's going to be
11 completely enclosed and weatherproof or --

12 MS. HANDLEY: I can't say completely.
13 There will still be the elements, but not -- I mean my
14 -- the -- the point --

15 COMMISSIONER MAY: But, it will be --

16 MS. HANDLEY: At least weather resistant.

17 COMMISSIONER MAY: Right.

18 MS. HANDLEY: I can't, you know, there's
19 -- for --

20 COMMISSIONER MAY: Right. Okay.

21 MS. HANDLEY: -- the most part there's --

22 COMMISSIONER MAY: All right. The --

23 MS. HANDLEY: -- no -- no rain.

24 COMMISSIONER MAY: All right. I guess one
25 of the things we have to look at is the affect on

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1 light and air and privacy for your adjacent neighbors
2 and that's another reason why I have questions about
3 the height. Because when -- the way you describe it
4 here with the one picture where we're looking at your
5 neighbor's lovely roof deck structure thing, you're
6 going to be above that. So -- and from your deck,
7 you'll be able to look into your neighbor's yard and
8 -- and on the other side where you're enclosing the
9 court, you'll be looking in -- you'll -- you'll be
10 able to overlook the neighbor's yard as well. Is that
11 right? I -- I can't tell as well from the pictures.

12 MS. HANDLEY: I can now.

13 COMMISSIONER MAY: I understand.

14 MS. HANDLEY: On the -- on my left-hand
15 side, this picture right here, he has -- he has -- my
16 neighbor right here has a little bit of roof, but you
17 can see he has his house, a garden, and then the deck
18 in the back.

19 COMMISSIONER MAY: Okay.

20 MS. HANDLEY: So, on the second floor of
21 my apartment, I can see over them.

22 COMMISSIONER MAY: Okay.

23 MS. HANDLEY: The one I took the pictures,
24 he can do to all of us. He can look like you said.

25 COMMISSIONER MAY: Right.

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1 MS. HANDLEY: He can look.

2 COMMISSIONER MAY: The -- but, the other
3 side of your property where you have the court and the
4 -- the doorway to your -- to the apartment.

5 MS. HANDLEY: Yes.

6 COMMISSIONER MAY: You're proposing
7 decking over that entire court as well and what's --
8 what is your neighbor's property? I can't tell from
9 the pictures. All I see is --

10 MS. HANDLEY: Yes.

11 COMMISSIONER MAY: -- green. Is that
12 green on a wall or is that green over -- is that just
13 trees? Is that the actual yard trees?

14 MS. HANDLEY: No, that's ivy hanging on
15 woodwork.

16 COMMISSIONER MAY: Okay. So, there's an
17 actual yard --

18 MS. HANDLEY: And that will stay.

19 COMMISSIONER MAY: -- next to your
20 property or next to your court?

21 MS. HANDLEY: Yes, actually, there is a
22 deck with a garage underneath is or a carport.

23 COMMISSIONER MAY: All the way out at the
24 alley?

25 MS. HANDLEY: Yes.

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1 COMMISSIONER MAY: And then what about
2 closer to the house? Is it -- is it -- is the garage
3 the entire length of your house back there?

4 MS. HANDLEY: No, in my neighbor's yard,
5 there's a -- a garden between the house and the
6 garage.

7 COMMISSIONER MAY: Right. Okay. So,
8 you'd be overlooking some of that garden?

9 MS. HANDLEY: Actually, I -- I have a view
10 now. I wouldn't afterwards.

11 COMMISSIONER MAY: I'm not asking about
12 now. I'm asking about the deck. You -- you -- that's
13 what --

14 MS. HANDLEY: No, because it would be
15 enclosed. I wouldn't see into that.

16 COMMISSIONER MAY: If you were on your
17 deck, you would be able to see?

18 MS. HANDLEY: No, I would not.

19 COMMISSIONER MAY: Why not? Oh, because
20 you're --

21 MS. HANDLEY: Because the walls are
22 enclosed. So, I no longer see into my neighbor's
23 houses.

24 COMMISSIONER MAY: So, you're going to
25 build a -- a wall above -- on the deck itself.

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1 MS. HANDLEY: Yes.

2 COMMISSIONER MAY: A wall above that.

3 MS. HANDLEY: Yes.

4 COMMISSIONER MAY: So, that you won't be
5 able to see out over that.

6 MS. HANDLEY: Yes.

7 COMMISSIONER MAY: Which is another thing
8 that's just not shown in the plan. Okay.

9 Did you look into -- it seems that the
10 primary rationale for this is so that you can get to
11 your apartment on the second floor.

12 MS. HANDLEY: Yes.

13 COMMISSIONER MAY: Did you look at any
14 less involved scheme for essentially just putting a
15 stairway and a landing up to a door opening on that
16 floor or did you -- is what's driving this more
17 covering the parking than getting the access?

18 MS. HANDLEY: I would say that --

19 COMMISSIONER MAY: It's probably not an
20 either or. I guess the question is did you look at
21 anything that was less involved?

22 MS. HANDLEY: At first, I thought because
23 of affordability, I would just take a door and do the
24 entrance.

25 COMMISSIONER MAY: Yes.

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1 MS. HANDLEY: And then my mother who's in
2 real estate said well, you know, what are your
3 intentions long term for the home.

4 COMMISSIONER MAY: Yes.

5 MS. HANDLEY: And so, she says and -- and
6 what's the affordability of -- of building the
7 carport, the -- the deck and so, we went through the
8 whole -- the whole issues of privacy which is -- and
9 -- and the parking and the safety and the entrance and
10 affordability and it -- and by the amount of money
11 that I would spend --

12 COMMISSIONER MAY: Yes.

13 MS. HANDLEY: -- is almost half just to
14 drop the door and put the spiral staircase and go
15 down. So, investment-wise --

16 COMMISSIONER MAY: Yes.

17 MS. HANDLEY: -- I might as well do it --
18 do the others.

19 COMMISSIONER MAY: Yes. Okay. All right.
20 Well, that's it for my questions.

21 CHAIRPERSON GRIFFIS: Would -- and taking
22 that to its logical conclusion is your expanding your
23 outdoor space?

24 MS. HANDLEY: Yes.

25 CHAIRPERSON GRIFFIS: So, you actually are

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1 able to have some of what is often required of
2 residential buildings that's not in a commercial zone,
3 but outside recreation space. Okay.

4 Other questions? Clarifications?

5 Very well. Let's move on then and we'll
6 just -- is there anything else you'd like to add? You
7 have plenty of time, but we're going to run through
8 all the other government reports. We're going to have
9 OP present their report. I'll note the Advisory
10 Neighborhood Commission's letter that is submitted in.

11 It's Exhibit Number 23 and then I'll turn it back
12 over to you if you want to just conclude with
13 anything.

14 You had indicated quickly that you have
15 spoken to your neighbors on each side.

16 MS. HANDLEY: Yes.

17 CHAIRPERSON GRIFFIS: And they're in
18 support?

19 MS. HANDLEY: Yes, I had -- they had a
20 letter and I sent it. I mailed it to the person. I
21 don't have her name. And it should be in -- in -- in
22 the package. It was an addition and I fax it to her
23 with pictures and -- and she said that she was adding
24 it to my file and both John and Scott Robinson lives
25 to my left and John on the right and they said that

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1 they both supported it. I went over the plans and --
2 and Scott and his partner are architects. So, he --

3 CHAIRPERSON GRIFFIS: Well, we won't hold
4 it against them.

5 COMMISSIONER MAY: He's an architect?

6 MS. HANDLEY: Yes, he's an architect.

7 COMMISSIONER MAY: No. No, he's an
8 architect.

9 MS. HANDLEY: Oh, you are.

10 COMMISSIONER MAY: So, don't -- don't --
11 don't take it as a slight.

12 MS. HANDLEY: Oh, okay. Okay. I'll be
13 sure to tell him you said that, Mr. Griffis.

14 CHAIRPERSON GRIFFIS: All right. I won't
15 be around for that.

16 MS. HANDLEY: So, they -- they did -- and
17 I did speak to her. I took it on face she put it in
18 the file. I can always fax another copy.

19 CHAIRPERSON GRIFFIS: Okay. Well, we'll
20 get that and we'll get it in.

21 MS. HANDLEY: Okay.

22 CHAIRPERSON GRIFFIS: I mean I think that
23 -- that clearly -- what Mr. May was going to is just
24 trying to flush out the entire record of --

25 MS. HANDLEY: Yes.

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1 CHAIRPERSON GRIFFIS: -- what sort of
2 impacts and clearly they will have understood the
3 plans and -- and you brought to them. So, let's look
4 to that letter -- letter.

5 Why don't we go to Office of Planning and
6 have -- Mr. Jackson, good morning. Why don't you
7 present your report?

8 MR. JACKSON: Good morning. My name's
9 Arthur Jackson, the D.C. Office of Planning and I will
10 briefly go through the Office of Planning report and
11 be available for questions.

12 If -- I guess the -- give this --
13 everything I can -- I need to say really is based on
14 the photographs. So, if you'll turn to the exhibit
15 that's the photograph aerial of the site, I'll go
16 through the points that I have to make in my report.

17 CHAIRPERSON GRIFFIS: Okay. Oh, first, do
18 you have this report? Have you reviewed the Office of
19 Planning's report?

20 MS. HANDLEY: Yes, I have. Yes, I have.

21 CHAIRPERSON GRIFFIS: Okay. Good.

22 MS. HANDLEY: Thank you.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. JACKSON: The site is a interior lot
25 located on -- on Q Street and as you can see from the

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1 aerial, I'm hoping you have the color version because
2 the black and white's pretty bad, the -- this one --
3 this is one of the few buildings that's set back on --
4 along Q Street and it sits back a substantial amount,
5 nearly 23 feet.

6 Also, note that there's an L-shaped court
7 in the rear of -- an L -- the building has an L-shape
8 which forms a court along the left property line and,
9 of course, the rear yard is close to the alley.

10 Also, note that the distance according to
11 the GIS from the rear of the parking around to the
12 front of the building is 530 feet.

13 Essentially, the applicant has come before
14 us because they want to do two -- accomplish two ends.

15 One is to provide a garage or carport to enclosed
16 their car and the other is to provide a -- to be an
17 access to their floor apartment in that the first
18 floor is not accessible from the parking area because
19 it's occupied by a tenant.

20 The applicant's -- the property is zoned
21 R-5-B and as such, there are a number of definitions
22 and specifics that we -- and, of course, zoning
23 regulations apply here.

24 One of the first is that we're looking at
25 just what the applicant's planning to do. It seems

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1 that what they're proposing in the rear yard it
2 actually seems to be more similar -- more similar to a
3 carport or garage.

4 Also, the applicant wants to place a
5 stairwell to the second floor in the enclosed court.
6 However, there's no provision for that. This type of
7 encroachment. So, that -- that's another issue that
8 has to be addressed.

9 And finally, the applicant is -- was
10 proposed -- proposing to increase the lot occupancy to
11 over 70 percent. In discussions with the applicant,
12 they agreed that they would make modifications
13 necessary to reduce the lot occupancy to -- to -- from
14 71 to 71 -- 70 percent so that this could be -- a
15 portion of this relief could be dealt with as a
16 special exception.

17 Therefore, based on that analysis, it was
18 determined that variances were required to allow the
19 circular stair and carport to encroach into the open
20 court and to locate a carport less than 12 feet from
21 the alley centerline and also a special exception
22 would be required to -- for the allowable occupancy
23 increase to 70 percent.

24 The applicant explain their reasons in a
25 letter dated 7 September 2003 and in submitting their

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1 -- their application, they provided two options for
2 providing access to the second floor -- floor
3 dwelling. The two options involved removing an
4 existing window and continuing it to the -- to the
5 floor plate in order to access the dwelling from the
6 court and also creating a new door in the wall facing
7 the rear yard which would be -- which was more major
8 construction. The applicant indicated a preference
9 for the latter, but the cost may force them to use the
10 former.

11 But, their proposal appears to allow them
12 to have access to either one of the options. So, it's
13 really a more conservative approach to approve this
14 proposal with regard what her ultimate ends is -- ends
15 are.

16 In the analysis, we looked at what the --
17 how the two variances could be granted and considered
18 the extraordinary existing conditions on site. The --
19 the lot has a -- a slightly irregular shape and is one
20 of only two residential properties on the square that
21 has a front yard setback. This is -- this is by far
22 the most severe front yard setback.

23 The minimum nine-foot depth for the rear
24 yard requires the applicant to park parallel with the
25 alley. So, in other words, instead of parking

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1 perpendicular to the dwelling, in doing that that
2 really requires that the rear yard remain free of any
3 other encumbrances so maneuvering can occur.

4 Because -- because of that, a lot of the
5 outdoor storage areas that would normally be in a rear
6 yard such as for -- for trash and other things that
7 you store in your back yard, kind of creep into the
8 court.

9 The practical difficulty is that the --
10 the applicant currently experiencing -- is traveling
11 through some distance through areas they consider
12 unsafe to access their dwelling. They'd like to -- to
13 solve that problem.

14 The most probable location for
15 ingress/egress due to the probable -- to the cost of
16 doing this project would appear to be in the rear
17 yards. That's in the -- in the rear court. Because
18 the rear yard is occupied by -- is used for parking.
19 To eliminate the -- to do otherwise would require
20 elimination of the on-site parking resource which is a
21 great potential.

22 The other issue has to do with the depth
23 of the rear yard. The zoning regulations allow for a
24 carport, but it -- it normally requires that the
25 carport be set back 12 feet from the center line of

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1 the alley. The alley's only 10-feet wide and only a
2 9-foot alley. That doesn't quite add up.

3 So, we did contact the Department of
4 Transportation to ask them specifically if that
5 created any concerns on their part and they had no
6 concerns.

7 The -- and particularly since the -- the
8 applicant has apparently been successful in parking
9 their car within the roll-up gate, a little more
10 discussion about the actual site.

11 What the applicant has is a free-standing
12 roll-up gate that's next to the property line and I
13 think if you look in the photographs that were
14 submitted, there's a photograph of a neighboring
15 property which shows the type of gate I'm talking
16 about. So, again, this is just a free standing
17 structure on the property line, but it occupies the
18 entire site.

19 This -- again, these photographs were of a
20 neighboring property. Correct?

21 MS. HANDLEY: Right.

22 MR. JACKSON: Okay. In our discussions
23 and when I visited the site and -- and looked out the
24 window, what I did see was that her ground floor --
25 the elevation of the second floor is -- is above the

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1 adjacent garages and the deck's on top of those
2 garages.

3 So, at this point, that would -- I should
4 reiterate that the applicant can see into the -- the
5 neighbor's rear yard and into and over onto the
6 adjacent structures on the neighboring garages from
7 her kitchen windows.

8 And the -- so, that the staff in -- in
9 reviewing -- well, that was an important point to --
10 to -- to recognize particularly with regard to having
11 to erect a deck that would -- or erect a -- put a
12 carport with a deck topping that would meet the same
13 -- be the same ground floor elevation as the second
14 floor.

15 Now, we didn't have an actual dimension
16 for that, but the -- I think the applicant said that
17 the -- the wall -- the brick wall along the side and
18 the existing roll-up door are 9 feet and I guess her
19 floor is slightly above that roll-up door, her ground
20 floor level, but, anyway, briefly, I'll go through
21 this.

22 So -- so, basically, we have two
23 circumstances that we felt needed to be addressed with
24 the -- the variance.

25 One was the locating -- extending the

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1 carport into the open court and locating the circular
2 stair in the -- in the open court and based on the
3 circumstances surrounding this applicant, we concluded
4 that these variances could be granted without
5 impairing the -- the intent, purpose or integrity of
6 the zoning map as it is embodied in the zoning
7 regulations and map.

8 With regard to Section 223, here we're
9 looking at the special exception for the lot occupancy
10 only and we went through those -- those provisions and
11 we felt that overall the application meets those
12 standards with regard to not -- because it does not
13 increase the visibility of any yard area except in
14 terms of the -- I guess the yard to the east and --
15 and that would -- that would be the dwelling -- okay.

16 Coming down the alley, the first garage on the -- on
17 the right that already has a screen -- a screen
18 surrounding its -- the second floor deck on top of
19 that garage and thereby this application should not
20 impact that.

21 So, based on those -- the only concern
22 that our staff has is that we did not -- we know that
23 this cannot be approved unless the amount of the
24 variance for the lot occupancy was reduced to 70
25 percent and we communicated that -- communicated that

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1 to the applicant and the applicant was agreeable to
2 make that reduction.

3 So, based on those findings, OP concludes
4 this application does meet the requirements for
5 Section 223 subject to the revised plans being
6 submitted that reflect a reduced lot occupancy and
7 reviewing the competency plan, we found no conflict
8 with the competency plan.

9 In reviewing the file, we found that ANC-
10 2F reviewed the application and recommended approval.

11 The State Historic Preservation staff reviewed the
12 application. Have no expressed any concerns and the
13 -- the request was forwarded to the Department of
14 Transportation, the Department -- the Fire and
15 Metropolitan Police Departments and no concerns were
16 -- were raised.

17 As a result, Office of Planning recommends
18 approval of variances to allow the circular stair and
19 carport to encroach in the rear yard and -- and to
20 locate a carport less than 12 feet from the center
21 line of the existing alley.

22 Staff also recommends of the special
23 exception for the increased lot occupancy subject to
24 -- to the public record being -- initial submission in
25 the public record that would consist of a revised plan

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1 that shows a reduced garage -- garage, carport, and
2 deck.

3 CHAIRPERSON GRIFFIS: Thank you very much,
4 Mr. Jackson.

5 Did you not review the application for a
6 variance from the lot occupancy then?

7 MR. JACKSON: No, I did not.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. HANDLEY: Could -- could I add? It's
10 not from 70 to 71 percent. It's from 70 to 70.1
11 percent. So --

12 MR. JACKSON: Oh, okay.

13 MS. HANDLEY: -- it -- it's -- if you look
14 at the actual -- when I went to the permit office and
15 -- and I -- and I spoke with D.C. government
16 representatives that had me fill this out, this form
17 you have --

18 CHAIRPERSON GRIFFIS: Right.

19 MS. HANDLEY: -- is -- is the maximum lot
20 is 60 percent provided by proposed construction is
21 70.1 and is was --

22 CHAIRPERSON GRIFFIS: 70.1.

23 MS. HANDLEY: -- actually 70.06, but I
24 assumed you would want me to round up. So, if -- so,
25 it's not a -- so, that 10 percent that lot occupancy

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1 existing condition I'm grandfathered there. I mean
2 that's why I'm saying --

3 CHAIRPERSON GRIFFIS: Right.

4 MS. HANDLEY: -- that's easily negotiable.

5 It's --

6 CHAIRPERSON GRIFFIS: No, we understand
7 that. A good sander will take about that .06 --

8 MS. HANDLEY: So, if --

9 CHAIRPERSON GRIFFIS: -- lot occupancy
10 off.

11 MS. HANDLEY: -- you know, if you need me
12 to do it from .1 to .0, I will do that.

13 CHAIRPERSON GRIFFIS: Right.

14 MS. HANDLEY: To address your concern, Mr.
15 May, and I --

16 CHAIRPERSON GRIFFIS: Actually, hold on a
17 second.

18 MS. HANDLEY: Oh, I'm sorry.

19 CHAIRPERSON GRIFFIS: In terms of
20 procedure here, you have cross examination privileges
21 now of Office of Planning. So, if you have any
22 questions of Office of Planning, now, would be the
23 time.

24 MS. HANDLEY: No, thank you, Mr. Jackson.

25 CHAIRPERSON GRIFFIS: Okay. Then we're

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1 going to have Board questions of Office of Planning
2 and then we'll get back to your conclusions.

3 MEMBER ZAIDAIN: I just have a question
4 just for Mr. Jackson, but anyone can answer it.

5 Is the alley one-way or is it two-way?

6 MR. JACKSON: It's not signed either way.

7 MEMBER ZAIDAIN: It's not signed either
8 way. Okay.

9 MR. JACKSON: But, it's only --

10 CHAIRPERSON GRIFFIS: Construction
11 happening on that alley?

12 MR. JACKSON: No, actually, most of the
13 construction work is coming off of I think it's Q
14 Street. No not Q Street. O Street to the south.

15 However, there is debris that's falling
16 out of a -- out of a building onto the alley.

17 CHAIRPERSON GRIFFIS: All right.

18 MR. JACKSON: But, they have -- but, the
19 alley's so narrow they're not reusing --

20 CHAIRPERSON GRIFFIS: There's a lot of
21 work that's happening in that --

22 MEMBER ZAIDAIN: Another reason the alley
23 is dangerous.

24 MR. JACKSON: Well, it's not some place to
25 be particularly around that big hole next door.

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1 MEMBER ZAIDAIN: Yes.

2 MR. JACKSON: But, the --

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. JACKSON: -- the alley's not being
5 used for any construction activity at this time.

6 MEMBER ZAIDAIN: You guys keep saying
7 that, you're going to make me ask for projects lists.

8 But, okay, just make sure I understand the
9 regulation regarding the carport because I've never --
10 I've never been exposed to that one before.

11 It has to be 12 feet from the center line
12 of the alley. So --

13 MR. JACKSON: Yes, I think the -- but, the
14 logic behind that I believe would be that your carport
15 would be far enough away from the alley so that you
16 could -- you could turn into it. Assuming you had a
17 12-foot alley --

18 MEMBER ZAIDAIN: Yes.

19 MR. JACKSON: -- you'd be able to make a
20 turn into it.

21 MEMBER ZAIDAIN: Right. Oh, okay.

22 MR. JACKSON: And actually have a -- well,
23 almost --

24 MEMBER ZAIDAIN: Okay.

25 CHAIRPERSON GRIFFIS: If you look at the

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1 regulations, they usually don't want a structure in an
2 alley closer than 2 feet. I mean it clearly is for
3 maneuverability. It also gives an --

4 MEMBER ZAIDAIN: Right. No, I understand
5 that. I -- I guess just my question is I'm trying to
6 understand if -- it's my understanding that -- that
7 the practical difficulty in that instance is -- is the
8 -- the smaller dimensions of the alley. Is that
9 correct?

10 MR. JACKSON: Well, it's the small of the
11 alley and the rear yard.

12 MEMBER ZAIDAIN: To allow -- and the rear
13 yard. Okay.

14 MR. JACKSON: If the rear yard -- in
15 looking back at the aerial that I -- I highlighted.

16 CHAIRPERSON GRIFFIS: Yes, the aerial is
17 impressive.

18 MEMBER ZAIDAIN: Yes, it is.

19 CHAIRPERSON GRIFFIS: It's almost as if
20 that house slipped.

21 MR. JACKSON: Well, the applicant had an
22 interesting story to tell about that. That -- that --
23 the actual reason they sit this thing back like that
24 and she may want to go -- go through that, but it's --
25 it's unusual in that it is so close to the alley and

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1 obviously wasn't designed to provide much of a rear
2 yard that -- that you would normally find in a
3 residence.

4 So, they only have 9 feet to work with and
5 the neighboring property that has -- has the garage,
6 you'll note that it is sitting much further back from
7 the alley and, in fact, it's far back enough that it
8 can have a garden and a back yard and -- and have a
9 deck.

10 So, it's -- again it's -- it goes to the
11 uniqueness of this property.

12 MEMBER ZAIDAIN: Right. So, the whole --
13 this whole entire space here is -- is the front yard
14 structure?

15 MR. JACKSON: Yes, it's --

16 MEMBER ZAIDAIN: Okay.

17 MR. JACKSON: -- mostly pebbles and a --
18 and a fountain and that's it.

19 MEMBER ZAIDAIN: Okay. Well, it's almost
20 like the building was design oriented to the alley as
21 oppose to the -- to the main street, but --

22 MS. HANDLEY: Well, that was a horse
23 stable.

24 MEMBER ZAIDAIN: It was a horse stable?

25 MS. HANDLEY: Yes, it was to be a horse

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1 doctor and that was his stables when it was originally
2 built as I understand.

3 MR. JACKSON: So, we were surmising that
4 the front of the building was where the horses would
5 graze and they stay in the alley -- stay in the -- in
6 the -- in the building on the property which is a barn
7 -- which would have been a barn back then and then the
8 -- the rear yard wasn't of any use because it wasn't
9 really a residence. But, that's -- just a summation.

10 MEMBER ZAIDAIN: Right. Right. Okay.
11 Thank you.

12 CHAIRPERSON GRIFFIS: Fascinating. Other
13 questions?

14 COMMISSIONER MAY: I have a question.
15 Exactly how deep is the rear yard?

16 MR. JACKSON: Nine feet.

17 COMMISSIONER MAY: It's 9 feet?

18 MR. JACKSON: Estimate 9 feet.

19 MS. HANDLEY: Actually, I measured it.
20 It's 10.6.

21 COMMISSIONER MAY: Well, that's the --

22 MR. JACKSON: 10.6. Sorry.

23 MS. HANDLEY: Just a minor --

24 COMMISSIONER MAY: That's my question is
25 that -- your drawings show 10.6

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1 MS. HANDLEY: Yes.

2 COMMISSIONER MAY: And there are a lot of
3 things that call it nine and I see it on the -- how
4 did I -- how is it on the survey?

5 MS. HANDLEY: I believe the survey's the
6 same 10.

7 COMMISSIONER MAY: See, if it's -- if it's
8 23 feet -- if the front yard is 23 feet and the house
9 is 68 feet, then that does leave only 9 feet.

10 MS. HANDLEY: This was -- Mr. Permit had
11 driven this, but I know I measured it and from my
12 house to that alley line is 10.6 inches. So, this --
13 this -- I'm --

14 MR. JACKSON: Yes, I just wanted to
15 highlight --

16 MS. HANDLEY: -- I probably went off this.
17 I'm sorry.

18 MR. JACKSON: -- maybe -- maybe what the
19 difference is that if you measure from the house to
20 the roll-up door, it's 9 feet. But, if you measure
21 from the house to the actual alley limit, is 10 feet.
22 Because I -- that's what I --

23 COMMISSIONER MAY: Right. I mean --

24 MS. HANDLEY: Oh, okay.

25 COMMISSIONER MAY: -- going from that is

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1 actually what you should be doing. I mean that's the
2 official document --

3 MS. HANDLEY: Yes.

4 COMMISSIONER MAY: -- that says how far it
5 is unless you want to have it resurveyed.

6 MS. HANDLEY: No, it -- it --

7 COMMISSIONER MAY: But, if -- you know, if
8 that --

9 MS. HANDLEY: This right there that's --
10 that's when -- when I got the original survey and --
11 and --

12 COMMISSIONER MAY: Yes.

13 MS. HANDLEY: -- I went to Mr. Permit and
14 said, you know, they were kind of a courier for me.

15 COMMISSIONER MAY: Yes.

16 MS. HANDLEY: And signed it and he said
17 well, you need to make some, you know, they want you
18 to add some drawings on here.

19 COMMISSIONER MAY: But, did you add the
20 dimensions that are on there?

21 MS. HANDLEY: No, I did not. Mr. Permit
22 did when I was going through the process.

23 COMMISSIONER MAY: So, the 68-foot
24 dimension was added by Mr. Permit? I'm not familiar
25 with Mr. Permit.

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1 MS. HANDLEY: Oh, no, the original typed
2 on. The -- I'm talking about this --

3 COMMISSIONER MAY: Okay.

4 MS. HANDLEY: -- this writing right here.

5 COMMISSIONER MAY: Okay.

6 MS. HANDLEY: This -- this existing 9-foot
7 brick retaining --

8 COMMISSIONER MAY: Right.

9 MS. HANDLEY: -- wall.

10 COMMISSIONER MAY: Okay. And that's what
11 -- what I'm --

12 MS. HANDLEY: And it's actually ten.

13 COMMISSIONER MAY: Okay. What I'm -- what
14 I'm getting at is that the -- if you had a -- if you
15 have a 68-foot deep building and you have a 23-foot
16 front yard that I've seen elsewhere in print, then
17 that leaves 9 feet on the over 100 foot lot depth and
18 whatever we approve here, should be limited to what's
19 -- what --

20 MS. HANDLEY: Oh.

21 COMMISSIONER MAY: -- is allowed on your
22 property.

23 MS. HANDLEY: You're right. My rear yard
24 10 foot 6 inches deep that's what I'm talking about.
25 That there.

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1 COMMISSIONER MAY: Yes, it may not be
2 something that we can --

3 MS. HANDLEY: I think -- I think I
4 measured -- I think I -- when I included some of the
5 -- because it's an L-shape.

6 COMMISSIONER MAY: Yes, well, it's
7 something that will need to be clear and correct on
8 the drawings and I think you're going to have to move
9 that back line anyway to deal with the 70 percent. It
10 just may be that it has to move from what's on the
11 drawings. Move back, you know, a foot and a half or a
12 foot and seven inches. Because what's shown on the
13 drawings here is 9 plus 1 foot 6.

14 Do -- do you disagree that it's -- that's
15 what the -- the drawing says, 9 plus 10 foot 6?

16 I don't know. I mean it may be that the
17 neighboring properties are over built into the alley.
18 That happens.

19 CHAIRPERSON GRIFFIS: Okay. Good.

20 MS. HANDLEY: No, see you're -- the --

21 CHAIRPERSON GRIFFIS: I -- I think we
22 ought to refer to the miscellaneous note number one,
23 all dimensions shown are approximate, to be field
24 verified and leave it at that. I think it'll be
25 clarity when we get to more conclusions --

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1 MS. HANDLEY: Okay.

2 CHAIRPERSON GRIFFIS: -- and directions
3 from the Board.

4 That being said, do we have any other
5 questions of the Office of Planning? Does the
6 applicant have any other additional cross examination
7 of Office of Planning?

8 MS. HANDLEY: No, thank you very much.

9 CHAIRPERSON GRIFFIS: Good. Let's move on
10 then. I don't have any other government reports
11 pertaining to this application. Office of Planning as
12 indicated they referred it to the other agencies that
13 would have referred this.

14 So, going to the Advisory Neighborhood
15 Commission 2F which did submit a letter, Exhibit
16 Number 23, and did they say what a quorum was? Well,
17 in any case, there was a quorum present and they do
18 support the application.

19 COMMISSIONER MAY: It looks like there
20 were six commissioners. So.

21 CHAIRPERSON GRIFFIS: Right. You know, we
22 have very strict regulations of what they're suppose
23 to tell us.

24 COMMISSIONER MAY: A -- a quorum must --

25 CHAIRPERSON GRIFFIS: Okay. Going on from

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1 that, then I don't have any other attendants. Is
2 anyone here to testify in Application 17084 either for
3 or against the application? Then come forward now.
4 I'm not seeing indications of anyone giving testimony.

5 Ms. Handley, why don't we turn to you for
6 any closing remarks that you might have for the
7 Board's consideration.

8 MS. HANDLEY: Just a -- to -- well, the
9 only closing remark was -- is after -- is if I were
10 allowed to build this is no, I wouldn't infringe upon
11 my neighbor's view. I sense that that was a concern
12 that you had. Because I -- and -- and I didn't put on
13 there that yes, I would -- it would be enclosed on top
14 of the carport in the deck. So, that was just to
15 address your concern, Mr. May.

16 The -- the existing 9-foot brick retaining
17 wall, those are the -- on the document we just -- we
18 were looking at this, the plat. The 9 foot there is
19 referencing the height of the brick walls that are
20 there on either side not the length, but the
21 measurements I would need a couple of minutes to go
22 over those measurements which I could do, but just for
23 purposes of closing up, those are my only remarks.

24 CHAIRPERSON GRIFFIS: Thank you very much.

25 Okay. I think it's -- yes, Mr. May. I think it's

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1 appropriate then to take this up in a motion for
2 further deliberation if there is any attendant to this
3 application. Mr. May.

4 COMMISSIONER MAY: Mr. Chairman, before we
5 consider a motion in this case for a decision today, I
6 do feel that we need to have some better documentation
7 of what is actually proposed here.

8 CHAIRPERSON GRIFFIS: Oh, actually what I
9 had anticipated is if a motion was to pass is that we
10 would require prior to issuance of an order the
11 documentation that reflected several things. First of
12 all, the extent to the property line that is a
13 buildable area. Second would be showing that the --
14 the proposed construction would meet the 70 percent
15 requirement and not exceed that.

16 Those are the only aspects that I believe
17 are in question at this point.

18 COMMISSIONER MAY: I would disagree. I
19 think that -- that I have some very serious concerns
20 about the nature of the construction that's being
21 proposed, the height and the wall construction and
22 these privacy walls and everything else and without a
23 better picture of -- of what's involved --

24 CHAIRPERSON GRIFFIS: But, let me -- let
25 me try and understand your concern when you say

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1 construction.

2 COMMISSIONER MAY: Yes.

3 CHAIRPERSON GRIFFIS: What does that mean?

4 I mean we don't -- we don't have any authority or
5 jurisdiction over how it's built.

6 COMMISSIONER MAY: I'm sorry. Don't --
7 don't mean to imply that I'm concerned about the --
8 the nature of the construction specifically. It's
9 just that I don't -- what we see on these drawings
10 does not actually represent what we would see.

11 It shows a deck. It doesn't show anything
12 about any kind of enclosing walls for the carport
13 either on the front or the sides and I would like to
14 see those before we make a decision about it. Because
15 I'm not sure that what's being proposed we can
16 adequately judge for the impact on the neighborhood
17 and the neighboring properties and the light and air
18 and all those other considerations that we need to
19 make.

20 CHAIRPERSON GRIFFIS: Ms. Handley, do you
21 have architectural drawings of this? Did an architect
22 draw off anything?

23 MS. HANDLEY: Just to, no. Just a -- a
24 kind of draft and then I gave it -- and then that's
25 when he said you need to have an engineer do it.

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1 Because I showed him -- I went with the architect and
2 said look at the pictures. What I showed you. It's a
3 steel post --

4 CHAIRPERSON GRIFFIS: Right.

5 MS. HANDLEY: -- cedar wood, cedar
6 enclosed. That's what I want and then they said well,
7 use Trex. It's a better material.

8 CHAIRPERSON GRIFFIS: Okay. Mr. May's
9 bringing up the point of --

10 MS. HANDLEY: But, that's it.

11 CHAIRPERSON GRIFFIS: -- if I can take it
12 to another point is when you talked to your neighbors,
13 were they aware, first of all, that you were going to
14 have a solid wall on each of the adjacent sides? Did
15 they understand what -- that type of enclosurement you
16 were going to have on the patio or the deck?

17 MS. HANDLEY: Yes.

18 CHAIRPERSON GRIFFIS: How would they have
19 known that?

20 MS. HANDLEY: Because -- okay. I see what
21 you're saying. The original -- when I took kind of --
22 when I described what I wanted to do and we walked and
23 I took my neighbors and we walked down -- two streets
24 down and said this is what we're going to do and they
25 came into my house and I showed them. We had the

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1 architectural drawings general. They weren't done to
2 scale, but that's when he said, you know, get the
3 engineer to do it because of the materials issue.

4 CHAIRPERSON GRIFFIS: Right.

5 MS. HANDLEY: So, I didn't attached
6 those --

7 CHAIRPERSON GRIFFIS: So, you have
8 architectural sketches of a concept.

9 MS. HANDLEY: Sketches.

10 CHAIRPERSON GRIFFIS: Is that correct?

11 MS. HANDLEY: Of a concept. Yes, I do.

12 CHAIRPERSON GRIFFIS: Okay.

13 MS. HANDLEY: And I can provide those to
14 you.

15 CHAIRPERSON GRIFFIS: You what?

16 MS. HANDLEY: I could send those to you.

17 CHAIRPERSON GRIFFIS: Others? Opinions?
18 We have two choices now. We're going to take up a
19 motion and proceed with this or we can set this for a
20 decision making with submissions required and that
21 would be further documentation of the proposed work.

22 COMMISSIONER MAY: I would prefer that we
23 set the decision maker.

24 CHAIRPERSON GRIFFIS: Who knew -- who knew
25 you were --

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1 COMMISSIONER MAY: I -- I do think this is
2 a circumstance where we need to -- to understand
3 carefully what's -- what's being proposed here and I
4 think that, you know, while there's clearly a case all
5 this -- that this properly is unique, because of the
6 setback on the front and the way the -- the rear yard
7 has been encroached upon by the building, there are a
8 wide variety of ways to address the concerns of the
9 applicant and -- and improve the property the way that
10 the applicant wants to.

11 But, I'm -- I'm not convinced that the way
12 this is done here and now because we don't have
13 sufficient documentation that -- that this is a way
14 that in the long term is going to protect or -- or
15 insure that we are -- are not infringing -- this
16 project will not infringe on the light and air not
17 only for the neighboring properties but for this
18 property.

19 I mean essentially what we're talking
20 about is building a -- a 15 to 20-foot tall box around
21 the entire yard.

22 CHAIRPERSON GRIFFIS: Right. No, I have a
23 -- I have a --

24 COMMISSIONER MAY: And -- and I -- I'd
25 like to see that.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MEMBER ZAIDAIN: Would you -- do you think
3 the architectural sketches that the applicant has
4 referenced would provide more clarification to you?

5 COMMISSIONER MAY: It -- it certainly
6 would get closer. I don't know if it's close enough.

7 MEMBER ZAIDAIN: Yes. I -- I mean I'm --
8 I understand both concerns. I mean I -- I think the
9 Office of Planning's, you know, report clarified it
10 for me and I think the drawings that we've seen
11 provided general -- but I also understand Mr. May's
12 concern with wanting to see more detail.

13 I -- I guess my concern is with the
14 applicant and putting them in a -- you know, her in a
15 position of -- well --

16 COMMISSIONER MAY: Having to wait until
17 January?

18 MEMBER ZAIDAIN: No. No. No. No. I'm
19 talking about going a route with --

20 COMMISSIONER MAY: You mean, give us
21 additional drawings.

22 MEMBER ZAIDAIN: Right. Going a route
23 that may not be necessary and that's why I was asking

24 if -- COMMISSIONER MAY: Well, I mean, you know,
25 we could look at the drawings and then let the

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1 applicant know whether there needs to be further --
2 further input required. I mean I --

3 CHAIRPERSON GRIFFIS: I'm not sure we can
4 do that.

5 COMMISSIONER MAY: Well, it may -- it may
6 wind up delaying things. We may have to have a
7 special meeting. I mean if you want to have a special
8 meeting for, you know, a few minutes next week, I'd be
9 willing to -- to consider that just to look at what
10 the architect proposes.

11 If that says it clearly, I have to say
12 frankly that I'm quite skeptical of it. I don't -- I
13 think that the -- the construction that's -- that's
14 proposed here I don't think will meet the standards.
15 I think that it's one thing to build a carport that's
16 10-feet tall. It's another thing to build one that's
17 15 or 20-feet tall with a -- a deck on it like that.

18 It's a -- it's a -- it's a very
19 significant departure from what's allowed by the
20 regulation.

21 If we're talking about --

22 CHAIRPERSON GRIFFIS: Well, I don't agree
23 with that.

24 COMMISSIONER MAY: -- just building a --
25 building a -- an enclosure over that, I mean it's not

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1 the most useful rear yard in the world and I don't
2 think that in principal I have any problem with
3 building a deck there. I mean with building a roof
4 there over it and --

5 CHAIRPERSON GRIFFIS: There's --

6 COMMISSIONER MAY: -- building a deck, but
7 it's when you have to build it that high up and it
8 becomes an encroachment on the neighboring properties.

9 CHAIRPERSON GRIFFIS: But, Mr. May,
10 there's -- there's nothing that regulates the height
11 of a carport and secondly, if you look at the --

12 COMMISSIONER MAY: Sure there is. I mean
13 a garage can't be build above 14 feet.

14 CHAIRPERSON GRIFFIS: That's a -- that's a
15 garage.

16 COMMISSIONER MAY: Well.

17 CHAIRPERSON GRIFFIS: The -- in looking at
18 the adjacent, I think it's more contextual than
19 anything else including the practical difficulties
20 coming on the -- on the access to the second level
21 which sets itself for it's on -- it's on dimension.

22 COMMISSIONER MAY: But, the deck doesn't
23 necessarily have to be at the second level. The deck
24 could be 10 feet in the air and could have a stair up
25 from the deck to the door.

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1 I mean there are lots of ways to solve
2 this problem and including ways that are much more
3 compliant with the -- the -- the letter and the spirit
4 of the regulations and that's when I have to concern.

5 Now, maybe if I see the drawings, my concerns will be
6 addressed. I -- I'm doubtful, but I'm -- you know, if
7 you want to request that.

8 CHAIRPERSON GRIFFIS: Did you ever -- did
9 you ever, Ms. Handley, look at having the deck not a
10 direct walkout from the second floor but lower? Is
11 there any advantage of having it so high aside from
12 having two landings off of your spiral stair?

13 MS. HANDLEY: No, I -- I -- that's -- I
14 could very well do that. I think that when I went to
15 my neighbors and I looked at theirs and how they had
16 done theirs and mind you, they had done theirs with
17 cedar wood and if you look, like this wall right here,
18 it is just the -- the normal 7 feet that go around.

19 CHAIRPERSON GRIFFIS: Correct. So, you
20 looked at something adjacent to --

21 MS. HANDLEY: I went and I looked at how
22 they did theirs and I looked at, you know, these were
23 the steel posts which I'm proposing. So, the
24 underside of mine would be like this.

25 CHAIRPERSON GRIFFIS: Right.

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1 MS. HANDLEY: And then on either side
2 would be the neighbor's fence with the ivy --

3 CHAIRPERSON GRIFFIS: No, I understand.

4 MS. HANDLEY: -- that already --

5 CHAIRPERSON GRIFFIS: I understand.

6 MS. HANDLEY: -- so, I just simply -- when
7 I saw that, it's done. It's simple. It was just
8 easier.

9 If the Board says well, there's a -- a
10 hazard or a problem with that, I can reevaluate
11 lowering it. I prefer not to, but I'd be willing to
12 or come back with more -- better pictures of this and
13 a better design for you if that's what you need.

14 CHAIRPERSON GRIFFIS: Conceptual drawings
15 for the architect, are there elevations or is it just
16 plans? Do you know what I'm asking?

17 MS. HANDLEY: Yes, he has -- he has the
18 measures and the elevations because I remember
19 distinctly taking them.

20 CHAIRPERSON GRIFFIS: So, elevation is as
21 if you're standing in -- in the alley and you're
22 looking at it?

23 MS. HANDLEY: Looking at the house.

24 CHAIRPERSON GRIFFIS: That's all in there?

25 MS. HANDLEY: Yes.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MS. HANDLEY: Kind of --

3 CHAIRPERSON GRIFFIS: This is what I'm
4 going to do. I'm going to set this for -- oh, geez,
5 let's have those submitted into the record. We'll set
6 this for a brief continuance on the 16th. We'll put
7 it first thing in the morning.

8 MS. HANDLEY: On the 16th of January?

9 CHAIRPERSON GRIFFIS: December. Next
10 week.

11 MS. HANDLEY: I need to be here? I'm
12 sorry. Are you saying come here?

13 CHAIRPERSON GRIFFIS: No.

14 MS. HANDLEY: Or do I need to have those
15 records to you by then?

16 CHAIRPERSON GRIFFIS: It's my hesitation
17 because I have two options. I can set this for a
18 special public meeting which means we go straight to
19 decision or I have a continuance of a hearing in which
20 case we can hear from you and have some discourse --

21 MS. HANDLEY: I see.

22 CHAIRPERSON GRIFFIS: -- which I think
23 would probably be more important if those last
24 questions that we can -- we can get done rather than
25 having this so locked into either approval or a

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1 denial.

2 Are you available on the 16th?

3 MS. HANDLEY: I will be.

4 CHAIRPERSON GRIFFIS: Okay. Why don't we
5 do that? We're going to take it up. We're going to
6 give you about 15 minutes. If you need -- if you
7 would, we need to have all that. Any other
8 information that you have. Also documentation. I
9 would suggest that you put in something into the
10 record that you have amended your application for a
11 special exception for lot occupancy of 70 percent and
12 that the drawings would reflect that. If you can have
13 these drawings marked up to reflect that, that would
14 be appropriate also. Any sort of conceptual drawings.

15 If your architect is a good friend and has
16 nothing to do tonight, maybe he can do some more
17 sketches and --

18 MS. HANDLEY: Okay.

19 CHAIRPERSON GRIFFIS: -- had some
20 shrubbery in color -- no.

21 But, in all seriousness, I think what is
22 being asked of the Board is just a -- a better
23 illustration of what's being proposed so that there's
24 a full understanding of what it is. I want to do
25 that.

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1 I have -- I have major concerns. First of
2 all, I never like to delay applicants, but more
3 importantly, I don't like to delay the Board and our
4 schedule is very tight.

5 MS. HANDLEY: Yes.

6 CHAIRPERSON GRIFFIS: So, the longer this
7 takes the more difficult it is. So, with that, let's
8 set this for a brief continuance on the 16th, first
9 case in the morning.

10 If you have questions now of what I've
11 just rattled off in terms of submission, absolutely
12 talk to the Office of Zoning and they'll be able to
13 clarify. But, maybe go through Ms. Bailey because
14 this has to be submitted in I would say by -- Ms. --
15 is it possible, Ms. Handley, for you to get this into
16 the office today or by tomorrow morning?

17 MS. HANDLEY: I'll need to go home. Get
18 them tonight and give it to you in the morning.

19 CHAIRPERSON GRIFFIS: Okay.

20 MS. HANDLEY: And I'll go ask my neighbor
21 if I can take pictures of his deck with the wall and
22 the enclosure to give them to you so you have a very
23 good visual image. Besides the fact that I won't be
24 using cedar wood. I'll be using Trex. It looks the
25 same.

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1 CHAIRPERSON GRIFFIS: Don't worry about
2 that. Don't -- don't get photographs --

3 MS. HANDLEY: Well, that's part of the
4 drawings in the --

5 CHAIRPERSON GRIFFIS: No. No. No. We
6 have no jurisdiction or authority over the materials
7 you use. So, don't even worry about that. There may
8 be opinions, but it doesn't matter. It won't factor
9 into us. Don't -- we -- I think the existing
10 condition is -- is fine.

11 MS. HANDLEY: Okay.

12 CHAIRPERSON GRIFFIS: And documented well
13 enough. Don't go to anything else.

14 What we're looking for is what -- how -- a
15 fuller understanding of what will be built.

16 MS. HANDLEY: Okay.

17 CHAIRPERSON GRIFFIS: So, that's what
18 we're looking for.

19 MS. HANDLEY: Okay.

20 CHAIRPERSON GRIFFIS: So, if that
21 motivates you to do additional things, that's fine,
22 but --

23 MS. HANDLEY: All right.

24 CHAIRPERSON GRIFFIS: -- the point is we
25 need that in.

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1 Ms. Bailey, is that okay by 12:00 tomorrow
2 if the -- that material comes?

3 MS. BAILEY: Sure, Mr. Chairman. Did the
4 applicant say she could do it by then?

5 MS. HANDLEY: Yes.

6 MS. BAILEY: Okay.

7 MS. HANDLEY: I'll do it. I'll go home
8 and get the drawings and -- tonight after work and
9 bring them tomorrow.

10 MS. BAILEY: And would you give us a call
11 to let us know if you run into a problem?

12 MS. HANDLEY: Yes.

13 MS. BAILEY: Okay.

14 MS. HANDLEY: Can I have your phone
15 number?

16 MS. BAILEY: Sure. We'll give it to you
17 after this.

18 MS. HANDLEY: Okay.

19 MS. BAILEY: The only other thing, Mr.
20 Chairman, during the discussion, it was brought out
21 that the neighbors had signed --

22 CHAIRPERSON GRIFFIS: That's right.

23 MS. BAILEY: -- and that would be helpful.

24 MS. HANDLEY: Bring a copy of the letter.

25 I will.

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1 MS. BAILEY: Right.

2 CHAIRPERSON GRIFFIS: Yes, let's make sure
3 that that letter's in the record.

4 MS. HANDLEY: Okay.

5 CHAIRPERSON GRIFFIS: Excellent. Okay.
6 Thank you very much and I'm sorry to delay you on
7 this.

8 MS. HANDLEY: Thank you.

9 CHAIRPERSON GRIFFIS: If there is -- why
10 don't we call the next case in the morning then?

11 MS. BAILEY: Application Number 17087 of
12 Jeffrey D. Kwaterski, excuse me, pursuant to 11 DCMR
13 3103.2, for a variance from the lot occupancy
14 requirements under Section 403, a variance from the
15 rear yard requirements under Section 404, a variance
16 from the closed court requirements under Section 406,
17 and a variance from the nonconforming structure
18 provisions under Subsection 2001.3 to allow a rear
19 garage with roof deck addition to a single family row
20 dwelling in the R-4 District at premises 1366 Quincy
21 Street, N.W. Square 2826, Lot 25.

22 Please stand to take the oath, sir. Raise
23 your right hand.

24 Do you solemnly swear or affirm that the
25 testimony that you will be giving in this proceeding

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1 will be the truth, the whole truth, and nothing but
2 the truth?

3 MR. KWATERSKI: I do.

4 MS. BAILEY: Thank you.

5 CHAIRPERSON GRIFFIS: Good morning. If
6 you wouldn't mind just turning on your mike and you
7 can state your name and address for the record.

8 MR. KWATERSKI: Okay. My name is Jeffrey
9 Kwaterski. I live at 1366 Quincy Street, N.W. in
10 Washington, D.C.

11 CHAIRPERSON GRIFFIS: Okay. And as
12 stated, you're coming in actually somewhat similarly
13 to the applicant before, but it is for several if not
14 four variances in order to accommodate a garage.

15 Do you -- do you want to add anything in
16 openings to the -- to the -- to your application and
17 submissions?

18 MR. KWATERSKI: Just a question to make
19 sure that the -- you received the application package
20 with photos and that the letter from the ANC-4C was
21 received.

22 CHAIRPERSON GRIFFIS: Yes.

23 MR. KWATERSKI: Okay.

24 CHAIRPERSON GRIFFIS: Yes, we have all
25 that in the record.

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1 MR. KWATERSKI: Okay.

2 CHAIRPERSON GRIFFIS: Okay. In which
3 case, why don't you just quickly walk through then the
4 test for the variances. Right. For the variances.

5 First of all, just briefly describe or --
6 or as much time as it takes describe the uniqueness of
7 character or in the -- the property, the land. How
8 that uniqueness has created a practical difficulty for
9 you and -- and then we can get into whether it
10 compares to the intent and integrity of the zone plan
11 or not.

12 MR. KWATERSKI: Okay. Well, this is a
13 proposal for building a rear garage off of a townhouse
14 in District of Columbia.

15 I have some larger photos. I'm not sure
16 how the copy quality was. If -- if anybody would like
17 to see the full color photos that are on that same
18 sheet.

19 CHAIRPERSON GRIFFIS: I think these are
20 pretty legible.

21 MR. KWATERSKI: Okay.

22 CHAIRPERSON GRIFFIS: The colors are fine.

23 MR. KWATERSKI: Okay. We are attempting
24 to address some of the issues with the current
25 property. The uniqueness being that we are at the end

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1 of a -- of the block towards a T where the alleys --
2 the alley directly behind our house is perpendicular
3 to a parallel alley to 14th Street. We're the second
4 to last property and the rear of the house is actually
5 quite shallow and opens as you might see by the photo
6 directly onto the alley.

7 The uniqueness of that being that as the
8 lots proceed down the block, I think one of the photos
9 actually shows the shot down the back, lots lengthened
10 somewhat and people actually have garages established
11 all the way down the block on probably at least half
12 of the properties or even two-thirds of the
13 properties. All the way down Quincy Street, there are
14 garage structures with the longer back yards allowing
15 for them to have both garages and yards.

16 So, the uniqueness of our property I
17 believe is that, one, we have a -- a shallow lot being
18 at the end. We also have an incline which although it
19 may not appear severe in the -- in the photo, it's
20 been enough now to damage the brakes on two of our
21 cars with parking at -- at an angle as it -- as it
22 currently is.

23 So, we are proposing to add a garage
24 structure that is virtually identical to the existing
25 garage structure to the adjacent neighbor. If you can

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1 see the photo, for the property immediately to our
2 left of our house and keeping -- we have architectural
3 drawings. I believe there's copies in the application
4 as well that show that we are in keeping with the
5 actual existing garage in terms of general height and
6 dimensions that is immediately to our side.

7 As well, with the idea of having a walkout
8 basement because of the elevation. Kind of the unique
9 property of this particular lot. We're kind of
10 cresting up on a hill. So, we have a walkout basement
11 which as the houses go down the street, they don't
12 have that. They're kind of a little bit less of the
13 walkout basements and more -- their -- their first
14 floor is actually lower.

15 Our first floor kitchen/sun room, we would
16 like to propose then to be able to walk out onto the
17 roof of the propose garage structure so that I can
18 provide a little more secure space for -- we have a
19 newborn baby who is six months old and wants to
20 probably get outside in the springtime and right now
21 as it is due to the shallow nature of the front yards
22 on these properties being approximately I believe 15
23 feet currently occupied by garden, there's no current
24 place for any kind of secure play.

25 So, I think the unique characteristics

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1 might also, I'm not sure if this is going beyond
2 because I've never been in a hearing before, but
3 there's I think the uniqueness of the security threat
4 in the -- in the area as well.

5 We're at a heavily trafficked corridor of
6 14th Street and Spring Road which is one of the hot
7 spots for the Metropolitan Police Department. There
8 is a constant stream of drug trafficking, prostitution
9 at that particular area using these alleys as
10 corridors for both drug use, drug sales, prostitution.

11 We have a house that's on the other side
12 of the garage that you can see on these photos that
13 has served and been under complaint for numerous years
14 as a house of prostitution.

15 So, immediately on the other side of that
16 garage you've got a parking lot where there has been
17 carjackings and there is traffic of people going in
18 and out of the rear of the property on 14th Street for
19 prostitution.

20 So, this is a particularly troublesome
21 corner of our neighborhood and I believe that also
22 provides as kind of a unique situation to try to help
23 the security and to make our situation a little more
24 viable for staying in that long term.

25 Thank you.

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1 CHAIRPERSON GRIFFIS: Good. Thank you
2 very much.

3 How long have you lived there?

4 MR. KWATERSKI: I've been there for three
5 years as of October.

6 CHAIRPERSON GRIFFIS: Okay. Very well.
7 Other questions from the Board.

8 COMMISSIONER MAY: How wide is the alley?

9 MR. KWATERSKI: I believe the alley is 9
10 feet.

11 CHAIRPERSON GRIFFIS: It's 15 feet.

12 MR. KWATERSKI: I'm sorry. Oh, yes, it is
13 15 feet. It shows on the survey. Sorry.

14 COMMISSIONER MAY: So, we have an issue
15 with -- oh, it's -- for a garage, then we still have
16 that same issue with a 12-foot setback from the center
17 line of the alley. Right?

18 CHAIRPERSON GRIFFIS: No, I don't believe
19 so. Let's get too it.

20 Any other questions while we look at that
21 very quickly?

22 The materials of the garage are going to
23 be similar to that --

24 MR. KWATERSKI: Yes, we're -- we're
25 proposing to have cement block construction.

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1 CHAIRPERSON GRIFFIS: With?

2 MR. KWATERSKI: With a wooden roof with
3 asphalt surface sloping. Underneath then a -- a
4 wooden deck that would just sit on top of the garage
5 structure.

6 CHAIRPERSON GRIFFIS: Oh, geez, 2300.2,
7 private garage that is accessory building. This is
8 attached. Is it not?

9 MR. KWATERSKI: Attached to the primary
10 house? We were proposing to build it abutting up to
11 the -- the house. Yes.

12 We would remove the wooden deck that you
13 see in the photos that currently exists. There's a 5-
14 foot wide small wooden deck that comes off of the
15 second floor. That would be removed.

16 CHAIRPERSON GRIFFIS: Okay. Yes, it does
17 appear that this setback if I'm reading this quickly
18 and carefully enough, 2300.4 and 2300.2 which were the
19 regulating says that where abutting, the garage would
20 be setback at least 12 feet from the center line of
21 the alley upon which it opens.

22 In which case, we'd have 15 feet. To the
23 center would be 7.6 and from 12 that would need to be
24 4 foot 6. Okay.

25 I don't see any difficulty in amending the

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1 application to include that as it is part of the
2 proposed design unless the applicant has an opinion on
3 that.

4 Do you understand? It would mean that --

5 MR. KWATERSKI: Sorry.

6 CHAIRPERSON GRIFFIS: -- if you look at
7 your first-floor plan in terms of your A100 sheet and
8 A -- or the plan two on that sheet indicates that
9 there's a two-foot setback and I'm assuming that
10 that's from the property line. It clearly is a line
11 with a neighboring structure. At least that's what's
12 being graphically represented.

13 That would then have to be if that's the
14 property line, 4 foot 6 inches. So, an additional 2
15 feet 6 inches.

16 It would seem -- you got to wonder why
17 they do that.

18 Pardon me? No, I'm just trying to -- I --
19 I think we can establish this.

20 How deep is -- what's the dimension of the
21 garage? The depth?

22 MR. KWATERSKI: I believe it's -- with the
23 setback I believe it would be approximately 23 feet.
24 I believe right now from the rear of the house not
25 counting the deck, it's 25 feet to the alley, to the

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1 property line and the other property is the garage to
2 our immediate left as well as the retaining wall of
3 the property to our immediate right brought up
4 directly to the alley. We're proposing to set back
5 two feet within -- back from their -- from where their
6 construction ends.

7 CHAIRPERSON GRIFFIS: Correct.

8 MR. KWATERSKI: I'm concerned about any
9 further going in for two reasons. One, the depth
10 required for even a mid-size car to fit in and two,
11 that virtually any setback in this type of an alley
12 provides a space where drug dealing and prostitution
13 goes on and it's happening throughout this particular
14 block.

15 CHAIRPERSON GRIFFIS: I see. So, there's
16 a concern in terms of setting back more than two feet
17 for creating an area that maybe unenforceable or un-
18 monitored.

19 MR. KWATERSKI: That's exactly right.
20 People are not able to monitor that properly.

21 CHAIRPERSON GRIFFIS: Right. Right.
22 Right. Okay. Very well. I -- I -- unless there's
23 any opposition to the -- from the Board, I think it's
24 proper to proceed with what has been documented in
25 front of us and to amend for the relief of the 12-foot

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1 setback on the alley.

2 Very well. Let's proceed then as amended.

3 Anything further?

4 MR. KWATERSKI: This is not the time to
5 talk about the letters of support. Correct?

6 CHAIRPERSON GRIFFIS: We'll get -- we'll
7 -- we'll --

8 MR. KWATERSKI: Okay.

9 CHAIRPERSON GRIFFIS: -- we'll get to what
10 -- no.

11 MR. KWATERSKI: Okay.

12 CHAIRPERSON GRIFFIS: Let's run through.
13 Let me ask you a couple of quick questions. First of
14 all, you presented to the ANC. Is that correct?

15 MR. KWATERSKI: I did.

16 CHAIRPERSON GRIFFIS: Okay. And it is in
17 our record. We'll get to that Exhibit Number 24.

18 Had -- did you meeting with Office of
19 Planning at all? Did you ever have somebody come in
20 to meet with you?

21 MR. KWATERSKI: Just in terms of going to
22 the actual office where we filled out the
23 documentation. I probably had to go back there
24 probably four or five times until we got --

25 CHAIRPERSON GRIFFIS: Okay. That's here

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1 though.

2 MR. KWATERSKI: Oh, I'm sorry. Then it
3 must have been the -- it was probably the Office of
4 Zoning.

5 CHAIRPERSON GRIFFIS: Okay. Right.

6 MR. KWATERSKI: Is that correct?

7 CHAIRPERSON GRIFFIS: Yes, so, no -- no
8 representative from Office of Planning?

9 MR. KWATERSKI: No, nobody ever -- never
10 had a house visit or any type of conversations --

11 CHAIRPERSON GRIFFIS: Right.

12 MR. KWATERSKI: -- in any depth with
13 people there.

14 CHAIRPERSON GRIFFIS: OP's not afraid of
15 this neighborhood. Okay.

16 Well, not having an Office of Planning
17 report, I don't have any other government reports send
18 to except for ANC-4C which is an approval --
19 recommending approval of the project.

20 Let's go to any other further Board
21 questions? Yes.

22 COMMISSIONER MAY: Do we know for sure
23 that OP is just completely unaware of this case and
24 that they have -- have not taken it into consideration
25 at all?

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1 CHAIRPERSON GRIFFIS: A hundred percent
2 assurances there's nothing been submitted.

3 COMMISSIONER MAY: Well, no, there's
4 nothing been submitted, but we -- we don't know that
5 somehow it got lost on somebody else's desk or if
6 anybody else is looking at it or anything like that.

7 MS. BAILEY: It's not in the Office of
8 Zoning if that's what you're asking about.

9 COMMISSIONER MAY: I know.

10 CHAIRPERSON GRIFFIS: Did -- but, did
11 Office of Zoning contact OP?

12 COMMISSIONER MAY: Is somebody here from
13 the Office of Planning? Is it worth even asking the
14 question?

15 CHAIRPERSON GRIFFIS: They don't know.

16 COMMISSIONER MAY: Okay. Well, that's
17 what I was wondering. Do we have any assurance that
18 there's been no -- and -- okay. All right. So, we
19 know that OP has no knowledge or opinion on this?
20 Thank you.

21 CHAIRPERSON GRIFFIS: He has not submitted
22 anything on it. All right.

23 Yes, what? I -- yes, but -- that's all
24 very interesting.

25 Okay. Let's go to the letters of support

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1 then. Of course, I have listed four letters of
2 support pertaining to this, Exhibit Number 23, 22, 9,
3 and 8.

4 I'll start with the Number 8 which is the
5 Ward Four Neighborhood Services Program Coordinator
6 that wrote a letter in in support of the application.

7 MR. KWATERSKI: That's correct.

8 CHAIRPERSON GRIFFIS: Does he live in the
9 neighborhood? She?

10 MR. KWATERSKI: Meritt Drucker I believe
11 lives in the general area of Ward Four. He does not
12 live in my immediate street, but he's -- because of
13 his nature of being very proactive in his work of
14 Neighborhood Services Coordinator, he's on the -- he's
15 on the beat there all the time.

16 CHAIRPERSON GRIFFIS: He's knows what's
17 happening up there. Right?

18 MR. KWATERSKI: He knows what's happening
19 and he was very much in support of this application
20 for -- this proposal for a garage is kind of
21 fulfilling the goals that he has for cleaning up the
22 neighborhood and -- and trying to reduce spaces where
23 people congregate for illegal activities.

24 CHAIRPERSON GRIFFIS: Okay. Good and then
25 I have Rose Sullivan and --

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1 MR. KWATERSKI: Tila Berracol. Those are
2 my two neighbors that live on the -- in the photo, you
3 see the two immediate properties. One with the
4 garage.

5 CHAIRPERSON GRIFFIS: Right.

6 MR. KWATERSKI: That would be Tila
7 Berracol and -- and Sharon Rose is the --

8 CHAIRPERSON GRIFFIS: I see.

9 MR. KWATERSKI: -- the house to the right.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. KWATERSKI: They both have reviewed
12 the architectural drawings, are very familiar with the
13 project, and are very supportive of it.

14 CHAIRPERSON GRIFFIS: Okay. Very well.
15 Anything else? Questions of the Board? Any
16 concluding remarks?

17 MR. KWATERSKI: I -- I feel that this
18 would be a good investment in the neighborhood. We're
19 trying to keep it very much in the spirit of what
20 already exists with the current structures and are
21 very sensitive to not trying to create any height to
22 walls going up beyond the garage -- the -- the garage
23 roof that would obstruct the light or air flow into
24 our neighbors' adjacent properties and I think our
25 architectural plan demonstrates that as well with

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1 keeping these security fences or the -- the privacy
2 rail to just I think three feet or something like that
3 where it's just enough to protect from children
4 falling off it. So.

5 CHAIRPERSON GRIFFIS: Good. Thank you.
6 Very well. Then I would like to move approval of
7 Application 17087 for the variance from lot occupancy
8 under 403, the variance from the rear yard
9 requirements 404, variance from closed court area 406,
10 the variance from the conforming structure course
11 which is attendant to 2001.3, and a variance from
12 2300.2 that is attendant to the setback from the
13 center line of the alley.

14 I think that this is an interesting
15 project in terms of coming in for so many variances.
16 One might think that this is overwhelmingly a huge
17 request for a substantial relief of zoning, but I
18 think absolutely otherwise.

19 The -- the uniqueness that's been created
20 based on the limited rear yard. Also based on the
21 adjacent properties, that being the structure on each
22 side that encloses their properties that create an
23 open area but an unsecured and unsafe area. I
24 certainly feel it's -- it is based on one, dimension
25 of the specific property, but also based on the

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1 condition that's created by the surrounding properties
2 that has lent itself to its uniqueness and its
3 practical difficulty in terms of how one would animate
4 that for usable residential applicability.

5 I think that it is perhaps a bit of a
6 digression, but it is interesting to -- to look down
7 historically this block to see, first of all, as
8 you've indicated that the properties get a little bit
9 larger. Also, the site grade changes substantially,
10 but there -- there are enclosed rear yards and also
11 enclosed structures and to see that in our wisdom of
12 -- of great level for current zoning regulations do
13 not allow similar types of situations.

14 Be that as it may, the limiting rear yard
15 capability and also the requirement for the
16 residential use of this property and as you've
17 indicated with family that is growing and requiring
18 outdoor recreation space, an outdoor area, but also is
19 requiring of safe, secure parking which is one of the
20 regulations for residential properties is to provide
21 an off-street parking space. How one balances that, I
22 think has been presented to us today.

23 In terms of the consistent with the intent
24 and integrity of the zone plan and also whether it
25 would impair that, I think it is very clear that --

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1 this would not in anyway impair the intent or the
2 integrity of the zone plan and map noting that this is
3 a residential R-4 District which allows row dwellings
4 and flats and single-family houses. Clearly, that is
5 the intention here.

6 In the R-4 for residential development, if
7 it was built today, it would require a parking space,
8 an off-site parking space and so, in -- in many
9 respects, what we're doing is if not taking up the
10 full intent of the regulations, we are certainly
11 looking at an application that addresses the spirit of
12 it and I would ask for a second.

13 MEMBER MILLER: Second.

14 CHAIRPERSON GRIFFIS: Thank you. Further
15 discussion?

16 COMMISSIONER MAY: Absolutely. I cannot
17 believe that you are so strongly in favor of this.
18 I'm just astonished.

19 This -- the -- the zoning regulations give
20 clear primacy of rear yard over parking or rather over
21 garages and to state that -- that this is somehow some
22 truer fulfillment of the -- of the zoning regulations
23 is absurd frankly.

24 Now, there are a number of ways that the
25 issues of this particular site can be addressed that

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1 don't require variances. Furthermore, I guess and
2 what -- what really -- I mean that's just sort of the
3 opening remark here, but I -- I -- I don't understand
4 how this meets the variance test. Why this property
5 is unique. What's unique about this property?

6 It's 17 feet wide by 100 feet long.
7 That's the standard description of thousands of lots
8 in the District. Are we saying that everyone of them
9 is entitled to have a rear garage that butts the
10 alley. I'm sorry. I don't believe that.

11 That's not what the regulations provide
12 for and I think that to say that this qualifies for
13 the -- the uniqueness test is absurd. Sorry to use
14 that word twice.

15 But, I'd be happy to hear your argument
16 that somehow this is unique.

17 CHAIRPERSON GRIFFIS: To restate, I
18 believe that there are physical characteristics that
19 are actually attendant to, one, it is -- its location
20 on the alley. I -- I don't think that one can take
21 generally to say look, we have row dwellings and
22 although our regulations have created them to be
23 illegal or nonconforming, none of them are unique.

24 I think there are unique characteristics
25 in this particular site. It goes to the depth of its

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1 own rear yard which is not exactly similar to the rest
2 of the areas. The -- the grade and the site and the
3 adjacent properties and how it is defined and built
4 on. With the adjacent property that is to the west
5 has a structured garage on it.

6 The applicant has come in and -- and
7 indicated that not only is it part of a creating an
8 outdoor recreation for a family which is the allowable
9 use of this row dwelling, but there is also a -- a
10 particular and unique characteristic of requiring
11 additional or one -- well, requiring safety and
12 securing the property of which they occupy.

13 Based on the -- based on the condition of
14 this lot as it is defined with the others, one, the --
15 the -- it creates that open area that is able to be
16 accessed directly from the alley. Also, can -- cannot
17 be seen or monitored from the other areas of the alley
18 based on the -- the structures that are adjacent to
19 it. I do find that there is a -- a uniqueness to
20 this.

21 And I don't agree that we go and look at
22 applicants and what they're proposing to say look
23 there's certain ways you can do this differently and
24 should do it differently.

25 I take issue with the fact that you say

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1 that this could be accomplished -- all of what is
2 addressing the practical difficulties could be
3 accomplished without variances. It's -- it's
4 inconceivable to think that. In fact, if our zoning
5 regulations created this existing building as
6 nonconforming and so anything that was done to it
7 would have to come for some sort of relief based on
8 the fact that we don't allow buildings like this to be
9 built anymore.

10 COMMISSIONER MAY: The only existing
11 nonconformity is the fact that the lot is not wide
12 enough and the fact that they're a hair over the lot -
13 - allow lot occupancy.

14 CHAIRPERSON GRIFFIS: But, you can't --
15 how is that diminished? I mean that -- that -- those
16 are huge --

17 COMMISSIONER MAY: But, it doesn't make it
18 -- no, but it doesn't make it unique. Look at the
19 properties down the line. Can you tell me that the
20 property that -- that we see right next to it with
21 just a fence is just as unique?

22 When I -- I'm not -- I don't mean to
23 suggest that I could design a better solution for --
24 for their problems. That's not what I'm implying at
25 all.

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1 What I'm saying is that the concerns that
2 have been raised that -- that contribute to the -- to
3 the -- the applicant's difficulties with this property
4 are things like security. Well, I mean most people do
5 what the rest of the people on the block have done.
6 They put up fences or they have gates. The fact that
7 you can't accommodate a parking space -- I mean there
8 -- there are small yards in -- in a lot of areas.
9 There are ways to -- to address that that have been in
10 the thousands of other lots that are like this across
11 the city.

12 There is not -- I mean in the -- the
13 regulations, there is a clear priority for rear yards
14 over garages and --

15 CHAIRPERSON GRIFFIS: But, you're looking
16 at two -- there's two practical difficulties to
17 securing the back space. First of all, to -- to
18 provide parking, an off-site parking, but two, also to
19 provide outdoor recreation.

20 There's a practical difficulty based on
21 the dimension of this lot that -- that you can't do
22 both.

23 COMMISSIONER MAY: I'm sorry. The
24 regulations don't require outdoor recreation space.
25 They do require a rear yard.

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1 CHAIRPERSON GRIFFIS: I don't think I said
2 it was required. Let me say that it was presented --

3 COMMISSIONER MAY: But, I'm talking about
4 requirements because that's what the regulations are
5 about. It's requirements. It's not, you know, what
6 would be best in this circumstance. We don't -- this
7 is not a planned unit development where there's some
8 sort of balancing out of all these different
9 requirements and you offset the lack of -- of rear
10 yard with community recreation space somewhere else or
11 anything like that. This is a single property --

12 CHAIRPERSON GRIFFIS: No, I -- I --

13 COMMISSIONER MAY: -- that is not unique.

14 CHAIRPERSON GRIFFIS: I'm not mistaken
15 this is the PUD. Others.

16 MEMBER MILLER: Mr. Chairman, I -- I would
17 concur with your assessment that this meets our
18 variance tests. I think that there's evidence in the
19 record that the property is unique physically with
20 respect the slope of the property and with respect to
21 its being used for criminal activity and I think it
22 meets the practical difficulty test in that the
23 evidence shows that it also can't be used safely in
24 the manner that it is right now and I think it also
25 meets the public good test in that it improves the

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1 safety for the neighborhood by blocking off that
2 criminal activity.

3 CHAIRPERSON GRIFFIS: Good. Others? See
4 to the motion -- and seconded. Then let me ask for
5 all those in favor of the motion signify by saying
6 aye.

7 COMMISSIONER MAY: I'm sorry. Mr.
8 Zaidain, did you want to say something?

9 MEMBER ZAIDAIN: No. I'm saying that I
10 have to --

11 COMMISSIONER MAY: Oh.

12 CHAIRPERSON GRIFFIS: He has to go.

13 MEMBER ZAIDAIN: I want the --

14 COMMISSIONER MAY: Okay.

15 MEMBER ZAIDAIN: -- the motion called to a
16 vote because I have to leave. I think it's an
17 interesting debate. I'd love to hop in it, but
18 unfortunately, I cannot. So.

19 CHAIRPERSON GRIFFIS: That being said all
20 those in favor of the motion signify by saying aye.

21 MEMBER MILLER: Aye.

22 MEMBER ZAIDAIN: Aye.

23 CHAIRPERSON GRIFFIS: Aye.

24 CHAIRPERSON GRIFFIS: And opposed?

25 COMMISSIONER MAY: Opposed.

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1 CHAIRPERSON GRIFFIS: Mr. Moy, if you
2 would record the vote.

3 MS. BAILEY: Mr. Chairman, may I do that
4 for you please?

5 CHAIRPERSON GRIFFIS: Oh, yes. Of course.
6 I'm sorry.

7 MS. BAILEY: That's okay. The motion --
8 the application is approved by a vote of 3-1-1. Mr.
9 Griffis made the motion. Ms. Miller second. Mr.
10 Zaidain is in support. Mr. May's opposed to the
11 motion and Mr. Etherly is not here today and shall we
12 do a summary order, Mr. Chairman?

13 CHAIRPERSON GRIFFIS: As there is no
14 opposition to this, I don't see any difficulty --

15 MS. BAILEY: Thank you, sir.

16 CHAIRPERSON GRIFFIS: You're welcome.
17 Thank you very much.

18 MR. KWATERSKI: Thank you.

19 (Whereupon, at 11:24 a.m. off the record
20 until 11:34 a.m.)

21 CHAIRPERSON GRIFFIS: Very well. Let's
22 proceed.

23 MS. BAILEY: The last case of the morning,
24 Mr. Chairman, is the Application Number 17088 of
25 Willie D. Cook, Sr., pursuant to 11 DCMR 3103.2 for a

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1 variance from the off-street parking space
2 requirements under Subsection 2101.1 to allow a public
3 hall and summer garden in the C-2-A District at
4 premises 1101 Kenyon Street, N.W., Square 2844, Lot
5 819.

6 Mr. Cook, would you please stand to take
7 the oath?

8 Do you solemnly swear or affirm that the
9 testimony that you will be giving today will be the
10 truth, the whole truth, and nothing but the truth?

11 Thank you.

12 CHAIRPERSON GRIFFIS: Good morning, Mr.
13 Cook. How are you? If you wouldn't mind just turning
14 your microphone on. You can just state your name and
15 address for the record.

16 MR. COOK: My name is Willie D as in David
17 Cook, Sr. I reside at 1511 25th Street, S.E.,
18 Washington, D.C. 20020.

19 CHAIRPERSON GRIFFIS: Good and has been
20 stated and as your submission shows, you are here for
21 a variance from off-street parking space requirement.

22 MR. COOK: Yes.

23 CHAIRPERSON GRIFFIS: Is that correct?

24 MR. COOK: Yes.

25 CHAIRPERSON GRIFFIS: Do you want to just

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1 illuminate a few other aspects or whatever you want to
2 tell us why don't you go ahead.

3 MR. COOK: Okay. Just very briefly, I own
4 and operate a restaurant/bar business at 1101 Kenyon
5 Street, N.W. I have owned and operated that for
6 approximately 13 years. I learned recent, not
7 recently, about a year/year and a half ago by way of
8 an inspection from the ABC Board that I was in
9 violation of some of the city's ordinance in terms of
10 charging for entertainment. There is a fee that is
11 assessed on Fridays and Saturday nights of \$5 and \$7
12 for entertainment.

13 And from time to time, we used a -- I may
14 use the yard area which is fenced in as a -- for a
15 cookout or something like that. Summer garden. I
16 don't know what that was all about, but it maybe a
17 cookout.

18 But, we were advised by the ABC Board that
19 to charge for entertainment, there had to be a certain
20 number of parking spaces. To even use the outside ace
21 that you need permission from the city to do that.

22 As a result of that, I was told that I had
23 to come before the -- the Board to ask -- to ask for
24 the variances. The property will not accommodate the
25 30 required spaces needed to come into compliance.

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1 The business has been in existence there
2 for I'm told by history for like 50 -- since 1954 and
3 I guess all of the owners from that time up until my
4 time was not aware of -- of this requirement. Because
5 we have not changed operations at all in terms of
6 activity over the 13 years that I've had it and the
7 owners before me did the same thing. But, upon a
8 recent inspection, maybe a year/year and a half ago,
9 we was told that we were in violation of some of the
10 city ordinance.

11 So, I'm -- I ask for a variance to the
12 exception to allow me to continue doing that.

13 CHAIRPERSON GRIFFIS: Okay. A couple of
14 quick questions. While one -- a couple of quick
15 clarifications actually.

16 In terms of -- you've -- obviously, you're
17 under two controlling boards, the ABC which gives you
18 your licensing and -- and all that.

19 MR. COOK: Sure.

20 CHAIRPERSON GRIFFIS: They have -- they
21 have correctly indicated if -- if your plans are
22 correctly noted that any use outside of essentially
23 the building parameter would need a public space
24 permit.

25 MR. COOK: Right.

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1 CHAIRPERSON GRIFFIS: Because it's off
2 your property line.

3 MR. COOK: Right.

4 CHAIRPERSON GRIFFIS: That is not within
5 our jurisdiction or authority. That's a whole
6 different piece.

7 MR. COOK: Oh.

8 CHAIRPERSON GRIFFIS: The -- the -- a
9 couple of quick things. You say the -- the Knob Hill
10 is a restaurant. Is that correct?

11 MR. COOK: Restaurant -- restaurant/bar.

12 CHAIRPERSON GRIFFIS: You have a full menu
13 then? Do you have tables and sit down --

14 MR. COOK: Yes.

15 CHAIRPERSON GRIFFIS: -- service?

16 MR. COOK: Yes, but it is not -- you know,
17 it's -- you just don't walk in everyday at 8:00 and --
18 and have dinner. It's more -- if -- if I had to
19 describe it, it would be more to the bar side of it
20 because -- there are tables and chairs, but it is not
21 -- and we serve like hamburgers, poultry products.
22 These kinds of things, but it's not our menu. It may
23 be just a sheet of paper with three or four items on
24 it that we may sell.

25 CHAIRPERSON GRIFFIS: I see.

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1 MR. COOK: But, it not a full -- full
2 fledged restaurant, but it is -- it is guided by the
3 -- the health department because they do come in --

4 CHAIRPERSON GRIFFIS: Sure.

5 MR. COOK: -- regularly to inspect the
6 premises.

7 CHAIRPERSON GRIFFIS: Sure. Okay. And
8 clearly being before us for a variance from the
9 required parking, we're looking to see what is the
10 unique characteristics of the property.

11 MR. COOK: Yes.

12 CHAIRPERSON GRIFFIS: And how that has
13 created the practical difficulty and as I understand
14 it, you've listed several. One, its history and its
15 use has been in existence for quite some time.

16 Noting that the property itself is -- is
17 getting close to 100 percent lot occupancy, there is
18 not space --

19 MR. COOK: Right.

20 CHAIRPERSON GRIFFIS: -- for the parking,
21 but in terms of the use of the property, why is it so
22 critical that this expanded use is needed?
23 Essentially, how are we getting to -- although we have
24 an existing use that charging is an integral part of
25 what's happening there?

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1 MR. COOK: How -- why is it critical?

2 CHAIRPERSON GRIFFIS: Yes.

3 MR. COOK: I don't -- I won't say it's --
4 it's critical. The fact that we charge for entertain
5 on those two nights, we'll -- we'll -- we'll have to
6 do one or two things. If we are not approved, we will
7 have to stop charging and not have entertainment.

8 CHAIRPERSON GRIFFIS: Right.

9 MR. COOK: It's what it will -- what it
10 will -- that's the bottom line.

11 CHAIRPERSON GRIFFIS: I see.

12 MR. COOK: Right. But, the -- the Board
13 -- the ABC Board say that for a public hall, you must
14 have a license for that if you're charging your
15 patrons to come in for -- for entertainment or just
16 charging them period to come in I guess.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. COOK: But, we charge a cover because
19 of the -- because of the entertainment.

20 CHAIRPERSON GRIFFIS: I see.

21 MR. COOK: So, we can pass, you know, pay
22 the entertainers.

23 CHAIRPERSON GRIFFIS: I see and in some of
24 your submissions, you have indicated that there is
25 ample public parking or street parking.

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1 MR. COOK: I made -- as a result of
2 talking with -- with Planning and -- and -- and
3 Zoning, I made an effort on more than one occasion to
4 sort of count and watch parking a little more closer
5 than I have in the past. Because we've just -- the
6 question has never come up and there's never been a
7 problem and so, what I just basically did was just be
8 around like 10:00/11:00 and just counted spaces sort
9 of around the building on -- on 11th Street, on the --
10 on -- on Kenyon Street.

11 And -- and also in the application, I show
12 that -- that the school has allowed us to use their
13 spaces and let me clarify that because Planning did
14 question me about that in terms of do I have anything
15 official on that. Now, I don't. It is just something
16 that has been going on just for so long and when I
17 purchased the -- the property, the -- the owner said
18 oh, yes, you can -- we've been using the school
19 property and the principal don't have a problem with
20 that so long as we did not use it at specific times.
21 Of course, during -- during school activity.

22 CHAIRPERSON GRIFFIS: So, you've been
23 there for 13 years?

24 MR. COOK: Right.

25 CHAIRPERSON GRIFFIS: And you've spoken to

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1 the principal when you first --

2 MR. COOK: Have not -- I have not spoken
3 to the principal. I have not personally spoken to the
4 principal.

5 CHAIRPERSON GRIFFIS: So, it was -- is the
6 principal aware that you park on the site?

7 MR. COOK: I wish I could answer that. We
8 -- I have not had any contact. It was just something
9 that was passed down and we were very clearly told by
10 the former owner that you cannot use it, of course,
11 during -- and our hours does not -- does not conflict.

12 CHAIRPERSON GRIFFIS: I see.

13 MR. COOK: Because it's not 8:00.

14 CHAIRPERSON GRIFFIS: Is the -- is the
15 parking that's adjacent, the public school, is it able
16 to be secured? Is it able to close?

17 MR. COOK: Oh, yes, they can close the --
18 there are gates to the space where they use for the
19 faculty.

20 CHAIRPERSON GRIFFIS: Yes.

21 MR. COOK: And they can close and lock the
22 gates.

23 CHAIRPERSON GRIFFIS: Do they ever?

24 MR. COOK: No. Never have. Never have.

25 CHAIRPERSON GRIFFIS: So, for your

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1 specific use, you've never talked to the current
2 principal or any of the previous principals?

3 MR. COOK: No, I haven't. No, I haven't.

4 CHAIRPERSON GRIFFIS: I see. Okay. And
5 you indicated that it's never come up before this
6 parking. Have you had conversations with neighbors at
7 all? Have anyone brought any complaints?

8 MR. COOK: No, we -- we talk with the
9 neighbors, you know, all the time. At least I do
10 because I'm there quite a bit during the day cleaning
11 out -- the outside, et cetera and there's not been a
12 problem.

13 Now, we have because it is a public place
14 from time to time have -- we've had to call in
15 officers to have some of our patrons move on. Where
16 -- we've had a complaint or two last year where a
17 couple of people were sitting on the steps of some of
18 the property and -- and a phone call came to us and
19 so, we responded. Went to the patrons and asked them
20 to move on, but they was reluctant to do so, so we had
21 to call in -- in the officers and we have had to do
22 that maybe two or three times a year because of some
23 problems we may be encountering because we didn't want
24 them loitering on the outside. Once they left the
25 building, we wanted them to go on.

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1 But, generally, the neighbors, our
2 conversations are -- are sort of brief. We speak or
3 we talk about the wind blowing the trash. We won't --
4 we don't take about parking or there has been no
5 frustration on their part that they have shared with
6 me regarding parking, but we have never had any
7 problems.

8 And what I was trying to impress upon
9 Planning, too, is that we -- is this kind of thing has
10 been going on for so long. There's not been any --
11 any real complaints that we was just amazed to find
12 that we was supposed to have 30 parking spaces.

13 CHAIRPERSON GRIFFIS: I see. Okay. Any
14 other questions from the Board?

15 Yes, Ms. Miller.

16 MEMBER MILLER: Mr. Cook, hi.

17 MR. COOK: Yes.

18 MEMBER MILLER: Have you -- did you try to
19 get the support of your ANC for this application?

20 MR. COOK: Yes, we -- in fact, I called --
21 called them on -- on two occasions and I never receive
22 an answer and then what I did I -- I submitted to them
23 a -- a document that I got from Zoning, a letter that
24 I received from Zoning telling me to come before the
25 Board and a note to them asking them to let me meet

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1 with them, but I never -- I never heard from them.

2 MEMBER MILLER: You called them or you
3 wrote them?

4 MR. COOK: I called them. I called them
5 twice. Because Zoning gave me their number.

6 MEMBER MILLER: Okay.

7 MR. COOK: And told me to contact Planning
8 as well as the ANC and I also sent them the letter
9 after I could not reach them by phone, but they -- I
10 send them a copy of the Zoning letter and I was a
11 little surprised I did not hear from them because
12 there is a -- a commissioner that walks around the
13 block from time to time, but I didn't -- I didn't see
14 her -- have not seen her since this process has been
15 under the way -- underway. Because she normally walks
16 her dog around the 11th and Kenyon Street.

17 CHAIRPERSON GRIFFIS: Who is that
18 commissioner?

19 MR. COOK: I can't call -- I -- you know,
20 I don't know her name.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. COOK: But, she -- she -- she is
23 because she supported our -- she made it very clear --
24 she made a point of telling me that she supported our
25 ABC license because we had -- we had just gone through

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1 a new one on those.

2 CHAIRPERSON GRIFFIS: Is that right?

3 MR. COOK: But, it's just -- we -- we have
4 good conversations, but no one -- we don't seem to
5 know -- really know one another. But, she lives right
6 -- she lives right there in the club area. That's
7 when I was really surprised, but I don't know where
8 she live.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. COOK: But, I was -- that's when I was
11 surprised I did not hear from the -- hear from them.

12 MEMBER MILLER: And did Office of Planning
13 suggest to you that you try to formalize your parking
14 agreement with the D.C. Public Schools?

15 MR. COOK: They were kind enough to send
16 me a copy of their -- of their recommendation to the
17 Board. I had no idea that there was a process for
18 making that kind of -- that kind of request, but it
19 was -- it was much too late for me to take that
20 action. I think I got the facts from them last week
21 and I saw in their report that there was nothing on
22 file and they're right and I -- I wasn't aware of that
23 and I said well, maybe this is something I ought to do
24 before I even go to the Board.

25 But, I thought, you know, we've been

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1 waiting so long maybe we should go ahead and -- and
2 let you hear the case and then follow through at a
3 later date.

4 But, I -- I have not made any contact with
5 them officially.

6 MEMBER MILLER: Okay. Thank you.

7 CHAIRPERSON GRIFFIS: Anything else? Yes.

8 COMMISSIONER MAY: I'm still -- good
9 question. The -- and maybe this is better for OP, but
10 30 spaces is -- 30 parking spaces is based on what
11 calculation?

12 CHAIRPERSON GRIFFIS: Assembly hall.

13 MR. COOK: Yes.

14 COMMISSIONER MAY: What square footage?
15 How -- how big is the assembly hall?

16 MR. COOK: Oh, I don't have my drawings.
17 It's -- it's -- it's on my drawings and I -- I don't
18 have them before me. Do you have -- it's -- it's two
19 levels.

20 COMMISSIONER MAY: I'm sorry. Do you --
21 the basic question is do you know how -- the size of
22 the public hall?

23 MR. COOK: Yes.

24 COMMISSIONER MAY: How many square feet?

25 MR. COOK: And -- and I can't answer. I'm

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1 sorry, sir. I don't have my paper.

2 COMMISSIONER MAY: Okay. Thanks.

3 MEMBER MILLER: I have one more question.

4 It's -- it's really a clarifying question, but did
5 you say that your use of this building of this
6 property has not changed since when?

7 MR. COOK: 1954.

8 MEMBER MILLER: Since --

9 MR. COOK: Now, I understand that -- and
10 we're talking to people now. I understand that in '54
11 there may have been -- the first thing may have been a
12 laundry there for a year or so, but after that, a
13 cleaners, but after that it has been restaurant/bar
14 all -- all along and I've had it for 13 years and I
15 know that's what it was used for and I know when I
16 purchased it from Kelley, he had had it for like 10/12
17 years and I know that that's what he had used it for.
18 That's how he used it.

19 MEMBER MILLER: But, what's -- I mean
20 what's triggering this application is?

21 MR. COOK: The ABC Board.

22 MEMBER MILLER: ABC Board noticing that
23 you were charging --

24 MR. COOK: Right.

25 MEMBER MILLER: -- for entertainment?

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1 MR. COOK: Right. Well -- well, they --
2 that's what got us all confused. The ABC Board walks
3 in anytime they want, of course, and we've had no, I
4 shouldn't use the word problem, we've had no concern,
5 but this particular team of inspectors raised this
6 concern. The other teams that have visited the
7 location for over the last 13 years and they normally
8 visit us about four or five times a year unexpectedly
9 of course, but they always come at the time that -- in
10 the high -- in the height of activity.

11 In other words, the door charges start at
12 about 10:00 -- at 10:00 -- 10:00 at night and they
13 normally don't even come out until about -- it's 11:00
14 or 12:00 when they come and make an on-site visit.

15 MEMBER MILLER: But, you've been -- you've
16 been having this entertainment and charging for it for
17 the past 13 years.

18 MR. COOK: For the past 13 years. Right.

19 MEMBER MILLER: Okay.

20 MR. COOK: For the past 13 years.

21 COMMISSIONER MAY: What -- the reason why
22 I'm focusing on the size or the square footage of --
23 of the actual assembly space --

24 MR. COOK: Yes.

25 COMMISSIONER MAY: -- for which you would

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1 be charging is that the -- the way the calculation --
2 I mean is it a specific calculation for parking
3 requirements based on the square footage --

4 MR. COOK: Right.

5 COMMISSIONER MAY: -- of the assembly area
6 and I'm just not convinced that the math is done
7 properly because 30 parking spaces is just a huge
8 number of parking spaces. That will be based on
9 having a -- I mean if it was all no fixed seating,
10 that would be 300 times 7, that would be -- 300 times
11 7 is 2100 square feet. Not -- yes.

12 I mean maybe we'll wait until Office of
13 Planning comes in on this because they may know more
14 on this. Seven -- that's a seat. Still have to do
15 the 10 times that.

16 CHAIRPERSON GRIFFIS: Yes, something's not
17 working there. Okay.

18 And where are the majority of your
19 customers from? Do you know? Areas?

20 MR. COOK: Pretty much -- pretty much D.C.
21 Now, I don't know what you mean. D.C. When you say
22 area, you mean like Baltimore or out -- out of the --

23 CHAIRPERSON GRIFFIS: No, like where --
24 where are most of your regular customers --

25 MR. COOK: Howard University. The

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1 university students. Some -- now that the community
2 is -- is changing a lot, a lot -- a lot of people
3 within the community are now coming. Hispanic
4 population is growing rather tremendously in the area.

5 They come, but it's -- it's mostly a lot of students.

6 There is a fair number of retired people that's
7 coming in like -- and probably as a result of my
8 retirement, having friends, et cetera and inviting
9 them in, but it's mostly college, 25/32 age group
10 people.

11 CHAIRPERSON GRIFFIS: Interesting and the
12 entertainment that you provide that you charge for is
13 attractive to those two generations?

14 MR. COOK: Yes. Yes.

15 CHAIRPERSON GRIFFIS: College kids and --

16 MR. COOK: But, the -- the advantage that
17 we had a few years ago until I changed -- until I
18 changed the -- the operation is that my group -- my
19 age group I used to open at 5:00 and 6:00 and so, of
20 course, we came a little early, but then at -- at the
21 10:00 or 11:00, the younger -- the younger crowd came
22 in. So, it --

23 CHAIRPERSON GRIFFIS: And how did you
24 change the operation?

25 MR. COOK: I just started opening at 8:00.

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1 CHAIRPERSON GRIFFIS: Oh, I --

2 MR. COOK: Because business was not such
3 that from 5:00 until 8:00 that it was sufficient cost
4 effective to keep it -- to open at that time.

5 CHAIRPERSON GRIFFIS: I see.

6 MR. COOK: So, I just -- I closed. We had
7 -- we called it the happy hour from 5:00 until 8:00.

8 CHAIRPERSON GRIFFIS: I see.

9 MR. COOK: And then after that, we had --
10 there was a DJ, of course, came in after that time and
11 -- and entertainment and that's what had happened.
12 But, it used to for -- for years when we -- when we
13 initially bought it -- this -- this time change has
14 just occurred in the last two years -- two or three
15 years, but it has always had what -- what they call a
16 happy hour or a scene from -- from 5:00 until -- 5:00
17 until 8:00.

18 CHAIRPERSON GRIFFIS: Okay. And what --
19 what type of entertainment do you usually have?

20 MR. COOK: It's -- it's just a -- a DJ and
21 it's dancing. There may be -- with the band may come
22 singers. With the band may come -- we have a lot of
23 -- my son is in poetry reading and we may do some of
24 that. That kind of thing, but mostly it's a DJ and
25 singers or vocalists you might say with the -- with

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1 the band and that's what is really being charged so we
2 pay the band for the entertainment.

3 CHAIRPERSON GRIFFIS: I see. Okay.

4 COMMISSIONER MAY: You charge people when
5 they walk in the front door or when they go upstairs?

6 MR. COOK: Front -- front door.

7 COMMISSIONER MAY: Okay.

8 MR. COOK: Front door. Right.

9 CHAIRPERSON GRIFFIS: Any other questions?
10 Okay. Let's move on then to Office of Planning and
11 have them present their report.

12 MR. MORDPHIN: Good morning, Chair and
13 members of the Board.

14 My name is Stephen Mordphin with the
15 Office of Planning.

16 And this application is an area variance
17 to reduce the number of parking spaces from 30 to zero
18 for the public hall or summer garden.

19 And the public hall -- the proposed public
20 hall is in addition to an existing restaurant/bar that
21 has been in existence since 1954 and the existing use
22 provides no off-street parking and is not required to
23 because it predates the adoption of the zoning
24 regulations.

25 The application indicates that there's an

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1 informal agreement with Tubman Element School for use
2 of their parking lot when not in use by the school.
3 However, D.C. Public Schools has indicated that the
4 applicant should complete a form in order to formalize
5 the agreement and the Office of Planning is not aware
6 that the applicant has completed such a form.

7 The expansion of the use to include live
8 entertain could potentially increase the draw. The
9 number -- could increase the number of people that
10 patronized the existing business and thereby, increase
11 the demand on parking within the surrounding area.

12 In order to minimize the impact on the
13 surrounding neighborhood, the applicant should obtain
14 use of off-street parking such as the school parking
15 lot. However, no formal agreement exists for use of
16 any off-street parking spaces.

17 Therefore, the Office of Planning has
18 recommended denial of the request.

19 That concludes the presentation from the
20 Office of Planning.

21 CHAIRPERSON GRIFFIS: Thank you very much.

22 Quick questions? Do you want to ask about the --

23 COMMISSIONER MAY: Yes, I'll ask the area
24 question.

25 You report sites 210 square feet of public

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1 hall which first of all seems small, but secondly, if
2 it's 210 square feet, then there's a -- there's a
3 calculation in the regulations that gives you I mean
4 based on 7 square feet per person, that gives you an
5 occupancy. But, the occupancy is 30 and parking is 1
6 per 10 occupants and so by my calculations if 210
7 square feet is correct, you only need three parking
8 spaces.

9 MR. MORDPHIN: The 210 square feet was
10 based on the calculation that we had done. We may
11 have --

12 COMMISSIONER MAY: So, you had -- you had
13 actually calculated the square feet?

14 MR. MORDPHIN: We -- well, we tried to
15 calculate the square feet because we did not have the
16 information available to us --

17 COMMISSIONER MAY: Right.

18 MR. MORDPHIN: -- as to where the number
19 30 came from.

20 COMMISSIONER MAY: Right.

21 MR. MORDPHIN: And from what you're saying
22 is that we did the math wrong when we put the 210. It
23 should be 2100.

24 We do have the size of the building.

25 COMMISSIONER MAY: Oh, I see. So, you

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1 reversed it. You basically took it and you didn't --
2 right. Okay.

3 MR. MORDPHIN: We -- we do have the size
4 of the building from the information that we obtained
5 from tax and revenue.

6 COMMISSIONER MAY: Yes.

7 MR. MORDPHIN: That indicates the size of
8 the building. However, it wouldn't indicate --

9 COMMISSIONER MAY: Right.

10 MR. MORDPHIN: -- the area that's
11 available for the entertainment because the size of
12 the building's going to include everything including
13 hallways and staircases and --

14 COMMISSIONER MAY: And kitchen and all
15 that sort of stuff. Right?

16 MR. MORDPHIN: -- kitchen and all of that.
17 So, we couldn't use that to try and figure out if the
18 30 parking spaces was accurate.

19 We do have the floor plan that was
20 submitted as a part of the application.

21 COMMISSIONER MAY: Right.

22 MR. MORDPHIN: But, then again it's
23 difficult to use that. It's not to scale. What we
24 received is a reduced --

25 COMMISSIONER MAY: Right.

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1 MR. MORDPHIN: -- floor plan. So, we
2 don't know the exact size of the area that's available
3 for that in order to try and refine the number 30.

4 COMMISSIONER MAY: Right. So, you -- you
5 basically took the 30 from what the applicant had
6 provided?

7 MR. MORDPHIN: Yes.

8 MR. COOK: No.

9 MR. MORDPHIN: Sorry.

10 COMMISSIONER MAY: Okay. Where did you
11 get the --

12 MR. COOK: The -- the -- Planning, you all
13 told me I needed 30.

14 MR. MORDPHIN: Is it Office of Planning or
15 Office of Zoning told you you needed 30?

16 MR. COOK: No, Office of Planning. There
17 is a letter in my file -- there -- there is a letter
18 from -- from planning that said you need 30 spaces and
19 I got that information from the area over on H Street
20 where they have all the maps. You go in and get --
21 that's Planning. Right?

22 MR. MORDPHIN: On H Street? H?

23 MR. COOK: H. Yes.

24 MR. MORDPHIN: Oh, yes. North -- yes,
25 North Capitol and H is Office of Planning. Yes.

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1 MR. COOK: Yes, they said that's what I
2 needed was 30 spaces and I had to -- I had to ask
3 Zoning -- I had to ask Zoning to allow me to use 30
4 spaces, but I was told by Planning.

5 MR. MORDPHIN: I -- I don't have a copy of
6 that letter and I was not aware of that. So, I don't
7 know who made that calculation that they used.

8 MR. COOK: Okay.

9 MS. BAILEY: Mr. Chairman, I believe the
10 applicant is referring to the Zoning Administrator's
11 referral letter.

12 CHAIRPERSON GRIFFIS: Oh, right.

13 MS. BAILEY: And it does indicate on that
14 that 30 parking spaces are needed.

15 CHAIRPERSON GRIFFIS: There we have
16 clarity.

17 MR. COOK: Okay.

18 CHAIRPERSON GRIFFIS: Thank you very much.

19 MR. COOK: Oh, it was Zoning then?

20 CHAIRPERSON GRIFFIS: Okay. So, the
21 Zoning Administrator indeed which is Exhibit Number 5
22 would have indicated in their spreadsheet exactly
23 parking spaces. Provided zero. Variance of 30.
24 Right.

25 MR. COOK: Okay.

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1 CHAIRPERSON GRIFFIS: I'm not sure how
2 that can be.

3 COMMISSIONER MAY: Yes, it's just hard to
4 know if that's really accurate.

5 CHAIRPERSON GRIFFIS: I -- just looking at
6 this very roughly, taking the dimensions if they're --
7 if they're correct, whether they are or not, I don't
8 know. I get about 815 square feet of assembly or
9 occupiable space.

10 COMMISSIONER MAY: That's --

11 CHAIRPERSON GRIFFIS: That would then be
12 divided by seven.

13 COMMISSIONER MAY: Is that on both floors?

14 CHAIRPERSON GRIFFIS: Yes.

15 COMMISSIONER MAY: 815?

16 CHAIRPERSON GRIFFIS: Yes.

17 COMMISSIONER MAY: Okay.

18 CHAIRPERSON GRIFFIS: Second and -- and --
19 and first. I get 650 on the first -- rather second
20 and about 165 on the first.

21 COMMISSIONER MAY: yes.

22 CHAIRPERSON GRIFFIS: These are very rough
23 approximates.

24 COMMISSIONER MAY: Sure.

25 CHAIRPERSON GRIFFIS: Because it's a

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1 triangle shape and all that.

2 COMMISSIONER MAY: Yes.

3 CHAIRPERSON GRIFFIS: Which lends itself
4 of a population of 116. So, 815 divided by 7 square
5 feet --

6 COMMISSIONER MAY: Right.

7 CHAIRPERSON GRIFFIS: -- is 116 which
8 would then be one per ten.

9 COMMISSIONER MAY: Per ten.

10 CHAIRPERSON GRIFFIS: So, that would be
11 divided by ten.

12 COMMISSIONER MAY: It would 12.

13 CHAIRPERSON GRIFFIS: And it would be --
14 it's -- right. 11.6 would -- would be 12 spaces
15 required. Okay.

16 Just noting that is -- is -- is there a --
17 is there any difference in the Office of Planning's
18 perspective of the impact or is it similar in terms of
19 the required and the use and all that?

20 MR. MORDPHIN: Well, it would be reducing
21 it from 12 to zero rather than from 30 to zero.

22 CHAIRPERSON GRIFFIS: Right.

23 MR. MORDPHIN: And the impact, also Mr.
24 Cook has indicated that the use is not really
25 changing. That this use has been going on in the

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1 exact same way for a number of years. That there's
2 not -- he's not adding the use as a result of this.
3 That he's trying to rectify.

4 MR. COOK: Yes, and that's what -- good.
5 Because that was a -- a point I did want to clarify
6 with you is that I heard you say that in addition to.
7 It's not in addition to. It's already there. We've
8 been doing it like this all the time, but we just
9 didn't have the right paperwork I guess to -- to do
10 it.

11 MR. MORDPHIN: So, based on that since
12 it's been operating this way, we've not heard from
13 DDOT as to whether or not there's any issue with
14 transportation. We've not heard from the ANC
15 indicating that they, because I tried to contact them
16 also, have a problem with this. So, not knowing of
17 any adverse impact on the neighborhood, I think the
18 reduction from 12 to zero, the Office of Planning
19 would not have an issue with that unless we're aware
20 of any adverse impact on the neighborhood.

21 There are three parking spaces. I'm not
22 sure that those three parking spaces meet the zoning
23 code because they -- you can't access the property
24 from the alley because of the point and I think --

25 MR. COOK: I park in there everyday for

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1 the last 13 years.

2 MR. MORDPHIN: Oh, I'm not --

3 MR. COOK: No, but it -- it takes a little
4 effort.

5 CHAIRPERSON GRIFFIS: Maybe there's a
6 difference. What Office of Planning is stating
7 there's a difference between what is usable, but what
8 actually fulfills the requirements.

9 MR. COOK: Right. Right.

10 CHAIRPERSON GRIFFIS: And -- and that is a
11 big difference.

12 MR. COOK: Right.

13 MR. MORDPHIN: And you can't park in the
14 front -- between the area between the front of a
15 building and the park. So --

16 CHAIRPERSON GRIFFIS: Right.

17 MR. MORDPHIN: -- you can't count those
18 three parking spaces.

19 CHAIRPERSON GRIFFIS: Well, not to mention
20 it's off their property.

21 MR. MORDPHIN: Right. It's also within
22 public space.

23 CHAIRPERSON GRIFFIS: Right.

24 MR. COOK: Oh, okay.

25 MR. MORDPHIN: So, Office of Planning

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1 can't count those three as --

2 MR. COOK: Yes.

3 MR. MORDPHIN: -- contributing towards the
4 parking requirement.

5 CHAIRPERSON GRIFFIS: Okay. Yes.

6 MEMBER MILLER: I've heard different
7 things being testified to with respect to whether
8 there's been in a change in use. I heard you earlier
9 say there was an expansion of use to include live
10 entertainment. Then I heard Mr. Cook say that the use
11 hasn't changed. They've had this live entertainment
12 for 13 years or something to that effect.

13 Does -- what's your position? Do you --
14 has there been a change in use or -- or not?

15 MR. MORDPHIN: Well, Office of Planning --
16 initially, we thought that this was going to be a
17 change in the use. Based on what Mr. Cook has said
18 here today that it's not a change in use, I was just
19 going to base my opinion on what Mr. Cook has
20 testified to in front of the Board this morning.

21 MEMBER MILLER: So -- so, if there's not
22 been a change in use, is there no parking required
23 then?

24 MR. MORDPHIN: No, I think the parking is
25 still required. I don't know when -- when the live

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1 entertainment came about, but since it apparently has
2 been operated this way for some time, I think the
3 addition of the live entertainment is not going to
4 change anything because it's not really in addition.
5 It's just rectifying how he has been operating for a
6 number of years.

7 MR. COOK: Yes.

8 MR. MORDPHIN: So, it's not going to
9 change the impact on the neighborhood --

10 MEMBER MILLER: Right. But --

11 MR. MORDPHIN: -- by charging for
12 admission at this time.

13 MEMBER MILLER: For there to be no parking
14 required, they would have had to have this use prior
15 to 1958.

16 MR. MORDPHIN: Correct.

17 MEMBER MILLER: Right? Okay. And is OP
18 of the opinion though that it would support the
19 variance only if there was a formal parking agreement
20 in place with D.C. Public Schools or have you changed
21 on that?

22 MR. MORDPHIN: Well, we would like -- that
23 would be nice to have if there were a formal parking
24 agreement. Because that would minimize to the extent
25 possible any impact on the neighborhood because there

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1 would be -- with 12 parking spaces and the 26 that are
2 provided within the school parking lot, that would
3 just minimize it to the extent possible and, you know,
4 all 12 would be able to be provided there and there
5 would be no way that the parking requirements would
6 not be met at all.

7 MEMBER MILLER: Okay. I can see that you
8 recommend that. Would you --

9 MR. MORDPHIN: Right. That's how we
10 recommended it in the report. We wanted to get as
11 many off the street as possible.

12 MR. COOK: Right.

13 MR. MORDPHIN: If this is going to be a
14 new use. Since it's not a new use, I think that
15 that's less important because if it's been operating
16 this way for some time, parking there without the off
17 street parking. They've been parking on -- on the
18 street. Then, I think that it's less important
19 because the 12 parking spaces have been used on the
20 street for the number of years without adversely
21 impacting the neighborhood.

22 CHAIRPERSON GRIFFIS: But, is there not --
23 is -- conceivably, we can't acknowledge the changing
24 demand on street parking or is there a lessening
25 demand on street parking?

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1 MR. MORDPHIN: I think if Mr. Cook has
2 been operating this way for a number of years, I think
3 it doesn't change the demand for the on-street parking
4 because --

5 CHAIRPERSON GRIFFIS: It doesn't.

6 MR. MORDPHIN: -- if the people have been
7 coming there for a number of years doing this and
8 parking there and he's just formalizing how --

9 CHAIRPERSON GRIFFIS: Right.

10 MR. MORDPHIN: -- with -- with the BZA how
11 he's been operating, I don't see that it changes it.

12 CHAIRPERSON GRIFFIS: But, he's also
13 counting on street parking. The public street
14 parking.

15 MR. MORDPHIN: The public street parking.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. MORDPHIN: If --

18 CHAIRPERSON GRIFFIS: Mr. Cook, you
19 indicated that you made a statement that this
20 neighborhood has been changing and that has changed
21 some of the --

22 MR. COOK: Yes, the --

23 CHAIRPERSON GRIFFIS: -- what are some of
24 the other changes that are happening around your --

25 MR. COOK: Well, when I -- my -- the --

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1 the main change pretty much is the change, you know,
2 of the -- of the groups -- ethnic groups. Their
3 homes, et cetera.

4 Now, there is another change that has
5 occurred just across the street up is there -- two
6 buildings are now being converted to condos.

7 CHAIRPERSON GRIFFIS: And what were they
8 before?

9 MR. COOK: They were single -- the first
10 building was a -- was an apartment building. The
11 other house was a single-family home.

12 CHAIRPERSON GRIFFIS: So, there's
13 construction happening in the area?

14 MR. COOK: Oh, yes. Oh, yes. Yes, it's
15 construction.

16 CHAIRPERSON GRIFFIS: And is that density
17 increasing or is it decreasing? Is it staying the
18 same?

19 MR. COOK: No, I think the construction is
20 going to increase because this block that is
21 immediately across from our little business strip,
22 there are a lot of old homes there and they are
23 restructuring them. They look like everybody's going
24 toward condos. Taking the basement, middle level, and
25 the top and making two and three condos --

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. COOK: -- out -- out of those.

3 CHAIRPERSON GRIFFIS: Wouldn't that put
4 more cars in competition for street parking?

5 MR. COOK: Well, I -- you know, I don't
6 know. I have not -- now, the -- the building on the
7 far end up that, now, that apartment building is full
8 and I -- or condo full and I think there has to be at
9 least ten or 12 units in there. I have not seen any
10 change and the reason I'm fairly comfortable in saying
11 that is because when I've gone out as a result of
12 having to come here today, I've gone out at night,
13 I've gone back up like 10:00/11:00 and watched the
14 pattern of parking and I've just not seen any -- any
15 difference in it over the years that we have, you
16 know, we have -- we have been there.

17 Now, the other thing that I -- I called to
18 Planning's attention earlier is -- is in my paperwork,
19 too. Is that I think what -- what is also happening
20 is that the street parking is lessening itself because
21 all of the homes right on Kenyon Street, they have
22 started redoing their garages and what they're now
23 doing is -- is parking their cars in the -- in the --
24 in the garages. Because I've been trying to rent a
25 couple them, but they won't rent them.

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1 CHAIRPERSON GRIFFIS: Okay. Anything else
2 from Office of Planning? Oh, or yes, Ms. --

3 MEMBER MILLER: Mr. Cook, okay, I just
4 want to make sure I've -- I've nailed this issue down.

5 MR. COOK: Sure.

6 MEMBER MILLER: You know, I was looking at
7 whether there's been a change of use and I think we
8 clarified the -- in the last 13 years, there hasn't
9 been a change of use.

10 MR. COOK: Right.

11 MEMBER MILLER: In OP's report, they say
12 that the restaurant/bar was established in 1954 prior
13 to the adoption of the zoning regs in 1958. Can you
14 say whether or not there was the same use with respect
15 to live entertainment going back to that date?

16 MR. COOK: Now, if you go back to '54, I
17 can't say that. Now, I've talked to a gentleman about
18 it and I know one year they tell me there was a
19 cleaners there, but we -- we -- I've tried to piece
20 the history together and -- and I'm missing a year.

21 But, I know for 20 years, let's see 13,
22 20, 25 years that we've had -- had entertainment.
23 Okay.

24 CHAIRPERSON GRIFFIS: Mr. Cook.

25 MR. COOK: Yes, sir.

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1 CHAIRPERSON GRIFFIS: This is what I'd
2 like to do at this point. First of all, Mr. May
3 astutely found that, in fact, what you're here for in
4 terms of count is probably not correct. What we're
5 going to need to do is this. We need to get the --
6 the correct count so that we're all -- I've thrown out
7 12 parking spaces, but we need to know exactly what it
8 is so we can all factor into it.

9 We're going to ask several things. First
10 of all, we're going to ask Office of Planning to -- to
11 look at that based on the testimony that we've had
12 today and if they are so motivated to reissue a
13 supplemental report on this application.

14 We will also in the meantime contact the
15 ANC to see if they have any comment in regard to this
16 application, but the critical piece is just getting
17 the right calculation. So, we know what we're
18 actually talking about or what we're discussing.

19 And then if there -- in that -- well,
20 there it is.

21 Let's go to schedule then and see how we
22 proceed with this.

23 I think -- let me hear quickly from the
24 Board members whether we need to continue this in
25 hearing form or whether we would just go to decision

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1 making on this with the additional information,
2 additional submissions. I think it's probably best to
3 do it as a public meeting and go to deliberation and
4 find and we'll have the factual information into the
5 record. I think we've gone through everything that
6 has been submitted on this.

7 There is a note. There is a letter of
8 objection in this application. I'm not sure if you
9 are aware of it. Mr. Seawell. It's in the record.
10 You may want to review that.

11 MR. COOK: No, I remember seeing that.
12 Right. Okay.

13 CHAIRPERSON GRIFFIS: And brings up quite
14 a few points of complaint. So, with that, I think we
15 can keep the record open for any sort of -- oh, yes.
16 Any sort of additional written submission that you
17 wanted to make in terms of conclusion or addressing
18 it, but so, noting that to the Board if there's no
19 objection, I think that's the way we proceed.

20 So, let me allow Board members if they
21 have follow-up questions or continuing questions to
22 get them answered now. As if we set this to a public
23 meeting, there will not be time for that.

24 MR. COOK: Okay.

25 CHAIRPERSON GRIFFIS: Ms. Miller.

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1 MEMBER MILLER: Mr. Cook, I just wanted to
2 give you the opportunity to finish your answer to my
3 question. I know that the Chairman and I started
4 conversing for a minute while you were answering.

5 MR. COOK: Oh, yes.

6 MEMBER MILLER: About the history of this
7 property as to its use.

8 MR. COOK: Right.

9 MEMBER MILLER: Particularly with respect
10 to live entertainment and how far back that went.

11 MR. COOK: Now, I can -- I can assure you
12 that 30 years it has happened. I -- I can't go back
13 to -- to the '50s because in my conversation with one
14 of the gentlemen that was around at that time, I know
15 there was a cleaner there for a couple of years, but I
16 do know for about 30 years there has been
17 entertainment at that location. Bar/restaurant
18 entertainment.

19 Let's see. I've had it for 13. Kelley --
20 no, that's 23 years. It's 13 and he had it ten. So,
21 but I -- but I didn't know the previous owners.

22 So, I can't -- I can probably do enough
23 research to find out when it -- but, I just don't know
24 that for a fact as we speak right now.

25 MEMBER MILLER: Okay. So -- so, would you

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1 concur with OP's statement that the restaurant/bar was
2 established in 1954?

3 MR. COOK: Oh, yes.

4 MEMBER MILLER: But, are you saying at
5 some period in between '54 and the present there was a
6 cleaners?

7 MR. COOK: I think it was in '54 when it
8 first opened.

9 MEMBER MILLER: No, but you remark about
10 how it was a cleaners at one point. Is that before
11 '54 or after '54?

12 MR. COOK: You know, I thought it was like
13 -- when they started it was a restaurant/bar. Then it
14 changed like '54/'58 for a cleaners for a couple of
15 years and then it went back to its bar status and I
16 understood that the owner at that time had some kind
17 of complications with the license at that time.

18 But, I just can't verify exactly what
19 happened from '54 up until 1960 in terms of all of the
20 activities there.

21 MEMBER MILLER: Okay. Thank you.

22 MR. COOK: Right.

23 CHAIRPERSON GRIFFIS: Good. Anything
24 else? Follow-up questions?

25 Mr. Cook, anything else you'd like to

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1 conclude with at this point?

2 MR. COOK: No, that's all, sir.

3 CHAIRPERSON GRIFFIS: Okay. We do
4 appreciate your patience.

5 MR. COOK: All right.

6 CHAIRPERSON GRIFFIS: And what I'd like to
7 do is set this for a special public meeting on the
8 13th of January and what I'd ask is if you wanted --
9 if you would, Mr. Cook, you can coordinate. End
10 result, we need to know exactly what the -- how many
11 parking spaces a variance is being requested for?

12 MR. COOK: Is required. Right?

13 CHAIRPERSON GRIFFIS: I would offer you
14 the great expertise of Office of Planning if you want
15 it --

16 MR. COOK: Okay.

17 CHAIRPERSON GRIFFIS: -- or Office of
18 Zoning to do those calculations. It shouldn't be that
19 difficult, but what you're going to need to provide is
20 the actual square footage in the building that is used
21 for the assembly space.

22 MR. COOK: Oh, the assembly space itself.
23 Okay.

24 CHAIRPERSON GRIFFIS: And then that will
25 make a very quick calculation.

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1 MR. COOK: And that will -- that will need
2 to be certified like an engineer or architect. Oh, I
3 can measure it myself. Okay.

4 CHAIRPERSON GRIFFIS: With some
5 reliability, yes.

6 COMMISSIONER MAY: Yes, I mean if you can
7 produce a -- a drawing that shows what you measured.
8 Like take the plans that we have and show the -- show
9 the calculations. I think that would probably be
10 okay.

11 CHAIRPERSON GRIFFIS: Yes.

12 COMMISSIONER MAY: Or you could have an
13 architect or an engineer do it.

14 And the assembly space does include, you
15 know, places where you have chairs and tables.

16 MR. COOK: It does include?

17 COMMISSIONER MAY: It does include the
18 chairs and tables.

19 MR. COOK: Okay. Okay.

20 COMMISSIONER MAY: It wouldn't include a
21 stage, bathrooms, kitchen, you know, behind the bar or
22 any of that sort of stuff.

23 MR. COOK: Okay.

24 COMMISSIONER MAY: But, anyplace where
25 somebody could stand, sit, eat.

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1 MR. COOK: Stand, eat, too.

2 COMMISSIONER MAY: You know, if the -- if
3 the seats were fixed, it would be a different thing.
4 Fixed meaning bolted to the floor.

5 MR. COOK: Right. We move them all the
6 time.

7 COMMISSIONER MAY: But, if you move them,
8 then it's part of the assembly space.

9 MR. COOK: Okay. Very good.

10 COMMISSIONER MAY: But, I'm sure if you
11 have any questions about that, Office of Planning can
12 fill you in.

13 MR. COOK: Okay. Great. All right.

14 CHAIRPERSON GRIFFIS: Excellent.

15 MR. COOK: All right.

16 CHAIRPERSON GRIFFIS: That being said, Ms.
17 Bailey.

18 MS. BAILEY: Mr. Chairman, I just want to
19 remind you that on the 13th you also have another a
20 special public meeting schedule and that is St.
21 Patrick's. So, this is going to be the second special
22 public meeting on the 13th.

23 CHAIRPERSON GRIFFIS: St. Patrick's is on
24 the 13th?

25 MS. BAILEY: Yes, sir.

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1 CHAIRPERSON GRIFFIS: Do it on the 20th.

2 Oh -- oh. No, that's okay. That -- that's fine.

3 MS. BAILEY: That's okay?

4 CHAIRPERSON GRIFFIS: Yes, the 13th.

5 MS. BAILEY: Okay.

6 CHAIRPERSON GRIFFIS: We can do this in a
7 hurry. St. Patrick's will take a little bit longer
8 than this.

9 MS. BAILEY: Mr. Cook, do you think you
10 can -- do you think you can get this information to us
11 by January 5th or earlier?

12 MR. COOK: Oh, yes, I'll -- I'll get --
13 I'll -- I'll start working on putting it together --

14 MS. BAILEY: Okay.

15 MR. COOK: -- this week. Oh, yes.
16 January 5th? By January 5th or earlier?

17 MS. BAILEY: Yes, sir.

18 MR. COOK: Okay.

19 MS. BAILEY: And also, the same obviously
20 would apply to the Office of Planning.

21 MR. COOK: Okay. Okay.

22 CHAIRPERSON GRIFFIS: Good. Everything
23 clear, Mr. Cook?

24 MR. COOK: Very clear.

25 CHAIRPERSON GRIFFIS: Dates? Okay. Let

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1 me just reiterate. Of course, on the 13th, that's a
2 special public meeting. You're not required to be
3 here. There won't be any additional testimony.
4 That's when the Board will take up all the information
5 on the record and deliberate and then decide either to
6 approve or to deny.

7 MR. COOK: Okay.

8 CHAIRPERSON GRIFFIS: So, you're perfectly
9 welcome to be here.

10 MR. COOK: Sure.

11 CHAIRPERSON GRIFFIS: But, we won't be
12 asking anything more of you on the 13th. So, the
13 critical piece is to get everything you want into the
14 record.

15 MR. COOK: Right.

16 CHAIRPERSON GRIFFIS: As Ms. Bailey has
17 indicated by the 5th and that way we'll be able to
18 have it.

19 MR. COOK: Very good.

20 CHAIRPERSON GRIFFIS: Great. Thank you
21 very much. Appreciate your patience.

22 MR. COOK: Yes.

23 CHAIRPERSON GRIFFIS: Is there anything
24 else attendant to the morning session that we need to
25 take care of?

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1 MS. BAILEY: No, sir.

2 CHAIRPERSON GRIFFIS: Very well. Then I
3 would adjourn the 9th of December 2003 public --
4 morning public hearing.

5 (Whereupon, the hearing was recess at
6 12:22 p.m. to reconvene this same day.)

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

1:35 p.m.

CHAIRPERSON GRIFFIS: Good afternoon, ladies and gentlemen. Let me call to order the afternoon session of the 9th of December 2003.

My name is Geoff Griffis. I am Chairman for today at least and joining me is Ms. Miller and representing the -- the National Capital Planning Commission is Mr. Zaidain.

Copies of today's hearing agenda are available to you -- for you. They are located where you entered into the hearing room. So, please pick one up. We have quite a few things on the agenda for this afternoon, but we will get through them expeditiously.

Let me just run through a couple of things for those who are not familiar with our proceedings and as a reminder for those who are familiar with our proceedings.

First of all, all public hearings before the Board of Zoning Adjustment are recorded. So, we ask several things of you.

First of all, I'd ask that everyone turn off all their cell phones and beepers so we don't have

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1 a disruption in the proceedings.

2 Also, you will need to fill out two
3 witness cards if you're going to present testimony
4 before the Board. Witness cards are available at the
5 door you entered into and also at the testimony table
6 in front of us. Two cards to be filled out prior to
7 coming forward and they are to be given to the
8 recorder who is sitting to my right.

9 Coming forward, please make yourself
10 comfortable. You will need to state your name and
11 your address for the record and the microphone should
12 be on when you say that, but we will give instructions
13 if it isn't.

14 The order for our proceedings for special
15 exceptions and variances is first a statement and
16 witnesses by the -- by the applicant.

17 Second will be any government reports
18 attended to the application. Those include such
19 reports as Office of Planning or Department of
20 Transportation.

21 Third we will have the report from the
22 Advisory Neighborhood Commission.

23 Fourth will be parties or persons in
24 support of an application.

25 Fifth would be parties or persons in

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1 opposition to the application.

2 And finally, we will have closing remarks
3 or any rebuttal witnesses by the applicant.

4 Cross examination of witnesses is
5 permitted by the applicant and parties in a case. The
6 ANC within which the property is located is
7 automatically a party in the case and, therefore,
8 would be able to cross examine witnesses.

9 Our record which will be established
10 during these public hearing proceedings will be closed
11 at the conclusion of the public hearing on an
12 application except for any material that is
13 specifically requested by the Board and we will be
14 very specific on what is to be submitted and when it
15 is to be submitted into the Office of Zoning. Of
16 course, it goes without saying that after that is
17 received the record would then be finally closed and
18 no other information would be accepted.

19 The Sunshine Act requires that this Board
20 conduct its hearings in the public and before the
21 public. However, this Board may consistent with the
22 Sunshine Act and its rules of procedure enter into
23 executive session. Executive sessions would be for
24 the purposes of reviewing a record and/or deliberating
25 on a specific case.

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1 The decision of this Board in contested
2 cases of which special exceptions and variances are
3 must be based exclusively on the record that we will
4 establish here before us today. So, in order to not
5 give the appearance of not deliberating solely on the
6 record, we ask that people present today not engage
7 Board members in any type conversation.

8 I have said please to turn off any cell
9 phones and beepers.

10 I think we're ready to proceed. We will
11 look to move expeditiously through our afternoon
12 schedule and I would like to hear if there any
13 preliminary matters for the Board's attention with any
14 application in the afternoon.

15 Preliminary matters are those which relate
16 to whether a case will or should be heard today such
17 as request for a continuance, postponement or whether
18 adequate and proper notice has been provided.

19 If you are not prepared to go forward with
20 a case that's scheduled for this afternoon or if you
21 believe the Board should not proceed with a case, now
22 would be the time to bring that to the attention of
23 the Board. I'll take it as an indication of someone
24 having a preliminary matter if they come forward and
25 make themselves comfortable in front.

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1 In the meantime, let me say good afternoon
2 to Ms. Bailey and Mr. Moy who are with the Office of
3 Zoning and ably assisting us in making sure we make
4 not catastrophic mistakes as we proceed with our
5 responsibilities.

6 Any preliminary matter that you're aware
7 of, Ms. Bailey?

8 MS. BAILEY: Mr. Chairman and to all, good
9 afternoon. No, sir, staff has none.

10 CHAIRPERSON GRIFFIS: Very well. Let's
11 call the first case in the afternoon then.

12 MS. BAILEY: And that is Application
13 Number 17080 of the Asian American LEAD, pursuant to
14 11 DCMR 3104.1 for a special exception to allow the
15 establishment of a community center under Section 209.

16 The property is located in the R-4 District at
17 premises 1323 Girard Street, N.W. Also known as
18 Square 2855, Lot 828.

19 Is there anyone here today who will be
20 testifying who was not sworn in previously? Anyone
21 needs to be sworn in on this case?

22 Members of the Board, as you know, this is
23 -- this is a continued case from last week, December
24 2nd, and I believe the Board had requested some
25 information. That information has been filed in the

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1 record and as I indicated, this is the continuance.

2 CHAIRPERSON GRIFFIS: Good. Thank you
3 very much.

4 Very well. Just to clarify for the
5 record, we did get the additional submission which
6 included plans and site plan that indicated where
7 parking would be provided.

8 I would suggest that we have the applicant
9 come up briefly and just walk through that, take any
10 questions from the Board, and any cross examination
11 based on that submission by the party in opposition
12 which was established at our last hearing and then, we
13 will get back into the order that we had established
14 previously.

15 So, if you're ready, who was going to
16 speak to that?

17 MR. BUI: Good afternoon, Mr. Chairman and
18 all the Commissioners.

19 Thank you for having us back this week.

20 CHAIRPERSON GRIFFIS: You're very welcome.

21 MR. BUI: Yes, thank you. My name is Hung
22 Bui. I'm the Co-chair of the Board of Director Asian
23 American LEAD and with me is Sandy Dang who is a
24 founder and Executive Director, Asian American LEAD.
25 Behind us in the hearing room, we have a number of

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1 people who are very important to Asian American LEAD
2 which I'd like to make introductions and I might be
3 calling upon to testify if necessary.

4 In the back there, we have Mr. Bob Myers
5 who's the Co-Chair -- my Co-Chair of Asian American
6 LEAD who might be called and the lawyers, Mr. Eric Von
7 Salzen who's a partner of law firm Hogan & Hartson and
8 Ms. Kerri Sikorski is an associate there. They are
9 representing Asian American LEAD on pro bono basis.

10 Also with us is Mr. Allen Mushinsky who is
11 the architect that might be called if necessary when
12 respond to your specific request.

13 As you know, we submitted the three items
14 that you requested and -- and I -- I actually have an
15 additional petition with signatures among our
16 neighbors and also a letter -- a supplemental letter
17 from the Easter Seal which allowing us to -- to rent
18 the two parking -- additional parking space as long as
19 we need them and I'd like to submit them for the
20 record for purpose of completeness.

21 CHAIRPERSON GRIFFIS: Yes. Can you also
22 provide them to the parties?

23 MR. BUI: Yes. Sure. One to -- to her
24 and here another copy.

25 CHAIRPERSON GRIFFIS: Okay. We're looking

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1 at more pages to the --

2 MR. BUI: Yes, the -- the petitions are
3 all our neighbors. I think we got roughly --
4 practically everybody in our blocks and the -- the two
5 adjacent blocks except for one person. We didn't know
6 who it is.

7 And we also have a supplemental lease
8 agreement with the Easter Seals.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. BUI: Which allowing us to use -- rent
11 the two parking space in their parking lot as long as
12 we need them and they also emphasize that that is no
13 duplication. They are renting the same -- they're not
14 renting the same parking space to different
15 organizations.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. BUI: I think that's important fact to
18 be --

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. BUI: -- placed in the record.

21 CHAIRPERSON GRIFFIS: Let me address the
22 petition first so that we don't go through hours of
23 cross examination on it.

24 MR. BUI: Okay.

25 CHAIRPERSON GRIFFIS: Petition reads "We,

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1 the undersigned, would like to express our full
2 support for the presence of the Asian American LEAD in
3 our neighborhood."

4 First of all, the public hearing isn't
5 about whether you're able to be in the neighborhood or
6 not. It has to do with zoning issues.

7 MR. BUI: Right.

8 CHAIRPERSON GRIFFIS: So, clearly the
9 folks -- or you tell me in speaking with these and
10 getting the signatures, did you explain what the
11 special exception case was that was now being
12 presented before the BZA?

13 MS. DANG: Yes, I did. I went door to
14 door and explained to them that it was before zone was
15 the church and now, we would like to exchange the
16 zoning to a community center.

17 CHAIRPERSON GRIFFIS: Yes.

18 MS. DANG: And we explained the purpose of
19 why we there and tell them that -- what we need their
20 support in -- support of our -- our community center.

21 So, I did explain to them very clearly the
22 purpose of the -- why they sign --

23 CHAIRPERSON GRIFFIS: Okay. So, it's your
24 testimony that not only do they support your efforts,
25 but they also support your application in getting

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1 relief --

2 MR. BUI: Yes.

3 CHAIRPERSON GRIFFIS: -- or a special
4 exception granted.

5 MR. BUI: Absolutely.

6 MS. DANG: Yes.

7 CHAIRPERSON GRIFFIS: I see. Okay.

8 MR. BUI: Okay. If -- if you take a look
9 at that petition, we -- again we practically all our
10 neighbors including the --

11 CHAIRPERSON GRIFFIS: Right.

12 MR. BUI: -- Mr. Bill --

13 CHAIRPERSON GRIFFIS: Yes.

14 MR. BUI: -- Shortinghouse is here.

15 CHAIRPERSON GRIFFIS: Let's not take a lot
16 of time on it.

17 MR. BUI: Okay. Let's not go through that
18 again.

19 Let me get back to the -- the -- the
20 important issue of parking space.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. BUI: Okay. You have before you is
23 the two proposed solutions in compliance with the
24 rule. Okay. And the -- the relevant objections under
25 the zoning regulation is 2101.1 and -- and that

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1 particular provision require that for a community
2 center of this type one parking space for each ten
3 seats of occupancy, capacity for the first 10,000
4 seats and the only space in the house, in our -- in
5 the building usable for that purpose is the main
6 assembly room and that room is approximately 412
7 square feet of space and if you do the calculation, we
8 got six parking space require.

9 And our proposed solution in compliance
10 with that rule if you take a look at the drawing A1 --
11 yes, A1, the main assembly room is on the first floor.

12 Right. A2 rather. The main assembly room has 412
13 square feet. Okay.

14 And under that -- the size of that room,
15 we are required to provide roughly six parking space
16 and our proposed solution to this particular -- in
17 compliance with this particular provision is that we
18 are going to allocate because of the size -- the width
19 of the building, it's about basically 40 square feet,
20 we going to have four parking space allocated in the
21 back of the house and because in the back of the
22 house, there is a -- is an alleyway there and we also
23 make provision for the handicap space.

24 So, we -- we have a total of five that
25 basically right next or adjacent to the -- to the

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1 building and then two additional parking space that we
2 rented from Easter Seals.

3 CHAIRPERSON GRIFFIS: Okay. Let me ask
4 you a couple quick questions. I think the Board
5 understands fully what was submitted and first of all,
6 there's no access to those -- those four parking from
7 the alley or there is --

8 MR. BUI: There is.

9 CHAIRPERSON GRIFFIS: -- that's how you
10 access it?

11 MR. BUI: Yes.

12 CHAIRPERSON GRIFFIS: And so, your
13 handicapped actually is accessed from the street?

14 MR. BUI: Yes.

15 CHAIRPERSON GRIFFIS: So, you're -- you're
16 -- you're removing that retaining wall --

17 MR. BUI: Right.

18 CHAIRPERSON GRIFFIS: -- that was
19 existing?

20 MR. BUI: Absolutely.

21 CHAIRPERSON GRIFFIS: And parking four off
22 of that.

23 MR. BUI: And, of course, if the -- if the
24 handicapped parking space not being used, then you can
25 go in and out on the side from the front.

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1 CHAIRPERSON GRIFFIS: Right. Do you see
2 any difference between the parking requirement for
3 community center and churches?

4 MR. BUI: Not that I'm aware of.

5 CHAIRPERSON GRIFFIS: How about your
6 attorney? Is he aware of --

7 MR. VON SALZEN: No, Mr. Chairman.

8 CHAIRPERSON GRIFFIS: Is it -- well, let's
9 look at it. Let's not be indirect. Shall we?

10 MR. BUI: Yes. Yes. Absolutely.

11 CHAIRPERSON GRIFFIS: Do you have the
12 regulations in front of you?

13 MR. BUI: Yes, I do.

14 CHAIRPERSON GRIFFIS: Okay. Here's the
15 issue I think the Board is very concerned with. First
16 of all, there's an existing C of O for a church.

17 MR. BUI: Right.

18 CHAIRPERSON GRIFFIS: You had a new C of O
19 issued for a church function. The last testimony that
20 was given in this hearing was that you are not a
21 church. Is that correct?

22 MR. BUI: Yes. Yes, we are not.

23 CHAIRPERSON GRIFFIS: And, therefore, we
24 would anticipate that a certificate of occupancy would
25 be forthcoming for you to maintain and establish the

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1 community center.

2 MR. BUI: Right.

3 CHAIRPERSON GRIFFIS: Right? Now,
4 according to the regulations and -- and how -- let's
5 just say in layman's terms. How things work.

6 MR. BUI: Yes.

7 CHAIRPERSON GRIFFIS: An existing
8 certificate of occupancy which would have been granted
9 for a church would have come under the review of
10 parking requirements that was established. I forget
11 how long ago it was established, but it was an
12 existing, continuing use.

13 As you have come in, there would be an
14 evaluation for the parking requirement based on the
15 addition of intensity of use. Meaning if we look at
16 past, that there was a church use and the parking
17 calculated based on that, based on the existing
18 structure, you can take a credit for the parking that
19 was established for the church for this facility.

20 MR. BUI: Yes.

21 CHAIRPERSON GRIFFIS: Therefore, we need
22 to factor that into the community service center or
23 the community center. So, what I am trying to elicit
24 from you is what is the difference in count from one
25 parking to the other and it seems to me from my review

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1 of -- of the regulations that they are identical.

2 Meaning there would not be an additional parking
3 requirement for this facility at this time.

4 MR. BUI: That's our understanding.

5 CHAIRPERSON GRIFFIS: Okay.
6 Clarifications? Questions from the Board?

7 MR. BUI: And -- and if I -- if I might
8 add, I -- I want to state that even though the C of O
9 of the previous owner, the Sojourners, were designated
10 for the church use, it was operating as a community
11 center the whole time it was there.

12 CHAIRPERSON GRIFFIS: Yes. Well, we can't
13 go back there --

14 MR. BUI: Yes, of course. Of course.

15 CHAIRPERSON GRIFFIS: -- amid past
16 mistakes.

17 MR. BUI: Of course. Right. Absolutely.
18 But, in that -- our intention is to -- is to comply
19 with all the rules.

20 CHAIRPERSON GRIFFIS: Right.

21 MR. BUI: And the rules as we understood
22 it --

23 CHAIRPERSON GRIFFIS: Indeed.

24 MR. BUI: -- we believe we have complied.

25 CHAIRPERSON GRIFFIS: Indeed. Now,

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1 parking still is a factor and it's an integral -- an
2 important issue in the special exception case.

3 MR. BUI: Yes.

4 CHAIRPERSON GRIFFIS: Just clearly and as
5 you are well aware in a special exception, we're
6 looking for evidence of any sort of potential adverse
7 impact or well, there it is and one of which has been
8 brought to light in this application is parking and I
9 think you are addressing it and, of course, special
10 exceptions can have conditions and conditions would
11 then work towards mitigating any potential for adverse
12 impact.

13 So, that being said, I think we -- we
14 should look at what you have proposed and are actually
15 submitting to do in terms of providing the required
16 parking on site as one of the factors in our
17 deliberation of how it will or tend to diminish the
18 potential for adverse impact.

19 Okay. Follow-up questions? Yes, Mr.
20 Zaidain.

21 MEMBER ZAIDAIN: Actually, I just want to
22 ask a quick question about -- about the parking spaces
23 themselves and -- and the site plan that we received.

24 You're going to be putting up a new
25 retaining wall around the end of the site? Kind of

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1 boxing in --

2 MR. BUI: Can I call Mr. Allen?

3 MEMBER ZAIDAIN: Sure. Absolutely.

4 MR. BUI: Do you have this, Allen?

5 MR. MUSHINSKY: My name is Allen
6 Mushinsky. For the record, I'm the architect for this
7 project. Principal with Mushinsky Volsky Associates
8 in Bethesda, Maryland.

9 What -- there is a grade change between
10 the alley and the back yard.

11 MEMBER ZAIDAIN: Okay.

12 MR. MUSHINSKY: And it's approximately 4
13 to 5 feet.

14 MEMBER ZAIDAIN: And that's -- that's
15 currently supported by a stone wall?

16 MR. MUSHINSKY: At the -- at the property
17 -- at the alley, there is a wall there.

18 MEMBER ZAIDAIN: Okay.

19 MR. MUSHINSKY: The proposal is to remove
20 the wall, excavate the area level or slightly sloping
21 from the alley.

22 MEMBER ZAIDAIN: Yes.

23 MR. MUSHINSKY: And then build a new
24 landscape tie wall and -- and probably with the
25 proposed fence on top eventually. Put steps in to

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1 make up the difference so people parking there can
2 walk up.

3 MEMBER ZAIDAIN: Yes.

4 MR. MUSHINSKY: And that would take care
5 of the four spaces.

6 MEMBER ZAIDAIN: Right.

7 MR. MUSHINSKY: It would require a sloping
8 wall on the east and west just to compensate for
9 grades because --

10 MEMBER ZAIDAIN: Sure.

11 MR. MUSHINSKY: -- there's a slope to the
12 site --

13 MEMBER ZAIDAIN: How high would the --

14 MR. MUSHINSKY: -- and adjacent sites.

15 MEMBER ZAIDAIN: -- how high would the
16 southern portion -- how -- how high would the
17 retaining wall in the southern portion be?

18 MR. MUSHINSKY: The long wall which is
19 where the steps are --

20 MEMBER ZAIDAIN: Right.

21 MR. MUSHINSKY: -- the -- we haven't
22 gotten the total grading survey, but by some basic
23 field measurement --

24 MEMBER ZAIDAIN: Right.

25 MR. MUSHINSKY: -- it'll be between 4 feet

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1 and 5 feet high.

2 MEMBER ZAIDAIN: Okay. And the stairs
3 would --

4 MR. MUSHINSKY: On the alley side
5 obviously.

6 MEMBER ZAIDAIN: Right. And then the
7 stairs would compensate for getting people up to --

8 MR. MUSHINSKY: That's correct.

9 MEMBER ZAIDAIN: -- grade. Okay.

10 MR. MUSHINSKY: And it will take you up to
11 the -- where the handicapped space is located and that
12 space is, of course, straight drive-in from Girard.

13 MEMBER ZAIDAIN: From Girard. Right.

14 MR. MUSHINSKY: And it's directly level
15 where that little sidewalk that's shown on the plan
16 comes over the crosshatch to the proposed addition.

17 MEMBER ZAIDAIN: Yes.

18 MR. MUSHINSKY: That is actually where
19 handicapped access lift will be to get into the first
20 floor.

21 MEMBER ZAIDAIN: Okay. Okay. That's -- I
22 just wanted to make sure I understood the site plan.
23 Thank you.

24 CHAIRPERSON GRIFFIS: And are you securing
25 the back at all? Is that what you're proposing?

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1 MR. MUSHINSKY: I'm sorry.

2 CHAIRPERSON GRIFFIS: Is there any secured
3 portion of the back or is access straight in from the
4 alley?

5 MR. MUSHINSKY: The likelihood is there
6 will be a fence across the retaining wall --

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. MUSHINSKY: -- and a gate just to
9 protect the yard as opposed -- but, not to protect the
10 -- the parking spaces themselves.

11 CHAIRPERSON GRIFFIS: Right. Okay.
12 Obviously, I'm not sure we'd require that, but okay.
13 That makes a heck of a lot of sense. Certainly the
14 handicapped space being adjacent to the lift would
15 make some common sense also.

16 All right. So, for clarity, I think we
17 can certainly state and it is 2100.4 in the zoning
18 regulations that there would not be a required
19 variance for parking on this -- with this application.

20 So, let us proceed in that fashion.

21 As far as I understand unless there are
22 other questions from the submission from the applicant
23 at this point from the Board, we will go to cross
24 examination by the parties based on this information
25 and then we will go to the testimony in support and

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1 then we'll go to testimony in party's case in
2 opposition.

3 DR. BRIZILL: Good afternoon. My name is
4 Dorothy Brizill and I reside at 1327 Girard Street and
5 I am a party in this case.

6 I would like to ask Ms. Dang about the
7 petitions that have been submitted.

8 The first one -- first sheet I'd like to
9 ask you about is this particular one that we received
10 on Friday from your attorney and as you recall, at the
11 end of the hearing last Tuesday -- well, let me back
12 up. During the hearing last Tuesday, you indicated
13 that you had additional signatures, 15 to 20
14 signatures, which you seem to suggest you failed to
15 bring which you could submit for the record. Is that
16 correct?

17 MS. DANG: Yes.

18 DR. BRIZILL: Could you look at this --
19 these two pages that was submitted to us? All parties
20 were served with this on Friday from your attorney.

21 MS. DANG: Yes.

22 DR. BRIZILL: What's the date next to all
23 those signatures on that page -- on the first page?
24 On that first page.

25 MS. DANG: Ms. Brizill, I have -- I have

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1 my board co-chair Bob Myers. That a lot of these
2 signatures that we didn't submit on the date of the
3 hearing last time --

4 DR. BRIZILL: Ms. Dang, could you just
5 tell me what the date is on the signatures that
6 everyone has written next to their signature?

7 MS. DANG: And then on -- we did get
8 additional signatures on --

9 DR. BRIZILL: Ms. Dang.

10 CHAIRPERSON GRIFFIS: Yes, let's --

11 MS. DANG: -- December 3rd.

12 CHAIRPERSON GRIFFIS: -- just make it
13 quick questions for the answering effort.

14 DR. BRIZILL: Okay. Please just tell me
15 what is the date next --

16 CHAIRPERSON GRIFFIS: Actually, let me
17 interrupt here.

18 For everyone's understanding, cross
19 examination is for our purposes.

20 DR. BRIZILL: Yes.

21 CHAIRPERSON GRIFFIS: It's to elicit
22 information that we need.

23 DR. BRIZILL: Right.

24 CHAIRPERSON GRIFFIS: So, keep in mind if
25 there's a question, quick answer. Quick question,

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1 quick answer and we'll move on.

2 MS. DANG: December 3rd.

3 DR. BRIZILL: Okay. So, that would have
4 been the day after last Tuesday's hearing. Correct?

5 MS. DANG: Yes.

6 DR. BRIZILL: Okay. On the petition sheet
7 you've just provided us, could you just look at that
8 first covering sheet?

9 MS. DANG: Yes.

10 DR. BRIZILL: What are the dates next to
11 those signatures?

12 MS. DANG: December 3rd and December 4th.

13 DR. BRIZILL: You have six signatures at
14 the top and what address do those individuals give?

15 MS. DANG: 1308 Girard Street.

16 DR. BRIZILL: Are you aware of what 1308
17 Girard Street is?

18 MS. DANG: I think it's some kind of
19 organization.

20 DR. BRIZILL: It's a temporary halfway
21 house while kids are being adjudicated by the courts.
22 So, they're not residence.

23 CHAIRPERSON GRIFFIS: Is that your
24 understanding? Is that your understanding of what it
25 is?

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1 MS. DANG: No, I don't. I just --

2 CHAIRPERSON GRIFFIS: Okay.

3 MS. DANG: -- I just --

4 CHAIRPERSON GRIFFIS: The next question.

5 DR. BRIZILL: You knew it was an
6 institution then?

7 MS. DANG: I don't know what institution.
8 I just walk in there and I saw a few staff in there.
9 So, I just ask them to support our application.

10 CHAIRPERSON GRIFFIS: Okay. So, some --

11 DR. BRIZILL: You indicated that the rest
12 of these signatures were residents of the area. Page
13 three, four, five, and six, what does it say at the
14 head of that sheet? Right here. This paragraph. The
15 printed paragraph.

16 MS. DANG: As a member All Soul's Church.

17 DR. BRIZILL: So, those are the signatures
18 of members of All Soul's Church?

19 MS. DANG: Yes.

20 DR. BRIZILL: Okay. Thank you.

21 Mr. Chairman, in light of the fact that --

22 CHAIRPERSON GRIFFIS: You're not going to
23 cross examine me. Are you?

24 DR. BRIZILL: No.

25 CHAIRPERSON GRIFFIS: Okay.

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1 DR. BRIZILL: I'm just asking a question
2 for procedure.

3 CHAIRPERSON GRIFFIS: I --

4 DR. BRIZILL: Ms. Dang testified last
5 Tuesday --

6 CHAIRPERSON GRIFFIS: Yes.

7 DR. BRIZILL: -- that she had signatures
8 already, that they just failed to bring them and
9 instead what they did was after the hearing --

10 CHAIRPERSON GRIFFIS: I understand that.

11 DR. BRIZILL: -- they went out and got
12 additional signatures.

13 CHAIRPERSON GRIFFIS: Right.

14 DR. BRIZILL: And indeed these are not
15 most of the residents of the block.

16 CHAIRPERSON GRIFFIS: I think -- let me --
17 let me interrupt you because I think the Board itself
18 brought up concerns with the petition and the Board is
19 not unaware of petitions. I mean we get them all the
20 time and I think we have great sense looking at what
21 they are and what they represent which actually I
22 thought I was going to put a little bit to rest with
23 my own question and not going through all of it.

24 So, it's noted. We will take the
25 petitions for what they are.

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1 Again, it should be said. I don't think
2 I've said it in this case. It's -- this is not a
3 popularity contest. It's not how many hundreds come
4 in for and how many come in against and that would
5 make our job easy. Make everyone else's problematic
6 getting everyone down here, but the point being and
7 very seriously, is that we look to the substantive
8 issues especially under the special exception case of
9 what would create or not create adverse impact.

10 And the reason why we look for letters
11 from adjacent neighbors is for evidence of that. The
12 neighbors are going to be the ones that know better
13 than we do whether there is a potential for adverse
14 impact of whether there is not a potential for adverse
15 impact.

16 So, I can say in my personal capacity on
17 this Board petitions don't mean much to me. It
18 doesn't represent a whole lot. It also doesn't
19 represent a lot of factual basis. In -- in most of
20 the ones that I've seen signed, there isn't a case.
21 There isn't a test for a variance. The special
22 exception that everyone's reviewing and signing on.
23 But, they serve their purpose and we understand that.

24 So, anything else on that?

25 DR. BRIZILL: No, my point, Mr. Chairman,

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1 was simply the fact that as you've already articulated
2 this afternoon that the organization came in using the
3 C of O of a church.

4 CHAIRPERSON GRIFFIS: Yes.

5 DR. BRIZILL: And now, they testified last
6 Tuesday that they already had signatures and indeed
7 they did not and they went out the next couple of days
8 and got signatures.

9 CHAIRPERSON GRIFFIS: Okay.

10 DR. BRIZILL: So, I just wanted to bring
11 that to the Board's attention.

12 CHAIRPERSON GRIFFIS: That's fine.

13 DR. BRIZILL: Thank you.

14 CHAIRPERSON GRIFFIS: In your case
15 presentation which we're about to get to it, you --
16 you can certainly expand on that if you like.

17 Mr. Zaidain.

18 MEMBER ZAIDAIN: Well, I guess she -- she
19 mentioned something before she went into the statement
20 about the petitions, about the C of O. I don't -- I
21 don't -- I guess I'm unclear as to what the connection
22 between the C of O and the --

23 CHAIRPERSON GRIFFIS: Why don't we wait --

24 DR. BRIZILL: Truthfulness, Mr. Zaidain.
25 Truthfulness.

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1 MEMBER ZAIDAIN: Okay.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. BUI: Can I respond to that?

4 CHAIRPERSON GRIFFIS: No.

5 MR. BUI: Okay.

6 CHAIRPERSON GRIFFIS: In your closing you
7 can.

8 MR. BUI: Okay.

9 CHAIRPERSON GRIFFIS: In rebuttal
10 witnesses, you'll have the opportunity.

11 So, bringing this back to some semblance
12 of order, what we are now going to proceed with unless
13 there's any -- is the ANC represented today? Do you
14 have any cross examination on this new submission and
15 testimony. Okay. The ANC doesn't have any other
16 cross examination.

17 What I would like to do is call anybody
18 here in support. Persons in support of this
19 application. Anybody here to give testimony today?
20 That would be, of course, Application 17080.

21 If there is no one here to give -- yes,

22 UNIDENTIFIED SPEAKER: Mr. Chairman, I
23 gave supporting testimony on the last hearing.

24 CHAIRPERSON GRIFFIS: Oh, that's true.

25 Didn't we -- we went through that. Didn't we?

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1 UNIDENTIFIED SPEAKER: Yes.

2 CHAIRPERSON GRIFFIS: To make sure you all
3 didn't have to come back again. I'm terribly sorry.

4 MR. BUI: We can call him again, too.

5 CHAIRPERSON GRIFFIS: Yes.

6 MR. BUI: If necessary.

7 CHAIRPERSON GRIFFIS: No need.

8 MR. BUI: Okay. Great.

9 CHAIRPERSON GRIFFIS: Okay. In which case
10 then let me just for clarification, we'll go for
11 persons in opposition. Then we'll go for the party in
12 opposition case presentation.

13 At the conclusion of that, they will
14 present the case and conclude and then we will go to
15 the applicant for their rebuttal witnesses if there
16 are any. Cross examination of those rebuttal
17 witnesses and then closing.

18 So, is anyone here attendant to this
19 application to give testimony as persons in opposition
20 to the application? If not, we can go to the party's
21 presentation of their case.

22 Why don't you have a seat and make
23 yourselves comfortable?

24 MR. IMHOFF: Good afternoon, members and
25 staff members of the Board of Zoning Adjustment and

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1 neighbors at Asian American LEAD.

2 I am Gary Imhoff, 1327 Girard Street,
3 N.W., Washington, D.C.

4 DR. BRIZILL: And my name is Dorothy
5 Brizill. I also reside at 1327 Girard Street, N.W.

6 MR. IMHOFF: We are the next door
7 neighbors to this facility and we have lived at our
8 current address since 1982.

9 We're not here to speak about the program
10 of Asian American LEAD and we certainly do not
11 question the dedication of the applicants to their
12 program or to their clients.

13 However, we have a few problems with this
14 application. Most of which already came to this
15 Board's attention at the previous session on December
16 2nd.

17 First, the application was not properly
18 placarded. Although there is a photograph submitted
19 by the applicants showing the placard placed
20 prominently in front of the porch, the placard was
21 actually posted on the front of the building inside
22 the porch. Only someone who walked into the yard and
23 came onto the porch would be able to read it. We have
24 a photograph that shows this placement.

25 We did not raise this as a preliminary

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1 matter because we did not believe it was necessary to
2 postpone these hearings.

3 Second, the facility has been operating
4 for a number of months under Certificate of Occupancy
5 that applied for and received as a church even though
6 it is not a church and has no religious ties or aims.

7 As the applicant admitted at the previous
8 hearing, it made this deceptive application knowingly
9 simply because it would be more convenient and
10 speedier to apply as a church rather than to make a
11 proper application as a community center.

12 Third, the facility says in its
13 application that it will "Cater to approximately 160
14 residents and at any given time, there are 50 to 60
15 persons on site." To clarify, we believe that this
16 refers to residents of the community broadly defined
17 not residents of the house who are nonresident clients
18 of the facility.

19 In case, 1323 Girard Street, N.W. was
20 originally designed and built as a single family
21 house. This large number of people in the house for
22 several hours of each day strains and may well exceed
23 its capacity. The house does not have a fire escape
24 and the first-floor windows are barred. While we
25 believe this may be acceptable for a single-family

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1 house, we believe that it poses a fire danger for a
2 facility that accommodates a large number of people.

3 Four, the facility does not have adequate
4 parking as was pointed out at the previous hearing.
5 Stacked parking for four or at most if they are all
6 subcompacts. Fives cars in a driveway is not adequate
7 for this facility.

8 At present, staffers and visitors
9 sometimes squeeze out another parking space in the
10 driveway by parking across the sidewalk and they do
11 use street parking.

12 Fifth and finally, the immediate
13 residential community is inundated with an
14 inordinately large and burdensome number of
15 institutional uses. We are submitting to the Board a
16 partial list of some of these facilities today.

17 We believe that the BZA's duty to protect
18 the peace and quiet expected of a residential
19 community means that the BZA should place a greater
20 not a lesser emphasis on ensuring that additional
21 institutions that wish to locate in this neighborhood
22 should be unobtrusive, good neighbors.

23 We are here today as opponents of this
24 application. We are not, however, asking the BZA to
25 deny the application, but rather to place a few

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1 minimal reasonable restrictions and requirements on
2 granting it.

3 First, we believe that Asian American LEAD
4 should make an effort to provide parking spaces on its
5 own. The proposal that it submitted in its letter
6 dated December 5th which we received on December 6th
7 for four parking spaces in the rear of the facility is
8 a good first step.

9 It should be noted the construction of
10 these spaces is a major job since it requires grading
11 the back yard down several feet to the level of the
12 alley.

13 We do not believe that additional spaces
14 at the Easter Seals' facility is a workable
15 accommodation even though it superficially may seem to
16 be. Both because of the temporary nature of the
17 agreement between Easter Seals -- between the Asian
18 American LEAD and Easter Seals month-to-month
19 terminating on April 31st, 2004 and because Easter
20 Seals has entered into several agreements regarding
21 parking with several other institutions in the
22 neighborhood, over committing its parking spaces many
23 times.

24 We did not receive from the applicants
25 when we were served the letter that it has given to

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1 the Board today from -- from the Easter Seals'
2 children development center dated December 4th. I
3 note that this says the -- that the lease for two
4 spaces can be extended and we also note that it says
5 that the spaces rented by Asian American LEAD are
6 solely for their use.

7 I would like to question that. We have a
8 photograph of the -- or a couple of photographs of the
9 parking lot from just this weekend when, in fact, the
10 Easter Seals facility wasn't using any spaces itself,
11 but the lot was more than full. Every space was
12 filled and there were additional in lanes in the
13 parking space.

14 That lot is very heavily used and I
15 believe that the child development center has
16 agreements with facilities in addition to Second
17 Genesis that it mentions in its letter of December
18 4th.

19 Returning to my written testimony, we are
20 not committed to a particular number of parking
21 spaces, but if the Board settles on using the formula
22 in Section 2101.1 of the code that applies to arenas,
23 armories, assembly halls, et cetera, then it should
24 certainly not accept the applicant's contention that
25 people can only sit in one room of the house or that

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1 something in the other rooms of the house prevents
2 people from sitting in them.

3 Second, we believe that the BZA should
4 request the fire marshal to inspect the facility for
5 its true occupancy capacity as it is currently
6 configured. We have seen an artist's rendering of a
7 huge and inappropriately designed fire escape at the
8 rear of the building, but adequate fire escape routes
9 do not exist at this time for an institutional
10 facility. This is a safety issue.

11 Third, Asian American LEAD should commit
12 to providing adult supervision of its clients at all
13 times that they are on the property not just at the
14 times that it is conducting programs. A responsible
15 adult should always been available to unlock and open
16 the door when clients arrive early for programs and
17 should always remain until all clients have left the
18 premises.

19 Fourth, we would request BZA to make a
20 condition of the exception or variance, we learned
21 today that it -- the Board believes a variance would
22 not be necessary, so it would be an exception, which
23 -- that no construction or modification of the
24 exterior and no expansion of the building would occur
25 that would adversely affect the residential character

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1 of the building and of the -- or of the neighborhood
2 and that no effort should be made to expand the
3 existing square footage of the building so as to
4 increase its capacity.

5 Fifth and finally, we would ask BZA to
6 review the exception or variance within two years
7 rather than within five years to insure that
8 additional parking and a fire escape have been
9 constructed and to determine that the facility has
10 provided adequate adult supervision for its clients on
11 the premises.

12 CHAIRPERSON GRIFFIS: Actually, you can --
13 if you wouldn't mind putting them down at this end and
14 they'll get recorded into the record.

15 DR. BRIZILL: As I indicated earlier, my
16 name is Dorothy Brizill and I will just be making some
17 brief remarks.

18 What you are receiving shortly is one of
19 the reasons why we are so concerned about this
20 facility going next door to us. As a long-time
21 resident in Columbia Heights, I have been concerned
22 about community-based residential facilities,
23 community centers facilities, and other programs in
24 and around the address 1323 Girard Street because they
25 directly impact on the residential character of

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1 Columbia Heights.

2 I should also note that most of these
3 institutional programs have no parking or just one or
4 two parking spaces for staff, none for visitors or
5 clients.

6 And for the record, I would like to read
7 the following list which I have provided to you. In
8 immediate proximity to 1323 Girard Street, we have
9 1308 Girard Street which is across the street which is
10 group home for adjudicated male teenagers. 1318 and
11 1320 Harvard Street directly behind the building
12 across the alley is Second Genesis, a large apartment
13 building operating a residential drug facility. 1313
14 Harvard Street directly across the street from Second
15 Genesis and behind the facility is a residential
16 facility for the mentally disturbed.

17 13th and Girard, the northwest corner next
18 door to the facility is a school and health care
19 facility operated by Easter Seals. 2801 13th Street
20 at the northeast corner is a residential facility for
21 pregnant women and 2801 14th Street is NCBA otherwise
22 known National Caucus on Black Ages, and a residential
23 apartment facility and community center for senior
24 citizens.

25 These are all the facilities within the

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1 same square or within a block of this facility.

2 In close proximity is the second grouping.

3 13th and Harvard Street at the northeast corner is a
4 Omega Si Phi's D.C. headquarters. 2908 13th Street is
5 a facility for AIDS infants. 14th and Harvard Street
6 is the new Urban League D.C. headquarters currently
7 under construction. 1422 Harvard Street is operated
8 by Samaritan Inn, a residential facility for homeless
9 women. 1434 Harvard Street is Turning Point a
10 facility operated by the Salvation Army, a residential
11 program for homeless families. 1410 Girard Street,
12 the Community of Hope, a residential facility for
13 homeless families. 15th and Girard Street, Clinica De
14 Puebla, a medical facility. 1419 Columbia Road and
15 1314 14th Street, the Latin American Youth Center --
16 Youth -- should be center not club.

17 1420 Columbia Road, the Bell Multi-
18 cultural Center and Day Care Facility. 13th and
19 Fairmont Streets the Pleasant Plains Baptist Church
20 which also have a parking agreement with Easter Seals.

21 15th and Harvard Street All Souls Church. 2905 11th
22 Street at Harvard Street the Alliance of Concerned
23 Black Men Community Center and 14th and Irving Streets
24 is the Unity Health Care Center.

25 Listed on city records, but I was not able

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1 to determine the current status, but facilities which
2 until recently have been in operation are at 1241
3 Girard Street operated by Samaritan Inn as a
4 residential facility for homeless men. 1238 Harvard
5 Street at the southeast corner of 13th and Harvard a
6 community-based resident facility for adjudicated
7 youth and 1400 block of Harvard Street mid-block there
8 is a community-based -- what has been a community-
9 based residential facility for male youth.

10 On the map that I distributed, you will
11 see circled in red the address 1323 Girard Street and
12 all of the Xs on the two maps indicated some of the
13 facilities that I have just mentioned in my
14 recitation.

15 On the issue of parking, I'd just like to
16 make a few brief remarks.

17 As Gary has already indicated, we are
18 pleased to see that the organization has an agreement
19 with the Easter Seal organization. We would note for
20 the record that it has similar agreements with Second
21 Genesis which is directly behind it which has no
22 parking but operates a large residential drug care
23 facility and the Pleasant Plains Baptist Church at the
24 corner of 13th and Fairmont.

25 And we have pictures that indicates that

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1 on the past Sunday and the past weekend whenever the
2 church has a -- a program, that parking lot is filled.

3 There is no indication of any designated spots for
4 the Asian American LEAD.

5 And indeed on Saturdays, the Second
6 Genesis traditionally operates a -- a flea market and
7 a -- a carwash on that -- that lot.

8 With regard to the issue of stacking of
9 cars in a driveway, this has become a very serious
10 problem and I will tell you why. On the very same
11 side of the street where the Asian American LEAD
12 facility is located at either end of the corner at
13 13th Street and at 14th Street, at 13th Street you
14 have the Easter Seals facility and at 14th Street, you
15 have the National Caucus on Black Ages which is a
16 facility for senior citizens.

17 Both facilities have individuals who use
18 wheelchairs. There have been many occasions over the
19 past several months when cars from the Asian American
20 LEAD had stacked in that driveway and have blocked the
21 sidewalk to the extent to which individuals in
22 wheelchairs have had to get out in the street with
23 great difficulty to themselves.

24 Finally, with regard to the four parking
25 spaces in the rear, we -- we welcome this initiative.

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1 I would only note and raise some question about four
2 parking spaces 9 feet wide might be a challenge. The
3 lot is barely 40 feet wide and indeed there is a
4 telephone and electrical line pole at the eastern end
5 of the lot in the alley. That would have to be
6 something that would be navigated and I, therefore,
7 question whether or not you're going to be able to get
8 a total of four parking spaces in the rear, but I do
9 welcome the efforts by the Asian American LEAD to be
10 responsive to the concern regarding parking.

11 Thank you.

12 CHAIRPERSON GRIFFIS: Thank you. Anything
13 else?

14 DR. BRIZILL: No.

15 CHAIRPERSON GRIFFIS: You had indicated
16 that you had photographs about the posting --

17 DR. BRIZILL: Yes.

18 CHAIRPERSON GRIFFIS: -- and those are
19 already in or are they coming in?

20 DR. BRIZILL: Yes, I -- here are the --

21 CHAIRPERSON GRIFFIS: Okay.

22 DR. BRIZILL: -- photographs of the
23 posting -- of the failure to post.

24 CHAIRPERSON GRIFFIS: Okay. Let me just
25 be clear on that. If you submit those, of course, you

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1 don't get those back.

2 DR. BRIZILL: Right.

3 CHAIRPERSON GRIFFIS: So, if you want to
4 put those into the record, we can do that.

5 DR. BRIZILL: Fine.

6 CHAIRPERSON GRIFFIS: We'll -- we'll have
7 to make copies or I think we understand the issue.

8 DR. BRIZILL: And I also have photographs
9 of -- of vehicles at their facilities blocking the
10 sidewalk.

11 CHAIRPERSON GRIFFIS: Okay. And let's --
12 let's take Board questions now if you're complete with
13 your case presentation. Is there anything else --

14 DR. BRIZILL: Yes. No.

15 CHAIRPERSON GRIFFIS: Okay. Very well.
16 Let's talk about the parking then going up to that --
17 yes, I -- I think you've indicated quite a bit of the
18 potential adverse impact or, in fact, the existing.

19 With the new plan that actually has been
20 submitted today, do you feel that that would tend to
21 be mitigated with the provision of the parking in the
22 rear or do you believe that it would be worse? What's
23 your reaction to the submission?

24 MR. IMHOFF: I believe that four parking
25 spaces provided in the rear with an additional space

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1 in the driveway may well be sufficient, but that is --
2 that is why we ask that the Board review this in -- in
3 two years to insure that it is sufficient. That --
4 that -- first that the parking has been provided and
5 second that it is a sufficient number of spaces for
6 the facility.

7 CHAIRPERSON GRIFFIS: I see and -- and
8 you've had the ability or time to review this plan and
9 you don't see any other attendant problems coming up
10 with that type of scenario having access off the
11 alley?

12 DR. BRIZILL: My only concern is -- is
13 that as you are aware Asian American LEAD submitted
14 this elaborate drawing in its submission last Tuesday
15 which -- which shows a huge structure being erected to
16 the rear of the building and I assume it's for the
17 purpose of a fire escape and a wheelchair lift.

18 That encroaches on the very space that
19 they're saying they're going to provide the parking
20 on. So, I -- I have some concerns about whether or
21 not you're going to actually be able to get four
22 parking spaces in their given this huge structure
23 which they say they're going to build.

24 CHAIRPERSON GRIFFIS: Well, according to
25 the site plan, you can.

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1 DR. BRIZILL: That site -- if you compare
2 that site plan that we got on Friday with the one that
3 was in the original file, I believe you'll see that
4 they're very different. Somewhat different.

5 CHAIRPERSON GRIFFIS: Where do you see the
6 difference? The new stairs is going to project out
7 about 16 and a little over 16.6 inches from the
8 existing structure.

9 Do we have the plat?

10 DR. BRIZILL: What I am comparing is
11 something that was submitted in the file. This one.

12 CHAIRPERSON GRIFFIS: Right.

13 DR. BRIZILL: Which -- which shows a -- a
14 huge addition in the back.

15 CHAIRPERSON GRIFFIS: A2.

16 DR. BRIZILL: Yes and then this one --
17 that is different from the one that we got on Friday.

18 CHAIRPERSON GRIFFIS: Okay.

19 DR. BRIZILL: They seem to have
20 substantially shrunk.

21 CHAIRPERSON GRIFFIS: Well, okay. We'll
22 get the answer to that.

23 Now, there -- there's substantial
24 presentation of the adjacency of other types of
25 facilities. Of course, they're not all community

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1 centers. Some are as you've indicated CBRFs. Some
2 are I don't know what designation. Not going into all
3 of them.

4 Can you illuminate a little more about
5 what is the adverse impact? I mean it's one thing to
6 show us where they all are, but so what? What is the
7 impact?

8 DR. BRIZILL: The impact occurs because
9 many of these facilities are residential. There is no
10 parking for the residents of these facilities, but
11 increasingly, the problem has become there is no
12 parking for the visitors and especially the ones that
13 are for the homeless and for adjudicated youth. They
14 have social workers, police officers, officers of the
15 court who are regularly visiting them and so, for
16 example, the facility at 1308 Girard Street a -- a
17 regular stream of social workers, officers of the court
18 going there as well visitors, family visiting the
19 residents of that facility.

20 So, each of these addresses that is a
21 residential facility you sort of -- like say, for
22 example, that home has 20 adjudicated youth. You
23 multiply in terms of the -- the -- if they're on
24 probation or parole -- no, they wouldn't be on parole,
25 but probationary officers, officers of the court,

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1 social workers.

2 CHAIRPERSON GRIFFIS: So, there are a
3 lot of trips in and out of these.

4 DR. BRIZILL: Yes, and a need for parking
5 and these are not just short term trips. Usually,
6 they last -- each individual's visit usually lasts an
7 hour to two hours depending upon the nature of the
8 visit.

9 So, that's why I stress the fact that
10 their residential.

11 Now, we don't expect, you know, the
12 adjudicated teenagers to have cars and what have you,
13 but oftentimes the ones for the homeless families and
14 the homeless adults, they do have cars and so, in --
15 in -- it just -- it just does dramatically impact upon
16 the area.

17 MR. IMHOFF: Also, there is an issue in
18 residential neighborhoods when there is a growing, an
19 ever growing and increasing use of houses, former
20 single-family houses or apartment houses or rooming
21 houses as institutions -- as institutions of several
22 types. It diminishes the residential character of the
23 neighborhood. It diminishes the number of people in
24 the neighborhood who's commitment is to the community
25 rather than to particular programs. It diminishes the

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1 control of the neighborhood by its residents.

2 And there are any number of good things
3 that can go into residential neighborhoods in small
4 numbers without changing or affecting or impacting the
5 quality of life in that neighborhood --

6 CHAIRPERSON GRIFFIS: All right. Let's
7 get --

8 MR. IMHOFF: -- that become

9 CHAIRPERSON GRIFFIS: What's quality of
10 life? What's residential character and what isn't in
11 this application?

12 You've indicated one the stair addition in
13 the back you say isn't of a residential character.

14 MR. IMHOFF: Right.

15 CHAIRPERSON GRIFFIS: And yet, you are
16 also asking us to send the fire marshal out.

17 Are you understanding that that's actually
18 the -- a fire egress, life safety egress and more
19 importantly --

20 MR. IMHOFF: Yes, we're -- what -- we're
21 -- we're saying two things. One is that currently
22 while the fire escape facilities may be perfectly
23 adequate for a single family residing in that house or
24 even if the house were divided into two or three
25 apartments, it might be up to code. I'm not sure.

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1 That when using the house as a facility
2 accommodating 50 to 60 people at one time, we don't
3 believe that the fire escape facilities are adequate.

4 CHAIRPERSON GRIFFIS: Okay. Well, just
5 put that totally aside.

6 MR. IMHOFF: However, we're also saying
7 that --

8 CHAIRPERSON GRIFFIS: Excuse me. Well,
9 just put that totally aside. Because first of all, we
10 wouldn't have any jurisdiction to review the code or
11 life safety issues. Clearly, there's a whole other
12 department that would do that during permitting and
13 they will make sure that that is appropriate and
14 adequate, be it the size of the stairs for the
15 capacity of the building, the corridor, the corridor
16 rating, all of that we will assume will be done
17 appropriately.

18 However, you bring up a point of there's
19 residential character that goes to that addition. I
20 think the Board needs to understand what your position
21 is.

22 MR. IMHOFF: Yes, our -- our position
23 would be that the -- the artist's rendering shows this
24 as a very industrial kind of construction that --

25 CHAIRPERSON GRIFFIS: Okay. Let's --

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1 let's get also for the record when you're talking
2 about the artist's rendering, outside of the
3 publication that Ms. Brizill has lifted before, the
4 documents that are before us that would be part of an
5 approval application would be the architect's
6 documents. So, I'm looking at A6, elevation.

7 That -- that's nice, but that's not real
8 for us and I'm not sure it's real for them either. I
9 mean I understand what your point is and it shows the
10 massing of it and that's an important piece to look at
11 that, but when we evaluate this application for -- for
12 the factual basis of what we're actually looking at, I
13 need to look at the architectural documents which
14 become a condition of any order that we might issue
15 and approve of.

16 So, if we want to take it on and refer to
17 those and what you're saying is this elevation might
18 express that. Is that correct?

19 DR. BRIZILL: Yes. And -- and --

20 CHAIRPERSON GRIFFIS: In terms of the
21 industrial character.

22 DR. BRIZILL: Right. And the thing -- the
23 -- the industrial character, it would be different if
24 it were being blocked by a building. The parking lot
25 of Easter Seals begins right at their driveway. So,

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1 you would see this house with this massive addition to
2 the rear of it if you stood on 13th Street or you
3 stood on the sidewalk at Girard Street. It's not
4 going to be hidden in the back. It's not just a rear
5 addition to the building. It is going to be very,
6 very obvious.

7 CHAIRPERSON GRIFFIS: So, your point is if
8 I understand you correctly in your statement that if
9 this was actually -- looked more like an addition to
10 the building. So an actual enclosed stair.

11 DR. BRIZILL: I -- I don't know. I'm --
12 I'm not going to go down that road. I'm just saying
13 that it is a -- a very ugly industrial addition to a
14 building not in keeping with the residential character
15 of the building.

16 CHAIRPERSON GRIFFIS: Okay.

17 DR. BRIZILL: Of the neighborhood and it
18 would be -- it would be a very obvious sighting from
19 the sidewalk on 13th Street or on Girard -- or on
20 Girard Street and --

21 CHAIRPERSON GRIFFIS: Okay. That's
22 understood. Okay. Also, you brought up a point of
23 supervision of clients at all times. Can you give the
24 Board a little bit of background of what the concern
25 is and then --

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1 DR. BRIZILL: Okay. Oftentimes, they have
2 young adults arriving for their program and the
3 building is not open and so, what they do is -- is
4 that they just do what young people do. They hang
5 around on the front. They yell and scream and they --
6 and -- and quite frequently go and they get food at
7 the corner store, but they don't even have a trash can
8 to put it in. So, the trash accumulates every
9 morning. I have to go out there and pick up the trash
10 that's blown down.

11 I would --

12 CHAIRPERSON GRIFFIS: What time is this
13 usually?

14 DR. BRIZILL: In the afternoon after
15 school usually.

16 CHAIRPERSON GRIFFIS: And they're not open
17 in the afternoon so that the --

18 DR. BRIZILL: I don't -- I don't know what
19 their hours are. It seems to vary.

20 CHAIRPERSON GRIFFIS: I see.

21 DR. BRIZILL: I'm just saying -- I'm just
22 basing it purely on my observation.

23 CHAIRPERSON GRIFFIS: Right.

24 DR. BRIZILL: And my observation is -- is
25 not from the perspective oh, you're doing something

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1 bad, but the fact that I'm very concerned about the
2 welfare of these children who are there unsupervised
3 and in instances, they will stay around for some
4 period of time and then just leave because no one has
5 shown up to let them in.

6 I would simply ask that if they're going
7 to have a program or if they expect visitors that
8 someone be there to open the door and that they
9 provide a trash can for trash that's --

10 CHAIRPERSON GRIFFIS: Okay.

11 DR. BRIZILL: -- outside.

12 CHAIRPERSON GRIFFIS: That's clear.

13 MR. IMHOFF: We -- we should add that in
14 all fairness Asian American LEAD had been a better
15 neighbor in the past year than Sojourners was for many
16 years.

17 CHAIRPERSON GRIFFIS: Yes. Yes. Well.

18 MR. IMHOFF: And has -- has run a program
19 that is less intrusive in the neighborhood than the
20 program than Sojourners ran.

21 We are -- we are again not talking about
22 Asian American LEAD's programs, aims, et cetera.

23 CHAIRPERSON GRIFFIS: Right. I
24 understand.

25 MR. IMHOFF: Simply the need for adult

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1 supervision for its clients before and after the hours
2 that they're formally open when there are children on
3 the grounds.

4 CHAIRPERSON GRIFFIS: Okay. Other
5 questions of the Board? Ms. Miller.

6 MEMBER MILLER: I'm just wondering whether
7 the applicant showed you the architectural drawings
8 prior to this hearing.

9 DR. BRIZILL: No, the -- the applicant did
10 not show the architectural drawings. The applicant
11 did not come and speak with me. I came down and I
12 reviewed the file myself.

13 MEMBER MILLER: Okay. Thank you.

14 CHAIRPERSON GRIFFIS: Anything else?
15 Other Board members? Does the ANC have any cross
16 examination? Does the applicant have cross
17 examination? No questions?

18 MR. BUI: I have a couple rebuttals.

19 CHAIRPERSON GRIFFIS: I see. Well, okay.
20 Good. Thank you very much.

21 Did you have any closing -- this is your
22 last opportunity to address the Board. So, if you had
23 any closing remarks, any summations, anything of that
24 nature. If not, that's fine.

25 If you're going to put the photos in,

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1 okay. Actually, why don't you let the applicant
2 review them first because you don't have copies of
3 them at this point and then we'll put them into the
4 record and then copies will be made and provided and
5 distributed all around.

6 Okay. Then let's go. We're going to
7 rebuttals.

8 Are you calling your architect?

9 MR. BUI: Yes, I will.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. BUI: But, first, I'd like to make
12 some preliminary remarks and then we'll go probably
13 point rebuttal.

14 CHAIRPERSON GRIFFIS: Well, you've got
15 them upside down.

16 You're calling witnesses right now.
17 Witnesses are going to rebut what you just heard.
18 Then you're going to do your -- your comments --

19 MR. BUI: Okay. That's fine.

20 CHAIRPERSON GRIFFIS: -- and closings and
21 all that.

22 Your architect's here. So, while you get
23 organized, I'm going to ask him a tough question.

24 MR. BUI: Yes, let me call -- have the
25 architect questions. Allen.

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1 CHAIRPERSON GRIFFIS: Okay. First you
2 came up -- not to overwhelm your rebuttal. In terms
3 of this site, I like this site. What's the dimension
4 of the overall site from the rear of the building? Do
5 you know?

6 MR. MUSHINSKY: Yes, hold on. I hope that
7 it's on the plot plan.

8 Well, I was going to testify to just --

9 CHAIRPERSON GRIFFIS: You're going to do
10 basics.

11 MR. MUSHINSKY: Yes, I was going to
12 clarify.

13 CHAIRPERSON GRIFFIS: Okay. Let's --

14 MR. MUSHINSKY: So --

15 CHAIRPERSON GRIFFIS: If you don't mind,
16 I'm going to just speed this up a little bit. Let's
17 go ahead and do that.

18 MR. MUSHINSKY: I'll -- I -- just a few
19 things.

20 CHAIRPERSON GRIFFIS: But, there's the
21 question whether you have enough space to put those
22 in.

23 MR. MUSHINSKY: Okay. The answer is yes.
24 The drawings that were done for the Friday submission
25 are the exact same drawings that are copies of the

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1 digital files created by the civil engineer who
2 surveyed the property.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. MUSHINSKY: And the previous
5 documents.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. MUSHINSKY: So, the stair shown --

8 CHAIRPERSON GRIFFIS: And I don't care
9 about the authenticity. Tell me the dimensions.

10 MR. MUSHINSKY: Yes.

11 CHAIRPERSON GRIFFIS: The -- the existing
12 addition is -- is 19 feet roughly or 16 7. I'm sorry.
13 Nineteen is your handicapped parking spot.

14 What's the overall distance from the back
15 of the addition or the rear of the structure to the
16 property line?

17 MR. MUSHINSKY: The stair is 16 foot 7 --
18 16.7 inches. I apologize. I have to --

19 CHAIRPERSON GRIFFIS: That's all right.

20 MR. MUSHINSKY: I wasn't --

21 CHAIRPERSON GRIFFIS: Let me ask you this
22 question.

23 MR. MUSHINSKY: The answer is --

24 CHAIRPERSON GRIFFIS: SP1 that was
25 submitted, an 8? by 11 form is obviously a reduced

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1 document. There's a scale on the document.

2 MR. MUSHINSKY: Oh, I'm -- I'm sorry.

3 CHAIRPERSON GRIFFIS: Is this a scale
4 document?

5 MR. MUSHINSKY: No, it got reduced.

6 CHAIRPERSON GRIFFIS: Not -- not the hard
7 copy that I'm holding, but this was created -- this is
8 a copy of a scale document. Is that correct?

9 MR. MUSHINSKY: And it is this document
10 right here which is to scale.

11 CHAIRPERSON GRIFFIS: Okay. So, looking
12 at the scale document, you have a compliant 19 foot
13 parking space. Is that correct?

14 MR. MUSHINSKY: That's correct.

15 CHAIRPERSON GRIFFIS: And the -- the space
16 in between it is scale, if I was looking at a scale
17 document, is scale for the distance away from the
18 addition. Is that correct?

19 MR. MUSHINSKY: Yes.

20 CHAIRPERSON GRIFFIS: Okay. So, the
21 separation it would appear to be close to between 12
22 and 14 feet. Is that about what it is?

23 MR. MUSHINSKY: It's actually 33 feet. I
24 -- I was just scaling my accurate drawing here.

25 CHAIRPERSON GRIFFIS: Okay. Now, you

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1 answered the wrong question though.

2 MR. MUSHINSKY: This is from the back --
3 oh.

4 CHAIRPERSON GRIFFIS: Follow where I'm
5 going. You've got 19 feet back from the property and
6 then you have what dimension to the rear portion of
7 your addition?

8 MR. MUSHINSKY: A little over 13 feet.

9 CHAIRPERSON GRIFFIS: See that. I wasn't
10 bad. Twelve to 14 feet and then you have 16 feet 4 --
11 7 inches.

12 MR. MUSHINSKY: Seven inches. Right.

13 CHAIRPERSON GRIFFIS: So, there it is.
14 Okay. The other question that came up in terms of --
15 I'm sorry. I'm crossing your rebuttal witness.

16 MR. BUI: That's okay. It's okay.

17 CHAIRPERSON GRIFFIS: Yes, actually, it is
18 okay because that's what I'm here for.

19 Address the comment that came up in the
20 opposition's case presentation that you're putting a
21 very industrial, very hard, very crass addition on the
22 back into a residential neighborhood. It's been -- it
23 was testified in the opposition's case that the -- the
24 sight of this is going to be clear. Because as in the
25 submission documents you have, you have the Easter

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1 Seal parking lot that will never impede obviously
2 unless they build on it that and I would add to it
3 as you go around in your rendering but also in your
4 elevations, you have what looks to be more of a
5 prison-like bar surrounding the windows.

6 Can you talk on the two issues first of
7 all in terms of the design compatibility of the
8 addition and then perhaps to the need or the aesthetic
9 or design requirement for those security measures?

10 MR. MUSHINSKY: The -- the physical
11 dimensions of what you see in elevation and in plan
12 are actually the minimum requirements obviously to
13 meet code to create a legitimate exit stair.

14 The concept of the design because of the
15 nature of the house and previous additions that were
16 done on the third floor made it very difficult to just
17 put a brick enclosure or whatever in order to create
18 the legitimate required -- what would -- we're
19 proposing exit stair and so, our goal from the design
20 standpoint actually was those are not bars. They're
21 actually -- it's a screening material. It's a prefab
22 screening material.

23 CHAIRPERSON GRIFFIS: No, let me be clear.

24 MR. MUSHINSKY: The reason for it is --

25 CHAIRPERSON GRIFFIS: I'm bringing up two

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1 issues.

2 MR. MUSHINSKY: Yes.

3 CHAIRPERSON GRIFFIS: The -- the --
4 actually, the opposition's case didn't bring up the
5 second issue of mine and that's the bars on the first
6 level t hat seem to be rendered as trying to be
7 ornamental, but --

8 MR. MUSHINSKY: They are actually -- it's
9 an ornamental screening material.

10 CHAIRPERSON GRIFFIS: Oh, I see.

11 MR. MUSHINSKY: Like a louver material.

12 CHAIRPERSON GRIFFIS: So, you --

13 MR. MUSHINSKY: It's a very small drawing.
14 I apologize, but the intent of this stairwell is
15 actually to create the most visually open unobtrusive
16 volume by being as open as possible but still meeting
17 the code as far as you have to have certain
18 requirements for -- so people can't fall out or over
19 the stairs. So, what we've tried to do is create a
20 very light stair. The minimum amount of structure and
21 still meet code.

22 And the idea of the grill, what you're
23 seeing there is a -- a louvered material. They come
24 in panels, prefabricated panels that will go up on the
25 sides and its purpose is to keep people from -- from

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1 climbing over, falling off, and so forth and the
2 actual squares there are like 6-inch squares. They're
3 large openings and the bars themselves are only like a
4 quarter of an inch thick and the idea is really to
5 make it unobtrusive.

6 In reverse if we had done this in masonry
7 materials or whatever, it would block sunlight. It
8 would literally block people's view. You'll be able
9 to see through this and that was the goal here.

10 It is a -- a modern looking stair
11 enclosure. Because that's the way I can make it as
12 open as possible. I'd never be able to do it if I did
13 a Victorian or Colonial and that -- that's the concept
14 behind it.

15 It isn't trying to be cheap or anything
16 else. It's trying to do the best thing for the
17 condition.

18 CHAIRPERSON GRIFFIS: Okay. The security
19 bars on the first floor windows, same material?

20 MR. MUSHINSKY: They're existing actually.

21 CHAIRPERSON GRIFFIS: That's no excuse.
22 Are they being maintained?

23 MR. BUI: Yes.

24 MR. MUSHINSKY: Yes. They -- they would
25 like to keep them.

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1 CHAIRPERSON GRIFFIS: Are you concerned
2 about security on that level?

3 MR. BUI: No, not -- not really, but it
4 was there when -- when we got the building and we
5 haven't done much to it.

6 CHAIRPERSON GRIFFIS: I see.

7 MR. MUSHINSKY: Quite frankly, these are
8 not working drawings. So, there's certain things that
9 have not been taken to the --

10 CHAIRPERSON GRIFFIS: Understandable.

11 MR. MUSHINSKY: -- level of detail.

12 CHAIRPERSON GRIFFIS: I've pushed our
13 jurisdiction fall enough. Let's move on.

14 MR. MUSHINSKY: May I --

15 CHAIRPERSON GRIFFIS: Yes.

16 MR. MUSHINSKY: -- just address the other
17 questions. Number one, the telephone pole in the back
18 actually is on the east side of the property line on
19 the east side towards the other facility. It is
20 clearly shown on the survey you received.

21 CHAIRPERSON GRIFFIS: Yes, we --

22 MR. MUSHINSKY: Okay.

23 CHAIRPERSON GRIFFIS: -- I see it.

24 MR. MUSHINSKY: So, it's not an issue. We
25 don't believe it's an issue.

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1 The design that -- and you said is really
2 a building code issue, we actually have met with all
3 the jurisdictions in the building department including
4 the fire marshal. We've had a formal meeting with him
5 to go over the whole interior of the house in order to
6 make it conform either the design -- proposed design
7 conform to the building codes and fire regulations.

8 The building is to be sprinklered when the
9 renovation is done. The stair is to be added and
10 everything will be absolutely up to the current codes.

11 I am concerned about a -- a recommendation
12 that was made with regard to not allowing expansion of
13 the square footage because if that winds up including
14 the stair, that would negate creating the stair which
15 is obviously part of, you know, the proposal on safety
16 codes. So, there was a statement made by the
17 opposition about not allowing expansion of square
18 footage.

19 CHAIRPERSON GRIFFIS: Understood.

20 MR. MUSHINSKY: There is no intent to
21 expand the house as its other functions, but the stair
22 is an expansion.

23 CHAIRPERSON GRIFFIS: No intent in this
24 application.

25 MR. MUSHINSKY: Yes, exactly.

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1 CHAIRPERSON GRIFFIS: Right.

2 MR. MUSHINSKY: And I think I -- I tried
3 to address the planning architectural.

4 CHAIRPERSON GRIFFIS: Okay. Questions
5 from the Board? Any other questions? Very well.

6 Anything else? You want to redirect or do
7 you have --

8 MR. BUI: No, but I would -- I would like
9 to bring another person for --

10 CHAIRPERSON GRIFFIS: Good.

11 MR. BUI: -- rebut her charges. Bill
12 Shortinghouse.

13 CHAIRPERSON GRIFFIS: No charges. Just
14 case presentation.

15 MR. BUI: And, you know, as another,
16 Honor.

17 MR. SHORTINGHOUSE: I'm Bill
18 Shortinghouse. I live at 1326 Girard Street, N.W. and
19 I'm a neighbor directly across the street from the
20 facility.

21 This is in regards to the matter of the
22 number of facilities in the neighborhood and the
23 impact on street parking.

24 As the Board are quite aware, I have
25 concern about off-street parking and on -- and on-site

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1 facility parking from a previous case that I was the
2 respondent to.

3 In this case, these facilities in general
4 while they may be residential in nature that have been
5 brought to the Board's attention are primarily for
6 individuals that are either youth or indigents without
7 their own transportation and they are so sited in our
8 neighborhood to make use of the adequate bus
9 facilities that are on 14th Street and also the
10 proximity of the Columbia Heights metro station which
11 is three blocks away. So, we do have a preponderance
12 of these types of facilities in our neighborhood
13 because they are grouped around ease of public
14 transportation.

15 Also, on our street in particular --

16 CHAIRPERSON GRIFFIS: Are you saying that
17 these came in because the Metro opened?

18 MR. SHORTINGHOUSE: No, but I believe that
19 a number of them have been placed there because they
20 know that the Metro station was in planning and so,
21 that's why they are grouped in our neighborhood.

22 CHAIRPERSON GRIFFIS: I see. You would
23 think then we'd have like mass transit advocacy groups
24 all over the place with that.

25 MR. SHORTINGHOUSE: Yes, the District has

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1 found it convenient to place them in our neighborhood
2 also --

3 CHAIRPERSON GRIFFIS: I see.

4 MR. SHORTINGHOUSE: -- because of the
5 availability of the housing stock and facilities.

6 CHAIRPERSON GRIFFIS: Ah, that makes some
7 sense. Okay.

8 MR. SHORTINGHOUSE: In particular on our
9 street on Girard Street, the configuration of the
10 block is on my side of the street. It is continuous
11 row house from 13th to 14th with the exception of a
12 small municipal concrete park at the end on 14th
13 Street.

14 However, across the street on the north
15 side of the street, it is only -- there are only three
16 residential structures of a -- a house size. There's
17 the Easter Seals and their entire parking lot and then
18 there's the NCBA Estates which are a high rise with
19 their own dedicated parking lot.

20 So, essentially, that side of the street
21 is without residential parking load with the exception
22 of the two small rooming houses and Dr. Brizill and
23 Gary Imhoff's house which they also have a private
24 driveway.

25 So, the load on that side of the street

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1 during daily business hours which is when this center
2 would be in operation is very negligible.

3 The other facilities that are in the
4 neighborhood also as Dr. Brizill has pointed out do
5 contribute to the load because they have attendant
6 people coming and staff people coming for visitation,
7 but again because there is very few residents that are
8 parking on our street at that time of the day, it's a
9 negligible impact in my belief.

10 The other facilities that have longer term
11 staff, they also have their own parking off street and
12 it's limited, but it's sufficient obviously for the
13 zoning code.

14 In addressing the issue of the kids being
15 outside, as I've stated before, I work from home and I
16 work in the front of my house and I have clear view of
17 the properties across the street from me and would be
18 very aware of any kids running around unsupervised or
19 causing mayhem. This is obviously a concern in every
20 neighborhood and I would be the first to jump on this
21 to get it addressed.

22 I have noted that the -- some of the
23 clients from the facility have been sitting outside
24 and enjoying the weather and it -- it is not a
25 question in my mind of them being unsupervised or that

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1 -- the fact that they cannot get into the building
2 because I have known when I have seen them outside
3 that there are actually staff present and I do believe
4 that the staff arrive timely and, in fact, in advance
5 of when their clients arrive and are there well after
6 their clients departure.

7 In all the time that they have been having
8 clients there, I have never noted any disturbance or
9 any adverse affect -- impact of the -- the children at
10 this facility in our neighborhood. In fact, it's a
11 welcome addition to see kids in the neighborhood.

12 As far as the trash goes, it would be
13 impossible for anyone to discern whether trash is
14 being created by their kids or what is simply blowing
15 around our neighborhood from trash pickup that's not
16 very effective. So, I question that as a valid point.

17 Although, I believe that the facility
18 adequately monitors their children and also does
19 attend to taking care of their facility, they have
20 done a great job in sprucing up the landscaping and
21 they also go and monitor for trash.

22 So, I -- I hope that that is not a
23 continuing problem and if it is, I, of course, will be
24 first to direct it to their attention.

25 Thank you.

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1 CHAIRPERSON GRIFFIS: Good. Thank you
2 very much.

3 So, what you're saying is no signs the
4 trash that's on the street. So, you're not sure who
5 to blame for it.

6 MR. SHORTINGHOUSE: Correct.

7 CHAIRPERSON GRIFFIS: You have -- you have
8 full understanding and appreciate the fact that the --
9 those running the community center would be responsive
10 if it became a problem?

11 MR. SHORTINGHOUSE: I believe that they
12 would.

13 CHAIRPERSON GRIFFIS: Okay. And the other
14 piece that you're -- testimony that you provided in
15 this in terms of clarity of the parking, the parking
16 load on the street is that on -- on this side of the
17 street you're indicating that it is somewhat different
18 than the south side, but also different than the
19 surrounding area because actually on each side of the
20 corners there is a parking structure. Actually, OP's
21 plan does it quite well illustrating the fact that
22 there is four structures in the block outside of the
23 Easter Seal and the -- the structure on 14th Street.

24 So, your point is that the load has
25 actually diminished?

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1 MR. SHORTINGHOUSE: I'm -- yes, that's
2 correct.

3 CHAIRPERSON GRIFFIS: I see. Okay.
4 Questions from the Board?

5 MR. SHORTINGHOUSE: I'm sorry. I have one
6 more -- one more comment about the parking load.

7 CHAIRPERSON GRIFFIS: Sure.

8 MR. SHORTINGHOUSE: This is in regards to
9 the use of the Easter Seals' parking lot from the
10 church.

11 Yes, on Sundays, the church have the right
12 to use their parking lot and the lot is full. The --
13 as far as I can tell, no one has blocked off any
14 parking spaces for any of the other clients of Easter
15 Seals that they permit parking, but this is just
16 during -- during the church services only when that
17 lot is full. They're only there on Sunday mornings
18 and they don't have Sunday evening meeting.

19 Occasionally, they may have a function in the
20 evenings that they have use of this facility. Any
21 other time, that -- the church's impact on that
22 parking is negligible.

23 CHAIRPERSON GRIFFIS: Okay. From your
24 perspective as a resident on the street.

25 MR. SHORTINGHOUSE: Correct. Thank you.

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1 CHAIRPERSON GRIFFIS: I see. Okay.
2 Anything else?

3 MR. SHORTINGHOUSE: Nothing. Thank you.

4 MR. BUI: I do have another questions for
5 you, Bill, and that is from your best -- from your
6 personal experience, have you seen any traffic
7 generated because the school bus wasn't able to get in
8 and out, get through the -- the block because of our
9 presence in -- in that particular neighborhood?

10 MR. SHORTINGHOUSE: I believe you're
11 referring to Dr. Brizill's question from the previous
12 statement about blocking the traffic of school buses
13 coming to the facility.

14 As -- as I said, working in the front of
15 my house and viewing this daily, there is to my
16 knowledge and my experience only one school bus that
17 comes to this facility. It is one of the mini-buses
18 like a 12 seater. It comes in the morning, makes one
19 delivery, and comes in the afternoon and picks up.
20 There are no other school buses or delivery-type
21 vehicles that go to that facility, to the Easter
22 Seals' facility.

23 MR. BUI: Thank you. That's all -- that's
24 all I have for this witness.

25 CHAIRPERSON GRIFFIS: Good. Any other

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1 witnesses?

2 MR. BUI: No, Mr. Chairman.

3 CHAIRPERSON GRIFFIS: Excellent. Cross
4 examination of the testimony that you've heard? Any
5 questions? Any follow-up questions from the Board?

6 Yes, Ms. Miller.

7 MEMBER MILLER: I just have a question
8 about the agreement between Easter Seals and Asian
9 American LEAD --

10 MR. BUI: Yes.

11 MEMBER MILLER: -- that was submitted to
12 us.

13 I'm looking at the agreement and the last
14 bullet under requirements of Asian American LEAD staff
15 says Second Genesis will receive numbered spaces and
16 only those spaces will be utilized on a daily basis
17 and my question is is that a typo? Was that suppose
18 to refer to Asian American LEAD or is that in there
19 because Second Genesis gets that and that's relevant
20 to this agreement?

21 MS. DANG: I think it's -- it's other one.
22 Yes, I think that is a -- is a typo.

23 MEMBER MILLER: It's supposed to say
24 Asian --

25 MS. DANG: Yes. Yes, it is the typo.

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1 MEMBER MILLER: Okay.

2 MR. BUI: That was, in fact, a typo.

3 MEMBER MILLER: Okay. Would you submit to
4 the Board then the corrected agreement?

5 MS. DANG: Sure. Sure.

6 MR. BUI: Sure.

7 MEMBER MILLER: Thank you.

8 MR. BUI: But, you do have the
9 supplemental agreement we have with Easter Seals.

10 CHAIRPERSON GRIFFIS: Oh, that's the
11 updated letter?

12 MR. BUI: Yes, and that would precede the
13 previous one.

14 CHAIRPERSON GRIFFIS: Which is the 4th of
15 December?

16 MR. BUI: Yes.

17 CHAIRPERSON GRIFFIS: Okay.

18 MS. DANG: But, I will be happy to get
19 that --

20 MR. BUI: Well, this -- this -- I think
21 this should -- should be efficient.

22 CHAIRPERSON GRIFFIS: Okay. I think you
23 ought to just put in for the record for clarity --

24 MEMBER MILLER: Yes.

25 CHAIRPERSON GRIFFIS: -- just a corrected

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1 letter --

2 MS. DANG: Sure.

3 MEMBER MILLER: Thank you.

4 CHAIRPERSON GRIFFIS: -- from April. All
5 right. Anything else from the Board? Closing
6 remarks?

7 MR. BUI: Yes, I do have a couple comments
8 and first of all, I just want to thank Mr. Imhoff and
9 Dr. Brizill. You know, I -- we appreciate it that
10 they're not here to ask the Board to deny our
11 applications and -- but, rather ask for a few minimal
12 and reasonable restriction requirements and we all in
13 agreement with that.

14 The question here is we -- how we going to
15 address what is reasonable and minimal and --
16 restriction requirement in this particular case.

17 And in addressing -- I would like to
18 address some of their -- their point in rebuttal.
19 Partly, because some of these issues, are these
20 impossible? Are they just unreasonable? So, we need
21 to come to the -- to the agreement what is reasonable
22 here.

23 CHAIRPERSON GRIFFIS: Take them one at a
24 time.

25 MR. BUI: Yes. With respect -- on the

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1 first point, she testify that -- that the additional
2 space we secure with Easter Seal is not adequate and
3 you provide you the supplementing letter that -- that
4 will be -- the two parking spot is for our use
5 indefinitely as long we need them and that would solve
6 that particular issue.

7 Also on the second point, she indicated
8 that the Board should request the first marshal to
9 inspect facility and our respond to that is that we
10 did have the fire marshal who came by a year ago and
11 the inspection was -- was fine.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. BUI: And -- and we are obviously, the
14 building need to be renovated in such a way to address
15 the safety concern because it is -- it is our number
16 one concern to provide safety for all the kids.

17 CHAIRPERSON GRIFFIS: City won't let
18 you --

19 MR. BUI: Absolutely.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. BUI: Yes, it's not -- it's no
22 concern.

23 CHAIRPERSON GRIFFIS: Let's stick to the
24 zoning issues.

25 MR. BUI: Absolutely. On the third point,

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1 indicated that Asian American LEAD should commit --
2 provide adult supervision. We want to assure you that
3 we open from -- from 10:00 to 7:00 and we at all time
4 have adult supervision on the kids. We wouldn't be
5 around if we didn't have the proper supervision.

6 On the four point, she asked that the
7 Board make -- deny any request for expansion and ask
8 Mr. Allen Mushinsky testify that it will be impossible
9 the addition on the back that is in compliance with
10 the code -- safety code. That's for the entrance and
11 exit. So, we need some expansion there. It's
12 impossible to renovate the building without some --
13 without -- without any expansion.

14 On the final point, she also asked the --
15 the Board to grant the -- to review the exception
16 within two years as opposed to five years and our
17 respond will be we don't want to here every other
18 year. Would be -- would not be to -- we don't want to
19 spend -- we want to dedicate our time to providing the
20 -- promoting youth development as oppose to come back
21 here every other week -- every other year trying to
22 grant the exceptions and -- and that would not be
23 reasonable for us.

24 CHAIRPERSON GRIFFIS: As much fun as this
25 is --

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1 MR. BUI: Right.

2 CHAIRPERSON GRIFFIS: -- you don't want to
3 do it.

4 MR. BUI: As -- this is -- this is not fun
5 for us, but I appreciate her, you know, her concern.
6 Unfortunately, had we know a lot of these from her
7 point of view, we would try to accommodate them, but
8 we didn't know.

9 Also, there are several -- several
10 occasion where she mention that we -- we were -- and
11 she characterized this as being deceptive when we --
12 when we submit a Certificate of Occupancy, try to
13 operate the building as a church as opposed to a
14 community center and my response, our response to that
15 is that we didn't have any deceptive intent
16 whatsoever.

17 One of the reason for filing the
18 Certificate of Occupancy as it was partly because we
19 want to spend our resource trying to apply to take
20 care of this application so we can do simultaneously
21 and the easiest way to be able to do that is
22 grandfather in the previous from the previous owner.
23 That was the quickest.

24 We did not have any deceptive intent in
25 trying to deceive anybody and so, in many ways, I'm

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1 somewhat saddened and -- and I don't -- I'm not
2 offended, but I'm a little bit saddened by her -- by
3 her statement that we are trying to deceive anybody
4 here.

5 Also, her concern regarding the stacking
6 of cars, of course, we addressed that. Our proposed
7 solution would -- would remedy that problem.

8 Do we have any other? Yes.

9 MS. DANG: I just wanted you to know that
10 when we first move in, I had call Ms. Brizill several
11 time so that I want -- we want to be good neighbors.
12 We want to make sure that we can be good neighbor and
13 respectful of our neighbors and Mr. Gary Imhoff
14 actually came over to -- to tour our facility --

15 CHAIRPERSON GRIFFIS: Okay.

16 MS. DANG: -- and get to know -- get to
17 know us.

18 CHAIRPERSON GRIFFIS: Okay.

19 MS. DANG: And, you know, I appreciate Mr.
20 Imhoff is noticing that we are doing better in -- in
21 our effort to supervise the children and I appreciate
22 that.

23 CHAIRPERSON GRIFFIS: Right.

24 MS. DANG: But, I really want you to know
25 that I have really want to engage Ms. Brizill to

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1 really talk with her and -- and address some of the
2 concerns that she has.

3 So, I'm -- I'm saddened by the fact that
4 -- that not able to get her to call me back and get
5 her attention, you know, and -- and be a good
6 neighbor. So, I'm saddened by that.

7 So, I want you to know that I want to make
8 every effort to be good neighbors --

9 CHAIRPERSON GRIFFIS: Well, I appreciate
10 you saying that and I think it is --

11 MS. DANG: -- to everyone.

12 CHAIRPERSON GRIFFIS: -- going to be
13 important if this is approved. Of course, you may
14 well be neighbors for some time. So, it's important
15 to keep that line of communication going.

16 Anything else?

17 MR. BUI: No, I -- no, we -- we have -- we
18 say what we wanted to say. So, in closing, thank you
19 for your attention and thank you for your time and --

20 CHAIRPERSON GRIFFIS: Well --

21 MR. BUI: -- this is --

22 CHAIRPERSON GRIFFIS: -- thank you for
23 yours and we appreciate you coming back and -- and
24 bringing clarity to this application which I think has
25 come a long way since last we saw it.

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1 That being said let's set this for
2 decision making. Decision making will be set I would
3 suggest on -- no, I wouldn't suggest that.

4 MS. BAILEY: February, Mr. Chairman.

5 CHAIRPERSON GRIFFIS: I think we may push
6 it to February. February 3rd, 2004. It will be held
7 in a special meeting in the morning session or not a
8 special meeting. It will be in our normal public
9 meeting.

10 What we can do -- what let's do is have
11 submissions of proposed conditions by the applicant
12 and the parties and then any sort of conclusionary
13 statements. I'm not requiring full findings of fact
14 and conclusions of law, but if there is summations.

15 Problems with that date and decision
16 making? Difficulty? Okay.

17 MR. BUI: Could we ask for an early --
18 early date for the decision to be reached because we
19 do have that rest of C of O situations. We'd like to
20 redesignate it as soon as possible pending the outcome
21 of this application.

22 CHAIRPERSON GRIFFIS: Okay. I understand
23 that. Let's do the 20th of January and here's what is
24 the issue, first of all, I want the -- I want proposed
25 conditions from the party and the applicant. We've

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1 had a lot thrown around. You've had time to address
2 it. Let's put it in writing. It'll be before the
3 Board.

4 I have now set as of today special public
5 meetings every single morning in January and so, what
6 that does for our schedule is push us up to the
7 average of 12 to 13-hour hearing days which is a
8 little troubling.

9 So, what I'm trying to do is balance our
10 schedule with also your needs and requirements.

11 The other piece of it is the more we have
12 to decide on a certain day, the less time there is for
13 deliberation not that we lose quality of our
14 deliberation, but I think we can fit it in on the 20th
15 then.

16 Unless, Ms. Bailey, you see any difficulty
17 with that?

18 MS. BAILEY: No, Mr. Chairman, you just
19 have a full day that day.

20 CHAIRPERSON GRIFFIS: I'll say. It's a
21 good thing we like --

22 MR. BUI: Can we have 15 minutes on that
23 day?

24 CHAIRPERSON GRIFFIS: You don't have any
25 time on that day. Special public meeting, of course,

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1 is deliberation of the Board. The case -- the record
2 is closed except for that material which I've just
3 requested. There is no additional testimony during
4 that period. You are absolutely welcome to be here
5 and you will see how the Board deliberates. It will
6 illuminate all its issues. It will set its position.
7 It will take a motion and it will either approve or
8 deny the application.

9 So, there is no further preparation except
10 for the filings that you need to do. So --

11 MS. BAILEY: Would the 29th of this month
12 give you sufficient time?

13 MR. BUI: The 29th?

14 MS. BAILEY: The 29th.

15 MR. BUI: Yes, absolutely.

16 DR. BRIZILL: Excuse me, Mr. Chairman.

17 CHAIRPERSON GRIFFIS: Yes.

18 DR. BRIZILL: We would not be able to make
19 any submission in that time given the holidays.

20 CHAIRPERSON GRIFFIS: By the 29th of
21 December?

22 DR. BRIZILL: Yes. No.

23 CHAIRPERSON GRIFFIS: Proposed conditions?

24 DR. BRIZILL: No. Proposed conditions and
25 findings of fact and law.

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1 CHAIRPERSON GRIFFIS: No. No. No, I'm
2 not requiring findings and conclusions. I -- I -- I
3 was allowing any sort of summation remarks if you
4 wanted to put them in.

5 DR. BRIZILL: The hearing --

6 CHAIRPERSON GRIFFIS: I don't think this
7 needs a full finding and conclusions.

8 DR. BRIZILL: The hearing would be on the
9 -- December 29th with submissions due by when? The --

10 CHAIRPERSON GRIFFIS: No. No. No. She's
11 saying submissions are due on the 29th.

12 DR. BRIZILL: Okay.

13 CHAIRPERSON GRIFFIS: We're shooting for
14 the 20th. Is that correct?

15 MS. BAILEY: Exactly.

16 CHAIRPERSON GRIFFIS: Yes.

17 DR. BRIZILL: Okay.

18 MS. BAILEY: And, Ms. Brizill, whatever
19 the applicant file, you can respond to by the 12th of
20 January.

21 DR. BRIZILL: Thank you.

22 MS. BAILEY: And, of course, that includes
23 the ANC as well.

24 MR. BUI: Okay.

25 CHAIRPERSON GRIFFIS: Excellent. After

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1 she's finished, she's going to reiterate all those
2 submissions requirements and the date very quickly.
3 If there are any further questions after that, of
4 course, a call into the Office of Zoning will bring
5 clarity.

6 So, Ms. Bailey, when you're ready.

7 MS. BAILEY: The 29th of December would be
8 the submissions from the applicant. The parties have
9 until January 12th to respond and the decision will be
10 scheduled for special public meeting on January 20th
11 at 9:00 a.m.

12 CHAIRPERSON GRIFFIS: Good. All clear?
13 Excellent. Thank you very much.

14 The next case -- we're going to take a two
15 minute and let this applicant move out. If the next
16 applicant could move forward and get ready.
17 Application 17089 and we're going to get right into
18 that.

19 (Whereupon, at 3:03 p.m. off the record
20 until 3:15 p.m.)

21 CHAIRPERSON GRIFFIS: Very well. Let's
22 resume. I think we're ready to call our next case.

23 MS. BAILEY: Yes, Mr. Chairman. That's
24 Application Number 17089 of James Gushner pursuant to
25 11 DCMR 3103.2 for a variance from the lot occupancy

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1 requirements under Section 403, a variance from the
2 rear yard requirements under Section 404, a variance
3 from the open court requirements under Section 406,
4 and a variance from the nonconforming structure
5 provisions under Subsection 2001.3, to allow a two-
6 story addition to a single family detached dwelling in
7 the R-1-B District at premises 5822 Sherrier Place,
8 N.W., Square 1454, Lot 62.

9 Please stand to take the oath.

10 Do you solemnly swear or affirm that the
11 testimony that you will be giving today will be the
12 truth, the whole truth, and nothing but the truth?

13 Please have a seat at the table.

14 CHAIRPERSON GRIFFIS: Good afternoon. All
15 set? Ready to roll?

16 MR. GUSHNER: Sure.

17 CHAIRPERSON GRIFFIS: Good. You just need
18 to turn on your microphone and touch the base of that.
19 There's a little button. Fabulous. And just give
20 your name and your address.

21 MR. GUSHNER: Okay. My name is Jimmy
22 Gushner and I live at 5822 Sherrier Place, N.W. and do
23 you want me to just briefly explain what we're trying
24 to do here?

25 Basically, I wanted to do an addition

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1 renovation to an existing structure that -- that's not
2 conforming and it's depicted there which is the house
3 with the -- the third house on the -- on the right in
4 the -- in the front there and -- and the small garage
5 which I can point out here.

6 This is the proposed structure and this
7 garage and these are the existing structures there.
8 These are existing and these are the aerial views.
9 Oh, I'm sorry.

10 CHAIRPERSON GRIFFIS: Right. He was just
11 pointing out the exhibits that are here. The existing
12 elevation and the garage elevation and you have a roof
13 plan that's showing that. All of which is submitted
14 in. What we don't have is the rendering or the
15 colored version of it.

16 MR. GUSHNER: Right.

17 CHAIRPERSON GRIFFIS: So, that's fine.
18 Okay.

19 MR. GUSHNER: And basically, I've -- I've
20 been living on that block since 1989 and I've seen
21 other work that -- this is Larysa Kurylas who's the
22 architect on this and she's -- I've seen other work
23 that she's done in the neighborhood and I've --
24 everybody's been very please with the -- how
25 contextually it -- it fits in with the -- with the

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1 rest of the neighborhood.

2 And basically, I've -- I've shown these
3 elevations along with drawings and gone and walked
4 virtually every neighbor. Some of the houses in the
5 neighborhood are -- are rented. So, I didn't get to
6 talk to all the owners, but there was no -- nobody
7 that would oppose that and -- and I -- I also
8 submitted those -- those letters in the file with a --
9 with a drawing of, you know, which houses were except
10 -- were in -- in -- you know, which --

11 CHAIRPERSON GRIFFIS: Supporting.

12 MR. GUSHNER: -- which were supporting.
13 Yes, exactly. The -- the -- this proposed project and
14 also the letter from the ANC which was I think 7-0 in
15 support of the project also.

16 And I would let Larysa speak in detail
17 about the -- the variances that we're going for and
18 why -- why we need them and --

19 CHAIRPERSON GRIFFIS: Excellent.

20 MR. GUSHNER: -- if that's okay.

21 CHAIRPERSON GRIFFIS: Yes, let's do that.

22 I think we can get through the detail very quickly,
23 but first, let me clarify. This application was
24 reviewed and was somewhat modified in terms of the
25 relief that's sought.

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1 The Board has looked at it and none of
2 this impacts what you'll have to do today, but we are
3 looking at a variance from 2001.3 which is the
4 addition of nonconforming structures. A variance from
5 403.2 which is the lot occupancy and a variance from
6 2503.2 for the rear yard. Okay.

7 Which is actually aligned with the -- the
8 -- oh, no, that's not right. 2503.2 is the setback
9 from the deck.

10 Basically, what I'm looking at and I think
11 that it is correct to go with what the Zoning
12 Administrator referred the application for.

13 So, that being said let's discuss the test
14 of the variances.

15 MS. KURLAS: My name is Larysa Kurlas.
16 I'm Jimmy Gushner's architect.

17 I could go through, you know, whole
18 explanation about the design of the house, but I think
19 you probably want to focus just on the variance issues
20 at this point.

21 CHAIRPERSON GRIFFIS: I said it's exactly
22 what we want to hear.

23 MS. KURLAS: Okay.

24 CHAIRPERSON GRIFFIS: But, we can't.

25 MS. KURLAS: Okay.

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1 CHAIRPERSON GRIFFIS: So, what is
2 important to us this afternoon, of course, is the test
3 for the variance and that is --

4 MS. KURLAS: Right.

5 CHAIRPERSON GRIFFIS: -- what's unique
6 about this property? Why is that uniqueness created
7 this practical difficulty? The practical difficulty
8 of what you're proposing to do and then tell us why,
9 in fact, it wouldn't impair the intent and integrity
10 of the zone plan or crush the public good.

11 MS. KURLAS: Yes. Well, what we have
12 here is a existing nonconforming structure on a
13 nonconforming lot and that's creating a hardship
14 situation.

15 The existing structure on the lot is
16 nonconforming because it is set back .7 feet from the
17 front property line creating an open court condition
18 and it's also set back only a range of 7 to 5 feet
19 from the rear property line.

20 And what we are doing with the addition --
21 additions, one of which is a planned addition to the
22 north of the properties extending both of those
23 nonconforming conditions, both the .7 foot front open
24 court condition and the -- or actually increasing the
25 nonconformance at the rear of the property line

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1 because of the curve of the property line at the back.

2 So, reducing the rear yard to 4 feet at the northwest
3 corner. You can see the -- the curve of the property
4 line there.

5 We also --

6 MEMBER ZAIDAIN: That's the northwest
7 corner? I'm trying to look at your -- your --

8 CHAIRPERSON GRIFFIS: Is that Project N.W.
9 or is it real northwest?

10 MS. KURLAS: Project N.W.

11 CHAIRPERSON GRIFFIS: Okay.

12 MS. KURLAS: Real northwest and north is
13 to the right on the sheet.

14 CHAIRPERSON GRIFFIS: Sure is.

15 MEMBER ZAIDAIN: Right. You're --

16 MS. KURLAS: So, the upper right corner
17 of the plan of the house is the northwest corner.

18 CHAIRPERSON GRIFFIS: That is?

19 MEMBER ZAIDAIN: Yes, it is.

20 MS. KURLAS: If you look at the north
21 arrow near the title block, that points north and
22 we're saying that north is the short side.

23 MEMBER ZAIDAIN: It's more -- it's more
24 west than north, but it's --

25 CHAIRPERSON GRIFFIS: Gotcha. We won't

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1 dispute that fact.

2 MEMBER ZAIDAIN: I mean the sun sets in
3 that general direction.

4 CHAIRPERSON GRIFFIS: All right. We're
5 looking at that top corner. Okay.

6 MS. KURLAS: Our addition is also
7 increasing the footprint of the house to 54 percent
8 coverage on that front lot.

9 CHAIRPERSON GRIFFIS: Right.

10 MS. KURLAS: We'll also proposing a deck
11 that would be 6 feet high at that northwest corner
12 again. The -- the edge of the deck would sit on the
13 property line and be 6 feet high where only 4 feet is
14 allowed. I mean I think that's another --

15 CHAIRPERSON GRIFFIS: Right. Okay.

16 MS. KURLAS: -- variance that we need and
17 the thing that Office of Planning brought up is this
18 parking accommodation. That if you increase the size
19 of the house 25 percent, you have to accommodate
20 parking on site and we're actually proposing to
21 accommodate two parking spaces on a nearby site that
22 is owned by Jimmy Gushner along with the front lot.

23 There's one lot that borders Sherrier
24 Place which is separated by the 30 foot right-of-way
25 from the lot on the alley.

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1 CHAIRPERSON GRIFFIS: Right.

2 MEMBER ZAIDAIN: And that -- that right-
3 of-way is still in the railroad company's possession?

4 MS. KURLAS: Well, I think --

5 MEMBER ZAIDAIN: You probably mow -- you
6 probably mow the grass. Right?

7 MR. GUSHNER: Nobody knows -- nobody knows
8 who owns it.

9 MS. KURLAS: I think technically it
10 belongs to the District.

11 MEMBER ZAIDAIN: Interesting.

12 MR. GUSHNER: And there's the -- the water
13 line that goes underneath that from the -- from the
14 Del Carlia water treatment.

15 MEMBER ZAIDAIN: Okay. But -- but, it's
16 -- it's two separate lots. Do you have two separate
17 deeds? Two separate tax records?

18 MR. GUSHNER: Yes. Yes.

19 MS. KURLAS: So, the -- the front lot,
20 the lot that the house is built on is nonconforming
21 because it's only 2,318 square feet and that's less
22 than the 5,000 required in -- in R-1-B.

23 It has the necessary frontage. It
24 actually has 76 feet of frontage where only 50 feet is
25 required, but the site is extremely shallow. It

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1 ranges from 28 feet at the north side to 32 feet on
2 the south side and if you just overlay a 25 foot rear
3 yard requirement on top of that, you only have a
4 buildable area of, you know, 3 to 5 feet at the -- at
5 the front of the property. So, that poses a hardship.

6 We're suggesting that if the two lots are
7 considered together, the street lot and the alley lot,
8 that the combined square footage becomes 5,546 square
9 feet meaning -- meeting the intent of the zoning
10 regulations. That's 546 square feet over the 5,000
11 required and that the combined lot occupancy of the
12 house plus the garage would be 36 percent. Well,
13 below the 40 percent allowed in that zone.

14 We feel that we're improving the parking
15 situation by providing the -- the two spaces in the
16 garage and we feel that the neighboring lots are
17 protected by the side yard setbacks. We have a 8 foot
18 side yard setback on the north side and a 16 foot side
19 yard on the south side.

20 And the -- and the -- the area of
21 noncomformance which is mostly the -- the rear yard,
22 that that only impacts this 30 foot right-of-way and
23 not a neighbor directly. As a matter of fact, you
24 could consider that 30 foot right-of-way a de facto
25 rear yard, you know, 25 foot rear yard or 30 foot rear

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1 yard.

2 MEMBER ZAIDAIN: If I could just ask a
3 quick question.

4 CHAIRPERSON GRIFFIS: Yes.

5 MEMBER ZAIDAIN: I'm confused about the
6 court. Where is the court being created? The front
7 court.

8 MS. KURLAS: Well, it might be easier to
9 see it on the plot plan. If you look at the front
10 property line along Sherrier Place and you look at the
11 front face of the house, there's a dimension there
12 that's 0.7 feet and that is what, you know, Zoning and
13 Office of Planning are calling the open court and that
14 open -- the square footage represented by that open
15 court has been included in all the square footage
16 calculations.

17 MEMBER ZAIDAIN: Right. Because it's less
18 that 4 feet. Correct?

19 MS. KURLAS: Right.

20 MEMBER ZAIDAIN: Would be -- but, I guess
21 what -- what makes me confused is the court has to be
22 enclosed on two sides. Is that --

23 CHAIRPERSON GRIFFIS: Yes, that's no
24 court.

25 MEMBER ZAIDAIN: Yes, I don't understand.

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1 CHAIRPERSON GRIFFIS: I guess that's
2 correct way to say it. Right? That's no court.

3 MEMBER ZAIDAIN: Okay.

4 CHAIRPERSON GRIFFIS: Right.

5 MEMBER ZAIDAIN: That doesn't change the
6 relief. Right?

7 CHAIRPERSON GRIFFIS: That does not.

8 MEMBER ZAIDAIN: Okay.

9 MS. KURLAS: I would also like to point
10 out that the two houses to the south of -- of this
11 property have been able to obtain the -- variances
12 similar to the ones that we're --

13 CHAIRPERSON GRIFFIS: Oooh, let's be
14 careful before we go too far.

15 Clearly, of course, the test for a
16 variance is to find its uniqueness. Uniqueness in
17 this property and uniqueness that creates practical
18 difficulty. By comparing similar applications that
19 were approved, you may, in fact, be diminishing --

20 MS. KURLAS: Okay.

21 CHAIRPERSON GRIFFIS: -- your uniqueness.
22 However, I think there is as I'm understanding of the
23 -- the case that's been presented today and also in
24 the record, there is a substantial amount of
25 uniqueness.

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1 For one, there is the site grade that
2 drops substantially which, of course, goes to the fact
3 of how your essentially first-level porch comes out at
4 a grade 6 feet which then regulates it toward lot
5 occupancy as opposed to being a structure below 4 feet
6 in which it would not.

7 Clearly, the intent of the regulations was
8 to allow that type of application, but did not
9 anticipate every unique circumstance of grade change.

10 This right-of-way which obviously is quite
11 unique to this property, one on the angle that it
12 clips in the rear of the primary structure and I
13 almost view this application, although not officially,
14 but certainly as an -- as an accessory structure, as a
15 garage.

16 I think one could logically without going
17 to the history look at these as -- as whole lots that
18 were taken for that right-of-way be that as it may.

19 There is a -- a substantially uniqueness
20 that is, in fact, creating the practical difficulty of
21 the other two variances in terms of allowing this
22 addition.

23 So, that being said, are there -- are
24 there --

25 MEMBER ZAIDAIN: Just out of -- just out

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1 of --

2 CHAIRPERSON GRIFFIS: Yes.

3 MEMBER ZAIDAIN: Just very quickly out of
4 curiosity, you knew the driveway was there when you
5 -- when you bought the property. Correct?

6 MR. GUSHNER: Yes.

7 MEMBER ZAIDAIN: Have you approached the
8 District government about what their plans are for the
9 right-of-way? What's going on or anything like that?

10 MR. GUSHNER: I haven't at this time. No.
11 I know that the -- there was a big dispute at one
12 time because Georgetown was going to build a
13 powerplant. Was going to run some, I guess, high
14 tension wires --

15 MEMBER ZAIDAIN: Right.

16 MR. GUSHNER: -- which potentially an
17 environment issue, across that, but that -- they --
18 they didn't do that.

19 MEMBER ZAIDAIN: Okay.

20 CHAIRPERSON GRIFFIS: Good. Anything else
21 you'd like to add?

22 MS. KURLAS: No.

23 CHAIRPERSON GRIFFIS: Very well. Let's
24 move to Office of Planning's report. Mr. Jackson is
25 back with us this afternoon. Good to see you.

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1 MR. JACKSON: Well -- well, I'm glad to be
2 back.

3 This is -- my name is Arthur Jackson, D.C.
4 Office of Planning and I'll briefly go through the
5 Office of Planning's report.

6 The Office of Planning reviewed the
7 application and believes that there are different
8 variances required than what was originally
9 advertised.

10 Essentially, we were looking at variance
11 for the additional -- for the parking space to be non-
12 accessory to the existing building, for increasing the
13 lot occupancy, for -- for the -- and a variance for
14 the continuation of a nonconforming court. Variance
15 from the decrease -- and a decrease in a nonconforming
16 rear yard.

17 We based that on the zoning tabulation
18 that was provided by the -- provided by the applicant
19 I guess through the Office of Zoning.

20 By looking at the definition of a court,
21 the definition says it's a -- it's surrounded on all
22 sides by exterior walls of a building or by -- I'm --
23 I'm sorry, open court. Open to the street yard or
24 alley not less than -- and not less than 10 feet wide
25 or in that a court is an unopened -- unopened space --

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1 open to the sky on the said lot as building which is
2 bounded on two or more sides by exterior walls of the
3 building or on two or more sides by more exterior
4 walls, lot lines, and yards.

5 In this case, we have a -- an area that's
6 bounded on two sides by a side -- on the two sides by
7 side yards, on the front by a property line, on the
8 rear by a wall. I believe that's why it was
9 determined to be a court, but in any case since that
10 was on the interpretation that we received, we decided
11 to go ahead and pursue getting -- seeing whether it
12 could qualify for relief under that provision.

13 So, in essence, we're asking for a
14 variance from Section 2001.3.B.2 because in two
15 instances they are continuing existing nonconformities
16 or increasing the nonconformity by making the rear
17 yard 4 -- 4 feet wide instead of 5 and, of course, the
18 variance for the lot occupancy and the variance for --
19 to make -- so, that they can park, a required parking
20 space off site.

21 So, essentially, that's how we got to our
22 determination.

23 I think the applicant has presented their
24 case ably and has described the -- the inconsistencies
25 that the lot has that makes it difficult to develop

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1 the property under the current zoning regulations.

2 They have -- in our review of their
3 application, we saw -- in visiting the site, we didn't
4 think that this would have any impact on adjacent
5 neighbors and so, we think that it is in terms of
6 variances, the -- there are peculiar and there are
7 difficulties in the property that limit their ability
8 to be developed in -- in a way that's consistent with
9 the zoning regs and that we think that granting this
10 application would not have a -- be a substantial
11 detriment to the public good in terms of traffic noise
12 and -- and lighting.

13 We also think that the circumstances
14 constitute a peculiar -- a particular difficulty and
15 that -- and conclude that the list of variances can be
16 granted without impairing the -- the intent, purpose,
17 and integrity of the zoning map as embodied in the
18 zoning regulations and map.

19 In terms of the accomplished plan, the
20 application is consistent with that.

21 In terms of the special exception -- I'm
22 sorry. The variance for the lot occupancy is
23 necessary because the -- a special exception would
24 only allow the lot occupancy of 50 percent. They're
25 going for 54. Again, we think that the -- the

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1 variance can be granted in -- in that instance because
2 of the -- for reasons stated previously.

3 In terms of community input, the ANC voted
4 to approve the -- this proposal on November 5th, 2003
5 and by my count, 12 neighboring property owners
6 submitted letters of support for the application.

7 Therefore, we again recommend approval of
8 a variance from Section 2116.1 to allow the parking
9 space to be located off site on another property owned
10 by the applicant. A variance from Section 403.3 to
11 allow the increase of lot occupancy to 54 percent and
12 -- and one correction is a variance from Section
13 2001.3.B.2 to allow the continuance of the
14 nonconforming court and to decrease of existing
15 nonconforming rear yard setback from 5 feet to 4.

16 The concludes the Office of Planning's
17 report and we're available to answer questions.

18 CHAIRPERSON GRIFFIS: Excellent. Thank
19 you very much, Mr. Jackson.

20 I think perhaps we can even add to the
21 uniqueness of this site as the complications of the
22 differing variances that may or may not be required
23 which I've never seen a successful case base itself
24 on, but this may be one.

25 Be that as it may, quite frankly as a

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1 variance test is made others fall to it. I can't see
2 how you would make a test reach over the threshold of
3 a -- a lot occupancy variance but somehow not meet the
4 test of the others as the uniqueness of practical
5 difficulty in this are similar all the way through.

6 So, we do have a little bit of
7 discrepancy, but I think the Board can look to and --
8 and we appreciate the Office of Planning's analysis
9 and full report on this which gives us great
10 information to deliberate on and again, as I say, very
11 specifically goes to the test of the variances.

12 But, I think we can rest assured first of
13 all in terms of the parking there would not be parking
14 required as these are two separate lots which again is
15 often difficult to think of. We don't often see this.

16 There are two separate lots and the -- this -- the --
17 the lot behind is not essentially within this
18 application for any type -- type of relief. I don't
19 believe that that relief from the parking requirement
20 would be needed.

21 But, again, to reiterate, I think we're
22 looking at the three variances as outlined and all of
23 the information Office of Planning has provided go to
24 that and are very strongly in support of it.

25 That being said, do you have any

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1 questions, cross examination of Office of Planning?

2 MR. GUSHNER: No, I do not.

3 CHAIRPERSON GRIFFIS: Okay. Did you
4 receive their report?

5 MR. GUSHNER: I made a copy of it from the
6 file. Yes.

7 CHAIRPERSON GRIFFIS: Okay. So, you're
8 reviewed it and you understand what they're saying.
9 Okay.

10 Board questions? Nothing? Very well.

11 Mr. Jackson, again, we thank you very much
12 for this and he has also indicated, but let's move to
13 the ANC report. The -- the ANC had submitted in their
14 letter 3D from Mr. Finney the Chair and I take it and
15 I understand actually -- actually, this is one of the
16 best letters we've had today. So, maybe we'll take a
17 moment and reflect on that. We can move on with this.
18 Right. Exactly. Obviously very supportive of it and
19 so, I'm sure you did any excellent job in -- in
20 presenting and the facts that he illuminates are very
21 important to the Board in terms of our review and I
22 think it has met the standard if not surpassed them to
23 be granted great weight in our deliberation.

24 I am not aware of any other submission
25 attendant to this application in terms of government

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1 reporting unless the applicant is aware of any other.

2 If not, then we can move on to whether
3 anyone is here attendant to this Application 17089 to
4 give testimony today either for or in opposition to
5 it.

6 Not seeing any indication of people
7 wanting to testify, we will make note of Exhibit
8 Number 22 that was submitted into the record which is
9 letters of support as the applicant has already
10 testified. Twelve letters of support have been
11 submitted into the record along with the designation
12 of where they are from.

13 Anything else I need to call to the
14 attention? Is the applicant aware of any other
15 submissions that I haven't illuminated?

16 MR. GUSHNER: No.

17 CHAIRPERSON GRIFFIS: Very well. We'll
18 turn it over to you for any sort of closing remarks
19 you might have.

20 MR. GUSHNER: I have no closing remarks.

21 CHAIRPERSON GRIFFIS: Very well. Anything
22 left?

23 MR. GUSHNER: Oh, can I ask for a bench
24 decision?

25 CHAIRPERSON GRIFFIS: You don't need to

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1 ask. We're going to do something here.

2 Mr. Zaidain, any questions?

3 MEMBER ZAIDAIN: No.

4 CHAIRPERSON GRIFFIS: Nothing? Very well.

5 Then let's take this up in terms of a motion and I
6 would move approval of Application 17089 pursuant to
7 the variances as stated by the Board under 2001.3,
8 403.2, and 2503.2 for the premises of 5822 Sherrier
9 Place, N.W.

10 I would ask for a second.

11 MEMBER ZAIDAIN: I'll second, Mr. Chair.

12 CHAIRPERSON GRIFFIS: Thank you very much.

13 I think it's very clear in terms of the uniqueness.
14 One is the site slop. Second as was touched upon as
15 the shape of the lot that actually angles and the
16 third, of course, is the right-of-way that cuts
17 through the -- diminishing the portions of the
18 established required size of a lot in this area.

19 I think the practical difficulties that
20 arise out of the uniqueness have been well illuminated
21 and there has not been any evidence of detriment I've
22 seen or I do believe the Board has seen any sort of
23 detriment to the zone plan or map or the public good
24 for that matter.

25 I think the case has been made and should

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1 be supported.

2 Others.

3 MEMBER ZAIDAIN: I agree, Mr. Chair.

4 CHAIRPERSON GRIFFIS: Thank you very much.

5 Any other comments?

6 Then I'd ask for all those in favor
7 signify by saying aye.

8 MEMBER MILLER: Aye.

9 CHAIRPERSON GRIFFIS: Aye.

10 MEMBER ZAIDAIN: Aye.

11 CHAIRPERSON GRIFFIS: And opposed?

12 Why don't we record that vote?

13 MS. BAILEY: The vote is recorded as 3-0-2
14 to approve the application. Motion made by Mr.
15 Griffis. Seconded by Mr. Zaidain. Ms. Miller is in
16 support. Mr. Etherly and there is not a Zoning
17 Commission member present today and application is
18 approved as amended by the Board and summary order,
19 Mr. Chairman?

20 CHAIRPERSON GRIFFIS: Yes, I don't see any
21 reason to do a -- on this. We should do a summary.

22 MS. BAILEY: Thank you, sir.

23 CHAIRPERSON GRIFFIS: Good. Thank you
24 very much and thank you. Appreciate your patience
25 this afternoon. Good luck.

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1 MS. KURLAS: Thank you.

2 MR. GUSHNER: Thank you very much.

3 CHAIRPERSON GRIFFIS: And that's one heck
4 of a -- an addition. I tell you just a side comment
5 as you're moving out, I had trouble figuring out from
6 the existing photographs to the proposed new if I was
7 looking at the same thing. So, I think it's going to
8 be an excellent improvement to that piece of property,
9 but that had no bearing on the application. So. All
10 right.

11 MR. GUSHNER: Thank you.

12 CHAIRPERSON GRIFFIS: Have a good day.
13 Why don't we move on and call the next case in the
14 afternoon.

15 MS. BAILEY: The last case of the day is
16 that of the Washington International School
17 Application Number 17082, pursuant to 11 DCMR 3104.1
18 for a special exception to allow an existing private
19 school to amend Condition Number 3 of the BZA Order
20 Number 16189 to allow a maximum of 92 faculty and
21 staff under Section 206. The property is located in
22 the R-1-A District at premises 3100 Macomb Street,
23 N.W. Square 2084, Lot 837.

24 The persons that are present in the back
25 of the hearing room, are you associated with this

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1 application? Can you hear me okay back there? Okay.

2 I -- if you're going to be testifying,
3 please stand to take the oath.

4 Do you solemnly swear or affirm that the
5 testimony you will be giving this afternoon will be
6 the truth, the whole truth, and nothing but the truth?

7 Thank you.

8 CHAIRPERSON GRIFFIS: Good afternoon.

9 MR. DEPUY: Good afternoon, Mr. Griffis,
10 members of the Board.

11 For the record, I'm Jacques DePuy,
12 attorney with Greenstein, DeLorme & Luchs.

13 This is an application by the Washington
14 International School for a special exception to
15 increase its authorized staff level from 70 to 92.

16 As the material submitted and the
17 testimony today will indicate, we believe that the
18 application satisfies the special exception criteria
19 specifically that the requested addition in faculty
20 and staff will not cause any objectionable conditions
21 to adjoining or nearby property based on noise,
22 traffic, number of students or other -- otherwise
23 objectionable conditions and secondly, that ample
24 parking space is provided for such teachers and staff
25 as well as visitors and others who use the property.

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1 Our witnesses today include only Mr.
2 Richard Hall, the head of school. Also, in the
3 audience if necessary are Robert Fleischman, the
4 Chairman of the Board of Trustees; Mr. Tom Alexander
5 who's the Director of Finance; and also Gary Baker.

6 The -- as the Board knows, the ANC -- ANC-
7 3C has filed a letter in support of the application.
8 The Planning Office has filed a report in support of
9 the application and Mr. Mordphin is here to give that
10 report.

11 Also Friends of Tregaron represented by
12 Ms. Bonnie LePard who is here today will appear in
13 support, but with a reservation or a caveat and,
14 therefore, the application we believe will be
15 unopposed.

16 Mr. Chairman, member of the Board, at this
17 point, I'd ask Mr. Richard Hall to give his testimony
18 and I'll hand out copies to the Board at this time.

19 MR. HALL: Good afternoon, Mr. Chairman
20 and members of the BZA.

21 My name is Richard Hall and I'm head of
22 Washington International School. I've been head of
23 school since 2001 and previous to that, I was
24 headmaster of the North Shore Country Day School in
25 Chicago from 1979 to '89 and from 1989 to 2000

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1 Director of the International School in Brussels.

2 I'm pleased to appear before you today in
3 support of our application for a special exception.

4 Washington International School was
5 founded in 1966 and has been operating at 3100 Macomb
6 Street, N.W. location since 1978.

7 The school is a private day school that
8 currently offers classes from prekindergarten through
9 12th grade at two campuses. The Macomb Street campus
10 includes students from sixth through 12th grade while
11 the second campus located on Reservoir Road serves
12 students from prekindergarten through fifth grade.

13 The school is coeducation with students
14 primarily from the local international community.
15 Currently, the students and parents represent over 90
16 countries.

17 Washington International School appears
18 today in support of its application for a special
19 exception to allow the school to amend Condition
20 Number 3 of the BZA order in Application Number 16189
21 dated February 4, 1997 to reflect the correct current
22 number of faculty and staff.

23 We do not come before you to seek approval
24 for any increase in the number of students which we
25 have pledged to the community not to increase.

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1 It has come to the attention of the
2 current administration of Washington International
3 School that the number of faculty and staff members
4 exceeds the total number permitted pursuant to
5 Condition Number 3 of the BZA order in Application
6 Number 16189. That BZA order stated that the total
7 number of faculty staff should not exceed 70.
8 Currently, Washington International School has 92
9 faculty and staff members.

10 Since this discovery, the administration
11 has searched its records for an explanation of when
12 and how it exceeded the staffing level set forth in
13 the 1997 BZA order.

14 Unfortunately, the school is unable to
15 accurately explain the increase in school staffing
16 since 1997 in part because of recent changes in the
17 senior administration and in our Board of Trustees and
18 in part due to confusion with respect to new
19 construction at the other campus and shifting of
20 students and staff.

21 For example, I assumed my duties as
22 headmaster only two and a half years ago in 2001 and
23 Tom Alexander our Director of Business Operations
24 joined WIS in 2002. In addition, WIS recently elected
25 a new Chairman of the Board and a number of new

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1 Trustees.

2 However, not withstanding this increase in
3 the staffing level, the school submits that its
4 current level of faculty and staff has not created any
5 adverse affects on neighboring and nearby properties.

6 First, the school provides adequate
7 on-site parking the staff, faculty, and visitors.

8 Second, these on-site parking spaces are
9 adequately landscaped and screened from adjacent
10 properties.

11 And third, the vehicular ingress --
12 ingress and egress patterns from the school property
13 have not been affected by the current staffing level.

14 For these reasons, Washington
15 International School requests a special exception to
16 allow the school to amend Condition Number 3 of the
17 BZA order in Application Number 16189 to (a) reflect
18 the current correct number of faculty and staff and
19 (b) to be in full compliance with all BZA mandates.

20 It should be noted that while the school
21 is seeking a technical increase, the application does
22 not seek an actual or physical increase in the
23 school's faculty and staff because the school has been
24 operating at the current faculty and staff level of 92
25 for some years.

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1 Since filing an application with the BZA
2 in September, Washington International School has met
3 with both the ANC-3C and the Friends of Tregaron, a
4 community organization which closely monitors any
5 matters that affect the historic Tregaron Estate, to
6 discuss the application and explain the school's
7 request to amend Conditions Number 3.

8 Annually, the school reports to the
9 Friends of Tregaron regarding matters found in the
10 school's formal contract with them entered into in
11 1997 and was at that time submitted for the record in
12 the 1997 BZA case.

13 The report says the following: Friends --
14 the Friends of Tregaron and WIS agree that the
15 preservation of Tregaron Estate and the operation of
16 the school are important and mutually compatible goals
17 and also says that the parties agree to work
18 cooperatively together to implement the purposes and
19 principles of the contract.

20 I believe that we have since that --
21 certainly since my arrival, we have had a cordial
22 relationship with the Friends of Tregaron and have
23 talked often.

24 The report included also -- the report in
25 September includes also the number of students that we

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1 have in the school and the events and the school's in
2 full compliance with this agreement.

3 Subsequent to these meetings, ANC-3C
4 approved our application as part of its consent
5 calendar.

6 The Friends of Tregaron have evidenced
7 their support as well for our application. The school
8 notes that along with its approval, the Friends of
9 Tregaron has urged the school to keep close watch of
10 compliance with staff and student levels which the
11 school fully agrees to do and I think Bonnie LePard
12 will testify shortly in that regard.

13 In order to address the concerns of
14 Friends of Tregaron as expressed in their letter of
15 December 1, 2003, we will offer to make our records
16 available to both the friends and the ANC if they wish
17 to confirm that the school is up to its commitments.

18 Washington International School submits
19 that this application satisfies the requirements for a
20 special exception pursuant to the zoning regulations.

21 The requested special exception to amend Condition 3
22 of BZA Order 16189 is in harmony with the purpose and
23 intent of the zoning regulations and will not
24 adversely effect the use of neighboring properties.

25 Additionally, the application will not

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1 cause addition noise, traffic or other conditions
2 objectionable to adjoining properties or the
3 neighborhood.

4 Finally, sufficient parking is provided by
5 the school for its faculty, staff, and visitors.

6 In response to a request from the Office
7 of Zoning that we review the most recent BZA order
8 from 1997, Application Number 16189, for the purpose
9 of updating it and making sure that each condition is
10 relevant and applicant -- applicable to the current
11 situation of the Tregaron property, I attach to my
12 testimony a document that seeks to accomplish this
13 task.

14 As you will see, the attached document
15 lists the conditions from the 1997 order verbatim and
16 in a black line format, depicts the revisions that we
17 believe are necessary and appropriate. Thus, for
18 example, we suggest the deletion of all items from the
19 prior order that pertain to the construction of the
20 gymnasium/arts building such as with respect to
21 construction hours, methods of delivery of materials,
22 and the like since the building has been completed.

23 Therefore, I ask that the Board of Zoning
24 Adjustment approve the school's application.

25 Thank you for the opportunity to appear

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1 before you and I would be pleased to answer any
2 questions you may have.

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

5 A couple of quick questions. First of
6 all, it's noted in your 92 that this would be --
7 although the condition is total number of faculty and
8 staff, your calculation of 92 is -- is what?

9 MR. HALL: Is based on full-time
10 equivalent faculty and staff.

11 CHAIRPERSON GRIFFIS: And how does that
12 break down for your program and use? How many people
13 does that actually mean, bodies?

14 MR. HALL: I may need some help. 101.

15 CHAIRPERSON GRIFFIS: 101.

16 MR. HALL: Yes.

17 CHAIRPERSON GRIFFIS: Okay. And do you --
18 do you foresee that changing? Obviously, that's part
19 -- part-time people --

20 MR. HALL: Right.

21 CHAIRPERSON GRIFFIS: -- that may make a
22 full-time equivalent.

23 MR. HALL: Right.

24 CHAIRPERSON GRIFFIS: In terms of the
25 program that the school is offering or the projected

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1 changes of programs, does that percentage breakdown
2 which seems to be fairly minimal is that anticipated
3 to change at all?

4 MR. HALL: No.

5 CHAIRPERSON GRIFFIS: So, actually what
6 you're proposing is to modified Condition Number 3 to
7 say the total number of full-time equivalent faculty
8 and support staff --

9 MR. HALL: Yes.

10 MR. DEPUY: That's correct, Mr. Chairman.

11 CHAIRPERSON GRIFFIS: -- shall not exceed
12 92. Now, another concern for us is that -- or comment
13 I should say. The proposed conditions that would have
14 been grand if we had received them earlier. This
15 Board has -- has looked at in terms of modification of
16 conditions especially with -- maybe I should start on
17 a good note.

18 I thought, for instance, the elevators
19 really weren't working today because the hearing room
20 wasn't filled for a private school application if you
21 were going forward, but let me state a concern that we
22 have and the Board I think in looking at the prior
23 hearing to go in and clean up all of the past
24 conditions makes an awful lot of sense and so, with
25 this being proposed, I think we can take a look at it

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1 and move on with it.

2 Obviously, the -- the difficulty that we
3 have is that -- is this opening up an entire review of
4 all of the issues attendant to the case and I think we
5 can be cautious and careful enough and look to only
6 those that have actually expired or need just to be
7 updated with a word change so that we don't run into
8 that difficulty.

9 Anything else? Clarifications?
10 Questions? Yes, Ms. Miller.

11 MEMBER MILLER: With respect to the
12 parking, how many parking spaces does the school have
13 on site?

14 MR. HALL: Seventy-two.

15 MEMBER MILLER: And do you know under the
16 regulations how many faculty and staff you can have
17 for those number of spaces?

18 MR. DEPUY: Ms. Miller, we've calculated
19 the parking requirements and we believe that the 72 is
20 all that's required based on the two for three
21 requirement for the number of faculty and staff and
22 the requirement for the largest auditorium space on
23 campus.

24 The Planning Office, I believe, has
25 calculated four additional spaces beyond what we

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1 calculate, but I believe the Planning Office agrees
2 with us that there is no requirement that they be
3 provided because it's an historic landmark.

4 MEMBER MILLER: So, what we're looking at
5 is just ample parking not a certain number in the
6 regulations?

7 MR. DEPUY: That's correct.

8 MEMBER MILLER: Okay. Also, I don't
9 believe that I have in my file a report from the ANC.
10 Is there one?

11 MR. DEPUY: There is a letter from the
12 ANC. I believe that's -- that's all that I'm aware
13 of.

14 The ANC put this item on its consent
15 calendar and I think because it's on the consent
16 calendar, they may -- may not have done a report in
17 the normal way.

18 MEMBER MILLER: Do you have a copy of --
19 of the letter?

20 CHAIRPERSON GRIFFIS: Yes. Here we go.
21 We -- well, I think we have one here. What's the date
22 of the letter?

23 MR. DEPUY: October 29th.

24 CHAIRPERSON GRIFFIS: Is that what that
25 is?

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1 MEMBER MILLER: Right. Okay.

2 CHAIRPERSON GRIFFIS: They have it.

3 MEMBER MILLER: We found the letter. They
4 submitted a letter in -- in support of two different
5 cases in one letter.

6 MR. DEPUY: Yes, that's correct.

7 MEMBER MILLER: Okay. And it wasn't in
8 this file.

9 MR. DEPUY: Conserving trees.

10 MEMBER MILLER: Okay. Thank you.

11 MEMBER ZAIDAIN: I -- okay. I got a
12 little -- I think because I was looking through
13 something else, I got -- I got a little behind on what
14 you were talking about with this -- with the
15 questioning about the faculty and staff.

16 Basically, you said the three words and my
17 ears perk up when it comes to private schools and that
18 is full-time equivalents. How do you -- how is that
19 playing into this at this time?

20 CHAIRPERSON GRIFFIS: What the -- the
21 applicant has just stated that they have -- the number
22 of bodies is about roughly just over 100.

23 MEMBER ZAIDAIN: 101.

24 CHAIRPERSON GRIFFIS: 101. They have
25 full-time equivalents then of 92 and --

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1 MEMBER ZAIDAIN: Wait -- wait. Number of
2 -- number of bodies being their total number of
3 faculty and support staff?

4 CHAIRPERSON GRIFFIS: Right.

5 MEMBER ZAIDAIN: Okay.

6 CHAIRPERSON GRIFFIS: And so, that was
7 giving me an indication of what that kind of breakdown
8 of part-time people that created the full-time which
9 goes to I think the issue the Board has contended with
10 is --

11 MEMBER ZAIDAIN: Oh. Okay.

12 CHAIRPERSON GRIFFIS: -- the actual impact
13 is not just numbers or number of people, but what
14 people generate.

15 MEMBER ZAIDAIN: Right. Exactly. Well,
16 that's something we've been doing quite a bit lately.

17 So -- so, really, you were just -- you
18 were pinning down what the term they're using is.

19 CHAIRPERSON GRIFFIS: That's correct.

20 MEMBER ZAIDAIN: Or that should be using.
21 I guess.

22 CHAIRPERSON GRIFFIS: And if, in fact, as
23 this Board's been doing, write the new condition or
24 modify Condition Number 3. I think it has to be
25 explicit in what --

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1 MEMBER ZAIDAIN: Okay.

2 CHAIRPERSON GRIFFIS: -- we're reviewing
3 and approving it for. As -- as this case is being
4 presented, of course, this is an existing condition
5 essentially that we're being asked to approve.

6 MEMBER ZAIDAIN: Right. Yes, I understand
7 that.

8 CHAIRPERSON GRIFFIS: So, the reality is
9 we're looking at 92 FTEs.

10 MEMBER ZAIDAIN: Right. Well, this is
11 something that we've been dealing with in other
12 private schools and -- and I'll say right off the bat
13 I'm not supportive of -- in general of full-time
14 equivalents. I don't think that captures what -- what
15 we need to look at here. That's more of a budgetary
16 term.

17 To anybody who may have the answer from
18 your -- from your team here, do you guys know how many
19 total number of people are on-site at one time?
20 Through a shift breakdown of your -- of your faculty
21 and staff do you --

22 MR. HALL: I don't think I can answer
23 that.

24 MEMBER ZAIDAIN: Okay.

25 CHAIRPERSON GRIFFIS: Well, let's explore

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1 that limitedly so there's a better understanding.

2 If you have 92 full-time employees rather
3 if you have 101 --

4 MEMBER ZAIDAIN: 101.

5 MR. HALL: Some will come and go at
6 different times of the day --

7 MEMBER ZAIDAIN: Right.

8 MR. HALL: -- obviously because they're
9 not required to be there all day long.

10 MEMBER ZAIDAIN: No, that's
11 understandable. I -- I --

12 MR. HALL: So --

13 MEMBER ZAIDAIN: The point that we have --
14 the problem we have with full-time equivalence is if
15 we were to -- first of all, if you're -- if you're
16 presenting 92 full-time equivalents to us --

17 MR. HALL: Yes.

18 MEMBER ZAIDAIN: -- as faculty and staff
19 and we were to amend this condition to say total
20 number of faculty and support staff shall be '92 and
21 then let's say you take then of those full-time
22 equivalents and break them into six different
23 employees, you're going to be out of compliance with
24 your -- with your order.

25 MR. HALL: And that -- I think that was

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1 what was your question.

2 MEMBER ZAIDAIN: Right.

3 MR. HALL: Having to do with do we change
4 that in the future and I would not see any change in
5 that.

6 MEMBER ZAIDAIN: Was this presented as --
7 as FTEs to the ANC?

8 MR. HALL: I don't know.

9 MEMBER ZAIDAIN: I mean was this issue
10 debated at all?

11 MR. HALL: Yes. I don't know.

12 MEMBER ZAIDAIN: Right. I'm just --
13 because there's -- there's a difference to -- between
14 FTEs and total number of staff.

15 MR. HALL: Sure.

16 MEMBER ZAIDAIN: I just wanted to know if
17 that was raised by anybody -- any -- any of the other
18 parties in the --

19 MR. HALL: By the way, there is --

20 MEMBER ZAIDAIN: I'll ask him too when we
21 get to him. Don't worry.

22 MR. HALL: Okay. There is a -- there is a
23 footnote in my testimony which I forgot to say out
24 loud which is, in fact, that that number is based on
25 full-time equivalent --

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1 MEMBER ZAIDAIN: Oh. Okay.

2 MR. HALL: -- faculty and staff.

3 MEMBER ZAIDAIN: I did not see the
4 footnote.

5 MR. HALL: Yes, sorry.

6 CHAIRPERSON GRIFFIS: Well, that's why we
7 pushed you on the question.

8 MR. HALL: I --

9 CHAIRPERSON GRIFFIS: We did see that
10 actually, but you need to say it.

11 MR. HALL: Yes, thank you.

12 CHAIRPERSON GRIFFIS: Okay. The
13 difficulty -- I think what Mr. Zaidain is evidencing
14 which -- and I think it is open if there's a good
15 answer. Is something that we do struggle with. One
16 is what is an accurate count. The other is how -- can
17 it actually be monitored or not?

18 I'm of -- of a little differing opinion
19 with Mr. Zaidain in terms of the use of full-time
20 equivalents. Because I think it's a -- it can become,
21 in fact, a more exact measurement and the compliance
22 of which can be measured quite well as opposed to
23 doing something of direct impact of -- of faculty and
24 staff on site at one time.

25 MEMBER ZAIDAIN: Well, I'm not saying that

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1 that standard's good, too.

2 CHAIRPERSON GRIFFIS: No, I know you're
3 not proposing it, but --

4 MEMBER ZAIDAIN: I'm just -- but --

5 CHAIRPERSON GRIFFIS: -- looking at
6 alternatives, how do we -- what is the term or
7 measurement that we would use and I don't think we've
8 hit the best --

9 MEMBER ZAIDAIN: Right. I don't -- I
10 don't think we have either to be honest with you. I
11 just -- not -- not to sound negative. I just know --

12 CHAIRPERSON GRIFFIS: Right.

13 MEMBER ZAIDAIN: I'm just not in support
14 of the FTE and I'm not sure what I'm in support of
15 yet.

16 CHAIRPERSON GRIFFIS: Right. Ms. Miller's
17 got the answer.

18 MEMBER MILLER: I do, but they're not
19 listening. But -- no, the alternative is to come up
20 with a number that safely covers the -- the maximum
21 number of employees that you will have total and that
22 doesn't have an adverse impact on the community.

23 Now, that number could be 101 or it might
24 be a little bit higher for flexibility. I don't know.

25 But, maybe you could think about a number.

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1 CHAIRPERSON GRIFFIS: But, it isn't. Let
2 me disagree with that. Because if we give them a
3 maximum of 101 right now, why isn't it what Mr.
4 Zaidain has proposed is 50 of them become part-time.
5 We now actually have 150 employees and then how many
6 are actually on site? I mean you can keep putting --

7 MEMBER ZAIDAIN: Well, is that what she's
8 saying? I think she's saying there's 101 --

9 MEMBER MILLER: That's not what I'm
10 saying. Total staff.

11 MEMBER ZAIDAIN: -- total staff.

12 MEMBER MILLER: Including part-time
13 employees.

14 When you use the full-time equivalent, you
15 -- you can divide them a million times and you don't
16 have -- you can't control the number. If you have a
17 specific number of total employees --

18 MEMBER ZAIDAIN: She's saying give them a
19 static number.

20 CHAIRPERSON GRIFFIS: Just total
21 employees.

22 MEMBER MILLER: Right.

23 CHAIRPERSON GRIFFIS: But, it does the
24 same thing.

25 MEMBER MILLER: No, they can't have more

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1 than say 101 employees.

2 CHAIRPERSON GRIFFIS: I see.

3 MEMBER MILLER: Or 105 employees.

4 CHAIRPERSON GRIFFIS: I see.

5 MEMBER MILLER: They can -- they can have
6 -- they can break that number into part-time and full-
7 time.

8 CHAIRPERSON GRIFFIS: Okay. So, it goes
9 back to the condition crafted in 1862 of total number
10 of faculty and support staff shall not exceed 92.

11 MR. DEPUY: I think 105 would be fine.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. HALL: Either way for us.

14 CHAIRPERSON GRIFFIS: See we have all this
15 time to kill today. With a private school we said --
16 no, I think with all seriousness it's a very important
17 issue and -- and what we --

18 MR. HALL: Yes.

19 CHAIRPERSON GRIFFIS: -- you know, really
20 what we're doing is insuring one, that our order can
21 be measured and complied with.

22 MR. HALL: Yes.

23 CHAIRPERSON GRIFFIS: And two, that is a
24 full understanding of the applicant in complying with
25 it so we don't run into problems which is not unique

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1 to this application.

2 MR. HALL: Yes.

3 CHAIRPERSON GRIFFIS: It seems to be more
4 of the norm which we'd like to remedy.

5 MR. HALL: I understand.

6 CHAIRPERSON GRIFFIS: Okay. So, you've
7 heard from the Board. Is there a response to that in
8 terms of how we would -- well, there should be. So,
9 I'm allowing you to let us know what direction it is.

10 First of all, we have -- what Ms. Miller's
11 talking about is setting an absolute limit. Total
12 number just as the condition is written now. Total
13 number of faculty and support staff shall not exceed
14 92 or it would be 101 in your case as you've just said
15 is the total number of your faculty and staff. What?

16 MR. HALL: I think that's okay.

17 CHAIRPERSON GRIFFIS: I just -- no, we're
18 not deciding it. I'm just letting it happen --

19 MR. HALL: Yes.

20 CHAIRPERSON GRIFFIS: -- in terms of
21 response.

22 MR. HALL: I'm trying to think about what
23 difference it would make to us.

24 CHAIRPERSON GRIFFIS: Good and just so you
25 know, keep thinking about it.

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1 MR. HALL: All right.

2 CHAIRPERSON GRIFFIS: It's -- is there
3 anything else in terms of your presentation of the
4 case at this point? Otherwise, we're going to run
5 through the rest of the report.

6 MR. DEPUY: That completes our case in
7 chief.

8 CHAIRPERSON GRIFFIS: Okay. Great. Thank
9 you. Let's go to Office of Planning which I think may
10 have an opinion also on how to deal with this.

11 MR. MORDPHIN: Good afternoon, Chairman
12 and members of the Board.

13 My name is Stephen Mordphin with the
14 Office of Planning and this application is a special
15 exception to permit a maximum of 92 faculty and staff
16 for Washington International School.

17 And the school's located on historic
18 property and as such, no additional parking is
19 required for this increase.

20 BZA Application Number 16189 granted in
21 1997 permitted a total faculty and staff of 70 under
22 Condition Number 3 and this application proposes to
23 increase that amount by 22 for a total of 92. The
24 application indicates that this school has already
25 been operating with faculty and staff of this amount.

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1 The application is for the continued use
2 of the subject property as a private school. The
3 increase not likely to cause the use to become
4 objectionable because of noise, traffic, number of
5 students or other objectionable conditions because the
6 school has already been operating with the increased
7 number of faculty and staff without becoming
8 objectionable to the neighborhood.

9 OP has made this determination based on
10 the letter of support from ANC-3C dated October 29th,
11 2003.

12 Therefore, the Office of Planning
13 recommends approval of the application as submitted by
14 the applicant.

15 CHAIRPERSON GRIFFIS: Good. Thank you
16 very much and in your understanding of our discussion
17 in terms of increasing that Condition Number 3 the
18 total number of faculty and support staff to not
19 exceed 101, would that also be in concurrence with the
20 Office of Planning and the understanding of what's
21 been testified to today?

22 MR. MORDPHIN: The way I would look at it
23 maybe is how -- what is the maximum number of staff
24 like on any single one shift or at any one time.
25 Because although some of them may be full-time

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1 equivalents, are they all there at the same time.

2 CHAIRPERSON GRIFFIS: Right.

3 MR. MORDPHIN: In which case, you might
4 run out of parking. So, I would do it the single
5 largest shift or the -- the maximum number that are on
6 site at any one time.

7 CHAIRPERSON GRIFFIS: Okay. So, we have
8 the three options. FTE, on site or total.

9 MR. HALL: Ms. Miller suggested that
10 perhaps giving us a little flexibility something like
11 105 would serve us well and that means that different
12 years you have different configurations of class sizes
13 and sometimes we do need more part-time and less part-
14 time, but it's never going to vary greatly from what
15 we have right now. We have a very stable faculty.

16 MEMBER ZAIDAIN: So, when you say 105,
17 you're talking about 105 total people --

18 MR. HALL: Total people --

19 MEMBER ZAIDAIN: -- employed by --

20 MR. HALL: -- coming in and out all day.

21 Well --

22 MR. DEPUY: Faculty and staff.

23 MR. HALL: Faculty and staff. Right.

24 Yes, faculty and staff.

25 CHAIRPERSON GRIFFIS: As opposed to the

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1 current condition of 101 or in contrast. In
2 comparison.

3 MR. HALL: Gives a little more
4 flexibility.

5 CHAIRPERSON GRIFFIS: Right.

6 MR. HALL: I think that's --

7 CHAIRPERSON GRIFFIS: Right.

8 MR. HALL: Believe me, we will hire nobody
9 we do not need.

10 MR. DEPUY: Mr. Chairman and members of
11 the Board, it might be -- another option to consider
12 is -- is language which would say no greater than the
13 higher number of 92 FTE or 105 employees which would
14 put a cap on both.

15 CHAIRPERSON GRIFFIS: And certainly no
16 more than 70 --

17 MR. DEPUY: It would also --

18 CHAIRPERSON GRIFFIS: -- on site at one
19 time. That would get it all together. No, I
20 appreciate that. There may be -- there may well -- we
21 may not solve it with this one, but I think there's
22 going to be a way to deal with it.

23 But, that's an interesting point of a
24 little bit of flexibility in terms of 105 which is not
25 a monumental difference and it -- it lends itself to

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1 some flexibility about adding a part-time or a quarter
2 person.

3 Now, in terms of when you look at part-
4 time, give a quick synopsis of who we're talking
5 about. Do you -- for instance, if a tutor comes in --

6 MR. HALL: Yes.

7 CHAIRPERSON GRIFFIS: -- or a special
8 language person, is that a part-time employee? Are
9 they consultants? Are they counted?

10 MR. HALL: No. It would generally be
11 someone who is teaching a part-time load. Two classes
12 or three classes or on the staff side somebody who is
13 working generally would be something like half-time.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. HALL: But, those would be the people
16 that would be --

17 CHAIRPERSON GRIFFIS: And are there those
18 that are --

19 MR. HALL: -- counted.

20 CHAIRPERSON GRIFFIS: -- attendant to the
21 programs that would not be counted as a part-time or a
22 full-time staff or faculty?

23 MR. HALL: Such as consultants, we would
24 not include those in those -- in these numbers.

25 CHAIRPERSON GRIFFIS: Okay. And there

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1 wouldn't be any -- any specialty educational people?
2 Any sort of like, I don't know, tutors that might come
3 in or someone that does a special language class once
4 a week or something like?

5 MR. HALL: Could be. Could be.

6 CHAIRPERSON GRIFFIS: If there was a
7 person that did that and had one class a week, is that
8 a part-time person?

9 MR. HALL: Had one class a week, always
10 coming in, sure.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. HALL: Somebody was -- is on a regular
13 schedule with us.

14 CHAIRPERSON GRIFFIS: Understood.

15 MR. HALL: Yes.

16 CHAIRPERSON GRIFFIS: Okay. Okay. Very
17 well. Any other questions? Ms. Miller.

18 MEMBER MILLER: For Op, I just want to ask
19 in your opinion, does the site have ample parking for
20 105 faculty and staff?

21 MR. MORDPHIN: From the way they are
22 operating now, I would assume that they probably do
23 because there's also -- there are other ways to get
24 there and faculty can carpool and because the -- from
25 -- the letter from the ANC indicates that there is no

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1 -- that they are in support of it which to me
2 indicates that there is no problem there. I would
3 assume that there's some flexibility in that parking
4 lot to accommodate. We're only talking an additional
5 four faculty and staff members that may not be there
6 at the same time.

7 So, I would assume probably yes.

8 MEMBER MILLER: Okay. And for the
9 applicant, I'm just curious. With respect to the
10 proposal that we could do an either or, like 92 FTE or
11 105 full bodies total, does that give you the
12 flexibility to increase the FTEs under that proposal?

13 Like you could have 93 FTEs then or -- what does that
14 -- could you just elaborate on that just a little bit?
15 What does that add versus, you know, just doing a
16 105?

17 MR. DEPUY: You could count it either way.

18 The only question I have is how parking would be
19 required. Whether parking is going to be based on the
20 92 or the 105. It's a bigger parking number if -- if
21 the -- if the employee count is -- is 105.

22 CHAIRPERSON GRIFFIS: But, you don't have
23 a parking requirement.

24 MR. DEPUY: Well, we don't. It's just
25 ample parking, but the question is does that cause the

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1 Board any discomfort --

2 CHAIRPERSON GRIFFIS: I see.

3 MR. DEPUY: -- with the parking.

4 CHAIRPERSON GRIFFIS: I see. It
5 shouldn't. It's the same number. Right?

6 MR. DEPUY: It's the same number.

7 CHAIRPERSON GRIFFIS: Actually, I mean if
8 -- it's an excellent point to bring up. Because the
9 -- the parking tabulation if we went to the
10 calculation would have to be on total number of
11 faculty and staff irregardless of part-time or full-
12 time. I mean that's the way it is written. Okay.

13 So, that being said, anything else as
14 follow-up?

15 Last question then to the applicant.
16 You're indicated in your testimony and also in some of
17 the submissions that you do annual reports and that is
18 to the Friends of and also the ANC. Is there any
19 difficulty or do you have an opposition to providing a
20 report to this Board annually --

21 MR. HALL: Certainly not.

22 CHAIRPERSON GRIFFIS: -- based on the
23 total number of faculty and staff and based on the
24 student enrollment?

25 MR. HALL: Certainly not.

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1 CHAIRPERSON GRIFFIS: Okay. Let's move on
2 then if there's no other question. Do you have
3 questions of Office of Planning? Cross examination?

4 MR. DEPUY: No, none.

5 CHAIRPERSON GRIFFIS: Okay. We do have
6 the ANC letter that was just passed down to us. I
7 don't know if it was said on the record. It was
8 probably said out here, but there was attendant to
9 another application. So, it's in another file. We'll
10 put it in this file.

11 I don't have any other government reports
12 submitted directly to us on this. So, let us go to
13 other testimony. Right. No, I do know.

14 Yes, do the Friends of Tregaron want to
15 come up? I'm noting. Is there anyone else here to
16 give testimony today that are in support or in
17 opposition? Very well.

18 Hi.

19 MS. LEPARD: Good afternoon. My name is
20 Bonnie LePard. I live at 3101 Macomb Street. I am an
21 environmental attorney and I'm also the President of
22 the Friends of Tregaron Foundation, Inc.

23 The -- I submitted a letter that was filed
24 on December 3rd that hopefully is in your file from
25 the Friends of Tregaron.

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1 Just a little background on the Friends of
2 Tregaron is that this is a nonprofit community-based
3 organization that's been around over 30 years -- 35
4 years dedicated to preserving and protecting the
5 Tregaron Estate which is a wonderful historic site
6 that got landmark status in D.C. in '78 and is also in
7 the Cudon Park Historical District and is also in the
8 National Register of Historic Sites and it's
9 historically important for a number of reasons which I
10 won't take up your time here today, but it's a great
11 house.

12 The mansion and some of the buildings are
13 architecturally sublime. Charles Plat did the
14 building in 1912 and with Ellen Bittle Shipman who's a
15 renowned landscape architect and the landscaping and
16 the buildings are still intact and important and
17 preserved and protected today and our group has been
18 around to -- dedicated to keeping this -- one of these
19 last remaining valuable green spaces in the District
20 of Columbia preserved and protected.

21 I am here today -- the school only owns
22 six acres. Pardon me. It's a 20 acre estate -- 20
23 plus acres. That even -- when the school bought their
24 six acres and the 14 surrounding acres are privately
25 owned, it has still been treated as one site. The

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1 landscaping and the buildings together are intact and
2 treated together that way by historic preservation
3 review board and other entities.

4 I am here today in support of this
5 application, but with a -- a cautionary note I guess
6 as mentioned and is mentioned in my letter.

7 Because of the over the years the school
8 has worked with this -- with the neighborhood and with
9 the Friends of Tregaron and it's -- and the
10 communication have improved in -- and -- and we have a
11 lot of contact and -- and discussions over various
12 issues and concerns that come up. So, we work very
13 hard at working with the school.

14 My organization is a large group. It has
15 over the years over 500 members and they keep avidly
16 interested in the site and today they're not all here
17 because we are in support of this.

18 But, we do have a concern about the
19 growing increase that has taken on over the years and
20 to be here again sort of acting -- asking
21 retroactively for authorization of the increase. It
22 happened we discovered in 1997 when the school had
23 grown from 350 students to 425 without any
24 explanation.

25 It's just sort of grown and creeped up and

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1 nobody really knew why and that's sort of what's
2 happened -- that is what's happened again today as
3 their reports show. They can't -- they don't really
4 know when or why or how they went from 70 to 92 which
5 is now it turns out to be 101.

6 And I guess as a group that preserves this
7 really fragile historic site, we're concerned about
8 the site. We're concerned -- there's a lot of
9 students. That's 517, but actually if it's more now,
10 you're going to go up to 105. That could be 530
11 people coming and going at that site any given day.

12 And this is in a residential neighbor on a
13 very busy street. Macomb Street's very busy and
14 there's five or more private school or schools. Not
15 all private. Pardon me. Schools in the neighborhood
16 and the -- Macomb Street's a major thoroughfare
17 traffic-wise between Massachusetts and Connecticut
18 Avenue.

19 So, all the said, the traffic is something
20 that the school tries to work with and tries to stay
21 on top of, but at 8:00 in the morning, Macomb Street
22 is really a parking lot and there's no movement.

23 So, our concern has been this kind of
24 growing increase and so, we're here today or I'm here
25 on behalf of the -- the board and the members to just

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1 say it's got to stop. It just -- it just can't keep
2 growing overnight.

3 We know as a group we could have come here
4 today and opposed this application and we could have
5 opposed prior things the school has done and -- and
6 many neighborhood groups in Cudon Park do the exact
7 same thing, but we're trying very hard to work with
8 the school and we don't want to be unreasonable and
9 say no, you can't have 22 or more faculty there and,
10 you know, years ago, you can't have these extra 75
11 students. They're already there and I know they need
12 to be there and they need to have a school to go to
13 and you need their tuition and things like that.

14 But, I just want to put a marker down and
15 put it into the record that this can't continue to
16 happen and they really need to stay at a set note and
17 to allow them, you know, what was earlier today 92 and
18 now I understand the -- the discussion about why it's
19 going to be 101 or now 105. It is wiggle room that
20 they continue to -- they've been able to have over the
21 years and I -- I just want to voice our concerns about
22 that.

23 Thank you for this opportunity.

24 CHAIRPERSON GRIFFIS: Good. Thank you
25 very much and it should be noted that we did receive

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1 your letter and I know the Board read the entire
2 contents of it. So, and we do appreciate you taking
3 the time to be down here to present it to us.

4 I think it's the Board's concern in this
5 application and in all of our applications in terms of
6 the -- the creep or the unawareness and it's not just
7 private schools, but other things that are conditioned
8 with certain types of caps and we often get with a new
9 administration or a new director or a new board oh,
10 gosh, we didn't know. We have worked to -- to -- with
11 applicants to try and get a system of which they can
12 do in house in order to monitor.

13 Now, that we do have, in fact, a
14 compliance officer attendant to the Office of Zoning,
15 I think we have -- the Board now has the capability of
16 receiving updates and doing something with them.

17 So, I think it's an important thing if
18 it's only just to set up the system of reminding and
19 everyone knows what it is. Because I think the
20 Board's well aware of how it can creep up and not
21 maliciously, but can kind of get lost or -- or one can
22 lose track of it.

23 So, we appreciate that concern to put into
24 the record and also to motivate us to condition
25 something of that nature.

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1 Okay. Any other questions from the Board?

2 Yes.

3 MEMBER MILLER: I phrased my question with
4 respect to giving them flexibility so that they
5 wouldn't be back in two years from now and I just am
6 curious as to your opinion as to whether that 105
7 number for total faculty and staff is one that you're
8 comfortable with or does that seem to high to you or
9 do you have a feel for that?

10 MS. LEPARD: It -- it did seem another
11 chance for them to grow, for more cars and I don't see
12 a lot of carpooling going on and I don't see a lot of
13 public transportation being used and a lot of walking.

14 So, there's a lot -- and pretty much everybody that's
15 up there drives and the children -- the students get
16 dropped off. There are some students that walk from
17 the subway. I -- I correct myself, but not very many.

18 And so, I -- I worry a bit about it going
19 up. I don't want to be unreasonable either and don't
20 want them to have to come back and programs could
21 change.

22 But, it -- it -- I'll leave that to -- to
23 the Board, but it does -- it worries me that it's, you
24 know, and as the part -- I didn't realize that it was
25 a FTE 92 really meaning 101. That took me by

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1 surprise, too.

2 So, it's a little unsettling to have it go
3 up again, but do they really need that wiggle room, I
4 guess I'll have to leave it to the honesty of Mr.
5 Hall.

6 MEMBER MILLER: And would you be more
7 comfortable with our choosing a specific number versus
8 an FTE number?

9 MS. LEPARD: I worry about the splitting
10 of the FTEs and -- and how many -- the specific number
11 I think gets away from the FTE problem. I think it
12 actually will probably decrease. If you have it -- it
13 set to a -- this is a -- this is that number that's on
14 the payroll. That's probably a better way to go than
15 FTEs which then does become split to as -- as the
16 Chairman said you could have 50 more next year and 50
17 more cars and, you know, virtual in and out.

18 I do wonder though you asked a question
19 about the contractors and the after school -- people
20 that aren't on their faculty. There are folks that
21 have courses and events in the evening that come and
22 go to the school and that's a whole other stream of
23 traffic that's not related to in their own occupancy.

24 So, there's a bunch, you know, whether it's after-
25 school enrichment programs or after-school tutorials

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1 or things like that or -- or also sporting events, but
2 that's a separate issue based on the usage of their
3 gym and things like that.

4 CHAIRPERSON GRIFFIS: But, you're saying
5 that there's a different faculty roster for after-
6 school activities?

7 MS. LEPARD: I don't know if it's a
8 different faculty roster, but you have different
9 people coming in and whether they're renting from you
10 or teaching or as part of your program, I'm not sure.

11 MR. HALL: Maybe I should just speak to
12 that. We do have an agreement and it's a pretty clear
13 agreement, nine pages I guess, with the Friends of
14 Tregaron and indeed, we -- we're pretty attentive to
15 making sure that we follow that agreement. Certain
16 number of activities that are allowed in the course of
17 the year and at the end of September every year, the
18 Friends of Tregaron gets a report outlining all the
19 activities that we have had after hours.

20 And I think that, Bonnie, you would agree
21 that there have not been any issues concerning that
22 nor have we heard very much complaint from the -- from
23 the neighborhood on those issues.

24 CHAIRPERSON GRIFFIS: Are there consistent
25 daily things that happen outside of -- after school?

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1 I mean is there afternoon program?

2 MR. HALL: Yes, they're --

3 CHAIRPERSON GRIFFIS: Okay. Are those
4 people that employ those programs counted in your 101
5 number?

6 MR. HALL: No, but there aren't very many
7 of them. There might be a coach who comes in to coach
8 a sport, but most of the coaching is done my members
9 of our own faculty. So, we -- we tend to have those
10 programs done by people who are already there.

11 CHAIRPERSON GRIFFIS: I see. So, there's
12 not a redundancy of faculty. I mean three is a
13 redundancy of faculty. It's not an additional --

14 MR. HALL: No.

15 CHAIRPERSON GRIFFIS: -- faculty that
16 comes in for afternoon -- consistent afternoon
17 activities.

18 MR. HALL: They would -- and, of course,
19 the faculty -- many of the faculty leave by 3:30 or
20 4:00 and -- and then anybody that comes in is taking
21 the place of somebody who's gone, but there aren't
22 many of those at all.

23 CHAIRPERSON GRIFFIS: Well, that's not
24 such a de minimis aspect that you brought up. That's
25 a -- that's one of the critical aspects that the Board

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1 is looking at --

2 MR. HALL: Right.

3 CHAIRPERSON GRIFFIS: And is concerned
4 with. If somebody leaves at 3:00 and someone else
5 comes in, you've now acknowledged that you've created
6 two trips for something --

7 MR. HALL: Right.

8 CHAIRPERSON GRIFFIS: -- that is a single
9 position.

10 MR. HALL: Right.

11 CHAIRPERSON GRIFFIS: So, not losing that,
12 I understand what you're saying and let me see if I
13 follow then. If there's an after-school program, kids
14 can stay until 5:00 or 6:00. Is that correct?

15 MR. HALL: Correct. Correct.

16 CHAIRPERSON GRIFFIS: And those kids are
17 not unattended. There are adults --

18 MR. HALL: Correct.

19 CHAIRPERSON GRIFFIS: -- that are
20 overseeing them and probably doing programs.

21 MR. HALL: Correct.

22 CHAIRPERSON GRIFFIS: And those are --

23 MR. HALL: Generally people who are
24 currently on our staff.

25 CHAIRPERSON GRIFFIS: And if they are not

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1 part of that generally people on your staff, are they
2 counted in the 101?

3 MR. HALL: No.

4 CHAIRPERSON GRIFFIS: So, you have people
5 that are not on your staff that can come in for the
6 afternoon that maybe they're doing the -- the student
7 care Monday through Friday that wouldn't be counted?

8 MR. HALL: Everybody who is on the payroll
9 is 101.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. HALL: I'm sorry.

12 CHAIRPERSON GRIFFIS: Sorry if I didn't
13 understand that and put you through all that, but
14 there it is.

15 MEMBER ZAIDAIN: Do you have volunteers?

16 MR. HALL: We do have volunteers. Yes, we
17 do.

18 CHAIRPERSON GRIFFIS: How many volunteers?

19 MR. HALL: I'm not sure I could give you
20 exact numbers, but there are --

21 CHAIRPERSON GRIFFIS: Fifty? Do you have
22 -- I mean we're not -- we're not worried about, you
23 know, the bake sale that has 50 people come in to help
24 set up the tables and sell apple pies once a year.

25 MR. HALL: That's generally the volunteers

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1 that we have.

2 CHAIRPERSON GRIFFIS: Okay. So, you don't
3 have volunteers that are there Monday through Friday?

4 MR. HALL: No.

5 CHAIRPERSON GRIFFIS: That --

6 MR. HALL: No.

7 CHAIRPERSON GRIFFIS: I think that's where
8 I'm going unless the Board feels differently.

9 MR. HALL: No. No.

10 CHAIRPERSON GRIFFIS: I want to know --

11 MR. HALL: That's correct.

12 CHAIRPERSON GRIFFIS: -- on day-to-day
13 who's there, who's consistently there.

14 MR. HALL: That's right.

15 CHAIRPERSON GRIFFIS: Look schools have to
16 have that kind of --

17 MR. HALL: Yes, they do.

18 CHAIRPERSON GRIFFIS: -- I don't think
19 that the -- the neighborhood is saying that that
20 flexibility isn't allowed. I mean on events --

21 MR. HALL: No.

22 CHAIRPERSON GRIFFIS: -- and sporting
23 events and bake sales and all that, but day-to-day
24 Monday through Friday who's there and who's counted?
25 Okay.

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1 Ms. Miller.

2 MEMBER MILLER: Ms. LePard, I want to know
3 if you have looked at the proposed conditions to the
4 BZA order that the applicant has submitted?

5 MS. LEPARD: Mr. DePuy showed them to me
6 just prior to -- or this afternoon when we came into
7 the hearing room. I -- I gave them a once -- glance
8 once over and I -- I -- my first reaction was they
9 were fine, but I want to spend a little more time
10 because of the -- the traffic is a little -- is -- is
11 an ongoing issue we work with and they have a traffic
12 management policy there.

13 You know, relating to this application,
14 they've -- they've -- I guess anything I would want to
15 do would be to change of some of it which would be a
16 whole different issue I guess. Some of the traffic
17 issues.

18 CHAIRPERSON GRIFFIS: You see, Mr. DePuy,
19 what we walk into with this. Okay.

20 MEMBER ZAIDAIN: Actually, if I could. I
21 don't want to interrupt your line of questioning.

22 I actually wanted to ask Office of
23 Planning a question. Have you seen the proposed
24 conditions about the maintenance for the -- the
25 parking lots and -- and the -- the conditions related

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1 to changing the -- well, there was -- there were --
2 the -- the alteration of conditions changing from
3 construction to maintenance of certain facilities?

4 I guess my question is was that part of
5 your -- was that part of your analysis and -- and do
6 you think they're in good condition to be maintained?

7 Do you know?

8 MR. MORDPHIN: I don't have a copy of
9 those proposed conditions.

10 MEMBER ZAIDAIN: Okay.

11 CHAIRPERSON GRIFFIS: Let me just make a
12 statement because I think I need to caution the Board
13 if -- if we start opening up all these conditions
14 which is what I probably wasn't that direct with in --
15 in saying this.

16 If we start walking into these conditions,
17 first of all, we don't have the record.

18 MEMBER ZAIDAIN: Okay.

19 CHAIRPERSON GRIFFIS: We will have to go
20 revisit the record and the only way we can actually do
21 that is open up an entire hearing on every single
22 condition.

23 MEMBER ZAIDAIN: Right. So --

24 CHAIRPERSON GRIFFIS: Which means we --
25 we're basically throwing out the previous order and

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1 starting from scratch. So, I just want to caution us.

2 MEMBER ZAIDAIN: Well, let me -- well, let
3 me -- let me save you some time. I mean are these off
4 the table? This is not part of the application?

5 CHAIRPERSON GRIFFIS: I think -- I think
6 -- and this is what I know the Board member was
7 thinking about. It's nice to clean it up and I'm just
8 wondering if we can -- how do we stop? At what level
9 do we stop cleaning it up and aren't changing the
10 actual --

11 MEMBER ZAIDAIN: Well, and that's --

12 CHAIRPERSON GRIFFIS: I think that we do
13 take it off the table.

14 MEMBER ZAIDAIN: Okay.

15 CHAIRPERSON GRIFFIS: I think what we have
16 is an application that was clearly advertized as such
17 -- as the modification of Condition Number 3 and that
18 everything that will proceed in the record that's
19 before us is going to be on the Condition Number 3. I
20 think any order that was issued if it was approved
21 would say that, would note that the -- the
22 modification to Condition 3 and say that the full
23 force of the previous order or the previous order was
24 in full force.

25 Otherwise -- you know, that's right.

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1 MEMBER ZAIDAIN: Well, I --

2 CHAIRPERSON GRIFFIS: Just seems to be --

3 MEMBER ZAIDAIN: Yes, I agree with your,
4 Mr. Chairman, and -- and -- and if the applicant wants
5 it to go otherwise, maybe we'd have to continue it and
6 -- and get more information. I don't know.

7 I'm just saying that there were certain
8 things in the proposed corrections that talked about
9 maintaining certain facilities and I just feel like we
10 should have some evidence in the record that those are
11 in a condition to be maintained. I don't want to --

12 CHAIRPERSON GRIFFIS: Right.

13 MEMBER ZAIDAIN: -- set the bar really low
14 for these facilities if they're in bad shape.

15 CHAIRPERSON GRIFFIS: Right.

16 MEMBER ZAIDAIN: Not saying they are. I'm
17 just saying we need some evidence in the record.

18 CHAIRPERSON GRIFFIS: But, taking that to
19 a logical extreme, why -- shouldn't we also look to
20 make sure that the traffic management plan can be
21 maintained is actually working?

22 MS. BAILEY: Mr. Chairman.

23 CHAIRPERSON GRIFFIS: Yes, a voice of
24 reason.

25 MS. BAILEY: I don't know about that, sir,

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1 but I'm the guilty party here.

2 I had asked the applicant to update the
3 conditions.

4 CHAIRPERSON GRIFFIS: Oh, and -- and
5 there's no -- I --

6 MS. BAILEY: Just because it seems to make
7 sense.

8 CHAIRPERSON GRIFFIS: Absolutely does
9 and --

10 MS. BAILEY: The order was issued in 1997.

11 CHAIRPERSON GRIFFIS: Right.

12 MS. BAILEY: This is almost 2004.

13 CHAIRPERSON GRIFFIS: Right.

14 MS. BAILEY: And it seems to make sense to
15 -- the applicant indicated that really nothing other
16 than the number of faculty and staff would not be
17 changing. That's the only thing and so, it just
18 seemed to have made sense to make it applicable to --

19 CHAIRPERSON GRIFFIS: Okay.

20 MS. BAILEY: -- December 9th, 2003. So --

21 CHAIRPERSON GRIFFIS: No, and I totally
22 agree.

23 MS. BAILEY: -- if there's a problem with
24 that --

25 CHAIRPERSON GRIFFIS: I know the Board

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1 actually was doing it --

2 MS. BAILEY: -- then I take full
3 responsibility.

4 CHAIRPERSON GRIFFIS: -- without --
5 without the submission and our -- our heads were going
6 in the same direction trying to reword some of this
7 stuff and all I'm saying is that we might be a little
8 cautionary, but I can be persuaded very quickly of
9 course, but yes.

10 MEMBER MILLER: I mean I for one have the
11 contrary point of view that it might not be too
12 difficult just to update this order in the way that
13 you have and I think that Ms. LePard really does
14 represent the community interest here and, you know,
15 but that's why I'm asking you if you're comfortable
16 with this. Because if you're not comfortable with it,
17 then I think, you know, then I would feel differently,
18 but -- or if you're not prepared, you know, to address
19 it right now.

20 MS. LEPARD: Thank you. I appreciate
21 that. I -- I like the idea of instead of providing
22 landscaping they're going to maintain landscape. I
23 think they've -- you know, those kind of maintenance
24 of things. Is -- it seems an obvious update and --
25 and to keep things going.

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1 I -- I -- there's -- it's -- it's very,
2 you know, minor most all of this and I -- and I guess
3 on behalf of Friends of Tregaron, I would be willing
4 to go along with it.

5 I guess the only thing is the traffic
6 management plan which is just something that if we
7 need to address it I think we're going to need to
8 address it probably in a different way as an ongoing
9 conversation or if they ever have plans for something
10 in the future which I will have concerns about then
11 I'll -- that should maybe be in a separate conditions
12 put before you or a separate hearing or whatever.

13 But, at this point, I think it is probably
14 to the benefit of Friends of Tregaron that they
15 maintain landscaping, that they maintain some of these
16 various things.

17 And to answer another Commissioner's
18 question about is there, you know, are all these
19 things, the upkeep and so forth, it's in -- it's in
20 pretty good shape.

21 We don't care for the traffic -- the
22 traffic and we have problems at the beginning of the
23 year and problems with certain events that we try to
24 work with, but we'll keep talking and I -- I wouldn't
25 be troubled if you want to update the conditions at

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1 this point.

2 MS. NAGELHOUT: Mr. Chair.

3 CHAIRPERSON GRIFFIS: Yes.

4 MS. NAGELHOUT: Could I second your note
5 of caution on --

6 CHAIRPERSON GRIFFIS: Of course.

7 MS. NAGELHOUT: -- revisiting the prior
8 conditions. Because this was advertised as an
9 extremely limited --

10 CHAIRPERSON GRIFFIS: Right.

11 MS. NAGELHOUT: -- relief. It was not
12 advertised as a full-blown 206 application. We don't
13 have the findings or the -- or the evidence or the
14 testimony in this proceeding to revisit most of these
15 conditions. So, I would second your note of caution.

16 CHAIRPERSON GRIFFIS: Thank you. Of
17 course, a very strong voice of reason for corporation
18 counsel, our legal advisor.

19 Yes, Ms. Miller.

20 MEMBER MILLER: I just think some of it's
21 common sense though because, you know --

22 CHAIRPERSON GRIFFIS: It is very common
23 sense and that's why we're -- I totally agree and you
24 know how some of the most common sense things can --
25 can fall apart for us and not with our own doing.

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1 Okay. This is what I propose. What --
2 what else? Any other questions on this?

3 Okay. If there's nothing further then,
4 any cross examination? Any other questions of the
5 Friends?

6 MR. DEPUY: None.

7 CHAIRPERSON GRIFFIS: Okay. I don't think
8 there's anything else for us to cover today unless you
9 want a -- rather except for any conclusionary remarks
10 that you might have and then let me before you do that
11 I think we can do two things. We can either try and
12 do this right now. Make a decision on these
13 conditions. We can give additional time for people to
14 respond to the conditions. That would be a big
15 mistake actually.

16 We either do it or we don't. Whether we
17 actually -- let me see if I -- are you going to
18 propose the language and adopt the language right now
19 for all these conditions if we go in that direction or
20 are you just going to adopt what's being proposed?

21 MEMBER MILLER: Adopt what's being
22 proposed?

23 CHAIRPERSON GRIFFIS: I see. Okay.

24 MEMBER MILLER: Oh, it's -- accept we need
25 to fill in the number for number 3. I wouldn't accept

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1 the 92.

2 CHAIRPERSON GRIFFIS: There it is then.
3 Let's do this. While don't we let you conclude any
4 summation remarks you want. We're going to take a
5 quick recess of about ten minutes and then I think we
6 can come back out and deal with this today. Okay.

7 MR. DEPUY: That's fine. We'll -- we'll
8 cede our time for closing to the Board so it can
9 deliberate. Use that time for deliberations.

10 CHAIRPERSON GRIFFIS: How amenable of you.
11 All right. Let's go.

12 (Whereupon, at 4:34 p.m. off the record
13 until 5:21 p.m.)

14 CHAIRPERSON GRIFFIS: Okay. Let's resume
15 very briefly.

16 I think it -- it should have been noted in
17 our discussion/deliberation briefly out here and
18 obviously pursuing this that, one, it's commendable
19 that the -- this application specifically has come in
20 with support noting a few words of caution, but also
21 with the fact that this is a -- these are large issues
22 that the Board deals with constantly and one of the --
23 one of the most important pieces the Board is
24 currently looking to in all its orders and any
25 conditions on it is -- is the ability for

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1 enforceability, for understanding, and consistency.

2 And really so, I think it -- it can be
3 said and probably won't be surprised in that clearly
4 we look at this in terms of its impact outside of this
5 application and perhaps its impact on other
6 applications that might be coming, that may be being
7 processed before us at this time.

8 So, I say that only to bring up to the
9 point that I do not believe that the -- the amount of
10 concern and time that we've taken to do this is of
11 total reflection of this specific application, but
12 other issues attendant to our processing of similar.

13 So, with that, what I'd like to do is,
14 first of all, I think we are moving towards
15 establishing a total number of faculty and staff count
16 which would then reflect more of reality and I think
17 would more adequately reflect an ability to be
18 measurable and forceful and understandable.

19 So, what we'd like to do is have -- have
20 you submit to the Board specifically what the current
21 total amount is. Understanding that you said that 101
22 is what it is, what we'd like is just something that
23 verifies that, documentation of it.

24 I think that obviously will be served to
25 the community and to the ANC.

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1 I going to set this for a special decision
2 making which would be next Tuesday. So, we don't have
3 a lot of time to get that.

4 I was not anticipating that it would take
5 time to put that in. So, we'd require that in by 3:00
6 tomorrow into the Office of Zoning. Noting full well
7 that it's going to be provided without a lot of time
8 for responses.

9 We certainly are hoping that it's -- well,
10 there it is.

11 We would then pick this up. The other
12 major concern that we have is, of course, reviewing
13 the entire previous order and the other conditions in
14 the order. I think just to be perhaps absurdly
15 cautious, the Board I believe will not undertake
16 reviewing or changing the -- the -- any sort of word
17 or language in any of the other conditions.

18 You know, even in our brief logical
19 discussion and the three of us that are here today
20 agree on everything, all the time, there seems to be
21 some -- some matter of slight disagreement of what the
22 impact might be or may not be.

23 I open that up to the larger community and
24 I can guarantee you we'll have a few opinions that may
25 be different than even the ones we have. So, with

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1 undue caution, I believe that we will note and do
2 appreciate the proposed wording of the conditions, but
3 would only look to modify as advertised Condition
4 Number 3.

5 That being said, anything else? Very
6 well.

7 I believe that would be it then for us.
8 Ms. Bailey, just to reiterate, we're asking for that
9 documentation of the total number of employees by
10 close or by 3:00 tomorrow. That way, it can actually
11 go out to us in time for our review before the Tuesday
12 decision making.

13 Are you sure? Anything else to add? Any
14 other additional information?

15 Yes, Ms. Bailey.

16 MS. BAILEY: Just to say that the decision
17 is scheduled for December 16th at 9:00 a.m. at the
18 special public meeting. That's next Tuesday, 9:00
19 a.m.

20 CHAIRPERSON GRIFFIS: Good. Everybody
21 clear? Happily unclear?

22 MR. HALL: We do not --

23 CHAIRPERSON GRIFFIS: No. No, and no
24 refreshments will be served.

25 Okay. If there's no other questions, no

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1 other clarifications, I believe that's it for us
2 today. Is that correct, Ms. Bailey?

3 MS. BAILEY: Yes, sir.

4 CHAIRPERSON GRIFFIS: Very well. Then I
5 would like to conclude the afternoon session of the
6 9th of December 2003 and thank you all very much and
7 do appreciate your patience.

8 (Whereupon, the hearing was concluded at
9 5:26 p.m.)

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